



OFFICE OF THE COUNTY EXECUTIVE

MEMORANDUM

June 29, 2021

TO: Tom Hucker, Council President

FROM: Marc Elrich, County Executive

SUBJECT: ZTA 19-07 and related zoning and other issues

I am writing to provide comments on ZTA 19-07 as amended by the PHED committee, propose some changes, and suggest a role for community engagement.

First, regarding concerns about ZTA 19-07, I have the following concerns and comments:

1. The ZTA does not set any proposed minimum setback from a building; it is a limited use process up to 30 feet from the building and then it is a “modified conditional use” process for less than 30 feet setback.
2. It is not clear what a modified conditional use process would look like. The Planning Board letter dated 11-18-19 includes some issues to be addressed, including the “extent of Planning Staff involvement in the expedited limited use and conditional use processes”. ZTA 19-07 would remove the right of appeal to the Board of Appeals and require that it go straight to the courts. This is an expensive burden for residents.
3. Allowing the Hearing Examiner to order a joint hearing or consolidation could be helpful but the Office of Zoning and Administrative Hearings (OZAH) believes (per the 11-18-19 letter from the Planning Board) that any consolidated applications should be filed on the same day. Additionally, further discussion could be useful for determining the amount of area that could be consolidated.
4. Residents have concerns about who can be a party of record. They have proposed that:
 - “Party of Record” means an Applicant or Respondent who appears at or is represented at an OZAH Hearing, and any other Person or Organization who presents oral testimony, comment, or argument at an OZAH Hearing.

- In a consolidated OZAH case, any person who has submitted written testimony to OZAH will automatically be a Party of Record.
5. Antenna attachments to existing and replacement utility poles are not covered by this ZTA. Although Section 59.3.5.2.C mentions replacement utility poles, it has been interpreted that utility poles – whether existing or replacement – are governed by Section 59.3.5.14.C “Antenna on Existing Structure”. The staff memo from Jan 21, 2020, explains,
- “A pole may be replaced because of general maintenance, increased electrical service needs, to accommodate cable service, or to accommodate an antenna. If the pole exists when an applicant applies for an electrical permit, the provision for an antenna attachment on an existing structure applies (Section 59.3.5.14.C of the zoning code). There is NO height limit for antennas on existing structures. There IS a required 60-foot antenna setback from any dwelling (Section 59.3.5.14.C.2.e.iii).” (pg. 11)
- The memo confirms that ZTA 19-07 does not amend this section and that therefore, it would “not affect the current law concerning the unlimited height of utility poles in their status as existing structures.”
6. The amendment to provide a minimum distance between poles with antennas “occupied or controlled by the same carrier” is a good addition to limit the unnecessary proliferation of antennas. A similar provision should be added to Section 59.3.5.14.C
7. The waiver and objection process proposed for certain height increases and for new poles is not one that gives sufficient notice and access for residents. Unless there is a specific objection, the waiver is allowed; a process is not required.
8. In order to minimize proliferation of unnecessary poles, new poles should be a conditional use process.
9. Additional stealth requirements may be appropriate for streetlights and utility poles. (If additional stealth requirements were included, Section 59.3.5.14.C would need to be amended also.)
10. A final permit should be conditional on testing for RF to determine whether the telecommunications tower is within the FCC’s RF standards for the general population.

Previously, my staff has mentioned a “tiered” approach to siting of telecom towers and antenna attachments. I would like to propose a 3-tiered approach based on the allowed speed of the road: less than 35 mph; 35-50 mph; and greater than 50 mph. On roadways with speeds less than 35 mph, telecommunications towers would be allowed at 75 feet with a conditional use to 60 feet. This would allow attachments on approximately 31,000 streetlights at 75 feet and about another 6,000 at 60 feet. On roadways with 35-50 mph, telecommunication towers would be allowed at 45 feet with a conditional use to 30 feet, and on roadways with a speed greater than 50 mph, telecommunication towers would be allowed at 30 feet with conditional use to 10 feet.

I would also note that given that there are three separate companies – AT&T, Verizon and T-Mobile - that potentially want to install telecommunication towers in the millimeter spectrum, a discussion is needed about what that could look like in the neighborhoods. It could be three towers every 150 feet. It is not simply locating one tower as it has been portrayed.

Additionally, it is my understanding that municipalities have some concerns about their involvement and role in the process.

On a related issue, we are reviewing procedures and process of the Transmission Facility Coordinating Group (known as the Tower Committee) to provide for better public input and transparency. That review is not yet complete, but it is in process.

My staff and I have talked with many residents and industry representatives, and we have found them to be knowledgeable and willing to help improve the process. I would like to propose that we convene a working group comprised of a diverse group of stakeholders, including industry, residents, municipalities and homeowner/tenant associations and/or non-profit organizations. Staff support would be provided by Executive and Council staff. The group would have a limited time – perhaps 75 -90 days - to present written recommendations. I believe such a group would allow opportunity for a more complete discussion of these issues.

ME/DS

CC: Mitra Pedoeem, Director, Department of Permitting Services
Victor Salazar, Division Chief, Zoning, Well & Septic and Code Compliance, DPS
Mark Beall, Zoning Manager, Division of Zoning, Well & Septic and Code Compliance, DPS
Linda Kobylski, Chief, Land Development, DPS
Mitsuko Herrera, Program Director, Office of Broadband Programs
Debbie Spielberg, Special Assistant, County Executive
Meredith Wellington, Land Use Planning Policy Analyst, Office of the County Executive
Clifford Royalty, Office of the County Attorney
Marjorie L. Williams, Broadband, Cable & Franchise Division Manager, Department of Technology & Enterprise Business Solutions (TEBS)
Livhu Ndou, Legislative Attorney, Montgomery County Council
Pamela Dunn, Senior Legislative Analyst, Montgomery County Council
Dr. Costis Toregas, IT Adviser, Montgomery County Council