

M E M O R A N D U M

September 29, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards

PURPOSE: Worksession #1

Expected Attendees

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department

Introduction

Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards, lead sponsor Councilmember Riemer, was introduced on February 8, 2022. ZTA 22-01 will reduce the setback for Antenna on Existing Structure to 30 feet.

Public Hearing

A public hearing was held on September 13, 2022. Several speakers testified, both in opposition and support. Opposition testified that the approval process for Antenna on Existing Structure lacks public input, that the negative effects of radiation have not been sufficiently studied, and that the technology has become obsolete. Letters in opposition questioned the legal necessity for this ZTA, as well as asked questions about the impacts on the environment, such as pollinators and the tree canopy.

Speakers in support testified that this infrastructure is needed to support businesses and public services, increase connectivity, and encourage colocation. Testimony in support included letters from MD5G Partnership, which represents 35 organizations that support “building connected communities through enhanced wireless networks”, including Maryland State Lodge Fraternal Order of Police, Montgomery County Chamber of Commerce, Hispanic Chamber of Commerce, Wireless Infrastructure Association, Greater Washington Board of Trade, T-Mobile, Greater

Bethesda Chamber of Commerce, and Montgomery County Medical Society. These letters noted the benefits of wireless connectivity in sectors such as education, public safety, healthcare, transportation, and technology. They noted that ZTA 22-01 would support small business owners, who “depend on timely communication at sufficient speeds to conduct civil engineering and construction trade work, as well as in other areas of industry requiring substantial mobility and access to information.” They also noted that the current zoning ordinance has the unintended consequence of incentivizing applying for a new telecommunications tower rather than using an existing pole.

The Town of Chevy Chase submitted written testimony asking for several amendments, including:

1. requiring deployment of 5G equipment to be limited use instead of accessory use, so that there is Transmission Facilities Coordination Group (TFCG, or “Tower Committee”) oversight and opportunity for public input;
2. ensuring design standards for limited use be applied; and
3. clarifying that the 30-foot setback would be measured on a horizontal basis from the pole, and not at an angle.

Summary of Impact Statements

Planning Board Recommendation

The Planning Board reviewed ZTA 22-01 on July 14, 2022. The Board recommended approval of the ZTA, since it would make the setback for Antenna on Existing Structure the same as Telecommunications Towers, which is consistent with the County’s “long-standing practice of encouraging co-location of such equipment on existing poles where possible.”

RESJ Impact Statement

The Office of Legislative Oversight (OLO) submitted a racial equity and social justice (RESJ) impact statement on March 14, 2022. OLO found that it could not determine the impact of ZTA 22-01 on racial equity and social justice in the County. OLO noted that “expansion in 5G services could help bridge the digital divide by race and ethnicity”, but that there is no consensus regarding the health and environmental impacts of 5G technology so the probable impact on health inequities remains unknown.

Discussion

Background

Under Section 3.5.14.C. of the Zoning Ordinance, an “Antenna on Existing Structure” is defined as “one or more antennas attached to an existing support structure, including 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.” Currently, the setback for an Antenna on Existing Structure is 60 feet. ZTA 22-01 will reduce that setback to 30 feet.

As background, in July 2021 the County Council adopted ZTA 19-07, Telecommunications Towers – Limited Use.¹ Under Section 3.5.2.C. of the Zoning Ordinance, a “Telecommunications Tower” is defined as “any structure, other than a building, used to provide wireless voice, data, or image transmission within a designated service area. Telecommunications Tower 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).” ZTA 19-07 revised the standards for telecommunications towers allowed as a limited or conditional use and generally amended the use requirements. The setback for a Telecommunications Tower in the Agricultural, Rural Residential, and Residential zones was reduced to 30 feet after Committee and Council worksessions. But ZTA 19-07 did not make any changes to Antenna on Existing Structure, a different use in the Zoning Ordinance with separate provisions.² Of note, utility poles are different from streetlights and other telecommunications towers. The County does not issue building permits for utility poles, which are regulated by the Maryland Public Service Commission.

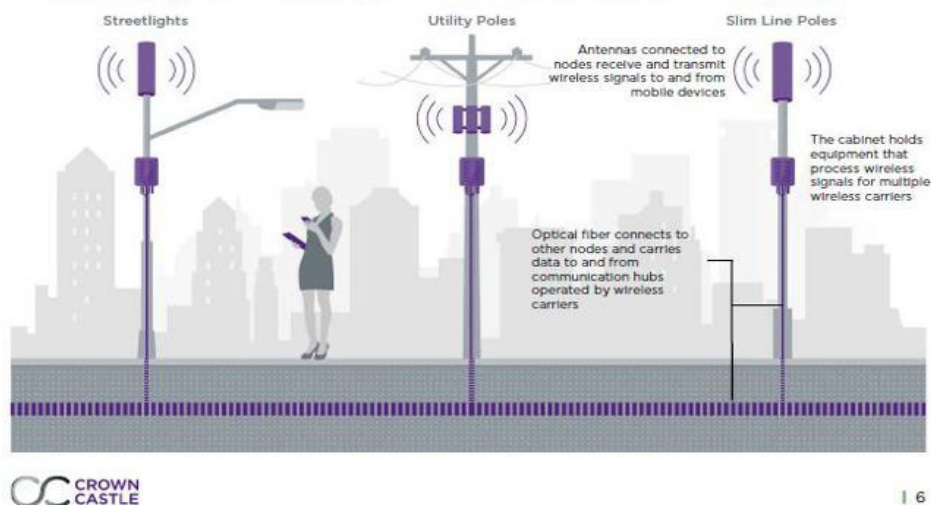
The purpose of ZTA 22-01 is to treat Antennas on Existing Structures similarly to Telecommunications Towers. Without this ZTA, an applicant would be incentivized to install a new or replacement tower rather than installing an Antenna on Existing Structure. Typically, the Antenna on Existing Structure use comes into play when placing a small cell antenna on a utility pole. As a refresher, 5G requires smaller equipment installed closer together and much closer to the ground. Unlike the macro towers, which were located on private property, small cell facilities tend to be located in public rights-of-way. For installation, an antenna is installed either on top of or flush with a pole, usually a pre-existing streetlight or utility pole. The antenna receives and transmits wireless signals from wireless devices. A cabinet holds the equipment necessary to process the wireless signals for multiple wireless carriers. The cabinet can also be a separate box on the ground.

¹ The PHED Committee held three worksessions on ZTA 19-07, followed by four full Council worksessions. The final staff report, along with prior memorandums, can be found here: https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210727/20210727_4_D.pdf. The text of ZTA 19-07 can be found here: https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2019/20210727_19-17.pdf.

² Council was advised that it would not be recommended to add the Antenna on Existing Structures section to ZTA 19-07 last year without re-introducing the ZTA because there had already been a public hearing that did not include that use.

What Are Small Cell Deployments?

Small cell deployments are complementary to towers, adding much needed coverage and capacity to urban and residential areas, venues, and anywhere large crowds gather



Federal Law: Health Effects and Recent Cases

Much of the opposition surrounding ZTA 19-07 concerns the health effects of radio frequency (RF) exposure. Under federal law, local jurisdictions are preempted from regulating telecommunications antennas because of health effects as long as those facilities are operating within FCC-determined power and RF ranges. In its appeal of the FCC order, the County challenged the FCC's failure to address RF emissions. In addition, the County and other jurisdictions asked the FCC to update and complete a 2013 evaluation of the existing RF safety standards. The FCC has refused to review its standards and has disagreed with concerns raised about RF emissions from 5G small cell antennas. The Court dismissed the County's challenge as moot, finding that the FCC's additional order considered RF exposure risks of 5G services. In addition, Congress has explicitly preempted the County from considering any regulations related to RF health issues:

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.
47 U.S. Code §332(c)(7)(B)(iv)

On August 13, 2021, the United States Court of Appeals for the District of Columbia Circuit issued a decision in *Environmental Health Trust, et al. v. FCC*.³ The D.C. Circuit held that the FCC's refusal to reconsider the noncancer health effects of 5G was arbitrary and capricious and remanded back to the FCC. The Court wrote:

³ The decision can be found here:

[https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/\\$file/20-1025-1910111.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/FB976465BF00F8BD85258730004EFDF7/$file/20-1025-1910111.pdf).

...[W]e grant the petitions in part and remand to the Commission to provide a reasoned explanation for its determination that its guidelines adequately protect against harmful effects of exposure to radiofrequency radiation unrelated to cancer. It must, in particular,

- (i) provide a reasoned explanation for its decision to retain its testing procedures for determining whether cell phones and other portable electronic devices comply with its guidelines,
- (ii) address the impacts of RF radiation on children, the health implications of long-term exposure to RF radiation, the ubiquity of wireless devices, and other technological developments that have occurred since the Commission last updated its guidelines, and
- (iii) address the impacts of RF radiation on the environment. (p. 31)

The Court did not give the FCC a deadline for this review. Further, the Court specifically noted that:

To be clear, we take no position in the scientific debate regarding the health and environmental effects of RF radiation—we merely conclude that the Commission’s cursory analysis of material record evidence was insufficient as a matter of law. (p. 31)

In summary, the D.C. Circuit found that the FCC must provide a reasoned explanation for not updating the RF guidelines.⁴ But that case did not change the law banning “materially prohibiting” carriers from offering wireless service, and local jurisdictions are still preempted from regulating telecommunications antennas because of health effects as long as those facilities are operating within FCC-determined power and RF ranges.

Due to the passage of ZTA 19-07, Council Staff believes that it would be difficult for a telecommunications company to argue that service has been “materially prohibited”, since a new or replacement Telecommunications Tower can be installed 30 feet from the nearest habitable building.

However, the existing different standards for a Telecommunications Tower versus an Antenna on Existing Structure can lead to a situation where a provider constructs a new tower instead of placing an antenna on a nearby utility pole. For example, under the current Zoning Ordinance a provider would be encouraged to construct a telecommunications tower 30 feet from a home instead of placing an antenna on a utility pole 50 feet from a home. County policy has generally encouraged co-location, which is defined as the siting of multiple facilities on the same structure; for example, placing multiple antennas on the same pre-existing utility pole. As evidence of this policy, this Council voted for an amendment to ZTA 19-07 that would not allow a new pole if there was a usable pre-existing or potential replacement pole within 150 feet of the proposed site; the Hearing Examiner is tasked with making sure the tower minimizes visual impact as compared to any alternative location where the tower could be located; and the Tower Committee makes recommendations based on appropriate location and co-location.

⁴ The text of the order can be found here: <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>.

Proposed Amendments

The Town of Chevy Chase submitted written testimony asking for several amendments, including:

1. requiring deployment of 5G equipment to be limited use instead of accessory use, so that there is Transmission Facilities Coordination Group (TFCG, or “Tower Committee”) oversight and opportunity for public input;
2. ensuring design standards for limited use be applied; and
3. clarifying that the 30-foot setback would be measured on a horizontal basis from the pole, and not at an angle.

Council Staff does not recommend approval of these amendments.

1. Under Section 2-58E, the Tower Committee already reviews applications for Antennas on Existing Structures. The Tower Committee must “review the siting of each proposed transmission facility”, and a telecommunications transmission facility is defined as “any antenna, tower, monopole, or other structure used primarily to receive or transmit wireless voice, data, or image information (or any combination of them).”
2. Antenna on Existing Structure is already a limited use in the Zoning Ordinance. An Antenna on Existing Structure has several use standards, including:
 - limited dimensions for the antenna;
 - a prohibition on signs or illumination on the antenna or support structure;
 - limits on the size of the equipment building; and
 - design and landscaping standards for the equipment building.⁵
3. Regarding the measuring of setbacks, Council Staff does not believe this amendment is necessary since this language is not included anywhere else in the Zoning Ordinance when discussing setbacks. Setbacks are defined as “a distance measured from the ... lot line to a structure or surface parking lot.” In reviewing the Zoning Ordinance, the only reference to measuring horizontally in this way is for footcandles—“as measured horizontally at grade.” Specifying how a setback should be measured should be done holistically throughout the zoning ordinance, otherwise a Court could interpret the clarification here as evidence that setbacks are measured differently elsewhere.

This packet contains:

ZTA 22-01	© 1
Planning Board Recommendation	© 4
Planning Staff Memorandum	© 5
RESJ Impact Statement	© 8
Antenna on Existing Structure Use Standards	© 11
Written Testimony	© 13

⁵ A full copy of the use standards has been attached to this packet.

Ordinance No.:
Zoning Text Amendment No.: 22-01
Concerning: Antenna on Existing
Structure – Use Standards
Draft No. & Date: 1 – 1/20/2022
Introduced: February 15, 2022
Public Hearing: September 13, 2022
Adopted:
Effective:

**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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- reduce the setback for antennas on existing structures; and
- generally amend the antenna on existing structures provisions.

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

Division 3.5. “Commercial Uses”

Section 3.5.14. “Accessory Commercial Uses”

Section 3.5.14.C. “Antenna on Existing Structure”

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 text that 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

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 59-3.5 is amended as follows:

Division 3.5 Commercial Uses

* * *

Section 3.5.14. Accessory Commercial Uses

* * *

C. Antenna on Existing Structure

* * *

2. Use Standards

* * *

- 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 installed at a minimum height of 15 feet; and
 - iii. the [structure]antenna 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 in any Commercial/Residential, Employment, or Industrial zone.

* * *

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

July 22, 2022

To: The Honorable Gabe Albornoz
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on July 14, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-01, as it was introduced. The ZTA amends the required setbacks for small cell antennas from residential structures when placed on existing poles. Updates to this setback was inadvertently omitted from ZTA 19-07, which generally amended the setback standards for small cell antennas.

The ZTA updates the setback for small cell antennas when located on existing poles in residential zones from 60 feet to 30 feet. This matches the setbacks allowed for antennas when placed on new poles. The county has a long-standing practice of encouraging co-location of such equipment on existing poles where possible and this proposed change is in keeping with that practice.

The Board appreciates the opportunity to review ZTA 21-01 and offers its full support in seeing this change adopted.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, July 14, 2022.



Casey Anderson
Chair

Attachment A: Board Staff Report Packet

CA:BB:aj

ZTA 22-01 – ANTENNA ON EXISTING STRUCTURE

Description

ZTA 22-01 reduces the setback required for an antenna mounted on existing structures from 60 feet to 30 feet, consistent with the standards allowed for new structures recently adopted by ZTA 19-07.

ZTA 22-01

COMPLETED: 7-7-2022

MCPB

Item No. 06

7-14-2022

2425 Reedie Drive

Floor 14

Wheaton, MD 20902

BB

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Summary

- ZTA 19-07, Telecommunications Towers, for small cell antennas was adopted on July 27, 2021, creating new setback standards that antennas located on new structures be set back a minimum of 30 feet from residential dwellings in residential zones.
- The standards for antennas located on existing structures was not updated at that time, and still requires a 60-foot minimum setback from residential properties.
- The county has long prioritized co-location of cell antennas on existing structures and towers, therefore ZTA 22-01 would adjust the standards for antennas on existing structures to match that of new structures to not disadvantage co-location.
- Planning staff has no comments and recommends the Planning Board transmit a memo to the District Council in support of the ZTA.

LEAD SPONSORS

Councilmember Reimer

INTRODUCTION DATE:

February 15, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-01

ZTA 22-01 was introduced by Councilmember Reimer on February 15, 2022. The public hearing for this ZTA has been delayed several times and is currently scheduled for September 13, 2022. This ZTA would amend code in Section 3.5.14.C “Antenna on Existing Structure” which is a sub-section of the section titled “Accessory Commercial Uses.” This section of code regulates the mounting of antennas, including cellular, on existing structures such as street or parking lot lights, utility poles, or water towers. When ZTA 19-07 (Ordinance 19-17) for small cell antennas was adopted on July 27, 2021, the updated provisions permitted a minimum setback from residential structures of 30 feet for antennas on new structures. Section 3.5.14.C for antennas on existing structures, however, was not updated and still requires a minimum 60-foot setback, double what is allowed for new structures. The county has a longstanding interest in encouraging co-location of new infrastructure onto existing structures where possible, so ZTA 22-01 was introduced to allow the setback standards for antennas on existing structures to match the standards of antennas on new structures.

SECTION TWO

ANALYSIS

ZTA 22-01 as introduced

ZTA 22-01 makes minor text modifications to Section 3.5.14.C.2.e.iii of the Zoning Code, replacing the word structure with antenna, and the setback requirement of 60’ with 30’ (Attachment A). No other standards regulating the placement of antennas on existing structures is modified by this ZTA. This is the minimum modification that meets the ZTA’s intent of having the setback standard for antennas on existing structures match the standard for new structures. Planning staff has no comment on this ZTA and recommends the Planning Board transmit a memo in support of the ZTA.

Conclusion

Staff supports the changes as introduced for ZTA 22-01 and recommends the Planning Board transmit comments in support of the ZTA to the District Council. The code change brings parity to the placement of antennas on both new and existing structures, which was the intent of the original ZTA 19-07 for small cell antennas.

Attachment A – ZTA 22-01 introduction packet

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 22-01: ANTENNA ON EXISTING STRUCTURE —USE STANDARDS

SUMMARY

The Office of Legislative Oversight cannot discern the net anticipated impact of Zoning Text Amendment 22-01 on racial equity and social justice (RESJ) in the County.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 22-01

The purpose of Zoning Text Amendment (ZTA) 22-01 is to make a change to the Zoning Ordinance that will enable the telecommunications sector to increase the number of small cell towers in the County to expand fifth generation (5G) wireless coverage. Toward this end, ZTA 22-01 would amend the current setback requirements of placing antennas on existing structures in right of ways from 60 feet to 30 feet.

ZTA 22-01 was introduced on February 15, 2022.³ If enacted, ZTA 22-01 will align with two prior zoning text amendments that also support the expansion of wireless 5G technology services in the County.

- ZTA 18-02 adopted on May 15, 2018 allows the limited use installation of 5G towers in mixed use and non-residential zones and reduced the setback requirement for these towers from 60 feet to 30 feet; and
- ZTA 19-07 adopted on July 27, 2021 allows the limited use installation of 5G towers in residential zones that replace an existing utility pole, street light pole, or parking lot pole. The setback requirement for these was also reduced from 60 feet to 30 feet.

THE DIGITAL DIVIDE, HEALTH INEQUITIES, AND RACIAL EQUITY

To understand the impact of ZTA 22-01 on RESJ in the County requires understanding the potential impact of this ZTA on Black, Indigenous, and Other People of Color (BIPOC) and low-income communities. To describe these potential impacts, this section describes the digital divide and health inequities and how this ZTA could impact each in the County.

The Digital Divide. The Digital Divide refers to the gap among those who have access to new technology and those that do not. This divide includes a racial divide in internet access where those without, face economic and political costs that can include difficulty finding and applying for employment, accessing telehealth services, and learning online.

RESJ Impact Statement

Zoning Text Amendment 22-01

In Montgomery County, there is a digital divide in broadband access where 94 percent of White and 96 percent of Asian residents had broadband access in 2019 compared to 92 percent of Black and 89 percent of Latinx residents.⁴ Yet, the digital divide in smartphone ownership is likely narrower than the divide in broadband access since nationally, 85 percent of White, 83 percent of Black, and 85 percent of Latinx residents owned a smartphone in 2021.⁵

Research from the Brookings Institution contends that the ubiquity of smartphone use by race and ethnicity creates an opportunity to narrow the digital divide in broadband access by improving wireless services. This research states that:

“...5G will be a determining factor in whether or not mobile-dependent users fully partake in the global digital economy, especially as smartphones, cell phones, and other wireless-enabled devices become the *only* gateway to the internet for certain populations. For communities of color that often lack reliable broadband access, 5G represents increased economic opportunity through improved access to social services, such as health care, education, transportation, energy, and employment.”⁶

Brookings further notes that since Black and Latinx residents are more likely to depend on mobile services for online access, 5G networks must be widely available, affordable, and able to support emerging technologies that address public interest concerns.⁷ As such, expansion in 5G services could help bridge the digital divide by race and ethnicity.

Health Inequities. Health inequities refer to systematic differences in health outcomes that reflect differential access to the social determinants of health (e.g. access to food, housing, income, education, health care) often by race and ethnicity. Examples of health inequities include lower life expectancy, higher rates of mental illness, and difficulty in getting health care among BIPOC compared to White people. In Montgomery County, for example, between 2013-15:⁸

- The heart disease mortality rate was 127.8 per 100,000 Black residents compared to 110.0 White residents, 59.8 Asian residents, and 55.7 Latinx residents;
- The breast cancer mortality rate was 25.6 per 100,000 Black residents compared to 19.5 White residents, 10.9 Latinx residents, and 7.3 Asian residents; and
- The infant mortality rate was 8.8 per 1,000 live births among Black children compared to 4.9 for Latinx children, 3.8 for Asian children and 3.7 for White children.

The likely impact of ZTA 22-01 on current health inequities in the County is potentially two-fold. If ZTA 22-01 helps to narrow the digital divide in internet access as noted above, it could expand access to telehealth medicine that in turn could help narrow health disparities by race and ethnicity. But, if the reduced set back requirements for small cell towers authorized under ZTA 22-01 results in negative health outcomes, this in turn could widen health disparities by race and ethnicity. However, there is no consensus among researchers regarding the health and environmental impacts of expanding 5G technology by reducing setbacks. As such, the potential health effects of reducing setbacks to expand 5G technology and its probable impact on health inequities remains unknown.

Various research studies link radiation emitting from cell phone towers to a number of health concerns that include miscarriages, suppressed immune function, and childhood leukemia.⁹ Yet the consensus among federal agencies based on their review of the research is that cell phone towers do not pose an environmental or health risk to the public.¹⁰ A recent appeals court decision, however, finds that the Federal Communications Commission’s (FCC) claims about the health and environmental impacts of 5G technology are insufficient.¹¹ In turn, the Appeals Court has asked the FCC to provide additional information to justify its claim that its current guidelines adequately protect against the harmful effects of exposure to radiofrequency radiation.¹²

RESJ Impact Statement

Zoning Text Amendment 22-01

ANTICIPATED RESJ IMPACTS

Due to limited information and data on the potential health effects of reducing setbacks for small cell towers, OLO cannot distinguish the net RESJ impact of Zoning Text Amendment 22-01 in the County. Whereas OLO finds that ZTA 22-01 could favorably impact racial equity and social justice by narrowing the County's digital divide, OLO cannot ascertain whether reducing setbacks for small cell towers would diminish or exacerbate health disparities in the County. As such, OLO cannot discern the net impact of ZTA on 22-01 on racial equity and social justice in the County.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council's decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO's endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

OLO staffer Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement with assistance from Elaine Bonner-Tompkins, Senior Legislative Analyst.

¹ Definition of racial equity and social justice adopted from "Applying a Racial Equity Lens into Federal Nutrition Programs" by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

² Ibid

³ Ibid

⁴ American Community Survey, 1-year estimates, 2019

⁵ "Mobile Fact Sheet." 2021. Washington, DC: Pew Research Center, April 7, 2021. <http://www.pewinternet.org/fact-sheet/mobile/>.

⁶ Turner Lee, Nicol. 2022. Report: Enabling opportunities: 5G, the internet of things, and communities of color. Brookings. <https://www.brookings.edu/research/enabling-opportunities-5g-the-internet-of-things-and-communities-of-color/>

⁷ Ibid

⁸ Jupiter Independent Research Group, Racial Equity Profile Montgomery County, Office of Legislative Oversight Report 2019-7, July 15, 2019

⁹ See for example Johansson, Olle. Disturbance of the immune system by electromagnetic fields-A potentially underlying cause for cellular damage and tissue repair reduction which could lead to disease and impairment, NIH: National Library of Medicine, Pathophysiology. April.23, 2009; Anadolu Agency. 2021. Phones may cause spike in childhood cancer in new generations. Daily Sabah. February 15; and Belluz, Julia. A concerning new study links miscarriages to cellphone radiation. How worried should we be? Vox. February 15. <https://www.vox.com/science-and-health/2018/2/15/17008482/cellphones-cancer-miscarriage-health>, 2018.

¹⁰ FCC Consumer Guide. Wireless Devices and Health Concerns. October 29, 2020

¹¹ United States Court of Appeals for The District of Columbia Circuit: No. 20-1025. Environmental Health Trust, Et Al., Petitioners V. Federal Communications Commission and United States of America, Respondents. <https://www.fcc.gov/document/dc-circuit-decision-environmental-health-trust-v-fcc> Argued January 25, 2021 Decided August 13, 2021.

¹² Ibid

Section 3.15.4.C

C. Antenna on Existing Structure

1. Defined

Antenna on Existing Structure means one or more antennas attached to an existing support structure, including 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
 - 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.
- b. 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.
- c. Associated equipment must be located in an unmanned building, equipment cabinet, or equipment room in an existing building. An equipment building must satisfy the following standards:
 - i. An equipment building must satisfy the following standards:
 - (a) It is a maximum of 560 square feet in area; however, a single equipment building in excess of 560 square feet, located at ground level, may be used if:
 - (1) the overall maximum square footage is 1,500 square feet and the maximum height is 12 feet;
 - (2) the building is used for more than one telecommunications provider operating from the same monopole or tower; and
 - (3) the building is reviewed by the Telecommunications Transmission Facility Coordinating Group under Chapter 2 (Section 2-58E).
 - (b) It is a maximum of 14 feet in height, including the support structure for the equipment building.
 - (c) If the equipment building is greater than 4 feet in height and is in a Residential zone, or the nearest abutting property is in a Residential zone, the building must be faced with brick or other material compatible with the surrounding neighborhood on all sides.
 - ii. If an equipment cabinet and any supporting platform are greater than 4 feet in height, and service an Antenna on 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, 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 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 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.
 - iii. An antenna may be mounted on the facade of a building at a minimum height of:
 - (a) 50 feet in a Residential Detached zone; or
 - (b) 30 feet in any Residential Multi-Unit, Commercial/Residential, Employment, and Industrial zone.
 - iv. The antenna must not be attached to the support structure for:
 - (a) an antenna that is part of an Amateur Radio Facility licensed by the Federal Communications Commission; or
 - (b) an antenna to receive television imaging in the home.
 - 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 installed at a minimum height of 15 feet; and
 - iii. the structure is at least 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.

September 9, 2022

Council President Gabe Albornoz
Montgomery County Council
100 Maryland Ave, 6th Floor
Rockville, MD 20850

RE: Support - ZTA 22-01, Antenna on Existing Structure – Use Standards

Dear Council President Albornoz and Members of the Council,

Enclosed in this packet, you will find letters on behalf of the MD5G Partnership, urging you to support Zoning Text Amendment (ZTA) 22-01 to reduce the setback for antennas on existing structures from 60-feet to 30-feet. MD5G Partnership represents more than 35 organizations statewide that have come together in support of building connected communities through enhanced wireless networks. We have seen firsthand the benefits of wireless connectivity across sectors including education, public safety, healthcare, transportation, and tech.

In 2018, ZTA 18-02 was passed by County Council allowing the deployment of small cells in commercial and mixed-use areas. Then in 2021, the council passed ZTA 19-07 to allow small cell antennas in residential zones. As the demand for mobile data continues to grow with more devices connecting to wireless networks than ever before, these were critical steps toward ensuring the county is future-proof and has the wireless networks it needs to keep residents and businesses connected and safe.

However, the existing zoning ordinances contain inconsistencies that are addressed by ZTA 22-01. If an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way.

The small cells that will be enabled as a result of ZTA 22-01 will add much-needed capacity to provide the connectivity we all demand today and to prepare for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; employees working from home; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and much more.

We urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we depend on.

Thank you,



Laura Toraldo, Executive Director, MD5G Partnership



10200 Connecticut Avenue, Suite 308, Kensington, MD 20895

September 7, 2022

TO;

Gabriel Albornoz, President
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

SUBJECT: ZTA-22-01 reference amendment on Commercial Use Zoning to address Antennas on Existing Structures, Use Standards.

Dear Council President Albornoz and members of the Montgomery County Council,

Through this letter, the Hispanic Chamber of Commerce of Montgomery County asks that you represent the interests of minority small business owners, facilitating on the road and on work site communications via cellular networks by approving the amendment proposed by Councilmember Reimer that would reduce the setback for 5G transmission boxes/ antennas on existing structures.

The Chamber strongly favors this amendment and we ask that you support this motion and approve the requested modification, as it would greatly help our workforce and members of the small business community.

The amendment provides a more reasonable approach that will ease the establishment of a good cellular communication network by allowing the setback minimum to be at 30 feet instead of 60 feet from a dwelling unit in a rural residential, residential or Planned Unit Development zone. This amendment impacts Chapter 59 of the Montgomery County Code 3.5.14.C – “Antenna on Existing Structure” under Division 3.5 “Commercial Uses”.

Many County small business owners and their staff depend on timely communication at sufficient speeds to conduct civil engineering and construction trade work, as well as in other areas of industry requiring substantial mobility and access to information. We ask that you expedite this amendment as it will facilitate placing 5G cellular tower nodes (antennas) in strategic locations to optimize cellular communications coverage at sufficient speeds for timely sharing of engineering designs and real time imaging. Thank you for your continued support and service.

Carmen Ortiz Larsen
President and Chair of the Board of Directors

A handwritten signature in black ink, reading "Carmen Ortiz Larsen".



September 7, 2022

Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: Support - Zoning Text Amendment (ZTA) 22-01

Dear President and Members of the Council

The Wireless Infrastructure Association (WIA) writes in support of the proposed Zoning Text Amendment 22-01 (the "Amendment"). If adopted, this Amendment would pave the way to increased wireless connectivity in Montgomery county and continue to the deployment of 5G networks – the next generation of wireless services.

WIA works to support the responsible and sustainable deployment of wireless infrastructure to efficiently deliver wireless access to all communities. Our members include broadband infrastructure providers, wireless carriers, equipment manufacturers, and professional services firms that collectively own and operate wireless networks in Maryland and throughout the United States.

While in the past years Montgomery County has made steps to modernize county processes and rules to deploy wireless networks more efficiently, the existing zoning ordinances contain inconsistencies that are addressed by the Amendment. Specifically, if an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole because under current guidelines the use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that is capable of hosting the wireless equipment at hand. This current policy fully contradicts how the wireless industry operates in the real world. Using collocation opportunities, the wireless industry first explores already-existing infrastructure that can host wireless equipment before digging the ground for additional vertical assets. The Amendment reconciles this current discrepancy between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way to the benefit of Montgomery County residents and communities.



Wireless
Infrastructure
Association

The demand for wireless services from our customers – your constituents – creates a shared responsibility of government and industry to ready the next-generation networks that will serve consumers today and into the future. The small cells that will be enabled by the Amendment will add much-needed capacity to provide the connectivity we all demand today and to prepare for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; remote working opportunities; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and much more. As more Montgomery County residents rely on these wireless services, the Amendment would allow the wireless industry to explore additional opportunities to deploy wireless infrastructure, resulting in greater investment, increased capacity, and advanced wireless connectivity fueling the jobs of today and tomorrow.

We urge you passage of this important Amendment.

Thank you for your time and consideration. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arturo Chang", is written over a large, stylized blue "A" that serves as a signature element.

Arturo Chang
Director and Senior Counsel
State Government Affairs
703.535.7451
Arturo.Chang@WIA.org



September 13, 2022

The Honorable Gabe Alborno
Council President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

Dear Council President Alborno:

The Montgomery County Chamber of Commerce (MCCC) supports the ZTA 22-01, *Antenna on Existing Structure - Use Standards*. This proposed zoning text amendment would reduce the setback for antennas on existing structures from 60 feet to 30 feet.

ZTA 22-01 addresses inconsistencies in zoning ordinances related to small cell infrastructure. For example, if an applicant needs to install equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way.

While ZTA 22-01 is technical in nature its passage will significantly advance the ability to implement 5G technologies in Montgomery County. The small cells that will be enabled because of ZTA 22-01 will add much-needed capacity, which is now a core economic necessity for any jurisdiction, and Montgomery County is no different. The County's economy heavily relies on innovation to create jobs and advance economic activity. The opportunities for innovation and advancement in health care, transportation, public safety, education, manufacturing, entertainment, and many other sectors cannot be understated.

Again, MCCC supports the passage of ZTA 22-01 and as always, we look forward to working with Montgomery County on this and other important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Godwin", is written over a light blue horizontal line.

Georgette "Gigi" Godwin
President & CEO
Montgomery County Chamber of Commerce

cc: Members, Montgomery County Council



CLYDE E. BOATWRIGHT
STATE PRESIDENT

MARYLAND STATE LODGE FRATERNAL ORDER OF POLICE®

8302 COVE ROAD BALTIMORE, MD 21222



KENNETH SCHUBERT
SECRETARY
EARL KRATTSCH
TREASURER

September 01, 2022

**Honorable Gabe Albornoz, Council President,
Honorable Evan Glass, Vice President,
Honorable Andrew Friedson District 1,
Honorable Craig Rice, District 2,
Honorable Sidney Katz, District 3,
Honorable Nancy Navarro, District 4,
Honorable Tom Hucker, District 5
Honorable Will Jawando, At-Large,
Honorable Hans Riemer, At-Large
Montgomery County Government
100 Maryland Avenue, 6th Floor
Rockville, Md 20850**

Dear Honorable Council President and Councilmembers,

On behalf of the MD5G Partnership, we urge you to support Zoning Text Amendment (ZTA) 22-01 to reduce the setback for antennas on existing structures from 60-feet to 30-feet. MD5G Partnership represents more than 35 organizations statewide that have come together in support of building connected communities through enhanced wireless networks. We have seen firsthand the benefits of wireless connectivity across sectors including education, public safety, healthcare, transportation, and tech.

In 2018, ZTA 18-02 was passed by County Council allowing the deployment of small cells in commercial and mixed-use areas. Then in 2021, the council passed ZTA 19-07 to allow small cell antennas in residential zones. As the demand for mobile data continues to grow with more devices connecting to wireless networks than ever before, these were critical steps toward ensuring the county has the wireless networks it needs to keep residents and businesses connected and safe.

However, the existing zoning ordinances contain inconsistencies that are addressed by ZTA 22-01. If an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that

Representing the Professional Police Officers of the State of Maryland

are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way.

The small cells that will be enabled as a result of ZTA 22-01 will add much-needed capacity to provide the connectivity we all demand today and to prepare for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; employees working from home; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and so much more.

Robust wireless networks help keep us safe. Across the U.S., 80% of 911 calls are made from a mobile device. And communication infrastructure helps emergency personnel do their jobs safely and effectively by providing real-time access to the information they need.

We urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we depend on.

Respectfully Yours,

A handwritten signature in black ink, appearing to read 'Clyde Boatwright', with a stylized flourish at the end.

Clyde Boatwright
State President

Representing the Professional Police Officers of the State of Maryland



Statement of Daniel Flores
Vice President, Government Relations

**Support of Zoning Text Amendment (ZTA) 22-01, Antenna on Existing
Structure**

Tuesday, September 13, 2022

1:30pm – 2:30pm

Zoning Text Amendment (ZTA) 22-01

My name is Daniel Flores, Vice President of Government Relations for the Greater Washington Board of Trade. I am here to urge you to support Zoning Text Amendment (ZTA) 22-01 to reduce the setback for antennas on existing structures from 60-feet to 30-feet. The resulting enhanced wireless networks are needed to build connected communities, foster inclusive economic growth, and improve our region's global competitiveness. We have seen firsthand the benefits of wireless connectivity across sectors including education, public safety, healthcare, transportation, and technology.

In 2018, ZTA 18-02 was passed by the County Council allowing the deployment of small cells in commercial and mixed-use areas. Then in 2021, the council passed ZTA 19-07 to allow small cell antennas in residential zones. These were critical steps to ensure the county has the wireless networks needed to keep residents and businesses connected and safe, as demand for more data and devices continues to grow at faster pace than ever before.

However, the existing zoning ordinances contain inconsistencies that are addressed by ZTA 22-01. If an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefits of this change include the reduced proliferation of infrastructure in the right-of-way, improved network efficiencies and better deployment options.

(Statement of Daniel Flores: Support of Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure Continued)

The small cells enabled as a result of ZTA 22-01 will add much-needed capacity to provide the connectivity we all demand today while preparing for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; employees working remotely; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and so much more.

Wireless infrastructure deployment, driven by private sector investment, will serve as an important economic boost for communities large and small across the state. According to CTIA – which represents the US wireless communication industry – the build out of 5G, the next generation of wireless coverage, will generate over \$11 billion in GDP and 34,000 new jobs for Maryland in the next ten years. 5G will transform major industries, supporting a new wave of innovation from transportation to public safety, healthcare, and education.

As a member of the MD5G Partnership representing more than 35 organizations statewide, we urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we depend on.



12050 Baltimore Ave
Beltsville, MD 20705

September 8, 2022

Council President
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Dear Council President:

On behalf of the MD5G Partnership, we urge you to support Zoning Text Amendment (ZTA) 22-01 to reduce the setback for antennas on existing structures from 60-feet to 30-feet. MD5G Partnership represents more than 35 organizations statewide that have come together in support of building connected communities through enhanced wireless networks. We have seen firsthand the benefits of wireless connectivity across sectors including education, public safety, healthcare, transportation, and tech.

In 2018, ZTA 18-02 was passed by County Council allowing the deployment of small cells in commercial and mixed-use areas. Then in 2021, the council passed ZTA 19-07 to allow small cell antennas in residential zones. As the demand for mobile data continues to grow with more devices connecting to wireless networks than ever before, these were critical steps toward ensuring the county has the wireless networks it needs to keep residents and businesses connected and safe.

However, the existing zoning ordinances contain inconsistencies that are addressed by ZTA 22-01. If an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way.

The small cells that will be enabled as a result of ZTA 22-01 will add much-needed capacity to provide the connectivity we all demand today and to prepare for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; employees working from home; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and so much more.

Wireless infrastructure deployment, driven by private sector investment, will serve as an important economic boost for communities large and small across the state. The build out of 5G, the next generation of wireless coverage, will generate over \$11 billion in GDP and 34,000 new jobs for Maryland in the next ten years. 5G will transform major industries, supporting a new wave of innovation from transportation to public safety, healthcare, and education.

We urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we depend on.

Sincerely,

Jane Builder
Principal Manager Network Advocacy



September 9, 2022

The Honorable Gabe Alborno
President
Montgomery County Council
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Zoning Text Amendment 22-01

Dear Council President Alborno:

On behalf of the Greater Bethesda Chamber of Commerce, we urge you to support Zoning Text Amendment (ZTA) 22-01 to reduce the setback for antennas on existing structures from 60-feet to 30-feet. In order to maintain and create a more prosperous environment for business in Greater Bethesda, we know wireless connectivity is crucial.

In 2018, ZTA 18-02 was passed by County Council allowing the deployment of small cells in commercial and mixed-use areas. Then in 2021, the council passed ZTA 19-07 to allow small cell antennas in residential zones. As the demand for mobile data continues to grow with more devices connecting to wireless networks than ever before, these were critical steps toward ensuring the county has the wireless networks it needs to keep residents and businesses connected.

However, the existing zoning ordinances contain inconsistencies that are addressed by ZTA 22-01. If an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole. The use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that works just as well. ZTA 22-01 reconciles discrepancies between new, replacement and existing poles by allowing telecommunication facilities on existing poles that are at least 30 feet away from a building. The benefit of this change is the reduced proliferation of infrastructure in the right-of-way.

The small cells that will be enabled as a result of ZTA 22-01 will add much-needed capacity to provide the connectivity we all demand today and to prepare for the future. Strong wireless networks are a necessity for our Greater Bethesda businesses to thrive in this digital economy. In addition, Wireless infrastructure deployment, driven by private sector investment, will serve as an important economic boost for communities large and small across the state. The build out of 5G, the next generation of wireless coverage, will generate over \$11 billion in GDP and 34,000 new jobs for Maryland in the next ten years. 5G will transform major industries, supporting a new wave of innovation from transportation to public safety, healthcare, and education.

On behalf of the Greater Bethesda Chamber and our membership, we urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we need now and for our future.



Messaging in support of Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure

Hearing to be held on Tuesday, September 13 from 1:30 – 2:30.

On behalf of physicians and patients in Montgomery County and the region, we urge you to support any and all improvements to the digital infrastructure which will enhance connectivity resulting in improved patient care. In particular, enhancements which will reduce infrastructure barriers to telemedicine connectivity and improve the development and utilization of digital health applications to improve health outcomes is needed.

5G, the next generation of wireless networks, is unleashing advances in digital health through remote sensors that can share vitals with clinicians and health care facilities in real time to take preventative action.

Goldman Sachs estimates that connected devices could create [\\$305 billion](#) in annual health system savings from decreased costs and mortality due to the enhanced ability to monitor and communicate with patients managing chronic illnesses.

We urge you to support Zoning Text Amendment (ZTA) 22-01 to enhance the wireless networks we depend on to provide quality, timely, efficient and effective medical care to the people of Montgomery County.

Submitted by Tuesday Cook, M.D., President, Montgomery County Medical Society

September 13, 2022 - Montgomery County Council Public Hearing Testimony

RE: ZTA 22-01, Antenna on Existing Structure – Use Standards

FROM: John Parrish

Dear Councilmember,

Please keep the existing sixty foot antenna setback requirements in place or increase the minimum distance further away from residences. Basic internet services and some of the enhanced services can be satisfied, and are being satisfied, without placing antennas closer to homes. My basic service in Silver Spring is adequate under current conditions with fiber optics and was adequate with copper until my neighborhood was forced to transition away from copper.

Electric Energy Use and Climate Impact Assessment Needed

The rollout of 5G is expected to sharply increase electricity demand and further exacerbate our global and local climate crisis. **Nearly fifty percent of the PEPCO fuel mix to generate electricity in the D.C. region comes from natural gas and coal.** Montgomery County has an obligation to lessen, not increase, our use of fossil fuels to reduce CO2 emissions. Placing antennas closer to homes will facilitate the connection of many more internet dependant devices that do not serve basic needs and would sharply increase the electricity demand. This seriously undermines County efforts to reduce harmful greenhouse gas emissions. **This increased dirty energy demand should be analyzed and quantified so that the public knows whether or not Montgomery County is complying with climate goals.**

Democratic Process Safeguards Severely Weakened by the Council if ZTA 22-01 is Enacted

Democratic processes are increasingly under threat in our country. It is alarming to know the FCC prohibits local governments from making antenna placement decisions based on public health considering that outdated FCC safety guidelines do not reflect current scientific knowledge of the harmful effects of RF radiation exposure. This is all the more reason for the County to keep all of the current conditional-use procedures in place regarding the placement of antennas in residential areas. Our current conditional-use process requires review by M-NCPPC staff and the Planning Board and gives citizens the opportunity to go before the Hearing Examiner and the Board of Appeals if needed. The conditions promoted by ZTA's 19-07 and 22-01 subvert public participation and democratic procedures. We can do better than this!

To Obtain Desired 5G Radio Frequency (RF) Signal Strength, Negative Impacts to Trees Will Occur

The foliage and limbs of trees interfere with RF signals. To achieve adequate reception, trees would require severe pruning and disfigurement. This is not a result that I find desirable nor is it necessary. Basic internet services can be provided via cable, copper and fiber optics. **Will the Council please analyze and quantify how this loss of tree canopy would contribute to climate related problems such as the urban heat island effect? Will the Council also analyze the expected loss of tree biomass and how that impact reduces carbon sequestration in our county?**

Please, at the very least, maintain existing distance standards for antenna placement and keep the existing conditional-use reviews in place. **Please also seriously consider how the rollout of 5G will increase addictions to electronic devices at the expense of societal mental health.** I urge the Council to stop and consider whether the rollout of 5G is really necessary for the quality of life of county residents. I argue it is not.

John Parrish

Date: September 13, 2022 – Montgomery County Council Public Hearing Testimony

Re: ZTA 22-01, Antenna on Existing Structure – Use Standards – **Opposition to reducing setback**

From: Roberta G (rg) Steinman, 9009 Fairview Road, Silver Spring, Maryland, 20910

Dear Council President and Councilmembers,

I am strongly opposed to reducing the setback for an antenna on existing structures from 60 feet to 30 feet. I support either keeping the 60 foot setback, or increasing it.

Please, do not approve ZTA 22-01 because the 5G rollout and its reduced setback:

- **Overrides individual rights,**
- **Will not help bridge the digital divide,**
- **Would have harmful effects on human health and biodiversity,**
- **Would increase greenhouse gas emissions and worsen climate impacts due to increased power demands,**
- **Would harm tree canopies, which are critical to mitigating global warming and drought, and**
- **Expand the cycle of consumption, contributing to our world's E-waste Emergency**

Overrides Individual Rights and Excludes Public Participation: This law would allow wireless companies to **put** thousands of cell towers and the large 5G equipment boxes **on almost every block of every street in our county**, as close as 30 feet from our homes, and within 10 feet in mixed commercial/residential areas,¹ and it would do so without public participation or public protection. The ZTA also eliminates public notices and hearings. **No notice. No hearing. No community input.** The rights of local residents and the ownership of private property would automatically be subservient to the telecom companies' profit-making interest. It is no longer a question of residents' rights, but corporate motives. Allowing companies unfettered access to build cell towers in neighborhoods in the name of 5G is a bad policy, and this alone has led to a **massive pushback from Montgomery County citizens.**

5G will not help bridge the digital divide and will disproportionately affect low-income communities Since 98.8% of Montgomery County already has broadband access, **the digital divide is about affordability, not accessibility.** Low-income communities are at a digital disadvantage because they cannot afford home broadband connections, or the costs of computer purchase, maintenance and service--none of which are addressed by this ZTA or previous ZTAs. Thus they have few options for getting online other than using their cell phones. "If the Council really wants to support equity in Montgomery County, councilmembers can address the issue directly by supporting affordable fiber broadband connections; affordable computers with free tech support and education; and funding a full analysis of the digital inequity in the county so that policy recommendations can be science-based and data-driven."² Coverage can be improved today with existing cellular technology. Montgomery County needs affordable broadband, not 5G cell towers, to bridge the digital divide.

But what ZTA 22-01 would do is allow multiple telecom companies to put thousands of cell towers and the large 5G equipment boxes as close as 30 feet from our homes. Property values are likely to go down for any residents who find that an intrusive, visually unpleasant telecom tower has invaded their front yard. The economic hit is likely to be especially hard on those with smaller properties, whose homes are close to the street. **The result would be a disproportionate impact on low-income communities and communities of color. ZTA 22-01 must be subject to a review for its impact on racial equity and social justice.**

¹ In 2018 the Montgomery County Council passed ZTA 18-02, which allows placement of small-cell towers within 10 feet from homes in mixed commercial/residential areas.

² https://www.thesentinel.com/communities/montgomery-county-needs-affordable-broadband-not-5g-cell-towers-to-bridge-the-digital-divide/article_c4cb0ec6-e1f3-11eb-9735-5bb51f9713d4.html

Peer-Reviewed Scientific Literature documents the harmful effects of wireless radiation on health

The FCC still has not updated its 1996 exposure limits for radio-frequency radiation from cell towers, cellphones, and other wireless devices with the latest science. Yet, over this 26-year period, there has been a vast amount of research by respected scientists and institutions – literally thousands of scientific articles in peer-reviewed journals – showing harmful effects of wireless radiofrequency radiation on human health, on the environment, and on the climate. International independent scientists are calling for biologically-based public exposure standards and reducing wireless radiation.

More than 240 scientists who have published peer-reviewed research on the biologic and health effects of nonionizing electromagnetic fields (EMF) signed [the International EMF Scientist Appeal](#), which calls for stronger exposure limits. The appeal makes the following assertions:³

“Numerous recent scientific publications have shown that EMF affects living organisms at levels well below most international and national guidelines. Effects include increased cancer risk, cellular stress, increase in harmful free radicals, genetic damages, structural and functional changes of the reproductive system, learning and memory deficits, neurological disorders, and negative impacts on general well-being in humans. Damage goes well beyond the human race, as there is growing evidence of harmful effects to both plant and animal life.”

Radiation from Wireless Infrastructures has also been shown to be Harmful to Biodiversity

In addition to the harmful effects on humans, radiofrequency/microwave (RF/MW) radiation from wireless infrastructures and devices has been shown to have harmful effects on animal, insect and plant life. And yet, there are NO US agency wireless radiation “safety” limits for trees, plants, birds and bees.

The main component of the 5G network that will affect the earth’s ecosystems is the millimeter waves, which have never been used at such scale before. In numerous studies, the millimeter waves have been linked to disturbances in birds, bees, amphibians, and plants. Birds exposed to RF/MW radiation from infrastructures express abnormalities in fertility, nesting patterns, navigation and reduced populations.⁴ When affected by radiation, honeybees, our key agricultural pollinators, don’t return to the hive; the strength of colonies and productivity of queens are reduced; and eggs don’t transform into larvae.⁵ Amphibians are harmed, with tadpoles suffering deformities and a 90% mortality rate from cellular towers only 140 meters away.⁶ Plants are affected on a cellular, molecular and whole plant scale.⁷ Cellular towers’ radiation cause harm to trees: discoloration and thinning of leaves, distorted growth of

³ <https://blogs.scientificamerican.com/observations/we-have-no-reason-to-believe-5g-is-safe/>

⁴ Balmori, A. (2009). Electromagnetic pollution from phone masts. Effects on wildlife. *Pathophysiology*, 16(2-3), 191-199. doi: 10.1016/j.pathophys.2009.01.007. Retrieved from https://www.researchgate.net/publication/24180316_Electromagnetic_pollution_from_phone_masts_Effects_on_wildlife. And, Sivani, S. & Sudarsanam, D. *Impacts of radio-frequency electromagnetic field (RF-EMF) from cell phone towers and wireless devices on biosystem and ecosystem- a review*. Biology and Medicine. Volume 4, Issue 4. January 6, 2013. P.207.

⁵ Halabi, N., Achkar, R., & Haidar, G. (2013). The effect of cell phone radiations on the life cycle of honeybees. *Eurocon 2013*, page 5. doi: 10.1109/eurocon.2013.6625032. Retrieved from https://www.researchgate.net/publication/246044829_The_Effect_of_Cell_Phone_Radiations_on_the_Life_Cycle_of_Honeybees. And, Warnke, Ulrich. *Birds, Bees and Humankind: Destroying Nature by ‘Electrosmog’*. Competence Initiative for the Protection of Humanity, Environment and Democracy. March 2009.

⁶ Balmori, A. (2010). Mobile Phone Mast Effects on Common Frog (*Rana temporaria*) Tadpoles: The City Turned into a Laboratory. *Electromagnetic Biology And Medicine*, 29(1-12), 31-35. doi:10.3109/15368371003685363. Retrieved from <https://www.ncbi.nlm.nih.gov/pubmed/20560769>

⁷ Vian, A., Davies, E., Gendraud, M., & Bonnet, P. (2016). Plant Responses to High Frequency Electromagnetic Fields. *Biomed Research International*, 2016, 1-13. doi: 10.1155/2016/1830262. Retrieved from https://www.researchgate.net/publication/294576990_Plant_Responses_to_High_Frequency_Electromagnetic_Fields

trunks as well as dead leaves and branches.⁸ Because all ecosystems of the earth are interconnected, if one component of an ecosystem is disrupted the whole system will be affected.

Do No Harm – Apply the Precautionary Principle and Follow the Science

The latest cellular technology, 5G, will employ millimeter waves for the first time in addition to microwaves that have been in use for older cellular technologies, 2G through 4G. Furthermore, 5G will not replace 4G; it will accompany 4G for the near future and possibly over the long term. If there are synergistic effects from simultaneous exposures to multiple types of Radio Frequency Radiation (RFR), our overall risk of harm from RFR may increase substantially. Cancer is not the only risk as there is considerable evidence that RFR causes neurological disorders and reproductive harm, likely due to oxidative stress.⁹

Wireless technology has changed considerably over the past 25 years, and **new radiation standards need to be adopted to reflect current scientific data and present-day concerns.**

5G is an Energy Hog, and this translates into higher greenhouse gas emissions

5G would facilitate a massive shift from wired and fiber-optic communication, to wireless communication. It is much more efficient to send data through copper wires or fibers than through air. An exhaustive study published in the professional journal of the Institute of Electronic and Electronics Engineers (IEEE) said: “wireless technologies will continue to consume at least ten times more power than wired technologies, when providing comparable access rates and traffic volumes.”¹⁰ Furthermore, the ability for more devices to be used on the same network creates more incentive for consumers to buy electronics and use them more often, thus multiplying the harmful impact on the environment through increased energy use. And higher energy consumption inevitably means higher greenhouse gas emissions. Based on the County’s recently passed Climate Assessments Bill ([Bill 3-22](#)), **ZTA 22-01 would be subject to a climate assessment review for the potential impacts of its proposed policies.**

5G would Harm Tree Canopies, which are critical to mitigating global warming and drought

A rollout of 5G would also result in a major loss of tree canopy, due to “line of sight” requirements for the higher-spectrum millimeter wavelengths. The proposed dense network of ‘small-cell’ towers on poles in front of our homes would mean the severe pruning (if more than 25% of a tree is pruned, it is likely to die) and removal of untold number of trees, and a reduction in shade tree planting sites. Yet we are at a critical ecological moment in time when trees are more important than ever.

Tree canopies are the critical renewable technology needed to combat increased warming and drought due to climate change. Trees absorb carbon dioxide — the greenhouse gas emitted by our cars and power plants. The “line of sight” cutting would eliminate the carbon sequestration of thousands of trees. Trees also cool neighborhoods, reducing energy needs. And trees increase rainwater absorption, mitigating the effects of drought. 5G would undermine these important biological services that trees provide. This ZTA fails in every way to protect our vital tree canopy. Further, the 5G permitting process would also eliminate the forest conservation review and other standards currently required for cell

⁸ Waldmann-Selsam, C., Balmori-de la Puente, A., Breunig, H., & Balmori, A. (2016). Radiofrequency radiation injures trees around mobile phone base stations. *Science Of The Total Environment*, 572, 554-569. doi:10.1016/j.scitotenv.2016.08.045. Retrieved from https://www.researchgate.net/publication/306435017_Radiofrequency_radiation_injures_trees_around_mobile_phone_base_stations

⁹ Joel M. Moskowitz, PhD, is director of the Center for Family and Community Health in the School of Public Health at the University of California, Berkeley, <https://blogs.scientificamerican.com/observations/we-have-no-reason-to-believe-5g-is-safe/>

¹⁰ “Energy consumption in wired and wireless access networks” Jayant Baliga ; Robert Ayre ; Kerry Hinton ; Rodney S. Tucker, IEEE Communications Magazine (Volume: 49, Issue: 6, June 2011), https://web.archive.org/web/20171114021923if_/http://ieeexplore.ieee.org/abstract/document/5783987/ (paid)

towers. Even worse, a considerable amount of independent research indicates that the trees left behind that are close to antennas would also be harmed from constant exposure to radio-frequency radiation.¹¹ **This potential loss of trees and tree canopies must be part of the Climate Impact Assessment.**

5G devices contribute to our world's E-waste Emergency and increased demands for energy

5G will speed the obsolescence of existing technology and encourage people to swap out their existing devices for new 5G devices, contributing to our world's ever growing e-waste emergency. E-waste contains a laundry list of chemicals that are harmful to people and the environment including mercury, lead, beryllium, brominated flame retardants, and cadmium, and more. As consumers gain access to more technologies, the cycle of consumption expands: new devices are developed; older devices are thrown out, even if they are still functional. Metals used in the manufacturing of the smart devices used today often cannot be recycled in the same way many household items can be recycled. Because these technologies cannot be recycled, they create tons of waste when they are created, and tons of waste when they are thrown away. E-waste is projected to reach nearly 75 million metric tons of e-waste worldwide each year by 2030.¹² Furthermore, the ever-expanding cycle of consumption leads to evermore demand for energy to power the multitude of new connected devices exacerbating the greenhouse gas emissions.

Let Science, coupled with Public Participation, guide our actions

Remember the wonders of lead, asbestos, tobacco, CFCs, and fossil fuels? Those chickens did come home to roost. So let's **critically evaluate *this new technology before we dive in*** — and not be sorry later. Let us pause our headlong rush to speed the deployment of 5G. Rather than lining our residential streets with cell towers to accommodate the telecom industry's profit-based technology policies, we need to pause and study the extensive Science-based research, and couple that with transparency and robust public participation, to guide our decisions about the design and use of these powerful technologies.¹³

*****THESE ARE STRUCTURES ZTA 22-01 IS TALKING ABOUT*****

Under section 3.5.14.C. of the Zoning Ordinance, an "Antenna on Existing Structure" is defined as "one or more antennas attached to an existing support structure, including 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." Currently, the setback for an Antenna on Existing Structure is 60 feet. ZTA 22-01 will reduce that setback to 30 feet, so that these antennas are treated similarly to telecommunications towers. (from Feb 10, 2022, Legislative Attorney, Livhu Ndou, Memorandum to County Council, https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20220215/20220215_3C.pdf)

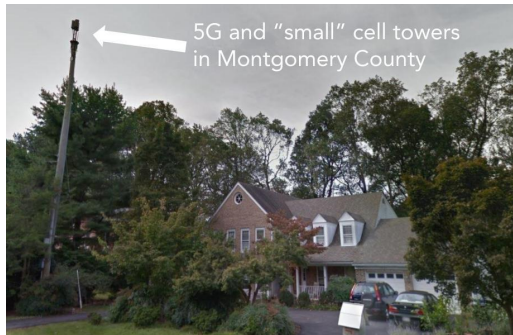
Thank you for considering my comments,
~ Ms. Roberta G (rg) Steinman

¹¹ For a sample of research articles on impact of wireless radiation's adverse impact on trees, see <https://techwisemocomd.org/tag/take-action-montgomery-county/>

¹² The Global E-waste Monitor 2020, p.13. https://www.itu.int/en/ITU-D/Environment/Documents/Toolbox/GEM_2020_def.pdf

¹³ <https://techwisemocomd.org/2020/01/04/community-vision-for-takoma-zta19-07-testimony/>

Testimony against Montgomery County Council Cell Tower ZTA 22-01
By Steve Steckler, Rockville Maryland



30 feet is not the magic number.

First, there is no legally correct reason that the setback has to be 30 feet to meet federal law. This is simply a number developed by Councilman Hans Riemer as “the number” based on zero legal precedent.

Say not to 30 feet!

The Council should serve the community by basing the setbacks on facts, not fear. All too often we hear that “our hand are tied” or “they will sue us.” The recent Flower Hill decision shows that yes, they might sue, but the town might win! Further, keeping the setback at 60 feet will be just fine for networks! If they need to go closer, they can document the need and apply for a special exception.

The judge ruled that all the Telecommunications Act of 1996 requires of a local government -- the local government only must allow a service provider to provide wireless telephone service which can connect to landlines. Nothing more!

*We are talking about putting transmitting antennas in front of bedroom windows.
Do the right thing and vote NO!*

September 1, 2022

[Analysis of ExteNet Sys. v. Village of Flower Hill by Attorney
Robert Berg Esq., Legal Advisor for the Environmental Health Trust](#)

Summary: In a [landmark legal decision](#), federal district court judge Frederic Block held on July 29, 2022 that the Village of Flower Hill, NY, acted within its powers under the Telecommunications Act of 1996 when it denied the application of ExteNet, Inc. ("ExteNet"), a telecommunications company working for Verizon Wireless, to install 18 "small cell" 4G wireless antennas on public rights-of-way in the Village. The case is [ExteNet Sys. v. Village of Flower Hill](#), No. 19-CV-5588-FB-VMS, pending in the United States District Court for the Eastern District of New York.

Analysis: In 2016, Verizon had identified the area around Flower Hill as having deficient 4G LTE service, and asked ExteNet to design and install a network of 66 small wireless facilities to improve coverage, 18 of which would be located within Flower Hill. In May 2017, ExteNet applied for a permit for one small cell facility, and the Village imposed a moratorium on such applications while it considered an ordinance regulating them. That ordinance was enacted in 2019, by which time ExeNet had applied for 18 such permits. Following meetings with Village officials, revised applications from ExteNet, multiple public hearings and a public forum, the Village Board voted to deny ExteNet's applications, and approved a written statement of findings prepared by the Village Attorney explaining the reasons. The reasons for the Board's denial were: (1) the significant adverse aesthetic and property value impacts of the 18 nodes permeating the tiny village; (2) no gap in wireless coverage for Verizon and no need to justify the significant adverse impacts; and (3) ExteNet's abject refusal to submit an actual fixed plan for each of the 18 wireless nodes and poles, instead offering multiple different plans with different pole/node locations and configurations, abject refusal to provide onsite photo simulations for each of the proposed nodes, and refusal to comply with the public notice provisions of the village code.

ExteNet sued the Village in federal court under the Telecommunications Act of 1996 ("TCA"), claiming that the Village's ordinance regulating small cell facilities constitutes an effective prohibition on personal wireless services, was discriminatory, and was not supported by substantial evidence -- all in violation of the TCA. Additionally, ExteNet alleged that the denial violated New York's Transportation Corporations Law.

In rejecting ExteNet's arguments, the District Court made several very notable findings based on well-established, controlling Second Circuit law. First, Judge Block noted that the TCA "is not a model of clarity. In part, this is because it 'strikes a balance between two competing aims - to facilitate nationally the growth of wireless telephone service and to maintain substantial local

control over siting of towers.'" Relying on *Omnipoint Communications, Inc. v. City of White Plains*, 430 F.3d 529, 534 (2nd Cir. 2005). Judge Block then pointed out that the Second Circuit holds that this balance can be found by requiring local governments to "allow service providers to fill gaps in the ability of wireless telephones to have access to land-lines." Relying on *Sprint Spectrum L.P. v. Willoth*, 176 F.3d 630, 643 (2nd Cir. 1999). That's all the TCA requires of a local government -- the local government only must allow a service provider to provide wireless telephone service which can connect to landlines. Nothing more!

This is the key takeaway of this important decision. Why? Because in 2018, the Federal Communications Commission ("FCC") issued a ruling that purports to expand the scope of the TCA to include wireless services beyond providing access to a telephone network. In that ruling, *In re Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, 33 F.C.C.R. 9088, 9104-05 (2018), the FCC "clarif[ied] that an effective prohibition occurs where a state or local legal requirement materially inhibits a provider's ability to engage in any of a variety of activities related to its provision of a covered service. This test is met not only when filling a coverage gap but also when densifying a wireless network, introducing new services, or otherwise improving service capabilities."

Judge Block held that the FCC's 2018 ruling exceeds the scope of the TCA which only covers providing wireless telephone service access to landlines. Judge Block noted: "Improved capacity and speed are desirable (and no doubt, profitable) goals in the age of smartphones, but they are not protected by the Act," relying again on *Willoth*.

Judge Block then examined the Village Board's decision denying ExteNet's application to determine whether it was supported by substantial evidence, as required under the TCA. Judge Block found that substantial evidence showed that Verizon's wireless customers throughout the Village can make a wireless telephone call, even though the signal strength might not be especially high; consequently, there is no gap in coverage justifying ExteNet's application. Having found a single reason supported by substantial evidence for the Board's denial of the application, the Court found no need to evaluate the Board's other reasons, citing *T-Mobile Ne, LLC v. Town of Islip*, 893 F.Supp.2d 338, 355 (E.D.N.Y. 2012) ("If the Court finds that even one reason given for the denial is supported by substantial evidence, the decision of the local zoning body cannot be disturbed.").

Keep in mind the following caveat and a few additional positive points about this important legal decision:

Judge Block is a federal district judge within the Second Circuit. His decision relies on favorable Second Circuit decisions which he, as a district court judge, is obligated to follow. Other circuits either have not addressed this specific issue or may be more favorably inclined towards the FCC's 2018 broad interpretation of the reach of the TCA. Judge Block's decision does not bind

any other federal court. However, Judge Block is a very well-respected, seasoned jurist who is applying thoughtful Second Circuit precedent. We believe Judge Block's decision will be persuasive to other courts, and we recommend that the decision be disseminated broadly to interested parties.

Further, the other reasons provided by the Village Board for denying the application -- aesthetics, property devaluation, and ExteNet's refusal to provide actual fixed plans and photo simulations for each of the proposed nodes and refusal to comply with the Village Code notice provisions, if supported by substantial evidence, in our view, would also support denial of the applications under the case law.

[Download the judge's decision in ExteNet Sys. v. Village of Flower Hill.](#)

**

Legal and/or media inquiries about the [Flower Hill, NY decision](#) can be sent to the Environmental Health Trust's legal advisor, Robert Berg Esq., at robertbergesq@aol.com.

For additional information on 5G wireless deployments in the United States, please visit the Environmental Health Trust website [here](#).

Testimony Opposing ZTA 22-01- Cell Tower Antennas 30 Feet From homes

Dear Montgomery County Council,

Please vote no on ZTA 22-01.

I have lived in Silver Spring for nearly 60 years. I do not want a cell tower in front of my home, no matter how short it is. Do your best to keep these towers away from our children.

Please see information from Environmental Health Trust showing other officials voted to protect their residents. You each should do the same instead of voting to allow cell towers in our neighborhoods.

Thank you,

Bette Steckler

Many communities have passed strong ordinances restricting cell towers and small cell antennas near homes and schools. Montgomery County should follow suit to protect the families that live here.

Setbacks for Cell Towers from *Environmental Health Trust* ehtrust.org

[Shelburne, Massachusetts](#): 3,000 feet for schools and 1,500 feet for homes.

[Copake, New York](#): 1,500 feet from homes, schools, churches and public buildings.

[Sallisaw, Oklahoma](#): 1,500 from homes.

[Calabasas, California](#): No “Tier 2” telecommunications facilities within 1,000 feet of homes and schools.

[Stockbridge, Massachusetts](#): 1,000 feet for schools, playgrounds and athletic fields. 600 feet for residential.

[Walnut City, California](#): 1,500 feet setbacks for schools, parks and residential zones.

[Bar Harbor, Maine](#): 1500 feet setback for schools.

[Bedford, New Hampshire](#): 750 feet from nearest residentially-zoned property.

[Encinitas, California](#): Restricted site locations include residential zones, within Ecological zones, or very high fire hazard severity zones, 500 feet from residential dwelling unit, daycare facilities or schools.

[Scarsdale, New York](#) - 500 feet setback from homes, schools, parks, and houses of worship.

[Randolph, Massachusetts](#): 500 feet setbacks for homes.

[Petaluma, California](#): 500 feet setback for homes.

[Suisun City, California](#): 500 feet setback for homes.

[Ithaca New York](#): 250 feet or more setback from any residence, school, or day-care facility.

Several school districts prohibit cell towers such as:

- Los Angeles California
- Palo Alto California
- West Linn-Wilsonville, Oregon

Wireless infrastructure can impact tree canopy in numerous ways

- Companies have aggressively trimmed trees with no oversight by arborists.
- Trees are being felled/removed to build infrastructure and/or roads to the facility.
- Digging to install the poles and related equipment can disrupt the root zone.
- Research studies have found damage to trees from exposure to the radiofrequency radiation emitted from the wireless antennas.

What municipalities can do to protect trees:

- Require companies to present a master plan for their proposed networks (rather than piecemeal one at a time) to determine environmental impacts including impacts to tree canopy and pollinator habitat.
- Require environmental assessments for the network that includes impacts to trees.
- Zoning and ordinances should include tree protections such as setbacks for root zones.
- Prohibit tree removal and trimming for new infrastructure.
- Create a transparent process for oversight that includes independent arborists and experts.

Examples of Tree Protections

Washington DC

A standalone pole shall not be located within an existing street tree's protected zone and poles shall not be placed within 15 feet of any open tree planting space.

No street tree shall be removed, or have its protected root zone impacted and "no tree shall be pruned related to the installation or functioning of small cell infrastructure."

Denver Colorado

Minimum of 15-25 feet of separation to the tree trunk such that no proposed disturbance shall occur within 5 feet of the critical root zone (drip-line) of any tree.

Thornton Colorado

Poles shall not be located... "less than 15 feet or within the drip line of an existing tree, whichever is greater in order to protect the health of the tree."

Listen to Science Please

Expert Quotes from Environmental Health Trust

“Given the human, animal and experimental evidence, I assert that, to a reasonable degree of scientific certainty, the probability that RF exposure causes gliomas and neuromas is high.”

-Christopher Portier PhD [former Director of the United States National Center for Environmental Health at the Centers for Disease Control and Prevention](#) and former Director of the U.S. Agency for Toxic Substances and Disease Registry. Portier’s [176-page expert report](#) with 443 scientific references found scientific evidence of carcinogenicity.

“The scientific evidence is sufficiently robust showing that cellular devices pose significant health risks to children and pregnant women. The weight of the evidence supports stronger precautionary regulation by the federal government. The cellular industry should take immediate steps to reduce emission of electromagnetic radiation (EMR) from phones and avoid marketing their products to children.”

[John Wargo, Ph.D., Environmental Risk and Policy at Yale University](#)

“I am calling on my industry to bring safer technology to market. The current implementation of technology is not safe. Take a good look at the science. This is about our children’s future. Do not be lulled into believing that 25-year-old standards can protect the youngest and most vulnerable. They simply cannot.”

Frank Clegg, CEO of Canadians for Safe Technology and Former President of Microsoft Canada, [5G Appeal](#) [NIH Talk](#)

“Children’s brains develop through the teenage years and may be more affected by cell phone use. Parents should consider reducing the time their children use cell phones and encourage them to turn the devices off at night.”

- Dr. Karen Smith, Director of the [California Department of Public Health press release](#) for issuance of their [cell phone radiation advisory](#).

“We should not wait to protect children’s brains. The science is now clear and compelling, indicating that wireless technology is harmful to health, especially for children. Wireless radiation is repeating the history of lead, tobacco and DDT.”

-Devra Davis PhD, MPH, President of Environmental Health Trust, founding director of the Board on Environmental Studies and Toxicology of the U.S. National Research Council, National Academy of Sciences, and **a member of the team of the Intergovernmental Panel on Climate Change scientists who were awarded the Nobel Peace Prize with the Honorable Al Gore.** [Watch Dr. Davis’ TEDx talk](#)

“The exposure levels of the Federal Communications Commission are totally outdated and do not protect the health of the public, especially of children. I urge you to take strong and active steps to reduce exposure of children and staff to excessive levels of radiofrequency EMFS within your schools.

-David O. Carpenter, M.D. Director, **Institute for Health and the Environment University at Albany**

September 6, 2022

Dear Councilmembers,

I am opposed to ZTA 22-01.

It is autocratic. It is discriminatory. It is irresponsible.

ZTA 22-01 is another embarrassing piece of industry-serving legislation imposed upon residents by the bill's lead sponsor.

More specifically, ZTA 22-01:

- requires residents to purchase new cell phones and cell plans to take advantage of the technology facilitated by ZTA 22-01. (The low-end iphone is \$450 + the new adaptor, headphones, case, and screen protector; the [least expensive 5g cell plan](#) is \$48 + taxes + fees.)
- continues the Council's trend of denying notice and hearings to taxpayers.
- ignores that health studies have never been done to proof its safety.
- disproportionately impacts lower-income taxpayers, thus discriminating de facto.

Respectfully,

Lisa Cline

I want Montgomery County to be a leader in telecommunications by showing how we can have the excellent communications without altering neighborhoods:

- fiber to all premises.
- industry moving to longer range 5G signals outside of residential areas.

I'm disappointed with how council members:

- refused to meet with constituents.
- reduced of our speaking time from three minutes to two minutes
- one in particular making up total fantasizes about health
- one in particular talked down to residents
- misrepresented the role of Livhu Ndou, Esq. Her client is the PHED committee and in particular the chair. She isn't presenting balanced information. She advocates for cell towers.

It's total nonsense that Montgomery County is required to place cell towers in the residential rights-of-way. Gaithersburg has banded cell towers in their residential rights-of-way.

Congress writes the laws. FCC transforms laws into regulations. Circuit courts adjudicate any disagreements. Court decisions are final. FCC has no right to change court rulings.

Court of Appeals for the Second Circuit Court rejected the FCC's "material inhibition" standard:

- Village Lynbrook wins over Clear Wireless
- Village of Flower Hill wins over ExteNet

The "effective prohibition" stands unchanged.

You need to invite Andrew Campanelli or Scott McCollough to speak. Both are nationally recognized telecommunications lawyers.

There is no legal nor technical need for 22-01. Don't waste your time on it.

Setback from residential housing:

1,500 feet

- Bar Harbor, Maine
- Copake, New York
- Sallisaw, Oklahoma
- Walnut City, California

Why all this emphasis on legacy 5G technology promoted by a losing candidate?

The council's statement that cell rights-of-way are required is based on FCC's illegal action.

ZTA 22-01 - DO NOT ACT ON THIS ZTA

Councilmembers,

ZTA 22-01 is another zoning change that is on a trajectory to be voted on without meaningful public input. Please do not move forward with ZTA 22-01.

Last year the Council adopted 19-07 - a zoning change largely pushed by the wireless industry and unpopular with residents. The Council's lead sponsor - Mr. Riemer - claims 19-07 is not "exactly as intended" and needs a correction so that he can allow wireless providers access to thousands of utility poles in residential areas as close as 30 feet from homes.

There is no FCC requirement or rational justification for this ZTA 22-01.

PLEASE CONSIDER THE FOLLOWING AND TABLE THIS ZTA 22-01

1. Council did NOT intend to cover utility poles 30 feet from homes when it passed ZTA 19-07.

ZTA 19-07 amended the provisions of the code contained in Section 3.5.2 and not those contained in Section 3.5.14. The Council's own briefing materials on the date of the passage (7.27.2021) contained this point noting that 19-07 did not cover "existing and replacement utility poles" as they are separately defined in the code.¹ This point was made repeatedly: in the January 2020 memo by the PHED committee senior legislative attorney² and in the June 29, 2021 briefing packet to the full Council, giving the lead sponsor, the committee and the Council ample time to change the text of 19-07, *if that had been their intent*. ZTA 22-01 is not an adjustment to ZTA 19-07 but a completely different and **material**³ zoning change.

¹ "5. Antenna attachments to existing and replacement ***utility poles are not covered*** by this ZTA. Although Section 59.3.5.2.C mentions replacement utility poles, it has been interpreted that utility poles – whether existing or replacement – are governed by Section 59.3.5.14.C “Antenna on Existing Structure”. The staff memo from Jan 21, 2020, explains, “A pole may be replaced because of general maintenance, increased electrical service needs, to accommodate cable service, or to accommodate an antenna. If the pole exists when an applicant applies for an electrical permit, the provision for an antenna attachment on an existing structure applies (Section 59.3.5.14.C of the zoning code). There is NO height limit for antennas on existing structures. There IS a required 60-foot antenna setback from any dwelling (Section 59.3.5.14.C.2.e.iii).” (pg. 11) The memo confirms that ZTA 19-07 does not amend this section and that therefore, it would “not affect the current law concerning the unlimited height of utility poles in their status as existing structures.” [included as part of briefing materials for ZTA 19-07 dated July 27, 2021: https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2021/20210727/20210727_4D.pdf]

² https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2020/20200123/20200123_PHED1.pdf

³ An estimate of the number of poles affected by ZTA 22-01 is approximately 32,435, based on a Memorandum prepared by Livhu Ndou to the PHED Committee. "Currently: 9,383 poles have less than a 30-foot setback from a building; 18,839 poles have a setback between 30 feet and 45 feet; 13,596 poles have a setback between 45 and 60 feet; and 33,368 poles have a setback of 60 feet or more."

Mr. Riemer has stated that ZTA 22-01 "is needed to correct the Council's intention to allow existing poles to erect antennas at 30 [foot setbacks]."⁴ *Is Mr. Riemer saying that neither he nor Councilmembers read the 19-07 briefing materials, so they did not know what they were passing?*

2. The Material Zoning Changes in ZTA 22-01 Need a Meaningful Public Hearing

The hearing for ZTA 22-01 is scheduled to be September 13th at 1:30 p.m. - mid-day on a workday - automatically excluding those residents that work during that time. The hearing has very limited speaking slots that filled within hours - also denying residents the ability to speak to ZTA 22-01.

Further, the County continues to pass zoning amendments without the input of the Office of the People's Counsel ("OPCS") as it seems to have determined to update its codified provisions on the OPC via defunding it rather than legislatively removing it.

County procedure stipulates that input on zoning text amendments is to be provided by the Office of the People's Counsel whose purpose is "promoting a full and fair presentation of relevant issues in administrative proceedings in order to achieve balanced records upon which land use decisions can be made" and it is tasked with providing "technical assistance to citizens and citizens associations [to] encourage effective participation in, and increased public understanding of and confidence in, the County land use process." Yet, the People's Counsel (established over 30 years ago) was defunded by the Council several years ago and the Council has dodged requests to reinstate it. The provision for People's Counsel is still on the books, the Council just pretends it is not there by not funding it.⁵

3. Wireless Zoning Needs Climate Impact Analysis

While it is a move in the right direction to pass Bill 3-22 on climate reviews of zoning text amendments it does not capture ZTA 22-01 if the Council passes it now. So conveniently all of the cell antennas and their related generators and those that could be deployed if the Council moves forward now with ZTA 22-01 will be completely (and conveniently) ignored for energy use and greenhouse gas emissions.

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20210310/20210310_PH_ED2.pdf

⁴ <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/agenda/col/2022/20220215/minutes-20220215.pdf>

⁵ See https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md_zone2014/0-0-0-64694 (noting that required staff consultations for a zoning text amendment must include one staff representative "each from the Montgomery County Planning Board; the Office of the County Attorney; the Office of Zoning and Administrative Hearings; the Department of Permitting Services; the Board of Appeals; the *People's Counsel*; and the Office of the County Executive." [emphasis added])
See also https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-1896

4. Council has Failed to Correct Errors of Wireless Antenna Placements Under Current Zoning

Flaws in the current zoning process - the Tower Committee - have been raised to the Council many times including by the County Executive in 2019 noting that "administrative reforms are needed."⁶ The zoning process must be reviewed thoroughly to stop the mistakes that residents have raised continuously in hearings for ZTA 19-07 and its failed predecessors including cell poles put up in the incorrect location, next to schools for pre-grade school children, and those in violation of zoning height and setback requirements. Also, those cell towers that are in excess of current FCC RF emissions.

PLEASE TABLE ZTA 22-01

Thank you,
Cyndie Baughman
Resident - Montgomery County, MD

⁶ <https://montgomerycountymd.gov/cable/Resources/Files/Towers/ZTAFiles/Final%20testimony%20ZTA%2019-07.pdf>

Katherine Katzin

Opposition to ZTA 22-01

Please vote no on ZTA 22-01 and cancel all action on it this fall. Instead, please allow the incoming Council to consider changes to the zoning code.

ZTA 22-01 threatens our health, homes, neighborhoods, trees, pedestrians, and due process.

No Legal Requirement for ZTA 22-01

There is no FCC or federal requirement, no plausible legal justification, for ZTA 22-01. It appears to be another gratuitous handout to the wireless industry at the expense of County residents. The Council has yet to respond substantively to the FCC's court loss in EHT et al. v. FCC (2021) and other recent case law such as Extenet v. Flower Hill (2022). (See <https://ehtrust.org/wp-content/uploads/Analysis-of-ExteNet-Sys.-v.-Village-of-Flower-Hill-by-Attorney-Robert-Berg-Legal-Advisor-the-Environmental-Health-Trust-2.pdf>) In the EHT case, a federal appeals court ruled that it was illegal for the FCC to rely upon FDA webpages in its decision-making, because FDA has not provided "factual bases" for its webpage. Why then does the Council believe that it can rely on these same webpages?

Assault on Equity and Social Justice

The Council's own staff, in its Racial Equity and Social Justice (RESJ) impact statement on ZTA 22-01, did not find that 22-01 would have a positive net impact on racial equity or social justice in the County. And that was after relying on a "report" that was "generously" supported by T-Mobile. At the same time, they noted that "if the reduced set back requirements for small cell towers authorized under ZTA 22-01 results in negative health outcomes, this in turn could widen health disparities by race and ethnicity." The statement did not even consider the social justice impacts of close proximity towers on vulnerable populations like pregnant people, young children whose brains are still developing, people with heart conditions, electro-sensitivity, and other conditions.

ZTA 22-01 will not close the Digital Divide. The RESJ impact statement makes false assertions based on wishful assumptions that low-income residents will receive funding for expensive 5G devices and services. But the financial support has not been allotted at levels that would make the devices and services accessible for all residents. (See [lifeline-breakdown-fact-sheet.pdf \(nclc.org\)](#))

Reducing setbacks from 60 to 30 feet is more harmful to people of lower income, who live on smaller lots, and whose children's bedrooms will be closer to the antennas.

Bad for the Climate and Trees

At a time when we should be working toward climate rescue, ZTA 22-01 will further increase tree loss, increase energy consumption, and harm vegetation, birds, and insects. The County cannot restrict PEPCO's removal of tree foliage in the rights-of-way and on private properties that are in close proximity to the taller replacement pole and re-attached electrical wires, for safety. Tree foliage in rights-of-way that presents line-of-sight obstructions for providers' antenna networks is also removed so that

antennas can communicate effectively with each other. Removing more than 25% of a tree is known to cause its death.

Foliage removal can result in loss of winter windbreaks, loss of summer shade, and increased energy consumption and bills, which are more impactful for residents with lower incomes. Tree loss contributes to heat island effects, which are associated with adverse health effects that are even more dire for people living without health insurance. Heat islands are also associated with increased levels of violence. Loss of tree foliage can also decrease residential property aesthetics and values and diminish the character of neighborhoods. (See [Volunteers Map Heat Islands In Montgomery County | DCist](#))

Dangerous for Pedestrians

Furthermore, as a result of proliferation of pole mounted wireless facilities residents can get stuck with multiple large ground mounted equipment boxes. These boxes block drivers' view of pedestrians and children playing or waiting at bus stops and obstruct stroller and wheelchair access to sidewalks. These effects are at complete odds with the County's focus on Vision Zero and pedestrian safety.

Hazardous Poles

Pole mounted wireless facilities near homes reduce their property value, which is bad for the financial well-being of residents and of the County as a whole.

Residents have no opportunity to comment or object to the right-of-way permits for antennas.

The County cannot restrict the height of the replacement utility poles for antenna attachments. Some replacement poles have already been approximately 70 feet tall! Residents get no notice of the installation of new, thicker and taller replacement poles for antennas. And the County cannot set time limits for the removal of old poles. So residents get stuck with double utility poles, which are hazardous and eyesores.

Vote NO

There's no legal requirement for the County to adopt ZTA 22-01. It poses harms to neighborhoods, homes, pedestrians, the tree canopy, and finances. Please vote no on ZTA 22-01 and allow the incoming Council to consider zoning changes.

Testimony Opposing ZTA 22-01

My name is Katherine Katzin. Thank you for giving me the opportunity to speak today. I am opposed to ZTA 22-01.

There is no FCC or federal requirement, no plausible legal justification, for ZTA 22-01.

Nowhere in federal law is it written that 30 foot setbacks are required over 60 foot setbacks.

- Montgomery County **is not and was not vulnerable to liability for “a lot of money”** if it failed to adopt these ZTAs, as some have claimed. The Supreme Court ruled in 2005 that localities cannot be fined or liable for money damages for failing to deploy a cell tower.¹
- During the deliberations for ZTA 19-07, the Council inaccurately characterized City of Portland v. FCC² with respect to the effective prohibition standard of wireless services.

o Re: Section 332, City of Portland did not address or alter municipalities' rights to determine location of towers. For this section, the Fourth Circuit (whose rulings govern in Maryland) has **defined effective prohibition as a total lack of coverage**, which is not our situation in Montgomery County, where **we already have extensive 4G and 5G coverage** (see Cellco v. Board of Supervisors of Fairfax County³).

- A recent case in the Second Circuit, **Extenet v. Flower Hill** found that **effective prohibition under sections 253 and 332 applied only to the ability of a wireless telephone to make phone calls to a landline**. Nothing more. The federal judge wrote: “it is **not** up to the FCC to construe the Act to say something it does **not** say.”⁴

Finally, ZTA 22-01 won't prevent proliferation of new poles. Pepco could install a new pole and then a few weeks later, wireless carriers claim it's an existing structure under 22-01.

Please vote no on ZTA 22-01 and allow the incoming Council to consider zoning changes.

References

1 <https://www.supremecourt.gov/opinions/04pdf/03-1601.pdf>


2 <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>

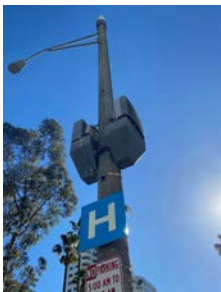
3 <https://cite.case.law/f-supp-3d/140/548/>

4 <https://ehtrust.org/wp-content/uploads/Analysis-of-ExteNet-Sys.-v.-Village-of-Flower-Hill-by-Attorney-Robert-Berg-Legal-Advisor-the-Environmental-Health-Trust-2.pdf>

Testimony Submitted to the Montgomery County Council Showing Property Value Will Drop from ZTA 22-01

by Zena Carmel-Jessup, Silver Spring Maryland

	<p>Research referenced by Montgomery County itself shows loss of property value from wireless antenna facilities in front of homes! Cell antennas 30 feet from homes will impact the property value of homes sitting right in front of the tower!</p> <p>(Content taken from Environmental Health Trust Property Value Devaluation from Cell Antennas)</p> <p>Montgomery County Own Legal filings state property values will drop from small cells.</p> <p>"many deployments of small cells could affect property values, with significant potential effect..." - Legal filing by Montgomery County Maryland and other Cities, 4/7/2017, Docket No. 16-421, Reply Comments of Smart Communities Siting Coalition which includes Montgomery County</p> <p>"Considering that the Smart Communities' prior filings show that the addition of facilities of this size diminish property values, it is strange for the Commission to assume that approval can be granted in the regulatory blink of an eye....A good example lies in the Commission's discussion of undergrounding.⁶² The Commission at once appears to recognize that communities spend millions of dollars on undergrounding projects, and that allowing poles to go up in areas where poles have been taken down has significant impacts on aesthetics (not to mention property values)."</p> <p>- Ex Parte Submission from lawyers representing Montgomery County . Letter to Ms. Marlene H. Dortch, Secretary Federal Communications Commission September 19, 2018</p> <p>Realtors state property values will drop</p> <ul style="list-style-type: none">● Realtor Magazine: Cell Towers, Antennas Problematic for Buyers "An overwhelming 94 percent of home buyers and renters surveyed by the National Institute for Science, Law & Public Policy
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(NISLAPP) say they are less interested and would pay less for a property located near a cell tower or antenna. What's more, of the 1,000 survey respondents, 79 percent said that under no circumstances would they ever purchase or rent a property within a few blocks of a cell tower or antennas, and almost 90 percent said they were concerned about the increasing number of cell towers and antennas in their residential neighborhood."

- National Association of REALTORS Magazine ["Homeowners Complain About 'Ugly' 5G Boxes in Their Yards"](#) January 27, 2021
"Wireless companies are installing boxes in front of homes as part of their 5G network rollout. But homeowners aren't pleased, calling the chest freezer-sized boxes a big eyesore in their front yards."
- [A Field Guide to Cell Towers, The National Association of Realtors](#)
 - This field guide lists numerous publications indicating wildlife effects as well as human health risks and impacts to property values from the aesthetics and perceived health implications.
- The California Association of Realtors' Property Sellers Questionnaire specifically lists "cell towers" on the disclosure form for sellers of real estate. The seller must note "neighborhood noise, nuisance or other problems from.." and includes cell towers and high voltage transmission lines on the long list problems. [Click here to see the California Association of Realtors' Property Sellers Questionnaire](#) (p. 3-4 under K. Neighborhood)

Studies Show Cell Antennas Near Homes Drop Property Values from 7% to 20%

- [The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods](#) study found that buyers would pay as much as 20 percent less, as determined at that time by an opinion survey in addition to a sales price analysis.
- [The Disamenity Value of Cellular Phone Towers on Home Prices in Savannah, Georgia](#) (The Empirical Economics Letters, Aug. 2019) found proximity to cell phone towers can reduce selling price up to 7.6%.

Numerous articles state property value will drop

- "Cellphone towers bring extra tax revenue and better reception to a section of the city, but many are skeptical because of the potential



(b) A small cell attached at the top of a streetlight pole (Heilman, 2018).



Fig. 9. Street view on the Shepley street with view of the mobile phone tower antenna mounted on a street pole. The tower antenna is located on the street corner, where antennas transmit the pollution at close range.



health risks and the impact on property values. Increasing numbers of people don't want to live near cell towers. In some areas with new towers, **property values have decreased by up to 20%.**

-National Business Post: [Your new neighbor, a cell tower, may impact the value of your home](#) 2022

- A recent survey by the National Institute for Science, Law & Public Policy (NISLAPP) found **that 94 percent of homebuyers are "less interested and would pay less" for a property located near a cell tower or antenna.**

-["Do neighborhood cell towers impact property values?"](#)
Pennsylvania Association of Realtors

- **"Properties that are approximately close to the tower will suffer substantial degradation to their value** based on the nature of the unusual feature in the residential neighborhood." - [Appraiser: Cell Tower Will Affect Property Values](#)
- "While most states do not require disclosure of neighborhood nuisances, such as cell towers or noisy neighbors, a few states do, **and more are likely to in the future.**"- [Real Estate Q&A: Is There an Obligation to Tell Buyers About Nearby Cell Phone Tower?](#) (RISMedia, Apr. 26, 2021)
- "Understanding EMF values of business and residential locations is relatively new for the real estate industry. Cell phone towers bring extra tax revenue and better reception to a section of the city, but many are skeptical because of potential health risks and the impact on property values. Increasing numbers of people don't want to live near cell towers. **In some areas with new towers, property values have decreased by up to 20%.**" - ["Examining invisible urban pollution and its effect on real estate value in New York City"](#) – by William Gati in New York Real Estate Journal September 2017
- "In 32 years of experience as a Real Estate Appraiser specializing in detrimental conditions, takings, adverse impacts and right-of-way, I have found that aesthetics (or rather the adverse impact on aesthetics) of externalities routinely has the largest impact on property values. As a result, proximity to towers of all types (cell, wind turbine, and electric transmission) has an impact on property values. The same is true with all sorts of surface installations such as pump stations and communication equipment boxes. This would apply to new small cell and DAS equipment,



although again, one would expect that the less intrusive the facility, the less significant the impact. Small cell and DAS installations can be unsightly, bulky, inconsistent, and even noisy.” - [“Impact of Communication Towers and Equipment on Nearby Property Values”](#) prepared by Burgoyne Appraisal Company, March 7, 2017

- “As we expected, the results clearly show that cell phone towers negatively affect adjacent property values, although in a relatively modest way. The negative impact decreases with the distance to the tower **with by far the largest effect occurring within the first 200 m.** Furthermore, the research confirms that all types of towers exert similar impact on property values despite various towers having different visual effects which demonstrate that the residents’ concern is more on health impacts than visual effects.” - [The Impact of Cell Phone Towers on House Prices: Evidence from Brisbane, Australia](#) (Environmental Economics and Policy Studies, Jan. 1, 2018)
- “On average, the potential external cost of a wireless tower is approximately \$4132 per residential property, which corresponds to a negative price effect of 2.65%. **The negative price impact of 9.78% is much more severe for properties within visible range of a tower compared to those not within visible range of a tower.** This negative impact vanishes as radii distances exceed 0.72 km.” [Wireless Towers and Home Values: An Alternative Valuation Approach Using a Spatial Econometric Analysis](#) (Journal of Real Estate Finance & Economics, May 1, 2018)
- [The effect of distance to cell phone towers on house prices](#) S Bond, Appraisal Journal, Fall 2007, Source, Appraisal Journal ([Found on page 22](#))
- [Using GIS to Measure the Impact of Distance to Cell Phone Towers on House Prices in Florida](#)
- [Florida State University Law Review Volume 24 | Issue 1 Article 5 1996 The Power Line Dilemma: Compensation for Diminished Property Value Caused by Fear of Electromagnetic Fields](#)
- [New Zealand Ministry for the Environment. “Appendix 5: The Impact of Cellphone Towers on Property Values”](#) Source: New Zealand Ministry for the Environment website
- [Powers, turbines and transmission lines impacts on property value edited by Sally Bond Sally Sims and Peter Dent. 2014](#)

The Impact of Cell Phone Towers on House Prices in Residential Neighborhoods, was published in The Appraisal Journal of the Appraisal



Institute in 2006. The Appraisal Institute is the largest global professional organization for appraisers with 91 chapters.

The study indicated that:

- Homebuyers would pay from 10%–19% less to over 20% less for a property if it were in close proximity to a cell phone base station.
- The ‘opinion’ survey results were then confirmed by a market sales analysis.
- The results of the sales analysis showed prices of properties were reduced by around 21% after a cell phone base station was built in the neighborhood.”

Jim Turner, Esq., Chairman of the National Institute for Science, Law and Public Policy, says,

“The results of the 2014 NISLAPP survey suggest there is now high awareness about problems from cell towers and antennas, including among people who have never experienced cognitive or physical effects from the radiation. A study of real estate sales prices would be beneficial at this time in the United States to determine what discounts homebuyers are currently placing on properties near cell towers and antennas.”

The Appraisal Journal study added,

“Even buyers who believe that there are no adverse health effects from cell phone base stations, knowing that other potential buyers might think the reverse, will probably seek a price discount for a property located near a cell phone base station.”

James S. Turner, Esq., Chairman of the National Institute for Science, Law & Public Policy and Partner, Swankin & Turner in Washington, D.C., says,

“The recent NISLAPP survey suggests there is now a high level of awareness about potential risks from cell towers and antennas. In addition, the survey indicates respondents believe they have personally experienced cognitive (57%) or physical (63%) effects from radiofrequency radiation from towers, antennas or other radiating devices, such as cell phones, routers, smart meters and other consumer electronics. Almost 90% are concerned about the increasing number of cell towers and antennas generally. A study of real estate sales prices would be beneficial at this time in the United States to determine what discounts homebuyers are currently placing on properties near cell towers and antennas.”

COVID-19 outcomes span a wide spectrum, from asymptomatic, to mild, severe, hospitalization, ICU, and death. Much research has been devoted to understanding risk factors associated with case severity. For example, CDC recognizes obesity, diabetes, chronic lung disease, coronary artery disease, physical inactivity, and smoking, among others.

<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-care/underlyingconditions.html>

Environmental risk factors may also contribute to COVID-19 severity. The Harvard TH Chan School of Public Health has noted “Emerging research, including a study from Harvard T.H. Chan School of Public Health, finds that breathing more polluted air over many years may itself worsen the effects of COVID-19.”

<https://www.hsph.harvard.edu/c-change/subtopics/coronavirus-and-pollution/>

The attached peer-reviewed research examines associations between COVID-19 severity and radiofrequency exposure, suggesting that, like air pollution, radiofrequency exposure could be a risk factor contributing to COVID-19 severity and mortality.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8580522/>
<https://doi.org/10.18103/mra.v9i4.2371>

The Council should immediately halt all small cell deployments in residential zoning in the County until it has examined this research and can assure the public that these deployments are safe and are not increasing disease severity or mortality in the County.

Dear Montgomery County Council,

I am a resident who has grown to love MoCo. When I moved here, I had no idea that I could be facing the rollout of over 33,000 small cell towers. I am a technologist with heightened sensitivity to RF/EME waves. I'm well aware that these 5G towers will be military grade, millimeter wave technology.

Furthermore, the FCC lost their cause on 8.13.21, regarding their outdated 26-year-old guidelines and have yet to comply with the court order.

EHT et al., v. FCC Court Oral Argument and Press Conference

<https://www.youtube.com/watch?v=5oXhnuAkLq4&t=970s>

Dr. Kent Chamberlin on the NH 5G Commission Findings and Wireless Safety:

<https://www.youtube.com/watch?v=t85QgvfKNkE>

Notable slides:

What happened when cell towers were placed on fire stations?

Within a week of installation many firefighters developed unusual symptoms of headaches, fatigue, insomnia, memory loss, confusion, nausea and weakness. After a time, firefighters in stations with adjacent cell towers were found to have forgotten CPR or became lost responding to a fire in a city they grew up in.

[Physicians for Safe Technology](#)

Article Title:
Mortality by
neoplasia and
cellular telephone
base stations in the
Belo Horizonte
municipality, Minas
Gerais state, Brazil

The article reports on research that analyzed the correlation between how close people lived to a cell tower and cases of deaths by neoplasia. Data obtained from government databases.

Covered timeframe 1996-2006; conclusions based on study of 856 cell towers.

The largest power density measured during the study was $40.78 \mu\text{W}/\text{cm}^2$ ($407.8 \text{ mW}/\text{m}^2$)

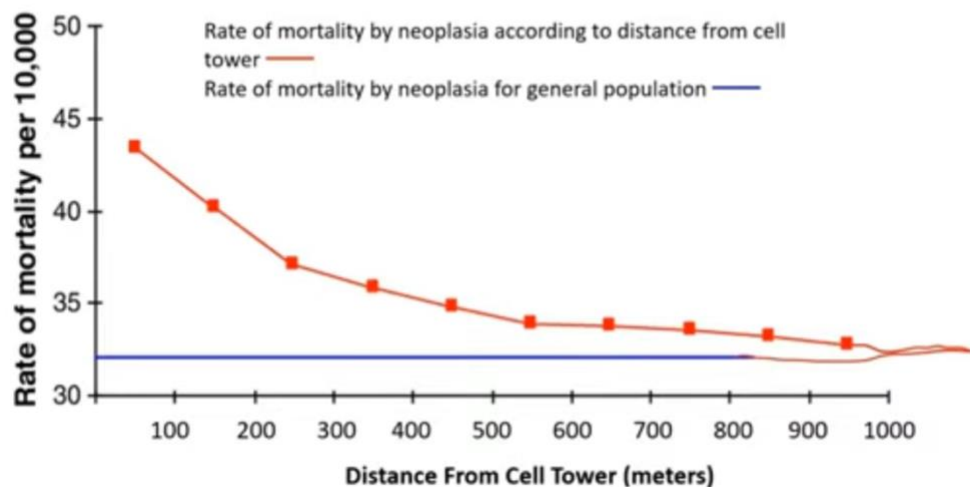


Adilza C. Dode, Mônica M.D. Leão, Francisco de A.F. Tejo, Antônio C.R. Gomes, Daiana C. Dode, Michael C. Dode, Cristina W. Moreira, Vânia A. Condessa, Cláudia Albinatti, Waleska T. Caiaffa,

"Mortality by neoplasia and cellular telephone base stations in the Belo Horizonte municipality, Minas Gerais state, Brazil", Science of The Total Environment, Volume 409, Issue 19, 2011, Pages 3649-3665, ISSN 0048-9697

<https://doi.org/10.1016/j.scitotenv.2011.05.051>

Take-Away from Article Referenced on Previous Slide



Cell Tower Radiation is Not Healthy Pittsfield Board of Health USA

youtu.be/TUa4o0B8W08

Today, I'm asking our Council to be as wise as the Pittsfield Board of Health and put a pause on ZTA 22-01.

Sincerely,

Nicole Williams

September 8, 2022

Dear Council President and Members,

Please submit this testimony into the OFFICIAL RECORD opposing ZTA 22-01 and reply to confirm that it has been added thereto.

I attest and affirm that the following statements are true and accurate within my personal knowledge.

Principles for Finding Common Ground: Please read my testimony and consider it in your discussions and actions regarding Zoning Text Amendment (ZTA) 22-01. Many, if not all of you, consider yourself to be concerned about protecting the environment. Let's start by taking inspiration from an environmental icon, Jane Goodall, as to guiding principles for how to approach issues. In a recent book, she offers three principles: wisdom, direct experience, and compassion.¹ Wisdom is more than information and knowledge, it also involves the heart. Approach an issue with knowledge and heart, have direct experience with or connect with people who have direct experience with the issue, and show compassion. I propose we take these principles to listen and open your hearts and minds as you approach the issues of ZTA 22-01 and wireless technologies.

Listening To All Residents: Do you wonder why Marc Elrich was elected and recently re-elected in spite of an openly hostile and antagonistic Council, endorsements and accolades by the Washington Post for his opponents, and many millions of dollars advertising for his opponents funded by PACs and personal finances? It is because he has heart. He is a person before he is a politician. He listens to residents. He cares about their cares. He doesn't disparage residents, he doesn't try to bully or accuse residents he disagrees with of being conspiracy theorists or of spreading false information by KGB.² He listened to residents in response to ZTA 19-07 and offered moderate solutions that were rejected by the Council³

It's time that this Council listens to all its residents, welcomes their information, meets with them, and seeks solutions to address their needs. This means setting aside politics, previous policy positions, friendships and alliances with fellow Councilmembers, and being curious to learn why people like me and so many others are so opposed to ZTA 22-01 and MoCo's approach to wireless technologies. We are interested in finding safe and fair solutions for modern internet and technology in Montgomery County and near our homes. Do not disparage

¹ Goodall and Abrams, *The Book of Hope*, Celadon Books, New York, NY, 2021

² Council Meetings on ZTA 19-07 on June 29, and in July 13, July 20th, 2021 and NPR radio interview on July 17th, 2021.

³ See County Executive Elrich's Memo of July 5th and Amendments submitted to Council July 20th, 2021.

us, do not bully us with name calling, do not ignore us or our information or our proposed solutions.

Many, if not nearly all of you, have refused to meet with residents regarding 19-07 and now 22-01. County staff estimated that there are 32,000 existing poles with setbacks between 30 and 60 feet.⁴ Thus ZTA 22-01 could affect hundreds of thousands of residents across MoCo. And yet, all of these lives are dismissed as “an administrative adjustment”.

Why would I spend my time devoted to this issue rather than on professional and family projects? I purchased my home here, have lived in Montgomery County for over 30 years and raised my children here while they attended public schools. We are settled in our neighborhood, we trusted Montgomery County, so we decided to age in place.⁵ And yet, if you continue with 22-01 and policies of 19-07, none of us, including families with young children, will be able to live in our homes. How can we be uprooted? Where would the resources come from?

Why is the Council so resistant to resident input on wireless? I am frequently asked: “Why is the Council ignoring you? Why are they resistant to science and information? Why won’t they meet with you?” So, I ask you all, “Why is it you ignore us”? Where is your interest in Open Meetings? In transparency? In resident responsiveness? In the People’s Counsel? In caring about our health, the environment, trees, wildlife, birds, bees, pollinators? Racial Justice and Social Equity? Bridging the digital divide? I know you profess to care about these issues, so why don’t you want to learn more about threats to these cherished values from your ZTAs?

The lead champion of ZTA 19-07 and 22-01 has said that in his whole political career, he has never seen such an outpouring of resident resistance on an issue as with these cell tower Amendments.⁶ It has been 6 years in the making and resident opposition is not abating, if anything it is bolstered by recent Court cases and intensifying. You are on the wrong side of history, but we will pay with our health for your policies if they continue to ignore the legal and scientific evidence on wireless technology.

So why do you not want to even meet with us? Perhaps it is because of industry advertising and lobbying. The wireless industry is estimated to be as much as a \$4-5 trillion worldwide industry. Anyone who watches TV is bombarded with ads for 5G, seemingly every 2 minutes. 5G is the future, 5G is cool, 5G is the way to connect to be modern?. Who doesn’t love or at least depend

⁴ See page 3, “setback”

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20210310/20210310_PHED2.pdf

⁵ I understand that the lead sponsor in pre-election debates indicated that he does not favor the County’s long standing principle in its Master Plan—aging in place. Sounds like us elders are disposable and are being relegated to institutional living. And who will pay for that? How do our costs of institutional living figure into your cost/benefit analyses for MoCo?

⁶ Council Meetings on ZTA 19-07 on June 29, and in July 2021.

on their laptops, cell phones, tablets, and other devices to function in this world? Who wouldn't want to be up-to-date with the latest technology? And then there is the lure of political success, the lobbyists who sponsor conferences, offer positions on their committees, and perhaps might even offer future job possibilities. Harvard cites the Federal Communications Commission (FCC) as a "captured agency dominated by the industries it is supposed to be regulating."⁷

Are you not skeptical? Do you not want to know the "other" side? Haven't we learned the obvious from the tobacco and opioid debacles that we cannot depend on industry-funded "research" or advertising. This is not conspiracy theory, it is rational analysis of understanding what are the motivations behind actions and perspectives. A systematic review found that 82% of radiofrequency studies that were independently funded or funded by governments found negative health effects from mobile phones. However, only 33% of studies funded by industry found negative effects.⁸

Council Responsibilities and Process: Looking at the Council's voting on ZTA 19-07, it seems that several Councilmembers had doubts about the County's wireless ZTAs and this ambivalence was evidenced by fluctuating voting. I urge all of you on the Council to listen to and vote your conscience and not be swayed by the voices and surrogates for the wireless industry or any political allegiances. The information below on some of the legal and scientific issues should at least give you pause. Think of the cell towers near children in stand-alone pre-schools and nursery schools as well as in churches and synagogues and on or near public schools. Each of you is responsible for the consequences of your actions. The Councilmembers took an oath of office to both uphold the Constitution and the laws of Maryland. Your oath and the imbedded ethical values both demand that you take very seriously the risks of imposing harm on residents.⁹

The statements made by Councilmembers immediately before the vote on ZTA 19-07 were that there is no evidence of risks of harm to human health and if there was, we would know from our government agencies (see legal below). Further, other Councilmembers, also pushing for a vote just weeks before an expected major Court decision, said if anything new came from the Court decision, the Council would amend the ZTA.¹⁰ In fact, 2.5 weeks later the Court had significant rulings pertinent to safety of cell towers and wireless technologies. However, during the Council's first Town hall (remote) when they returned in September after August recess, no questions on cell towers were addressed. Later we were told by the county staff person managing the events that the Council had informed them that the Council would not be accepting or addressing any questions on cell towers or 19-07. During the Council meetings in the spring of 2021 leading up to the vote on July 27th, there was no meaningful public

⁷ https://ethics.harvard.edu/files/center-for-ethics/files/capturedagency_alster.pdf

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1797826/>

⁹ Councilmembers cannot rely on a defense of relying on others; they have individual responsibility for their own actions.

¹⁰ July 27th MoCo Council meeting.

discussions. In the Council meetings after reconvening in the fall of 2021 during Zoom Council meetings, town halls, and most debates, chats on zoom call were controlled so only “approved” chats and Q & As were visible to others and addressed. Add to this that offices were closed because of COVID restrictions, calls being answered by voicemail, and even when contact could be made with a staffer, requests for phone calls or remote meetings with Council members were widely refused. Is this inclusive democracy by our once esteemed County Council?

Landmark Court Ruling Against the FCC and its outdated exposure standards for wireless technologies: On August 13, 2021 (2.5 weeks after the Council pushed through a vote on 19-07) the U.S. Court of Appeals for the D.C. Circuit ruled in favor of Environmental Health Trust et al. as follows: The Federal Communications Commission (FCC) violated federal law (the Administrative Procedures Act, or APA) and was “capricious and arbitrary” by failing to provide a “reasoned explanation” for deciding that its wireless radiation exposure limits do not need updating, even though these limits have not been reviewed since 1996. The Food and Drug Administration (FDA) has not provided an “articulation of the factual... bases” for its conclusions, which “represent[s] a failure by the FDA”, and therefore the FCC cannot rely upon FDA webpage FAQs on cell phone safety. All other expert agencies in the federal government have been silent on the question of safety, and “silence does not even indicate whether the expert agencies... considered any of the evidence”. The Court ordered FCC to “provide a reasoned explanation for its decision” and to address the impacts of RF radiation on children and the environment. FCC has not yet complied with this order.

Additional background regarding the EH Trust decision: Petitioners submitted over 11,000 pages of scientific evidence indicating health effects of wireless radiation exposure at levels below FCC’s current limits. FCC is required to set exposure limits to protect public health, but it is not a health agency and must rely on other expert agencies’ analyses (which have not been done). The Federal Drug Administration (FDA) acknowledges that it has not made any determination about the safety of cell towers.^{11, 12, 13}

More specifically, the Court found that the FCC did not provide evidence of properly examining evidence such as the testimony of persons injured by wireless radiation and impacts from long-term wireless exposure and impacts to children, the developing brain, the reproductive system and wildlife and the environment.

¹¹ See letter dated January 11, 2022, from FDA Center for Devices and Radiological Health https://ehtrust.org/wp-content/uploads/FCC_FDA-Communications-FCC-Lawyer-and-Mother-on-Cell-Tower-Radiation-.pdf

¹² See public comments by local resident groups regarding Montgomery County's reliance on FDA statements: <https://www.regulations.gov/comment/FDA-2021-P-1347-0732>

¹³ This section is from Background Information on candidate pledge document produced by residents <https://techwisemocomd.org/wp-content/uploads/2022/07/Voter-Guide2.pdf> and <https://ehtrust.org/>

The FCC must now re-examine the submissions on their record. The Court specifically ordered the FCC to provide a reasoned explanation for the above issues as well as the ubiquity of wireless devices and the technological developments since the FCC last updated its guidelines.

ZTA 22-01 Does not meet standards of Racial Equity and Social Justice (RESJ) —22-01 is another step towards widening the digital divide: RESJ impact statements are challenging to produce and the initial Statement or assessment of 22-01 noted “... if the reduced set back requirements for small cell towers authorized under ZTA 22-01 results in negative health outcomes, this in turn could widen health disparities by race and ethnicity.”¹⁴ The Statement on the effect on the digital divide relied heavily on a report that was almost entirely based on industry-funded information.¹⁵

Compared to wireless from cell antennas and towers, wired broadband is less costly, more reliable, more secure, faster, and supports wireless in homes at resident discretion. Angela Siefer, Executive Director of the National Digital Inclusion Alliance (which represents over 850 affiliates in 48 states)¹, testified to the U.S. Congress in 2020 on this topic: “The excitement around 5G has led to claims 5G will solve the digital divide. It will not.”¹⁷

Furthermore, the Statement did not address social justice and the disparate effects by age, gender and disability status.¹⁸ “Researchers at the Environmental Working Group, a respected nonprofit, have called for child exposure levels 200-400 times lower than the current FCC limits.¹⁹ The bones of children's skulls are not as fully developed as adults, leaving their developing brains more vulnerable.²⁰ In a study by Santini, women living near cell towers were much more likely to report adverse health outcomes than men.²¹ Further data estimate prevalence of electro sensitivity (ES) as recognized by the Americans with Disabilities Act (ADA) suggest cell towers closer to homes, enabled by 22-01, could result in adverse health outcomes in up to 30% of the population, and cause a constructive eviction in 0.65% of the population –

¹⁴ <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-01.pdf>

¹⁵ The Brookings Report was funded by T-Mobile, the author was chair of an industry –funded organization. Brookings has received significant industry funding with donors including AT&T T-Mobile, Verizon, Google. <https://www.brookings.edu/research/enabling-opportunities-5g-the-internet-of-things-and-communities-of-color/>; https://www.brookings.edu/wp-content/uploads/2016/11/turner_lee_cv_december-2016.pdf; <http://www.tprcweb.com/past-board-members/>; <https://cdn.ca9.uscourts.gov/datastore/opinions/2020/08/12/18-72689.pdf>; https://www.brookings.edu/wp-content/uploads/2022/02/brookings_contributorslist_fy2022.pdf

¹⁷ <https://docs.house.gov/meetings/IF/IF16/20200129/110416/HHRG-116-IF16-Wstate-SieferA-20200129.pdf>;

<https://www.racialequitytools.org/glossary>

¹⁸ <https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/RacialEquity/Bill27-19.pdf>;

https://codelibrary.amlegal.com/codes/montgomerycounty/latest/montgomeryco_md/0-0-0-118171.

¹⁹ <https://ehjournal.biomedcentral.com/articles/10.1186/s12940-021-00768-1>

²⁰ <https://www.marylandmatters.org/2021/07/23/opinion-children-deserve-safety-assurances-when-it-comes-to-cellphone-radiation/>

²¹ See Table 2-<https://www.tandfonline.com/doi/abs/10.1081/jbc-120020353>

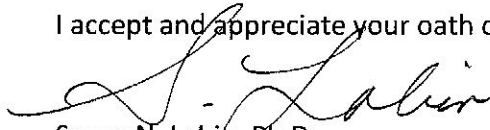
this is approximately 7,000 people in Montgomery County alone being forced to flee their homes.”

Request for Council Action: Let the new Council take up the issue of 22-01. The very existence of 22-01 indicates the complexity of the Zoning Codes related to wireless facilities and the need for a thorough analysis of such codes. This would also allow time for a more thorough RESJ impact assessment, and Environmental and Climate as well as Economic Impact assessments. Attempting to push through 22-01 as “an administrative” change is not only contrary to goals of transparency, but is dangerously pernicious. There is no legal justification requiring 22-01.²³ If the Council persists in considering 22-01 this session, it should at least schedule a nighttime hearing so the many people on the wait list can be given an opportunity to provide verbal testimony. Let the Council and community hear the voices of the residents. If the Council persists, let the PHED Committee refrain from bringing the amendment to the Council for a vote. If the Committee persists, we urge Councilmembers to vote “NO” on 22-01.

CLOSING

I have presented no matter of mere “concern” or any other non-substantive matter, but solely matters of substance, of fact, and law.

I accept and appreciate your oath of office.



Susan N. Labin, Ph.D.

Submitted September 8, 2022 11:30 am.

²³ There were legal justifications presented for ZTA 19-07 “We don’t feel that we can put up roadblocks even if we wanted to because federal action has been very clear as to what the expectation is.” (Riemer, Council meeting June 29th). However, the Courts have been very clear that the County maintains its rights to regulate the location of towers. Numerous other municipalities have passed zoning codes compliant with federal law, such as San Rafael, CA. which are far more protective of residential areas (<https://www.cityofsanrafael.org/documents/resolution-14621/>)(<https://www.cityofsanrafael.org/documents/resolution-14621/>). Also see an example municipal ordinance that is FCC compliant and the proposed alternative approach by County Executive Elrich in his memo dated July 15, 2021. The assertion that the County was required to implement ZTA 19-07 was based on an incorrect assessment about the ability of federal executive agencies to override legislation by Congress as well as appellate court precedent. The City of Portland case dealt with Section 235 of the telecom act and how applications are processed; that case did nothing to change the interpretation of The Telecommunications Act of 1996, Section 332c7B(i)(II), which preserves the long-held right of state and local jurisdictions over zoning authority and tower location (<https://drive.google.com/file/d/1ISfUHqk2vQxoiXZqFLyhh-3mJZD9RJjb/view>).

Hello, my name is Susan Labin. Thank you for the opportunity to speak to you today. I am speaking as a long-time resident of Montgomery County in opposition to Zoning Text Amendment (ZTA) 22-01.

I have 6 issues for you today:

1. I ask each Councilmember to consider whether you are acting as Public servant or as politician positioning for your next job or committee assignment?
2. Is this another industry debacle like tobacco and opioid travesties, but even larger? How do the lobbyists and the constant barrage of 5G advertising affect you?
3. You are accountable to your conscience and for upholding your oath of office. You do not have to agree with us, but you do have a fiduciary duty to find solutions that respect residents' interests. Rather than treating us as obstacles, think of us as your resources and partners.
4. The US Court of Appeals for the DC Circuit last year resoundingly ruled for Environmental Trust et.al., against the FCC. It called the FCC "arbitrary and capricious" in failing to consider the vast amount of scientific evidence on the negative effects of wireless technologies on humans, children, and the environment. I urge the Council not to act in same manner. The court clarified that no federal agency has ever reviewed the body of scientific evidence on cell towers.
5. What problem are you solving? Wired internet is almost universally available in MoCo. Wired is about 50 x less costly, far faster, more reliable, more secure, uses less energy, and allows for wireless in one's home. Where are the County's Climate and Economic assessments? As per congressional testimony: "... 5G will **not** solve the digital divide".
6. As for social justice, 22-01 will disproportionately affect the vulnerable: Electro Sensitivity is a medical diagnosis protected by ADA. What about the County's legal exposure for costs from dislocation, harm, and even death for thousands of residents?

Hundreds of thousands of residents may be affected by 22-01-this is not a trivial "administrative" correction.

VOTE your conscience: CANCEL all action or VOTE NO on 22-01.

Testimony Opposing ZTA 22-01 from Colleen Cordes, Takoma Park Resident:

The County Council should resist a false rationale being offered for why ZTA 22-01 is no big deal and why it can be quietly rushed through, before residents even know what's happening: The false claim that it's "just" a "technical fix" of ZTA 19-07, the resident-unfriendly zoning change the Council passed in July, 2021.

That's wrong on two counts:

First, there's ample evidence that there was no accidental "technical" oversight made in the final language of ZTA 19-07, by either Council staff or by Councilmember Hans Riemer -- its main sponsor and the only sponsor of ZTA 22-01 -- that would be "fixed" by ZTA 22-01. In fact, as early as January, 2020, the Council's own senior legislative analyst, Jeffrey Zyontz, told the PHED Committee, which Mr. Riemer chairs, in [a written memo all residents can easily review on line](#), that ZTA 19-07 would NOT change the part of County zoning code that this new ZTA 22-01 deals with. (See pp. 11-12 of that memo.) *Council staff repeatedly included that information in memos they prepared for both Mr. Riemer's committee and for the full Council.* And County Executive Marc Elrich also, in written communication to the Council in June, 2021, noted this fact for the Council. So Mr. Riemer and the rest of the Council were several times informed of this fact. ZTA 22-01 cannot be honestly characterized as "correcting" an accidental oversight in a law passed earlier. This is an entirely new proposal.

Second, the changes embodied in ZTA 22-01 are not "just" a small matter. It's a big deal for the huge number of residents who don't want wireless facilities on utility or light poles 30 feet from their bedroom window, as ZTA 22-01 would allow. In fact, it would be a major change in the County's zoning law for the regulation of wireless facilities.

There's no way the outgoing Council should rush to pass such a significant zoning change just before current Council terms end. Instead, I urge you to cancel all action on the proposed ZTA immediately and instead encourage the new Council that will follow you to thoroughly review zoning law and administrative regulation of wireless facilities in Montgomery County.

Thank you.

TESTIMONY BY SUE PRESENT
ON
ZONING TEXT AMENDMENT (ZTA) 22-01
PUBLIC HEARING – SEPTEMBER 13, 2022

Good afternoon President Alborno and Members of the Council,
My name is Sue Present. Please reject ZTA 22-01. It poses threats to residents, their homes, and their neighborhoods.

For example:

Where the ZTA allows antenna attachments, utility companies must then permit the antenna attachments on their poles, per FCC mandate.¹ And utility companies require the vast majority of the antenna attachments to go onto replacement poles that are taller, larger, and stronger than the pre-existing poles, to support the weight of the antenna facilities and to prevent dangerous overloading of the poles.² There are no County height limits on the replacement poles. Some replacement poles have been very tall, reaching 60 feet or more in height, not include the height of the attached antennas.³

Utility poles often get replaced long before antenna applications are submitted or reviewed.⁴ With no provisions for notice to residents or opportunity for the public to comment before DPS issues the right-of-way permits and before the work takes place, neighbors are blindsided. Yet, neighbors are stuck with the obtrusive replacement poles, even when antenna applications are never filed (because, for example, the providers realize that the

¹ FCC [One Touch Make Ready Rules](#); and for context, also see FCC [Declaratory Ruling](#) and [47 U.S.C. § 224](#)

² PEPCO Guidelines. See for example, TFCG application No. [2019010697](#), pdf pg. 16, PEPCO Guidelines, Structural notes 1 – 3, and Clearances note 5.

³ For example, [DAS node S1](#), which is installed on the replacement utility pole at 9101 River Road.

⁴ See *data* Montgomery Public Utility ROW permits database, <https://data.montgomerycountymd.gov/Community-Recreation/data-Montgomery-Public-Utility-ROW-permits/c79p-fhp7/data#SaveAs>

applications would not satisfy zoning standards), rejected, withdrawn, or placed on indefinite hold.⁵

Neighbors get stuck with double poles, too, because the pre-existing utility poles languish – often for years – after replacement utility poles have been installed. There are no County regulations that limit the time that utilities have to remove the pre-existing poles after the replacement poles have been installed for antenna facilities. Double poles are roadway hazards.⁶ They impede drivers’ visibility of pedestrians and vice versa. And they undermine Vision Zero strategies.

When utility poles and electrical wires are increased in height for the antenna attachments, tree foliage is removed to provide a

⁵ For example, these public utility poles in a Calverton neighborhood, which were provided right-of-way permits after the utility submitted requests for its customer Crown Castle, and the utility indicated that the replacement poles were for attachments to the poles and that the permits were needed per FCC “Make Ready.”

PROW Permit #	Date Issued	Street Numbers	Street Name	Suffix	Nearest Cross Street	PEPCO Pole ID (on DPS application)	Setback in Feet
377576	10/12/2020	13204 and 13208	Bellevue	St	Tampico Way	816446-090980	~48
377582	10/12/2020	3112 and 3116	Cordoba	St	La Plata St	815446-320100	~44
377584	10/12/2020	12517 and 12521	Galway	Dr	Kilkenny St	815447-550550	~46
377590	10/12/2020	12337 and 12341	Pretoria	Dr	N/A (Mid-block)	814446-600420	~40
377594	10/12/2020	12300 and 12304	Blakely	Ct	Shanandale Dr	814445-150160	~56

⁶ Gagne, Amanda, *Evaluation of Utility Pole Placement and the Impact on Crash Rates*, Worcester Polytechnic Institute Publications, April 23, 2008, <https://web.wpi.edu/Pubs/ETD/Available/etd-043008-155826/unrestricted/Gagne.pdf>, accessed Aug. 17, 2022. See pp. 64 – 65: “Another suggested remedy is remove old utility poles after they have been replaced or hit. At several points along the route old pole was left standing next to the replacement pole (see Figure 38), which increases the density of utility poles thereby increasing the risk of a crash occurring. Perhaps even more disturbing is remnants of a hit utility pole were left alongside the road creating another object for motorists to crash into, refer to Figure 39.”

radial safety clearance of up to 15 feet.⁷ This loss of tree foliage can adversely affect the aesthetic appearance of a residential property, and it can diminish the character of the neighborhood. It can result in loss of winter windbreaks, loss in summer shade, loss of tree canopy, and it can contribute to heat island effects, too.^{8, 9} And consequences of the loss of foliage can harm residents' health, seasonal comfort, and their ability to afford energy bills.¹⁰

Other threats posed by this ZTA include: pedestrian, school bus stop, and child-play hazards related to large ground-mounted equipment cabinets; disturbances from buzzing equipment boxes; declines in neighborhood quality associated with diminished aesthetics and graffiti, safety problems, and stigma; and reductions in home property values, which Montgomery County's own expert has affirmed.¹¹

⁷ Depending upon the voltage of the electrical service, PEPCO will remove foliage to provide a radial safety clearance of up to 15 feet from the cross arms and electrical lines. See PEPCO.COM FAQ: [How much will be trimmed from trees?](#)

⁸ Montgomery County Capital Budget FY23, [Street Tree Preservation](#)

⁹ Fenston, Jacob, *Volunteers Map Heat Islands In Montgomery County*, WAMU, DCist, Aug. 08, 2022, <https://dcist.com/story/22/08/08/volunteers-map-heat-islands-montgomery-county/>, accessed Aug. 17, 2022.

¹⁰ Montgomery County Capital Budget FY23, [Street Tree Preservation](#): "Winter windbreaks can lower heating costs by 10 to 20 percent, and summer shade can lower cooling costs by 15 to 35 percent."

¹¹ See the [Burgoyne Declaration \(Exhibit O, PDF pp.669 - 679\)](#), the substance of which was attached as an exhibit to filings made to the FCC, submitted on multiple dates, including the [Comments](#) that were submitted on 10/29/2019, by Montgomery County and likeminded localities. On that date, Montgomery County joined with communities and associations of local governments, that included: The National League of Cities; Clark County, Nevada; Cobb County, Georgia; Howard County, Maryland; Montgomery County, Maryland; the City of Ann Arbor, Michigan; The City of Arlington, Texas; the City of Bellevue, Washington; the City of Boston, Massachusetts; the City of Burlingame, California; the Town of Fairfax, California; the City of Gaithersburg, Maryland; the City of Greenbelt, Maryland; the Town of Hillsborough, California; the City of Kirkland, Washington; the City of Lincoln, Nebraska; the City of Los Angeles, California; the City of Monterey, California; the City of Myrtle Beach, South Carolina; the City of New York, New York; the City of Omaha, Nebraska; the City of Portland, Oregon; the City of San Bruno, California; the Michigan Coalition to Protect Public Rights-of-Way; the Texas Municipal League; and the Texas Coalition of Cities for Utility Issues.

The memo introducing ZTA 22-01 asserts that the ZTA aligns with regulations adopted through ZTA 19-07. That's false! There are technically different standards in ZTA 22-01 for the setback, which, unlike ZTA 19-07, fails to exclude any setback encroachments that are allowed under Section 4.1.7.B.5.¹² As a result, ZTA 22-01 provides fewer protections when homes have porches, bay windows, and other building encroachments.

In addition, ZTA 19-07 articulates a series of protections on the replacement utility poles and streetlight poles in the rights-of-way that are absent from ZTA 22-01, because, although ZTA 22-01 is dependent upon replacement street poles, it does not regulate them. Protections on the replacement street poles that ZTA 19-07 articulates include:

- A replacement pole must be at least 150 feet from the nearest antenna occupied or controlled by the same carrier.¹³
- Height restrictions on replacement utility poles require them to be no more than 10 feet taller than the pre-existing poles, including the height of the antenna attachments.¹⁴
- Height restrictions are imposed on replacement streetlight poles (which vary by zone and width of roadway), but the

¹² [Sec. 3.5.2.C.2.b.iii.](#) In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower must be at least 30 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section [4.1.7.B.5.](#)

¹³ [Sec. 3.5.2.C.2.b.v\(e\)](#)

¹⁴ [Sec. 3.5.2.C.2.b.vii\(c\)](#)

height restrictions on replacement streetlight poles
subsume the height of the antenna attachments, too.¹⁵

- A pre-existing utility pole must be removed within 180 days of the replacement utility pole installation.¹⁶
- A pre-existing streetlight pole must be removed within 10 business days after activation of the replacement facility.¹⁷

But most importantly, the reason that ZTA 22-01 does not align with ZTA 19-07 is because, as Councilmember Riemer, the ZTA sponsor, is aware, utility poles are exempt from regulation by the zoning ordinance. This is infrastructure of State regulated utility companies that has sovereign immunity.¹⁸ And, by the way, Council Staff reminded the PHED Committee of the exemption for utility poles in the memorandum for the February 10, 2021 meeting.¹⁹ Mr. Riemer also knows, or he should know, that County and municipal infrastructure, including streetlight poles, is exempt through sovereign immunity, too.²⁰ Our County leaders have continued to present the public with confusing and inaccurate information about which poles ZTA 19-07

¹⁵ [Sec. 3.5.2.C.2.b.vii\(b\)](#): in the Agricultural, Rural Residential, and Residential zones, 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 up to 25 feet where the height of the pole being replaced is less than 20 feet tall, whichever is greater; or
- (2) plus 15 feet when abutting a right-of-way with a paved section width greater than 65 feet;

¹⁶ [Sec. 3.5.2.C.2.b.vi.](#)

¹⁷ *Id.*

¹⁸ See MCC Chapter 8, [Sec. 8-1.\(d\) Exemptions](#) and [Sec. 8-1.\(f\) Zoning restrictions and referrals](#).

¹⁹ See the [Feb. 5, 2021 Staff memorandum to the PHED Committee](#), Sec. V(C), Utility Poles, pp. 9 -10. On pg. 10, the memo states, ZTA 19-07 applies to all replacement telecommunications towers and replacement utility poles that are no longer owned or used by a utility company.” Please note that utility poles that are no longer owned or used by a utility company are not utility poles; they are merely poles.

²⁰ See MCC Chapter 8, [Sec. 8-1.\(d\) Exemptions](#), [Sec. 8-1.\(f\) Zoning restrictions and referrals](#), and Editor’s note, containing County Attorney Opinion dated [7/29/98](#), which discusses the County’s sovereign immunity, and County Attorney Opinion dated [5/20/91](#), which discusses the sovereign immunity of the County and its municipalities.

applied to, and which ones were excluded.²¹ Essentially, the ZTA 19-07 limited use regulations that concern replacement-pole wireless facilities in the rights-of-way are impotent.

For the Racial Equity and Social (RESJ) Justice Statement on this ZTA, OLO evaluates health and safety impacts that are not discussed above.²² OLO recognizes the federal D.C. Circuit Appeals Court decision, in *Environmental Health Trust v. FCC*, in which the Court “finds that the Federal Communications Commission’s (FCC) claims about the health and environmental impacts of 5G technology are insufficient.”²³ And OLO recognizes that Appeals Court issued a remand, “ask[ing] the FCC to provide additional information to justify its claim that its current guidelines adequately protect against the harmful effects of exposure to radiofrequency radiation.”²⁴ To date, the FCC has not provided the information that the Court requested and that the public deserves.

Unfortunately, the setback impacts were never evaluated by OLO for its RESJ Statement.²⁵ Data show that, compared to the County’s

²¹The reminder of the exemption for utility poles did not stop Mr. Riemer from continuing to assert that ZTA 19-07 would apply to utility poles. In that [meeting on February 10th](#), beginning at approximately minute mark 50, Mr. Riemer presented a series of slides of maps of neighborhoods that he characterized as “case studies.” In these slides he depicted utility poles and streetlight poles in the rights-of-way to demonstrate how applying setbacks with ZTA 19-07 would affect opportunities for wireless coverage. And slides identified that he was referencing the [AntennaZTA website](#).

Verification through the AntennaZTA website and GoogleMaps of the case study neighborhoods displayed confirms ownership of the street poles as follows: in Montgomery Knolls and Franklin Knolls, Silver Spring street poles are Pepco utility poles; in Greenwood Knolls, Wheaton, street poles are Pepco utility poles; in Kenwood Park, Bethesda, street poles are Pepco utility poles; in Takoma Park with the adjacent right-of-way in Silver Spring, the street poles are Pepco utility poles and a few City streetlight poles; and in Westleigh, North Potomac, the street poles are County streetlight poles and some Pepco utility poles. **All of the street poles that Mr. Riemer referenced in the slides that he displayed were exempt from the regulations in ZTA 19-07.**

²² [Racial Equity and Social Justice \(RESJ\) Zoning Text Amendment Statement on ZTA 22-01: Antenna on Existing Structure — Use Standards, completed by the Office of Legislative Oversight on March 14, 2022](#)

²³ *Id.*

²⁴ *Id.*

²⁵According to an e-mail message sent to Sue Present, on September 1, 2022, by Chris Cihlar Ph.D., Director, Office of Legislative Oversight, OLO conducted a Racial Equity and Social Justice evaluation that culminated in a neutral statement concerning Racial Equity and Social Justice impacts of ZTA 22-01. With its limited time and resources

population at large, persons of color and residents with lower incomes more frequently live in the zones that are affected by this ZTA.²⁶ Their populations tend to be concentrated in areas where homes are on smaller lots and have shorter front-foot setbacks.²⁷ Thus, the harmful effects posed by ZTA 22-01 would have disparate adverse impacts on these residents. The Council should be protecting these residents, not adopting legislation that effectively targets and threatens them with harm.

ZTA 22-01 is unnecessary to meet the law. And it is unnecessary to provide residents with reliable 4G and 5G services. This ZTA does nothing to prioritize or incentivize attachments on poles in the non-residential zones over residential zones; and this ZTA does nothing to prioritize or incentivize attachments on poles on the high speed, high volume roadways over our neighborhood streets and other sensitive locations. ZTA 22-01 does offer perverse incentives for providers to pepper our neighborhoods with antenna attachments on street poles. With the application reviews, permitting, and installations for these antenna facilities being relatively cheap, quick, and easy, and with the process bypassing requirements for notices to residents and opportunities for public comments, this ZTA generates incentives to site antenna facilities with less thought, care, and oversight for residents and neighborhoods than other siting processes do, such as those that require an OZAH review.

Simply put, passage of ZTA 22-01 would be a financial coup for the wireless industry, but a big, big loss for residents and neighborhoods.

available, OLO chose to evaluate the merits of 5G for that Statement; OLO did not evaluate the impacts of the ZTA's setback reduction.

²⁶ M-NCPPC [Equity Focus Areas map](#) combined with [MCAtlas \(zoning\)](#)

²⁷ *Id.*

With ZTA 22-01 we lose safety, comfort, health, income, aesthetics, home values, neighborhood quality, and opportunities for due process. And those who would particularly lose out with ZTA 22-01 are persons of color and residents with lower incomes. Residents were hoodwinked by Mr. Riemer's previous small cell legislation. And now ZTA 22-01 is a lame attempt at a cover-up, with promotional messaging that has been deceitful.

For those of you whose names were on the ballot in the recent Primary election, please demonstrate the trusted leadership and integrity that we heard about during your political campaigns. And to those of you who have maxed out your service on the Council, I urge you to not to let your action on ZTA 22-01 besmirch your final days on the Council. Don't leave us with threats of antenna facilities on our neighborhood street poles.

Reject ZTA 22-01! Thank you.

Attachment: "Say NO to Zoning Text Amendment 22-01" (PPT) 

To: Montgomery County Councilmembers, County Executive, County Clerk
From: Anna Olsson, Silver Spring, MD

Subject: ZTA 22-01, if passed, will increase inequality and harm residents in Montgomery County

September 8, 2022

Councilmembers et al.:

Please add this to the official testimony for opposition to ZTA 22-01.

There is overwhelming evidence, documented in hundreds of peer-reviewed articles, that radiofrequency / microwave (RF/MW) radiation is harmful to human health. As documented by countless testimonies by Montgomery County residents during previous public hearings on Zoning Text Amendments that relate to cell tower placement, you must be aware of this, and if you continue to ignore this overwhelming evidence, you are violating your Oath of Office in the most serious way, willfully harming your constituents.

It is beyond my ability to comprehend why you would pursue this Zoning Text Amendment at a time when our County is experiencing unprecedented health issues among its residents, and when we are entering what may be the most significant energy crisis most of us have experienced in our lifetime.

Why would you even consider a Zoning Text Amendment that would allow - probably even encourage - cell service providers to litter our county with what the WHO has classified as a Class 2 carcinogen - a known toxin - in allowing cell antennas to be placed on utility poles just 30 feet from homes, with no recourse, and no way of getting away from 24/7 radiation? You need to regulate to *protect* your residents from this toxin, not open the floodgates to the corporations to freely and unlimitedly expose us to it!

Furthermore, by passing ZTA 22-01, you will deliberately or inadvertently cause both energy use and energy costs to skyrocket across our County. According to the 2020 report "Operators facing power cost crunch" By Matt Walker for industry analyst firm MTN Consulting "A typical 5G base station consumes up to twice or more the power of a 4G base station. The disparity can grow at higher frequencies, due to a need for more antennas and a denser layer of small cells. Edge compute facilities needed to support local processing and new Internet of things (IoT) services add to overall network power usage. The bottom line is that, in an increasingly 5G world, telcos will face significant growth in their energy bills."

How will an ever-increasing power use of thousands of new antennas for more devices with higher frequencies affect the cell phone bills of Montgomery County residents? You bet it will lead to an increased digital divide!

In addition to the recklessness of the proposed Zoning Text Amendment, you have also been made aware numerous times prior by residents testifying in Public Hearings that there is actually a cheaper, safer, faster, more energy efficient solution to providing connectivity to all Montgomery County Residents: Finish building out the fiber-optic network that we have all been paying the telecom corporations for over the last several years through added taxes on our bills. The fact that you are ignoring this opportunity while stubbornly pushing more and more invasive ZTAs could not make it any clearer who you truly represent through your actions: Corporations. We see what you are doing, and we will hold you accountable. Abolish ZTA 22-01 and start regulating the Telecom Corporations to serve and protect your constituents!

Anna Olsson
Silver Spring, MD

Dear Council President Alborno and Members of the County Council,

I am opposed to ZTA 22-01.

Please add this to the official testimony for opposition to ZTA-2201.

I urge you and the entire Council to cancel all action on ZTA 22-01 this fall. Instead, allow the incoming Council to consider changes to the zoning code.

Last summer while Montgomery County residents were trying to survive a pandemic, Mr. Riemer's PHED Committee added radical amendments to their ZTA 19-07 offering up incredible handouts and concessions just to benefit wireless corporations (and ignoring opposition testimony of dozens of residents). Those amendments included lopsided procedures and low-ball fees for conditional use hearings.

There is no FCC or federal requirement, no plausible legal justification, for ZTA 22-01. ZTA 22-01's purpose is yet another gratuitous handout to the wireless industry.

The Montgomery County Council needs to stop reciting pro-wireless bias narratives that rubber-stamp and cheerlead the interests of telecom corporations. What is preempted is an actual moratorium that's specific to wireless — for which Montgomery County is NOT GUILTY!

What the County's attorneys continue to advise Councilmembers cannot be squared with what the FCC told the Supreme Court! The **FCC never concluded that every limitation on any covered service is effectively prohibitory** — and told that to the Supreme Court! In addition, the FCC stated that ***“[n]othing in the Small Cell Order suggests that wireless carriers may ‘construct any and all towers,’ or small cells, that they ‘deem [...] necessary’ in their ‘business judgment.’*** In addition, the Commission did not conclude that every limitation on any covered service is effectively prohibitory. See the DETAILS of what a Montgomery County resident researched and presented as to why it is wrong to construe that the small cell order implies that localities may never constrain a carrier's preferences.

https://drive.google.com/file/d/1_M410pm3umwW99oG7duUecbw8BvGOJsQ/view?usp=sharing

The County is recklessly and fecklessly devoted to giving maximum locations to wireless facilities AS IF doing so is law — all the while falsely alleging legal consequences when, in fact, ***“there is not a shred of evidence in the legislative history suggesting that . . . Congress intended plaintiffs to be able to recover damages and attorney's fees.”*** See the DETAILS of what a resident researched and presented about the history of City of Rancho Palos Verdes v. Abrams all the way up to the Supreme Court. Review this comprehensive look at why a telecom company can NOT sue a local jurisdiction for damages. Enforcing violations of **§332(c)(7) would undermine the policies that the Telecommunications Act (TCA) reflects!** Researched by a Montgomery County resident:

<https://drive.google.com/file/d/16ADxPEmDZAdQy6yAUUJbfZYXLuXts91Z/view?usp=sharing>

Additionally reflective of the TCA is that streaming videos, viewing online movies, sending/receiving emails, browsing the Internet, and engaging in tele-medicine are NOT part of “personal wireless service” or even a telecommunications service and the preemptive provisions in 47 U.S.C. 253 and 332(c)(7). The Telecommunications Act's **(TCA) 47 U.S.C. 253 and 332(c)(7) do not apply to these aforementioned services in isolation.**

A coverage gap analysis is all about voice service — NOT any perceived need to expand the aforementioned data services. Coverage required is for outdoor, wireless phone calls (which require up to “5 bars” of telecommunication service). As per the FCC itself, coverage is *“outdoors and stationary. It is not meant to reflect where service is available when a user is indoors or in a moving vehicle.”* —

— <https://www.fcc.gov/BroadbandData/MobileMaps/mobile-map>

WHY is it that the following has not dawned on the Montgomery County Council — that it's **exceedingly unlikely** that the US Congress in 1996 intended for the US population to be sickened, injured, and die from the profoundly deleterious effects of RF/EMF 24/7/365 where we live, work, and play **in order to** allow the wireless industry to maximize its profits???

The Council's own staff, in its Racial Equity and Social Justice impact statement on ZTA 22-01, did not find that 22-01 would have a positive net impact on racial equity or social justice in the County. And that was after relying on a “report” that was “generously” supported by T-Mobile. At the same time, they noted that “if the reduced set back requirements for small cell towers authorized under ZTA 22-01 results in negative health outcomes, this in turn could widen health disparities by race and ethnicity.” The statement did not even consider the social justice impacts of close proximity towers on vulnerable populations. (Please see additional racial equity information in the addendum.)

The Council has yet to respond substantively to the FCC's court loss in EHT et al. v. FCC (2021) and other recent case law such as Extenet v. Flower Hill (2022)¹. In the EHT case, a federal appeals court ruled that it was illegal for the FCC to rely upon FDA webpages in its decision-making, because FDA has not provided “factual bases” for its webpage. Why then does the Council believe that it can rely on these same webpages? In addition to threatening residents' health and promoting inequity, ZTA 22-01 will further increase tree loss, harms to vegetation, birds, and insects as a result of proliferation of pole mounted wireless facilities.

I urge the entire Council to rescind ZTA 19-07 and to press FCC (in light of FCC's court loss in EHT et al. v. FCC), based on a thorough review of ALL the science, to issue a well-reasoned explanation for new exposure limits that are truly protective; AND I urge the entire Council to cancel all action on ZTA 22-01.

Sincerely,

V Bailey

Silver Spring, MD

¹ **ExteNet v Flower Hill is a treasure trove of case cites of all of the case law that Council has ignored.** This New York District Court's decision from late July will undoubtedly be influential to other circuit courts.

ExteNet Sys. v. Vill. of Flower Hill, No. 19-CV-5588-FB-VMS (E.D.N.Y. Jul. 29, 2022) —

<https://casetext.com/case/extenet-sys-v-vill-of-flower-hill>

The District Court affirmed the following:

>>> that the lack of a gap in coverage is relevant here and can constitute substantial evidence justifying denial of a permit

>>> that the FCC's 2018 [small cell] ruling exceeds the scope of the TCA that only covers the provision of wireless telephone service access to a telephone network because the TCA requires an application for a wireless facility be the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides **access to land-lines**

>>> that because the TCA is not in question — that there's no small cell entitlement to which to legally give deference — as per one of the most-cited cases on the basic standards of review of agency statutory interpretation; by not substituting its own construction of the [plain statutory language of the TCA] and the phrase, “personal wireless services” — the Court affirmed that the [TCA] is not in question

>>> that even though ExteNet focused on the lack of need for improved 4G LTE coverage — and that **improved capacity and speed** are desirable (and, no doubt, profitable) goals in the age of smartphones — they **are not protected by the Act**

In asserting the above, the District Court's decision reveals a volume of former decisions and precedents with case law that is quite clear — IF IT'S READ:

>>>> “... the FCC's [small cell] ruling is [NOT] entitled to deference under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) [because] Chevron deference applies only when the [TCA] statute in question is silent or ambiguous [or in question]. Although the Second Circuit found the phrase “personal wireless services” “opaque,” it ultimately relied on “[t]he plain statutory language” [of the TCA] to define it. Therefore, the **phrase was not ambiguous.**” — citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) — as per <https://casetext.com/case/chevron-inc-v-natural-resources-defense-council-inc-american-iron-and-steel-institute-v-natural-resources-defense-council-inc-ruckelshaus-v-natural-resources-defense-council-inc>

>>>> “A gap in 4G coverage does not establish that the target area is underserved by voice cellular telephone service.” — as per *Crown Castle NG East LLC v. Town of Hempstead*, 2018 WL 6605857, at *9 (E.D.N.Y. Dec. 17, 2018) — <https://casetext.com/case/crown-castle-ng-e-llc-v-town-of-hempstead-1>

>>>> “We hold only that the Act's ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to land-lines.” — as per *Willloth*, 176 F.3d at 643 — <https://casetext.com/case/sprint-spectrum-v-willoth#p643>

which means

>>>> “. . . local governments must allow service providers to fill gaps in the ability of wireless telephones to have access to land-lines” — as per *Sprint Spectrum L.P. v. Willloth*, 176 F.3d 630 (2d Cir. 1999) — <https://casetext.com/case/sprint-spectrum-v-willoth>

>>>> ***"It is not up to the FCC to construe the [Act] to say something it does not say, nor up to the Court to find broadband communication encompassed by the law."*** — as per Clear Wireless LLC v. Bldg. Dep't of Vill. of Lynbrook, 2012 WL 826749, at *9 (E.D.N.Y. Mar. 8, 2012) — <https://casetext.com/case/clear-wireless-llc-v-bldg-dept-of-the-village-of-lynbrook#p9>

>>>> ***"If the Court finds that even one reason given for the denial is supported by substantial evidence, the decision of the local zoning body cannot be disturbed."*** — as per T-Mobile Ne. LLC v. Town of Islip, 893 F.Supp.2d 338, 355 (E.D.N.Y. 2012 - <https://casetext.com/case/tmobile-ne-llc-v-town-of-islip#p355>

>>>> ***[The TCA] "strikes a balance between two competing aims — to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers."*** — as per Omnipoint Communications v. White Plains, 430 F.3d 529 (2d Cir. 2005) — <https://casetext.com/case/omnipoint-communications-v-white-plains#p531>

>>>> ***"The [1996 Telecommunications] Act provides ... that "[n]othing in this section affects the authority of a State or local government to manage the public rights-of-way . . . , on a competitively neutral and nondiscriminatory basis[.]"*** — as per the preemptive effect of the TCA's 47 U.S.C. § 253(a) — <https://casetext.com/statute/united-states-code/title-47-telecommunications/chapter-5-wire-or-radio-communication/subchapter-ii-common-carriers/part-ii-development-of-competitive-markets/section-253-removal-of-barriers-to-entry>

Addendum:

The below slides are excerpted from a report by Montgomery County Residents. The entire report can be found here: <https://techwisemocomd.org/2022/09/05/project-wtf-no-to-zta-22-01/>

ZTA 22-01 DOES NOT PROVIDE RACIAL EQUITY AND SOCIAL JUSTICE*

ZTA 22-01 takes aim at the rights-of-ways in residential zones that abut homes that are on smaller lots and have shorter setbacks.

Persons of color and persons of low and modest incomes live in these homes with greater frequency than the County population at large.

**According to Chris Cihlar Ph.D., Director, Office of Legislative Oversight, his office conducted a Racial Equity and Social Justice evaluation that culminated in a neutral statement concerning Racial Equity and Social Justice impacts of ZTA 22-01. OLO evaluated the merits of 5G for that Statement; OLO did not evaluate the impacts of the ZTA's setback reduction.*

9/5/2022

PROJECT WTF - A public information series provided by Montgomery County Resident Advocates

Continues...

ZTA 22-01 MOST INJURES THE PERSONS AND COMMUNITIES THAT RACIAL EQUITY AND SOCIAL JUSTICE LEGISLATION AIMS TO PROTECT

Persons of color and residents with lower-incomes are particularly at risk for the adverse effects of ZTA 22-01. They tend to live in affected areas more frequently than the County population at large, in homes on smaller parcels and with shorter front foot setbacks. Where the ZTA 22-01 setback reductions apply in neighborhood rights-of-way, State and federal laws are triggered that concern utility installations for attachments, and that pre-empt County regulatory protection.

- FCC "Make Ready" rules require the County to issue a right-of-way permit for a larger-girth, taller replacement pole. Pole authorizations are often issued months in advance of when the applications for the wireless antenna facility applications are submitted and reviewed. This can leave residents with thicker and taller replaced poles, even when the wireless applications are later rejected, withdrawn, or placed on indefinite hold.
- The County cannot restrict the height of the replacement utility poles for antenna attachments. Some replacement poles have already been approximately 70 feet tall!
- The County cannot set time limits for the removal of the pre-existing utility poles, when the new thicker and taller poles are installed. As a result, the old poles can languish next to the replacement poles for years, resulting in double poles, which are hazardous and eyesores.
- The County cannot restrict PEPCO's tree foliage removal, done for safety when poles and electrical wires are increased in height. Tree foliage is also removed when it impedes antennas' "line of sight" transmission. But foliage removal, particularly when aggressive, can deleteriously impact residents' immediate comfort, health, finances, well-being, and the removal can have longer-term adverse impacts upon properties and neighborhoods.

9/5/2022

PROJECT WIT - A public information series provided by Montgomery County Resident Advocates

HOTTEST AREAS ARE OFTEN LOW INCOME COMMUNITIES AND COMMUNITIES WHERE MORE RESIDENTS OF COLOR LIVE*

Tree foliage removal poses disparate and significant adverse impacts of ZTA 22-01 upon residents who are persons of color and residents with lower incomes. And the consequences of these adverse disparate impacts can include diminished health, comfort, and excessive utility bills.

Foliage is removed from trees in the rights-of-way and on private properties that are in close proximity to the replacement taller pole and re-attached electrical wires, for safety. Tree foliage in rights-of-way that presents line-of-sight obstructions for providers' antenna networks is also removed so that antennas can communicate effectively with each other.

Foliage removal can result in loss of winter windbreaks, loss in summer shade, loss of tree canopy, and it can contribute to heat island effects, too. Loss of tree foliage can also adversely affect residential property aesthetics and diminish the character of the neighborhood.

* See: [Volunteers Map Heat Islands In Montgomery County](#)

9/5/2022

PROJECT WIT - A public information series provided by Montgomery County Resident Advocates

Legal Reasons for Council to Stand Down on ZTA 22-01

>>>

Council needs to stop reciting pro-wireless bias narratives that rubber-stamp and cheerlead the interests of telecom and their so-called demonstrations. What is preempted is an actual moratorium that's specific to wireless — for which Montgomery County is NOT GUILTY!

What the County's attorneys continue to advise Councilmembers cannot be squared with what the FCC told the Supreme Court! The **FCC never concluded that every limitation on any covered service is effectively prohibitory** — and told that to the Supreme Court! In addition, the FCC stated that ***"[n]othing in the Small Cell Order suggests that wireless carriers may 'construct any and all towers,' or small cells, that they 'deem[] necessary' in their 'business judgment.'*** In addition, the Commission did not conclude that every limitation on any covered service is effectively prohibitory. I've researched and presented the DETAILS of why it is **wrong to construe that the small cell order implies that localities may never constrain a carrier's preferences**. See https://drive.google.com/file/d/1_M410pm3umwW99oG7duUecbw8BvGOJsQ/view?usp=sharing

The County is recklessly and fecklessly devoted to giving maximum locations to wireless facilities AS IF doing so is law — all the while falsely alleging legal consequences when, in fact, ***"there is not a shred of evidence in the legislative history suggesting that . . . Congress intended plaintiffs to be able to recover damages and attorney's fees."*** I've researched and presented the DETAILS of the history of City of Rancho Palos Verdes v. Abrams all the way up to the Supreme Court. Review my comprehensive look at why a **telecom company can NOT sue a local juris-diction for damages**. Enforcing violations of **§332(c)(7) would undermine the policies that the Telecommunications Act (TCA) reflects!** — See <https://drive.google.com/file/d/16ADxPEmDZAdQy6yAUUJbfZYXLuXts91Z/view?usp=sharing>

Additionally reflective of the TCA is that streaming videos, viewing online movies, sending/receiving emails, browsing the Internet, and engaging in tele-medicine are NOT part of "personal wireless service" or even a telecommunications service and the preemptive provisions in 47 U.S.C. 253 and 332(c)(7). The Telecommunications Act's **(TCA) 47 U.S.C. 253 and 332(c)(7) do not apply to these aforementioned services in isolation.**

A coverage gap analysis is all about voice service — NOT any perceived need to expand the aforementioned data services. Coverage required is for outdoor, wireless phone calls (which require up to "5 bars" of telecommunication service). As per the FCC itself, coverage is ***"outdoors and stationary. It is not meant to reflect where service is available when a user is indoors or in a moving vehicle."*** — <https://www.fcc.gov/BroadbandData/MobileMaps/mobile-map>

WHY is it that the following has not dawned on Council — that it's **exceedingly unlikely** that the US Congress in 1996 intended for the US population to be sickened, injured, and die from profoundly deleterious RF/EMF effects 24/7/365 **to which we do not consent** — all in order to allow the wireless industry to maximize its profits???

>>>

Council needs to be acutely aware of ExteNet v Flower Hill's inevitable influence since the very recent 7/29/2022 decision whereby a local jurisdiction in NY successfully fought off 18 "small cell" 4G wireless antennas on public rights-of-way in the Village. In sum, the alive-and-well, coverage gap analysis is all about voice service versus any perceived need to expand data services — until the Second Circuit says it isn't! The same applies in our Fourth Circuit.

ExteNet v Flower Hill is a treasure trove of case cites (below) of ALL the case law to-date that Council has ignored. This District Court's decision will undoubtedly be influential to other circuit courts.

ExteNet Sys. v. Vill. of Flower Hill, No. 19-CV-5588-FB-VMS (E.D.N.Y. Jul. 29, 2022) — <https://casetext.com/case/extenet-sys-v-vill-of-flower-hill>

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>>> that the FCC's 2018 [small cell] ruling exceeds the scope of the TCA that only covers the provision of wireless telephone service access to a telephone network because the TCA requires an application for a wireless facility be the least intrusive means for closing a significant gap in a remote user's ability to reach a cell site that provides access to land-lines

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In asserting the above, the District Court's decision reveals a volume of former decisions and precedents with case law that is quite clear — IF IT'S READ:

>>>> " ... **the FCC's [small cell] ruling is [NOT] entitled to deference** under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) [because] Chevron deference applies only when the [TCA] statute in question is silent or ambiguous [or in question]. Although the Second Circuit found the phrase "**personal wireless services**" "opaque," it ultimately relied on "[t]he plain statutory language" [of the TCA] to define it. Therefore, the **phrase was not ambiguous.**" — citing *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) — as per <https://casetext.com/case/chevron-inc-v-natural-resources-defense-council-inc-american-iron-and-steel-institute-v-natural-resources-defense-council-inc-ruckelshaus-v-natural-resources-defense-council-inc>

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>>>> ***“We hold only that the Act’s ban on prohibiting personal wireless services precludes denying an application for a facility that is the least intrusive means for closing a significant gap in a remote user’s ability to reach a cell site that provides access to land-lines.”*** — as per Willoth, 176 F.3d at 643 — <https://casetext.com/case/sprint-spectrum-v-willoth#p643>

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>>>> ***“... local governments must allow service providers to fill gaps in the ability of wireless telephones to have access to land-lines”*** — as per Sprint Spectrum L.P. v. Willoth, 176 F.3d 630 (2d Cir. 1999) — <https://casetext.com/case/sprint-spectrum-v-willoth>

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>>>> ***“If the Court finds that even one reason given for the denial is supported by substantial evidence, the decision of the local zoning body cannot be disturbed.”*** — as per T-Mobile Ne. LLC v. Town of Islip, 893 F.Supp.2d 338, 355 (E.D.N.Y. 2012 — <https://casetext.com/case/tmobile-ne-llc-v-town-of-islip#p355>

>>>> ***[The TCA] “strikes a balance between two competing aims — to facilitate nationally the growth of wireless telephone service and to maintain substantial local control over siting of towers.”*** — as per Omnipoint Communications v. White Plains, 430 F.3d 529 (2d Cir. 2005) — <https://casetext.com/case/omnipoint-communications-v-white-plains#p531>

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Of note are the other reasons provided by the local jurisdiction for denying the application that if supported by substantial evidence would also support denial of the applications under the case law:

- aesthetics
- property devaluation
- applicant’s refusal to provide actual fixed plans and photo simulations for each of the proposed nodes
- applicant’s refusal to comply with the local jurisdiction’s provisions

>>>

Council needs to be practical in the fact that wireless requires wireline backhaul facilities -- not more wireless. Montgomery County is not “out of bandwidth.” Rather, it is short on paid-and-promised fiber not completed or installed in Maryland since 2010. **Even former FCC Chairman, Ajit Pai, knows the importance of the physical networks** — and said so in a Mobile World Congress!

NTCA — The Rural Broadband Association states the following:

*"to a significant degree, 5G wireless services will rest upon a foundation of **wireline backhaul facilities**. Even where licensed spectrum may be available to function as backhaul in some instances, the densification of small cells that will power this **new technology will certainly require a densification of fiber not seen before in this nation's history**.[In addition, Pai stated that "all the spectrum we devote to 5G won't be put to good use if the physical networks to carry 5G traffic are never built."]* This is particularly true in rural areas where densities are low. In rural areas where potential service locations and users are often much further apart, **fiber is [] the linchpin to effective connectivity — and barriers to the deployment of fiber will undermine, if not defeat, access by rural Americans to next-generation broadband services and speeds of the kind contemplated by the FCC.**"*

— *as per remarks from FCC Commissioner, Ajit Pai, at the Mobile World Congress, Barcelona, Spain, February 28, 2017 at <https://www.fcc.gov/document/chairman-pai-remarks-mobile-world-congress> quoted in <https://www.ntca.org/sites/default/files/federal-filing/2018-09/9.10%20and%2011%202018%20Carowitz%20Adams%20ex%20partes.pdf>

>>>

Council needs to be practical in the fact that advertising isn't reality. In fact, as per a Vantage Point report on 5G, **"5G ... "will be a mediocre if not very poor solution for tomorrow's fixed broadband, with very poor median-to-advertised speed performance."**

Here are further details from p21:

*"If 1 Gbps is a reasonable household broadband service expectation within the 5G equipment's service life, then tomorrow's maximum **5G small cell throughput cell capacity expectation** on the order of 1.5 Gbps for that timeframe — to be shared among all users, and which may seem plentiful today — **will be a mediocre if not very poor solution for tomorrow's fixed broadband, with very poor median-to-advertised speed performance.** . . the small cell is in danger of **serious congestion**, and/or will require throughput limiting — either of which will render it indeed a mediocre if not **very poor solution.**"*

— as per https://www.vantagepnt.com/wp-content/uploads/dlm_uploads/2017/07/vps-5g-white-paper-march-2017.pdf

>>>

Council needs to initiate Investigations into the BILLIONS of cross-subsidies carried out by Verizon and other carriers to avoid paying Maryland State taxes so that their corporate profits could be boosted. We had a bait 'n' switch; we **paid** for fiber; we got wireless instead. For decades, telecom has transferred billions from its REGULATED, wired state public telecommunications utility companies to its UNREGULATED, wireless subsidiary companies. See <https://drive.google.com/file/d/1ujaFKj7sWPYBKRJGDaO3scyv8uqnWzyQ/view>

These financial sleights-of-hand have been — and continue to be — in **direct violation of the 1996 Telecommunications Act: Title 47, §254(k), which states that “[a] telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition.”**

What Montgomery County needs is more **fiber to the home on an open, interoperable, Net Neutrality network -- preferably one that's community owned.** Recovery of the billions due/owing would allow Maryland to pay for this safe, secure, reliable, and high speed, fiber network that was promised to be installed by 2010 so that fiber to the premises (FTTP) would **finally** bridge the digital divide.

*Submitted by irene of eyemind concepts —
40+ year resident of Silver Spring*

Testimony of
Rick Meyer
North Potomac, MD

Regarding
**Zoning Text Amendment (ZTA) 22-01, Antenna on Existing
Structure - Use Standards**

September 13, 2022

I am Rick Meyer and speak this afternoon in opposition to ZTA 22-01 because this ZTA which seeks to accommodate inadequacies and weaknesses of mmWave technology -- is simply no longer needed.

We repeatedly heard demands from two wireless carriers that invested billions in **mmWave** frequency auctions that they MUST be granted access to residential rights-of-way to deploy mmWave with very short setbacks.

There have also been implied threats of lawsuits by wireless industry alleging “denial of service” unless essentially unfettered access to residential zones was immediately granted.

Thus, the Council passed ZTA 18-02 in 2018 and opened the barndoor for **access** to more than 33,000 eligible utility and streetlight poles to attach wireless antennas:

- as limited use
- in public rights-of-way
- **inside** residential zones
- so long as the existing pole was 60 feet from nearest dwelling.¹

So, given this urgent industry imperative how many applications from wireless companies have been submitted in the four years since June 2018 for first time antenna collocations **on poles** in residential zones -- according to the Montgomery County Tower Committee database.²

¹ Memorandum to PHED Committee. From: Ndou, Dunn and Rodriguez-Hernandez. **Re: Worksession #3 for ZTA 19-07**. March 5, 2021. Page 3.
https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2021/20210310/20210310_PHED2.pdf

² https://montgomerycountymd.gov/cable/Resources/Files/Towers/databases/MC%20Database%2009_12_22.xlsx

33.³ That's it. 33 in four years with an eligible pool of 33,000 poles.

By contrast, **C-band** technology seems to be rapidly overtaking mmWave particularly in Montgomery County. C-band goes much farther, does a better job of penetrating buildings and foliage and **is cheaper** to roll out.⁴

As proof that mmWave is becoming obsolete, how many applications have been filed since June 2018 in Montgomery County for new and additional antennas **on rooftops, water towers, monopoles, and lattice towers**— where C-Band is typically deployed?

766 applications vs 33.⁵

³ From the current Tower Committee Database as referenced above. Counting applications submitted since June 2018 in residential zones **only**. Does NOT include withdrawn applications.

⁴ Verizon Merges C-Band, mmWave for Faster 5G. Sasha Sagan, PC Magazine. May 5, 2021, <https://www.pcmag.com/news/verizon-merges-c-band-mmwave-for-faster-5g>

⁵ Based on our research the overwhelming number of these Tower Committee applications included installations to upgrade C-Band.

Keep in mind that all three major wireless carriers proudly display coverage maps on their marketing websites showing 4G and 5G wireless coverage is positively glowing in Montgomery County. All three.⁶

Even with 60 ft setbacks.

ZTA 22-01 is simply superfluous and gratuitous.

⁶ <https://www.verizon.com/coverage-map/>
<https://www.t-mobile.com/coverage/coverage-map?INTNAV=tNav:Coverage:5G4GCoverageMap>
<https://www.att.com/maps/wireless-coverage.html>



Crown Castle
10980 Grantchester Way,
4th Floor
Columbia, MD 21044

September 13, 2022

Gabe Albornoz, President
Montgomery County Council
100 Maryland Avenue, 6th Floor
Rockville, MD 20850

Re: Support – Zoning Text Amendment (ZTA) 22-01

Dear President Albornoz:

Crown Castle is the nation's largest provider of shared wireless infrastructure, we have a long track record of working with the public and municipalities to deploy wireless infrastructure. We deploy co-located small cell facilities, in addition to rooftop antennas, towers and fiber optic cables. Our customers include public and private businesses, governmental entities, healthcare facilities and educational institutions. Our infrastructure helps facilitate working from home, online learning, virtual healthcare and countless other online and virtual services that are needed now more than ever during the ongoing pandemic. We continue to work closely with County officials and other stakeholders to deploy small cells, fiber optic cables and other telecommunications infrastructure to support County residents, visitors, and businesses.

We support the proposed Zoning Text Amendment 22-01 (the ZTA) that paves the way to increased wireless connectivity in the County. Many residents and visitors rely solely on their wireless devices to connect to the Internet. Ubiquitous connectivity like any other utility is a requirement, not a luxury. We use our devices to stay connected from everywhere -- home, work, and in the community.

Crown Castle appreciates the steps taken by the County to support the more efficient deployment of wireless networks. The existing zoning ordinances contain inconsistencies that are addressed by the ZTA. Specifically, if an applicant needs to install their equipment 30 feet from a building, they must install a new pole or a replacement pole because under current guidelines the use of existing poles 30 feet from a building is prohibited. The unintended consequence is that applicants are incentivized to apply for new poles or replacement poles even when there is an existing pole that is capable of hosting the wireless equipment at hand.

Crown Castle constructs wireless networks looking first to collocation opportunities – using existing infrastructure in the right-of-way that can host wireless equipment. The ZTA will allow Crown Castle the opportunity to construction 56 new small cells using existing infrastructure located 30 feet from a building that will not require replacement. This means that wireless broadband service will be improved in 56 areas of the County without putting a shovel in the ground or adding new vertical infrastructure to the right-of-way.

The demand for wireless services from our customers – your constituents – creates a shared responsibility of government and industry to ready the next-generation networks that will serve consumers today and into the future. The small cells enabled by the ZTA will add much-needed capacity to provide the uninterrupted connectivity we all demand today and to prepare for the future. Strong wireless networks enable distance learning for students of all ages; telehealth for patients and health care providers; remote working opportunities; small businesses to thrive in the digital economy; older adults to stay in touch with family and combat social isolation; public safety personnel to utilize the best resources for our safety; and much more. As more County residents rely on these wireless services, the ZTA will allow the wireless industry to explore additional opportunities to deploy wireless infrastructure, resulting in greater investment, increased capacity, and advanced wireless connectivity supporting the needs of businesses and families.

We urge passage of this important ZTA. Thank you for your time and consideration. Please contact the undersigned with questions.

Respectfully submitted,



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M E M O R A N D U M

September 30, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards

PURPOSE: Worksession #1 - **Addendum**

We received the attached memorandum from the County Executive Office regarding ZTA 22-01 in opposition to the ordinance. The memorandum is attached at © 1. Additionally, a piece of testimony was inadvertently left out of the packet as the individual submitted testimony both as herself and as a representative of an organization. This testimony has been attached at © 3.

This packet contains:

County Executive Memorandum dated September 29, 2022
Additional testimony – Community Vision for Takoma

	<u>Circle #</u>
County Executive Memorandum dated September 29, 2022	1
Additional testimony – Community Vision for Takoma	3




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

September 29, 2022

TO: Hans Riemer, Chair
Planning, Housing & Economic Development Committee

FROM: Marc Elrich, County Executive 

SUBJECT: Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards

I am writing to ask you to table ZTA 22-01 because there is currently no need for a change. The Council already passed ZTA 19-07, which allows telecom towers at 30 feet from residences through the streamlined limited use process (and they are allowed even closer than 30 feet through a modified, expedited conditional use process).

We have not seen a rationale suggesting that the change promoted by ZTA 22-01 is necessary. The County already has at least 33,000 poles available for attachments in residential areas. There is no need for more poles, and there is a downside to changing the setback. There is some risk in reducing the distance for existing structures from the current 60 feet because of aesthetic concerns. Previous federal court rulings have clarified that local jurisdictions have the authority to regulate aesthetic considerations. While ZTA 19-07 allowed new poles at 30 feet, new poles can be subject to aesthetic considerations; existing structures, like utility poles, are not subject to aesthetic requirements.

There also is no evidence that this ZTA would help address the digital divide, which became even more apparent during the COVID-19 pandemic. As you may know, my administration has been working to provide improved digital equity, especially expanding free and vastly reduced broadband access, which is central to allowing students and their families to access essential information and schoolwork.

Here is some of the work to address the digital divide and improve equity:

As of June 2022, 12,294 County households have enrolled in the Affordable Connectivity Program (ACP). Residents enrolled in other benefit programs are eligible to receive \$45 off their home or mobile broadband bill through ACP. In July 2022, Montgomery Connects, the County's digital equity program, launched an initiative to provide in-person ACP enrollment assistance and has helped over 428 families enroll in this program. In addition, 200 families are receiving free home broadband through the MoCoNet 100 Mbps residential broadband program. In FY22, Senior Planet Montgomery provided technology training for over 5,000 participants aged 50 and above. Montgomery Connects has provided over 26,000 loaner computers to low-income residents who do not have computers. The Office of Broadband programs is working with Comcast and Verizon to submit Maryland rural broadband grants to get broadband service to the remaining 75 occupied unserved rural properties in the County.

Furthermore, while the County cannot and does not regulate based on radiofrequency emissions, the County does need to ensure compliance with the Federal Communications Commission's (FCC) radio frequency (RF) guidelines, which have been put into question by a decision by the DC Circuit Court last August. The Court did not rule on RF effects, but they did rule that the FCC order was "arbitrary and capricious", and the FCC must provide a "reasoned explanation" for their guidelines. (<https://docs.fcc.gov/public/attachments/DOC-374936A1.pdf>) Given that there is no urgency to change the setback, it makes sense to wait to see how the FCC responds.

At this point, it makes sense to maintain the existing 60' setback.

- The County is not under any demonstrated federal obligation to enact this ZTA.
- There has been no local demonstrated need.
- There is an argument based on aesthetics that the distances can be different for new telecom towers, where the County can have input on the design and existing structures where the County does not.
- It is prudent to wait to see how the FCC responds to the Court decision.

Therefore, I respectfully request that the Council not approve this ZTA at this time, and I urge you to leave the 60-foot distance for existing structures intact. If you are concerned about consistent standards, then I suggest that you could put the new poles at 60 feet from residences as ZTA 19-07 stipulated when it was introduced. You would then have consistency without creating possible concerns about aesthetics.

I appreciate your attention to these concerns.

**Testimony in Opposition to ZTA 22-01
On Behalf of Community Vision for Takoma, by Colleen Cordes**

Please resist a false rationale being offered for why ZTA 22-01 is no big deal, why it can be quietly rushed through: No. It's not "just" a "technical fix" of ZTA 19-07.

First, evidence shows there was no accidental "technical" mistake in the final language of ZTA 19-07. As early as January, 2020, the Council's own senior legislative analyst told the PHED Committee, which Councilmember Riemer chairs, in [a memo](#), that ZTA 19-07 would NOT change the part of County zoning code that governs existing utility poles – the part of code that ZTA 22-01 deals with. *Council staff repeatedly included that fact in memos to Mr. Riemer's committee and the full Council.* The County Executive, in written comments to you, a month before you passed ZTA 19-07, also noted it. So Mr. Riemer and the full Council were informed several times over the year and a half before you passed ZTA 19-07.

ZTA 22-01 cannot be honestly characterized as "correcting" an accidental oversight in that law. This is an entirely new proposal.

Second, what ZTA 22-01 proposes is not a minor change. It's a big deal for the huge number of residents who don't want cell towers on poles 30 feet from their bedroom windows.

In fact, it would be a major change in County zoning law – not something the outgoing Council should rush to pass just before your terms end.

We urge you to cancel all action on ZTA 22-01. Encourage the incoming Council to thoroughly review all zoning and regulation of wireless facilities. One priority: Correct the out-of-control situation with rooftop antennas on multi-family residential buildings.

Many, if not most, of these rental buildings are in residential zones affected by this proposed ZTA. If passed, residents in these buildings may find new pole antennas beaming into their windows, in addition to the ones over their heads. No one will monitor any of them. Why is no one making sure residents are not being illegally exposed to radiation levels that exceed federal safety limits? That's the kind of fix we need – not ZTA 22-01. Thank you.