

M-NCPPC



**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING**

THE MARYLAND-NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

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**MCPB**  
**Item #6**  
**09/15/05**

**DATE:** September 9, 2005  
**TO:** Montgomery County Planning Board  
**VIA:** Rose Krasnow, Chief, Development Review *RK*  
Carlton Gilbert, Zoning Supervisor *CG*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the Zoning Ordinance to define amateur radio facility and to allow an amateur radio facility as a permitted use in certain zones; to define radio and television broadcasting stations and towers and to establish special exception standards for radio and television broadcasting stations and towers; and to generally amend the telecommunication facility zoning regulations.

**TEXT AMENDMENT:** No. 05-10  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmembers Praisner & Knapp  
**INTRODUCED DATE:** July 12, 2005

**PLANNING BOARD REVIEW:** September 15, 2005  
**PUBLIC HEARING:** September 20, 2005; 1:30pm

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**STAFF RECOMMENDATION:** APPROVAL with modifications

**PURPOSE AND BACKGROUND OF THE TEXT AMENDMENT**

Recent Text Amendments

- Zoning Ordinance Text Amendment No. 02-03

ZTA 02-03 (Ordinance No. 14-65) increased residential protections from telecommunication facilities by establishing a maximum height for a support structure and by encouraging a support structure design that is compatible with the environment and is screened adequately from the adjacent residences. The PHED Committee also identified several confusing zoning elements that pertain to wireless and to

radio/television broadcast facilities and recommended that a comprehensive review of the zoning requirements for self-supporting broadcast towers be undertaken to determine whether any different zoning requirements unique to a broadcast tower should be enacted. The same zoning requirements would continue to apply to both types of towers until definitional changes and revisions to clarify the differences between radio and television towers, and towers for personal service could be implemented. These changes are the subject of the proposed text amendment (ZTA 05-10).

- Zoning Ordinance Text Amendment No. 00-15

The Text Amendment No. 00-15 (Ordinance No. 14-34) allowed an increase in the amount of square footage allocated for equipment buildings constructed in conjunction with telecommunication facilities. The amendment permitted an equipment building to be constructed to a maximum of 1,500 square feet (if used for more than one telecommunication provider) versus 560 square feet in all zones.

- Zoning Ordinance Text Amendment No. 97015

Adopted in November 1997, this amendment allowed a wireless telecommunication facility in the RE-2C zone by special exception. There was no clear indication in the record why the comprehensive telecommunication zoning legislation (ZTA 95028) excluded the RE-2C zone.

#### Purpose of ZTA 05-10

The subject text amendment proposes to provide clarity to ambiguous terms used to describe and regulate public utility buildings and structures, telecommunication facilities, radio and television broadcast towers and amateur radio facilities.

Specifically, major elements of the zoning text amendment include:

- To define amateur radio facility and to allow an amateur radio facility as a permitted use in certain zones
- To define radio and television stations and towers and to establish special exception standards for radio and television broadcasting stations and towers
- To amend the land use tables to identify four classes of telecommunication related uses: (1) amateur radio facility, (2) public utility buildings and structures, (3) radio and television broadcasting stations and towers, and (4) telecommunication facility
- Eliminating radio towers from the land uses exempt from height controls
- Make plain language changes

#### **ANALYSIS**

The text amendment proposes to revise the standards for the grant of a telecommunication facility. Below is a discussion of each proposed change.

### **Amateur radio facility**

The subject text amendment proposes to define an amateur radio facility as follows:

***Amateur Radio Facility: Any facility used for personal, non-commercial radio communications licensed by the Federal Communications Commission.***

Staff believes that establishing a separate definition for amateur radio is appropriate since this would help distinguish personal, non-commercial radio transmissions from commercial broadcasting radio towers. In addition, the text amendment proposes to eliminate radio towers from the land uses exempt from height controls and to permit by right amateur radio facilities up to 100 feet in height. Any facility proposed above 100 feet in height would require special exception approval by the Board of Appeals. Staff believes that limiting the structure and antenna height to 100 feet minimizes adverse impacts to surrounding properties and eliminates ambiguities that currently exist in establishing height restrictions for amateur radio facilities. However, there are no specific special exception standards or requirements recommended in the subject text amendment for antennae and support structures greater than 100 feet in height. Staff believes that the County Telecommunications Transmission Facility Coordinating Group (the group tasked with reviewing transmission tower requests prior to formal application submittal) should assist the PHED Committee in establishing special exception requirements for the placement, screening and height of antennae and support structures above 100 feet prior to action on the text amendment by the County Council..

### **Radio and television stations and towers**

The subject text amendment proposes to define radio and television stations and towers as follows:

***Radio and television broadcasting stations and towers. Any facility used to transmit radio or television communications that are intended to be received by the general public.***

The depicted definition has been proposed to coincide with the existing terms listed in the land use tables of the Zoning Ordinance. In addition, special exception provisions have been proposed for radio and television stations and towers that, except for support structure height, mirror standards that currently exist for telecommunications facilities (Section 59-G-2.43). Currently, the maximum height for a telecommunication facility support structure and antenna is 155 feet, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. In the past, it has been unclear whether this height limitation should apply to radio and television towers since many of the existing support structures are taller than the 199-foot requirement. The subject text amendment proposes a support structure

maximum height of 300 feet, unless it can be demonstrated that additional height up to 450 feet is needed for service, collocation, or public safety communication purposes. Documentation provided by the Telecommunications Transmission Facility Coordinating Group (“Tower Committee”) for existing radio broadcasting towers in Montgomery County indicate that two existing towers are less than 200 feet in height, eight facilities are between 200 and 300 feet and nine structures are greater than 300 feet, including one that is taller than 600 feet (see Attachment 2). Staff believes that establishing a maximum support structure height of 300 feet (with an increase up to 450 feet if demonstrated for service, collocation, or public safety communication purposes) is consistent with current practice. In any case, the maximum height for any proposed support structure and antennae would be analyzed and addressed by the Tower Committee and through the special exception public hearing process.

### **Definition of “Structure”**

The subject text amendment proposes to modify the definition of the term “structure”, as follows, to include telecommunication facilities:

*Structure: An assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and [TV] television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.*

Staff believes that the inclusion of telecommunications facilities in the definition of the term “Structure” is confusing and ambiguous. Instead, staff believes that “telecommunications and wireless transmission” towers and monopoles should be included in the definition to provide a more comprehensive list of structures that support antennae used for telecommunications transmission. These modifications have been included in Attachment 1.

### **Modifications to the Land Use Tables**

Modifications to the land use tables have been proposed to reflect the proposed separation of the telecommunication related uses into four categories: (1) amateur radio facility, (2) public utility buildings and structures, (3) radio and television broadcasting stations and towers, and (4) telecommunication facility. An amateur radio facility would be the only new use added to the land use tables. The remaining three uses are listed in more clearly discernible land use categories and will continue to be allowed as currently depicted in the Zoning Ordinance (either by right or by special exception approval).

### **Use of the term “Support Structure” In Conjunction with Special Exception Requirements for Telecommunication Tower Heights and Setbacks**

The term “support structure” is a phrase generally used to describe buildings, towers and monopoles supporting antennas. Because this term is not defined and could have various meanings, staff believes that use of the term should be avoided unless its meaning is clearly delineated. One alternative would be to establish a new definition for support structure. Staff believes that providing clarification in those locations where this term is used would be a better solution. For example, the ZTA states the following special exception standard for radio and television broadcasting towers (emphasis added in bold typeface):

**59-G-2.44. Radio and television broadcasting stations and towers.**

[See section 59-G-2.43.]

Any Radio and television broadcasting station or tower must satisfy the following standards:

\* \* \*

- (3) The support structure must not exceed 300 feet in height, unless it can be demonstrated that additional height up to 450 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the height and location of the support structure.

For the language stated above, the following modifications are recommended by staff:

Any Radio and television broadcasting station **[[or]]** and tower must satisfy the following standards:

\* \* \*

- (3) The **[[support]]** structure supporting antennas used for radio and television broadcasting must not exceed 300 feet in height, unless it can be demonstrated that additional height up to 450 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction and before the final inspection of the building permit, the applicant must submit documentation to the Department of Permitting Services as to the

height and location of the ~~[[support]] tower or other antenna-supporting structure.~~

Staff has made similar clarifying modifications throughout the proposed text amendment to better describe the intent of the proposed standards (see Attachment 1).

## **RECOMMENDATION**

The staff supports the proposed text amendment to define amateur radio facility and to allow an amateur radio facility as a permitted use in certain zones; to define radio and television stations and towers and to establish special exception standards for radio and television broadcasting stations and towers; and to generally amend the telecommunication facility zoning regulations to provide plain language clarifications.

Attachment 1 depicts the proposed text amendment as modified by staff. Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. Double underlining indicates text that is added to the text amendment by amendment (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

### Attachments

1. Proposed Text Amendment 05-10
2. Table depicting AM Broadcast Stations in Montgomery County