

**TESTIMONY BY SUE PRESENT**  
**ON**  
**ZONING TEXT AMENDMENT (ZTA) 22-01**  
**PUBLIC HEARING – SEPTEMBER 13, 2022**

Good afternoon President Alborno and Members of the Council,  
My name is Sue Present. Please reject ZTA 22-01. It poses threats to residents, their homes, and their neighborhoods.

For example:

Where the ZTA allows antenna attachments, utility companies must then permit the antenna attachments on their poles, per FCC mandate.<sup>1</sup> And utility companies require the vast majority of the antenna attachments to go onto replacement poles that are taller, larger, and stronger than the pre-existing poles, to support the weight of the antenna facilities and to prevent dangerous overloading of the poles.<sup>2</sup> There are no County height limits on the replacement poles. Some replacement poles have been very tall, reaching 60 feet or more in height, not include the height of the attached antennas.<sup>3</sup>

Utility poles often get replaced long before antenna applications are submitted or reviewed.<sup>4</sup> With no provisions for notice to residents or opportunity for the public to comment before DPS issues the right-of-way permits and before the work takes place, neighbors are blindsided. Yet, neighbors are stuck with the obtrusive replacement poles, even when antenna applications are never filed (because, for example, the providers realize that the

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<sup>1</sup> FCC [One Touch Make Ready Rules](#); and for context, also see FCC [Declaratory Ruling](#) and [47 U.S.C. § 224](#)

<sup>2</sup> PEPCO Guidelines. See for example, TFCG application No. [2019010697](#), pdf pg. 16, PEPCO Guidelines, Structural notes 1 – 3, and Clearances note 5.

<sup>3</sup> For example, [DAS node S1](#), which is installed on the replacement utility pole at 9101 River Road.

<sup>4</sup> See *data* Montgomery Public Utility ROW permits database, <https://data.montgomerycountymd.gov/Community-Recreation/data-Montgomery-Public-Utility-ROW-permits/c79p-fhp7/data#SaveAs>

applications would not satisfy zoning standards), rejected, withdrawn, or placed on indefinite hold.<sup>5</sup>

Neighbors get stuck with double poles, too, because the pre-existing utility poles languish – often for years – after replacement utility poles have been installed. There are no County regulations that limit the time that utilities have to remove the pre-existing poles after the replacement poles have been installed for antenna facilities. Double poles are roadway hazards.<sup>6</sup> They impede drivers’ visibility of pedestrians and vice versa. And they undermine Vision Zero strategies.

When utility poles and electrical wires are increased in height for the antenna attachments, tree foliage is removed to provide a

<sup>5</sup> For example, these public utility poles in a Calverton neighborhood, which were provided right-of-way permits after the utility submitted requests for its customer Crown Castle, and the utility indicated that the replacement poles were for attachments to the poles and that the permits were needed per FCC “Make Ready.”

<b>PROW Permit #</b>	<b>Date Issued</b>	<b>Street Numbers</b>	<b>Street Name</b>	<b>Suffix</b>	<b>Nearest Cross Street</b>	<b>PEPCO Pole ID (on DPS application)</b>	<b>Setback in Feet</b>
<b>377576</b>	10/12/2020	13204 and 13208	Bellevue	St	Tampico Way	816446-090980	~48
<b>377582</b>	10/12/2020	3112 and 3116	Cordoba	St	La Plata St	815446-320100	~44
<b>377584</b>	10/12/2020	12517 and 12521	Galway	Dr	Kilkenny St	815447-550550	~46
<b>377590</b>	10/12/2020	12337 and 12341	Pretoria	Dr	N/A (Mid-block)	814446-600420	~40
<b>377594</b>	10/12/2020	12300 and 12304	Blakely	Ct	Shanandale Dr	814445-150160	~56

<sup>6</sup> Gagne, Amanda, *Evaluation of Utility Pole Placement and the Impact on Crash Rates*, Worcester Polytechnic Institute Publications, April 23, 2008, <https://web.wpi.edu/Pubs/ETD/Available/etd-043008-155826/unrestricted/Gagne.pdf>, accessed Aug. 17, 2022. See pp. 64 – 65: “Another suggested remedy is remove old utility poles after they have been replaced or hit. At several points along the route old pole was left standing next to the replacement pole (see Figure 38), which increases the density of utility poles thereby increasing the risk of a crash occurring. Perhaps even more disturbing is remnants of a hit utility pole were left alongside the road creating another object for motorists to crash into, refer to Figure 39.”

radial safety clearance of up to 15 feet.<sup>7</sup> This loss of tree foliage can adversely affect the aesthetic appearance of a residential property, and it can diminish the character of the neighborhood. It can result in loss of winter windbreaks, loss in summer shade, loss of tree canopy, and it can contribute to heat island effects, too.<sup>8, 9</sup> And consequences of the loss of foliage can harm residents' health, seasonal comfort, and their ability to afford energy bills.<sup>10</sup>

Other threats posed by this ZTA include: pedestrian, school bus stop, and child-play hazards related to large ground-mounted equipment cabinets; disturbances from buzzing equipment boxes; declines in neighborhood quality associated with diminished aesthetics and graffiti, safety problems, and stigma; and reductions in home property values, which Montgomery County's own expert has affirmed.<sup>11</sup>

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<sup>7</sup> Depending upon the voltage of the electrical service, PEPCO will remove foliage to provide a radial safety clearance of up to 15 feet from the cross arms and electrical lines. See PEPCO.COM FAQ: [How much will be trimmed from trees?](#)

<sup>8</sup> Montgomery County Capital Budget FY23, [Street Tree Preservation](#)

<sup>9</sup> Fenston, Jacob, *Volunteers Map Heat Islands In Montgomery County*, WAMU, DCist, Aug. 08, 2022, <https://dcist.com/story/22/08/08/volunteers-map-heat-islands-montgomery-county/>, accessed Aug. 17, 2022.

<sup>10</sup> Montgomery County Capital Budget FY23, [Street Tree Preservation](#): "Winter windbreaks can lower heating costs by 10 to 20 percent, and summer shade can lower cooling costs by 15 to 35 percent."

<sup>11</sup> See the [Burgoyne Declaration \(Exhibit O, PDF pp.669 - 679\)](#), the substance of which was attached as an exhibit to filings made to the FCC, submitted on multiple dates, including the [Comments](#) that were submitted on 10/29/2019, by Montgomery County and likeminded localities. On that date, Montgomery County joined with communities and associations of local governments, that included: The National League of Cities; Clark County, Nevada; Cobb County, Georgia; Howard County, Maryland; Montgomery County, Maryland; the City of Ann Arbor, Michigan; The City of Arlington, Texas; the City of Bellevue, Washington; the City of Boston, Massachusetts; the City of Burlingame, California; the Town of Fairfax, California; the City of Gaithersburg, Maryland; the City of Greenbelt, Maryland; the Town of Hillsborough, California; the City of Kirkland, Washington; the City of Lincoln, Nebraska; the City of Los Angeles, California; the City of Monterey, California; the City of Myrtle Beach, South Carolina; the City of New York, New York; the City of Omaha, Nebraska; the City of Portland, Oregon; the City of San Bruno, California; the Michigan Coalition to Protect Public Rights-of-Way; the Texas Municipal League; and the Texas Coalition of Cities for Utility Issues.

The memo introducing ZTA 22-01 asserts that the ZTA aligns with regulations adopted through ZTA 19-07. That's false! There are technically different standards in ZTA 22-01 for the setback, which, unlike ZTA 19-07, fails to exclude any setback encroachments that are allowed under Section 4.1.7.B.5.<sup>12</sup> As a result, ZTA 22-01 provides fewer protections when homes have porches, bay windows, and other building encroachments.

In addition, ZTA 19-07 articulates a series of protections on the replacement utility poles and streetlight poles in the rights-of-way that are absent from ZTA 22-01, because, although ZTA 22-01 is dependent upon replacement street poles, it does not regulate them. Protections on the replacement street poles that ZTA 19-07 articulates include:

- A replacement pole must be at least 150 feet from the nearest antenna occupied or controlled by the same carrier.<sup>13</sup>
- Height restrictions on replacement utility poles require them to be no more than 10 feet taller than the pre-existing poles, including the height of the antenna attachments.<sup>14</sup>
- Height restrictions are imposed on replacement streetlight poles (which vary by zone and width of roadway), but the

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<sup>12</sup> [Sec. 3.5.2.C.2.b.iii.](#) In the Agricultural, Rural Residential, and Residential zones, the pre-existing pole and the replacement tower must be at least 30 feet from any building intended for human occupation, excluding any setback encroachments allowed under Section [4.1.7.B.5.](#)

<sup>13</sup> [Sec. 3.5.2.C.2.b.v\(e\)](#)

<sup>14</sup> [Sec. 3.5.2.C.2.b.vii\(c\)](#)

height restrictions on replacement streetlight poles  
subsume the height of the antenna attachments, too.<sup>15</sup>

- A pre-existing utility pole must be removed within 180 days of the replacement utility pole installation.<sup>16</sup>
- A pre-existing streetlight pole must be removed within 10 business days after activation of the replacement facility.<sup>17</sup>

But most importantly, the reason that ZTA 22-01 does not align with ZTA 19-07 is because, as Councilmember Riemer, the ZTA sponsor, is aware, utility poles are exempt from regulation by the zoning ordinance. This is infrastructure of State regulated utility companies that has sovereign immunity.<sup>18</sup> And, by the way, Council Staff reminded the PHED Committee of the exemption for utility poles in the memorandum for the February 10, 2021 meeting.<sup>19</sup> Mr. Riemer also knows, or he should know, that County and municipal infrastructure, including streetlight poles, is exempt through sovereign immunity, too.<sup>20</sup> Our County leaders have continued to present the public with confusing and inaccurate information about which poles ZTA 19-07

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<sup>15</sup> [Sec. 3.5.2.C.2.b.vii\(b\)](#): in the Agricultural, Rural Residential, and Residential zones, for streetlights, the height of the pole that is being replaced:

- (1) plus 6 feet when abutting a right-of-way with a paved section width of 65 feet or less, or up to 25 feet where the height of the pole being replaced is less than 20 feet tall, whichever is greater; or
- (2) plus 15 feet when abutting a right-of-way with a paved section width greater than 65 feet;

<sup>16</sup> [Sec. 3.5.2.C.2.b.vi](#).

<sup>17</sup> *Id.*

<sup>18</sup> See MCC Chapter 8, [Sec. 8-1.\(d\) Exemptions](#) and [Sec. 8-1.\(f\) Zoning restrictions and referrals](#).

<sup>19</sup> See the [Feb. 5, 2021 Staff memorandum to the PHED Committee](#), Sec. V(C), Utility Poles, pp. 9 -10. On pg. 10, the memo states, ZTA 19-07 applies to all replacement telecommunications towers and replacement utility poles that are no longer owned or used by a utility company.” Please note that utility poles that are no longer owned or used by a utility company are not utility poles; they are merely poles.

<sup>20</sup> See MCC Chapter 8, [Sec. 8-1.\(d\) Exemptions](#), [Sec. 8-1.\(f\) Zoning restrictions and referrals](#), and Editor’s note, containing County Attorney Opinion dated [7/29/98](#), which discusses the County’s sovereign immunity, and County Attorney Opinion dated [5/20/91](#), which discusses the sovereign immunity of the County and its municipalities.

applied to, and which ones were excluded.<sup>21</sup> Essentially, the ZTA 19-07 limited use regulations that concern replacement-pole wireless facilities in the rights-of-way are impotent.

For the Racial Equity and Social (RESJ) Justice Statement on this ZTA, OLO evaluates health and safety impacts that are not discussed above.<sup>22</sup> OLO recognizes the federal D.C. Circuit Appeals Court decision, in *Environmental Health Trust v. FCC*, in which the Court “finds that the Federal Communications Commission’s (FCC) claims about the health and environmental impacts of 5G technology are insufficient.”<sup>23</sup> And OLO recognizes that Appeals Court issued a remand, “ask[ing] the FCC to provide additional information to justify its claim that its current guidelines adequately protect against the harmful effects of exposure to radiofrequency radiation.”<sup>24</sup> To date, the FCC has not provided the information that the Court requested and that the public deserves.

Unfortunately, the setback impacts were never evaluated by OLO for its RESJ Statement.<sup>25</sup> Data show that, compared to the County’s

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<sup>21</sup>The reminder of the exemption for utility poles did not stop Mr. Riemer from continuing to assert that ZTA 19-07 would apply to utility poles. In that [meeting on February 10<sup>th</sup>](#), beginning at approximately minute mark 50, Mr. Riemer presented a series of slides of maps of neighborhoods that he characterized as “case studies.” In these slides he depicted utility poles and streetlight poles in the rights-of-way to demonstrate how applying setbacks with ZTA 19-07 would affect opportunities for wireless coverage. And slides identified that he was referencing the [AntennaZTA website](#).

Verification through the AntennaZTA website and GoogleMaps of the case study neighborhoods displayed confirms ownership of the street poles as follows: in Montgomery Knolls and Franklin Knolls, Silver Spring street poles are Pepco utility poles; in Greenwood Knolls, Wheaton, street poles are Pepco utility poles; in Kenwood Park, Bethesda, street poles are Pepco utility poles; in Takoma Park with the adjacent right-of-way in Silver Spring, the street poles are Pepco utility poles and a few City streetlight poles; and in Westleigh, North Potomac, the street poles are County streetlight poles and some Pepco utility poles. **All of the street poles that Mr. Riemer referenced in the slides that he displayed were exempt from the regulations in ZTA 19-07.**

<sup>22</sup> [Racial Equity and Social Justice \(RESJ\) Zoning Text Amendment Statement on ZTA 22-01: Antenna on Existing Structure — Use Standards, completed by the Office of Legislative Oversight on March 14, 2022](#)

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup>According to an e-mail message sent to Sue Present, on September 1, 2022, by Chris Cihlar Ph.D., Director, Office of Legislative Oversight, OLO 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. With its limited time and resources

population at large, persons of color and residents with lower incomes more frequently live in the zones that are affected by this ZTA.<sup>26</sup> Their populations tend to be concentrated in areas where homes are on smaller lots and have shorter front-foot setbacks.<sup>27</sup> Thus, the harmful effects posed by ZTA 22-01 would have disparate adverse impacts on these residents. The Council should be protecting these residents, not adopting legislation that effectively targets and threatens them with harm.

ZTA 22-01 is unnecessary to meet the law. And it is unnecessary to provide residents with reliable 4G and 5G services. This ZTA does nothing to prioritize or incentivize attachments on poles in the non-residential zones over residential zones; and this ZTA does nothing to prioritize or incentivize attachments on poles on the high speed, high volume roadways over our neighborhood streets and other sensitive locations. ZTA 22-01 does offer perverse incentives for providers to pepper our neighborhoods with antenna attachments on street poles. With the application reviews, permitting, and installations for these antenna facilities being relatively cheap, quick, and easy, and with the process bypassing requirements for notices to residents and opportunities for public comments, this ZTA generates incentives to site antenna facilities with less thought, care, and oversight for residents and neighborhoods than other siting processes do, such as those that require an OZAH review.

Simply put, passage of ZTA 22-01 would be a financial coup for the wireless industry, but a big, big loss for residents and neighborhoods.

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available, OLO chose to evaluate the merits of 5G for that Statement; OLO did not evaluate the impacts of the ZTA's setback reduction.

<sup>26</sup> M-NCPPC [Equity Focus Areas map](#) combined with [MCAtlas \(zoning\)](#)

<sup>27</sup> *Id.*

With ZTA 22-01 we lose safety, comfort, health, income, aesthetics, home values, neighborhood quality, and opportunities for due process. And those who would particularly lose out with ZTA 22-01 are persons of color and residents with lower incomes. Residents were hoodwinked by Mr. Riemer's previous small cell legislation. And now ZTA 22-01 is a lame attempt at a cover-up, with promotional messaging that has been deceitful.

For those of you whose names were on the ballot in the recent Primary election, please demonstrate the trusted leadership and integrity that we heard about during your political campaigns. And to those of you who have maxed out your service on the Council, I urge you to not to let your action on ZTA 22-01 besmirch your final days on the Council. Don't leave us with threats of antenna facilities on our neighborhood street poles.

**Reject ZTA 22-01! Thank you.**

Attachment: "Say NO to Zoning Text Amendment 22-01" (PPT) 