



Zoning Text Amendment (ZTA) No. 16-16, Conditional Use Decisions

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Completed: 01/5/17

Description

ZTA 16-16 would: 1) amend provisions governing OZAH's decisions in conditional use cases; 2) amend provisions governing requests for oral argument before the Board of Appeals in conditional use cases; 3) permit applicants for conditional uses approved by the Hearing Examiner to implement a conditional use when a request for oral argument before the Board of Appeals is pending; 4) authorize the Board of Appeals to stay the Hearing Examiner's decision upon motion of any party; 5) authorize the Board of Appeals to place conditions on the approval or denial of requests for a stay; and 6) generally amend provisions concerning conditional use appeals.

Summary

Staff recommends approval, as introduced, of ZTA No. 16-16 to modify the provisions for appeals of conditional use decisions by clarifying who may appeal a decision. In the Hearing Examiner's opinion, the current code provisions allow unintended delays in reaching a final decision.

Background/Analysis

The Hearing Examiner believes that the current provisions for appeals of conditional use decisions is causing confusion on who may appeal a decision. In the Hearing Examiner's opinion, the current code provisions allow unintended delays in reaching a final decision.

Currently, the conditional use decision process is as follows. Substantive changes proposed by the Hearing Examiner as introduced in the ZTA are discussed in *italics*:

- The Hearing Examiner must issue a report and decision no later than 30 days after the close of the record of the public hearing. The Hearing Examiner may extend the time.
- The Hearing Examiner must issue a notice, on the day the report and decision is issued, to the Board of Appeals, the applicant, and all parties of record that the report and decision is complete and available for review. If a timely request for oral argument is not received under

Section 7.3.1.F.1.c, the Hearing Examiner's report and decision becomes the final decision. *ZTA 16-16 proposes to modify this provision by making the Hearing Examiner's report and decision effective on the date issued.*

- Any party of record or aggrieved party may file a written request to present oral argument before the Board of Appeals within 10 days after the Office of Zoning and Administrative Hearings issues the Hearing Examiner's report and decision. The filing of such a request transfers jurisdiction over the matter from the Hearing Examiner to the Board of Appeals. *ZTA 16-16 modifies this provision by requiring any party of record to appeal the Hearing Examiner's decision for the purpose of oral argument with the Board of Appeals within the 10-day window after the Hearing Examiner's decision.*
- A written request for oral argument must be filed with the Board of Appeals and the Hearing Examiner, and must concisely identify the matters to be presented at the oral argument.
- Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument. An opposition to a request for oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.
- The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner.
- Regardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must, under Section 7.3.1.F.2, approve or deny the conditional use application or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate. *The ZTA makes clear that the BOA must approve or deny the appealed conditional use application.*
- *ZTA 16-16 further adds a provision stating that a request for an appeal of the Hearing Examiner's decision does not stay the decision of the Hearing Examiner. Upon motion by any party, the Board of Appeals may grant or deny a stay and may impose conditions on the grant or denial necessary to protect nearby property owners and the neighborhood (consistent with language in Section 7.3.1.F.2. for the BOA deciding a conditional use application).*

Staff has no objection to the changes proposed by the Hearing Examiner but notes that the Board of Appeals does not support this ZTA. The Board notes that in cases where oral argument is not requested, this ZTA would make the conditional use decision effective 10 days earlier than it would otherwise become effective. The Board does not believe that this short time savings is worth the risk when compared with the potential risk that an applicant who chooses to move forward during those 10 days is

exposed to (i.e. the risk that the conditional use grant will be appealed, that it might be stayed, and that it could conceivably be remanded or denied). The Board of Appeals believes that the benefit of waiting these 10 days outweighs any inconvenience.

Attachments

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

ATTACHMENT 1

Zoning Text Amendment No.: 16-16
Concerning: Conditional Use
Decisions
Draft No. & Date: 2 - 11/17/16
Introduced: November 29, 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**

Lead Sponsor: Council President Floreen at the Request of the
Office of Zoning and Administrative Hearings

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

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

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

Division 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.
[Single boldface brackets] indicate that text is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

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 * * *

3 **Division 7.3. Regulatory Approvals**

4 * * *

5 **Section 7.3.1. Conditional Use**

6 * * *

7 F. Decision

8 1. Hearing Examiner

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

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

18 b. The Hearing Examiner must issue a notice, on the day the
19 report and decision is issued, to the Board of Appeals, the
20 applicant, and all parties of record that the report and decision
21 [is complete] has been issued and is available for review. [If a
22 timely request for oral argument is not received under Section
23 7.3.1.F.1.c, the Hearing Examiner's report and decision
24 becomes the final decision.] The Hearing Examiner's report and
25 decision is effective on the date issued.

26 c. Any party of record [or aggrieved party may file] may appeal
27 the Hearing Examiner's decision by filing a written request to

28 present oral argument before the Board of Appeals within 10
 29 days after the Office of Zoning and Administrative Hearings
 30 issues the Hearing Examiner's report and decision. The filing of
 31 such a request transfers jurisdiction over the matter on appeal
 32 from the Hearing Examiner to the Board of Appeals.

33 i. A written request for an appeal and oral argument must
 34 be filed with the Board of Appeals and the Hearing
 35 Examiner, and must concisely identify the matters to be
 36 presented at the oral argument. A person requesting an
 37 appeal must send a copy of that request to the Hearing
 38 Examiner, the Board of Appeals, and all parties of record
 39 before the Hearing Examiner.

40 ii. Any party of record [or aggrieved party] may, no later
 41 than 5 days after a request for an appeal and oral
 42 argument is filed, file a written opposition or request to
 43 participate in oral argument. An opposition to a request
 44 for an appeal and oral argument must be sent to the
 45 Board of Appeals and all parties as listed by the Hearing
 46 Examiner, and must be concise and limited to matters
 47 raised by the party who requested oral argument.

48 iii. The Board of Appeals may, in its discretion, grant or
 49 deny an oral argument request. If the Board of Appeals
 50 grants a request for oral argument, the argument must be
 51 limited to matters contained in the record compiled by
 52 the Hearing Examiner.

53 iv. Regardless of whether the Board of Appeals has elected
 54 to hear oral argument, the Board of Appeals must, under

55 Section 7.3.1.F.2, approve or deny the appealed
56 conditional use application or remand it to the Hearing
57 Examiner for clarification or the taking of additional
58 evidence, if appropriate.

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

65 2. Board of Appeals

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

69 * * *

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

72

73 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council