

Introduction

MEMORANDUM

April 2, 2010

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

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

Zoning Text Amendment (ZTA) 10-05, sponsored by Councilmember Trachtenberg, is scheduled for introduction 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.

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 will be scheduled for May 11, 2010 at 1:30 p.m., if the attached resolution is approved.

This Packet Contains
ZTA 10-05
Resolution

© number
1 – 9
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Zoning Text Amendment No: 10-05
Concerning: Special Exceptions Procedures
– Telecommunications
Facilities

Draft No. & Date: 3/19/10

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**

By: Councilmember Trachtenberg

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] 8 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 foot from
71 the property line for every foot of height of the support
72 structure.

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

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

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

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

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

90 [a.] A In agricultural and residential zones, a distance of 300 feet.

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

92 [c.] C The setback is measured from the base of the support structure
93 to the base of the nearest off-site dwelling.

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

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

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

121 (5) The property owner must be an applicant for the special exception for
122 each support structure. A modification of a telecommunications
123 facility special exception is not required for a change to any use
124 within the special exception area not directly related to the special
125 exception grant. A support structure must be constructed to hold no
126 less than 3 telecommunications carriers. The Board may approve a
127 support structure holding less than 3 telecommunications carriers if:
128 [1)] (A) requested by the applicant and a determination is made that
129 collocation at the site is not essential to the public interest; and [2)]

130 (B) the Board decides that construction of a lower support structure
131 with fewer telecommunications carriers will promote community
132 compatibility. The equipment compound must have sufficient area to
133 accommodate equipment sheds or cabinets associated with the
134 [telecommunication] telecommunications facility for all the carriers.

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

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

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

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

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

152 (11) The applicants for the special exception must file with the Board of
153 Appeals a recommendation from the Transmission Facility
154 Coordinating Group regarding the telecommunications facility. The
155 recommendation must be no more than [one year] 30 days old, except

156 that a recommendation issued within one year before {date of
157 adoption} must be accepted for one year from the date of issuance.

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

164 * * *

165 Sec. 3. Effective date. This ordinance takes effect on the date of Council
166 adoption.

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170 This is a correct copy of Council action.

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173 _____
Linda M. Lauer, Clerk of the Council

Resolution No.: _____
Introduced: April 6, 2010
Adopted: _____

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

By: District Council

Subject: Notice of Public Hearing on Zoning Text Amendment 10-05

Background

1. Section 59-H-9.3 of the Montgomery County Ordinance requires that, within 30 days of introduction of any text amendment, the Council act by resolution to set a date and time for public hearing on the proposed amendment.
2. Zoning Text Amendment No. 10-05, introduced on April 6, 2010, is intended to shorten the period of review of special exception petitions for telecommunications facilities.
3. This ZTA is a response to a declaratory ruling released by the Federal Communications Commission (FCC) on November 18, 2009.

Action

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 resolution:

Legal notice will be given of the public hearing to be held on May 11, 2010 at 1:30 p.m., in the Council Hearing Room, Stella Werner Council Office Building, Rockville, Maryland, for the purpose of giving the public an opportunity to comment on the proposed amendment.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

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