



Committee: PHED
Committee Review: Completed
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #Antennas #UtilityPoles

AGENDA ITEM #4C
October 25, 2022
Action

SUBJECT

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

Lead Sponsor: Councilmember Riemer

EXPECTED ATTENDEES

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

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The PHED Committee (3-0) recommends approval with amendments.

DESCRIPTION/ISSUE

ZTA 22-01 will reduce the setback for Antenna on Existing Structure to 30 feet in Rural Residential, Residential, or Planned Unit Development zones.

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.

This report contains:

Staff memo
ZTA 22-01, amended
Planning Board Recommendation
Planning Staff Memorandum
RESJ Impact Statement

Pages 1-4
© 1
© 6
© 7
© 10

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MEMORANDUM

October 20, 2022

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

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

PURPOSE: Action

Committee recommendation (3-0): approval of the ZTA with amendments
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Expected Attendees

- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, Department of Permitting Services (DPS)
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- Marjorie Williams, Broadband, Cable & Franchise Division Manager, Department of Technology & Enterprise Business Solutions (TEBS)
- Meredith Wellington, Land Use Planning Policy Analyst, Office of the County Executive

Introduction

Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards, lead sponsor Councilmember Riemer, was introduced on February 8, 2022. ZTA 22-01 will reduce the setback for Antenna on Existing Structure in the Rural Residential, Residential, or Planned Unit Development zones to 30 feet.

Public Hearing

A public hearing was held on September 13, 2022. Several speakers testified, both in opposition and support. Opposition testified that the approval process for Antenna on Existing Structure lacks public input, that the negative effects of radiation have not been sufficiently studied, and that the technology has become obsolete. Letters in opposition questioned the legal necessity for this ZTA, as well as asked questions about the impacts on the environment, such as pollinators and the tree canopy. Speakers in support testified that this infrastructure is needed to support businesses and

public services, increase connectivity, and encourage colocation. Letters in support noted the benefits of wireless connectivity in sectors such as education, public safety, healthcare, transportation, and technology; and noted that the current zoning ordinance has the unintended consequence of incentivizing applying for a new telecommunications tower rather than using an existing structure.¹

Summary of Impact Statements

Planning Board Recommendation

The Planning Board reviewed ZTA 22-01 on July 14, 2022. The Board recommended approval of the ZTA, since it would make the setback for Antenna on Existing Structure the same as Telecommunications Towers, which is consistent with the County’s “long-standing practice of encouraging co-location of such equipment on existing poles where possible.”

RESJ Impact Statement

The Office of Legislative Oversight (OLO) submitted a racial equity and social justice (RESJ) impact statement on March 14, 2022. OLO found that it could not determine the impact of ZTA 22-01 on racial equity and social justice in the County. OLO noted that “expansion in 5G services could help bridge the digital divide by race and ethnicity”, but that there is no consensus regarding the health and environmental impacts of 5G technology so the probable impact on health inequities remains unknown.

Council Worksession

The District Council held a worksession on ZTA 22-01 on October 18, 2022.² The Council reviewed the amendments proposed by the PHED Committee. The Council supported without objection a motion to use the term “building intended for human occupation”, rather than “dwelling”, consistent with ZTA 19-07.

the [structure][[antenna]]Antenna on Existing Structure is at least [60]30 feet from a [[dwelling]]building intended for human occupation in a Rural Residential, Residential, or Planned Unit Development zone, and at least 10 feet from any structure in any Commercial/Residential, Employment, or Industrial zone.

PHED Committee

The PHED Committee held worksessions on ZTA 22-01 on October 3 and October 10, 2022. The PHED Committee recommended approval of ZTA 22-01 with the following amendments:

¹ Written testimony can be found here:

<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20220913/item7.html>

² The full staff report for that worksession, with attachments, can be found here:

https://www.montgomerycountymd.gov/council/Resources/Files/agenda/col/2022/20221018/20221018_9_A.pdf

1. Clarify that both the antenna and its related equipment are subject to Section 3.5.14.C. Use Standards

the [structure][[antenna]]Antenna on Existing Structure is at least [60]30 feet from a [[dwelling]]building intended for human occupation in a Rural Residential, Residential, or Planned Unit Development zone, and at least 10 feet from any structure in any Commercial/Residential, Employment, or Industrial zone.

2. Add preferential placement language for an Antenna on Existing Structure with a setback of 90 feet or less

Whenever it is legally and technically feasible, an Antenna on Existing Structure located 90 feet or less from a building intended for human occupation in a Rural Residential, Residential, or Planned Unit Development zone should be located closest to intersections, closest to property lines between dwellings, along the non-front-facing side of residential properties, or along abutting properties used for a non-residential purpose. In addition, the Antenna on Existing Structure must be at least 5 feet from the area between two parallel lines extending from the sides of a residential front door. If the applicant cannot meet the foregoing standards, the applicant must include in their application an affidavit proving that either permission from the pole owner cannot be obtained or service cannot be provided using a pole at an alternate location.

3. Limit pole proliferation

An Antenna on Existing Structure must be located at least 150 feet from the nearest antenna occupied or controlled by the same carrier.

4. Require the removal of a deactivated Antenna on Existing Structure

An Antenna on Existing Structure must be removed within 30 days of deactivation.

5. Encourage the protection of tree canopies

Sec. 2. Tree Loss Minimization. The County Executive must include tree loss minimization language in all franchise and license agreements signed after the effective date of ZTA 22-01. Critical damage to the root zones of trees as well as excessive pruning should be avoided in the installation of an Antenna on Existing Structure.

6. *Require maintenance of any Antenna on Existing Structure*

The owner of the Antenna on Existing Structure must maintain the Antenna on Existing Structure in a safe condition. The owner must remove graffiti and repair damage to the facility.

This packet contains:

ZTA 22-01, amended	© 1
Planning Board Recommendation	© 6
Planning Staff Memorandum	© 7
RESJ Impact Statement	© 10
County Executive September 29, 2022, Letter	© 13
County Executive October 7, 2022, Letter	© 15

Ordinance No.:
Zoning Text Amendment No.: 22-01
Concerning: Antenna on Existing
Structure – Use Standards
Draft No. & Date: 2 – 10/19/2022
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

Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards, lead sponsor Councilmember Riemer, was introduced on February 8, 2022. ZTA 22-01 will reduce the setback for Antenna on Existing Structure in the Rural Residential, Residential, or Planned Unit Development zones to 30 feet.

The Office of Legislative Oversight (OLO) submitted a Racial Equity and Social Justice (RESJ) Impact Statement on July 1, 2022. OLO found that it could not determine the impact of ZTA 22-01 on racial equity and social justice in the County.

The Planning Board unanimously recommended approval of ZTA 22-01 on July 14, 2022.

A public hearing was held on September 13, 2022. Several speakers testified, both in opposition and support. The Council also received several letters, both in opposition and support. Testimony in opposition argued the approval process for Antenna on Existing Structure lacks public input, that the negative effects of radiation have not been sufficiently studied, and that the technology has become obsolete. Testimony in support argued this infrastructure is needed to support businesses and public services, increase connectivity, and encourage colocation.

The PHED Committee held worksessions on October 3 and October 10, 2022. The PHED Committee recommended several amendments to make ZTA 22-01 more consistent with ZTA 19-07, Telecommunications Towers. These amendments included: 1) clarifying that the use standards apply to both the antenna and its related equipment; 2) adding preferential placement language for Antenna on Existing Structure with a setback of 90 feet or less; 3) limiting pole proliferation; 4) requiring the removal of deactivated Antenna on Existing Structure; 5) encouraging the protection of tree canopies; and 6) requiring maintenance of the antenna and its equipment.

The District Council had a worksession on October 18, 2022. During the worksession, the Council supported without objection a motion to use the term “building intended for human occupation”, rather than “dwelling”, consistent with ZTA 19-07.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 22-01 will be approved as amended.

ORDINANCE

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

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

Division 3.5 Commercial Uses

* * *

Section 3.5.14. Accessory Commercial Uses

* * *

C. Antenna on Existing Structure

* * *

2. Use Standards

* * *

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

- i. the antenna is in an enclosure and the enclosure is the same color or pattern as the existing structure;
- ii. the antenna and the antenna enclosure is installed at a minimum height of 15 feet; and
- iii. the [structure][[antenna]]Antenna on Existing Structure is at least [60]30 feet from a [[dwelling]]building intended for human occupation in a Rural Residential, Residential, or Planned Unit Development zone, and at least 10 feet from any structure in any Commercial/Residential, Employment, or Industrial zone.

f. Antennas installed under Section 3.5.14.C.2.e.iii. must meet the following use standards:

- i. Whenever it is legally and technically feasible, an Antenna on Existing Structure located 90 feet or less

from a building intended for human occupation in a Rural Residential, Residential, or Planned Unit Development zone should be located closest to intersections, closest to property lines between dwellings, along the non-front-facing side of residential properties, or along abutting properties used for a non-residential purpose. In addition, the Antenna on Existing Structure must be at least 5 feet from the area between two parallel lines extending from the sides of a residential front door. If the applicant cannot meet the foregoing standards, the applicant must include in their application an affidavit proving that either permission from the pole owner cannot be obtained or service cannot be provided using a pole at an alternate location.

ii. An Antenna on Existing Structure must be located at least 150 feet from the nearest antenna occupied or controlled by the same carrier.

iii. An Antenna on Existing Structure must be removed within 30 days of deactivation.

iv. The owner of the Antenna on Existing Structure must maintain the Antenna on Existing Structure in a safe condition. The owner must remove graffiti and repair damage to the facility.

* * *

Sec. 2. Tree Loss Minimization. The County Executive must include tree loss minimization language in all franchise and license agreements signed after the effective date of ZTA 22-01. Critical damage to the root zones of trees as well as

55 excessive pruning should be avoided in the installation of an Antenna on Existing
56 Structure.

57 * * *

58 **Sec. ~~[[2]]~~3. Effective date.** This ordinance becomes effective 20 days after
59 the date of Council adoption.

July 22, 2022

To: The Honorable Gabe Albornoz
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment No. 22-01

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on July 14, 2022 and by a vote of 5:0 supported Zoning Text Amendment (ZTA) 22-01, as it was introduced. The ZTA amends the required setbacks for small cell antennas from residential structures when placed on existing poles. Updates to this setback was inadvertently omitted from ZTA 19-07, which generally amended the setback standards for small cell antennas.

The ZTA updates the setback for small cell antennas when located on existing poles in residential zones from 60 feet to 30 feet. This matches the setbacks allowed for antennas when placed on new poles. The county has a long-standing practice of encouraging co-location of such equipment on existing poles where possible and this proposed change is in keeping with that practice.

The Board appreciates the opportunity to review ZTA 21-01 and offers its full support in seeing this change adopted.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, July 14, 2022.



Casey Anderson
Chair

Attachment A: Board Staff Report Packet

CA:BB:aj

ZTA 22-01 – ANTENNA ON EXISTING STRUCTURE

Description

ZTA 22-01 reduces the setback required for an antenna mounted on existing structures from 60 feet to 30 feet, consistent with the standards allowed for new structures recently adopted by ZTA 19-07.

ZTA 22-01

COMPLETED: 7-7-2022

MCPB

Item No. 06

7-14-2022

2425 Reedie Drive

Floor 14

Wheaton, MD 20902



Benjamin Berbert, Planner III, Countywide Planning and Policy
Benjamin.Berbert@montgomeryplanning.org, 301-495-4644

Jason Sartori, Chief, Countywide Planning and Policy
Jason.Sartori@montgomeryplanning.org, 301-495-2172



Summary

- ZTA 19-07, Telecommunications Towers, for small cell antennas was adopted on July 27, 2021, creating new setback standards that antennas located on new structures be set back a minimum of 30 feet from residential dwellings in residential zones.
- The standards for antennas located on existing structures was not updated at that time, and still requires a 60-foot minimum setback from residential properties.
- The county has long prioritized co-location of cell antennas on existing structures and towers, therefore ZTA 22-01 would adjust the standards for antennas on existing structures to match that of new structures to not disadvantage co-location.
- Planning staff has no comments and recommends the Planning Board transmit a memo to the District Council in support of the ZTA.

LEAD SPONSORS

Councilmember Reimer

INTRODUCTION DATE:

February 15, 2022

REVIEW BASIS:

Chapter 59

SECTION ONE

BACKGROUND

Rationale for ZTA 22-01

ZTA 22-01 was introduced by Councilmember Reimer on February 15, 2022. The public hearing for this ZTA has been delayed several times and is currently scheduled for September 13, 2022. This ZTA would amend code in Section 3.5.14.C “Antenna on Existing Structure” which is a sub-section of the section titled “Accessory Commercial Uses.” This section of code regulates the mounting of antennas, including cellular, on existing structures such as street or parking lot lights, utility poles, or water towers. When ZTA 19-07 (Ordinance 19-17) for small cell antennas was adopted on July 27, 2021, the updated provisions permitted a minimum setback from residential structures of 30 feet for antennas on new structures. Section 3.5.14.C for antennas on existing structures, however, was not updated and still requires a minimum 60-foot setback, double what is allowed for new structures. The county has a longstanding interest in encouraging co-location of new infrastructure onto existing structures where possible, so ZTA 22-01 was introduced to allow the setback standards for antennas on existing structures to match the standards of antennas on new structures.

SECTION TWO

ANALYSIS

ZTA 22-01 as introduced

ZTA 22-01 makes minor text modifications to Section 3.5.14.C.2.e.iii of the Zoning Code, replacing the word structure with antenna, and the setback requirement of 60’ with 30’ (Attachment A). No other standards regulating the placement of antennas on existing structures is modified by this ZTA. This is the minimum modification that meets the ZTA’s intent of having the setback standard for antennas on existing structures match the standard for new structures. Planning staff has no comment on this ZTA and recommends the Planning Board transmit a memo in support of the ZTA.

Conclusion

Staff supports the changes as introduced for ZTA 22-01 and recommends the Planning Board transmit comments in support of the ZTA to the District Council. The code change brings parity to the placement of antennas on both new and existing structures, which was the intent of the original ZTA 19-07 for small cell antennas.

Attachment A – ZTA 22-01 introduction packet

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

Office of Legislative Oversight

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

SUMMARY

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

PURPOSE OF RESJ STATEMENTS

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

PURPOSE OF ZTA 22-01

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

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

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

THE DIGITAL DIVIDE, HEALTH INEQUITIES, AND RACIAL EQUITY

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

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

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




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

September 29, 2022

TO: Hans Riemer, Chair
Planning, Housing & Economic Development Committee

FROM: Marc Elrich, County Executive 

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

I am writing to ask you to table ZTA 22-01 because there is currently no need for a change. The Council already passed ZTA 19-07, which allows telecom towers at 30 feet from residences through the streamlined limited use process (and they are allowed even closer than 30 feet through a modified, expedited conditional use process).

We have not seen a rationale suggesting that the change promoted by ZTA 22-01 is necessary. The County already has at least 33,000 poles available for attachments in residential areas. There is no need for more poles, and there is a downside to changing the setback. There is some risk in reducing the distance for existing structures from the current 60 feet because of aesthetic concerns. Previous federal court rulings have clarified that local jurisdictions have the authority to regulate aesthetic considerations. While ZTA 19-07 allowed new poles at 30 feet, new poles can be subject to aesthetic considerations; existing structures, like utility poles, are not subject to aesthetic requirements.

There also is no evidence that this ZTA would help address the digital divide, which became even more apparent during the COVID-19 pandemic. As you may know, my administration has been working to provide improved digital equity, especially expanding free and vastly reduced broadband access, which is central to allowing students and their families to access essential information and schoolwork.

Here is some of the work to address the digital divide and improve equity:

As of June 2022, 12,294 County households have enrolled in the Affordable Connectivity Program (ACP). Residents enrolled in other benefit programs are eligible to receive \$45 off their home or mobile broadband bill through ACP. In July 2022, Montgomery Connects, the County's digital equity program, launched an initiative to provide in-person ACP enrollment assistance and has helped over 428 families enroll in this program. In addition, 200 families are receiving free home broadband through the MoCoNet 100 Mbps residential broadband program. In FY22, Senior Planet Montgomery provided technology training for over 5,000 participants aged 50 and above. Montgomery Connects has provided over 26,000 loaner computers to low-income residents who do not have computers. The Office of Broadband programs is working with Comcast and Verizon to submit Maryland rural broadband grants to get broadband service to the remaining 75 occupied unserved rural properties in the County.

Furthermore, while the County cannot and does not regulate based on radiofrequency emissions, the County does need to ensure compliance with the Federal Communications Commission's (FCC) radio frequency (RF) guidelines, which have been put into question by a decision by the DC Circuit Court last August. The Court did not rule on RF effects, but they did rule that the FCC order was "arbitrary and capricious", and the FCC must provide a "reasoned explanation" for their guidelines. (<https://docs.fcc.gov/public/attachments/DOC-374936A1.pdf>) Given that there is no urgency to change the setback, it makes sense to wait to see how the FCC responds.

At this point, it makes sense to maintain the existing 60' setback.

- The County is not under any demonstrated federal obligation to enact this ZTA.
- There has been no local demonstrated need.
- There is an argument based on aesthetics that the distances can be different for new telecom towers, where the County can have input on the design and existing structures where the County does not.
- It is prudent to wait to see how the FCC responds to the Court decision.

Therefore, I respectfully request that the Council not approve this ZTA at this time, and I urge you to leave the 60-foot distance for existing structures intact. If you are concerned about consistent standards, then I suggest that you could put the new poles at 60 feet from residences as ZTA 19-07 stipulated when it was introduced. You would then have consistency without creating possible concerns about aesthetics.

I appreciate your attention to these concerns.




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

M E M O R A N D U M

October 7, 2022

TO: Hans Riemer, Chair
Planning, Housing and Economic Development Committee

FROM: Marc Elrich, County Executive 

SUBJECT: Follow – up, ZTA 22-01, Antenna on Existing Structure – Use Standards

As you know, I previously submitted a memo (attached) outlining why I believe ZTA 22-01 is not needed at this time. As a follow up to your discussion about ZTA 22-01 on October 3, I would like to suggest an alternative. I understand that you believe ZTA 22-01 is important to avoid a proliferation of new poles. If that is correct, I suggest that you provide an incentive for carriers to attach to existing poles at 60' (or further). If that does not work for them, then they would have the option to erect a new telecommunications tower at somewhere between 30-60' as was allowed under ZTA 19-07.

As I pointed out in my memo, while ZTA 19-07 allowed new poles at 30 feet, new poles can be subject to aesthetic considerations; existing structures, which are often utility poles, are not subject to aesthetic requirements. Therefore, preserving the 60' setback for antennas on existing structures as different from new telecommunications towers, and offering an incentive to carriers to attach to existing 60' poles is important. Together, these requirements discourage the proliferation of new poles while supporting aesthetic standards for poles located from 30' to 59' from dwellings in residential areas.

I appreciate your attention to these concerns.

Enclosure