

M E M O R A N D U M

September 17, 2009

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz  Legislative Attorney

SUBJECT: Zoning Text Amendment 09-03, Home Occupations and Residential Off-Street Parking

On July 13, 2009 the Committee reviewed the material in the staff report but did not make any final recommendations, with one exception. The Committee did not wish to amend the housing code to change the number of people per square foot of habitable space, as recommended by staff. On September 14, 2009 the Committee discussed complaint data requested and issues identified in the staff memorandum. The Committee, by a vote of 3-0 unless otherwise noted, recommended the following changes from ZTA 09-03 as introduced:

- 1) amend the violation provision to allow the Planning Board the option of finding violations under the subdivision regulations;
- 2) amend the citation provision to be consistent with the Committee's recommendation on Bill 22-09 (to be determined at the Committee's September 21, 2009 meeting);
- 3) allow tow trucks that are less than 10,000 pounds gross vehicle weight, shorter than 21 feet long, and lower than 8 feet high to be parked on residentially zoned lots (2-1 with Councilmember Elrich voting to not allow any tow trucks on residentially zoned property);
- 4) add a definition of temporary parking;
- 5) amend the footnote concerning the RMH-200 zone to allow pre-existing heavy commercial vehicles to the extent previously permitted;
- 6) allow stone or rock quarries in the R-200 zone that are currently parking heavy commercial vehicles on their site to continue to do so;
- 7) require at least 160 square feet of surfaced area for each vehicle parked in the front yard; and
- 8) amend the minimum amount of surfaced area to 320 square feet without regard to the size of the front yard.

Question concerning boats on trailers

One recreational vehicle is allowed to be parked on a residentially zoned lot. Councilmember Floreen asked whether a boat and trailer is considered a recreational vehicle. The simple answer is yes. The definition of recreational vehicle includes the trailer for a boat without regard to the size of the boat or the trailer. ZTA 09-03 would not amend the current definition of recreational vehicle, which is as follows:

Recreational vehicle: A duly licensed and registered vehicle, with or without motor power, which is solely intended for the leisure use of the operator and guests. A recreational vehicle must not be used as an office nor have customer entry for a retail transaction. For the purpose of this Chapter, the following are recreation vehicles:

- (a) motor homes;
- (b) travel trailers;
- (c) campers or camping trailers, including truck inserts and collapsible units; or
- (d) **non-freight trailers as defined by the Maryland Motor Vehicle Administration, used to transport other leisure equipment such as a boat, horse, motorcycle, show car, race car, snowmobile, or bicycle.** (Emphases added)

Under ZTA 09-03, a tandem axle trailer would be classified as a heavy commercial vehicle; however, recreational vehicles, which include all boat trailers, are excluded. Council staff **incorrectly** stated on September 14 that all tandem axle trailers would be heavy commercial vehicles, even if the trailer was for a boat. The definition of recreational vehicle includes trailers of any size if they are used to transport leisure equipment. The following is the definition of heavy commercial vehicle proposed in ZTA 09-03.

Commercial vehicle, heavy: 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) greater than 10,000 pounds gross vehicle weight;
- (b) rated by the manufacturer with a load capacity of more than one ton;
- (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 machine or vehicle for agricultural use is not a heavy commercial vehicle.

Remaining issues

The Executive recommended a revision to ZTA 09-03 to include the R-40 zone. R-40 zones create communities of duplexes on lots of approximately 4,000 square feet. It is common for homes to have front yards of 800 square feet. It is likely that the minimum 320 square feet allowed by ZTA 09-03 (40 percent of an 800-square foot front yard) would also be the maximum for lots in this zone. **Staff recommends revising ZTA 09-03 to include the R-40 zone, although it may have limited effects.**

The revised ZTA attached to this packet includes minor editorial changes recommended by staff.

This packet contains:
ZTA 09-03 revised

© number
1-31

Zoning Text Amendment No: 09-03
Concerning: Home Occupations and Residential
Off-Street Parking
Draft No. & Date: 2 – 9/15/09
Introduced: May 5, 2009
Public Hearing: June 9, 2009
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: 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:

Boldface indicates a heading or defined term.

Underlining indicates text that is added to existing laws by the original text amendment.

[**Single boldface brackets**] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[**Double boldface brackets**] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

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.
- (c) In addition to all other remedies provided by law, any violation of a Planning Board Action as defined in Section 50-41 may be enforced under subsection (b) or under Section 50-41, at the discretion of the Planning Board.
- (d) The Planning Board may assign a hearing officer designated by the Planning Board, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter or any other Planning Board Action as defined in Section 50-41. The hearing officer must submit the required report and recommendation to the Planning Board not later than 60 days after the hearing record closes, but the hearing officer may by order extend the time to file the report.

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

Division 59-A-2. DEFINITIONS AND INTERPRETATION.

Sec. 59-A-2.1. Definitions.

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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]]~~ to store dismantled or wrecked motor vehicles, vehicle parts ~~[[thereof]]~~, or junk. An automobile sales lot is not a parking facility ~~[[for the purposes of this]]~~ ~~[chapter]~~ under this 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. A tow truck that is less than 10,000 pounds gross vehicle weight, shorter than 21 feet in length as measured under subsection (c), and less than 8 feet as measured under subsection (d) is also 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.

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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]] but not including an electrologist, mortician, nursing home administrator, pharmacist, or veterinarian. [[This definition includes a]] A registered nurse or physician's assistant is a health practitioner 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]] 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]] 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]] state or County law, except that [disposal of] medical waste must be [regulated as provided in] disposed of under [[Maryland]] State [[Laws]] laws and [[Regulations]] 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]] lot or parcel, 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]] does not include any addition to any building and any accessory building that was constructed within 18 months [[of the date]] after 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]),which may include a home health practitioner's office [[whenever]]if 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]]which 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]]which 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.

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

Division 59-A-3. BUILDING, USE AND OCCUPANCY PERMITS

REGISTRATION OF CERTAIN USES .

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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] requirements 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]] requirements, 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]]~~ lot or parcel by street address and either lot and block number or liber and folio;
- (c) Zone in which the ~~[[property]]~~ lot or parcel 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] requirements 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]]could 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]]if 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]] requirements 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 WITHOUT A WARNING UNDER SUBSECTION D(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]]State and County law, except that disposal of medical waste must be regulated [as provided in] by [[Maryland]] State [[Laws]]laws and [[Regulations]]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]]~~the merchandise 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]]~~must 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]]~~to conduct 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 the vehicle is 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]] No more than 2 registered home occupations [[is]] are allowed in any [[one]] dwelling unit.
 - (2) [[It]] The home occupation 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]]~~ counted in Paragraph (3) [[below]].

- (3) ~~[[A maximum of]]~~ No more than 20 visits per week, and no more than 5 per day, excluding deliveries, ~~[[is]]~~ are 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]]~~ must 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]]~~ 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]]~~ 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]] lots or parcels, 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]] lots or parcels, 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]] who is supervised by 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]] but not [[result in]] more than 5 vehicle trips containing not more than 10 patients [[arriving or departing]] may come or leave 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]] obtain a use-and-occupancy permit, [as specified by] under Paragraph (1) [[above]];
 - (B) [[Provide]] provide an indoor waiting room, [as specified by] under Paragraph (5) [[above]];
 - (C) [Comply with] [[Satisfy]] satisfy the off-street parking [[provisions]] requirements 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.

- **Special Exception Uses.** Uses designated by the letters "SE" may be authorized as special exceptions, [in accordance with the provisions of] under Article 59-G.

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
* * *										
(b) Transportation, communication and utilities.										
Airstrips, in the common open space.		P								
Amateur radio facility.	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE	P ⁵¹ /SE
Cable communications system.	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹	SE ⁹
Electric power transmission and distribution lines, overhead, carrying 69,000 volts or less.	P		P	P	P	P	P	P	P	P
Electric power transmission and distribution lines, underground.	P	P	P	P	P	P	P	P	P	P
Helistop. ⁴⁶										
Parking of automobiles, off-street, in connection with commercial uses.	P ³⁹	P ³⁹	P ³⁹	P ³⁹ , 43	[42]	[42]	SE	SE		SE
Parking of motor vehicles, <u>other than heavy commercial vehicles</u> , off-street, in connection with any use permitted in the zone. <u>Vehicles and machinery</u>	P ^{11,13}	P ¹¹	P ¹¹	P ^{12,13}	P ¹²	P [12]*				

<u>for agricultural use may be parked without restrictions.</u>										
Pipelines, aboveground.	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, and loading, unloading, or cleaning vehicles or trailers is permitted on any area. Temporary parking is infrequent; not more than 12 days per year.

* * *

³⁹ Parking of motor vehicles is permitted in an historic district [[in accordance with the provisions of Sec.]] under Section 59- A-6.22. Parking of heavy commercial vehicles in connection with a stone or rock quarry is not limited.

* One light commercial vehicle may be parked on any lot or parcel. A tow truck is not permitted to park with a 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. Not more than three [[light]] heavy 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]] lot or parcel 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]]~~ 320 square feet in total area is not limited by this provision .

(d) No more than one vehicle may be parked for every 160 square feet of surfaced area.

(e) The limit on surfaced area does not apply to stone or rock quarries in the R-200 zone.

* * *

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						
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</u>	P ₋	P ₋	P ₋	P ₋	P	P ₋	P ₋

any size lot without restrictions. A tow truck is not permitted to park with a vehicle attached on any size lot or parcel.							
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 Section 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]] land 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]] after the notice was mailed, a second notice [[shall]] must be sent to the special exception holder and the [[property]] land 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]] land 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]] Examiner finds that:

- (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]]~~ Examiner finds that 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