



Zoning Text Amendment (ZTA) No. 16-15, Facility for Senior and Disabled - Standards

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Completed: 1/5/17

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**Description**

ZTA No. 16-15 would separate the standards for senior and disabled independent living facilities; and revise the standards for senior and disabled independent living facilities. According to the County Council staff introduction memorandum, the current provisions for describing who may live in facilities designated as independent living facilities for seniors and disabled persons is no longer in alignment with Federal Fair Housing Act regulations.

**Summary**

**Staff recommends approval of ZTA 16-15 as modified by staff, to separate the standards for senior and disabled independent living facilities; and revise the standards for senior and disabled independent living facilities. In general, staff does not object to ZTA 16-15. Staff does question why the “resident care-giver” language differs for the two independent living groups. Further, under the Independent Living Facility for Persons with Disabilities provisions, staff suggests the following revision pertaining to the restriction on occupancy of a unit to read:**

***Any parent, daughter, son, sister, [or] brother or person related by blood, marriage, adoption, or guardianship of a handicapped resident regardless of age or disability.***

**Background/Analysis**

As defined, Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations. ZTA No. 16-15 would separate the limited use standards for senior and disabled independent living facilities; and revise the standards for senior and disabled independent living facilities for the purpose of bringing the code in-line with current Federal Fair Housing Act regulations for facilities designated as independent living facilities for seniors

and disabled persons. Under the Independent Living Facility for Seniors limited use provisions the text amendment would:

- Change the phrase, “the spouse of a senior or disabled resident” to, “other members of the household of a senior adult” regardless of age (disabled resident is being separated into another section)
- Change the phrase, “resident care-giver, if needed to assist a senior or disabled resident” to, “person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist elderly persons as defined in that program.”
- Clarify the age restriction rules when imposed beyond the general age restriction rules of the subsection
- Add a reference to adherence to the Maryland Fair Housing Act

Under the Independent Living Facility for Persons with Disabilities limited use provisions, the text amendment would continue the standards as currently required under Section 3.3.2.C.2. These include:

- The facility meeting all applicable federal, state, and County licensure, certificate, and regulatory requirements.
- Allowing resident staff necessary for the operation of the facility to live on-site.
- Restricting occupancy of a dwelling unit to: a person with disabilities, as defined in Section 1.4.2, Defined Terms; the spouse of a disabled resident, regardless of age or disability; a resident caregiver, if needed to assist a disabled resident; or any parent, daughter, son, sister, or brother of a handicapped resident, regardless of age or disability.

In general, staff does not object to ZTA 16-15. Staff does question why the “resident care-giver” language differs for the two independent living groups. Further, under the Independent Living Facility for Persons with Disabilities provisions, staff suggests language changes pertaining to the restriction on occupancy of a unit to read:

*Any parent, daughter, son, sister, [or] brother or person related by blood, marriage, adoption, or guardianship of a handicapped resident regardless of age or disability.*

As proposed, if you have an elderly relative i.e., aunt, uncle, or grandparent that does not have a surviving sibling or child, it is not clear that other family members would be allowed to live with the handicapped resident. If the language was changed as recommended above, this problem would be eliminated.

## **Attachments**

1. ZTA No. 16-15 as modified

# ATTACHMENT 1

Zoning Text Amendment No.: 16-15  
Concerning: Facility for Senior and  
Disabled - Standards  
Draft No. & Date: 1 – 11/17/16  
Introduced: November 29, 2016  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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Lead Sponsor: Councilmember Floreen

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

- separate the standards for senior and disabled independent living facilities;
- revised the standards for senior and disabled independent living facilities; and
- generally amend the provisions for senior and disabled independent living facilities.

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

Division 59-3.3.       “Residential Uses”  
Section 59-3.3.2.     “Group Living”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

**Sec. 1. DIVISION 59-3.3 is amended as follows:**

**Division 3.3. Residential Uses**

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**Section 3.3.2. Group Living**

\* \* \*

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

**1. Defined**

Independent Living Facility for Seniors or Persons with Disabilities means a building containing dwelling units and related services for senior adults or persons with disabilities. Independent Living Facility for Seniors or Persons with Disabilities includes meal preparation and service, day care, personal care, nursing or therapy, or any service to the senior adult or disabled population of the community that is an ancillary part of one of these operations.

**2. Use Standards**

a. Where an Independent Living Facility for Seniors [or Persons with Disabilities] is allowed as a limited use, it must satisfy the following standards:

i. The facility must meet all applicable Federal, State, and County licensure, certificate, and regulatory requirements.

ii. Resident staff necessary for the operation of the facility are allowed to live on-site.

iii. Occupancy of a dwelling unit is restricted to the following:

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- (a) a senior adult [or person with disabilities,] as defined in Section 1.4.2, Defined Terms;
- (b) [the spouse of a senior or disabled resident,] other members of the household of a senior adult regardless of age [or disability]; or
- (c) a [resident care-giver, if needed to assist a senior or disabled resident; or] person authorized to occupy housing provided under any federal or state program that is specifically designed and operated to assist elderly persons as defined in that program.
- (d) [in a development designed primarily for persons with disabilities rather than senior adults, one parent, daughter, son, sister, or brother of a handicapped resident, regardless of age or disability.]
- [(e) Age restrictions must] If imposing age restrictions that would limit occupancy otherwise allowed by this Subsection, the facility must only impose age restrictions that satisfy at least one type of exemption for housing for older persons from the familial status requirements of the federal “Fair Housing Act,” Title VIII of the Civil Rights Act of 1968, as amended, or the state Fair Housing Act, Subtitle 7 of Title 20 of the Annotated Code of Maryland, State Government Article as amended.

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- b. Where an Independent Living Facility for Persons with Disabilities is allowed as a limited use, it must satisfy the following standards:
  - i. The facility must meet all applicable federal, state, and County licensure, certificate, and regulatory requirements.
  - ii. Resident staff necessary for the operation of the facility are allowed to live on-site.
  - iii. Occupancy of a dwelling unit is restricted to the following:
    - (a) a person with disabilities, as defined in Section 1.4.2, Defined Terms;
    - (b) the spouse of a disabled resident, regardless of age or disability;
    - (c) a resident caregiver, if needed to assist a disabled resident; or
    - (d) any parent, daughter, son, sister, ~~[[or]]~~ brother or person related by blood, marriage, adoption, or guardianship of a handicapped resident, regardless of age or disability.
- c. Where an Independent Living Facility for Seniors or Persons with Disabilities is allowed as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards, Section 7.3.1, Conditional Use, and the following standards:

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

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80 This is a correct copy of Council action.

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83 Linda M. Lauer, Clerk of the Council