



**Proposed Zoning Text Amendment (ZTA) Residential Care Facility: Continuing Care Retirement Community**

---

GR

Gregory Russ, Planner Coordinator, CP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174

JS

Jason Sartori, Chief, CP&P, [jason.sartori@montgomeryplanning.org](mailto:jason.sartori@montgomeryplanning.org), 301-495-2172

**Completed: 10/22/20**

---

**Description**

The proposed Zoning Text Amendment (ZTA) would amend the Zoning Ordinance (Chapter 59) to define the term Continuing Care Retirement Community.

**Summary**

**Staff recommends approval to transmit the proposed Zoning Text Amendment to the County Council for introduction. The proposed ZTA will clarify the possibility that a senior living project with stand-alone units located in buildings separate from the associated services could be considered for approval pursuant to the Zoning Ordinance’s Conditional Use requirements.**

**Background/Analysis**

Residential Care Facility means a group care or similar arrangement for the care of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living, or for the protection of the individual. Residential Care Facility includes a nursing home, an assisted living facility, a continuing care retirement community, a hospice, and a group home. It should be noted that a Continuing Care Retirement Community requires conditional use approval by the County Hearing Examiner’s Office through the public hearing process.

Overall Intent of the Proposed ZTA

The overall intent of the ZTA is to clarify that “stand-alone” units<sup>1</sup> are permitted as part of a senior living project that includes independent living and assisted living care. This allows for the development of senior housing that responds to seniors’ desire for more diverse housing options. Such communities still must include an assisted living component (typically in a multi-family building type) and allows a variety of independent living styled building types. The physical separation of the stand-alone

---

<sup>1</sup> While “stand-alone” units may be a detached house, duplex or townhomes, the commonality is that the service component of the independent living use might not be located within the independent living residential building structure(s).

independent dwelling units affords residents greater independence while at the same time providing the needed support services offered by the senior community.

### Proposed ZTA

Staff believes that stand-alone units located in buildings separate from their associated services are currently permitted (requires conditional use approval) in connection with a continuing care retirement community (“CCRC”) under the Residential Care Facility provision of the Zoning Ordinance.<sup>2</sup> However, the Zoning Ordinance does not define a CCRC. As a result, the Hearing Examiner has had to rely upon the Maryland State Code’s definition of a CCRC that among other things requires that in addition to assisted living and independent living, a CCRC must include skilled nursing.<sup>3</sup> However, the State Code’s regulation of CCRCs does not pertain to land use matters and instead addresses other unrelated issues (e.g. financing issues). As such, for purposes of evaluating Montgomery County land use, the proposed straightforward ZTA adds a definition for a CCRC to the Zoning Ordinance, thus clarifying the current practice by the Planning Department of allowing for more flexibility in senior living unit types while also requiring assisted living services, at a minimum. Below is the proposed language for defining a CCRC:

***Continuing Care Retirement Community: A community providing a continuum of residential occupancy and health care services for seniors. This community must include assisted living and residential independent dwelling units and may also include memory care and/or skilled nursing in one or more buildings of any structure type. The health care and services component of the community may be located in a structure physically separated from the independent dwelling units.***

### Compatibility

---

<sup>2</sup> Where a Residential Care Facility (Over 16 Persons) is allowed as a conditional use, occupancy of any independent dwelling unit in a **continuing care retirement community**, is restricted to persons 62 years of age or older, with the following exceptions:

- (1) the spouse of a resident, regardless of age;
- (2) another relative of a resident, 50 years of age and older;
- (3) the resident widow, widower, or other surviving relative of a resident who dies while residing at the **continuing care retirement community**, is allowed to remain even though the resident widow, widower, or other surviving relative has not reached the age of 62.

<sup>3</sup>Maryland Code Human Services Title Section 10-401 provides: (g) “Continuing care in a retirement community” means providing shelter and providing either medical and nursing or other health related services or making the services readily accessible through the provider or an affiliate of the provider, whether or not the services are specifically offered in the written agreement for shelter: (1) to an individual who is at least 60 years of age and not related by blood or marriage to the provider; (2) for the life of the individual or for a period exceeding 1 year; and (3) under one or more written agreements that require a transfer of assets or an entrance fee notwithstanding periodic charges.

The proposed ZTA will simply allow a senior living project with stand-alone units located in buildings separate from the associated services to be considered for approval pursuant to the Zoning Ordinance's Conditional Use requirements. As such, an applicant desiring to develop a senior living project with these characteristics must still satisfy all of the conditional use requirements, including a demonstration of compatibility with the surrounding area, and obtain approval from the Zoning Hearing Examiner after presentation of the Conditional Use case.

Finally, and as noted above, the ZTA will allow for more context sensitive design that should be encouraged, especially given the emphasis on compatibility in connection with a Conditional Use. Thus, instead of only allowing a multi-family building type, independent living units comprised of much less intensive building types (e.g. single-family, duplexes, townhomes) would be permitted. By definition, these building types are much more compatible with the surrounding lower density residential zones in which many senior living projects are located and should be a permitted senior living product type.

#### Potentially Interested Party Outreach

Prior to staff bringing the ZTA to the Planning Board, we requested that one law firm interested in the introduction and adoption of the potential legislation (Lerch, Early & Brewer, Chtd.) notify potentially interested groups, including several civic associations. On October 6, 2020, email correspondence was sent to the applicable groups. As of the date of staff report publication, email correspondence was received from two organizations expressing support for the potential ZTA to define a CCRC. Attachment 2 provides the email correspondence associated with this process.

#### **Conclusion**

The proposed Zoning Text Amendment ("ZTA") to define Continuing Care Retirement Community will accomplish the following three objectives that appear to have been intended by the current Zoning Ordinance but need to be clarified legislatively:

1. Classify a senior living project containing both independent living and assisted living/memory care as a "Residential Care Facility" pursuant to Zoning Ordinance Section 3.3.2.E.
2. Allow the senior independent living units to be located within any building type, including detached house, duplex, townhouse or apartment building types.
3. Allow the Residential Care Facility use to consist of one or more buildings with the associated services for all of the independent and the assisted living units to be provided in the same building as the assisted living units or within a separate building(s) from the residential component (i.e. the independent and assisted living units).

Note: As a practical matter, locating services separate from the residences is likely only relevant with respect to the independent living units, since the assisted living units would by necessity need to be located in close proximity to the corresponding services.

**Attachments**

1. Proposed ZTA-to define a Continuing Care Retirement Community
2. Email Correspondence-Outreach Efforts

# ATTACHMENT 1

Zoning Text Amendment No.: 20-xx  
Concerning: Residential Care Facility:  
Continuing Care  
Retirement Community  
Draft No. & Date: 1 – 9/21/20  
Introduced:  
Public Hearing:  
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**

---

Lead Sponsors:

---

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- define the term Continuing Care Retirement Community; and
- generally amend the provisions for Residential Care Facilities

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

Division 1.4.           “Defined Terms”  
Section 1.4.2.       “Specific Terms and Phrases Defined”

**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 59-1 is amended as follows:**

2           **Division 1.4. Defined Terms**

3           \*    \*    \*

4           **Section 1.4.2. Specific Terms and Phrases Defined**

5           In this Chapter, terms that are not specifically defined have their ordinary meaning.

6           The following words and phrases have the meanings indicated.

7           \*    \*    \*

8           **Construction Administration or Sales Office:** See Section [3.5.15.A.1](#)

9           **Continuing Care Retirement Community:** A community providing a continuum  
10          of residential occupancy and health care services for seniors. This community must  
11          include assisted living and residential independent dwelling units and may also  
12          include memory care and/or skilled nursing in one or more buildings of any  
13          structure type. The health care and services component of the community may be  
14          located in a structure physically separated from the independent dwelling units.

15          \*    \*    \*

16          **Sec. 2. Effective date.** This ordinance becomes effective 20 days after the  
17          date of Council adoption.

18  
19          This is a correct copy of Council action.

20  
21          \_\_\_\_\_  
22          Selena Mendy Singleton, Esq.  
23          Clerk of the Council

**From:** [Harris, Patricia A.](#)  
**To:** [Russ, Gregory](#)  
**Subject:** FW: Senior Housing Legislation  
**Date:** Tuesday, October 13, 2020 1:34:20 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

[EXTERNAL EMAIL] Exercise caution when opening attachments, clicking links, or responding.

Please see below.

**Patricia A. Harris, Attorney**

Lerch, Early & Brewer, Chtd. rising to every challenge for 70 years  
 7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814  
 T 301-841-3832 | F 301-347-3756 | Main 301-986-1300  
[paharris@lercheearly.com](mailto:paharris@lercheearly.com) | Bio

**Lerch Early COVID-19 Resource Center**

**Attention:** This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.  
[www.lercheearly.com](http://www.lercheearly.com)


**From:** Allison Ciborowski <[aciborowski@LeadingAgeMaryland.org](mailto:aciborowski@LeadingAgeMaryland.org)>  
**Sent:** Tuesday, October 13, 2020 11:15 AM  
**To:** Harris, Patricia A. <[paharris@lercheearly.com](mailto:paharris@lercheearly.com)>  
**Cc:** Aaron Greenfield <[aaron@agreenfieldlaw.com](mailto:aaron@agreenfieldlaw.com)>  
**Subject:** RE: Senior Housing Legislation

Hi Pat,

LeadingAge Maryland supports innovative solutions for linking senior housing with health and supportive services. The proposed zoning text amendment (ZTA) seeks to accomplish that objective by clarifying that senior housing communities with both independent and assisting living services on a single campus can include independent dwelling units. This is a popular option for seniors – they can retire in one community and receive the care they need as they age. Additionally, this ZTA is particularly responsive to the COVID-19 pandemic in that this type of living arrangement offers a variety of “socially-distanced” independent dwelling unit options for seniors.

Thank you!

Allison

**Allison Ciborowski**  
*President and CEO*  
 LeadingAge Maryland  
 6811 Campfield Road  
 Baltimore, Maryland  
 c 410-925-1295  
[aciborowski@leadingagemaryland.org](mailto:aciborowski@leadingagemaryland.org)  


**Coronavirus Updates**

[LeadingAge Maryland resources](#)  
[LeadingAge national resources](#)

**Upcoming Events**

[Marketing Symposium | Oct. 15, 22, 29, & Nov. 5](#)  
[Understanding Aging: Affordable Housing | Nov. 2 & 9](#)  
[Finance & Strategy Symposium | Dec. 10-11](#)

**From:** Harris, Patricia A. <[paharris@lercheearly.com](mailto:paharris@lercheearly.com)>  
**Sent:** Tuesday, October 6, 2020 3:47 PM  
**Subject:** Senior Housing Legislation

As you may be aware, Lerch, Early represents a wide-array of senior living providers. Maryland-National Capital Park and Planning Commission (“M-NCPPC”) has asked that we notify industry groups, senior living advocacy groups and civic associations who may be interested in a Zoning Text Amendment (ZTA) related to senior housing that M-NCPPC is initiating.

In an effort to clarify both the types of senior housing uses permitted and the requisite approval process for a continuing care retirement community (“CCRC”) in the Zoning Ordinance, and with the input and support of senior living and health care industry advocacy groups, M-NCPPC has initiated a ZTA to define a CCRC, a referenced but undefined term in the Zoning Ordinance. This “clean-up” ZTA will clarify that a CCRC includes a senior housing community with both independent and assisting living services on a single campus, a popular option for seniors where residents can retire in one community and receive the care they need as they age. The ZTA is particularly relevant and responsive to the COVID-19 pandemic in that CCRCs offer a variety of “socially-distanced” independent dwelling unit options for seniors.

We hope that you will be supportive of the ZTA. Thank you.

Pat Harris



---

**Patricia A. Harris, Attorney**

Lerch, Early & Brewer, Chtd. rising to every challenge for 70 years

7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814

T [301-841-3832](tel:301-841-3832) | F [301-347-3756](tel:301-347-3756) | Main 301-986-1300

[paharris@lerchearly.com](mailto:paharris@lerchearly.com) | [Bio](#)

**[Lerch Early COVID-19 Resource Center](#)**

**Attention:** This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.

[www.lerchearly.com](http://www.lerchearly.com)

**From:** [Harris, Patricia A.](#)  
**To:** [Russ, Gregory](#)  
**Subject:** FW: ZTA - Senior Housing  
**Date:** Tuesday, October 13, 2020 1:34:33 PM

---

**[EXTERNAL EMAIL]** Exercise caution when opening attachments, clicking links, or responding.

Please see below.

---

**Patricia A. Harris**, Attorney  
Lerch, Early & Brewer, Chtd. rising to every challenge for 70 years  
7600 Wisconsin Ave | Suite 700 | Bethesda, MD 20814  
T 301-841-3832 | F 301-347-3756 | Main 301-986-1300  
[paharris@lerchearly.com](mailto:paharris@lerchearly.com) | [Bio](#)

#### **Lerch Early COVID-19 Resource Center**

**Attention:** This message is sent from a law firm and may contain information that is privileged or confidential. If you received this communication in error, please notify the sender by reply e-mail and delete this message and any attachments. Thank you.  
[www.lerchearly.com](http://www.lerchearly.com)

---

**From:** Griffin Benton <[gbenton@marylandbuilders.org](mailto:gbenton@marylandbuilders.org)>  
**Sent:** Tuesday, October 13, 2020 12:49 PM  
**To:** Harris, Patricia A. <[paharris@lerchearly.com](mailto:paharris@lerchearly.com)>  
**Subject:** ZTA - Senior Housing

Good Afternoon Patricia,

I was reaching out on behalf of MBIA to offer our support of the initiated ZTA to clarify that a CCRC includes a senior housing community with both independent and assisting living services on a single campus, a popular option for seniors where residents can retire in one community and receive the care they need as they age. This is critical, especially in the age of COVID-19 highlighting the importance of larger living spaces –

Montgomery County has always scored particularly high amongst its 55+ residents who say it is a good place to live and raise a family, in fact nearly 90 percent. However, only 45 percent offer that it is a good place to retire. That number will decrease as we have seen the tragic effect COVID has had on senior living communities, and with the need for housing that meets the needs of older adults will grow significantly in Montgomery County in the years to come, this ZTA is crucial to ensuring their continued healthy and safety.

Please let me know how we can be more involved and any comments/questions you have

Griffin Benton

Griffin Benton  
Director of Government Affairs  
[gbenton@marylandbuilders.org](mailto:gbenton@marylandbuilders.org)  
Maryland Building Industry Association  
11825 W. Market Place  
Fulton, MD 20759  
Dir: 301-776-6207  
Ph: 202-815-4239



Check out NAHB's Member Advantage Program at [www.nahb.org/ma](http://www.nahb.org/ma)