

**M E M O R A N D U M**

May 4, 2010

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: Zoning Text Amendment 10-05,  
Special Exceptions Procedures – Telecommunications Facilities

Zoning Text Amendment (ZTA) 10-05, sponsored by Councilmember Trachtenberg, was introduced on April 6, 2010. This ZTA is a response to a declaratory ruling released by the Federal Communications Commission (FCC) on November 18, 2009. In that so-called “shot clock” ruling, the FCC determined that, under federal law, zoning applications for telecommunications facilities should be decided within 90 days (for co-locations) or 150 days (for other siting applications). If a local government fails to act within those timeframes, an applicant for telecommunications facility may bring an action in court. The ZTA is intended to shorten the period of review of special exception petitions for telecommunications facilities and requires additional information before an application is accepted. It would also remove a step in the process to save time.

The approval of ZTA 10-05 would:

- increase the number of required copies of a special exception petition;
- require a special exception petition for a telecommunications facility to include an approved preliminary forest conservation plan and photographic simulations;
- remove the requirement that the Planning Board make a finding of need as to telecommunications facilities; and
- generally amend the provisions related to special exception applications and telecommunications facilities.

A public hearing on ZTA 10-05 is scheduled for May 11, 2010 at 1:30. If the public hearing raises additional issues that require analysis, this ZTA may have to come back to the Committee.

## Issues

*Should the number of special exception application copies be increased to 8?*

The Planning Staff believes that increasing the number of copies submitted would save time. The reviewing divisions within the Planning Department currently require more copies of special exception applications than it receives.<sup>1</sup> Requiring more copies of the application would reduce staff time required to make copies. Requiring more copies of the application would be an additional burden on applicants. This new requirement would apply to all special exception applications.

Staff recommends increasing the number of copies to 8.

*Should a telecommunications special exception application include an approved preliminary forest conservation plan and photographic simulations?*

All special exception applications are currently required to provide preliminary forest conservation plans, not an approved forest conservation plan. Requiring an approved plan will reduce uncertainty about forest conservation law requirements. The alternative to an approved plan provided in ZTA 10-05 is confirmation that a forest conservation plan is not required. This is not an additional burden for telecommunications applicants; it only changes the order of approvals. It will help the timely processing of telecommunications plans.

Photographic simulation is a great aid to the Hearing Examiner and the Board of Appeals. If it is not provided with the applications, the Hearing Examiner may request it in the course of the hearing. Having the simulation in hand at the time the shot clock starts will reduce processing time.

Staff recommends requiring an approved forest conservation plan or a confirmation that a plan is not required, and also agrees with requiring photographic simulations.

*Should the requirement for a separate determination of “need” by the Planning Board be removed?*

Processing a telecommunications facility special exception is currently delayed by requiring the Planning Board to make an independent finding of need. Scheduling items on the Planning Board agenda adds time. The Planning Board requires that staff reports be posted 2 weeks before the item is scheduled on their agenda. The facts provided by the Transmission Facility Coordinating Group to the Planning Board are known to the Board of Appeals. Allowing the Board of Appeals to make an independent find of the need is sufficient. The public will still have an opportunity to comment at the Hearing Examiner’s hearing.

This Packet Contains  
ZTA 10-05

© number  
1 – 9

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<sup>1</sup> The paperless office is a future aspiration; it is not a current reality.

Zoning Text Amendment No: 10-05  
Concerning: Special Exceptions Procedures –  
Telecommunications Facilities  
Draft No. & Date: 2 – 4/8/10  
Introduced: April 6, 2010  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

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By: Councilmember Trachtenberg

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- increase the number of required copies of a special exception petition;
- require a special exception petition for a telecommunications facility to include an approved preliminary forest conservation plan and photographic simulations;
- remove the requirement that the Planning Board make a finding of need as to telecommunications facilities; and
- generally amend the provisions related to special exception procedures and telecommunications facilities.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-4 COUNTY BOARD OF APPEALS

Section 59-A-4.2 Petitions for Special Exceptions and Variances

DIVISION 59-G-2 SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS

Section 59-G-2.58 Telecommunications facility.

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[**Single boldface brackets**] indicate that text is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[**Double boldface brackets**]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1           **Sec. 1. DIVISION 59-A-4 is amended as follows:**

2       \*   \*   \*

3       **59-A-4.2. Petitions for special exceptions and variances.**

4       \*   \*   \*

5       **59-A-4.22. Data to accompany petition for special exception.**

6       (a) Each petition for special exception must be accompanied at the time of its  
7       filing by [4] § copies of a statement that includes:

8           (1) Survey plats or other accurate drawings showing boundaries,  
9           dimensions, area, topography and frontage of the property involved,  
10          as well as the location and dimensions of all structures existing and  
11          proposed to be erected, and the distances of such structures from the  
12          nearest property lines.

13          (2) Plans, architectural drawings, photographs, elevations, specifications,  
14          or other detailed information depicting fully the exterior appearance  
15          of existing and proposed construction, including signs, involved in the  
16          petition. This requirement may be satisfied by site plan documents  
17          which comply with the requirements of section 59-D-3.2, as provided  
18          in subsection (b)(2).

19          (3) A statement explaining in detail how the special exception would be  
20          operated, including hours of operation, number of anticipated  
21          employees, occupants and clientele, equipment involved, and any  
22          special conditions or limits which the applicant proposes.

23          (4) Complete information concerning the size, type, and location of any  
24          existing and proposed trees, landscaping and screening, and exterior  
25          illumination. This requirement may be satisfied by site plan

- 26 documents which comply with the requirements of section 59-D-3.2,  
27 as provided in subsection (b)(2).
- 28 (5) Certified copy of official zoning vicinity map of 1000-foot radius  
29 surrounding the subject property and other information to indicate the  
30 general conditions of use and existing improvements on adjoining and  
31 confronting properties, along with a list of those adjoining and  
32 confronting property owners in the county tax records who are entitled  
33 to notice of the filing under subsection 59-A-4.46.
- 34 (6) If the applicant is not the owner of the property involved, the lease,  
35 rental agreement, or contract to purchase by which the applicant's  
36 legal right to prosecute the petition is established.
- 37 (7) Applicable master plan maps reflecting proposed land use, zoning,  
38 and transportation, together with any other portions of the applicable  
39 master plan which the applicant considers relevant.
- 40 (8) Except a petition for a telecommunications facility, [A] a preliminary  
41 forest conservation plan prepared under Chapter 22A or a  
42 confirmation that the inventory is not required [, and]
- 43 (9) [an] An approved natural resources inventory prepared in accordance  
44 with the technical manual adopted by the Planning Board or a  
45 confirmation that the inventory is not required [, and in addition:
- 46 (i) Other natural features, such as rock outcroppings and scenic  
47 views; and
- 48 (ii) Historic buildings and structures].
- 49 [(9)] 10 A preliminary or final water quality plan if the property is  
50 located in a special protection area subject to Chapter 19.
- 51 [(10)] 11 All additional exhibits which the applicant intends to introduce.

52 [(11)] 12 A summary of what the applicant expects to prove, including  
53 the names of applicant's witnesses, summaries of the testimonies of  
54 expert witnesses, and the estimated time required for presentation of  
55 the applicant's case.

56 (13) If the petition is for a telecommunications facility:

57 (A) an approved preliminary forest conservation plan prepared  
58 under Chapter 22A or a confirmation that the plan is not  
59 required; and

60 (B) photographic simulations of the tower and site, including  
61 equipment areas at the base, as seen from at least three  
62 directions, including from adjacent and confronting properties.

63 \* \* \*

64 **Sec. 2. DIVISION 59- G-2 is amended as follows:**

65 **59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS**

66 \* \* \*

67 **59-G-2.58 Telecommunications facility.**

68 (a) Any telecommunications facility must satisfy the following standards:

69 (1) A support structure must be set back from the property line as follows:

70 [a.] (A) In agricultural and residential zones, a distance of one  
71 foot from the property line for every foot of height of the  
72 support structure.

73 [b.] (B) In commercial and industrial zones, a distance of one-  
74 half foot from the property line for every foot of height of the  
75 support structure from a property line separating the subject site  
76 from commercial or industrial zoned properties, and one foot

77 for every foot of height of the support structure from residential  
78 or agricultural zoned properties.

79 [c.] (C) The setback from a property line is measured from the  
80 base of the support structure to the perimeter property line.

81 [d.] (D) The Board of Appeals may reduce the setback  
82 requirement to not less than the building setback of the  
83 applicable zone if: (i) the applicant requests a reduction; and  
84 (ii) evidence indicates that a support structure can be located on  
85 the property in a less visually obtrusive location after  
86 considering the height of the structure, topography, existing  
87 vegetation, adjoining and nearby residential properties, if any,  
88 and visibility from the street.

89 (2) A support structure must be set back from any off-site dwelling as  
90 follows:

91 [a.] (A) In agricultural and residential zones, a distance of 300  
92 feet.

93 [b.] (B) In all other zones, one foot for every foot in height.

94 [c.] (C) The setback is measured from the base of the support  
95 structure to the base of the nearest off-site dwelling.

96 [d.] (D) The Board of Appeals may reduce the setback  
97 requirement in the agricultural [an] and residential zones to a  
98 distance of one foot from an off-site residential building for  
99 every foot of height of the support structure if: (i) the applicant  
100 requests a reduction; and (ii) evidence indicates that a support  
101 structure can be located in a less visually obtrusive location  
102 after considering the height of the structure, topography,

103 existing vegetation, adjoining and nearby residential properties,  
104 and visibility from the street.

105 (3) The support structure and antenna must not exceed 155 feet in height,  
106 unless it can be demonstrated that additional height up to 199 feet is  
107 needed for service, collocation, or public safety communication  
108 purposes. At the completion of construction, before the support  
109 structure may be used to transmit any signal, and before the final  
110 inspection pursuant to the building permit, the applicant must certify  
111 to the Department of Permitting Services that the height and location  
112 of the support structure is in conformance with the height and location  
113 of the support structure as authorized in the building permit.

114 (4) The support structure must be sited to minimize its visual impact. The  
115 Board may require the support structure to be less visually obtrusive  
116 by use of screening, coloring, stealth design, or other visual mitigation  
117 options, after considering the height of the structure, topography,  
118 existing vegetation and environmental features, and adjoining and  
119 nearby residential properties. The support structure and any related  
120 equipment buildings or cabinets must be surrounded by landscaping  
121 or other screening options that provide a screen of at least 6 feet in  
122 height.

123 (5) The property owner must be an applicant for the special exception for  
124 each support structure. A modification of a telecommunications  
125 facility special exception is not required for a change to any use  
126 within the special exception area not directly related to the special  
127 exception grant. A support structure must be constructed to hold no  
128 less than 3 telecommunications carriers. The Board may approve a  
129 support structure holding less than 3 telecommunications carriers if:

130 [1)] (A) requested by the applicant and a determination is made that  
131 collocation at the site is not essential to the public interest; and [2)]  
132 (B) the Board decides that construction of a lower support structure  
133 with fewer telecommunications carriers will promote community  
134 compatibility. The equipment compound must have sufficient area to  
135 accommodate equipment sheds or cabinets associated with the  
136 [telecommunication] telecommunications facility for all the carriers.

137 (6) No signs or illumination are permitted on the antennas or support  
138 structure unless required by the Federal Communications  
139 Commission, the Federal Aviation Administration, or the County.

140 (7) Every freestanding support structure must be removed at the cost of  
141 the owner of the telecommunications facility when the  
142 telecommunications facility is no longer in use by any  
143 telecommunications carrier for more than 12 months.

144 (8) All support structures must be identified by a sign no larger than 2  
145 square feet affixed to the support structure or any equipment building.  
146 The sign must identify the owner and the maintenance service  
147 provider of the support structure or any attached antenna and provide  
148 the telephone number of a person to contact regarding the structure.  
149 The sign must be updated and the Board of Appeals notified within 10  
150 days of any change in ownership.

151 (9) Outdoor storage of equipment or other items is prohibited.

152 (10) Each owner of the telecommunications facility is responsible for  
153 maintaining the telecommunications facility[,] in a safe condition.

154 (11) The applicants for the special exception must file with the Board of  
155 Appeals a recommendation from the Transmission Facility  
156 Coordinating Group regarding the telecommunications facility. The

157 recommendation must be no more than [one year] 30 days old, except  
158 that a recommendation issued within one year before {date of  
159 adoption} must be accepted for one year from the date of issuance.

160 (12) [Prior to the Board granting any special exception for a  
161 telecommunications facility, the proposed facility must be reviewed  
162 by the County Transmission Facility Coordinating Group.] The Board  
163 [and Planning Board] must make a separate, independent finding as to  
164 need and location of the facility. The applicant must submit evidence  
165 sufficient to demonstrate the need for the proposed facility.

166 \* \* \*

167 Sec. 3. Effective date. This ordinance takes effect on the date of Council  
168 adoption.

169  
170 This is a correct copy of Council action.

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172 \_\_\_\_\_  
173 Linda M. Lauer, Clerk of the Council