



Committee: PHP
Committee Review: Completed
Staff: Livhu Ndou, Legislative Attorney
Purpose: Final action – vote expected
Keywords: #ConditionalUse #LimitedUse
#HearingExaminer #OZAH #PreliminaryPlan

AGENDA ITEMS #15A&B
February 13, 2024
Action

SUBJECT

Zoning Text Amendment (ZTA) 23-11, Regulatory Approvals – Conditional Use
Subdivision Regulation Amendment (SRA) 23-02, Preliminary Plan – Approval Procedures

Lead Sponsor: Council President Friedson

INVITED ATTENDEES

- Benjamin Berbert, Planner III – Countywide Planning & Policy, Montgomery County Planning Department
- Lynn Robeson Hannan, Director, Office of Zoning and Administrative Hearings (OZAH)

COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

The Planning, Housing, & Parks (PHP) Committee unanimously recommends enactment of ZTA 23-11 with amendments, and enactment of SRA 23-02 as introduced. Roll call vote expected.

DESCRIPTION/ISSUE

ZTA 23-11, Regulatory Approvals – Conditional Use, will streamline the Office of Zoning and Administrative Hearing’s (OZAH) processes. SRA 23-02, Preliminary Plan – Approval Procedures, will allow concurrent review of a preliminary plan and conditional use application.

SUMMARY OF KEY DISCUSSION POINTS

- SRA 23-02 will allow concurrent review of a preliminary plan and conditional use application. The preliminary plan approval will be a “conditional approval” contingent on the approval of the conditional use.
- ZTA 23-11 will streamline OZAH’s processes by:
 - allowing limited use approval in certain zones for the following uses: Equestrian Facility, Home Health Practitioner, Home Occupation (Major Impact), Retail/Service Establishment, Rural Country Market, and Automobile Storage Lot;
 - increasing Family Day Care from 8 to 12 persons and eliminating Group Day Care (9-12 Persons);
 - consolidating Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact);
 - consolidating Retail/Service Establishment (85,001 SF and Over) and Retail/Service Establishment (120,001 SF and Over);
 - not requiring additional notice for waiver of a parking requirement;

- not requiring landscaping plans that provide more than the minimum requirements to go through the alternative method of compliance;
- allowing the Hearing Examiner to dismiss inactive applications; and
- allowing the Hearing Examiner to waive or refund conditional use fees.
- The Planning, Housing, and Parks (PHP) Committee recommended enactment of SRA 23-02 without amendment.
- The PHP Committee recommended enactment of ZTA 23-11 with several amendments. These amendments included formatting and other technical amendments, retaining the parking waiver notice requirement, and amending the Alternative Method of Compliance.

This report contains:

Staff Report	Pages 1-18
ZTA 23-11	© 1
SRA 23-02	© 47
Planning Board recommendation	© 50
Planning Staff report	© 53
Climate Assessment	© 75
RESJ Impact Statement	© 79

Alternative format requests for people with disabilities. If you need assistance accessing this report you may [submit alternative format requests](#) to the ADA Compliance Manager. The ADA Compliance Manager can also be reached at 240-777-6197 (TTY 240-777-6196) or at adacompliance@montgomerycountymd.gov

MEMORANDUM

February 8, 2024

TO: County Council

FROM: Livhu Ndou, Legislative Attorney

SUBJECT: Zoning Text Amendment (ZTA) 23-11, Regulatory Approvals – Conditional Use Subdivision Regulation Amendment (SRA) 23-02, Preliminary Plan – Approval Procedures

PURPOSE: Action

<p>Planning, Housing, & Parks (PHP) Committee (3-0): Approval of ZTA 23-11 with amendment Approval of SRA 23-02 as introduced</p>
--

INVITED ATTENDEES

- Artie Harris, Chair, Montgomery County Planning Board
- Jason Sartori, Director, Montgomery County Planning Department
- David Anspacher, Acting Chief – Countywide Planning and Policy, Montgomery County Planning Department
- Lisa Govoni, Supervisor – Housing, Infrastructure, and Zoning Policy, Montgomery County Planning Department
- Benjamin Berbert, Planner III – Countywide Planning & Policy, Montgomery County Planning Department
- Lynn Robeson Hannan, Director, Office of Zoning and Administrative Hearings (OZAH)

INTRODUCTION

Zoning Text Amendment (ZTA) 23-11, Regulatory Approvals – Conditional Use and Subdivision Regulation Amendment (SRA) 23-02, Preliminary Plan – Approval Procedures, lead sponsor Council President Friedson, were introduced on December 12, 2023. ZTA 23-11, Regulatory Approvals – Conditional Use, will streamline the Office of Zoning and Administrative Hearing’s (OZAH) processes. SRA 23-02, Preliminary Plan – Approval Procedures, will allow concurrent review of a preliminary plan and conditional use application.

PUBLIC HEARING

A public hearing was held on January 23, 2024. The Planning Board testified in support, and the Planning Board's recommendation is summarized below. The Kensington Heights Civic Association testified in opposition noting the importance of the conditional use process against bad development.

SUMMARY OF IMPACT STATEMENTS

Planning Board Recommendation

On January 11, 2024, the Planning Board unanimously recommended approval of ZTA 23-11 with amendments, and approval of SRA 23-02 as introduced. The recommended amendments to ZTA 23-11 included:

- Adding Group Day Care (Over 30 Persons) to the Use Table.
- Adding the statement “Where Home Health Practitioner is allowed as a limited use, the following standards apply...” to the newly established limited use standards section for Home Health Practitioners.
- Rewording the design requirement standard for Retail/Service Establishment (85,001 SF and Over).
- Keeping the notice requirement for parking waivers, but allowing the option to include it in the Hearing Notice.
- Amending the Alternative Method of Compliance language in the ZTA by providing more flexibility in the conditional use standards, clarifying that the applicable deciding body in the Planning Board, and clarifying that the conditional use findings for landscaping or screening apply to site plan.

Climate Assessment

The Planning Board reviewed the Climate Assessment and found that ZTA 23-11 will have an “overall minor indeterminate climate impact”. Planning found that since the number and location of future approvals is unknown, the ZTA has indeterminate small positive or negative impacts on greenhouse gas emissions variables in the transportation sector, and small positive impacts on community adaptive capacity variables. Because many of the uses are small-scale or take advantage of existing structures, Planning anticipates the potential impacts will be minor on a local and countywide scale. Further, the impacts are minimal because rather than creating or expanding uses, ZTA 23-11 is changing the approval process.

RESJ Impact Statement

The Office of Legislative Oversight (OLO) provided a Racial Equity and Social Justice (RESJ) Impact Statement on January 22, 2024. OLO found that business owners in the industries impacted by ZTA 23-11 – retail and service establishments, home health, equestrian services, family day care, country markets, and home-based industries – will be the primary beneficiaries of this ZTA as it reduces the cost of business for these industries. However, OLO could not discern how ZTA 23-11 would impact racial inequities and disparities in entrepreneurship or racial inequities and

disparities in community engagement because the demographics of local business owners and community stakeholders impacted by the ZTA is unknown.

DISCUSSION: ZTA 23-11

The intent of ZTA 23-11 is to streamline the Office of Zoning and Administrative Hearing’s (OZAH) processes. The ZTA does this by amending approval procedures, consolidating certain uses, and changing several conditional uses to limited uses.

The Zoning Ordinance’s Use Table provides whether a use is limited, conditional, or both. This is denoted by an “L”, “C”, or “L/C”. Where a use can be either limited or conditional, if the provided limited use standards cannot be met, then an applicant can look to the conditional use standards. A conditional use application is based on the provided conditional use standards for each use, as well as Section 7.3.1., which contains additional requirements for conditional uses such as conformance with the applicable master plan, not causing undue harm to the neighborhood because of a non-inherent adverse effect, adequate public facilities, and other criteria.

1. Allow limited use approval in certain zones for the following uses:

ZTA 23-11 will change several uses from conditional use to limited use. Before discussing the change from a conditional to limited use, below is the number of pending or approved applications that have been received by OZAH or DPS in the last 10 years for the relevant uses:

	OZAH	DPS
Equestrian Facility	3	
Home Health Practitioner (Low Impact)		78
Home Health Practitioner (Major Impact)	1	
Home Occupation (Low Impact)		390
Home Occupation (Major Impact)	1	
Family Day Care (Up to 8 Persons)	Currently permitted by right	
Group Day Care (9-12 Persons)	25	
Retail/Service Establishment (120,001 SF and Over)	0	
Rural Country Market	0	
Automobile Storage Lot	0	

- **Equestrian Facility**

Under Section 3.2.4., an Equestrian Facility is defined as “any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills.” An Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.” Where allowed as a limited use, generally about 1 acre is required per horse, with a 5-horse limit in the RNC zone. Additional standards apply over 10 horses. ZTA 23-11 will make Equestrian Facility a limited or conditional use in certain residential detached zones.

		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40
AGRICULTURAL												
* * *												
Equestrian Facility	3.2.4	L/C	L/C	L/C	L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C			
* * *												

The reason for this change is to allow up to 5 horses in certain larger-lot Residential Detached zones, subject to a minimum acreage requirement. Those minimum gross acreages per horse are:

- for 1-2 horses, 2 acres;
- for 3-10 horses, one acre per horse; and
- for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.

Further, this change would only apply if the horses are for a “non-commercial” purpose, meaning no events, boarding, or riding lessons.

c.	<u>In the RE-2, RE-2C, RE-1, and R-200 zones, a maximum of 5 horses are allowed if the following standards are satisfied:</u>
i.	<u>The horses are kept for non-commercial purposes. Commercial purposes include boarding horses not owned by the resident for a fee, instruction in equestrian skills for a fee, and events such as competitions, exhibitions, or other displays of equestrian skills.</u>
ii.	<u>The maximum number of horses is determined by the minimum lot sizes in Section 3.2.4.B.1.a.</u>
iii.	<u>State requirements for nutrient management concerning animal waste must be met.</u>

• **Home Occupation (Major Impact)**

Under Section 3.3.3.H., Home Occupation means “any occupation that provides a service or product and is conducted within a dwelling unit by a resident of the dwelling unit.” Home Occupation is divided into No Impact, Low Impact, and Major Impact. Major Impact is always a conditional use. ZTA 23-11 keeps the conditional use standards but makes them limited use standards in the Commercial/Residential and Employment zones, since the use is consistent with a commercial or employment use.

				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	CR	NCR	CRT	CR	GR	NR	LSC	EOF
* * *																										
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	CR	NC	CR	CR	GR	NR	LSC	EOF	
* * *																											
ACCESSORY RESIDENTIAL USES	3.3.3																										
* * *																											
Home Occupation (Major Impact)	3.3.3.H	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C

As a conditional use, the Hearing Examiner had discretion to determine the number of Home Occupations on a site, as well as the number of visits and deliveries. To change Home Occupation (Major Impact) from a conditional to a limited use, ZTA 23-11 sets specific standards for approval. Many of these standards are modeled on the limited use standards for Low Impact. This includes limiting visits to 35 per week, and no more than 8 per day.

b. Use Standards

- i. Where a Home Occupation (Major Impact) is allowed as a limited use, it must satisfy the following standards:
- (a) The maximum number of visits is 35 per week, and no more than 8 per day, excluding deliveries and the arrival and departure of any non-resident employee.
 - (b) Visitors must wait inside the dwelling unit.
 - (c) In-person sale of goods is limited to:
 - (1) the products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or hand-crafts performed by a resident of the dwelling; and
 - (2) a maximum of 5 sales per month of items ordered for delivery at a later date to customers at other locations (delivery of goods must occur off-site).
 - (d) Display or storage of goods is limited to:
 - (1) the products listed in Section 3.3.3.H.5.b.i.(c); and
 - (2) samples of merchandise that may be ordered by customers for delivery at other locations.
 - (e) Display or storage of merchandise to be delivered must not be visible outside of the residence and must be contained within the maximum floor area available for the Home Occupation.
 - (f) Home Occupation (Major Impact) may not be on a site that is already approved for another conditional use under Section 7.3.1, Conditional Use or Home Health Care Practitioner.
 - (h) The applicant must provide valid proof of home address as established by Executive regulations under Method 2 of Chapter 2 (Section 2A-15).
 - (i) Screening under Division 6.5 is not required.

• **Rural Country Market**

Under Section 3.5.11.D., Rural Country Market means “the display and retail sale in a rural or residential area of agricultural products and farm food products certified as non-potentially hazardous by the Department of Health and Human Services. A Rural Country Market includes the display and sale of non-edible farm products only if the products are grown and processed on farms in the State of Maryland. Rural Country Market does not include the sale or storage of bread, cheese, or other foodstuffs produced in a commercial kitchen, or an eating and drinking establishment.” It is allowed in the Agricultural, Rural Residential, and Residential Estate zones as a conditional use. ZTA 23-11 allows the option for a limited use.

		Residential Detached										
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40
RETAIL SALES AND SERVICE	3.5.11											
* * *												
Rural Country Market	3.5.11.D	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C			
* * *												

ZTA 23-11 retains the Hearing Examiner’s ability to set smaller setbacks or approve use of an existing structure if the applicant chooses to apply for a conditional use.

<p>2. Use Standards</p> <p><u>a.</u> Where a Rural Country Market is allowed as a [conditional] limited use, it [may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and] must satisfy the following standards:</p> <p>[a]i. The minimum tract area is 2 acres.</p> <p>[b]ii. The maximum height is 20 feet, unless located in an existing building.</p> <p>[c]iii. The minimum setback from the street and from any side or rear lot line is 50 feet [, except that the minimum setback from the street may be reduced to 25 feet if the Hearing Examiner finds that the smaller setback would be compatible with surrounding uses. The Hearing Examiner may approve the use of an existing structure that does not meet these requirements if the Hearing Examiner finds that the use is suitable and compatible with the surrounding area].</p> <p><u>b.</u> Where a Rural Country Market is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, all applicable limited use standards, and the following standards:</p> <p>i. <u>The minimum setback from the street under 3.5.11.D.2.a.iii. may be reduced to 25 feet if the Hearing Examiner finds that the smaller setback would be compatible with surrounding uses.</u></p> <p>ii. <u>The Hearing Examiner may approve the use of an existing structure that does not meet these requirements if the Hearing Examiner finds that the use is suitable and compatible with the surrounding area.</u></p>

• **Automobile Storage Lot**

Under Section 3.5.13.A., Automobile Storage Lot means “the storage of automobiles in connection with a towing operation. Automobile Storage Lot does not include the storage of junked cars.” It is currently only allowed in the GR zone, and only as a conditional use. ZTA 23-11 will allow an Automobile Storage lot in the Industrial zones as a limited use.

USE OR USE GROUP	Definitions and Standards	Commercial/ Residential			Employment				Industrial			
		CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH	
* * *												
VEHICLE SERVICE	3.5.13											
Automobile Storage Lot	3.5.13.A				C				L	L	L	

The limited use standards are similar to the standards for other Vehicle Services uses, such as a car wash, filling station, and auto repair.

<p>2. Use Standards</p> <p>a. <u>Where an Automobile Storage Lot is allowed as a limited use, it must satisfy the following standards:</u></p> <p>i. <u>Vehicles must be stored or parked only on a hard surface that is constructed of impervious material resistant to erosion, is adequately treated to prevent dust emission, and is surrounded by a raised curb. The parking and storage area must be set back 15 feet from any right-of-way, 25 feet from any lot line abutting land in an Agricultural, Rural Residential, or Residential Detached zone, and 3 feet from any other lot line.</u></p> <p>ii. <u>Access to the site from a street with a residential classification is prohibited.</u></p> <p>iii. <u>The tract on which an Automobile Storage Lot use is allowed must be less than 10 acres in size.</u></p> <p>iv. <u>On-site illumination must be 0.5 footcandles or less at the lot line, excluding street lights within the right-of-way.</u></p>
--

2. Increase Family Day Care from 8 to 12 persons and Eliminate Group Day Care (9-12 Persons)

Under Section 3.4.4., Day Care Facility means “an establishment where care is provided for less than 24 hours a day, for which the provider is paid, for any of the following: children under the age of 17 years; developmentally disabled persons; handicapped individual; or any elderly individual.” Day Care Facility has several sub-categories, including Family Day Care (Up to 8 Persons), Group Day Care (9-12 Persons), Day Care Center (13-30 Persons), and Day Care Center (Over 30 Persons). ZTA 23-11 increases Family Day Care (Up to 8 Persons) to 12 persons and eliminates Group Day Care (9-12 Persons). Family Day Care (Up to 8 Persons) is currently a permitted use while Group Day Care (9-12 Persons) is a conditional use in higher-density Residential zones. The intent of this change is to address County issues with providing more day care facilities and making approval easier for these smaller uses.

		AR	R	RC	RNC	Residential Detached							Residential Townhouse			Residential Multi-Unit			CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH				
						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 INSTITUTIONAL																																
* * *																																
DAY CARE FACILITY	3.4.4																															
Family Day Care (Up to [8] 12 Persons)	3.4.4.C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
[Group Day Care (9 -12 Persons)]	[3.4.4.D]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]
Day Care Center (13 - 30 Persons)	[3.4.4.E] 3.4.4.D	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C

To ensure compatibility, the number of non-resident staff members on-site at any time is limited to 3. If the provider is not a resident, then they may file a conditional use application for a Day Care Center (13-30 Persons).

- | |
|--|
| <ol style="list-style-type: none"> 1. <u>The registrant must be the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.D).</u> 2. <u>No more than 3 non-resident staff members may be on-site at any time.</u> |
|--|

3. Consolidate Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact)

Under Section 3.3.3.G., Home Health Practitioner means “the office of a health practitioner who is licensed or certified by a Board under the Maryland Department of Health and Mental Hygiene, has an advanced degree in the field from an accredited educational institution, and who resides in the dwelling unit in which the office is located.” Home Health Practitioner does not include an electrologist, mortician, nursing home administrator, pharmacist, or veterinarian. Home Health Practitioner is divided into Major Impact and Low Impact. Both are allowed in all zones, except for the Industrial zones. Major Impact is a conditional use, and Low Impact is a limited use.

ZTA 23-11 changes Home Health Practitioner to a limited use in the Commercial/Residential and Employment zones, since a home health practice is compatible with commercial and employment uses. ZTA 23-11 also merges Low Impact and Major Impact, since the only difference between the two uses is the number of non-resident support persons. Low Impact has 2 practitioners and 1 non-resident support person, while Major Impact has 2 practitioners and 2 or more non-resident support persons.

has not seen an application for a Retail/Service Establishment (120,001 SF and Over) in recent years.

USE OR USE GROUP	Definitions and Standards	Commercial/ Residential			Employment				Industrial		
		CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH
		* * *									
COMMERCIAL											
* * *											
RETAIL SALES AND SERVICE	3.5.11										
* * *											
Retail/Service Establishment (85,001[-120,000] SF and Over)	3.5.11.B		L	L	L	L			L	L	L
[Retail/Service Establishment (120,001 SF and Over)]	[3.5.11.B]		[L]	[L]	[C]	[C]			[L]	[L]	[L]

To encourage compatibility, ZTA 23-11 adds certain design requirements.

- | | |
|---|--|
| <p>ix.</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> | <p><u>For Retail/Service Establishments 120,001 square feet and over:</u></p> <p><u>Any facade longer than 100 horizontal feet must incorporate wall plane projections or recesses.</u></p> <p><u>Street level retail facades that front public or private streets or parking areas must provide transparent glazing for at least 60 percent of the horizontal length of the building façade between the height, at a minimum, of 3 feet and 8 feet above the walkway grade. Transparent glazing includes transparent windows, unobstructed display windows, or transparent store doors.</u></p> <p><u>All sides of a building that front an abutting public right-of-way must have at least one active retail, residential, or office entrance.</u></p> <p><u>Areas for storage, truck parking, trash collection, or compaction and loading must be screened from public rights-of-way.</u></p> <p><u>Variations in rooflines must be used when possible. Full architectural parapets or equivalent features must be used around the entire building to conceal rooftop mechanical equipment.</u></p> |
|---|--|

5. Remove the requirement of additional notice for waiver of a parking requirement.

Under Section 6.2.10., any request for a waiver of the vehicle parking space requirement requires application notice. Application notice typically requires an applicant to notify all adjacent and abutting property owners, civic associations, and other individuals and entities when the application is filed. The need for a parking waiver is sometimes not known until after intake, which means the waiver notice places a burden on applications for small

projects to mail additional notice. Further, failure to provide that notice can delay the hearing or require the Hearing Examiner to leave the record open longer than necessary. ZTA 23-11 removes this additional notice requirement. Of note, OZAH’s written notice of the public hearing includes a link to all application materials, so any request for a waiver can be found online.

Section 6.2.10. Parking Waiver

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. [~~Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D.~~]

6. Remove the requirement that landscaping plans that provide more than the minimum requirements must go through the alternative method of compliance.

Under Section 6.8.1., the “applicable deciding body” may approve an alternative method of compliance for many of the development requirements in Article 6, such as site access, parking, open space, outdoor display and storage, and signs. The Hearing Examiner already has broad authority under Section 7.3.1. to waive many of the detailed requirements of Article 6 to ensure compatibility of the use. The need to justify additional waivers under Section 6.8.1. causes unnecessary delay, particularly when it comes to landscaping plans. There have been applications where the applicant provided more effective screening than the minimum required by the Zoning Ordinance, but screening that was still less than the minimum required by the Zoning Ordinance. For example, an applicant who is required to provide 6 feet of screening could offer to provide only 5 feet but include denser plants and a screening wall. That applicant would need to go through the alternative method of compliance because that alternative does not meet the minimum even if it is more or equally effective. ZTA 23-11 will exempt these types of landscaping plans from Section 6.8.1.

B. Landscaping plans that provide more than the minimum requirements in Division 6.5 may be approved by the applicable deciding body without regard to this section.

7. Allow the Hearing Examiner to dismiss inactive applications.

Under Section 7.3.1., the Hearing Examiner does not have the authority to dismiss conditional use cases when the applicant has not been actively pursuing the application. Notice of a contemplated dismissal could encourage an applicant to try to resolve outstanding issues if possible.

4. Dismissal or Withdrawal of an Application

- a. The Hearing Examiner may dismiss an application if the application has been pending for more than one year and the applicant has not actively pursued the application.
 - i. The Hearing Examiner must notify the applicant of the contemplated dismissal at the applicant's last known address at least 60 days before dismissing the case.
 - ii. The applicant may stay the dismissal by filing a motion before the case is dismissed.
 - iii. The Hearing Examiner may grant the motion for good cause shown.
- b. The Hearing Examiner or the Hearing Examiner's designee must send a notice to all parties entitled to notice of the hearing when [an applicant withdraws] an application for a conditional use is withdrawn.

8. Allow the Hearing Examiner to waive or refund conditional use fees.

Under Section 7.6.5., the Zoning Ordinance gives the Board of Appeals and the District Council the ability to waive fees for variance and rezoning applications. However, it does not give the Hearing Examiner the ability to waive fees for conditional use applications. OZAH notes that refunds are rare but have been helpful to small entities in some cases.

C. Waiving or Refunding of Conditional Use Fees

The Hearing Examiner may waive or refund a filing fee for a conditional use, in whole or in part, if:

- 1. the application has not been advertised for public hearing;
- 2. the application has been advertised for public hearing but the applicant files a request to withdraw it within 90 days after a master plan, map amendment, or Zoning Text Amendment that materially affects the property is approved;
- 3. condemnation proceedings or public acquisition of the subject property has been initiated;
- 4. if an action of the County Executive, County Council, or an administrative board or agency resolves or moots the issues pending in the case, whether or not a public hearing has been held; or
- 5. the applicant shows that undue hardship will result if a refund is not approved.

DISCUSSION: SRA 23-02

Currently, a conditional use must be granted before the preliminary plan is approved. Otherwise, if the conditional use is approved but makes changes to the original plans, the preliminary plan would need to be amended to reflect those changes. SRA 23-02 will allow concurrent review of a preliminary plan and conditional use application. To avoid the problem of having to amend the

preliminary plan, the preliminary plan approval will be a “conditional approval” contingent on the approval of the conditional use.

SRA 23-02 will allow minor changes to be acted upon by the Planning Director, rather than the full Board, to save the applicant time. A question was received about what constitutes a “minor change”. As written, what constitutes a minor change will be left to the Director’s discretion. To protect stakeholders and allow for public participation, there will be a 15-day window for any objection to the approval of the preliminary plan based on the conditional use approval. If an objection is received that the Director considers relevant, then a public hearing and action by the Board will be required. The Director may also require Board action without an objection being received.

2. After conditional use approval and prior to certification of a preliminary plan, the Director may approve a minor change to a preliminary plan that was approved contingent on the approval of a conditional use application, if the minor change does not modify a condition of the preliminary plan. The Director may approve these minor changes without a public hearing if no objection to the application is received within 15 days after the conditional use is approved. If an objection is received within 15 days and the Director considers the objection relevant, a public hearing and action by the Board is required. The Director may also require the change be acted on by the Board when no objection is received.

PHP COMMITTEE WORKSESSION

The Planning, Housing, & Parks (PHP) Committee held a worksession on ZTA 23-11 and SRA 23-02 on February 5, 2024. The Committee unanimously recommended enactment of ZTA 23-11 with amendments, and enactment of SRA 23-02 as introduced.

In acknowledging that the intent of ZTA 23-11 was to streamline parts of the land use review process for applicants, the Committee discussed whether the Planning Board should hear conditional uses. Under the current Zoning Ordinance, the Planning Board is not required to review every conditional use application. In practice, the Planning Director noted that approximately 90% of conditional use applications go to the Board. This can delay the conditional use process and create an equity issue for applicants and effected neighbors who must make time to attend two separate hearings for one application. The Committee requested a review of internal procedures to determine which conditional uses can be reviewed by the Planning Director and not have an additional hearing before the Planning Board. The Committee requested to be briefed after this review is done, with a goal of reducing the percentage of applications that must go to the Board.

The Committee unanimously recommended the following amendments to ZTA 23-11:

- 1. Add “Group Day Care (Over 30 Persons)” to the modified Use Table.**

In amending the Day Care Facility uses, “Over 30 Persons” has been renumbered from 3.4.4.F. to 3.4.4.E. This use was inadvertently left off the amended Use Table.

		AR	R	RC	RNC	Residential Detached							Residential Townhouse			Residential Multi-Unit			CRN	CRT	CR	GR	NR	LSC	EOF	IL	IM	IH	
						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 INSTITUTIONAL																													
* * *																													
DAY CARE FACILITY	3.4.4																												
Family Day Care (Up to [8] 12 Persons)	3.4.4.C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
[Group Day Care (9 -12 Persons)]	[3.4.4.D]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]
Day Care Center (13 - 30 Persons)	[3.4.4.E] <u>3.4.4.D</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	P	
Day Care Center (Over 30 Persons)	[3.4.4.F] <u>3.4.4.E</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	L	L	P	P	P	P	P	P	P	P	P	

2. Adding the statement “Where Home Health Practitioner is allowed as a limited use, the following standards apply” to the newly established limited use standards section for Home Health Practitioners

Typically, an introductory phrase like this is used before listing a use’s limited use standards and should be added here for consistency.

2. Use Standards [for All Home Health Practitioners]
Where Home Health Practitioner is allowed as a limited use, the following standards apply:

3. Rewording proposed limited use standard 3.5.11.B.2.a.ix.(b)

This change to the measurement for a Retail/Service Establishments 120,001 Square Feet and Over makes the standard easier to interpret.

- ix. For Retail/Service Establishments 120,001 square feet and over:
 - (a) Any facade longer than 100 horizontal feet must incorporate wall plane projections or recesses.
 - (b) Street level retail facades that front public or private streets or parking areas must provide transparent glazing for at least 60 percent of the horizontal length of the building façade as measured from a height of no more than 3 feet above the walkway grade to no more than 8 feet above the walkway grade ~~[[between the height, at a minimum, of 3 feet and 8 feet above the walkway grade]].~~ Transparent glazing includes transparent windows, unobstructed display windows, or transparent store doors.

4. Keeping the notice requirement for Parking Waivers under Section 6.2.10. and adding “or a Hearing Notice under Section 7.5.2.E.” as a notice option

There are two different types of notice at issue here: Hearing Notice and Application Notice. The difference between the two is the Application Notice is sent by the applicant at the beginning of the review to alert neighbors to a pending review, while the Hearing Notice is sent by OZAH to notify neighbors of a pending public hearing. For conditional uses, no Application Notice is required, only Hearing Notice. Under the current Zoning Ordinance, this Section creates the need for an applicant to send an additional Application Notice to satisfy the parking waiver notice requirement. The Committee recommended allowing the Hearing Examiner to include the waiver in the Hearing Notice, which would mitigate the concern about needing to use a notice not typically associated with a conditional use.

Section 6.2.10. Parking Waiver

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. ~~[Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D.]~~
Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D or Hearing Notice under Section 7.5.2.E.

5. Modify the Conditional Use section instead of the Alternative Method of Compliance section, and clarify that the “applicable deciding body” in the Alternative Method of Compliance is the Planning Board

The Committee recommended 3 amendments regarding the Alternative Method of Compliance language:

- a) amending the conditional use findings under Section 7.3.1.E.1.b., instead of Section 6.8.1., to clarify that the Hearing Examiner may deviate from Article 6 for compatibility
- b) clarifying that the “applicable deciding body” in Section 6.8.1. is the Planning Board¹
- c) adding additional language to clarify that any standards decided by the Hearing Examiner on a conditional use still apply

Division 6.8. Alternative Compliance
Section 6.8.1. Alternative Method of Compliance

* * *

A. The ~~[[applicable deciding body]]~~ Planning Board may approve an alternative method of compliance with any requirement of Division 6.1 and Division 6.3 through Division 6.6 if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The ~~[[applicable deciding body]]~~ Planning Board must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

* * *

~~[[B. Landscaping plans that provide more than the minimum requirements in Division 6.5 may be approved by the applicable deciding body without regard to this section.]]~~ If an application is subject to a previous conditional use approval that approved alternative screening standards than those found under Section 6.2.9. or Division 6.5., those alternative standards apply and Section 6.8.1. is not applicable.

Division 7.3. Regulatory Approvals
Section 7.3.1. Conditional Use

* * *

E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner must find that the proposed development:

* * *

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]]~~ the intent of the general requirements under Article 59-6.

¹ Council Staff has confirmed that “applicable deciding body” in this section does not include other departments or agencies, such as the Department of Permitting Services (DPS).

This packet contains:

ZTA 23-11	© 1
SRA 23-02	© 47
Planning Board recommendation	© 50
Planning Staff report	© 53
Climate Assessment	© 75
RESJ Impact Statement	© 79

Ordinance No.: _____
Zoning Text Amendment No.: 23-11
Concerning: Regulatory Approvals –
Conditional Use
Revised: 2/7/2024 Draft No.: 3
Introduced: December 12, 2023
Public Hearing: January 23, 2024
Adopted: _____
Effective: _____

**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 Friedson

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- (1) change certain conditional uses to limited uses;
- (2) remove the application notice requirement for certain parking waivers;
- (3) allow approval of certain landscaping plans under the alternative method of compliance;
- (4) allow the Hearing Examiner to dismiss inactive conditional use applications;
- (5) allow the Hearing Examiner to approve waivers and refunds of filing fees under certain circumstances; and
- (6) generally amend the development procedures for certain regulatory approvals.

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

Division 1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Section 3.1.5.	“Transferable Development Rights”
Section 3.1.6.	“Use Table”
Division 3.2.	“Agricultural Uses”
Section 3.2.4.	“Equestrian Facility”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”
Division 3.4.	“Civic and Institutional Uses”
Section 3.4.4.	“Day Care Facility”
Division 3.5.	“Commercial Uses”
Section 3.5.11.	“Retail Sales and Service”

Section 3.5.13.	“Vehicle Service”
Division 6.2.	“Parking, Queuing, and Loading”
Section 6.2.4.	“Parking Requirements”
Section 6.2.10.	“Parking Waiver”
Division 6.3.	“Open Space and Recreation”
Section 6.3.4.	“Rural Open Space”
Division 6.8.	“Alternative Compliance”
Section 6.8.1.	“Alternative Method of Compliance”
Division 7.3.	“Regulatory Approvals”
Section 7.3.1.	“Conditional Use”
Division 7.6.	“Special Provisions”
Section 7.6.5.	“Fees”

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 59-1.4 is amended as follows:

Division 1.4. Defined Terms

* * *

Section 1.4.2. Specific Terms and Phrases Defined

In this Chapter, terms that are not specifically defined have their ordinary meaning.

The following words and phrases have the meanings indicated.

* * *

Day Care Center (13 - 30 Persons): See Section [3.4.4.E.1] 3.4.4.D.1

Day Care Center (Over 30 Persons): See Section [3.4.4.F.1] 3.4.4.E.1

* * *

[Group Day Care (9 - 12 Persons): See Section 3.4.4.D.1]

* * *

Home Health Practitioner: See Section 3.3.3.G.1

[Home Health Practitioner (Low Impact): See Section 3.3.3.G.3.a]

[Home Health Practitioner (Major Impact): See Section 3.3.3.G.4.a]

* * *

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.

* * *

Sec. 2. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.5. Transferable Development Rights

25 A. The following uses are prohibited if the lot or parcel on which the use is
26 located is in the AR zone and is encumbered by a recorded Transfer of
27 Development Rights easement:

28 * * *

29 **2. Residential**

- 30 a. Attached Accessory Dwelling Unit
- 31 b. Detached Accessory Dwelling Unit
- 32 c. Residential Care Facility (Up to 8 Persons)
- 33 d. Residential Care Facility (9 - 16 Persons)
- 34 e. Residential Care Facility (Over 16 Persons)
- 35 f. Guest House
- 36 g. Home Health Practitioner [(Low Impact)]
- 37 [h. Home Health Practitioner (Major Impact)]
- 38 [i]h. Home Occupation (Low Impact)
- 39 [j]i. Home Occupation (Major Impact)

40 **3. Civic and Institutional**

- 41 a. Charitable, Philanthropic Institution
- 42 [b. Group Day Care (9 - 12 Persons)]
- 43 [c]b. Day Care Center (13 - 30 Persons)
- 44 [d]c. Day Care Center (Over 30 Persons)
- 45 [e]d. Private Club, Service Organization
- 46 [f]e. Religious Assembly

47 * * *

48 **Section 3.1.6. Use Table**

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

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential			Residential												Commercial / Residential			Employment				Industrial				
						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
AGRICULTURAL																													
* * *																													
Equestrian Facility	3.2.4	L/C	L/C	L/C	L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C																				
* * *																													
RESIDENTIAL																													
* * *																													
ACCESSORY RESIDENTIAL USES	3.3.3																												
* * *																													
Home Health Practitioner	3.3.3.G	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	L/C	
[Home Health Practitioner (Low Impact)]	[3.3.3.G]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	
[Home Health Practitioner (Major Impact)]	[3.3.3.G]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	
* * *																													
Home Occupation (Major Impact)	3.3.3.H	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	
* * *																													
CIVIC AND INSTITUTIONAL																													
* * *																													
DAY CARE FACILITY	3.4.4																												
Family Day Care (Up to [8] 12 Persons)	3.4.4.C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

USE OR USE GROUP	Definition s and Standards	Ag	Rural Residential			Residential												Commercial / Residential			Employment				Industrial				
						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
[Group Day Care (9 -12 Persons)]	[3.4.4.D]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	
Day Care Center (13 - 30 Persons)	[3.4.4.E] 3.4.4.D	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	
Day Care Center (Over 30 Persons)	[3.4.4.F] 3.4.4.E	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	L	L	P	P	P	P	P	P	P	P	
* * *																													
COMMERCIAL																													
* * *																													
RETAIL SALES AND SERVICE	3.5.11																												
* * *																													
Retail/Service Establishment (85,001[-120,000] SF and Over)	3.5.11.B																		L	L	L	L				L	L	L	
[Retail/Service Establishment (120,001 SF and Over)]	[3.5.11.B]																		[L]	[L]	[C]	[C]				[L]	[L]	[L]	
* * *																													
Rural Country Market	3.5.11.D	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C	[C] L/C																				
* * *																													
VEHICLE SERVICE	3.5.13																												
Automobile Storage Lot	3.5.13.A																									C			
* * *																													

52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77

* * *

Sec. 3. DIVISION 59-3.2 is amended as follows:

Division 3.2. Agricultural Uses

* * *

Section 3.2.4. Equestrian Facility

A. Defined

Equestrian Facility means any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills. Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.

B. Use Standards

1. Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:
 - a. The minimum gross acreage per horse is as follows:
 - i. for 1-2 horses, 2 acres;
 - ii. for 3-10 horses, one acre per horse; and
 - iii. for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.
 - b. In the RNC zone, a maximum of 5 horses is allowed.
 - c. In the RE-2, RE-2C, RE-1, and R-200 zones, a maximum of 5 horses are allowed if the following standards are satisfied:
 - i. The horses are kept for non-commercial purposes. Commercial purposes include boarding horses not owned by the resident for a fee, instruction in equestrian skills for a fee, and events such as competitions, exhibitions, or other displays of equestrian skills.

78 ii. The maximum number of horses is determined by the
79 minimum lot sizes in Section 3.2.4.B.1.a.

80 iii. State requirements for nutrient management concerning
81 animal waste must be met.

82 [c]d. Any Equestrian Facility that keeps or boards more than 10
83 horses must meet all nutrient management, water quality, and
84 soil conservation standards of the County and State. A nutrient
85 management plan prepared by a qualified professional and a
86 soil conservation and water quality plan prepared by the
87 Montgomery Soil Conservation District Board must be
88 submitted through a letter of certification by the landowner to
89 DPS, or other relevant agency. Enforcement of the nutrient
90 management, water quality, and soil conservation plans is the
91 responsibility of the State of Maryland. The landowner must
92 obtain all plans within one year after starting operations.

93 [d]e. Each building, show ring, paddock, outdoor arena, and manure
94 storage area must be located at least 100 feet from any existing
95 dwelling on an abutting property.

96 [e]f. Amplified sound must satisfy Chapter 31B.

97 [f]g. Any outdoor arena lighting must direct light downward using
98 full cutoff fixtures; producing any glare or direct light onto
99 nearby properties is prohibited. Illumination is prohibited after
100 10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on
101 Sunday through Thursday.

102 [g]h. Equestrian events are restricted as follows:

Site Requirements	Hours of Operation		Number of Participants and Spectators			
	Su-Th	Fr-Sa	Event	Informal Event	Minor Event	Major Event
			0-25	26-50	51-150	151-300
Up to 17.9 acres	6am-9pm	6am-10pm	Unlimited on any day	None	None	None
18 - 24.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	None	None
25 - 74.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	None
75+ acres and direct access to a roadway with an Area Connector or higher classification	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	Maximum of 3 per year lasting up to 3 consecutive days each

103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118

- [h].i. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators, per day. The applicant must specify the nature of the event, the anticipated attendance of spectators and participants, the number of days the event will take place, the hours during which the event will take place, the area to be used for parking, any traffic control measures intended to be put in place, and any other information determined by DPS to be relevant to the issuance of the permit. A fee for issuance of the permit may be set by DPS.
- [i].i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. [An Equestrian Facility conditional use approval must be renewed every 5 years. Before the conditional use is

119 renewed the Hearing Examiner must evaluate the effectiveness
120 of the terms and conditions of the original approval.]

121 2. Where an Equestrian Facility is allowed as a conditional use, it may
122 be permitted by the Hearing Examiner under all applicable limited use
123 standards, Section 7.3.1, Conditional Use, and the following
124 standards:

125 a. If the subject lot abuts property in the AR zone, screening under
126 Division 6.5 is not required.

127 b. In the AR, R, RC, and RNC zones:

128 i. The Equestrian Facility must not adversely affect
129 abutting land uses or the surrounding road network.

130 ii. In evaluating the compatibility of an Equestrian Facility
131 on the surrounding land uses, the Hearing Examiner must
132 consider that the impact of an agricultural use on
133 surrounding land uses in an Agricultural or Rural
134 Residential zone does not necessarily need to be
135 controlled as stringently as the impact in a Residential
136 zone.

137 c. In the RE-2, RE-2C, RE-1, and R-200 zones:

138 i. Any Equestrian Facility on less than 5 acres must
139 establish through a pasture maintenance plan, feeding
140 plan, and any other documentation the Hearing Examiner
141 requires, that the site contains sufficient open pasture to
142 ensure proper care of the horses and proper maintenance
143 of the site.

144 ii. The Hearing Examiner may limit or regulate more
145 stringently than limited use standards the following:

- 146 (a) the number of horses that may be kept or boarded;
- 147 (b) the number of horses that may be rented out for
- 148 recreational riding or instruction;
- 149 (c) the number and type of equestrian events that may
- 150 be held in a one-year period; and
- 151 (d) the hours of operation of any equestrian event or
- 152 activity.
- 153 iii. The facility operator must satisfy the state requirements
- 154 for nutrient management concerning animal waste.

155 * * *

156 **Sec. 4. DIVISION 59-3.3 is amended as follows:**

157 **Division 3.3. Residential Uses**

158 * * *

159 **Section 3.3.3. Accessory Residential Uses**

160 * * *

161 **G. Home Health Practitioner**

162 **1. Defined[, In General]**

163 a. Home Health Practitioner means the office of a health
 164 practitioner who is licensed or certified by a Board under the
 165 Maryland Department of Health and Mental Hygiene, has an
 166 advanced degree in the field from an accredited educational
 167 institution, and who resides in the dwelling unit in which the
 168 office is located. Home Health Practitioner includes a registered
 169 nurse or physician’s assistant if that person has an advanced
 170 degree in the field and practices independently. Home Health
 171 Practitioner does not include an electrologist, mortician, nursing
 172 home administrator, pharmacist, or veterinarian.

173 **b.** Home Health Practitioner is limited to 2 health practitioners,
174 one of whom must be a resident, and up to 3 non-resident
175 support persons in any 24-hour period.

176 **2. Use Standards [for All Home Health Practitioners]**

177 **a.** Where a Home Health Practitioner is allowed as a limited use, it
178 must satisfy the following standards:

179 [[a]]i. A Home Health Practitioner is prohibited in an
180 apartment, [multi use] multi-use, and general building
181 type.

182 [[b]]ii. Screening under Division 6.5 is not required.

183 [[c]]iii. To maintain the residential character of the
184 dwelling:

185 [[i.]](a) The use must be conducted by an individual
186 or individuals residing in the dwelling unit.

187 [[ii.]](b) The use must be conducted within the
188 dwelling unit or any accessory building and
189 not in any open yard area. The use must be
190 subordinate to the use of the dwelling for
191 residential purposes and any external
192 modifications must be consistent with the
193 residential appearance of the dwelling unit.

194 [[iii.]](c) Exterior storage of goods or equipment is
195 prohibited.

196 [[iv.]](d) The maximum amount of floor area used for
197 the Home Health Practitioner is 33% of the
198 eligible floor area of the dwelling unit plus

- 199 any existing accessory building on the same
200 lot, or 1,500 square feet, whichever is less.
- 201 [[v.]](e) An existing accessory building may be used
202 for the home health practice, but external
203 evidence of such use is prohibited. Only one
204 accessory building may be used and it must
205 be an eligible area.
- 206 [[vi.]](f) Equipment or facilities are limited to:
207 [[a.]](1) office equipment; or
208 [[b.]](2) medical equipment.
- 209 [[vii.]](g) Any equipment or process that creates a
210 nuisance or violates any law is prohibited in
211 connection with the operation of a home
212 health practice.
- 213 [[viii.]](h) Disposal of medical waste must be regulated
214 by State laws and regulations.
- 215 [[ix.]](i) Truck deliveries are prohibited, except for
216 parcels delivered by public or private parcel
217 services that customarily make residential
218 deliveries.
- 219 [[x.]](j) Appointments are required for visits, but
220 emergency patients may visit outside the
221 specified hours or without appointment.
- 222 [[xi.]](k) Clients, patients, or other visitors must be
223 informed of the correct address and parking
224 location in advance of any appointment.

251 [iii]i. A maximum of one Home Occupation (Low Impact) and
252 one Home Health Practitioner [(Low Impact)] is allowed
253 on the same site. A Home Health Practitioner is not
254 permitted on a site that is already approved for any other
255 conditional use under Section 7.3.1, Conditional Use or a
256 Home Occupation (Major Impact).

257 [iv]j. An indoor waiting room must be provided if more than
258 one patient or client will be on the premises at the same
259 time.

260 [v]k. Parking must be screened under Section 6.2.9.B or
261 Section 6.2.9.C, depending on the number of parking
262 spaces provided.

263 [i]b. Where a Home Health Practitioner is allowed as a conditional
264 use, the limited use standards of this Section apply, except the
265 hours of operation; number of clients, customers, patients, or
266 other visitors allowed; and the on-site sale of goods may be
267 determined by the Hearing Examiner under Section 7.3.1,
268 Conditional Use.

269 [c][m]3. **Registration.**

270 Any Home Health Practitioner [(Low Impact)] must register with DPS.

271 [i]a. **Application Requirements**

272 An application for registration must include the following:

273 [(a)]i. a signed affidavit of compliance that affirms that
274 the applicant:

275 [(1)](a) satisfies the applicable standards in Section
276 3.3.3.G; and

- 277 ~~[(2)]~~(b) will take whatever action is required by DPS
278 to bring the Home Health Practitioner (Low
279 Impact) into compliance if complaints of
280 noncompliance are received and verified;
- 281 ~~[(b)]~~ii. The manner in which the operation of the Home
282 Health Practitioner [~~(Low Impact)~~] satisfies the use
283 standards in Section 3.3.3.G;
- 284 ~~[(c)]~~iii. the location of the lot by street address and either
285 lot and block number or liber and folio;
- 286 ~~[(d)]~~iv. The zone in which the lot is located;
- 287 ~~[(e)]~~v. area of the lot or parcel, in square feet or acres;
- 288 ~~[(f)]~~vi. The total floor area of the dwelling unit and the
289 amount of floor area to be used for the Home
290 Health Practitioner [~~(Low Impact)~~], as well as the
291 floor area of any existing accessory building to be
292 used for the Home Health Practitioner [~~(Low~~
293 Impact)];
- 294 ~~[(g)]~~vii. The location and number of off-street parking
295 spaces;
- 296 ~~[(h)]~~viii. proof of home address;
- 297 ~~[(i)]~~ix. Other pertinent information required by DPS;
- 298 ~~[(j)]~~x. a copy of the use-and-occupancy permit required
299 under Section 7.4.2; and
- 300 ~~[(k)]~~xi. the location of any indoor waiting room for
301 patients, if more than one patient will be on the
302 premises at the same time.
- 303 ~~[(ii)]~~b. **Approval**

331 scheduled within 30 days, or as soon as the
332 Hearing Examiner's calendar permits. The
333 Hearing Examiner does not have authority to
334 grant the applicant any extension of the
335 hearing in such a case.

336 ~~[(3)]~~(c) Operation of the Home Health Practitioner
337 ~~[(Low Impact)]~~ may continue until the
338 Hearing Examiner has acted on the petition,
339 if the violation is corrected before the
340 application for conditional use is filed. If the
341 Hearing Examiner denies the conditional use
342 application, the Home Health Practitioner
343 ~~[(Low Impact)]~~ must cease immediately or
344 operate under the requirements for a Home
345 Health Practitioner ~~[(Low Impact)]~~.

346 ~~[(c)]~~iii. DPS may issue a citation under Division 7.8:

347 ~~[(1)]~~(a) immediately, instead of a warning notice
348 under Section 3.3.3.G.3.c.iii(b); or

349 ~~[(2)]~~(b) 30 days or more after the warning notice
350 was issued under Section 3.3.3.G.3.c.iii(b).

351 **[4. Home Health Practitioner (Major Impact)**

352 **a. Defined**

353 Home Health Practitioner (Major Impact) means a Home Health
354 Practitioner limited to 2 resident health practitioners and 2 or more
355 non-resident support persons in any 24-hour period.]

356 **[b. Use Standards**

357 Where a Home Health Practitioner (Major Impact) is allowed as a
358 conditional use, it may be permitted by the Hearing Examiner under
359 Section 7.3.1, Conditional Use, and the following standards:

- 360 i. The hours of operation and number of clients, customers,
361 patients or other visitors allowed during that time are
362 determined by the Hearing Examiner.
- 363 ii. The maximum number of deliveries is determined by the
364 Hearing Examiner.
- 365 iii. On-site sale of goods is determined by the Hearing
366 Examiner.
- 367 iv. The Hearing Examiner may grant a conditional use for a
368 Home Health Practitioner (Major Impact) on the same
369 site as a Home Health Practitioner (Low Impact), a Home
370 Occupation (Low Impact), or a Home Occupation (No
371 Impact) if it finds that both together can be operated in a
372 manner that satisfies Section 3.3.3.G.4 and Section 7.3.1,
373 Conditional Use.
- 374 v. The Hearing Examiner must not grant a conditional use
375 for a Home Health Practitioner (Major Impact) where the
376 site is already approved for any other conditional use
377 under Section 7.3.1, Conditional Use.
- 378 vi. An indoor waiting room must be provided.
- 379 vii. Screening under Division 6.5 is not required.]

380 * * *

381 **H. Home Occupation**

382 **1. Defined, In General**

383 Home Occupation means any occupation that provides a service or product
384 and is conducted within a dwelling unit by a resident of the dwelling unit.
385 Home Occupation does not include Home Health Practitioner (see Section
386 3.3.3.G, Home Health Practitioner), Bed and Breakfast (see Section 3.5.6.B,
387 Bed and Breakfast), Day Care Facility (see Section 3.4.4, Day Care
388 Facility), display of furniture not made in the home for sale in the home or at
389 an off-site location, Landscape Contractor (see Section 3.5.5, Landscape
390 Contractor), or Educational Institution (Private) (see Section 3.4.5,
391 Educational Institution (Private)).

392 **2. Use Standards for all Home Occupations**

- 393 a. Screening under Division 6.5 is not required.
- 394 b. To maintain the residential character of the dwelling:
- 395 i. The use must be conducted by an individual or
396 individuals residing in the dwelling unit.
- 397 ii. The use must be conducted within the dwelling unit or
398 any accessory building and not in any open yard area.
399 The use must be subordinate to the use of the dwelling
400 for residential purposes and require no external
401 modifications that detract from the residential appearance
402 of the dwelling unit.
- 403 iii. Exterior storage of goods or equipment is prohibited.
- 404 iv. The maximum amount of floor area used for the Home
405 Occupation must not exceed 33% of the total eligible
406 area of the dwelling unit and any existing accessory
407 building on the same lot, or 1,500 square feet, whichever
408 is less.

- 409 v. An existing accessory building may be used for the
410 Home Occupation, but external evidence of such use is
411 prohibited. Only one accessory building may be used and
412 it must be an eligible area.
- 413 vi. Equipment or facilities are limited to:
414 (a) domestic or household equipment;
415 (b) office equipment; or
416 (c) any equipment reasonably necessary for art
417 production, handcrafts, or making beer or wine.
- 418 vii. Any equipment or process that creates a nuisance or
419 violates any law is prohibited in the operation of a Home
420 Occupation.
- 421 viii. A Home Occupation is prohibited to use, store, or
422 dispose of:
423 (a) a quantity of a petroleum product sufficient to
424 require a special license or permit from The Fire
425 Marshal; or
426 (b) any material defined as hazardous or required to
427 have a special handling license under State and
428 County law.
- 429 ix. Truck deliveries are prohibited, except for parcels
430 delivered by public or private parcel services that
431 customarily make residential deliveries.
- 432 x. Display or storage of merchandise to be delivered must
433 not be visible outside of the residence and must be
434 contained within the maximum floor area available for
435 the Home Occupation.

- 436 xi. The storage of equipment or merchandise for collection
- 437 by employees who will use or deliver it at off-site
- 438 locations is prohibited.
- 439 xii. A second kitchen in the home for catering or making
- 440 food for off-site delivery or sales is prohibited.
- 441 xiii. The maintenance or repair of motor vehicles for
- 442 compensation is prohibited.

443 * * *

444 **5. Home Occupation (Major Impact)**

445 **a. Defined**

446 Home Occupation (Major Impact) means a Home Occupation that is
447 limited to 2 non-resident employees in any 24-hour period [[and is
448 regulated under Section 7.3.1, Conditional Use]].

449 **b. Use Standards**

450 i. Where a Home Occupation (Major Impact) is allowed as
451 a limited use, it must satisfy the following standards:

452 (a) The maximum number of visits is 35 per week,
453 and no more than 8 per day, excluding deliveries
454 and the arrival and departure of any non-resident
455 employee.

456 (b) Visitors must wait inside the dwelling unit.

457 (c) In-person sale of goods is limited to:

458 (1) the products of dressmaking, hand-weaving,
459 block-printing, the making of jewelry,
460 pottery or musical instruments by hand, or
461 similar arts or hand-crafts performed by a
462 resident of the dwelling; and

- 463 (2) a maximum of 5 sales per month of items
464 ordered for delivery at a later date to
465 customers at other locations (delivery of
466 goods must occur off-site).
- 467 (d) Display or storage of goods is limited to:
- 468 (1) the products listed in Section
469 3.3.3.H.5.b.i.(c); and
- 470 (2) samples of merchandise that may be ordered
471 by customers for delivery at other locations.
- 472 (e) Display or storage of merchandise to be delivered
473 must not be visible outside of the residence and
474 must be contained within the maximum floor area
475 available for the Home Occupation.
- 476 (f) Home Occupation (Major Impact) may not be on a
477 site that is already approved for another
478 conditional use under Section 7.3.1, Conditional
479 Use or Home Health Care Practitioner.
- 480 (h) The applicant must provide valid proof of home
481 address as established by Executive regulations
482 under Method 2 of Chapter 2 (Section 2A-15).
- 483 (i) Screening under Division 6.5 is not required.
- 484 ii. Where a Home Occupation (Major Impact) is allowed as
485 a conditional use, it may be permitted by the Hearing
486 Examiner under Section 7.3.1, Conditional Use, and the
487 following standards:
- 488 [i.](a) The maximum number of visits and deliveries is
489 determined by the Hearing Examiner.

- 490 [ii.](b) An indoor waiting room must be provided.
- 491 [iii.](c) In-person sale of goods is limited to:
- 492 [(a)](1) the products of dressmaking, hand-
- 493 weaving, block-printing, the making of
- 494 jewelry, pottery or musical instruments by
- 495 hand, or similar arts or hand-crafts
- 496 performed by a resident of the dwelling; and
- 497 [(b)](2) a maximum of 5 sales per month of
- 498 items ordered for delivery at a later date to
- 499 customers at other locations (delivery of
- 500 goods must occur off-site).
- 501 [iv.](d) Display or storage of goods is limited to:
- 502 [(a)](1) the products listed in Section
- 503 3.3.3.H.5.b.iii.(a); and
- 504 [(b)](2) samples of merchandise that may be
- 505 ordered by customers for delivery at other
- 506 locations.
- 507 [v.](e) Display or storage of merchandise to be
- 508 delivered must not be visible outside of the
- 509 residence and must be contained within the
- 510 maximum floor area available for the Home
- 511 Occupation.
- 512 [vi.](f) The Hearing Examiner may grant a
- 513 conditional use for a Home Occupation (Major
- 514 Impact) on the same site as a Home Occupation
- 515 (Low Impact), a Home Occupation (No Impact), or
- 516 a Home Health Practitioner [(Low Impact)] if [it]

517 the Hearing Examiner finds that both together can
518 be operated in a manner that satisfies Section
519 3.3.3.H.5 and Section 7.3.1, Conditional Use.

520 [vii.](g) The Hearing Examiner must not grant a
521 conditional use for a Home Occupation (Major
522 Impact) where the site is already approved for any
523 other conditional use under Section 7.3.1,
524 Conditional Use.

525 [viii.](h) The applicant must provide valid proof of
526 home address as established by Executive
527 regulations under Method 2 of Chapter 2 (Section
528 2A-15).

529 [ix.](i) Screening under Division 6.5 is not required.

530 [x.](j) In the AR zone, this use may be prohibited
531 under Section 3.1.5, Transferable Development
532 Rights.

533 * * *

534 **Sec. 5. DIVISION 59-3.4 is amended as follows:**

535 **Division 3.4. Civic and Institutional Uses**

536 * * *

537 **Section 3.4.4. Day Care Facility**

538 **A. Defined, In General**

539 Day Care Facility means an establishment where care is provided for less than 24
540 hours a day, for which the provider is paid, for any of the following: children under
541 the age of 17 years; developmentally disabled persons; handicapped individual; or
542 any elderly individual. Day Care Facility includes accessory preschool and
543 kindergarten educational programs that are accredited by the State.

544 **B. Exemptions**

545 The conditional use standards in Section [3.4.4.E.2.b] 3.4.4.D.2.b and Section
546 [3.4.4.F.2.b.i] 3.4.4.E.2.b.i through Section [3.4.4.F.2.b.v] 3.4.4.E.2.b.v do not
547 apply to a Day Care Center operated by a nonprofit organization and located in:

- 548 1. a structure owned or leased by a religious organization and used for
549 worship, or a structure located on premises owned or leased by a
550 religious organization that is adjacent to premises regularly used as a
551 place of worship;
- 552 2. a structure used for private, parochial education purposes that is
553 exempted from the conditional uses standards under Section 3.4.5,
554 Educational Institution (Private); or
- 555 3. a publicly-owned building.

556 **C. Family Day Care (Up to [8] 12 Persons)**

557 **Defined**

558 Family Day Care (Up to [8] 12 Persons) means a Day Care Facility for a
559 maximum of [8] 12 people in a dwelling where for child day care the
560 registrant is the provider and a resident, or the registrant is not a resident but
561 more than half the children cared for are residents. The provider's own
562 children under the age of 6 are counted [within the group of 8] toward the
563 maximum number of people allowed. For care of senior adults or persons
564 with disabilities the registrant is the provider. Family Day Care (Up to [8] 12
565 Persons) does not include more than 2 non-resident staff members on-site at
566 any time or a provider that is not a resident and does not meet the
567 requirement for a non-resident provider (see Section [3.4.4.E] 3.4.4.D., Day
568 Care Center (13-30 Persons)).

- 569 1. The registrant must be the provider and a resident. If the provider is
570 not a resident, the provider may file a conditional use application for a
571 Day Care Center (13-30 Persons) (see Section 3.4.4.D).
572 2. No more than 3 non-resident staff members may be on-site at any
573 time.

574 **[D. Group Day Care (9 -12 Persons)]**

575 **1. Defined**

576 Group Day Care (9-12 Persons) means a Day Care Facility for 9 to 12
577 people where staffing, operations, and structures comply with State and local
578 regulations and the provider’s own children under the age of 6 are counted
579 towards the maximum number of people allowed.

580 **2. Use Standards**

- 581 a. Where a Group Day Care (9-12 Persons) is allowed as a limited
582 use, it must satisfy the following standards:
- 583 i. The facility must not be located in a townhouse or duplex
584 building type.
 - 585 ii. In a detached house, the registrant is the provider and a
586 resident. If the provider is not a resident, the provider
587 may file a conditional use application for a Day Care
588 Center (13-30 Persons) (see Section 3.4.4.E).
 - 589 iii. In a detached house, no more than 3 non-resident staff
590 members are on-site at any time.
 - 591 iv. In the AR zone, this use may be prohibited under Section
592 3.1.5, Transferable Development Rights.
- 593 b. Where a Group Day Care (9-12 Persons) is allowed as a
594 conditional use, it may be permitted by the Hearing Examiner

595 under all limited use standards and Section 7.3.1, Conditional
596 Use.]

597 **[E]D. Day Care Center (13 - 30 Persons)**

598 **1. Defined**

599 Day Care Center (13-30 Persons) means a Day Care Facility for 13 to 30
600 people where staffing, operations, and structures satisfy State and local
601 regulations. A Day Care Center (13-30 Persons) includes a Family Day Care
602 (Up to [8] 12 Persons) [and Group Day Care (9-12 Persons)] where the
603 provider is not a resident and cannot meet the non-resident provider
604 requirement.

605 **2. Use Standards**

606 Where a Day Care Center (13-30 Persons) is allowed as a conditional use, it
607 may be permitted by the Hearing Examiner under Section 7.3.1, Conditional
608 Use, and the following standards:

- 609 a. The facility must not be located in a townhouse or duplex
610 building type.
- 611 b. An adequate area for the discharge and pick up of children is
612 provided.
- 613 c. The number of parking spaces under Division 6.2 may be
614 reduced if the applicant demonstrates that the full number of
615 spaces is not necessary because:
- 616 i. existing parking spaces are available on abutting property
617 or on the street abutting the site that will satisfy the
618 number of spaces required; or
- 619 ii. a reduced number of spaces would be sufficient to
620 accommodate the proposed use without adversely

621 affecting the surrounding area or creating safety
622 problems.

623 d. For a Family Day Care where the provider is not a resident and
624 cannot meet the non-resident provider requirement, screening
625 under Division 6.5 is not required.

626 e. In the AR zone, this use may be prohibited under Section 3.1.5,
627 Transferable Development Rights.

628 **[F]E. Day Care Center (Over 30 Persons)**

629 * * *

630 **Sec. 6. DIVISION 59-3.5 is amended as follows:**

631 **Division 3.5. Commercial Uses**

632 * * *

633 **Section 3.5.11. Retail Sales and Service**

634 * * *

635 **B. Retail/Service Establishment**

636 **1. Defined**

637 Retail/Service Establishment means a business providing personal services
638 or sale of goods to the public. Retail/Service Establishment does not include
639 Animal Services (see Section 3.5.1, Animal Services) or Drive-Thru (see
640 Section 3.5.14.E, Drive-Thru).

641 **2. Use Standards**

642 a. Where a Retail/Service Establishment is allowed as a limited
643 use, it must satisfy the following standards:

644 i. In the R-10 zone:

645 (a) The apartment building type must contain a
646 minimum of 150 dwelling units, be a minimum of

- 647 60 feet in height, and be on a site with a minimum
648 of 5 acres.
- 649 (b) A maximum of 10% of the gross floor area of the
650 building or 10,000 square feet, whichever is less,
651 may be used for the Retail/Service Establishment
652 use.
- 653 (c) Only small-scale retail sales and personal service
654 establishments are permitted. Small-scale retail
655 sales and personal service establishments provide
656 convenience goods and services typically requiring
657 frequent purchase and a minimum of travel by
658 occupants of the nearby commercial area and
659 adjacent residential neighborhood.
- 660 ii. In the CRN zone:
- 661 (a) If the subject lot abuts or confronts a property
662 zoned Agricultural, Rural Residential, or
663 Residential Detached that is vacant or improved
664 with an agricultural or residential use, site plan
665 approval is required under Section 7.3.4.
- 666 (b) A Retail/Service Establishment over 15,000 square
667 feet of gross floor area must be a grocery store.
- 668 iii. In the CRT, GR, and NR zones, if the subject lot abuts or
669 confronts a property zoned Agricultural, Rural
670 Residential, or Residential Detached that is vacant or
671 improved with an agricultural or residential use, site plan
672 approval is required under Section 7.3.4.

- 673 iv. In the CRT, CR, GR, and NR zones, where a
674 development is located within 1/2 mile of a Metro station
675 entrance and has a minimum 50,000 square foot footprint
676 or a minimum of 100,000 square feet of all gross floor
677 area designed for a single user, it must satisfy the
678 following standards:
- 679 (a) In addition to any street-facing entrance
680 requirement, all sides of a building that front an
681 abutting public right-of-way must have at least one
682 active entrance.
- 683 (b) Parking facilities, excluding access driveways,
684 must be located below-grade or in a structure
685 behind or within the primary building.
- 686 (c) The maximum building footprint of the area
687 designed for a single Retail/Service Establishment
688 use is 80,000 square feet.
- 689 (d) Additional floor area equal to at least 20% of the
690 footprint designed for the largest Retail/Service
691 Establishment must be provided as street level
692 retail spaces with less than 5,000 square feet of
693 tenant gross floor area each. These spaces must be
694 located at street level, and a secondary entrance
695 accessing the primary Retail/Service Establishment
696 use is prohibited. At least 50% of the additional
697 tenant space(s) must be located along the facade
698 where the primary active customer entrance for the

- 699 largest single Retail/Service Establishment is
700 located.
- 701 (e) If applicable, full architectural parapets or
702 equivalent features must be used around the entire
703 building to conceal rooftop mechanical equipment.
- 704 (f) Any residential floor area or office floor area must
705 be equal to or greater than the gross floor area
706 designed for the subject Retail/ Service
707 Establishment. At least 50% of the gross floor area
708 of the non-retail component must be located above
709 the street level retail footprint.
- 710 (g) Section 3.5.11.B.2.a.iv.(c) through Section
711 3.5.11.B.2.a.iv.(f) do not apply if more than 75%
712 of the gross floor area of the Retail/ Service
713 Establishment is a cellar.
- 714 (h) For a project greater than 500,000 square feet of
715 gross floor area, the Planning Board may approve
716 a development that does not satisfy Section
717 3.5.11.B.2.a.iv.(a) through Section 3.5.11.B.2.a.iv.
718 (f) if it finds that the project, through an alternative
719 design, results in a more appropriate configuration
720 of the site.
- 721 (i) Section 3.5.11.B.2.a.iv does not apply to a regional
722 shopping center.
- 723 v. In the EOF zone, Retail/Service Establishment is limited
724 to a maximum of 30% of the gross floor area on the
725 subject site.

- 726 vi. In the LSC zone, if the tract is larger than 5 acres,
727 Retail/Service Establishment is limited to a maximum of
728 10% of the gross floor area of development approved
729 under one application. If site plan approval is required
730 under Section 7.3.4, the Planning Board may approve a
731 maximum of 15% of the gross floor area for
732 Retail/Service Establishment if the Planning Board finds
733 that unique circumstances are present and the area would
734 be enhanced by additional retail activity.
- 735 vii. In the IL and IM zones, Retail/Service Establishment is
736 limited to:
- 737 (a) building and food service supply, home design and
738 furnishings, wholesale or retail;
 - 739 (b) computer programming and software sales and
740 service, including data banks, and data retrieval;
 - 741 (c) wholesale trades limited to sale or rental of
742 products intended for industrial or commercial
743 users; and
 - 744 (d) other Retail/Service Establishment uses or a
745 combination of Office, Retail/Service
746 Establishment, or Restaurant uses that occupy a
747 maximum of 35% of the mapped FAR.
- 748 viii. In the IH zone, Retail/Service Establishment is limited to:
- 749 (a) building and food service supply, home design and
750 furnishings, wholesale or retail;

- 751 (b) computer programming and software sales and
752 service, including data banks, and data retrieval;
753 and
754 (c) wholesale trades limited to sale or rental of
755 products intended for industrial or commercial
756 users.
- 757 ix. For Retail/Service [[Retail/Service]] Establishments
758 120,001 square feet and over:
- 759 (a) Any facade longer than 100 horizontal feet must
760 incorporate wall plane projections or recesses.
- 761 (b) Street level retail facades that front public or
762 private streets or parking areas must provide
763 transparent glazing for at least 60 percent of the
764 horizontal length of the building facade as
765 measured from a height of no more than 3 feet
766 above the walkway grade to no more than 8 feet
767 above the walkway grade [[between the height, at
768 a minimum, of 3 feet and 8 feet above the
769 walkway grade]]. Transparent glazing includes
770 transparent windows, unobstructed display
771 windows, or transparent store doors.
- 772 (c) All sides of a building that front an abutting public
773 right-of-way must have at least one active retail,
774 residential, or office entrance.
- 775 (d) Areas for storage, truck parking, trash collection,
776 or compaction and loading must be screened from
777 public rights-of-way.

778 (e) Variations in rooflines must be used when
779 possible. Full architectural parapets or equivalent
780 features must be used around the entire building to
781 conceal rooftop mechanical equipment.

782 [b. Where a Retail/ Service Establishment is allowed as a
783 conditional use, it may be permitted by the Hearing Examiner
784 under Section 7.3.1, Conditional Use, and the following
785 standard:

786 The building must be designed in a way that reduces its scale
787 and contributes to its visual interest. Long building walls should
788 have projections, recessions, or other effective treatments that
789 improve building design.]

790 * * *

791 **D. Rural Country Market**

792 **1. Defined**

793 Rural Country Market means the display and retail sale in a rural or
794 residential area of agricultural products and farm food products certified as
795 non-potentially hazardous by the Department of Health and Human
796 Services. A Rural Country Market includes the display and sale of non-
797 edible farm products only if the products are grown and processed on farms
798 in the State of Maryland. Rural Country Market does not include the sale or
799 storage of bread, cheese, or other foodstuffs produced in a commercial
800 kitchen, or an eating and drinking establishments (see Section 3.5.3, Eating
801 and Drinking).

802 **2. Use Standards**

803 a. Where a Rural Country Market is allowed as a [conditional]
804 limited use, it [may be permitted by the Hearing Examiner

805 under Section 7.3.1, Conditional Use, and] must satisfy the
806 following standards:

807 [a]i. The minimum tract area is 2 acres.

808 [b]ii. The maximum height is 20 feet, unless located in an
809 existing building.

810 [c]iii. The minimum setback from the street and from any side
811 or rear lot line is 50 feet [, except that the minimum
812 setback from the street may be reduced to 25 feet if the
813 Hearing Examiner finds that the smaller setback would
814 be compatible with surrounding uses. The Hearing
815 Examiner may approve the use of an existing structure
816 that does not meet these requirements if the Hearing
817 Examiner finds that the use is suitable and compatible
818 with the surrounding area].

819 b. Where a Rural Country Market is allowed as a conditional use,
820 it may be permitted by the Hearing Examiner under Section
821 7.3.1, Conditional Use, all applicable limited use standards, and
822 the following standards:

823 i. The minimum setback from the street under
824 3.5.11.D.2.a.iii. may be reduced to 25 feet if the Hearing
825 Examiner finds that the smaller setback would be
826 compatible with surrounding uses.

827 ii. The Hearing Examiner may approve the use of an
828 existing structure that does not meet these requirements if
829 the Hearing Examiner finds that the use is suitable and
830 compatible with the surrounding area.

831 * * *

832 **Section 3.5.13. Vehicle Service**

833 **A. Automobile Storage Lot**

834 **1. Defined**

835 Automobile Storage Lot means the storage of automobiles in connection
 836 with a towing operation. Automobile Storage Lot does not include the
 837 storage of junked cars.

838 **2. Use Standards**

839 a. Where an Automobile Storage Lot is allowed as a limited use, it
 840 must satisfy the following standards:

841 i. Vehicles must be stored or parked only on a hard surface
 842 that is constructed of impervious material resistant to
 843 erosion, is adequately treated to prevent dust emission,
 844 and is surrounded by a raised curb. The parking and
 845 storage area must be set back 15 feet from any right-of-
 846 way, 25 feet from any lot line abutting land in an
 847 Agricultural, Rural Residential, or Residential Detached
 848 zone, and 3 feet from any other lot line.

849 ii. Access to the site from a street with a residential
 850 classification is prohibited.

851 iii. The tract on which an Automobile Storage Lot use is
 852 allowed must be less than 10 acres in size.

853 iv. On-site illumination must be 0.5 footcandles or less at the
 854 lot line, excluding street lights within the right-of-way.

855 b. Where an Automobile Storage Lot is allowed as a conditional
 856 use, it may be permitted by the Hearing Examiner under
 857 Section 7.3.1, Conditional Use.

858

859

* * *

860

Sec. 7. DIVISION 59-6.2 is amended as follows:

861

Division 6.2. Parking, Queuing, and Loading

862

* * *

863

Section 6.2.4. Parking Requirements

864

* * *

865

B. Vehicle Parking Spaces

866

USE or USE GROUP	Metric	AGRICULTURAL, RURAL RESIDENTIAL, RESIDENTIAL, AND INDUSTRIAL ZONES	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area		Outside a Parking Lot District or Reduced Parking Area
		Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
RESIDENTIAL					
* * *					
ACCESSORY RESIDENTIAL USES					
* * *					
Home Health Practitioner [(Low Impact)] [Home Health Practitioner (Major Impact)]	Home Health Practitioner	1.00	1.00	1.00	1.00
	Non-Resident Employee	1.00	1.00	1.00	1.00
	plus, Each Client Allowed per Hour	1.00	1.00	1.00	1.00
	(in addition to residential spaces)				
* * *					
CIVIC AND INSTITUTIONAL					
* * *					
DAY CARE FACILITY					
* * *					
Family Day Care [Group Day Care]	Non-Resident Employee (in addition to residential spaces)	1.00	0.50	1.50	1.00
	Required spaces may be allowed on the street abutting the site				
* * *					

867

* * *

868 **Section 6.2.10. Parking Waiver**

869 The deciding body may waive any requirement of Division 6.2, except the required
870 parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design
871 satisfies Section 6.2.1. [Any request for a waiver of the vehicle parking space
872 requirement under Section 6.2.4.B requires application notice under Section
873 7.5.2.D.] Any request for a waiver of the vehicle parking space requirement under
874 Section 6.2.4.B requires application notice under Section 7.5.2.D or Hearing
875 Notice under Section 7.5.2.E.

876 * * *

877 **Sec. 8. DIVISION 59-6.3 is amended as follows:**

878 **Division 6.3. Open Space and Recreation**

879 * * *

880 **Section 6.3.4. Rural Open Space**

881 **A. General Requirements**

882 * * *

883 **4. Uses in Rural Open Space**

884 a. In the RC zone, the following uses allowed under Article 59-3
885 are prohibited in any rural open space area:

886 * * *

- 887 [xiii. Group Day Care (9 - 12 Persons);]
- 888 [xiv]xiii. Day Care Center (13 - 30 Persons);
- 889 [xv]xiv. Day Care Center (Over 30 Persons);
- 890 [xvi]xv. Private Club, Service Organization;
- 891 [xvii]xvi. Public Use (Except Utilities);
- 892 [xviii]xvii. Religious Assembly;
- 893 [xix]xviii. Animal Boarding and Care;
- 894 [xx]xix. Veterinary Office/Hospital;

- 895 [xxi]~~xx~~. Media Broadcast Tower;
- 896 [xxii]~~xxi~~. Country Inn;
- 897 [xxiii]~~xxii~~. Cemetery;
- 898 [xxiv]~~xxiii~~. Landscape Contractor;
- 899 [xxv]~~xxiv~~. Shooting Range (Outdoor);
- 900 [xxvi]~~xxv~~. Rural Antique Shop; and
- 901 [xxvii]~~xxvi~~. Mining, Excavation.

902 b. In the RNC zone, the following uses allowed under Article 59-3
903 are prohibited in any rural open space area:

904 * * *

- 905 [xv. Group Day Care (9 - 12 Persons);]
- 906 [xvi]~~xv~~. Day Care Center (13 - 30 Persons);
- 907 [xvii]~~xvi~~. Day Care Center (Over 30 Persons);
- 908 [xviii]~~xvii~~. Educational Institution (Private);
- 909 [xix]~~xviii~~. Playground, Outdoor Area (Private);
- 910 [xx]~~xix~~. Private Club, Service Organization;
- 911 [xxi]~~xx~~. Public Use (Except Utilities);
- 912 [xxii]~~xxi~~. Religious Assembly;
- 913 [xxiii]~~xxii~~. Swimming Pool (Community);
- 914 [xxiv]~~xxiii~~. Animal Boarding and Care;
- 915 [xxv]~~xxiv~~. Veterinary Office/Hospital;
- 916 [xxvi]~~xxv~~. Cable Communications System;
- 917 [xxvii]~~xxvi~~. Telecommunications Tower;
- 918 [xxviii]~~xxvii~~. Cemetery;
- 919 [xxix]~~xxviii~~. Landscape Contractor;
- 920 [xxx]~~xxix~~. Rural Antique Shop;
- 921 [xxxi]~~xxx~~. Rural Country Market; and

922 [xxxii]xxxii. Public Utility Structure.

923 * * *

924 **Sec. 9. DIVISION 59-6.8 is amended as follows:**

925 **Division 6.8. Alternative Compliance**

926 **Section 6.8.1. Alternative Method of Compliance**

927 A. The [[applicable deciding body]] Planning Board may approve an alternative
928 method of compliance with any requirement of Division 6.1 and Division
929 6.3 through Division 6.6 if it determines that there is a unique site, a use
930 characteristic, or a development constraint, such as grade, visibility, an
931 existing building or structure, an easement, or a utility line. The [[applicable
932 deciding body]] Planning Board must also determine that the unique site, use
933 characteristic, or development constraint precludes safe or efficient
934 development under the requirements of the applicable Division, and the
935 alternative design will:

- 936 [A]1. satisfy the intent of the applicable Division;
- 937 [B]2. modify the applicable functional results or performance standards the
938 minimal amount necessary to accommodate the constraints;
- 939 [C]3. provide necessary mitigation alleviating any adverse impacts; and
- 940 [D]4. be in the public interest.

941 B. [[Landscaping plans that provide more than the minimum requirements in
942 Division 6.5 may be approved by the applicable deciding body without
943 regard to this section.]] If an application is subject to a previous conditional
944 use approval that approved alternative screening standards than those found
945 under Section 6.2.9. or Division 6.5., those alternative standards apply and
946 Section 6.8.1. is not applicable.

947 * * *

948 **Sec. 10. DIVISION 59-7.3 is amended as follows:**

949 **Division 7.3. Regulatory Approvals**

950 **Section 7.3.1. Conditional Use**

951 * * *

952 **D. Review and Recommendation**

953 **1. Planning Director Review**

954 a. The Planning Director may provide a report and
955 recommendation for review by the Planning Board at a public
956 meeting or issue a report and recommendation directly to the
957 Hearing Examiner. The Planning Director must provide a report
958 and recommendation on a telecommunication tower application
959 directly to the Hearing Examiner.

960 b. If the Planning Director provides a report and recommendation
961 to the Planning Board, the Planning Director must publish the
962 report and recommendation a minimum of 10 days before the
963 Planning Board public meeting.

964 c. If the Planning Director provides a report and recommendation
965 to the Hearing Examiner, the Planning Director must publish
966 the report and recommendation a minimum of 10 days before
967 the Hearing Examiner’s public hearing.

968 **2. Planning Board Review**

969 a. The Planning Board may consider the Planning Director’s
970 report and recommendation as a consent item on its agenda or
971 hold a public meeting to consider the recommendation.

972 b. The Planning Board must provide a recommendation on the
973 application to the Hearing Examiner a minimum of 7 days
974 before the Hearing Examiner’s public hearing.

975 **3. Amendment of an Application**

- 976 a. An applicant may amend the application before the hearing if
- 977 the Hearing Examiner approves a motion to amend after giving
- 978 10 days’ notice to all parties entitled to original notice of filing.
- 979 If an amendment would materially alter an applicant’s proposal
- 980 or evidence, the Hearing Examiner may postpone the hearing to
- 981 a date that permits all interested parties adequate time to review
- 982 the amendment.
- 983 b. The applicant must forward a copy of any proposed amendment
- 984 to the Planning Board. The Hearing Examiner must keep the
- 985 record open for no more than 30 days to provide an opportunity
- 986 for the Planning Board or its staff to comment. Within that
- 987 time, the Planning Board or its staff must comment on the
- 988 amendment or state that no additional review and comment are
- 989 necessary.

990 **4. Dismissal or Withdrawal of an Application**

- 991 a. The Hearing Examiner may dismiss an application if the
- 992 application has been pending for more than one year and the
- 993 applicant has not actively pursued the application.
- 994 i. The Hearing Examiner must notify the applicant of the
- 995 contemplated dismissal at the applicant’s last known
- 996 address at least 60 days before dismissing the case.
- 997 ii. The applicant may stay the dismissal by filing a motion
- 998 before the case is dismissed.
- 999 iii. The Hearing Examiner may grant the motion for good
- 1000 cause shown.
- 1001 b. The Hearing Examiner or the Hearing Examiner’s designee
- 1002 must send a notice to all parties entitled to notice of the hearing

1003 when [an applicant withdraws] an application for a conditional
1004 use is withdrawn.

1005 **E. Necessary Findings**

1006 1. To approve a conditional use application, the Hearing Examiner must
1007 find that the proposed development:

1008 * * *

1009 b. satisfies the requirements of the zone, use standards under
1010 Article 59-3, and to the extent the Hearing Examiner finds
1011 necessary to ensure compatibility, meets ~~[[applicable]]~~ the
1012 intent of the general requirements under Article 59-6;

1013 * * *

1014 **Sec. 11. DIVISION 59-7.6 is amended as follows:**

1015 **Division 7.6. Special Provisions**

1016 * * *

1017 **Section 7.6.5. Fees**

1018 * * *

1019 **B. Waiving or Refunding of Local Map Amendment Fees**

1020 1. The District Council may waive or refund any Local Map Amendment
1021 required filing fee, in whole or in part, if:

- 1022 a. the application has not been advertised for public hearing;
- 1023 b. the application has been advertised for public hearing but the
- 1024 applicant files a request to withdraw it within 90 days after a
- 1025 master plan, Sectional Map Amendment, or Zoning Text
- 1026 Amendment that materially affects the property is approved, or
- 1027 condemnation proceedings or public acquisition of the subject
- 1028 property has been initiated; or

1029 c. the applicant shows that undue hardship will result if the refund
1030 is not approved.

1031 2. The Hearing Examiner may refund a Local Map Amendment filing
1032 fee of less than \$25,000, if any condition of Section 7.6.5.B.1 is
1033 satisfied.

1034 **C. Waiving or Refunding of Conditional Use Fees**

1035 The Hearing Examiner may waive or refund a filing fee for a conditional use, in
1036 whole or in part, if:

- 1037 1. the application has not been advertised for public hearing;
- 1038 2. the application has been advertised for public hearing but the
1039 applicant files a request to withdraw it within 90 days after a master
1040 plan, map amendment, or Zoning Text Amendment that materially
1041 affects the property is approved;
- 1042 3. condemnation proceedings or public acquisition of the subject
1043 property has been initiated;
- 1044 4. if an action of the County Executive, County Council, or an
1045 administrative board or agency resolves or moots the issues pending
1046 in the case, whether or not a public hearing has been held; or
- 1047 5. the applicant shows that undue hardship will result if a refund is not
1048 approved.

1049 **[C]D. Waiving or Refunding of Variance Fees**

1050 If a variance is needed because of an error by a government agency in its approval
1051 of a site plan, the Board of Appeals may waive or refund all or part of the filing
1052 fee.

1053 * * *

1054 **Sec. 12. Effective date.** This ordinance becomes effective 20 days after the
1055 date of District Council adoption.

Ordinance No.: _____
Subdivision Regulation Amendment No.: 23-02
Concerning: Preliminary Plan – Approval
Procedures
Revised: 12/04/2023 Draft No.: 1
Introduced: December 12, 2023
Public Hearing: _____
Adopted: _____
Effective: _____

**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 Friedson

AN AMENDMENT to:

- (1) allow the Director to approve a minor change to a preliminary plan application when associated with a conditional use;
- (2) and generally amend the subdivision amendment provisions.

By amending:

Montgomery County Code	
Chapter 50.	“Subdivision of Land”
Division 50.4.	“Preliminary Plans”
Section 50.4.2.	“Approval Procedures”

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:

1 **Sec. 1. Chapter 50 is amended as follows:**

2 * * *

3 **Division 50.4. Preliminary Plans**

4 * * *

5 **Section 50.4.2. Approval Procedures**

6 * * *

7 E. *Plan Certification.*

8 1. Every preliminary plan approved by the Board must be certified
9 by the Director to confirm that the plan reflects the Board’s
10 approval. Any modification of the plan conditioned by the
11 Board’s approval must be included in the plan before receiving
12 the approval stamp. The approved plan must be filed in the
13 records of the Board.

14 2. After conditional use approval and prior to certification of a
15 preliminary plan, the Director may approve a minor change to a
16 preliminary plan that was approved contingent on the approval
17 of a conditional use application, if the minor change does not
18 modify a condition of the preliminary plan. The Director may
19 approve these minor changes without a public hearing if no
20 objection to the application is received within 15 days after the
21 conditional use is approved. If an objection is received within
22 15 days and the Director considers the objection relevant, a
23 public hearing and action by the Board is required. The Director
24 may also require the change be acted on by the Board when no
25 objection is received.

January 16, 2024

To: The Honorable Andrew Friedson
President, Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 501
Rockville, Maryland 20850

From: Montgomery County Planning Board

Subject: Zoning Text Amendment 23-11, Regulatory Approvals – Conditional Use
Subdivision Regulation Amendment 23-02, Preliminary Plans – Approval Procedures

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission met on January 11, 2024, and by a vote of 5:0 recommended support for Zoning Text Amendment (ZTA) 23-11 with recommended revisions, and Subdivision Regulation Amendment (SRA) 23-02 as introduced. The ZTA and SRA help streamline the conditional use process by making code adjustments to consolidate existing similar uses, allowing certain existing conditional uses to become limited uses, modifying review authorities of the Hearing Examiner, and allowing for certain preliminary plan adjustments by the Planning Director.

The Planning Board is supportive of the initiatives of ZTA 23-11 and recommends most of the changes as they were introduced. The Board however has a few recommended modifications for clarity or to improve the process further. These recommendations include:

1. Adding Group Day Care (Over 30 Persons) to the modified Use Table, for purposes of updating the section reference from 59-3.4.4.F to 59-3.4.4.E. The Board believes this was likely an oversight in the initial drafting and recommends adding this to the use table for clarity and consistency.
2. Adding the statement “Where Home Health Practitioner is allowed as a limited use, the following standards apply” to the newly established limited use standards section for Home Health Practitioners. Typically, an introductory phrase like this is used before listing a use’s limited use standards and should be added here for consistency.
3. Rewording proposed limited use standard 59-3.5.11.B.2.a.ix.(b). to read “as measured from a height of no more than 3 feet above the walkway grade to no more than 8 feet above the walkway grade”. This change does not alter the intent of the standard as drafted in the ZTA, but is clearer to interpret.

4. Keeping the notice requirement for Parking Waivers under 59-6.2.10. and adding “or a Hearing Notice under Section 7.5.2.E.” as a notice option. The Board believes noticing parking waivers is important and should not be removed from the code. Allowing the Hearing Examiner to include the waiver in their Hearing Notice should mitigate the existing concerns about needing to use a notice not typically associated with a conditional use.
5. Modifying the conditional use finding under Section 59-7.3.1.E.1.b. to clarify that the Hearing Examiner finds an application that meets “the intent of the” general requirements to the extent necessary to find compatibility. This modification is in lieu of the text in the ZTA for Section 59-6.8.1.B, which attempted to allow approval of alternative screening without the use of Alternative Compliance. The Board feels the authority to approve general standards without Alternative Compliance is suitable for the Hearing Examiner during conditional uses. This is because the premise of conditional use review is finding compatibility, which may include implementation of the general development standards. Alternative Compliance remains appropriate for site plan review, which is a more technical review.
6. Updating Alternative Compliance in Section 59-6.8.1. to change the applicable deciding body to the Planning Board. With the modification recommended in item five above, the use of the Alternative Compliance section would only pertain to the Planning Board going forward.
7. Either update Alternative Compliance Section 59-6.8.1. or site plan findings Section 59-7.3.4.E.2.d. to clarify that any general development requirement for landscaping or screening modified and approved by a conditional use shall apply to site plans without the need for Alternative Compliance. There are rare instances where conditional uses still require a subsequent site plan review. Currently there are no site plan requirements to follow the alternative development standards set by a conditional use, setting up for potential confusion over which set of standards would apply to the site plan.

The Planning Board supports the revisions to Chapter 50 as introduced in SRA 23-02 without revisions. The new provision grants the Planning Director the ability to allow minor modifications to a preliminary plan conditioned on the approval of a conditional use, after a Board hearing, if it is necessary to remain consistent with the approved conditional use. This helps the Board implement a new policy of concurrently reviewing preliminary plans and conditional use applications and helps future applicants avoid additional Board hearings to approve minor modifications. Plan changes that would impact the findings or conditions of the preliminary plan would still require a second Board hearing.

The Planning Board appreciates the opportunity to review ZTA 23-11 and SRA 23-02 and recommends the District Council adopt the zoning and subdivision changes with the recommendations described herein. Planning staff is available to assist if the Council has any questions or wishes to engage in further dialogue about the recommended changes.

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 Wheaton, Maryland, on Thursday, January 11, 2024.



Artie L. Harris
Chair

Attachments:

A - Planning Board Staff Packet

ZTA 23-11
REGULATORY APPROVALS – CONDITIONAL USE
SRA 23-02

PRELIMINARY PLAN – APPROVAL PROCEDURES

Description

The ZTA would streamline the Office of Zoning and Administrative Hearing’s Conditional Use process by combining similar uses, switching certain uses from Conditional to Limited Use, and creating processes for inactive applications.

The SRA establishes a process for issuing and revising Preliminary Plans that were concurrently reviewed with a Conditional Use application and issued a “conditional approval” by the Planning Board.

ZTA 23-11 & SRA 23-02

Completed: 1-4-2023

MCPB

Item No. 06

01-11-2023

2425 Reedie Drive

Floor 14

Wheaton, MD 20902

BB	Benjamin Berbert, Planner III, Countywide Planning and Policy Benjamin.Berbert@montgomeryplanning.org , 301-495-4644
ymg	Lisa Govoni, Acting Supervisor, Countywide Planning and Policy Lisa.Govoni@montgomeryplanning.org , 301-650-5624
DA	David Anspacher, Acting Chief, Countywide Planning and Policy David.Anspacher@montgomeryplanning.org , 301-495-2191

ZTA SPONSORS

Lead Sponsor:
Councilmember Friedson

INTRODUCTION DATE

December 12, 2023

COUNCIL PUBLIC HEARING DATE

January 23, 2024

REVIEW BASIS

Chapters 50 & 59

Summary

- ZTA 23-11 and SRA 23-02 are a package of code amendments intended to streamline the conditional use review process.
- Preliminary plans and conditional use plans may be concurrently reviewed and recommended by the Planning Board.
- The ZTA recommends numerous changes including the combining of existing similar uses, the creation of new limited use standards for uses currently only allowed as conditional uses, simplifying the process around waivers and alternative compliance review, and providing new authority to the Hearing Examiner to dismiss applications and refund applications.
- The SRA creates a process to allow the Planning Director to approve minor modifications to preliminary plans after Board hearings but prior to certification that are conditioned on approval of a conditional use.

TABLE OF CONTENTS

SECTION 1 – BACKGROUND	2
Rationale For Introduction	2
SECTION 2 – ZTA 23-11 ANALYSIS AND RECOMMENDATION.....	3
Division 59-1.4. Defined Terms	4
Division 59-3.1. Use Table	4
Division 59-3.2. Agricultural Uses	5
Division 59-3.3. Residential Uses	6
Division 59-3.4. Civic And Institutional Uses	8
Division 59-3.5. Commercial Uses – As Introduced	9
Division 59-6.2. Parking, Queuing, and Loading	12
Division 59-6.3. Open Space and Recreation	14
Division 59-6.8. Alternative Compliance	14
Division 59-7.3. Regulatory Approvals.....	17
SECTION 3 – SRA 23-02 ANALYSIS AND RECOMMENDATION	18
Section 50-4.2.E. Plan Certification	18
SECTION 4 – CLIMATE ASSESSMENT	19
SECTION 5 – CONCLUSION	20
SECTION 6 – ATTACHMENTS	20

SECTION 1 – BACKGROUND

Rationale For Introduction

Zoning Text Amendment (ZTA) 23-11, Regulatory Approvals – Conditional Use and Subdivision Regulation Amendment (SRA) 23-02, Preliminary Plan – Approval Procedures, were introduced on December 12, 2023, sponsored by Councilmember Friedson (Attachment A). The ZTA and SRA are scheduled for a District Council Public Hearing on January 23, 2024.

Together, the ZTA and SRA are part of a larger effort to streamline the submittal and review process for conditional uses. Staff from Planning, Office of Zoning and Administrative Hearings (OZAH) and the Council collaborated to find opportunities in the county code, including both Zoning (chapter 59) and Subdivision (chapter 50) where the process could be simplified, or where uses were redundant or overly regulated. The introduced ZTA and SRA represent ideas that had the biggest regulatory impact with the least change to code.

Changes proposed by ZTA 23-11 include combining similar uses, creating opportunities for limited use review where only conditional use review exists currently, and adjusting the review standards and authority of the Hearing Examiner.

In Chapter 59 there are four categories for identifying how uses are allowed in any given zone, as illustrated in the Use Table from the Zoning Code. Section 59-3.1.1. is a key to using the use table and lists out the four categories. Two of these categories, *conditional use* and *limited use* are used frequently in the ZTA and this Staff Report. The four categories are listed below, with a brief description of what each use category means:

- Permitted (P) – The use is permitted in the zone without any additional use standards that modify the operations or function of the use, beyond the development standards that apply to all uses based on the underlying zone (height, setbacks, density, placement).
- Limited (L) – The use is allowed in the zone, but has additional use standards within Division 59-3 which serve to ‘limit’ the use. The standards vary greatly depending on the use and the zone, but often include additional setbacks, review process, necessary findings, or other measurable ways to ensure a use is otherwise appropriate for any location in that zone. As with Permitted uses, the standards of the underlying zone apply, unless specifically excluded or modified by the use standards.
- Conditional (C) - The use may be allowed in the zone, if it can satisfy all of the conditional use standards within Division 59-3 and is approved by the Hearing Examiner. A conditional use is not a permitted or allowed use until approved by the Hearing Examiner. Conditional use standards often are similar to limited use standards, but rely on the Hearing Examiner's review to further limit any element of the use to ensure compatibility with the surrounding

area. This may include limits on a use size, hours of operation, access and loading locations, deliveries, and a range of other factors that contribute to compatibility.

- Blank () – If a cell in the use table is blank, that use is not permitted in any way.

SRA 23-02 proposes one small addition to code pertaining to modifications made to certified plans, which helps facilitate a more streamlined review of conditional use plans with preliminary plans. Montgomery Planning Staff will bring before the Planning Board concurrent reviews of preliminary plans and conditional use plans, if applicants request it. Current practice is to not review a preliminary plan until after the conditional use plan is approved, because the review of the preliminary plan presumes the use being reviewed is allowed by zoning for that site. With conditional uses, there is no presumption the use is allowed until the plan is approved by the Hearing Examiner. In this new process, Planning Staff and the Planning Board will review both applications jointly, but at the combined Planning Board Hearing, the Board would issue a conditional approval to the preliminary plan, contingent on the accompanying conditional use plan being approved by the Hearing Examiner. Planning Staff would not certify the preliminary plan until after the conditional use plan is approved. This would make the preliminary plan process appear longer, since it would delay final certification, but would be substantially shorter than the current process where the Planning Board reviews the preliminary plan after the conditional use is approved.

The SRA that was introduced would create a process where the Planning Director may permit certain minor changes to preliminary plans after a Planning Board Hearing, if the preliminary plan was concurrently reviewed with a conditional use, the final approval of the conditional use made modifications to the plans, and the modifications do not otherwise impact a condition or finding of the Planning Board.

SECTION 2 – ZTA 23-11 ANALYSIS AND RECOMMENDATION

ZTA 23-11 modifies multiple sections of the zoning code. The following sections of this report are broken down by Division, and will walk through each amended section starting with the text as it was introduced, then discussing Planning Staff’s analysis and recommendations if applicable. With each section, Planning Staff references the line numbers in the ZTA where these specific changes occur, so the reader can follow along with both documents.

Division 59-1.4. Defined Terms

DIVISION 59-1.4. DEFINED TERMS – AS INTRODUCED

In the first section of the ZTA, 59-1.4 Defined Terms, lines 4 – 15, a few changes to defined terms are proposed, reflecting changes that are proposed in other parts of the ZTA. Non-substantive changes include:

- Updating the code sections for both types of Day Care Center to reflect changes to the numbering in Section 3.4.4.
- The deletion of Group Day Care (9-12) Persons as this section is merged with another section (see lines 563-585).
- The deletion of two sub-uses within the Home Health Practitioner use, including: Home Health Practitioner (Low Impact) and (Major Impact) (lines 222-229 and 340-368).

DIVISION 59-1.4. DEFINED TERMS – ANALYSIS AND RECOMMENDATION

The modifications to the Defined Terms Division are straightforward. They delete the uses that are proposed for removal through consolidation, and also adjust section references to certain terms that were also adjusted by adding or removing use standards throughout the ZTA. The shown modifications make sense given the other changes proposed by the ZTA and are supported by Planning Staff

Recommendation – Support the modifications in the Defined Terms section as introduced.

Division 59-3.1. Use Table

DIVISION 59-3.1. USE TABLE – AS INTRODUCED

In Section 3.1.5. Transferable Development Rights, lines 24-46 of the ZTA, the list of uses prohibited on lots or parcels located in the AR zone and encumbered by a Transfer of Development Rights easement is updated to reflect changes made to uses by other parts of the ZTA. Home Health Practitioner (Low Impact) and (Major Impact) are merged into one use, and Group Day Care (9-12) is removed. Reflecting these changes in the alphanumeric list causes the remainder of the list to be updated accordingly.

Section 3.1.6. Use Table, shown as line 51 stretching across pages 5 and 6 of the ZTA have multiple updates to both the uses listed, and the permissible level of uses (permitted, limited, or conditional). The analysis for these changes are discussed later in the Staff Report, but are reflected in the use table to include:

- Adding Limited as an option for Equestrian Facilities in the RE-2, RE-2C, RE-1, and R-200 zones.
- Deleting the uses Home Health Practitioner (Low Impact), which was a limited use in almost every zone and Home Health Practitioner (Major Impact), which was a conditional use in almost every zone, and replacing them with a single use of Home Health Practitioner listed as Limited/Conditional.
- Adding Limited as an option for Home Occupation (Major Impact) in the Commercial/Residential and Employment Zones.
- Updating the use Family Day Care (Up to 8) to reflect the new use Group Day Care (Up to 12), and deleting the use Group Day Care (9-12).
- Updating the use Retail/Service Establishment (85,001 – 120,000) to (85,001 and Over), and deleting the use Retail/Service Establishment (120,001 and Over).
- Adding Limited as an option for Rural County Market in the AG, and Rural Residential Zones, along with the RE-2, RE-2C, RE-1, and R-200 zones.
- Adding Limited as an option for Automobile Storage Lot in the Industrial Zones.

DIVISION 59-3.1 USE TABLE – ANALYSIS AND RECOMMENDATION

The Use Table updates are technical in nature, updating use names and section numbers that are edited in other parts of this ZTA. Staff identified one additional edit missing from the use table (line 51) based on the changes proposed by the ZTA. Under Civic and Intuitional, Day Care Facility, the use table updates to show the new use for Family Day Care (Up to 12 Persons), remove Group Day Care (9-12 Persons), and updates Day Care Center (13-30 Persons) to section D from E, but the use Group Day Care (Over 30 Persons) also needs to be updated in the use table, reflecting that it has moved from section 59-3.4.4.F to 59-3.4.4.E.

Recommendation – update the use table to reflect the section change for Group Day Care (Over 30 Persons) from Section 3.4.4 F to Section 3.4.4E.

Division 59-3.2. Agricultural Uses

DIVISION 59-3.2. AGRICULTURAL USES – AS INTRODUCED

The change proposed on lines 56-154 is to the use Equestrian Facility, Section 3.2.4. Currently, Equestrian Facility is a limited use in the AG and Rural Residential zones, but are only allowed as a conditional use in the Residential zones. Lines 71-81 insert a new section of standards that would provide a limited use option in the larger lot Residential zones (RE-2, RE-2C, RE-1, and R-200). The new limited use standards would permit up to 5 horses on a property if the following standards could be met:

- i. The horses are kept for non-commercial purposes. Commercial purposes include boarding horses not owned by the resident for a fee, instruction in equestrian skills for a fee, and events such as competitions, exhibitions, or other displays of equestrian skills.
- ii. The maximum number of horses is determined by the minimum lot sizes in Section 3.2.4.B.1.a.
- iii. State requirements for nutrient management concerning animal waste must be met.

The remainder of the Equestrian Facility code sections remain unchanged, except the subsection numbering is shifted to accommodate the added limited use code mentioned above.

DIVISION 59-3.2 AGRICULTURAL USES – ANALYSIS AND RECOMMENDATION

The proposed changes to Equestrian Facility would allow the use as a limited use with new use standards for the RE-2, RE-2C, RE-1, and R-200 zones. Planning Staff agree in creating limited use standards for these zones, and find the proposed standards, when combined with the standards that apply to all Equestrian Facilities, to be appropriate. This will eliminate the need for Planning Staff and the Hearing Examiner to review these relatively minor requests from property owners to house up to five horses on large lot residential properties that have adequate acreage.

Recommendation - Support the limited use standards for Equestrian Facilities as introduced.

Division 59-3.3. Residential Uses

There are two groups of uses that are amended by this ZTA in the Residential Uses Division: Home Health Practitioners, and Home Occupation.

HOME HEALTH PRACTITIONERS

SECTION 59-3.3.3.G. HOME HEALTH PRACTITIONER – AS INTRODUCED

The first section amended under 59-3.3 Residential Uses is Section 3.3.3.G. Accessory Residential Uses – Home Health Practitioner. The amendment covers a large section of the ZTA, from lines 161-368. The code currently has a general definition for Home Health Practitioner, and then separate standards for a Home Health Practitioner (Low Impact), which is allowed as a limited use in most zones, and Home Health Practitioner (Major Impact), which is allowed as a conditional use in most zones. This ZTA merges the two uses into one single use for Home Health Practitioner, and streamlines the code to allow it as both a limited use or a conditional use in almost every zone. With the merging of the different Home Health Practitioners, the definition (lines 175-175) is expanded to say:

b. Home Health Practitioner is limited to 2 health practitioners, one of whom must be a resident, and up to 3 non-resident support persons in any 24-hour period.

Most of the limited use standards from the previous Home Health Practitioner (Low Impact) use are maintained as standards that apply to all Home Health Practitioners, with a few new standards added, based on conditions that are commonly placed on those that were conditionally approved, including:

- Limiting hours of operation to between 7:00am and 7:00pm (lines 234-235)
- Prohibiting the use on a site approved with a conditional use, or with a Home Occupation (Major Impact) (lines 241-245)
- Adding that where Home Health Practitioner is allowed as a conditional use, all limited use standards apply except for hours of operations, number of clients, patients, or visitors, and conditions around the on-site sale of goods, which may be modified by the Hearing Examiner (lines 250-255).

The Home Health Practitioner (Major Impact) and its list of standards are deleted in lines 340-368, since most of these standards were captured either in the expanded definition, or the added standards listed above.

SECTION 59-3.3.3.G. HOME HEALTH PRACTITIONER – ANALYSIS AND RECOMMENDATION

Planning Staff support the idea of merging the Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact) into one use. Most of the use standards from both uses were combined to form one long list of limited use standards. The new standards proposed are based on conditions commonly applied by the Hearing Examiner to the Home Health Practitioners (Major Impact) during conditional use review. This seems reasonable because the difference in impacts between low impact uses and major impact uses were nominal. The primary difference was allowing the Hearing Examiner to waive some of the standards through a conditional use review. For clarity and consistency with other code sections, Planning Staff recommends adding the phrase “Where Home Health Practitioner is allowed as a limited use, the following standards apply” to line 177 of the ZTA, prior to starting the alphanumeric list of standards. This statement is common in other uses of the code where a use may be both limited or conditional. Similar text already introduces the standards that apply to only conditional use review on line 250 of the ZTA.

Recommendation – Support merging Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact) into one use, but add the phrase “Where Home Health Practitioner is allowed as a limited use, the following standards apply” on line 177 of the ZTA.

HOME OCCUPATION

SECTION 59-3.3.3.H. HOME OCCUPATION – AS INTRODUCED

The other Residential use modified by the ZTA is the Accessory Residential Use - Home Occupation under section 59-3.3.3.H. These amendments are covered in lines 370-521 of the ZTA. Similar to the Home Health Practitioner use discussed above, Home Occupation has a general definition and standards that apply to all types of Home Occupation, and then has sub-categories of Home Occupation (No Impact), Home Occupation (Low Impact) and Home Occupation (Major Impact), each with separate sub-definitions and use standards. For Home Occupation, the ZTA does not seek to merge the three categories together, rather it adds limited use standards for Home Occupation (Major Impact). The new limited use standards are shown on lines 439-472 of the ZTA. These standards include limiting total visitors, requiring an indoor waiting area, limiting in-person sales, limiting on-site storage and display of merchandise, and prohibiting the use in conjunction with other at home employment uses.

SECTION 59-3.3.3.H. HOME OCCUPATION – ANALYSIS AND RECOMMENDATION

The amendments to the Home Occupation section of code provide an opportunity to allow Home Occupation (Major Impact) as a limited use, with set standards, and retains the ability to apply for conditional use if an applicant wishes to deviate from certain standards. The standards proposed as a limited use seems reasonable and consistent with the intensity allowed with other at-home types of businesses, limiting the number of visitors, deliveries, sales, and displays that may occur. The limited use standards also prohibit additional at-home businesses if also doing a Home Occupation (Major Impact).

Recommendation – Support the new limited use standards for Home Occupation (Major Impact) as introduced.

Division 59-3.4. Civic And Institutional Uses

DIVISION 59-3.4 CIVIC AND INSTITUTIONAL USES – AS INTRODUCED

Within Division 59-3.4 Civic and Institutional Uses, the ZTA proposes modifications to Section 59-3.3.4. Day Care Facility, on lines 545 – 617 of the ZTA. The Current code has four size ranges of Day Care Facilities;

- Family Day Care (Up to 8 persons)
- Group Day Care (9-12 persons)
- Day Care Center (13-30 persons)

- Day Care Center (over 30 persons)

The Family Day Care (Up to 8 persons) is currently permitted in every zone, but Group Day Care (9-12 persons) is substantially more restricted, only allowed as a limited use for the Rural Residential and larger lot Residential zones, and is a conditional use in the remaining Residential, townhouse and multi-unit zones. This ZTA proposes merging Family Day Care (up to 8 persons) with Group Day Care (9-12 persons), creating a new use for Family Day Care (up to 12 persons), and permitting the use in every zone except for Industrial-Heavy. The ZTA is slightly expanding upon the existing definition of Family Day Care to clarify that the registrant for the use may be the care provider and a resident, otherwise a conditional use application would need to be filed. Lines 563-585 are the deletion of the existing Group Day Care (9-12) use. There are no policy modifications for the remaining two larger Day Care use groups, just the necessary section re-numbering from having deleted the (9-12) use in the section.

DIVISION 59-3.4 CIVIC AND INSTITUTIONAL USES – ANALYSIS AND RECOMMENDATION

The proposed revisions to combine Family Day Care (up to 8 Persons) and Group Day Care (9-12 Persons) into one new use, Family Day Care (Up to 12 Persons) is supported by Planning Staff. The combined use will be a permitted use in all zones, like Family Day Care (up to 8 Persons) currently. Adding up to four additional children in the care facility is a relatively small impact on adjacent land uses, but has a huge impact in reducing regulatory burdens for small childcare providers. The additional regulatory hurdles that were required for Group Day Care (Up to 12 Persons) were substantial, as the use was not permitted outright in any zone and either had to follow limited, or conditional use standards. Many childcare providers each year file plans to enlarge an existing small childcare facility from 8 to 12 capacity. Most of these requests occur with no physical changes in building exterior or on-site operations. Planning Staff are very supportive of this change making it easier to modestly expand permitted care facilities without additional hardship for the applicants.

Recommendation – Support combining the existing Day Care categories of Family Day Care (up to 8 Persons) and Group Day Care (9-12 Persons) into one, permitted use of Family Day Care (up to 12 Persons).

Division 59-3.5. Commercial Uses – As Introduced

The ZTA proposes edits to three uses under Division 59-3.5; Retail/Service establishment under Section 3.5.11.B, Rural Country Market under Section 3.5.11.D, and Automobile Storage Lot under Section 3.5.13.A.

RETAIL/SERVICE ESTABLISHMENT

SECTION 59-3.5.11.B. RETAIL/SERVICE ESTABLISHMENT– AS INTRODUCED

The use Retail/Service Establishment, lines 624-775 of the introduced ZTA, is being amended in two ways. First, there are modifications to the retail size ranges occurring in the use table (see page 6 of the ZTA). Currently, the code divides Retail/Service establishment into six categories based on square footage.

- Retail/Service Establishment (Up to 5,000 SF)
- Retail/Service Establishment (5,001 – 15,000 SF)
- Retail/Service Establishment (15,001 – 50,000 SF)
- Retail/Service Establishment (50,001 – 85,000 SF)
- Retail/Service Establishment (85,001 – 120,000 SF)
- Retail/Service Establishment (120,001 SF and Over)

As the square footage increases, the uses become more restrictive both in the number of zones, and in the rigorousness of the review process. Only one use, (120,001 and Over) requires a conditional use in any circumstances. The ZTA proposes merging the upper two size categories into one, effectively making the uppermost category Retail/Service Establishment (85,001 and Over), rather than the current (120,001 and Over).

The second change occurs in Section 59-3.5.11.B to add new limited use standards that would apply to establishments 120,001 square feet and larger in size (lines 746-767), and the deletion of the conditional use requirements (lines 768-775). These proposed limited use standards were pulled from a few sources, including standards that apply to establishments over 50,000 square feet in size within ½ mile of Metrorail (lines 662-711), or that came from the intent of the deleted conditional use standards for retail 120,001 square feet and over.

SECTION 59-3.5.11.B. RETAIL/SERVICE ESTABLISHMENT – ANALYSIS AND RECOMMENDATION

Planning Staff have no objection to the proposal to combine the two largest sub-categories of retail establishments into one, because there is little effective difference in the impacts that a single retailer user of these sizes would have on form or function. As drafted, this combination also eliminates the conditional use requirement for the largest retailer users from the GR and NR zones. The added standards that would apply to establishments over 120,000 square feet serve the same compatibility function that a conditional use would have, and are standards borrowed from other retail uses either within ½ mile of a Metrorail station, or from the form requirements for mixed use projects. Planning Staff recommend a slight modification to the wording of the new standard 59-3.11.B.2.a.ix(b), marked up as follows:

(b) Street level retail facades that front public or private streets or parking areas must provide transparent glazing for at least 60 percent of the horizontal length of the building façade as measured from a height of no more than 3 feet above the walkway grade to no more than 8 feet above the walkway grade [[between the height, at a minimum, of 3 feet and 8 feet above the walkway grade]]. Transparent glazing includes transparent windows, unobstructed display windows, or transparent store doors.

The proposed language is not fundamentally different in intent, but is more clearly written.

Recommendation - Support combining the Retail/Service Establishment (85,001 – 120,000) and Retail/Service Establishment (120,001 and Over) into a new single use Retail/Service Establishment (85,001 and Over), with the proposed standards, including the modification to (b) described above.

RURAL COUNTRY MARKET

SECTION 59-3.5.11.D. RURAL COUNTRY MARKET – AS INTRODUCED

Rural Country Markets, described under Section 59-3.5.11.D., lines 777-816 in the ZTA, currently is only allowed as a conditional use in the AR, R, RC, RNC, RE-2, RE-2C, RE-1 and R-200 zones. This ZTA proposes to allow it as a limited use in the same zones, with limited use standards that incorporate most of the existing conditional use standards. These include a minimum tract area of 2 acres, a maximum building height of 20 feet unless incorporated into an existing building, and a minimum setback of 50 feet from side or rear lot lines. The ZTA then creates a new sub-section that allows the Hearing Examiner to approve the use as a conditional use with reduced setbacks, or the use of an existing structure that does not meet height and setbacks, if the use is still found to be suitable and compatible with the surrounding area.

SECTION 59-3.5.11.D. RURAL COUNTRY MARKET – ANALYSIS AND RECOMMENDATION

The proposed changes to Rural Country Markets in Section 59-3.5.11.D to add a limited use option in all the zones that currently allow it as a conditional use is a reasonable way to simplify approving this use. These markets are small, often roadside markets in rural areas selling local farm produced food, and commercially produced products are prohibited. The ZTA would convert most of the conditional use standards to limited use standards. For applications that cannot meet the limited use standards, a conditional use could still be filed. Making it easier to open these small Rural Country Markets is a reasonable way to help farms remain viable.

Recommendation – Support the changes making Rural County Market a limited use in certain zones.

AUTOMOBILE STORAGE LOT

SECTION 59-3.5.13.A. AUTOMOBILE STORAGE LOT – AS INTRODUCED

Automobile Storage Lot is a subsection of Vehicle Service under Section 59-3.5.13 (lines 818-843). This use is only allowed in the code as a conditional use, and is only allowed in the GR zone. This ZTA would allow the use to also occur as a limited use in any of the three industrial zones. The ZTA adds new limited use standards including requiring vehicles only be parked on a hard surface, that access to a residential street is prohibited, that the tract is less than 10 acres, and on-site illumination needs to be kept to 0.5 footcandles or less. These standards are largely borrowed from the Vehicle Sales and Rental (Outdoor) use, which also may have large quantities of vehicles stored outdoors.

SECTION 59-3.5.13.A. AUTOMOBILE STORAGE LOT – ANALYSIS AND RECOMMENDATION

The ZTA proposed to allow Automobile Storage Lots in the industrial zones as a limited use, following many of the use standards for Automobile Sales and Service (Outdoor). Currently, the use is only allowed in the GR zone, as a conditional use. This expansion of zones and the proposed standards make sense. The use is a narrowly defined use, as a vehicle storage area for towed vehicles, and is not intended to store junked cars. This sort of use is appropriate in industrial zones where compatibility concerns are limited. Utilizing the use standards from auto sales lots is also reasonable considering the shared aesthetic of vehicles parked outdoors.

Recommendation – Support the expansion of the use into the industrial zones, with the proposed limited use standards.

Division 59-6.2. Parking, Queuing, and Loading

DIVISION 59-6.2 PARKING, QUEUING, AND LOADING – AS INTRODUCED

There are two broad areas of change proposed by this ZTA to Division 59-6.2 under the Parking section. The first change updates the required parking table (line 852) to reflect the various changes in uses throughout this ZTA (deletion, merger, renaming), as discussed earlier in this report. The other change proposed is under Section 6.2.1. Parking Waiver (lines 854-859). The ZTA keeps the standards for a parking waiver, but deletes the requirement that the waiver request require a specific public notice under Section 59-7.5.2.D.

DIVISION 59-6.2 PARKING, QUEUING, AND LOADING – ANALYSIS AND RECOMMENDATION

Planning Staff support the updates to the parking table, as they are straightforward, removing the (Low Impact) and (Major Impact) for Home Health Practitioner, and removing Group Day Care, consistent with these uses being removed from the code as discussed in other sections of this report.

The parking waiver modification is less straightforward. Section 59-7.5.2.D. Application Notice is the type of notice a parking waiver requires. Application Notice is a specific type of notice, most typically associated with sketch, site, signature business HQ, biohealth priority campus, and mixed income Plans. Conditional uses do not require Application Notice under Section 59-7.5.2.D, instead they require a notice called Hearing Notice under 59-7.5.2.E. When there is a parking waiver request with a conditional use, it creates extra process and expense for applicants to fulfill the Application Notice. Occasionally, the need for a parking waiver is not known when plans are submitted for review, as the issue arises during the review process itself.

Both the Application Notice and the Hearing Notice requires mailed notice to all abutting and confronting property owners, and civic, HOA, and renter associations registered with the Planning Board within ½ mile of a property. The two notices also share similarities in identifying project names, filing numbers, property location, and basics about the application. The primary difference is the Application Notice is done at the beginning of a review to alert neighbors to a pending review, and the Hearing Notice is done later in process to notify neighbors about a pending public hearing. While Planning Staff acknowledge needing to send an Application Notice just because of a parking waiver is potentially burdensome, Planning Staff believe requested waivers including parking waivers should have some type of notice. Waiver requests should be added as a requirement of the Hearing Notice when applicable as an alternative. The Hearing Notice goes out 30 days prior to a hearing for conditional use applications which provides sufficient time for neighbors and interested parties to comment on the request and otherwise become engaged in the process. For site plans that request parking waivers, the existing process of including it in the Application Notice should remain since site plans already require Application Notice. Planning Staff recommends Section 59-6.2.10 be modified as follows:

Section 6.2.10. Parking Waiver

The deciding body may waive any requirement of Division 6.2, except the required parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design satisfies Section 6.2.1. Any request for a waiver of the vehicle parking space requirement under Section 6.2.4.B requires application notice under Section 7.5.2.D or Hearing Notice under Section 7.5.2.E.

Recommendation – Support the amendments to the parking table, and amend the parking waiver section of the ZTA as to allow Hearing Notice under Section 7.5.2.E. as an alternative notice requirement.

Division 59-6.3. Open Space and Recreation

DIVISION 59-6.3 OPEN SPACE AND RECREATION – AS INTRODUCED

The changes proposed under Division 59-6.3 Open Space (lines 862-906) amend the list of uses prohibited in rural open space, under the RC and the RNC zones in Within Section 59-6.3.4 Rural Open Space. Specifically, Group Day Care (9-12 Persons) is removed, and then update the numbering for the remainder of the uses in the list.

DIVISION 59-6.3. OPEN SPACE AND RECREATION – ANALYSIS AND RECOMMENDATION

The changes to the Open Space and Recreation Division are technical updates to the list of uses prohibited in Rural Open Space. The uses proposed for removal from the code are being removed from this list, resulting in the renumbering of the remaining items in the sequence.

Recommendation – Support the edits to the list of uses prohibited in Rural Open Space.

Division 59-6.8. Alternative Compliance

DIVISION 59-6.8. ALTERNATIVE COMPLIANCE – AS INTRODUCED

Division 59-6.8. Alternative Compliance is located at the end of Article 59-6 General Development Standards, and acts as a catchall allowing the approving authority to deviate from the standards in most of Article 59-6, if findings can be made that the code intent is still met, modifications are the minimum necessary for relief, that impacts are mitigated, and that there is a public interest. This ZTA proposes adding an exclusion to Alternative Compliance, lines 924-926, stating that landscape plans that provide more than the minimum screening requirement may be approved by the deciding body without regard to this section.

DIVISION 59-6.8. ALTERNATIVE COMPLIANCE – ANALYSIS AND RECOMMENDATION

Planning Staff have a couple of concerns with this amendment to the Alternative Compliance as written. First, the ZTA text states ‘plans that provide more than the minimum requirement in Division 6.5 may be approved...’. Planning Staff sees this language as a statement of fact. Any elements provided on a plan that clearly ‘exceeds’ minimum standards by definition is satisfying the minimum, and would be approvable without Alternative Compliance. The issue as understood by Planning Staff is the cumbersome detailed nature of applying Alternative Compliance, and that the need to deviate from the requirements of Article 6 that can arise as part of the negotiations at conditional use

hearings, especially around screening. The desired outcome may be screening that from a practical standpoint is more effective, but deviates from rather than exceeds base standards. This often causes cases to be put on hold, with the Alternative Compliance review sent back to Planning Staff to analyze and provide supplemental analysis on, resulting in weeks of delay.

One solution to this is to clarify the ability of the Hearing Examiner to deviate from the requirements of Article 59-6 for purposes of compatibility. The findings for conditional use are found under Section 59-7.3.1.E., Necessary Findings for conditional uses. Existing Section 59-7.3.1.E.1.b. states that to approve a conditional use application, the Hearing Examiner must find that the proposed development *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.* This section starts to suggest conditional uses may not need to strictly follow Article 59-6 but does not state this clearly. Planning Staff recommends modifying this line of code to read as follows:

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] the intent of the** general requirements under Article 59-6.

Replacing the word ‘applicable’ with the phrase ‘the intent of the’ allows the Hearing Examiner to refer back to the intent statements of each Division in Article 59-6, and then modify the General Development Requirements as necessary to ensure compatibility. Given the nature of the Hearing Examiners review focused on compatibility, Planning Staff find this flexibility reasonable. Planning Staff still find it appropriate for the Planning Board at the time of a site plan to apply Alternative Compliance, including the screening requirements of Division 59-6.

In the rare occasion a conditional use comes back before the Board as a site plan, it should be clear that any alternative requirements imposed by the Hearing Examiner can be in lieu of the requirements in Article 59-6 and Alternative Compliance would not be necessary. Planning Staff have to possible remedies for this rare but possible scenario. First would be to modify the ZTA to include the following changes to 59-6.8.1. which clarify that Alternative Compliance only applies to the Planning Board, and provides the Board the ability to approve plans that do not follow all of Article 59-6 if the Hearing Examiner has already approved alternative standards.

Section 6.8.1. Alternative Method of Compliance

The **[applicable deciding body] Planning Board** may approve an alternative method of compliance with any requirement of Division [6.1](#) and Division [6.3](#) through Division [6.6](#) if it determines that there is a unique site, a use characteristic, or a development constraint, such as grade, visibility, an existing building or structure, an easement, or a utility line. The **[applicable deciding body] Planning Board** must also determine that the unique site, use characteristic, or development constraint precludes safe or efficient development under the requirements of the applicable Division, and the alternative design will:

* * *

B. [[Landscape plans that provide landscaping and site elements that will meet or exceed the requirements of Division 6.4 or Division 6.5 may be approved by the Hearing Examiner without regard to this section, if the alternative landscaping design is deemed adequate to ensure compatibility.]] If an application is subject to a previous conditional use approval that approved alternative screening standards than those found under Section 6.2.9. Parking Lot Landscaping and Outdoor Lighting, or Division 6.5. Screening, those alternative standards apply and Section 6.8.1. is not applicable.

This language clarifies that Alternative Compliance only applies to the Planning Board during its review of applicable plans, and clarifies that standards set by the Hearing Examiner on a conditional use are valid and do not require the Board to review Alternative Compliance. The two specific sections referenced, Section 6.2.9, and Division 6.5 are both sections that involve screening, which is what the Hearing Examiner is most concerned with being able to deviate from. Planning Staff note that upon asking the Department of Permitting Services if they ever apply Alternative Compliance as part of a permit review they were unable to think of a case where they did.

Planning Staff's alternative suggestion would continue to replace 'applicable deciding body' with 'Planning Board' as discussed above, but would completely remove Section 59-6.8.1.B above and instead modify the site plan findings under 59-7.3.4.E. Alternative Compliance does not apply to Division 6.2. Parking, Queueing, and Loading, since there is a Parking Waiver under Section 59-6.2.10. Therefore, It may be ill-placed to reference compliance with alternative standards from Division 6.2 under Alternative Compliance. Modifying the existing site plan findings to require compliance with any existing conditional uses on the site is another alternative to allow the Board to find conformance with Chapter 59 using the standards set forth by the Hearing Examiner. Planning Staff would recommend modifying the condition under 59-7.3.4.E.2.d. as follows:

d. satisfies applicable use standards, development standards, and general requirements under this Chapter including any general development requirements modified by an approved conditional use;

Recommendation – Transmit the alternative language for conditional use findings in Section 59-7.3.1.E.1.b. that provide the Hearing Examiner flexibility in approving Article 6, the amendment to Alternative Compliance Section 6.8.1. that clarify the section applies to the Planning Board, and the options to either amend Section 6.8.1.B. to exempt the Board from having to find Alternative Compliance for modifications to parking lot and site screening, or to amend the site plan findings under Section 7.3.4.E.2.d. to require site plans follow any general development requirements modified by a conditional use.

Division 59-7.3. Regulatory Approvals

DIVISION 59-7.3. REGULATORY APPROVALS – AS INTRODUCED

Division 59-7.3 Regulatory Approvals is a broad Division that covers all types of regulatory plan approval. The standards for review of conditional uses are within this Division, under Section 59-7.3.1. The ZTA proposes modifying an existing section, 59-7.3.1.D.4 Withdraw of an Application, to include Dismissal or Withdraw of an Application. The ZTA adds new provisions to allow the Hearing Examiner to dismiss an application with 60 days' notice after one year of application inactivity. Applicants would also have the option to request a stay of the dismissal. These changes are shown on lines 940-985 of the ZTA.

DIVISION 59-7.3. REGULATORY APPROVALS – ANALYSIS AND RECOMMENDATION

The ZTA creates a process for the Hearing Examiner to withdraw a stalled application, by amending Section 59-7.3.1.D.4, to add 'Dismissal' to the existing Withdraw of an Application section. This is a reasonable addition, allowing the Hearing Examiner to file a motion to dismiss an application inactive for over a year, after providing 60 days' notice.

As discussed in more detail under the Alternative Compliance section on page 15 of this Staff Report, Planning Staff is also recommending the modification to Section 59-7.3.1.E.1.b. as follows:

- 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] the intent of the general requirements under Article 59-6.

Recommendation – Support amending Section 59-7.3.1.D.4. to add Dismissal standards to the existing section, and amending Section 59-7.3.1.E.1.b. clarifying the conditional use meet the intent of Article 59-6 to meet compatibility.

DIVISION 59-7.6. SPECIAL PROVISIONS – AS INTRODUCED

The last section of code that would be amended by this ZTA is under the Special Provisions Division. This Division is a set of regulations that set forth the duties and responsibilities of the various agencies with the authority to act on the zoning code. This ZTA is proposing a new section under Section 59-7.6.5. Fees, adding C. Waiving or Refunding of Conditional Use Fees (lines 1006 – 1020). This section provides the Hearing Examiner the option to waive or refund the filing fees for a conditional use application if either the application has yet to be noticed for a public hearing, if a major change (Master Plan, ZTA, map amendment) within the past 90 days has materially affected the property, the

property has started condemnation proceedings, or if a government body takes an action rendering the issues of the application moot or resolved.

DIVISION 59-7.6. SPECIAL PROVISIONS – ANALYSIS AND RECOMMENDATION

The amendment allowing the full or partial refunding of filing fees under certain circumstances is a reasonable practice and supported by Planning Staff.

Recommendation – Support the addition of Section 59-7.6.C. Waiving or Refunding of Conditional Use Fees.

SECTION 3 – SRA 23-02 ANALYSIS AND RECOMMENDATION

Section 50-4.2.E. Plan Certification

SECTION 50-4.2.E. PLAN CERTIFICATION – AS INTRODUCED

As discussed in the background section of this report, one element in streamlining conditional use reviews is a policy change to allow concurrent review of preliminary plans with conditional use plans. During the hearing and deliberation of the conditional use plan with OZAH, changes may occur to applications after the Planning Board has reviewed them at a public hearing. To streamline the process, a new policy is added to Chapter 50 allowing the Director to approve minor changes to certified preliminary plans so that the applicant can avoid another Planning Board hearing.

The Section that would be added is under Section 50-4.2.E Plan Certification (page 48, lines 14-25 of the SRA). Any minor change that does not alter a Planning Board condition, or substantially impact a finding, may be approved by the Planning Director. A 15-day waiting period from the date of OZAH approving the conditional use plan would allow a party of record to object and request the Board reconsider the plan. The Director would also have the option to request a new Board hearing to discuss the changes if they deemed it necessary.

SECTION 50-4.2.E. PLAN CERTIFICATION – ANALYSIS AND RECOMMENDATION

The SRA creates a process that would allow the Planning Director to allow minor modifications to preliminary plans that are recommended for approval by the Board contingent on the passage of a specific conditional use application. Normally changing a plan that has already been before the Board is handled through an amendment, however, amendments presume the previous plan is approved and certified. Preliminary plans for a conditional use cannot be certified and approved until after

approval of the pending conditional use application. If the conditional use plan changes after the Planning Board hearing but prior to approval, and these changes need to be reflected on the preliminary plan drawings, these changes would need to be made to the preliminary plan prior to certification. If the changes were substantial, such as increasing density, impacting findings, or modifying conditions of approval, Planning Staff would bring the changes back before the Planning Board as a continuation of the hearing. This SRA establishes a process for minor changes that can be acted upon by the Planning Director rather than the full Board. Planning Staff supports this new process that would avoid needing additional hearings for small modifications. Having to take minor modifications back to the Board would delay the approval of the preliminary plan, counter to the intent of streamlining the process. The provisions in the SRA provide for a 15-day objection period by parties of record, and for the Director to voluntarily send the plans back to the Board for any reason. These standards are consistent with language in other sections in code that pertain to Director and Administrative level approvals.

Recommendation – Support the SRA creating a process for Planning Director modifications to certain preliminary plans prior to certification, as introduced.

SECTION 4 – CLIMATE ASSESSMENT

Bill 3-22, passed by the County Council on July 12, 2022, requires the Planning Board to prepare a climate assessment for each zoning text amendment, master plan, and master plan amendment, effective March 1, 2023. Each climate assessment must include the potential positive or negative effects a ZTA may have on climate change (including greenhouse gas emissions) and upon community resilience and adaptive capacity. The climate impact assessment for ZTA 23-11 is attached in Attachment B.

The anticipated to all factors assessed by the climate assessment are negligible because most of the changes in the ZTA are procedural changes in how designated review agencies perform their review and do not actively modify the physical behavior of land uses. Any impacts to greenhouse gas emissions and sequestration will be minor, and it is indeterminant whether there would be a net positive or negative impact. Any change in emissions is tied to the extent applicants are encouraged to apply for uses as a result of a more streamlined process. Since most of the uses being modified are at-home uses, it is difficult if not impossible to determine if there will be a resulting increase or decrease in vehicle trips or other emissions factors. On a local level there may be more impact from increased patrons or delivery vehicles, but reductions from working at home rather than an off-site location. Impacts to community resilience and adaptive capacity will also be minor and positive. The streamlined process will benefit applicants and may increase the availability or distribution of economic resources, benefit community connectivity, and change the distribution of resources and support.

SECTION 5 – CONCLUSION

Planning Staff recommends the Planning Board support ZTA 23-11 with the revisions recommended by Planning Staff, and SRA 23-02 as introduced. These proposed code changes will help streamline conditional use reviews with practical recommendations to combine similar uses, provide opportunities for limited use review, and to facilitate concurrent preliminary plan and conditional use reviews.

SECTION 6 – ATTACHMENTS

Attachment A: Zoning Text Amendment 23-11 and Subdivision Text Amendment 23-02 Intro Packet

Attachment B: Climate Assessment 23-11

CLIMATE ASSESSMENT FOR ZTA 23-11, REGULATORY APPROVALS – CONDITIONAL USE

PURPOSE OF CLIMATE ASSESSMENTS

The purpose of the climate assessments is to evaluate the anticipated impact of master plans and zoning text amendments (ZTAs) on the County's contribution to addressing climate change. These assessments will provide the County Council with a better understanding of the potential climate impacts and implications of proposed master plans and ZTAs at the county level. The scope of the climate assessments is limited to the County's contribution to addressing climate change, specifically upon the County's contribution to greenhouse gas (GHG) emissions, and how actions proposed by master plans and ZTAs could improve the County's adaptive capacity to climate change and increase community resilience.

While co-benefits such as health and cost savings may be discussed, the focus is on how proposed master plans and ZTAs may impact GHG emissions and community resilience.

SUMMARY

ZTA 23-11, Regulatory Approvals – Conditional Use, will streamline the Office of Zoning and Administrative Hearing's (OZAH) processes by:

- a. Allowing limited use approval in certain zones for the following uses: Equestrian Facility, Home Health Practitioner, Home Occupation (Major Impact), Retail/Service Establishment, Rural Country Market, and Automobile Storage Lot
- b. Increasing Family Day Care from 8 to 12 persons and eliminating Group Day Care (9-12Persons)
- c. Consolidating Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact)
- d. Consolidating Retail/Service Establishment (85,001 SF and Over) and Retail/Service Establishment (120,001 SF and Over)
- e. Not requiring additional notice for waiver of a parking requirement
- f. Not requiring landscaping plans that provide more than the minimum requirements to go through the alternative method of compliance
- g. Allowing the Hearing Examiner to dismiss inactive applications and
- h. Allowing the Hearing Examiner to waive or refund conditional use fees.

It is anticipated that ZTA 23-11 will result in an overall minor indeterminate climate impact resulting from an aggregate of minor local negative and positive climate-related impacts toward the County's goals of addressing greenhouse gas emissions and ensuring resilience, and a small positive impact on the adaptive capacity of our communities.

The number and site locations of future approvals issued under this ZTA are unknown, therefore the ZTA would likely have indeterminate small positive or negative impacts on some greenhouse gas emissions-related variables in the transportation sector, and small positive impacts on several community adaptive capacity-related variables. In view of the small-scale nature of these uses, which for the most part would take advantage of existing structures, these potential impacts would likely be minor on both a local and countywide scale.

BACKGROUND AND PURPOSE OF ZTA 23-11

The purpose of ZTA 23-11 is to help streamline the conditional use review process. As noted in the summary above, there are a number of changes to code including consolidating similar uses, establishing new limited use standards and process for certain uses, and providing the Hearing Examiner with new processes for dismissing applications and waiving fees under certain circumstances. These modifications are intended to reduce the number of conditional use applications, and to simplify the process for many smaller businesses by eliminating unnecessary reviews.

VARIABLES THAT COULD AFFECT THE ASSESSMENT

CLIMATE-RELATED VARIABLES

Greenhouse Gas-related Variables:

Transportation-related: Vehicle Miles Traveled (VMT); Number of Trips; Non-vehicle Modes of Transportation; and Public Transportation Use

Resilience-related Variables:

Exposure-Related: Activity in Urban Heat Islands

Adaptive Capacity-Related Variables:

Change in Availability or Distribution of Economic and Financial Resources; Change to Community Connectivity; and Change in Distribution of Resources and Support

OTHER VARIABLES

Other variables include the number, site locations, and transportation options associated with future approvals issued pursuant to the ZTA.

ANTICIPATED IMPACTS

GREENHOUSE GAS EMISSIONS, CARBON SEQUESTRATION, AND DRAWDOWN

The proposed limited use approvals (see a. in the Summary above) and the other proposed process streamlining changes (b. – d.) share similar features in that they primarily serve to simplify OZAH’s existing review and approval processes. The ZTA does not significantly redefine uses or create uses that do not currently exist. To the degree that applicants take advantage of a more streamlined process created by this ZTA there could be minor increases in approvals by allowing the limited uses and through the other streamlining provisions. This in turn could cause minor indeterminate increases or decreases in the transportation-related greenhouse gas variables indicated above, depending on the number and location of approvals under the ZTA and any associated changes in use and modes of transportation. These variables include vehicle miles traveled, number of trips, non-vehicle modes of transportation, and public transportation use. In view of the small-scale nature of these uses, which for the most part would take advantage of existing structures, these potential impacts would likely be minor on both a local and countywide scale.

Proposed non-land use process-related changes (e. – h.) listed in the Summary above are procedural changes and are not expected to have climate change impacts per ZTA climate assessment criteria.

COMMUNITY RESILIENCE AND ADAPTIVE CAPACITY

As with the greenhouse gas emission discussion above, the proposed limited use approvals (see a. in the Summary above) and the other proposed process streamlining changes (b. – d.) share similar features in that they primarily serve to simplify OZAH’s existing review and approval processes. The ZTA does not significantly redefine uses or create uses that do not currently exist. To the degree that applicants take advantage of a more streamlined process created by this ZTA there could be minor increases in approvals by allowing the limited uses and through the other streamlining provisions. This in turn could cause minor indeterminate increases or decreases in the exposure-related variable: activity in urban heat islands. In view of the small-scale nature of these uses, which for the most part would take advantage of existing structures, these potential impacts would likely be minor on both a local and countywide scale.

To the degree that applicants take advantage of a more streamlined process created by this ZTA, the amendment is anticipated to have a minor indeterminate positive impact on several adaptive capacity-related variables including change in availability or distribution of economic and financial resources, change to community connectivity, and change in distribution of resources and support. This is due to potential enhancements in household and business incomes, employment, income equality, business size and diversity, social connections, sense of place and belonging, and availability of resources and support. In view of the small-scale nature of these uses, which for the most part would take advantage of existing structures, these potential impacts would likely be minor on both a local and countywide scale.

Proposed non-land use process-related changes (e. – h.) listed in the Summary above are procedural changes and are not expected to have community resilience and adaptive capacity impacts per ZTA climate assessment criteria.

RELATIONSHIP TO GHG REDUCTION AND SEQUESTRATION ACTIONS CONTAINED IN THE MONTGOMERY COUNTY CLIMATE ACTION PLAN (CAP)

ZTA 23-11 does not involve any GHG or sequestration activities that relate to the GHG reduction and sequestration actions from the County’s Climate Action Plan.

RECOMMENDED AMENDMENTS

Planning staff does not have any recommended climate-related amendments to ZTA 23-11 because the ZTA would likely result in an overall indeterminate aggregate of minor positive and negative local impacts on greenhouse gas emissions and resilience. Moreover, other than the anticipated minor positive impacts on community adaptive capacity as discussed above, the ZTA does not offer obvious additional opportunities for significantly enhancing positive climate change impacts beyond the potential benefits associated with the proposed use as discussed in this assessment.

SOURCES OF INFORMATION, ASSUMPTIONS, AND METHODOLOGIES USED

The climate assessment for ZTA 23-11 was prepared using the methodology (tables 1, 2, and 8, in particular) for ZTAs contained within the [*Climate Assessment Recommendations for Master Plans and Zoning Text Amendments in Montgomery County, December 1, 2022.*](#)

Racial Equity and Social Justice (RESJ) Zoning Text Amendment Statement

Office of Legislative Oversight

ZTA 23-11: REGULATORY APPROVALS – CONDITIONAL USE

SUMMARY

The Office of Legislative Oversight (OLO) cannot discern the anticipated impact of ZTA 23-11 Regulatory Approvals –Conditional Use on racial equity and social justice (RESJ) in the County with available data.

PURPOSE OF RESJ STATEMENTS

The purpose of RESJ impact statements for zoning text amendments (ZTAs) is to evaluate the anticipated impact of ZTAs on racial equity and social justice in the County. Racial equity and social justice refer to a **process** that focuses on centering the needs, power, and leadership of communities of color and low-income communities with a **goal** of eliminating racial and social inequities.¹ Achieving racial equity and social justice usually requires seeing, thinking, and working differently to address the racial and social harms that have caused racial and social inequities.²

PURPOSE OF ZTA 23-11

Local businesses can experience difficulties in operating and growing businesses in Montgomery County as they locate and/or expand their businesses in zones that permit their use.³ If a business attempts to locate in a zone that permits their operations only under Conditional Use, they must apply for a permit with Montgomery County Planning. The Conditional Use application process can be timely and expensive. However, if a business attempts to locate in a zone that permits their operations under Limited Use, they can utilize a shorter and less expensive application process to acquire a permit with the Montgomery County Department of Permitting Services (DPS).

The purpose of ZTA 23-11 is to streamline the permitting process for select businesses by changing some Conditional Use zones into Limited Use zones. ZTA 23-11 would also streamline the Office of Zoning and Administrative Hearing's (OZAH) approval process by making the following changes and revisions to the Zoning Ordinance:⁴

- Allowing Limited Use approval in certain zones for Equestrian Facility, Home Health Practitioner, Home Occupation, Retail/Service Establishment, Rural Country Market, and Automobile Storage Lot uses;
- Increasing Family Day Care from 8 to 12 persons and eliminating the Group Day Care category (9-12 persons);
- Consolidating Home Health Practitioner categories for low impact and major impact;
- Consolidating Retail/Service Establishment categories for 85,001 square feet and 120,001 square feet and over;
- Not requiring additional notice for waiver of a parking requirement;
- Not requiring landscaping plans that provide more than the minimum requirements to go through the alternative method of compliance;
- Allowing the Hearing Examiner to dismiss inactive applications; and
- Allowing the Hearing Examiner to waive or refund Conditional Use fees.

A companion case, Subdivision Regulation Amendment SRA 23-02 that allows concurrent review of a Preliminary Plan and Conditional Use applications, is also proposed along with the ZTA. With this SRA, the Preliminary Plan approval would be a "conditional approval" subject to the approval of the Conditional Use application.⁵

RESJ Impact Statement

Zoning Text Amendment 23-11

This RESJ impact statement (RESJIS) builds on prior OLO RESJIS's completed for following legislation:

- Expedited Bill 29-21, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments (published September 13, 2021);⁶
- ZTA 21-08, Landscape Contractor – Use Standards (published November 16, 2021);⁷ and
- Expedited Bill 37-23, Contracts and Procurement – Minority-Owned Businesses – Sunset Date – Amendments (published October 18, 2023).⁸

For background on inequities and disparities in entrepreneurship and on the permitting process in Montgomery County, please refer to these RESJIS's. ZTA 23-11 was introduced on December 12, 2023.

ENTREPRENEURSHIP, PERMITTING, AND RACIAL EQUITY

Racial and Ethnic Inequities in Entrepreneurship. Researchers at the Brookings Institution find that disparities in entrepreneurship by race and ethnicity “do not reflect the intrinsic desire or talents of entrepreneurship of color themselves, but rather the structure of the systems they navigate.”⁹ Their review of the research finds that there “are no differences between racial groups in entrepreneurial capabilities or interests, as measured by degree of confidence, capacity to learn, appetite for risk, creativity, and determination.”¹⁰

Instead, research shows that a variety of other factors adversely impact Black, Indigenous, and Other People of Color (BIPOC) as they consider starting and growing businesses, including disparities in educational attainment, personal wealth, access to mainstream capital, and exposure to entrepreneurship in family and social networks. For example, a report by the U.S. Small Business Administration found that Black- and Latinx-owned businesses are more likely to have been denied credit, to receive only a portion of the funding requested, or to refrain from applying for needed funding out of fear their applications will be rejected.¹¹ Other factors that explain the disparity in capital include discriminatory lending practices, less wealth to leverage, recent financial challenges, and lower credit scores.¹²

Nationally, Black and Latinx constituents represent 28 percent of the population but eight percent of business owners with employees. Local data also demonstrates disparities in business ownership by race and ethnicity, particularly with respect to revenue. For example, while the 2012 Survey of Business Owners indicates that Black- and Latinx-owned firms each accounted for 15 percent of firms in Montgomery County and Asian-owned firms accounted for 14 percent of County firms, Asian-owned firms accounted for only four percent of local business revenue and Black- and Latinx-owned firms each accounted for less than two percent of local business revenue. 2017 data (Table 1) also demonstrates that Black and Latinx constituents are under-represented among business-owners with employees locally.¹³

Table 1: Population and Business Owners with Employees by Race and Ethnicity, Montgomery County

Race and Ethnicity ¹⁴	Percent of Population	Percent of Business Owners with Employees
Asian	14.8	18.0
Black	18.1	5.0
Native American	0.3	0.4
White	54.3	68.1
Latinx	19.0	7.1

Source: 2017 American Community Survey 5-Year Estimates and 2017 American Business Survey, Census Bureau.

RESJ Impact Statement

Zoning Text Amendment 23-11

County Permitting Process and Costs.¹⁵ The permitting process for businesses seeking to establish or expand their operations through the approval of a Conditional Use application can take a long time and be cost prohibitive for small businesses, including BIPOC-owned firms. Table 2 summarizes the key differences in review processes for Conditional Use and Limited Use applications.

Table 2: Summary of Conditional Use and Limited Use Review Processes

Review Process	Application	Actions	Review Period
Conditional Use	Planning Board	Reg	120+ days
Limited Use	Department of Permitting Services	Permits (Use, Building, Occupancy)	<30 days

The Conditional Use process can take four or more months to complete while the Limited Use process can often take less than a month to complete. The Conditional Use process is often more expensive for applicants depending on types of uses and the cost of filing fees. For example, the current Conditional Use application fee for Group Day Care 9-12 is \$490 while the licensing fee for Family and Group Day Care with Department of Permitting Services (DPS) is \$205.48 per two-year license. This cost of Conditional Use applications could be cost-prohibitive for some small businesses, especially BIPOC-owned ones.

Community Engagement with Conditional Use Process.¹⁶ The Conditional Use process provides opportunities for community participation, particularly from adjoining properties and residents of the immediate neighborhood. Conditional Use application review requires public notices and hearings. Accordingly, it allows neighbors, homeowners' associations, and other interested parties the opportunity to comment on potential impacts on properties and the immediate area. However, neither the Planning Board nor OZAH report on the demographics of community stakeholders that offer public testimony on Conditional Use applications. If homeowners are more likely to offer comment on Conditional Use applications than renters, available data suggests White constituents are more likely to offer comments because they have higher rates of homeownership. Whereas White people accounted for 42 percent of the County's population in 2019, they accounted for 59 percent of owner-occupied housing units in the County.¹⁷

ANTICIPATED RESJ IMPACTS

To consider the anticipated impact of ZTA 23-11 on racial equity and social justice, OLO considers two related questions:

- Who are the primary beneficiaries of this zoning text amendment?
- What racial and social inequities could passage of this ZTA weaken or strengthen?

OLO anticipates that business owners in the industries impacted by ZTA 23-11 (e.g. retail and service establishments, home health, equestrian services, family day care, country markets, and home-based industries) will be the primary beneficiaries of this ZTA as it reduces the cost of business for these industries. Rather than going through the costly Conditional Use process, they will be able to utilize the lower cost Limited Use process for certain permits. OLO, however, cannot assess whether this ZTA will impact racial inequities and disparities in entrepreneurship locally without data on the number of businesses and demographics of local business-owners that would likely be impacted by this ZTA.

RESJ Impact Statement

Zoning Text Amendment 23-11

OLO also anticipates that community stakeholders neighboring the businesses most likely to benefit from this ZTA could be harmed as they will lose the opportunity to offer public testimony on certain local permitting concerns. OLO, however, cannot access whether this ZTA will impact racial inequities or disparities in community engagement because the demographics of community stakeholders impacted by this ZTA remain unknown.

Taken together, OLO cannot discern the anticipated RESJ impact of ZTA 23-11 with available data.

RECOMMENDED AMENDMENTS

Bill 44-20 amending the County’s Racial Equity and Social Justice Act requires OLO to consider whether recommended amendments aimed at narrowing racial and social inequities are warranted in developing RESJ impact statements for zoning text amendments.¹⁸ Based on the preceding analysis, OLO anticipates that ZTA 23-11 will have an indeterminate impact on racial and social inequities in the County. As such, OLO does not offer recommended amendments.

CAVEATS

Two caveats to this racial equity and social justice impact statement should be noted. First, predicting the impact of zoning text amendments on racial equity and social justice is a challenging, analytical endeavor due to data limitations, uncertainty, and other factors. Second, this RESJ impact statement on the proposed zoning text amendment is intended to inform the Council’s decision-making process rather than determine it. Thus, any conclusion made in this statement does not represent OLO’s endorsement of, or objection to, the ZTA under consideration.

CONTRIBUTIONS

Elsabett Tesfaye, Performance Management and Data Analyst, and Elaine Bonner-Tompkins, Senior Legislative Analyst, drafted this racial equity and social justice impact statement.

¹ Definition of racial equity and social justice adopted from “Applying a Racial Equity Lens into Federal Nutrition Programs” by Marlysa Gamblin, et.al. Bread for the World, and from Racial Equity Tools.

<https://www.racialequitytools.org/glossary>

² Ibid.

³ OLO RESJ Impact Statement for Zoning Text Amendment 21-08. Office of Legislative Oversight, November 16, 2021.

⁴ Ndou, Livhu. Montgomery County Council, Agenda Item #2A&2B, December 27, 2023.

⁵ Ibid.

⁶ OLO RESJ Impact Statement for Expedited Bill 29-21. Office of Legislative Oversight, September 13, 2021

⁷ OLO RESJ Impact Statement for ZTA 21-08.

⁸ OLO RESJ Impact Statement for Expedited Bill 37-23. Office of Legislative Oversight, October 18, 2023.

⁹ Joseph Parilla and Darrin Redus, how A New Minority Business Accelerator Grant Program Can Close the Racial Entrepreneurship Gap, Brookings, December 9, 2020.

¹⁰ Ibid.

¹¹ US. Small Business Administration. Office of Advocacy. Minority-Owned Employer Businesses and Their Credit Market Experiences In 2017. July 23, 2020 (cited by Stephen Roblin, COVID-19 Recovery Outlook: Minority-Owned Businesses, Office of Legislative Oversight, September 21, 2020).

<https://advocacy.sba.gov/2020/07/23/minority-owned-employer-businesses-and-their-credit-market-experiences-in-2017/>

¹² Ibid.

¹³ OLO RESJ Impact Statement for Bill 37-23.

¹⁴ Latinx is an ethnicity rather than a race. Therefore, Latinx people are included in multiple racial groups.

RESJ Impact Statement

Zoning Text Amendment 23-11

¹⁵ OLO RESJ Impact Statement for ZTA 21-08.

¹⁶ Ibid.

¹⁷ American Community Survey, 2020 cited in OLO RESJ Impact Statement for ZTA 21-08.

¹⁸ Bill 44-20, Racial Equity and Social Justice – Impact Statements – Advisory Committee – Amendments, Montgomery County, Maryland, December 1, 2020.

https://apps.montgomerycountymd.gov/ccllms/DownloadFilePage?FileName=2682_1_12149_Bill_44-20_Signed_20201211.pdf