



**Committee PHED**  
**Staff:** Jeff Zyontz, Senior Legislative Analyst  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #TelecommunicationsTowers

AGENDA ITEM 15  
October 1, 2019  
**Introduction**

## **SUBJECT**

19-07: Telecommunications Towers – Limited Use

## **EXPECTED ATTENDEES**

NA

## **COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

NA

## **DESCRIPTION/ISSUE**

The is a proposed 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.

## **SUMMARY OF KEY DISCUSSION POINTS**

The ZTA would allow poles with antennas as a limited use in residential zones where the pole for the antenna would replace a pre-existing utility pole, streetlight pole, or site plan-approved parking lot light pole. The replacement pole must be at least 60 feet from the nearest habitable building, with conditions for screening and design. The poles allowed as a limited use would be limited in height. (For streetlights, the height of the pole that is being replaced is limited to the height of the pre-existing pole plus 6 feet when the abutting right-of-way has a paved section width of 65 feet or less. When the abutting right-of-way has a paved section width greater than 65 feet, the height above pre-existing poles would be 15 feet. For utility poles and parking lot lights, the height of the antenna is limited to the height of the pre-existing utility or parking lot light pole plus 10 feet.) The ZTA would also change the standards and procedures for poles that require conditional use approval.

### **This report contains:**

Staff Introduction Memorandum to the Council  
ZTA 19-07

Pages 1-2  
© 1-14

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**Introduction**

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

September 26, 2019

TO: County Council

FROM: Jeffrey L. Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 19-07, Telecommunications Towers – Limited Use

PURPOSE: Introduction – no vote required

Zoning Text Amendment (ZTA) 19-07, (Lead sponsor Councilmember Riemer, Co-sponsors Councilmembers Albornoz and Rice) is scheduled for introduction on October 1, 2019. ZTA 19-07 would:

- 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.

Wireless technology is rapidly changing to offer faster speeds, enhanced reliability, and expanded capabilities. The Federal Communications Commission (FCC) believes that greater capacity is needed to meet future demands. The next generation of wireless technology has dramatically more capacity than what is in use today.

Wireless networks will increasingly take advantage of millimeter wave spectrum above 24 GHz. That spectrum can carry a lot of information, but the signal travels a short distance. The technology requires many antennas that are closer to the device that is sending and receiving information. While today's technology relies on relatively few but tall macro towers, tomorrow's technology (5G) will also make use of many more, shorter antennas.

The previous Council reviewed the restrictions of 5G towers in 2018. By approving ZTA 18-02, the Council allowed deployment of 5G antennas in mixed-use and non-residential zones with reduced setbacks. The zoning code does not allow 5G towers in residentially-zoned areas except by conditional use approval.<sup>1</sup> The previous Council also took the question of allowing a limited use in residential

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<sup>1</sup> In the conditional use process, a minimum 300-foot setback from existing dwellings is required.

zones in the fall of 2018 with a 30-foot setback.<sup>2</sup> Ultimately, the Council did not support shorter cell towers as a limited use in residential zones.

In the opinion of the sponsors, the opportunities for innovation and advancement in health care, education, transportation, agriculture, entertainment, and many other sectors should not be understated. As wireless technologies increasingly help power the County's economy and undoubtedly contribute to County residents' quality of life, the sponsors of ZTA 19-07 do not want the County to be left behind.

The sponsors of ZTA 19-07 believe that the proposed ZTA strikes the right balance. It ensures that the industry is incentivized to use poles that are 60 feet or more from a building. When the setback distance is between 60 and 30 feet, residents will continue to have a voice in the process to argue that there are less obtrusive locations.

The sponsors are concerned about preemption efforts by the FCC and possibly the Maryland General Assembly. This ZTA is an opportunity for the County to set its own standards. In the opinion of the sponsors, if the Council does not act, federal or state rules will be imposed on the County, and those rules will be less favorable than what this ZTA would achieve.<sup>3</sup>

The ZTA would allow poles with antennas as a limited use in residential zones where the pole for the antenna would replace a pre-existing utility pole, streetlight pole, or site plan-approved parking lot light pole. The replacement pole must be at least 60 feet from the nearest habitable building, with conditions for screening and design. The poles allowed as a limited use would be limited in height. (For streetlights, the height of the pole that is being replaced is limited to the height of the pre-existing pole plus 6 feet when the abutting right-of-way has a paved section width of 65 feet or less. When the abutting right-of-way has a paved section width greater than 65 feet, the height above pre-existing poles would be 15 feet. For utility poles and parking lot lights, the height of the antenna is limited to the height of the pre-existing utility or parking lot light pole plus 10 feet.)

ZTA 19-07 would also amend the conditional use standards for poles in residential zones under 50 feet that do not meet the limited use standards. If the Hearing Examiner determines that additional height above the limited use standards and reduced setback are needed to provide service or that 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. Under any circumstances, the setback must be at least 30 feet from a building. ZTA 19-07 includes a revision to the conditional use process to allow for decision to be made within 90 days, which is an FCC shot clock requirement for new poles. Reducing the processing time requires that appeals of the Hearing Examiner's decisions go straight to the Circuit Court. ZTA 19-07 would also allow for batching applications when those applications are in the same neighborhood and have similar issues.

A public hearing concerning ZTA 19-07 will be scheduled at a later date.

This packet contains  
ZTA 19-07

© number  
1 – 14

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<sup>2</sup> A 30-foot setback from dwellings was proposed in ZTA 18-11 as introduced.

<sup>3</sup> The County filed petitions for judicial review of several FCC orders. The court has not acted on those petitions.

Zoning Text Amendment No.: 19-07  
Concerning: Telecommunications  
Towers – Limited Use  
Draft No. & Date: 1 – 9/24/19  
Introduced:  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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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”  
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.*  
*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

#### ORDINANCE

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

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

2       **DIVISION 3.1. Use Table**

3       \*   \*   \*

4       **Section 3.1.6. Use Table**

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

USE OR USE GROUP	Definitions and Standards		Rural Residential		Residential													Commercial/ Residential			Employment				Industrial				
					Residential Detached								Residential Townhouse			Residential Multi-Unit													
			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	RR	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	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/C	L	L	L	L/C	L/C	L	L/C	L	L	L

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

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

9           **DIVISION 3.5. Commercial Uses**

10          \*    \*    \*

11          **Section 3.5.2. Communication Facility**

12          \*    \*    \*

13          C.     Telecommunications Tower

14          \*    \*    \*

15                 2.     Use Standards

16          \*    \*    \*

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

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

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

33                                 iii.  In the Agricultural, Rural Residential, and Residential  
34   zones, the pre-existing pole and the replacement tower

35 must be at least 60 feet from any building intended for  
36 human occupation, excluding any setback encroachments  
37 allowed under Section 4.1.7.B.5.

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

43 [ii] v. The tower must be located:

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

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

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

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

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

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



61 utility pole must be removed within 180 days after a  
62 replacement utility pole is installed.

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

65 (a) for streetlights, the height of the pole that is being  
66 replaced:

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

69 or

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

73 (b) for utility poles and parking lot lights, the height of  
74 the pre-existing utility or parking lot light pole plus  
75 10 feet.

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

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

81 [vii] x. Any equipment cabinet:

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

84 (b) if used to support antennas on a replacement  
85 streetlight pole, must be installed in the  
86 Telecommunications Tower base or at ground

87 level, unless this requirement is waived by the  
88 Department of Transportation;

89 (c) must be the same color or pattern as the pre-  
90 existing tower[, except as provided in Section  
91 59.3.5.2.C.2.b.vii(d)] 3.5.2.C.b.x(d); and

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

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

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

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

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

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

111 [xiii] xvi. If a tower does not have a streetlight, the tower  
112 must be removed at the [cost] expense of the owner of  
113 the tower when the tower is no longer in use for more

114 than 12 months. Any antenna and equipment must be  
115 removed at the [cost] expense of the owner of the  
116 antenna and equipment when the [antennas] antenna and  
117 equipment are no longer in use for more than 12 months.  
118 The [Telecommunications] Transmission [Facilities]  
119 Facility Coordinating Group must be notified within 30  
120 days of the removal.

121 c. Where a Telecommunications Tower is allowed as a conditional  
122 use, it may be permitted by the Hearing Examiner under  
123 [Section 3.5.2.C.2.a, limited use standards, Section 7.3.1,  
124 Conditional Use,] either Subsection 3.5.2.C.2.d or Subsection  
125 3.5.2.C.2.a, limited use standards. In addition, Section 7.3.1  
126 and the following procedures and standards must be satisfied:

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

137 \* \* \*

138 d. In the Agricultural, Rural Residential, and Residential zones,  
139 where a Telecommunications Tower that is proposed to be less  
140 than 50 feet in height does not meet the limited use standards

141 under Subsection 3.5.2.C.2.a, it may be permitted by the  
142 Hearing Examiner as a conditional use without regard to  
143 Section 7.3.1 only if the following procedures and standards are  
144 satisfied:

145 i. An application must include:

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

149 (b) fees as approved by the District Council;

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

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

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

157 (f) plans showing existing buildings, structures,  
158 rights-of-way, tree coverage, vegetation, historic  
159 resources, and the location and design of  
160 streetlights, utilities, or parking lot poles within  
161 300 feet of the proposed location;

162 (g) a list of all property owners, homeowners  
163 associations, civic associations, condominiums,  
164 and renter associations within 300 feet of the  
165 proposed tower;

- 166 (h) plans showing height and architectural design of
- 167 the tower and cabinets, including color materials,
- 168 and any proposed landscaping and lighting;
- 169 (i) photograph simulations with a direct view of the
- 170 tower and site from at least 3 directions;
- 171 (j) at least one alternative site that maximizes the
- 172 setback from any building intended for human
- 173 occupation or reduces the height of the proposed
- 174 tower.

175 ii. Before the Hearing Examiner reviews any conditional  
 176 use for a Telecommunications Tower, the proposed  
 177 facility must be reviewed by the Transmission Facility  
 178 Coordinating Group. The Transmission Facility  
 179 Coordinating Group must declare whether the application  
 180 is complete, verify the information in the draft  
 181 application, and must issue a recommendation within 20  
 182 days of accepting a complete Telecommunications Tower  
 183 application. The applicant for a conditional use must file  
 184 a complete copy of the recommendation from the  
 185 Transmission Facility Coordinating Group with the  
 186 Hearing Examiner at least 30 days before the date set for  
 187 the public hearing. The Transmission Facility  
 188 Coordinating Group recommendation must have been  
 189 made within 90 days of its submission to the Hearing  
 190 Examiner.

- 191                    iii. The Hearing Examiner must schedule a public hearing to  
192                    begin within 30 days after the date a complete application  
193                    is accepted by the Hearing Examiner.
- 194                    (a) Within 10 days of when an application is accepted,  
195                    the Office of Zoning and Administrative Hearings  
196                    must notify all property owners within 300 feet of  
197                    the application of:
- 198                    (1) the filed application;  
199                    (2) the hearing date; and  
200                    (3) information on changes to the hearing date  
201                    or the consolidation found on the Office of  
202                    Zoning and Administrative Hearing’s  
203                    website.
- 204                    A sign that satisfies Section 59.7.5 must also be  
205                    posted at the site of the application at the same  
206                    time.
- 207                    (b) The Hearing Examiner may postpone the public  
208                    hearing and must post notice on the website of the  
209                    Office of Zoning and Administrative Hearings of  
210                    any changes to the application, the application  
211                    schedule, or consolidation of multiple applications.
- 212                    (c) The Hearing Examiner may request information  
213                    from Planning Department Staff.
- 214                    iv. A Telecommunications Tower must be set back, as  
215                    measured from the base of the support structure.
- 216                    v. (a) The Telecommunications Tower must be at least  
217                    60 feet from any building intended for human

218 occupation, excluding encroachments that are  
219 allowed under Section 4.1.7.B.5 and no taller than  
220 30 feet; or  
221 (b) if the Hearing Examiner determines that additional  
222 height and reduced setback are needed to provide  
223 service or a reduced setback or increased height  
224 will allow the support structure to be located on  
225 the property in a less visually obtrusive location,  
226 the Hearing Examiner may reduce the setback  
227 requirement to at least 30 feet or increase the  
228 height. In making this determination, the Hearing  
229 Examiner must consider the height of the structure,  
230 topography, existing tree coverage and vegetation,  
231 proximity to nearby residential properties, and  
232 visibility from the street.

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

237 vii. The tower must be located to minimize its visual impact  
238 as compared to any alternative location where the tower  
239 could be located to provide service. Neither screening  
240 under Division 6.5 nor the procedures and standards  
241 under Section 7.3.1 are required. The Hearing Examiner  
242 may require the tower to be less visually obtrusive by use  
243 of screen, coloring, or other visual mitigation options,  
244 after the character of residential properties within 400

- 245                    feet, existing tree coverage and vegetation, and design  
246                    and presence of streetlight, utility, or parking lot poles.
- 247            e.    When multiple applications for Telecommunications Towers  
248                    raise common questions of law or fact, the Hearing Examiner  
249                    may order a joint hearing or consolidation of any or all of the  
250                    claims, issues, or actions. Any such order may be prompted by  
251                    a motion from any party or at the Examiner's own initiative.  
252                    The Hearing Examiner may enter an order regulating the  
253                    proceeding to avoid unnecessary costs or delay. The following  
254                    procedures for consolidated hearings govern:
- 255                    i.    All applications must be filed within 30 days of each  
256                                    other and be accompanied by a motion for consolidation.
- 257                    ii.   The proposed sites, starting at a chosen site, must be  
258                                    located such that no site is further than 3,000 feet from  
259                                    the chosen site in the application.
- 260                    iii.   The proposed sites must be located in the same zone,  
261                                    within the same Master Plan area, and in a neighborhood  
262                                    with similar building heights and setbacks.
- 263                    iv.   Each tower must be of the same or similar proposed  
264                                    height, structure, and characteristics.
- 265                    v.    A motion to consolidate must include a statement  
266                                    specifying the common issues of law and fact.
- 267                    vi.   The Hearing Examiner may order a consolidated hearing  
268                                    if the Examiner finds that a consolidated hearing will  
269                                    more fairly and efficiently resolve the matters at issue.



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

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

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

281                    \*   \*   \*

282                    **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
283                    date of Council adoption.

284

285                    This is a correct copy of Council action.

286

287

288                    \_\_\_\_\_  
289                    Mary Anne Paradise  
                         Acting Clerk of the Council