



**Zoning Text Amendment (ZTA) No. 16-14, Special Exception - Amendments**

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Gregory Russ, Planner Coordinator, FP&P, [gregory.russ@montgomeryplanning.org](mailto:gregory.russ@montgomeryplanning.org), 301-495-2174



Pam Dunn, Chief, FP&P, [pamela.dunn@montgomeryplanning.org](mailto:pamela.dunn@montgomeryplanning.org), 301-650-5649

**Completed: 09/8/16**

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**Description**

ZTA No. 16-14 would clarify that a special exception approved under the prior zoning code may be expanded under the procedures and substantive provisions of the prior zoning code. The Hearing Examiner and the Board of Appeals request clarification of the zoning code's grandfathering provision.

**Summary**

**Staff recommends approval, with modifications, of ZTA No. 16-14 to clarify that a special exception approved under the prior zoning code may be expanded under the procedures and substantive provisions of the prior zoning code. The proposed changes include a broadening of new Section 7.7.1.C.5 to cover existing special exceptions that may have been approved under Zoning Ordinances previous to the 2004 Zoning Ordinance. Staff also believes that clarifications are needed on whether the ZTA would apply to an expansion of the use only or would an expansion of a structure beyond 10 percent or 30,000 square feet also be allowed. Clarification is also needed on the intended duration of the expansion provision (indefinitely or until October 30, 2039).**

**Background/Analysis**

Zoning Text Amendment (ZTA) 16-14, would clarify that a special exception approved under the prior zoning code may be expanded under the procedures and substantive provisions of the prior zoning code. The Hearing Examiner and the Board of Appeals request clarification of the zoning code's grandfathering provision. The Hearing Examiner holds the opinion that all special exception expansions above the lesser of 10 percent of the gross floor area, or 30,000 square feet of floor area, require the development to proceed under the new zoning code. The Board of Appeals believes that it must decide such expansions under the old zoning code unless the applicant chooses to proceed under the new code. One of the differences between the new code and the old code is that the jurisdiction of the Hearing Examiner and the Board of Appeals changes. The Hearing Examiner has jurisdiction of conditional uses under the new code. The Board of Appeals decides all special exceptions under the old code. ZTA 16-14 would codify the Board of Appeal's understanding of the current code and allow special exception expansions (for applications submitted or approved before October 30, 2014) to proceed under the old code.

If the County Council believes that the proposed policy should be implemented, then staff believes that several issues need clarification prior to adoption of the text amendment:

- Does the ZTA apply to an expansion of the use only or does it also allow expansions of a structure beyond 10 percent or 30,000 square feet?
- Will the expansion provision remain in effect indefinitely (as currently drafted) or will it sunset on October 30, 2039?

In addition, the language in proposed Section 7.7.1.C.5 should be broadened to also cover existing special exceptions that may have been approved under Zoning Ordinances previous to the 2004 Zoning Ordinance. Staff has provided recommended language in lines 24 through 28 of the ZTA.

Staff is also unclear of the purpose of the added phrase “and does not satisfy Subsection b” on lines 17-18 as it pertains to “Expansion above Section 7.7.1.C.2”. The entire sentence with the added language reads as follows:

*If any expansion exceeds Section 7.7.1.C.2 and does not satisfy Subsection b, then the entire expansion must satisfy the applicable standards and procedures for the current zoning.*

Staff is unclear of the intent of this language and recommends that it be deleted.

#### **Attachments**

1. ZTA No. 16-14 as modified by staff

# ATTACHMENT 1

Zoning Text Amendment No.: 16-14  
Concerning: Special Exception -  
Amendments  
Draft No. & Date: 1-07/21/16  
Introduced: August 2, 2016  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No.:

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

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Lead Sponsor: Council President Floreen

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

- clarify that a special exception approved under the prior zoning code may be expanded under the procedures and substantive provisions of the prior zoning code.

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 7.7.	“Exemptions and Nonconformities”
Section 59.7.7.1.	“Exemptions”

**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**

\* \* \*

**Conditional Use:** A use that must meet the conditional use standards in Division 3.2 through Division 3.7 and requires approval by the Hearing Examiner, under the findings in Section 7.3.1. [A] In zoning codes effective before October 30, 2014, a conditional use [is] was referred to as a special exception.

\* \* \*

**Sec. 2. Division 59-7.7 is amended as follows:**

**DIVISION 7.7. Exemptions and Nonconformities**

**Section 7.7.1. Exemptions**

\* \* \*

**C. Expansion of Floor Area**

\* \* \*

**4. Expansion above Section 7.7.1.C.2**

If any expansion exceeds Section 7.7.1.C.2 [[and does not satisfy Subsection b]], then the entire expansion must satisfy the applicable standards and procedures for the current zoning. After October 30, 2039, any amendment to a previously approved application must satisfy the applicable standards and procedures for the current zoning to the extent of (a) any expansion, and (b) any other portion of an approved development associated with the expansion.

**5. Without regard to the limitations of Section 7.7.1.C, a special exception approved under [[the]] a code in effect on or before October 29, 2014 may be expanded under the applicable standards and**

27                   procedures of the code [[in effect]] governing that use on October 29,  
28                   2014.

29   \*   \*   \*

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

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33   This is a correct copy of Council action.

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36   Linda M. Lauer, Clerk of the Council