



Montgomery
County Council

Committee: PHED

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

Purpose: Final action – vote expected

Keywords: #ZTA 20-08, #Residential Care, #Retirement
Community

AGENDA ITEM #6

May 11, 2021

Action

SUBJECT

Zoning Text Amendment 20-08, Residential Care Facility - Continuing Care Retirement Community

EXPECTED ATTENDEES

Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Chief, Countywide Planning and Policy, Planning Department
Benjamin Berbert, Planner Coordinator, Countywide Planning and Policy, Planning Department

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Committee (3-0) recommends approval of ZTA 20-08 with amendments.

DESCRIPTION/ISSUE

ZTA 20-08 would add definitions for a Senior Care Community and a Continuing Care Retirement Community to the Zoning Ordinance to allow for flexibility in senior living unit types while also requiring assisted living services.

SUMMARY OF KEY DISCUSSION POINTS

The Zoning Ordinance currently allows independent living units and residential care facilities in a multi-unit building type if approved as a conditional use. ZTA 20-08 would establish the circumstances under which independent living units would be permitted within the Residential Care Facility use, by providing a definition for Senior Care Communities. ZTA 20-08 would also clarify the definition of a Continuing Care Retirement Community.

This report contains:

Staff Memorandum
ZTA 20-08, with amendments
Planning Board and Planning Staff recommendation

Pages

1-3
© 1-8
© 9-21

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MEMORANDUM

May 6, 2021

TO: County Council

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

SUBJECT: Zoning Text Amendment 20-08, Residential Care Facility – Continuing Care Retirement Community

PURPOSE: Final action on ZTA 20-08, with amendments, as recommended by the Committee

Zoning Text Amendment (ZTA) 20-08, lead sponsor Council President at the request of the Planning Board, was introduced on December 8, 2020. ZTA 20-08 would add a definition for a Continuing Care Retirement Community to the Zoning Ordinance to allow for flexibility in senior-living unit types that are associated with developments that also provide assisted living services.

Committee Recommendation: On April 19, 2021, the Planning, Housing, and Economic Development (PHED) Committee unanimously recommended approval of ZTA 20-08 with amendments.

Background

The Zoning Ordinance currently allows independent living units and residential care facilities in a multi-unit building type if approved as a conditional use.¹ ZTA 20-08 would allow a wider variety of building types by allowing the construction of campus-like communities with a varying level of associated medical services. The proposed language states that the community “*must* include assisted living *and* residential independent dwelling units”, and that it “*may* also include memory care *and/or* skilled nursing”. So, while assisted living will be mandatory, memory care or skilled nursing will not be. Because the expanded use

¹ Section 3.3.2.E.1 defines a “Residential Care Facility” as 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, in which: a) the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements; b) resident staff necessary for operation of the facility are allowed to live on-site; and c) the number of residents includes members of the staff who reside at the facility, but does not include infants younger than two months old. Residential Care Facility includes a nursing home, an assisted living facility, a continuing care retirement community, a hospice, and a group home. Residential Care Facility does not include a Hospital (see Section 3.4.6, Hospital) or Independent Living Facility for Seniors or Persons with Disabilities (see Section 3.3.2.C, Independent Living Facility for Seniors or Persons with Disabilities).

would still be considered under Residential Care Facility, the conditional use standards of Section 7.3.1.E would apply. Specifically, the Hearing Examiner would still need to find that the proposed development: conforms with the applicable master plan; is harmonious with the surrounding neighborhood; and will have adequate public services and facilities.

Public Hearing and Testimony

A public hearing was held on January 19, 2021. Testimony from the Greater South Glen Neighborhood Association and the West Montgomery County Citizens Association was in opposition. Testimony from Lerch, Early, & Brewer and the Planning Board was in support.

Opposition testified that independent and assisted senior living should not be combined. Opposition testified that ZTA 20-08 is unnecessary because residential care facilities already allow a wide range of housing styles. Opposition testified that the ZTA as currently written does not guarantee the sharing of facilities. Opposition expressed concern that fee simple duplexes and triplexes would be built in low-density zones where they are currently not permitted. Opposition testified that seniors interested in senior living are typically doing so because they are no longer interested in the burdens of homeownership, and that allowing the units to be owned in fee simple would complicate the ownership of the conditional use rights.

Testimony in support emphasized that conditional use approval would still be required in order to ensure compatibility. Supporters testified that the lack of diverse housing options meant many seniors would move to other counties, causing a loss of tax dollars in Montgomery County. Supporters also testified that there is no justification for regulating the building form and tenure type of senior housing, and that over-regulation would cost seniors flexibility and lifestyle choice.

Planning Board Recommendation

ZTA 20-08 was introduced at the request of the Planning Board. The Planning Board's December 2020 memorandum noted that the development community is "limited in its ability to provide various options in building type (detached residential, duplex, townhouse and apartment) and varying levels of medical services associated with these structures." The proposed stand-alone units under the new definition in ZTA 20-08 would still require conditional use approval, which ensures compatibility with the surrounding area and could be beneficial for lower-density residential zones.

The Planning Board did note that the ZTA as introduced provided a definition for "continuing care retirement community", a term already defined under State law, and thus could lead to confusion for applicants who are trying to meet both Montgomery County and the State's legal requirements. Subsequently, the Planning Board and Planning Staff recommended using the term "senior care community" and adding a separate definition for continuing care retirement community that meets the State's definition.

PHED Committee and Amendments

The PHED Committee unanimously recommended approval of the ZTA with amendments. Those amendments are as follows:

1. ZTA 20-08 as originally introduced defined “Continuing Care Retirement Community” as:

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.

This definition would be applied to a new term in the Zoning Ordinance—“Senior Care Community”. Since “continuing care retirement community” is already defined under State law, using the term “senior care community” would reduce confusion for applicants.² [Lines 19-24]

2. A “Continuing Care Retirement Community” would be defined as “a type of Residential Care Facility structured in a manner consistent with the Annotated Code of Maryland (COMAR) 32.02.01”. “Continuing care retirement community” is referenced in other parts of the Zoning Ordinance but was never defined. This amendment would make the definition consistent with State law. [Lines 9-16]
3. A “Senior Care Community” would be listed as a type of Residential Care Facility under Section 3.3.2.E [Lines 42-45]; and be placed under the same age restrictions as a continuing care retirement community. [Lines 104-109, 113-121]
4. Setback requirements for all building types would be the minimum setbacks required in the R-30 zone. With the allowance of more building types, this amendment would provide guidance as to the setbacks for those buildings. The R-30 zone already provides reasonable setbacks for all building types. [Lines 91-96]
5. A minimum side setback of 20 feet to abutting lots not included in the application would be required. This amendment would ensure compatibility in lower-density zones. [Lines 97-101]

² Maryland Code Human Services Title Section 10-401 defines “Continuing care in a retirement community” as: “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.

Zoning Text Amendment No.: 20-08
Concerning: Residential Care Facility
– Continuing Care
Retirement Community
Draft No. & Date: 6 – 5/6/21
Introduced: December 8, 2020
Public Hearing: January 19, 2021
Adopted: May 11, 2021
Effective: May 31, 2021
Ordinance No.:

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

Lead Sponsor: Council President at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- define the term Continuing Care Retirement Community;
- define the term Senior Care 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”
<u>Division 3.3.</u>	<u>“Residential Uses”</u>
<u>Section 3.3.2.</u>	<u>“Group Living”</u>

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.*

OPINION

Zoning Text Amendment (ZTA) 20-08, lead sponsor Council President Hucker at the request of the Planning Board, was introduced on December 8, 2020.

The Zoning Ordinance currently allows independent living units and residential care facilities in a multi-unit building type if approved as a conditional use. ZTA 20-08 would allow a wider variety of building types by allowing the construction of campus-like communities with a varying level of associated medical services.

In its report to the Council, the Montgomery County Planning Board and Planning Staff recommended approval of ZTA 20-08.

The Council's public hearing was conducted on January 19, 2021. There were four speakers, including the Planning Board Chair. Testimony from the Greater South Glen Neighborhood Association and the West Montgomery County Citizens Association was in opposition. Testimony from Lerch, Early, & Brewer and the Planning Board was in support.

The Council referred the text amendment to the Planning, Housing, and Economic Development (PHED) Committee for review and recommendation.

The PHED Committee held a worksession on April 19, 2021. The Committee recommended approving ZTA 20-08 with amendments. The first amendment is to create a new term in the Zoning Ordinance—"Senior Care Community". The second and third amendments are to list a Senior Care Community as a type of Residential Care Facility and for a Senior Care Community to have the same age restrictions as a Continuing Care Retirement Community. The fourth and fifth amendments are to provide setbacks for the now-allowed building types, by using the standard method of development in the R-30 zone; and a minimum side setback of 20 feet to abutting lots. The sixth and final amendment is to provide a definition for Continuing Care Retirement Community that is in line with the State definition.

The Council agreed with the recommendation of the Committee. For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 20-08 will be approved as amended.

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. 1. DIVISION 59-1 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

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

The following words and phrases have the meanings indicated.

* * *

Construction Administration or Sales Office: See Section 3.5.15.A.1

Continuing Care Retirement Community: A type of Residential Care Facility structured in a manner consistent with the Annotated Code of Maryland (COMAR) 32.02.01. [[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.]]

* * *

Senior Adult: A person who is 62 years of age or older.

Senior Care 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.

* * *

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

Division 3.3.2. Group Living

28 * * *

29 **E. Residential Care Facility**

30 **1. Defined, In General**

31 Residential Care Facility means a group care or similar arrangement
 32 for the care of persons in need of personal services, supervision, or
 33 assistance essential for sustaining the activities of daily living, or for
 34 the protection of the individual, in which:

- 35 a. the facility must meet all applicable Federal, State, and County
 36 certificate, licensure, and regulatory requirements;
- 37 b. resident staff necessary for operation of the facility are allowed
 38 to live on-site; and
- 39 c. the number of residents includes members of the staff who
 40 reside at the facility, but does not include infants younger than
 41 2 months old.

42 Residential Care Facility includes a nursing home, an assisted living
 43 facility, a [[continuing care retirement community]] Continuing Care
 44 Retirement Community, a hospice, [[and]] a group home, and a Senior
 45 Care Community. Residential Care Facility does not include a
 46 Hospital (see Section 3.4.6, Hospital) or Independent Living Facility
 47 for Seniors or Persons with Disabilities (see Section 3.3.2.C,
 48 Independent Living Facility for Seniors or Persons with Disabilities).

49 * * *

50 **2. Use Standards**

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52 **c. Residential Care Facility (Over 16 Persons)**

53 * * *

- ii. Where a Residential Care Facility (Over 16 Persons) 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:

 - (a) The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents. Any such service may be restricted by the Hearing Examiner.
 - (b) A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.
 - (c) Where residential dwelling units are provided:
 - (1) the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and
 - (2) the minimum green area is 50%.
 - (d) Where facility size is based on the number of beds, not dwelling units, the following lot area is required:
 - (1) In the R, RC, and RNC zones, 2,000 square feet per bed or 5 acres, whichever is greater.

- (2) In all other zones, the minimum lot area is 2 acres or the following, whichever is greater:
- [(i)](A) in RE-2, RE-2C, RE-1, and R-200 zone: 1,200 square feet per bed;
 - [(ii)](B) in R-60, R-90, and R-40 zone: 800 square feet per bed;
 - [(iii)](C) in TLD, TMD, THD, R-30, and R-20 zone: 600 square feet per bed;
 - and
 - [(iv)](D) in R-10: 300 square feet per bed.

- (e) [[The minimum side setback is 20 feet.]]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 (see Section 4.4.14.B.3, Placement).
- (f) [[In the R-10 and R-20 zones, the development standards of the apartment building type apply, except as modified by Section 3.3.2.E.2.c.]]The minimum side setback is 20 feet to abutting lots not included in the application.
- (g) Independent dwelling units must satisfy the MPDU provisions of Chapter 25 (Section 25.A-5).
- (h) In a [[continuing care retirement community]] Continuing Care Retirement Community and a Senior Care Community, occupancy of any

independent dwelling unit 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]] Continuing Care Retirement Community or the Senior Care Community[,] is allowed to remain, even though the resident widow, widower, or other surviving relative has not reached the age of 62.

A minimum of 80% of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.

- (i) Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.
- (j) In the AR zone, this use may be prohibited under Section 3.1.5, Transferable Development Rights.

* * *

134 **Sec. ~~[[2]]3. Effective date.~~** This ordinance becomes effective 20 days after
135 the date of Council adoption.

136

137 This is a correct copy of Council action.

138

139

140 Selena Mendy Singleton, Esq.

141 Clerk of the Council



MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

January 15, 2021

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 20-08

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 20-08 at its regular meeting on January 14, 2021. By a vote of 5:0, the Planning Board recommends approval of the ZTA to adopt a definition for the term Continuing Care Retirement Community (CCRC), and made additional modifications to define the term Senior Care Community, and to add Senior Care Community to the list of allowed Residential Care Facilities.

The ZTA was first proposed by the Planning Board by a similar 5:0 vote at its meeting on October 29, 2020, which recommended establishing a definition of a CCRC. The intent of the text amendment is to define a new category of Residential Care Facility that provides more flexibility to developers and future residents in the type of dwellings available for residential care, including providing for independent dwelling units in single-family detached and attached housing, in addition to the previously allowed multi-unit living. These new options provide some privacy for senior adults who only need partial care, and it provides more opportunities for finding compatibility with surrounding development.

The modified version of ZTA 20-08, as recommended by the Board, does define a CCRC under Section 1.4.2., but references the state definition of a CCRC in the COMAR. A new use, Senior Care Community, would be added to the definition section, utilizing the same definition that was provided for a CCRC in the introduced ZTA. The Board finds this less confusing for future applicants that may be navigating both the County Code and the State Code when receiving final approval for their projects.

The Planning Board continues to support the definition for the new Senior Care Community because it clarifies that multiple building types may be utilized within the community, and explicitly states that the associated care services may be located in a building on-site separate from the buildings containing the independent dwelling units. This allows the flexibility desired in designing these Residential Care Facilities from both future residents and existing adjacent communities.

The Board recommends an additional text change not part of ZTA 20-08 as introduced; adding the term Senior Care Community to the definition of Residential Care Facilities in Section 3.3.2.E. of the Zoning Ordinance. An amendment was not previously needed here because this section already references a CCRC. Upon recommending a new defined term of Senior Care Community, it became necessary to add that text to the list of allowed facilities as a Residential Care Facility.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the recommendation adopted by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, at its regular meeting held in Wheaton, Maryland, on Thursday, January 14, 2021.



Casey Anderson
Chair

CA:BB:aj

As Modified by Planning Board

Zoning Text Amendment No.: 20-08
Concerning: Residential Care Facility
– Continuing Care
Retirement Community
Draft No. & Date: 1 – 9/21/20
Introduced: December 8, 2020
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 Sponsor: Council President at the request of the Planning Board

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:

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

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

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

The following words and phrases have the meanings indicated.

* * *

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

Continuing Care Retirement Community: A type of Residential Care Facility structured in a manner consistent with the Annotated Code of Maryland (COMAR) 32.02.01.][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.]]

* * *

Senior Adult: A person who is 62 years of age or older.

Senior Care 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.

* * *

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

Division 3.3.2. Group Living

* * *

E. Residential Care Facility

1. Defined, In General

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, in which:

- a. the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements;
- b. resident staff necessary for operation of the facility are allowed to live on-site; and
- c. the number of residents includes members of the staff who reside at the facility, but does not include infants younger than 2 months old.

Residential Care Facility includes a nursing home, an assisted living facility, a continuing care retirement community, a hospice,[[and]] a group home, and a Senior Care Community. Residential Care Facility does not include a Hospital (see Section 3.4.6, Hospital) or Independent Living Facility for Seniors or Persons with Disabilities (see Section 3.3.2.C, Independent Living Facility for Seniors or Persons with Disabilities).

* * *

Sec. [[2]]3. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

55 Selena Mendy Singleton, Esq.
56 Clerk of the Council



Zoning Text Amendment (ZTA) No. 20-08, Residential Care Facility – Continuing Care Retirement Community

BB

Benjamin Berbert, Planner Coordinator, CP&P, benjamin.berbert@montgomeryplanning.org, 301-495-4644

JS

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Completed: 01/07/21

Description

ZTA 20-08 would provide a definition for the term Continuing Care Retirement Community as a type of Residential Care Facility.

Summary

Staff recommends approval of ZTA No. 20-08, with amendments, to define a Continuing Care Retirement Community, and to also add a definition for a Senior Care Community as a type of Residential Care Facility. The submitted ZTA initially intended to only define Continuing Care Retirement Communities, however this term is a state regulated term, therefore Staff proposes the term Senior Care Community as an alternative for the desired use type. This ZTA would allow a wider variety of building types for Residential Care Facilities to be built in a campus-like setting providing an alternative to apartment-like living for seniors.

Background/Analysis

The Planning Board, at its meeting dated October 29, 2020, voted 5-0 to transmit a recommendation to the County Council to introduce a ZTA that would define a Continuing Care Retirement Community for the purposes of allowing a senior living project with some amount of stand-alone or one-family type dwelling units. This ZTA, No. 20-08 is the corresponding ZTA to this request.

Residential Care Facilities, covered in Section 3.3.2.E of the Zoning Ordinance, is a type of group care designed for persons in need of some or full assistance in personal services and daily living and currently includes nursing homes, assisted living facilities, continuing care retirement communities, hospice, and group homes. These uses generally require a conditional use approval by the Hearing Examiner through a public hearing process.

Rationale for ZTA Introduction

Montgomery County has seen a steady supply of new Residential Care Facilities constructed, but most have been for seniors requiring advanced levels of nursing care and memory care services, located in apartment buildings where the provided services are housed within the primary structure. Staff has been approached multiple times in recent years by applicants looking to provide communities for seniors that offer a wider variety of housing types and assistance levels within one contained “campus” setting. Some dwellings would be provided under the previously seen model with high levels of care provided in an

apartment building with services within the building, while other more independent units could be built in proximity to the main care giving facility. The goal would be to provide varying levels of care in different types of structures, including detached and attached one-family dwelling types, and apartment building types. Residents needing less intensive care may benefit from the added privacy provided by single-family dwellings, while still having the access and peace of mind knowing necessary services are located within the community.

Staff believes the intent of allowing a Residential Care Facility with some amount of single-family housing units was intended in the Zoning Ordinance by allowing a Continuing Care Retirement Community (CCRC) as an option. However, the Zoning Ordinance never defined a CCRC, leaving the Hearing Examiner's office to rely on the State of Maryland definition of a CCRC, which pertains to financing and operations of such communities rather than the land use composition of them.¹ Defining a CCRC (or similar term) would provide the option for some amount of single-family dwelling types to be included within a Residential Care Facility as part of a Conditional Use approval. This new housing option would afford a level of privacy for seniors who need some but not full assistance. The new building types may also help in context to provide better compatibility with surrounding development than an apartment building type would

ZTA 20-08

ZTA 20-08 as introduced by the Council makes one change to the Zoning Ordinance; adding a definition for a Continuing Care Retirement Community under Section 1.4.2 Specific Terms and Phrases Defined. The following is the proposed text:

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.

However, as stated earlier, Staff is proposing a modification to the submitted ZTA. Because a CCRC is a defined term with the State of Maryland, there is concern that it would be confusing for Montgomery County to offer up its own, separate definition since applicants for senior housing may be wanting to apply both with the county for this new type of development, and with the state for a CCRC financing structure.

Staff suggests a few modifications. First, the term for a CCRC should still be defined since it is used in the Zoning Ordinance, but should have the following definition:

Continuing Care Retirement Community: A type Residential Care Facility structured in a manner consistent with the Annotated Code of Maryland (COMAR) 32.02.01

¹ 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.

Second, a new term, called a “Senior Care Community” should be defined and added to Section 1.4.2 using the same definition proposed by the ZTA for CCRC’s:

Senior Care 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.

By adding a new defined term, one additional change would be needed to the Zoning Ordinance, in Section 3.3.2.E.1 Defined, In General, to add the term Senior Care Community to the list of included types of Residential Care Facilities:

E. Residential Care Facility

1. Defined, In General

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, in which:

- a. the facility must meet all applicable Federal, State, and County certificate, licensure, and regulatory requirements;
- b. resident staff necessary for operation of the facility are allowed to live on-site; and
- c. the number of residents includes members of the staff who reside at the facility, but does not include infants younger than 2 months old.

Residential Care Facility includes a nursing home, an assisted living facility, a continuing care retirement community, a hospice[, and]] a group home, and a Senior Care Community.

Residential Care Facility does not include a Hospital (see Section [3.4.6](#), Hospital) or Independent Living Facility for Seniors or Persons with Disabilities (see Section [3.3.2.C](#), Independent Living Facility for Seniors or Persons with Disabilities).

This proposed change to the submitted ZTA still provides all the same flexibilities that were contemplated when the Board first transmitted the request to the Council, but clarifies the distinction between state and county defined terms.

Conclusion

Staff believes that ZTA 20-08, as modified with a new separate term for Senior Care Community, still meets all of the identified intents for the ZTA. Applicants will be able to provide new Residential Care Facility communities that provide a wider range of unit types for different desires and required levels of care, which will be better for future residents and potentially an improvement on compatibility.

Attachment

1. ZTA No. 20-08 as introduced.

Zoning Text Amendment No.: 20-08
Concerning: Residential Care Facility
– Continuing Care
Retirement Community
Draft No. & Date: 1 – 9/21/20
Introduced: December 8, 2020
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 Sponsor: Council President at the request of the Planning Board

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:

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

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

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

The following words and phrases have the meanings indicated.

* * *

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

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.

* * *

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

This is a correct copy of Council action.

Selena Mendy Singleton, Esq.
Clerk of the Council