PHED Committee #1
October 10, 2022

**M E M O R A N D U M**

October 5, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

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

PURPOSE: Worksession #2

**Expected Attendees**

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, Department of Permitting Services (DPS)
- Debbie Spielberg, Special Assistant, County Executive
- Mitsuko Herrera, Program Director, Office of Broadband Programs
- Marjorie Williams, Broadband, Cable & Franchise Division Manager, Department of Technology & Enterprise Business Solutions (TEBS)
- Meredith Wellington, Land Use Planning Policy Analyst, Office of the County Executive

**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.

The PHED Committee held a worksession on this ZTA on October 3, 2022.[1] During that worksession Councilmember Friedson proposed several amendments. The Committee scheduled an additional worksession to review those amendments.

[1] The Staff Report for the October 3, 2022, worksession has been attached to this packet, or can be found here: https://www.montgomerycountymd.gov/council/Resources/Files/agenda/cm/2022/20221003/20221003_PHED2.pdf.

## 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.

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
- screening, design, and landscaping standards.

While the definition for Antenna on Existing Structure includes several types of existing structures, most applications received by the County for this use are for attachments to utility poles. Of note, the County's regulation over utility poles is limited. The County does not issue building permits for utility poles, which are regulated by the Maryland Public Service Commission. Any proposed amendments should not interfere with the public utilities' management of their poles.

## Proposed Amendments

The below amendments were proposed in order to place the same restrictions on Antenna on Existing Structure that were placed on Telecommunications Towers in ZTA 19-07.[2]

### *1. Measurement*

Written testimony was received questioning how the setback would be measured. The concern was that the setback for an antenna, particularly one on a strand mount, could be measured at an angle or in a way that brings it closer to 30 feet from a habitable building. The Zoning Ordinance defines setbacks as "a distance measured from the … lot line to a structure or surface parking lot." DPS has confirmed that the setback is measured from the edge of the antenna, or the box housing the antenna, to the building, in a straight line. Put another way, setback measurement is a horizontal measurement from the closest point of the house wall to the closest point of the antenna on a horizontal plane. To use the Committee's example from its October 3, 2022, worksession, if a person were to walk 30 feet from the edge of their house and then measure straight up from the ground, that is where the edge of the antenna would have to start. Council Staff does not recommend any amendments regarding measurement of setbacks.

[2] Councilmember Jawando requested an update on how many small cell applications have been received since the passage of ZTA 19-07. According to information provided by the Office of Broadband Programs, approximately 44 applications have been received. About half of that number are in agricultural or residential zones. The majority involve removal and replacement of existing antennas. About 40 of the applications are for Antenna on Existing Structure. The spreadsheet containing this data can be found attached to this packet.

### *2. Preferential Placement*

ZTA 19-07 included the following language about the placement of telecommunications towers:

> When choosing a replacement pole, it must replace pre-existing poles that are close to intersections, along non-front-facing sides of residential properties, abutting nonresidential properties, and not in front of residential front doors. If these standards cannot be met, then the applicant must provide an affidavit stating that either permission from the pole owner could not be obtained or service could not be provided at an alternate location.

In order to apply this language to Antenna on Existing Structure, the amendment could read:

> The antenna must be placed close to intersections, along non-front-facing sides of residential properties, abutting nonresidential properties, and not in front of residential front doors. If these standards cannot be met, then the applicant must provide an affidavit stating that either permission from the pole owner could not be obtained or service could not be provided at an alternate location.

This amendment would ensure that an antenna, even if on a strand mount, would not be placed directly in front of a residence unless permission from the pole owner to do so could not be obtained or service could not be provided at an alternate location.

This amendment would apply to all new Antenna on Existing Structure applications. This means that while existing Antenna on Existing Structure would be grandfathered in, a new applicant would be subject to this provision even if they are placing the antenna 60 feet or more from a habitable building. Since the Council is limited to considering aesthetic requirements, the Committee must ask whether there is an aesthetic need for this type of regulation on an Antenna on Existing Structure that is over 60 feet from a habitable building, given this would be a change in how those antennas have been deployed in the past. If the Committee does not wish to effect Antenna on Existing Structure that are over 60 feet from a habitable building, then this amendment should be limited to Antenna on Existing Structure that are at a 30-to-60-foot setback.

### *3. Pole Proliferation*

ZTA 19-07 included language that a replacement tower must be at least 150 feet from the nearest antenna occupied or controlled by the same carrier. To apply this provision to Antenna on Existing Structure, the below language could be added to the use standards:

> An antenna must be at least 150 feet from the nearest antenna occupied or controlled by the same carrier.

Similar to the above amendment, the Committee should consider whether this amendment would apply to all Antenna on Existing Structure, or just those at a 30-to-60-foot setback.

### *4. Removal*

ZTA 19-07 included the following language regarding removal of towers:

> A pre-existing streetlight or parking lot light pole must be removed within 10 business days after power is activated to the replacement tower, and a pre-existing utility pole must be removed within 180 days after the replacement utility pole is installed. If a tower does not have a streetlight, the tower must be removed at the expense of the owner if not in use for longer than 12 months, and the Tower Committee must be notified within 30 days of the removal.

An analogous amendment for Antenna on Existing Structure is removal of the antenna after deactivation. In deciding how much time should be allowed, consideration should be given to the fact that even if it is just the antenna being removed, DPS will need to issue a right-of-way permit for the antenna to be removed. DPS has confirmed that 30 days should be sufficient for removal. The amendment could read:

> An antenna must be removed within 30 days of deactivation.

### *5. Height*

ZTA 19-07 had detailed language regarding the height of a Telecommunications Tower, based on where it is located, the height of the pole being replaced, and the height of the tallest nearby streetlight. The Committee asked what restrictions can be placed on the height of an antenna on a utility pole. There are safety standards that determine the placement of an antenna on a utility pole, both for the safety of workers and the public. Utility poles have more types of equipment than just antennas, and there are spacing requirements under the relevant electrical codes. For example, how far electric circuits can be from each other and where the streetlight can go. Often the antenna is placed on top of the pole; but not always. Lastly, the height of utility poles has historically not been regulated because their height is based on need, particularly the need to provide electricity.

The practical effect of placing a height limit on Antenna on Existing Structure—regardless of the type of structure it is placed on—is limited because implicit in the definition the structure already exists. Aesthetically, a minimum height for the antenna would be more reasonable than a maximum height since it would be further out of view. The current minimum height is 15 feet. In addition, placement on top of a utility pole would decrease visual clutter relative to other equipment.

One reason to limit the maximum height would be to protect tree canopies. But that maximum height would be limited to the height above the utility pole, not the entire pole. Because certain safety standards are in place regarding spacing of equipment, Council Staff does not recommend any amendments regarding the height of an Antenna on Existing Structure.

### *6. Maintenance*

ZTA 19-07 required the owner of the telecommunications tower to maintain it, including removal of graffiti and repair of any damage. This standard could be applied to antennas. However, this does create a scenario where the antenna owner is required to do maintenance that the owner of the existing structure may not be required to do. And, given the size of the antenna in relation to the rest of the existing structure, the effect of this amendment could be minimal. If added, the amendment could read:

> The owner of the antenna must maintain the antenna and its equipment in a safe condition. The owner of the antenna is responsible for removing graffiti from the antenna and repairing any damage to the antenna.

### *7. Notice*

Lastly, ZTA 19-07 had notice requirements for certain installations of telecommunications towers. However, those notice requirements were only triggered under the waiver and objection process or for conditional use. Antenna on Existing Structure remains a limited use. To provide notice of applications, the Tower Committee website lists all applications, as well as agendas and minutes.

This packet contains:

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**

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Lead Sponsor: Councilmember Riemer

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**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.*<br><u>Underlining</u> *indicates text that is added to existing law by the original text amendment.*<br>***[****Single boldface brackets****]*** *indicate text that is deleted from existing law by original text amendment.*<br><u>Double underlining</u> *indicates text that is added to the text amendment by amendment.*<br>***[[****Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*<br>* * * *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**]**<u>antenna</u> is at least **[**60**]**<u>30</u> 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.

Montgomery County Planning Board
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

2425 Reedie Drive
Floor 14
Wheaton, MD 20902

MontgomeryPlanningBoard.org

**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

Montgomery Planning

# 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

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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.

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.

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[1] Definition of racial equity and social justice adopted from "Applying a Racial Equity Lends 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 mini- mum 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.

**DEPARTMENT OF PERMITTING SERVICES**
**Division of Zoning & Code Compliance**

**October 4, 2022**

**VIA ELECTRONIC MAIL**

**TO:** Councilmember Hans Riemer, Chair, PHED Committee
Councilmember Andrew Friedson, Member, PHED Committee
Councilmember Will Jawando, Member, PHED Committee

**FROM:** Victor Salazar, Division Chief
Division of Zoning and Code Compliance
Department of Permitting Services

**IN RE: ZTA 22-01 Setback Measurements**

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Messrs: Riemer, Friedson, and Jawando

By and through this letter the Department of Permitting Services (DPS) replies to the PHED Committee's request for clarification on "setback measurements" as it relates to antennas.

Setback Measurements performed by a Field Inspector would be as follows:

- ***The Setback Measurement is a horizontal measurement from the closest point of the house wall to the closest point of the antenna on a horizontal plane.***
    - In layman's terms, if you walked 30 feet from the edge of a house and then measured straight up, that's where the edge of the antenna would start.
    - The setback would *not* be measured at an angle.

Should the PHED Committee require additional information don't hesitate to contact our office.

| ApplNo | Carrier Name | SiteID | App_Description | Rcvd | Appvd | Action | Rooftop/ AES | Zoning | SWF_SmallWirelessYN |
|---|---|---|---|---|---|---|---|---|---|
| 2021121650 | T-Mobile | 123 | Swap (3) antennas and (3) RRUs. Install (1) hybrid trunk cable. remove (1) 2106 cabinet | 30-Dec-21 | | Withdrawn | AES | AR | Yes |
| 2022031708 | T-Mobile | 653 | Proposed installation of strand node MNG-102 on existing PEPCO pole 793424-9936. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 4402 | 22-Mar-22 | 04-May-22 | Recommended | AES | CR-1.5 C-1.0 R-1.5 H-60T | Yes |
| 2022051804 | Verizon Wireless | 148 | REMOVE (12) EXISTING ANTENNAS and INSTALL (9) PROPOSED ANTENNAS. REMOVE (6) EXISTING RRHs and INSTALL (9) PROPOSED RRHs. | 26-May-22 | 07-Sep-22 | Recommended | AES | CR-2.0 C-1.75 R-0.5 H-125T | Yes |
| 2021081535 | Verizon Wireless | 482 | This is an existing rooftop site with a height of 28' and a parapet height of 30'. Verizon proposes to modify their existing installation at the 33' RAD center by removing and replacing (1) antenna. The proposed new antenna will be (1) Samsung AT1K0 | 24-Aug-21 | 06-Oct-21 | Recommended | Rooftop/AES | CR-3.0 C-1.5 R-2.5 H-200 | Yes |
| 2022041721 | Verizon Wireless | 497 | Remove (4) existing antennas, install (12) proposed antennas.<br>Remove (12) existing RRH's, install (8) proposed RRH's | 05-Apr-22 | | Withdrawn | Rooftop/AES | CR-3.0 C-2.0 R-2.75 H-90 T | Yes |
| 2022081889 | Verizon Wireless | 332 | REMOVING:<br>· (9) EXISTING ANTENNAS<br>· (12) EXISTING RRHS<br>· (24) EXISTING DIPLEXERS<br>· (3) EXISTING SECTOR OVP BOXES<br>· (3) EXISTING EQUIPMENT OVP BOXES<br>· (3) EXISTING 6x12 HYBRIFLEX CABLES<br>PROPOSED:<br>· (11) PROPOSED ANTENNAS<br>· (9) PROPOSED RRH | 03-Aug-22 | | Pending - Not Complete | Rooftop/AES | CR-3.0 C-3.0 R-2.75 H-90 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2021101591 | T-Mobile | 738 | Proposed installation of strand node MNG-092m1 on existing PEPCO pole 799420-5674<br>Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 44 | 29-Oct-21 | 02-Feb-22 | Recommended | AES | CRT-0.75, C-0.75 R-0.25 H-50 | Yes |
| 2022021673 | T-Mobile | 678 | Proposed installation of strand node MNG-552 on existing PEPCO pole 801416-6501. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 4402 | 03-Feb-22 | 02-Mar-22 | Recommended | AES | CRT-1.5 C-1.5 R-0.5 H-50 | Yes |
| 2022051772 | AT&T Wireless | 29 | AT&T to add a back-up 35kw natural gas generator on steel platform. | 11-May-22 | 01-Jun-22 | Recommended | Rooftop/AES | CRT-2.25 C1-5 R-0.75 H-45 | Yes |
| 2022061840 | T-Mobile | 753 | Proposed installation of strand node MNG-166 on existing PEPCO pole 799413-820440. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson | 21-Jun-22 | | Under Review | AES | CRT-2.25, C-1.5, R-0.75, H-50 | Yes |
| 2022031706 | T-Mobile | 749 | Crown Castle proposes to install a small wireless facility in the right of way consisting of a pole mounted Kathrein Antenna 84010601, two Ericsson 2203 Radios and one Ericsson 2205 Radio inside a LOSH50 equipment cabinet. All will be mounted to PEPCO Uti | 17-Mar-22 | | Tabled | AES | CRT-3.0 C-1.0 R-2.75 H-100 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2021081542 | Verizon Wireless | 566 | This is an existing rooftop site with a height of 21' and a parapet height of 24'. Verizon proposes to modify their existing installation at the 25' RAD center by removing and replacing (1) antenna. The proposed new antenna will be (1) Samsung AT1K0 | 24-Aug-21 | 06-Oct-21 | Recommended | Rooftop/AES | CRT-3.0 C-1.0 R-2.75 H-100 | Yes |
| 2021111599 | Verizon Wireless | 692 | Project consists of removing (1) existing antenna and (1) existing remote radio head and installing (1) new proposed antenna as well as (1) new proposed remote radio head | 03-Nov-21 | 05-Jan-22 | Recommended | Rooftop/AES | CRT-3.0 C-3.0 R-2.5 H-120 | Yes |
| 2022081926 | Verizon Wireless | 756 | Crown Castle will be installing a new metal pole including (1) new omni antenna on pole top (shrouded) and (1) RRH, meter, load center, and disconnect switch inside a concealed equipment cabinet mounted at the base of a pole. | 23-Aug-22 | | Pending - Not Complete | New | EOF-1.5 H-75 | Yes |
| 2022071866 | Verizon Wireless | 757 | Crown Castle is adding (1) new omni antenna on pole top and (1) RRH, meter, load center, and disconnect switch inside an equipment cabinet mounted at the base of a replaced pole. | 18-Jul-22 | | Under Review | AES | EOF-1.5, H-75 | Yes |
| 2022071865 | Other | 756 | Install new Crown Castle owned metal pole. The new pole will have a top mounted antenna and will house the associated conduit and radios in a concealed pole base. | 18-Jul-22 | 10-Aug-22 | Withdrawn | New | EOF-1.5, H-75 | Yes |
| 2021071519 | AT&T Wireless | 731 | AT&T is proposing to colocate its Small Wireless Facility including a pole top equipment enclosure and 1 Galtronics Omni antenna GQ2410-06621 inside a canister shroud. At 10' on the pole will be a Commscope enclosure SSC-760237600 containing 1 radio. A P | 29-Jul-21 | 06-Oct-21 | Recommended | AES | IL-1, H-50 | Yes |
| 2021111614 | AT&T Wireless | 742 | Installation of a small cell antenna on a verizon replaced utility pole located in the Montgomery County ROW. (1) Antenna will be installed at the top of the pole. (1) RRH will be installed a cabinet installed mid pole. All equipment will be painted to ma | 12-Nov-21 | 06-Apr-22 | Recommended | AES | IL-1.0, H-50 | Yes |
| 2022071885 | Verizon Wireless | 279 | Remove (6) RRH's, install (6) antennas and (9) RRH's. | 29-Jul-22 | | Pending - Not Complete | Rooftop/AES | LSC-1.0 H-110 T | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2021081538 | AT&T Wireless | 733 | Installation of a small cell antenna on a PEPCO replaced wooden utility pole located in the ROW. 1 antenna will be installed at the top of the pole. An equipment shroud containing 1 RRH (remote radio head) installed mid pole. Install 1 Meter, 1 disconnec | 19-Aug-21 | 06-Oct-21 | Recommended | AES | Non-MNCPPC (City of Gaithersburg) | Yes |
| 2022011670 | AT&T Wireless | 642 | Crown Castle, on behalf of AT&T is removing (4) existing antennas and installing (1) new omni 4G antenna on an existing utility pole. | 31-Jan-22 | 06-Apr-22 | Recommended | AES | Non-MNCPPC (City of Gaithersburg) | Yes |
| 2022041729 | Verizon Wireless | 217 | REMOVE (12) EXISTING ANTENNAS<br>· INSTALL (12) PROPOSED ANTENNAS<br>· REMOVE (3) 1 1/4" HYBRID CABLES<br>· REMOVE (12) 1 5/8" COAX CABLES<br>· REMOVE (12) EXISTING RRHs<br>· INSTALL (6) PROPOSED RRHs<br>· INSTALL (3) 6x12 HYBRID CABLES<br>· REMOVE (6) DIPLEXERS | 11-Apr-22 | | Withdrawn | Rooftop/AES | Non-MNCPPC (City of Gaithersburg) | Yes |
| 2021071518 | AT&T Wireless | 734 | Installation of an AT&T Small Wireless Facility to include one Galtronics GQ2418-B6941 Omni Antenna (antenna volume of 2.8 cubic feet) and side mounted Charles Industries Radio Cabinet SH60-482420GNN8 with Squirrel Guard 96-SH60SQRLGRDA (cabinet volume of | 29-Jul-21 | 05-Jan-22 | Recommended | AES | Non-MNCPPC (City of Rockville) | Yes |
| 2022021683 | T-Mobile | 662 | Proposed installation of strand node MNG-157 on existing PEPCO pole 795421-000310.Strand Node Equipment to be installed:<br>-Strand Cable<br><br>-Ericsson 6523 semi-integrated panel antenna (1)<br><br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br><br>-Er | 14-Feb-22 | 06-Apr-22 | Recommended | AES | R-10 | Yes |
| 2022031699 | T-Mobile | 748 | Crown Castle is proposing to install a small cell cannister antenna to an existing PEPCO pole #800424-002262. This installation will include (1) Kathrein Canister antenna, (2) Erricsson 2203 Radios, (1) Ericcsson 2205 Radio, (1) Losh 50 Cabinet, and (1) 1 | 17-Mar-22 | | Tabled | AES | R-10 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2022071877 | Verizon Wireless | 48 | Remove (6) antennas and (9) RRH's. Install (9) antennas and (6) RRH's | 22-Jul-22 | | Pending - Not Complete | Rooftop/AES | R-10 | Yes |
| 2022011659 | T-Mobile | 746 | Proposed installation of strand node 400m1 on existing PEPCO pole 787431-450590. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 4402 | 14-Jan-22 | 04-May-22 | Recommended | AES | R-20 | Yes |
| 2022021672 | AT&T Wireless | 747 | The existing lantern top pole is being replaced by a new 22'3" pole. On the top of the pole will be a concealment shroud containing 3 remote radio heads, above that at a RAD center of 26'6" will be 1 omni directional Galtronics antenna model GQ2418-B6941 | 21-Feb-22 | 04-May-22 | Recommended | New/Replacement | R-20 | Yes |
| 2022061838 | Verizon Wireless | 51.01 | REMOVE (6) EXISTING ANTENNAS<br>· INSTALL (6) PROPOSED ANTENNAS<br>· REMOVE (6) 1 5/8" COAX CABLES<br>· REMOVE (1) 6x12 HYBRID CABLE<br>· INSTALL (1) POWERSHIFT SHELF<br>· INSTALL (5) BOOST MODULES<br>· REMOVE (9) EXISTING RRHs<br>· INSTALL (6) PROPOSED RRHs<br>· | 30-Jun-22 | 03-Aug-22 | Recommended | AES | R-200 | Yes |
| 2022071884 | Verizon Wireless | 20 | REMOVE (9) EXISTING ANTENNAS<br>· INSTALL (9) PROPOSED ANTENNAS<br>· REMOVE (6) 1 5/8" COAX CABLES<br>· INSTALL (1) UPCONVERTER<br>· REMOVE (6) EXISTING RRHs<br>· INSTALL (9) PROPOSED RRHs<br>· INSTALL (1) 6x12 HYBRID CABLES | 29-Jul-22 | | Under Review | AES | R-200 | Yes |
| 2021091559 | AT&T Wireless | 736 | AT&T is proposing to colocate its Small Wireless Facility including a pole top equipment enclosure and 1 Galtronics OMNI antenna GQ2410-B6621 inside a canister shroud. At 10' on the pole will be a Charles Industries enclosure SH60-482420GNN8 containing 1 | 21-Sep-21 | | Tabled | AES | R-60 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2021101566 | T-Mobile | 677 | Proposed installation of strand node MNG-510 on existing PEPCO pole 790425-010700. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 44 | 06-Oct-21 | 05-Jan-22 | Recommended | AES | R-60 | Yes |
| 2021101594 | T-Mobile | 739 | Proposed installation of strand node MNG-422m1 on existing PEPCO pole 799416-510810. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson | 29-Oct-21 | 06-Apr-22 | Not Recommended | AES | R-60 | Yes |
| 2021101593 | T-Mobile | 740 | Proposed installation of strand node MNG-383m1 on existing PEPCO pole 806429-990310. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson | 29-Oct-21 | 01-Dec-21 | Recommended | AES | R-60 | Yes |
| 2021111625 | AT&T Wireless | 744 | Installation of a small cell antenna on a PEPCO replaced wooden utility pole located in the Montgomery County right of way. Install (1) antenna at the top of the pole with (1) RRH installed inside a cabinet located mid pole. All equipment painted to match | 19-Nov-21 | 06-Apr-22 | Recommended | AES | R-60 | Yes |
| 2022031709 | T-Mobile | 750 | Proposed installation of strand node MNG-423 on existing PEPCO pole 802417-3164. Strand Node Equipment to be installed:<br>-Strand Cable<br>-Ericsson 6523 semi-integrated panel antenna (1)<br>-Ericsson Diplex Filter B2+B66/B30 (4-2) Diplexer (2)<br>-Ericsson 4402 | 29-Mar-22 | 01-Jun-22 | Not Recommended | AES | R-60 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2022051806 | Verizon Wireless | 751 | This project consists of Verizon Wireless installing (3) 5G 28GHZ antennas along an existing PEPCO owned wood utility pole located within the Maryland State Highway maintained ROW. PEPCO will replace the existing wood pole to accommodate the small cell w | 27-May-22 | 06-Jul-22 | Recommended | AES | R-60 | Yes |
| 2022061818 | Verizon Wireless | 397 | REMOVE (3) EXISTING ANTENNAS<br>· REMOVE (6) EXISTING REMOTE RADIO HEADS<br>· INSTALL (9) PROPOSED ANTENNAS<br>· INSTALL (6) PROPOSED REMOTE RADIO HEADS<br>· INSTALL (3) PROPOSED 1x2 TOP-SIDE POWER AND FIBER<br>JUMPERS, (1) PER SECTOR<br>· INSTALL (3) PROPOSED 1 | 02-Jun-22 | | Pending - Not Complete | AES | R-60 | Yes |
| 2022071864 | Verizon Wireless | 755 | Crown Castle is adding (1) new omni antenna on pole top and (1) RRH, meter, load center, and disconnect switch inside an equipment cabinet mounted at the base of a replaced pole. | 18-Jul-22 | | Under Review | AES | R-60 | Yes |
| 2022071863 | Other | 754 | Install new Crown Castle metal pole. The new pole will have a top mounted antenna and will house the associated conduit and radios in a concealed pole base. | 18-Jul-22 | 10-Aug-22 | Withdrawn | New | R-60 | Yes |
| 2022081927 | Verizon Wireless | 754 | Crown Castle will be installing a new metal pole including (1) new omni antenna on pole top (shrouded) and (1) RRH, meter, load center, and disconnect switch inside<br>a concealed equipment cabinet mounted at the base of a pole. | 23-Aug-22 | | Pending - Not Complete | New | R-60 | Yes |
| 2021111613 | AT&T Wireless | 741 | Installation of a small cell antenna on a PEPCO replaced utility pole located in Montgomery county ROW. (1) Antenna will be installed at the top with (2) RRH's installed inside a cabinet installed mid pole. All equipment painted to match. | 11-Nov-21 | 04-May-22 | Recommended | AES | R-90 | Yes |
| 2021111624 | AT&T Wireless | 743 | Installation of a small cell antenna on a PEPCO replaced wooden utility pole located in Montgomery County right of way. (1) Antenna will be installed at the top with (2) RRH's installed in an equipment cabinet installed mid pole. All equipment painted to | 19-Nov-21 | 06-Apr-22 | Recommended | AES | RE-2 | Yes |

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|---|---|---|---|---|---|---|---|---|---|
| 2021111628 | AT&T Wireless | 745 | Installation of a small cell antenna on a PEPCO replaced wooden utility pole located in the Montgomery county right of way. (1) antenna will be installed at the top of the pole with (2) RRH's installed in a cabinet located mid pole. | 24-Nov-21 | 06-Apr-22 | Recommended | AES | RE-2 | Yes |

*Clerk's note: A typographical error on page 11, line 165 has been corrected by removing the underline formatting from the period; the period was in the existing text. Also, in a second correction the list of amended sections on page 1 has been amended to remove references to Division 7.3 and Section 7.3.1, which were not changed in the adopted ordinance.*

**SECOND CORRECTED**
Ordinance No.: 19-17
Zoning Text Amendment No.: 19-07
Concerning: Telecommunications Towers – Limited Use
Draft No. & Date: 7 – 7/15/2021
Introduced: October 1, 2019
Public Hearing: November 19, 2019
Adopted: July 27, 2021
Effective: August 16, 2021

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

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Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers Albornoz and Rice

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

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

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

DIVISION 3.1. "Use Table"
Section 3.1.6. "Use Table"
DIVISION 3.5. "Commercial Uses"
Section 3.5.2. "Communication Facility"

| | |
|---|---|
| ***EXPLANATION:*** | ***Boldface*** *indicates a Heading or a defined term.*<br>*Underlining indicates text that is added to existing law by the original text amendment.*<br>***[****Single boldface brackets****]*** *indicate text that is deleted from existing law by original text amendment.*<br>*Double underlining indicates text that is added to the text amendment by amendment.*<br>***[[****Double boldface brackets****]]*** *indicate text that is deleted from the text amendment by amendment.*<br>* * * *indicates existing law unaffected by the text amendment.* |

**OPINION**

Zoning Text Amendment (ZTA) 19-07, lead sponsor Councilmember Riemer, co-sponsors Councilmembers Albornoz and Rice, was introduced on October 1, 2019.

ZTA 19-07 will allow certain telecommunications towers as a limited or conditional use in certain residential zones; revise the standards for telecommunications towers allowed as a limited or conditional use; revise the conditional use findings required for the replacement of a pre-existing pole; and amend the use requirements to address certain telecommunications towers.

In its report to the Council, the Planning Board recommended approval of ZTA 19-07 with amendments to increase Planning staff involvement, clarification of volume and height measurements, and the timing of applications for consolidated processing.

The Council's public hearing was on November 19, 2019. Most of the public testimony was in opposition and expressed concerns about RF emissions, Planning Staff involvement, lack of notice and public participation, post-construction inspection, the Tower Committee, an increase in energy use, a reduction in property values, and the effect on minority communities. Testimony in support refuted the claims about health effects and supported better broadband coverage in the County. Some testimony was generally in support but expressed concern that it was still too restrictive in light of the FCC Order. The Council also received significant written testimony in the years between introduction of ZTA 19-07 and its adoption.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation. The PHED Committee held worksessions on January 23, 2020; February 10, 2021; and March 10, 2021. The PHED Committee recommended approval of ZTA 19-07 with several amendments. Those amendments were:

- Reduce the setback for a limited use from 60 feet to 30 feet (3-0);
- Modified conditional use process for all poles under the 30-foot setback (3-0);
- A "waiver and objection" process for a height up to 50 feet where other limited use setback requirements are met (3-0);
- A "waiver and objection" process for all new poles (2-1);

- Under the "waiver and objection" process, for notice to be sent to all property owners and civic associations within 300 feet; and for standing for objections to be limited to those within 300 feet (3-0); and
- Pole proliferation language—that a small wireless facility should not be located within 150 feet of a facility occupied or controlled by the same carrier (3-0).

The full Council had worksessions on June 29, 2021; July 13, 2021; and July 20, 2021. During the worksessions, the Council discussed but did not approve amendments proposed by Councilmember Katz and Council President Hucker that used a tier approach to setbacks based on speed limit and the type of road, respectively. The Council approved various amendments proposed by Councilmembers Friedson, Navarro, Reimer, and Rice. These amendments addressed tree loss minimization, pole proliferation, preferential placement, and height.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 19-07 will be approved as amended.

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-3.1 is amended as follows:**

## DIVISION 3.1. Use Table

* * *

## Section 3.1.6. Use Table

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

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

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

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

**DIVISION 3.5. Commercial Uses**

* * *

**Section 3.5.2. Communication Facility**

* * *

C. Telecommunications Tower

* * *

2. Use Standards

* * *

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

i. Any building permit application to the Department of Permitting Services **[[**concerning**]]** for the construction of a Telecommunications Tower must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the building permit application.

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

iii. In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower must be at least **[[**60**]]** 30 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section 4.1.7.B.5.

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

**[**ii**]**v. A replacement **[[**The**]]** tower must be located:

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

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

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

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

**[**(e)**]**(d) in a manner that complies with streetlight maintenance requirements as determined by the Department of Transportation**[[**.**]]**;

(e) at least 150 feet from the nearest antenna occupied or controlled by the same carrier; and

(f) whenever it is legally and technically feasible, replacement poles should replace pre-existing poles that are located closest to intersections, closest to property lines between dwellings, along the non-front-facing side of residential properties, or along abutting properties used for a non-residential purpose. In addition, the replacement towers must be at least 5 feet from the area between two parallel lines extending from the sides of a residential front door. If the applicant cannot meet the foregoing standards, the applicant must include in their application an affidavit proving that either permission from the pole owner cannot be obtained or service cannot be provided using a pole at an alternate location.

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

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

(a) in the Commercial/Residential, Industrial, and Employment zones, for streetlights, the height of the pole that is being replaced or the height of the tallest streetlight pole within 50 feet, whichever is greater:

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

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

(b) 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; and

**[[**(b)**]]**(c) for utility poles and parking lot lights, the height of the pre-existing utility or parking lot light pole plus 10 feet.

**[**v**]**viii. The tower must be the same color as the pre-existing pole.

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

**[**vii**]**x. Any equipment cabinet:

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

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

(c) must be the same color or pattern as the pre-existing tower**[**, except as provided in Section 59.3.5.2.C.2.b.vii(d)**]** , except as provided in Section 3.5.2.C.b.x(d); and

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

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

**[**ix**]**xii. The design of a replacement tower located in a public right-of-way, including the footer and the replacement streetlight, must be approved by the Department of Transportation.

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

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

**[**xii**]**xv. The owner of the tower **[**or the antenna attached to the tower**]** must maintain **[[**their**]]** the tower**[**,**]**. The

owner of the antenna must maintain the **[**antennas,**]** antenna and equipment in a safe condition**[**,**]**. Both owners must remove graffiti**[**,**]** and repair damage **[[**from their**]]** to the facility.

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

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

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

* * *

d. In the Agricultural, Rural Residential, and Residential zones, where a Telecommunications Tower **[[**that is proposed to be less than 50 feet in height does not meet the limited use standards under Subsection 3.5.2.C.2.a**]]** is proposed to be less than 30 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section 4.1.7.B.5, it may be permitted by the Hearing Examiner as a conditional use without regard to Section 7.3.1 only if the following procedures and standards are satisfied:

i. An application must include:

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

(b) fees as approved by the District Council;

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

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

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

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

(g) a list of all property owners, homeowners associations, civic associations, condominium associations, and renter associations within 300 feet of the proposed tower;

(h) plans showing height and architectural design of the tower and cabinets, including color materials, and any proposed landscaping and lighting;

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

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

ii. Before the Hearing Examiner reviews any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The Transmission Facility

Coordinating Group must **[[**declare whether the application is complete,**]]** verify the information in the draft application**[[,]]** and must issue a recommendation within 20 days of accepting a complete Telecommunications Tower application. The applicant for a conditional use must file a complete copy of the recommendation from the Transmission Facility Coordinating Group with the Hearing Examiner at least **[[**30**]]** 5 days before the date set for the public hearing. The Transmission Facility Coordinating Group recommendation must have been made within 90 days of its submission to the Hearing Examiner.

iii. Upon receipt of the Transmission Facility Coordinating Group recommendation, the applicant must submit an initial application to the Planning Director for approval of completeness, under Section 7.3.1.B.3. The Planning Director must review the application for completeness within 10 days after receipt.

**[[**iii**]]**iv. The Hearing Examiner must schedule a public hearing to begin within 30 days after the date a complete application is accepted by the Hearing Examiner.

(a) Within 10 days of when an application is accepted, the Office of Zoning and Administrative Hearings must notify the municipality where the proposed tower will be located, as well as all property owners, homeowners associations, civic associations, condominium associations, and renter

associations within 300 feet of the **[[**application**]]** proposed tower of:

(1) the filed application;

(2) the hearing date; and

(3) information on changes to the hearing date or the consolidation found on the Office of Zoning and Administrative Hearing's website.

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

(b) The Hearing Examiner may postpone the public hearing for up to 30 days at the request of the applicant and must post notice on the website of the Office of Zoning and Administrative Hearings of any changes to the application, the application schedule, or consolidation of multiple applications.

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

**[[**iv**]]**v. **[[**A**]]** The setback for a Telecommunications Tower must be **[[**set back, as**]]** measured from the base of the support structure.

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

**[[**(b) if**]]** If the Hearing Examiner determines that additional height and reduced setback are needed to provide service or a reduced setback or increased height will allow the support structure to be located on the property in a less visually obtrusive location, the Hearing Examiner may reduce the setback requirement **[[**to at least 30 feet**]]** or increase the height up to 50 feet. In making this determination, the Hearing Examiner must consider the height of the structure, topography, existing tree coverage and vegetation, proximity to nearby residential properties, and visibility from the street.

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

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

coverage and vegetation**[[,]]** and design and presence of streetlight, utility, or parking lot poles.

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

i. All applications must be filed within 30 days of **[[**each other**]]** the initial application to be consolidated and be accompanied by a motion for consolidation.

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

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

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

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

vi. The Hearing Examiner may order a consolidated hearing if the Examiner finds that a consolidated hearing will more fairly and efficiently resolve the matters at issue.

vii. If the motion to consolidate is granted, the applicant and opposition must include all proposed hearing exhibits with their pre-hearing statements.

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

f. Where a proposed Telecommunications Tower does not meet the limited use standards because it is taller than allowed under Section 3.5.2.C.2.b.vii or where there is no pre-existing or replacement pole so a new pole must be constructed, but otherwise meets the limited use standards under Section 3.5.2.C.2.b, the applicant may request a waiver from the Office of Zoning and Administrative Hearings. The application must meet the requirements of Sections 3.5.2.c.2.d.1 and 3.5.2.c.2.d.3.

i. A new pole may only be constructed if there is no utility pole or streetlight pole within 150 feet of the proposed location that could be used as a pre-existing pole or replacement tower.

ii. The applicant must notify by mail the municipality where the proposed tower will be located, as well as all property owners, homeowners associations, civic associations, condominium associations, and renter associations within 300 feet of the proposed tower. Proof of when notice was mailed must be submitted to the Office of Zoning and

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

iii. Upon receipt of notice of a waiver, the municipality, a property owner, homeowners association, civic association, condominium association, or renter association within 300 feet of the proposed tower may file an objection and request a hearing with the Office of Zoning and Administrative Hearings. An objection must be filed within 20 days of when notice was mailed.

iv. If an objection is received, the Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 10 days after the objection is received and conduct any such hearing within 30 days of the date the objection is received. Waivers and objections may be consolidated under Section 3.5.2.c.2.e.5.

v. The Hearing Examiner may only decide the issues raised by the waiver or objection. The Hearing Examiner will determine whether the proposed location minimizes visual impact as compared to any alternative location where the new tower could be located to provide service, and consistent with the Hearing Examiner's authority under Section 3.5.2.c.2.d. The maximum height allowed is 50 feet.

vi. The Hearing Examiner must issue a decision within 10 days of the hearing. If no objection is filed, the Hearing Examiner may issue a decision without a public hearing.

vii. The height of a new pole, including any attached antennas and equipment, must not be taller than the height of the nearest pre-existing streetlight or utility pole:

(a) 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

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

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

* * *

**Sec. 3. Tree Loss Minimization**. The County Executive must include tree loss minimization language in all franchise and license agreements signed after the effective date of ZTA 19-07. Critical damage to the root zones of trees as well as excessive pruning should be avoided in the installation of telecommunications towers, regardless of whether they are installed on a new, pre-existing, or replacement pole.

* * *

**Sec. [[3]]4. Effective date**. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

PHED Committee #2
October 3, 2022

**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***

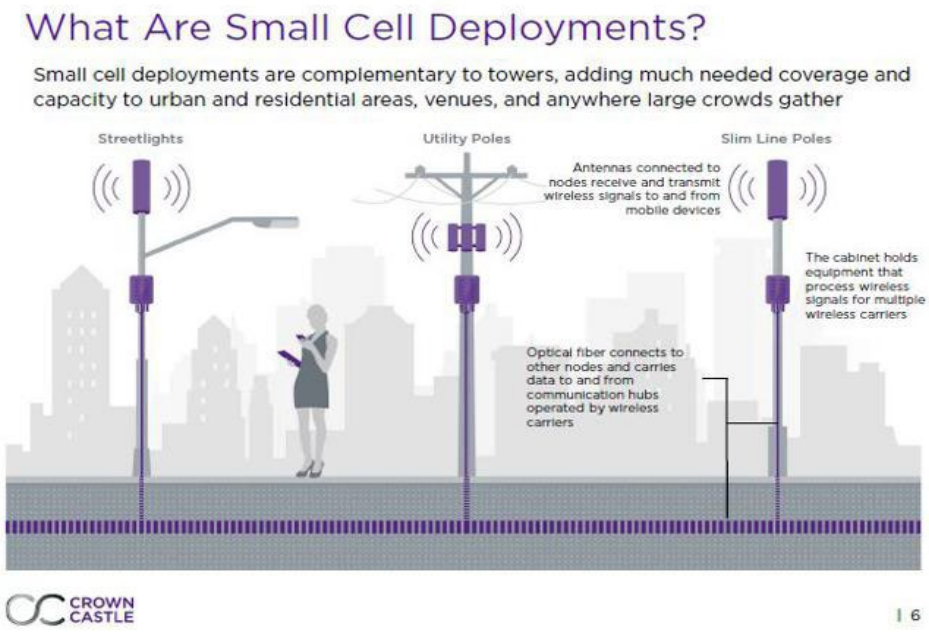
Under Section 3.5.14.C. of the Zoning Ordinance, an "Antenna on Existing Structure" is defined as "one or more antennas attached to an existing support structure, including a building, a transmission tower, a monopole, a light pole, a utility pole, a water tank, a silo, a barn, a sign, or an overhead 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_4D.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.




***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.

> …[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:



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

Item#1
October 10, 2022
**Worksession Addendum**

**M E M O R A N D U M**

October 6, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

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

PURPOSE: Worksession #2 **- 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.

This packet contains: Circle #

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.