

Zoning Text Amendment No.: 19-07
Concerning: Telecommunications
Towers – Limited Use
Draft No. & Date: 3 – 4/26/2021
Introduced: October 1, 2019
Public Hearing: November 19, 2019
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Councilmember Riemer
Co-Sponsors: Councilmembers 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”

EXPLANATION: **Boldface** indicates a Heading or a defined term.
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
* * * indicates existing law unaffected by the text amendment.

ORDINANCE

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

1 **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2 **DIVISION 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

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

6 Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential		Residential															Commercial/ Residential			Employment				Industrial		
					Residential Detached								Residential Townhouse			Residential Multi-Unit													
					AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL
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COMMERCIAL																													
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Communication Facility	3.5.2																												
Cable Communications System	3.5.2.A	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	C	C	C	C	
Media Broadcast Tower	3.5.2.B	C	C	C		C	C	C	C	C	C				C	C	C				C		L	C	C	C	P		
Telecommunications Tower	3.5.2.C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L	L	L	L/C	L/C	L	L/C	L	L	L		

7 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

8 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

9 **DIVISION 3.5. Commercial Uses**

10 * * *

11 **Section 3.5.2. Communication Facility**

12 * * *

13 **C. Telecommunications Tower**

14 * * *

15 2. Use Standards

16 * * *

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

23 i. Any permit application to the Department of Permitting
24 Services concerning a Telecommunications Tower must
25 include a recommendation from the Transmission
26 Facility Coordinating group issued within 90 days of the
27 submission of the permit application.

28 ii. In the Commercial/Residential, Industrial, and
29 Employment zones, the pre-existing pole and the
30 replacement tower must be at least 10 feet from an
31 existing building, excluding any setback encroachments
32 allowed under Section 4.1.7.B.5.

33 iii. In the Agricultural, Rural Residential, and Residential
34 zones, the pre-existing pole and the replacement tower

35 must be at least ~~[[60]] 30 feet from any building intended~~
36 for human occupation, excluding any setback
37 encroachments allowed under Section 4.1.7.B.5.

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

43 [ii] v. The tower must be located:

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

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

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

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

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

58 (e) _____ at least 150 feet from the nearest antenna
59 occupied or controlled by the same wireless
60 communication carrier.

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

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

68 (a) for streetlights, the height of the pole that is being
69 replaced:

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

72 or

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

76 (b) for utility poles and parking lot lights, the height of
77 the pre-existing utility or parking lot light pole plus
78 10 feet.

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

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

84 [vii] x. Any equipment cabinet:

85 (a) must not exceed a maximum volume of 12 cubic
86 feet;

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

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

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

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

141 * * *

142 d. In the Agricultural, Rural Residential, and Residential zones,
143 where a Telecommunications Tower [[that is proposed to be
144 less than 50 feet in height does not meet the limited use
145 standards under Subsection 3.5.2.C.2.a]] is proposed to be less
146 than 30 feet from any building intended for human occupation,
147 excluding any setback encroachments allowed under Section
148 4.1.7.B.5., it may be permitted by the Hearing Examiner as a
149 conditional use without regard to Section 7.3.1 only if the
150 following procedures and standards are satisfied:

- 151 i. An application must include:
 - 152 (a) the subject property's ownership and, if the
153 applicant is not the owner, authorization by the
154 owner to file the application;
 - 155 (b) fees as approved by the District Council;
 - 156 (c) a statement of how the proposed development
157 satisfies the criteria to grant the application;
 - 158 (d) a certified copy of the official zoning vicinity map
159 showing the area within at least 1,000 feet
160 surrounding the subject property;
 - 161 (e) a written description of operational features of the
162 proposed use;
 - 163 (f) plans showing existing buildings, structures,
164 rights-of-way, tree coverage, vegetation, historic
165 resources, and the location and design of
166 streetlights, utilities, or parking lot poles within
167 300 feet of the proposed location;

- 168 (g) a list of all property owners, homeowners
169 associations, civic associations, condominiums,
170 and renter associations within 300 feet of the
171 proposed tower;
- 172 (h) plans showing height and architectural design of
173 the tower and cabinets, including color materials,
174 and any proposed landscaping and lighting;
- 175 (i) photograph simulations with a direct view of the
176 tower and site from at least 3 directions;
- 177 (j) at least one alternative site that maximizes the
178 setback from any building intended for human
179 occupation or reduces the height of the proposed
180 tower.
- 181 ii. Before the Hearing Examiner reviews any conditional
182 use for a Telecommunications Tower, the proposed
183 facility must be reviewed by the Transmission Facility
184 Coordinating Group. The Transmission Facility
185 Coordinating Group must declare whether the application
186 is complete, verify the information in the draft
187 application, and must issue a recommendation within 20
188 days of accepting a complete Telecommunications Tower
189 application. The applicant for a conditional use must file
190 a complete copy of the recommendation from the
191 Transmission Facility Coordinating Group with the
192 Hearing Examiner at least 30 days before the date set for
193 the public hearing. The Transmission Facility
194 Coordinating Group recommendation must have been

195 made within 90 days of its submission to the Hearing
196 Examiner.

197 iii. Upon receipt of the Transmission Facility Coordinating
198 Group recommendation, the applicant must submit an
199 initial application to the Planning Director for approval
200 of completeness, under Section 7.3.1.B.3. The Planning
201 Director must review the application for completeness
202 within 10 days after receipt.

203 iv. The Hearing Examiner must schedule a public hearing to
204 begin within 30 days after the date a complete application
205 is accepted by the Hearing Examiner.

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

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

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

- 222 (b) The Hearing Examiner may not postpone the
223 public hearing for more than 30 days, and must
224 post notice on the website of the Office of Zoning
225 and Administrative Hearings of any changes to the
226 application, the application schedule, or
227 consolidation of multiple applications.
- 228 (c) The Hearing Examiner may request information
229 from Planning Department Staff.
- 230 v. A Telecommunications Tower must be set back, as
231 measured from the base of the support structure.
- 232 vi. [(a) The Telecommunications Tower must be at least
233 60 feet from any building intended for human
234 occupation, excluding encroachments that are
235 allowed under Section 4.1.7.B.5 and no taller than
236 30 feet; or]
- 237 [(b) if] If the Hearing Examiner determines that
238 additional height and reduced setback are needed
239 to provide service or a reduced setback or
240 increased height will allow the support structure to
241 be located on the property in a less visually
242 obtrusive location, the Hearing Examiner may
243 reduce the setback requirement, [to at least 30
244 feet] or increase the height up to 50 feet. In
245 making this determination, the Hearing Examiner
246 must consider the height of the structure,
247 topography, existing tree coverage and vegetation,

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

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

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

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

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

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

- 300 i. The Hearing Examiner must send notice of the request
- 301 for a waiver, under Section 3.5.2.c.2.d.iv.a.
- 302 ii. A property owner, homeowners association, civic
- 303 association, condominium, and renter association within
- 304 300 feet of the proposed tower may file an objection and
- 305 request a hearing with the Office of Zoning and
- 306 Administrative Hearings. An objection must be filed
- 307 within 30 days of receiving notice.
- 308 iii. If an objection is received, the Hearing Examiner must
- 309 send notice of an adjudicatory hearing to the applicant
- 310 and any aggrieved person who filed an objection within
- 311 10 days after the objection is received and conduct any
- 312 such hearing within 30 days of the date the objection is
- 313 received. Waivers and objections may be consolidated
- 314 under Section 3.5.2.c.2.e.5.
- 315 iv. The Hearing Examiner may only decide the issues raised
- 316 by the waiver or objection and consistent with the
- 317 Hearing Examiner’s authority under Section 3.5.2.c.2.d.
- 318 v. If no objection is filed, the Hearing Examiner may issue a
- 319 decision without a public hearing.
- 320 g. Any party aggrieved by the Hearing Examiner’s decision may
- 321 file a petition for judicial review under the Maryland rules
- 322 within 15 days of the publication of the decision.

323 * * *

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

326

327 This is a correct copy of Council action.

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329 _____

330 Selena Mendy Singleton, Esq.,
331 Clerk of the Council