



May 23, 2019

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.

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. DPZ is willing to support a party being authorized to petition for a Conditional Use if the use being sought is consistent with the ownership interest held, be it through outright ownership or easement. 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:



for Valdis Lardins, Director

5-23-19

Date

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

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:



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**PETITION TO AMEND THE
ZONING REGULATIONS OF
HOWARD COUNTY**

DPZ Office Use Only:

Case No. ZRA- 188

Date Filed: 4-1-19

1. Zoning Regulation Amendment Request

I (we), the undersigned, hereby petition the County Council of Howard County to amend the Zoning Regulations of Howard County as follows: To amend the Howard County Zoning Regulations pertaining to conditional uses to: (i) allow the Hearing Authority to grant variances to certain setbacks; (ii) provide that certain setbacks are inapplicable from properties either owned by the petitioner or over which the petitioner has a recorded easement or similar recorded instrument; (iii) provide that the written authorization of the owner of the subject property must be submitted with the conditional use petition, which authorization may be in the form of a recorded easement or similar recorded instrument; and (iv) provide that child day care centers are an accessory use to a private academic school conditional use.

[You must provide a brief statement here. "See Attached Supplement" or similar statements are not acceptable. You may attach a separate document to respond to Section 1 in greater detail. If so, this document shall be titled "Response to Section 1"]

2. Petitioner's Name Glenelg Country School

Address 12793 Folly Quarter Road, Ellicott City, MD 21042

Phone No. (W) _____ (H) _____

Email Address ventre@glenelg.org

3. Counsel for Petitioner Sang W. Oh, Talkin & Oh, LLP

Counsel's Address 5100 Dorsey Hall Drive, Ellicott City, MD 21042

Counsel's Phone No. 410-964-0300

Email Address soh@talkin-oh.com

4. Please provide a brief statement concerning the reason(s) the requested amendment(s) to the Zoning Regulations is (are) being proposed. Glenelg Country School is a private school located in western Howard County that was founded in 1954 with 35 students. Today, GCS enrolls over 750 students. In BA Case No. 16-034 C, GCS presented an application for the enlargement and modification of a previously-approved conditional use (special exception). A portion of the newly-proposed conditional use area included the land area of 22 fee-simple pipestem strips that are owned by various protesting neighbors. In 2007 and 2008, GCS obtained the written consent of these protesting neighbors in an easement agreement. This easement agreement, which was the consent required in this case, was submitted along with the application. The protesting neighbors objected to the inclusion of the land area under the 22 fee-simple pipestems. The Hearing Examiner ultimately denied BA Case No. 16-034C holding that the proffered consent was not adequate. The

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purpose of the instant zoning regulation amendment is to require the Hearing Authority to decide the land use and zoning issues that are presented by applicants and not avoid making these determinations citing legal issues that are within the sole province of the courts. Administering the conditional use regulations for private schools to require a specific form of consent to be submitted with the application provides the protesting neighbors with the ability to prevent any future expansion/modification of GCS and condemns GCS from being able to sustain the institution for the future.

5. Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with current General Plan for Howard County_____

See the attached Supplemental Statement.

[You may attach a separate document to respond to Section 5. If so, this document shall be titled "Response to Section 5"]

6. The Legislative Intent of the Zoning Regulations in Section 100.A. expresses that the Zoning Regulations have the purpose of "...preserving and promoting the health, safety and welfare of the community." Please provide a detailed justification statement demonstrating how the proposed amendment(s) will be in harmony with this purpose and the other issues in Section 100.A._____

See the attached Supplemental Statement.

[You may attach a separate document to respond to Section 6. If so, this document shall be titled "Response to Section 6."]

7. Unless your response to Section 6 above already addresses this issue, please provide an explanation of the public benefits to be gained by the adoption of the proposed amendment(s)_____

See the attached Supplemental Statement.

8. Does the amendment, or do the amendments, have the potential of affecting the development of more than one property, yes or no? Yes

If yes, and the number of properties is less than or equal to 12, explain the impact on all properties affected by providing a detailed analysis of all the properties based upon the nature of the changes proposed in the amendment(s). If the number of properties is greater than 12, explain the impact in general terms.

[You may attach a separate document to respond to Section 8. If so, this document shall be titled "Response to Section 8."]

9. If there are any other factors you desire the Council to consider in its evaluation of this amendment request, please provide them at this time. Please understand that the Council may request a new or updated Technical Staff Report and/or a new Planning Board Recommendation if there is any new evidence submitted at the time of the public hearing that is not provided with this original petition.

None.

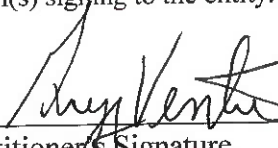
[You may attach a separate document to respond to Section 9. If so, this document shall be titled "Response to Section 9."]

10. You must provide the full proposed text of the amendment(s) as a separate document entitled "Petitioner's Proposed Text" that is to be attached to this form. This document must use this standard format for Zoning Regulation Amendment proposals; any new proposed text must be in CAPITAL LETTERS, and any existing text to be deleted must be in **[[Double Bold Brackets]]**. In addition, you must provide an example of how the text would appear normally if adopted as you propose.

After this petition is accepted for scheduling by the Department of Planning and Zoning, you must provide an electronic file of the "Petitioner's Proposed Text" to the Division of Public Service and Zoning Administration. This file must be in Microsoft Word or a Microsoft Word compatible file format, and may be submitted by email or some other media if prior arrangements are made with the Division of Public Service and Zoning Administration.

11. The Petitioner agrees to furnish additional information as may be required by the Department of Planning and Zoning prior to the petition being accepted for scheduling, by the Planning Board prior to its adoption of a Recommendation, and/or by the County Council prior to its ruling on the case.
12. The undersigned hereby affirms that all of the statements and information contained in, or filed with this petition, are true and correct. The undersigned has read the instructions on this form, filing herewith all of the required accompanying information. If the Petitioner is an entity that is not an individual, information must be provided explaining the relationship of the person(s) signing to the entity.

Glenelg Country School
Petitioner's name (Printed or typed)


Petitioner's Signature

3-25-19
Date


Sang W. Oh, Counsel for Petitioner

[If additional signatures are necessary, please provide them on a separate document to be attached to this petition form.]

FEE

The Petitioner agrees to pay all fees as follows:

Filing fee.....\$695.00. If the request is granted, the Petitioner shall pay \$40.00 per 200 words of text or fraction thereof for each separate textually continuous amendment (\$40.00 minimum, \$85.00 maximum)

Each additional hearing night.....\$510.00*

The County Council may refund or waive all or part of the filing fee where the petitioner demonstrates to the satisfaction of the County Council that the payment of the fee would work an extraordinary hardship on the petitioner. The County Council may refund part of the filing fee for withdrawn petitions. The County Council shall waive all fees for petitions filed in the performance of governmental duties by an official, board or agency of the Howard County Government.

APPLICATIONS: One (1) original plus twenty four (24) copies along with attachments.

For DPZ office use only:

Hearing Fee \$ _____

Receipt No. _____

PLEASE CALL 410-313-2395 FOR AN APPOINTMENT TO SUBMIT YOUR APPLICATION

County Website: www.howardcountymd.gov

Revised:07/12
T:\Shared\Public Service and Zoning\Applications\County Council\ZRA Application

INSTRUCTIONS TO THE APPLICANT/PARTY OF RECORD

- As required by State Law, applicants are required to complete the **AFFIDAVIT AS TO CONTRIBUTION** that is attached, and if you have made a contribution as described in the Affidavit, please complete the **DISCLOSURE OF CONTRIBUTION** that is attached.
- If you are an applicant, Party of Record (i.e., supporter/protestant) or a family member and have made a contribution as described in the Affidavit, you must complete the **DISCLOSURE OF CONTRIBUTION** that is attached.
- Filed affidavits and disclosures will be available for review by the public in the office of the Administrative assistant to the Zoning Board during normal business hours.
- Additional forms may be obtained from the Administrative Assistant to the Zoning Board at (410-313-2395) or from the Department of Planning and Zoning.
- Completed form may be mailed to the Administrative Assistant to the Zoning Board at 3430 Courthouse Drive, Ellicott City, MD 21043.
- Pursuant to State Law, violations shall be reported to the Howard County Ethics Commission.

ZONING MATTER: Glencg Country School

AFFIDAVIT AS TO CONTRIBUTION

**As required by the Annotated Code of Maryland
State Government Article, Sections 15-848-15-850**

I, Glencg Country School, the applicant in the above zoning matter

_____, HAVE ✓ _____, HAVE NOT

made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate or the treasurer of a political committee during the 48-month period before application in or during the pendency of the above referenced zoning matter.

I understand that any contribution made after the filing of this Affidavit and before final disposition of the application by the County Council shall be disclosed within five (5) business days of the contribution.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: GREGORY J. VENTRE

Signature: [Handwritten Signature]
HEAD OF SCHOOL

Date: 2/25/19

ZONING MATTER: Glenelg Country School

DISCLOSURE OF CONTRIBUTION

**As required by the Annotated Code of Maryland
State Government Article, Sections 15-848-15-850**

This Disclosure shall be filed by an Applicant upon application or by a Party of Record within 2 weeks after entering a proceeding, if the Applicant or Party of Record or a family member, as defined in Section 15-849 of the State Government Article, has made any contribution or contributions having a cumulative value of \$500 or more to the treasurer of a candidate of the treasurer of a political committee during the 48-month period before the application was file or during the pendency of the application.

Any person who knowingly and willfully violates Sections 15-848-15-850 of the State Government Article is subject to a fine of not more than \$5,000. If the person is not an individual, each officer and partner who knowingly authorized or participated in the violation is subject to the same penalty.

APPLICANT OR
PARTY OF RECORD: N/A

RECIPIENTS OF CONTRIBUTIONS:

<u>Name</u>	<u>Date of Contribution</u>	<u>Amount</u>
<u>N/A</u>		

I understand that any contribution made after the filing of this Disclosure and before final disposition of the application by the County Council shall be disclosed with five (5) business days of the contribution.

Printed Name: GREGORY J. VENTRE

Signature: [Handwritten Signature]

Date: 3/25/19

ZONING MATTER: Glenelg Country School

AFFIDAVIT AS TO ENGAGING IN BUSINESS WITH AN ELECTED OFFICIAL

**As required by the Annotated Code of Maryland
State Government Article, Sections 15-848-15-850**

I, GLENELG COUNTRY SCHOOL, the applicant in the above zoning matter

_____, AM

_____, AM NOT

Currently engaging in business with an elected official as those terms are defined by Section 15-848 of the State Government Article of the Annotated Code of Maryland.

I understand that if I begin engaging in business with an elected official between the filing of the application and the disposition of the application, I am required to file an affidavit in this zoning matter at the time of engaging in business with elected official.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Printed Name: GREGORY J. VENTRE

Signature: [Handwritten Signature]
HEAD OF SCHOOL

Date: 2/25/19

Petition to Amend the Zoning Regulations of Howard County

Petitioner's Proposed Text

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.
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.

Example of how the text would appear normally if adopted:

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.
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.

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), 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.

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:

Example of how the text would appear normally if adopted:

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, which may include child day care centers and nursery schools as an accessory use, provided that:

Petition to Amend the Zoning Regulations of Howard County

Supplemental Statement

Response to Section 5

The proposed amendments will be in harmony with PlanHoward 2030. Glenelg Country School (“GCS”) is located in the Rural West and is zoned RR-DEO. The County established a Rural West Advisory Committee as part of PlanHoward 2030 “to be a sounding board on various land use issues in the Rural West,” including conditional uses. PlanHoward 2030, p. 34. “Conditional uses . . . are presumed to be appropriate in the zoning districts where they are allowed.” *Id.* “Conditional Uses are authorized in specified zoning districts based on the presumption that they are generally appropriate and compatible in the specified districts.” Howard County Zoning Regulations § 131.0.A.

Implementing Action b. to Policy 4.5 of PlanHoward 2030 is to review use designations, including conditional uses, in the Rural West, and determine if amendments are necessary. PlanHoward 2030, p. 36. PlanHoward 2030 called for “[a] thorough review of the zoning regulations during Comprehensive Rezoning” to determine whether “the permitted by right/permitted by permit/permitted by conditional use structure” needed an overhaul. *Id.* at p. 34. “The uses themselves should also be reviewed to determine if there are additional uses that could be added, or if there are some uses that are no longer relevant and could be deleted.” *Id.*

Additionally, beyond the context of the Rural West, Policy 10.4 of PlanHoward 2030 is to “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.” *Id.* at p. 143. Implementing Action c. to Policy 10.4 similarly proposes to “Review and, as appropriate, amend the County’s conditional use regulations to reflect updated land use policies.”

PlanHoward 2030 was adopted on July 26, 2012. During the subsequent Comprehensive Rezoning process in 2013, the County’s Department of Planning and Zoning and the County Council thoroughly reviewed the County’s zoning map and regulations as called for by PlanHoward 2030. Given GCS’s extensive history, student enrollment levels, and stature in the community, it is undeniable that the County Council was aware of GCS’ RR-DEO zoning and its approved Private Academic School conditional use at the time of the 2013 Comprehensive Rezoning.

As part of the 2013 Comprehensive Rezoning, the County Council made the decision to keep the Private Academic School use a conditional use in the RR-DEO zoning district. Doing so was an acknowledgment by the County Council that GCS is an appropriate use and is in harmony with PlanHoward 2030; otherwise, the Council would have expressly deleted this conditional use and prohibited private academic schools in the RR-DEO district. Approving this Petition is necessary to ensure that GCS can continue serving the community and sustaining its programs into the future as the County Council clearly intended and in harmony with PlanHoward 2030.

Response to Section 6

The proposed amendments will be in harmony with the legislative intent provided in Section 100.0.A of the Zoning Regulations. These amendments will promote the health, safety, and welfare of the community by allowing GCS to continue its work of serving hundreds of families in the community every year. Furthermore, one of the policy goals in furtherance of promoting the health, safety, and welfare is to “provide a guide . . . for private enterprise in undertaking development, investment and other economic activity relating to uses of land and structures throughout the County.” Howard County Zoning Regulations § 100.0.A.4. GCS has been growing and evolving to meet the needs of the community for approximately 65 years, and the proposed amendments are necessary to allow GCS to continue undertaking investment and development to serve the County’s residents, including by permitting a child day care center/nursery school. Approving the requested amendments will not adversely affect the community.

Conversely, without the approval of the instant Petition, the welfare of the community will be negatively affected. If GCS is prohibited from making any future expansions and modifications to its school and program, GCS will be unable to sustain its institution and will further be unable to continue serving the community as it has for decades.

The proposed amendments regarding setbacks in Section 131.0.D will also further the purposes of Section 100.0.A. Conditional uses are presumed to be generally appropriate and compatible in their zoning districts as provided in Zoning Regulations Section 131.0.A. In any context other than conditional uses, the Hearing Authority is authorized to grant variances to the setback requirements imposed by the Zoning Regulations in accordance with Section 130.0.B. Allowing the Hearing Authority to make those same determinations for setbacks imposed by the specific conditional use criteria of Section 131.0.N and Section 131.0.O would preserve and promote the health, safety, and welfare of the community by ensuring that appropriate and compatible developments are not prevented merely because of some unique physical condition of the subject property (for which a variance would otherwise be available) or because the petitioner happens to own two adjoining lots (creating internal setbacks) instead of one combined lot.

As intended by Section 100.0.A, the proposed zoning regulation amendments would allow additional conditional use developments in furtherance of the most beneficial and convenient relationships among the residential, non-residential, and public areas of the County with specific consideration of the conditional use’s suitability at its particular location. The instant amendments would also better guide the orderly growth and development of the County in accordance with Section 100.0.A.2, again by ensuring that appropriate and compatible conditional use developments are not foreclosed simply because of unique property conditions.

Response to Section 7

The proposed amendments will benefit the public by allowing GCS to continue to serve the Howard County community. As described previously in this Petition, GCS currently enrolls over 750 students. These students come from across the County, reducing enrollment figures at County schools that are over capacity. In order for GCS to continue serving its students and the public into the future, approval of the instant Petition is necessary.

Response to Section 8

The proposed amendments have the potential of affecting all conditional use applications. The amendments pertaining to setbacks would merely bring conditional uses closer in line with other uses that a person may make of his or her property. For conditional uses that are compatible with the surrounding neighborhood and would be beneficial to the area, little justification exists to deny such uses on the mere basis of a setback not being able to be satisfied. This is especially true when the setback is from the petitioner's own property or when the variance criteria of Section 130.0.B would otherwise be satisfied.

Requiring a setback from property that a petitioner owns or has an easement over does not lead to the most beneficial arrangement of land uses. Instead, a petitioner is forced to comply with setback requirements for no reason other than owning multiple separate lots instead of one combined lot. A conditional use petitioner's decision to locate a use or structure up to an internal lot line should be the petitioner's alone, given that such decision will have no impact on anyone other than that petitioner. If the petitioner ever chooses to sell or convey one lot separate and apart from the other, the purchaser will be making an informed decision and choosing to acquire the lot with knowledge of the reduced setback such that the purchaser will likewise not be adversely affected.

Furthermore, granting the Hearing Authority the ability to consider unique physical conditions affecting a conditional use property will also have minimal impact. The variance criteria require the Hearing Authority to make specific findings, including that the variance "will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare." Given the considerations required by Section 130.0.B, these proposed amendments will provide more flexibility to the Hearing Authority to approve compatible and beneficial developments while still ensuring that any reduced setbacks do not create substantial negative effects.

Provided that a private academic school satisfies all of the conditional use criteria of Section 131.0.N.48, a child day care center and/or nursery school is an appropriate accessory use in connection with that school. For a petitioner who would like to more fully serve the community by also providing a child day care center or nursery school, this proposed amendment would allow an incidental and subordinate day care or nursery school without forcing the petitioner to seek a second, separate conditional use approval for such accessory use.

The impact of the proposed amendment pertaining to owner authorizations will also be minimal. Currently, the Department of Planning and Zoning's form conditional use petition requires the property owner's authorization. That requirement, however, is not presently codified in the Zoning Regulations as it would be with the approval of this amendment.

Additionally, if a conditional use petitioner has obtained a recorded easement or similar recorded instrument over certain property, such a formal instrument should be sufficient to serve as the necessary authorization. A petitioner will almost certainly have relied upon such recorded instrument in planning for the development of such petitioner's property. The owner of a property, after having granted a conditional use petitioner an easement, should not be able to change such

owner's mind and to completely preclude the conditional use application from being heard and considered. The owner who granted the easement should, and would, still have the right to contest the use based on the conditional use criteria contained within Section 131.0. The owner could also seek to enforce the terms of the recorded instrument in court or any other appropriate forum. A conditional use hearing, however, is not the appropriate forum. This proposed zoning regulation amendment would ensure that after having been granted the benefit of an easement, a conditional use petitioner could rely upon such grant and could proceed to have its conditional use petition heard and decided on the merits.