

To: The Honorable Nancy Navarro, President of the Montgomery County Council and Council Members

From: Meredith Wellington

Re: **Please amend ZTA 19-01, Accessory Dwelling Units on July 23rd.**

July 17, 2019

Thank you for the time and effort that this Council and staff have put into ZTA 19-01 at the two Council work sessions on June 18th and July 9th. ZTA 19-01 needs this kind of careful consideration because it permits the building of detached apartments and homes in the backyards of at least 120,000 properties throughout the County.

These detached houses must be carefully managed in the County's small lot zones—R-60 and R-90-- with regard to location, lot size, compatibility, best design practices for infill development and existing provisions in master plans. **The negative consequences of poor planning—increased pressure on our infrastructure of schools, roads, utilities, parks, safety, health care, and environment (storm water runoff, tree loss)—will impact both current and future tenants and homeowners.** The Council took small steps at the recent work sessions to ameliorate negative consequences by requiring greater setbacks for buildings longer than 24 feet and by considering screening, but more needs to be done.

Please consider the following actions to both the ZTA and companion bills:

1. **Please add the following requirements for approval of a detached accessory dwelling unit as a limited use. These “use standards” would be added to Section 3.3.3.A.2.**

a. Please require screening. Screening is a tried and true way to address incompatibilities created by increased height, density, and intensity of use.

There is an entire section of the Zoning Code that requires screening in a wide variety of situations, including Accessory uses, like the one proposed here. See Sec. 6.5. of the Zoning Code. Landscaping must be required, and a fence may be a discretionary decision made by the respective neighbors.

Section 3.3.3.A.2.a.vi. of the Code currently does not require screening because detached ADUs are presently not a legal use in the R-60 and R-90 lots. **These small lots need screening in order to protect the privacy of residents in the detached ADUs and for**

their adjoining neighbors. Please amend Section 3.3.3.A.2.a.vi. to provide that “Screening is required.”

b. Please clarify that ADUs, including detached houses and apartments, are subject to all of the standards for infill development—this includes, but is not limited to lot coverage and storm water management.

There has been a lot of discussion among residents about whether the rules for infill development for lots 15,000 sq. ft. or smaller, apply to development under ZTA 19-01. This Council needs to make it clear to the public and to regulators that the infill restrictions apply. Please add clarifying language to the ZTA at @25-26, iv. and v. of the July 9 draft that the infill rules apply to any proposed accessory dwelling unit.

c. Please require tree protection through the Tree Canopy Conservation Law as a standard of approval for a detached secondary house or apartment as a limited use.

The County has documented numerous times the loss of tree canopy in the down County; i.e., the area with the concentration of R-60 and R-90 lots. Because this new law no longer requires at least 300 feet between new ADUs, the cumulative impact on trees in some areas of the County could be devastating.

In order to apply the Tree Canopy Conservation Law to detached ADUs, please amend the Tree Canopy law to apply to all construction of detached ADUs, without regard to whether a sediment control permit is needed.

d. Reconsider eliminating parking for ADU residents within a mile of certain kinds of transit. Please require as a standard for approval in Sec. 3.3.3.2 of the Zoning Code that, notwithstanding the one-mile radius, DHCA may, at its discretion, deny an application where it makes a finding that the proposed detached unit is likely to reduce the available on-street parking within 300 feet of the proposed ADU.

As the Council knows, the issue of parking is one of great concern to residents, and a potential source of considerable friction between neighbors. While we all wish that we had a complete transportation system that allowed residents to easily travel around the County and the region without a car, right now that is not the reality.

To the extent that one can infer anything from the chart on car registration within or without the one mile, the clear inference is that without regard to location near transit, cars are equally available. This suggests that driving may also be at the same frequency. Chart in July 9th work session report, p. 7-8.

The Council should develop a reasonable standard for current circumstances, and review it as new transit comes online.

- 2. Please reduce the maximum size of a detached ADU from 1200 sq. ft. to 1000 sq. ft.**

As a compromise, Councilmember Katz proposed that the maximum square footage of a detached ADU be 1000 sq.ft. rather than 1200 sq. ft. Council should support this amendment in order to better assure adequate resources for new families in the County.

A 1200 sq.ft. home is too large on a 12,000 sq. ft. lot, and so is an 800 sq.ft. home on an 8,000 sq.ft. lot. The test of 10% of the lot or 50% of the principal dwelling footprint, whichever is less, should be discussed in terms of the kind of housing it provides—2 and 3 bedroom dwellings—and the number of people who will live in such a dwelling—not on how it compares to a car garage.

We must consider the needs of the people in the new dwelling unit, and their impact on the community. A car parked in a two-car garage has very few needs; a family living in a cottage has all of the same needs of any family. That is, schools, police and fire protection, healthcare, utilities, playgrounds and parks, are a few examples.

- 3. Please clarify whether or not a detached ADU can be licensed as a short term rental (STR). STRs remove housing inventory from the long term rental market.**

My understanding, based on my attending and/or listening to all of the PHED work sessions, and the Council work sessions, is that a new detached ADU can become an STR. To make this change, the owner must simply prevent cooking in the apartment, and obtain a new license for an STR. The owner, however, must choose. The housing cannot be licensed both for long term and short term rental, since the short term rental is more like a hotel room.

This issue is important because the economic incentives favor the creation of new STRs over new rental apartments, since STR revenues are often so much greater than monthly rent. Conversions to STRs will accordingly undermine the goal of creating affordable housing.

- 4. Please require a periodic review of ADUs in the small lot zones, R-60 and R-90, and, as part of that review, an assessment of enforcement. The scale of this legislation is huge—120,000 properties are affected—and, if enacted, it must be adequately evaluated.**

Adding three enforcement positions to DHCA in a year of tight revenues is a good start. The problem of enforcement will not be solved, however, with only three more employees. Those employees are needed in order to deal with existing compliance issues. Moreover, the enforcement problems are not only a matter of the number of employees performing enforcement duties. As Councilmember Albornoz pointed out, there is an issue with respect to when inspections are done. There is a major issue with regard to DHCA's ability to verify who is living in the housing it inspects, since DHCA typically does not have a warrant, and, to my understanding, occupants do not have to speak to, or answer the door to, DHCA.

The entire enforcement scheme must be systematically reviewed, and an "Oh, well" attitude must be replaced with a determination to enforce Montgomery County laws and regulations—or else repeal them.

Finally, this legislation has the potential for major impacts on renters and residents alike, and on the overall plan for growth in the County, including location of, and types of housing. **Please require the Montgomery Planning Board to provide to the Council on a yearly basis a housing report that includes detailed information about the successes and failures of the new housing type, the detached ADU, on school enrollment, roads, utility capacity, parks, safety, healthcare, and the environment.**

Newly-introduced Companion Bill 22-19 asks the County Executive to report quarterly on ADUs as part of its Quality of Life report as to how Executive functions are impacting residents quality of life. That is fine, but it is of no help to the Council in terms of planning for the County's future.

Thank you for your consideration.

Meredith Wellington