



Montgomery
County Council

Committee: PHED

Staff: Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst

Purpose: To make preliminary decisions – straw vote
expected

Keywords: #TelecommunicationsTowers

AGENDA ITEM #4

June 29, 2021

Worksession

SUBJECT

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

EXPECTED ATTENDEES

The following individuals will be available for questions:

Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, DPS
Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS
Linda Kobylski, Chief, Land Development, DPS
Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department
Derek Baumgardner, Hearing Examiner, Office of Zoning and Administrative Hearings
Mitsuko Herrera, Program Director, Office of Broadband Programs
Debbie Spielberg, Special Assistant, County Executive
Meredith Wellington, Land Use Planning Policy Analyst, Office of the County Executive
Marjorie L. Williams, Broadband, Cable & Franchise Division Manager, Department of Technology
& Enterprise Business Solutions (TEBS)
Dr. Costis Torgas, IT Adviser, Montgomery County Council

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Planning, Housing, and Economic Development (PHED) Committee voted in favor of ZTA 19-07 at its March 10, 2021 worksession. The Committee made the following recommendations:

1. Reduce setback for a limited use from 60 feet to 30 feet (3-0)
2. Modified conditional use process for all poles under the 30-foot setback (3-0)
3. A “waiver and objection” process for a height up to 50 feet where other limited use setback requirements are met (3-0)
4. A “waiver and objection” process for all new poles (2-1)
5. Under the “waiver and objection” process, for notice to be sent to all property owners and civic associations within 300 feet; and for standing for objections to be limited to those within 300 feet (3-0)
6. Pole proliferation language: that a small wireless facility should not be located within 150 feet of a facility occupied or controlled by the same carrier (3-0)

DESCRIPTION/ISSUE

This 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 intent of ZTA 19-07 is to amend the Zoning Ordinance so that the small cell antenna provisions are in compliance with the FCC Small Cell Order. Among other things, that Order prohibits local governments from effectively prohibiting service and imposes a 90-day “shot clock” to review applications.

ZTA 19-07 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 30 feet from the nearest habitable building, with conditions for screening and design as well as height restrictions based on the width of the right-of-way.

For poles less than 30 feet from the nearest habitable building, ZTA 19-07 establishes a modified conditional use process that will require a public hearing while still meeting the shot clock. This modified conditional use process does not require recommendations from the Planning Staff or Planning Board, limits the findings of the Hearing Examiner, allows consolidated applications, eliminates the Board of Appeals, and reduces the notice requirement to 300 feet.

ZTA 19-07 also creates a waiver and objection process. This process applies to new poles where no existing pole exists within 150 feet. The waiver and objection process also applies to applications for poles higher than the limited use standards but under 50 feet tall. This waiver and objection process would provide a public hearing only where an objection is filed.

A straw vote is expected today if no further worksession is needed.

This report contains:

Staff Memorandum	Pages 1-15
ZTA 19-07	© 1-17
Planning Board Recommendation	© 18-20
Planning Staff Recommendation	© 21-27
Requirements in Other Jurisdictions	© 28-30
DPS Right-of-Way Process	© 31

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Worksession

M E M O R A N D U M

June 24, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney
Pamela Dunn, Senior Legislative Analyst

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

PURPOSE: Worksession for ZTA 19-07

Available Attendees:

The following attendees will be available for questions:

Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, Department of Permitting Services (DPS)
Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS
Linda Kobylski, Chief, Land Development, DPS
Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
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Marjorie L. Williams, Broadband, Cable & Franchise Division Manager, Department of Technology & Enterprise Business Solutions (TEBS)
Dr. Costis Torgas, IT Adviser, County Council

Summary and Intent of ZTA 19-07

Zoning Text Amendment (ZTA) 19-07, lead sponsor Councilmember Riemer, co-sponsors Councilmembers Alborno and Rice, was introduced 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.

A public hearing was held on November 19, 2019. The Planning, Housing, and Economic Development (PHED) Committee had worksessions on January 23, 2020; February 10, 2021; and March 10, 2021. Straw votes are expected if no additional worksession is scheduled. Final action will be in July.

Why now?

The reasons for this ZTA are two-fold. First, ZTA 19-07 updates current standards, bringing Montgomery County in compliance with federal orders. The County's current regulations for small cell antennas in the Agricultural, Rural Residential, and Residential zones likely do not comply with the FCC's Small Cell order. Those regulations are discussed in detail later in this memorandum. In addition, in recent years industry-sponsored bills have been brought before the General Assembly which specifically list Montgomery County as being a restrictive jurisdiction. Less permissive standards than surrounding jurisdictions decreases the County's desirability. And, from a legal perspective, if these bills were to move forward the state could impose rules on the County that are less favorable than this ZTA.

Second, the advancement and encouragement of technology has led to increases in mobile data demands and, with the resulting need to densify networks, 5G provides increased communication capacity and speed to users. The 2019 Annual Wireless Industry Survey found U.S. consumers used 82% more mobile data in 2018 compared to 2017, using a record 28.58 trillion megabytes (MB) of mobile data. Some of that rise is due to more devices being connected to mobile networks. The report found that there were 421.7 million mobile devices connected in 2018. That is an increase of 21.5 million devices compared to the year prior. Nearly half of those are smartphones, according to the report. The demand for more wireless capacity is coming from the bandwidth and speed required for mobile video, driverless cars, and connected appliances. The FCC believes that greater capacity is needed to meet future demands. Wireless technology is rapidly changing to offer faster speeds, enhanced reliability, and expanded capabilities. The next generation of wireless technology, 5G, has dramatically more capacity than 4G. Telecommunications providers have indicated an interest in creating a 5G network in the County. A robust 5G network will contribute to County residents' quality of life by providing opportunities for innovation and advancement in health care, education, transportation, agriculture, entertainment, and other sectors. As stated by the sponsors of the ZTA, the County does not want to get left behind.

What is 5G?

Small cell towers, also known as 5G antennas, allow faster internet speed and more connectivity.¹ These lower-powered antennas serve a smaller area but with higher data volumes and are designed to operate at higher frequencies, so they can support faster downloads with more devices connected to the network.

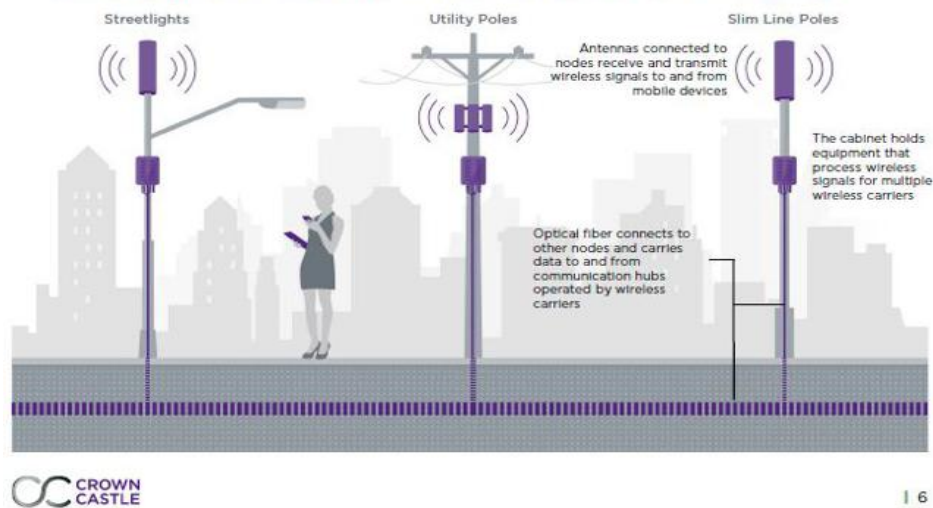
¹ This is not to be confused with the 5G wireless router that many people have in their homes. The 5G Wi-Fi router stands for 5Ghz (gigahertz) whereas 5G cellular, which stands for "5th generation", is the new system wireless carriers are installing.

Unlike the large installations of previous cell towers, which could be as tall as 100 feet, 5G requires smaller equipment installed closer together and much closer to the ground. Unlike the macro towers, which were located on private property, small cell facilities tend to be located in public rights-of-way.

For installation, an antenna is installed either on top of or flush with a pole, usually a pre-existing streetlight or utility pole. The antenna receives and transmits wireless signals from wireless devices. A cabinet holds the equipment necessary to process the wireless signals for multiple wireless carriers. The cabinet can also be a separate box on the ground. Due to the weight of the installation, it is sometimes necessary for a replacement pole to be put up that may be taller than the original streetlight or utility pole.

What Are Small Cell Deployments?

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



Source: Crown Castle.

Wooden utility poles typically need to have at least an 11-inch base diameter to support wireless antennas and equipment. Some, but not all, utility poles need to be replaced to accommodate 5G antennas. All streetlight poles and most traffic signal poles will need to be replaced to accommodate the weight of antennas and equipment. For metal poles, the top of the pole would need to be 6 inches in diameter at a minimum. Typical pole diameters at the base are 8, 10, or 12 inches. Poles larger than 12 inches in diameter are concealment poles with equipment mounted internally in the pole instead of in a shroud or in a larger-based unit. In the absence of FCC preemption, County regulations control the design of poles. All replacement poles can be designed to mimic the original pole and still be structurally capable of supporting any proposed multi-carrier antenna and associated equipment.

Examples of small cell antennas:



A small cell tower along Key Highway in Baltimore. Source: Baltimore Sun.

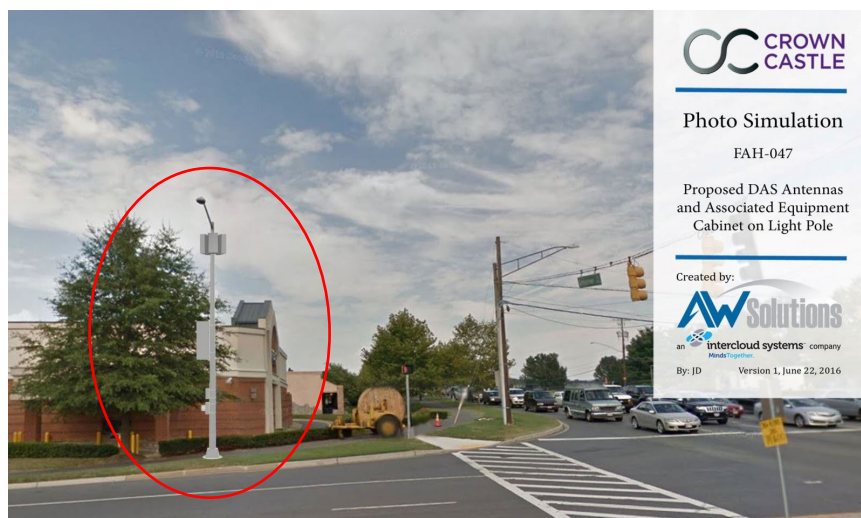


Photo simulation of a small cell antenna. Source: Crown Castle.



Existing small cell antenna in Rockville. Source: Bethesda Magazine.

Federal Guidelines

The Telecommunications Act of 1996 was enacted by Congress “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.” Under the authority of that Act, the Federal Communications Commission (FCC) issued orders in 2018 to promote the installation of 5G. These orders are known as the “Small Cell Order”, “Moratoria Order”, and “One Touch Make-Ready Order”. The Small Cell Order places restrictions on the fees that local governments can charge for access to rights-of-way and on the aesthetic requirements that can be imposed on carriers. The Moratoria Order prohibits local governments from prohibiting deployment of 5G technology within a certain period of time, called the “shot clock”. And the One Touch Make-Ready Order gives construction crews authority to make all necessary changes to poles to make them ready for new antennas.²

The overarching effect is that federal law bans states and local governments from “materially prohibiting” carriers from offering wireless service. The County Council first reviewed the restrictions on 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. But the Zoning Ordinance did not allow 5G towers in residentially-zoned areas except by conditional use approval, and the minimum setback from existing dwellings was 300 feet. As these restrictions do not meet the “shot clock” and likely prohibit deployment, revisions to the Zoning Ordinance are necessary.

Court of Appeals Decision

In *City of Portland v. United States*, the United States Court of Appeals for the 9th Circuit ruled on petitions filed by a coalition of local governments, including Montgomery County, challenging multiple FCC orders governing small cell telecommunications facilities. The 9th Circuit also ruled on the County’s separate petition, which argued that the FCC erred by not updating its regulations governing Radio Frequency (RF) emissions before issuing the small cell order.

The 9th Circuit dismissed as moot the County’s petition. The bulk of the Court’s decision concerned the FCC orders relating to the installation and management of small cell facilities, including the manner in which local governments can regulate small cell facilities and the amount that local governments may charge for the use of the right-of-way.

The Court allowed a lowered standard for determining when a local government has effectively prohibited the deployment of small cell facilities. The Court held that a local regulation that “materially inhibits” deployment was sufficient to be an effective prohibition.

The Court also reduced the time limits—often called the “shot clock”—imposed on local government’s review and approval of facilities. The Court did hold that the failure to comply with the shot clock does not result in an automatic approval. If the County misses a deadline, the applicant must still seek an injunction. The County would have the opportunity to rebut the presumed statutory violation through that process.

Regarding the regulation of aesthetics, the Court overruled the FCC requirement that all facilities receive identical treatment because the underlying statute allows different regulatory treatment among types of providers, so long as such treatment does not “unreasonably discriminate among providers of functionally

² The text of the order can be found here: <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>.

equivalent services.” The Court found that “aesthetics requirements are not preempted if they are (1) reasonable, (2) no more burdensome than those applied to other types of infrastructure deployments, and (3) objective and published in advance.” To qualify as a “reasonable” aesthetic requirement, an ordinance must be both “technically feasible and reasonably directed to avoiding or remedying the intangible public harm of unsightly or out-of-character deployments.”

Otherwise, the 9th Circuit upheld the FCC orders. First, the FCC order prevented owners and operators of utility poles from discriminatorily denying or delaying 5G and broadband service providers access to the poles. The Court sustained this aspect of the FCC order. Second, the Court upheld the FCC’s restrictions on the amount local governments may charge for the use of the right-of-way. Fees are permissible only if they are a “reasonable approximation of the state or local government’s costs” of processing applications and managing the rights-of-way. Fees are presumptively lawful if application fees are no more than \$500 and recurring fees for each wireless facility are no more than \$270 per year.

More on the “Shot Clock”

Local governments must review all required permits within a federally-mandated time limit, also known as the “shot clock.” The shot clock is a 60-day approval for attachments to existing poles and 90 days for a new or replacement pole. The shot clock begins to run when an applicant: (1) takes the first procedural step in the application process, and (2) submits written documentation showing that the proposed modification is an eligible request. The FCC has clarified that this second criterion gives localities the opportunity to review the application and determine if the shot clock is triggered. The intent of ZTA 19-07 is to make sure the County abides by this shot clock.

Supreme Court Appeal

A petition for writ of certiorari for *City of Portland, Oregon, et al., Petitioners v. Federal Communications Commission, et al.* was filed on the County’s behalf on March 22, 2021. The main issues in the petition are whether the rental fees can be more than the cost, and what an “effective prohibition of service” is. No ruling has been issued yet. It is Council Staff’s opinion that this petition is not a reason to delay ZTA 19-07.

Public Hearing

A public hearing was held on November 19, 2019. Much of the public testimony was in opposition to ZTA 19-07, with some exceptions. Written testimony largely reflected the testimony heard during the hearing.

- The County Executive recommended deferring the consideration of ZTA 19-07 until the federal courts had considered the County’s challenges to FCC rules and until improvements were made in the County’s administration of antenna applications. The Executive also opposed changes to the conditional use process for antennas that included removing Planning staff application reviews.
- The Planning Board recommended approval of ZTA 19-07 with amendments to increase Planning staff involvement, clarification of volume and height measurements, and the timing of applications for consolidated processing.
- The Town of Somerset opposed ZTA 19-07 as a sweeping change that would eviscerate the opportunity for Planning staff review.

- The City of Takoma Park expressed concern with ZTA 19-07 and preferred a code more along the lines adopted by the City. In a follow-up letter, the City of Takoma Park opposed ZTA 19-07 because it would limit the City's ability to be part of the planning and siting process, and because of concerns over oversight and inspections.
- The Mayor of Garrett Park requested that the Council work with municipalities before proceeding.
- Issues raised by other speakers included:
 - the negative health effects of radio frequency (RF) waves;
 - RF exposure would disproportionately burden minority communities;
 - a reduction in property values;
 - the lack of public notice of limited uses;
 - the lack of coordination between DPS and the Tower Committee;
 - the lack of experience with small cell antennas in commercial areas;
 - the lack of post-construction inspections in the current process;
 - a conditional use process that lacked meaningful public participation;
 - an increase in energy use; and
 - a lack of need.
- Industry representatives questioned whether the proposed process in ZTA 19-07 would violate FCC shot clock rules and whether it would violate federal law by effectively prohibiting the deployment of 5G facilities in residential areas.
- Testimony in support refuted the claims of negative health effects and expressed the need for better coverage in the County.

PHED Committee Worksession

The PHED Committee made the following recommendations at its March 10, 2021 worksession:

1. Reduce setback for a limited use from 60 feet to 30 feet (3-0)
2. Modified conditional use process for all poles under the 30-foot setback (3-0)
3. A “waiver and objection” process for a height up to 50 feet where other limited use setback requirements are met (3-0)
4. A “waiver and objection” process for all new poles (2-1)
5. Under the “waiver and objection” process, for notice to be sent to all property owners and civic associations within 300 feet; and for standing for objections to be limited to those within 300 feet (3-0)
6. Pole proliferation language: that a small wireless facility should not be located within 150 feet of a facility occupied or controlled by the same carrier (3-0).

Detailed Review of ZTA 19-07

Limited Use

All limited use standards are purely objective criteria that do not have a public hearing. The Department of Permitting Services (DPS) determines if the criteria have been met at the time of building permit. Generally, on permits for buildings, the required notice for a limited use is on-site posting once DPS has issued a permit. If the issuance of a building permit is appealed, it then goes to the Board of Appeals and a hearing is held to determine if DPS's approval or denial satisfied the standard for zoning and building

permits. A building permit appeal is not an opportunity to make a general objection to DPS action; it must be a violation of code standards.

ZTA 19-07 will allow towers as a limited use in the Agricultural, Rural Residential, and Residential zones if the tower would replace a pre-existing utility pole, streetlight pole, or site plan-approved parking lot light pole. The tower is allowed if the following standards are met:

- *Tower Committee* – The application must include a recommendation from the Transmission Facility Coordinating Group (TFCG, or “Tower Committee”).
- *Setbacks* – The pre-existing pole or replacement tower must be at least 30 feet from any building intended for human occupation.
- *Design standards* – Antennas must be concealed in an enclosure of the same color as the pole, installed at a minimum height of 15 feet, and installed parallel with the tower. The replacement tower must be the same color as the pre-existing pole. The tower must have no exterior wiring; but on wooden or utility poles any exterior wiring must be enclosed in a shielded conduit.
- *Equipment cabinet* – Equipment cabinets must not exceed 12 cubic feet in volume and, if used to support antennas on a replacement streetlight pole, must be installed in the telecommunications tower base or at ground level. The equipment cabinet must be the same color or pattern as the pre-existing tower and may be a stealth design.
- *Illumination and Sound* – Signs or illumination are prohibited. The noise level must comply with County Code.
- *Location* – The tower must be within 2 feet of the base and, in a public right-of-way, at the same distance from the curb line or edge of travel lane in an open section as the pre-existing pole. The tower must be outside of the roadway clear zone and allow for adequate sight distances. The tower must be at least 150 feet from the nearest antenna by the same carrier.
- *Height* – The height of the tower, including any attached antennas and equipment, is as follows:³
 - Streetlights: the height of the pole being replaced plus 6 feet when abutting a right-of-way with a paved section width of 65 feet or less; or plus 15 feet when abutting a right-of-way with a paved section width greater than 65 feet
 - Utility poles and parking lot lights: the height of the pre-existing pole plus 10 feet.
- *Maintenance* – The owner of the tower must maintain the tower and the owner of the antenna must maintain the antenna. Both owners are responsible for removing graffiti and repairing any damage.

Neighboring Jurisdictions

While Montgomery County is not bound by other jurisdictions, looking to our neighbors can provide some guidance on the rest of the region’s response to the FCC order. In addition to Virginia not allowing conditional uses for small cell antennas, other jurisdictions use a combination of limited use, tower committees, and franchise agreements. The following tables provide some of the setback and height requirements.

³ Regarding the typical height of a tower, a cobra streetlight pole is 25 feet high; a neighborhood streetlight is usually 14 feet high; and the height allowed by ZTA 19-07 is between 35 to 40 feet. For a height up to 50 feet, a waiver must be filed, as described in the waiver and objection section later in this memorandum.

Setbacks

Prince George's County	30 feet from a house, 150 feet from a school
Washington, D.C.	10 feet from a building
Fairfax County	10 feet from a right-of-way
Arlington County	None (wherever a utility pole or streetlight exists)

Height

Prince George's County	No higher than 50 feet or 10% higher than adjacent structures
Washington, D.C.	The greater of 10% increase or 36 feet
Fairfax County	15 feet higher than the original pole
Arlington County	6 feet higher than the original pole but no higher than 35 feet

Modified Conditional Use

The conditional use process has value when there is some subjective finding required. It also provides an opportunity for public hearing. Without this ZTA, all telecommunications towers in residential zones, without regard to the height of the tower, may only be approved as a conditional use. The conditional use standards require the tower to be set back from dwellings one foot for every foot in height or 300 feet, whichever is greater. A location must exist on the subject property where that setback can be met, but then may be located elsewhere on the site with a reduced setback if the alternative location is visually less obtrusive.

The conditional use process in Montgomery County is a lengthy one. It requires recommendations from Planning Staff; recommendations from the Planning Board; a public hearing by the Hearing Examiner; and the ability to appeal to the Board of Appeals. The only time requirement is that the Hearing Examiner issue a decision within 30 days of the public hearing. The process can easily take anywhere from 6 months to 1 year, which far exceeds the 90-day shot clock.

The intent of ZTA 19-07 is to streamline the current process and avoid a prohibition of service.⁴ ZTA 19-07 also ensures that the County is in compliance with the shot clock by establishing a “modified conditional use process”. This modified process will shorten the timeline by:

- removing the requirement for Planning Staff and Planning Board recommendations;
- limiting the findings required by the Hearing Examiner to choosing the least visually obtrusive location;
- allowing consolidated applications;
- eliminating the Board of Appeals so that appeals go directly to the Circuit Court; and
- reducing the notice requirement to 300 feet.

The modified conditional use process in the Agricultural, Rural Residential, and Residential zones would be triggered for all pre-existing and replacement towers less than 30 feet from any building intended for human occupation, excluding any setback encroachments. GIS analysis indicated that a 30-foot setback was a more appropriate standard because it would provide the desired increase in antennas. A 30-foot setback is also much more in line with neighboring jurisdictions, which have setbacks as low as 10 feet from single-unit houses. Lastly, there are streets in Montgomery County that are less than 30 feet wide.

⁴ In some jurisdictions, such as in Virginia, conditional use approval for a small cell pole is prohibited.

The list of application requirements is extensive, including: property ownership or authorization; a statement of how the proposed development satisfies the criteria to grant the application; a certified copy of the official zoning vicinity map showing an area of at least 1,000 feet from the subject property; a written description of the operational features of the use; plans showing existing buildings, structures, rights-of-way, tree coverage, vegetation, historic resources, and the location and design of the streetlights, utility poles, or parking lot poles within 300 feet of the proposed location; plans showing the height and architectural design of the tower and cabinets, including color materials and proposed landscaping and lighting; photograph simulations with a direct view of the tower and site from at least 3 directions; a list of all property owners, homeowners and civic associations, condominium associations, and renter associations within 300 feet of the proposed tower; and at least one alternative site that maximizes the setback or reduces the height of the proposed tower. The application must also be reviewed by the Tower Committee, who must provide a recommendation.

The Hearing Examiner will then provide notice of the hearing to the municipality where the proposed tower will be located, as well as to all property owners, homeowners and civic associations, condominium associations, and renter associations within 300 feet of the proposed tower. A sign must also be posted at the site. It should be noted that, under the current conditional use process, notice is sent to all property owners and civic associations within ½ mile (2,640 feet) of the proposed tower. However, a 50-foot pole would not be visible ½ mile away, so this requirement would be overly burdensome—hence the reduction to 300 feet.

The modified conditional use process eliminates the participation of the Planning Board and Planning Staff in order to meet the shot clock. However, Planning's participation can be requested by the Hearing Examiner. In addition, while the Tower Committee will initially review all applications for technical matters, conditional use applications have always been reviewed by the Planning Department to ensure they are complete before they are presented to the Hearing Examiner for scheduling and review. Since the Tower Committee is not practiced at this type of review, ZTA 19-07 does still require the Planning Director to review a conditional use application. The review is for completeness only and is not a substantive review of the application.

The Hearing Examiner's findings are limited. They must be limited in order to comply with the FCC order, which prevents the County from effectively prohibiting service. In addition, limited findings make meeting the shot clock feasible. The Hearing Examiner's primary directive is to minimize visual impact as compared to any alternative location where the tower could be located to improve service. This process is possible because the applicant must provide alternative locations with their initial application. The Hearing Examiner may require the use of screening, coloring, or other visual mitigation options, and can base this need on existing tree coverage and vegetation as well as the design and presence of nearby poles. Of note, amendments to ZTA 19-07 remove the term "after the character of residential properties" when describing the standards that the Hearing Examiner will be looking at. This was removed because the Hearing Examiner typically relies on the expert advice of the Planning Department to determine the "character" of the neighborhood since the Hearing Examiner cannot introduce evidence. Since the Planning Board and Planning Staff are no longer providing recommendations, this standard was inconsistent. In addition, since the findings are limited to what is least visually obtrusive, the character of the neighborhood standard has less weight than in other conditional use applications. However, the visually obtrusive standard does still ensure that aesthetics is considered, such as by allowing the Hearing Examiner to require screening, coloring, and other visual mitigation.

Lastly, applications for conditional use may be consolidated at the request of the applicant or by order of the Hearing Examiner. The Hearing Examiner is given discretion in regulating the proceedings to avoid unnecessary costs or delay. For example, the Hearing Examiner must consider the time it takes to send notice and schedule the hearing, so may need to deny a consolidation if filed late. In order to qualify for consolidation, applications must be filed within 30 days of each other and be located within 3,000 feet of each other. The proposed towers must also be of the same or similar proposed height, structure, and other characteristics; as well as located in the same zone, same Master Plan area, and neighborhoods with similar building heights and setbacks. The goal of this consolidation process is to reduce the burden on the Hearing Examiner to have multiple hearings on similar proposals, as well as to ensure the County does not struggle to meet the shot clock. The Hearing Examiner will also have discretion over cross-examination and may limit the amount of time given to each party, as long as each side has equal time.

Waiver and Objection Process

The waiver and objection process is not a new one in Montgomery County. It is currently used for accessory dwelling units. It still allows for community input, but for those poles where there is no objection no public hearing will be triggered.

The FCC order defines small cell antennas as those that are on structures 50 feet or less in height. One industry representative suggested that unless the height limit is 50 feet, Montgomery County can be found to have effectively prohibited service. The PHED Committee therefore recommended a waiver and objection process for towers that meet all the limited use standards except for the height. The Hearing Examiner may not approve an application higher than 50 feet.

In addition, ZTA 19-07 as introduced laid out the conditions for pre-existing and replacement poles but was silent on wholly new poles. While it is rare for a telecommunications provider to choose to construct a brand-new pole where none existed, due to both the time constraints and the higher cost of doing so, given the way 5G works there may be circumstances where there is no pre-existing or replacement pole available in a small enough area to provide service. The PHED Committee recommended the waiver and objection process for these new poles if all other limited use standards are met.

Notice of a request for waiver will be sent to the municipality where the proposed tower is located, as well as to all property owners, homeowners' associations, civic associations, condominium associations, and renter associations within 300 feet of the proposed tower. Any property owner, homeowners' association, civic association, condominium association, or renter association within 300 feet of the proposed tower would have standing to object and request a hearing. Waivers and objections can be consolidated for hearings, similar to the modified conditional use process. During the hearing and in its decision, the Hearing Examiner is limited to issues raised by a waiver or objection, as well as to all the standards that apply under the modified conditional use process: "determine whether the proposed location minimizes visual impact as compared to any alternative location where the new tower could be located to provide service"—in other words, to choose the less obtrusive location. If no objection is filed, then the waiver can be granted without a public hearing.

Proposed Councilmember Amendments

The following amendments were proposed after the last PHED worksession. Council Staff recommends the approval of both amendments.

Councilmember Friedson Amendment

To avoid the construction of new poles where a pre-existing pole exists or could be replaced, ZTA 19-07 takes certain measures. The waiver and objection section of ZTA 19-07 reads “where there is no pre-existing or replacement pole so a new pole must be constructed”. To make clear that a new pole should only be built if no other options are available, Councilmember Friedson is introducing an amendment that reads:

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

Councilmember Riemer Amendment

By creating a process for the approval of new poles, height standards needed to be set for those new poles. Councilmember Riemer is therefore introducing the following amendment:

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

- (a) plus 6 feet when abutting a right-of-way with a paved section width of 65 feet or less; or
- (b) plus 15 feet when abutting a right-of-way with a paved section width greater than 65 feet.

This language ensures that new poles are consistent with neighboring poles, while providing for the additional height often required by antennas.

Additional Issues

Health Effects

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

No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

47 U.S. Code §332(c)(7)(B)(iv)

Petitioning for judicial review to require an evaluation of environmental and health effects was the most the Council could do regarding regulating due to health issues. Congress delegated all considerations of health to the FCC. ZTA 19-07 changes neither the FCC's obligation to study health effects nor the limitations on the Council to not consider health effects.

The Tower Committee

Many questions have been raised regarding the role of the Transmission Facilities Coordination Group (TFCG), also referred to as the "Tower Committee". Given the role of the Tower Committee in ZTA 19-07, it is appropriate to provide a brief overview of its role and limitations.

The Tower Committee is responsible for the initial review of radio and telecommunications carrier applications. The Tower Committee, which is within the Executive Branch, is made up of representatives from the relevant land-owning and land-use agencies and reviews all telecommunications facilities and antenna siting requests. The Tower Committee makes recommendations on the installation of radio and telecommunications infrastructure in Montgomery County. The Tower Committee has certain policy goals, including:

- promoting the appropriate location and co-location of transmission facilities to minimize adverse impact to the community and public facilities;
- to provide a forum for private carriers and public agencies to meet and reach consensus on sensible siting of transmission facilities; and
- to provide a centralized source for private providers, County agencies, and the public to obtain information regarding the siting process and the location and description of potential and current sites.

The Tower Committee was not established to be a body that hears public testimony. It does not make subjective findings; rather, it makes recommendations to the Hearing Examiner or DPS. It is open to the public but mailed notice of applications to nearby property owners is not required. To the extent that there are problems with the TFCG, those would most likely need to be addressed by a Bill concerning Section 2-58E of the County Code.

Co-Location, Pole Proliferation, and Preferential Placement

Co-location, proliferation, and preferential placement are discussed as ways to mitigate the negative impacts associated with 5G. Co-location is the siting of multiple facilities on the same structure, for example, placing multiple antennas on the same pre-existing utility pole. It can include siting multiple facilities from multiple providers in the same location. Proliferation, in the 5G context, is usually referring to the rapid increase in the number of poles and antennas. As discussed in the beginning of this memo, 5G requires more antennas placed close together. While often discussed negatively, proliferation is necessary for 5G to be effective.

First, ZTA 19-07 requires antennas to be placed at least 150 feet from the nearest antenna occupied or controlled by the same carrier. Second, Councilmember Friedson's amendment would not allow new poles if there is a usable pre-existing or potential replacement pole within 150 feet of the proposed site. Third, the Hearing Examiner is tasked with making sure the tower minimizes visual impact as compared to any alternative location where the tower could be located. Lastly, the Tower Committee makes recommendations based on appropriate location and co-location.

Inspections

Testimony has been received regarding the lack of routine inspections for telecommunications facilities. ZTA 19-07 is silent as to inspections; routine inspections have not been required in the past, nor does ZTA 19-07 prohibit them. Applicants request inspections from DPS when construction is complete. Applicants also provide a third-party inspection report from registered and licensed engineers. DPS inspectors examine the right-of-way to make sure it was not damaged in the installation.

When a resident believes work was done that is not in compliance with the Zoning Ordinance, that complaint goes to DPS. DPS investigates and if not in compliance, a violation notice is issued. The property owner has 30 days to remedy the issue and receives a citation if they fail to do so. If the problem is still not remedied, the County pursues an abatement in court, which can lead to the tower being taken down.

Of note, a building permit is not required for a utility pole. However, a right-of-way permit is still required. A utility pole may be replaced because of general maintenance, increased electrical service needs, to accommodate cable service, or to accommodate an antenna. If the pole exists when an applicant applies for an electrical permit, the provision for an antenna attachment on an existing structure applies.⁵

Property Values

Evidence regarding the effect of small cell antennas on property values is inconclusive. In addition, it is unclear whether these studies included small cell antennas or focused exclusively on macro cell towers.

No effect:

- A 2018 Valbridge Property Advisors market study in Boston, Dallas, Phoenix, and Raleigh determined there was no measurable difference (defined as less than 1%) for homes within a .5 to 1-mile radius of a cell tower.
- In a 2015 Delaware case, a court found a cell tower did not impact surrounding property values.

Negative effect:

- A 2017 study in Alabama focused on visual effects and found that properties within .72 km of the closest tower (which was 2,632 feet) declined 2.46% on average compared to homes outside the tower visibility range.
- A 2018 Kentucky study found properties with a visible antenna 1,000 feet away sold for 1.82% less than a similar property 4,500 feet away.

Positive effect:

- An article in the National Real Estate Investor Quality concluded that quality cell phone coverage can have a significant impact on the desirability and value of a property.

⁵ The County also enters into franchise agreements with providers that may provide additional terms.

Racial Equity and Social Justice

ZTA 19-07 was introduced before Racial Equity and Social Justice (RESJ) impact statements were required from the Office of Legislative Oversight (OLO). However, some information is available regarding the impacts.

While public testimony expressed concern that these small cell antennas would be placed in minority communities, and therefore have negative equity impacts, the same can be said for positive impacts. The increase of small cell antennas in minority communities would provide those populations with better access. For example, for those who do not or cannot afford expensive broadband, 5G would provide better service. As an example, during the COVID-19 pandemic Montgomery County Public Schools issued hotspots to those without internet access. The situation highlighted the need for more wireless access in certain communities. The increase in 5G across the County, especially in areas where it is lacking, means a more equitable distribution of better and faster wireless access.

ZTA 19-07 does not, however, guarantee equitable access. As with all zoning provisions, ZTA 19-07 does not mandate where small cell antennas must be provided. Rather, it relaxes the requirements so that providers are encouraged to install small cell antennas throughout the County. From a technological standpoint, providers will likely install the small cell antennas where the extra capacity is most needed. Council Staff encourages the County Council to continue to work on ways of guaranteeing equitable coverage.

Zoning Text Amendment No.: 19-07
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 5 – 6/22/2021
Introduced: October 1, 2019
Public Hearing: November 19, 2019
Adopted:
Effective:
Ordinance No.:

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

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

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

DIVISION 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
DIVISION 3.5.	“Commercial Uses”
Section 3.5.2.	“Communication Facility”
DIVISION 7.3.	“Regulatory Approvals”
Section 7.3.1.	“Conditional Use”

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	Ag	Rural Residential				Residential												Commercial/ Residential			Employment				Industrial		
		AR					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	NR	LSC	EOF	IL	IM	IH
* * *																												
COMMERCIAL																												
* * *																												
Communication Facility	3.5.2																											
Cable Communications System	3.5.2.A	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	C	C	C
Media Broadcast Tower	3.5.2.B	C	C	C		C	C	C	C	C	C	C				C	C	C				C		L	C	C	C	P
Telecommunications Tower	3.5.2.C	L/C	L/C	L/C	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>	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 building permit application to the Department of
24 Permitting Services [[concerning]] for the construction of
25 a Telecommunications Tower must include a
26 recommendation from the Transmission Facility
27 Coordinating group issued within 90 days of the
28 submission of the building permit application.
- 29 ii. In the Commercial/Residential, Industrial, and
30 Employment zones, the pre-existing pole and the
31 replacement tower must be at least 10 feet from an
32 existing building, excluding any setback encroachments
33 allowed under Section 4.1.7.B.5.

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

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

[ii] v. The tower must be located:

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

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

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

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

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

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

- 61 [iii] vi. A pre-existing streetlight or parking lot light pole
62 must be removed within 10 business days after power is
63 activated to the replacement tower, and a pre-existing
64 utility pole must be removed within 180 days after a
65 replacement utility pole is installed.
- 66 [iv] vii. The height of the tower, including any attached
67 antennas and equipment, must not exceed:
- 68 (a) for streetlights, the height of the pole that is being
69 replaced:
- 70 (1) plus 6 feet when abutting a right-of-way
71 with a paved section width of 65 feet or less;
72 or
73 (2) plus 15 feet when abutting a right-of-way
74 with a paved section width greater than 65
75 feet.
- 76 (b) for utility poles and parking lot lights, the height of
77 the pre-existing utility or parking lot light pole plus
78 10 feet.
- 79 [v] viii. The tower must be the same color as the pre-
80 existing pole.
- 81 [vi.] ix. The tower must have no exterior wiring, except
82 that exterior wiring may be enclosed in shielded conduit
83 on wooden or utility poles.
- 84 [vii] x. Any equipment cabinet:
- 85 (a) must not exceed a maximum volume of 12 cubic
86 feet;

- (b) if used to support antennas on a replacement streetlight pole, must be installed in the Telecommunications Tower base or at ground level, unless this requirement is waived by the Department of Transportation;
- (c) must be the same color or pattern as the pre-existing tower[, except as provided in Section 59.3.5.2.C.2.b.vii(d)] 3.5.2.C.b.x(d); and
- (d) may be a stealth design approved for safety by the Department of Transportation.
- [viii] xi. The tower must include a replacement streetlight, if a streetlight existed on the pre-existing pole.
- [ix] xii. The design of a replacement tower located in a public right-of-way, including the footer and the replacement streetlight, must be approved by the Department of Transportation.
- [x] xiii. The noise level of any [fans] equipment must comply with Chapter 31B.
- [xi] xiv. Signs or illumination [on the antennas or support structure], except a streetlight, on the antennas or support structure are prohibited unless required by the Federal Communications Commission or the County.
- [xii] xv. The owner of the tower [or the antenna attached to the tower] must maintain their tower[,]. The owner of the antenna must maintain the [antennas,] antenna and equipment in a safe condition[,]. Both owners must remove graffiti[,] and repair damage from their facility.

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

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

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

* * *

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

i. An application must include:

- (a) the subject property's ownership and, if the applicant is not the owner, authorization by the owner to file the application;
- (b) fees as approved by the District Council;
- (c) a statement of how the proposed development satisfies the criteria to grant the application;
- (d) a certified copy of the official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
- (e) a written description of operational features of the proposed use;
- (f) plans showing existing buildings, structures, rights-of-way, tree coverage, vegetation, historic resources, and the location and design of streetlights, utilities, or parking lot poles within 300 feet of the proposed location;

- (g) a list of all property owners, homeowners associations, civic associations, condominium associations, and renter associations within 300 feet of the proposed tower;
- (h) plans showing height and architectural design of the tower and cabinets, including color materials, and any proposed landscaping and lighting;
- (i) photograph simulations with a direct view of the tower and site from at least 3 directions;
- (j) at least one alternative site that maximizes the setback from any building intended for human occupation or reduces the height of the proposed tower.

ii. Before the Hearing Examiner reviews any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The Transmission Facility Coordinating Group must [[declare whether the application is complete,]] verify the information in the draft application[[,]] and must issue a recommendation within 20 days of accepting a complete Telecommunications Tower application. The applicant for a conditional use must file a complete copy of the recommendation from the Transmission Facility Coordinating Group with the Hearing Examiner at least [[30]]5 days before the date set for the public hearing. The Transmission Facility Coordinating Group

recommendation must have been made within 90 days of its submission to the Hearing Examiner.

- iii. Upon receipt of the Transmission Facility Coordinating Group recommendation, the applicant must submit an initial application to the Planning Director for approval of completeness, under Section 7.3.1.B.3. The Planning Director must review the application for completeness within 10 days after receipt.
- iv. The Hearing Examiner must schedule a public hearing to begin within 30 days after the date a complete application is accepted by the Hearing Examiner.

(a) Within 10 days of when an application is accepted, the Office of Zoning and Administrative Hearings must notify the municipality where the proposed tower will be located, as well as all property owners, homeowners associations, civic associations, condominium associations, and renter associations within 300 feet of the application of:

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

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

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

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

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

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

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

proximity to nearby residential properties, and
visibility from the street.

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

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

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

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

- 276 ii. The proposed sites, starting at a chosen site, must be
277 located such that no site is further than 3,000 feet from
278 the chosen site in the application.
- 279 iii. The proposed sites must be located in the same zone,
280 within the same Master Plan area, and in a neighborhood
281 with similar building heights and setbacks.
- 282 iv. Each tower must be of the same or similar proposed
283 height, structure, and characteristics.
- 284 v. A motion to consolidate must include a statement
285 specifying the common issues of law and fact.
- 286 vi. The Hearing Examiner may order a consolidated hearing
287 if the Examiner finds that a consolidated hearing will
288 more fairly and efficiently resolve the matters at issue.
- 289 vii. If the motion to consolidate is granted, the applicant and
290 opposition must include all proposed hearing exhibits
291 with their pre-hearing statements.
- 292 viii. The Hearing Examiner has the discretion to require the
293 designation of specific persons to conduct cross-
294 examination on behalf of other individuals and to limit
295 the amount of time given for each party's case in chief.
296 Each side must be allowed equal time.
- 297 f. Where a proposed Telecommunications Tower does not meet
298 the limited use standards because it is taller than allowed under
299 Section 3.5.2.C.2.b.vii or where there is no pre-existing or
300 replacement pole so a new pole must be constructed, but
301 otherwise meets the limited use standards under Section
302 3.5.2.C.2.b., the applicant may request a waiver from the Office

of Zoning and Administrative Hearings. The application must meet the requirements of Sections 3.5.2.c.2.d.1. and 3.5.2.c.2.d.3.

- i. A new pole may only be constructed if there is no utility pole or streetlight pole within 150 feet of the proposed location that could be used as a pre-existing pole or replacement tower.
- ii. The applicant must notify by mail the municipality where the proposed tower will be located, as well as all property owners, homeowners associations, civic associations, condominium associations, and renter associations within 300 feet of the proposed tower. Proof of when notice was mailed must be submitted to the Office of Zoning and Administrative Hearings. A sign that satisfies Section 59.7.5 must also be posted at the site of the application at the same time.
- iii. Upon receipt of notice of a waiver, a property owner, homeowners association, civic association, condominium associations, and renter association within 300 feet of the proposed tower may file an objection and request a hearing with the Office of Zoning and Administrative Hearings. An objection must be filed within 20 days of when notice was mailed.
- iv. If an objection is received, the Hearing Examiner must send notice of an adjudicatory hearing to the applicant and any aggrieved person who filed an objection within 10 days after the objection is received and conduct any

330 such hearing within 30 days of the date the objection is
331 received. Waivers and objections may be consolidated
332 under Section 3.5.2.c.2.e.5.

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

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

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

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

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

352 g. Any party aggrieved by the Hearing Examiner's decision may
353 file a petition for judicial review under the Maryland rules
354 within 15 days of the publication of the decision.

355 * * *

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

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.,
Clerk of the Council



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

OFFICE OF THE CHAIR

November 18, 2019

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. 19-07

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 19-07 (ZTA 19-07) at its regular meeting on November 14, 2019. By a vote of 5:0, the Planning Board provides the following comments on ZTA 19-07 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.

The Board believes that ZTA 19-07 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.

The Board believes that adding a requirement and expedited process for conditional use approval for replacement poles that do not meet the limited use standards 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.

The Board further recommends that the following comments/questions be addressed during the PHED Committee worksession on ZTA 19-07 (as detailed in the staff report):

- The extent of Planning Staff involvement in the expedited limited use and conditional use processes.
- The Hearing Examiner's concerns regarding the proposed language that allows consolidation of applications filed up to 29 days apart. OZAH believes that any consolidated applications should be filed on the same day.
- Clarification on the maximum size (volume) of a small cell antenna to be located on a replacement or existing streetlight, utility or site plan approved parking lot light pole. There appears to be inconsistency between the current Zoning Code maximum and the FCC allowance.

- Clarification of existing Zoning Code language on how the minimum installation height (of 15 feet) of an antenna on a pole should be measured. The Board suggests that the measurement be made from the base of the antenna.

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 was proposed to 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 would need to 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. ZTA 18-11 was not enacted by the previous Council.

As proposed, ZTA 19-07:

- Allows 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;
- Requires that any permit application to the Department of Permitting Services concerning a Telecommunications Tower include a recommendation from the Transmission Facility Coordinating (TFCG) group issued within 90 days of the submission of the permit application;
- Requires, in the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower to be at least 60 feet from the nearest habitable building;
- Limits the height of a replacement structure 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;
- Amends the conditional use standards for poles in Agricultural, Rural Residential, and Residential zones proposed to be less than 50 feet in height that do not meet the limited use standards;
- Requires that any conditional use for a Telecommunications Tower be reviewed by the TFCG before being reviewed by the Hearing Examiner. The TFCG must declare whether the application is complete, verify the information in the draft application, and must issue a recommendation within 20 days of accepting a complete Telecommunications Tower application;
- Requires that the Telecommunications Tower under a conditional use application be at least 60 feet from any building intended for human occupation and no taller than 30 feet;

- Allows the Hearing Examiner to reduce the setback requirement to a minimum of 30 feet or increase the height above 30 feet if needed to provide service or if a reduced setback or increased height will allow the support structure to be located on the property in a less visually obtrusive location;
- Requires the tower to be located to minimize its visual impact as compared to any alternative location where the tower could be located to provide service;
- Requires that appeals of the Hearing Examiner's decisions go straight to the Circuit Court;
- Requires that the Hearing Examiner schedule a public hearing to begin within 30 days after the date a complete application is accepted by the Hearing Examiner; and
- Allows for batching applications when those applications are in the same neighborhood and have similar issues.

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, November 14, 2019.



Corey Anderson
Chair

CA:GR:aj



Zoning Text Amendment (ZTA) No. 19-07, Telecommunications Towers – Limited & Conditional Use

DDR

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JKS

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Completed: 11/7/19

Description

ZTA No. 19-07 amends 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

Staff recommends the following comments on ZTA No. 19-07 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.

Staff believes that ZTA 19-07 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.

Staff believes that adding a requirement and expedited process for conditional use approval for replacement poles that do not meet the limited use standards 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 further recommends that the following comments/questions be addressed during PHED Committee worksession on ZTA 19-07 (as detailed in the staff report):

- The extent of Planning Staff involvement in the expedited limited use and conditional use processes.
- The Hearing Examiner's concerns regarding the proposed language that allows consolidation of applications filed up to 29 days apart. OZAH believes that these applications should be filed on the same day.

- Clarification on the maximum size (volume) of a small cell antenna to be located on a replacement or existing streetlight, utility or site plan approved parking lot light pole. There appears to be inconsistency between the current Zoning Code maximum and the FCC allowance.
- Clarification of existing Zoning Code language on how the minimum installation height (of 15 feet) of an antenna on a pole should be measured. Staff suggests that the measurement should be made from the base of the antenna.
- Minor plain language clarifications.

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 was proposed to 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 would need to 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. **ZTA 18-11 was not enacted by the previous Council.**

ZTA 19-07 was introduced on October 1, 2019. Below is an excerpt from the Council Staff report introducing the ZTA:

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.

As stated above, 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 (In the conditional use process, a minimum 300-foot setback from existing dwellings is required.). The previous Council also took on the question of allowing a limited use in residential zones in the fall of 2018 (ZTA 18-11) with a 30-foot setback. 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 (The County filed petitions for judicial review of several FCC orders that, as of the date of this memorandum, the court has not acted on.).

As proposed, ZTA 19-07 **does not change the requirements for telecommunications towers that are not replacing a pre-existing utility pole, streetlight pole, or site plan approved parking lot light pole.**¹ However, the ZTA adds to or modifies the telecommunication provisions as discussed below (Planning staff supports these proposed changes, with modifications as indicated):

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

- ZTA 19-07 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.
 - Any permit application to the Department of Permitting Services concerning a Telecommunications Tower (including non-residential zones) must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the permit application. *(lines 23-27)*
 - In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower must be at least 60 feet from the nearest habitable building. In 2018, the characteristics of emerging 5G and small cell technology required 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. *(lines 33-37)*
 - The 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.

¹ In residential areas, these macro towers continue to require a 300-foot setback, conditional use approval, and that an Office of Zoning and Administrative Hearing (OZAH) Hearing Examiner's approval may be appealed to the Board of Appeals.

However, additional minimum height would be permitted to comply with the National Electric Safety Code. (lines 63-75)

REPLACEMENT POLES AS A CONDITIONAL USE IN RESIDENTIAL AREAS (lines 138-246)

- ZTA 19-07 would amend the conditional use standards for poles in Agricultural, Rural Residential, and Residential zones proposed to be less than 50 feet in height that do not meet the limited use standards.
 - Before the Hearing Examiner reviews any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The Transmission Facility Coordinating Group must declare whether the application is complete, verify the information in the draft application, and must issue a recommendation within 20 days of accepting a complete Telecommunications Tower application. (lines 175-190)
 - The Telecommunications Tower must be at least 60 feet from any building intended for human occupation and no taller than 30 feet. (lines 216-220)
 - 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 a minimum of 30 feet or increase the height above 30 feet. Under all circumstances, the setback must be at least 30 feet from a building. (lines 221-232)
 - The tower must be located to minimize its visual impact as compared to any alternative location where the tower could be located to provide service. (lines 237-239)
 - ZTA 19-07 includes a revision to the conditional use process to allow for a 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. (lines 278-280)
 - The Hearing Examiner must schedule a public hearing to begin within 30 days after the date a complete application is accepted by the Hearing Examiner. Within that time frame, the Hearing Examiner may request information from Planning Department Staff. (lines 212-213) *Planning Staff believes that this requirement needs clarification. What information may be requested from Planning Department staff? In what form would this information be, i.e., staff report, staff memo, graphics? What is the expected turnaround time for staff to accomplish this task if the Hearing Examiner is requesting information concerning consolidated cases or is on an expedited hearing schedule?*

MULTIPLE APPLICATIONS FOR TELECOMMUNICATIONS TOWERS (lines 247-277)

- ZTA 19-07 would also allow for batching applications when those applications are in the same neighborhood and have similar issues.
 - All applications must be filed within 30 days of each other and be accompanied by a motion for consolidation. (lines 255-256) The Hearing Examiner's Office believes that the ability to consolidate applications filed 29 days apart should be eliminated. The current proposal will

create logistical problems for OZAH staff, as they will have to rearrange hearings already scheduled with potentially many parties (including civic associations and individuals) to get a new date. They will also have to manage the scheduling of transcription services, update the website, and do multiple mailings when they could have done one mailing for the applications that are consolidated. As such, the ZTA should require the Motion for Consolidation to be filed at the same time the applications to be consolidated are filed.

The current language in the ZTA 19-07 reads:

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

OZAH recommends changing that language to read:

"All applications for Telecommunications Tower conditional uses that the Applicant seeks to have consolidated must be filed on the same date and be accompanied by a motion for consolidation."

Planning staff supports the change recommended by OZAH.

- The proposed sites to be consolidated, starting at a chosen site, must be located such that no site is further than 3,000 feet from the chosen site in the application.
- The proposed sites must be located in the same zone, within the same Master Plan area, and in a neighborhood with similar building heights and setbacks.
- Each tower must be of the same or similar proposed height, structure, and characteristics.

OTHER CHANGES AND CLARIFICATIONS

- Section 3.5.2.C.2.b.iv (Telecommunication Use Standard- lines 38-42 of the ZTA) states for antennas on a replacement pole:

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

Although this language is existing language that is not proposed to be modified as part of ZTA 19-07, staff believes that clarifications could be warranted. The maximum antenna size under Standard A exceeds the requirement established by the Federal Communications Commission (FCC) which limits the antenna to 3 cubic feet in volume (Standard A allows a maximum volume of 6 cubic feet). Also, installation is typically from the center of the antenna. Under Standard A the base of the antenna could technically be at a height under 13 feet. Staff suggests that the minimum installation height of 15 feet be clarified to be measured from the base of the antenna.

- Lines 106-110 read as follows:

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

Staff recommends a minor plain language clarification (double underlined language above) to make clear the responsibilities of both owners (tower and antenna).

Conclusion

Staff believes that ZTA 19-07 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 and expedited process for conditional use approval for replacement poles that do not meet the limited use standards 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 further recommends that the following comments/questions be addressed during the PHED Committee worksession on ZTA 19-07 (as detailed in the staff report):

- The extent of Planning Staff involvement in the expedited limited use and conditional use processes.
- The Hearing Examiner's concerns regarding the proposed language that allows consolidation of applications filed up to 29 days apart. OZAH believes that these applications should be filed on the same day.
- Clarification on the maximum size (volume) of a small cell antenna to be located on a replacement or existing streetlight, utility or site plan approved parking lot light pole. There appears to be inconsistency between the current Zoning Code maximum and the FCC allowance.
- Clarification of existing Zoning Code language on how the minimum installation height (of 15 feet) of an antenna on a pole should be measured. Staff suggests that the measurement should be made from the base of the antenna.
- Minor plain language clarifications.

Attachments

1. ZTA No. 19-07 as introduced

	Setbacks	Pole Height
Montgomery County current	<p><u>AR,R,RC-limited</u> (not replacement): 300 feet</p> <p><u>C/R- limited</u> (replacement): 10 feet from existing building/within 2 feet of pre-existing pole base</p> <p><u>All Residential Zonesⁱ</u> conditional (new and pre-existing): a distance of one foot for every foot of height or 300 feet from an existing dwelling (whichever is a greater setback)ⁱⁱ</p>	<p><u>AR, R, RC-limited</u> (not replacement): 179 feet maximum</p> <p><u>C/R- limited</u> (replacement):</p> <p>-<i>Streetlights</i>: the height of the pole being replaced:</p> <p>1) plus 6 feet when abutting a ROWⁱⁱⁱ with paved section width of 65 feet or less</p> <p>2) plus 15 feet when abutting a ROW with a paved section width greater than 65 feet</p> <p>-<i>Utility poles</i>: the height of the pre-existing pole plus 10 feet</p> <p><u>All Residential Zones^{iv}</u>– conditional (new and pre-existing): 135 feet maximum</p>
Montgomery County proposed	<p><u>All Residential Zones-limited</u> (replacement on pre-existing pole): at-least 60 feet from nearest habitable building</p> <p><u>All Residential Zones-conditional</u> 30 feet from a building</p>	<p><u>All Residential Zones-limited</u> (replacement on pre-existing pole):</p> <p>-<i>Streetlights</i>: the height of the pole being replaced:</p> <p>1) plus 6 feet when abutting a ROW with paved section width of 65 feet or less</p> <p>2) plus 15 feet when abutting a ROW with a paved section width greater than 65 feet</p> <p>-<i>Utility poles</i>: the height of the pre-existing pole plus 10 feet</p> <p><u>All Residential Zones-conditional</u> under 50 feet</p>
Prince George's County	<p><u>Public & Private Land</u>: one foot for every one foot in the height of the pole</p> <p>-Cannot be located within...^v</p> <ul style="list-style-type: none"> • 150 of the nearest small wireless facility controlled by the same "Person" • 15 feet of an existing tree • 30 feet from a residential dwelling unit unless a study deems more distance is required related to radio frequency radiation • 3 feet, 6 inches from the curb or 6 feet from the end of the paved section of the roadway if no curb exists when in a public ROW • 250 feet of an elementary/secondary institution 	<p><u>Public Land</u>: 199 feet maximum</p> <p><u>Private Land</u>: 100 feet maximum</p> <p>Co-located/Existing Pole: The new height cannot exceed 10 feet higher than the original pole height.</p> <p>Public ROW (protected area): Cannot exceed 30 feet</p> <p>Public ROW: Cannot exceed 50 feet or 10 feet greater than the tallest existing pole in the public ROW</p>
Washington D.C. ^{vi} ROW/Public	<p><u>New or Existing Pole</u>: Small cell infrastructure shall not be installed on an existing or new pole within a 10' setback from all existing buildings or building lines (i.e. property line, building restriction line, or additional setback required by zoning)</p>	<p><u>Existing Poles</u>: Any attachment, including antenna(e), to an existing pole shall not extend the existing pole to a height of more than 36 feet or by more than 10 percent, whichever is greater.</p> <p><u>Wood Poles</u>: The height of any replacement wood pole including its antennae shall not exceed 50 feet.</p>

	<p>Small Cell infrastructure is not permitted to be installed on: Medians and traffic islands; bridges, tunnels, overpasses and elevated roadways; Twin-Twenty or Washington Upright poles, or others; all sidewalks and rights-of-way immediately adjacent to Federal property or Federal reservations; and avenues and streets on the Federal Core Interest Area Map that do not designate small cell infrastructure locations</p>	
Fairfax, VA ^{vii}	<p><u>Co-located^{viii}</u>: If in utility transmission easement or street ROW, it must be located a minimum of 10 feet from the utility transmission easement or ROW line. Otherwise, it must meet minimum yard requirements of the specific zoning district*</p> <p><u>R-12, R-16, R-20: Permitted Use, Setback</u>: All other structures (1) Front yard: Controlled by a 25° angle of bulk plane, but not less than 20 feet (2) Side yard: Controlled by a 25° angle of bulk plane, but not less than 10 feet (3) Rear yard: Controlled by a 25° angle of bulk plane, but not less than 25 feet (FAR .70)</p> <p><u>R-30: Permitted Use, Setback</u>: All structures (1) Front yard: Controlled by a 25° angle of bulk plane, but not less than 20 feet (2) Side yard: Controlled by a 25° angle of bulk plane, but not less than 10 feet (3) Rear yard: Controlled by a 25° angle of bulk plane, but not less than 25 feet (FAR: 1.0)</p> <p><u>Replacement</u>: Assume the new pole must be in the exact same spot as preexisting pole</p> <p><u>New Structures</u>: Single-family zones, <u>not</u> located on a major thoroughfare= no less than 300 feet All other areas: no less than 100 feet From an existing or permitted utility distribution or transmission pole</p> <p><u>Hub-Sites^x</u>: If in utility transmission easement or street ROW, it must be located a minimum of 20 feet from the utility transmission easement or ROW line</p>	<p><u>Co-located</u>: 12 feet maximum</p> <p><u>Replacement-Single Family Dwelling Zones</u>: If <i>located on a major thoroughfare</i>, maximum height equals 80 feet. If the existing pole is higher than 80 feet, then the new pole cannot be more than 15 feet taller than the original. If <i>not located on a major thoroughfare</i> the new pole cannot be more than 15 feet higher than the existing pole.</p> <p><u>Replacement-Multi-Family Dwelling Zones</u>: If the buildings are 35 feet or less in height, then the entire height of the pole must not exceed 100 feet. If the original pole exceeds 100 feet, then the replacement cannot be more than 15 feet higher than the existing pole.</p> <p><u>Replacement- All Other Instances</u>: The entire height of the pole must not exceed 100 feet. If the original pole exceeds 100 feet, then the replacement cannot be more than 15 feet higher than the existing pole.</p> <p><u>New Structures</u>: 50 feet maximum <u>Hub-Sites</u>: 12 feet maximum</p>

Arlington, VAⁱ	All small cell facilities must be placed on an existing privately-owned utility poles and structures in the right-of-way, and County owned light poles.	Height restrictions are based on the type of pole the small wireless facility will be placed on. ^{xii} Some examples include ^{xiii} : <ul style="list-style-type: none"> • 35 feet maximum (including small wireless facility) • 26 feet maximum (including small wireless facility) The small wireless facility should not exceed 6 feet higher than the pole.
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ⁱ AR,R,RC,RNC,RE-2,RE-2C,RE-1,R-200,R-90,R-60,R-40

ⁱⁱ The Hearing Examiner may reduce the setback to no less than one foot for every foot in height if evidence indicates that the reduced setback will allow the support structure to be located on the property in a less visually-intrusive location. – Jeff Zyontz November 19, 2019 Public Hearing Staff Packet pg. 8
https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2019/20191119/20191119_7.pdf

ⁱⁱⁱ Right-of-Way

^{iv} Unless it can be demonstrated that additional height up to 179 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection required by the building permit, the applicant must certify to DPS that the height and location of the support structure conforms with the height and location of the support structure on the building permit.

^v Prince George's County CB-058-2019 on Small Wireless Facilities <https://princegeorgescountymd.legistar.com/LegislationDetail.aspx?ID=4144226&GUID=A73DBCBE-5AED-408B-86B2-88298DD721C0&Options=ID|Text|&Search=CB-58-2019>

^{vi} Small Cell Design Guidelines, 2019

https://ddot.dc.gov/sites/default/files/dc/sites/ddot/page_content/attachments/Final%20Third%20Version%20of%20the%20Small%20Cell%20Guidelines.pdf

^{vii} Ground-mounted equipment has different restrictions based on specific zones and locations. Please see 7-8 of Fairfax County Zoning Ordinance 19-480
<https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning%20ordinance/adopted%20amendments/zo19480.pdf>

^{viii} Co-location includes antenna and equipment is placed on an existing utility or light pole.

^{ix} Fairfax minimum yard requirements for residential zones, R-12 (pg. 3-77) R-16 (pg. 3-83), R-20 (pg. 3-89), R-30 (pg. 3-95) : <https://www.fairfaxcounty.gov/planning-development/sites/planning-development/files/assets/documents/zoning/zoning%20ordinance/art03.pdf>

^x A hub site as defined by the Fairfax County Zoning Ordinance pertains to an equipment cabinet or structure that serves a wireless facility system when there are no antennas located on the same lot as the equipment cabinet or structure.

^{xi} Amended and enacted Chapter 22 (Street Development and Construction) Section 22-8.2 for Arlington County, VA Effective August 1, 2019

https://arlington.granicus.com/MetaViewer.php?view_id=2&clip_id=3656&meta_id=188150 Chapter 22 full text: https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/22/2019/08/Ch-22_STREET-DEVELOPMENT-AND-CONSTRUCTION_per-Board-Report_Final.pdf

^{xii} Arlington, VA Department of Transportation Lighting Standards & Specifications Updates <https://transportation.arlingtonva.us/streets/street-lights/lighting-standards-specifications-updates/>

^{xiii} Arlington, VA Department of Transportation Small Cell Wireless Facility Pole Drawings <https://arlingtonva.s3.amazonaws.com/wp-content/uploads/sites/19/2019/10/Small-Cell-Wireless-Facility-SWF-Pole-Drawings.pdf>

	New Utility Pole NOT RELATED TO WIRELESS	New Utility Pole for Maintenance	Replacement Utility Pole RELATED TO WIRELESS	Wireless attachment to a Utility Pole in ROW	New Wireless Structure (Pole) in ROW	Wireless on Private Property
Details	Definition: PEPCO	Definition: PEPCO (or other utility) Maintenance (Double Poling)	Definition: Installing a new pole specifically to accommodate a new antenna	Definition: Mobilitie (or other Telecommunications Franchisee) places equipment on existing utility pole	Commercial Building permit for structure Definition: new DOT street light, stealth structure,	Commercial Building permit for structure Definition: rooftop antenna, private street light, stealth structure
	Transmit power	Transmit power	Related to Wireless			
	12 month expiration	12 month expiration (double poling) 180 days to move equipment and switch all other carriers; removing double pole.	12 month expiration (double poling) 180 days to move equipment and switch all other carriers; removing double pole.			
PERMIT TYPE	Right of Way Permit	Right of Way Permit	Right of Way Permit	Three Permits Required: COMBUILD (Install/Wireless) Right of Way (Install/Wireless) Electrical (Install/Wireless)	Three Permits Required: COMBUILD (Install/Wireless) Right of Way (Install/Wireless) Electrical (Install/Wireless)	Two Permits Required: COMBUILD (Install/Wireless) Electrical (Install/Wireless)
Work Type/Use Code	INSTALL / PUBUTL * Check box for new pole	INSTALL / PUBUTL * Check box for new pole	INSTALL / PUBUTL * Check box for Pole to Accommodate Wireless	INSTALL / WIRELESS for all three permit types	INSTALL / WIRELESS for all three permit types	INSTALL / WIRELESS for both permit types
Reviews	Utility Review	Utility Review	Utility Review	Structural1 Review	Structural1 Review	Structural1 Review
	Traffic Control	Traffic Control	Traffic Control	Electrical	Electrical	Electrical
			Zoning/Wireless	Zoning/Wireless Review	Zoning/Wireless Review	Architectural (only if mounted on bldg)
				Subdivision Development Review (related ROW permit req.)	Subdivision Development Review (related ROW permit req.)	Life Safety (only if mounted on bldg)
				Roadside Tree Review	Roadside Tree Review	Zoning/Wireless Review
					DOT Review if new DOT street light	
Submittal Req	Standard submittal	Standard submittal	Tower Committee Recommendation	Tower Committee Recommendation	Tower Committee Recommendation	Tower Committee Recommendation
					DOT Approval (plans and/or letter uploaded to ePlans) if new DOT street light	
Inspections	Performed by ROW inspector	Performed by ROW inspector	Performed by ROW inspector	Wireless provider must provide certifications related to structural integrity, ZTA requirements and photo of equipment installed. Performed by Zoning Inspector and/or Electrical Inspector?	Wireless provider must provide certifications related to structural integrity, ZTA requirements and photo of equipment installed. Performed by Zoning inspector and/or Electrical Inspector?	Wireless provider must provide certifications related to structural integrity, ZTA requirements and photo of equipment installed. Performed by Zoning Inspector and/or Commercial Bldg/Electrical Inspector?
	Inspection - 251	Inspections - 251, 951	Inspections - 251, 951	Inspection - 251	Inspection - 251	Inspection - 251
		Inspection - Removal of Original Pole	Inspection - Removal of Original Pole			
		Need to establish mechanisms to confirm that within 180 days of start of work that all work is completed	Need to establish mechanisms to confirm that within 180 days of start of work that all work is completed			
Reports	Expire letter to applicant	Expire letter to applicant	Expire letter to applicant	TBD - Commercial Building	TBD - Commercial Building	TBD - Commercial Building
	Expire report for inspection	Expire report for inspection	Expire report for inspection	TBD - Zoning	TBD - Zoning	TBD - Zoning
			TFCG report - Longitude/Latitude, Utility Pole#, Total Height, Distance to Nearest Bldg, TC App#, TBD	TFCG report - Longitude/Latitude, Utility Pole#, Total Height, Distance to Nearest Bldg, TC App#, TBD	TFCG report - Longitude/Latitude, Utility Pole#, Total Height, Distance to Nearest Bldg, TC App#, TBD	TFCG report - Longitude/Latitude, Utility Pole#, Total Height, Distance to Nearest Bldg, TC App#, TBD



OFFICE OF THE COUNTY EXECUTIVE

MEMORANDUM

June 29, 2021

TO: Tom Huckler, Council President

FROM: Marc Elrich, County Executive

SUBJECT: ZTA 19-07 and related zoning and other issues

I am writing to provide comments on ZTA 19-07 as amended by the PHED committee, propose some changes, and suggest a role for community engagement.

First, regarding concerns about ZTA 19-07, I have the following concerns and comments:

1. The ZTA does not set any proposed minimum setback from a building; it is a limited use process up to 30 feet from the building and then it is a “modified conditional use” process for less than 30 feet setback.
2. It is not clear what a modified conditional use process would look like. The Planning Board letter dated 11-18-19 includes some issues to be addressed, including the “extent of Planning Staff involvement in the expedited limited use and conditional use processes”. ZTA 19-07 would remove the right of appeal to the Board of Appeals and require that it go straight to the courts. This is an expensive burden for residents.
3. Allowing the Hearing Examiner to order a joint hearing or consolidation could be helpful but the Office of Zoning and Administrative Hearings (OZAH) believes (per the 11-18-19 letter from the Planning Board) that any consolidated applications should be filed on the same day. Additionally, further discussion could be useful for determining the amount of area that could be consolidated.
4. Residents have concerns about who can be a party of record. They have proposed that:
 - “Party of Record” means an Applicant or Respondent who appears at or is represented at an OZAH Hearing, and any other Person or Organization who presents oral testimony, comment, or argument at an OZAH Hearing.

- In a consolidated OZAH case, any person who has submitted written testimony to OZAH will automatically be a Party of Record.
5. Antenna attachments to existing and replacement utility poles are not covered by this ZTA. Although Section 59.3.5.2.C mentions replacement utility poles, it has been interpreted that utility poles – whether existing or replacement – are governed by Section 59.3.5.14.C “Antenna on Existing Structure”. The staff memo from Jan 21, 2020, explains,
- “A pole may be replaced because of general maintenance, increased electrical service needs, to accommodate cable service, or to accommodate an antenna. If the pole exists when an applicant applies for an electrical permit, the provision for an antenna attachment on an existing structure applies (Section 59.3.5.14.C of the zoning code). There is NO height limit for antennas on existing structures. There IS a required 60-foot antenna setback from any dwelling (Section 59.3.5.14.C.2.e.iii).” (pg. 11)
- The memo confirms that ZTA 19-07 does not amend this section and that therefore, it would “not affect the current law concerning the unlimited height of utility poles in their status as existing structures.”
6. The amendment to provide a minimum distance between poles with antennas “occupied or controlled by the same carrier” is a good addition to limit the unnecessary proliferation of antennas. A similar provision should be added to Section 59.3.5.14.C
7. The waiver and objection process proposed for certain height increases and for new poles is not one that gives sufficient notice and access for residents. Unless there is a specific objection, the waiver is allowed; a process is not required.
8. In order to minimize proliferation of unnecessary poles, new poles should be a conditional use process.
9. Additional stealth requirements may be appropriate for streetlights and utility poles. (If additional stealth requirements were included, Section 59.3.5.14.C would need to be amended also.)
10. A final permit should be conditional on testing for RF to determine whether the telecommunications tower is within the FCC’s RF standards for the general population.

Previously, my staff has mentioned a “tiered” approach to siting of telecom towers and antenna attachments. I would like to propose a 3-tiered approach based on the allowed speed of the road: less than 35 mph; 35-50 mph; and greater than 50 mph. On roadways with speeds less than 35 mph, telecommunications towers would be allowed at 75 feet with a conditional use to 60 feet. This would allow attachments on approximately 31,000 streetlights at 75 feet and about another 6,000 at 60 feet. On roadways with 35-50 mph, telecommunication towers would be allowed at 45 feet with a conditional use to 30 feet, and on roadways with a speed greater than 50 mph, telecommunication towers would be allowed at 30 feet with conditional use to 10 feet.

I would also note that given that there are three separate companies – AT&T, Verizon and T-Mobile - that potentially want to install telecommunication towers in the millimeter spectrum, a discussion is needed about what that could look like in the neighborhoods. It could be three towers every 150 feet. It is not simply locating one tower as it has been portrayed.

Additionally, it is my understanding that municipalities have some concerns about their involvement and role in the process.

On a related issue, we are reviewing procedures and process of the Transmission Facility Coordinating Group (known as the Tower Committee) to provide for better public input and transparency. That review is not yet complete, but it is in process.

My staff and I have talked with many residents and industry representatives, and we have found them to be knowledgeable and willing to help improve the process. I would like to propose that we convene a working group comprised of a diverse group of stakeholders, including industry, residents, municipalities and homeowner/tenant associations and/or non-profit organizations. Staff support would be provided by Executive and Council staff. The group would have a limited time – perhaps 75 -90 days - to present written recommendations. I believe such a group would allow opportunity for a more complete discussion of these issues.

ME/DS

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