

MEMORANDUM

January 28, 2016

TO: Planning, Housing, and Economic Development Committee
FROM: Jeff Zyontz, Senior Legislative Analyst
SUBJECT: Zoning Text Amendment 15-14, Conditional Use Amendment – Business Vehicles

Zoning Text Amendment (ZTA) 15-14, introduced on December 8, 2015, would allow business vehicles, such as food trucks, on sites with conditional use approval without going through the Conditional Use amendment process. Council President Floreen is the lead sponsor of ZTA 15-14; Councilmembers Riemer, Leventhal, Katz, Berliner, Navarro, and Rice are co-sponsors.

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 \$1,500. This ZTA 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.

The Council held a public hearing on January 21, 2016. The Planning Board recommended approval with an amendment to avoid conflict with unique conditions of approval. The Planning Staff had an identical recommendation. Testimony was not received from anyone else.

Issues

Why approve ZTA 15-14?

ZTA 15-14 establishes a category of use on property with an approved conditional use that is allowed without any amendment process to the conditional use. In the absence of this ZTA, a food truck on a special exception site may be required to go through a major amendment process.¹ The criteria that triggers a major amendment's "substantial adverse effects on the surrounding neighborhood" is always debatable. ZTA 15-14 would preempt any debate. It would allow those uses already allowable in the zone without additional processing.

¹ 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.

Should ZTA 15-14 be amended to require that the mobile vehicle must not violate the conditions of approval in the conditional use?

Staff did not investigate the breadth of conditions on conditional use approval. A somewhat common condition is hours or seasons of operation. This is a typical condition on a special exception in or abutting residential detached zones. ZTA 15-14 would have a negligible impact in residential zones, even without amendment.² There are separate licensing provisions for food truck hours. Those provisions include hours of operation. **If the Council wants the hours of operation in the conditional use approval to control such things as hours of operation, it should agree to the Planning Board's recommendation.**

Should ZTA 15-14 be amended to allow limited uses as well as permitted uses?

As introduced, ZTA 15-14 would allow mobile vehicles for a use allowed in the subject property's zone **as a permitted use** under certain circumstances. The Planning Board recommended changing that to "limited" or permitted use. The Planning Board revision would allow vehicles to sell food or anything else in the LSC and EOF zones. It would also allow a vehicle-based veterinary use to operate in almost all commercial and mixed-use zones. **Staff recommends including limited uses.**

Should there be a limit on the number of vehicles allowed at any one location, without the need for an amendment to a special exception?

As introduced, there are no limits to the number of vehicles that could operate on a site without an amendment to a special exception. Any vehicles would be prohibited from blocking roadway access, reducing the required number of parking spaces, or the area required for green space, but the number of vehicles would not be limited. On large sites, this could create a situation where the vehicles are the dominant use. **Staff recommends limiting the number of vehicles allowed without a conditional use amendment.**

<u>This Packet Contains</u>	<u>© number</u>
ZTA 15-14	1 – 4
Planning Board Recommendation	5 – 10
Planning Staff Recommendation	11 – 13

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² The commercial uses allowed by conditional use approval in residential zones are limited to animal boarding and care, veterinary office, and landscape contractor. These uses would also be allowed under ZTA 15-14 on property with conditional use approval as a transitory use. Food trucks are not allowed in residential zones. ZTA 15-14 would not change that.

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 conditional 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.

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33 This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council

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MONTGOMERY COUNTY PLANNING BOARD
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

OFFICE OF THE CHAIR

January 11, 2016

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 15-14

BOARD RECOMMENDATION

The Montgomery County Planning Board of the Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 15-14 at our regular meeting on January 7, 2016. By a vote of 5:0, the Planning Board recommends approval, under certain parameters, of the text amendment to exempt vehicles doing business on a site with a conditional use from the conditional use amendment process. As introduced, 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. In order that conditions unique to a particular special exception or conditional use approval are adhered to, the Board recommends that an additional standard be included that allows the placement of a mobile vehicle on a conditional use property only if its placement does not violate the conditions of approval for the conditional use. Suggested language to reflect the Board’s recommendation is included as an attachment to this transmittal, separate from the technical staff report.

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, including the fees associated with an amendment. 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.

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The Planning Board 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. Allowing a mobile vehicle on a conditional use property only if it does not violate the conditions of approval for the conditional or special exception use could further reduce possible conflicts.

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 Silver Spring, Maryland, on Thursday, January 7, 2016.



Casey Anderson
Chair

CA:GR

As Modified by the Planning Board on January 7, 2016

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.:

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- 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.

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1 **Sec. 1. DIVISION 59-7.3 is amended as follows:**

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3 **Section 7.3.1 Conditional Use**

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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 or limited use that does not violate the conditions of
23 approval and if the use is located:

- 24 a. in a mobile vehicle;
25 b. in an manner that allows vehicles to access the site from
26 abutting rights-of-way;

- 27 c. in a manner that allows all uses on the site to satisfy the
- 28 minimum parking requirements; and
- 29 d. on an area not required for open space or green area.

30 * * *

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

33

34 This is a correct copy of Council action.

35

36 _____

37 Linda M. Lauer, Clerk of the Council

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

 Gregory Russ, Planner Coordinator, FP&P, gregory.russ@montgomeryplanning.org, 301-495-2174
 Pam Dunn, Chief, FP&P, pamela.dunn@montgomeryplanning.org, 301-650-5649

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