

**MEMORANDUM**

March 6, 2024

TO: Planning, Housing, and Parks (PHP) Committee

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 24-01, Household Living – Civic and Institutional Uses

PURPOSE: Worksession

**INVITED ATTENDEES**

- Artie Harris, Chair, Montgomery County Planning Board
- Lisa Govoni, Supervisor – Housing, Infrastructure, and Zoning Policy, Montgomery County Planning Department
- Benjamin Berbert, Planner III – Countywide Planning & Policy, Montgomery County Planning Department

**INTRODUCTION**

Zoning Text Amendment (ZTA) 24-01, Household Living – Civic and Institutional Uses, lead sponsors Council Vice-President Stewart and Council President Friedson, and co-sponsors Councilmembers Fani-González, Glass, Sayles, Mink, Luedtke, Balcombe, Albornoz, Katz, and Jawando, was introduced on January 16, 2024. ZTA 24-01 would allow the Educational Institution (Private) use and the Religious Assembly use to build affordable townhouses and apartments in Residential Detached zones.

**PUBLIC HEARING**

A public hearing was held on February 27, 2024. Speakers testified in opposition and support. The Council also received written testimony.<sup>1</sup>

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<sup>1</sup> Official written testimony can be found here:  
<https://www.montgomerycountymd.gov/COUNCIL/OnDemand/testimony/20240227/item3.html>.

The Council also received a substantial amount of correspondence that was not submitted as official testimony.

Testimony in support included individuals, churches, housing organizations, Montgomery for All, AARP, Action in Montgomery, the League of Women Voters, and Greater Greater Washington. Speakers in support testified that houses of worship have the resources and values to provide affordable housing. They testified that exclusionary zoning has increased racial and wealth disparities. Speakers noted the housing shortage in the County and that this ZTA will help schools and places of worship leverage their existing land to address this issue. They also testified that both religious and educational institutions have excess land that could be used to address affordable housing shortages if zoning hurdles were removed. As for changes, many asked that the housing be allowed by right, with site plan review. They also asked to remove language that the development be compatible with the surrounding neighborhood, given apartment buildings and townhouses are not currently allowed in the zones where this ZTA will apply. Testimony in support also requested language that specifically requires housing for seniors and persons with disabilities.

Testimony in opposition included individuals and numerous civic associations. Speakers in opposition testified that housing should be concentrated in more urban areas. They noted environmental concerns such as flooding, deforestation, and loss of wildlife by placing development in less urban areas. Speakers also noted that there are many houses of worship in some parts of the County, and so this ZTA could have large effects on the environment. Speakers in opposition noted that the County will need to provide more public amenities in the residential detached zones, such as better transportation options and more schools. Speakers expressed concern with increased gentrification, parking, noise, and the amount of trash that will be generated. As for changes, speakers requested removing the Residential Detached zones, and requiring proximity to transit. Letters also requested restricting the amount of land that can be used per organization.

## **SUMMARY OF IMPACT STATEMENTS**

### **Planning Board Recommendation**

On February 15, 2024, the Planning Board unanimously recommended approval of ZTA 24-01 with five amendments. These include: 1) increasing the setback to 25 feet; 2) clarifying language regarding access to water and sewer; 3) requiring sites be a quarter mile from a bus route; 4) making the Townhouse Living standards available in all Residential Detached zones; and 5) including 4% Low-Income Housing Tax Credit (LIHTC) housing.

### **Climate Assessment**

The Planning Board reviewed the Climate Assessment and found that there will likely be “minor negative impacts on greenhouse gas emissions and sequestration, especially for any applications allowed in the larger lot residential zones furthest from activity and job centers.” This is because there will likely be more vehicle miles traveled, loss of green cover, and a need for new and upgraded infrastructure. Planning found that “adaptive capacity would also have an aggregate minor negative impact due to increased exposure to heat and changes to water quality both as a result of loss of green cover.” Lastly, “there may be minor positive impacts to community resilience due to improved social networks, and a stronger sense of community.”

## RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) Impact Statement on February 23, 2024. OLO found that ZTA 24-01 could “narrow racial and social inequities in the County if it increases the supply of affordable housing units for low-and moderate-income households.” OLO noted that exclusionary zoning “has played a key role in fostering racial and social inequities in housing that persist today” because it increases the cost of housing and reduces the availability of affordable housing, resulting in communities across the County that are relatively expensive and unaffordable to residents of color, and in turn furthering residential segregation across the County by race and ethnicity.<sup>2</sup> OLO noted that if ZTA 24-01 increased the number of affordable housing units in the County, it could narrow racial and social inequities in housing security and cost burden. Further, increasing the number of affordable housing units in the larger lot residential zones concentrated in the most affluent communities in the County could “diminish residential segregation and reduce racial disparities in access to high quality schooling, transportation, health care, employment, and other opportunities.”

## BACKGROUND

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 Educational Institution (Private) or Religious Assembly. ZTA 24-01 will also establish development standards and require certain affordability thresholds for these projects.

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.<sup>3</sup>

		Residential Detached										Residential Townhouse			Residential Multi-Unit											
		R	R C	RN C	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	G R	NR	LSC	EO F		
<b>RESIDENTIAL</b>																										
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	L	L	L	L	
Multi-Unit Living	3.3.1.E				C	C	C	C	C	C	C				P	P	P	P	P	P	L	L	L	L	L	

## Multi-Unit Living

ZTA 24-01 provides several standards for allowing Multi-Unit Living:

<sup>2</sup> “Exclusionary zoning refers to policies that prohibit building multi-family dwellings and group housing in residential areas zoned for single family homes.”

<sup>3</sup> Neither use is permitted in the AR zone or the Industrial zones.

- b. Where Multi-Unit 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:

Multi-Unit Living will be allowed as a conditional use, meaning all applications will go through the Office of Zoning and Administrative Hearings (OZAH).

- i. Where allowed as a conditional use, Multi-Unit Living must be located on 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.

To take advantage of ZTA 24-01, the underlying use must be Educational Institution (Private) or Religious Assembly. Educational Institution (Private) is defined as “a private school or educational or training academy providing instruction or programs of learning.” Educational Institution (Private) includes tutoring and college entrance exam preparatory courses, art education programs, artistic performances, indoor and outdoor recreation programs, and summer day camps, any of which may serve individuals who are not enrolled as students in the institution’s academic program. Whether it is a limited use, conditional use, or permitted by right varies by zone; but it is not allowed in the IH or AR zones. Religious Assembly is defined as “a meeting area for religious practices, including a church, synagogue, mosque, convent, or monastery.” It includes a memorial garden on the premises. Religious Assembly is allowed by right in all zones except Heavy Industrial (IH), where it is not allowed, and the Agricultural Reserve (AR) zone, where it is a limited use.

Whether a property is “used for” Educational Institution (Private) or Religious Assembly will be determined by OZAH, who can defer to the Department of Permitting Services (DPS). Use could be verified via existing permits, inspection of the property, history of the use, State Department of Assessments and Taxation (SDAT) records, and other evidence. The inclusion of properties separated by a right-of-way will allow development on lots and parcels that may be owned by the Educational Institution (Private) or Religious Assembly but not directly used for religious services or education.

- ii. The maximum building height of any building used for Multi-Unit Living is 60 feet.
- iii. Principal building setbacks of any building used for Multi-Unit Living must meet the standard method development standards of the apartment building type in the R-30 zone under Section 4.4.14.B.3.
- iv. The minimum side setback is 20 feet to abutting lots and parcels not included in the application.
- v. A minimum of 35% common open space is required.

Multi-Unit Living is currently permitted by right in the R-30 through R-10 zones. Since ZTA 24-01 is allowing Multi-Unit Living in zones that do not have established development standards, those standards needed to be created.

The maximum height for the apartment building type is 35 feet in the R-30 zone, 80 feet in the R-20 zone, and 100 feet in the R-10 zone. Sixty feet is therefore a reasonable average for an apartment building across multiple zones. Further, Independent Living Facility for Seniors or Persons with Disabilities has a similar provision, where it is allowed as a conditional use in Residential Detached zones with a height of 60 feet for the apartment building type.

The R-30 zone was chosen for principal building setbacks because it provides standards for every building type but is not the densest Residential Multi-Unit zone. The 20-foot setback to abutting lots and parcels provides a buffer for neighboring properties but does not dictate the placement of the buildings within the lot or parcel, allowing increased flexibility in design. This is important for this ZTA, where a building may already exist for the Educational Institution (Private) or Religious Assembly.

Lastly, common open space is defined as “an outdoor area that is intended for recreational use by residents and their visitors.” Section 6.3.3. of the Zoning Ordinance lists what features are allowed in each type of open space. For common open space, this includes conservation areas, recreational spaces, water bodies, and utilities. Common open space requirements for the apartment building type in the residential zones are as follows:

- R-200 = 20% (optional method)
- R-90 = 15% (optional method)
- R-60 = 20% (optional method)
- R-40 = 20% (optional method)
- R-30 = 50% (standard method)
- R-20 = 45% (standard method)
- R-10 = 40% (standard method)

Balancing the size of the lots in the applicable zones under ZTA 24-01, and the need to accommodate multiple uses, the open space requirement was set to 35%.

- vi. 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 either an upgrade to the service line or installation of a pump station due to the proposed development.

It is important for the Residential Estate zones to be included in ZTA 24-01 to address the RESJ issues of residential segregation. However, these zones may have less-than-sufficient public facilities for the growth potential of this ZTA. Therefore, its applicability is limited to sites in these zones that already have adequate water and sewer access.

- vii. The dwelling units must meet one of the following affordability thresholds:
  - (a) 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);
  - (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 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;

- (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 Area Median Income (AMI) or below and at least 10% of the total units affordable to households earning incomes eligible for the MPDU program in Chapter 25A; or
- (d) the project receives an award of 9% Low-Income Housing Tax Credits (LIHTC) from the Maryland Department of Housing and Community Development (DHCD).

The affordability thresholds for ZTA 24-01 are similar to those of ZTA 23-02, Regulatory Approvals – Mixed-Income Housing Community, which was adopted by the Council in July 2023.<sup>4</sup> These thresholds were recommended at the time by the Planning Department.

- vii. The maximum residential density is determined by the Hearing Examiner under the development standards of Section 3.3.1.E.2.b., without regard to any other limitation in this Chapter.
- ix. 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.

Since the underlying zones, sizes of the lots, and other structures on the lot or parcel will vary, density can be determined by the Hearing Examiner based on the development standards. The Hearing Examiner will also be given discretion to adjust the height, lot coverage, and parking requirement based on the site and its surrounding neighborhood.

### **Townhouse Living**

As introduced, ZTA 24-01 would not change the standards for Townhouse Living in the zones where it was already allowed. Rather, it will add an additional option for Townhouse Living in the RE-2 zone. This means that Townhouse Living will be allowed in all Residential Detached, Residential Townhouse, and Residential Multi-Unit zones. But the requirements for each zone will vary.

Under the current zoning ordinance, where Townhouse Living is allowed as a limited use, it must meet the following standards:

- In the RE-2C and RE-1 zones, Townhouse Living is permitted as part of a development including optional method Moderately Priced Dwelling Units (MPDUs) if it is served by public sewer service or designated for sewer service in an applicable master plan.
- In the R-200 and R-40 zones, Townhouse Living is permitted as part of a development including optional method MPDUs.

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<sup>4</sup> The Area Median Income for a family of four in Montgomery County is \$152,100, effective June 15, 2023.

- In the R-90 and R-60 zones, Townhouse Living is permitted as part of a development including optional method MPDUs, an optional method cluster development that is a minimum of 10 acres in size, or an optional method cluster development that is a minimum of 3 acres or more in size and recommended in a master plan.
- In the GR, NR, and EOF zones, the gross floor area of all Household Living uses is limited to 30% of the gross floor area on the subject site.
- In the LSC zone, all Household Living uses are limited to 30% of the maximum allowed FAR mapped on the subject site.

For Townhouse Living, where allowed as a conditional use in the RE-1, R-200, R-90, and R-60 zones, certain accessibility standards already apply. These requirements are part of the County’s “Design for Life” initiative, which encourages the construction of accessible homes. These provisions already exist in the zoning ordinance and are not being changed by ZTA 24-01. These include:

- All buildings and structures must meet or exceed the Level II Accessibility Standards.<sup>5</sup>
- Public bus service must be available on a road abutting the site.
- A Metro Station must be within 2 miles of the site.
- Public recreation or park facilities must be within 1,000 feet of the site.
- A grading plan must demonstrate that the post-construction site will have a slope less than 5%.
- The minimum tract size is 2 acres.
- The density limitations and development standards of the Townhouse Medium Density (TMD) zone under optional method apply.
- Reducing the number of required parking spaces through a parking waiver is prohibited.
- A minimum of one parking space for each dwelling unit must satisfy the dimensional standards for handicapped-accessible vehicle parking and a minimum 8-foot-wide access aisle required by the State.

Under ZTA 24-01, Townhouse Living will be allowed as a conditional use in the RE-2 zone if it is located on property used for Educational Institution (Private) or Religious Assembly and meets certain affordability thresholds. In addition, 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. The sewer requirement is included because sufficient water and sewer infrastructure is not a given throughout the RE-2 zone.

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<sup>5</sup> Under [Section 52-107](#) of the County Code, Level I Accessibility Standard means a permanent addition to a single family residence that include at least one no-step entrance located at any entry door to the house that is connected to an accessible route to a place to visit on the entry level, a usable powder room or bathroom, and a 32-inch nominal clear width interior door as further defined and described in Executive Regulations. Level II Accessibility Standard means permanent additions to a single-family residence that provide all of the Level I Accessibility Standards plus an accessible circulation path that connects the accessible entrance to an accessible kitchen, a full bath, and at least one accessible bedroom, as further defined and described in Executive Regulations.

## ISSUES RAISED

### **Has this been done other jurisdictions?**

Similar measures have been taken in other jurisdictions. In California, a bill was passed in 2023 that required any housing development project be allowed by right upon the request of an applicant who applies for streamlined approval, on any land owned by an independent institution of higher education or religious institution on or before January 1, 2024, if the development satisfies specified criteria.<sup>6</sup> Any organization building this type of streamlined affordable housing must maintain the affordability of these homes for a minimum of 55 years for rental properties and 45 years for properties that can be owned. In Washington state, jurisdictions must allow an increased density bonus consistent with local needs for any affordable housing development of any single-family or multi-family residence located on real property owned or controlled by a religious organization.<sup>7</sup>

### **Will the residential properties associated with Religious Assembly be tax-exempt?**

Under [Md. Tax-Property Code Ann. § 7-204](#), “property that is owned by a religious group or organization is not subject to property tax if the property is actually used exclusively for: (1) public religious worship; (2) a parsonage or convent; or (3) educational purposes.” Council Staff interprets this to mean that any housing built under ZTA 24-01 will not be tax-exempt because it is not exclusively used for religious worship, and the ZTA does not intend to limit the housing to parishioners. Courts have historically construed this exemption strictly, but ultimately the question of how taxes will be applied is up to SDAT. Logistically, it is possible for a property owner to obtain two SDAT numbers and therefore have separate tax accounts.

### **What happens if the Educational Institution (Private) or Religious Assembly use is torn down or goes defunct?**

Under Section 7.7.2. of the Zoning Ordinance, a lawful nonconforming use of a structure or lot must not be expanded. If the Educational Institution (Private) or Religious Assembly use is torn down or goes defunct, then the remaining Townhouse Living or Multi-Unit Living use will become non-conforming. This means that any expansion of the housing will not be possible in the event the underlying use no longer exists. Whether a proposed alteration or renovation would be considered an expansion is fact specific.

### **What will the parking requirement be?**

When determining the parking requirement for multiple uses, an applicant must provide the requisite number of spaces per use. So, for example, if 15 parking spaces are required for the Educational Institution (Private) and 15 parking spaces are required for townhouses, then 30 parking spaces will be required onsite. However, Section 6.2.3.I.3 of the Zoning Ordinance

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<sup>6</sup> The text of California’s bill can be found here:

[https://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=202320240SB4](https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB4).

<sup>7</sup> The text of Washington state’s bill can be found here: <https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1377-S.PL.pdf?q=20230630124040>.

allows an applicant who is proposing more than 1 use to submit a shared parking analysis using the Urban Land Institute Shared Parking Model (Second Edition, 2005) instead of using the parking requirements table in the Zoning Ordinance. Further, the ZTA allows the Hearing Examiner to modify any development standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.

### **May an applicant submit concurrent applications?**

Since ZTA 24-01 requires the Educational Institution (Private) or Religious Assembly use, an applicant will need to prove that use exists before applying for Townhouse Living or Multi-Unit Living. Religious Assembly is permitted by right in most zones, so no review by OZAH is required, although building permits from DPS may still be required. Educational Institution (Private) varies by zone. Based on feedback from OZAH and DPS, concurrent applications could be possible, but an applicant would need to involve multiple departments/agencies. For example, the limited use institution would go to DPS while the conditional use housing would go to OZAH.

## **PROPOSED AMENDMENTS**

### **Council Staff Technical Corrections**

Council Staff recommends an amendment to change “contiguous properties that are separated only by a public right-of-way” to “confronting properties.” Under Section 1.4.2. of the Zoning Ordinance, “confronting” means “[p]roperties that are directly across a right-of-way with a master plan width of less than 80 feet from each other based on a line between the 2 properties that is drawn perpendicular to the right-of-way. Properties within a 45-degree diagonal across an intersection are also confronting.” This proposed amendment would use an already-existing term in the Zoning Ordinance and provide clarity on how distance across a right-of-way is measured. In addition, Council Staff recommends including abutting properties, which is defined as sharing a property line or easement line.

*Council Staff recommends the following amendment:*

<p><u>This may include <del>[[contiguous]]</del> <b>confronting and abutting</b> properties <del>[[that are separated only by a public right of way]]</del>.</u></p>
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### **Expand Zones for Townhouse Living**

The Planning Board recommends the Townhouse Living standards be applied to all the Residential Detached zones. They argue that “allowing prospective applicants to build either Multi-Unit Living or Townhouse Living provides for a wider range of potential housing types and may help with necessary compatibility findings of conditional uses on smaller infill sites.” When drafted, the intent of the ZTA was to allow Townhouse Living to be built by Educational Institution (Private) or Religious Assembly uses where it would not otherwise be allowed. For Townhouse Living, these uses could already build townhouses, but that development would have to meet the above-described Design for Life or affordability standards. Applying the language of

ZTA 24-01 to all Residential Detached zones would give Educational Institution (Private) or Religious Assembly uses the option to do either Design for Life, which they could always do, or the affordability thresholds laid out in the ZTA. Further, the affordability standards in ZTA 24-01 are a higher threshold than those that exist for limited use Townhouse Living in the higher-density zones. This amendment would include an update to the Use Table to make RE-2C and R-40 an “L/C.”

*Council Staff recommends the following amendments:*

<p><b>D. Townhouse Living</b></p> <p><b>1. Defined</b> Townhouse Living means 3 or more dwelling units in a townhouse building type.</p> <p><b>2. Use Standards</b></p> <p style="text-align: center;">* * *</p> <p>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:</p> <p style="text-align: center;">* * *</p> <p>ii. <u>In <del>[[the RE-2 zone]]</del> Residential Detached zones:</u></p>
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USE OR USE GROUP	Definition s and Standards	Ag	Rural Residential		Residential														
					Residential Detached								Residential Townhouse			Residential Multi-Unit			
					AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30
<b>RESIDENTIAL</b>																			
HOUSEHOLD LIVING	3.3.1																		
* * *																			
Townhouse Living	3.3.1.D				P	<u>C</u>	<u>L/C</u>	L/C	L/C	L/C	L/C	L/C	<u>L/C</u>	P	P	P	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>					P	P	P

**Clarify Water and Sewer Restriction**

Under the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan, there is a water and sewer category for Private Institutional Facilities (PIF).<sup>8</sup> The PIF is a community water or sewer service for use only by private institutional facilities. The Plan defines private institutional facilities (PIFs) as buildings constructed for an organization that qualifies for a federal tax exemption under the provisions of Section 501 of Title 26 of the United States Code (Internal Revenue Service). Approval is restricted to a single, specified user; and service for any other user is not allowed without a subsequent amendment to the Water and Sewer Plan. Under the

<sup>8</sup> The Water and Sewer Plan can be found here: <https://www.montgomerycountymd.gov/water/Resources/Files/supply/2022-2031%20Montgomery%20County%20Approved%20Ten-Year%20Water%26Sewer%20Plan.pdf>

Plan, the Council reviews and accepts a concept plan for the proposed use. If the PIF user subsequently and significantly alters that concept plan (prior to the extension of service), DEP can require the Council's reconsideration of the original category change action. Upon consultation with and recommendations from M-NCPPC staff, DEP will determine when changes to the concept development plan warrant the Council's reconsideration.

As introduced, the ZTA requires all sites to be served by existing water and sewer infrastructure that will not require an upgrade to the service line or installation of a pump station. The intent of this language was to ensure that housing is not built in areas that do not have adequate water and sewer service. PIF properties have received approval to access public water and sewer because they were close enough to extend this public service to an institutional use. The ZTA intent was to prohibit these properties from upgrading to serve the additional housing use. Under the PIF determination, it is unlikely that the new housing could be added to the PIF. But, since it is possible that some of the housing will be non-profit housing, the Planning Board recommends language that explicitly states this will not be allowed. The amendment clarifies it is PIF properties that are limited. As noted by the Planning Board, the language as introduced would prohibit most properties since substantial new construction would often require an upgrade to service lines. The Planning Board also recommends this amendment apply in all zones, not just the Residential Estate zones. While it is less likely that the other Residential Detached zones will not have existing or planned water and sewer service, Planning reports that there are pockets of these zones where it could be an issue. The amendment proposed would read:

- vi. ~~[[In the RE-2, RE-2C, and RE-1 zones, the]]~~ 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 if the property received water and sewer access subject to a Private Institutional Facilities determination.

*Council Staff would suggest rewording to say:*

- vi. ~~[[In the RE-2, RE-2C, and RE-1 zones,]]~~ If the property received water and sewer access subject to a Private Institutional Facilities determination, 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.

### **Allow Site Plan Review Instead of Conditional Use**

Advocates requested both Townhouse Living and Multi-Unit Living under the ZTA go through site plan review instead of conditional use. Of note, several of these projects will require site plan review after approval of the conditional use. Further, under the recently passed SRA 23-02, Preliminary Plan – Approval Procedures, the Council adopted an amendment to the Zoning Ordinance that will allow preliminary plan review and conditional use review to occur concurrently.

There are important differences between site plan review and conditional use. As stated in Section 7.3.4.A.4., “[a] site plan provides a detailed overview of the applicant’s development. Site plan review will be used to determine if the proposed development satisfies current laws, regulations, and this Chapter, and substantially conforms with the recommendations of the applicable master plan and approved guidelines.” A conditional use, however, assumes the use is presumed valid but may need certain conditions to be compatible. Given the breadth of this ZTA, which will allow this use in multiple zones on a wide variety of sites, conditional use is an appropriate review process. Further, while advocates are concerned that conditional use will allow those in opposition to block projects, it can also allow flexibility. For example, the ZTA allows the Hearing Examiner to adjust height, density, lot coverage, and parking.

Written testimony from advocates stated that the conditional use process is subject to appeal. However, under Section 7.3.4. of the Zoning Ordinance, any party aggrieved by the Planning Board’s site plan decision may also file a petition for judicial review.

Lastly, advocates requested site plan review instead of conditional use because the Hearing Examiner must consider compatibility. However, one of the necessary findings for site plan review is that the application “substantially conforms with the recommendations of the applicable master plan.” Most master plans will face the same argument that the compatibility standards would, since they would not have contemplated this ZTA allowing Townhouse Living and Multi-Unit Living in these Residential Detached zones.

*Council Staff does not recommend this amendment.*

### **Remove Compatibility Requirements**

Advocates requested the removal of language that gives the Hearing Examiner discretion to modify development standards to maximize compatibility with the character of the neighborhood. Advocates expressed concern that this subjective standard would allow those in opposition to make arguments that any building that is not a single-family detached home would not maximize compatibility.

As a legal matter, many cases have repeatedly ruled that conditional uses are presumed valid. This high standard means that conditional uses are presumed to be allowable uses of the land and must be rebutted by credible evidence that “the proposed use has adverse effects above and beyond those inherently associated with such a [conditional use] irrespective of its location within the zone.” *Schultz v. Pritts*, 291 Md. 1, 22-23 (1981). Since it is a site-specific determination, an argument that any Townhouse Living or Multi-Unit Living development should be denied just because it is in a typically single-family zone would likely fail, since the Zoning Ordinance assumes the use is valid.

Further, under Section 7.3.1. of the Zoning Ordinance, which lists the necessary findings for conditional use, in every conditional use review the Hearing Examiner must find that the application “is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan.” However, the language in ZTA 24-01 is more specific, reading the Hearing Examiner “may modify any development standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.” As

noted above, this language could provide more flexibility to developers, who may desire changes in the density, lot coverage, or parking requirements based on the site.

*To avoid redundancy and keep consistent standards, Council Staff recommends the following amendment:*

- (h) The Hearing Examiner may modify the height ~~[[Height]]~~, density, coverage, and parking standards ~~[[must]]~~ to 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.]]~~

### **Increase Side Setback to 25 Feet**

As introduced, the ZTA requires a 20-foot setback to abutting properties. The Planning Board recommends a 25-foot setback, which would provide extra room for any necessary landscape screening and is consistent with the existing standards for an Independent Living Facility for Seniors or Persons with Disabilities, which is another use that allows the apartment building type in Residential Detached zones.

*Council Staff recommends the following amendment:*

- (c) The minimum side setback is ~~[[20]]~~ 25 feet to abutting lots and parcels not included in the application.

### **Require Development to be ¼ Mile from Bus Routes**

The Planning Board recommended requiring eligible sites to be ¼ mile from a public bus route. The reasoning provided by the Planning Board is that some of the sites in the ZTA may be far away from activity centers, growth corridors, and employment centers, and that without bus service, future residents would be car dependent. However, as noted in the RESJ statement, it is important for the Council to consider residential segregation when placing affordable housing. This transit limitation would restrict where in the County this affordable housing is located, and needing affordable housing does not mean the resident does not have access to a vehicle. Lastly, this requirement would severely limit the number of Religious Assemblies and Educational Institutions (Private) that could take advantage of this ZTA.

*Council Staff does not recommend this amendment.*

### **Include 4% Low Income Housing Tax Credit (LIHTC)**

LIHTC is designed to subsidize either 30% or 70% of the low-income unit costs in a project. There are two types of LIHTC credits: a 9% tax credit (for the 70% subsidy) and a 4% tax credit (for the 30% subsidy). The 9% tax credit is for new construction or substantial rehabilitation without any additional subsidies, while the 4% tax credit is for new construction that uses additional subsidies or properties acquired for rehabilitation. LIHTC credits are allocated by state and local housing agencies. The affordability thresholds in ZTA 24-01 are similar to the

thresholds in ZTA 23-02, Regulatory Approvals – Mixed-Income Housing Community, which only include 4% LIHTC. Similarly, in 2021 the Council adopted ZTA 21-07, Density and Height Allocation – Development with Moderately Priced Dwelling Units, which allowed increased FAR or 100% income-restricted projects that were either MPDUs or 9% LIHTC. The Planning Board recommends including 4% LIHTC projects in ZTA 24-01, which would expand the scope of the ZTA, allowing more affordable projects to be built in the County.

*Council Staff recommends the following amendment:*

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

This packet contains:

ZTA 24-01	© 1
Planning Board recommendation	© 12
Planning Staff report	© 15
Climate Assessment	© 31
RESJ Impact Statement	© 35

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: February 27, 2024  
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, Katz, and Jawando

---

**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:*

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.

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
* * *																											
<b>RESIDENTIAL</b>																											
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	P	P	P	P	P	P	P	P	L	L	L	
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>				P	P	P	P	P	P	P	L	L	L	L	
* * *																											

8

\* \* \*

**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] confronting and  
52 abutting properties [[that are separated only by a  
53 public right-of-way]].

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

59 I The minimum side setback is 20 feet to abutting lots  
60 and parcels not included in the application.

- 61                    (d) A minimum of 35% common open space is  
62                    required.
- 63                    (e) The site must be served by existing water and sewer  
64                    infrastructure that will not require either an upgrade  
65                    to the service line or installation of a pump station  
66                    due to the proposed development.
- 67                    (f) The dwelling units must meet one of the following  
68                    affordability thresholds:
- 69                    (1) at least 50% of the units are built under a  
70                    government regulation or binding agreement  
71                    that limits the price charged for at least 30  
72                    years and affordable to households earning  
73                    60 percent or less of Area Median Income  
74                    (AMI);
- 75                    (2) at least 30% of the units built under a  
76                    government regulation or binding agreement  
77                    that limits the price charged for at least 30  
78                    years with at least 10% of the total units  
79                    affordable to households earning 30% of  
80                    Area Median Income (AMI) or below and at  
81                    least 20% of the total units affordable to  
82                    households earning incomes eligible for the  
83                    MPDU program in Chapter 25A;
- 84                    (3) at least 30% of the units built under a  
85                    government regulation or binding agreement  
86                    that limits the price charged for at least 30  
87                    years with at least 20% of the total units

88 affordable to households earning 50% of  
89 Area Median Income (AMI) or below and at  
90 least 10% of the total units affordable to  
91 households earning incomes eligible for the  
92 MPDU program in Chapter 25A; or

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

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

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

107 **E. Multi-Unit Living**

108 **1. Defined**

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

112 **2. Use Standards**

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

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

142 installation of a pump station due to the proposed  
143 development.

144 vii. The dwelling units must meet one of the following  
145 affordability thresholds:

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

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

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

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

169 Department of Housing and Community  
170 Development (DHCD).

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

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

180 \* \* \*

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

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

**February 20, 2024**

**To:** The Honorable Andrew Friedson  
President, Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 501  
Rockville, Maryland 20850

**From:** Montgomery County Planning Board

**Subject:** Zoning Text Amendment 24-01, Household Living – Civic and Institutional

### **BOARD RECOMMENDATION**

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on February 15, 2024, and by a vote of 5:0 recommended support for Zoning Text Amendment (ZTA) 24-01 with modifications. This ZTA allows affordable housing projects to develop in the Residential Detached Zones as a conditional use, following certain standards, including being located on land associated with a Religious Institution or an Educational Facility (Private). The Planning Board is very supportive of finding new creative ways to facilitate affordable housing and provides a few recommendations to enhance this ZTA.

Currently, Multi-Unit living is not allowed in any of the Residential Detached Zones. Townhouse Living is allowed but only with optional methods of development, or as a conditional use where the dwellings are built to provide for a high level of accessibility for people with disabilities. This ZTA allows Multi-Unit living in all of the Residential Detached zones, and Townhouse Living in the RE-2 zone as a conditional use, if the land is associated with a Religious Institution or an Educational Facility (Private). This land use change would help further the mission of these charitable organizations and meet major policy goals of the county. The framework of the conditional use standards in the ZTA is based on the Independent Living Facilities standards, which in many ways have similar community impacts and are of a similar scale.

The Planning Board supports the ZTA, with five recommendations. The first recommendation is in the conditional use standard for both Multi-Unit Living and Townhouse Living. The ZTA establishes a minimum 20-foot setback from land not part of the application, and the Board recommends increasing the setback to 25 feet. This modification is subtle, but better aligns with the existing use standards of Independent Living Facilities and provides extra room for any necessary landscape screening.

Second, the Board recommends clarifying language regarding access to water and sewer not requiring an upgraded service line. The intent of this standard is to ensure properties not currently in the water and sewer service area remain ineligible for this conditional use, however as written, all properties would likely become disqualified because any substantial new construction may require an upgrade to

service lines. This provision of the ZTA only applies to the RE-2, RE-2C, and RE-1 zones. While these are the most common zones located outside the water and sewer service areas, there are instances where other Residential Detached Zones are also ineligible for public service. The focus of this conditional use standard should be on properties where Religious Institutions or Educational Facilities (Private) are connected to public water and sewer but are outside of the service area, because of the Public Institutional Facility (PIF) designation policy. These PIF properties, plus others that are connected to public water and sewer, are intended to remain ineligible for this conditional use. The Board recommends adding the following language directly stating that it is properties that were subject to the PIF policy that are ineligible for the conditional use, and to remove the language limiting the standard to the RE-2, RE-2C, and RE-1 zones:

[In the RE-2, RE-2C, and RE-1 zones, t]The site must be served by existing water and sewer infrastructure that will not require an upgrade to the service line or instillation of a pump station due to the proposed development, if the property received water and sewer access subject to a Private Institutional Facilities determination.

Third, a new conditional use standard should be added to both Multi-Unit Living and Townhouse Living that requires an eligible site to be a quarter mile from a public bus route. The Planning Board appreciates being as expansive as possible in finding new opportunities for affordable housing but is concerned some of these sites may be far away from activity centers, growth corridors, and employment centers. Without bus service, the future residents would be car dependent, which could put them at a disadvantage. Requiring eligible sites to be a quarter mile from bus service helps mitigate some of these concerns.

Fourth, the Board recommends the conditional use standards for Townhouse Living proposed by this ZTA be made available to all of the Residential Detached Zones, not just the RE-2 zone. Allowing prospective applicants to build either Multi-Unit Living or Townhouse Living provides for a wider range of potential housing types and may help with necessary compatibility findings of conditional uses on smaller infill sites.

Finally, the Board recommends the County Council consider expanding the affordability thresholds to allow recipients of the 4% Low-Income Housing Tax Credit (LIHTC) to be able to take advantage of the zoning changes. Currently, there are four affordability options outlined in the ZTA, one of which allows a project that receives an award of 9% LIHTC from the Maryland Department of Housing and Community Development (DHCD) to use the zoning changes. This option could be expanded to include 4% LIHTC projects, which would expand the scope of the ZTA, allowing more affordable projects to be built in the county.

The Board also reviewed the Climate Assessment prepared by Planning Staff for ZTA 24-01. The assessment found there would likely be minor negative impacts on greenhouse gas emissions and sequestration, especially for any applications allowed in the larger lot residential zones furthest from activity and job centers. These sites would generate new vehicle miles traveled, would likely result in a larger loss of green cover, and would most likely need new or upgraded infrastructure. Adaptive capacity would also have an aggregate minor negative impact due to increased exposure to heat and changes to

water quality both as a result of loss of green cover. There may be minor positive impacts to community resilience due to improved social networks, and a stronger sense of community.

The Planning Board appreciates the opportunity to review ZTA 24-01 and recommends the District Council adopt the zoning changes with the recommended modifications. The Planning Board appreciates the creative solution to providing more opportunities for affordable housing and looks forward to working with the Council to help reconcile any differences.

### **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, February 15, 2024.



**Artie L. Harris**  
Chair

Attachments:

- A - Planning Board Staff Packet ZTA 24-01
- B - Climate Assessment ZTA 24-01

Montgomery Planning

**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

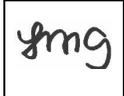
2425 Reddie Drive, Floor 14

Wheaton, MD 20902

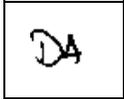
## Planning Staff



Benjamin Berbert, Planner III, Countywide Planning and Policy  
[Benjamin.Berbert@montgomeryplanning.org](mailto:Benjamin.Berbert@montgomeryplanning.org), 301-495-4644



Lisa Govoni, Acting Supervisor, Countywide Planning and Policy  
[Lisa.Govoni@montgomeryplanning.org](mailto:Lisa.Govoni@montgomeryplanning.org), 301-650-5624



David Anspacher, Acting Chief, Countywide Planning and Policy  
[David.Anspacher@montgomeryplanning.org](mailto:David.Anspacher@montgomeryplanning.org), 301-495-2191

### ZTA SPONSORS

#### Lead Sponsors:

Council President Friedson  
Council Vice President Stewart

#### Cosponsors:

Councilmembers Fani-Gonzalez, Glass,  
Sayles, Mink, Luedtke, Balcombe, Alborno,  
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 17<sup>th</sup>, 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
* * *																	
<b>RESIDENTIAL</b>																	
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 instillation 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 instillation 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 property<sup>1</sup>, 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**

<b>Zone</b>	<b>Height of Detached House</b>	<b>1.5x Side Setback of Detached House</b>	<b>1.5x Rear Setback of Detached House</b>	<b>Side Setback before full building height</b>	<b>Rear Setback before full building height</b>
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 <sup>2</sup>	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

<sup>1</sup> 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.

<sup>2</sup> 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.

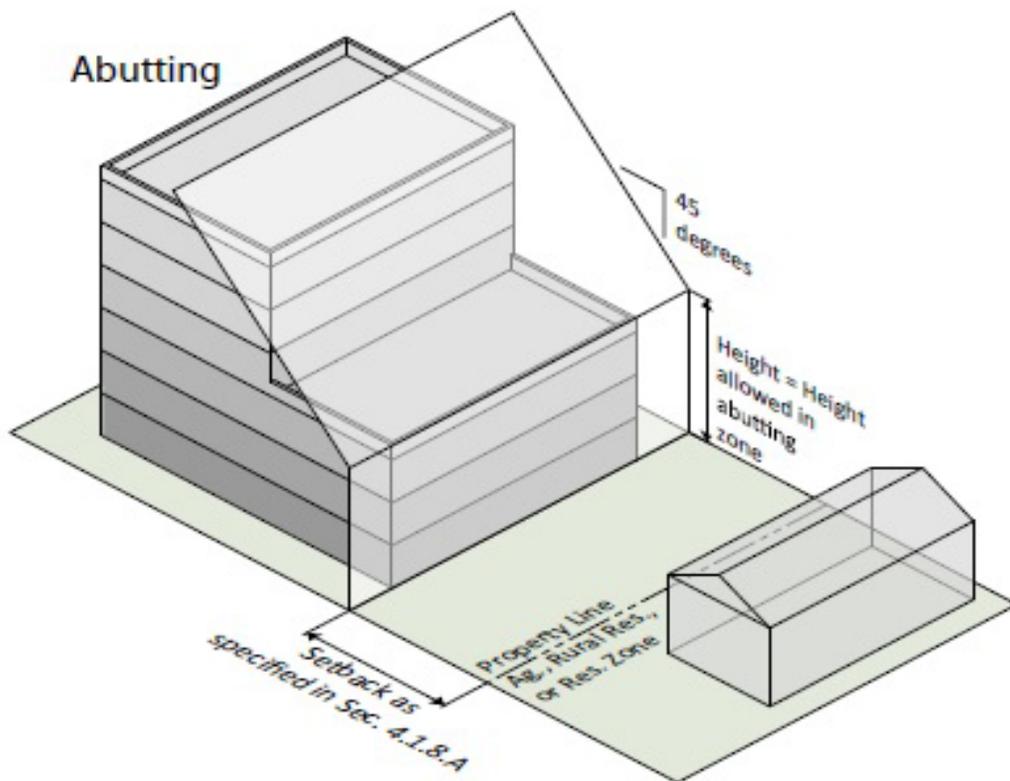


Figure 2 – Height Compatibility

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*

## 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.

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## 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.

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## 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.

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## 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.

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### 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.

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### 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.

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### 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\*](#).

# Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

## ZTA 24-01: HOUSEHOLD LIVING – CIVIC AND INSTITUTIONAL USES

### SUMMARY

The Office of Legislative Oversight (OLO) anticipates that Zoning Text Amendment 24-01: Household Living–Civic and Institutional Uses could narrow racial and social inequities in the County if it increases the supply of affordable housing units for low- and moderate-income households.

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### PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.<sup>1</sup> Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.<sup>2</sup>

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### PURPOSE OF ZTA 24-01

The purpose of ZTA 24-01, Household Living–Civic and Institutional Uses, is to allow houses of worships and private educational institutions to build multi-unit housing and townhouses on land located within the following residential detached zones as conditional uses:

- Residential Estate-2 (RE-2) – Minimum lot area of 2 acres.
- Residential Estate-2C (RE-2C) – Minimum lot area of 2 acres.<sup>3</sup>
- Residential Estate-1 (RE-1) – Minimum lot area of one acre.<sup>4</sup>
- Residential-200 (R-200) – Minimum lot area of 20,000 square feet.<sup>5</sup>
- Residential-90 (R-90) – Minimum lot area of 9,000 square feet.<sup>6</sup>
- Residential-60 (R-60) – Minimum lot area of 6,000 square feet.<sup>7</sup>
- Residential-40 (R-40) - Minimum lot area of 6,000<sup>8</sup>square feet.<sup>9</sup>

Currently, multi-family units are not permitted in residential detached zones. Further, townhomes are only permitted under certain circumstances in residential detached zones as either a limited use or conditional use, except within the RE-2 zone.<sup>10</sup> ZTA 24-01 will establish development standards for compatibility and require certain affordability thresholds for multi-family units and townhome developments built by houses of worship and private educational institutions within detached residential zones.<sup>11</sup> More specifically, “Townhouse Living” and “Multi Unit Living” dwelling units allowed under ZTA 24-01 would have to meet at least one of the following affordability thresholds:

- At least half of the units would have to be affordable to households earning up to 60 percent of area median income (AMI) for at least 30 years.
- At least 20 percent of the units would have to be affordable to households eligible for the Moderate Priced Dwelling Unit (MPDU) Program<sup>12</sup> and another 10 percent of units would have to be affordable to households earning up to 30 percent of AMI for at least 30 years.

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- At least 20 percent of units would have to be affordable to households earning up to 50 percent of AMI and another 10 percent of units would have to be affordable to households eligible for the MPDU program for at least 30 years.
- The project receives an award of nine percent Low Income Housing Tax Credits from the Maryland Department of Housing and Community Development.

This RESJ impact statement (RESJIS) builds on two prior OLO RESJIS's completed for:

- ZTA 22-07, Residential Multi-Unit Low Density, R-30 Optional Method Development (August 15, 2022);<sup>13</sup> and
- ZTA 23-02, Regulatory Approvals - Mixed-Use Housing Community (May 1, 2023)<sup>14</sup>

For background on racial and social inequities in affordable housing and development in Montgomery County, refer to these RESJIS's.

ZTA 24-01 was introduced to the County Council on January 16, 2024.

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### EXCLUSIONARY ZONING, HOUSING INSECURITY, AND RACIAL EQUITY

Historically, government policies such as restrictive covenants, redlining, New Deal housing policies, and the inequitable implementation of the G.I. Bill have fostered residential segregation and racial disparities in housing.<sup>15</sup> Contemporary discrimination in the housing market has also reinforced residential segregation and racial disparities in housing and housing security. Together, historical and contemporary racial inequities in the housing market have created two distinct housing systems where:

- Government-subsidized historically White-only enclaves enabled many White families to build home equity and intergenerational wealth; and
- Underinvested Black, Indigenous, and Other People of Color (BIPOC) communities where historically BIPOC households paid more for lesser housing and fewer amenities in turn were denied opportunities to build intergenerational wealth.

**Exclusionary Zoning.** Exclusionary zoning has played a key role in fostering racial and social inequities in housing that persist today. Exclusionary zoning refers to policies that prohibit building multi-family dwellings and group housing in residential areas zoned for single family homes. Many communities in Montgomery County are exclusively zoned for detached single family houses, often with minimum lot and house sizes. Exclusionary zoning increases the cost of housing and reduces the affordability of housing. As a result, many communities across the County are relatively expensive and unaffordable to many BIPOC residents.<sup>16</sup> In turn, residential segregation across the County by race and ethnicity also persists.

As part of its Equity Agenda for Planning, Montgomery Planning has identified communities with high concentrations of BIPOC constituents, low-income households, and English language learners as Equity Focus Areas (EFAs).<sup>17</sup> EFAs are primarily found along the I-270 Corridor, the Route 29 Corridor, and the eastern portion of the County.<sup>18</sup> As described in Table 1 on the next page, White constituents accounted for a majority of the County's population residing outside of EFAs in 2018 while less than a quarter of the population within EFAs were White.

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**Table 1: Equity Focus Areas (EFAs) and Areas Outside of EFAs, 2018<sup>19</sup>**

	Equity Focus Areas (EFAs)	Areas Outside of EFAs	County
<b>Population</b>	<b>275,873</b>	<b>764,260</b>	<b>1,040,133</b>
<i><b>Percent by Race and Ethnicity</b></i>			
<b>White</b>	22.0	52.6	44.5
<b>Black</b>	25.7	14.8	17.7
<b>Asian or Pacific Islander</b>	13.6	15.0	14.6
<b>Other Race</b>	3.5	4.1	3.9
<b>Hispanic or Latinx</b>	35.2	13.5	19.3

Source: 2018 American Community Survey, 5-Year Estimates compiled by Montgomery County Planning, March 2021

Further, it is important to recognize the material impact of residential segregation in the County on housing opportunities and burdens. For example:<sup>20</sup>

- A majority of constituents in the EFAs (54 percent) resided in rentals while a majority of constituents outside of EFAs (72 percent) resided in owner-occupied housing;
- The value of homes in EFAs (\$345,000) was nearly half the average value of homes outside of EFAs (\$629,000);
- A third of households earned less than \$50,000 annually in the EFAs compared to less than a fifth of households outside of EFAs (18 percent); and
- Households in EFAs were nearly twice as likely to not have a vehicle as households outside of EFAs (11.3 percent vs. 6.4 percent).

**Housing Insecurity:** Residential segregation fostered by exclusionary zoning contributes to disparities in housing and housing insecurity by race and ethnicity as well. A review of American Community Survey data on homeownership and housing burden demonstrating higher levels of housing insecurity among Black and Latinx households confers a greater need for affordable housing among Black and Latinx households as well. More specifically, in 2021:<sup>21</sup>

- 77 percent and 69 percent of White and Asian households respectively resided in owner-occupied units compared to 54 percent of Latinx households and 43 percent of Black households.
- 28 to 32 percent of Black, Asian, and Latinx mortgage holders in the County were housing cost-burdened (expending more than 30 percent of income on housing) compared to 22 percent of White mortgage holders.
- 57 percent and 46 percent of Black and Latinx households respectively resided in rentals compared to 31 percent of Asian households and 23 percent of White households.
- 63 percent and 57 percent of Latinx and Black renters respectively were housing cost-burdened compared to 45 percent of White renters and 38 percent of Asian renters.

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### ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 24-01 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this zoning text amendment?
- What racial and social inequities could passage of this ZTA weaken or strengthen?

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**For the first question**, OLO considered the demographics of households needing affordable housing. Since Black and Latinx households experience the highest rates of housing insecurity in the County, OLO anticipates they are the most likely to benefit from ZTA 24-01 if it increases the production of affordable housing in the County.

**In response to the second question**, OLO considered the potential impact of ZTA 24-01 on housing disparities in the County. If ZTA 24-01 increases the number of affordable housing units in the County, it could narrow racial and social inequities in housing security and cost burden. Moreover, if ZTA 24-01 increased the number of affordable housing units in the larger lot residential zones concentrated in the most affluent communities in the County, it could also diminish residential segregation and reduce racial disparities in access to high quality schooling, transportation, health care, employment, and other opportunities.

Taken together, OLO finds that if ZTA 24-01 increases the number of affordable housing units in the County it will favorably impact RESJ in the County.

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### RECOMMENDED AMENDMENTS

Bill 44-20 amending the County’s Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for ZTAs.<sup>22</sup> OLO finds the RESJ impact of ZTA 24-01 would be favorable if it increased the number of affordable housing units available in the County. As such, OLO does not offer any recommended amendments for this ZTA.

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### CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council’s decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the ZTA under consideration.

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### CONTRIBUTIONS

Elsabett Tesfaye, Performance Management and Data Analyst, drafted this racial equity and social justice impact statement with assistance from Elaine Bonner-Tompkins, Senior Legislative Analyst.

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<sup>1</sup> Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

<sup>2</sup> Ibid.

<sup>3</sup> Under optional method development, minimum lot size of 34 acres for MPDUs and 50 acres for cluster development.

<sup>4</sup> Under optional method development, minimal lot size of 17 acres for MPDUs and 50 acres for cluster development.

<sup>5</sup> Under optional method development, minimal lot size of 9 acres for MPDUs and 5 acres for cluster development.

<sup>6</sup> Under optional method development, minimal lot size of 5 acres for MPDUs and 5 acres for cluster development.

<sup>7</sup> Under optional method development, minimal lot size of 3 acres for MPDUs and 5 acres for cluster development.

<sup>8</sup> Under standard method development, minimal lot size 6,000 SF for Detached House or a Building for a Cultural Institution, Religious Assembly, Public Use, or a Conditional Use allowed in the zone; 4,000 SF for Duplex-Side, 8,000 SF for Duplex-Over.

<sup>9</sup> Under optional method development, minimal lot size of 3 acres for MPDUs.

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<sup>10</sup> Ndou, Livhu. Montgomery County Council, Agenda Item #1A, Introduction, January 16, 2024.

<sup>11</sup> Ibid.

<sup>12</sup> Moderately Priced Dwelling Units (MPDUs) refer to dwelling units offered for sale or rent to eligible low- or moderate-income households through the Department of Housing and Community Affairs' MPDU program. The MPDU program requires that 12.5 to 15 percent of new housing units in projects with 20 or more units to be affordable to households earning up to 65 or 70 percent of the area median income. The required affordability period for MPDUs is 30 years for units sold and 99 years for units rented.

<sup>13</sup> OLO RESJ Impact Statement for ZTA 22-07. Office of Legislative Oversight, August 15, 2022.

<https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2022/ZTA22-07.pdf>

<sup>14</sup> OLO RESJ Impact Statement for ZTA 23-02. Regulatory Approvals - Mixed-Use Housing Community. Office of Legislative Oversight, August 15, 2022. <https://www.montgomerycountymd.gov/OLO/Resources/Files/resjis/ZTA/2023/ZTA23-02.pdf>

<sup>15</sup> Rothstein, Richard. 2017. The Color of Law: A Forgotten History of How Government Segregated America. (Cited in OLO RESJ Impact Statement for ZTA-23-02)

<sup>16</sup> Bailey, Saki et al., How Racism Shaped the Housing Crisis and What We Can Do About It, Shareable (page 8)

<sup>17</sup> Montgomery Planning. 2020. Equity Agenda for Planning. The Equity Focus Areas Analysis.

<https://montgomeryplanning.org/planning/equity-agenda-for-planning/the-equity-focus-areas-analysis/>

<sup>18</sup> Ibid.

<sup>19</sup> Montgomery County Department of Planning, 2021. Equity Focus Areas & Area Outside of EFAs (2018) demographic Profile.

[https://mcatlas.org/filetransfer/EFAs/Story\\_map/SB\\_Round2\\_StaticBGs/Demo%20profiles%20EFA%20Non-EFA%20MoCo%20ACS%202018.pdf](https://mcatlas.org/filetransfer/EFAs/Story_map/SB_Round2_StaticBGs/Demo%20profiles%20EFA%20Non-EFA%20MoCo%20ACS%202018.pdf)

<sup>20</sup> Ibid.

<sup>21</sup> 2021 American Community Survey 5-Year Estimates, Census Bureau. Estimates for Native American and Pacific Islander constituents were not available for these data points. (Originally cited in OLO RESJ Impact Statement for Bill 6-23 Housing - Sharing Economy Rental).

<sup>22</sup> Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

[https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682\\_1\\_12149\\_Bill\\_44-20\\_Signed\\_20201211.pdf](https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf)