



OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich
County Executive

MEMORANDUM

September 29, 2022

TO: Hans Riemer, Chair
Planning, Housing & Economic Development Committee

FROM: Marc Elrich, County Executive 

SUBJECT: Zoning Text Amendment (ZTA) 22-01, Antenna on Existing Structure – Use Standards

I am writing to ask you to table ZTA 22-01 because there is currently no need for a change. The Council already passed ZTA 19-07, which allows telecom towers at 30 feet from residences through the streamlined limited use process (and they are allowed even closer than 30 feet through a modified, expedited conditional use process).

We have not seen a rationale suggesting that the change promoted by ZTA 22-01 is necessary. The County already has at least 33,000 poles available for attachments in residential areas. There is no need for more poles, and there is a downside to changing the setback. There is some risk in reducing the distance for existing structures from the current 60 feet because of aesthetic concerns. Previous federal court rulings have clarified that local jurisdictions have the authority to regulate aesthetic considerations. While ZTA 19-07 allowed new poles at 30 feet, new poles can be subject to aesthetic considerations; existing structures, like utility poles, are not subject to aesthetic requirements.

There also is no evidence that this ZTA would help address the digital divide, which became even more apparent during the COVID-19 pandemic. As you may know, my administration has been working to provide improved digital equity, especially expanding free and vastly reduced broadband access, which is central to allowing students and their families to access essential information and schoolwork.

Here is some of the work to address the digital divide and improve equity:

As of June 2022, 12,294 County households have enrolled in the Affordable Connectivity Program (ACP). Residents enrolled in other benefit programs are eligible to receive \$45 off their home or mobile broadband bill through ACP. In July 2022, Montgomery Connects, the County's digital equity program, launched an initiative to provide in-person ACP enrollment assistance and has helped over 428 families enroll in this program. In addition, 200 families are receiving free home broadband through the MoCoNet 100 Mbps residential broadband program. In FY22, Senior Planet Montgomery provided technology training for over 5,000 participants aged 50 and above. Montgomery Connects has provided over 26,000 loaner computers to low-income residents who do not have computers. The Office of Broadband programs is working with Comcast and Verizon to submit Maryland rural broadband grants to get broadband service to the remaining 75 occupied unserved rural properties in the County.

Furthermore, while the County cannot and does not regulate based on radiofrequency emissions, the County does need to ensure compliance with the Federal Communications Commission's (FCC) radio frequency (RF) guidelines, which have been put into question by a decision by the DC Circuit Court last August. The Court did not rule on RF effects, but they did rule that the FCC order was "arbitrary and capricious", and the FCC must provide a "reasoned explanation" for their guidelines. (<https://docs.fcc.gov/public/attachments/DOC-374936A1.pdf>) Given that there is no urgency to change the setback, it makes sense to wait to see how the FCC responds.

At this point, it makes sense to maintain the existing 60' setback.

- The County is not under any demonstrated federal obligation to enact this ZTA.
- There has been no local demonstrated need.
- There is an argument based on aesthetics that the distances can be different for new telecom towers, where the County can have input on the design and existing structures where the County does not.
- It is prudent to wait to see how the FCC responds to the Court decision.

Therefore, I respectfully request that the Council not approve this ZTA at this time, and I urge you to leave the 60-foot distance for existing structures intact. If you are concerned about consistent standards, then I suggest that you could put the new poles at 60 feet from residences as ZTA 19-07 stipulated when it was introduced. You would then have consistency without creating possible concerns about aesthetics.

I appreciate your attention to these concerns.