

MEMORANDUM

March 28, 2019

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Senior Legislative Analyst

SUBJECT: Zoning Text Amendment 19-03, Commercial/Residential Zones - Animal Boarding and Care

PURPOSE: Worksession – develop recommendations for Council’s consideration

Expected to Attend:

Casey Anderson, Chair, Montgomery County Planning Board
Jason Sartori, Acting Chief, Functional Planning and Policy, M-NCPPC
Greg Russ, Planner Coordinator, M-NCPPC
Ehsan Motazed, Chief, Zoning and Enforcement, Department of Permitting Services

Staff Recommendation: Approve ZTA 19-03 with the revisions recommended by Planning staff.

Background

Zoning Text Amendment (ZTA) 19-03, lead sponsor Council President Navarro at the request of the County Executive, was introduced on February 5, 2019. ZTA 19-03 would allow Animal Boarding and Care as a limited use in Commercial/Residential zones.¹

Animal Boarding and Care, as a limited use, requires the following provisions:

- i. Any part of a building used for animal boarding or care must be soundproofed.
- ii. If it is abutting or confronting 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.
- iii. An outdoor exercise yard is allowed if:
 - (a) it is fenced and set back a minimum of 50 feet from any Residential zone; and
 - (b) any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

¹ Key word: #AnimalBoarding.

Currently, Animal Boarding and Care is a limited use in the GR (General Retail), IL (Light Industrial), and IM (Moderate Industrial) zones. It is a conditional use in the AR, R, RC, RNC, RE-2, RE-2C, RE-1, R-200, NR, and Commercial/Residential zones.

Public Hearing: On March 19, the Council conducted a public hearing concerning ZTA 19-03. The Executive testified in support of ZTA 19-03 to better meet the needs of pet owners and their pets in more urbanized areas. The Planning Board had no objections to ZTA 19-03 given limited use requirements for animal boarding with technical changes recommended by Planning staff. Planning staff recommended approval of ZTA 19-03 with modifications to remove references to the CR zones under the conditional use standards for Animal Boarding and Care. The owner of an Animal Boarding and Care establishment spoke in favor of ZTA 19-03 and requested its speedy approval.

Issues

What is the County's experience with noise complaints?

Animal noise complaints that have any reference to kennels have been pouring in to the 311 system at the rate of about 1 per year for the entire County. Noise from kennels has not been a significant issue.

What is the process for conditional use approval?

The applicant must submit an initial application to the Planning Director, who must review the application for completeness. The Hearing Examiner must schedule a public hearing to begin within 120 days after the date an application is accepted as complete.

The Planning Board must provide a recommendation on the application to the Hearing Examiner a minimum of 7 days before the Hearing Examiner's public hearing. This recommendation is made after a Planning Board hearing.

To approve a conditional use application, the Hearing Examiner, in addition to any specific finding required in the Zoning Ordinance, must find that the proposed development:

- a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;
- b. satisfies the requirements of the zone, use standards under Article 59-3 and, to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;
- c. substantially conforms with the recommendations of the applicable master plan;
- d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;
- e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;
- f. will be served by adequate public services and facilities;

- g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect.

Once the application is approved, the applicant files a building permit with DPS. The only procedure in the Zoning Ordinance that is more burdensome than conditional use is a change in mapped zoning.

What is the process for a limited use approval?

A building permit is referred to the Planning Department for comment. The Planning Board and Hearing Examiner have no role in the approval process. DPS makes an administrative finding that all of the standards of the zone are satisfied. Where an animal boarding use is allowed as a limited use and the applicant plans for an outdoor exercise yard: 1) the exercise yard must be fenced and set back a minimum of 50 feet from any Residential zone; and 2) any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m. **Whether or not there is an outdoor exercise yard, any part of a building used for animal boarding or care must be soundproofed.** Site plan approval is required if the applicant's lot abuts a residentially-zoned property.

All site plans are regulatory approvals made by the Planning Board. The plans provide a detailed overview of the applicant's development. The site plan process is used to determine if the proposed development substantially conforms with the recommendations of the applicable master plan and approved guidelines and will be compatible with existing and approved or pending adjacent development. The Planning Board holds a public hearing before making its findings. The Hearing Examiner is not involved in the Planning Board's action on site plans.

What is the intent of the CR zone?

The CRN, CRT, and CR zones permit a mix of residential and nonresidential uses at varying densities and heights. The zones promote economically, environmentally, and socially sustainable development patterns **where people can live, work, recreate, and access services and amenities.** The application of the CRN, CRT, and CR zones is appropriate where impacts can be mitigated by co-locating housing, jobs, and services. The intent of the CRN, CRT, and CR zones is to:

1. implement the recommendations of applicable master plans;
2. target opportunities for redevelopment of single-use commercial areas and surface parking lots with **a mix of uses**;
3. **encourage development that integrates** a combination of housing types, mobility options, **commercial services**, and public facilities and amenities, where parking is prohibited between the building and the street;
4. **allow a flexible mix of uses**, densities, and building heights appropriate to various settings to ensure compatible relationships with adjoining neighborhoods;
5. integrate an appropriate balance of employment and housing opportunities; and
6. standardize optional method development by establishing minimum requirements for the provision of public benefits that will support and accommodate density above the standard method limit.

Should the modifications recommended by Planning staff be approved?

ZTA 19-03 would allow Animal Boarding and Care as a limited use in CR zones where the use is currently allowed as a conditional use. The current code has provisions for conditional use approval in

those zones. The enactment of ZTA 19-03 would make those provisions meaningless. The Planning Board and Planning staff recommended removing the references to the CR zones in the provisions for the conditional use approval of Animal Boarding and Care. The recommendations of the Planning Board are within the scope of the advertisement and consistent with the Executive's intent to make Animal Boarding and Care a limited use in CR zones.

Staff recommends approval of ZTA 19-03 with the revisions recommended by Planning staff.

Should the ZTA be effective immediately upon approval?

ZTA 19-03 was introduced with a standard effective date:

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

Testimony indicated a desire for faster action. The Committee may recommend to the Council that ZTA 19-03 be effective upon approval.

| <u>This packet contains</u> | <u>© number</u> |
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| ZTA 19-03 as recommended by Planning staff | 1 – 5 |
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Zoning Text Amendment No.: 19-03
Concerning: Commercial/Residential
Zones - Animal Boarding
and Care
Draft No. & Date: 2 - 3/27/19
Introduced: February 5, 2019
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**

Lead Sponsor: Council President Navarro at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- allow Animal Boarding and Care as a limited use in CR zones

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 3.5.1. "Animal Services"

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:

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

9 **Division 3.5. Commercial Uses**

10 **Section 3.5.1. Animal Services**

11 * * *

12 B. Animal Boarding and Care

13 * * *

14 **2. Use Standards**

15 * * *

16 b. Where Animal Boarding and Care is allowed as a conditional
17 use, it may be permitted by the Hearing Examiner under
18 Section 7.3.1, Conditional Use, and the following standards:

19 * * *

20 ii. In the ~~[[Commercial/Residential and]]~~ Employment
21 zones, any part of a building used for animal boarding or
22 care must be soundproofed.

23 iii. In the ~~[[CRT, CR, and]]~~ NR ~~[[zones]]~~zone, an outdoor
24 exercise yard is allowed if:

25 (a) it is fenced and set back a minimum of 50 feet
26 from any Residential zone; and

27 (b) any animal is prohibited from being outdoors
28 between 9:00 p.m. and 7:00 a.m.

29 * * *

30 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the
31 date of Council adoption.

32

33 This is a correct copy of Council action.

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35

36 Megan Davey Limarzi, Esq.
37 Clerk of the Council



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

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OFFICE OF THE CHAIR

March 11, 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. 19-03

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 19-03 (ZTA 19-03) at its regular meeting on March 7, 2019. By a vote of 3:0, (Commissioners Dreyfuss and Patterson absent from the hearing) the Planning Board recommends approval, as amended, to allow Animal Boarding and Care as a limited use in the CR zones. The modifications would further clarify the intent of ZTA 19-03 by eliminating any reference of the CR zones under the conditional use standards for Animal Boarding and Care.

Under the current Zoning Code, Animal Boarding and Care is allowed as a limited use in the GR (General Retail), IL (Light Industrial) and IM (Moderate Industrial) zones and allowed with conditional use approval in the Agricultural, Rural Residential, RE-2, RE-2C, RE-1, R-200, Commercial/Residential (CR, CRT and CRN) and Neighborhood Retail (NR) zones. ZTA 19-03 proposes to allow this use under the limited use standards in all CR zones.

The Planning Board has no objection to ZTA 19-03 since the objective standards of the limited use requirements are similar to the objective specific requirements under the conditional use provisions including: soundproofed walls; fenced outdoor exercise areas that are a minimum of 50 feet from any Residential zone; and a prohibition on animals being outdoors after 9:00 p.m. The conditional use provisions are silent on requirements for outdoor exercise areas for animal boarding in the CRN zone. However, given that CRN zoned properties are intended to be located along the transitional edges for pedestrian-scale, neighborhood-serving mixed-use centers, the limited use provisions provide additional mitigating measures by requiring site plan approval when an Animal Boarding and Care use is proposed adjacent to a property located in the AR, Rural Residential or Residential Detached zones. Therefore, the Board believes that the limited use provisions governing Animal Boarding and Care are sufficient to mitigate any potential impacts to adjacent properties when allowing the use in the CR zones.

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The Honorable Nancy Navarro

March 11, 2019

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As depicted in the technical staff report, the Planning Board agrees with staff's recommendation to modify Section 3.5.1.B.2.b.ii & iii to remove any reference to the CR zones under the conditional use standards for Animal Boarding and Care since, as proposed, the use would only be allowed under the limited use provisions.

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, March 7, 2019.


Casey Anderson
Chair

CA:GR:aj



Zoning Text Amendment (ZTA) No. 19-03, Commercial/Residential Zones - Animal Boarding and Care

Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174

Jason Sartori, Acting Chief, FP&P, jason.sartori@montgomeryplanning.org, 301-495-2172

Completed: 02/28/19

Description

Zoning Text Amendment (ZTA) 19-03 would allow Animal Boarding and Care as a limited use in CR zones.

Summary

Staff recommends approval, as amended, to allow Animal Boarding and Care as a limited use in the CR zones. The modifications would clarify the intent of ZTA 19-03 by eliminating any reference of the CR zones under the conditional use standards for Animal Boarding and Care.

Background/Analysis

Animal Boarding and Care is defined as the structures or land used for the boarding, breeding, or care of dogs, cats, pets, fowl, or other domestic animals at a location other than a Veterinary Office/Hospital, not including animals raised for agricultural purposes.

Under the current Zoning Code, Animal Boarding and Care is allowed as a limited use in the GR (General Retail), IL (Light Industrial) and IM (Moderate Industrial) zones and allowed with conditional use approval in the Agricultural, Rural Residential, RE-2, RE-2C, RE-1, R-200, Commercial/Residential (CR, CRT and CRN) and Neighborhood Retail (NR) zones. ZTA 19-03 proposes to allow this use under the limited use standards in all CR zones.

Limited Use Standards

Where Animal Boarding and Care is allowed as a limited use, it must satisfy the following standards:

- Any part of a building used for animal boarding or care must be soundproofed.
- If it is abutting or confronting 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.
- An outdoor exercise yard is allowed if it is fenced and set back a minimum of 50 feet from any Residential zone.
- Any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

Conditional Use Specific Standards

Where Animal Boarding and Care is allowed as a conditional use in the CR zones, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- In the **Commercial/Residential** (and Employment) zones any part of a building used for animal boarding or care must be soundproofed.
- In the **CRT, CR,** and **NR** zones an outdoor exercise yard is allowed if: it is fenced and set back a minimum of 50 feet from any Residential zone; and any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

Staff Recommendations

Staff has no objection to ZTA 19-03 since the objective standards of the limited use requirements are similar to the objective specific requirements under the conditional use provisions including: soundproofed walls; fenced outdoor exercise areas that are a minimum of 50 feet from any Residential zone; and a prohibition on animals being outdoors after 9:00 p.m. The conditional use provisions are silent on requirements for outdoor exercise areas for animal boarding in the CRN zone. However, given that CRN zoned properties are intended to be located along the transitional edges for pedestrian-scale, neighborhood-serving mixed-use centers, the limited use provisions provide additional mitigating measures by requiring site plan approval when an Animal Boarding and Care use is proposed adjacent to a property located in the AR, Rural Residential or Residential Detached zones. Therefore, staff believes that the limited use provisions governing Animal Boarding and Care are sufficient to mitigate any potential impacts to adjacent properties when allowing the use in the CR zones.

Staff recommends modifications to Section 3.5.1.B.2.b.ii & iii to remove any reference to the CR zones under the conditional use standards for Animal Boarding and Care since, as proposed, the use would only be allowed under the limited use provisions. Below, staff has highlighted the language to be eliminated for the reader's convenience.

Section 3.5.1. Animal Services

* * *

B. Animal Boarding and Care

* * *

2. Use Standards

* * *

b. Where Animal Boarding and Care 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:

* * *

ii. In the ~~[[Commercial/Residential and]]~~Employment zones any part of a building used for animal boarding or care must be soundproofed.

iii. In the ~~[[CRT, CR, and]]~~NR zone~~[[s]]~~ an outdoor exercise yard is allowed if:
(a) it is fenced and set back a minimum of 50 feet from any Residential zone; and
(b) any animal is prohibited from being outdoors between 9:00 p.m. and 7:00 a.m.

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Testimony on Behalf of County Executive Marc Elrich
In Support of ZTA 19-03

Good afternoon, my name is Ehsan Motazedi. I am the Division Chief of Zoning and site Plan Enforcement with Department of Permitting Services and I am pleased to provide testimony this afternoon on behalf of County Executive Marc Elrich in support of Zoning Text Amendment 19-03, Animal Boarding and Care in Commercial/Residential Zones (CR), which is intended to allow Animal Boarding and Care as a limited use in CR Zones.

In the County's urban centers of Bethesda, Silver Spring, Wheaton and other growing communities the construction of multipurpose commercial and residential projects has increased the residential population over the past 19 years. Accompanying the increase in families living in these urban centers are pets that serve as companions to these families. Veterinary services, pet grooming and pet daycare services have been on the rise alongside the increase in the number of residents making these urban centers their home.

However, one service that has been identified as a need but not being sufficiently met is the need for Animal Boarding and Care. In C/R Zones business operators are required to obtain a Conditional Use to provide these services to local residents. The Conditional Use process places an onerous and costly burden due to the additional cost and delays required from a formal hearing process. This places business operators at a disadvantage when obtaining leasable space. Additionally, the barriers created by requiring a conditional use are counter to the transit-oriented development policies associated with the C/R zones by requiring residents in this mixed use zone to find the services elsewhere if they are not available due to regulatory hurdles such as conditional use.

ZTA 19-03 would change the use from a Conditional Use to a Limited Use. Animal Boarding and Care business will still be required to satisfy existing standards intended to protect residences from nuisances by requiring sound proofing and the hours animals are permitted to be outside and also assign setback requirements from residential zones.

In conclusion, County Executive Elrich requests the adoption of ZTA 19-03 Animal Boarding and Care in Commercial/Residential Zones so that those living within the zone have easier access to a common service associated with a household.

Thank you, Council President Navarro and Members of the Montgomery County Council, for this opportunity to submit this testimony on behalf of County Executive Elrich, and we urge the County Council to approve ZTA 19-03.