



Zoning Text Amendment (ZTA) No. 19-02, Clinics - Limited Use

Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174

Jason Sartori, Acting Chief, FP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 02/14/19

Description

Zoning Text Amendment (ZTA) 19-02 would allow medical and dental clinics as a limited use in Residential Zones and establish standards for medical and dental clinics as a limited use in Residential zones.

Summary

Staff provides the following comments on ZTA 19-02 to allow medical and dental clinics as a limited use in Residential Zones and establish standards for medical and dental clinics as a limited use in Residential zones.

- **In general, staff does not object to allowing a clinic in an accessory capacity to a large residential care facility; charitable, philanthropic institution; a large day care center; a private educational institution; or a place of religious assembly.**
- **Staff believes that the legislation should clarify that the accessory use must also adhere to the Minor Amendment provisions of a conditional use or special exception, as applicable.**
- **Where a clinic would be accessory to a permitted principal use it would be more difficult to objectively determine that the clinic is an accessory use. One suggestion would be to limit the number of medical practitioners allowed as an accessory use to a permitted principal use (no conditional use or special exception approval) to a number less than four (2 or 3) and to limit the floor area for all clinics as an accessory use to 5% or less of the floor area of the principle use. The legislation as introduced only limits the floor area in cases where an application is requested for more than 4 medical practitioners.**

Background/Analysis

Under the current Zoning Code, any permitted or limited use in a zone may be an accessory use to any other use in the same zone. Before October 30, 2014 (the previous Zoning Code), an accessory use could be any use that was incidental and subordinate to the principal use. Under this older provision, the Department of Permitting Services allowed medical and dental clinics as accessory uses to some institutional uses. That is no longer the case because those uses are not listed as permitted or limited uses in many residential zones. (Currently, a Clinic with more than 4 Medical Practitioners is not allowed in the Residential Zones while a Clinic with Up to 4 Medical Practitioners is only allowed by conditional use approval in the R-200, R-90 and R-60 zones). ZTA 19-02 would allow accessory use clinics that are

limited in size in all residential zones. In zones where such clinics are currently allowed as a conditional use (R-200, R-90, R-60), the standards for the use would be unchanged. *Staff is unclear why the limited use provisions for 4 or less medical practitioners would not also apply to these zones.*

ZTA 19-02 would not change the code to go back to allowing any incidental or subordinate use as an accessory use. The amendment would only apply the accessory use rules for clinics in any: large residential care facility (over 16 Persons); charitable, philanthropic institution; large day care center (over 30 Persons); private educational institution; or place of religious assembly. Clinics with more than 4 medical practitioners would only be allowed as a minor part (5% of the use's total floor area) of the principal use. *Staff is uncertain of the rationale for not also including the 5% provision for clinics with up to 4 medical practitioners. Otherwise, a Clinic for up to 4 Practitioners potentially could be of a size similar to that of a clinic that is established as a principal use. This is of particular concern where the clinic would be accessory to a permitted use that would not be beholden to the minor amendment provisions of a special exception or conditional use approval for the principal use.*

Residential Care Facility (Over 16 Persons) – Section 3.3.2.E.

Residential Care over 16 Persons requires conditional use approval in all residential zones. Some of the provisions associated with approving this use include:

- The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents.
- A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.
- Where residential dwelling units are provided: the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and the minimum green area is 50%.
- Where facility size is based on the number of beds, not dwelling units, the minimum lot area is 2 acres or based on a square footage per bed (whichever is greater), depending on the zone:
- Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.

Charitable, Philanthropic Institution – Section 3.4.2.

A Charitable, Philanthropic Institution requires conditional use approval in the RE-2, RE-2C, RE-1, R-200, R-90, R-60; however, this use may also be allowed as a limited use in an existing detached house in the R-90 and R-60 zones under certain standards that include:

- The use must be primarily for the provision of support and hospitality services for persons who are present as a result of treatment or care being provided to a member of their household by a federal treatment facility or a Hospital.
- Services may be provided daily, during any hours, to persons who are not permanent residents of the premises but are present as a result of treatment or care being provided to a member of their household by a federal treatment facility or a Hospital.

- The maximum number of guests that may reside on the property at one time is 8, excluding resident staff
- A maximum of 2 resident staff may live on-site.
- One parking space is required for each resident staff member. A minimum of 0.25 parking spaces is required for each guest bed.

Where a Charitable, Philanthropic Institution is allowed as a conditional use, some of the provisions associated with approving this use include:

- Screening under Division 6.5 is required for outdoor recreation facilities.
- Any lighting associated with outdoor recreation facilities must satisfy Section 6.4.4.
- In the RE-2, RE-2C, RE-1, R-200, R-90, and R-60 zones: The site fronts on and has direct access to a road built to primary residential road or higher standards.
 - i. Access to a corner lot may be from an abutting primary street, constructed to primary residential standards, if the Hearing Examiner finds this access to be appropriate and not detrimental to existing residential uses on that primary residential street.
 - ii. The minimum side setback is twice that required for a detached house.
 - iii. The minimum lot width at the front lot line is twice that required for a detached house.
 - iv. The maximum FAR is 0.25.
- In the R-90 and R-60 zones, the minimum green area is 50% and the maximum building height is 35 feet.
- In the R-200 zone, the minimum green area is 60% and the maximum building height is 50 feet.
- In the RE-2, RE-2C, and RE-1 zones, the minimum green area is 70%.

Day Care Center (Over 30 Persons) – Section 3.4.4.F.

A Day Care Center for over 30 Persons requires approval of a conditional use in all Residential Zones and cannot be located in a townhouse or duplex building type. Some of the standards associated with a Day Care Center (Over 30 Persons) include:

- All required parking must be behind the front building line; however, required parking may be located between the structure and the street where the Hearing Examiner finds that such parking is safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties.
- An adequate area for the discharge and pick up of children is provided.
- The Hearing Examiner may limit the number of children outside at any one time.
- In the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones, the Day Care Center (Over 30 Persons) must be located on a site containing a minimum of 500 square feet of land area per person. The Hearing Examiner may reduce the area requirement where it finds that:
 - (a) the facility will predominately serve persons of an age range that requires limited outdoor activity space;
 - (b) the additional density will not adversely affect adjacent properties; and
 - (c) additional traffic generated by the additional density will not adversely affect the surrounding streets.

Educational Institution (Private) – Section 3.4.5.

A Private Educational Institution requires approval of a conditional use in all Residential Zones. Some of the standards associated with a Private Educational Institution include:

- The use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element that is incompatible with the environment and character of the surrounding neighborhood.
- The use will be in a building compatible with the residential character of the surrounding neighborhood, and, if the Educational Institution (Private) is located on a lot of 2 acres or less, in either an undeveloped area or an area substantially developed with detached houses, the exterior architecture of the building must be similar to a detached house design, and at least comparable to any existing homes in the immediate neighborhood.
- The Educational Institution (Private) will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.
- The number of pupils per acre allowed to occupy the premises at any one time must be specified by the Hearing Examiner considering the following factors: traffic patterns; adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter vehicle queues on adjacent streets; and adequacy of student and visitor parking.
- If an Educational Institution (Private) operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses; (ii) art education programs; (iii) artistic performances; (iv) indoor and outdoor recreation programs; or (v) summer day camps, the Hearing Examiner must find, in addition to the other required findings for the grant of a conditional use, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Hearing Examiner must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Hearing Examiner.

Religious Assembly – Section 3.4.10.

Religious Assembly is a permitted use in all Residential Zones.

Conclusion

In general, staff does not object to allowing a clinic in an accessory capacity to a large residential care facility; charitable, philanthropic institution; a large day care center; a private educational institution; or a place of religious assembly. Staff is unclear, however, on how allowing 4 or more practitioners as accessory to a principal use governed by special exception or conditional use provisions would impact the conditions of approval including, in some cases, traffic and parking concerns. Staff believes that the legislation should clarify that the accessory use must also adhere to the Minor Amendment provisions of a conditional use or special exception, as applicable, in order to *ensure that the accessory use does not*

change the nature, character, or intensity of the conditional use or special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use or special exception.

Staff further questions whether allowing 4 or more practitioners should be considered “accessory” to the principal use, even if the floor area for the use is limited to 5% or less of the gross floor area of the principal use where the number of practitioners is greater than four. In the case of a clinic proposed as accessory to *a conditional use or special exception*, the minor amendment process could address any potential for substantial adverse effects on surrounding properties. However, where a clinic would be accessory to a *permitted* principal use it would be more difficult to objectively determine if the clinic is an accessory use. One suggestion would be to limit the number of medical practitioners allowed as an accessory use to a *permitted* or *limited* principal use (no conditional use or special exception approval) to a number less than four and to limit the floor area for all clinics as an accessory use to 5% or less of the floor area of the principle use.

Attachments

1. ZTA No. 19-02 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 19-02
Concerning: Clinics - Limited Use
Draft No. & Date: 1-12/19/2018
Introduced: January 15, 2019
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Council President Navarro
Co-sponsor: Councilmember Rice

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow medical and dental clinics as a limited use in Residential Zones
- establish standards for medical and dental clinics as a limited use in Residential zones, and
- generally amend the provisions concerning medical and dental clinics

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

Division 3.1. "Use Table"
Section 3.1.6. "Use Table"
Division 3.5. "Commercial Uses"
Section 3.5.7. "Medical and Dental"

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:

1 **Sec. 1. DIVISION 59-3.1 is amended as follows:**

2 **Division 3.1. Use Table**

3 * * *

4 **Section 3.1.6. Use Table**

5 The following Use Table identifies uses allowed in each zone. Uses may be
6 modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential			Residential													* * *
						Residential Detached								Residential Townhouse			Residential Multi-Unit		
						RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10	
* * *																			* * *
MEDICAL AND DENTAL	3.5.7																		
Clinic (Up to 4 Medical Practitioners)	3.5.7.A					<u>L</u>	<u>L</u>	<u>L</u>	C	C	C		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	* * *
Clinic (More than 4 Medical Practitioners)	3.5.7.B					<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	* * *
Medical, Dental Laboratory	3.5.7.C																		* * *
* * *																			* * *

7 **Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

8 * * *

9 **Sec. 2. DIVISION 59-3.5 is amended as follows:**

10 **Division 3.5. Commercial Uses**

11 * * *

12 **Section 3.5.7. Medical and Dental**

13 **A. Clinic (Up to 4 Medical Practitioners)**

14 **1. Defined**

15 Clinic (Up to 4 Medical Practitioners) means a building occupied by up to 4
16 medical practitioners and related services to provide healthcare on an
17 outpatient basis.

18 **2. Use Standards**

19 a. Where a Clinic (Up to 4 Medical Practitioners) is allowed as a
20 limited use, it must be an accessory use to one of the following
21 principal uses:

- 22 i. Residential Care Facility (Over 16 Persons);
- 23 ii. Charitable, Philanthropic Institution;
- 24 iii. Day Care Center (Over 30 Persons);
- 25 iv. Educational Institution (Private); or
- 26 v. Religious Assembly.

27 b. Where a Clinic (Up to 4 Medical Practitioners) is allowed as a
28 conditional use, it may be permitted by the Hearing Examiner
29 under Section 7.3.1, Conditional Use, and the following
30 standards:

- 31 [a]i. The minimum lot width at the front lot line is 100 feet.
- 32 [b]ii. The minimum setback from a lot that is vacant or
33 residentially improved is 40 feet. The minimum setback
34 from all other abutting lots is 20 feet.
- 35 [c]iii. The site must front on and have direct access to a
36 business district street or higher classification; however,
37 access to a corner lot may be from an abutting street built
38 to primary residential standards, if the Hearing Examiner
39 finds the access to be appropriate and not detrimental to
40 existing residential uses on the primary residential street.

41 [d]iv. Office space suitable for the practice of the profession
42 must be unavailable in either the nearest
43 Commercial/Residential or Employment zone or the
44 nearest medical clinic office building constructed.

45 [e]v. A maximum of 4 additional medical practitioners may be
46 present at any one time, and only if the presence of the
47 additional practitioners will not generate additional
48 patient-related traffic. The additional practitioners are
49 only allowed to assist a practitioner in a specific surgical
50 or diagnostic procedure or perform administrative work
51 related to the treatment of patients on-site the same day.
52 A written record must be kept for inspection by County
53 enforcement staff identifying the physicians on-site and
54 their schedules of seeing patients and performing
55 administrative work.

56 **B. Clinic (More than 4 Medical Practitioners)**

57 **1. Defined**

58 Clinic (More than 4 Medical Practitioners) means a building occupied
59 by more than 4 medical practitioners and related services to provide
60 healthcare on an outpatient basis. Clinic (More than 4 Medical
61 Practitioners) does not include emergency medical care accessory to a
62 Hospital.

63 **2. Use Standards**

64 a. Where a Clinic (More than 4 Medical Practitioners) is allowed
65 as a limited use, [and] the following conditions must be
66 satisfied:

67 i. If the use is located in a CRN zone and the subject lot
68 abuts or confronts a property zoned Agricultural, Rural
69 Residential, or Residential Detached that is vacant or
70 improved with an agricultural or residential use, site plan
71 approval is required under Section 7.3.4.

72 ii. If the use is not located in the CRN zone, it must occupy
73 5 percent or less of the floor area of the principal use and
74 must be an accessory use to one of the following
75 principal uses:

- 76 (a) Residential Care Facility (Over 16 Persons);
- 77 (b) Charitable, Philanthropic Institution;
- 78 (c) Day Care Center (Over 30 Persons);
- 79 (d) Educational Institution (Private); or
- 80 (e) Religious Assembly.

81 b. Where a Clinic (More than 4 Medical Practitioners) is allowed
82 as a conditional use, it may be permitted by the Hearing
83 Examiner under Section 7.3.1, Conditional Use.

84 * * *

85 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
86 date of Council adoption.

87
88 This is a correct copy of Council action.

89
90 _____
91 Megan Davey Limarzi, Esq.
92 Clerk of the Council