Zoning Text Amendment (ZTA) No. 19-07, Telecommunications Towers – Limited & Conditional Use

**Description**

ZTA No. 19-07 amends 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.

**Summary**

Staff recommends the following comments on ZTA No. 19-07 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.

Staff believes that ZTA 19-07 strikes a balance in addressing the community’s interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community’s interest in managing commercial use of public property and maintaining attractive and safe roads and neighborhoods.

Staff believes that adding a requirement and expedited process for conditional use approval for replacement poles that do not meet the limited use standards makes sense, given that retrofitting them with small cell technology can be more difficult when also trying to establish compatibility with neighborhoods, especially in areas with underground utilities.

Staff further recommends that the following comments/questions be addressed during PHED Committee worksession on ZTA 19-07 (as detailed in the staff report):

- The extent of Planning Staff involvement in the expedited limited use and conditional use processes.
- The Hearing Examiner’s concerns regarding the proposed language that allows consolidation of applications filed up to 29 days apart. OZAH believes that these applications should be filed on the same day.
• Clarification on the maximum size (volume) of a small cell antenna to be located on a replacement or existing streetlight, utility or site plan approved parking lot light pole. There appears to be inconsistency between the current Zoning Code maximum and the FCC allowance.
• Clarification of existing Zoning Code language on how the minimum installation height (of 15 feet) of an antenna on a pole should be measured. Staff suggests that the measurement should be made from the base of the antenna.
• Minor plain language clarifications.

Background/Analysis

ZTA 18-02 (adopted May 15, 2018), amended the Zoning Ordinance to allow replacement of pre-existing streetlights, utility poles and site plan-approved parking lot lights in the Commercial/Residential, Employment and Industrial zones.

ZTA 18-11 was proposed to allow replacement of these same types of pre-existing poles in the Agricultural, Rural Residential and Residential zones as a Limited Use if the pre-existing pole is at least 22 feet tall and 30 feet from a house, or as Conditional Use if the pre-existing pole is shorter than 22 feet and at least 30 feet from a house. The Hearing Examiner would need to find that the tower is compatible with nearby residential property and is located to minimize its visual impact. To meet federal shot clocks, the Hearing Examiner’s decision would be made final action by the County, by removing the right to appeal the Hearing Examiner’s decision to the Board of Appeals. Appeal to the Circuit Court would still be permitted. ZTA 18-11 was not enacted by the previous Council.

ZTA 19-07 was introduced on October 1, 2019. Below is an excerpt from the Council Staff report introducing the ZTA:

Wireless technology is rapidly changing to offer faster speeds, enhanced reliability, and expanded capabilities. The Federal Communications Commission (FCC) believes that greater capacity is needed to meet future demands. The next generation of wireless technology has dramatically more capacity than what is in use today.

Wireless networks will increasingly take advantage of millimeter wave spectrum above 24 GHz. That spectrum can carry a lot of information, but the signal travels a short distance. The technology requires many antennas that are closer to the device that is sending and receiving information. While today’s technology relies on relatively few but tall macro towers, tomorrow’s technology (5G) will also make use of many more, shorter antennas.

As stated above, the previous Council reviewed the restrictions of 5G towers in 2018. By approving ZTA 18-02, the Council allowed deployment of 5G antennas in mixed-use and non-residential zones with reduced setbacks. The zoning code does not allow 5G towers in residentially-zoned areas except by conditional use approval (In the conditional use process, a minimum 300-foot setback from existing dwellings is required.). The previous Council also took on the question of allowing a limited use in residential zones in the fall of 2018 (ZTA 18-11) with a 30-foot setback. Ultimately, the Council did not support shorter cell towers as a limited use in residential zones.

In the opinion of the sponsors, the opportunities for innovation and advancement in health care, education, transportation, agriculture, entertainment, and many other sectors should not be understated. As wireless technologies increasingly help power the County’s economy and
undoubtedly contribute to County residents' quality of life, the sponsors of ZTA 19-07 do not want the County to be left behind.

The sponsors of ZTA 19-07 believe that the proposed ZTA strikes the right balance. It ensures that the industry is incentivized to use poles that are 60 feet or more from a building. When the setback distance is between 60 and 30 feet, residents will continue to have a voice in the process to argue that there are less obtrusive locations.

The sponsors are concerned about preemption efforts by the FCC and possibly the Maryland General Assembly. This ZTA is an opportunity for the County to set its own standards. In the opinion of the sponsors, if the Council does not act, federal or state rules will be imposed on the County, and those rules will be less favorable than what this ZTA would achieve (The County filed petitions for judicial review of several FCC orders that, as of the date of this memorandum, the court has not acted on.).

As proposed, ZTA 19-07 does not change the requirements for telecommunications towers that are not replacing a pre-existing utility pole, streetlight pole, or site plan approved parking lot light pole. However, the ZTA adds to or modifies the telecommunication provisions as discussed below (Planning staff supports these proposed changes, with modifications as indicated):

REPLACEMENT POLES AS LIMITED USE IN RESIDENTIAL AREAS (Streetlight, Utility, and Parking Lot Light Poles)
• ZTA 19-07 would allow poles with antennas as a limited use in residential zones where the pole for the antenna would replace a pre-existing utility pole, streetlight pole, or site plan-approved parking lot light pole.
  o Any permit application to the Department of Permitting Services concerning a Telecommunications Tower (including non-residential zones) must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the permit application. (lines 23-27)
  o In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower must be at least 60 feet from the nearest habitable building. In 2018, the characteristics of emerging 5G and small cell technology required that antennas be located closer to mobile devices, and thus closer to residences and businesses. In ZTA 18-02, the County approved allowing the smallest class of antennas to be located on poles at least 10 feet from buildings in commercial areas. (lines 33-37)
  o The height of a replacement structure would be limited to 6 additional feet for streetlights, when abutting a right-of-way with a paved section width of 65 feet or less, or 15 additional feet for streetlights when abutting a right-of-way with a paved section width greater than 65 feet. Additional height for utility poles and parking lot light poles would be limited to 10 feet.

1 In residential areas, these macro towers continue to require a 300-foot setback, conditional use approval, and that an Office of Zoning and Administrative Hearing (OZAH) Hearing Examiner’s approval may be appealed to the Board of Appeals.
However, additional minimum height would be permitted to comply with the National Electric Safety Code. (lines 63-75)

**REPLACEMENT POLES AS A CONDITIONAL USE IN RESIDENTIAL AREAS** (lines 138-246)

- ZTA 19-07 would amend the conditional use standards for poles in Agricultural, Rural Residential, and Residential zones proposed to be less than 50 feet in height that do not meet the limited use standards.
  - Before the Hearing Examiner reviews any conditional use for a Telecommunications Tower, the proposed facility must be reviewed by the Transmission Facility Coordinating Group. The Transmission Facility 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. (lines 175-190)
  - The Telecommunications Tower must be at least 60 feet from any building intended for human occupation and no taller than 30 feet. (lines 216-220)
  - If the Hearing Examiner determines that additional height above the limited use standards and reduced setback are needed to provide service or that 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 a minimum of 30 feet or increase the height above 30 feet. Under all circumstances, the setback must be at least 30 feet from a building. (lines 221-232)
  - 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. (lines 237-239)
  - ZTA 19-07 includes a revision to the conditional use process to allow for a decision to be made within 90 days, which is an FCC shot clock requirement for new poles. Reducing the processing time requires that appeals of the Hearing Examiner’s decisions go straight to the Circuit Court. (lines 278-280)
  - 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. Within that time frame, the Hearing Examiner may request information from Planning Department Staff. (lines 212-213) *Planning Staff believes that this requirement needs clarification. What information may be requested from Planning Department staff? In what form would this information be, i.e., staff report, staff memo, graphics? What is the expected turnaround time for staff to accomplish this task if the Hearing Examiner is requesting information concerning consolidated cases or is on an expedited hearing schedule?*

**MULTIPLE APPLICATIONS FOR TELECOMMUNICATIONS TOWERS** (lines 247-277)

- ZTA 19-07 would also allow for batching applications when those applications are in the same neighborhood and have similar issues.
  - All applications must be filed within 30 days of each other and be accompanied by a motion for consolidation. (lines 255-256) The Hearing Examiner’s Office believes that the ability to consolidate applications filed 29 days apart should be eliminated. The current proposal will
create logistical problems for OZAH staff, as they will have to rearrange hearings already scheduled with potentially many parties (including civic associations and individuals) to get a new date. They will also have to manage the scheduling of transcription services, update the website, and do multiple mailings when they could have done one mailing for the applications that are consolidated. As such, the ZTA should require the Motion for Consolidation to be filed at the same time the applications to be consolidated are filed.

The current language in the ZTA 19-07 reads:

“All applications must be filed within 30 days of each other and be accompanied by a motion for consolidation.”

OZAH recommends changing that language to read:

“All applications for Telecommunications Tower conditional uses that the Applicant seeks to have consolidated must be filed on the same date and be accompanied by a motion for consolidation.”

Planning staff supports the change recommended by OZAH.

- The proposed sites to be consolidated, 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.
- 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.
- Each tower must be of the same or similar proposed height, structure, and characteristics.

OTHER CHANGES AND CLARIFICATIONS

- Section 3.5.2.C.2.b.iv (Telecommunication Use Standard- lines 38-42 of the ZTA) states for antennas on a replacement pole:

  *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.*

  Although this language is existing language that is not proposed to be modified as part of ZTA 19-07, staff believes that clarifications could be warranted. The maximum antenna size under Standard A exceeds the requirement established by the Federal Communications Commission (FCC) which limits the antenna to 3 cubic feet in volume (Standard A allows a maximum volume of 6 cubic feet). Also, installation is typically from the center of the antenna. Under Standard A the base of the antenna could technically be at a height under 13 feet. Staff suggests that the minimum installation height of 15 feet be clarified to be measured from the base of the antenna.

- Lines 106-110 read as follows:

  *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 respective facility.*
Staff recommends a minor plain language clarification (double underlined language above) to make clear the responsibilities of both owners (tower and antenna).
Conclusion

Staff believes that ZTA 19-07 strikes a balance in addressing the community’s interest in having increased access to mobile broadband services and the evolving technical needs of the wireless industry while also working to protect the community’s interest in managing commercial use of public property and maintaining attractive and safe roads and neighborhoods. Adding a requirement and expedited process for conditional use approval for replacement poles that do not meet the limited use standards makes sense, given that retrofitting them with small cell technology can be more difficult when also trying to establish compatibility with neighborhoods, especially in areas with underground utilities. Staff further recommends that the following comments/questions be addressed during the PHED Committee worksession on ZTA 19-07 (as detailed in the staff report):

- The extent of Planning Staff involvement in the expedited limited use and conditional use processes.
- The Hearing Examiner’s concerns regarding the proposed language that allows consolidation of applications filed up to 29 days apart. OZAH believes that these applications should be filed on the same day.
- Clarification on the maximum size (volume) of a small cell antenna to be located on a replacement or existing streetlight, utility or site plan approved parking lot light pole. There appears to be inconsistency between the current Zoning Code maximum and the FCC allowance.
- Clarification of existing Zoning Code language on how the minimum installation height (of 15 feet) of an antenna on a pole should be measured. Staff suggests that the measurement should be made from the base of the antenna.
- Minor plain language clarifications.

Attachments

1. ZTA No. 19-07 as introduced
Zoning Text Amendment No.: 19-07
Concerning: Telecommunications Towers – Limited Use
Draft No. & Date: 1 – 9/24/19
Introduced: October 1, 2019
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

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”
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.

<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>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>AR</td>
<td>R</td>
<td>RC</td>
<td>RNC</td>
<td>RE-2</td>
<td>RE-2C</td>
</tr>
<tr>
<td>* * *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>COMMERCIAL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>* * *</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Communication Facility</td>
<td>3.5.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cable Communications System</td>
<td>3.5.2.A</td>
<td></td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Media Broadcast Tower</td>
<td>3.5.2.B</td>
<td></td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
<td>C</td>
</tr>
<tr>
<td>Telecommunications Tower</td>
<td>3.5.2.C</td>
<td></td>
<td>L/C</td>
<td>L/C</td>
<td>L/C</td>
<td>L/C</td>
<td>L/C</td>
</tr>
</tbody>
</table>

7 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 permit application to the Department of Permitting Services concerning a Telecommunications Tower must include a recommendation from the Transmission Facility Coordinating group issued within 90 days of the submission of the 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 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. 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.

[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.

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

(a) 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

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

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

[v] viii. 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:

(a) 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 (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 (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.

[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 3.5.2.C.2.d or Subsection 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, 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, condominiums, 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. The Transmission Facility 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 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. 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 all property owners within 300 feet of the application of:
      (1) the filed application;
      (2) the hearing date; and
      (3) information on changes to the hearing date or the consolidation found on the Office of Zoning and Administrative Hearing’s website.
A sign that satisfies Section 59.7.5 must also be posted at the site of the application at the same time.
   (b) The Hearing Examiner may postpone the public hearing and must post notice on the website of the Office of Zoning and Administrative Hearings of any changes to the application, the application schedule, or consolidation of multiple applications.
   (c) The Hearing Examiner may request information from Planning Department Staff.
iv. A Telecommunications Tower must be set back, as measured from the base of the support structure.
   (a) The Telecommunications Tower must be at least 60 feet from any building intended for human
Zoning Text Amendment No.: 19-07

occupation, excluding encroachments that are allowed under Section 4.1.7.B.5 and no taller than 30 feet; or

(b) 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. 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.

vi. 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.

vii. 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, existing tree coverage and vegetation, and design
and presence of streetlight, utility, or parking lot poles.

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 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.
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. 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. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Mary Anne Paradise
Acting Clerk of the Council