

Specific Proposals for the Neighborhood and Property Issues and Concern of Setbacks By Laura Belflower

The existing document language is in bold type and proposals or discussion is in regular type.

Setbacks

***Existing Code:**

WCSS: When adjacent to the rear or side yard of residentially zoned property which is developed or developable for residential use the minimum setback from the property line abutting said residential must be one foot for every three feet of structure height. Zoned industrial and its adjacent to industrial, no additional setback. Adjacent to other type of property, the minimum setback from that property line must be 20% of the structure height.

WCSS facility (equipment shelters, etc.): the same required yards (setbacks) as required for principal structures.

Proposal: The public purposes to be achieved by setbacks are to:

- A. Maintain the aesthetic character of the surrounding area, in the same manner and level as is required of other similarly appearing or impacting uses.
- B. Protect the safety of surrounding properties from reasonably likely safety risks, in the same manner and level as is required of other similar uses.

(Property values are not proposed to be included as an issue addressed by setbacks because, if there is any impact on property values, it is because of concerns about aesthetics or safety and does not need to be analyzed separately.)

Issues:

1.a. "Setback" distances should be increased.

b. Minimum setback should be one ft./ one ft. of tower height

Proposal: The setback distances for WCSS should not be increased.

Justification:

- A. Setbacks are inefficient and ineffective methods to address aesthetics. There is no evidence that a greater setback of a WCSS results in greater aesthetic protections. Setting the WCSS back from property lines, in most cases, makes the structure more visible, as it pushes it more into the normal view of people on adjacent properties.¹ Additionally, a uniform setback cannot take into consideration the uses or vegetation on the property that might allow a more aesthetically pleasing location for the tower.

¹ Design studies (Time-Saver Standards for Landscape Architecture, Charles W. Harris and Nicolas T. Dines, coeditors, New York, McGraw-Hill, 1988) show that a normal field of vision is no more than 15 degrees above horizontal, so pushing the tower away from adjacent properties puts more of the tower in the viewer's normal vision.

- B. Any aesthetic issues about a WCSS are because it is tall and visible (i.e. the issue is related to the part of the structure above the zoning district height limitations). If Hillsborough County has regulatorily determined that there is an aesthetic issue created by tall structures that can be addressed through setbacks, it would be reflected in the County's regulations.

For most tall structures, however, there is no setback beyond the zoning district setbacks. Section 6.08.04 specifically addresses unusually tall structures, allowing them with administrative review, but no setback requirements above the zoning district setbacks. Similarly, section 6.08.05. allows flagpoles, up to 150 feet in height in non-residential districts; section 6.08.03. allows amateur radio antenna support structures; and 6.10. addresses light poles, including sports lighting, all without extraordinary setbacks. According to the information provided to the committee by staff, there is a review process for power poles over 75 feet tall, but no indication of a setback requirement.

There are some setback requirements for some tall structures. Under section 6.11.04, agricultural structures have a stepped-up increasing setback from side and rear lot lines that would result in a 90-foot setback for a 125-foot silo. Wind Energy Conversion Systems (wind turbines), addressed by section 6.11.118, are required to be setback 100% of the structure height from property lines. Radio and TV towers, under section 6.11.79, must be set back 1 foot for every 3 feet of tower height. But there is no indication that these setbacks were created for aesthetic reasons.

Therefore, there is nothing to indicate, under Hillsborough County's regulatory scheme for other uses or in actual aesthetic differences, that an increased setback is needed to maintain the aesthetic character of the area surrounding a WCSS in the same manner and level as is required of other similarly appearing or impacting uses.

- C. WCSSs are built to high safety standards, much higher than many other tall structures, such as power poles in the right of way. Therefore, they are less, or certainly no more, of a safety risk than other structures.

Although there are examples of towers that have fallen/collapsed, these are extremely rare. The chances of a tower falling or creating a structural safety hazard are much less than the large trees that surround homes, the power poles that line roadways, the ballfield lights in parks and at schools, and any other tall structures or objects. As there are no fall-zones or safety setbacks in Hillsborough County's regulations for these uses, there is no justification for increased safety setbacks for WCSS.

- D. Other safety issues about towers, such as concerns about children attempting to climb them, cannot be resolved by setbacks. Concerns about the health effects of the signal sent by the antennas cannot, by federal law, be considered at all, so is not a setback safety issue.
- E. Florida law provides that "[a]ny setback or distance separation required of a tower may not exceed the minimum distance necessary, as determined by the local government, to satisfy the structural safety or aesthetic concerns that are to be protected by the setback or distance separation." §365.172(b)(2), Florida Statutes. As indicated above, there is no structural safety or aesthetic concern about towers that can actually be resolved by increased setbacks for the tower. A case could even be made that a reduction could be justified. Therefore, the existing setbacks are the most that can be found to meet the law.

For all these reasons, the existing setbacks for WCSS indicated above should remain unchanged.

c. Setbacks should be increased to 700% of tower height (7 ft./ 1/ft. tower height).

Response: My justifications for not increasing the WCSS setbacks are indicated above, but I would like to address this proposal because it shows how all the consequences (intended and unintended) of the decision on setbacks need to be addressed.

If a setback of 700% of the tower height was required for towers, a tower of 150 feet, a fairly typical height, would be required to be set back 1050 feet from any property line. This would require the tower to be located on a parcel of at least 3,483,426 square feet – that is over 80 acres – with the tower at the center. Obviously, with those requirements, it would be impossible to build a tower in anything but the most agricultural area. It does not take much to see that this could easily be considered by the courts to be a prohibition of service and struck down. Equally significantly, such a setback does not address the issues, whatever they are, towers are believed to create; it just pushes towers away for the sake of pushing them away.

As another example, if towers are required to be set back further from residential areas, it pushes them closer to the road, where they are much more visible to the traveling public. This also points out that all aspects of the issues need to be considered. Before a setback requirement, or any other regulation, is proposed to the County Administrator, it needs to be thoroughly analyzed to be sure it does what it is intended to do, and no more.

2. “Setback” restrictions should also take into consideration the aesthetic/property value impact of “base station” or ground equipment, and also what equipment is placed on the tower.

Proposal: The existing setback for the base station and ground equipment of the zoning district principal building setback (yard) should not be changed.

Justification:

- A. There is nothing about the ground equipment that would not be allowed in any residential lot, with much less setbacks. The equipment shelters are essentially accessory structures (like large tool sheds), which would be allowed in any residential district without having to meet the rear and side yard principal structure setbacks. Accessory structures that meet principal structure setbacks can be any height up to the district height restriction, any size, and in any number, all with no requirement of fencing or screening. As Hillsborough County has no extraordinary setbacks for such equipment if it was not associated with a WCSS, there is no reason to have extraordinary setbacks for the equipment just because it is associated with the WCSS.
- B. The generators are no different than commercial or residential generators in that they have to meet noise requirements and meet all codes for the fuel source. The equipment in the shelters is no more dangerous than other electrical equipment and presents much less danger from explosion or fire than cars parked in an enclosed garage. Therefore, there is no safety issue associated with the ground equipment that justifies extraordinary setbacks.

C. Any aesthetic issues the ground equipment creates will not be addressed by increasing the setbacks for the equipment.

For all of these reasons, there is no justification for increasing the setbacks for the ground equipment. If anything, they should be allowed to just meet accessory structure setbacks and requirements.

3. Standardization of setbacks according to property uses/zoning.

Specific proposals:

a. Setbacks for school or other properties should not be different from those required for other residential property.

Response: I don't disagree with making the setbacks the same on all similarly zoned properties.

4. "Setback" restrictions should include distances from tower-to-tower, and do more to promote collocation of equipment on towers.

Proposal: There should not be a tower-to-tower setback.

Justification:

Tower-to-tower separations are an inefficient way to try to limit the number of new towers. The set distances have no real relationship to the protection of aesthetics or safety or to how towers need to be located. Additionally, they frequently conflict with the other requirements, artificially pushing towers to places less preferred under the regulations. Requirements for proof that there is no existing structure that can reasonably be used are much more efficient in limiting the number of towers and also promotes collocation.

5. CCAC should recommend "setback" and/or other restrictions on placement of VRAD, WiMax, or other equipment not attached to WCSS not included in the above code.

Specific proposals:

In an effort to get as much completed on the central topic of addressing WCSS under section 6.11.29 of the Land Development Code, these other issues, which go into the use of public rights-of-way and the regulation of other than wireless facilities, should be "put in the parking lot" or dropped completely.