



MONTGOMERY COUNTY PLANNING DEPARTMENT  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB  
Item #  
5/06/10

April 30, 2010

MEMORANDUM

TO: Montgomery County Planning Board

FROM: Damon B. Orobona, Senior Zoning Analyst *DAMON*

VIA: Rose Krasnow, Chief of Development Review  
Ralph Wilson, Supervisor of Zoning *RDW*  
Greg Russ, Zoning Coordinator *GR*

SUBJECT: ZTA 10-05; Amendment to Telecommunications Facility Special Exception Process in response to FCC Declaratory Ruling.

---

*Summary.* Staff supports Zoning Text Amendment (ZTA) 10-05 as introduced. ZTA 10-05 was introduced by Councilmember Trachtenberg on April 6, 2010, for the purpose of updating the zoning ordinance in light of a recent Federal Communications Commission (FCC) Declaratory Ruling that places exacting time limitations on local zoning authorities in reviewing telecommunications facility applications.

The FCC Ruling effectively limits the County's review of a telecommunication facility special exception to 150 days. In response to the significantly reduced review period, County agency representatives developed a conceptual approach that generally allots a 30-day review to the Transmission Facilities Coordinating Group (Tower Committee), a 90-day review to the Planning Commission, and a 30-day period for both the Office of Zoning and Administrative Hearings (Hearing Examiner) and Board of Appeals' public hearings.

The primary goal of the ZTA is to streamline the telecommunications facility special exception review process. To do this, the ZTA amends the review process in the following ways: (1) requires the applicant to submit eight copies of all submission materials at filing; (2) requires the applicant to submit photographic simulations of the proposed site from at least three angles; (3) requires an approved forest conservation plan at filing; (4) requires the applicant to submit a Tower Committee recommendation that is no more than 30 days old; and (5) eliminates the requirement that the Planning Board make a separate, independent finding as to need and location of the proposed telecommunications facility.

Under the ZTA, the Board will no longer be required to make a need finding as part of the special exception process. The intent is for the Board to review only those telecommunications facilities affecting agency-owned parkland. Staff supports the proposed procedural modifications as a reasonable approach to bring the County's telecommunications facility review process into compliance with the strict FCC 150-day time limitation.

*FCC Declaratory Ruling.* Two separate events prompted the FCC to revisit the federal statute<sup>1</sup> that controls local zoning approvals for wireless telecommunications facilities. In 2008, a collection of wireless providers petitioned the FCC to clarify the timeframes that local zoning authorities must act within regarding siting requests. The wireless providers alleged that the telecommunications facility application process often faces lengthy and unreasonable delays around the United States. In furthering the allegations, Maryland was cited as an example where the typical application process has gone from approximately two months to nine months over the past four years, and the DC Metro area was cited as going from about six months to more than a year over the past five years. Subsequent to the wireless providers' allegations, Congress enacted the *American Recovery and Reinvestment Act of 2009*, which, in part, directed the FCC to devise a national broadband plan that will ensure every American has access to broadband service. The Recovery and Reinvestment Act places additional pressures on the FCC to ensure a sufficient wireless network is in place in the coming years.

In response to these events, the FCC adopted Declaratory Ruling 09-99 on November 18, 2009, which promotes wireless and broadband services by reducing delays in the construction of wireless telecommunications facilities. The Ruling sets a specific timeframe for local authorities reviewing wireless siting applications: all reviews must be completed within 90 days for collocations, and 150 days for all other applications.<sup>2</sup> Although the FCC states that it is not the Ruling's intent to give preferential treatment to the wireless service industry in the processing of zoning requests, Montgomery County will have to alter its typical special exception process to accommodate the newly imposed 150-day limit for telecommunications facility applications.

*Existing Telecommunications Facility Review in Montgomery County.* Montgomery County typically treats applications for telecommunication facilities as special exceptions.<sup>3</sup> Generally speaking, special exceptions in the County go through an extensive review process, with a public hearing before the Planning Board, a quasi-

---

<sup>1</sup> 47 U.S.C. §332(c)(7).

<sup>2</sup> The Ruling states that if a local zoning authority exceeds these time limitations, there has been a failure to act, which gives the applicant the right to pursue judicial relief. If the applicant pursues judicial relief, the court will not automatically issue an injunction granting the application, but will instead hear and decide the application on an expedited basis.

<sup>3</sup> Although telecommunications facilities are allowed by-right in certain zones and can also be treated as a Mandatory Referral in certain circumstances.

judicial proceeding before the Hearing Examiner, and an action item before the Board of Appeals.

A telecommunications facility special exception is even more cumbersome than the typical special exception. In addition to the usual three-tiered review process, the ordinance also requires a telecommunications facility to be reviewed by the Tower Committee, a group established by Executive Regulation that determines whether there is a need for wireless coverage at a specific location.<sup>4</sup> Because *four* separate public sessions are currently conducted during the telecommunications facility special exception process, it is not expected that the County can continue its current review process and comply with the new 150-day FCC time limitation.

*County Response to FCC Ruling.* In response to the FCC Ruling, an informal cell tower working group met to discuss how to best process telecommunications facility requests within the 150-day timeframe established by the FCC. The working group looked at ways of paring down the process to 150 days or less. The general approach taken was to substantially cut back on the review time typically allocated to each reviewing agency. The idea was to allot approximately 30 days for the Tower Committee to review whether there is a need for cellular coverage in the area, about 90 days for the Planning Department's land use and regulatory analysis, and another 30 days or so for both the Hearing Examiner's and Board of Appeals' public hearings.

Specifically, the ZTA proposes that all special exception applicants submit eight copies of all required materials at filing. This requirement will help streamline the review process by requiring sufficient copies to distribute to various agencies at the time of filing. The ZTA also requires a telecommunications facility applicant to submit photographic simulations of the proposed installation from at least three angles, including adjacent and confronting properties. Generally, these simulations are requested by staff anyway, so requiring the simulations at filing will help minimize delays caused by resubmissions. The ZTA also requires an approved forest conservation plan at the time the applicant files for a telecommunications facility. This requirement avoids potential delays that could extend governmental review beyond 150 days. Additionally, the ZTA requires the telecommunications facility applicant to submit a Tower Committee recommendation that is no more than 30 days old. The current standard requires a Tower Committee recommendation that is not older than one year. Reducing the requirement to 30 days or less shortens total review time, as the 150-day FCC clock starts ticking as the Tower Committee begins its review. Shortening the requirement to 30 days also helps avoid outdated Tower Committee recommendations. Finally, the ZTA eliminates the requirement that the Planning Board must make a separate, independent finding as to the need and location of the proposed telecommunications facility.<sup>5</sup>

---

<sup>4</sup> §59-G-2.58(a)(12).

<sup>5</sup> This requirement is currently codified at §59-G-2.58(a)(12).

Legislative history shows that the requirement for the Planning Board to make an independent finding of need separate from that of the Tower Committee was included by the Council as part of the 2002 rewrite of the special exception regulations. The reason cited was that the Tower Committee does not issue notice nor allow formal public participation during its assessment of the telecommunications facility application.

The Planning Board's current practice has been to address need and location only when raised as an issue by staff or during the Board's public hearing, which rarely is the case. Eliminating the independent need finding allows the Board the discretion to review only applications it has a particular concern about, such as a telecommunications facility proposed on Commission-owned land, and brings the review time more in line with the FCC Ruling.<sup>6</sup>

Historic preservation staff recommends adding a requirement to the ZTA that an application for a telecommunications facility special exception include an approved historic area work permit or a determination that the proposed facility does not constitute a substantial alteration as defined in Chapter 24A.<sup>7</sup> Consideration was given to a similar proposal by the informal working group that reviewed the FCC Ruling, but was not recommended so as not to extend the 150-day FCC period beyond the Tower Committee process and special exception process. Any historic preservation issues would be addressed as they now are, outside the special exception process.

With the proposed procedural changes, it appears possible to take a telecommunications facility review from approximately 190 days to around 130 days. A side-by-side comparison of the existing process to the proposed process is shown on the following page.

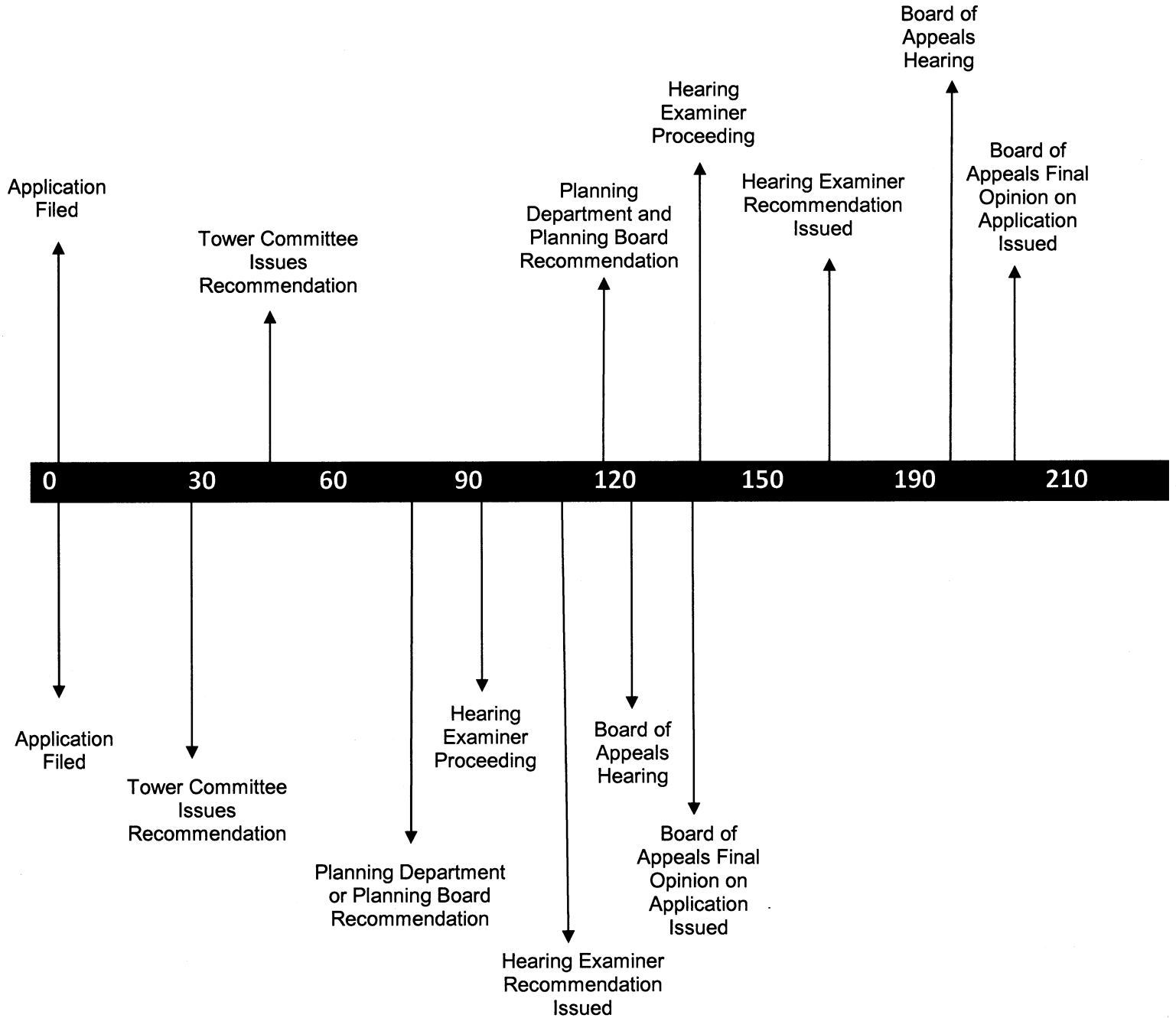
The ZTA is scheduled to be heard by the County Council on May 11, 2010. A copy of the ZTA as introduced is attached.

---

<sup>6</sup> The Planning Board is not required to review special exception applications, though the Commission generally follows the policy to bring all special exceptions before the Board except accessory apartment applications. §59-A-4.128.

<sup>7</sup> See Historic Preservation interoffice memorandum at attachment 2.

## Existing Process in Days



## Proposed Process in Days

# ATTACHMENT 1

Zoning Text Amendment No: 10-05  
Concerning: Special Exceptions Procedures  
– Telecommunications  
Facilities

Draft No. & Date: 3/19/10

Introduced: April 6, 2010

Public Hearing:

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**

---

By: Councilmember Trachtenberg

---

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- increase the number of required copies of a special exception petition;
- require a special exception petition for a telecommunications facility to include an approved preliminary forest conservation plan and photographic simulations;
- remove the requirement that the Planning Board make a finding of need as to telecommunications facilities; and
- generally amend the provisions related to special exception procedures and telecommunications facilities.

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

DIVISION 59-A-4 COUNTY BOARD OF APPEALS

Section 59-A-4.2 Petitions for Special Exceptions and Variances

DIVISION 59-G-2 SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS

Section 59-G-2.58 Telecommunications facility.

**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 that text 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-A-4 is amended as follows:**

2       \*   \*   \*

3       **59-A-4.2. Petitions for special exceptions and variances.**

4       \*   \*   \*

5       **59-A-4.22. Data to accompany petition for special exception.**

6       (a) Each petition for special exception must be accompanied at the time of its  
7       filing by [4] § copies of a statement that includes:

8           (1) Survey plats or other accurate drawings showing boundaries,  
9           dimensions, area, topography and frontage of the property involved,  
10          as well as the location and dimensions of all structures existing and  
11          proposed to be erected, and the distances of such structures from the  
12          nearest property lines.

13          (2) Plans, architectural drawings, photographs, elevations, specifications,  
14          or other detailed information depicting fully the exterior appearance  
15          of existing and proposed construction, including signs, involved in the  
16          petition. This requirement may be satisfied by site plan documents  
17          which comply with the requirements of section 59-D-3.2, as provided  
18          in subsection (b)(2).

19          (3) A statement explaining in detail how the special exception would be  
20          operated, including hours of operation, number of anticipated  
21          employees, occupants and clientele, equipment involved, and any  
22          special conditions or limits which the applicant proposes.

23          (4) Complete information concerning the size, type, and location of any  
24          existing and proposed trees, landscaping and screening, and exterior  
25          illumination. This requirement may be satisfied by site plan



26 documents which comply with the requirements of section 59-D-3.2,  
27 as provided in subsection (b)(2).

28 (5) Certified copy of official zoning vicinity map of 1000-foot radius  
29 surrounding the subject property and other information to indicate the  
30 general conditions of use and existing improvements on adjoining and  
31 confronting properties, along with a list of those adjoining and  
32 confronting property owners in the county tax records who are entitled  
33 to notice of the filing under subsection 59-A-4.46.

34 (6) If the applicant is not the owner of the property involved, the lease,  
35 rental agreement, or contract to purchase by which the applicant's  
36 legal right to prosecute the petition is established.

37 (7) Applicable master plan maps reflecting proposed land use, zoning,  
38 and transportation, together with any other portions of the applicable  
39 master plan which the applicant considers relevant.

40 (8) Except a petition for a telecommunications facility, [A] a preliminary  
41 forest conservation plan prepared under Chapter 22A or a  
42 confirmation that the inventory is not required.[, and]

43 (9) [an] An approved natural resources inventory prepared in accordance  
44 with the technical manual adopted by the Planning Board or a  
45 confirmation that the inventory is not required[, and in addition:

46 (i) Other natural features, such as rock outcroppings and scenic  
47 views; and

48 (ii) Historic buildings and structures].

49 [(9)] 10 A preliminary or final water quality plan if the property is  
50 located in a special protection area subject to Chapter 19.

51 [(10)] 11 All additional exhibits which the applicant intends to introduce.

52 [(11)] 12 A summary of what the applicant expects to prove, including  
53 the names of applicant's witnesses, summaries of the testimonies of  
54 expert witnesses, and the estimated time required for presentation of  
55 the applicant's case.

56 (13) If the petition is for a telecommunications facility:

57 (A) an approved preliminary forest conservation plan prepared  
58 under Chapter 22A or a confirmation that the plan is not  
59 required; and

60 (B) photographic simulations of the tower and site, including  
61 equipment areas at the base, as seen from at least three  
62 directions, including from adjacent and confronting properties.

63 \* \* \*

64 **Sec. 2. DIVISION 59- G-2 is amended as follows:**

65 **59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS**

66 \* \* \*

67 **59-G-2.58 Telecommunications facility.**

68 (a) Any telecommunications facility must satisfy the following standards:

69 (1) A support structure must be set back from the property line as follows:

70 [a.] A In agricultural and residential zones, a distance of one foot from  
71 the property line for every foot of height of the support  
72 structure.

73 [b.] B In commercial and industrial zones, a distance of one-half foot  
74 from the property line for every foot of height of the support  
75 structure from a property line separating the subject site from  
76 commercial or industrial zoned properties, and one foot for

77 every foot of height of the support structure from residential or  
78 agricultural zoned properties.

79 [c.] C The setback from a property line is measured from the base of  
80 the support structure to the perimeter property line.

81 [d.] D The Board of Appeals may reduce the setback requirement to  
82 not less than the building setback of the applicable zone if: (i)  
83 the applicant requests a reduction; and (ii) evidence indicates  
84 that a support structure can be located on the property in a less  
85 visually obtrusive location after considering the height of the  
86 structure, topography, existing vegetation, adjoining and nearby  
87 residential properties, if any, and visibility from the street.

88 (2) A support structure must be set back from any off-site dwelling as  
89 follows:

90 [a.] A In agricultural and residential zones, a distance of 300 feet.

91 [b.] B In all other zones, one foot for every foot in height.

92 [c.] C The setback is measured from the base of the support structure  
93 to the base of the nearest off-site dwelling.

94 [d.] D The Board of Appeals may reduce the setback requirement in  
95 the agricultural [an] and residential zones to a distance of one  
96 foot from an off-site residential building for every foot of  
97 height of the support structure if: (i) the applicant requests a  
98 reduction; and (ii) evidence indicates that a support structure  
99 can be located in a less visually obtrusive location after  
100 considering the height of the structure, topography, existing  
101 vegetation, adjoining and nearby residential properties, and  
102 visibility from the street.

103 (3) The support structure and antenna must not exceed 155 feet in height,  
104 unless it can be demonstrated that additional height up to 199 feet is  
105 needed for service, collocation, or public safety communication  
106 purposes. At the completion of construction, before the support  
107 structure may be used to transmit any signal, and before the final  
108 inspection pursuant to the building permit, the applicant must certify  
109 to the Department of Permitting Services that the height and location  
110 of the support structure is in conformance with the height and location  
111 of the support structure as authorized in the building permit.

112 (4) The support structure must be sited to minimize its visual impact. The  
113 Board may require the support structure to be less visually obtrusive  
114 by use of screening, coloring, stealth design, or other visual mitigation  
115 options, after considering the height of the structure, topography,  
116 existing vegetation and environmental features, and adjoining and  
117 nearby residential properties. The support structure and any related  
118 equipment buildings or cabinets must be surrounded by landscaping  
119 or other screening options that provide a screen of at least 6 feet in  
120 height.

121 (5) The property owner must be an applicant for the special exception for  
122 each support structure. A modification of a telecommunications  
123 facility special exception is not required for a change to any use  
124 within the special exception area not directly related to the special  
125 exception grant. A support structure must be constructed to hold no  
126 less than 3 telecommunications carriers. The Board may approve a  
127 support structure holding less than 3 telecommunications carriers if:  
128 [1)] (A) requested by the applicant and a determination is made that  
129 collocation at the site is not essential to the public interest; and [2)]

130 (B) the Board decides that construction of a lower support structure  
131 with fewer telecommunications carriers will promote community  
132 compatibility. The equipment compound must have sufficient area to  
133 accommodate equipment sheds or cabinets associated with the  
134 [telecommunication] telecommunications facility for all the carriers.

135 (6) No signs or illumination are permitted on the antennas or support  
136 structure unless required by the Federal Communications  
137 Commission, the Federal Aviation Administration, or the County.

138 (7) Every freestanding support structure must be removed at the cost of  
139 the owner of the telecommunications facility when the  
140 telecommunications facility is no longer in use by any  
141 telecommunications carrier for more than 12 months.

142 (8) All support structures must be identified by a sign no larger than 2  
143 square feet affixed to the support structure or any equipment building.  
144 The sign must identify the owner and the maintenance service  
145 provider of the support structure or any attached antenna and provide  
146 the telephone number of a person to contact regarding the structure.  
147 The sign must be updated and the Board of Appeals notified within 10  
148 days of any change in ownership.

149 (9) Outdoor storage of equipment or other items is prohibited.

150 (10) Each owner of the telecommunications facility is responsible for  
151 maintaining the telecommunications facility[,] in a safe condition.

152 (11) The applicants for the special exception must file with the Board of  
153 Appeals a recommendation from the Transmission Facility  
154 Coordinating Group regarding the telecommunications facility. The  
155 recommendation must be no more than [one year] 30 days old, except

156 that a recommendation issued within one year before {date of  
157 adoption} must be accepted for one year from the date of issuance.

158 (12) [Prior to the Board granting any special exception for a  
159 telecommunications facility, the proposed facility must be reviewed  
160 by the County Transmission Facility Coordinating Group.] The Board  
161 [and Planning Board] must make a separate, independent finding as to  
162 need and location of the facility. The applicant must submit evidence  
163 sufficient to demonstrate the need for the proposed facility.

164 \* \* \*

165 Sec. 3. Effective date. This ordinance takes effect on the date of Council  
166 adoption.

167

168

169

170 This is a correct copy of Council action.

171

172

173 \_\_\_\_\_  
Linda M. Lauer, Clerk of the Council

**Subject:** FW: Zoning Text Amendment No. 10-05

**From:** Whipple, Scott  
**Sent:** Monday, April 19, 2010 4:13 PM  
**To:** Russ, Gregory  
**Subject:** Zoning Text Amendment No. 10-05

Thank you for the opportunity to comment on Zoning Text Amendment No. 10-05. The historic preservation section supports in concept the goals of the ZTA. However, the section believes that a petition for special exception for a telecommunications facility should include either an approved Historic Area Work Permit or determination that the proposed installation does not constitute a substantial alteration as required under Chapter 24A for sites or resources within a historic district listed in the Master Plan for Historic Preservation or individual resources or resources within a historic district identified in the Locational Atlas and Index of Historic Sites, respectively, or confirmation that a historic area work permit or substantial alteration determination is not required.

The historic preservation language proposed herein is consistent with the preliminary or final water quality plan requirements and the preliminary forest conservation plan language found in the amendment at sections 59-A-4.22.(a)(10) and (13)(A), respectively.

Under Chapter 24A, the Montgomery County Historic Preservation Commission must act within forty-five days of the receipt of a completed historic area work permit application. Dispensing with the historic preservation review process, or establishing that no historic preservation review is necessary, prior to the initiation of a petition for a telecommunications facility, would simplify and streamline the petition for special exception process.

**Scott D. Whipple**, Supervisor  
Historic Preservation Section | Urban Design and Preservation Division  
Montgomery County Planning Department | M-NCPPC  
Office: 1400 Spring Street, Suite 500 | Silver Spring  
Mail: 8787 Georgia Avenue | Silver Spring MD 20910  
301-563-3400 phone | 301-563-3412 fax  
[scott.whipple@montgomeryplanning.org](mailto:scott.whipple@montgomeryplanning.org) | [www.montgomeryplanning.org/historic/](http://www.montgomeryplanning.org/historic/)

**Please note:** Our office has moved. We are now located at 1400 Spring St, suite 500.