



Committee: PHED
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To receive testimony – no vote expected
Keywords: #Antennas #UtilityPoles

AGENDA ITEM #7
September 13, 2022
Public Hearing

SUBJECT

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

Lead Sponsor: Councilmember Riemer

EXPECTED ATTENDEES

Members of the public

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To receive testimony

DESCRIPTION/ISSUE

ZTA 22-01 will reduce the setback for Antenna on Existing Structure to 30 feet.

SUMMARY OF KEY DISCUSSION POINTS

- The District Council adopted ZTA 19-07 on July 27, 2021, which made the setback for a limited use Telecommunications Tower in the Agricultural, Rural Residential, and Residential zones 30 feet.
- Under the current Zoning Ordinance, the setback for an Antenna on Existing Structure is 60 feet.
- ZTA 22-01 will reduce the setback for Antenna on Existing Structure to 30 feet so that those antennas are treated similarly to telecommunications towers.

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MEMORANDUM

September 8, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

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

PURPOSE: Public Hearing

Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards, lead sponsor Councilmember Riemer, was introduced on February 8, 2022.

In July 2021, the County Council adopted ZTA 19-07, Telecommunications Towers – Limited Use. ZTA 19-07 revised the standards for telecommunications towers allowed as a limited or conditional use and generally amended the use requirements. The setback for a Telecommunications Tower in the Agricultural, Rural Residential, and Residential zones was reduced to 30 feet. ZTA 19-07 did not make any changes to Antenna on Existing Structure, a different use in the Zoning Ordinance with separate provisions.

Under section 3.5.14.C. of the Zoning Ordinance, an “Antenna on Existing Structure” is defined as “one or more antennas attached to an existing support structure, including a building, a transmission tower, a monopole, a light pole, a utility pole, a water tank, a silo, a barn, a sign, or an overhead transmission line support structure. Antenna on Existing Structure includes related equipment.” Currently, the setback for an Antenna on Existing Structure is 60 feet. ZTA 22-01 will reduce that setback to 30 feet, so that these antennas are treated similarly to telecommunications towers.

A PHED Committee worksession is tentatively scheduled for October 3, 2022.

This packet contains:

ZTA 22-01
Racial Equity and Social Justice Impact Statement

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

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

Lead Sponsor: Councilmember Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

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

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

Division 3.5. “Commercial Uses”

Section 3.5.14. “Accessory Commercial Uses”

Section 3.5.14.C. “Antenna on Existing Structure”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

OPINION

ORDINANCE

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

1 **Sec. 1. DIVISION 59-3.5 is amended as follows:**

2 **Division 3.5 Commercial Uses**

3 * * *

4 **Section 3.5.14. Accessory Commercial Uses**

5 * * *

6 **C. Antenna on Existing Structure**

7 * * *

8 **2. Use Standards**

9 * * *

10 e. An antenna classified as Standard A under Section 3.5.2.C.1.b
11 may be installed on any existing structure located in the right-
12 of-way in any zone where an antenna on an existing structure is
13 allowed, if:

14 i. the antenna is in an enclosure and the enclosure is the
15 same color or pattern as the existing structure;

16 ii. the antenna and the antenna enclosure is installed at a
17 minimum height of 15 feet; and

18 iii. the [structure]antenna is at least [60]30 feet from a
19 dwelling in a Rural Residential, Residential, or Planned
20 Unit Development zone, and at least 10 feet from any
21 structure in any Commercial/Residential, Employment,
22 or Industrial zone.

23 * * *

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

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

Office of Legislative Oversight

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

SUMMARY

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

PURPOSE OF RESJ STATEMENTS

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

PURPOSE OF ZTA 22-01

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

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

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

THE DIGITAL DIVIDE, HEALTH INEQUITIES, AND RACIAL EQUITY

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

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

RESJ Impact Statement

Zoning Text Amendment 22-01

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

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

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

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

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

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

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

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

RESJ Impact Statement

Zoning Text Amendment 22-01

ANTICIPATED RESJ IMPACTS

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

CAVEATS

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

CONTRIBUTIONS

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

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

² Ibid

³ Ibid

⁴ American Community Survey, 1-year estimates, 2019

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

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

⁷ Ibid

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

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

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

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

¹² Ibid