SAY NO TO

ZONING TEXT AMENDMENT (ZTA) 22-01

Effects are harmful and unfair to residents and neighborhoods

PROJECT WTF

a public information series provided by
Montgomery County Resident Advocates

ZTA 22-01 Does Not Provide Racial Equity and Social Justice*

ZTA 22-01 takes aim at the rights-of-ways in residential zones that abut homes that are on smaller lots and have shorter setbacks.

Persons of color and persons of low and modest incomes live in these homes with greater frequency than the County population at large.

**According to Chris Cihlar Ph.D., Director, Office of Legislative Oversight, his office conducted a Racial Equity and Social Justice evaluation that culminated in a neutral statement concerning Racial Equity and Social Justice impacts of ZTA 22-01. OLO evaluated the merits of 5G for that Statement; OLO did not evaluate the impacts of the ZTA's setback reduction.*

ZTA 22-01 Most Injures the Persons and Communities that Racial Equity and Social Justice Legislation Aims to Protect

Persons of color and residents with lower-incomes are particularly at risk for the adverse effects of ZTA 22-01. They tend to live in affected areas more frequently than the County population at large, in homes on smaller parcels and with shorter front foot setbacks. Where the ZTA 22-01 setback reductions apply in neighborhood rights-of-way, State and federal laws are triggered that concern utility installations for attachments, and that pre-empt County regulatory protection.

- FCC "Make Ready" rules require the County to issue a right-of-way permit for a larger-girth, taller replacement pole. Pole authorizations are often issued months in advance of when the applications for the wireless antenna facility applications are submitted and reviewed. This can leave residents with thicker and taller replaced poles, even when the wireless applications are later rejected, withdrawn, or placed on indefinite hold.

- The County cannot restrict the height of the replacement utility poles for antenna attachments. Some replacement poles have already been approximately 70 feet tall!

- The County cannot set time limits for the removal of the pre-existing utility poles, when the new thicker and taller poles are installed. As a result, the old poles can languish next to the replacement poles for years, resulting in double poles, which are hazardous and eyesores.

- The County cannot restrict PEPCO's tree foliage removal, done for safety when poles and electrical wires are increased in height. Tree foliage is also removed when it impedes antennas' "line of sight" transmission. But foliage removal, particularly when aggressive, can deleteriously impact residents' immediate comfort, heath, finances, well-being, and the removal can have longer-term adverse impacts upon properties and neighborhoods.

REPLACEMENT POLES FOR ANTENNAS IN RIGHTS-OF-WAY BLINDSIDE AND ADVERSELY AFFECT RESIDENTS

- **RESIDENTS RECEIVE NO NOTICE** about the installation of a replacement pole to support an antenna, which often begins many months before the TFCG antenna application is submitted and notice of the application is provided to public wireless subscribers. Abiding by FCC "Make Ready" rules, DPS issues a utility company a right-of-way permit to replace its utility pole with a larger-girth and taller pole for the intended antenna.

- **RESIDENTS HAVE NO OPPORTUNITY TO COMMENT OR OBJECT** to the right-of-way permit. And although the County has permitting standards for issuing right-of-way permits, there are numerous loopholes that make it possible for permitting standards to be waived, too.

- **RESIDENTS GET STUCK WITH THE REPLACEMENT UTILITY POLES**, once installed, even when the wireless applications are rejected, withdrawn, or placed on indefinite hold.

- **FOLIAGE IS REMOVED FROM TREES** in the rights-of-way and from trees on residents' private properties, to accommodate taller utility poles and electrical wires, and also for the antenna attachments.

- **RESIDENTS GET STUCK WITH DOUBLE POLES.** The County has no power to require the pre-existing utility pole to be removed. Poles languish for years after the pre-existing pole is replaced and the antenna is attached.

- **RESIDENTS CAN GET STUCK WITH MULTIPLE LARGE GROUND MOUNTED EQUIPMENT BOXES.** FCC rules on the Spectrum Act (aka 6409) give providers wide latitude to expand antenna attachment facilities.

Hottest Areas are Often Low Income Communities and Communities Where More Residents of Color Live*

Tree foliage removal poses disparate and significant adverse impacts of ZTA 22-01 upon residents who are persons of color and residents with lower incomes. And the consequences of these adverse disparate impacts can include diminished health, comfort, and excessive utility bills.

Foliage is removed from trees in the rights-of-way and on private properties that are in close proximity to the replacement taller pole and re-attached electrical wires, for safety. Tree foliage in rights-of-way that presents line-of-sight obstructions for providers' antenna networks is also removed so that antennas can communicate effectively with each other.

Foliage removal can result in loss of winter windbreaks, loss in summer shade, loss of tree canopy, and it can contribute to heat island effects, too. Loss of tree foliage can also adversely affect residential property aesthetics and diminish the character of the neighborhood.

* See: Volunteers Map Heat Islands In Montgomery County

ZTA 22-01 UNDERMINES COMPLETE STREETS/VISION ZERO STRATEGIES

- Large ground-mounted equipment boxes and double utility poles can obscure the visibility of children-at-play on neighborhood streets.

- Many neighborhood streets do not have sidewalks or paved paths. Large ground-mounted equipment boxes and double utility poles can obscure children waiting at mid-block school bus stops, and small stature pedestrians and persons in wheel chairs traveling along the right-of-way.

- Along shared pedestrian - bike paths, large ground-mounted equipment boxes and double utility poles threaten safe shared usage.

DON'T BELIEVE THE HYPE!

ZTA 22-01 ≠ ZTA 19-07

ZTA 22-01 AND ZTA 19-07 DO NOT MATCH

ZTA 22-01	ZTA 19-07	Limited Use Standards and Protections
NO	YES	30-foot setback excludes encroachments allowed under Sec. 4.1.7.B.5. (which can add up to an additional 10 feet to the setback).
NO	YES	Replacement pole must be at least 150 feet from the nearest antenna occupied or controlled by the same carrier.
NO	YES	Height restrictions on replacement utility poles require them to be no more than 10 feet taller than the pre-existing poles.
NO	YES	Height restrictions regulate replacement streetlight poles (which vary by zone and width of roadway).
NO	YES	Pre-existing utility poles must be removed within 180 days of the replacement utility pole installations.
NO	YES	A pre-existing streetlight pole must be removed within 10 business days after activation of the replacement facility.

ZTA 22-01 Concerns Replacement Utility Poles in Rights-of-Way; ZTA 19-07 Does Not

ZTA 22-01

ZTA 22-01 is a catalyst for pre-existing utility poles to be replaced. FCC rules authorize utility pole replacements to support the antennas in locations where the County zoning ordinance allows antenna attachments in the rights-of-way.

Sec. 3.5.14.C currently allows antennas to be attached in rights-of-way at a 60-foot setback from homes in residential zones. Pre-existing utility poles have already been replaced by utility poles to support the antenna attachments, applying these FCC rules.

ZTA 22-01 amends Sec. 3.5.14.C, to allow antenna attachments in rights-of-ways at the reduced setback of 30 feet from homes in residential zones.

ZTA 19-07

Per Legislative Staff guidance, "ZTA 19-07 applies to all replacement telecommunications towers and replacement utility poles that are no longer owned or used by a utility company."*

However, utility poles that are no longer owned or used by a utility company are not utility poles, they are merely poles. Ergo, **ZTA 19-07 does not apply to any replacement utility poles.**

* (Feb. 5, 2021 Staff memorandum to the PHED Committee, Sec. V)C), Utility Poles, pg. 10)

ZTA 22-01 Concerns Replacement of County and Municipalities' Streetlight Poles; ZTA 19-07 Does Not

ZTA 22-01

ZTA 22-01 is a catalyst for County and municipalities' streetlight poles to be replaced. FCC rules authorize the government infrastructure replacements to support the antennas in locations where the County zoning ordinance allows antenna attachments in the rights-of-way.

Sec. 3.5.14.C of the zoning ordinance allows antennas to be attached in rights-of-way at a 60-foot setback from homes in residential zones.

ZTA 22-01 amends Sec. 3.5.14.C, to allow antenna attachments in rights-of-ways at the reduced setback of 30 feet from homes in residential zones.

ZTA 19-07

The Feb. 5, 2021 Staff Memo to the PHED Committee, pp. 9 -10, discusses the exemption of utility poles, and references Sec. 8-1 of the Buildings Chapter of the County Code.

Streetlight poles and other infrastructure owned by the County and municipalities are also exempt. Sec. 8-1 includes two County Attorney memos that confirm **sovereign immunity from zoning regulations**:

- the 1998 memo confirms that **the County is exempt from zoning regulations**; and
- the 1991 memo confirms that **the County and its municipalities are exempt from zoning regulations**.

ZTA 22-01 Impacts Tens of Thousands of Street Poles Sites that ZTA 19-07 Never Impacted

ZTA 22-01 impacts tens of thousands of street poles sites, by right.

ZTA 19-07 never did that. Major impacts of ZTA 19-07 have been:

- **Reducing setbacks from 60 feet to 30 feet, by right, for privately-owned parking lot poles; and,**
- **Establishing the OZAH waiver and conditional use processes for privately-owned new poles.**

ZTA 22-01 **DOES NOT MATCH** ZTA 19-07

ZTA 22-01 **DOES NOT ALIGN** WITH ZTA 19-07

ZTA 22-01 should be REJECTED

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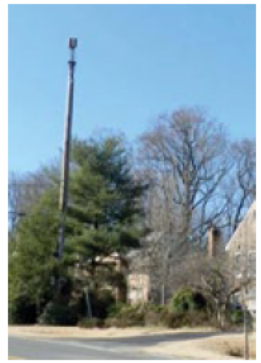

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