

Ordinance No.: 18-44
Zoning Text Amendment No.: 18-02
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 3 – 5/7/18
Introduced: February 13, 2018
Public Hearing: April 3, 2018
Adopted: May 15, 2018
Effective: June 4, 2018

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

Lead Sponsor: Council President at the request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the use standards for antennas;
- revise the standards for antennas on existing structures;
- allow telecommunications towers as a limited use in certain zones; and
- generally amend telecommunications tower and cellular antenna provisions.

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

DIVISION 3.1. “Use Table”
Section 3.1.6. “Use Table”
DIVISION 3.5. “Commercial Uses”
Section 3.5.2. “Communication Facility”
Section 3.5.14. “Accessory Commercial Uses”

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

Underlining indicates text that is added to existing law by the original text amendment or by ZTA 14-09.

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

Double underlining indicates text that is added to the text amendment by amendment or text added by this amendment in addition to ZTA 14-09.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment or indicates a change from ZTA 14-09.

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

OPINION

Zoning Text Amendment No. 18-02 was introduced on February 13, 2018. ZTA 18-02 would amend zoning regulations related to the placement of telecommunications antennas in non-residential zones and the provision for antennas on existing structures in all zones.

In its report to the Council, the Montgomery County Planning Board agreed with the recommendation of Planning staff that ZTA 18-02 should be approved as introduced. In the opinion of Planning staff, ZTA 18-02 strikes a balance in addressing the community's interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community's interest in managing commercial use of public property and maintaining attractive and safe roads and neighborhoods. Planning staff recommended approval of ZTA 18-02 as introduced.

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

The Council conducted a public hearing on April 3, 2018. The testimony was split between support and opposition, with a majority of those speaking opposed to the approval of ZTA 18-02. Generally, industry representatives and non-residential interests (Chambers of Commerce, T-Mobile, and Crown Castle) favored the approval of ZTA 18-02. Other speakers (the Town of Somerset, the Civic Federation, and individuals) opposed the ZTA. Proponents cited increasing needs for wireless bandwidth for businesses, customers, and E-911 communications. Business interests cited the competitive advantage achieved by jurisdictions with superior wireless service.

Outside of numerous statements about the health effects of radio frequency antennas, most opposition objected to reducing the setback required between existing structures and houses from 60 feet to 20 feet. Some testimony called for 1,500-foot setbacks from schools. There was some opposition to adding Telecommunications Tower as a limited use in the CRN, CRT, CR, and LSC zones because the new limited use (and where an existing limited use is allowed) would not afford the public adequate notice and an opportunity to contest the tower. An issue concerning reduced property values was raised by testimony. Some opponents questioned whether wireless companies had sufficient liability coverage given their potential risks. Some who testified cited the County's lack of capacity or commitment to regulating antennas (and towers) once they are approved for construction as a reason to oppose ZTA 18-02. One opponent wanted to see the regulatory requirements of other jurisdictions before recommending any action.

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 3, 2018. The Committee recommended approval of ZTA 18-02 (3-0) with amendments. The Committee recommended retaining all of the current setback and building height standards for antennas on existing facilities in residential zones and adding provisions that will require compatible antenna enclosures where antennas are allowed. The ZTA would allow more permissive standards for antennas in mixed-use and non-residential zones.

A majority of the Committee recommended lowering the maximum allowable tower heights for new towers that require conditional use approval (2-1, Councilmember Leventhal would have deferred this item; he favored a separate ZTA concerning residential zones).

The Council agreed with the recommendations of the 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. 18-02 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 59-3.1 is amended as follows:**

2 **DIVISION 59-3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under

6 Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential			Residential														Commercial/Residential						Employment					Industrial				
						Residential Detached						Residential Townhouse				Residential Multi-Unit																			
			R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH							
* * *		AR																																	
COMMERCIAL																																			
* * *																																			
Communication Facility	3.5.2																																		
Cable Communications System	3.5.2.A	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	C	C	C	C		
Media Broadcast Tower	3.5.2.B	C	C	C		C	C	C	C	C	C	C									C		L	C	C	C	C							P	
Telecommunications Tower	3.5.2.C	L/C	L/C	C	C	C	C	C	C	C	C	C								L/C	L/C	L	L/C	L	L	L	L	L/C	L	L/C	L	L	L		

7 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

Sec. 2. DIVISION 59-3.5 is amended as follows:

DIVISION 3.5. Commercial Uses

* * *

Section 3.5.2. Communication Facility

* * *

C. Telecommunications Tower

1. Defined

- a. Telecommunications Tower means any structure, other than a building, [providing] used to provide wireless voice, data, or image transmission within a designated service area.
- Telecommunications Tower [consists of] includes one or more antennas attached to a support structure, and related equipment, but does not include amateur radio antenna (see Section 3.5.14.A and Section 3.5.14.B, Amateur Radio Facility), radio or TV tower (see Section 3.5.2.B, Media Broadcast Tower), or an antenna on an existing structure (See Section 3.5.14.C, Antenna on Existing Structure).
- b. Antenna Dimension means an antenna, and any enclosure containing the antenna, in which the total combined size of the antenna within any enclosure meets the following dimensions:

<u>Standard</u>	<u>Maximum Length on Any Side (in feet)</u>	<u>Maximum Volume (in cubic feet, excluding any equipment cabinet)</u>
<u>A</u>	<u>4 feet 2 inches</u>	<u>6 cubic feet</u>
<u>B</u>	<u>4 feet 2 inches</u>	<u>46 cubic feet</u>
<u>C</u>	<u>6 feet</u>	<u>30 cubic feet</u>
<u>D</u>	<u>9 feet</u>	<u>13 cubic feet</u>
<u>E</u>	<u>15 feet</u>	<u>1 cubic foot</u>

2. Use Standards

a. Where a Telecommunications Tower is allowed as a limited use in the Agricultural zone, Rural zone, Rural Cluster zone, Employment zones, and Industrial zones, and the [[Tower]] tower is not a replacement tower that complies with 59.3.5.2.C.2.b, it must satisfy the following standards:

[i. It must not be staffed.]

[ii]i. Antennas are limited to the following [types and dimensions]:

(a) an antenna that satisfies one of the Antenna Dimensions standards in Section 59.3.5.2.C.1.b

[omni-directional (whip) antennas with a maximum height of 15 feet and a maximum diameter of 3 inches];

(b) [directional or panel antennas with a maximum height of 8 feet and a maximum width of 2 feet; and

(c)] satellite or microwave dish antennas with a maximum diameter of 8 feet.

[iii]ii. Signs or illumination on the antennas or support structure are prohibited unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.

[iv]iii. In the AR, R, and RC zones, the tower must be located within an overhead transmission line right-of-way and is a maximum height of [199]179 feet. The tower must be a

55 minimum of 300 feet from any [residence] dwelling. A
56 Telecommunications Tower conditional use application
57 may be filed with the Hearing Examiner to deviate from
58 this standard.

59 [v]iv. In the LSC, IL, IM, and IH zones, the tower is a
60 maximum height of [199]179 feet with a setback of one
61 foot for every foot of height from the property lines of all
62 properties zoned Agricultural, Rural Residential, or
63 Residential.

64 [vi]v. In the GR and EOF zones, the tower is a maximum
65 height of [150]130 feet with a setback of one foot for
66 every foot of height from the property lines of all
67 properties zoned Agricultural, Rural Residential, or
68 Residential. A Telecommunications Tower conditional
69 use application may be filed with the Hearing Examiner
70 to deviate from this standard.

71 b. In the Commercial/Residential, Industrial, and Employment
72 zones, where a Telecommunications Tower is allowed as a
73 limited use and the tower would replace a pre-existing utility
74 pole, streetlight pole, or site plan approved parking lot light
75 pole, the [[Tower]] tower is allowed if it satisfies the following
76 standards:

77 i. Antennas must comply with the Antenna Classification
78 Standard A under Section 59.3.5.2.C.1.b, be concealed
79 within an enclosure the same color as the pole, be
80 installed at a minimum height of 15 feet, and [[must]] be
81 installed parallel with the [[Tower]] tower.

82 ii. The tower must be located:

- 83 (a) within 2 feet of the base of a pre-existing pole and
84 at the same distance from the curb line, or edge of
85 travel lane in an open section, as the pre-existing
86 pole in a public right-of-way;
- 87 (b) at least 10 feet from an existing building;
- 88 (c) outside of the roadway clear zone as determined by
89 the Department of [[Transportation]] Permitting
90 Services;
- 91 (d) in a manner that allows for adequate sight
92 distances as determined by the Department of
93 [[Transportation]] Permitting Services; and
- 94 (e) in a manner that complies with streetlight
95 maintenance requirements as determined by the
96 Department of Transportation.

97 iii. A pre-existing streetlight or parking lot light pole must be
98 removed within 10 business days after power is activated
99 to the replacement tower, and a pre-existing utility pole
100 must be removed within 180 days after a replacement
101 utility pole is installed.

102 iv. The height of the tower, including any attached antennas
103 and equipment, must not exceed:

- 104 (a) for streetlights, the height of the pole that is being
105 replaced:
- 106 (1) plus 6 feet when abutting a right-of-way
107 with a paved section width of 65 feet or less;
108 or

- 109 (2) plus 15 feet when abutting a right-of-way
110 with a paved section width greater than 65
111 feet.
- 112 (b) for utility poles and parking lot lights, the height of
113 the pre-existing utility or parking lot light pole plus
114 10 feet.
- 115 v. The tower must be the same color as the pre-existing
116 pole.
- 117 vi. The tower must have no exterior wiring, except that
118 exterior wiring may be enclosed in shielded conduit on
119 wooden or utility poles.
- 120 vii. Any equipment cabinet:
- 121 (a) must not exceed a maximum volume of 12 cubic
122 feet;
- 123 (b) used to support antennas on a replacement
124 streetlight pole must be installed in the
125 Telecommunications Tower base or at ground
126 level, unless this requirement is waived by the
127 Department of Transportation;
- 128 (c) must be the same color or pattern as the pre-
129 existing [[Tower]] tower, except as provided in
130 Section 59.3.5.2.C.2.b.vii(d);
- 131 (d) may be a stealth design approved by the
132 Department of Transportation.
- 133 viii. The tower must include a replacement streetlight, if a
134 streetlight existed on the pre-existing pole.

- ix. The design of a replacement tower located in a public right-of-way, including the footer and the replacement streetlight, must be approved by the Department of Transportation.
- x. The noise level of any fans must comply with Chapter 31B.
- xi. Signs or illumination on the antennas or support structure, except a streetlight, are prohibited unless required by the Federal Communications Commission or the County.
- xii. [[Each]] The owner of the tower or the [[antennas]] antenna attached to the tower must maintain their tower, antennas, and equipment in a safe condition, remove graffiti, and repair damage.
- xiii. If a tower does not have a streetlight, the tower must be removed at the cost of the owner of the tower when the tower is no longer in use for more than 12 months. [[Antennas]] Any antenna and equipment must be removed at the cost of the owner of the antenna and equipment when the antennas and equipment are no longer in use for more than 12 months. The Telecommunications Transmission Facilities Coordinating Group must be notified within 30 days of the removal.

[b]c. Where a Telecommunications Tower is allowed as a conditional use, it may be permitted by the Hearing Examiner under [all

applicable] Section 3.5.2.C.2.a, limited use standards, Section 7.3.1, Conditional Use, and the following standards:

* * *

ii. A Telecommunications Tower must be set back [from the property line], as measured from the base of the support structure, as follows:

- (a) A Telecommunications Tower is prohibited in any scenic setback indicated in a master plan.
- (b) In the Agricultural, Rural Residential, and Residential Detached zones, a distance of one foot for every foot of height or 300 feet from an existing dwelling, whichever provides the greater setback [[from any property line]].
- (c) In the Employment zones, a distance of one-half foot for every foot of height [when] from the property lines of abutting [Commercial/Residential] Commercial/Residential, Employment, or Industrial zoned properties, and one foot for every foot of height [when] from the property lines of abutting Agricultural, Rural Residential, or Residential zoned properties.
- (d) The Hearing Examiner may reduce the setback requirement to not less than the building setback for a detached house building type in the applicable zone or to a distance of one foot from an off-site dwelling for every foot of height of the support structure, whichever is greater, if evidence

indicates that a reduced setback will allow the support structure to be located on the property in a less visually obtrusive location than locations on-site where all setback requirements can be met after considering the height of the structure, topography, existing vegetation, nearby residential properties, and visibility from the street. A reduced setback may be approved only if there is a location on the property where the setback requirements can be met.

- iii. The maximum height of a support structure and antenna is ~~[155]~~135 feet, unless it can be demonstrated that additional height up to ~~[199]~~179 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the applicant must certify to DPS that the height and location of the support structure conforms with the height and location of the support structure on the building permit.

* * *

Section 3.5.14. Accessory Commercial Uses

* * *

C. Antenna on Existing Structure

1. Defined

Antenna on Existing Structure means one or more antennas attached to an existing support structure, including [such as] a building, a transmission tower, a monopole, a light pole, a utility pole, a water tank, a silo, a barn, a sign, or an overhead transmission line support structure. Antenna on Existing Structure includes related equipment.

2. Use Standards

Where an Antenna on Existing Structure is allowed as a limited use, it must satisfy the following standards:

a. Antennas are limited to the following types and dimensions:

- i. an antenna that satisfies one of the Antenna Dimensions standards in Section 59.3.5.2.C.1.b; and [omni-directional (whip) antennas with a maximum height of 15 feet and a maximum diameter of 3 inches;
- ii. directional or panel antennas with a maximum height of 8 feet and a maximum width of 2 feet;
- iii]ii. satellite, radar, or microwave dish antennas with a maximum diameter of 8 feet. If the building includes a media broadcast studio, a dish may have a maximum diameter of 22 feet[; and
- iv. small cell antennas with a maximum height of 3 feet and a maximum width of 2 feet].

* * *

c. Associated equipment must be located in an unmanned building, equipment cabinet, or equipment room in an existing building.

- i. An equipment building must satisfy the following standards:

- 241 [i.](a) It is a maximum of 560 square feet in area;
242 however, a single equipment building in excess of
243 560 square feet, located at ground level, may be
244 used if:
245 ([a]1) the overall maximum square footage is
246 1,500 square feet and the maximum height is
247 12 feet;
248 ([b]2) the building is used for more than one
249 telecommunications provider operating from
250 the same monopole or tower; and
251 ([c]3) the building is reviewed by the
252 Telecommunications Transmission Facility
253 Coordinating Group under Chapter 2
254 (Section 2-58E).
255 [ii.](b) It is a maximum of 14 feet in height,
256 including the support structure for the equipment
257 building.
258 [iii.](c) If the equipment building is greater than 4
259 feet in height and is [or cabinet is at ground level]
260 in a Residential zone, or the nearest abutting
261 property is in a Residential zone, [and the
262 equipment building or cabinet is more than 4 feet
263 in height, including the support structure,] the
264 building [or cabinet] must be faced with brick or
265 other material compatible with the surrounding
266 neighborhood on all sides [and the equipment must

be surrounded by landscaping of at least 3 feet in height].

ii. If an equipment cabinet and any supporting platform are greater than 4 feet in height, and service an Antenna on [[an]] Existing Structure that is not a utility pole, streetlight pole, or site plan approved parking lot light pole, and if the Existing Structure is in a Residential zone, or the nearest abutting property to the Existing Structure is in a Residential zone, then the equipment must be surrounded by landscaping of at least 3 feet in height.

iii. If an equipment cabinet services an Antenna on Existing Structure and the Existing Structure is a utility pole, streetlight pole, or site plan approved parking lot light pole, the equipment cabinet:

(a) must not exceed a maximum volume of 12 cubic feet; and

(b) must be the same color or pattern as the existing structure, unless it is a stealth design approved by the Department of Transportation.

* * *

d. Except under Section 3.5.14.C.2.e [for a small cell antenna that satisfies Section 3.5.14.C.2.a.iv], when mounted on a rooftop or structure located outside of a right-of-way [on privately owned land], the antenna must meet the following standards:

i. An antenna is prohibited:

(a) on any detached house, [or] duplex, or townhouse
building type or an accessory structure associated
with either building type; and

(b) in any scenic setback indicated in a master plan.

ii. An antenna and a related unmanned equipment building
or cabinet may be installed on a rooftop, if a building is a
minimum height of:

(a) ~~[50]~~ ~~[[35]]~~ 50 feet in any Residential Detached,
Rural Residential, or Planned Unit Development
zone, and must be mounted in an antenna
enclosure the same color or design as the building;
or

(b) ~~[30]~~ 20 feet in any Residential Multi-Unit,
Commercial/Residential, Employment, or
Industrial zone, and must be mounted in an
antenna enclosure the same color or design as the
building.

* * *

e. [When located at least 60 feet from a detached house or a
duplex building type, a small cell antenna that satisfies Section
3.5.14.C.2.a.iv may be installed on any existing structure, at a
minimum height of 15 feet, in any zone where an antenna on an
existing structure is allowed.]

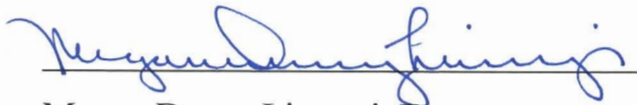
An antenna classified as Standard A under Section 3.5.2.C.1.b
may be installed on any existing structure located in the right-
of-way in any zone where an antenna on an existing structure is
allowed, if:

- i. the antenna is in an enclosure and the enclosure is the same color or pattern as the existing structure;
- ii. the antenna and the antenna enclosure is installed at a minimum height of 15 feet; and
- iii. the structure is at least ~~[[20]]~~ 60 feet from a dwelling in a Rural Residential, Residential, or Planned Unit Development zone, and at least 10 feet from any structure in any Commercial/Residential, Employment, or Industrial zone.

* * *

Sec. 4. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.



Megan Davey Limarzi, Esq.
Clerk of the Council