

Carl B. Wilkerson

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August 4, 2023

Re: Opposition to Proposed ZTA-23-05<sup>1</sup>

I participated in the July 25, 2023, hearing at the County Office Building on ZTA-23-05. This submission enlarges the comments I made in person during my allotted three minutes of time during the hearing. Without further clarification of recent County Zoning interpretations about large commercial vehicle parking in residential areas, I fully oppose enactment of ZTA-23-05. Thank you for the opportunity to share my views.

Before enactment of new zoning laws by the County Council, proposals need precision in scope, purpose and wording. Furthermore, amended zoning ordinances need clear justification supported by tangible, objective benchmarks and metrics. The justification for ATA-23-05 is exceptionally sparse. There is no analysis of how many neighborhoods would be impacted by the proposed amendment. The proposal's overall impact is, therefore, unacceptably imprecise, and speculative at best.

The required Climate Assessment by the Montgomery County Planning Board states within its very short report that ZTA-23-05 would have an "unpredictable impact" on green cover, greenhouse gas emissions, impervious cover, and negative water quality and quantity. While the report states that ZTA-23-05 could have a minor to insignificant impact on these climate provisions, that observation is purely speculative without any analytical yardsticks. That analytical imprecision is likely due to the fact that the ZTA provides no supporting data, analysis, or even estimation of how many neighborhoods will face two commercial vehicles in their driveways instead of one.

In my view, it is most likely that lower cost neighborhoods will experience the greatest incidence of two commercial vehicles on one residential lot. The proliferation of commercial vehicles beyond the current limit in neighborhoods could essentially transform a R-60 neighborhood into a semi-industrial neighborhood in a manner outside the normal comprehensive rezoning process that exhibits careful analysis and justification. The disproportionate impact on lower cost neighborhoods could depress home values and contradict opportunities for generational wealth accumulation of underserved groups. Proposed ZTA-23-05 lacks sufficient justification and analysis to be enacted without fulsome analysis and justification.

Even more concerning is a recent County administrative action that undermines the careful delineation of light and heavy commercial vehicle parking, as explained below.

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<sup>1</sup> ATA-23-05 would amend the current zoning governing the parking of commercial vehicles in residential neighborhoods to expand the currently authority to park one light commercial vehicle on a residential homesite to allow the parking of two light commercial vehicles per residence.

Without correction and clarification, ZTA-23-05 would allow the parking of two heavy commercial vehicles in any one residential neighborhood, through a back door circumvention.

The Council's evaluation of ZTA-23-05 provides a perfect forum to restate the correct scope of the term "large commercial vehicle" and to reassert the correct intent and legislative history governing the parking of large commercial vehicles in residential neighborhoods. The discussion below highlights how a recent administrative action in Montgomery County has undermined plain language and intent in the zoning ordinance governing the parking of large commercial vehicles in residential neighborhoods. Until this legislative restatement and reassertion occurs, it would be premature and imprudent to advance ZTA-23-05. Such an action would inflict significant harm on residential neighborhoods if large commercial vehicles are able to evade the prohibition on parking in residential zones.

**Background.** In a 2022 action, the Montgomery County Board of Zoning Appeals approved a special exception amendment for the French International School (FIS) allowing 17 full size school busses to be parked on the school's property in an R-60 residential zone. The school is located on Rockville Pike immediately south of Pooks Hill Road in Bethesda, MD. The busses are parked within 100 feet of homeowners on Alta Vista Court in the Maplewood Subdivision in Bethesda, a neighborhood boarded by Rockville Pike, Cedar Lane, Old Georgetown Road, and the Beltway. The busses' diesel engines are warmed up before 6 am each school day, causing excessive noise and pollution that the prohibition on large commercial vehicles was designed to preclude. Maplewood homeowners and the Maplewood Citizens Association actively participated in the special exception process, including three full-day hearings. Among other things, the groups opposed the parking of busses under the zoning laws governing large commercial vehicle parking in R-60 neighborhoods.

The Special Exception Hearing Examiner disagreed with the community opposition, relying on a completely inaccurate depiction of the County Council's legislative intent when it enacted ZTA-09-03. Fundamental to this issue and the proposed ZTA-23-05 is the definition of "large commercial vehicle," its legislative history in the zoning ordinance, and the County Council 's intent.

The community groups opposed the hearing examiner's position on this zoning interpretation in a hearing before the Board of Zoning Appeals, who upheld the examiner's interpretation. The community groups had exhausted their small budget for legal representation and were, thus, unable to challenge the Board's decision in Circuit Court.

The FIS arguments were grounded in ZTA 09-03 and its legislative history, but the analysis accepted by the hearing examiner and the Board of Zoning Appeals about how the Ordinance changed at that time is erroneous. To see clearly why this is so, it is necessary to understand what the limitations on vehicle storage were in the R-60 zone before enactment of ZTA 09-03, and the effect of the change made by that ZTA on those limitations.

## **A. Commercial Vehicle Storage in Residential Zones: Pre-ZTA-09-03**

Prior to enactment of ZTA 09-03, off-street parking of motor vehicles in connection with uses permitted in the RMH 200, R-4 plex, R-40 R-60, R-90, and R-150 zones was permitted in accordance with footnote 12 to 559-C- I .31 (b), which as relevant to the R-60 zone, read as follows:

One commercial vehicle may be parked on any lot or parcel provided the vehicle meets all the following: (1) 10,000 pounds or less gross vehicle weight, (2) 19 feet or less in length measured from the extremes of the vehicle or load, or (3) 8 feet or less in height including racks needed for materials. A tow truck is not permitted to park with a disabled car attached. One recreation vehicle may be parked on a lot or parcel, however it must not be used for dwelling purposes for more than 3 days in any month.

This limitation had to be read in conjunction with the Ordinance's definition of "commercial vehicle," which read as follows:

**Commercial vehicle:** A duly licensed and registered vehicle used to transport passengers or property to further a commercial enterprise. A commercial vehicle must not be used as an office nor have customer entry for a retail transaction. **For the purposes of this Chapter the following are also commercial vehicles: .**

- (a) vehicles of more than 10,000 pounds gross vehicle weight;**
- (b) vehicles with a manufacturers' rated load capacity of more than 3/4 ton;**
- (c) vehicles registered as commercial vehicles by the Motor Vehicle Administration of the state of Maryland or other jurisdiction;
- (d) "for hire" vehicles as classified by the Maryland Motor Vehicle Administration;
- (e) a funeral motor vehicle or ambulance as classified by the Maryland Motor Vehicle Administration;
- (f) a freight trailer or semitrailer as defined by the Maryland Motor Vehicle Administration;

A recreational vehicle, or a farm machine or a farm vehicle for agricultural use is not a commercial vehicle.

S59-A-2.I (emphasis added).

Under these provisions, all vehicles of over 10,000 pounds gross vehicle weight, including school buses, were considered commercial vehicles, and could not be parked in the R-60 zone. In addition, no more than one school bus, if it had a gross vehicle

weight of 10,000 pounds or less, could be parked in the R-60 zone. In the case of FIS, the school buses (1) exceed 19 feet in length; (2) exceed 8 feet in height; (3) have a gross vehicle weight that exceeds 10,000 pounds, and (4) have a rated load capacity of more than one ton. Thus, whether the buses would or would not be considered used "to further a commercial enterprise," under the pre-ZTA 09-03 Ordinance, not even one of the FIS buses could be parked at a school on R-60 zoned property.

## **B. Changes Made BY ZTA 09-03**

ZTA 09-03 dealt with a number of issues relating to home occupations and residential offstreet parking. With regard to commercial vehicles, the primary focus of the ZTA was on the offstreet parking of tow trucks. As explained in the PHED Committee Report to Council at the time of adoption,

A footnote in the zoning law limits commercial vehicle parking in residential zones to vehicles up to 19 feet long. This ZTA would define light commercial vehicles as those that are shorter than 21 feet. It would also increase the allowable load capacity from 3/4 ton to 1 ton. In those respects, ZTA 09-03 would be more permissive than the current law.

All aspects of the proposed definition would conform to amendments recently approved in Bill 27-08, which limited the parking of heavy commercial (longer than 21 feet or with a load capacity greater than 1 ton) vehicles on-street in residential areas. Heavy commercial vehicles would be required to park only in commercial areas.

Tow trucks would be classified as heavy commercial vehicles under ZTA 09-03, according to the police but not according to the Department of Permitting Services, Staff recommended ZTA 09-03 as introduced, but currently recommends an amendment to ban parking tow trucks in residential zones, given the split of opinion. **The Committee recommended amending ZTA 09-03 to allow smaller tow trucks to be parked on residential lots.**

Id. at 5-6 (footnote omitted; emphasis in original). The omitted footnote is a citation to the aforementioned footnote

12 in the Ordinance. The PHED Committee Report to the Council (w/o exhibits), just before adoption of ZTA 09-03, is attached as Exhibit 2.

ZTA 09-03 effectuated these changes via splitting the definition of "commercial vehicle" into two parts: heavy commercial vehicles and light commercial vehicles. A commercial vehicle was in the "heavy" category if it met any of four criteria: (a) greater than 10,000 pounds gross vehicle weight; (b) a rated load capacity of more than one ton; (c) a length of 21 feet or more; and (d) a height of more than 8 feet. Otherwise it was in the "light" category\* See Ord. No. 1659 (ZTA 09-03) at 6-7.

ZTA 09-03 and its legislative history are devoid of any reference to a desire on the part of any Councilmember — or any other person or entity to exclude conventional school buses — which plainly met the "commercial vehicle" definition prior to enactment of ZTA 09-03 — from the pre-existing prohibition on their being parked in the R-40, R-60, R-90 and R-150 residential zones. Nor was there any suggestion from any source that the deletion of the term "passengers" was intended to authorize conventional-sized buses (for school use or otherwise), to be parked in those zones. Nor was there any suggestion or implication that such buses ought to be allowed to park in those zones because they arguably were not used in furtherance of a "commercial enterprise," a term not defined in the Ordinance.<sup>23</sup>

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<sup>2</sup> In great irony, the special exception for the FIS high school on Forest Lane in Bethesda specifically forbids school bus parking on the high school lots in deference to the zoning prohibitions and because it is inappropriate in a R-60 residential neighborhood. The special exception for the new combined FIS elementary and grade school on Rockville Pike will allow the housing of busses used for the high school that the high school's special exception prohibited. In effect, the prohibited high school busses circumvent the prohibition through the storage at the new FIS elementary and middle school on Rockville Pike. So, the noise, pollution and disruption from the busses prohibited at the high school have been exported to the new Rockville Pike school and the surrounding R-60 neighborhood, adding insult to injury for the homeowners within 100 feet of the diesel bus storage at the new school. In a further ironic twist, the high school initially disregarded its special exception's prohibition on bus storage and was heavily sanctioned by the Board of Zoning Appeals. As a result, the high school was required to store its busses in an industrial area with zoning compatible with bus storage. All of the FIS busses should be required to be similarly stored in compatible industrial zoning. The erroneous zoning interpretation in the Rockville Pike school's special exception permitted the removal of the high school's busses from appropriate industrial zoning back to inappropriate R-60 residential zoning. ZTA-23-05 will allow similar violations without action by the Council to rectify the defective interpretation in the special exception.

### **C. Analysis of the Legislative History and County Council Intent**

The foregoing establishes that there is no support in the text or the legislative history of ZTA 09-03 for a counterintuitive interpretation that with ZTA 09-03, the parking of heavy vehicles (i.e., with more than 10,000 pounds gross vehicle weight), disallowed in the residential zones pre-ZTA enactment: whether or not for commercial purposes, was suddenly reversed to allow for the parking of such school buses for a private school in any of the protected residential zones.

In the same vein, there is nothing in the ZTA's text or legislative history to support an argument that private school buses can evade the parking restriction because a private educational institutional is not a commercial use listed in 559-C-1.3(c). That Ordinance section does not purport to be inclusive of all uses of a commercial nature. In fact, even though the private educational institution use is not found in subsection (c), such institutions are often owned and operated by corporate and other for-profit entities as commercial enterprises. The Ordinance draws no distinction between for-profit and non-profit school operations in either the definition ("educational institution, private"), or in terms of eligibility for a special exception under S59-G2.19. Nor does any other provision in the Ordinance refer to §59-C-1.3(c) as a definitive list of commercial uses regulated by the Ordinance.<sup>4</sup>

### **Conclusion: Inappropriate and Ultra Vires to Enact ZTA-23-05 Without Restating and Reasserting the Plain Language and Intent of the County Council Regarding the Parking of Large Commercial Vehicles in R-60 Residential Neighborhoods**

The County Council should not advance ZTA-23-05 without restating the plain language and intent governing the parking of large commercial vehicles in residential neighborhoods because it will allow the infliction of dangerous, noisy and polluting harm incompatible with the quiet enjoyment of residential neighborhoods under the erroneous interpretation authorized by the Board of Zoning Appeals in the special exception granted to FIS. The permitted location of heavy commercial vehicles in residential neighborhoods is incompatible with the quiet enjoyment of homes protected by the zoning laws of Montgomery County. The result in the recent County administrative action above allowing 17 full size diesel school busses to be parked in a R-60 zone within 100 feet of homes is an abomination destructing the plain language and intent of the zoning laws and Council legislation.

It is incumbent on the Council to faithfully consider the wholistic impact of incremental changes to the zoning ordinances through the zoning text amendment process. Such a

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<sup>4</sup>David Brown, Esq. of Knopf and Brown originated the detailed analysis of the legislative intent and history of the zoning reflected above governing the parking of commercial vehicles in residential neighborhoods in the Maplewood Community Association's opposition to the FIS special exception amendment.

wholistic approach would consider and correct the invalid interpretation of county zoning ordinances before advancing a new ZTA that could be expanded light years beyond the simple parking of two light commercial vehicles in residential neighborhoods. County residents will be greatly harmed if the erroneous policy interpretation is left standing and infects the application of proposed ZTA-23-05.

I fully oppose the enactment of ZTA-23-05 for the reasons stated above. To do otherwise would tacitly allow a continued undermining of the plain wording of the zoning laws and Council intent. The defects in ZTA-23-05 can be corrected through rigorous data, analysis and estimated impact. Further, ATA-23-05 can mitigate a miscarriage in the application of the zoning laws by restating the scope and purpose of the current limits on heavy commercial vehicle parking in residential zones.

I greatly appreciate your attention to my views. Please let me know if you have any questions.

Sincerely,

*Carl B. Wilkerson*

Carl B. Wilkerson

**Supplemental Submission on Proposed ZTA 23-05  
from Carl B. Wilkerson-September 11, 2023**

This document supplements my submission on ZTA 23-05 dated August 4, 2023. I also provided input during the July 25, 2023, County Council hearing on ZTA 23-05. I have attempted to reach several County Council Staff members to further elaborate on my opposition to ZTA 23-05. Thank you for your attention to my views.

**Background.** ZTA 23-05 would amend Montgomery County zoning laws to allow two light commercial vehicles to be parked on residential properties. The current zoning only allows one commercial vehicle to be parked on residential properties

**A. Proposed ZTA 23-05 Fundamentally Fails Basic Legislative Protocols**

The need for ZTA 23-05 has not been demonstrated. The initiative contains no explanation, analysis, or justification for this significant modification to Montgomery County zoning laws. There is no estimate of how many additional trucks would be parked in residential driveways or how many residential neighborhoods would be affected. ZTA 23-05 should not be advanced without thorough analysis of its scope, added truck volume, and residential neighborhood impact.

Citizens are deprived of the opportunity to evaluate proposed legislation in the absence of a clear statement of purpose, need, and justification. The ZTA contains scant, if any, discussion about its impact, purpose, and justification. Zoning Amendments need to be considered in a holistic manner that evaluates all the ripple effects that would occur. This initiative will have harmful, unwarranted consequences. It is an *ad hoc* bill inflicting blanket application across the County to weaken the harmony of the zoning laws. A modification of this character is best addressed in the comprehensive rezoning process, not in a one-off ZTA that has little justification and ignores significant negative impacts. ZTA 23-05 is an end-run around proper process and procedure.

In sum, ZTA 23-05 fails the essential fundamentals for legislative actions.

**B. The Existing Special Exception Process Can Fully Address Requests for Multiple Commercial Vehicle Parking and More Properly Invites and Includes Input from Nearby Affected Residents**

If some residents need to park more than one commercial vehicle, the Special Exception process can properly address the request and grant relief on a case-by-case basis. Importantly, the special exception process provides nearby residents with the opportunity to weigh-in on the pros and cons of a request for special exception. ZTA is a form of stealth legislation that bypasses citizen input. The County-wide blanked exception in ZTA 23-05 is unnecessary overkill. The initiative does not explain any need to circumvent the special exception mechanism. Special exceptions provide a better suited and fairer means to resolve requests for zoning deviations.

### **C. Proposed ZTA 23-05 Omits a Racial Equity and Social Justice Impact Statement (RESJ); Negative Impact on Generational Wealth Accumulation in Lower Income and Diverse Neighborhoods**

ZTA 23-05 completely lacks a racial equity and social justice impact statement, which is necessary considering harmful impairment to underserved groups. The county's official policy about our RESJ impact statements recites noble objectives, focusing on the power of communities of color and low-income communities and states a goal of eliminating racial and social inequities. It references the historic burdens placed on these communities that thwarted meaningful home ownership and the building of generational wealth. These are important and commendable County goals. ZTA 23-05 undermines these noble goals.

In all likelihood, the greatest impact of ZTA 23-05 will be on lower income residential neighborhoods. It's highly unlikely that they would occur in the upper income neighborhoods of Chevy Chase, or Potomac or Bethesda. Rather, they would be more likely to occur in Wheaton or Hillandale or Randolph Hills or Glenmont, where many underserved individuals are attempting to acquire and improve generational wealth. Those neighborhoods already suffer from an excessive presence of commercial vehicles that are in violation of existing county zoning ordinances governing commercial vehicles. It is well established that commercial and construction vehicles parked in residential neighborhoods burdens home values. Nothing in ZTA 23-05 evaluates the negative impact on home values, generational wealth accumulation, or quality of life impairment.

ZTA 23-05 should be shelved until a proper RESJ is conducted to evaluate its negative impact on underserved and lower income neighborhoods. Absent a thorough analysis, the County's policy focusing on the power of communities of color and low-income communities with a goal of eliminating racial and social inequities is effectively just lip service.

Another inconsistency appears in other county publications. One is entitled "being good neighbors: maintaining the residential character of our neighborhoods." This document states that

"preserving the quality of life in Montgomery County neighborhoods needs help from all of us. *New county laws initiated by the county council are designed to help protect our residential neighborhoods.*"

Shockingly, proposed ZTA 23-05 contradicts these very worthwhile aspirations and policy objectives. ZTA 23-05 does not help protect residential neighborhoods. Instead, it harms residential neighborhoods and effectively converts them into industrial zones.

### **D. The Climate Impact Statement Supporting Proposed ZTA 23-05 is Fatally Flawed**

Montgomery County's valuable policy emphasis on climate change is undermined by the proposed ZTA 23-05. The planning staff statement on climate change is almost

completely worthless, because it contains no estimates on the number of trucks, the number of neighborhoods, and the anticipated climate impact. It is undisputed that increased driveway surface concrete creates significant reflective heat and greatly increases rapid water runoff that deteriorates our county streams. The climate change statement acknowledges that all of the points discussed are unpredictable, but whimsically states, in spite of that, little impact is anticipated. The conclusion is unvarnished speculation and akin to junk science. That is insufficient for County Council enactments amending the zoning laws. In all honesty, the climate impact statement is window dressing without meaning. Sadly, it simply touches a base to fulfill (inadequately) a worthwhile County objective to consider the climate impact of legislation. County residents deserve better than hollow statements just going through the motions. They merit careful evaluation of climate impact in legislative actions. Virtually none exists in ZTA 23-05.

**E. Enactment of ZTA 23-05 Would Allow a Defective Recent Precedent to Obliterate and Undermine County Council Legislation, Intent, and Purpose**

As explained more fully in my initial submission, a recent legal precedent was established in a special exception application that (incorrectly) determined that full size school busses were not heavy commercial vehicles, despite clear objective measures in the zoning ordinance to the contrary. Additionally, the (incorrect) precedent directly contradicted the unequivocal wording and County Council intent when it amended the distinctions between light and heavy commercial vehicles. Inexplicably, the hearing examiner and the Board of Appeals concluded that a full size school bus was not a heavy commercial vehicle and, therefore, could be parked in a R-60 neighborhood. The diesel busses in question are within 100 feet of residences and are warmed up before 6 am. This is contrary to the protections in the Montgomery zoning law, and fail the County's expressed objective that "preserving the quality of life in Montgomery County neighborhoods needs help from all of us. *New county laws initiated by the county council are designed to help protect our residential neighborhoods.*"

Why is this recent precedent permitting school bus parking in residential neighborhoods relevant to ZTA 23-05? Because without correction and adherence to the literal wording and intent of the County's definition of "heavy commercial vehicle," ZTA 23-05 would also allow the parking of two school busses on residences in R-60 neighborhoods.

It is incumbent on the County Council to faithfully serve its own wording and intent in the definitional distinctions between heavy and light commercial vehicles. To allow ZTA 23-05 to become law without reclarification and restatement of its intent in crafting those zoning definitions will undermine the integrity of County zoning laws to the continued detriment of its citizens.

**F. Conclusion**

ZTA 23-05 is not ready for prime time. It should be jettisoned. There is no analytically based justification for the amendment. The existing special exception process is the

proper means to handle requests to park two light commercial vehicles per residence. Having a blanket, County-wide zoning revision allowing two light commercial vehicles in residential neighborhoods is unwarranted overkill. The more surgical solution of the special exception process can handle requests and more appropriately allow affected homeowners to interact and respond based on specific factual circumstances. This both fair and more democratic. Later, the comprehensive rezoning process can address in a holistic manner the need to allow two commercial vehicles to be parked in residential neighborhoods.

ZTA 23-05 completely fails the purpose and intent of required climate impact statements. It fully fails the County's noble goal of eliminating racial and social inequities. Rather, ZTA 23-05 would greatly harm the ability of these groups to achieve generational wealth through home ownership.

ZTA 23-05 lacks a meaningful climate impact statement. The proffered statement provides no worthwhile content is a collection of useless speculation about the climate impact of the ZTA. The zoning amendment will impair the climate through increased hard surfaces (as required in other zoning standards for each parked vehicle) that will unequivocally increase reflected heat and accelerate the speed of water runoff that further harms the County's increasingly eroded streams and creeks.

In sum, ZTA 23-05 should be dropped. If it is to advance, it needs quantifiable data on the expected number of additional two-commercial vehicle parking that will occur. ZTA 23-05 should be jettisoned until it has a proper Racial Equity and Social Justice impact statement that thoroughly addresses the negative impact of increased commercial vehicle parking on home values in lower cost neighborhoods and the impairment of generational wealth for diverse communities. Lastly, the County Council should restate the unequivocal purpose and intent of its recently differentiated definitions of light and heavy commercial vehicles in the zoning ordinance. That action will prevent the unauthorized erosion of clear zoning laws governing the parking of commercial vehicles in residential neighborhoods.

Thank you for your attention to my views. Please let me know if you have any questions.

Sincerely,

*Carl B. Wilkerson*

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