



Zoning Text Amendment (ZTA) No. 15-14, Conditional Use Amendment - Business Vehicles



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Completed: 12/31/15

Description

ZTA No. 15-14 would exempt vehicles doing business on a site with a conditional use from the conditional use amendment process. Specifically, an amendment to a special exception or a conditional use would not be required for a permitted use allowed in the subject property’s zone as long as: the use occurs in a mobile vehicle; vehicles are able to access the site from abutting rights-of-way; all uses on the site satisfy the minimum parking requirements; and the use does not occur in an area required for open space or green area.

Summary

In general, Staff believes that there is merit in relaxing the amendment process for allowing certain temporary mobile uses on sites where special exception or conditional uses currently exist. ZTA No. 15-14 requires retention of street access and parking requirements associated with the approved special exception or conditional use; thereby minimizing possible impacts to the site layout associated with the approved special exception or conditional use. However, *staff believes it could be problematic to avoid the amendment process all together because conditions unique to a particular approval may be violated without regard.*

If the proposed change will not have a major impact on the neighborhood, then it should be reviewed as a minor amendment, which can be approved administratively. If the County Council believes that in no circumstance should a mobile vehicle under the parameters of ZTA No. 15-14 require a major amendment, then ZTA No. 15-14 can be amended to require a minor amendment under the standards provided. If the County Council further believes that the financial costs are too great for review under the minor amendment process for a business located in a mobile vehicle, then an amendment to the fee schedule is also an option.

Background/Analysis

ZTA 15-14 would allow business vehicles, such as food trucks, on sites that received conditional use approval without requiring the Conditional Use Amendment process. The sponsor and co-sponsors

believe that the process for allowing businesses in mobile vehicles on sites such as filling stations is overly burdensome. The direct fees alone for an amendment on a filling station conditional use site is over \$1,500. ZTA No. 15-14 would allow uses permitted as of right under the property's zoning to proceed without an amendment to a previously granted conditional use. The added use would be required to retain required parking, open space, and street access.

Major and Minor Amendment

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

A minor amendment to a conditional use *may be approved administratively* by the Hearing Examiner or Board of Appeals, as applicable, depending on which entity approved the conditional use. A minor amendment to a conditional use is one that *does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.*

ZTA No. 15-14 would eliminate the need to go through either of these amendment processes for a permitted use if the use is located: in a mobile vehicle; in a manner that allows vehicles to access the site from abutting rights-of-way; in a manner that allows all uses on the site to satisfy the minimum parking requirements; and occurs in an area not required for open space or green area.

Transitory Use

Under Section 3.5.15. Temporary Commercial Uses, a Transitory Use means a use on private property or the public right-of-way conducted from a *vehicle or from a movable structure* that remains in the same location *for less than 24 hours. Transitory Use includes a food service truck.*

A Transitory Use is allowed as a limited use in all zones and must adhere to several limited use standards including: registration in accordance with Chapter 47 (Vendors); location in the public right-of-way only where it satisfies Chapter 47; locating on private property only if it would be allowed as a permanent use in the applicable zone; and prohibition on any portion of the open space required by the zone in which the property is located.

A mobile vehicle associated with the parameters for exemption from the conditional use amendment process (ZTA No. 15-14) could fall within the definition of a Transitory Use except that the ZTA does not require that a mobile business vehicle be relocated within a 24-hour period. Staff recommends that the County Council clarify the intent of the vehicle duration.

Conclusion

In general, Staff believes that there is merit in relaxing the amendment process for allowing certain temporary mobile uses on sites where a special exception or conditional use currently exists. ZTA No. 15-14 requires retention of street access, parking requirements and open space or green area associated with the approved special exception or conditional use; thereby minimizing possible impacts to the site layout associated with the approved special exception or conditional use. However, ***staff believes it could be problematic to avoid the amendment process all together because conditions unique to a particular approval may be violated without regard.***

If the proposed change will not have a major impact on the neighborhood, then it should be reviewed as a minor amendment, which can be approved administratively. If the County Council believes that in no circumstance should a mobile vehicle under the parameters of ZTA No. 15-14 require a major amendment, then the ZTA can be amended to require a minor amendment under the standards provided. If the County Council further believes that the financial costs are too great for review under the minor amendment process for a business located in a mobile vehicle, then an amendment to the fee schedule is an option.

Attachments

1. ZTA No. 15-14 as introduced

ATTACHMENT 1

Zoning Text Amendment No.: 15-14
Concerning: Conditional Use
Amendment - Business
Vehicles

Draft No. & Date: 2 – 12/7/15
Introduced: December 8, 2015
Public Hearing:
Adopted:
Effective:
Ordinance No.:

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

Lead Sponsor: Council President Floreen
Co-sponsors: Councilmembers Riemer, Leventhal, Katz, Berliner, and Navarro

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- exempt vehicles doing business on a site with a conditional use from the condition use amendment process ; and
- generally allow for exemptions to the process of conditional use amendments.

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

DIVISION 59-7.3. “Regulatory Approvals”
Section 59-7.3.1. “Conditional Use”

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*

Underlining indicates text that is added to existing law by the original text amendment or by ZTA 14-09.

[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 or text added by this amendment in addition to ZTA 14-09.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment or indicates a change from ZTA 14-09.

** * * 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. DIVISION 59-7.3 is amended as follows:**

2 **DIVISION 7.3. Regulatory Approvals**

3 **Section 7.3.1 Conditional Use**

4 * * *

5 **K. Amendments**

6 **1. Major Amendment**

7 * * *

8 **2. Minor Amendment**

9 a. A minor amendment to a conditional use may be approved
10 administratively by the Hearing Examiner or Board of Appeals,
11 as applicable, depending on which entity approved the
12 conditional use. A minor amendment to a conditional use is one
13 that does not change the nature, character, or intensity of the
14 conditional use to an extent that substantial adverse effects on
15 the surrounding neighborhood could reasonably be expected,
16 when considered in combination with the underlying
17 conditional use.

18 * * *

19 **3. Exemption from Amendment Procedure**

20 An amendment to a special exception or a conditional use is not
21 required for a use allowed in the subject property's zone as a
22 permitted use if the use is located:

- 23 a. in a mobile vehicle;
24 b. in an manner that allows vehicles to access the site from
25 abutting rights-of-way;
26 c. in a manner that allows all uses on the site to satisfy the
27 minimum parking requirements; and

28 d. on an area not required for open space or green area.

29 * * *

30 **Sec. 2. Effective date.** This ordinance becomes effective 20 days after
31 approval.

32

33 This is a correct copy of Council action.

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36 Linda M. Lauer, Clerk of the Council