



# HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

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## TECHNICAL STAFF REPORT

*Planning Board Meeting of June 6, 2019*

**Case No./Petitioner:** ZRA-188 – Glenelg Country School

**Request:** Amend Section 131.0.D to exempt setback requirements from lots in common ownership and allow the Hearing Authority to grant setback variances for Conditional Uses; Amend Section 131.0.F.2 to accept easements as written authorization for a petition; and, Amend Section 131.0.N.48 to include child day care and nursery schools as an accessory use to *Schools, Colleges, Universities—Private (Academic)*.

### I. BACKGROUND AND HISTORY OF EXISTING ZONING REGULATIONS

There are three sections of code that are affected by the requested amendment.

#### 1) Section 131.0.D - *Compliance with Specific Requirements for a Conditional Use.*

The Statement of Intent in Sec. 131.0.- Conditional Uses states: *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 must comply with the requirements for the specific use as detailed in Section 131.N, and cannot be varied except for modifications or expansions of conditional uses approved prior to July 12, 2001. The code recognizes that Conditional Uses (formerly called Special Exceptions) should be considered within the specific context of a particular site and surrounding development patterns. As such, the Hearing Authority has broad discretion to impose additional limitations on Conditional Uses. However, the 1993 Comprehensive Rezoning added specific language prohibiting the granting of variances to Conditional Use criteria.

The proposed Section 131.0.D. amendments seek to reinstate the Hearing Authority's ability to approve setback variances and creates setback exemptions described in Section II below.

#### 2) Section 131.0.F.2 - *Pre-Submission Community Meeting, Petition and Public Hearing.*

This section contains submission requirements for a Conditional Use Petition, including a Conditional Use Plan, a statement outlining the possible impacts on vicinal properties, and other supporting documentation.

Prior to 1993, the code required a Petitioner to submit a general statement addressing the potential impacts of the use on the area. In 1993, the code was expanded to add some procedural requirements. The proposed Section 131.0.F.2 amendment includes a provision to address property ownership, which has not historically been addressed in this section of the Zoning Regulations.

3) Section 131.0.N.48 - *Schools, Colleges, Universities—Private (Academic)*

This section provides specific standards that Private Academic Schools must meet for Conditional Use approval, including but not limited student density, lot area, street frontage, and setbacks.

*Schools, Colleges, Universities—Private (Academic)* first appeared as a Special Exception in 1977 and has evolved over time as the needs and expectations of schools have changed. The current conditions are as follows:

48. *Schools, Colleges, Universities—Private (Academic)*

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for private academic schools, colleges and universities, (not including nursery schools) provided that:

- a. The maximum density permitted is 60 pupils per acre for lots less than three acres, and 100 pupils per acre for lots three acres or greater.
- b. In addition to meeting the minimum area requirements above, schools with residence accommodations shall provide an additional 500 square feet of lot area per site resident. Residents shall include students, staff members, caretakers and their families who reside on the site.
- c. A private school may be erected to a greater height than permitted in the respective district, provided that no structure is more than three stories in height and the front, side and rear setbacks shall be increased two feet for each foot by which such structure exceeds the height limitation.
- d. Sufficient off-street school bus loading areas shall be provided if bus service is provided for students.
- e. Outdoor uses will be located and designed to shield residential property from noise or nuisance. Play areas, athletic fields and similar uses shall be buffered from residential properties by fencing, landscaping, adequate distance or other appropriate means.
- f. Buildings, parking areas and outdoor activity areas will be at least 50 feet from adjoining residentially-zoned properties other than a public road right-of-way.
- g. At least 20% of the area within the building envelope will be green space, not used for buildings, parking area or driveways. The building envelope is formed by the required structure setbacks from property lines and public street rights-of-way.
- h. The site has frontage on and direct access to a collector or arterial road designated in the General Plan, except that expansions of a Conditional Use that was approved prior to July 12, 2001 are permitted.
- i. The minimum lot size in the RC and RR Districts for a new private academic facility is three acres. The minimum lot size in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for a new private academic facility is one acre. An existing private academic facility is not required to comply with this criterion.

## II. DESCRIPTION AND EVALUATION OF PROPOSAL

This section contains the Department of Planning and Zoning (DPZ) technical evaluation of ZRA-188. The Petitioner's proposed amendment text is attached as Exhibit A, Petitioner's Proposed Text. DPZ's proposed amendment text is attached as Exhibit B, DPZ's Proposed Text.

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**Section 131.0.D - Compliance with Specific Requirements for a Conditional Use.**

**1) Section 131.0.D.1 and Section 131.0.D.5**

**DPZ recommends approval with modifications**

ZRA 188 proposes to allow the Hearing Authority to reduce setbacks in the Specific Criteria for Conditional Uses through a variance process subject to the criteria in Section 130.0.B.2.

The Conditional Use process provides flexibility by allowing uses that may be compatible with uses permitted by right but that could generate certain adverse impacts. Specific Criteria, which typically include more restrictive bulk regulations, are applied to improve the compatibility of the use and reduce potential impacts to the surrounding community. Bulk regulations include setbacks, height maximums, lot coverage maximums, and other dimensional limitations. However, the bulk regulations included in the Specific Criteria have been arbitrarily developed and added piecemeal rather than through a rigorous evaluation that includes testing different site conditions, conditional uses and their locations.

Currently, bulk regulations in base zoning districts may be reduced through a variance process in accordance with Section 130.0.B.2. of the Zoning Regulations. However, bulk regulations embedded in the conditional criteria are not afforded this option. Similar to land subject to base zoning requirements, some properties where conditional uses are an option may likewise be constrained by features such as steep slopes, streams/buffers, and irregular lot shape. These circumstances may constrain reasonable development of property and are taken into account when variances are considered from base zoning district bulk requirements. Not so for Conditional Uses. If a property cannot meet the Conditional Use setbacks, it is automatically disqualified from consideration.

Allowing the Hearing Authority to vary Conditional Use bulk regulations on a case-by-case basis, would provide flexibility, consistent with the same approach applied to by right uses. This would avoid having to strictly adhere to dimensional standards that may have little bearing on potential adverse impacts to vicinal properties or the surrounding community.

Therefore, DPZ recommends the proposed amendment to allow variances to setback requirements be approved and expanded to include all bulk regulations in Section 131.0N and Section 131.0.O, according to the provisions and criteria set forth in Section 131.0.B.2.

**2. Section 131.0.D.6**

**DPZ recommends approval with modifications**

The Petitioner also seeks to exempt Conditional Uses from all setback requirements (conditional use and base zoning) where adjacent lots are 1) in common ownership, or 2) held in an easement or similar instrument. It further stipulates that the County does not have a role in determining the validity of such private easement agreements and clarifies that the legality and validity of such agreements is presumed.

Exempting setback requirement from lot lines shared by the same owner is permitted under the existing regulations, however, it is not explicitly referenced under Conditional Use regulations. Currently, Conditional Uses can extend beyond parcel boundaries to include two adjacent properties, in which case setbacks to the intervening property line do not apply. This was applied in a recent decision, BA-15-026C, which established a Firewood Processing Conditional Use on two adjacent parcels owned by the Petitioner. However, forcing petitioners to include multiple properties under common ownership in a Conditional Use petition or to combine the lots to address setback issues may inhibit Conditional Use categories that have maximum lot size requirements or more stringent requirements for additional/larger lots. Additionally, Subdivision and Land Development Regulations may prevent lot consolidation, and environmental buffers from stream and wetlands may prevent inclusion of the additional area in the Conditional Use area.

It is reasonable to provide flexibility in situations such as these, and allow the setback exemption where there is common ownership and the Conditional Use area remains on one property. Therefore, DPZ supports the proposed amendment to exempt Conditional Use setbacks where adjacent lots are in common ownership. DPZ further recommends expanding the setback exemption to include the pipestem portion of a pipestem lot.

The Subdivision and Land Development Regulations define a pipestem lot as “a residential lot that is shaped like a pipe or flag, and is separated from the nearest road by another lot, except for an unbuildable strip of land 50 feet or less in width.” Given the size and nature of the pipestem portion of such lots, setbacks from these lots are often impractical or unnecessary. They are typically used as access drives, which are exempt from complying with bulk regulations, according to Section 103.0 which defines a structure and exempts driveways and parking surfaces. Furthermore, the purpose of a setback is to create a buffer area to protect certain uses. Buffering an access drive through setbacks is unnecessary and therefore, DPZ recommends exempting Conditional Uses from pipestem setback requirements.

#### ***Section 131.0.F.2.f- Pre-Submission Community Meeting, Petition and Public Hearing.***

##### **DPZ recommends approval with modifications**

Howard County Zoning Regulations do not contain any requirements regarding authorization from a property owner to apply for a Conditional Use. However, the Conditional Use Petition form asks what the Petitioner’s interest is in the subject property and states that “[i]f the Petitioner is not the owner, written authorization must be submitted from the owner.” The proposed ZRA modifies this authorization for a Conditional Use by expanding it to easement holders. It also clarifies that the validity and legality of the easement or instrument is presumed.

The second part of this amendment, presumed validity, is consistent with current practice. DPZ reviews tax records to check ownership but otherwise relies on the application form signed by the owner or owner’s authorization as valid authority to process a Petition. Any dispute in the right to submit a Petition must be adjudicated through court proceedings between the involved parties, which does not include the County. This approach is currently applied in all circumstances when there is a dispute between property owners. Therefore, DPZ recommends codifying and clarifying the current practice of obtaining written authorization of the owner or agent and the presumed validity of that authorization. However, DPZ’s text in Exhibit B slightly modifies the Petitioner’s proposed text to simplify it.

While the code is silent on the question of ownership rights necessary to apply, the Conditional Use Petition form requires owner authorization to process the application. This is consistent with research done by DPZ to determine how other jurisdictions process conditional uses. Expanding this authority to include an easement holder is, however, a policy decision, best addressed by the County Council. It will ultimately be up to them to determine the property interest sufficient to process an application. If the Council determines that an easement constitutes sufficient interest to obtain use approval, DPZ recommends additional language (as shown in Exhibit B) be included that requires the Petitioner submit written verification attesting to their permission for the Petition and right to carry out the use(s) on the property.

**Section 131.0.N.48 - Schools, Colleges, Universities—Private (Academic).**

**DPZ recommends approval**

The proposed amendment adds child day care centers and nursery schools as an accessory use. DPZ would typically consider such uses as customary and incidental to the Private Academic Schools, and therefore would permit them as accessory. DPZ recommends approval since the proposed language is consistent with our current interpretation.

To note; Child Day Care Centers and Nursery Schools are otherwise Conditional Uses and would necessitate Conditional Use approval if determined not to be accessory to the Private Academic use.

**III. GENERAL PLAN**

The amendments proposed seek to clarify the Conditional Use process and powers of the Hearing Examiner, reinforce the requirements of the application process, and address the needs of Private Academic Schools.

The proposed amendment is in harmony with the following PlanHoward 2030 policies as related to the review process.

**POLICY 10.4**

Review and update all County development regulations to respond to County General Plan development goals and changing market conditions, and to improve the efficiency of the County's review process.

**Implementing Actions**

- a. **Zoning Regulation Review.** Develop Zoning Regulations that better address infill and redevelopment goals and issues.
- b. **Streamlining Processes.** Amend development regulations and manuals to streamline the review process to the maximum extent possible.
- c. **Updated Conditional Use Regulations.** Review and, as appropriate, amend the County's Conditional Use regulations to reflect updated land use policies. The regulations should reflect current best practices and policies to minimize the impact of development on the environment.

**IV. RECOMMENDATION**

For the reasons noted above, the Department of Planning and Zoning recommends that the ZRA-188 be APPROVED WITH MODIFICATIONS, as described above and drafted in Exhibit B.

Approved by:

  
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Valdis Lazdins, Director

5-23-19  
Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

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**Exhibit A – Petitioner’s Proposed Text**

CAPITALS indicates text to be added. [[Text in double brackets]] indicates text to be deleted.

**Howard County Zoning Regulation Section 131.0.D:**

**Proposed Amendment:**

1. A Conditional Use shall comply with the requirements for the specific use given in Section 131.0.N AND SECTION 131.0.O. Variances may not be granted to the requirements of Section 131.0.N AND SECTION 131.0.O except for modifications or expansions of existing Conditional Uses in accordance with Section 131.0.D.4 below AND EXCEPT AS PROVIDED IN SECTION 131.0.D.5 AND SECTION 131.0.D.6 BELOW.
2. Where a minimum lot size is given in Section 131.0.N OR SECTION 131.0.O 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 131.0.N OR SECTION 131.0.O 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 131.0.N, in accordance with the variance provisions of Section 130.0.B. for modifications and expansions of:
  - a. Existing Conditional Uses that were approved prior to July 12, 2001; and
  - b. Conditional Uses filed on or before March 5, 2001, and approved after July 12, 2001.
5. THE HEARING AUTHORITY MAY APPROVE VARIANCES TO ANY SETBACKS REQUIRED BY SECTION 131.0.N AND SECTION 131.0.O, IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF SECTION 130.0.B UNLESS OTHERWISE SPECIFIED IN THE SPECIFIC CONDITIONAL USE CRITERIA.
6. ANY SETBACK REQUIRED BY SECTION 131.0.N OR SECTION 131.0.O, OR BY THE UNDERLYING ZONING DISTRICT, SHALL NOT APPLY IF THE PROPERTY FROM WHICH SUCH SETBACK IS MEASURED IS EITHER (A) OWNED BY THE PETITIONER, OR (B) PROPERTY OVER WHICH THE PETITIONER OR ITS PREDECESSOR WAS GRANTED A RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT. THE VALIDITY AND LEGALITY OF SUCH RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT SHALL BE PRESUMED, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER SUCH RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT SHALL NOT BE RELEVANT TO THE DETERMINATION TO BE MADE UNDER THIS SECTION 131.0.D.6.

**Howard County Zoning Regulation Section 131.0.F.2:**

**Proposed Amendment:**

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 shall include wetlands, steep slopes, and tree and forest cover.

b. Information regarding noise, dust, fumes, odors, lighting levels, 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.

d. Supporting documentation, such as traffic studies, market studies, and noise studies, may be required by the Department of Planning and Zoning at its discretion 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.

f. WRITTEN AUTHORIZATION FROM THE PROPERTY'S OWNER (IF OTHER THAN THE PETITIONER), WHICH AUTHORIZATION MAY BE IN THE FORM OF A RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT. THE VALIDITY AND LEGALITY OF SUCH RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT SHALL BE PRESUMED, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER SUCH RECORDED EASEMENT OR SIMILAR RECORDED INSTRUMENT SHALL NOT BE RELEVANT TO THE DETERMINATION TO BE MADE UNDER THIS SECTION 131.0.F.2.F

[[f.]] g. After a petition for a Conditional Use has been determined to be officially accepted by the Department of Planning and Zoning and a hearing date has been scheduled, the petition materials shall not be revised or replaced prior to the hearing. The technical staff report shall be based upon the materials in the petition at the time of acceptance. Supplemental materials may only be presented in testimony to the Hearing Authority.



**Howard County Zoning Regulation Section 131.0.N.48:**

**Proposed Amendment:**

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for private academic schools, colleges and universities, [(not including nursery schools)] WHICH MAY INCLUDE CHILD DAY CARE CENTERS AND NURSERY SCHOOLS AS AN ACCESSORY USE, provided that:

**Exhibit B – DPZ’s Proposed Text**

CAPITALS indicates text to be added. [[Text in double brackets]] indicates text to be deleted.

**Howard County Zoning Regulation Section 131.0.D:**

**Proposed Amendment:**

1. A Conditional Use shall comply with the requirements for the specific use given in Section 131.0.N AND SECTION 131.0.O. Variances may [[not]] be granted to the requirements of Section 131.0.N AND SECTION 131.0.O except for modifications or expansions of existing Conditional Uses in accordance with Section 131.0.D.4 ET SEQ BELOW.
2. Where a minimum lot size is given in Section 131.0.N OR SECTION 131.0.O 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 131.0.N OR SECTION 131.0.O 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 131.0.N, in accordance with the variance provisions of Section 130.0.B. for modifications and expansions of:
  - a. Existing Conditional Uses that were approved prior to July 12, 2001; and
  - b. Conditional Uses filed on or before March 5, 2001, and approved after July 12, 2001.
5. THE HEARING AUTHORITY MAY APPROVE VARIANCES TO ANY BULK REQUIREMENTS REQUIRED BY SECTION 131.0.N AND SECTION 131.0.O, IN ACCORDANCE WITH THE VARIANCE PROVISIONS OF SECTION 130.0.B.
6. ANY SETBACK REQUIRED BY SECTION 131.0.N OR SECTION 131.0.O, OR BY THE UNDERLYING ZONING DISTRICT, SHALL NOT APPLY IF THE PROPERTY FROM WHICH SUCH SETBACK IS MEASURED IS IN COMMON OWNERSHIP. CONDITIONAL USE SETBACKS SHALL NOT APPLY TO, FROM, OR WITHIN THE PIPESTEM PORTION OF ANY PIPESTEM LOT, AS DEFINED IN THE SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.

**Howard County Zoning Regulation Section 131.0.F.2:**

**Proposed Amendment:**

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 shall include wetlands, steep slopes, and tree and forest cover.
- b. Information regarding noise, dust, fumes, odors, lighting levels, 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.
- d. Supporting documentation, such as traffic studies, market studies, and noise studies, may be required by the Department of Planning and Zoning at its discretion 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.
- f. WRITTEN AUTHORIZATION FROM EITHER THE PROPERTY'S OWNER OR FROM THE HOLDER OF AN EASEMENT OR SIMILAR INSTRUMENT, ATTESTING TO THEIR PERMISSION FOR THE PETITION AND THEIR RIGHT TO CARRY OUT THE USE(S) ON THE PROPERTY. THE VALIDITY AND LEGALITY OF SUCH AUTHORIZATION SHALL BE PRESUMED.

[[f.]] g. After a petition for a Conditional Use has been determined to be officially accepted by the Department of Planning and Zoning and a hearing date has been scheduled, the petition materials shall not be revised or replaced prior to the hearing. The technical staff report shall be based upon the materials in the petition at the time of acceptance. Supplemental materials may only be presented in testimony to the Hearing Authority.

Example of how the text would appear normally if adopted:

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 shall include wetlands, steep slopes, and tree and forest cover.

b. Information regarding noise, dust, fumes, odors, lighting levels, 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.

d. Supporting documentation, such as traffic studies, market studies, and noise studies, may be required by the Department of Planning and Zoning at its discretion 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.

f. Written authorization from the property's owner (if other than the Petitioner). The validity and legality of such shall be presumed.

g. After a petition for a Conditional Use has been determined to be officially accepted by the Department of Planning and Zoning and a hearing date has been scheduled, the petition materials shall not be revised or replaced prior to the hearing. The technical staff report shall be based upon the materials in the petition at the time of acceptance. Supplemental materials may only be presented in testimony to the Hearing Authority.

**Howard County Zoning Regulation Section 131.0.N.48:**

**Proposed Amendment:**

A Conditional Use may be granted in the RC and RR Districts, on properties that are not ALPP purchased or dedicated easement properties, and in the R-20, R-ED, R-12, R-SC, R-SA-8, R-H-ED, R-A-15, R-APT, R-MH, or R-VH Districts for private academic schools, colleges and universities, [(not including nursery schools)] WHICH MAY INCLUDE CHILD DAY CARE CENTERS AND NURSERY SCHOOLS AS AN ACCESSORY USE, provided that: