

Ordinance No.: 16-53
Zoning Text Amendment No.: 10-05
Concerning: Special Exceptions Procedures –
Telecommunications Facilities
Draft No. & Date: 2 - 6/15/10
Introduced: April 6, 2010
Public Hearing: May 11, 2010
Adopted: June 22, 2010
Effective: June 22, 2010

**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.*

OPINION

Zoning Text Amendment No. 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 localities must decide zoning applications for telecommunications facilities within 90 days (for co-locations) or 150 days (for other siting applications). The ZTA would require additional information before the Board of Appeals accepts an application and would shorten the period of review of special exception petitions for telecommunications facilities.

The Montgomery County Planning Board, in its report to the Council, recommended that the text amendment be approved as introduced.

The Council held a public hearing on ZTA 10-05 on May 11, 2010. The Hearing Examiner supported ZTA 10-05 as introduced. Representatives of T-Mobile suggested that a special exception application should be allowed to proceed at the same time as a forest conservation application and that the approval of the special exception should be allowed on the condition of the forest conservation plan approval.

The Council received correspondence on this matter in addition to oral testimony. A resident was concerned about: 1) ensuring the accuracy of telecommunications facility applications; 2) reducing opportunities for public participation; 3) the possibility that any change to the current process is unnecessary until the results of the FCC’s reconsideration and on-going litigation are known; and 4) the possibility that the ZTA sets the stage for overwhelming the resources available to review telecommunications applications. Other testimony also addressed the health effects of radio frequency emissions.

The Board of Appeals supported ZTA 10-05. The Board members believe that the special exception process affords a significant opportunity for public participation, even with the proposed changes to the process. They do not view the continuing litigation on the shot clock to be a reason for inaction.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on May 6, 2010 to review the amendment. On June 14, 2010 the Committee (3-0) recommended approval of ZTA 10-05 with amendments to:

- 1) allow a maximum of 90 days between the Transmission Facility Coordinating Group recommendation and the application for a special exception;
- 2) require the recommendations of the Transmission Facility Coordinating Group to be submitted to the record of the application at least 5 days before the date set for the public hearing on the special exception; and
- 3) reference the exemption provisions of the forest conservation law (Chapter 22A-5).

The Committee believed that requiring more information with an application for a telecommunications facility special exception will aid in timely decision making. An approved forest conservation plan (or proof that the facility is exempt from the forest conservation requirements) will remove uncertainty in the special exception process. The Committee was satisfied that the opportunity for public notice and participation in the special exception process is adequate. In addition, the Committee concluded that the issue of the need for the telecommunications facility would be adequately addressed by the Board of Appeals.

The District Council reviewed Zoning Text Amendment No. 10-05 at a worksession held on June 22, 2010 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 10-05 will be approved as amended.

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 under Chapter 22A-5.],
 43 and]
- 44 (9) [an] An approved natural resources inventory prepared in accordance
 45 with the technical manual adopted by the Planning Board or a
 46 confirmation that the inventory is not required under Chapter 22A-5 [,
 47 and in addition:
- 48 (i) Other natural features, such as rock outcroppings and scenic
 49 views; and
- 50 (ii) Historic buildings and structures].
- 51 ~~[(9)]~~ (10) A preliminary or final water quality plan if the property is
 52 located in a special protection area subject to Chapter 19.

53 ~~[(10)]~~ (11) All additional exhibits which the applicant intends to introduce.

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

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

59 (A) an approved preliminary forest conservation plan prepared
60 under Chapter 22A or a confirmation that the plan is not
61 required under Chapter 22A-5; and

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

65

66 * * *

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

68 **59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.**

69 * * *

70 **59-G-2.58 Telecommunications facility.**

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

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

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

76 [b.] (B) In commercial and industrial zones, a distance of one-
77 half foot from the property line for every foot of height of the

78 support structure from a property line separating the subject site
79 from commercial or industrial zoned properties, and one foot
80 for every foot of height of the support structure from residential
81 or agricultural zoned properties.

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

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

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

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

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

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

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

105 height of the structure, topography, existing vegetation,
106 adjoining and nearby residential properties, and visibility from
107 the street.

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

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

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

- 132 support structure holding less than 3 telecommunications carriers if:
133 [1)] (A) requested by the applicant and a determination is made that
134 collocation at the site is not essential to the public interest; and [2)]
135 (B) the Board decides that construction of a lower support structure
136 with fewer telecommunications carriers will promote community
137 compatibility. The equipment compound must have sufficient area to
138 accommodate equipment sheds or cabinets associated with the
139 [telecommunication] telecommunications facility for all the carriers.
- 140 (6) No signs or illumination are permitted on the antennas or support
141 structure unless required by the Federal Communications
142 Commission, the Federal Aviation Administration, or the County.
- 143 (7) Every freestanding support structure must be removed at the cost of
144 the owner of the telecommunications facility when the
145 telecommunications facility is no longer in use by any
146 telecommunications carrier for more than 12 months.
- 147 (8) All support structures must be identified by a sign no larger than 2
148 square feet affixed to the support structure or any equipment building.
149 The sign must identify the owner and the maintenance service
150 provider of the support structure or any attached antenna and provide
151 the telephone number of a person to contact regarding the structure.
152 The sign must be updated and the Board of Appeals notified within 10
153 days of any change in ownership.
- 154 (9) Outdoor storage of equipment or other items is prohibited.
- 155 (10) Each owner of the telecommunications facility is responsible for
156 maintaining the telecommunications facility[,] in a safe condition.
- 157 (11) The applicants for the special exception must file with the Board of
158 Appeals a recommendation from the Transmission Facility

159 Coordinating Group regarding the telecommunications facility. The
160 recommendation must be no more than [one year] ~~[[30]]~~ 90 days old,
161 except that a recommendation issued within one year before {date of
162 adoption} must be accepted for one year from the date of issuance.
163 The recommendation of the Transmission Facility Coordinating
164 Group must be submitted to the Board at least 5 days before the date
165 set for the public hearing.

166 (12) [Prior to the Board granting any special exception for a
167 telecommunications facility, the proposed facility must be reviewed
168 by the County Transmission Facility Coordinating Group.] The Board
169 [and Planning Board] must make a separate, independent finding as to
170 need and location of the facility. The applicant must submit evidence
171 sufficient to demonstrate the need for the proposed facility.

172 * * *

173 Sec. 3. Effective date. This ordinance takes effect on the date of Council
174 adoption.

175

176 This is a correct copy of Council action.

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Linda M. Lauer

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Linda M. Lauer, Clerk of the Council