

1. **ZOTA 2017-5: AMENDMENTS RELATING TO CONDITIONAL USES, DEFINITIONS, AND CLARIFICATIONS** – petition for a Zoning Ordinance text amendment to Articles 1, 3, 8, 9, 10, 12, 15, 16, 17, 22A & B, 23, and 24 of the Zoning Ordinance, to move several uses from the conditional use category to either the principal permitted or the accessory use category.

REQUESTED BY: Urban County Planning Commission

PROPOSED TEXT: Copies are available from the staff.

The Zoning Committee Recommended: Approval.

The Staff Recommends: Approval, for the following reasons:

1. The proposed text amendment will have multiple benefits; e.g., it will adjust the Planning staff's workload so that more time can be spent on reviewing the more complex or problematic appeals and providing sound, defensible findings and conditions; it will help to provide better government service by not requiring applicants to go through a long, potentially arduous, cumbersome and/or expensive process; and it will reduce the number of applications to the Board of Adjustment by eliminating many conditional uses that are routinely approved by the Board. This, in turn, will allow the Board (or, in some instances, the Planning Commission) to focus on more difficult appeals that have the potential for adversely impacting surrounding properties.
2. Replacing the term "church" with "place of religious assembly" is a timely update to the Zoning Ordinance. The term "church" is generally associated with the Christian faith, whereas "place of religious assembly" indicates a more inclusive concept of the various world religions, many of which are present in Lexington due to the diversity of its population.
3. Adding a definition of "personal care home" to the Zoning Ordinance will help to clarify the difference and levels of care between an assisted living facility, a personal care facility and a nursing home. At least one personal care facility is located in Lexington and has been in existence since the 1950s. Because it is listed in the Zoning Ordinance as a conditional use, it is logical to provide a definition.

Staff Zoning Presentation – Ms. Rackers presented and summarized the staff report and recommendations for this text amendment. She said this is a request to move some uses from the conditional use category to the principal permitted or to the accessory use category. She said that this amendment is being requested because staff believes it will have multiple benefits and will provide better government and customer service. She said that it will adjust the workload of the staff and reduce the number of cases to be reviewed before the Board of Adjustment.

Ms. Rackers said that five staff members met and came up with changes to 14 uses, as follows:

Move from Conditional Use to Principal Permitted Use

1. **Plant nurseries with no on-site sales (A-R and A-B zones)**
2. Temporary real estate sales offices (R-1A through R-5 zones)
3. Offices of veterinarians and animal hospitals/clinics (P-1, B-1, CC and B-6P zones)
4. Health clubs, athletic clubs and spas (B-2B zone)
5. Indoor recreational/athletic club facilities (B-3, B-4 and I-1 zones)
6. Churches and Sunday school (B-3, B4 and I-1 zones)
7. **Church-related schools for academic instruction (B-4 and I-1 zones)**
8. Self-service car washes (B-6P zone)

Move from Conditional Use to Accessory Use

1. Low-impact home occupations (R-1 through R-5 zones)*
2. **Columbariums and mausoleums (R-1A through R-5 zones)**
3. Roof or pole-mounted satellite dish antennae (R-1A through R-5 zones)
4. Non-commercial athletic club facilities (R-3, R-4 and R-5 zones)
5. Incidental retail sales and personal services (R-5 zone)
6. **Columbariums (I-1 zone)**

* The determination of "low-impact" would be based on the following criteria: (a) no customers come to the property; (b) there is no use of any hazardous materials or firearms; and (c) there is no use of any inherently disturbing chemicals, materials or equipment. Examples include sewing, crafts and computer graphics.

Ms. Rackers said these 14 uses were presented to the Board of Adjustment in February. The Fayette County Neighborhood Council and Fayette Alliance reviewed this list and provided input. They suggested removing the four uses (noted in bold), leaving uses that have less potential for unintended consequences, as follows:

Move from Conditional Use to Principal Permitted Use

1. Temporary real estate sales offices (R-1A through R-5 zones)

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2. Offices of veterinarians and animal hospitals/clinics (P-1, B-1, CC and B-6P zones)
3. Health clubs, athletic clubs and spas (B-2B zone)
4. Indoor recreational/athletic club facilities (B-3, B-4 and I-1 zones)
5. Churches and Sunday school (B-3, B4 and I-1 zones)
7. Self-service car washes (B-6P zone)

Move from Conditional Use to Accessory Use

1. Low-impact home occupations (R-1 through R-5 zones)*
2. Roof or pole mounted satellite dish antennae (R-1A through R-5 zones)
3. Non-commercial athletic club facilities (R-3, R-4 and R-5 zones)
4. Incidental retail sales and personal services (R-5 zone)

- * The determination of "low-impact" would be based on the following criteria: (a) no customers come to the property; (b) there is no use of any hazardous materials or firearms; and (c) there is no use of any inherently disturbing chemicals, materials or equipment. Examples include sewing, crafts and computer graphics.

Ms. Rackers described the four basic uses categories of the Zoning Ordinance. She said that principal permitted and accessory uses are allowed by right, but the accessory uses need to be incidental and subordinate to a principal use on the property; conditional uses need to go to the Board of Adjustment (BOA) or to the Planning Commission with a zone change for approval; and prohibited uses are not allowed anywhere. She said that the conditional use application process can be confusing for applicants and very time consuming, for the applicant and the staff.

Ms. Rackers said that currently there are two categories and two levels of regulations related to conducting business in a residence: one is the home office (accessory use) for people who work off site and do paper work at home; the other is home occupations, for those who actually work in their homes (conditional use). She said that some conditional uses have an impact on surrounding properties and some don't. She said this request is proposing a three-tiered process: the home office; the home occupation, which would be an accessory use, with little to no impact on surrounding properties (i.e., sewing, crafts, computer design, and tutoring); and the home-based business, which would be a conditional use, with potential impact on surrounding properties (i.e., child care). She said this request will reduce the number of cases to the BOA which the staff believes to be a good thing.

Ms. Rackers said this text amendment is also proposing to create and revise some definitions and to clarify some uses in the Zoning Ordinance. She said the staff is creating a definition for "personal care facility" and revising the "assisted living facility" definition, replacing the term "rest home" with "personal care facility", creating a definition and requirements for "home-based business", revising the definition and regulations for "home occupation", and replacing the term "church" with "place of religious assembly". She said that the staff was recommending approval for the reasons provided in the staff report and on the agenda.

Commission Questions – Mr. Penn asked why plant nurseries with on-site sales were removed from the A-R and A-B zones. Ms. Rackers said that it could have unintended consequences because some plant nurseries have on-site sales. Mr. Penn said that conditional uses states "with no on-site sales". Ms. Rackers said that the Fayette County Neighborhood Council and Fayette Alliance thought that it would not be possible. Mr. Penn asked if Christmas trees could be raised on private property. Ms. Rackers stated that they could be grown on someone's property, but then would need to be taken elsewhere to be sold. Mr. Marx said this use was on original list as a clarification, not a change. He said that a conditional use permit is not needed if there are not any on-site sales. He said that it was removed because of a controversial case in the past. Mr. Penn clarified that if there are no on-site sales, then a conditional use is not required in the A-R and A-B zones. Mr. Marx agreed.

Ms. Plumlee said that #5 under the label "conditional use to principal permitted use" relating to churches need more review because they will be outside of tax rules and that there is B-3 zoning in the Rural Service Area. Ms. Plumlee requested that this use be removed from the ZOTA. Ms. Rackers said that recommendation can be made.

Ms. Mundy said that she agrees with Ms. Plumlee to review churches in B-3, as a B-4 and I-1 zones conditional use. Mr. Cravens asked if churches will be removed from principal uses and asked why church-related schools for academic instruction was removed from the original list of uses because some are related to schools. Mr. Rackers said that this related to Transylvania University because they are a church-based school and have properties all over town. Mr. Marx said it was a general concern and Transylvania University has many BOA cases and the staff only rarely gets a request for this use.

Mr. Owens also agreed that churches should remain as a conditional use in the B-3, B-4, and I-1 zones.

Citizen Comment – There were no citizens present to speak to this application.

Action – A motion was made by Mr. Owens, seconded by Ms. Mundy, to approve ZOTA 2017-5: AMENDMENTS RELATING TO CONDITIONAL USES, DEFINITIONS, AND CLARIFICATIONS, for the reasons provided by the staff and with the

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conditional use amendments, deleting churches and Sunday schools from the conditional use to principal permitted use category.

Discussion of Motion – Mr. Cravens said that he didn't understand why churches and Sunday schools couldn't be a principal permitted use in the B-3, B-4 and I-1 zones since it is permitted in all other zones. He asked for an amended motion to leave churches and Sunday schools as proposed.

Mr. Wilson asked Mr. Owens if he wished to modify the original motion. Mr. Owens declined.

Amended Action - The motion was amended by Mr. Cravens, and died due to lack of a second.

Motion Action – Motion carried 10-1 (Cravens opposed).

