

PHED Committee #2
July 20, 2015

MEMORANDUM

July 16, 2015

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz^{JZ}, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 15-08, Charitable Institutions – Residential Support

The lead sponsor for Zoning Text Amendment (ZTA) 15-08 is Council President Leventhal; co-sponsors are Council Vice President Floreen and Councilmembers Katz, Rice, Riemer, Navarro, Berliner, and Elrich. The ZTA was introduced on May 21, 2015 and would allow, under certain circumstances, a charitable institution to provide shelter for people who are supporting a family member at a medical institution in an existing detached house or townhouse.

The Council held a public hearing on July 14, 2015. The Planning Board and Planning Staff recommended approval of ZTA 15-08 with amendments. The Board and Planning Staff recommended two substantive changes. The Board recommended excluding the townhouse building type from use as a residential support facility. The Board noted that up to 10 persons may reside in the house at one time (8 guests and 2 resident staff persons). The Board made this recommendation despite the fact that a GIS analysis found no existing townhouse building types that fit the locational criteria for permitting the use. Both the Planning Board and Planning Staff also recommended an on-site parking requirement of one space for every 4 guest beds. As introduced in ZTA 15-08, guests may park on the premises of the institution where treatment occurs, but cannot park overnight on the site or on residential streets in the surrounding neighborhood. All of the testimony received expressed support for the ZTA.

Issues

Scope of ZTA 15-08¹

Under ZTA 15-08, a charitable housing and support facility would be allowed as a limited use. The use would be allowed:

- 1) within 100 feet, excluding public rights-of-way, from the boundary of a federal research and treatment facility containing at least 200 acres;
- 2) in the R-60 and R-90 zones;
- 3) on property that fronts on and has direct access to a major highway with a minimum master-planned right-of-way of 120 feet; and
- 4) in an existing detached house or townhouse building type.²

There are 3 federal research and treatment facilities that are at least 200 acres in size: 1) the National Institutes of Health (NIH), 2) the U.S. Food and Drug Administration (FDA), and 3) Walter Reed National Military Medical Center.

National Institutes of Health (NIH)

There are 8 properties that include a detached house building type, located within 100 feet (excluding Old Georgetown Road right-of-way) of NIH and having direct access to Old Georgetown Road. Several other properties that are within 100 feet of NIH and front on Old Georgetown Road do not have direct access to it or are not a detached house building type.

There are 28 townhouse properties located within 100 feet (excluding Rockville Pike right-of-way) of NIH across Rockville Pike. None of the properties front on or have direct access to Rockville Pike. All properties access a private drive aisle within the townhouse development and would therefore not be subject to ZTA 15-08.

U.S. Food and Drug Administration (FDA)

There are 24 properties that include a detached house building type, located within 100 feet (excluding New Hampshire Avenue right-of-way) of FDA and having direct access to New Hampshire Avenue. The FDA site is mainly a research and regulatory facility where it is very unlikely that treatment to individuals would occur. Staff does not anticipate that these 24 properties would be impacted by ZTA 15-08.

Walter Reed National Military Medical Center

There are no properties within 100 feet of Walter Reed that fit the criteria of ZTA 15-08. Residential properties located along Jones Bridge Road are not eligible because the roadway is not classified as a major highway with a master-planned width of at least 120 feet.

¹ This material is liberally borrowed from Planning Staff's memorandum to the Planning Board.

² This criteria is discussed separately.

Prohibiting residential support in townhouses

The Planning Board recognized that the ZTA would allow up to 10 residents, including staff but excluding children under 2 years old. In their opinion, this number of unrelated people would be inappropriate in a townhouse. **Staff agrees that the use could be prohibited in a townhouse.**

On-site parking requirement

As introduced, on-site parking by guests would be prohibited. In particular, the text reads as follows:

One parking space is required for each resident staff member. Guests or guest households may park on the premises of the institution where treatment occurs, but must not park overnight on the site or on residential streets in the surrounding neighborhood.

The Planning Board agrees with the parking for resident staff members but would also require a minimum of 0.25 parking spaces for each guest bed. It is anticipated the vast majority of guests would come to the area without cars, but some guests may have them. **Staff supports the Planning Board's recommendation, as it an affirmative requirement instead of a negative requirement to NOT park in particular places.**

Editorial changes recommended by the Planning Board

The Planning Board recommended a number of editorial changes to ZTA 15-08. **Staff recommends approval of those changes with one exception.** The ZTA uses the phrase "hospitality services for persons who are present as a result of treatment or care being provided to a member of their household by a federal treatment facility or a Hospital." The Planning Board recommended editorial change would add "or family" after the word household in a number of places in the ZTA. Family is not a defined term in the zoning code. In fact, the term family is used only in conjunction with other words (immediate family member, family day care, and family burial site³). Household is a defined term in the code that includes families:

Household: A person living alone, or any one of the following groups living together as a single housekeeping unit and sharing common living, sleeping, cooking, and eating facilities:

- 1. any number of people related by blood, marriage, adoption, or guardianship;*
- 2. up to 5 unrelated people; or*
- 3. 2 unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship.*

³ All of these are defined terms:

- Immediate Family Member: A person's parent, spouse, child, or sibling.
- Family Day Care (Up to 8 Persons) means a Day Care Facility for a maximum of 8 people in a dwelling where for child day care the registrant is the provider and a resident, or the registrant is not a resident but more than half the children cared for are residents...
- Family Burial Site: A location used for the permanent interment of deceased persons and ashes related to the property owner by blood, marriage, or adoption.

By including “any number of people related by blood, marriage, adoption, or guardianship” and “2 unrelated people and any children, parents, siblings, or other persons related to either of them by blood, adoption, or guardianship”, families are a subset of households. All families are households but not all households are families. At best, the recommended addition of the word “family” is redundant in the context used by the Planning Board. At worst, it implies that the defined term “household” does not include families.

<u>This Packet Contains</u>	<u>© number</u>
Planning Board Recommendation	1 – 2
Planning Staff Report	3 – 5
ZTA 15-08 (as recommended by the Planning Board)	6 – 11



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

OFFICE OF THE CHAIR

The Maryland-National Capital Park and Planning Commission

June 26, 2015

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

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 15-08

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment (ZTA) No. 15-08 at our regular meeting on June 25, 2015. By a vote of 5:0, the Planning Board recommends approval of the text amendment as modified by the Board and depicted in the attached technical staff report to generally reflect plain language clarifications and consistency with similar language in other sections of the Code. One substantive change includes a recommendation to exclude the townhouse building type from use as a residential support facility, given its potential to allow up to 10 persons to reside in the house at one time (8 guests and 2 resident staff persons) and the fact that the GIS analysis found no existing townhouse building types that fit the locational criteria for permitting the use. A second recommendation is to establish an objective on-site parking requirement for guests. As introduced in ZTA 15-08, guests may park on the premises of the institution where treatment occurs, but cannot park overnight on the site or on residential streets in the surrounding neighborhood. To minimize enforcement concerns for DPS, staff typically works to avoid establishing subjective standards for limited uses.

ZTA No. 15-08 as introduced would allow charitable residential support facilities by modifying the definition of a Charitable, Philanthropic Institution to include housing and support services for caregivers and persons who are present as a result of treatment or care being provided to a member of their household or family by a federal treatment facility or a Hospital. The housing and support for these persons would be allowed as a limited use in the R-60 and R-90 zones in an existing detached house or townhouse building type that fronts on and has direct access to a major highway with a minimum master-planned right-of-way of 120

feet. The use is further limited by a requirement that the property be located within 100 feet, excluding public rights-of-way, from the boundary of a federal research and treatment facility containing at least 200 acres. The number of guests that may reside on the property is limited to 8 persons and the number of resident staff on-site is limited to 2 persons.

The Board believes that the limitations on the number of residents per house and the locations where the use could occur minimize potential adverse impacts of the proposed use on residential neighborhoods while allowing a needed support service at appropriate locations. Vehicular access to this use would occur only along a major highway with a minimum master-planned right-of-way of 120 feet, thereby further minimizing vehicular impacts on internal streets of established residential communities.

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 Silver Spring, Maryland, on Thursday, June 25, 2015.

Casey Anderson
Chair

CA:GR

Zoning Text Amendment (ZTA) No. 15-08, Charitable Institutions - Residential Support

- Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174
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Completed: 06/18/15

Description

ZTA No. 15-08 would allow charitable residential support facilities under certain circumstances. Specifically, the ZTA would modify the definition of a Charitable, Philanthropic Institution to include housing and support services for caregivers and persons who are present as a result of treatment or care being provided to a member of their household by a federal treatment facility or a Hospital. The housing and support for these persons would be allowed as a limited use in the R-60 and R-90 zones in an existing detached house or townhouse building type that fronts on and has direct access to a major highway with a minimum master-planned right-of-way of 120 feet. The use is further limited by a requirement that the property be located within 100 feet, excluding public rights-of-way, from the boundary of a federal research and treatment facility containing at least 200 acres. The number of guests that may reside on the property is limited to 8 persons and the number of resident staff on-site is limited to 2 persons.

Summary

Staff recommends approval, with modifications, of ZTA No. 15-08 to allow charitable residential support facilities under certain circumstances. Staff modifications generally reflect plain language clarifications and consistency with similar language in other sections of the Code. One substantive change includes a recommendation to exclude the townhouse building type from use as a residential support facility, given its potential to allow up to 10 persons to reside in the house at one time (8 guests and 2 resident staff persons) and the fact that the GIS analysis found no existing townhouse building types that fit the locational criteria for permitting the use. A second recommendation is to establish an objective on-site parking requirement for guests. As introduced in ZTA 15-08, guests may park on the premises of the institution where treatment occurs, but cannot park overnight on the site or on residential streets in the surrounding neighborhood. To minimize enforcement concerns for DPS, staff typically works to avoid establishing subjective standards for limited uses.

Background/Analysis

Definition (Lines 9-16)

ZTA 15-08 would modify the definition of a Charitable, Philanthropic Institution to include housing and support services for caregivers (Attachment 1, line 13). Staff recommends clarifying this language to clarify the intent to provide housing and support for family members as well as caregivers. The proposed definitional modification would provide inclusionary language for: *persons who are present as a result of treatment or care being provided to a member of their household or family by a federal treatment facility or a Hospital.* This language is consistent with text included under the proposed limited use standards (lines 28-32 of Attachment 1).

Location (Attachment 1-Lines 3-6; 39-41; 57-60; and Attachment 2)

Under ZTA 15-08, a charitable housing and support facility would be allowed as a limited use in the R-60 and R-90 zones in an existing detached house or townhouse building type that fronts on and has direct access to a major highway with a minimum master-planned right-of-way of 120 feet and within 100 feet, excluding public rights-of-way, from the boundary of a federal research and treatment facility containing at least 200 acres. Attachment 2 depicts the locations in the County where existing detached house and townhouse building types fit the criteria. Generally, there are three federal research and treatment facilities that each encompasses at least 200 acres- the National Institutes of Health (NIH), Walter Reed National Military Medical Center; and the U.S. Food and Drug Administration (FDA). Staff discusses each site below.

National Institutes of Health (NIH)

There are 8 properties that include a detached house building type, located within 100 feet (excluding Old Georgetown Road right-of-way) of NIH and having direct access to Old Georgetown Road (Map 1 of Attachment 2). Several other properties are within 100 feet of NIH and front on Old Georgetown Road, but do not have direct access to it or are not a detached house building type.

There are 28 townhouse properties located within 100 feet (excluding Rockville Pike right-of-way) of NIH across Rockville Pike. However, after further examination it was determined that none of the properties actually front on or have direct access to Rockville Pike (Map 2 of Attachment 2). All properties access a private drive aisle within the townhouse development. In any case, staff believes that the townhouse building type would be an inappropriate building type for the proposed use. The potential for 10 persons residing in this unit type at any one time appears incompatible with the character of a townhouse development. As such, ***staff recommends that the townhouse building type be deleted from the ZTA.***

Walter Reed National Military Medical Center

There are no properties within 100 feet of Walter Reed that fit the criteria of ZTA 15-08. Residential properties located along Jones Bridge Road are not eligible because the roadway is not classified as a major highway with a master-planned width of at least 120 feet.

U.S. Food and Drug Administration (FDA)

There are 24 properties that include a detached house building type located within 100 feet (excluding New Hampshire Avenue right-of-way) of FDA and having direct access to New Hampshire Avenue (Map 3 of Attachment 2). However, it should be noted that the FDA site is mainly a research and regulatory facility where it is very unlikely that treatment to individuals would occur. As such, at this time it would be highly unlikely that these 24 properties would be impacted by this ZTA.

Residential Capacity of Charitable Housing and Support Facility (Attachment 1-Lines 45-51)

ZTA 15-08 proposes that a maximum of 8 guests reside on the property at one time, consistent with the requirements for a Residential Care Facility for up to 8 persons (a permitted use in all residential zones). The ZTA further limits the number of resident staff on-site to 2 persons. Staff believes that the limitations on the number of residents per house and the locations where the use could occur minimize potential adverse impacts of the proposed use on residential neighborhoods. Vehicular access to this use must occur only along a major highway with a minimum master-planned right-of-way of 120 feet, thereby further minimizing vehicular impacts on internal streets of established residential communities.

Parking (Attachment 1-Lines 52-56)

ZTA 15-08 as introduced would limit parking to one space for each resident staff member (2 spaces maximum). In addition, guests may park on the premises of the institution where treatment occurs, but cannot park overnight on the site or on residential streets in the surrounding neighborhood.

Staff has concerns with the guest parking requirements since they appear to be more subjective than objective. It is unclear how DPS will be able to enforce or prove that there is no parking overnight at the site or on residential streets surrounding the neighborhood or what actually constitutes "a neighborhood". ***Staff believes that a better solution is to require a certain number of parking spaces for guests on site based on the number of beds proposed for the facility.*** Under the Residential Care Facility use, a metric of 0.25 spaces per bed is the minimum requirement. For a facility with eight beds, a minimum of 2 spaces would be required. Staff recommends this change.

Conclusion

With the proposed changes to the ZTA language as depicted in Attachment 1 (plain language modifications, exclusion of townhouse building type and modifications to the parking requirements), staff recommends approval of ZTA No. 15-08.

Attachments

1. ZTA No. 15-08 as modified by staff
2. GIS Maps and Table of Potential Sites for Charitable Institutions for housing and support services

Sec. 1. DIVISION 59.3 is amended as follows:

DIVISION 59.3. Uses and Use Standards

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Residential														
		Residential Detached								Residential Townhouse			Residential Multi-Unit			
		RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40	TLD	TMD	THD	R-30	R-20	R-10		
* * *																
CIVIC AND INSTUTIONAL																
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CHARITABLE, PHILANTHROPIC INSTITUTION	3.4.2	C	C	C	C	L/C	L/C									
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Section 3.4.2. Charitable, Philanthropic Institution

A. Defined

1. Charitable, Philanthropic Institution means a private, tax-exempt organization whose primary function is to provide services, research, or educational activities in areas such as health, social service, housing and support services for [[caregivers]] persons who are present as a result of treatment or care being provided to a member of their household or family by a federal treatment facility or a Hospital, recreation, or environmental conservation.

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B. Use Standards

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1. Where a Charitable, Philanthropic Institution is allowed as a limited use, ~~[[in the R-60 and R-90 zones,]]~~ it must satisfy the following standards:

- a. ~~[[A]]~~ The Charitable, Philanthropic Institution must ~~[[reuse a dwelling to]]~~ be primarily ~~[[provide]]~~ for the provision of support and hospitality services for ~~[[multiple guests]]~~ persons who are present as a result of treatment or care being provided to a member of their household or family by a federal treatment facility or a Hospital.
- b. Services may be provided daily, during any hours, to persons ~~[[or households]]~~ who are not permanent residents of the premises but are present as a result of treatment or care being provided to a member of their household or family by a federal treatment facility or a ~~[[hospital]]~~ Hospital.
- c. The support and hospitality services are provided without payment ~~[[by a tax-exempt organization]]~~.
- d. ~~[[Residential support facilities]]~~ The Charitable, Philanthropic Institution must use an existing detached house ~~[[or townhouse building type]]~~ and must retain the appearance of a detached house ~~[[or townhouse building type, as applicable]]~~.
- e. The property must front~~[[s]]~~ on and ~~[[has]]~~ have direct access to a ~~[[public road classified as a]]~~ major highway with a minimum master-planned right-of-way of 120 feet ~~[[or greater]]~~.
- ~~[[f. The building must comply with the detached house or townhouse building type development standards of the zone in which it is located.]]~~

45 [[g]]f. The maximum number of guests that may reside on the
46 property at one time is 8, excluding:

- 47 i. resident staff; or
48 ii. children younger than 2 months of age, when present
49 with a parent or legal guardian.

50 [[h]]g. [[Up to]] A maximum of 2 resident staff [[necessary for
51 the operation of the facility]] may live on-site.

52 [[i]]h. One parking space is required for each resident staff
53 member. [[Guests or guest households may park on the
54 premises of the institution where treatment occurs, but must not
55 park overnight on the site or on residential streets in the
56 surrounding neighborhood.]] A minimum of 0.25 parking
57 spaces is required for each guest bed.

58 [[i]]i. The property must be within 100 feet, excluding public rights-
59 of-way, from the boundary of a federal research and treatment
60 facility [[owned and operated by the federal government and]]
61 containing at least 200 acres.

62 2. Where a Charitable, Philanthropic Institution is allowed as a
63 conditional use, it may be permitted by the Hearing Examiner under
64 Section 7.3.1, Conditional Use, and the following standards:

65 [1] a. Screening under Division 6.5 is required for outdoor recreation
66 facilities.

67 [2] b. Any lighting associated with outdoor recreation facilities must
68 satisfy Section 6.4.4.

69 [3] c. In the AR, R, RC, and RNC:

70 [a] i. A Charitable, Philanthropic Institution must re-use an
71 existing building. The Hearing Examiner may waive this

72 restriction to approve a residential camp for seriously ill
73 children and their immediate family members, operated
74 or sponsored by a non-profit organization under the
75 following conditions. Immediate family members may
76 attend sessions jointly with or separate from the sessions
77 attended by the children. Separate sessions for immediate
78 family members are only permitted as a secondary camp
79 activity. The camp may include facilities for overnight
80 accommodations and for support services related to camp
81 activities. The camp must be compatible with adjacent
82 land uses.

83 [b] ii. The site fronts on and has direct access to a public road
84 built to arterial or higher road standards. Frontage on and
85 access to an arterial or higher standard is not required
86 where the Hearing Examiner finds that road access by a
87 primary residential or secondary residential road will be
88 safe and adequate for the anticipated traffic to be
89 generated.

90 [c] iii. The minimum side setback is twice that required for a
91 detached house.

92 [d] iv. The minimum lot width at the front lot line is twice that
93 required for a detached house.

94 [e] v. The minimum green area is 50%.

95 [f] vi. The maximum coverage is half of the maximum allowed
96 for a detached house.

97 [g] vii. The maximum FAR is 0.2.

98 [4] d. In the R and RC zones, the maximum lot area is 5 acres.

- 99 [5] e. In the AR and RNC zones, the minimum lot area is twice that
100 required for a detached house and the maximum lot area is 2
101 acres.
- 102 [6] f. In the AR zone, this use may be prohibited under Section 3.1.5,
103 Transferable Development Rights.
- 104 [7] g. In the RE-2, RE-2C, RE-1, R-200, R-90, and R-60 zones:
- 105 [a] i. The site fronts on and has direct access to a road built to
106 primary residential road or higher standards. Access to a
107 corner lot may be from an abutting primary street,
108 constructed to primary residential standards, if the
109 Hearing Examiner finds this access to be appropriate and
110 not detrimental to existing residential uses on that
111 primary residential street.
- 112 [b] ii. The minimum side setback is twice that required for a
113 detached house.
- 114 [c] iii. The minimum lot width at the front lot line is twice that
115 required for a detached house.
- 116 [d] iv. The maximum FAR is 0.25.
- 117 [e] v. For residential and office uses, if located in a lawfully
118 existing building, the standards in Section [3.4.2.B.7.b]
119 3.4.2.B.2.g.ii and Section [3.4.2.B.7.d] 3.4.2.B.2.g.iv do
120 not apply.
- 121 [8] h. In the R-90 and R-60 zones, the minimum green area is 50%
122 and the maximum building height is 35 feet.
- 123 [9] i. In the R-200 zone, the minimum green area is 60% and the
124 maximum building height is 50 feet.

125 [10] j. In the RE-2, RE-2C, RE-1 zones, the minimum green area is
126 70%.

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

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132 This is a correct copy of Council action.

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135 Linda M. Lauer, Clerk of the Council