



**Zoning Text Amendment (ZTA) No. 21-02, Independent Living Facilities for Seniors or Persons with Disabilities – Residential Zone Standards**

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Benjamin Berbert, Planner Coordinator, CP&P, [Benjamin.berbert@montgomeryplanning.org](mailto:Benjamin.berbert@montgomeryplanning.org), 301-495-4644

JS

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

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**Completed: 7/8/21**

**Description**

ZTA 21-02 would allow for multiple building types to be constructed as part of an Independent Living Facility for Seniors or Persons with Disabilities rather than just the apartment bundling type. It would also amend the green area requirements and provide appropriate development standards for buildings other than apartments.

**Summary**

Staff recommends the Board transmit comments supporting ZTA 21-02 as introduced, with minor modifications. The zoning text amendment (ZTA) is sponsored by Councilmembers Friedson and Katz, and co-sponsored by Council President Hucker. At the introduction on June 15, 2021, Councilmembers Reimer and Navarro also were added as co-sponsors. The Public Hearing date is set for July 20, 2021.

**Background/Analysis**

Independent Living Facilities for Seniors or Persons with Disabilities is a sub-group of residential living, under Section 3.3.2 Group Living. This use is different from Residential Care Facilities, another type of Group Living, because it has less intensive services and residents are not dependent on 24-hour care.

Rationale for ZTA Introduction

The origins of this ZTA start with the recently approved ZTA 20-08, which just recently approved by the County Council in May 2021. That ZTA created a new sub-category within Residential Care Facilities called a Senior Care Facility, and among other things, created a use that allowed for residential care to occur in building types other than apartment building types. This current ZTA 21-02 would now add the opportunity to construct Independent Living Facilities with more than just the apartment building type. Planning Staff have met with multiple perspective applicants who have expressed interest in being able to develop communities of Independent Living for Seniors if the building type were allowed to vary, including townhouses or duplexes, which suggests there is market interest in this change going through.

ZTA 21-02 as introduced

ZTA 21-02 makes changes to multiple sub-sections under Section 3.3.2.C. Independent Living Facility for Seniors of Persons with Disabilities, including to the use definition to clarify the allowed structures, and to the use standards to reduce the green area and establish appropriate development standards for

structures other than apartment buildings. The following will analyze the major areas where changes are proposed, however the full introduced ZTA is provided as Attachment A.

*Definition*

ZTA 21-02 proposes the following changes to the definition of Independent Living for Seniors of Persons with Disabilities:

Independent Living Facility for Seniors or Persons with Disabilities means a building or collection of buildings, of any building type, containing dwelling units ~~[and related services]~~ for senior adults or persons with disabilities. An Independent Living Facility for Seniors or Persons with Disabilities [includes] may include on-site support services such as meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations. Support services may be located either in the same structure as the dwelling units or in a structure physically separated from the independent living dwelling units.

The proposed definition changes add clarity that this use can be in any building type, and also eliminates the implicit requirement that any related community services be contained within the same building(s) as the residents. This provides the opportunity for future developments with this use to have a separate community center that may include support services, with residents living in a wider range of building types including single family detached and attached housing.

*Use Standards*

The introduced ZTA makes modifications to the use standards for Independent Living Facilities for Seniors or Persons with Disabilities under subsection c. for where the use is allowed as a conditional use, which is in most rural residential, residential detached, and residential townhouse zones, from the R zone through to the THD zone. The use is a limited use in the residential multi-unit, commercial/residential and some employment zones. The changes proposed include modifications to the green area requirement, and modifications to the development standards.

*Green Area*

Currently, the green area requirements for this use vary depending on zone as show in Table 1 below:

Table 1 – Green Area Requirements by Zone

<b>Zone</b>	<b>Green Area requirement</b>
RE-2, RE-2C, RE-1	70%
R-200	60%
R-60, R-90, RT	50%

Master plans were able to specify a different requirement in the RE-2, RE-2C, RE-1 zones, and the Hearing Examiner was able to reduce the requirement by 15% if necessary to accommodate lower building heights to increase compatibility. The proposed requirement with this ZTA is a green area of 50% across all zones.

The definition of green area is broad, and includes *outdoor scenic, recreational, or similar amenities, including lawns, decorative plantings, sidewalks and walkways, and active and passive recreational areas that are available for occupants and visitors of the building.* When the only allowed building

type was an apartment, reaching up to 70% green area was not onerous considering outdoor landscaping, stormwater, lawns, forest conservation area, and the necessary setbacks all counted toward the green area. By allowing new building and dwelling types such as one family attached or detached dwellings, the development pattern naturally spreads out, making it more difficult to provide such a high amount of green area. The trade-off for the reduced green area requirements is allowing these new building types that are often shorter, have smaller massing, and may be more compatible with surrounding development than an apartment building may have been. Staff believes this is a reasonable change to the code, and is consistent with other zones that allow duplexes, townhouses and apartments where the open space or green space requirements are less for the duplex and townhouse building type.

#### *Development Standards*

In the current code, the development standards provided for the use set a height limit (60 ft), a front setback (50 ft) and side/rear setbacks (25 ft). By introducing the option for one family detached and attached units, new standards needed to be provided for the individual lots that may be subdivided as part of any new development. The R-30 zone standard method of development standards were selected because it was an existing zone that had standards for all of the possible building types, and that made sense in the context of the use. Staff is generally supportive of this approach to the development standards.

#### Issues

There are two minor issues that Staff has identified with the current phrasing of the introduced ZTA, 1) height limits and 2) front setbacks.

#### *Height Limits*

The current code sets a height limit for the use at 60 feet, and this ZTA as introduced does not propose to change the height limit. This height limit made sense for allowing flexibility in designing an apartment building type that could be found compatible with surrounding development, since it enabled larger side and rear setbacks, or the ability to vary building height across a site. With the introduction of new building types, Staff recommends that different height limits be provided for the townhouse, duplex and detached building types that are more consistent with the height requirements for those structure types in other zones.

One alternative would be to default to the height allowed in the underlying zone. For most residential zones where this use is a conditional use, the only allowed standard method structure is captured in the data tables as *Detached House or a building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the Zone*. In a few zones including the RNC, and the Townhouse zones, building heights are established for additional building types. To implement this, Section 3.3.2.C.2.iv could be modified in the following way:

- iv. The maximum building height of an Independent Living Facility for Seniors or Persons with Disabilities is set as the height allowed for each building type in the underlying zone under standard method, except for the apartment building type which may be up to 60 feet. If a particular building type is not allowed under standard method, the height limit is that allowed for a Conditional Use allowed in the zone. [[and the]] The maximum density is determined by the Hearing Examiner under the development standards of Section [3.3.2.C.2.b.vi]

3.3.2.C.2.c.vi through Section [3.3.2.C.2.b.ix] 3.3.2.C.2.c.ix, without regard to any other limitation in this Chapter.

Another alternative would be to include height along with setbacks from the R-30 under the introduced ZTA in section 3.3.2.C.2.ix (lines 82 – 86) as shown below.

- ix. [The Hearing Examiner may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.] Principal building height and setbacks for all building types must meet the maximum height and minimum setbacks required under the standard method of development for the subject building type in the R-30 zone (see Section 4.4.14.B.3, Placement) except for the apartment building type, which may have a height of up to 60 feet.

Under this second option, subsection iv would also strike any reference to building height and would instead just discuss density. The heights that would be allowed under the two alternatives are shown in table 2 below. With either option, the code could continue to allow the apartment building type to retain a height of 60 feet as the intent of this ZTA was not to take away existing provisions but rather add to them. While Staff supports either option as an alternative to the ZTA as introduced, Staff recommends the first approach utilizing the standards for the underlying zone, as it provides some additional flexibility over the R-30 zone while still setting reasonable height standards.

Table 2 – Proposed and Current Height Limits by Zone

Zone	ZTA as Introduced All building types	Underlying Zone		R-30 Standard All building types
		SFD, DUP, CU	TH	
R, RC, RE-2, RE-2C, RE-1	60'	50'		35'
RNC		35'	40'	
R-200		35-50' <sup>1</sup>		
R-90, R-40		35'		
R-60		30' <sup>2</sup>		
Townhouse Zones		35'	40'	

*Front Setbacks*

The front setback is the other provision Staff has concerns about as the ZTA is currently drafted. The current code specifies a minimum front setback of 50 feet. The introduced ZTA under Section 3.3.2.C.2.vi (lines 63-68) strikes this provision and instead just specifies that the front setback area must be maintained as green area. A 50-foot front setback made sense as it applied to an apartment building being set back from the existing road frontage which is the current situation. However, with the potential inclusion of new detached and attached dwelling types, a 50-foot front setback is not appropriate or practical everywhere but may still be practical when establishing setbacks around the entire edge of a development project. As the introduced ZTA is written, the new provision under

<sup>1</sup> Building height in the R-200 zone is based on lot size. Lots under 15k SF are capped at 35', 15k-25k SF at 40', 25k-40k SF at 45' and lots over 40k SF at 50'.

<sup>2</sup> Building height in the R-60 zone is measured as 30 feet when using the definition used in most zones as the *mean height between the eaves and ridge of a gable, hip, mansard, or gambrel roof*, but also requires the highest point of a roof regardless of style to remain below 35'.

Section 3.3.2.C.2.ix states *Principal building setbacks for all building types must meet the minimum setbacks required under the standard method of development for the subject building type in the R-30 Zone.* Staff has already established these standards are appropriate when considering a new community that may include single family detached or attached dwellings around new streets or open spaces, but without additional language the 20 foot front setbacks would also apply to the setback from any existing streets that are on the perimeter of the site, which currently require the 50 foot setbacks. In most of the residential zones, the minimum setbacks now for any use allowed is greater than 20 feet and in some zones is up to 50 feet, as shown in Table 3 below.

Table 3 – Existing Front Setback Standards by Zone

Zone	Existing front setbacks
R, RC, RE-2, RE-2C, RE-1	50'
RNC, R-200	40'
R-90	30'
R-60, R-40	25'
Townhouse Zones	20'

Additionally, Section 3.3.2.C.2.vi references *'the front setback area' must be maintained as green area*, which without further context implies any and all front setbacks must be maintained as green area. Staff believes the intent is to maintain the front setback from the existing street(s) that are on the site perimeter as green area, but not to regulate the use of individual lots front yards in such a manner and believes this should be clarified as well.

For purposes of clarity, continuing existing development patterns to the extent practical and helping with the compatibility findings associated with Conditional Uses, Staff proposes the following changes to 3.3.2.C.2.vi as follows:

vi. [The minimum front setback is 50 feet.] The minimum front setback to a street that is along the perimeter of an application is equal to the front setback for a detached house in the underlying zone under the standard method development. Except for an access driveway, [this] the front setback area established above must be maintained as green area[; however, if development does not exceed the height limit of the applicable Residential zone, the minimum setback specified by the zone applies].

## Conclusion

Staff is generally supportive of the changes in ZTA 21-02 allowing additional building types to be constructed for Independent Living for Seniors or Persons with Disabilities, and for modifying the green area requirements. Staff does recommend the changes described above to the building heights and the frontage street setbacks to ensure new applications remain consistent with existing development standards of adjacent communities within the residential zones.

## Attachments

- A. ZTA No. 21-02 – introduction packet and ZTA as introduced.



**Committee:** PHED  
**Committee Review:** At a future date  
**Staff:** Livhu Ndou, Legislative Attorney  
Pamela Dunn, Senior Legislative Analyst  
**Purpose:** To introduce agenda item – no vote expected  
**Keywords:** #IndependentLivingFacilities

AGENDA ITEM #16A  
June 15, 2021  
**Introduction**

## **SUBJECT**

Zoning Text Amendment (ZTA) 21-02, Independent Living Facility for Seniors or Persons with Disabilities – Residential Zone Standards

Lead Sponsors: Councilmembers Friedson and Katz  
Co-Sponsor: Council President Hucker

## **EXPECTED ATTENDEES**

None

## **COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION**

N/A

## **DESCRIPTION/ISSUE**

ZTA 21-02 will allow multiple building types for Independent Living Facilities for Seniors or Persons with Disabilities; and amend the green area and setback requirements for Independent Living Facilities for Seniors or Persons with Disabilities.

## **SUMMARY OF KEY DISCUSSION POINTS**

- Currently, Independent Living Facilities for Seniors or Persons with Disabilities are restricted to multi-unit building types.
- ZTA 21-02 will allow multiple building types for Independent Living Facilities for Seniors or Persons with Disabilities.
- ZTA 21-02 will reduce the green area requirement and amend other setback requirements to accommodate the construction of campus-like communities

### **This report contains:**

Staff Report  
ZTA 21-02

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**MEMORANDUM**

June 10, 2021

TO: County Council

FROM: Livhu Ndou, Legislative Attorney  
Pamela Dunn, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment (ZTA) 21-02, Independent Living Facility for Seniors or Persons with Disabilities – Residential Zone Standards

PURPOSE: Introduction

Zoning Text Amendment (ZTA) 21-02, Independent Living Facility for Seniors or Persons with Disabilities – Residential Zone Standards, lead sponsors Councilmembers Friedson and Katz, co-sponsor Council President Hucker, is scheduled to be introduced on June 15, 2021.

The Zoning Ordinance currently limits Independent Living Facilities for Seniors or Persons with Disabilities to multi-unit building types. ZTA 21-02 will allow more diverse housing options and less intensive building types, such as townhomes, duplexes, and detached houses. ZTA 21-02 will also reduce the amount of green space required and amend other setbacks to allow for the construction of these more campus-like communities, while remaining a conditional use.

A public hearing is tentatively scheduled for July 20, 2021 at 1:30 p.m.

This packet contains:  
ZTA 21-02

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Zoning Text Amendment No.: 21-02  
Concerning: Independent Living  
Facility for Seniors or  
Persons with Disabilities  
– Residential Zone  
Standards

Draft No. & Date: 1 – 5/13/2021

Introduced:

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**

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Lead Sponsors: Councilmembers Friedson and Katz  
Co-Sponsor: Council President Hucker

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

- allow multiple building types for Independent Living Facilities for Seniors or Persons with Disabilities; and
- amend the green area and setback requirements for Independent Living Facilities for Seniors or Persons with Disabilities

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

Division 3.3.           “Residential Uses”  
Section 3.3.2.       “Group Living



**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. 2. DIVISION 59-3 is amended as follows:**

**Division 3.3. Residential Uses**

\* \* \*

**Section 3.3.2. Group Living**

\* \* \*

**C. Independent Living Facility for Seniors or Persons with Disabilities**

**1. Defined**

Independent Living Facility for Seniors or Persons with Disabilities means a building or collection of buildings, of any building type, containing dwelling units [and related services] for senior adults or persons with disabilities. An Independent Living Facility for Seniors or Persons with Disabilities [includes] may include on-site support services such as meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations. Support services may be located either in the same structure as the dwelling units or in a structure physically separated from the independent living dwelling units.

**2. Use Standards**

\* \* \*

c. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

- i. The site or the proposed facility has adequate accessibility to or provides on-site public transportation,

28 medical service, shopping areas, recreation and other  
29 community services frequently desired by senior adults  
30 or persons with disabilities. The application must include  
31 a vicinity map showing major thoroughfares, public  
32 transportation routes and stops, and the location of  
33 commercial, medical and public services within a one-  
34 mile radius of the proposed facility.

35 ii. The Hearing Examiner may restrict the availability of  
36 ancillary services to nonresidents and specify the manner  
37 in which this is publicized. Retail facilities may be  
38 included for the exclusive use of the residents of the  
39 building.

40 iii. A minimum of 15% of the dwelling units is permanently  
41 reserved for households of very low income, or 20% for  
42 households of low income, or 30% for households of  
43 MPDU income, and otherwise satisfies Chapter 25A. If  
44 units are reserved for households of more than one of the  
45 specified income levels, the minimum percentage must  
46 be determined by agreement with the Department of  
47 Housing and Community Affairs under Executive  
48 regulations. Income levels are defined in Section 1.4.2,  
49 Defined Terms.

50 iv. The maximum building height of an Independent Living  
51 Facility for Seniors or Persons with Disabilities is 60 feet  
52 and the maximum density is determined by the Hearing  
53 Examiner under the development standards of Section  
54 [3.3.2.C.2.b.vi] 3.3.2.C.2.c.vi through Section

- 55 [3.3.2.C.2.b.ix] 3.3.2.C.2.c.ix, without regard to any other  
56 limitation in this Chapter.
- 57 v. Height, density, coverage, and parking must be  
58 compatible with surrounding uses and the Hearing  
59 Examiner may modify height, density, coverage, and  
60 parking to maximize the compatibility of buildings with  
61 the residential character of the surrounding  
62 neighborhood.
- 63 vi. [The minimum front setback is 50 feet.] Except for an  
64 access driveway, [this] the front setback area must be  
65 maintained as green area]; however, if development does  
66 not exceed the height limit of the applicable Residential  
67 zone, the minimum setback specified by the zone  
68 applies].
- 69 vii. The minimum side and rear setback is 25 feet [or as  
70 specified by the relevant zone, whichever is greater] to  
71 abutting lots not included in the application.
- 72 viii. The minimum green area is[:] 50%.  
73 [(a) 70% in the RE-2, RE-2C, and RE-1 zone, except  
74 where the minimum green area requirement is  
75 established in a master plan;  
76 (b) 60% in the R-200 zone; and  
77 (c) 50% in the R-60, R-90, and Residential  
78 Townhouse zones.]
- 79 ix. [The Hearing Examiner may reduce the green area  
80 requirement by up to 15% if it is necessary to  
81 accommodate a lower building height for compatibility

82 reasons.] Principal building setbacks for all building  
83 types must meet the minimum setbacks required under  
84 the standard method of development for the subject  
85 building type in the R-30 zone (see Section 4.4.14.B.3,  
86 Placement).

87 \* \* \*

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

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91 This is a correct copy of Council action.

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94 Selena Mendy Singleton, Esq.

95 Clerk of the Council

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