CORRECTED
Ordinance No.: 19-17
Zoning Text Amendment No.: 19-07
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 7 – 7/15/2021
Introduced: October 1, 2019
Public Hearing: November 19, 2019
Adopted: July 27, 2021
Effective: August 16, 2021

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 Albornoz 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”
Zoning Text Amendment (ZTA) 19-07, lead sponsor Councilmember Riemer, co-sponsors Councilmembers Albornoz and Rice, was introduced on October 1, 2019.

ZTA 19-07 will 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 amend the use requirements to address certain telecommunications towers.

In its report to the Council, 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 Council’s public hearing was on November 19, 2019. Most of the public testimony was in opposition and expressed concerns about RF emissions, Planning Staff involvement, lack of notice and public participation, post-construction inspection, the Tower Committee, an increase in energy use, a reduction in property values, and the effect on minority communities. Testimony in support refuted the claims about health effects and supported better broadband coverage in the County. Some testimony was generally in support but expressed concern that it was still too restrictive in light of the FCC Order. The Council also received significant written testimony in the years between introduction of ZTA 19-07 and its adoption.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation. The PHED Committee held worksessions on January 23, 2020; February 10, 2021; and March 10, 2021. The PHED Committee recommended approval of ZTA 19-07 with several amendments. Those amendments were:

- Reduce the setback for a limited use from 60 feet to 30 feet (3-0);
- Modified conditional use process for all poles under the 30-foot setback (3-0);
- A “waiver and objection” process for a height up to 50 feet where other limited use setback requirements are met (3-0);
- A “waiver and objection” process for all new poles (2-1);
• 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); and
• 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).

The full Council had worksessions on June 29, 2021; July 13, 2021; and July 20, 2021. During the worksessions, the Council discussed but did not approve amendments proposed by Councilmember Katz and Council President Hucker that used a tier approach to setbacks based on speed limit and the type of road, respectively. The Council approved various amendments proposed by Councilmembers Friedson, Navarro, Reimer, and Rice. These amendments addressed tree loss minimization, pole proliferation, preferential placement, and height.

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. 19-07 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 59-3.1 is amended as follows:

DIVISION 3.1. Use Table

* * *

Section 3.1.6. Use Table

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

<table>
<thead>
<tr>
<th>USE OR USE GROUP</th>
<th>Definitions and Standards</th>
<th>Residential Detached</th>
<th>Residential Townhouse</th>
<th>Residential Multi-Unit</th>
<th>Commercial/Residential</th>
<th>Employment</th>
<th>Industrial</th>
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<td>R</td>
<td>RC</td>
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<td>RE-2</td>
<td>RE-2C</td>
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<td>Residential Detached</td>
<td>Residential Townhouse</td>
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<td>RC</td>
<td>RNC</td>
<td>RE-2</td>
<td>RE-2C</td>
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</table>

Key: P = Permitted Use  L = Limited Use  C = Conditional Use  Blank Cell = Use Not Allowed
Sec. 2. DIVISION 59-3.5 is amended as follows:

DIVISION 3.5. Commercial Uses

* * *

Section 3.5.2. Communication Facility

* * *

C. Telecommunications Tower

* * *

2. Use Standards

* * *

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

i. Any building permit application to the Department of Permitting Services [concerning] for the construction of a Telecommunications Tower must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the building permit application.

ii. In the Commercial/Residential, Industrial, and Employment zones, the pre-existing pole and the replacement tower must be at least 10 feet from an existing building, excluding any setback encroachments 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. A replacement [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; and
(f) whenever it is legally and technically feasible, replacement poles should replace pre-existing poles that are 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 replacement towers 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.

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

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

(a) in the Commercial/Residential, Industrial, and Employment zones, for streetlights, the height of the pole that is being replaced or the height of the tallest streetlight pole within 50 feet, whichever is greater:
(1) plus 6 feet when abutting a right-of-way
   with a paved section width of 65 feet or less;
   or

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

(b) in the Agricultural, Rural Residential, and
   Residential zones, for streetlights, the height of the
   pole that is being replaced:

   (1) plus 6 feet when abutting a right-of-way
   with a paved section width of 65 feet or less,
   or up to 25 feet where the height of the pole
   being replaced is less than 20 feet tall,
   whichever is greater; or

   (2) plus 15 feet when abutting a right-of-way
   with a paved section width greater than 65
   feet; and

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

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

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

[vii]x. Any equipment cabinet:
must not exceed a maximum volume of 12 cubic 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) except as provided in Section 3.5.2.C.b.x(d); and

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

The tower must include a replacement streetlight, if a streetlight existed on the pre-existing pole.

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.

The noise level of any equipment must comply with Chapter 31B.

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.

The owner of the tower or the antenna attached to the tower must maintain [[their]] the 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]] to the 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.
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.

[iii][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
243  associations within 300 feet of the [[application]] proposed tower of:
244  
245  (1) the filed application;
246  
247  (2) the hearing date; and
248  
249  (3) information on changes to the hearing date
250  or the consolidation found on the Office of
251  Zoning and Administrative Hearing’s
252  website.
253  
254  A sign that satisfies Section 59.7.5 must also be
255  posted at the site of the application at the same
256  time.
257  
258  (b) The Hearing Examiner may postpone the public
259  hearing for up to 30 days at the request of the
260  applicant and must post notice on the website of
261  the Office of Zoning and Administrative Hearings
262  of any changes to the application, the application
263  schedule, or consolidation of multiple applications.
264  
265  (c) The Hearing Examiner may request information
266  from Planning Department Staff.
267  
268  [[iv]vi.  [[A]] The setback for a Telecommunications
269  Tower must be [[set back, as]] measured from the base of
270  the support structure.
271  
272  [[v]vi.  [[A]] The Telecommunications Tower must be at
273  least 60 feet from any building intended for human
274  occupation, excluding encroachments that are
275  allowed under Section 4.1.7.B.5 and no taller than
276  30 feet; or]]
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.

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.

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]] the initial application to be consolidated and be accompanied by a motion for consolidation.

ii. The proposed sites, 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.

iii. 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.

iv. Each tower must be of the same or similar proposed height, structure, and characteristics.

v. A motion to consolidate must include a statement specifying the common issues of law and fact.

vi. The Hearing Examiner may order a consolidated hearing if the Examiner finds that a consolidated hearing will more fairly and efficiently resolve the matters at issue.
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vii. If the motion to consolidate is granted, the applicant and opposition must include all proposed hearing exhibits with their pre-hearing statements.

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

f. Where a proposed Telecommunications Tower does not meet the limited use standards because it is taller than allowed under Section 3.5.2.C.2.b.vii or where there is no pre-existing or replacement pole so a new pole must be constructed, but otherwise meets the limited use standards under Section 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.

Upon receipt of notice of a waiver, the municipality, a property owner, homeowners association, civic association, condominium association, or 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.

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

The Hearing Examiner may only decide the issues raised by the waiver or objection. The Hearing Examiner will determine whether the proposed location minimizes visual impact as compared to any alternative location where the new tower could be located to provide service, and consistent with the Hearing Examiner’s authority under Section 3.5.2.c.2.d. The maximum height allowed is 50 feet.
vi. The Hearing Examiner must issue a decision within 10 days of the hearing. If no objection is filed, the Hearing Examiner may issue a decision without a public hearing.

vii. 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 up to 25 feet where the height of the pole being replaced is less than 20 feet tall, whichever is greater; or

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

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

* * * *

**Sec. 3. 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 19-07. Critical damage to the root zones of trees as well as excessive pruning should be avoided in the installation of telecommunications towers, regardless of whether they are installed on a new, pre-existing, or replacement pole.

* * * *
Sec. [[3]][4]. 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