
EXHIBIT A

SECTION 131: Conditional Uses

A. Statement of Legislative Intent

Conditional uses are authorized in specified zoning districts based on the presumption that they are generally appropriate and compatible in the specified districts. However, particular uses in particular locations may have characteristics or impacts that are not typical. Conditional uses are not permitted automatically, but are subject to the regulations of this section and the conditions imposed by the Board of Appeals upon approval of the proposed development.

B. General Standards Required for Approval

The Hearing Authority shall have the power to permit conditional uses, provided the following general standards are met:

1. The proposed conditional use plan will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located. In evaluating the plan under this standard, the Hearing Authority shall consider:
 - a. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site; and
 - b. If a conditional use is combined with other conditional uses or permitted uses on a site, whether the overall intensity and scale of uses on the site is appropriate given the adequacy of proposed buffers and setbacks.
2. The proposed use at the proposed location will not have adverse effects on vicinal properties above and beyond those ordinarily associated with such uses. In evaluating the plan under this standard, the Hearing Authority shall consider whether:
 - a. The impact of adverse effects such as noise, dust, fumes, odors, lighting, vibrations, hazards or other physical conditions will be greater at the subject site than it would generally be elsewhere in the zone or applicable other zones.
 - b. The location, nature and height of structures, walls and fences, and the nature and extent of the landscaping on the site are such that the use will not hinder or discourage the development and use of adjacent land and structures more at the subject site than it would generally in the zone or applicable other zones.
 - c. Parking areas will be of adequate size for the particular use. Parking areas, loading areas, driveways and refuse areas will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties.
 - d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate.

C. Additional Standards Required in Certain Residential Districts

The following standards shall apply to conditional uses proposed on land within residential developments in the R-ED, R-SC, R-SA-8, R-A-15, R-MH or R-VH Districts:

1. The Hearing Authority shall not approve a conditional use on land which was included in the density calculation for a residential development and which has no remaining residential development potential, based on the maximum density allowed in the zoning district.
2. The Hearing Authority may approve a conditional use on land which was included in the density calculation for a residential development, and which has development potential for at least one dwelling unit, if the Hearing Authority finds that:
 - a. The combination of uses within the development, including the residential, conditional use and open space uses, will result in an overall intensity of development which is in harmony with vicinal land uses and the policies of the Howard County General Plan.
 - b. The conditional use will not infringe on open space or result in damage or lack of protection for environmentally sensitive areas of the development.
 - c. No more than 30 percent of the parcel on which the conditional use is located will be covered by structures or impervious surface, including roads, parking lots, loading or storage areas, and sidewalks.

D. Compliance with Specific Requirements for a Conditional Use

1. A conditional use shall comply with the requirements for the specific use given in Section 131.N. Variances may not be granted to the requirements of Section 131.N except for modifications or expansions of existing conditional uses in accordance with Section 131.d.4 below.
2. Where a minimum lot size is given in Section 131.N for a conditional use, such a requirement shall not be deemed to prohibit the establishment of the conditional use on a lot which complies with the minimum area requirement and is also used for other conditional uses or uses permitted as a matter of right.
3. If more than one conditional use is located on a lot and the specific requirements of Section 131.N for the conditional uses are in conflict, the more stringent requirements shall apply to all conditional uses on the site.
4. The Hearing Authority may approve variances to the bulk regulations in Section 131.N, in accordance with the variance provisions of Section 130.B.2. for modifications and expansions of:
 - a. Existing conditional uses that were approved prior to the effective date of Council Bill No. 11-2001; and
 - b. Conditional uses filed on or before March 5, 2001, and approved after the effective date of Council Bill No. 11-2001.

E. District Requirements

All regulations of the zoning district in which a conditional use is located shall apply to such uses, except where:

1. The requirements for a conditional use given in Section 131.N specifically amend the zoning district requirements or are more stringent than the zoning district requirements; or
2. A variance to the zoning district requirements is granted in accordance with Section 130.B.2; or

3. The Hearing Authority as a condition of approval imposes requirements which are more stringent than the requirements of the zoning district.

F. Pre-Submission Community Meeting, Petition and Public Hearing
[Council Bill 19-2002 (ZRA-35), effective 7/10/02]

1. A pre-submission community meeting is required prior to the initial submittal of a petition for a conditional use according to the following procedures:
 - a. The petitioner shall provide at least 2 weeks' written notice regarding the date, time, and location of the pre-submission community meeting to:
 - (1) All adjoining property owners as identified in the records of the Maryland Department of Assessments and Taxation, by mail; and
 - (2) The Department of Planning and Zoning, which will place the meeting notice on the Department's web site.
 - b. The petitioner shall post the property with posters provided by and at locations specified by the Department of Planning and Zoning, and shall make a reasonable effort to maintain the posters for at least the 2 weeks immediately prior to the meeting.
 - c. A certification of notice and posting and a summary of the issues expressed by residents at the pre-submission community meeting shall be transmitted by the petitioner to the Department of Planning and Zoning when the initial petition is filed.
 - d. The purposes of the pre-submission community meeting are to allow the petitioner to provide information to the community regarding the proposed conditional use and to allow community residents to ask questions and discuss any issues they have concerning the proposal.
 - e. If the petitioner does not submit the petition to the Department of Planning and Zoning within 1 year of the pre-submission community meeting, the petitioner shall hold another pre-submission community meeting, subject to the same notification and posting requirements as the first pre-submission community meeting.
2. A petition for conditional use shall be submitted to the Department of Planning and Zoning and shall include:
 - a. A conditional use plan which shows all existing and proposed uses, structures, parking areas, points of ingress and egress, landscaping, and the approximate location of relevant natural features which, when required by the Department of Planning and Zoning, shall include wetlands, steep slopes, and tree and forest cover. [Council Bill 19-2002 (ZRA-35), effective 7/10/02]
 - b. Information regarding noise, dust, fumes, odors, lighting, vibrations, non-sewage solid waste, hazards or other physical conditions resulting from the use which may adversely impact vicinal properties.
 - c. A statement that indicates:
 - (1) Whether the property is served by public or private water and sewage disposal;
 - (2) That additional information can be obtained from the Howard County Health Department; and

- (3) The current address of the Howard County Health Department.
[Council Bill 19-2002 (ZRA-35), effective 7/10/02]
- d. Supporting documentation, such as traffic studies, market studies, and noise studies, may be required by the Department of Planning and Zoning or by these regulations.
- e. For expansion or modification of an existing conditional use, the Department of Planning and Zoning may require information regarding compliance with previous requirements and conditions.
3. In accordance with Section 16.302 "Jurisdiction of Hearing Examiner" of the Howard County Code, the Department of Planning and Zoning shall transmit the application to the Hearing Examiner or the Planning Board. Based on the requirements of Section 131, the Planning Board shall make a recommendation on a conditional use petition heard by the Planning Board, for approval, approval with conditions or disapproval to the Hearing Authority.
4. Department of Planning and Zoning's Findings and Recommendations.
- a. The Department of Planning and Zoning shall transmit its findings and recommendations concerning a conditional use petition to the Hearing Examiner or, if appropriate, the Planning Board, at least 7 days prior to the public hearing on a petition.
- b. At any time any individual may submit a question to the staff of the Department of Planning and Zoning and related agencies concerning the findings and recommendations of the Department or related agencies. If a written response is requested, the question should be submitted in writing to the Department or Agency.
5. During the hearing either party may direct a question concerning the findings and recommendations of the Department of Planning and Zoning or related agencies to the Hearing Authority, and the Hearing Authority shall determine whether staff of the Department or related agencies shall respond and the form of the response.
6. A response by the Department of Planning and Zoning and related agencies to a question concerning the Technical Staff Report may be considered by the Hearing Authority only if the response is in writing.
[Council Bill 19-2002 (ZRA-35), effective 7/10/02]
7. The Hearing Authority shall hold at least one public hearing on the petition in accordance with Section 2.203 of the Howard County Code, and shall approve, disapprove or approve with conditions, the proposed development or use. Each decision by the Hearing Authority shall be in writing and shall state the reasons for the decision.

G. Burden of Proof

The applicant for a conditional use shall have the burden of proof, which shall be by a preponderance of the evidence and which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Hearing Authority or are required to meet any provisions of these regulations.

H. Conditions of Approval

1. If the conditional use is approved, the Hearing Authority may attach conditions to the proposed use or plan as it deems necessary to ensure continuous conformance with all applicable standards

and requirements. The conditional use plan, subject to such conditions, shall be made part of the decision and order of the Hearing Authority.

2. The Hearing Authority may place a time limit on a conditional use or may require renewal of the use after a certain time period as a condition of approval. On an application for renewal of a conditional use, the Hearing Authority shall determine whether the applicant has complied with the conditions and safeguards required by the Hearing Authority during the prior term. If the Hearing Authority finds that the applicant has been in substantial violation thereof, it shall deny the application for renewal. The Hearing Authority shall use the procedures given in Section 131.I.3.c(1) through (3) below in considering requests for renewal.
3. The use, development or maintenance of a conditional use site in violation of the conditional use plan, or of any conditions imposed by the Hearing Authority, shall constitute a violation of these regulations and shall be grounds for revocation of the conditional use.
4. The property owner or conditional use holder may petition the Board of Appeals for modification of conditions imposed by the Board in a Decision and Order approving a conditional use, in accordance with the following procedures:
 - a. A petition for modification of conditions shall be submitted in the same format and include the same information as a conditional use petition, clearly indicating the approved conditional use, the requested modifications, and the reasons for the request.
 - b. A petitioner shall certify that a copy of a request for modification of a condition to a conditional use Decision and Order has been sent by certified mail to adjoining property owners identified in the records of the Maryland Department of Assessments and Taxation and the parties of record, whose addresses shall be maintained by the secretary to the Hearing Authority.
[Council Bill 19-2002 (ZRA-35), effective 7/10/02]
 - c. The Hearing Authority shall hold a public hearing in accordance with the procedures for a conditional use petition. The public hearing shall be limited to consideration of the modification requested by the petitioner.
 - d. The Hearing Authority shall issue a written decision either upholding or modifying a condition imposed in the original Decision and Order.
 - e. After a decision is made, a new petition requesting modification of any of the conditions of approval shall not be accepted for at least 24 months after the date of the decision modifying or upholding the conditions of the original Decision and Order.

I. Establishment of Conditional Use

1. Site Development Plan Requirement

If required by the Department of Planning and Zoning, a Site Development Plan must be approved subsequent to the approval of a conditional use. The Site Development Plan must conform substantially to the conditional use plan.

2. Conformance with Conditional Use Plan

An approved conditional use shall not commence until:

- a. The Site Development Plan is approved, if required;

- b. All required building permits are issued; and
- c. The site conforms substantially to the conditional use plan, including but not limited to structures, landscaping, parking areas, points of access, and lighting, unless an alternative schedule for completion of improvements is approved by the Hearing Authority. The Department of Planning and Zoning may approve minor modifications to the configuration of buildings or other improvements as long as they do not move closer to abutting residential properties or other uses that might be adversely impacted.

3. Lapse of Decision Approving a Conditional Use

- a. Except as provided in Subsections b, c and d below, a Decision and Order approving a conditional use shall become void unless a building permit conforming to the plans for which the approval was granted is obtained within two years, and substantial construction in accordance therewith is completed within three years from the date of the decision. A Decision and Order approving a conditional use for which a building permit is not necessary shall become void unless the use commences within two years from the date of the decision. If a decision is appealed, the time period for the use being appealed shall be measured from the date of the last decision.
- b. The Hearing Authority may approve a phasing plan, in which only the first phase of a conditional use plan is subject to the time limits given above. The approval for future phases shall become void unless such phases are completed within a time period specified in the Hearing Authority's Decision and Order.
- c. The Hearing Authority may grant as many as two extensions of the time limits given above. The extensions shall be for a period of time not to exceed three years each, and may be granted in accordance with the following procedures:
 - (1) A request for an extension shall be submitted by the property owner prior to the expiration of the conditional use approval, explaining in detail the steps that have been taken to establish the use.
 - (2) The property owner shall certify that a copy of the request for an extension has been sent by certified mail to adjoining property owners and to the addresses given in the official record of the conditional use case for all persons who testified at the public hearing on the petition.
 - (3) The Hearing Authority shall provide opportunity for oral argument on the request at a work session if requested by any person receiving notice of the request. If no response is received within 15 days of the date of the written notification, a decision on the request may be made by the Hearing Authority without hearing oral argument.
 - (4) The Hearing Authority may grant the request if it finds that establishment of the use in accordance with the approved conditional use plan has been diligently pursued. If oral argument is presented on the request, the Hearing Authority may deny the request if any of the oral arguments allege that changes have taken place in the circumstances which led to the original decision to approve the conditional use.
- d. Notwithstanding that approval for a conditional use may have become void under Subsection c above, the Hearing Authority may grant a third extension of not more than two years from the date of lapse provided that:

- (1) The property owner submits a request for an extension that explains the steps taken to obtain a building permit and cause of delay;
 - (2) Procedures in Subsections 131.I.3.c(2) and (3) are followed; and
 - (3) The Hearing Authority finds that obtaining the building permit in accordance with the approved conditional use has been diligently pursued and has been delayed by a change in Federal, State, or local law or policy or by the delay of any State or Federal agencies in issuance of any permits or approvals required for the conditional use.
- e. If a condition of a previously granted special exception or conditional use is or has been previously modified, a petitioner may request and be granted one extension of time to obtain a building permit and complete substantial construction in addition to the two extensions that may be requested and granted pursuant to Section 131.I.3.c. above. Any extension of time granted pursuant to this subsection shall extend the deadline for obtaining a building permit by an additional two years and for completing substantial construction by an additional three years, and shall be measured from the date of the existing deadline. The Hearing Authority's consideration of a condition modification – related extension request pursuant to this subsection shall be governed by the procedures in Section 131.I.3.c.(1) through (4) above. [Council Bill 37-2004 (ZRA-47) effective September 8, 2004]

J. Enlargement or Alterations

The Hearing Authority may permit the enlargement or alteration of any existing use which is permitted by conditional use in the specified districts under the provisions of these regulations, provided that in evaluating the enlargement or alteration, the Hearing Authority shall make all of the required findings applicable to the entire conditional use.

K. Abandonment

If any conditional use is discontinued for a continuous period of at least two years, the conditional use approval shall become void and a new application to the Hearing Authority shall be required prior to the re-establishment of the use.

L. Revocation of Conditional Use

If a conditional use site is used, developed or maintained in violation of these regulations, the Department of Planning and Zoning may initiate action to revoke the conditional use as set forth below, in addition to other enforcement procedures authorized by these regulations and the County Code.

1. If a violation is not corrected within 30 days of the issuance of a violation notice the Department of Planning and Zoning may forward a copy of the violation notice to the Hearing Authority and request a revocation hearing.
2. The Hearing Authority shall schedule a public hearing to consider revoking the conditional use. The hearing shall be advertised as required by Section 2.203, "Notice to the Public" and Section 2.209, "Conduct of Board of Appeals Hearings; Original Jurisdiction" of the Howard County Code. In addition, at least 30 days written notice of the hearing shall be issued by registered mail to the property owner and the conditional use.
3. The public hearing shall be limited to consideration of issues relating to the alleged violations.
4. After holding a public hearing, the Hearing Authority shall issue a written decision as required in Section 2.211, "Decision and Order", of the Howard County Code revoking or reaffirming the

conditional use. If the conditional use is reaffirmed, the Board may amend, add to, or delete any of the existing conditions of approval. The Board may also reaffirm the conditional use subject to a schedule for abatement of specified violations, with provision for automatic revocation if the abatement schedule is not met.

M. Clarification of Decision and Order

The Department of Planning and Zoning may at any time request clarification of a Decision and Order of the Hearing Authority granting a conditional use petition, in accordance with the following procedures:

1. The Department of Planning and Zoning shall submit a written request to the Hearing Authority, listing the portions of the Decision and Order which require clarification and the reason for the request.
2. The Hearing Authority shall schedule a public hearing to consider the request for clarification. The hearing shall be advertised as required by Section 2.203, "Notice to the Public" and Section 2.209, "Conduct of Board of Appeals Hearings; Original Jurisdiction" of the Howard County Code. In addition, at least 30 days written notice of the hearing shall be issued by registered mail to the property owner and the conditional use holder.
3. The public hearing shall be limited to consideration of issues related to the request for clarification.
4. After holding a public hearing, the Hearing Authority shall issue a written decision as required in Section 2.211, "Decision and Order", of the Howard County Code, amending the original Decision and Order to provide clarification as deemed necessary by the Board.

N. Conditional Uses and Permissible Zoning Districts

The Board of Appeals may grant conditional uses in the specified districts in accordance with the following minimum criteria.

1. Age-restricted Adult Housing

A conditional use may be granted in the RC, RR, R-ED, R-20, R-12, R-SC, R-SA-8, or R-A-15 District, for age-restricted adult housing, provided that:

- a. Single-family detached, semi-detached, attached, and apartment dwelling units shall be permitted, except that only detached and semi-detached units are permitted in the RC and RR Districts.
- b. The development shall have a minimum of 20 dwelling units in the R-ED, R-SC, R-SA-8 and R-A-15 Districts and a minimum of 50 dwelling units in the RC, RR, R-20 and R-12 Districts. Any proposed development located in the RC, RR, R-20 and R-12 Districts, for which a conditional use petition or a pre-submission community meeting notice was filed on or prior to February 20, 2003, shall have a minimum of 20 dwelling units. (ZRA-40 Council Bill #65/2003)

c. The maximum density shall be as follows:

| <u>Zoning District</u> | <u>Maximum Dwelling Units Per Acre of Lot Area</u> |
|------------------------|--|
| RC or RR | 1 per net acre |
| R-20 or R-ED | 5 per net acre |
| R-12 | 6 per net acre |
| R-SC | 8 per net acre |
| R-SA-8 | 12 per net acre |
| R-A-15 | 25 per net acre |

d. The development shall comply with the following bulk requirements:

(1) Maximum Height:

- (a) Apartments..... 40 feet
- (b) Other Principal Structures..... 34 feet
- (c) Accessory Structures..... 15 feet

(2) Minimum Structure and Use Setback from Perimeter of Development:

- (a) From Public Street Right-of-way..... 40 feet
- (b) From RC, RR, R-ED, R-20, R-12 or R-SC Districts
 - Apartments and single-family attached 75 feet
 - Single-family detached and Semi-detached..... 50 feet
 - Unless adjoining parcel is developed for multi-family or non-residential uses (ZRA42 CB49/2003)..... 40 Feet
- (c) From zoning districts other than RC, RR, R-ED, R-20, R-12 or R-SC 20 feet

(3) Minimum structure setback from interior roadway or driveway for units with garages..... 20 feet

(4) Minimum structure setback from lot lines for single-family detached units

- (a) Side 5 feet
 - Except zero lot line dwellings..... 0 feet
 - A minimum of 15 feet must be provided between structures
- (b) Rear..... 20 feet

(5) Minimum distance between single-family detached and/or attached dwellings:

- (a) For units oriented face-to-face..... 30 feet
- (b) For units oriented side-to-side 15 feet
- (c) For units oriented face-to-side or Rear-to-side 20 feet
- (d) For units oriented rear-to-rear..... 40 feet
- (e) For units oriented face-to-rear 100 feet

(6) Minimum distance between apartment buildings or between apartment buildings and single-family dwellings:

- (a) For units oriented face-to-face..... 30 feet
- (b) For units oriented side-to-side 15 feet
- (c) For units oriented face-to-side or Rear-to-side 30 feet
- (d) For units oriented rear-to-rear..... 60 feet
- (e) For units oriented face-to-rear 100 feet

e. At least 50 percent of the gross site area in the RC, and RR Districts, and at least 35 percent in the R-ED, R-20, R-12, R-SC, R-SA-8 and R-A-15 Districts, shall be open space or open area in accordance with the Subdivision and Land Development Regulations. The open space or open area shall provide amenities such as pathways, seating areas and recreation areas for the residents, and shall be protective of natural features.

- f. Accessory uses may include social, recreational, educational, housekeeping, security, transportation or personal services, provided that use of these services is limited to on-site residents and their guests.
- g. At least one on-site community building or interior community space shall be provided that contains a minimum of:
 - (1) 20 square feet of floor area per dwelling unit for developments of less than 100 dwelling units, with a minimum area of 500 square feet or
 - (2) 10 square feet of floor area per dwelling unit for developments of 100 or more dwelling units
- h. Loading and trash storage areas shall be adequately screened from view.
- i. The project shall be designed to provide a transition or adequate buffering near the periphery of the site, either with open space areas and landscaping, or by designing the buildings near the periphery to be compatible in scale and character with residential development in the vicinity as demonstrated by architectural elevations or renderings submitted with the petition.
- j. For a development that will be built in phases, open space areas, recreational facilities and other accessory facilities shall be provided in each phase to meet the needs of the residents. The developer shall provide a schedule for the installation of facilities at the time the conditional use is approved.
- k. The petition shall establish how the age restrictions required under the definition of this use will be implemented and maintained over time. If the development will not be a rental community under single ownership, an entity such as a condominium association or homeowners association shall be established to maintain and enforce the age restrictions in addition to County enforcement of zoning regulations.
- l. All open space, common areas and related improvements shall be managed and maintained by a common entity, either the owner of the development, a condominium association, or a homeowners association.
- m. The petition shall include floor plans or other material demonstrating that the proposed dwellings will be appropriate for the age-restricted population, including design features that incorporate universal design principles to be accessible to or adaptable for residents with limited mobility and other age related functional limitations. The petition must include a list of interior features that make individual dwelling units adaptable and must demonstrate that accessible routes will be provided between parking areas, sidewalks, dwelling units and common areas.
- n. At least ten percent of the dwelling units shall be moderate income housing units in accordance with standards and procedures adopted by the County Council.

2. **Agribusiness**

- a. A conditional use may be granted in the RC and RR District for the following commercial and industrial uses:
 - (1) Local agricultural processing facilities, provided that at least 51 percent of the ingredients, measured by weight or volume as appropriate, are grown on the farm or land under the same ownership as the farm where the conditional use is