

## MEMORANDUM

February 28, 2019

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 19-02, Clinics – Limited Use

PURPOSE: Worksession – develop recommendations for the Council's consideration

**Staff recommends approval of ZTA 19-02 with the following amendments:**

- Adding the following provision to the section concerning clinics as limited uses:

If the principal use was approved as a conditional use or special exception, then this accessory use must satisfy the Minor Amendment provisions applicable to the principal use.
- Limiting the size for clinics with up to 4 practitioners, approved as limited uses, to the same floor area square footage limits as those with more than 4 practitioners (5 percent of the principal use).
- Revising the Use Table for R-200, R-90, and R-60 zones, where small clinics are allowed as conditional uses, and allow a limited use option.
- Making ZTA 19-02 effective upon Council approval.

Zoning Text Amendment (ZTA) 19-02, lead sponsor Council President Navarro and co-sponsor Councilmember Rice, was introduced on January 15, 2019. ZTA 19-02, Clinics – Limited Use would allow medical and dental clinics as accessory uses to certain large institutional uses.<sup>1</sup> Under the current zoning code, any permitted or limited use in a zone may be an accessory use to any other use in the same zone. Before 2014, an accessory use could be any use that was incidental and subordinate to the principal use. Under this older provision, the Department of Permitting Services allowed medical and dental clinics as accessory uses to some institutional uses. That is no longer the case because those uses are not listed as permitted or limited uses in many residential zones. ZTA 19-02 would allow accessory use clinics that

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<sup>1</sup> Key words: #MoCoMedical&DentalClinics, plus search terms accessory use, clinics, medical clinic, dental clinic.

are limited in size in all Residential zones. In zones where such clinics are currently allowed as conditional uses (R-200, R-90, R-60), the standards for the use would be unchanged.

ZTA 19-02 is a relatively minor change to the code. It would not change the code to go back to allowing any incidental or subordinate use as an accessory use. The amendment would only liberalize accessory use rules for clinics in any: 1) large residential care facility; 2) charitable, philanthropic institution; 3) large day care center; 4) private educational institution; or 5) place of religious assembly. Clinics with more than 4 practitioners would only be allowed as a minor part (5 percent of the use's total floor area) of the principal use.

The Planning Board did not object to ZTA 19-02 but recommended three revisions. All of their recommendations were suggested by Planning Staff:

- 1) Clarify that accessory use clinics in projects approved as conditional uses must adhere to the minor amendment process for amending the underlying approval.
- 2) Limit the size allowed for clinics with less than 4 practitioners (approved as limited uses) to the same floor area square footage limits as those with more than 4 practitioners (5 percent of the principal use).
- 3) In the Use Table for R-200, R-90, and R-60 zones, where small clinics are allowed as conditional uses, allow a limited use option.

The Council conducted a public hearing on February 26, 2019. All of the testimony supported the approval of ZTA 19-02 with an amendment to make the ZTA effective immediately upon approval by the Council.

## Issues

- 1) *Should ZTA 19-02 clarify that, when a clinic is an accessory use to a project approved as a conditional use or special exception, it must adhere to the minor amendment provisions to amend the underlying approval?*

A clinic allowed as a limited use under ZTA 19-02 would be an accessory use to the following uses:

Residential Care Facility (Over 16 Persons);  
Charitable, Philanthropic Institution;  
Day Care Center (Over 30 Persons);  
Educational Institution (Private); or  
Religious Assembly.

Except for a Religious Assembly use, all of these principal uses require conditional use approval. If the clinic is added after the conditional use is approved, it would require an amendment. There are provisions in the Zoning Ordinance for major and minor amendments.<sup>2</sup> A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.<sup>3</sup>

<sup>2</sup> "Get your facts first, then you can distort them as you please." Mark Twain.

<sup>3</sup> Section 59-7.3.1.K.1.

ZTA 19-02 as recommended by the Planning Board would allow clinics, when they are limited uses, to 5 percent of the floor area of the principal use. The Planning Board suggested foreclosing any initial debate on whether a proposal to add a clinic affected the “nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.”

A minor amendment to a conditional use is one that does **not** change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.<sup>4</sup> The minor Amendment procedures allow for an administrative approval; however, a public hearing may be requested to determine whether the amendment should be handled as a major amendment (with the same process and findings required of the original approval).

Staff recommends adding the following provision to the section concerning clinics as limited uses:

**If the principal use was approved as a conditional use or special exception, then this accessory use must satisfy the Minor Amendment provisions applicable to the principal use.**

- 2) *Should the size for a clinic with 4 or fewer practitioners approved as a limited use be limited to the same floor area square footage limits as those with more than 4 practitioners (5 percent of the principal use)?*

As introduced, ZTA 19-02 only limits the floor area of clinics with more than 4 practitioners. As the Planning Board pointed out, the ZTA did not limit the size of clinics with 4 or fewer practitioners. It would create a situation where clinics with 4 or fewer practitioners could be larger than clinics with more than 4 practitioners.

**Staff recommends limiting the size for limited use clinics with 4 or fewer practitioners to the same percentage floor area square footage limits as those with more than 4 practitioners (5 percent of the principal use).**

- 3) *In the Use Table for R-200, R-90, and R-60 zones, where small clinics are allowed as conditional uses, allow a limited use option.*

The Planning Board noted that where a clinic is currently allowed for up to 4 practitioners as a conditional use (R-200, R-90, and R-60 zones), ZTA 19-02 did not allow any circumstances where the use could be approved as a limited use. (ZTA 19-02 did not change the conditional use requirements for clinics. It only created a limited use category in zones where clinics are currently not permitted under any circumstances.) This omission of a limited use opportunity in R-200, R-90, and R-60 zones would create a circumstance where it would be procedurally easier to apply for a clinic with more practitioners than less.

**Staff recommends revising the Use Table for R-200, R-90, and R-60 zones, where small clinics are allowed as conditional uses, to allow a limited use option.**

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<sup>4</sup> Section 59-7.3.1.K.2.

4) *Should ZTA 19-02 be effective when approved?*

As introduced, ZTA 19-02 would become effective 20 days after enactment. That is normally the effective for ZTAs. A representative of a place of religious assembly with a finished building indicated their desire to proceed as soon as possible.

**Staff recommends making ZTA 19-02 effective upon Council approval.**

<u>This packet contains</u>	<u>© number</u>
ZTA 19-02 revised as recommended by Staff	1 – 7
Planning Board Recommendation	8 – 9
Planning Staff Recommendation	10 – 14

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Zoning Text Amendment No.: 19-02  
Concerning: Clinics - Limited Use  
Draft No. & Date: 1-12/19/2018  
Introduced: January 15, 2019  
Public Hearing: February 26, 2019  
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: Council President Navarro  
Co-sponsor: Councilmember Rice

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

- allow medical and dental clinics as a limited use in Residential Zones
- establish standards for medical and dental clinics as a limited use in Residential zones, and
- generally amend the provisions concerning medical and dental clinics

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 3.5. "Commercial Uses"  
Section 3.5.7. "Medical and Dental"

**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 59-3.1 is amended as follows:**

**Division 3.1. Use Table**

\* \* \*

**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	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	R-20	R-10		
* * *																			* * *		
MEDICAL AND DENTAL	3.5.7																				
Clinic (Up to 4 Medical Practitioners)	3.5.7.A					<u>L</u>	<u>L</u>	<u>L</u>	<u>L/C</u>	<u>L/C</u>	<u>L/C</u>		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	* * *		
Clinic (More than 4 Medical Practitioners)	3.5.7.B					<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	* * *		
Medical, Dental Laboratory	3.5.7.C																		* * *		
* * *																			* * *		

**Key:** P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

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**Sec. 2. DIVISION 59-3.5 is amended as follows:**

**Division 3.5. Commercial Uses**

\* \* \*

**Section 3.5.7. Medical and Dental**

**A. Clinic (Up to 4 Medical Practitioners)**

**1. Defined**

Clinic (Up to 4 Medical Practitioners) means a building occupied by up to 4 medical practitioners and related services to provide healthcare on an outpatient basis.

## 2. Use Standards

a. Where a Clinic (Up to 4 Medical Practitioners) is allowed as a limited use, it must occupy 5 percent or less of the floor area of the principal use and be an accessory use to one of the following principal uses:

- i. Residential Care Facility (Over 16 Persons);
- ii. Charitable, Philanthropic Institution;
- iii. Day Care Center (Over 30 Persons);
- iv. Educational Institution (Private); or
- v. Religious Assembly.

If the principal use was approved as a conditional use or special exception, then this accessory use must satisfy the Minor Amendment provisions applicable to the principal use.

b. Where a Clinic (Up to 4 Medical Practitioners) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

[a]i. The minimum lot width at the front lot line is 100 feet.

[b]ii. The minimum setback from a lot that is vacant or residentially improved is 40 feet. The minimum setback from all other abutting lots is 20 feet.

[c]iii. The site must front on and have direct access to a business district street or higher classification; however, access to a corner lot may be from an abutting street built



to primary residential standards, if the Hearing Examiner finds the access to be appropriate and not detrimental to existing residential uses on the primary residential street.

[d]iv. Office space suitable for the practice of the profession must be unavailable in either the nearest Commercial/Residential or Employment zone or the nearest medical clinic office building constructed.

[e]v. A maximum of 4 additional medical practitioners may be present at any one time, and only if the presence of the additional practitioners will not generate additional patient-related traffic. The additional practitioners are only allowed to assist a practitioner in a specific surgical or diagnostic procedure or perform administrative work related to the treatment of patients on-site the same day. A written record must be kept for inspection by County enforcement staff identifying the physicians on-site and their schedules of seeing patients and performing administrative work.

**B. Clinic (More than 4 Medical Practitioners)**

**1. Defined**

Clinic (More than 4 Medical Practitioners) means a building occupied by more than 4 medical practitioners and related services to provide healthcare on an outpatient basis. Clinic (More than 4 Medical Practitioners) does not include emergency medical care accessory to a Hospital.

**2. Use Standards**

a. Where a Clinic (More than 4 Medical Practitioners) is allowed as a limited use, [and] the following conditions must be satisfied:

i. If the use is located in a CRN zone and the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or Residential Detached that is vacant or improved with an agricultural or residential use, site plan approval is required under Section 7.3.4.

ii. If the use is not located in the CRN zone, it must occupy 5 percent or less of the floor area of the principal use and must be an accessory use to one of the following principal uses:

(a) Residential Care Facility (Over 16 Persons);

(b) Charitable, Philanthropic Institution;

(c) Day Care Center (Over 30 Persons);

(d) Educational Institution (Private); or

(e) Religious Assembly.

If the principal use was approved as a conditional use or special exception, then this accessory use must satisfy the Minor Amendment provisions applicable to the principal use.

b. Where a Clinic (More than 4 Medical Practitioners) is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use.

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**Sec. 3. Effective date.** This ordinance becomes effective immediately upon the date of Council adoption.

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96 This is a correct copy of Council action.

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100 Megan Davey Limarzi, Esq.  
Clerk of the Council



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

**OFFICE OF THE CHAIR**

February 25, 2019

**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. 19-02

**BOARD RECOMMENDATION**

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 19-02 (ZTA 19-02) at its regular meeting on February 21, 2019. By a vote of 4:0, (Commissioner Dreyfuss absent from the hearing) the Planning Board provides the following comments on ZTA 19-02 to allow medical and dental clinics as a limited use in Residential Zones and establish standards for medical and dental clinics as a limited use in Residential zones.

- In general, the Planning Board does not object to allowing a clinic in an accessory capacity to a large residential care facility; charitable, philanthropic institution; a large day care center; a private educational institution; or a place of religious assembly.
- The Planning Board believes that the legislation should clarify that the accessory use must also adhere to the Minor Amendment provisions of a conditional use or special exception, as applicable to the principal use.
- ZTA 19-02 would allow accessory use clinics that are limited in size in all residential zones. In zones where such clinics are currently allowed as a conditional principal use (R-200, R-90, R-60), the standards for the use would be unchanged. *The Board is unclear why the limited accessory use provisions for 4 or less medical practitioners would not also apply to these zones and therefore recommends that the land use table include a "L" along with the "C" ("L/C") for Clinic (Up to 4 Medical Practitioners) in the R-200, R-90 and R-60 zones.*
- Where a clinic would be accessory to a permitted principal use it would be more difficult to objectively determine that the clinic is an accessory use. One suggestion would be to limit the number of medical practitioners allowed as an accessory use to a permitted principal use (no conditional use or special exception approval) to a number less than four and to limit the floor area for all clinics as an accessory use to 5% or less of the floor area of the principle use. The legislation as introduced only limits the floor area in cases where an application is requested for more than 4 medical practitioners.

Under the current Zoning Code, any permitted or limited use in a zone may be an accessory use to any other use in the same zone. Before October 30, 2014 (the previous Zoning Code), an accessory use could be any use that was incidental and subordinate to the principal use. Under this older provision, the Department of Permitting Services allowed medical and dental clinics as accessory uses to some institutional uses. That is no longer the case because those uses are not listed as permitted or limited uses in many residential zones.

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ZTA 19-02 would allow accessory use clinics that are limited in size in all residential zones. In zones where such clinics are currently allowed as a conditional principal use (R-200, R-90, R-60), the standards for the use would be unchanged. *The Planning Board is unclear why the limited accessory use provisions for 4 or less medical practitioners would not also apply to these zones and therefore recommends that the limited use provisions be included in these zones while the conditional use process would remain for a clinic as a principal use.*

ZTA 19-02 would not change the code to go back to allowing any incidental or subordinate use as an accessory use. The amendment would only apply the accessory use rules for clinics in any: large residential care facility (over 16 Persons); charitable, philanthropic institution; large day care center (over 30 Persons); private educational institution; or place of religious assembly. Clinics with more than 4 medical practitioners would only be allowed as a minor part (5% of the use's total floor area) of the principal use. *The Planning Board is uncertain of the rationale for not also including the 5% provision for clinics with up to 4 medical practitioners. Otherwise, a clinic with up to 4 practitioners potentially could be of a size similar to that of a clinic that is established as a principal use. This is of particular concern where the clinic would be accessory to a permitted use that would not be beholden to the minor amendment provisions of a special exception or conditional use approval for the principal use.*

#### 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, February 21, 2019.

  
Casey Anderson  
Chair

CA:GR:aj

**Zoning Text Amendment (ZTA) No. 19-02, Clinics - Limited Use**

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Completed: 02/14/19

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**Description**

Zoning Text Amendment (ZTA) 19-02 would allow medical and dental clinics as a limited use in Residential Zones and establish standards for medical and dental clinics as a limited use in Residential zones.

**Summary**

Staff provides the following comments on ZTA 19-02 to allow medical and dental clinics as a limited use in Residential Zones and establish standards for medical and dental clinics as a limited use in Residential zones.

- In general, staff does not object to allowing a clinic in an accessory capacity to a large residential care facility; charitable, philanthropic institution; a large day care center; a private educational institution; or a place of religious assembly.
- Staff believes that the legislation should clarify that the accessory use must also adhere to the Minor Amendment provisions of a conditional use or special exception, as applicable.
- Where a clinic would be accessory to a permitted principal use it would be more difficult to objectively determine that the clinic is an accessory use. One suggestion would be to limit the number of medical practitioners allowed as an accessory use to a permitted principal use (no conditional use or special exception approval) to a number less than four (2 or 3) and to limit the floor area for all clinics as an accessory use to 5% or less of the floor area of the principle use. The legislation as introduced only limits the floor area in cases where an application is requested for more than 4 medical practitioners.

**Background/Analysis**

Under the current Zoning Code, any permitted or limited use in a zone may be an accessory use to any other use in the same zone. Before October 30, 2014 (the previous Zoning Code), an accessory use could be any use that was incidental and subordinate to the principal use. Under this older provision, the Department of Permitting Services allowed medical and dental clinics as accessory uses to some institutional uses. That is no longer the case because those uses are not listed as permitted or limited uses in many residential zones. (Currently, a Clinic with more than 4 Medical Practitioners is not allowed in the Residential Zones while a Clinic with Up to 4 Medical Practitioners is only allowed by conditional use approval in the R-200, R-90 and R-60 zones). ZTA 19-02 would allow accessory use clinics that are

limited in size in all residential zones. In zones where such clinics are currently allowed as a conditional use (R-200, R-90, R-60), the standards for the use would be unchanged. *Staff is unclear why the limited use provisions for 4 or less medical practitioners would not also apply to these zones.*

ZTA 19-02 would not change the code to go back to allowing any incidental or subordinate use as an accessory use. The amendment would only apply the accessory use rules for clinics in any: large residential care facility (over 16 Persons); charitable, philanthropic institution; large day care center (over 30 Persons); private educational institution; or place of religious assembly. Clinics with more than 4 medical practitioners would only be allowed as a minor part (5% of the use's total floor area) of the principal use. *Staff is uncertain of the rationale for not also including the 5% provision for clinics with up to 4 medical practitioners. Otherwise, a Clinic for up to 4 Practitioners potentially could be of a size similar to that of a clinic that is established as a principal use. This is of particular concern where the clinic would be accessory to a permitted use that would not be beholden to the minor amendment provisions of a special exception or conditional use approval for the principal use.*

#### Residential Care Facility (Over 16 Persons) – Section 3.3.2.E.

Residential Care over 16 Persons requires conditional use approval in all residential zones. Some of the provisions associated with approving this use include:

- The facility may provide ancillary services such as transportation, common dining room and kitchen, meeting or activity rooms, convenience commercial area or other services or facilities for the enjoyment, service or care of the residents.
- A group home for children must provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children who will use the facility.
- Where residential dwelling units are provided: the maximum residential density per lot area is 15 units per acre or the maximum density allowed in the zone, whichever is greater; and the minimum green area is 50%.
- Where facility size is based on the number of beds, not dwelling units, the minimum lot area is 2 acres or based on a square footage per bed (whichever is greater), depending on the zone:
- Height, density, coverage, and parking standards must be compatible with surrounding uses; the Hearing Examiner may modify any standards to maximize the compatibility of the building with the residential character of the surrounding neighborhood.

#### Charitable, Philanthropic Institution – Section 3.4.2.

A Charitable, Philanthropic Institution requires conditional use approval in the RE-2, RE-2C, RE-1, R-200, R-90, R-60; however, this use may also be allowed as a limited use in an existing detached house in the R-90 and R-60 zones under certain standards that include:

- The use must be primarily for the provision of support and 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.
- Services may be provided daily, during any hours, to persons 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 by a federal treatment facility or a Hospital.

- The maximum number of guests that may reside on the property at one time is 8, excluding resident staff
- A maximum of 2 resident staff may live on-site.
- One parking space is required for each resident staff member. A minimum of 0.25 parking spaces is required for each guest bed.

Where a Charitable, Philanthropic Institution is allowed as a conditional use, some of the provisions associated with approving this use include:

- Screening under Division 6.5 is required for outdoor recreation facilities.
- Any lighting associated with outdoor recreation facilities must satisfy Section 6.4.4.
- In the RE-2, RE-2C, RE-1, R-200, R-90, and R-60 zones: The site fronts on and has direct access to a road built to primary residential road or higher standards.
  - i. Access to a corner lot may be from an abutting primary street, constructed to primary residential standards, if the Hearing Examiner finds this access to be appropriate and not detrimental to existing residential uses on that primary residential street.
  - ii. The minimum side setback is twice that required for a detached house.
  - iii. The minimum lot width at the front lot line is twice that required for a detached house.
  - iv. The maximum FAR is 0.25.
- In the R-90 and R-60 zones, the minimum green area is 50% and the maximum building height is 35 feet.
- In the R-200 zone, the minimum green area is 60% and the maximum building height is 50 feet.
- In the RE-2, RE-2C, and RE-1 zones, the minimum green area is 70%.

#### Day Care Center (Over 30 Persons) – Section 3.4.4.F.

A Day Care Center for over 30 Persons requires approval of a conditional use in all Residential Zones and cannot be located in a townhouse or duplex building type. Some of the standards associated with a Day Care Center (Over 30 Persons) include:

- All required parking must be behind the front building line; however, required parking may be located between the structure and the street where the Hearing Examiner finds that such parking is safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties.
- An adequate area for the discharge and pick up of children is provided.
- The Hearing Examiner may limit the number of children outside at any one time.
- In the RE-2, RE-2C, RE-1, R-200, R-90, R-60, and R-40 zones, the Day Care Center (Over 30 Persons) must be located on a site containing a minimum of 500 square feet of land area per person. The Hearing Examiner may reduce the area requirement where it finds that:
  - (a) the facility will predominately serve persons of an age range that requires limited outdoor activity space;
  - (b) the additional density will not adversely affect adjacent properties; and
  - (c) additional traffic generated by the additional density will not adversely affect the surrounding streets.

#### Educational Institution (Private) – Section 3.4.5.



A Private Educational Institution requires approval of a conditional use in all Residential Zones. Some of the standards associated with a Private Educational Institution include:

- The use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element that is incompatible with the environment and character of the surrounding neighborhood.
- The use will be in a building compatible with the residential character of the surrounding neighborhood, and, if the Educational Institution (Private) is located on a lot of 2 acres or less, in either an undeveloped area or an area substantially developed with detached houses, the exterior architecture of the building must be similar to a detached house design, and at least comparable to any existing homes in the immediate neighborhood.
- The Educational Institution (Private) will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.
- The number of pupils per acre allowed to occupy the premises at any one time must be specified by the Hearing Examiner considering the following factors: traffic patterns; adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter vehicle queues on adjacent streets; and adequacy of student and visitor parking.
- If an Educational Institution (Private) operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses; (ii) art education programs; (iii) artistic performances; (iv) indoor and outdoor recreation programs; or (v) summer day camps, the Hearing Examiner must find, in addition to the other required findings for the grant of a conditional use, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Hearing Examiner must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Hearing Examiner.

#### Religious Assembly – Section 3.4.10.

Religious Assembly is a permitted use in all Residential Zones.

#### Conclusion

In general, staff does not object to allowing a clinic in an accessory capacity to a large residential care facility; charitable, philanthropic institution; a large day care center; a private educational institution; or a place of religious assembly. Staff is unclear, however, on how allowing 4 or more practitioners as accessory to a principal use governed by special exception or conditional use provisions would impact the conditions of approval including, in some cases, traffic and parking concerns. Staff believes that the legislation should clarify that the accessory use must also adhere to the Minor Amendment provisions of a conditional use or special exception, as applicable, in order to *ensure that the accessory use does not*

*change the nature, character, or intensity of the conditional use or special exception to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use or special exception.*

Staff further questions whether allowing 4 or more practitioners should be considered "accessory" to the principal use, even if the floor area for the use is limited to 5% or less of the gross floor area of the principal use where the number of practitioners is greater than four. In the case of a clinic proposed as accessory to a *conditional use or special exception*, the minor amendment process could address any potential for substantial adverse effects on surrounding properties. However, where a clinic would be accessory to a *permitted* principal use it would be more difficult to objectively determine if the clinic is an accessory use. One suggestion would be to limit the number of medical practitioners allowed as an accessory use to a *permitted or limited* principal use (no conditional use or special exception approval) to a number less than four and to limit the floor area for all clinics as an accessory use to 5% or less of the floor area of the principle use.

#### **Attachments**

1. ZTA No. 19-02 as introduced