

ZTA 24-01

HOUSEHOLD LIVING – CIVIC AND INSTITUTIONAL USES

Description

This ZTA would allow Townhouse Living and Multi-Unit Living in the Residential Detached Zones as a conditional use if it meets certain affordability thresholds and are on a property associated with Religious Assembly or Educational Institution (Private).

ZTA 23-10

Completed: 02-08-2024

MCPB

Item No. 06

02-15-2024

Montgomery County

Planning Board

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ZTA SPONSORS

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Council President Friedson
Council Vice President Stewart

Cosponsors:

Councilmembers Fani-Gonzalez, Glass,
Sayles, Mink, Luedtke, Balcombe, Albornoz,
Katz, and Jawando

INTRODUCTION DATE

January 11, 2024

REVIEW BASIS

Chapter 59



Summary:

- ZTA 24-01 would allow Townhouse Living and Multi-Unit Living in the Residential Detached Zones as a conditional use if it meets certain affordability thresholds and is on a property associated with Religious Assembly or Educational Institution (Private).
- Currently Multi-Unit living is not allowed in any of the Residential Detached Zones, though the Apartment building type and Townhouse Building type are allowed with a conditional use for Independent Living Facility for Seniors or Persons with Disabilities, or with Residential Care Facilities. Townhouse Living is also allowed as a conditional use in some Residential Detached Zones if it meets certain accessibility and location standards.
- Planning Staff recommends the Planning Board support ZTA 24-01 with modifications intended to clarify and strengthen the expansion of affordable housing opportunities throughout the Residential Detached Zones, when associated with certain institutional uses.

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SECTION 1: BACKGROUND

RATIONALE FOR INTRODUCTION

The authority for the Planning Board to review Zoning Text Amendments (ZTA) is granted through Section 59-7.2.4 of Montgomery County's Zoning Code. As set forth in these sections, the Planning Director must publicly publish a report and recommendation a minimum of 7 days before the Planning Board public meeting. The Planning Board must consider the Planning Director's report and recommendation as part of formulating its own recommendation. The Planning Board must submit to the District Council and make publicly available its recommendation on the ZTA before the District Council Public Hearing. While the Zoning Code does not provide guidelines on how Montgomery Planning and the Planning Board should review ZTAs, the department's practice is to conduct a technical review of ZTAs based on consistency with Thrive Montgomery 2050, the county's general plan, other relevant functional plans, master plans, and sector plans, and land use and zoning best practices.

Zoning Text Amendment (ZTA) 23-11, Household Living – Civic and Institutional Uses, was introduced by Council President Friedson, and Council Vice President Stewart on January 16, 2024 (Attachment A). The ZTA was co-sponsored by Councilmembers Fani-Gonzalez, Glass, Sayles, Mink, Luedtke, Balcombe, Albornoz, Katz, and Jawando. The ZTA is scheduled for a District Council Public Hearing on February 27, 2024. The Council released [a Press Release on ZTA 24-01](#) on January 17th, branding the ZTA as Facilitating Affordable Inclusive Transformational Housing (FAITH). The ZTA intends to assist the faith-based community with their social and charitable work in the community by facilitating a new process to increase housing opportunities for all income levels.

The ZTA would allow Multi-Unit Living in the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones (Residential Detached Zones) and Townhouse Living in the RE-2 zone as a conditional use if it met certain affordability thresholds and is located on land associated with a Religious Assembly or Educational Institution (Private) use. Currently, the Multi-Living use is not allowed in the Residential Detached Zones. Townhouse Living is currently allowed as a limited use in the Residential Detached Zones (except for RE-2) as part of optional method development, and as a conditional use providing high accessibility standards in some of the Residential Detached Zones (RE-1, R-200, R-90 and R-60). The building types associated with these uses (Apartment, and Townhouse) are also allowed as part of a conditional use in association with Independent Living Facility for Seniors or Persons with Disabilities, or with Residential Care Facilities. This ZTA would allow affordable housing developments of a similar size and scale as the independent living and residential care uses in the Residential Detached Zones, but only on properties also used for Religious Assembly or Educational Institutions (Private).

SECTION 2: ZTA 23-10 AS INTRODUCED

ZTA NO. 24-011 AS INTRODUCED

ZTA 24-01 is proposing revisions in two sections of the code; the Use Table under Section 59-3.1.6., and Household Living under Section 59-3.3.1.

The updates to the Use Table, shown on page 4 of the ZTA in Attachment A, and in figure 1 below adds Multi-Unit Living as a conditional use to all the Residential Detached Zones. The table is also updated to allow Townhouse Living as a conditional use in the RE-2 zone.

USE OR USE GROUP	Definition s and Standards	Ag	Rural Residential		Residential												
					Residential Detached								Residential Townhouse				
					AR	R	RC	RNC	RE- 2	RE- 2C	RE-1	R- 200	R-90	R-60	R- 40	TLD	TMD
* * *																	
RESIDENTIAL																	
HOUSEHOLD LIVING	3.3.1																
* * *																	
Townhouse Living	3.3.1.D				P	<u>C</u>	L	L/C	L/C	L/C	L/C	L	P	P	P		
Multi-Unit Living	3.3.1.E					<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>	<u>C</u>					

Figure 1 – Use Table

The changes to Household Living in Section 59-3.3.1 are more substantial. The first change, starting on page 5 of the ZTA, is in the Townhouse Living Section 59-3.3.1.D. The ZTA adds a new sub-section that clarifies the existing use standards that allow Townhouse Living as a conditional use are only applicable in the RE-1, R-200, R-90, and R-60 zones. This change nests the conditional use standards one level deeper into the code, and the standards are re-numbered accordingly. Starting at line 47 on page 6 of the ZTA, an entirely new section is added, providing new conditional use standards for allowing Townhouse Living as a conditional use in the RE-2 Zone. These standards span from line 48 – 105 of the ZTA. In summary, these standards set forth:

- That Townhouse Living must be located on a property used for Religious Assembly or Educational Institutions (Private).
- Maximum building heights and internal setbacks follow that of the R-30 zone.
- Minimum setback of 20 feet to land not part of the application.
- A Minimum 35% common open space.
- The site must be served by existing water and sewer.

- The dwelling must meet one of four detailed criteria on the total quantity and affordability levels of the housing units.
- That density is determined by the Hearing Examiner as part of the conditional use process.
- That Height, density, coverage, and parking will be set by the Hearing Examiner to maximize compatibility.

The next modification to the code is for Section 59-3.3.1.E. Multi-Unit Living. A minor update is proposed on lines 112-119 of the ZTA where Multi-Unit Living is allowed as a limited use, to establish these limited use standards as its own code sub-section, requiring the re-numbering of the associated limited use standards that follow. This is in preparation for the new conditional use standards that begin on line 120 of the ZTA and continue to the end of the ZTA. The use standards for Multi-Unit Living as a conditional use are almost identical to the use standards for Townhouse Living as a conditional use in the RE-2 zone except the maximum building height is set at 60 feet.

SECTION 3: ZTA ANALYSIS AND RECOMMENDATIONS

ZTA 24-01 ANALYSIS AND RECOMMENDATIONS

Montgomery Planning Staff recommends the Planning Board support ZTA 24-01 with modifications. Planning Staff are very supportive of creating additional opportunities for providing housing, especially affordable housing. Many religious institutions and private school campuses have land available that could be repurposed into residential uses, often in some of the communities where developable land is the scarcest. The recommendations Planning Staff make are generally minor and are intended for consistency within the code.

Currently, Multi-Unit living is not allowed in any of the Residential Detached Zones as is evidenced by the existing Use Table and use standards. The building type associated with Multi-Unit Living (Apartment Building Type) does occur in the Residential Detached Zones when part of a conditional use for the uses Independent Living for Seniors or Persons with Disabilities, and Residential Care Facility. Townhouse Living is allowed in many of the Residential Detached Zones including as part of cluster or Moderately Priced Dwelling Unit (MPDU) optional method development in the RE-2C, RE-1, R-200, R-90, R-60 and R-40 zones, and in the RE-1, R-200, R-90, and R-60 zones as a conditional use if it meets certain criteria around accessibility among other standards. These uses have been allowed in the Residential Detached zones historically to encourage the creation of these types of income or age restricted housing. While there has been localized concern over specific projects, often pertaining to a project's compatibility with the existing area or the adequacy of public facilities, there has been broad support for the policies behind the projects. The county through policy initiatives and master plan recommendations has long encouraged the creation of more income and age restrictive housing. The independent living and residential care uses have been included in the Residential Detached Zones in part because the public facility impacts are typically less than they would be for general housing. This

ZTA furthers the county's commitment to income restrictive housing in the Residential Detached Zones by establishing a conditional use process to approve affordable housing projects.

There are many elements of Thrive Montgomery 2050 that support this type of creative policy change, including recommendations to:

- Increase the number of income-restricted affordable housing units, especially in higher income areas.
- Develop strategies to build deeply affordable housing.
- Increase regulatory flexibility to incentivize infill development of underutilized properties.
- Facilitate development of housing in every part of the county.

However, there are other policy strategies that emphasize most of the future housing development should be targeted to identified growth areas including recommendations to:

- Increase residential density, especially in Corridor-Focused Growth areas along major growth corridors and in locations where additional housing can assist in the development of Complete Communities.
- Increasing income-restricted affordable housing in areas ensuring that these residents have an option to not commute long distances.
- Provide incentives to boost housing production, especially near transit and in Complete Communities.
- Facilitate the development of housing in every part of the county but especially in areas near transit, employment, and educational opportunities.

Planning Staff in its analysis must reconcile the housing policy benefits of being more permissive in where affordable housing can be constructed, with the potential negative planning policy impacts these developments may cause. This is true in any area that is not an existing or planned growth area, but particularly the RE-2, RE-2C, and RE-1 zones. These estate zones are generally not within the Thrive identified Corridor-Focused Growth Areas, Centers of Activity, employment areas, or along public transportation routes. Housing in these areas would likely be car dependent, and farther away from jobs and amenities.

Ultimately, the number of expected projects to be constructed as a result of this ZTA is low, and will likely be distributed on sites across the county. The affordability thresholds required in the conditional use standards are restrictive and applicants often rely on competitive grants or tax funding mechanisms to construct them. This will reduce the scale of any negative planning impacts the ZTA could have on the RE-2, RE-2C and RE-1 zones. Ultimately, Planning Staff find the housing policy benefits of the ZTA (with minor modifications) outweigh the potential negative impacts of developing housing outside of Corridor-Focused Growth areas, but believe the county should remain diligent to address identified needs that arise from specific projects and be aware of the concerns should the scope be recommended for expansion in the future.

Recommendation – Support the proposed scope of this ZTA including all of the Residential Detached Zones.

CONDITIONAL USE STANDARDS - TOWNHOUSE LIVING AND MULTI-UNIT LIVING

The majority of ZTA 24-01 is the establishment of new conditional use standards for Townhouse Living and Multi-Unit Living in the Residential Detached zones. The proposed use standards are nearly identical between the Townhouse Living and the Multi-Unit Living, so Planning Staff analyzes these standards as one list and walks through each use standard and staff recommendation below. Planning Staff note the basis of the list of conditional use standards comes from the conditional use standards for Independent Living for Seniors and Persons with Disabilities, but have been modified slightly in some instances.

1. *Must be located on a property used for Section 3.4.10. Religious Assembly or Section 3.4.5. Educational Institution (Private). This may include contiguous properties that are separated only by a public right-of-way.*

Staff supports allowing for affordable housing on these institutional properties. Religious Assembly and Educational Institutions (Private) are numerous and distributed throughout the county. These sites often have ‘excess’ land that could accommodate some level of additional development and providing for additional locations to provide affordable housing satisfies many policy goals of the county and the Planning Department.

Recommendation – support the co-locational criteria for properties either used as Religious Assembly or Educational Institutions (Private).

2. *Maximum building height for Townhouse Living is that for standard method development in the R-30 Zone (35 feet), and is 60 feet for Multi-Unit Living.*

Staff supports the height limitations proposed by the ZTA for Townhouse Living, which references the R-30 zone, and sets a height of 60 feet for Multi-Unit living. This standard is identical to the standards used today for independent living facilities.

Recommendation – support the height for Townhouse Living based on the R-30 Zone (35 feet) and the height for Multi-Unit Living at 60 feet.

3. *The principal building setbacks must meet the standard method of development for the associated building type in the R-30 zone.*

Like with building height, the standard of referring to the R-30 zone for principal building setbacks is the same as is done for independent living facilities, which Planning Staff supports.

These setbacks only apply for internal lot setbacks within the application area, not the setbacks from property not part of the application area which is discussed in a separate standard.

Recommendation – support the principal building setback standards based on the associated building type in the R-30 zone.

4. *The minimum side setback is 20 feet to abutting lots and parcels not included in this application.*

The standard to set side setbacks from abutting lots and parcels not included in the application at 20 feet is the first standard that is modified from the standards used for independent living facilities. The conditional use setbacks for independent living facilities are 25 feet, while the setbacks for Residential Care Facility are 20. Planning Staff have some concerns with using the smaller setback based on consistency and impacts on height compatibility.

Planning Staff support increasing the setback from any adjacent land not part of the application from 20 feet to 25 feet, consistent with the independent living facilities. Planning Staff see more similarities with the scale and operations of the proposed affordable housing development and independent living facilities. Both uses house more active people that are likely to generate more person trips associated with errands, work, and school, more intensely utilize outdoor facilities, and otherwise be a more intense and impactful use on the community. The extra five feet of setback provides additional area for screening and for ensuring adequate light and air. Adding the additional five feet would also be more consistent with independent living facilities since there are similarities in the uses and the zones they would be allowed in.

Recommendation – support increasing setbacks from land not included in the application to 25 feet, consistent with setbacks for Independent Living facilities.

5. *A minimum of 35% common open space is required.*

While the standard of 35% common open space differs from the 50% green area requirement of independent living facilities, Planning Staff agree with this recommendation. The definition of green area is vague, and there are no set standards of design for its use. Green area is defined in the code as *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.* Common open space has a similar vague definition as green area, but has specific design requirements including locating it in a centralized location or in a location adjacent to natural features, has a minimum usable width

of 50 feet except for when along on-site pedestrian facilities, and that a minimum 50% of the space be contiguous. These design and placement requirements ensure that the space is useful, therefore less total space is usually needed to provide the necessary recreational areas.

Recommendation – support the requirement for 35% common open space.

6. *In the RE-2, RE-2C, and RE-1 Zones, the site must be served by existing water and sewer infrastructure that will not require an upgrade to the service line or installation of a pump station due to the proposed development.*

This use standard is an attempt to ensure that new housing possible with this ZTA is not being constructed in areas not planned for water and sewer service. There are institutional uses which are generally outside of the planned service areas but have received special Council permission through the Private Institutional Facility (PIF) policy to access public water and sewer. These PIF properties are located outside of the planned water and sewer service area but were close enough that permission was granted to extend the public service for the specific institutional user. The ZTA intends to prohibit these properties from upgrading their existing water and sewer service to serve additional uses including housing. While the extension permission generally comes with restrictions on what may and may not use the extension, it's important to provide clear intent to future applicants and the general public. Planning Staff notes two concerns with the standard as currently worded.

First, as written, this would prohibit the intended addition of affordable housing on any property because an upgrade would always be required to serve the new development. The intent is to limit properties that received public water and sewer through the PIF policy from upgrading water and sewer infrastructure. Planning Staff recommend rewording the text to say:

“...will not require an upgrade to the service line or installation of a pump station due to the proposed development, if the property received water and sewer access subject to a Private Institutional Facilities determination.”

The second recommendation is to expand the scope of the standard to also require R-200, R-90, R-60 and R-40 to be served by existing water and sewer infrastructure, not just the RE-2, RE-2C, and RE-1 zones. While the RE-2, RE-2C, and RE-1 zones are the most likely to not have existing or planned water and sewer service, there are pockets of other Residential Detached Zones located in areas not served by water and sewer service. The standard should be based generally on the access of water and sewer service and not solely on the underlying zone.

Recommendation – support prohibiting development on sites not planned for water and sewer by amending the standard to clearly prohibit sites that received service through a PIF determination, and expand the applicable zones to include all Residential Detached Zones.

7. *The dwelling units must meet one of the following affordability thresholds:*
 - a. *At least 50% of the units are under a government regulation or binding agreement that limits the price charged for at least 30 years and affordable to households earning 60 percent or less of Area Median Income (AMI)*
 - b. *At least 30% of the units built under a government regulation or binding agreement that limits the price charged for at least 30 years with at least 10% of the total units affordable to households earning 30% of AMI or below and at least 20% of the total units affordable to households earning incomes eligible for the MPDU program (##-##% AMI)*
 - c. *At least 30% of the units built under a government regulation or binding agreement that limits the price charged for at least 30 years with at least 20% of the total units affordable to households earning 50% of the AMI and at least 10% of the total units affordable to households earning incomes eligible for the MPDU program*
 - d. *Projects that receive an award of 9% Low-Income Housing Tax Credits from the Maryland Department of Housing and Community Development.*

These four affordability thresholds are the same four thresholds that were adopted in July 2023 by Ordinance 20-03, for ZTA 23-05 Mixed Income Housing Community. The first threshold aligns with the requirements in the by-right Payment In Lieu of Taxes (PILOT) abatement adopted by the county with Bill 23-21. The second threshold focuses on providing deeply affordable units. Threshold option three aligns with the targets of the Housing Opportunity Commission’s housing production fund. The fourth option otherwise would allow any developer receiving the highly competitive 9% Low-Income Housing Tax Credit (LIHTC) the opportunity to qualify.

Recommendation – support the four qualifying affordability thresholds as introduced.

8. *The maximum residential density is determined by the Hearing Examiner under the development standards of this section without regard to any other limitations in this Chapter.*

This density standard is not part of the standards found for independent living facilities, as it specifically states the Hearing Examiner determines maximum density. In the independent living facilities, this is less directly implied by standard number 9 below in this Staff Report. The effect is the same, and permits an applicant requesting as much development as seen fit, if it can meet all of the standards, findings, and compatibility requirements that are performed during a conditional use review.

Recommendation – support the standard that the Hearing Examiner determines final density.

9. *Height, density, coverage, and parking standards must be compatible with surrounding uses. The Hearing Examiner may modify any development standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.*

This standard generally provides the Hearing Examiner flexibility when implementing other sections of the code to the extent necessary to ensure compatibility with existing uses. This standard is the same for independent living facilities as a conditional use. The development standards section of the code is specific to Article 59-6, which includes Queuing, Loading, Parking, Landscaping, Lighting, Screening, Signs, Open Space, and Recreation.

Planning Staff did question whether more attention should be provided to compatibility within the provided conditional use standards, particularly around building height. When apartment buildings are built in Commercial/Residential or Employment Zones that abut Single Family Detached zoning, the code requires following Height Compatibility standards under Section 59-4.1.8.B. Buildings are prohibited from extending beyond an angular plane, forcing buildings to step back with height. This angular plane starts set back 1.5 times the setback for a detached house in the abutting property¹, at a height equal to the maximum height for a detached house in the abutting property. The table below demonstrates what those heights and setbacks are for the Residential Detached Zones. Following the table, figure 2 is an image taken from the Zoning Code and demonstrates this angular plane in graphic form.

Table of Height Compatibility Setbacks

Zone	Height of Detached House	1.5x Side Setback of Detached House	1.5x Rear Setback of Detached House	Side Setback before full building height	Rear Setback before full building height
R-40	35 feet	12 feet	30 feet	38 feet	55 feet
R-60	35 feet	12 feet	30 feet	38 feet	55 feet
R-90	35 feet	12 feet	37.5 feet	38 feet	62.5 feet
R-200	50 feet ²	18 feet	45 feet	28 feet	55 feet
RE-1	50 feet	25.5 feet	52.5 feet	35.5 feet	62.5 feet
RE-2C	50 feet	25.5 feet	52.5 feet	35.5 feet	62.5 feet
RE-2	50 feet	25.5 feet	52.5 feet	35.5 feet	62.5 feet

¹ The Zoning Code requires the setback required by the setback compatibility provisions under Section 4.1.8.A., which is generally set at 1.5 times the setback of a detached house in the abutting property.

² Height in the R-200 zone is based on lot size, with 50 feet allowed for lots over 40,000 square feet. Height is 40 feet for lots at 20,000 square feet.

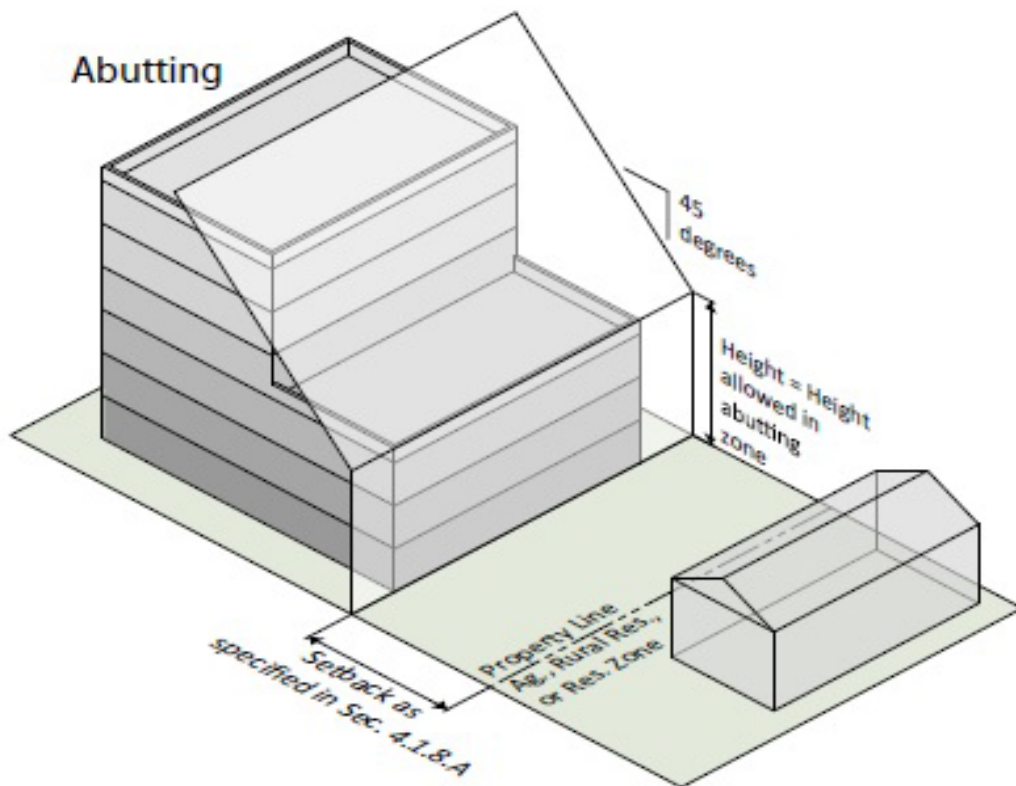


Figure 2 – Height Compatibility

Upon looking at these data in the previous table, the setback and height requirements imposed by Height Compatibility are not unreasonable in the larger lot zones such as the R-200, RE-1 or RE-2 zones, where allowed building heights are already 50 feet, and lot sizes are generally larger. The Height Compatibility however becomes very onerous for the smaller lot zones such as R-90, R-60 and R-40 where building height are only 35 feet to start, and available space is likely limited. The uses under Independent Living are not required to meet Height Compatibility, however as noted previously in this Staff Report, the setbacks from adjacent properties not part of the application is slightly larger than that proposed by this ZTA. Ultimately Planning Staff is not recommending additional Height Compatibility requirements but continues to recommend increasing setbacks to land not part of the application to 25 feet.

Recommendation – support the standard providing the Hearing Examiner the necessary flexibility to find uses compatible and increasing the setbacks from 20 feet to 25 feet for lang not included in the application.

10. Other Standards

There are additional standards Planning Staff recommend the Board and Council consider as part of allowing Multi-Unit Living and Townhouse Living as conditional uses in the Residential Detached Zones. As Planning Staff noted earlier, there are general concerns about allowing the development of Multi-Unit living in the larger estate lot zones because of their distance from transit, amenities, and

employment centers. A solution to this would be to take queues from the conditional use standards already in place for Townhouse Living. Because the Townhouse Living conditional use was to implement the Design For Life accessibility standards, there are location criteria that have to be met which include public bus service adjacent to the site, Metrorail station within 2 miles, and a public recreation center or park within 1,000 feet of the site. Not all of these may be relevant, but Planning Staff do recommend requiring, at a minimum, proximity to public bus service as an alternative to car-only living. Planning Staff recommends the same standard used from Townhouse Living, but suggests adding “or within 500 feet of a public bus stop” could be added if having the route adjacent to the property is deemed too limiting. The density of public bus routes does decrease as you move away from activity centers, especially in the RE-1 and RE-2 zones, but the standard would mitigate some of the reservations Planning Staff have about providing affordable housing developments in these less central areas.

Recommendation – add a standard requiring public bus service to be available on a road abutting the site.

TOWNHOUSE LIVING SECTION 59-3.3.1.D.

ZTA 24-01 as introduced adds Townhouse Living as a conditional use to the RE-2 zone, with the conditional use standards discussed above. The ZTA does not apply the new conditional use standards to allow for affordable housing under any of the remaining Residential Detached Zones. Planning Staff is unsure why this ZTA did not include the remaining Residential Detached Zones and recommends this ZTA's Townhouse Living conditional use standards apply to all Residential Detached Zones. This would allow affordable housing to be developed as Multi-Unit Living or Townhouse Living in all the Residential Detached Zones, maximizing applicant flexibility and providing more options for making compatibility findings.

Currently Townhouse Living is already allowed as a conditional use in the RE-1, R-200, R-90 and R-60 zones under alternate existing standards that were implemented by Ordinance 18-02, ZTA 15-02, known as “Design for Life”. The standards include meeting a certain level of interior design accessibility, locational standards, and generally following the development standards of the TMD zone.

Recommendation

Add the option to develop Townhouse Living as a conditional use under this ZTA's affordability housing standards, by modifying Section 59-3.3.1.D. to allow for the Design for Life standards in the RE-1, R-200, R-90, and R-60 zones, or allow for the affordable housing standards in the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones.

USE TABLE SECTION 59-3.1.6.

The Use Table, Section 59-3.1.6. is modified by the ZTA to add Multi-Unit Living as a conditional use in all of the Residential Detached Zones, and adding Townhouse Living as a conditional use in the RE-2 zone only.

Staff is supportive of adding the Multi-Unit Living to all the Residential Detached zones. Staff however is recommending changes to Townhouse Living, recommending the code also add a conditional use option to the RE-2C, and R-40 zones. While Planning Staff did recommend the affordable housing standards for Townhouse Living apply to all of the Residential Detached Zones, the Use Table already has conditional use options for many of the zones and does not need to be updated.

Recommendation – update the use table to add conditional use to Townhouse Living under the RE-2C and R-40 zones.

CORRESPONDANCE

Planning Staff received one piece of correspondence regarding this ZTA. The correspondence focused on the fact that the affordability thresholds proposed under this ZTA (and ZTA 23-02) were developed with rental affordable housing in mind and not for-sale affordable housing. This is an issue not just with the affordability thresholds outlined in this ZTA, but many federal, state, and county affordable housing guidelines. In the context of this ZTA, there may be instances where a group would want to build for-sale housing on a site currently on a property used for Religious Assembly or Educational Institutions (Private).

Planning Staff agrees that for-sale affordable housing is an important tool in the overall housing landscape, that is often overlooked. Ultimately, Planning Staff is not recommending any changes to the proposed affordability thresholds as outlined in this ZTA. They are consistent with existing affordability thresholds outlined in various county and state federal programs and policies, including the by-right PILOT standards, the HOC Production Fund, and the 9% LIHTC allocation. The ZTA also aligns with the affordability thresholds outlined in ZTA 23-02, Regulatory Approvals – Mixed-Income Housing Community and staff feel that consistency across the two ZTAs is important for predictability and simplicity.

SECTION 4: LEGISLATED ANALYSIS

CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative

effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 24-01 is attached in Attachment B.

ZTA 24-01 will likely have minor negative impacts on the county's goals of addressing greenhouse gas emissions resulting from an aggregate of minor local negative impacts, especially in the larger lot Residential Detached Zones. These include increased vehicle miles traveled, new infrastructure, and the loss of green area and tree cover. The ZTA will likely have an aggregate minor negative impact on community resilience and adaptive capacity because of potential reduction in forest and tree canopy cover, increased exposure to hazards such as heat, and changes to water quality and quantity. There would be one positive adaptive capacity element for new housing provided in more connected parts of the county through the enhancement of social networks and providing a sense of community. Planning Staff notes all of these impacts are likely to be small in scale due to the limited number of anticipated projects utilizing these new zoning provisions on any given year.

SECTION 5: CONCLUSION

Planning Staff recommends the Planning Board support ZTA 24-01 with modifications intended to clarify and strengthen the expansion of affordable housing opportunities throughout the Residential Detached Zones, when associated with certain institutional uses. This ZTA is a major step toward implementing the County's goals of providing more affordable housing in more locations.

ATTACHMENTS

Attachment A: Zoning Text Amendment 24-01 Intro Packet

Attachment B: Climate Assessment 24-01



Committee: PHP
Committee Review: At a future date
Staff: Livhu Ndou, Legislative Attorney
Purpose: To introduce agenda item – no vote expected
Keywords: #MultiUnit #Townhouse #AffordableHousing
#ReligiousAssembly #PrivateEducationalInstitution

AGENDA ITEM #1A
January 16, 2024
Introduction

SUBJECT

Zoning Text Amendment (ZTA) 24-01, Household Living – Civic and Institutional Uses
Lead Sponsor: Councilmember Vice-President Stewart and Council President Friedson
Co-Sponsors: Councilmembers Fani-González, Glass, Sayles, Mink, Luedtke, Balcombe, Albornoz, Katz

EXPECTED ATTENDEES

None

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To introduce ZTA – no vote expected

DESCRIPTION/ISSUE

ZTA 24-01 would allow the Religious Assembly use and the Educational Institution (Private) use to build affordable townhouses and apartments in Residential Detached zones.

SUMMARY OF KEY DISCUSSION POINTS

- Under the current zoning ordinance, Multi-Unit Living is not permitted in Residential Detached zones. Townhouse Living is permitted under certain circumstances as either a limited use or conditional use, except for in the RE-2 zone.
- ZTA 24-01 will allow the construction of Multi-Unit Living and Townhouse Living in Residential Detached zones as a conditional use when associated with Religious Assembly or Educational Institution (Private).
- ZTA 24-01 will establish development standards for compatibility and require certain affordability thresholds for these projects.
- A public hearing is tentatively scheduled for February 27, 2024.

This report contains:

ZTA 24-01

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Ordinance No.: _____
Zoning Text Amendment No.: 24-01
Concerning: Household Living – Civic
and Institutional Uses
Revised: 1/10/2024 Draft No.: 1
Introduced: January 11, 2024
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: Council Vice-President Stewart and Council President Friedson
Co-Sponsors: Councilmembers Fani-González, Glass, Sayles, Mink, Luedtke,
Balcombe, Albornoz, and Katz

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) allow Multi-Unit Living and Townhouse Living on properties with a Religious Assembly or Educational Institution (Private) use in certain zones;
- (2) provide development standards for Multi-Unit Living and Townhouse Living on properties with a Religious Assembly or Educational Institution (Private) use; and
- (3) generally amend the provisions for Household Living when combined with certain Civic and Institutional or other uses.

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 3.3.	“Residential Uses”
Section 3.3.1.	“Household 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:

DRAFT

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.

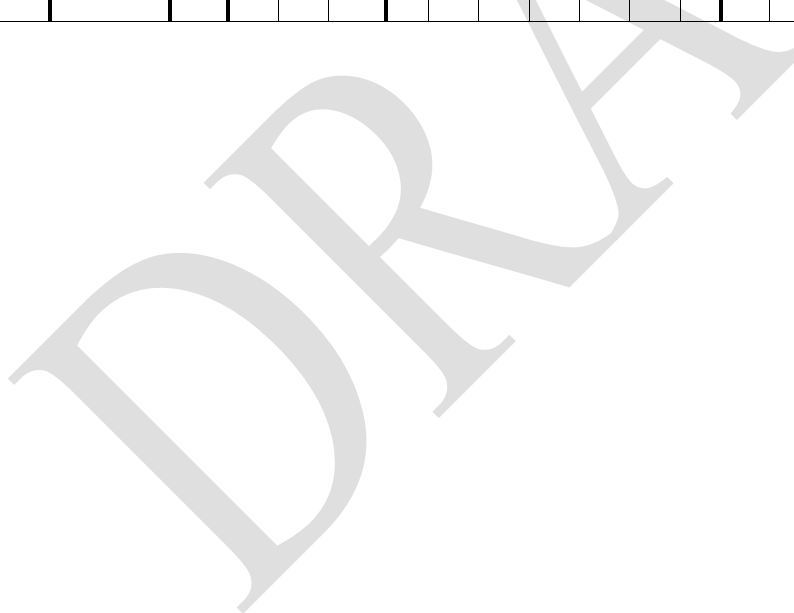
DRAFT

7

USE OR USE GROUP	Definition s and Standards	Ag AR	Rural Residential			Residential												Commercial / Residential			Employment				Industrial		
						Residential Detached						Residential Townhouse			Residential Multi-Unit												
			R	RC	RNC	RE- 2	RE- 2C	RE-1	R- 200	R-90	R-60	R- 40	TLD	TMD	THD	R-30	R-20	R-10	CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM
* * *																											
RESIDENTIAL																											
HOUSEHOLD LIVING	3.3.1																										
* * *																											
Townhouse Living	3.3.1.D				P	C	L	L/C	L/C	L/C	L/C	L	P	P	P	P	P	P	P	P	P	P	P	P	L	L	L
Multi-Unit Living	3.3.1.E					C	C	C	C	C	C	C					P	P	P	P	P	P	P	L	L	L	L
* * *																											

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Sec. 2. DIVISION 59-3.3 is amended as follows:

Division 3.3. Residential Uses

* * *

Section 3.3.1. Household Living

* * *

D. Townhouse Living

1. Defined

Townhouse Living means 3 or more dwelling units in a townhouse building type.

2. Use Standards

* * *

b. Where Townhouse Living is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

i. In the RE-1, R-200, R-90, and R-60 zones:

[i.](a) All buildings and structures must meet or exceed the Level II Accessibility Standards established by Section 52-106 and detailed in Section 52-107.

[ii.](b) Public bus service must be available on a road abutting the site.

[iii.](c) A Metro Station must be within 2 miles of the site.

[iv.](d) Public recreation or park facilities must be within 1,000 feet of the site.

[v.](e) A grading plan must demonstrate that the post-construction site will have a slope less than 5%.

[vi.](f) The minimum tract size is 2 acres.

35 [vii.](g) The density limitations and development
36 standards of the TMD zone under optional method
37 (Section 4.4.12.C) apply in spite of any other
38 limitation in this Chapter.

39 [viii.](h) Reducing the number of required parking spaces
40 through a parking waiver under Section 6.2.10 is
41 prohibited.

42 [ix.](i) A minimum of one parking space for each dwelling
43 unit must satisfy the dimensional standards for
44 handicapped-accessible vehicle parking and a
45 minimum 8-foot-wide access aisle required by the
46 State.

47 ii. In the RE-2 zone:

48 (a) Townhouse Living must be located on property
49 used for Section 3.4.10, Religious Assembly or
50 Section 3.4.5, Educational Institution (Private).
51 This may include contiguous properties that are
52 separated only by a public right-of-way.

53 (b) The maximum building height and principal
54 building setbacks of any building used for
55 Townhouse Living must meet the standard method
56 development standards of the townhouse building
57 type in the R-30 zone under Section 4.4.14.B.

58 (c) The minimum side setback is 20 feet to abutting lots
59 and parcels not included in the application.

60 (d) A minimum of 35% common open space is
61 required.

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- (e) The site must be served by existing water and sewer infrastructure that will not require either an upgrade to the service line or installation of a pump station due to the proposed development.
- (f) The dwelling units must meet one of the following affordability thresholds:
 - (1) at least 50% of the units are built under a government regulation or binding agreement that limits the price charged for at least 30 years and affordable to households earning 60 percent or less of Area Median Income (AMI);
 - (2) at least 30% of the units built under a government regulation or binding agreement that limits the price charged for at least 30 years with at least 10% of the total units affordable to households earning 30% of Area Median Income (AMI) or below and at least 20% of the total units affordable to households earning incomes eligible for the MPDU program in Chapter 25A;
 - (3) at least 30% of the units built under a government regulation or binding agreement that limits the price charged for at least 30 years with at least 20% of the total units affordable to households earning 50% of Area Median Income (AMI) or below and at

89 least 10% of the total units affordable to
90 households earning incomes eligible for the
91 MPDU program in Chapter 25A; or

92 (4) the project receives an award of 9% Low-
93 Income Housing Tax Credits (LIHTC) from
94 the Maryland Department of Housing and
95 Community Development (DHCD).

96 (g) The maximum residential density is determined by
97 the Hearing Examiner under the development
98 standards of Section 3.3.1.D.2.b.ii. without regard
99 to any other limitation in this Chapter.

100 (h) Height, density, coverage, and parking standards
101 must be compatible with surrounding uses. The
102 Hearing Examiner may modify any development
103 standards to maximize the compatibility of the
104 building with the residential character of the
105 surrounding neighborhood.

106 **E. Multi-Unit Living**

107 **1. Defined**

108 Multi-Unit Living means dwelling units in an apartment or multi use building
109 type. Multi-Unit Living includes ancillary offices to manage, service, and
110 maintain the development.

111 **2. Use Standards**

112 a. Where Multi-Unit Living is allowed as a limited use, it must
113 satisfy the following standards:

- 114 [a]i. In the GR, NR, and EOF zones, the gross floor area of all
 115 Household Living uses is limited to 30% of the gross floor
 116 area on the subject site.
- 117 [b]ii. In the LSC zone all Household Living uses are limited to
 118 30% of the maximum allowed FAR mapped on the subject
 119 site.
- 120 b. Where Multi-Unit Living is allowed as a conditional use, it may
 121 be permitted by the Hearing Examiner under Section 7.3.1,
 122 Conditional Use, and the following standards:
- 123 i. Where allowed as a conditional use, Multi-Unit Living
 124 must be located on property used for Section 3.4.10,
 125 Religious Assembly or Section 3.4.5, Educational
 126 Institution (Private). This may include contiguous
 127 properties that are separated only by a public right-of-way.
- 128 ii. The maximum building height of any building used for
 129 Multi-Unit Living is 60 feet.
- 130 iii. Principal building setbacks of any building used for Multi-
 131 Unit Living must meet the standard method development
 132 standards of the apartment building type in the R-30 zone
 133 under Section 4.4.14.B.3.
- 134 iv. The minimum side setback is 20 feet to abutting lots and
 135 parcels not included in the application.
- 136 v. A minimum of 35% common open space is required.
- 137 vi. In the RE-2, RE-2C, and RE-1 zones, the site must be
 138 served by existing water and sewer infrastructure that will
 139 not require either an upgrade to the service line or

140 installation of a pump station due to the proposed
141 development.

142 vii. The dwelling units must meet one of the following
143 affordability thresholds:

144 (a) at least 50% of the units are built under a
145 government regulation or binding agreement that
146 limits the price charged for at least 30 years and
147 affordable to households earning 60 percent or less
148 of Area Median Income (AMI);

149 (b) at least 30% of the units built under a government
150 regulation or binding agreement that limits the price
151 charged for at least 30 years with at least 10% of the
152 total units affordable to households earning 30% of
153 Area Median Income (AMI) or below and at least
154 20% of the total units affordable to households
155 earning incomes eligible for the MPDU program in
156 Chapter 25A;

157 (c) at least 30% of the units built under a government
158 regulation or binding agreement that limits the price
159 charged for at least 30 years with at least 20% of the
160 total units affordable to households earning 50% of
161 Area Median Income (AMI) or below and at least
162 10% of the total units affordable to households
163 earning incomes eligible for the MPDU program in
164 Chapter 25A; or

165 (d) the project receives an award of 9% Low-Income
166 Housing Tax Credits (LIHTC) from the Maryland

167 Department of Housing and Community
168 Development (DHCD).

169 viii. The maximum residential density is determined by the
170 Hearing Examiner under the development standards of
171 Section 3.3.1.E.2.b., without regard to any other limitation
172 in this Chapter.

173 ix. Height, density, coverage, and parking standards must be
174 compatible with surrounding uses. The Hearing Examiner
175 may modify any development standards to maximize the
176 compatibility of the building with the residential character
177 of the surrounding neighborhood.

178 * * *

179 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
180 date of District Council adoption.

181 **Sec. 4. Short Title.** This text amendment may be cited as the “FAITH
182 (Facilitating Affordable Inclusive Transformational Housing) zoning text
183 amendment (ZTA).”

This is a correct copy of Council action.

Sara R. Tenenbaum
Clerk of the Council



CLIMATE ASSESSMENT FOR ZTA 24-01, HOUSEHOLD LIVING – CIVIC AND INSTITUTIONAL USES

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the climate assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the County’s contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs at the county level. The scope of the climate assessments is limited to the County’s contribution to addressing climate change, specifically upon the County’s contribution to greenhouse gas (GHG) emissions, and how actions proposed by master plans and ZTAs could improve the County’s adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

ZTA 24-01 will allow the construction of Multi-Unit Living and Townhouse Living in residential Detached zones as a conditional use when associated with Religious Assembly or Educational Institution (Private).

Montgomery Planning anticipates that ZTA 24-01 will result in an overall indeterminate minor negative impact resulting from an aggregate of minor local negative climate-related impacts toward the County’s goals of addressing greenhouse gas emissions and ensuring resilience, and a small positive impact on the adaptive capacity of our communities. This is because although the number of future permits issued pursuant to this ZTA, limits of disturbance, footprint of new construction, new impervious surfaces, where the sites might be located relative to each other and other sources of urban heat, and what changes in transportation-related changes might ensue are all unknown, the ZTA limits the proposed uses to religious assembly and private educational institutions. The anticipated impacts include small negative local impacts on some greenhouse gas emissions-related variables in the transportation and energy sectors, small negative local impacts on some resilience-related variable in the exposure-related and sensitivity-related sectors, and small positive impacts on one community adaptive capacity-related variable.

BACKGROUND AND PURPOSE OF ZTA 24-01

Zoning Text Amendment (ZTA) 24-01 was introduced on January 16, 2024. The Council has branded the ZTA as Facilitating Affordable Inclusive Transformational Housing (FAITH). The ZTA is intended to assist the faith based community in their charitable and social work by facilitating a new processes for providing affordable housing on Religious Assembly or Educational Institution (Private) land. Many institutional uses are located on larger properties and have extra development capacity on their properties. This ZTA creates opportunities for new affordable housing developments on these institutional properties, through a conditional use process.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

CLIMATE-RELATED VARIABLES

Greenhouse Gas-related Variables:

Transportation-related: Vehicle miles traveled (VMT); and Number of trips

Building Embodied Emissions: Building square footage; Pavement infrastructure; and Material waste produced

Energy-related: Electricity usage

Land Cover Change and Management: Area of Forest; Area of non-forest tree canopy; Area of green cover

Resilience-related Variables:

Exposure-Related Factors: Activity in urban heat islands; Exposure to other hazards

Sensitivity-Related Factors: Change to forest cover; Change to non-forest tree canopy; Change to quality or quantity of other green areas; Changes to impacts of heat; Change in perviousness; Change to water quality or quantity; and Change to air quality

Adaptive Capacity-Related Variables:

Change to community connectivity

OTHER VARIABLES

Other variables include the number of future permits issued pursuant to the ZTA; presence of forest, non-forest tree canopy, or other green areas that may be impacted by construction; limits of

disturbance, footprint of new construction; and where the sites and transportation options are located relative to each other and other sources of urban heat.

ANTICIPATED IMPACTS

GREENHOUSE GAS (GHG) EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

The number of future permits issued pursuant to this ZTA, limits of disturbance, footprint of new construction, new impervious surfaces, where the sites might be located relative to each other and other sources of urban heat, and what changes in transportation-related changes might ensue are all unknown. However, because the ZTA limits the proposed uses to religious assembly and private educational institutions, the ZTA is likely to result in an overall indeterminate minor negative impact resulting from an aggregate of minor local negative climate-related impacts toward the County's goals of addressing greenhouse gas emissions. These negative impacts would be associated with new development in areas with large-lot estate zoning that would otherwise not be allowed. The negative impacts would be associated with the greenhouse gas and sequestration-related variables listed above including vehicle miles traveled (VMT), number of trips, building square footage; pavement infrastructure; material waste produced, electricity usage, area of forest, area of non-forest tree canopy, and area of green cover.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

For the same reasons indicated in the GHG and Sequestration section above, this ZTA is anticipated to result in an overall indeterminate minor negative impact resulting from an aggregate of minor local negative climate-related impacts toward the County's goals of addressing community resilience. These negative impacts would be associated with new development in areas with large-lot estate zoning that would otherwise not be allowed. The negative impacts would be associated with the resilience and adaptive capacity variables listed above including activity in urban heat islands, change to forest cover, change to non-forest tree canopy, change to quality or quantity of other green areas, changes to impacts of heat, exposure to other hazards, change in perviousness, change to water quality or quantity, and change to air quality. Regarding the change to forest and non-forest tree canopy cover variables, the negative impact is a potential one that could arise if new development under this ZTA involves forest removal that cannot be mitigated on the same site or non-forest tree canopy loss that cannot be replaced onsite. Regarding the exposure to other hazards variable there is the potential for some increase in local flooding due to additional runoff from increased impervious surface that could result from storms that are greater than stormwater management design criteria.

The ZTA is anticipated to have a small positive local impact on an adaptive capacity-related variable: change to community connectivity. This would be due to population increases in certain neighborhoods and associated potential enhancements in social support networks, and sense of

community. However, in view of the likely small number and size of any resulting new developments, these potential positive impacts would likely be minor.

RELATIONSHIP TO GHG REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 24-01 does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County’s Climate Action Plan.

RECOMMENDED ACTIONS

One potential way to reduce the negative climate impacts described above would be to limit the applicability of the ZTA to zones less dense than the proposed estate zones. This would help to focus new development under the ZTA to areas within the Corridor Focus Growth Areas as described in Thrive Montgomery 2050. This is an observation and not a recommendation, as staff recognize that other factors and needs must be considered in coming to a decision on this ZTA. However, regardless of the zones to which the ZTA applies, incorporating language into the ZTA to limit the new uses to areas with existing access to public transit, as required by the Zoning Code for similar conditional uses, would at least help to mitigate negative climate impacts associated with additional vehicle miles traveled (VMT) and number of trips.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 24-01 was prepared using the methodology (tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022*](#).