



Council President Navarro and Members of the Montgomery County Council:

Conservation Montgomery has been following the discussion regarding proposed ZTA 19-01. We support the County's need to provide more flexible and affordable housing. This ZTA would result in major changes to the rules and regulations for accessory apartments. We are submitting comments related to two environmental impacts that require consideration.

Tree Canopy Protection

A provision of ZTA 19-01 proposes to allow detached accessory units on lots smaller than one acre including in R-60, R-90, and R-200 zones. It also proposes eliminating the current maximum size limit for ADUs. There is confusion as to which footprints and setbacks will apply to detached accessory apartments (there is a difference between accessory *structure* or accessory *apartment* setbacks).

This raises the question - what protections will be in place to ensure there is no further loss of tree canopy in areas – particularly on smaller lots where it is already a challenge to retain mature tree canopy?

Unlike other jurisdictions, such as nearby Washington, DC, Montgomery County has no permit or review required for removal of trees on individual residential private property. And there is generally no onsite tree-replanting requirement for these properties either (the requirement only applies with a certain amount of land disturbance and can be covered by fee-in-lieu payments). This is already a problem as it stands now. Certain local municipalities within the County may have specific requirements and additional tree protections, but many neighborhoods do not.

Trees provide screening and privacy, shade and cooling, and storm water quantity and quality benefits. With the proposal for both detached and larger ADUs on smaller lots (with potentially smaller setbacks), there is the potential for even greater tree canopy loss in local areas. This loss could occur both on the property undergoing construction as well as on neighboring properties since trees are often located in back yards, near property lines, and their roots don't stop at the property line. The County's current lot coverage and setback requirements (which currently appear to be under debatable interpretation with this ZTA) do not address this issue.

Portland is often referred to as the gold standard for ADUs. In many ways it is also a green standard. Portland's ADU code requires that:

Ground disturbance or construction staging that impacts a root protection zone of an existing tree may trigger tree preservation requirements for trees located on

private property and/or in the public right-of-way. The value of a project may also trigger tree planting requirements for private property and/or in the public right-of-way. More information may be found at the Portland Trees website at www.portlandoregon.gov/trees.

Stormwater Management

We now know that 2018 was the wettest year on record in our DC area. This ZTA has the potential to add impervious surface on lots without any clear mechanism to trigger storm water review or mitigation. This needs to be addressed. Some neighborhoods already have significant impervious surface and existing storm water runoff issues.

Current county regulations require a sediment control/stormwater review and permit with a minimum of 5,000 square feet of land disturbance.

http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:montgomeryco_md_mc

The County should consider lowering this threshold to account for the land disturbance that would be allowed with proposed ADU construction. Also according to County Code, sediment permit exemptions are granted to projects “not associated with construction of a new residential or commercial building” - Montgomery County Code, Section 19-2(b)(1)(A). Since detached ADUs are in fact “new residential buildings,” we believe that they should be required to obtain sediment permits.

Again, using Portland as an example, their ADU code requires:

Submittal of a mitigation form and/or a stormwater plan if your project will add more than 500 square feet of impervious area. In most cases, stormwater from either attached or detached ADUs will be required to be disposed of on site. In most cases, installation of a stormwater treatment facility will be required when the ADU creates 500 or more square feet of impervious surface.

<https://www.portlandoregon.gov/bds/article/68689>

It also recently came to light that the amount of impervious surface on certain properties is not necessarily adequately accounted for in the Water Quality Protection Charge database. There must be a system for timely communication between DPS and DEP to track additional impervious surface generated by attached and detached ADUs.

Lastly, in terms of parking requirements, there are many cases where it is preferable to allow units to count street parking rather than to require additional impervious surface on lots, but this should be reviewed according to local area transportation and parking needs and availability.

Thank you for taking these issues under consideration,

Conservation Montgomery Board of Directors

