

## **M E M O R A N D U M**

September 20, 2022

TO: PHED Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 22-09, Accessory Structures – Use Standards

PURPOSE: Worksession #1

### **Expected Attendees**

- Casey Anderson, Chair, Planning Board
- Jason Sartori, Chief, Countywide Planning & Policy, Planning Department
- Benjamin Berbert, Planner III, Countywide Planning & Policy, Planning Department
- Victor Salazar, Chief – Division of Zoning and Code Compliance, DPS

### **Introduction**

Zoning Text Amendment (ZTA) 22-09, Accessory Structures – Use Standards, lead sponsor Councilmember Riemer and co-sponsor Councilmember Hucker, was introduced on July 26, 2022. ZTA 22-09 will create use standards for pool enclosures.

### **Public Hearing**

A public hearing was held on September 13, 2022. Planning Board testified in support of ZTA 22-09 but noted that Planning Staff had recommended not supporting it. Francoise Carrier of Bregman, Berbert, Schwartz & Gilday, LLC also testified in support of the ZTA, noting that pool enclosures could be a valuable part of an aging-in-place strategy, and for those who use swimming as a form of therapy or physical exercise. Council also received written testimony from Ms. Carrier, requesting the height be increased to 8 feet. This increase would accommodate the prefabricated models made by manufacturers.

### **Summary of Impact Statements**

#### ***Planning Board Recommendation***

On September 8, 2022, the Planning Board unanimously recommended approval of ZTA 22-09 with an amendment. The Planning Board expressed concern that “a property owner could enclose

a very small swimming pool with a larger enclosure to achieve a different purpose, such as storage.” Therefore, the Planning Board recommended an amendment that the new provisions would only apply to inground swimming pools. The Board also recommended the Council, at a later date, distinguish different types of accessory structures to avoid complicating the zoning code with a series of similar exceptions for other individual structure types.

### ***RESJ Impact Statement***

The Office of Legislative Oversight provided a Racial Equity and Social Justice (RESJ) Impact Statement on August 30, 2022. OLO found that ZTA 22-09 would have little or no impact on racial equity and social justice in the County because it would apply to all single-family detached residential developments. OLO noted that while homeownership rates in the County vary by race and ethnicity, it is unlikely that many homeowners will take advantage of this proposed change; therefore, the ZTA will have little to no impact on existing disparities in homeownership by race and ethnicity locally.

### **Discussion**

#### ***Background***

Under section 3.7.4.A.2 of the Zoning Ordinance, the maximum footprint for accessory buildings on a lot in the Agricultural, Rural Residential, and Residential Detached zones may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater.<sup>1</sup> ZTA 22-09 will allow an exception for pool enclosures.

A pool enclosure is a structure that covers a swimming pool, typically so that the property owner can use the swimming pool year-round, in any weather. They can be open or closed manually. Below are some examples of retractable pool enclosures:

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<sup>1</sup> The Council confirmed this interpretation when it passed ZTA 21-10 in March 2022, which can be found here: [https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2022/20220308\\_19-29.pdf](https://www.montgomerycountymd.gov/COUNCIL/Resources/Files/zta/2022/20220308_19-29.pdf).



'The Pool Owner's Guide to Pool Enclosures', <https://www.poolcalculator.com/pool-life/pool-owners-guide-to-pool-enclosures/>



Endless Pools, <https://www.endlesspools.com/blog/post/tour-pool-enclosures>



SunShield, <https://www.sunshielder.com/portfolio/telescopic-swimming-pool-enclosures-pool-cover/>



HomeGuide, <https://homeguide.com/costs/pool-enclosure-cost>

For reference, a swimming pool is defined in Chapter 51 of the County Code as:

Swimming pool means any artificial structure, basin, chamber, or tank, except a private spa, either above or below ground, which is used or intended to be used for the primary purpose of swimming, diving, wading, or recreational bathing. Swimming pool includes all appurtenant equipment, structures, and facilities located within a common enclosure. A unit used in conjunction with the private practice of a physician or physical therapist is not a swimming pool.



Because the pool enclosure must be at least the size of the swimming pool, if a property owner had a small house on a large lot, they could have a situation where “50% of the footprint of the principal building or 600 square feet, whichever is greater” is not sufficient to cover their private inground swimming pool. ZTA 22-09 will allow a cumulative footprint of up to 1,200 square feet for the pool enclosure.

To help ameliorate any negative impact on neighboring properties, the pool enclosure must be transparent or translucent, and have a maximum height of 7 feet. Of note, under Section 51-16 of the County Code, a private swimming pool must have a fence of at least 5 feet high.

ZTA 22-09 states that “the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater” *and* “the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.” This language ensures that a property owner does not install a swimming pool with a small pool enclosure in order to construct a larger additional accessory structure than would otherwise be allowed.

The County Code contains additional provisions regarding the construction, location, maintenance, and regulation of private swimming pools. Conformance with Chapter 51 would still be required. In addition, a pool enclosure would not exempt a property owner from lot coverage and setback requirements.<sup>2</sup>

### ***Proposed Amendments***

Planning Board expressed concern that a property owner could enclose a small swimming pool with a large pool enclosure for uses not intended by the ZTA, such as storage. Therefore, Planning Board recommends adding an amendment that this subsection should only apply to inground swimming pools.<sup>3</sup>

The Council received a letter in support from Francoise Carrier of Bregman, Berbert, Schwartz & Gilday, LLC, requesting the height be increased to 8 feet. According to the letter, “The manufacturers of popular models of pool enclosures generally build them with a maximum height at the peak of the structure between seven feet six inches and seven feet ten inches, so an eight-foot height limit would be more in keeping with products available for this purpose.”

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<sup>2</sup> Under Section 4.1.7.B.4. of the zoning ordinance, coverage is defined as “the area of a lot or site occupied by a building, including an accessory building, structured parking, or other roofed structure such as a porch, patio, deck, or steps.” Therefore, un-enclosed inground swimming pools do not count towards lot coverage. Depending on the size of the swimming pool there could be scenarios where a property owner would not be able to take advantage of this provision because once enclosed, lot coverage would be exceeded.

<sup>3</sup> The Zoning Ordinance does not define “inground swimming pool.” However, the schedule of fees for building permits includes fees for “Private in-ground swimming pool (including fence)” and “Private above-ground swimming pool (including fence)”. Therefore, Council Staff is confident that DPS would have no difficulty applying this provision.

- c. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:
- i. the pool enclosure, not including the rafters, is translucent or transparent;
  - ii. the pool enclosure has a height of ~~[[7]]~~8 feet or less;
  - iii. the pool enclosure surrounds and covers an inground swimming pool;
  - ~~[[iii]]~~iv. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
  - ~~[[iv]]~~v. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

***Council Staff recommends approval of ZTA 22-09 with amendments.***

This packet contains:

ZTA 22-09, with amendments	© 1
Planning Staff Memorandum	© 19
Planning Board Recommendation	© 25
RESJ Impact Statement	© 27
Letter in Support	© 29

Ordinance No.:  
Zoning Text Amendment No.: 22-09  
Concerning: Accessory Structures –  
Use Standards  
Draft No. & Date: 1 – 7/14/2022  
Introduced: July 26, 2022  
Public Hearing: September 13, 2022  
Adopted:  
Effective:

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

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Lead Sponsor: Councilmember Riemer  
Co-Sponsor: Councilmember Hucker

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

- create use standards for pool enclosures; and
- generally amend the provisions for accessory structures.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Division 3.7.	“Miscellaneous Uses”
Section 3.7.4.	“Accessory Miscellaneous Uses”
Division 4.2.	“Agricultural Zone”
Section 4.2.1.	“Agricultural Reserve Zone (AR)”
Division 4.3.	“Rural Residential Zones”
Section 4.3.3.	“Rural Zone (R)”
Section 4.3.4.	“Rural Cluster Zone (RC)”
Section 4.3.5.	“Rural Neighborhood Cluster Zone (RNC)”
Division 4.4.	“Residential Zones”
Section 4.4.4.	“Residential Estate – 2 Zone (RE-2)”
Section 4.4.5.	“Residential Estate – 2C Zone (RE-2C)”
Section 4.4.6.	“Residential Estate – 1 Zone (RE-1)”
Section 4.4.7.	“Residential – 200 Zone (R-200)”
Section 4.4.8.	“Residential – 90 Zone (R-90)”
Section 4.4.9.	“Residential – 60 Zone (R-60)”

Section 4.4.10. “Residential – 40 Zone (R-40)”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

*Underlining indicates text that is added to existing law by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*



**Sec. 1. Division 59-3.7 is amended as follows:**

**Division 3.7. Miscellaneous Uses**

\* \* \*

**Section 3.7.4. Accessory Miscellaneous Uses**

**A. Accessory Structure**

**1. Defined**

Accessory Structure means a structure subordinate to and located on the same lot as a principal building, the use of which is incidental to the use of the principal building or to the use of the land. An Accessory Structure is not attached by any part of a common wall or common roof to the principal building.

**2. Use Standards**

Where an Accessory Structure is allowed as a limited use, it must satisfy the following standards:

- a. In Agricultural and Rural Residential zones, where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction.
- b. In Residential Detached zones, where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

- c. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:
- i. the pool enclosure, not including the rafters, is translucent or transparent;
  - ii. the pool enclosure has a height of ~~[[7]]~~8 feet or less;
  - iii. the pool enclosure surrounds and covers an inground swimming pool;
  - ~~[[iii]]~~iv. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
  - ~~[[iv]]~~v. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

\* \* \*

**Sec. 2. Division 59-4.2 is amended as follows:**

**Division 4.2. Agricultural Zone**

**Section 4.2.1. Agricultural Reserve Zone (AR)**

\* \* \*

**F. AR Zone, Standard Method Development Standards**

	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a</b>
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	<b>Conditional Use allowed in the zone</b>
* * *	
3. Placement	
* * *	
Specification for Principal Building and Accessory Structure Setbacks	
* * *	
c. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction.	
d. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u>	
<u>1. the pool enclosure, not including the rafters, is translucent or transparent;</u>	
<u>2. the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u>	
<u>3. the pool enclosure surrounds and covers an inground swimming pool;</u>	
<u><del>[[3]]</del>4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and</u>	
<u><del>[[4]]</del>5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.</u>	

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51 **Sec. 3. Division 59-4.3 is amended as follows:**

52 **Division 4.3. Rural Residential Zones**

53 \* \* \*

54 **Section 4.3.3. Rural Zone (R)**

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56 B. R Zone, Standard Method Development Standards

	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction.	
e. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u>	
1. <u>the pool enclosure, not including the rafters, is translucent or transparent;</u>	
2. <u>the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u>	
3. <u>the pool enclosure surrounds and covers an inground swimming pool;</u>	
<del>[[3]]</del> 4. <u>the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and</u>	

[[4]]5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

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58 **Section 4.3.4. Rural Cluster Zone (RC)**

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60 B. RC Zone, Standard Method Development Standards

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	
<b>Specifications for Principal Building and Accessory Structure Setbacks (min)</b>	
* * *	
e. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction.	
f. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u>	
<u>1. the pool enclosure, not including the rafters, is translucent or transparent;</u>	
<u>2. the pool enclosure has a height of [[7]]8 feet or less;</u>	
<u>3. the pool enclosure surrounds and covers an inground swimming pool;</u>	

[[3]]4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and

[[4]]5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

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62 **Section 4.3.5. Rural Neighborhood Cluster Zone (RNC)**

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## 64 C. RNC Zone, Standard Method Development Standards

<b>1. Site</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>	
* * *		
<b>3. Placement</b>		
* * *		
Specifications for Principal Building and Accessory Structure Setbacks		* * *
* * *		
d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building. Buildings for an agricultural use are exempt from this size restriction.		
e. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be</u>		* * *



allowed, provided:

1. the pool enclosure, not including the rafters, is translucent or transparent;
2. the pool enclosure has a height of ~~[[7]]~~8 feet or less;
3. the pool enclosure surrounds and covers an inground swimming pool;
- ~~[[3]]~~4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
- ~~[[4]]~~5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

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66 **Sec. 4. Division 59-4.4 is amended as follows:**

67 **Division 4.4. Residential Zones**

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69 **Section 4.4.4. Residential Estate – 2 Zone (RE-2)**

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71 B. RE-2 Zone, Standard Method Development Standards

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	

Specifications for Accessory Structure Setbacks

\* \* \*

d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:

1. the pool enclosure, not including the rafters, is translucent or transparent;
2. the pool enclosure has a height of ~~[[7]]~~8 feet or less;
3. the pool enclosure surrounds and covers an inground swimming pool;
- ~~[[3]]~~4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
- ~~[[4]]~~5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

\* \* \*

**Section 4.4.5. Residential Estate – 2C Zone (RE-2C)**

\* \* \*

**B. RE-2C Zone, Standard Method Development Standards**

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a</b>
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	<b>Conditional Use allowed in the zone</b>
* * *	
2. Placement	
* * *	
Specifications for Accessory Structure Setbacks	
* * *	
<p>d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.</p>	
<p>e. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u></p> <ol style="list-style-type: none"> <li><u>1. the pool enclosure, not including the rafters, is translucent or transparent;</u></li> <li><u>2. the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u></li> <li><u>3. the pool enclosure surrounds and covers an inground swimming pool;</u></li> <li><u><del>[[3]]</del>4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and</u></li> <li><u><del>[[4]]</del>5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.</u></li> </ol>	

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77 **Section 4.4.6. Residential Estate – 1 Zone (RE-1)**

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## 79 B. RE-1 Zone, Standard Method Development Standards

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	
<b>Specifications for Accessory Structure Setbacks</b>	
* * *	
<p>d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.</p>	
<p><u>e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u></p> <ol style="list-style-type: none"> <li><u>1. the pool enclosure, not including the rafters, is translucent or transparent;</u></li> <li><u>2. the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u></li> <li><u>3. the pool enclosure surrounds and covers an inground swimming pool;</u></li> <li><u><del>[[3]]</del>4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and</u></li> <li><u><del>[[4]]</del>5. the cumulative footprint of the pool enclosure and all other accessory</u></li> </ol>	

buildings on the property does not exceed 1,200 square feet.

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81 **Section 4.4.7. Residential – 200 Zone (R-200)**

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83 B. R-200 Zone, Standard Method Development Standards

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	
<b>Specification for Accessory Structure Setbacks</b>	
* * *	
b. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.	
c. <u>Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u>	
1. <u>the pool enclosure, not including the rafters, is translucent or transparent;</u>	
2. <u>the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u>	
3. <u>the pool enclosure surrounds and covers an inground swimming pool;</u>	

[[3]]4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and

[[4]]5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

[c]d. Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.

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85 **Section 4.4.8. Residential – 90 Zone (R-90)**

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87 B. R-90 Zone, Standard Method Development Standards

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	
<b>Specifications for Accessory Structure Setbacks</b>	
* * *	
d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.	



e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:

1. the pool enclosure, not including the rafters, is translucent or transparent;
2. the pool enclosure has a height of ~~[[7]]~~8 feet or less;
3. the pool enclosure surrounds and covers an inground swimming pool;
- ~~[[3]]~~4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
- ~~[[4]]~~5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

[e]f. Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.

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89 **Section 4.4.9. Residential – 60 Zone (R-60)**

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91 **B. R-60 Zone, Standard Method Development Standards**

<b>1. Lot and Density</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>
* * *	
<b>2. Placement</b>	
* * *	

Specifications for Accessory Structure Setbacks

\* \* \*

d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.

e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:

1. the pool enclosure, not including the rafters, is translucent or transparent;

2. the pool enclosure has a height of ~~[[7]]~~8 feet or less;

3. the pool enclosure surrounds and covers an inground swimming pool;

~~[[3]]~~4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and

~~[[4]]~~5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

[e]f. Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.

\* \* \*

**Section 4.4.10. Residential – 40 Zone (R-40)**

\* \* \*

B. R-40 Zone, Standard Method Development Standards

<b>1. Site</b>	<b>Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone</b>	
* * *		
<b>3. Placement</b>		
* * *		
<b>Specifications for Accessory Structure Setbacks</b>		* * *
* * *		
d. Where the principal building on a lot is a detached house, the cumulative footprint of all accessory buildings on that lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater. This Subsection does not apply to Section 3.3.3.C, Detached Accessory Dwelling Unit. Buildings for an agricultural use are exempt from this size restriction.		
<u>e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:</u> <ol style="list-style-type: none"> <li><u>1. the pool enclosure, not including the rafters, is translucent or transparent;</u></li> <li><u>2. the pool enclosure has a height of <del>[[7]]</del>8 feet or less;</u></li> <li><u>3. the pool enclosure surrounds and covers an inground swimming pool;</u></li> <li><u><del>[[3]]</del>4. the cumulative footprint of all other accessory buildings on</u></li> </ol>		

<p><u>the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and</u></p> <p><u>[[4]]5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.</u></p>	
<p>[e]f. Any accessory building or structure used for the housing, shelter, or sale of animals or fowl other than a household pet must be a minimum of 25' from a lot line and a minimum of 100' from a dwelling on another lot.</p>	

96 \* \* \*

97       **Sec. 5. Effective date.** This ordinance becomes effective 20 days after the  
98       date of Council adoption.

## ZTA 22-09 – ACCESSORY STRUCTURES – USE STANDARDS

### Description

ZTA 22-09 would create special accessory structure use standards for pool enclosures located in residential zones.

ZTA 22-09

COMPLETED: 9-1-2022

MCPB

Item No. 11

9-8-2022

2425 Reddie Drive

Floor 14

Wheaton, MD 20902



Benjamin Berbert, Planner III, Countywide Planning and Policy  
[Benjamin.Berbert@montgomeryplanning.org](mailto:Benjamin.Berbert@montgomeryplanning.org), 301-495-4644

Jason Sartori, Chief, Countywide Planning and Policy  
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## Summary

- This ZTA would create special provisions for properties with accessory structures that include pool enclosures, allowing the cumulative footprint of accessory structures to exceed current limits under certain conditions.
- The ZTA would modify the Development Standards table for each residential zone to create a new standard under Specification for Principal Building and Accessory Structure Setbacks allowing the additional flexibility for certain pool enclosures.
- Planning staff does not support this ZTA as it seems too specific, creates policy conflicts and loopholes, and would require substantial additional clarity and amendments to mitigate these concerns.

### LEAD SPONSORS

Councilmember Riemer

Co-Sponsored by Councilmember Hucker

### INTRODUCTION DATE:

July 26, 2022

### REVIEW BASIS:

Chapter 59



## SECTION ONE

### BACKGROUND

#### Rationale for ZTA 22-09

ZTA 22-09 was introduced on July 26, 2022 by Councilmember Riemer, and cosponsored by Councilmember Hucker. The ZTA is scheduled for a Council Public Hearing on Tuesday, September 13, 2022. The intent of ZTA 22-09 is to create an exception to the current accessory structure footprint limitations, if a homeowner installs certain pool enclosures as an accessory structure. The current footprint limit on accessory structures is 600 square feet or 50% of the principal building footprint, whichever is greater. The ZTA was introduced because the existing footprint limits on accessory structures can be too limiting to enclose a pool under certain circumstances.

## SECTION TWO

### ANALYSIS

#### ZTA 22-09 as introduced

ZTA 22-09 creates new provisions for accessory structures by modifying the code in two similar ways in separate locations. The first modification is under use Section 3.7.4.A. Accessory Structure. Within the Use Standards, a new section c. is added as shown on lines 27-41 of Attachment A. This new subsection establishes separate provisions for properties that construct pool enclosures that are 7 feet or less in height and are made of a translucent or transparent material. If the construction of such a pool enclosure causes a property's cumulative accessory structure footprint to exceed 50% of the principal building footprint or 600 square feet (whichever is greater), the cumulative footprint of all accessory structures is allowed to be up to 1,200 square feet, so long as the footprint of all non-pool enclosure accessory structures continues to remain less than 50% of the principal building footprint or 600 square feet (whichever is greater).

The other series of changes this ZTA would make is to every standard method development standard table for the Agricultural, Rural Residential, and Residential Detached zones in Sections 4.2., 4.3., and 4.4. In each of these tables, there is a Specifications for Accessory Structure Setbacks section, which among other specifications includes the standard currently limiting the footprint of all accessory structures, stating "the cumulative footprint of all accessory buildings on a lot may not exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater." This ZTA adds a new specification, similar to the language discussed in the paragraph above, stating:

Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:

1. the pool enclosure, not including the rafters, is translucent or transparent;
2. the pool enclosure has a height of 7 feet or less;
3. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
4. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

A Racial Equity and Social Justice (RESJ) impact statement was prepared for ZTA 22-09 (Attachment B). It anticipates little to no impact on RESJ issues within the County. The impact statement says while white and Asian groups own houses at a higher rate than other racial and ethnic communities, the predicted impact is low because few residents would take advantage of these zoning changes.

### **Analysis of ZTA 22-09**

This ZTA intends to provide flexibility to residential property owners that desire to have a seasonal or permanent enclosure over their pools, and have pools located on a property in a way that a cover cannot be attached to the principal building, making it an accessory structure. Many pool enclosures would likely be at or more than the size limit currently for accessory structures, or would not enable any additional structures such as detached garages or sheds to be permitted on the property, especially where the principal building is smaller in size. The problem created by the existing accessory structure rules is clear, however Planning staff has many concerns with this ZTA from a logistical and a policy standpoint, which are discussed further below.

#### *Practicality*

This ZTA is a major policy change in allowing additional footprint for accessory structures but the restrictions, particularly on height, seem overly restrictive, unrealistic and possibly intended for very limited situations. The ZTA would cap the height of a qualifying pool enclosure at 7 feet. Presumably this was to minimize the visual impact from adjacent properties. In practicality it becomes very limiting in the type of enclosure that can be erected, and how useful it will be to an end user. For an A-framed enclosure to be constructed at 7 feet or less in height, the actual height of the side walls would be substantially shorter since building height on pitched roofs is typically measured as the mid-point between the eaves and the ridges. A domed enclosure would have a similar problem where only the very center would actually be 7 feet high with the sides curving downward. This could make it impractical to walk around the pool or otherwise use the pool deck. The limitations on height also presume the pool enclosure is built over an in-ground pool. A 7-foot tall pool enclosure is not practical over an above ground pool with sides that are three to five feet in height.

### *Definitions*

There are no definitions in Chapter 59 for either pool or pool enclosure. When reviewing this ZTA, the term pool enclosure generated an image in the mind of many Planning staff of a fence, rather than a structural component that fully covers and encloses the pool area. Without defining what constitutes a pool enclosure it could leave open the possibility for future confusion and misinterpretation at the time of permit review. Additionally, the lack of a working definition for pool can further complicate interpretation of the proposed changes, as discussed in the loopholes section below.

### *Loopholes*

Without definitions for pool or pool enclosure, Planning staff is concerned this ZTA has unintentional loopholes that would effectively increase the area on properties available for general storage. There is nothing that requires the ‘pool enclosure’ to be placed over a pool, so presumably someone could apply for a permit to construct a pool enclosure type structure but intend to place and use it as a shed. There is also nothing guiding how much bigger the enclosure can be compared to the pool or pool decking area. Further, without a working definition of pool, it is also plausible someone who is looking for additional on-site storage options could use an inflatable or temporary pool as the pool and use most of the actual square footage as general storage. This loophole is concerning, considering that just six months ago the Council passed ZTA 21-10, which was specifically intended to close loopholes on interpreting the rule limiting the cumulative footprint of accessory structures to 50% of the footprint of the principal building or 600 square feet (whichever is greater). There was a clear expressed policy intent by the Council to continue limiting the size of accessory structures on residential properties at that time.

Additionally, while not directly a concern Planning Staff has regarding the implementation of this ZTA, pool enclosures are not exempted from counting toward lot coverage limits for the respective residential zones. Pools currently do not count toward lot coverage as they do not meet the structural definition for coverage as defined in Section 4.1.7.B.4. By placing a pool enclosure over the pool and pool deck area, this new structure would meet the requirements of counting toward lot coverage.

These unanswered concerns raised above reinforce Planning staff’s recommendation not to support this ZTA, or at a minimum seek substantial amendments to define pool and pool enclosure, place limits on how much larger an enclosure can be compared to the pool, and possibly consider more practical height limits to ensure practicality of the enclosure.

## **SECTION THREE**

### **CONCLUSION**

Planning staff does not support ZTA 22-09 as introduced and recommends the Planning Board transmit comments to the District Council expressing a similar lack of support.

Attachment A – ZTA 22-09 introduction packet

Attachment B – RESJ Statement for ZTA 22-09

**September 12, 2022**

**To:** The Honorable Gabe Albornoz  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**From:** Montgomery County Planning Board

**Subject:** Zoning Text Amendment No. 22-09

#### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on September 8, 2022 and by a vote of 5:0 recommended approval of Zoning Text Amendment (ZTA) 22-09 with modifications. This ZTA would create special standards to allow additional accessory structure footprint for properties where one of the accessory structures includes a pool enclosure.

The ZTA modifies the standards for accessory structures in two places; within the use standards under Section 3.7.4.A. and within the standard method development standards tables for each Agricultural, Rural Residential, and Residential Detached zone in Sections 4.2., 4.3., and 4.4. The modifications are substantially the same, and state:

Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed provided:

- the pool enclosure, not including the rafters, is translucent or transparent;
- the pool enclosure has a height of 7 feet or less;
- the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater;
- and the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

While the Planning Board supports this ZTA, it does so as long as pool enclosures remain subject to all other applicable development standards, including lot coverage and setback requirements. The Board also has concerns that the ZTA both lacks clarity and complicates the zoning code. It recommends that the Council consider (through a follow-up effort) opportunities to distinguish different types of accessory

structures, like pool enclosures, to avoid complicating the zoning code with a series of similar exceptions for other individual structure types.

Furthermore, without clear definitions for “pool” or “pool enclosure” and no standards on how big the enclosure can be compared to the pool, it is possible a property owner could enclose a very small pool with a larger enclosure to achieve a different purpose (such as storage). The code was just amended through ZTA 21-10 to clarify accessory structure cumulative footprint limits and ZTA 22-09 could possibly reopen the code to misinterpretation. Therefore, the Board also requests that the Council make the following modification to the ZTA to clarify that a pool enclosure is not a fence (it must cover the pool) and that it must be placed over an inground swimming pool:

- e. Where the construction of a pool enclosure would cause the cumulative footprint of all accessory buildings, including the pool enclosure, to exceed 50% of the footprint of the principal building or 600 square feet, whichever is greater, the pool enclosure may be allowed, provided:
1. the pool enclosure, not including the rafters, is translucent or transparent;
  2. the pool enclosure has a height of 7 feet or less;
  3. the pool enclosure surrounds and covers an inground swimming pool;
  - [[3]]4. the cumulative footprint of all other accessory buildings on the property is less than 50% of the footprint of the principal building or 600 square feet, whichever is greater; and
  - [[4]]5. the cumulative footprint of the pool enclosure and all other accessory buildings on the property does not exceed 1,200 square feet.

The Board appreciates the Council’s considerations of these concerns and recommends the Council adopt ZTA 22-09 with the suggested modifications.

#### **CERTIFICATION**

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, September 8, 2022.



**Casey Anderson**  
Chair



# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 22-09      ACCESSORY STRUCTURES — USE STANDARDS

### SUMMARY

The Office of Legislative Oversight anticipates that Zoning Text Amendment 22-09 would have little or no impact on racial equity and social justice (RESJ) in the County.

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a process that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a goal of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### PURPOSE OF ZTA 22-09

The purpose of Zoning Text Amendment 22-09 is to allow a cumulative footprint of up to 1,200 square feet for a “pool enclosure” on a detached single-family property.<sup>3</sup> ZTA 22-09 amends provisions for accessory structures under the use group Section 3.7.4 “Accessory Miscellaneous Uses” of the Zoning Ordinance and other sections in the Agricultural, Rural Residential, and Residential zones.<sup>4</sup> ZTA 22-09 also requires that pool enclosures be transparent or translucent and have a maximum height of seven feet or less.<sup>5</sup> However, the existing accessory building requirement which specifies “...the cumulative footprint of all accessory buildings on that lot may not exceed 50 percent of the footprint of the principal building or 600 square feet, whichever is greater” remains unchanged for accessory buildings that do not include a pool enclosure.<sup>6</sup> ZTA 22-09 was introduced on July 26, 2022.<sup>7</sup>

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### ANTICIPATED RESJ IMPACTS

OLO anticipates that ZTA 22-09 will have little to no impact on RESJ in the County. The modifications proposed in this ZTA apply to all single-family detached residential developments in the County. While homeownership rates in the County vary by race and ethnicity with three-quarters of White and Asian households residing in owner-occupied units compared to half of Latinx residents, 43 percent of Black residents, and 47 percent of Indigenous residents and other groups,<sup>8</sup> OLO anticipates that few homeowners will take advantage of this proposed change in the Zoning Ordinance. Thus, ZTA 22-09 will have little to no impact on existing disparities in homeownership by race and ethnicity locally.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council’s decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the ZTA under consideration.

# RESJ Impact Statement

## Zoning Text Amendment 22-09

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### CONTRIBUTIONS

Elsabett Tesfaye, Performance Management and Data Analyst, drafted this RESJ impact statement.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools <https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid

<sup>3</sup> Montgomery County, Maryland Council: Zoning Text Amendment No. 22-09, Concerning: Accessory Structures – Use Standards. Introduced: July 26, 2022

[Zoning Text Amendment No: 10-xx \(montgomerycountymd.gov\)](https://montgomerycountymd.gov/Zoning-Text-Amendment-No-10-xx)

<sup>4</sup> Ibid

<sup>5</sup> Ibid

<sup>6</sup> Ibid

<sup>7</sup> Montgomery County, Maryland Council: Zoning Text Amendment No. 22-09.

<sup>8</sup> Racial Equity Profile Montgomery County. Report Number Report Number 2019-7. July 15, 2019

<https://www.montgomerycountymd.gov/OLO/Resources/Files/2019%20Reports/RevisedOLO2019-7.pdf>

September 9, 2022

Members, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, MD 20850

Re: Support for ZTA 22-09

Dear Members of the County Council:

I write on behalf of Silver Spring homeowners David Vandivier and Almila Ozdek in support of ZTA 22-09, which will be on the Council's public hearing agenda on September 13, 2022. Mr. Vandivier and Ms. Ozdek recently built an in-ground swimming pool in their backyard and would like to install a pool enclosure of the type shown in the photos below, which would allow them to use the pool year-round instead of just during warm-weather months.



Example Pool Enclosure in Closed Position



Example Pool Enclosure in Closed Position

This ZTA would increase the permitted square footage for an accessory structure on residential property to allow the installation of an above-ground pool enclosure for year-round swimming. This can be a valuable aging-in-place strategy, and can be very helpful for individuals who use swimming as a form of therapy or as their main form of physical exercise.

The ZTA places appropriate limits on the square footage of a pool enclosure and other accessory structures to avoid adverse impacts on neighbors from too many structures on any one lot. In addition, it

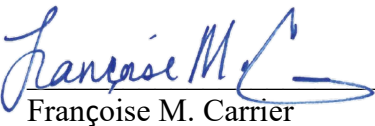
does not exempt a pool enclosure from being counted as part of the lot's building coverage limit. As a result, a homeowner who wants to install a pool cover will have to make other choices that keep lot coverage within established limits. Standard accessory structure setback requirements would apply as well, ensuring appropriate placement of the pool and pool enclosure. The ZTA also sets a height limit and specifies that a pool enclosure must be translucent or transparent, all of which will keep pool enclosures at a scale and of a type that will create minimal visual intrusion for neighbors.

My clients would like to suggest one change to the ZTA: to increase the maximum permitted height to eight feet instead of seven feet. The manufacturers of popular models of pool enclosures generally build them with a maximum height at the peak of the structure between seven feet six inches and seven feet ten inches, so an eight-foot height limit would be more in keeping with products available for this purpose.

We urge the Council to give favorable consideration to this ZTA.

Sincerely yours,

BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC

By: \_\_\_\_\_  
Françoise M. Carrier

cc: David Vandivier