



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING
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TECHNICAL STAFF REPORT

*Petition Accepted on August 29, 2008
Planning Board Meeting of October 23, 2008
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-109 – SK King George, LLC

Request: Zoning Regulation Amendment to amend Section 131.I.3. of the Zoning Regulations concerning the lapse of, and extensions of, approved Conditional Uses to establish a new provision whereby approved Conditional Uses would be completely exempt from the potential to become void and would not have to obtain extensions for projects for which plans are being processed with Howard County.

Department of Planning and Zoning Recommendation:

DENIAL

I. DESCRIPTION OF PROPOSAL

- # **The Petitioner proposes one amendment to the Zoning Regulations. In the Conditional Use section of the Zoning Regulations, there are currently regulations for how long an approved Conditional Use is valid (Section 131.I.3.a.), and also regulations permitting the Hearing Authority to grant extensions of an approved Conditional Use beyond the original period of validity (Section 131.I.3.c.).**

Very generally described, Section 131.I.3.a. states that an approved Conditional Use becomes void unless a building permit is obtained within two years, and substantial construction is completed within three years of the approval date.

Section 131.I.3.c. provides the possibility for two extensions beyond the original validity period, subject to procedures for notification to adjoining property owners and to parties of record in the original case, for an explanation of the reasons an extension is needed, and for the opportunity for oral argument at a work session of the Hearing Authority if requested by anyone receiving a notice.

- # **The proposed amendment would exempt “any projects for which plans are being actively processed with Howard County or were being actively processed on the date set forth above for the time limits” from both the Section 131.I.3.a. and Section 131.I.3.c. regulations.**

It is uncertain, because the Petitioner provides almost no useful explanation of the proposal or justification for the proposal, but the phrase “...or were being actively processed on the date set forth above for the time limits” appears to want to be applied to plans which were being processed during some period when the Conditional Use was valid, but then the plans processing was terminated due to the expiration of the Conditional Use.

- # **Essentially, what the Petitioner is requesting is that as long as a plan associated with a Conditional Use is in active processing, which is almost always a Site Development Plan, the Conditional Use can never expire , and no extensions are necessary. More importantly, even if a Conditional Use would technically expire based on Section 131.I.3.a, as long as a plan for the project had been processed during some period when the Conditional Use was active, the Conditional Use can never expire.**
- # **The subsections proposed to be amended and the amendment text is attached as Exhibit A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted).**

II. EXISTING REGULATIONS

- # **The existing regulations concerning the lapse of and extension of Conditional Uses were originally established in predominantly the same format in the 1993 Zoning Regulations, when such uses were known as Special Exceptions.**
- # **The reasons the regulations were set up in this manner is that until a Conditional Use is more or less “in the ground”, in that there is an issued building permit and substantial construction within three years , it is not prudent to allow the Conditional Use approval to continue without time limits.**

This is because the approval criteria for the Conditional Use can always change through Zoning Regulation Amendments, so if a Conditional Use is subject to expiration and extension requests, the changed criteria can be a factor in evaluating an extension.

Also, physical characteristics of the vicinity around a Conditional Use can also change over time, such as with new roads or new adjacent development such as new homes, so these new characteristics can become factors where a Conditional Use is no longer appropriate, even though it once was found to be appropriate.

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendment

- # **The amendment could apply to any Conditional Use in any zoning district. And, as noted above, it might apply to any expired Conditional Use which did go through some plan processing at some unspecified time in the past during a time when the Conditional Use was valid, effectively reviving old Conditional Use cases.**

IV. EVALUATIONS AND CONCLUSIONS

- # **The Petitioner provides negligible justification for the request and most importantly did not address the issue of explaining whether there are any the public benefits for the amendment.**

- # **The amendment would eliminate any person in opposition to the Conditional Use from challenging an extension request due to “...changes that have taken place in the circumstances which led to the original decision to approve the conditional use”, just because the plan associated with the Conditional Use was currently being processed, or was so processed in the past.**

This does not benefit the public in any way, and actually is a detriment.

- # **The regulations concerning the lapse of and the extension of Conditional Uses have worked quite well over the past 15 years, in that it is ordinarily quite easy to obtain extension approval. Cases when a Conditional Use do expire do happen, if a Petitioner is not paying enough attention to the deadline or if a plan being processed for the Conditional Use never progresses sufficiently, even if the Petitioner is the cause of such lack of progress.**

But then, the Petitioner may always apply for new Conditional Use approval, which does still allow for public comment, the same as an extension request, and re-approval if the Conditional Use can still meet all the criteria, the same as an extension request.

- # **In conclusion, this proposed amendment is not prudent and should be rejected as an attempt to void the current sensible controls over the validity of approved, but not established, Conditional Uses.**

V. RECOMMENDATION DENIAL

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-109 as noted above, be DENIED.

Marsha S. McLaughlin, Director

Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

Exhibit A – Petitioner’s Proposed Text

3. Lapse of Decision Approving a Conditional Use

- a. Except as provided in Subsections b, c [[and]] d **AND E** 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. SUBSECTIONS A. AND C. ABOVE SHALL NOT APPLY TO ANY PROJECT FOR WHICH PLANS ARE BEING ACTIVELY PROCESSED WITH HOWARD COUNTY OR WERE BEING ACTIVELY PROCESSED ON THE DATE SET FORTH ABOVE FOR TIME LIMITS.

- 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