

Ordinance No: 14-65
Zoning Text Amendment No: 02-03
Concerning: Telecommunications Facilities
Special Exceptions
Draft No. & Date: 2 – 10/29/02
Introduced: March 5, 2002
Public Hearing: April 9, 2002; 1:30 PM
Adopted: October 29, 2002
Effective: November 18, 2002

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

By: Councilmember Praisner

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- (1) revising the standards for the grant of a telecommunication facility special exception, and
- (2) generally amending the standards for the grant of a telecommunication facility special exception.

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

Division 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE”
Section 59-A-6.14	“Antenna for a private telecommunication facility mounted on a rooftop or structure located on privately owned land”
DIVISION 59-G-2	“SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS”

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

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

[Single boldface brackets] indicate text that is deleted from existing law by the 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 No. 02-03 was introduced on March 5, 2002. The ZTA as introduced would increase residential protections by establishing a maximum height for a support structure and encouraging a support structure design that is compatible with the environment. Due to concerns that have been raised over the potential for an excessive number of telecommunication facilities being constructed on a lot or parcel, the ZTA would prevent any telecommunication facility from locating within 1,500 feet of another telecommunication facility, unless a closer proximity is required for service. The ZTA is intended to further previous efforts to put in place clear and effective zoning regulations to control telecommunication facilities and balance the need for these facilities with community concerns.

The Montgomery County Planning Board in its report to the Council recommended that the text amendment be approved with revisions.

The County Council held a public hearing on April 9, 2002, to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on July 8, September 30 and October 14, 2002 to review Zoning Text Amendment 02-03. The Committee fully discussed the issues raised by industry and community representatives. Important elements of the ZTA, as recommended by the Committee include: (1) clarification that the size of a leased parcel for construction of a telecommunication tower is not required to be the minimum area required for the zone, (2) a maximum telecommunication tower height of 199 feet, and (3) tower siting and design requirements to achieve compatibility with the residential community.

Under current law, the wireless and the radio/television transmitting towers are subject to the same zoning regulations. The Committee identified several confusing zoning elements that pertain to wireless and to radio/television broadcast facilities that need to be addressed and clarified. The Committee recommends that a comprehensive review of the zoning requirements for self-supporting broadcast towers be undertaken to determine whether any different zoning requirements unique to a broadcast tower should be enacted. The Committee also recommended that the proposed separation restriction of 1,500 feet between telecommunication towers, not be implemented at this time, but set aside and taken-up in connection with the review of self-supporting broadcast towers. The same zoning requirements will continue to apply to both types of towers, until definitional changes and revisions to clarify the differences between radio and television towers, and towers for personal service are implemented.

The District Council reviewed Zoning Text Amendment No. 02-03 at a worksession held on October 29, 2002, and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

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. 02-03 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:

1 **Sec. 1. Division 59-A-6 is amended as follows:**
2 **DIVISION 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF**
3 **ZONE.**

4 * * *

5 **Sec. 59-A-6.14. Antenna for a private telecommunication facility mounted on**
6 **a rooftop or structure located on privately owned land.**

7 (a) An antenna and a related unmanned equipment building or cabinet
8 may be installed on a rooftop as a matter of right if [[it meets]] the
9 following standards are met.

10 (1) The building must be at least 30 feet in height in any multi-
11 family, commercial or industrial zone.

12 (2) The building must be greater than 50 feet in height in any one-
13 family residential zone. However, a rooftop telecommunication
14 antenna is not permitted on a one-family residence or a building
15 or structure accessory to a one-family residence.

16 (3) An antenna may be mounted on the facade of the building at a
17 height of at least 30 feet in a multi-family, commercial, or
18 industrial zone, and at a height greater than 50 feet in a one-
19 family residential zone. However, a telecommunication antenna
20 must not be mounted on the facade of a one-family residence or
21 a building or structure accessory to a one-family residence.

22 (4) An unmanned equipment building or cabinet must not exceed
23 560 square feet and 12 feet in height or 14 feet in height for a
24 roof top structure, including the support structure for the
25 equipment building, except that a single equipment building in
26 excess of 560 square feet, located at ground level, may be used
27 for more than one telecommunication provider, if:

- 28 (i) the overall square footage does not exceed 1500 square
- 29 feet and 12 feet in height,
- 30 (ii) the building is used for more than one telecommunication
- 31 provider operating from the same monopole or tower,
- 32 and
- 33 (iii) the building is reviewed by the Telecommunications
- 34 Transmission Facility Coordinating Group in accordance
- 35 with Sec. 2-58E of the County Code.

36 If the equipment building or cabinet is at ground level in a
37 residential zone, the building or cabinet must be faced with
38 brick or other suitable material on all sides and surrounded by
39 landscaping providing a screen of at least 3 feet in height, and
40 must conform to the [[applicable]] setback standards of the
41 applicable zone.

42 (5) If the equipment building is located on the roof of a building,
43 the equipment building or cabinet and other structure, in
44 combination with any other equipment building and structure,
45 must not occupy more than 25% of the roof area.

46 (b) In addition to a rooftop, an antenna may be attached as a matter of
47 right to an existing structure on privately owned land, including but
48 not limited to a radio, television, or telephone transmission tower, a
49 monopole, a light pole, a water tank, or an overhead transmission line
50 support structure. An equipment building located on such a structure
51 is subject to the requirements of subsection (a)(4). A structure
52 constructed for the support of: (1) an antenna that is part of an
53 amateur radio station licensed by the Federal Communications

54 Commission, or (2) an antenna to receive television imaging in the
55 home, may not be used as a support structure for any other antenna.

56

57 **Sec. 2. Division 59-G-2 is amended as follows:**

58 **DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND**
59 **REQUIREMENTS.**

60 * * *

61 **59-G-2.43. Public utility buildings, public utility structures and**
62 **telecommunication facilities.**

63 * * *

64 (j) Any telecommunication facility must satisfy the following standards:

65 [(1) The minimum parcel or lot area must be sufficient to accommodate
66 the location requirements for the support structure under paragraph
67 (2), excluding the antenna(s), but not less than the lot area required in
68 the zone. The location requirement is measured from the base of the
69 support structure to the property line. The Board of Appeals may
70 reduce the location requirement to not less than the building setback
71 of the applicable zone if the applicant requests a reduction and
72 evidence indicates that a support structure can be located on the
73 property in a less visually unobtrusive location after considering the
74 height of the structure, topography, existing vegetation, adjoining and
75 nearby residential properties, if any, and visibility from the street.]

76 [(2)](1)[A telecommunication facility, including support structure and
77 antenna, must not be within 1,500 feet of another telecommunication
78 facility, unless a closer proximity is required for service.]] A support
79 structure must be [located] set back from the property line as follows:

80 a. In agricultural and residential zones, a distance of one foot from
81 the property line for every foot of height of the support
82 structure.

83 b. In commercial and industrial zones, a distance of one-half foot
84 from property line for every foot of height of the support
85 structure from a property line separating the subject site from
86 commercial or industrial zoned properties, and one foot for
87 every foot of height of the support structure from residential or
88 agricultural zoned properties.

89 c. [These location requirements apply to perimeter lot lines and
90 not to interior lot lines.] The setback from a property line is
91 measured from the base of the support structure to the perimeter
92 property line.

93 d. The Board of Appeals may reduce the setback requirement to
94 not less than the building setback of the applicable zone if the
95 applicant requests a reduction and evidence indicates that a
96 support structure can be located on the property in a less
97 visually [[un]]obtrusive location after considering the height of
98 the structure, topography, existing vegetation, adjoining and
99 nearby residential properties, if any, and visibility from the
100 street.

101 (2) A support structure must be set back from any off-site dwelling
102 [[residential building or structure]] as follows:

103 a. In agricultural and residential zones, a distance of 300 feet.

104 b. In all other zones, one foot for every foot in height.

105 | c. The setback is measured from the base of the support structure
106 | to the base of the [[residential building or structure]] nearest
107 | off-site dwelling.

108 | d. The Board of Appeals may reduce the setback requirement in
109 | the agricultural and residential zones to a distance of one foot
110 | from an off-site residential building for every foot of height of
111 | the support structure if the applicant requests a reduction and
112 | evidence indicates that a support structure can be located in a
113 | less visually obtrusive location after considering the height of
114 | the structure, topography, existing vegetation, adjoining and
115 | nearby residential properties, and visibility from the street

116 | (3) The support structure and antenna must not exceed 155 feet in height,
117 | unless it can be demonstrated that additional height up to 199 feet is
118 | needed for service, [[to accommodate]] collocation, or public safety
119 | communication purposes. At the completion of construction and
120 | before the final inspection of the building permit, the applicant must
121 | submit documentation to the Department of Permitting Services as to
122 | the height and location of the support structure.

123 | (4) [[The antenna and support structure must be designed to minimize the
124 | visual impact on the community. The antenna and support structure
125 | should be designed to blend into the surrounding environment by use
126 | of available camouflaging, stealth design technology, or other means.
127 | The support structure and any related equipment buildings or cabinets
128 | must be surrounded by landscaping that provides a screen of at least 3
129 | feet in height.]] The support structure must be sited to minimize its
130 | visual impact. The Board may require the support structure to be less
131 | visually obtrusive by use of screening, coloring, stealth design, or

132 other visual mitigation options, after considering the height of the
133 structure, topography, existing vegetation and environmental features,
134 and adjoining and nearby residential properties. The support structure
135 and any related equipment buildings or cabinets must be surrounded
136 by landscaping or other screening options that provide a screen of at
137 least 6 feet in height.

138 ~~[(3)]~~(5) The property owner must be an applicant for the special exception
139 for each support structure. A modification of a telecommunication
140 facility special exception is not required for a change to any use
141 within the special exception area not directly related to the special
142 exception grant. A [freestanding] support structure must be
143 constructed to hold no less than 3 telecommunication carriers. The
144 Board may approve a support structure holding less than 3
145 telecommunication carriers if: 1) requested by the applicant and a
146 determination is made that collocation at the site is not essential to the
147 public interest; and 2) the Board decides that construction of a lower
148 support structure with fewer telecommunication carriers will promote
149 community compatibility. The equipment compound must have
150 sufficient area to accommodate equipment sheds or cabinets
151 associated with the telecommunication facility for all the carriers.

152 ~~[(4)]~~(6) No signs or illumination are permitted on the antennas or support
153 structure unless required by the Federal Communications
154 Commission, the Federal Aviation Administration, or the County.

155 ~~[(5)]~~(7) Every freestanding support structure must be removed at the cost of
156 the [[applicant]] owner of the telecommunication facility when the
157 telecommunication facility is no longer in use by any
158 telecommunication carrier for more than 12 months.

- 159 | (8) All support structures must be identified by a sign no larger than 2
160 | square feet affixed to the support structure or any equipment building.
161 | The sign must identify the owner and the maintenance service
162 | provider of the support structure or any attached antenna and provide
163 | the telephone number of a person to contact regarding the structure.
164 | The sign must be updated and the Board of Appeals notified within 10
165 | days of any change in ownership.
- 166 | (9) Outdoor storage of equipment or other items is prohibited.
- 167 | (10) Each [[applicant for the special exception]] owner of the
168 | telecommunication facility is responsible for maintaining the
169 | telecommunication facility, in a safe condition.
- 170 | (11) The applicants for the special exception must file with the Board of
171 | Appeals a recommendation from the Telecommunications
172 | Transmission Facility Coordinating Group regarding the
173 | telecommunication facility. The recommendation must be no more
174 | than one year old.
- 175 | [[6)]12 Prior to the Board granting any special exception for a
176 | telecommunication facility, the proposed facility must be reviewed by
177 | the County Telecommunication Transmission Facility Coordinating
178 | Group. The Board and Planning Board must make a separate,
179 | independent finding as to need and location of the facility.
- 180 | (k) Any telecommunication facility special exception application for
181 | which a public hearing was held before November 18, 2002 must be
182 | decided based on the standards in effect when the application was
183 | filed
- 184 | (l) Any telecommunication facility constructed as of November 18, 2002
185 | may continue as a conforming use.

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

189

190 This is a correct copy of Council action.

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194 _____

195 Mary A. Edgar, CMC

196 Clerk of the Council