Zoning Text Amendment No.: 19-07
Concerning: Telecommunications Towers – Limited Use
Draft No. & Date: 1 – 9/24/19
Introduced: October 1, 2019
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: Councilmember Riemer
Co-Sponsors: Councilmembers Albornoz and Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow certain telecommunications towers as a limited or conditional use in certain residential zones;
- revise the standards for telecommunications towers allowed as a limited or conditional use;
- revise the conditional use findings required for the replacement of a pre-existing pole; and
- generally amend 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”
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.

<table>
<thead>
<tr>
<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
<th>Residential Detached</th>
<th>Residential Townhouse</th>
<th>Residential Multi-Unit</th>
<th>Commercial/Residential</th>
<th>Employment</th>
<th>Industrial</th>
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<td>RC</td>
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<td>RE-2</td>
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<td><strong>COMMERCIAL</strong></td>
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<td><strong>Communication Facility</strong></td>
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<td><strong>Cable Communications System</strong></td>
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<td><strong>Media Broadcast Tower</strong></td>
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<td><strong>Telecommunications Tower</strong></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

* * *

2. Use Standards

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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. Any permit application to the Department of Permitting Services concerning a Telecommunications Tower must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the permit application.

ii. 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 setback encroachments allowed under Section 4.1.7.B.5.

iii. In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower
must be at least 60 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section 4.1.7.B.5.

[i] iv. 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.

[ii] v. 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) vii. The height of the tower, including any attached antennas and equipment, must not exceed:

(a) for streetlights, 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) for utility poles and parking lot lights, the height of the pre-existing utility or parking lot light pole plus 10 feet.

(v) viii. The tower must be the same color as the pre-existing pole.

(vi.) ix. The tower must have no exterior wiring, except that exterior wiring may be enclosed in shielded conduit on wooden or utility poles.

(vii) x. Any equipment cabinet:

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

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

(c) 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)] 3.5.2.C.b.x(d); and

(d) may be a stealth design approved for safety by the Department of Transportation.

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

[ix] xii. 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] xiii. The noise level of any [fans] equipment must comply with Chapter 31B.

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

[xii] xv. The owner of the tower [or the antenna attached to the tower] must maintain their tower[.], The owner of the antenna must maintain the [antennas,] antenna and equipment in a safe condition[.], Both owners must remove graffiti[,] and repair damage from their facility.

[xiii] xvi. If a tower does not have a streetlight, the tower must be removed at the [cost] expense 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] expense of the owner of the antenna and equipment when the [antennas] antenna and equipment are no longer in use for more than 12 months. The [Telecommunications] Transmission [Facilities] Facility Coordinating Group must be notified within 30 days of the removal.

c. Where a Telecommunications Tower is allowed as a conditional use, it may be permitted by the Hearing Examiner under [Section 3.5.2.C.2.a, limited use standards, Section 7.3.1, Conditional Use,] either Subsection 3.5.2.C.2.d or Subsection 3.5.2.C.2.a, limited use standards. In addition, Section 7.3.1 and the following procedures and standards must be satisfied:

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

* * *

d. In the Agricultural, Rural Residential, and Residential zones, where a Telecommunications Tower that is proposed to be less than 50 feet in height does not meet the limited use standards
under Subsection 3.5.2.C.2.a, it may be permitted by the
Hearing Examiner as a conditional use without regard to
Section 7.3.1 only if the following procedures and standards are
satisfied:

i. An application must include:

(a) the subject property’s ownership and, if the
applicant is not the owner, authorization by the
owner to file the application;

(b) fees as approved by the District Council;

(c) a statement of how the proposed development
satisfies the criteria to grant the application;

(d) a certified copy of the official zoning vicinity map
showing the area within at least 1,000 feet
surrounding the subject property;

(e) a written description of operational features of the
proposed use;

(f) plans showing existing buildings, structures,
rights-of-way, tree coverage, vegetation, historic
resources, and the location and design of
streetlights, utilities, or parking lot poles within
300 feet of the proposed location;

(g) a list of all property owners, homeowners
associations, civic associations, condominiums,
and renter associations within 300 feet of the
proposed tower;
(h) plans showing height and architectural design of
the tower and cabinets, including color materials,
and any proposed landscaping and lighting;

(i) photograph simulations with a direct view of the
tower and site from at least 3 directions;

(j) at least one alternative site that maximizes the
setback from any building intended for human
occupation or reduces the height of the proposed
tower.

ii. Before the Hearing Examiner reviews any conditional
use for a Telecommunications Tower, the proposed
facility must be reviewed by the Transmission Facility
Coordinating Group. The Transmission Facility
Coordinating Group must declare whether the application
is complete, verify the information in the draft
application, and must issue a recommendation within 20
days of accepting a complete Telecommunications Tower
application. The applicant for a conditional use must file
a complete copy of the recommendation from the
Transmission Facility Coordinating Group with the
Hearing Examiner at least 30 days before the date set for
the public hearing. The Transmission Facility
Coordinating Group recommendation must have been
made within 90 days of its submission to the Hearing
Examiner.
iii. The Hearing Examiner must schedule a public hearing to begin within 30 days after the date a complete application is accepted by the Hearing Examiner.

(a) Within 10 days of when an application is accepted, the Office of Zoning and Administrative Hearings must notify all property owners within 300 feet of the application of:

(1) the filed application;
(2) the hearing date; and
(3) information on changes to the hearing date or the consolidation found on the Office of Zoning and Administrative Hearing’s website.

A sign that satisfies Section 59.7.5 must also be posted at the site of the application at the same time.

(b) The Hearing Examiner may postpone the public hearing and must post notice on the website of the Office of Zoning and Administrative Hearings of any changes to the application, the application schedule, or consolidation of multiple applications.

(c) The Hearing Examiner may request information from Planning Department Staff.

iv. A Telecommunications Tower must be set back, as measured from the base of the support structure.

v. (a) The Telecommunications Tower must be at least 60 feet from any building intended for human
occupation, excluding encroachments that are allowed under Section 4.1.7.B.5 and no taller than 30 feet; or

(b) if the Hearing Examiner determines that additional height and reduced setback are needed to provide service or a reduced setback or increased height will allow the support structure to be located on the property in a less visually obtrusive location, the Hearing Examiner may reduce the setback requirement to at least 30 feet or increase the height. In making this determination, the Hearing Examiner must consider the height of the structure, topography, existing tree coverage and vegetation, proximity to nearby residential properties, and visibility from the street.

vi. The Hearing Examiner may not approve a conditional use if the use abuts or confronts an individual resource or is in a historic district in the Master Plan for Historic Preservation.

vii. The tower must be located to minimize its visual impact as compared to any alternative location where the tower could be located to provide service. Neither screening under Division 6.5 nor the procedures and standards under Section 7.3.1 are required. The Hearing Examiner may require the tower to be less visually obtrusive by use of screen, coloring, or other visual mitigation options, after the character of residential properties within 400...
feet, existing tree coverage and vegetation, and design
and presence of streetlight, utility, or parking lot poles.

e. When multiple applications for Telecommunications Towers
raise common questions of law or fact, the Hearing Examiner
may order a joint hearing or consolidation of any or all of the
claims, issues, or actions. Any such order may be prompted by
a motion from any party or at the Examiner’s own initiative.
The Hearing Examiner may enter an order regulating the
proceeding to avoid unnecessary costs or delay. The following
procedures for consolidated hearings govern:

i. All applications must be filed within 30 days of each
other and be accompanied by a motion for consolidation.

ii. The proposed sites, starting at a chosen site, must be
located such that no site is further than 3,000 feet from
the chosen site in the application.

iii. The proposed sites must be located in the same zone,
within the same Master Plan area, and in a neighborhood
with similar building heights and setbacks.

iv. Each tower must be of the same or similar proposed
height, structure, and characteristics.

v. A motion to consolidate must include a statement
specifying the common issues of law and fact.

vi. The Hearing Examiner may order a consolidated hearing
if the Examiner finds that a consolidated hearing will
more fairly and efficiently resolve the matters at issue.
vii. If the motion to consolidate is granted, the applicant and opposition must include all proposed hearing exhibits with their pre-hearing statements.

viii. The Hearing Examiner has the discretion to require the designation of specific persons to conduct cross-examination on behalf of other individuals and to limit the amount of time given for each party’s case in chief. Each side must be allowed equal time.

f. Any party aggrieved by the Hearing Examiner’s decision may file a petition for judicial review under the Maryland rules within 15 days of the publication of the decision.

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Sec. 3. 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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Mary Anne Paradise
Acting Clerk of the Council