

Action

MEMORANDUM

October 19, 2018

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst 

SUBJECT: Zoning Text Amendment 18-11, Telecommunications Towers – Approval Standards

PURPOSE: Approve, disapprove, or approve with amendments the recommendation of the PHED Committee to approve ZTA 18-11 with amendments

Expected Participants:

Joy Nurmi, Special Assistant to the County Executive
Mitsuko Herrera, Project Manager, ultraMontgomery
Diane Schwartz-Jones, Director, Department of Permitting Services (DPS)
Ehsan Motazedi, Division Chief, DPS
Atiq Panjshiri, Manager, Right-of-Way Permitting, DPS
Pam Dunn, Chief, Functional Planning & Policy (FP & P), Maryland-National Park & Planning Commission (M-NCPPC)
Greg Russ, Planner Coordinator, FP & P, M-NCPPC

PHED Committee Recommendation: On October 1, 2018, the Committee (3-0) recommended approval of ZTA 18-11 with the following amendments:

- 1) For facilities that require a conditional use (where existing poles are less than 22 feet tall), require a 60-foot setback subject to the Hearing Examiner's determination that 30 feet is acceptable.
- 2) Require more assurance that poles replaced for telecommunications purposes can and will be removed.
- 3) Require that DPS has all the information that is in the application submitted to the Transmission Facility Coordinating Group (TFCG).
- 4) Make 2 editorial changes recommended by the Executive:
 - a) Correct the name of the TFCG
 - b) Clarify the provision under which the Hearing Examiner is examining the new facility.

Executive's summary of changes in ZTA 18-11 as introduced

Telecommunications Towers would be Allowed as Limited Use in Residential Areas

- To replace poles taller than 22 feet and at least 30 feet from houses
 - The height of a replacement structure would be limited to 6 additional feet for streetlights and 10 additional feet for utility poles; additional minimal height increase would be allowed for utility poles to comply with safety code
- As colocations attached to existing structures, if 30 feet from houses
- On building roofs or facades, if the building is a minimum of 35 feet (three stories) and the building is a minimum of 10 feet from a single-family detached house, duplex, or townhouse.

Telecommunications Towers would be Allowed as Conditional Use in Residential Areas

- To replace poles shorter than 22 feet tall and at least 30 feet from houses
 - The replacement pole is limited to 22 feet (8-foot increase)
- A hearing examiner could:
 - review to determine it is the least visually-obtrusive pole within 400 feet
 - reduce the setback to 10 feet if there is no other pole available within 800 feet that meets a 30-foot setback.

Office of Zoning and Administrative Hearings Conditional Use Changes

- Narrows the criteria for what the Hearing Examiner reviews to determine compatibility
- Removes oral appeal of Hearing Examiner's decision to Board of Appeals. This is needed to help the County meet the federal shot clock and prevent preemptory zoning approvals under federal law ("deemed granted")
 - The decision can still be appealed to the Circuit Court.

Other Changes and Clarifications

- Equipment size increased from 12 cubic feet to 20 cubic feet for equipment in pole base
- The setback is measured from the pole to the building/house and excludes porches and similar permitted setback encroachments.

Known amendments for the Council's consideration

1. **Councilmember Hucker** recommends 2 amendments to ZTA 18-11:
 - A. Require the Hearing Examiner to address all replacement poles other than utility poles as a conditional use. (The PHED Committee recommendation to have a 60-foot setback standard, with a reduction based on need, would still be operative.) This would require amending Subsection 3.5.2.C.2.b.ii to read:

In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole must be [[at least 22 feet tall]] a utility pole, and the pre-existing pole and replacement tower must be at least 30 feet from a dwelling, excluding any building encroachments allowed under Section 4.1.7.B.5.
 - B. ZTA 18-11 as introduced includes standards for conditional use approval:

To approve a conditional use application for a Telecommunications Tower that replaces a pre-existing streetlight, utility, or parking lot light pole, the Hearing Examiner must find that the tower:

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

In addition to the prohibition on replacement poles abutting or confronting a historic resource, Councilmember Huckler would also prohibit a replacement pole that abuts or confronts:

- any educational institution;
- a daycare center;
- a religious assembly; or
- a public park.

Staff would just comment that the proposal to require conditional use approval to replace taller street light poles will be burdensome on the applicant and the Hearing Examiner. The scope of change presented by a tall replacement pole with another pole possibly 10 feet taller hardly warrants a hearing on compatibility.

The additional sites excluded from the possibility of a replacement of a pole (schools, child care centers, places of religious assembly, or parks) would result in more poles in front of single-unit dwellings.

2. **Councilmember Berliner** will propose two amendments to ZTA 18-11 concerning pre-existing utility poles and taller (22 feet or more) street lights, where replacement poles would be allowed as a limited use:¹
 - A. Retain a 60-foot setback from a dwelling as the standard for both limited and conditional uses; however, if the applicant demonstrates to the TFCG that improvements to service area or capacity cannot be achieved by using a pole at least

¹ 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: ...

STARTING ON LINE 36 (concerning poles allowed as a limited use):

ii. In the Agricultural, Rural Residential, and Residential zones,

- (a) the pre-existing pole must be at least 22 feet tall, and the pre-existing pole and replacement tower must be at least [[30]] 60 feet from a dwelling, excluding any building encroachments allowed under Section 4.1.7.B.5; however, if the applicant demonstrates to the Transmission Facility Coordinating Group that improvements to service area or capacity cannot be achieved by using a pole at least 60 feet from a dwelling, then the replacement pole where the Telecommunications Tower is allowed as a limited use, must be no less than 30 feet from a dwelling.
- (b) before an application for any Telecommunication Tower to replace a pre-existing pole is submitted to the Transmission Facility Coordinating Group, the applicant must:
 - (1) send notice of the application to any abutting property owner, confronting property owner, and any civic or homeowners association registered with the Planning Board, in which the site of the pole is located; and
 - (2) post notice of the application and contact information on the pole to be replaced.

* * *

STARTING ON LINE 187 (concerning poles allowed as a conditional use):

(b) the Hearing Examiner may reduce the setback requirement to not less than [[10]] 30 feet, if:

- (1) the [[Telecommunications Transmission Facilities Coordinating Group determines that improvements to service area or capacity cannot be achieved by using a pre-existing streetlight, utility, or parking lot pole within 800 feet of the proposed tower under Section 3.5.2.C.2.b or Section 3.5.2.C.14.c]] applicant demonstrates to the Transmission Facility Coordinating Group that improvements to service area or capacity cannot be achieved by using a pole at least 60 feet from a dwelling; or

- 60 feet from a dwelling, then the replacement pole, where the Telecommunications Tower is allowed as a limited use, must be no less than 30 feet from a dwelling.
- B. Require the applicant to post notice of the application on the pole to be replaced and send notice to property owners and civic associations.

These amendments are in response to community concerns in older, established communities where limited use will apply.

Staff supports this amendment but also supports amending the conditional use provisions (lines 189-194 of the PHED-recommended ZTA) to be consistent. As recommended by the PHED Committee, a 60-foot setback is required unless “the Transmission Facility Coordinating Group **determines** that improvements to service area or capacity cannot be achieved by using a pre-existing streetlight, utility, or parking lot pole within 800 feet of the proposed tower”. The requirement in the proposed amendment (the applicant must demonstrate to the Transmission Facility Coordinating Group that improvements to service area or capacity cannot be achieved by using a pole at least 60 feet from a dwelling) appropriately puts the burden on the applicant.

3. **Councilmember Katz** will put forward 2 amendments:
- A. Measure setbacks from the closest part of a dwelling to the base of the pole (by deleting the phrase “excluding any building encroachments allowed under Section 4.1.7.B.5” from lines 39 and 40 of the PHED-recommended draft ZTA). The encroachments that are excluded by the PHED recommendation are any porch, deck, terrace, steps, stoop, bay window, oriel², entrance, vestibule, or balcony.
- B. Add a requirement for the applicant to conduct a community meeting after an application for a replacement pole is submitted, but before the Hearing Examiner conducts a public hearing.³

Staff does not support this amendment. Under the new FCC ruling, the 90-day shot clock for the approval of a new pole would include any pre-application requirements. A public meeting would first require notice of the meeting, with time between the notice of the meeting and the meeting itself. It would also include time after the community meeting but before the application is submitted, to allow reaction time by the applicant. Even if notice of a community meeting is required 14 days before a meeting and an applicant may only submit an application 14 days after the meeting, there would only be 29 days. Review by the TFCG can be as long as 34 days. Leaving the Department of Permitting Services 24 days within the shot clock is too close for comfort.

² A bay window that is cantilevered above the ground.

³ STARTING ON LINE 150:

- i. Before the Hearing Examiner approves any conditional use for a Telecommunications Tower,
- (a) The applicant must provide proof that the applicant conducted a community meeting to provide notice and receive comments. The community meeting must be conducted at least 14 days before the hearing on the conditional use; and
- (b) the proposed facility must be reviewed by the [[Telecommunications]] Transmission [[Facilities]] Facility Coordinating Group. The applicant for a conditional use must file a complete copy of a recommendation from the [[Telecommunications]] Transmission [[Facilities]] Facility Coordinating Group with the Hearing Examiner at least 30 days before the date set for the public hearing. The recommendation must be no more than 90 days old at the time the conditional use application is filed.

In any event, if a limited use is the subject of a community meeting, the only matters at issue are the standards that need to be satisfied (are the height, equipment size, location, and setback requirements being met?).

Comments on suggestions from Sue Present

Some Councilmembers asked for comments from Sue Present. Those comments are included in the attachments to this memorandum. TheComments from the Executive includes recommended amendments that the Council may wish to consider.

Background

Please refer to the memorandum for the Council’s October 9, 2018 agenda on ZTA 18-11.

<u>This packet contains</u>	<u>© number</u>
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Zoning Text Amendment No.: 18-11
Concerning: Telecommunications
 Towers – Limited Use
Draft No. & Date: 2 – 10/2/18
Introduced: July 24, 2018
Public Hearing: September 25, 2018
Adopted:
Effective:
Ordinance No.:

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

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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

DIVISION 3.1. “Use Table”
Section 3.1.6. “Use Table”
DIVISION 3.5. “Commercial Uses”
Section 3.5.2. “Communication Facility”
Section 3.5.14. “Accessory Commercial Uses”
DIVISION 4.1. “Rules for All Zones”
Section 4.1.7. “Measurements and Exceptions”
DIVISION 7.3. “Regulatory Approvals”
Section 7.3.1. “Conditional Use”

EXPLANATION: *Boldface indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment or by ZTA 14-09.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment or text added by this amendment in addition to ZTA 14-09.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment or indicates a change from ZTA 14-09.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment No. 18-11 was introduced on July 24, 2018. ZTA 18-11 would add definitions, allow certain telecommunications towers as a conditional use in certain residential zones, revise the standards for telecommunications towers allowed as a limited or conditional use, revise the conditional use findings required for the replacement of a pre-existing pole, and exempt certain antennas from height limits.

ZTA 18-11 would, in part, allow replacements taller than 22 feet to be approved as a limited use and short poles to be approved as a conditional use.

The Planning Board recommended approval of ZTA 18-11. The Board believes that ZTA 18-11 strikes a balance between addressing the community's interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry, while also working to protect the community's interest in managing commercial use of public property (rights-of-way) and maintaining attractive and safe roads and neighborhoods. Because technology is constantly evolving, the Board believes that periodic review of these Code provisions should be established as part of the approval procedures of ZTA 18-11.

The Council conducted a public hearing on ZTA 18-11 on September 25, 2018. Forty-four people signed up to speak; seven did not participate at the hearing. Most (25 out of 34) questioned the wisdom of making any changes to the Zoning Ordinance to make approvals of small cell antennas easier or possible without notice to property owners. And most (16 of 25) who spoke in opposition expressed concern for the adverse health effects of RF transmissions. Some questioned the need for more equipment in the right-of-way or near homes and objected to its negative effect on property values. Some objected to the reduced setbacks—with poles as tall as 22 feet—as incompatible with residential neighborhoods. Some objected to allowing replacement poles as a limited use without notice or public hearing (for poles taller than 22 feet). Some people object to the bulk of equipment allowed in the rights-of-way. Some recommended a comprehensive redraft of ZTA 18-11. Those comprehensive changes also included changes to the functions of the People's Counsel and provisions in Chapter 8 (Building Permits).

Those who favored the approval of ZTA 18-11 positively anticipate faster and more comprehensive wireless service that may be offered by 5G. In their opinion, the availability of

such service adds value to their homes and businesses; ZTA 18-11 would allow the industry to accommodate expected demand for wireless services.

The Council referred the text amendment to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on October 1, 2018. The Committee recommended approving ZTA 18-11 with amendments.

The Committee (3-0) recommended approval of ZTA 18-11 with the following amendments:

- 1) For facilities that require a conditional use (where existing poles are less than 22 feet tall), require a 60-foot setback subject to the Hearing Examiner's determination that 30 feet is acceptable.
- 2) Require more assurance that DPS permitting limits are followed.
- 3) Require that DPS has all of the information that is in the application submitted to the Transmission Facility Coordinating Group (TFCG).
- 4) Make 2 editorial changes recommended by the Executive:
 - a) Correct the name of the TFCG.
 - b) Clarify the provision under which the Hearing Examiner is examining the new facility.

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. 18-11 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:

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

9 **DIVISION 3.5. Commercial Uses**

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11 **Section 3.5.2. Communication Facility**

12 * * *

13 **C. Telecommunications Tower**

14 1. Defined

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

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

23 2. Use Standards

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90 [vii]ix. Any equipment cabinet:
91 (a) must not exceed a maximum volume of 12 cubic
92 feet and be installed a minimum of 12 feet above
93 ground if not installed in the Telecommunications
94 Tower base or at ground level;

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

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

103 [(c)](d) must be the same color or pattern as the pre-
104 existing tower, except as provided in [Section
105 59.3.5.2.C.2.b.vii(d)] Section 59.3.5.2.C.2.b.ix(e);

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

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

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

- 114 [x]xii. The noise level of any fans must comply with Chapter
115 31B.
- 116 [xi]xiii. Signs or illumination on the antennas or support
117 structure, except a streetlight, are prohibited unless
118 required by the Federal Communications Commission or
119 the County.
- 120 [xii]xiv. The owner of the tower or the antenna attached to
121 the tower must maintain their tower, antennas, and
122 equipment in a safe condition, remove graffiti, and repair
123 damage.
- 124 [xiii]xv. If a tower does not have a streetlight, the tower
125 must be removed at the cost of the owner of the tower
126 when the tower is no longer in use for more than 12
127 months. Any antenna and equipment must be removed at
128 the cost of the owner of the antenna and equipment when
129 the antennas and equipment are no longer in use for more
130 than 12 months. The [[Telecommunications]]
131 Transmission [[Facilities]] Facility Coordinating Group
132 must be notified within 30 days of the removal.
- 133 xvi. Where a Telecommunications Tower is allowed as a
134 limited use, an applicant who files a permit application
135 with the Department of Permitting Services for such use
136 must file a complete copy of a recommendation from the
137 Transmission Facility Coordinating Group with the
138 permit application.
- 139 xvii. The owner of any wires, cable, or equipment on a pre-
140 existing utility pole, streetlight, or parking lot light pole

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that is replaced under this Section must remove their lines or equipment within 60 days of the installation of the replacement utility pole, streetlight, or parking lot light pole.

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

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

* * *

d. Where a Telecommunications Tower is allowed as a conditional use and the tower would replace a pre-existing utility pole, streetlight pole, or site plan approved parking lot light pole, it may be permitted by the Hearing Examiner under Section

167 3.5.2.C.2.b – Limited Use, Section 7.3.1 – Conditional Use, and
168 the following standards:

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

180 ii. Notwithstanding Section 3.5.2.C.2.b.ii, a
181 Telecommunications Tower must be set back, as
182 measured from the base of the support structure, as
183 follows:

184 (a) not less than [[30]] 60 feet from a dwelling,
185 excluding encroachments that are allowed under
186 Section 4.1.7.B.5; or

187 (b) the Hearing Examiner may reduce the setback
188 requirement to not less than [[10]] 30 feet, if:

189 (1) the [[Telecommunications]] Transmission
190 [[Facilities]] Facility Coordinating Group
191 determines that improvements to service
192 area or capacity cannot be achieved by using
193 a pre-existing streetlight, utility, or parking

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lot pole within 800 feet of the proposed tower under Section 3.5.2.C.2.b or Section ~~[[3.5.2.C.14.c]] 3.5.14.C.2; or~~
(2) the Hearing Examiner determines that a reduced setback will allow the support structure to be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing tree coverage and vegetation, proximity to nearby residential properties, and visibility from the street.

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

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Section 3.5.14. Accessory Commercial Uses

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C. Antenna on Existing Structure

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2. Use Standards

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

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

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228 iii. If an equipment cabinet services an Antenna on Existing
229 Structure and the Existing Structure is a utility pole,
230 streetlight pole, or site plan approved parking lot light
231 pole, the equipment cabinet:

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

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

239 (c) must be the same color or pattern as the existing
240 structure, unless it is a stealth design approved by
241 the Department of Transportation.

242 * * *

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

246 i. An antenna is prohibited:

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- (a) on or within 10 feet of any detached house, duplex, or townhouse building type or an accessory structure associated with either building type; and
 - (b) in any scenic setback indicated in a master plan.
- ii. An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop, if a building is a minimum height of:
- (a) ~~[50]~~ 35 feet in any Residential Detached, Rural Residential, or Planned Unit Development zone, and must be mounted in an antenna enclosure the same color or design as the building; or
 - (b) 20 feet in any Residential Multi-Unit, Commercial/Residential, Employment, or Industrial zone, and must be mounted in an antenna enclosure the same color or design as the building.
- ii. An antenna may be installed on the facade of a building at a minimum height of:
- (a) ~~[50]~~ 35 feet in ~~[a]~~ any Residential Detached, Rural Residential, or Planned Unit Development zone and must be mounted in an antenna enclosure the same color or design as the building; or
 - (b) ~~[30]~~ 20 feet in any Residential Multi-Unit, Commercial/Residential, Employment, ~~[and]~~ or Industrial zone and must be mounted in an antenna enclosure the same color or design as the building.

* * *

- 274 e. An antenna classified as Standard A under Section 3.5.2.C.1.b
- 275 may be installed on any existing structure located in the right-
- 276 of-way in any zone where an antenna on an existing structure is
- 277 allowed, if:
 - 278 i. the antenna is in an enclosure and the enclosure is the
 - 279 same color or pattern as the existing structure;
 - 280 ii. the antenna and the antenna enclosure [is] are installed at
 - 281 a minimum height of 15 feet above the ground; and
 - 282 iii. the structure is at least [~~60~~] 30 feet from a dwelling in a
 - 283 Rural Residential, Residential, or Planned Unit
 - 284 Development zone, and at least 10 feet from any
 - 285 [structure] building in any Commercial/Residential,
 - 286 Employment, or Industrial zone.

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

DIVISION 4.1. Rules for All Zones

* * *

Section 4.1.7. Measurement and Exceptions

* * *

C. Height

* * *

3. Height Encroachments

Any height encroachment not specifically listed is prohibited.

* * *

- 297 b. The maximum height does not apply to solar panels and any
- 298 roof structure listed in Section 4.1.7.C.3.a or Antenna on
- 299 Existing [[Structures]] Structure as defined in Section
- 300 [[3.5.14.C.2.d]] 3.5.14.C, except that in the TLD, TMD, THD,

301 and R-30 zones, an air conditioning unit or similar structure or
302 mechanical appurtenance may exceed the established height
303 limit by a maximum of 8 feet.

304 * * *

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

306 **DIVISION 7.3. Regulatory Approvals**

307 **Section 7.3.1. Conditional Use**

308 * * *

309 B. Application Requirements

310 * * *

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

312 * * *

313 m. for a [telecommunication tower] Telecommunications Tower
314 application[,];

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

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

321 * * *

322 E. Necessary Findings

323 * * *

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

- 328 a. meets the requirements of Section 3.5.2.C.2.d;
- 329 b. is compatible with or can be made compatible with nearby
- 330 residential property by the use of screening, coloring, stealth
- 331 design, or other visual mitigation options after considering the
- 332 height of the structure, topography, existing vegetation and
- 333 environmental features; and
- 334 c. does not abut or confront an individual resource in the Master
- 335 Plan for Historic Preservation.

336 * * *

337 **F. Decision**

- 338 1. Hearing Examiner

339 * * *

- 340 c. [Any] Except for decisions relating to a Telecommunications
- 341 Tower decided under Section 59.3.5.2.C.2.d, any party of
- 342 record may appeal the Hearing Examiner’s decision by filing a
- 343 written request to present oral argument before the Board of
- 344 Appeals within 10 days after the Office of Zoning and
- 345 Administrative Hearings issues the Hearing Examiner’s report
- 346 and decision. The filing of such a request transfers jurisdiction
- 347 over the matter while on appeal from the Hearing Examiner to
- 348 the Board of Appeals.

349 * * *

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

355 * * *

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

358

359 This is a correct copy of Council action.

360

361

362 Megan Davey Limarzi, Esq.
363 Clerk of the Council



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 19, 2018

TO: Hans Riemer, President
Montgomery County Council

FROM: Isiah Leggett 
County Executive

SUBJECT: Telecommunications Towers – Approval Standards

Attached is a Zoning Text Amendment (ZTA) for the Council's consideration that would amend zoning regulations related to placement of small cell antennas in residential areas. As you are aware, technology in the wireless industry continues to evolve, and while we all welcome the coming transformation that allows us to be one of the most digitally connected Counties, there must be a balance between how small cell antennas are deployed and how to protect our residential communities and ensure compatibility.

Given the unprecedented state and federal legislative and regulatory efforts to preempt the authority of local governments to manage the placement and size of telecommunications towers in the public rights-of-way, it is important that we enact local solutions to address small cell deployments expeditiously. As you know, State preemption legislation was introduced in the last Maryland General Assembly session, and we anticipate that it will be reintroduced in the next session. Last week, the Federal Communications Commission (FCC) issued an Order for consideration at its August 2018 meeting to preempt "express and de facto moratoria" on deployment of small cells and announced an attempt to further preempt local government authority to regulate communications facilities in the public rights-of-way. The best defense we have against these intrusions into local governance is to demonstrate that no further state or federal preemption is necessary because we have already provided a balanced local solution. Preemption will certainly lead to less local input and an inability to protect residents.

Over the past year and a half, I sponsored four public forums and my staff has reached out to numerous residents, both individually and in small groups, to gather input on proposed changes to the zoning code regarding deployment of small cell antennas in residential neighborhoods. The proposed ZTA that was originally shared with the public has significantly

Hans Riemer, Council President
July 19, 2018
Page 2

evolved to reflect the many views and concerns of community members, and, as a result, will include opportunities for public notice and input, better enforcement mechanisms, and requirements to ensure that the small cell antennas will be compatible with the communities where they are located.

To this end, this ZTA incentivizes deployment on existing utility poles and on the tall light poles in the County's rights-of-way that are found along our wider thoroughfares. The ZTA also retains the Conditional Use process with a public hearing for poles smaller than twenty-two feet, which are typically located in residential communities with underground utilities.

Small cell antennas on existing streetlights, utility, and parking lot light poles taller than twenty-two feet would be able to proceed using the Limited Use process if they meet specific conditions. These taller poles are typically farther from residences, often located on wider streets, and usually require little to no height increase. Because the shorter poles will always require a height increase and are typically in neighborhoods with underground utilities where there are no existing tall utility poles, they are less likely to be compatible with neighborhoods and should require a Conditional Use. Retaining a process to allow greater residential input into placement and visual appearance, while allowing streamlined access to taller poles, strikes a reasonable balance between the concerns of residents and our interest in ensuring access to robust wireless broadband services.

Residents have also expressed concerns about the health effects of radio frequency (RF) emissions from antennas. As you are aware from our effort on ZTA 18-02, which regulates small cell deployment in our commercial and industrial zones, federal law prohibits the County from regulating on the basis of RF emissions. However, I and my staff will continue to work with your office and other Councilmembers and our state and Congressional delegations to address the FCC's failure of leadership on this important issue.

I look forward to working with the Council to ensure a successful solution to the deployment of small cell technology in our County.

HL:la

Attachment



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

September 24, 2018

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 18-11

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 18-11 (ZTA 18-11) at its regular meeting on September 20, 2018. By a vote of 3:0 (Chair Anderson and Commissioner Dreyfuss absent from the hearing), the Planning Board recommends approval of the amendment to add definitions; allow certain telecommunications towers as a conditional use in certain residential zones; revise the standards for telecommunications towers allowed as a limited or conditional use; exempt certain antennas from height limits; revise the conditional use findings required for the replacement of a pre-existing pole; and generally amend conditional use requirements to address certain telecommunications towers. The Board believes that ZTA 18-11 strikes a balance in addressing the community's interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community's interest in managing commercial use of public property (rights-of-way) and maintaining attractive and safe roads and neighborhoods. The inclusion of a requirement for conditional use approval for replacement of shorter poles makes sense, given that retrofitting them with small cell technology can be more difficult when also trying to establish compatibility with neighborhoods, especially in areas with underground utilities. Further, because technology is constantly evolving, the Board believes that periodic review of these Code provisions should be established as part of the approval procedures of ZTA 18-11.

Zoning Text Amendment 18-02 (adopted May 15, 2018), amended the Zoning Ordinance to allow replacement of pre-existing streetlights, utility poles and site plan-approved parking lot lights in the Commercial/Residential, Employment and Industrial zones. ZTA 18-11 would allow replacement of these same types of pre-existing poles in the Agricultural, Rural Residential and Residential zones as a Limited Use if the pre-existing pole is at least 22 feet tall and 30 feet from a house, or as Conditional Use if the pre-existing pole is shorter than 22 feet and at least 30 feet from a house. The Hearing Examiner must find that the tower is compatible with nearby residential property and is located to minimize its visual impact. To meet federal shot clocks, the Hearing Examiner's decision would be made final action by the County, by removing the right to appeal the Hearing Examiner's decision to the Board of Appeals. Appeal to the Circuit Court would still be permitted.

As proposed, ZTA 18-11:

- Defines enclosure or stealth design;

- Defines the height of a telecommunications tower;
- Does not change the requirements for tall telecommunications towers. In residential areas, these macro towers continue to require a 300-foot setback, and conditional use approval;
- Allows Streetlight, Utility, and Parking Lot Light Poles to be replaced as a Limited Use if the poles are at least 22 feet tall and are at least 30 feet from homes in Residential, Rural Residential, and Agricultural zones;
- Limits the height of a replacement structure to 6 additional feet above the original streetlight pole, when abutting a right-of-way with a paved section width of 65 feet or less, or 15 additional feet for a streetlight pole when abutting a right-of-way with a paved section width greater than 65 feet. Additional height for utility poles and parking lot light poles would be limited to 10 feet. However, additional minimum height would be permitted to comply with the National Electric Safety Code;
- Reduces setbacks from dwellings in residential areas (in Rural Residential, Residential, or Planned Unit Development zones) from 60 feet to 30 feet (to use existing utility poles);
- Lowers the minimum building height for buildings that can be used to attach antennas to, from 50 feet to 35 feet in any Residential Detached, Rural Residential, or Planned Unit Development zone.
- Changes minimum building heights for attaching to building facades to the same as using building roofs – 35 feet in residential; 20 in commercial areas;
- Adds a requirement that the building used to attach antennas to, must be at least 10 feet from a house, duplex or townhouse;
- Allows replacement poles only as a Conditional Use if the pre-existing pole is less than 22 feet in height in Residential Detached, Rural Residential, and Agricultural zones;
- Narrows what the Office of Zoning and Administrative Hearings Hearing Examiner must look at to determine compatibility;
- Removes the right to appeal the Hearing Examiner's decision to the Board of Appeals; and
- Increases to 20 cubic feet the equipment size in the base of a pole.

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 Silver Spring, Maryland, on Thursday, September 20, 2018.


Casey Anderson
Chair

CA:GR



Zoning Text Amendment (ZTA) No. 18-11, Telecommunications Towers – Limited & Conditional Use

BDP

Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174

PD

Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

Completed: 09/13/18

Description

ZTA No. 18-11 amends the Montgomery County Zoning Ordinance to add definitions; allow certain telecommunications towers as a conditional use in certain residential zones; revise the standards for telecommunications towers allowed as a limited or conditional use; exempt certain antennas from height limits; revise the conditional use findings required for the replacement of a pre-existing pole; and generally amend conditional use requirements to address certain telecommunications towers.

Summary

Staff recommends approval of ZTA No. 18-11 to add definitions; allow certain telecommunications towers as a conditional use in certain residential zones; revise the standards for telecommunications towers allowed as a limited or conditional use; exempt certain antennas from height limits; revise the conditional use findings required for the replacement of a pre-existing pole; and generally amend conditional use requirements to address certain telecommunications towers. Staff believes that ZTA 18-11 strikes a balance in addressing the community's interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community's interest in managing commercial use of public property (rights-of-way) and maintaining attractive and safe roads and neighborhoods. The inclusion of a requirement for conditional use approval for replacement of shorter poles makes sense, given that retrofitting them with small cell technology can be more difficult when also trying to establish compatibility with neighborhoods, especially in areas with underground utilities.

Background/Analysis

ZTA 18-02 (Adopted May 15, 2018), amended the Zoning Ordinance to allow replacement of pre-existing streetlights, utility poles and site plan-approved parking lot lights in the Commercial/Residential, Employment and Industrial zones. ZTA 18-11 would allow replacement of these same types of pre-existing poles in the Agricultural, Rural Residential and Residential zones as a Limited Use if the pre-existing pole is at least 22 feet tall and 30 feet from a house, or as Conditional Use if the pre-existing pole is shorter than 22 feet and at least 30 feet from a house. The Hearing Examiner must find that the tower is compatible with nearby residential property and is located to minimize its visual impact. To meet federal shot clocks, the Hearing Examiner's decision would be made final action by the County, by

removing the right to appeal the Hearing Examiner's decision to the Board of Appeals. Appeal to the Circuit Court would still be permitted.

As proposed, ZTA 18-11 adds to or modifies the telecommunication provisions as discussed below:

- Defines Enclosure or stealth design to mean material, or the use of materials, intended to conceal antennas and associated equipment. (*lines 16-18*)
- Defines the height of a Telecommunications Tower as measured from the lowest point of the natural grade of the ground at the base of the pole to the highest point on the tower, including any attached antennas and equipment. (*lines 19-22*)
- ZTA 18-11 does not change the requirements for tall telecommunications towers. In residential areas, these macro towers continue to require a 300-foot setback, conditional use approval, and an Office of Zoning and Administrative Hearing (OZAH) Hearing Examiner's approval may be appealed to the Board of Appeals

REPLACEMENT POLES AS LIMITED USE IN RESIDENTIAL AREAS (Streetlight, Utility, and Parking Lot Light Poles)

- ZTA 18-11 allows these poles to be replaced as a Limited Use if the poles are at least 22 feet tall and are at least 30 feet from homes in Residential, Rural Residential, and Agricultural zones.
 - Sample research determined the 30-foot set back can be met in almost all cases.
 - ZTA 18-02 changed the Zoning Code to allow these poles to be replaced as a Limited Use if they are 10 feet from buildings in Commercial/Residential, Employment and Industrial Zones (no minimum height requirement).
 - Height of a replacement structure would be limited to 6 additional feet for streetlights, when abutting a right-of-way with a paved section width of 65 feet or less, or 15 additional feet for streetlights when abutting a right-of-way with a paved section width greater than 65 feet. Additional height for utility poles and parking lot light poles would be limited to 10 feet. However, additional minimum height would be permitted to comply with the National Electric Safety Code. (*lines 66-84*)
- Setback for Attachments to Existing Poles. ZTA 18-11 reduces setbacks from dwellings in residential areas (in Rural Residential, Residential, or Planned Unit Development zones) from 60 feet to 30 feet (to use existing utility poles). In 2018, the characteristics of emerging 5G and small cell technology require that antennas be located closer to mobile devices, and thus closer to residences and businesses. In ZTA 18-02, the County approved allowing the smallest class of antennas to be located on poles at least 10 feet from buildings in commercial areas. In proposed ZTA 18-11, the County Executive recommends that the smallest class of antennas be allowed if located at least 30 feet from a dwelling in residential neighborhoods. This makes the setback for replacement of preexisting poles the same as the setback to attach to an existing structure that does not require replacement. (*lines 269-273*)

- **Minimum Height for Buildings.** ZTA 18-11 lowers the minimum building height for buildings that can be used to attach antennas to, from 50 feet to 35 feet in any Residential Detached, Rural Residential, or Planned Unit Development zone. *(lines 230-273)*
 - **Facades.** ZTA 18-11 also changes minimum building heights for attaching to building facades to the same as using building roofs – 35 feet in residential; 20 in commercial areas.
 - **Setback.** ZTA 18-11 adds a requirement that the building used to attach antennas to, must be at least 10 feet from a house, duplex or townhouse. This minimum setback was added to address residents' concerns about increase of commercial structures like group/assisted living homes in residential areas.

REPLACEMENT POLES AS CONDITIONAL USE IN RESIDENTIAL AREAS (Streetlight Poles)

ZTA 18-11 will allow replacement poles as a Conditional Use if the pre-existing pole is less than 22 feet in height in Residential Detached, Rural Residential, and Agricultural zones (these shorter poles are typically in neighborhoods with underground utilities). The purpose of requiring conditional use for replacement of poles shorter than 22 feet is that these poles will always require a height increase, and are more difficult to make compatible with neighborhoods, especially in areas with underground utilities. However, under federal law, the County cannot prohibit all deployment of antennas in residential neighborhoods. By having a Hearing Examiner review the proposed location, the intent is to encourage the applicants to select locations that are farther from houses, such as across the street where there are no houses, adjacent to a park or greenway, surrounded by trees that make the antenna less visible, or near an intersection with other large street signs. Also, the purpose of allowing replacement of poles taller than 22 feet as a limited use is to incentivize applicants to select taller poles wherever possible. *(lines 150-191)*

- Maximum height for new replacement pole would be 22 feet (typically, existing pole is 14 feet tall – i.e., new 8-foot increase allowed; this is more than 6-foot increase allowed for taller poles as Limited Use, but taller poles do not need to get much taller to support small cells)
- 30-foot setback, but the Hearing Examiner can reduce the setback to 10 feet if there are no poles nearby that can meet the 30-foot setback requirement. This is a safety value to ensure the County does not prohibit provision of service, but there are very few instances where a pole that meets the 30-foot setback cannot be found.
- Setbacks can also be reduced by the Hearing Examiner to 10 feet if it will make the new telecommunications tower less visually obtrusive.

OZAH CONDITIONAL USE PROCESS CHANGES

- **Compatibility.** Narrows what OZAH Hearing Examiner must look at to determine compatibility. *(lines 311-322)*
 - The Hearing Examiner reviews height, topography, environmental features, and within 400 feet, character of residential properties, proximity to nearby residences, tree coverage, and design of other streetlight, utility and parking lot light poles. Small cell antennas for mobile phones have a limited service range of about a 350-foot radius, so there is a limited area in which an alternate location or pole could be selected. *(lines 192-201)*

- Appeal to Board of Appeals Removed. Board of Appeals does not oppose this change for a narrow class of decisions in the interest of complying with the federal shot clock rule. (lines
 - County action would be final after Hearing Examiner issues decision, but decisions can be appealed to the Circuit Court instead of oral argument by Board of Appeals.
 - Most decisions will involve adding 8 feet to an existing streetlight.
 - The Federal Communications Commission is proposing to reduce the period of time to review new replacement pole installations subject to conditional review from 150 days to 90 days. Making the Hearing Examiner's decision final action by the County, will enable retention of the conditional use process for replacement poles in residential areas.

OTHER CHANGES AND CLARIFICATIONS

- Equipment size was changed to 12 cubic feet in ZTA 18-02. ZTA 18-11 keeps 12 cubic feet for equipment size on a pole and increases to 20 cubic feet for equipment size in the base. DOT retains authority to approve having equipment on a pole instead of in the base. The additional size increase for the base is necessary to allow hardening of the base (e.g., to prevent damage from vandalism). (lines 90-97)
- Building height and setback calculations are amended so that antennas are treated similar to porches and do not count in setback limits. (lines 281-290)
- Antennas would not count toward building height, similar to solar panels.

Conclusion

Staff believes that ZTA 18-11 strikes a balance in addressing the community's interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community's interest in managing commercial use of public property and maintaining attractive and safe roads and neighborhoods. Adding a requirement for conditional use approval for replacement of shorter poles makes sense, given that retrofitting them with small cell technology can be more difficult when also trying to establish compatibility with neighborhoods, especially in areas with underground utilities. Staff recommends approval of ZTA 18-11 as introduced.

Attachments

1. ZTA No. 18-11 as introduced
2. ZTA 18-11 Telecommunications Towers – Approval Standards- Frequently Asked Questions

Staff Comments on Suggestions from Sue Present

1) Should the Council require a 60-foot setback for antennas in rights-of-way?

No. In most residential areas of the County, the setback from a property line is less than 60 feet. Antennas are prohibited on residential structures. The effect of a 60-foot setback requirement without relief from that standard would be the exclusion of antennas from a significant area of the County. In part because of federal and potential state preemption, the Executive recommends a receptive attitude toward expanded wireless technology. The need for enhanced wireless coverage, transaction speed, and capacity was cited for home business, cars, appliances, and emergency communication. A 60-foot setback would be counter to the Executive's recommendation and the FCC orders.

Under the FCC interpretation of the law, a 60-foot setback combined with a prohibition of antennas on residential structures would materially inhibit service.

2) Should conditional use approval be required for all poles?

No. ZTA 18-11 allows antennas and equipment on poles replacing a tall street light (22 feet or taller used along major roads) and on replacement utility poles as a limited use. In the Executive's opinion, the magnitude of the change in dimension is minimal.

A conditional use process is used when the Council has determined that the use is generally compatible in the zone in which it is allowed but there may be locations where the non-inherent attributes of a particular location make a location inappropriate. The inherent attributes of an antenna are that it requires a pole of a certain strength, has some mass for the antenna and equipment, and may have a cooling fan. The non-inherent attributes in conditional uses have been traffic (volume and safety), parking, or some other interference with a nearby land use. With this in mind, it is difficult to imagine standards by which the Hearing Examiner could deny a conditional use where it is similar to other poles on the street but higher (an inherent characteristic).

Pepco is allowed to put all types of equipment on utility poles without County review. Cross arms, transformers, insulators, repeaters, cable loops, cables, and telephone wires are all on utility poles. Requiring a conditional use approval for wireless antennas may be viewed as a prohibited discrimination against that service.

On a practical level, there would be a substantial amount of process for little results.

For poles where there are underground utility and shorter street lights, ZTA 18-11 requires conditional use approval with a finding of compatibility. In these areas, the new pole would be substantially different than the other poles on the street.

3) Do more to assure the removal of unused equipment and poles

The changes proposed by the PHED Committee include provisions to allow DPS greater enforcement opportunities. With regard to the removal of replaced utility poles, improved Public Service Commission requirements would be helpful.

4) Require a hierarchy of pole to be replaced.

ZTA 18-11 does this but making some poles limited uses and some poles conditional uses. The industry will go for limited use poles first.



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 18, 2018

TO: Hans Riemer, Council President
FROM: Isiah Leggett, County Executive 
SUBJECT: ZTA 18-11, Telecommunications Towers – Approval Standards

The Council has asked me to respond to the Resident Advocates' recommended amendments to ZTA 18-11, Telecommunications Towers - Approval Standards. I appreciate being given the opportunity to share comments on this proposal with you.

I would like to first note that our Department of Permitting Services (DPS) and the Department of Technology Services (DTS) have already instituted changes that strengthen permitting and enforcement standards. In fact, DPS Director Diane Jones outlined many of these changes at last week's Council meeting:

- DPS has created fields on its online system to clearly identify when an application is for wireless equipment. The upfront information must include the specific details required by ZTA 18-11, including location, pole number, height, setback, etc.
- DPS has worked with DTS to require that the TFCG Recommendation reflect the same information in essentially the same form.
- DPS has created a zoning review for all permits for wireless equipment for adherence to the criteria in ZTA 18-11.
- At the time of permit issuance, DPS will preload a final inspection to confirm proper installation and pole removal.

Regarding the Resident Advocates' recommendation to allow a 10-year expiration of a permit, I cannot support this as under current law building permits do not expire. Further, there is no practical reason for such an expiration.

In the most recent Council packet, language was included to add a requirement that when a replacement pole is erected, wireless equipment must be relocated to the new pole within a set period of time. ZTA 18-11 already has language requiring that the old pole be removed. Combined, these two provisions will give DPS the teeth to issue a Notice of Violation



Hans Riemer, Council President
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(NOV) and/or citation to the wireless company to obtain compliance. DPS will have both civil penalties and the ability to obtain an abatement order.

As far as instituting the additional "technical standards" proposed by the Resident Advocates, these standards are too vague and cannot be legally enforced. I believe ZTA 18-11 serves the objectives sought by the Resident Advocates, using legally enforceable standards.

ZTA 18-11 already establishes a tiered hierarchy of requirements for locating small cell antennas on replacement poles. As I noted in my earlier memo, small cell antennas on existing streetlights, utility, and parking lot light poles taller than twenty-two feet would be able to proceed using the Limited Use process if they meet specific conditions. These taller poles are typically farther from residents, often located on wider streets, and usually require little to no height increase. Because the shorter poles will always require a height increase, and are typically in neighborhoods with underground utilities where there are no existing tall utility poles, they are less likely to be compatible with neighborhoods and should require a Conditional Use. Retaining a process to allow greater residential input into placement and visual appearance, while allowing streamlined access to taller poles, strikes a reasonable balance between the concerns of residents and our interest in ensuring access to robust wireless broadband services.

With regard to ensuring that residents are provided notice and opportunity to comment, Councilmember Berliner's proposed amendment accomplishes that goal, and I support this amendment.

I also support the Resident Advocates' recommendation to enhance concealment language, and would propose the following language to accomplish this:

On Line 22 after "attached antennas" delete "and equipment" and replace with "equipment, enclosures, and stealth design materials." As revised, the amendment would read:

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

The remainder of the Resident Advocates' amendments, while well intentioned, are problematic. Delaying the effective date of ZTA 18-11 would mean that our legal challenge to the Federal Communications Commission's (FCC's) orders would not be as strong as it would be with an ordinance in effect.

Because in most residential areas of the County the setback from a property line is less than 60 feet, imposing a hard 60-foot setback for all replacement poles could have the effect of prohibiting service, which is against federal law.

The Resident Advocates' proposal to give the Hearing Examiner additional discretion and standards on which to base his/her decision would have the practical effect of

Hans Riemer, Council President
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compromising the County's ability to meet the federally mandated shot clock deadlines. Missing these deadlines leaves the County open to legal challenge, and the result could be potentially damaging to our communities, as there could be fewer controls on the replacement poles.

I do not support requiring equipment to be vaulted underground as it would create more noise for residents. Underground vaults require large cooling fans and water pumps to remove melted snow and rain. In addition, new slim-line design equipment, which incorporates antennas and equipment in a single unit, would be prohibited because under the FCC rules, antennas cannot be required to be undergrounded. Further, undergrounding equipment near wooden utility poles exacerbates resident's concerns about damage to tree roots.

I also do not support changing the height standards that were recently adopted by the Council in ZTA 18-02, Telecommunications Towers – Limited Use, as the Resident Advocates' propose. These height standards allow wireless providers to utilize commercial buildings for antennas, thereby offering additional options for mounting equipment and antennas in commercial areas instead of placing them in residential areas.

As I have said before, given the unprecedented state and federal legislative and regulatory efforts to preempt the authority of local governments to manage the placement and size of telecommunications towers in the public rights-of-way, it is important that we enact local solutions to address small cell deployments expeditiously. I look forward to working with the Council to ensure a successful solution to the deployment of small cell technology in our County.

IL:jn