



MONTGOMERY COUNTY PLANNING DEPARTMENT
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

MCPB
Item # 11
6/4/09

DATE: May 27, 2009
TO: Montgomery County Planning Board
VIA: Rose Krasnow, Chief, Development Review *RK*
Ralph Wilson, Zoning Supervisor *RW*
FROM: Greg Russ, Zoning Coordinator *GR*
REVIEW TYPE: Zoning Text Amendment
PURPOSE: To amend the provisions and definitions for: home occupations and home occupation special exceptions; violations; use and occupancy permits; commercial vehicles; and off-street parking surfaces and locations.

TEXT AMENDMENT: No. 09-03
REVIEW BASIS: Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance
INTRODUCED BY: District Council at the Request of the County Executive
INTRODUCED DATE: May 5, 2009
PLANNING BOARD REVIEW: June 4, 2009
PUBLIC HEARING: June 9, 2009; 7:30pm

STAFF RECOMMENDATION: Staff provides the following comments

- Overall, staff believes that including within one text amendment home occupation revisions and off-street parking modifications creates confusion. Optimally, separating the subjects into two text amendments would be clearer.
- Staff has no objection to the clarifications to the home occupation requirements including the details for renewing a major home occupation special exception, new definitions and registered home occupation violation procedures to simply the enforcement of home occupation regulations and the plain language clarifications.
- Staff recommends approval of the proposed changes to the Ordinance that will require a use-and-occupancy permit for all one-family detached dwellings.

- Staff recommends approval of the proposed changes to the definition of commercial vehicle that will create two separate categories: light commercial and heavy commercial.
- Staff conceptually agrees with limiting off-street parking in front yards in one-family residential zones. The text amendment as proposed provides appropriate grandfather provisions and safety measures along major roads. It eliminates the proposed front yard coverage requirement if a property owner only wants to provide two “standard sized” perpendicular parking spaces. This provision minimizes the impact of the surfaced area legislation on smaller lots that are only trying to meet the minimum parking requirement for a one-family dwelling.

The subject ZTA was proposed by the County Executive to improve the County's ability to enforce regulations relating to enforcement responsibilities pertaining to home occupations and off-street parking in one-family residential and agricultural zones.

ANALYSIS

A summary of the proposed changes, by general category, are discussed below.

I. Amend the provisions and definitions concerning home occupations

- The definitions for major, no impact, and registered home occupations are modified to make their meaning clearer. The staff has no objection to these changes.
- The definition for a home occupation is modified to specify that a maximum of two single axle trailers or trucks may be used for loading and unloading tools and equipment associated with a lawn maintenance service. This intent of this provision is to ensure that a home occupation does not alter the residential character of a neighborhood. Large trucks frequenting residential streets are inconsistent with such character.
- Definitions for “home occupation, eligible area” and “home occupation, visit” are added to assist DPS in its calculation of the area within a dwelling that will be devoted to home occupation and in its enforcement efforts in determining the maximum number of visits allowed for a home occupation.
- A definition for a “surfaced area” is added to Section 59-A-2 to specify the potential materials that facilitate the parking of a motor vehicle. This term is then incorporated by reference within the definition of a “home occupation residential parking area” to simplify the definition.

- Currently, one of the qualifying documents required for establishing a home occupation is evidence that the applicant resides in the home for at least 220 days each calendar year. The text amendment proposes to replace this requirement by defining a term “proof of home address” that establishes residency requirements by regulations under method 2 of Section 2A-15.
- A majority of the changes proposed in Sections 59-A-3.4 (Registration of a home occupation or home health practitioner's office.) and 59-A-6.1 (A no-impact home occupation, registered home occupation, or home health practitioner's office.) are plain language clarifications, including incorporating new or revised definitions (as described above) into the text.
- With respect to registered home occupation violations that might be remedied by a special exception (Section 59-A-3.43, Compliance and Enforcement.), changes are proposed to subsection (d) that will allow 60 calendar days, rather than 10, to file a petition for a major home occupation. The longer time period provides the operator of the home occupation ample time to remedy the violation prior to making a decision on whether to apply for a special exception.
- A registered home occupation may begin operation only after an approved on-site inspection (Section 59-A-3.43(b)). Current regulations do not require an on-site inspection by DPS.
- An additional amendment to Section 59-A-3.43(e) allows the Department of Permitting Services (DPS) to immediately issue a citation to a person violating home occupation provisions.

II. Amend the provisions for renewing a special exception for a home occupation (lines 653-708)

A special exception for a major home occupation is granted for a two-year period and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and if it satisfies the compliance procedures of the Zoning Ordinance. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the conditions established by the Board of Appeals and if the parties entitled to notice are given an opportunity to request a hearing but do not. The subject text amendment proposes to clarify certain details of the renewal process including: providing written notice prior to an upcoming renewal date; a requirement that a renewal application be filed; notification and reply procedures for those declining renewal; public hearing and waiver of public hearing procedures; and procedures for modifications of the terms and conditions of the special exception. Staff recommends approval of these clarifying modifications.

III. Amend the provisions for violations (lines 4-10)

Section 59-A-1.3 (Violations, penalties, and enforcement.) allows any violation of the Zoning Ordinance to be punished by a civil fine not exceeding \$500 for each offense or any lesser penalty allowed by regulation adopted under method 2. Modifications are proposed that instead allow any violation to be punished as a class A violation under Section 1-19 (Under this provision, a civil violation carries a maximum penalty of \$500 for the first offense and \$750 for a repeat offense; while a criminal violation carries a maximum fine of \$1000 and/or a maximum jail time of 6 months).

IV. Require a use-and-occupancy permit for a one-family detached dwelling (lines 156-163)

Currently under Section 59-A-3.2, "Use-and-occupancy permit", a use-and-occupancy permit certifying compliance with Chapter 59 must be issued by the Director of DPS before any building, structure, or land can be used or can be converted from one use to another. One exception to this requirement is a building used exclusively as a one-family, detached dwelling or a use incidental to the residential use, including a registered home occupation or no-impact home occupation. The proposed changes to the text will now require a use-and-occupancy permit for all one-family detached dwellings, thereby allowing DPS to better enforce the requirements of Chapter 59, especially in cases where no documentation for a home occupation is required (no-impact home occupation).

V. Amend the definition for a commercial vehicle (lines 25-56)

Currently, commercial vehicles are generally defined as vehicles of more than 10,000 pounds of vehicle weight or having a carrying load capacity of more than ¾ ton. To better assist DPS in the enforcement of parking requirements in residential areas, the definition of commercial vehicle is separated into two categories: light commercial and heavy commercial.

A heavy commercial vehicle is defined generally as a vehicle of more than 10,000 pounds of gross vehicle weight; a carrying load capacity of more than one ton; 21 feet long or longer in length; or more than 8 feet high. A light commercial vehicle is defined generally as having characteristics of lesser weight or dimension than a heavy commercial vehicle. The term "light commercial vehicle" will replace the term "commercial vehicle" in its parking applications in the one-family residential and agricultural zones. A heavy commercial vehicle (except for agricultural uses as explained below) will not be permitted in residential or agricultural zones.

In the RE-2, RE-2C and RE-1 zones, not more than 3 light commercial vehicles and not more than one unoccupied recreation vehicle may be parked on any lot at any one time. One additional recreation vehicle may be used on a lot for

dwelling purposes for not more than 3 days in any month. A similar provision is proposed for similarly sized parcels in the agricultural zones where the lot size is less than two acres and greater than one-half acre.

As currently established in the regulations (but made more transparent in the proposed amendment), vehicles and machinery for agricultural use may be parked without restrictions in both one-family residential and agricultural zones. Also, in the one-family residential zones a tow truck is not permitted to park with a vehicle attached. This provision is being added to the agricultural zones.

VI. Surfaced area in front yards (lines 142-144; 604-612)

As discussed above, surfaced area is being defined as *“Land where the natural surface has been altered by gravel, stone, brick, concrete, asphalt, or any other material that facilitates the parking of a motor vehicle”*. The proposed text amendment requires that parking of any vehicle or trailer in the front yard of a dwelling in the R-200, R-150, R-90, R-60, R-40 and R-4plex zones must be on a surfaced area (footnote 12 of 59-C-1.31, land uses—lines 594-596). In addition, Section 59-C-1.328 limits to 30% the maximum percentage of the area of the front yard that can be covered by surfaced area in the R-200, R-150 and R-90 zones and 35% in the R-60 zone.

The amendment provides a grandfather provision for existing surfaced area; allows front yard surfaced area coverage up to 50% if the tract has its primary access from a primary residential street, minor arterial road, major highway or arterial, or any State road; and eliminates the coverage provision if the surfaced area consists of 2 parking spaces no larger than a total of 310 square feet in total.

The provision to grandfather existing surfaced area that is greater than the proposed requirements is consistent with County policy. Permitting greater surfaced area coverage along major roads (up to 50%) provides a safety precaution by allowing additional turnaround space on-site to minimize the need for backing into the roadway. The provision to eliminate the surfaced area requirement where only two “standard sized” perpendicular parking spaces are located or proposed minimizes the impact of the surfaced area legislation on smaller lots that are only trying to adhere to the minimum parking requirement for a one-family dwelling.

GR

Attachments

1. Proposed Text Amendment No. 09-03

ATTACHMENT 1

Zoning Text Amendment No: 09-03
Concerning: Home Occupations and
Residential Off-Street Parking
Draft No. & Date: 1 – 5/1/09
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: The District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- amend the provisions and definitions concerning home occupations;
- amend the provisions for violations;
- amend the definition of a commercial vehicle;
- add a definition of a light commercial vehicle;
- add definitions associated with off-street parking and home occupations;
- require a use-and-occupancy permit for a one-family detached dwelling;
- limit the amount of surfaced area in front yards for certain one-family zones;
- limit parking in front yards to surfaced area;
- limit off-street parking in clustered agricultural zones;
- amend the provisions for renewing a special exception for a home occupation; and
- generally amend the provisions related to home occupations, off-street parking, and violations of the Zoning Ordinance.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-1	“PURPOSE AND APPLICABILITY”
Section 59-A-1.3	“Violations, penalties, and enforcement”
DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1.	“Definitions”
DIVISION 59-A-3	“BUILDING, USE AND OCCUPANCY PERMITS REGISTRATION OF CERTAIN USES.”
Section 59-A-3.2.	“Use-and-occupancy permit”
Section 59-A-3.4.	“Registration of a home occupation or home health practitioner's office”

DIVISION 59-A-6	“USES PERMITTED IN MORE THAN ONE CLASS OF ZONE”
Section 59-A-6.1	“A no-impact home occupation, registered home occupation, or home health practitioner's office”
DIVISION 59-C-1	“RESIDENTIAL ZONES- ONE-FAMILY”
Section 59-C-1.31	“Land uses”
DIVISION 59-C-9	“AGRICULTURAL ZONES”
Section 59-C-9.3	“Land uses”
DIVISION 59-F-2	“DEFINITIONS”
DIVISION 59-G-2	“SPECIAL EXCEPTIONS-STANDARDS AND REQUIREMENTS”
Section 59-G-2.29	“Home occupation, major”

EXPLANATION:	<p><i>Boldface indicates a heading or defined term.</i></p> <p><i><u>Underlining</u> indicates text that is added to existing laws by the original text amendment.</i></p> <p><i>[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.</i></p> <p><i><u>Double underlining</u> indicates text that is added to the text amendment by amendment.</i></p> <p><i>[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.</i></p> <p><i>* * * indicates existing law unaffected by the text amendment.</i></p>
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The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-1 is amended as follows:

DIVISION 59-A-1. PURPOSE AND APPLICABILITY

* * *

Sec. 59-A-1.3. Violations, penalties, and enforcement.

- (a) Any violation of this Chapter may be punished as provided in State law.
- (b) In addition to all other remedies provided by law, any violation of this Chapter may[, as an alternative,] be punished [by] as a [civil fine not exceeding \$500 for each offense or any lesser penalty allowed by regulation adopted under method 2] class A violation under Section 1-19. Each day a violation continues is a separate offense.

* * *

Sec. 2. DIVISION 59-A-2 is amended as follows:

Division 59-A-2. DEFINITIONS AND INTERPRETATION.

Sec. 59-A-2.1. Definitions.

* * *

Automobile parking facility: Any lot or structure used for off-street parking of 6 or more motor vehicles, where service or repair facilities are not permitted. A parking facility must not be used for storage of dismantled or wrecked motor vehicles, parts thereof, or junk. An automobile sales lot is not a parking facility for the purposes of this [chapter] Chapter. This definition includes 6 or more parking spaces serving a special exception use. (See [section] Section 59-E-2.[92]83 for special requirements applying to a smaller parking area serving a special exception use in a one-family residential zone.)

* * *

Commercial vehicle, heavy: [A duly licensed and registered vehicle used to transport passengers or property to further a commercial enterprise. A commercial vehicle must not be used as an office nor have customer entry for a retail

transaction. For the purposes of this Chapter the following are also commercial vehicles] Any motor vehicle, tandem axle trailer, or semi-trailer used for carrying freight or merchandise, or used in the furtherance of any commercial enterprise that is:

- (a) [vehicles of more] greater than 10,000 pounds gross vehicle weight;
- (b) [vehicles with a manufacturers] rated by the manufacturer with a load capacity of [more than 3/4] more than one ton;
- [(c) vehicles registered as commercial vehicles by the Motor Vehicle Administration of the state of Maryland or other jurisdiction;
- (d) "for hire" vehicles as classified by the Maryland Motor Vehicle Administration;
- (e) a funeral motor vehicle or ambulance as classified by the Maryland Motor Vehicle Administration; or
- (f) a freight trailer or semitrailer as defined by the Maryland Motor Vehicle Administration;]
- (c) 21 feet long or longer, measured from the extremes of the vehicle, including any object on the vehicle; or
- (d) more than 8 feet high, with properly inflated tires, measured from the ground to the highest part of the vehicle, including any racks but excluding any antennas.

A recreational vehicle, a motor vehicle owned by the County or other government agency, or a [farm] machine or [farm] vehicle for agricultural use is not a heavy commercial vehicle.

Commercial vehicle, light: Any motor vehicle or trailer used for carrying freight or merchandise, or used in the furtherance of any commercial enterprise that is not a heavy commercial vehicle. A light commercial vehicle must not be used as an office or have any entry for transactions. A recreational vehicle, a motor vehicle

owned by the County or other government agency, or a machine or a vehicle for agricultural use is not a light commercial vehicle.

* * *

Home address, proof of: Any valid document showing where a person lives as established by regulations under method 2 of Section 2A-15.

* * *

Home health practitioner's office: The office of a health practitioner who resides in the dwelling unit in which the office is located. For this purpose, a health practitioner is defined as a person who is licensed or certified by a Board under the Maryland Department of Health and Mental Hygiene and has an advanced degree in the field from an accredited educational institution, except that this definition excludes an electrologist, mortician, nursing home administrator, pharmacist, or veterinarian. This definition includes a registered nurse or physician's assistant only if that person has an advanced degree in the field and practices independently. A home health practitioner's office that does not qualify for registration [in accordance with] under Sections 59-A-3.4 and 59-A-6.1(a) and (d) may obtain a special exception as a major home occupation, [in accordance with] under Section 59-G-2.29.

Home occupation: Any occupation, other than a registered home health practitioner's office, that provides a service or product and is conducted within a dwelling unit by a resident or residents of the dwelling unit without diminishing its residential character.

A home occupation has the following characteristics:

- (a) It is clearly subordinate to the use of the dwelling unit for residential purposes and requires no external modifications that detract from the residential appearance of the dwelling unit.

- (b) It is conducted entirely within the dwelling unit or any existing accessory building, as defined in this section, and does not use any open yard area of the lot or parcel on which the dwelling unit is located or any building constructed on the lot or parcel specifically for the purpose of operating the home occupation, except for loading and unloading tools and equipment associated with a lawn maintenance service from not more than two single axle trailers or trucks (all storage and maintenance of these tools and equipment, however, must be within the dwelling unit or any existing accessory structure). It may, however, involve off-site activities such as sales, client contact, and other matters related to the home occupation.
- (c) It uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable at or beyond the lot line. It does not involve use, storage, or disposal of:
 - (1) A quantity of a petroleum product sufficient to require a special license or permit from the fire marshal; or
 - (2) Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that [disposal of] medical waste must be [regulated as provided in] disposed of under Maryland State Laws and Regulations.

A home occupation includes, but is not limited to, the office of a member of a recognized profession, such as a lawyer, accountant, architect, engineer, or veterinarian who resides in the dwelling unit in which the office is located. A home occupation does not include the following: bed-and-breakfast establishment, boardinghouse, day care facility, display of furniture not made in the home for sale in the home or at an offsite location, landscape contractor, private educational institution, tourist home, or the repair and maintenance of motor vehicles.

* * *

Home occupation, eligible area: The total number of square feet of floor area in any building on a property, including the area of a basement and any accessory building on the same lot but excluding the area of any cellar, uncovered steps and uncovered porches. All horizontal measurements must be made between interior faces of walls. Eligible area excludes any addition to any building and accessory building that was constructed within 18 months of the date the Department approved a home occupation on the lot.

* * *

Home occupation, major: A home occupation[, as defined above, that is] regulated [in accordance with] under the special exception provisions of Section 59-G-2.29; it may include a home health practitioner's office whenever that office does not qualify for registration [in accordance with] under Sections 59-A-3.4 and 59-A-6.1.

Home occupation, no impact: A home occupation[, as defined above, that is] regulated [in accordance with] under the applicable requirements and standards of 59-A-6.1(a) and (b) and is not required to register.

Home occupation, registered: A home occupation[, as defined above, that is] accessory to the residential use of the dwelling unit in which it occurs and is registered [in accordance with] under Sections 59-A-3.4 and 59-A-6.1(a) and (c).

Home occupation residential parking area: Any [portion] surfaced area of a lot or parcel in an R-60 or R-90 zone on which [is conducted] a registered home occupation[:

- (1) where the natural surface has been altered by gravel, stone, brick, concrete, asphalt, mulch, or any other material that facilitates the parking of a motor vehicle; and]

[(2) which is readily accessible for the parking of a motor vehicle] is conducted. A fully enclosed garage, or a carport is not a home occupation residential parking area.

* * *

Home occupation, visit: Any trip to the home occupation site for any purpose related to the home occupation.

* * *

Surfaced area: Land where the natural surface has been altered by gravel, stone, brick, concrete, asphalt, or any other material that facilitates the parking of a motor vehicle.

* * *

Sec. 2. DIVISION 59-A-3 is amended as follows:

**Division 59-A-3. BUILDING, USE AND OCCUPANCY PERMITS
REGISTRATION OF CERTAIN USES .**

* * *

Sec. 59-A-3.2. Use-and-occupancy permit.

59-A-3.21. Generally.

A use-and-occupancy permit certifying compliance with this Chapter must be issued by the Director before any building, structure, or land can be used or can be converted, wholly or in part, from one use to another. However, a use-and-occupancy permit is not required for:

- (a) [A building used exclusively as a one-family, detached dwelling or for uses incidental to the residential use. A registered home occupation or a no-impact home occupation is deemed to be incidental to the residential use. A registered home health practitioner's office is not incidental; it requires a use-and-occupancy permit unless it is subject to the exemption provisions of Section 59-A-6.1(d)(9). The use-and-occupancy permit cannot be issued

unless the practitioner has signed the Affidavit of Compliance required by Section 59-A-3.42.]

[(b)] Land or buildings used exclusively for agricultural purposes.

[(c)] (b) A use for which a valid occupancy permit was issued and not revoked [immediately prior to] before June 1, 1958.

[(d)] (c) A child day care facility for up to 8 children.

[(e)] (d) A transitory use.

* * *

Sec. 59-A-3.4. Registration of a home occupation or home health practitioner's office.

59-A-3.41. Requirement.

Any home occupation (except a no-impact home occupation), or home health practitioner's office[, as defined in Section 59-A-2.1,] that [complies with] satisfies Section 59-A-6.1 and is not required to have a special exception must be registered with the Department. [At the time of registration, the] An application for registration must be submitted to the Department. The Department must give the registrant a copy of the applicable regulations [as stated in] under Section 59-A-6.1 when the applicant submits the application. [An application must be submitted to the Department, which] The Department must maintain the Home Occupation and Health Practitioner Registry and issue a Certificate of Registration if the use [complies with] satisfies Section 59-A-6.1.

59-A-3.42. Application.

The application must include an Affidavit of Compliance with those regulations, which the applicant must sign. It must also provide the following information:

- (a) Manner in which the operation of the home occupation [complies with] satisfies Section 59-A-6.1;

- (b) Location of the property by street address and either lot and block number or liber and folio;
- (c) Zone in which the property is located;
- (d) Area of the lot or parcel, in square feet or acres;
- (e) Total floor area of the dwelling unit and the amount of floor area to be [utilized] used for the home occupation; floor area of any existing accessory building to be [utilized] used for the home occupation;
- (f) Location and number of off-street parking spaces;
- (g) [Evidence that the applicant resides in the home for a period of at least 220 days in each calendar year] Proof of home address; and
- (h) Other pertinent information required by the Department.
- (i) For a home health practitioner's office only, evidence that the practitioner is exempt from the provision of Section 59-A-6.1(d)(9) if applicable. If the practitioner is not exempt, a copy of the use-and-occupancy permit required by Section 59-A-3.21(a) must accompany the application, and the practitioner must describe the location of [an] any indoor waiting room for patients.

59-A-3.43. Compliance and Enforcement.

- (a) By signature of the Affidavit of Compliance, the applicant for a registered home occupation or home health practitioner's office affirms that he or she resides in the dwelling unit in question and agrees to [comply with] satisfy Section 59-A-6.1 of this Chapter and to take whatever action is required by the Department to bring the home occupation or practitioner's office into compliance, if complaints of noncompliance are received and verified.
- (b) [When the application for the registered home occupation is completed and the affidavit is signed, the Department must determine whether the home occupation or practitioner's office, as described in the application, complies

with the applicable sections of this Chapter. If it does comply, the] The Department must record [it] the home occupation in the Home Occupation and Health Practitioner Registry and issue a Certificate of Registration if the Department determines that the application satisfies the applicable sections of this Chapter. A registered home occupation may begin operation [without] after an approved on-site inspection. The home occupation or practitioner's office must [not] be recorded in the Registry, and the Certificate must [not] be issued only if the home occupation or practitioner's office, as described, [does not comply fully with] satisfies Section 59-A-6.1.

- (c) The Home Occupation and Health Practitioner Registry must be readily available for public inspection. If the Department receives [written notice of a violation of] a complaint about a registered home occupation or home health practitioner's office, an inspector must inspect the property and determine, within 90 days after receipt of the complaint, whether there is a violation of the provisions of this [section] Section or Section 59-A-6.1. [If the Department determines that there is no violation, the operator of the home occupation or home health practitioner's office and the complainant must be so notified in writing.]
- (d) If the Department determines [at any time] that there is a violation, a warning [must] may be issued, and the violation must be corrected within 30 days. [If it is not corrected, the Department must notify the operator of the home occupation or home health practitioner's office that either:]
- (1) The home occupation or home health practitioner's office must cease immediately; or
 - (2) In the case of any violation that might be remedied with a special exception, a petition must be filed within [10] 60 business days for a special exception for a major home occupation [in accordance with]

under Section 59-G-2.29. Operation of the registered home occupation or home health practitioner's office may continue until the Board has acted on the petition, provided the violation is corrected [during this period. The] before the application for a special exception is filed. If the Board denies the special exception, the home occupation or home health practitioner's office must cease immediately [if the Board denies the special exception] or operate under the provisions for a registered home occupation or home health practitioner's office.

- (e) [Violation of an order issued by the Department is subject to a penalty in accordance with Section 59-A-1.3 of this Chapter. The determination by the Department as to whether there is a violation may be appealed to the Board, in accordance with Section 59-A-4.11.] The Department may issue a citation under Section 59-A-1.3 at any time, including after the issuance of a warning under subsection (d), even if time remains for remedial action to be taken.

* * *

Sec. 3. DIVISION 59-A-6 is amended as follows:

Division 59-A-6. USES PERMITTED IN MORE THAN ONE CLASS OF ZONE.

Sec. 59-A-6.1. A no-impact home occupation, registered home occupation, or home health practitioner's office.

- (a) The following provisions apply to a no-impact home occupation, a registered home occupation, and to a home health practitioner's office:
- (1) Each home occupation operator or home health practitioner must [reside in the home for a period of at least 220 days in each calendar year] show proof of home address.

[(2)] Each home occupation or home health practitioner must maintain a log of all visits made to the home in connection with the use; this log must be available to the Department on request.]

[(3)](2) The amount of floor area used for the home occupation or home health practitioner's office must not exceed 33 percent of the [total floor] eligible area of [the dwelling unit and] any existing [accessory] building on the same lot or parcel. [Any enlargement of the total floor area resulting from construction completed on or after the date of commencement of the home occupation or within the 18 months immediately preceding commencement of the home occupation must be excluded from the total floor area on which this calculation is based.]

[(4)](3) [No] Any equipment or process that creates a nuisance [such as noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable at or beyond the lot line of a detached dwelling unit or the floor, ceiling or party wall of an attached dwelling unit is] or violates any law is not allowed in connection with the operation of a home occupation or home health practitioner's office, nor is this operation allowed to involve use, storage, or disposal of:

- (A) A quantity of a petroleum product sufficient to require a special license or permit from the fire marshal; or
- (B) Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated [as provided in] by Maryland State Laws and Regulations.

~~[(5)](4)~~ [No truck] Truck deliveries are not permitted, except for parcels delivered by public or private parcel services that customarily make residential deliveries.

~~[(6)](5)~~ A home occupation or home health practitioner's office found to be in violation of any provision of Section 59-A-6.1 is subject to the enforcement procedures [stated in] under Section 59-A-3.43(c), (d), and (e).

(b) A no-impact home occupation must comply with the following standards:

- (1) It must be conducted by a member or members of the family[, as defined in Section 59-A-2.1,] residing in the dwelling unit. No non-resident employees are permitted.
- (2) A maximum of 5 visits per week, including deliveries, is allowed in connection with no-impact home occupations on one lot or parcel. [For the purposes of this section, a “visit” is defined as a visit to the home by one automobile transporting one or more clients or customers.]
- (3) [No] The sale of goods on the premises is not allowed.
- (4) Display or storage of goods is limited to samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery, but [in no event must] the storage of merchandise awaiting delivery must not exceed 30 square feet of floor area.
- (5) [No equipment] Equipment or facilities may not be used other than:
 - (A) Domestic or household equipment;
 - (B) Office equipment[, such as a typewriter, word processor, calculator or computer]; or

- (C) [Art or handicraft equipment, such as a hand loom, spinning wheel, potter's wheel, kiln, and woodworking tools, or wine-making and beer-making equipment.] Any equipment reasonably necessary for art production, handicrafts, or making beer or wine.
- (6) If an accessory building is used for any part of the no-impact home occupation, there must be no external evidence of such use. [No more than] Only one accessory building may be used for this purpose. A new accessory building must not be constructed for the purpose of conducting the home occupation. For the purpose of this section an accessory building must [have existed for at least 18 months prior to the onset of the business activity in order to be used as a part of the home occupation] be an eligible area.
- (7) In the residential one-family zones regulated by Section 59-C-1.3 and in recorded residential subdivisions in the agricultural zones regulated by Division 59-C-9, any commercial vehicle that is parked or garaged on-site in connection with the no-impact home occupation must [comply with] satisfy the regulations for commercial vehicles in Section 59-C-1.31[, titled "Land Uses."]. In townhouse and multiple family dwellings in zones other than residential one-family or agricultural, one light commercial vehicle may be parked on-site in connection with this use, if parked in a garage.
- (8) The display of a sign must [comply with the requirements established in] satisfy Article 59-F of this [chapter] Chapter.
- (9) A no-impact home occupation must have no discernible impact on the surrounding neighborhood and must be accessory to the residential use of the dwelling unit in which it occurs.

- (10) In the R-60 and R-90 zones[:
- (A) Not], not more than [one] two motor [vehicle] vehicles [of a patron, client, or any other non-resident using,] visiting[, or associated with] a no-impact home occupation may be parked at the same time on a lot or parcel where a home occupation is conducted.
- (c) A registered home occupation in a residential or agricultural zone, as [provided by] allowed under Section 59-C-1.31, 59-C-1.71, 59-C-2.3 or 59-C-9.3, must [comply with] satisfy the following standards:
- (1) A maximum of 2 registered home occupations is allowed in any one dwelling unit.
 - (2) It must be conducted by a member or members of the family[, as defined in Section 59-A-2.1,] residing in the dwelling unit, and may employ no more than one nonresident assistant or business associate [who is required to be at the dwelling unit for any length of time during the 24-hour day]. For the purposes of this section, no more than one employee may visit the dwelling unit within any 24 hour period. The arrival and departure of the nonresident assistant or associate are not included in (3) below.
 - (3) A maximum of 20 visits per week, and no more than 5 per day, excluding deliveries, is allowed in connection with one or both registered home occupations on one lot or parcel. [For the purposes of this section, a "visit" is defined as a visit to the home by one automobile transporting one or more clients or customers. Visits by] Trips to the home occupation by employees or business associates for the purpose of picking up paychecks or work orders, or collecting

equipment or merchandise for use, sale, or delivery at off-site locations are not permitted.

- (4) The sale of goods on the premises is limited to:
 - (A) Handicrafts or art products or similar hand-made products or services such as dressmaking, hand-weaving, block-printing, jewelry, pottery, and musical instruments, which are produced on site by a resident of the dwelling; or
 - (B) [Up to 5 visits per month that involve the] The sale of items customarily ordered on the premises of the registered home occupation for delivery at a later date, to customers at other locations. However, the delivery of the goods to the customer must occur off-site.
- (5) Display or storage of goods is prohibited except for:
 - (A) Such handmade items as enumerated in paragraph (4)(A) above; or
 - (B) Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.

The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.

- (6) [No equipment or facilities may be used other than] Only the following equipment or facilities may be used:
 - (A) Domestic, household, or lawn maintenance service equipment;
 - (B) Office equipment[, such as but not limited to a typewriter, word processor, calculator or computer]; or
 - (C) [Art or handicraft equipment, such as but not limited to a hand loom, spinning wheel, potter's wheel, kiln or woodworking

tools.] Any equipment reasonably necessary for art production, handicrafts, or making wine or beer.

- (7) If an existing accessory building is used for any part of the registered home occupation, there must be no external evidence of such use. [No more than] Only one existing accessory building may be used for this purpose. [A new] An accessory building must [not be constructed for the purpose of conducting the registered home occupation. For the purpose of this section an accessory building must have existed for at least 18 months prior to the onset of the business activity in order to be used as part of the home occupation] be an eligible area.
- (8) A registered home occupation must not require construction of any off-street parking area other than that required by the residential use, except that any lot, including one recorded [prior to] before June 1, 1958, with less than the minimum area required by the zone, must have 2 off-street parking spaces. [Newly constructed spaces must be located in the side or rear yard.] If there is a common parking area serving more than one dwelling unit, as in the case of multiple-family or other attached dwelling units, parking in connection with the registered home occupation must not encroach on parking serving neighboring dwelling units.
- (9) In the R-60 and R-90 zones:
 - (A) Not more than two motor vehicles [of any non-resident employee, patron, client, or any other non-resident person associated with] of anyone visiting a registered home occupation may be parked at the same time on a lot or parcel where a registered home occupation is conducted.

(B) A registered home occupation must have a [home occupation] residential parking area on the lot or parcel on which the registered home occupation is conducted that is no greater than that which will accommodate two parked motor vehicles, each with a maximum dimension of 8.5' x 18', except that the following driveways are deemed to accommodate two parked motor vehicles regardless of the size of the driveways:

- (i) a driveway 12 feet or less in width that provides direct access for a motor vehicle to a public or private right-of-way, to a garage, carport, or a home occupation residential parking area for one car; or,]
- (ii) a driveway 20 feet or less in width that provides direct access for a motor vehicle to a garage, carport, or home occupation residential parking area for more than one car.

(C) Before a Certificate of Registration may be issued, the operator of the home occupation must submit evidence acceptable to the Department that the drainage of the home occupation residential parking area will not damage any nearby property or public street.

(D) [No] A home occupation residential parking area, regardless of when created, may not be established, maintained, or used for parking of any motor vehicle on a parcel or lot on which a registered home occupation is conducted [pursuant to] under a registration certificate issued after November 18, 2002, except [in accordance with] under the requirements of this section.

(E) For a registered home occupation [for which] with a registration certificate [had been] issued before November 18, 2002, a home

occupation residential parking area [that accommodates] for more than two parked motor vehicles may continue to be used and maintained, [provided that] if such area has been used for parking for a registered home occupation for not less than three years [prior to] before November 18, 2002.

(F) [A registered home occupation for which a registration certificate was issued before November 18, 2002, must bring all home occupation residential parking areas into compliance with the requirements of this section, if any home occupation residential parking area is constructed or increased for use by the registered home occupation after November 18, 2002.]

[(G)] Except for a driveway covered in subparagraph (B)(i) or (ii), or as otherwise provided in this section, each home occupation residential parking area must be set back from a lot line no less than:

	R-90	R-60
(1) Front ¹	30 feet	25 feet
(2) Side ²	16 feet	16 feet
(3) Rear ³	25 feet	20 feet

¹ The setback may be reduced up to 50 percent if a four-foot high solid wood fence, masonry wall, berm, evergreen landscaping six feet high [at a time of planting] when planted, or a combination, effectively screens from view from the ground of adjoining or confronting property, vehicles parked in the home occupation residential parking area.

² The setback may be reduced up to 50 percent if a six-foot high solid wood fence, masonry wall, berm, evergreen landscaping six feet high [at time of planting] when planted, or a combination, effectively screens from view from adjoining or confronting property, vehicles parked in the home occupation residential parking area.

³ For a corner lot, the side yard adjoining a public right-of-way [shall] must be considered as a front yard, and the front yard setbacks apply.

- (10) In the Residential One-Family Zones regulated by Section 59-C-1.3 and in recorded residential subdivisions in the Agricultural Zones regulated by Division 59-C-9, any light commercial vehicle that is parked or garaged on-site in connection with the registered home occupation must [comply with] satisfy the regulations for light commercial vehicles in Section 59-C-1.31[, title "Land Uses."]. In the Townhouse and Multiple-Family Zones regulated by Sections 59-C-1.7 and 59-C-2.3, respectively, one light commercial vehicle may be parked on-site in connection with this use if parked in a garage.
 - (11) The display of a sign must [comply with the requirements established in] satisfy Article 59-F of this [chapter] Chapter.
- (d) A home health practitioner's office, in those agricultural or residential zones where it is allowed as a registered use [in accordance with] under Section 59-C-1.31, 59-C-2.3, or 59-C-9.3, must [comply with] satisfy the following requirements, except as provided in Paragraph (d)(9), below:
- (1) A use-and-occupancy permit is required[, in accordance with] under Section 59-A-3.2.

- (2) No more than 2 resident health practitioners are allowed; [no] a nonresident health practitioner is not allowed, but nonresident support staff is allowed. A nurse or physician's assistant under the supervision of the resident health practitioner is deemed to be support staff.
- (3) The home health practitioner(s) may be allowed to treat more than one patient or client at a time, provided that this does not result in more than 5 vehicle trips containing not more than 10 patients arriving or departing at the same appointment time.
- (4) Clients, patients, or other visitors must visit by appointment only and must be informed of the correct address and parking location. Emergency patients may visit without appointment; abuse of this exemption may lead to revocation of the Certificate of Registration.
- (5) An indoor waiting room is required if more than one patient or client will be on the premises at the same time.
- (6) The sale of goods on the premises is prohibited, except for medication prescribed by the health practitioner or a prescribed remedial device that cannot be obtained from a commercial source.
- (7) Off-street parking must be provided [in accordance with] under the requirement for a medical practitioner's office, as stated in Section 59-E-3.7. If the lot is in any one-family zone regulated by Section 59-C-1.3, the parking must be screened; the screening must be equivalent to that required by Section 59-E-2.92, and newly constructed parking must be located at the side or rear yard. If there is a common parking area serving more than one dwelling unit, as in the case of multiple-family dwelling units, parking in connection with the home health practitioner's office must not encroach on parking serving neighboring dwelling units.

- (8) The display of a sign must [comply with the requirements established in] satisfy Article 59-F of this [chapter] Chapter.
- (9) A home health practitioner who was in practice at the registered location [prior to] before February 5, 1990[,] is exempt from the requirements to:
 - (A) Obtain a use-and-occupancy permit, [as specified by] under Paragraph (1) above;
 - (B) Provide an indoor waiting room, [as specified by] under Paragraph (5) above;
 - (C) [Comply with] Satisfy the off-street parking provisions of Paragraph (7), above; and

These exemptions do not apply to any home health practitioner who begins to practice at the registered location on or after February 5, 1990, nor do they apply if the practitioner moves to another location. No other exemptions from the requirements of this Section 59-A-6.1 apply to any home health practitioner.

* * *

Sec. 4. DIVISION 59-C-1 is amended as follows:

DIVISION 59-C-1. RESIDENTIAL ZONES, ONE-FAMILY

* * *

Sec. 59-C-1.3 Standard Development

The procedure for approval is specified in Chapter 50.

59-C-1.31. Land uses.

No use is allowed except as indicated in the following table:

- **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot in the zones indicated, subject to all applicable regulations.

street, in connection with any use permitted in the zone. <u>Vehicles and machinery for agricultural use may be parked without restrictions.</u>										
Pipelines, aboveground.	SE		SE	SE	SE	SE	SE	SE	SE	SE
Pipelines, underground.	P	P	P	P	P	P	P	P	P	P

* * *

¹¹ [Including farm vehicles and farm machinery for agricultural use.] Not more than 3 light commercial vehicles and not more than one unoccupied recreation vehicle may be parked on any lot at any one time. One additional recreation vehicle may be used on a lot for dwelling purposes for not more than 3 days in any month. A tow truck is not permitted to park with a [disabled car] vehicle attached. The provision for parking motor vehicles off- street in connection with any use permitted in the RE-1 zone does not apply to a lot reclassified from the R- 200 to the RE-1 zone that does not meet the minimum lot size requirement of the RE-1 zone. A lot reclassified from the R-200 to the RE-1 zone that does not meet the minimum lot size requirement of the RE-1 zone is subject to the motor vehicle off-street parking provision in effect for the lot before the lot was reclassified from the R-200 to the RE-1 zone. To provide for a reasonable period of amortization, the use of a lot reclassified from the R-200 to the RE-1 zone that does not conform to this provision may continue to operate for one year following [(the effective date of this ZTA) [May 22, 2006]] May 22, 2006. [On that date, the] After that date, the use of the lot must [be brought into conformity with] satisfy this provision or cease to operate.

¹² [Including farm vehicles and farm machinery for agricultural use.] One light commercial vehicle may be parked on any lot or parcel [provided the vehicle meets all the following: (1) 10,000 pounds or less gross vehicle weight, (2) 19 feet or less in length measured from the extremes of the vehicle or load, or (3) 8 feet or less in height including racks needed for materials]. A tow truck is not permitted to park with a [disabled car] vehicle attached. One recreation vehicle may be parked on a lot or parcel; however, it must not be used for dwelling purposes for more than 3 days in any month. [Up to three commercial vehicles owned or operated by the resident of the property may be parked on any lot or parcel in the RMH-200 zone, provided: (1) the lot or parcel used to park commercial vehicles is at least one acre in size; (2) the commercial vehicles are parked in the rear yard of the lot or parcel; and (3) use of the lot or parcel to park commercial vehicles was established before October 23, 2000.] Parking for any vehicle or trailer in a front yard must be on a surfaced area; however, temporary parking for visitors, loading, unloading, or cleaning vehicles or trailers is permitted on any area.

* * *

* Not more than three light commercial vehicles may be parked on any lot or parcel in the RMH-200 zone at any time, provided: (1) the lot or parcel used to park light commercial vehicles is at least one acre in size; (2) the light commercial vehicles are parked in the rear yard of the lot or parcel; (3) use of the lot or parcel to park light commercial vehicles was established before October 23, 2000 ; and (4) the resident of the property is the owner or operator of the vehicles.

* * *

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
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59-C-1.328. Coverage.										
-Maximum percentage of net lot area that may be covered by buildings, including accessory buildings:	25	25	15	25	25	30	35	40		25
-Maximum percentage of tract that may be covered by buildings:									35	
-Maximum percentage of tract to be devoted to green areas:									50	
- <u>In the zones indicated, the maximum percentage of the area of the front yard that can be covered by surfaced area, excluding the surfaced area in a driveway on a pipestem or flag shaped lot:</u>				<u>30*</u>	<u>30*</u>	<u>30*</u>	<u>35*</u>			

* * *

- * a) Any surfaced area existing before {date of adoption} is not limited by this provision if it is not increased in area;
- b) Surfaced area may be a maximum of 50 percent of the front yard of a tract that has its primary access from a primary residential street, minor arterial road, major highway or arterial, or any State road;

c) Surfaced area consisting of 2 parking spaces no larger than 310 square feet in total area is not limited by this provision.

* * *

Sec. 5. DIVISION 59-C-9 is amended as follows:

DIVISION 59-C-9. AGRICULTURAL ZONES.

* * *

59-C-9.3 Land uses.

* * *

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TD R
(f) Transportation, Communication and Utilities:							
Airstrip, associated with farm.		SE ²	SE	SE			
Amateur radio facility.	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	P ^{46/} SE	
Cable communication system. ¹⁰	SE	SE	SE	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, carrying more than 69,000 volts.	SE	SE	SE	SE	SE	SE	SE
Electric power transmission and distribution line, overhead, carrying 69,000 volts or less.	P	P	P	P	P	P	P
Electric power transmission and distribution line, underground.	P	P	P	P	P	P	P
Helistop	SE	SE ^{2,11}	SE ^{2,11}	SE ¹¹			
Parking of motor vehicles, <u>other than heavy commercial vehicles</u> , off-street, in connection with any use permitted. <u>Vehicles and machinery for agricultural use may be parked on any size lot without restrictions.</u>	P ₋ *	P ₋ *	P ₋ *	P ₋ *	P	P ₋ *	P ₋ *

<u>A tow truck is not permitted to park with a vehicle attached on any size lot or parcel.</u>							
Parking of motor vehicles, off-street, in connection with commercial uses.	P ³⁹			P ³⁹			
* * *							

* On any lot or parcel smaller than 2 acres in size but larger than .5 acres, not more than 3 light commercial vehicles and not more than one unoccupied recreational vehicle may be parked at any one time. One additional recreational vehicle may be used on a lot or a parcel for dwelling purposes for not more than 3 days in any month. On any lot or parcel equal to or smaller than .5 acres in size, not more than one light commercial vehicle and not more than one unoccupied recreational vehicle may be parked at any time.

* * *

Sec.6. DIVISION 59-F-2. DEFINITIONS

Sign, portable: A sign installed on a support or structure that permits removal or relocation of the sign by pulling, carrying, rolling, or driving, such as a sign with wheels; a menu or sandwich board sign; an inflatable sign; an umbrella, but not a canopy sign, may be a temporary sign or a limited duration sign, but not a permanent sign. A sign attached or painted on a vehicle parked and visible from the public right-of-way is also bound by this division unless it is a currently licensed and registered vehicle used in the daily operation of the business. This does not include a sign on [a] any light or heavy commercial vehicle as defined in 59-A-2.1. which is operated within the public right-of-way.

Sec. 7. DIVISION 59-G-2. SPECIAL EXCEPTIONS-STANDARDS AND REQUIREMENTS is amended as follows:

* * *

Section 59-G-2.29. Home occupation, major

(k) In the Residential One-Family Zones regulated by Section 59-C-1.3 and in recorded residential subdivisions in the Agricultural Zones regulated by Division 59-C-9, any commercial vehicle that is parked or garaged on-site in connection with the home occupation must comply with the regulations for commercial vehicles in section 59-C-1.31, title "Land Uses." In the Townhouse and Multiple-Family Zones regulated by Sections 59-C-1.7 and 59-C-2.3, respectively, one light commercial vehicle may be parked on-site in connection with the home occupation if parked in a garage.

* * *

(n) A special exception for a major home occupation is granted for a two-year period and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies [the compliance procedures specified by] Section 59-G-1.3.

(1) The Hearing Examiner must provide written notice 60 days before an upcoming renewal date to each holder of a renewable special exception, with instructions to submit a renewal application and request an inspection by the Department of Permitting Services, if the holder of the special exception wishes to renew for two more years. The special exception continues in effect until:

- (A) the Hearing Examiner has provided written notice of the renewal date;
- (B) renewal has been granted or denied, or the special exception holder has declined to renew the special exception; or

- (C) the holder of the special exception has failed to respond to the notice of renewal before the special exception expires.
- (2) If the special exception holder declines to renew, notice of the consequent expiration of the special exception must be sent by regular mail to the special exception holder, the property owner, and all other persons entitled to notice.
- (3) If the holder of the special exception does not reply to notification of the renewal date within 30 days from the mailing of the notice, a second notice shall be sent to the special exception holder and the property owner by certified mail, stating the date on which the special exception will expire if a renewal application is not received. If no reply to the second notice is received, the Hearing Examiner must issue an Order stating that the special exception has expired. The Order must be sent to the special exception holder and the property owner by certified mail and to all other persons entitled to notice of the special exception, by regular mail.
- (4) Upon receipt of an application for renewal, the Hearing Examiner must issue notice of a public hearing. The Hearing Examiner must conduct this public hearing at least 30 days after notice is sent to all parties entitled to notice of the original special exception hearing. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the applicable provisions of this Chapter and conditions established by the Board of Appeals, and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.

- (5) If a special exception holder requests modification of the terms and conditions of the special exception in conjunction with a renewal request, the Hearing Examiner may make a decision on the requested modification as part of the decision on the renewal, without a public hearing, if in the Hearing Examiner's judgment:
- (A) the modification does not substantially alter the nature, character, intensity of use or the conditions of the original grant; and
- (B) the parties entitled to notice are given an opportunity to request a hearing and fail to do so.
- (6) If, in the Hearing Examiner's judgment, the requested modification represents a significant change that would not substantially alter the nature, character, intensity of use or the conditions of the original grant, the Hearing Examiner may make a decision on the modification and the renewal only after a public hearing convened with proper notice .

* * *

Sec. 8. Effective date. This ordinance takes effect 180 days after the date of Council adoption.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council