AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- add definitions;
- allow certain telecommunications towers as a conditional use in certain residential zones;
- revise the standards for telecommunications towers allowed as a limited or conditional use;
- exempt certain antennas from height limits;
- revise the conditional use findings required for the replacement of a pre-existing pole; and
- generally amend conditional use requirements to address certain telecommunications towers

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”
DIVISION 4.1. “Rules for All Zones”
Section 4.1.7. “Measurements and Exceptions”
DIVISION 7.3. “Regulatory Approvals”
Section 7.3.1. “Conditional Use”
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:
Sec. 1. DIVISION 59-3.1 is amended as follows:

DIVISION 3.1. Use Table

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

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<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
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<th>Rural</th>
<th>Residential</th>
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<td>Media Broadcast Tower</td>
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<td>Telecommunications Tower</td>
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**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

* * *

c. Enclosure or stealth design means material, or the use of materials, intended to conceal antennas and associated equipment.

d. The height of a Telecommunications Tower is measured from the lowest point of the natural grade of the ground at the base of the pole to the highest point on the tower, including any attached antennas and equipment.

2. Use Standards

* * *

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

i. In the Commercial/Residential, Industrial, and Employment zones, the pre-existing pole and the replacement tower must be at least 10 feet from an
existing building, excluding any building encroachments allowed under Section 4.1.7.B.5.

ii. In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole must be at least 22 feet tall, and the pre-existing pole and replacement tower must be at least 30 feet from a dwelling, excluding any building encroachments allowed under Section 4.1.7.B.5.

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

[iii. The tower must be located:

(a) within 2 feet of the base of a pre-existing pole and at the same distance from the curb line, or edge of travel lane in an open section, as the pre-existing pole in a public right-of-way;

(b) at least 10 feet from an existing building;

(c) outside of the roadway clear zone as determined by the Department of Permitting Services;

(d) in a manner that allows for adequate sight distances as determined by the Department of Permitting Services; and

(e) in a manner that complies with streetlight maintenance requirements as determined by the Department of Transportation.
[iii]vi. A pre-existing streetlight or parking lot light pole must be removed within 10 business days after power is activated to the replacement tower, and a pre-existing utility pole must be removed within 180 days after a replacement utility pole is installed.

[iv]vi. The height of the tower, including any attached antennas and equipment, must not exceed:

(a) 22 feet when replacing a pre-existing streetlight less than 22 feet tall;

[(a)][(b)] for pre-existing streetlights 22 feet or taller, the height of the pole that is being replaced:

(1) plus 6 feet when abutting a right-of-way with a paved section width of 65 feet or less; or

(2) plus 15 feet when abutting a right-of-way with a paved section width greater than 65 feet[.]

[(b)][(c)] for utility poles [and parking lot lights], the height of the pre-existing utility [or parking lot light] pole plus 10 feet[.] and, if necessary, the minimum additional height required to comply with the National Electric Safety Code:

(d) for parking lot lights, the height of the pre-existing parking lot light pole plus 10 feet.

[v]vii. The tower must be the same color as the pre-existing pole.
The tower must have no exterior wiring, except that exterior wiring may be enclosed in shielded conduit on wooden or utility poles.

Any equipment cabinet:

(a) must not exceed a maximum volume of 12 cubic feet and be installed a minimum of 12 feet above ground if not installed in the Telecommunications Tower base or at ground level;

(b) must not exceed a maximum volume of 20 cubic feet when installed in the Telecommunications Tower base or at ground level;

[(b)](c) used to support antennas on a replacement streetlight pole must be installed in the Telecommunications Tower base or at ground level, unless this requirement is waived by the Department of Transportation;

[(c)](d) must be the same color or pattern as the pre-existing tower, except as provided in [Section 59.3.5.2.C.2.b.vii(d)] Section 59.3.5.2.C.2.b.ix(e);

[(d)](e) may be a stealth design approved by the Department of Transportation.

The tower must include a replacement streetlight, if a streetlight existed on the pre-existing pole.

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.
The noise level of any fans must comply with Chapter 31B.

Signs or illumination on the antennas or support structure, except a streetlight, are prohibited unless required by the Federal Communications Commission or the County.

The owner of the tower or the antenna attached to the tower must maintain their tower, antennas, and equipment in a safe condition, remove graffiti, and repair damage.

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. 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.

c. Where a Telecommunications Tower is allowed as a conditional use and does not replace a pre-existing pole, it may be permitted by the Hearing Examiner under Section 3.5.2.C.2.a[, limited use standards] – Limited Use, Section 7.3.1[.] – Conditional Use, and the following standards:

i. Before the Hearing Examiner approves any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the [County]
Telecommunications Transmission [Facility] Facilities Coordinating Group. The applicant for a conditional use must file a complete copy of a recommendation from the Telecommunications Transmission [Facility] Facilities Coordinating Group with the Hearing Examiner at least [5]30 days before the date set for the public hearing. The recommendation must be no more than 90 days old at the time the conditional use application is filed.

* * *

d. Where a Telecommunications Tower is allowed as a conditional use and the tower would replace a pre-existing utility pole, streetlight pole, or site plan approved parking lot light pole, it may be permitted by the Hearing Examiner under Section 3.5.2.C.2.b – Limited Use, Section 7.3.1 – Conditional Use, and the following standards:

i. Before the Hearing Examiner approves any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Telecommunications Transmission Facilities Coordinating Group. The applicant for a conditional use must file a complete copy of a recommendation from the Telecommunications Transmission Facilities Coordinating Group with the Hearing Examiner at least 30 days before the date set for the public hearing. The recommendation must be no more than 90 days old at the time the conditional use application is filed.
ii. Notwithstanding Section 3.5.2.C.2.b.ii, a Telecommunications Tower must be set back, as measured from the base of the support structure, as follows:

(a) not less than 30 feet from a dwelling, excluding encroachments that are allowed under Section 4.1.7.B.5; or

(b) the Hearing Examiner may reduce the setback requirement to not less than 10 feet, if:

(1) the Telecommunications Transmission Facilities Coordinating Group determines that improvements to service area or capacity cannot be achieved by using a pre-existing streetlight, utility, or parking lot pole within 800 feet of the proposed tower under Section 3.5.2.C.2.b or Section 3.5.2.C.14.c; or

(2) the Hearing Examiner determines that a reduced setback will allow the support structure to be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing tree coverage and vegetation, proximity to nearby residential properties, and visibility from the street.

iii. Notwithstanding Section 3.5.2.C.2.b.iv.(a), the tower must be located to minimize its visual impact. Screening
under Division 6.5 is not required; however, the Hearing
Examiner may require the tower to be less visually
obtrusive by use of screen, coloring, or other visual
mitigation options, after considering within 400 feet the
character of residential properties, proximity to nearby
residential properties, existing tree coverage and
vegetation, and design and presence of streetlight, utility,
or parking lot poles.

Section 3.5.14. Accessory Commercial Uses

C. Antenna on Existing Structure

2. Use Standards

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

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

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 be installed a minimum of 12 feet above
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ground if not installed in the Telecommunications Tower base or at ground level; [and]

(b) must not exceed a maximum volume of 20 cubic feet when installed in the Telecommunications Tower base or at ground level; and

(c) 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, when mounted on a rooftop or structure located outside of a right-of-way, the antenna must meet the following standards:

i. An antenna is prohibited:

   (a) on or within 10 feet of any detached house, 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 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) 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.

ii. An antenna may be installed on the facade of a building at a minimum height of:

(a) [50] 35 feet in [a] 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, [and] or Industrial zone and must be mounted in an antenna enclosure the same color or design as the building.

* * *

e. 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] are installed at a minimum height of 15 feet above the ground; and

iii. the structure is at least [60] 30 feet from a dwelling in a Rural Residential, Residential, or Planned Unit Development zone, and at least 10 feet from any [structure] building in any Commercial/Residential, Employment, or Industrial zone.
Sec. 3. DIVISION 59-4.1. is amended as follows:

DIVISION 4.1. Rules for All Zones

Section 4.1.7. Measurement and Exceptions

C. Height

3. Height Encroachments

Any height encroachment not specifically listed is prohibited.

b. The maximum height does not apply to solar panels and any roof structure listed in Section 4.1.7.C.3.a or Antenna on Existing Structures as defined in Section 3.5.14.C.2.d, except that in the TLD, TMD, THD, and R-30 zones, an air conditioning unit or similar structure or mechanical appurtenance may exceed the established height limit by a maximum of 8 feet.

Sec. 4. DIVISION 59-7.3 is amended as follows:

DIVISION 7.3. Regulatory Approvals

Section 7.3.1. Conditional Use

B. Application Requirements

2. The applicant must submit the following for review:
m. for a [telecommunication tower] Telecommunications Tower application[,];

i. photographic simulations of the tower and site seen from areas with a direct view of the tower, including a minimum of at least 3 directions; and

ii. photographs of streetlight, utility, or parking lot light poles within 400 feet of the proposed Telecommunications Tower.

E. Necessary Findings

7. Notwithstanding any other requirements of Section 59-7.3.1.E, to approve a conditional use application for a Telecommunications Tower that replaces a pre-existing streetlight, utility, or parking lot light pole, the Hearing Examiner must find that the tower:

a. meets the requirements of Section 3.5.2.C.2.d;

b. is compatible with or can be made compatible with nearby residential property by the use of screening, coloring, stealth design, or other visual mitigation options after considering the height of the structure, topography, existing vegetation and environmental features; and

c. does not abut or confront an individual resource in the Master Plan for Historic Preservation.

F. Decision

1. Hearing Examiner
c. [Any] Except for decisions relating to a Telecommunications Tower, any party of record may appeal the Hearing Examiner’s decision by filing a written request to present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner’s report and decision. The filing of such a request transfers jurisdiction over the matter while on appeal from the Hearing Examiner to the Board of Appeals.

* * *

d. Any party aggrieved by a decision of the Hearing Examiner relating to a Telecommunications Tower may, within 30 days after the Hearing Examiner’s action, file a petition for judicial review of the decision under Section 22-403 of the Land Use Article.

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Sec. 5. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Megan Davey Limarzi, Esq.
Clerk of the Council