

Ordinance No.: 18-25  
Zoning Text Amendment No.: 16-16  
Concerning: Conditional Use  
Decisions  
Draft No. & Date: 3 - 1/31/16  
Introduced: November 29, 2016  
Public Hearing: January 17, 2017  
Adopted: February 7, 2017  
Effective: February 27, 2017

**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 at the Request of the  
Office of Zoning and Administrative Hearings

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AN AMENDMENT to the Montgomery County Zoning Ordinance that is effective  
October 30, 2014 to:

- amend provisions governing OZAH's decisions in conditional use cases;
- amend provisions governing requests for oral argument before the Board of Appeals in conditional use cases;
- permit applicants for conditional uses approved by the Hearing Examiner to implement a conditional use when a request for oral argument before the Board of Appeals is pending;
- authorize the Board of Appeals to stay the Hearing Examiner's decision upon motion of any party;
- authorize the Board of Appeals to place conditions on the approval or denial of requests for a stay;
- generally amend provisions concerning conditional use appeals.

By amending the following sections of the Montgomery County Zoning Ordinance,  
Chapter 59 of the Montgomery County Code effective October 30, 2014 (as amended):

Division 7.3.            "Regulatory Approvals"  
Section 7.3.1.         "Conditional Use"

**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 that text 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.

## OPINION

Zoning Text Amendment No. 16-16 was introduced on November 29, 2016. The Council President was the lead sponsor of ZTA 16-16 at the request of the Hearing Examiner. As introduced, ZTA 16-16 would:

- 1) amend provisions governing OZAH's decisions in conditional use cases;
- 2) amend provisions governing requests for oral argument before the Board of Appeals in conditional use cases;
- 3) permit applicants for conditional uses approved by the Hearing Examiner to implement a conditional use when a request for oral argument before the Board of Appeals is pending;
- 4) authorize the Board of Appeals to stay the Hearing Examiner's decision upon motion of any party;
- 5) authorize the Board of Appeals to place conditions on the approval or denial of requests for a stay; and
- 6) generally amend provisions concerning conditional use appeals.

In its report to the Council, the Montgomery County Planning Board had no objections to the approval of the text amendment. Planning staff recommended approval.

The Council held a public hearing on January 17, 2017. The Planning Board recommended approval of ZTA 16-16 as introduced. The Board of Appeals stated their belief that there is no real need for the ZTA. In particular, the Board believes there is value in retaining the right for any aggrieved party to request oral argument.

The Council referred the matter to the Planning, Housing, and Economic Development Committee.

On January 30, 2017, the Committee (3-0) recommended approval of ZTA 16-16 with amendments to:

- revise the effective date of the Hearing Examiner's decision. When an appeal is made to the Board of Appeals, that appeal should automatically stay the Hearing Examiner's decision;

- revise Subsection K to clarify that the Hearing Examiner has jurisdiction over all amendments to conditional uses;
- revise Subsection J so that a copy or notice of the decision of the Board of Appeals or Hearing Examiner on each conditional use application need not be sent to all parties entitled to notice of filing; and
- revise line 31 in ZTA 16-16 as introduced, to add the word “while” between the words “matter” and “on appeal.”

The Committee thought that the individuals who could appeal a decision by the Hearing Examiner should be limited to parties of record. To do otherwise would allow for unfair delay in the process.

The District Council reviewed Zoning Text Amendment No. 16-16 on February 7, 2017. The Council agreed with the recommendation of the Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 16-16 will be approved as amended.

#### *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 59-7.3 is amended as follows:**

\* \* \*

**Division 7.3. Regulatory Approvals**

\* \* \*

**Section 7.3.1. Conditional Use**

\* \* \*

**F. Decision**

**1. Hearing Examiner**

a. The Hearing Examiner must issue a report and decision no later than 30 days after the close of the record of the public hearing.

The decision may [recommend that the application be approved, approved] approve, approve with conditions, or [denied] deny the application. The Hearing Examiner may supplement the specific requirements of this Chapter with any other requirements necessary to protect nearby properties and the general neighborhood. The Hearing Examiner may by order extend the time to issue the report and decision.

b. The Hearing Examiner must issue a notice, on the day the report and decision is issued, to the Board of Appeals, the applicant, and all parties of record that the report and decision [is complete] has been issued and is available for review. [If a timely request for oral argument is not received under Section 7.3.1.F.1.c, the Hearing Examiner's report and decision becomes the final decision.] The Hearing Examiner's report and decision is effective on the date issued, but will be stayed if appealed under Subsection c.

- 27 c. Any party of record [or aggrieved party may file] may appeal  
28 the Hearing Examiner's decision by filing a written request to  
29 present oral argument before the Board of Appeals within 10  
30 days after the Office of Zoning and Administrative Hearings  
31 issues the Hearing Examiner's report and decision. The filing of  
32 such a request transfers jurisdiction over the matter while on  
33 appeal from the Hearing Examiner to the Board of Appeals.
- 34 i. A written request for an appeal and oral argument must  
35 be filed with the Board of Appeals and the Hearing  
36 Examiner, and must concisely identify the matters to be  
37 presented at the oral argument. A person requesting an  
38 appeal must send a copy of that request to the Hearing  
39 Examiner, the Board of Appeals, and all parties of record  
40 before the Hearing Examiner.
- 41 ii. Any party of record [or aggrieved party] may, no later  
42 than 5 days after a request for an appeal and oral  
43 argument is filed, file a written opposition or request to  
44 participate in oral argument. An opposition to a request  
45 for an appeal and oral argument must be sent to the  
46 Board of Appeals and all parties as listed by the Hearing  
47 Examiner, and must be concise and limited to matters  
48 raised by the party who requested oral argument.
- 49 iii. The Board of Appeals may, in its discretion, grant or  
50 deny an oral argument request. If the Board of Appeals  
51 grants a request for oral argument, the argument must be  
52 limited to matters contained in the record compiled by  
53 the Hearing Examiner.

54 iv. Regardless of whether the Board of Appeals has elected  
55 to hear oral argument, the Board of Appeals must, under  
56 Section 7.3.1.F.2, approve or deny the appealed  
57 conditional use application or remand it to the Hearing  
58 Examiner for clarification or the taking of additional  
59 evidence, if appropriate.

60 v. A request for an appeal of the Hearing Examiner’s  
61 decision [[does not stay]] stays the decision of the  
62 Hearing Examiner. [[Upon motion by any party, the  
63 Board of Appeals may grant or deny a stay. The Board  
64 of Appeals may impose conditions on the grant or denial  
65 necessary to protect nearby property owners and the  
66 neighborhood.]]

67 2. Board of Appeals

68 a. If the Board of Appeals is deciding the appeal of an application,  
69 it must make the necessary findings under Section 7.3.1.E and  
70 must:

71 \* \* \*

72 J. Recording Procedures

73 1. The Hearing Examiner or the Board of Appeals must maintain in their  
74 permanent files any conditional use application that they approve,  
75 along with any written decision.

76 2. A copy or notice of the decision of the Board of Appeals or Hearing  
77 Examiner on each conditional use application must be sent to the  
78 applicant, the Board of Appeals or Hearing Examiner, as appropriate,  
79 the Planning Board, DPS, the Department of Finance, [[all parties  
80 entitled to notice of filing,]] and any other parties of record.

81 \* \* \*

82 K. Amendments

83 1. Major Amendment

84 a. A major amendment to a conditional use is one that changes the  
85 nature, character, or intensity of the conditional use to an extent  
86 that substantial adverse effects on the surrounding  
87 neighborhood could reasonably be expected, when considered  
88 in combination with the underlying conditional use.

89 b. [[A]] An application for a major amendment to a conditional  
90 use must be filed with the Hearing Examiner, and it follows the  
91 same procedures, must meet the same criteria, and must satisfy  
92 the same requirements as the original conditional use  
93 application, except that[[,]]:

94 i. [[The]] the public hearing must be limited to  
95 consideration of the proposed modifications specified in  
96 the notice of public hearing and to those aspects of the  
97 conditional use that are directly related to those  
98 proposals; and

99 ii. [[The]] the Hearing Examiner or, if the matter is  
100 appealed, the Board of Appeals, [[as applicable,]] may  
101 require the underlying conditional use to satisfy the  
102 conditional use requirements of the applicable zone, to  
103 the extent necessary to avoid substantial adverse effects  
104 on the surrounding neighborhood.

105 c. An application for an amendment to a special exception must be  
106 filed with the Board of Appeals, and it follows the procedures

107 and criteria applicable to modifications of special exceptions as  
108 determined by the provisions of Section 59.7.7.1.B.

109 2. Minor Amendment

110 a. ~~[[A]]~~ An application for a minor amendment to a conditional  
111 use must be filed with the Hearing Examiner, and it may be  
112 approved administratively by the Hearing Examiner [[or Board  
113 of Appeals, as applicable, depending on which entity approved  
114 the conditional use]]. An application for a minor amendment to  
115 a special exception must be filed with the Board of Appeals,  
116 and it may be approved administratively by the Board of  
117 Appeals. A minor amendment to a conditional use is one that  
118 does not change the nature, character, or intensity of the  
119 conditional use to an extent that substantial adverse effects on  
120 the surrounding neighborhood could reasonably be expected,  
121 when considered in combination with the underlying  
122 conditional use.

123 \* \* \*

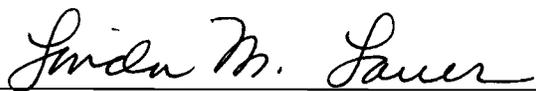
124 **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
125 date of Council adoption.

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127 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council