

## **Montgomery County Council Poised to Vote on Radical ZTA 19-07: IMPOSES CELL TOWERS NEAR HOMES – WITH NO MINIMUM SETBACKS!**

**Below is a summary of many major provisions of Zoning Text Amendment 19-07, as drastically revised by the Planning, Housing, and Economic Development (PHED) Committee in March, 2021.**

The original version of ZTA 19-07, as introduced in October 2019,<sup>1</sup> itself would have dramatically weakened current County regulations for cell towers on poles in strictly residential and in rural zones. *That would affect most County residents, whether they rent or own their homes, as so many multi-family and single-family homes are in such zones.* But the Committee’s rewrite goes far further -- shrinking distances from homes, eliminating meaningful public protections, and reducing public participation in the siting of cell towers even more. It also reaffirms, rather than fixes, the shocking provision in current law allowing cell towers just 10 feet from homes in other zones (such as commercial-residential). That affects all other residents.

If the full County Council votes to approve it, ZTA 19-07, as now revised, will:

- **Routinely allow permits for small cell towers just 30 feet from homes in public rights of way and parking lots:** The revised version would allow applicants to place wireless facilities “by right”<sup>2</sup> on existing or replacement poles as long as they were at least **30 feet** from homes in residential neighborhoods<sup>3</sup> -- **not 60 feet**, as was in the original version of the proposed zoning amendment. **This kind of routine permit would require no personal notice to nearby property owners and no public hearing.** Poles that could be used for wireless facilities include utility-owned poles, streetlights, lamp posts, and parking-lot light poles. Current law for residential zones allows routine permits only for existing poles and only if they are at least 60 feet from homes.
- **Eliminate Minimum Setbacks:** Perhaps worst of all, under an unprecedented new provision, cell towers would be allowed *less than 30 feet from homes* -- with absolutely NO minimum setback at all. Existing poles, replacement poles, or new poles in new locations could all be less than 30 feet from homes, as long as a County Hearing Examiner approves a special (“conditional-use”) permit for them. The first version of ZTA 19-07 did not allow cell towers in residential zones to be less than 30 feet from homes under any circumstance.
- **Severely constrict and abridge the current “conditional use” process for special permits:** Hearing Examiners would be allowed to streamline reviews for such special permits. The process would be much reduced from current law – effectively discarding many resident protections. It would closely mirror the new “waiver and objection” process described below. (Although a hearing would take place for a conditional-use permit whether anyone objected to a proposed cell-tower pole or not.)
- **Introduce a "waiver and objection" process<sup>4</sup> under which new poles – in locations where no pole now exists – could be built and used exclusively as cell towers in residential neighborhoods.** As with special permits: The only parties to be notified about a proposed new pole would be the municipality (if there is one) where the tower would be located and property owners and any

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<sup>1</sup> ZTA 19-07 was introduced by Councilmember Hans Reimer, who chairs the PHED Committee, and co-sponsored by Councilmembers Gabe A bornoz and Craig Rice. The only public hearing was held in November 2019. The ZTA was tabled in 2020 but subsequently “re-introduced” in February 2021. Even though radically altered by the PHED Committee, a second public hearing has NOT been scheduled, as of early June, 2021.

<sup>2</sup> These routine permits would be granted under “limited use” provisions of County zoning rules.

<sup>3</sup> Applicable zones in 19-07 include Residential Detached, Residential Townhouse, Residential Multi-Unit, Rural Residential, and Agricultural zones. ZTA 18-02, passed in 2018, reduced setbacks to just 10 feet from nearest building in all other zones, including Commercial/Residential.

<sup>4</sup> “Waiver and Objection” would be a hyper-streamlined, accelerated process that would ONLY apply to wireless facilities. Like the proposed revisions in the “conditional use” process for siting wireless facilities, it would truncate current protections in place for residents.

associations representing renters, homeowners, civic groups, or condos *within 300 feet* of the proposed site. A sign at the site would be posted. *There's no requirement to directly notify any residents within 300 feet who rent, rather than own, their homes.* Nor to print notices and signs in languages other than English. *And similar applications could be consolidated into one review.* Unlike special permits, no public hearing required unless one of those parties within 300 feet objected.

- **Ties hands of Hearing Examiner:** Both the revised conditional-use process and the brand new, untested “waiver and objection” process appear to give the Hearing Examiner only 3 choices:
  - **approve** the permit application,
  - accept alternative location offered *by the applicant*, (residents are not expressly allowed to submit alternate site suggestions), or
  - move the cellpole closer or make it taller to supposedly minimize visual obtrusiveness. (There is no stated option for Examiner to make the pole shorter or farther away!)
- **Substantially expand type of poles eligible for routine (“limited use”) permits:** Current zoning law for residential zones allows routine permits for wireless facilities ONLY on “existing poles” that are already cell-tower ready – meaning, already sturdy enough and/or tall enough to install cell antennas atop – and that are at least 60 feet from an existing home. Under ZTA 19-07, “replacement poles” will be treated like an “existing pole” and be eligible for routine permitting.<sup>5</sup>
- **Set no absolute height limit for residential cell towers:** There is no limit to the number of times a pole could be replaced with a taller pole, to allow more antennas at the site. Cell poles can be expanded over and over again. The revised version of the ZTA preserves the following provision from the original: The bottom antenna would have to be installed at a minimum height of 15 feet.
- **Set no minimum distance BETWEEN cell towers in residential zones:** The ZTA would also allow any one carrier to place its cell towers every 150 feet in the public rights of way. **But there would be no minimum distance between them -- as long as more than one carrier is involved.** (The PHED Committee considered making 150 feet the absolute distance between ANY small cell towers, but ultimately decided not to do that.<sup>6</sup>) Colocations would not be incentivized to minimize their number.
- **Establish few concealment/aesthetic requirements:** About the only ones: Some covering for wiring, antennas must be in an enclosure, and tower color – including that enclosure and equipment boxes – must match the pole color. There's no limit on how many antennas can be stacked on a pole.
- **Allow unlimited equipment cabinets:** Nor is there a limit on the number of bulky equipment cabinets that can be mounted on a pole – or on the ground beside it as part of future modifications and expansions. Each cabinet could be up to 12 cubic feet in size. For the tower itself, the Department of Permitting Services is supposed to determine if “sight distances” are “adequate,” presumably for drivers. But it's not clear whether that includes cabinets – or how DPS could determine that cabinets of that size, on the ground or pole, would not potentially block the line of sight for both drivers and pedestrians – *especially children darting across the road.*<sup>7</sup>

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<sup>5</sup> UNDER ACTUAL CURRENT LAW – Other current limits on cell-tower poles in strictly residential zones include: If an existing pole is NOT capable of being used as a wireless facility, and the applicant needs to install a replacement pole to have one that would be sturdy enough and/or tall enough to be used as a cell tower, then the applicant has to get a special permit (conditional use). And the applicant, under that special permit, will not legally be able to site it any closer than 300 feet from an existing home. “Conditional-use” permits now require notice to property owners *within half a mile* of the proposed site, a public hearing, and the approval of the County Hearing Examiner.

<sup>6</sup> At the PHED markup, the County Executive's staff noted that some locations – such as *particular street corners* – are attractive to all carriers. That means there could be a demand to place some cell towers very close together, if multiple carriers prefer the same location, but their own poles.

<sup>7</sup> NOTE: This summary attempts to be both accurate and understandable, a challenge given the complexity of zoning. Corrections/questions can be sent to the Montgomery County Coalition for the Control of Cell Towers, Inc. at: [controlcelltowers@gmail.com](mailto:controlcelltowers@gmail.com). Details current as of early June, 2021.