

Zoning Text Amendment No.: 18-11
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 1 – 7/18/18
Introduced: July 24, 2018
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**

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

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”

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.

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 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														
		AR	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	
* * *																													
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	P	C	C	C	C	
Media Broadcast Tower	3.5.2.B	C	C	C		C	C	C	C	C	C				C	C	C				C		L	C	C	C	P		
Telecommunications Tower	3.5.2.C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L	L	L	L/C	L/C	L	L/C	L	L	L		

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

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

9 **DIVISION 3.5. Commercial Uses**

10 * * *

11 **Section 3.5.2. Communication Facility**

12 * * *

13 **C. Telecommunications Tower**

14 1. Defined

15 * * *

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

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

23 2. Use Standards

24 * * *

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

31 i. In the Commercial/Residential, Industrial, and
32 Employment zones, the pre-existing pole and the
33 replacement tower must be at least 10 feet from an

34 existing building, excluding any building encroachments
35 allowed under Section 4.1.7.B.5.

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

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

46 [ii]iv. The tower must be located:

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

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

52 [(c)](b) outside of the roadway clear zone, as
53 determined by the Department of Permitting
54 Services;

55 [(d)](c) in a manner that allows for adequate sight
56 distances, as determined by the Department of
57 Permitting Services; and

58 [(e)](d) in a manner that complies with streetlight
59 maintenance requirements, as determined by the
60 Department of Transportation.

61 [iii]v. A pre-existing streetlight or parking lot light pole must be
62 removed within 10 business days after power is activated
63 to the replacement tower, and a pre-existing utility pole
64 must be removed within 180 days after a replacement
65 utility pole is installed.

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

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

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

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

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

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

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

85 [v]vii. The tower must be the same color as the pre-existing
86 pole.

87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113

- [vi]viii. The tower must have no exterior wiring, except that exterior wiring may be enclosed in shielded conduit on wooden or utility poles.
- [vii]ix. 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.
- [viii]x. The tower must include a replacement streetlight, if a streetlight existed on the pre-existing pole.
- [ix]xi. 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.

114 [x]xii. The noise level of any fans must comply with Chapter
115 31B.

116 [xi]xiii. Signs or illumination on the antennas or support
117 structure, except a streetlight, are prohibited unless
118 required by the Federal Communications Commission or
119 the County.

120 [xii]xiv. The owner of the tower or the antenna attached to
121 the tower must maintain their tower, antennas, and
122 equipment in a safe condition, remove graffiti, and repair
123 damage.

124 [xiii]xv. If a tower does not have a streetlight, the tower
125 must be removed at the cost of the owner of the tower
126 when the tower is no longer in use for more than 12
127 months. Any antenna and equipment must be removed at
128 the cost of the owner of the antenna and equipment when
129 the antennas and equipment are no longer in use for more
130 than 12 months. The Telecommunications Transmission
131 Facilities Coordinating Group must be notified within 30
132 days of the removal.

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

138 i. Before the Hearing Examiner approves any conditional
139 use for a Telecommunications Tower, the proposed
140 facility must be reviewed by the [County]

141 Telecommunications Transmission [Facility] Facilities
142 Coordinating Group. The applicant for a conditional use
143 must file a complete copy of a recommendation from the
144 Telecommunications Transmission [Facility] Facilities
145 Coordinating Group with the Hearing Examiner at least
146 [5]30 days before the date set for the public hearing. The
147 recommendation must be no more than 90 days old at the
148 time the conditional use application is filed.

149 * * *

150 d. Where a Telecommunications Tower is allowed as a conditional
151 use and the tower would replace a pre-existing utility pole,
152 streetlight pole, or site plan approved parking lot light pole, it
153 may be permitted by the Hearing Examiner under Section
154 3.5.2.C.2.b – Limited Use, Section 7.3.1 – Conditional Use, and
155 the following standards:

156 i. Before the Hearing Examiner approves any conditional
157 use for a Telecommunications Tower, the proposed
158 facility must be reviewed by the Telecommunications
159 Transmission Facilities Coordinating Group. The
160 applicant for a conditional use must file a complete copy
161 of a recommendation from the Telecommunications
162 Transmission Facilities Coordinating Group with the
163 Hearing Examiner at least 30 days before the date set for
164 the public hearing. The recommendation must be no
165 more than 90 days old at the time the conditional use
166 application is filed.

- 167 ii. Notwithstanding Section 3.5.2.C.2.b.ii, a
168 Telecommunications Tower must be set back, as
169 measured from the base of the support structure, as
170 follows:
- 171 (a) not less than 30 feet from a dwelling, excluding
172 encroachments that are allowed under Section
173 4.1.7.B.5; or
- 174 (b) the Hearing Examiner may reduce the setback
175 requirement to not less than 10 feet, if:
- 176 (1) the Telecommunications Transmission
177 Facilities Coordinating Group determines
178 that improvements to service area or
179 capacity cannot be achieved by using a pre-
180 existing streetlight, utility, or parking lot
181 pole within 800 feet of the proposed tower
182 under Section 3.5.2.C.2.b or Section
183 3.5.2.C.14.c; or
- 184 (2) the Hearing Examiner determines that a
185 reduced setback will allow the support
186 structure to be located on the property in a
187 less visually obtrusive location after
188 considering the height of the structure,
189 topography, existing tree coverage and
190 vegetation, proximity to nearby residential
191 properties, and visibility from the street.
- 192 iii. Notwithstanding Section 3.5.2.C.2.b.iv.(a), the tower
193 must be located to minimize its visual impact. Screening

194 under Division 6.5 is not required; however, the Hearing
195 Examiner may require the tower to be less visually
196 obtrusive by use of screen, coloring, or other visual
197 mitigation options, after considering within 400 feet the
198 character of residential properties, proximity to nearby
199 residential properties, existing tree coverage and
200 vegetation, and design and presence of streetlight, utility,
201 or parking lot poles.

202 * * *

203 **Section 3.5.14. Accessory Commercial Uses**

204 * * *

205 C. Antenna on Existing Structure

206 * * *

207 2. Use Standards

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

210 * * *

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

214 * * *

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

219 (a) must not exceed a maximum volume of 12 cubic
220 feet and be installed a minimum of 12 feet above

221 ground if not installed in the Telecommunications
222 Tower base or at ground level; [and]
223 (b) must not exceed a maximum volume of 20 cubic
224 feet when installed in the Telecommunications
225 Tower base or at ground level; and
226 (c) must be the same color or pattern as the existing
227 structure, unless it is a stealth design approved by
228 the Department of Transportation.

229 * * *

230 d. Except under Section 3.5.14.C.2.e, when mounted on a rooftop
231 or structure located outside of a right-of-way, the antenna must
232 meet the following standards:

233 i. An antenna is prohibited:
234 (a) on or within 10 feet of any detached house, duplex,
235 or townhouse building type or an accessory
236 structure associated with either building type; and
237 (b) in any scenic setback indicated in a master plan.

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

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

245 (b) 20 feet in any Residential Multi-Unit,
246 Commercial/Residential, Employment, or
247 Industrial zone, and must be mounted in an

248 antenna enclosure the same color or design as the
249 building.

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

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

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

260 * * *

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

265 i. the antenna is in an enclosure and the enclosure is the
266 same color or pattern as the existing structure;

267 ii. the antenna and the antenna enclosure [is] are installed at
268 a minimum height of 15 feet above the ground; and

269 iii. the structure is at least [60] 30 feet from a dwelling in a
270 Rural Residential, Residential, or Planned Unit
271 Development zone, and at least 10 feet from any
272 [structure] building in any Commercial/Residential,
273 Employment, or Industrial zone.

274 **Sec. 3. DIVISION 59-4.1. is amended as follows:**

275 **DIVISION 4.1. Rules for All Zones**

276 * * *

277 **Section 4.1.7. Measurement and Exceptions**

278 * * *

279 C. Height

280 * * *

281 3. Height Encroachments

282 Any height encroachment not specifically listed is prohibited.

283 * * *

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

291 * * *

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

293 **DIVISION 7.3. Regulatory Approvals**

294 **Section 7.3.1. Conditional Use**

295 * * *

296 B. Application Requirements

297 * * *

298 2. The applicant must submit the following for review:

299 * * *

- 300 m. for a [telecommunication tower] Telecommunications Tower
301 application[,];
- 302 i. photographic simulations of the tower and site seen from
303 areas with a direct view of the tower, including a
304 minimum of at least 3 directions; and
- 305 ii. photographs of streetlight, utility, or parking lot light
306 poles within 400 feet of the proposed
307 Telecommunications Tower.

308 * * *

309 E. Necessary Findings

310 * * *

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

- 315 a. meets the requirements of Section 3.5.2.C.2.d;
- 316 b. is compatible with or can be made compatible with nearby
317 residential property by the use of screening, coloring, stealth
318 design, or other visual mitigation options after considering the
319 height of the structure, topography, existing vegetation and
320 environmental features; and
- 321 c. does not abut or confront an individual resource in the Master
322 Plan for Historic Preservation.

323 * * *

324 F. Decision

325 1. Hearing Examiner

326 * * *

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

335 * * *

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

341 * * *

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

344

345 This is a correct copy of Council action.

346

347

348 _____
349 Megan Davey Limarzi, Esq.
Clerk of the Council