



Committee: Directly to Council
Staff: Livhu Ndou, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #SmallCell #TelecommunicationsTowers
#OZAHRules #5G

AGENDA ITEM #21A
November 30, 2021
Introduction

SUBJECT

Rules of Procedure for Conditional Uses and Waivers for Certain Telecommunications Towers and Objections to Applications for Waivers for Certain Telecommunications Towers before the Office of Zoning and Administrative Hearings

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

N/A

DESCRIPTION/ISSUE

An amendment to OZAH's Land Use Rules of Procedure is necessary to implement ZTA 19-07, passed by the District Council on July 27, 2021.

SUMMARY OF KEY DISCUSSION POINTS

- The District Council adopted Zoning Text Amendment (ZTA) 19-07 on July 27, 2021.
- ZTA 19-07 established new procedures for conditional use and waiver applications and objections to waiver applications for telecommunications towers before the Office of Zoning and Administrative Hearings (OZAH).
- The procedures established were not in OZAH's current Land Use Rules of Procedure.
- New rules are necessary to process applications efficiently, timely, and fairly.

This report contains:

OZAH Rules Resolution
OZAH Rules of Procedure Governing Certain
Telecommunications Towers

Pages

© 1-2
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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION
OF THE MARYLAND-WASHINGTON REGIONAL DISTRICT
IN MONTGOMERY COUNTY**

Lead Sponsor: District Council at the Request of the Hearing Examiner

SUBJECT: Rules of Procedure for Conditional Uses and Waivers for Certain Telecommunications Towers and Objections to Applications for Waivers for Certain Telecommunications Towers before the Office of Zoning and Administrative Hearings

Background

1. On July 27, 2021, the County Council, sitting as the District Council for that portion of the Maryland-Washington Regional District located in Montgomery County, Maryland, adopted Zoning Text Amendment (ZTA) 19-07 (Ordinance No. 19-17), establishing new procedures for conditional use and waiver applications, and objections to waiver applications, for new small cell telecommunications towers before the Office of Zoning and Administrative Hearings (OZAH).
2. The procedures established for conditional uses, waivers, and objections are new and are not governed by OZAH's current Land Use Rules of Procedure. The new rules are necessary to process these applications in an efficient, timely, and fair manner.
3. The District Council finds that OZAH's proposed Rules of Procedure will effectively implement Zoning Text Amendment ZTA 19-07 and are consistent with the Montgomery County Code and the Montgomery County Zoning Ordinance.

Action

The County Council for Montgomery County, Maryland, sitting as the District Council of the Maryland-Washington Regional District located in Montgomery County, Maryland approves the following resolution:

1. The attached Rules of Procedure governing new telecommunication towers authorized by ZTA 19-07 are hereby approved; and

2. The attached Rules of Procedure will be effective _____, 2022.

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
RULE OF PROCEDURE GOVERNING CERTAIN TELECOMMUNICATIONS TOWERS

Table of Contents

1.0	Definitions.....	3
1.1	OZAH's Land Use Rules:	3
1.2	Person(s):	3
1.3	Zoning Ordinance:.....	3
1.4	Holder of Conditional Use or Waiver:	3
2.0	Time Periods.	3
3.0	Professionally Prepared Plans.....	3
4.0	Access to Records.	3
5.0	Applications.....	3
5.1	Conditional Uses and Waivers.	3
5.1.1	Filing.	3
5.1.2	Contents.....	4
5.2	Objections.	5
5.2.1	Method of Filing.....	5
6.0	Notice.....	6
6.1	Sign Notice for Conditional Uses and Waivers.....	6
6.1.2	Affidavit of Posting.....	6
6.1.3	Duration of Posting.	6
6.1.4	Refund of Sign Fees.....	7
6.2	Application Notice for Waivers.	7
6.2.1	Contents.....	7
6.2.2	Verification of Mailing.....	7
6.3	Public Hearing Notice for Conditional Uses and Objections.....	8
6.3.1	Time for Issuance.	8
6.3.2	Conditional Uses.	8
6.3.3	Objections.	8
7.0	Public Hearings in Conditional Uses and Objection Cases	8
7.1	Scheduling.....	8
7.1.1	Postponements.	8
7.1.2	Continuance.	9

7.2	Consolidation for Public Hearing.	9
7.3	Pre-hearing Procedures.	9
7.3.1	Parties and Participants.	9
7.3.2	Legal Representation.	9
7.3.3	Pre-Hearing Submissions in Conditional Use Cases.	9
7.3.3.5	Opposition Pre-Hearing Submission.	9
7.3.4	Pre-Hearing Requests by Hearing Examiner.	10
7.3.5	Motions.	10
7.4	Hearing Procedures.....	10
7.0	Decisions.	10
7.1	Time for Issuance.	10
7.1.1	Waivers.	10
7.1.2	Conditional Uses and Objections.	10
7.2	Notification of Reports and Decisions.....	11
8.0	Transfer of Conditional Use or Waiver Application to a New Holder.....	11
8.1	Administrative Approval.	11
8.1.1	Procedures.	11
8.1.2	Hearing Examiner Action.	11
8.1.3	Record of Transfer.	11
8.1.4	Non-Compliance with this Rule.....	11

1.0 Definitions.

1.1 OZAH's Land Use Rules:

OZAH's Land Use Rules means the Office of Zoning and Administrative Hearing's Amended Land Use Rules of Procedure adopted by Council Resolution 18-780 on April 25, 2017, or as subsequently amended.

1.2 Person(s):

The term person or persons has the meaning stated in Section 59.1.4.1 of the Montgomery County Zoning Ordinance (2014 as amended).

1.3 Zoning Ordinance:

Zoning Ordinance means the Montgomery County Zoning Ordinance (2014 as amended).

1.4 Holder of Conditional Use or Waiver:

The person(s) that applied for and received an approval for a conditional use or waiver.

2.0 Time Periods.

All time periods in these Rules will be calculated under §59.1.4.1 of the Zoning Ordinance.

3.0 Professionally Prepared Plans.

All professionally prepared plans must be signed and sealed by the professional who prepared them, as required under State law.

4.0 Access to Records.

OZAH will maintain the record of all applications for conditional uses, waivers, and objections. These records will be available for public inspection by appointment between the hours of 9:00 a.m. and 4:30 p.m., on days the OZAH is open for appointments. Copies documents of record will be provided by OZAH upon request at a fee established separately.

5.0 Applications.

5.1 Conditional Uses and Waivers.

5.1.1 Filing.

Applications must be filed at the Montgomery County Planning Department on forms provided by the OZAH.

5.1.1.1 Electronic Filing.

Once OZAH receives verification from the Planning Department that the application is complete, it will review the application for

acceptance based on the application materials included in the [Planning Department's Development Application Information Counter](#) (DAIC) or another digital platform.

5.1.1.2 Acceptance by OZAH.

OZAH will accept the application once it determines that all required items have been received, including filing fees.

5.1.1.3 Paper Copies.

After OZAH accepts the application, the Applicant must mail paper copies of all application materials to OZAH within five days of verification. Paper copies may alternatively be hand-delivered to OZAH, by appointment, within five days of the date accepted by OZAH.

5.1.1.4 Filing Fees. Fifteen percent of the filing fee approved by the District Council must be paid directly to the Planning Department when the application is submitted for verification of completeness. Payment of the remaining 85% of the filing fees must be included with the application when it is filed with OZAH.

5.1.2 Contents.

5.1.2.1 Applications must include all items required by the [Section 3.5.2.C.2.d.i](#) of the Montgomery County Zoning Ordinance for the proposed primary and each alternative tower location, and the following:

5.1.2.1.1 Contact Information. Name, mailing address, phone number, and email address of the applicant and any person acting on behalf of the applicant. OZAH may reject an application if all contact information is not provided.

5.1.2.1.2 Verification of completeness. Verification from the Montgomery County Planning Department that the application is complete; and

5.1.2.1.3 Mailing List. An applicant for a waiver must submit a mailing list of all property owners, homeowners, civic, and condominium associations, and municipalities within 300 feet of the primary and alternative proposed pole locations. An applicant may rely on the following to generate the mailing list required by [Sections 59.3.5.2.C.2.d.i\(g\)](#) and [59.3.5.2.C.2.f.ii](#) of the Zoning Ordinance:

5.1.2.1.3.1 Names and addresses of associations and municipalities may be obtained from the Planning Department's [Association Finder Interactive Map](#).

5.1.2.1.3.2 Names and addresses of current property owners may be obtained or verified from the [Real Property Database](#) of the Maryland State Department of Assessments and Taxation.

5.1.2.1.3.3 The distance from the proposed primary and alternate pole locations may be obtained from [MCATLAS](#).

5.1.2.2 Location of Primary and Alternative Poles. All plans submitted must identify and mark the primary and alternative locations of the poles proposed.

5.1.2.3 GPS Coordinates. Each application must include the GPS coordinates for both the proposed primary and alternate locations.

5.1.2.4 Tower Committee Recommendation. The application must include a recommendation from the Tower Facilities Coordinating Group that is no more than 90 days old at the time of application.

5.2 Objections.

An objection must be filed directly with OZAH on the form provided by OZAH.

5.2.1 Method of Filing.

5.2.1.1 Electronic Filing.

An objection may be filed electronically by email, provided that a copy of the objection is postmarked on the same date that the email is submitted. If there is a discrepancy between the postmarked date and the date of the email, the postmarked date will be the date filed.

5.2.1.2 Hand-Delivery.

An objection may be hand-delivered to OZAH by appointment.

5.2.2 Contents. Objections must include the following information:

5.2.2.1 The name, mailing address, email address, and phone number of the person(s) objecting. If the person objecting has no email address, they must so indicate on the form. The Hearing Examiner may reject an application if all contact information is not provided.

5.2.2.2 The OZAH case number of the waiver application that is being objected to.

5.2.2.3 The distance from the Objector's property to the proposed location of the primary and alternate poles to which they are objecting. For application purposes, OZAH will accept measurements obtained from [MCATLAS](#).

5.2.2.4 Basis for Objection.

A statement of the basis for the objection, including why the objector believes the pole is visually obtrusive and whether or how the pole may be made less visually obtrusive.

6.0 Notice

6.1 Sign Notice for Conditional Uses and Waivers.

OZAH will provide the required sign to be erected on the site of the proposed primary and alternate locations by the applicant. The sign must be posted within five (5) days after OZAH accepts the application.

6.1.1 Fee.

The applicant must pay a Council-established sign fee prior to receiving the signs.

6.1.2 Affidavit of Posting.

When the Applicant picks up the signs, OZAH will provide the applicant an affidavit of posting form attesting that the sign has been posted continuously for the required time.

6.1.2.1 Time for Filing Affidavit of Posting.

For conditional use applications, the Affidavit of Posting must be submitted at the public hearing. For waiver applications, the applicant shall submit the affidavit of posting a minimum of 21 days from the date OZAH accepts the application.

6.1.2.2 Failure to Submit.

If an applicant fails to submit the affidavit of posting, the Hearing Examiner may determine that required notice has not been provided.

6.1.3 Duration of Posting.

Signs must remain in place for at least 15 days after the Hearing Examiner issues a decision.

6.1.4 Refund of Sign Fees.

The Hearing Examiner may give the applicant a partial refund of the sign fee if signs are returned in reusable condition within 21 days after a final decision in the case. If the signs are not returned within 21 days, the refund is forfeited.

6.2 Application Notice for Waivers.

In addition to Sign Notice, the Applicant for a waiver must mail notice of the application to all persons on the mailing list submitted with the application within three days of acceptance by OZAH.

6.2.1 Contents.

The Application Notice shall be on a form provided by OZAH and must contain:

6.2.1.1 A link to the application on the [DAIC](#) or other digital platform where the complete application may be viewed.

6.2.1.2 The address of the property on which the proposed primary and alternate towers are located. If in a right-of-way, the address of the nearest properties abutting the right-of-way at the proposed primary and alternate locations.

6.2.1.3 The GPS coordinates of the proposed primary and alternate locations.

6.2.1.4 OZAH case number, name of applicant, OZAH's website, email address and phone number for additional information.

6.2.1.5 The date accepted for filing by OZAH.

6.2.1.6 A statement that the primary or alternative location proposed may be approved administratively unless an objection is filed within 20 days of the date postmarked accepted for filing by OZAH.

6.2.2 Verification of Mailing.

On the date Application Notice is mailed to required persons, the Applicant must mail verification to OZAH that the Application Notice has been mailed. Verification of Mailing must include:

6.2.2.1 The date the Application Notice was mailed.

6.2.2.2 A copy of the Application Notice.

6.2.2.3 A signed affidavit on a form provided by OZAH that the Applicant has mailed the Application Notice.

6.3 Public Hearing Notice for Conditional Uses and Objections.

6.3.1 Time for Issuance.

OZAH will send notice of a public hearing within 10 days of accepting a conditional use application or an objection for filing.

6.3.2 Conditional Uses.

OZAH must mail written notice of the public hearing to all property owners, homeowner's associations, civic associations, renters associations, and condominiums on the mailing list submitted with the conditional use. If the Hearing Examiner finds an error in the mailing list, the Hearing Examiner may require that notice be sent to the correct person. The Hearing Examiner may send notice of the filing to other interested persons, organizations, or agencies, at the Examiner's discretion.

6.3.3 Objections.

OZAH must mail written notice of the public hearing to the person(s) objecting to approval of a waiver and the waiver applicant.

7.0 Public Hearings in Conditional Uses and Objection Cases

7.1 Scheduling.

The Hearing Examiner must schedule a public hearing within 30 days of the date it accepts an application for a conditional use or an objection.

7.1.1 Postponements.

7.1.1.1 Conditional Use Applications.

Upon motion of an applicant, the Hearing Examiner may postpone a hearing in a conditional use case for good cause shown. An applicant must request a postponement of the public hearing in writing at least seven days before the scheduled hearing date.

7.1.1.2 Objections.

Any party may request a postponement of a public hearing on an objection. The Hearing Examiner may postpone the hearing for good cause, subject to the requirements of federal law.

7.1.2 Continuance.

OZAH may continue a public hearing to a date and time certain if announced during the public hearing.

7.2 Consolidation for Public Hearing.

Upon motion of any party, the Hearing Examiner, in his or her discretion, may consolidate up to five conditional use applications or objections for public hearing, provided:

7.2.1 All applications meet the requirements of Section 59.3.5.2.C.2.e of the Zoning Ordinance;

7.2.2 All applications to be consolidated are filed within 30 days of the initial application; and

7.2.3 Consolidation will result in judicial economy and fairness to the parties.

7.3 Pre-hearing Procedures.

7.3.1 Parties and Participants.

[Rules 3.1 \(Parties\)](#) and [3.2 \(Participants\)](#) of OZAH's Land Use Rules govern parties and participants to a conditional use hearing.

7.3.2 Legal Representation.

[OZAH Land Use Rule 3.3](#) governs representation of the parties at a public hearing.

7.3.3 Pre-Hearing Submissions in Conditional Use Cases.

An applicant must file a pre-hearing submission at least 10 days before the scheduled hearing. The pre-hearing submission must contain:

7.3.3.1 If not included in the application, copies of any additional reports, photographs, and evidence intended to be introduced at the public hearing; the Hearing Examiner may exclude evidence if not submitted with the applicant's pre-hearing submission.

7.3.3.2 the names of all experts expected to testify at the hearing, their resumes, and a summary of expert testimony which will be proffered at the hearing.

7.3.3.3 identity of all other witnesses who will testify; and

7.3.3.4 estimated time required for presentation.

7.3.3.5 Opposition Pre-Hearing Submission.

Persons or associations represented by counsel or intending to introduce expert evidence or testimony must also file a pre-hearing statement containing the same information in Rule 6.3.2 at least seven days before the date of hearing.

7.3.4 Pre-Hearing Requests by Hearing Examiner.

The Hearing Examiner may request additional evidence to be submitted by the parties to ensure completeness and fairness of the hearing process. The Hearing Examiner may require parties to exchange evidence in advance of the hearing.

7.3.5 Motions.

Any request for an order from the Hearing Examiner must be made by motion. The motion shall be served by mail or email on all other parties and must contain a certificate of service stating the date and mode of service. Parties have five days to respond to the notice.

7.4 Hearing Procedures.

Hearings may be held in person or remotely via Microsoft Teams or another digital platform in the discretion of the Hearing Examiner.

7.4.1 Public hearing procedures for conditional use and objection cases are set forth in [Rule 4](#) of OZAH's Land Use Rules, including the following:

7.4.1.1 The Hearing Examiner may limit the time given for each party's case-in-chief. Each party shall receive equal time.

7.4.1.2 The Hearing Examiner may designate a person to cross-examine to witnesses.

7.4.1.3 Any person testifying via a digital platform must allow camera access so parties may view the witness' testimony.

7.0 Decisions.

7.1 Time for Issuance.

7.1.1 Waivers.

The Hearing Examiner may issue a decision on an application for a waiver no earlier than 21 days and no later than 31 days after OZAH accepts it for filing.

7.1.2 Conditional Uses and Objections.

The Hearing Examiner must issue a decision no later than 10 days after the close of the public hearing record in a conditional use or objection case.

7.2 Notification of Reports and Decisions.

The Hearing Examiner must issue notice to the applicant and any parties of record that the report or decision in a case is complete and available for review on the day it is issued. Notice must also be sent to the Department of Permitting Services. The notice must briefly state whether the application was approved, denied, or recommended for approval or denial, list any conditions of approval, and inform the recipient parties of right to file a petition for judicial review to the Circuit Court under the Maryland Rules of Civil Procedure.

8.0 Transfer of Conditional Use or Waiver Application to a New Holder.

8.1 Administrative Approval.

The Hearing Examiner may administratively transfer a conditional use or waiver approval to a new holder, or add an existing holder, by registering the transfer with OZAH in accordance with this Rule.

8.1.1 Procedures.

The existing and proposed holders must submit a notarized letter to OZAH, signed by the landowner(s), the existing conditional use holder(s) and the proposed new conditional use holder(s), seeking the change or the addition of a conditional use holder.

8.1.2 Hearing Examiner Action.

Unless the Director of OZAH determines that the request for an administrative change does not comply with this Rule, he/she shall make the administrative change to the conditional use records and send confirmation of that change to the Department of Permitting Services, the land owner(s) and the old and new holders.

8.1.3 Record of Transfer.

The change in the name of the conditional use holder(s) must be recorded in the conditional use case file.

8.1.4 Non-Compliance with this Rule.

If the Director of OZAH determines that the requested administrative change does not comply with this Rule, he/she shall so notify the landowner(s) of the conditional use site, the conditional use holder(s) and proposed new conditional use holder(s).