AGENDA ITEM #9
October 6, 2009

Action

MEMORANDUM

October 2, 2009

TO: County Council

FROM: Jeffrey L. Zyontz, Legislative Attorney

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

PHED Recommendation: On September 21, 2009 the Committee (2-0-1; Councilmember Knapp abstaining) recommended the approval of ZTA 09-03 with the following amendments:

1) allow the Planning Board the option of finding violations under the subdivision regulations;
2) allow the issuance of citation immediately or after a warning period has expired;
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) allow pre-existing heavy commercial vehicles parking in the RMH-200 zone to continue their use;
6) allow stone or rock quarries in the R-200 zone that are currently parking heavy commercial vehicles on their site to continue the use;
7) require at least 160 square feet of surfaced area for each vehicle parked in the front yard;
8) apply the parking provision of ZTA 09-03 to the R-40 zone; and
9) amend the minimum amount of surfaced area to 320 square feet without regard to the size of the front yard.

The Committee did not wish to amend the housing code to change the number of people per square foot of habitable space. The Committee was satisfied that all boat trailers would be defined as recreational vehicles and that 1 recreation vehicle was allowed on a lot. The Committee conducted worksessions on July 13, September 14, and September 21, 2009.

Post Committee issues

Should an amortization period be established after the effective date of ZTA 09-03 to extinguish parking violations?

Some residents are currently parking in front yards on non-surfaced areas. Some residents have less than 160 square feet of surfaced parking for each car parked in their front yard. These current uses may be deemed by a court to be legal non-conforming uses. Under that determination, the use could continue

until the use is abandoned for a 6 month period. The Executive would want these uses to cease after the effective date of ZTA 09-03.

Non-conforming uses can be extinguished by an amortization period related to the investment made in the use. As there is no investment made for parking on a front lawn and limited investment for crowding cars on surfaced area, the period to amortize these minimal investments would be minimal.

Staff recommends adding the following after line 616:

> (f) Parking in a front yard on a non-surfaced area or parking on less than 160 square feet of surfaced area for each vehicle must cease 6 months after {effective date}.

If this amortization period is adopted, the Council may wish to consider an effective date shorter than 6 months from adoption.

Should the Planning Board enforcement provision be the subject of a more comprehensive amendment?

After the Committee agreed to include provisions for the Planning Board's enforcement of the zoning ordinance, the Planning Board requested the introduction of a more comprehensive ZTA (ZTA 09-09). Staff recommends removing the provision from ZTA 09-03 and resolving the issue more comprehensively.

Background

Zoning Text Amendment (ZTA) 09-03, introduced at the request of the County Executive on May 5, 2009 would amend the Zoning Ordinance to:

1) allow the Department of Permitting Services (DPS) to immediately issue a citation to a person violating home occupation provisions;
2) require DPS to conduct on-site inspections before approving home occupations;
3) require use and occupancy certificates for certain dwellings;
4) require a person conducting a home occupation to prove that they live at the home being used for the business;
5) clarify the number of allowable trips to a home occupation;
6) define heavy and light commercial vehicles and prohibit off-street parking of heavy commercial vehicles on residentially zoned property;
7) limit the amount of parking on the front yard of a residential parcel; and
8) make the text of the Zoning Ordinance more precise, concise, and decisive.

The Planning Board transmitted its comments about ZTA 09-03 in a letter dated June 5, 2009. The Planning Board expressed concern that a single ZTA changed 2 subject areas: home occupations and off-street parking. The Board suggested that splitting the ZTA into those 2 subject areas would aid transparency. Finally, the Board recommended revisions to the enforcement provision to give the Planning Board the same enforcement powers as authorized under the subdivision ordinance. Planning staff did not recommend any revisions other than splitting the ZTA into 2 subject areas.

The County Executive supported ZTA 09-03 with a revision to include the R-40 zone in the zones with restricted off-street parking. He asked that ZTA 09-03 and Bills 22-09, 23-09, and 24-09 be treated as a comprehensive package to address code-related problems and their negative effects on communities.

A public hearing was held on June 9, 2009 at 7:30 p.m. A number of civic associations expressed support for ZTA 09-03. Some stated that it misses the mark by only indirectly addressing the problem of overcrowding; without addressing overcrowding, ZTA 09-03 would only force more cars to search for on-street parking. Some civic associations suggested further restrictions for off-street parking, more documentation for home occupations, and proof of residency. Building industry representatives questioned if a problem really exists, since the Executive's 2008 Code Enforcement Work Group Report relied on only 15 cases.

Recreational vehicle owners complained that the front yard parking restrictions would make it impossible to park their vehicles on their lots. The owners of commercial trucks parked on large lots requested relief from ZTA 09-03 and the current provisions in residential zones. A long- standing business, permitted by the current Ordinance, asked for a clause in the ZTA to recognize their use.

Issues

1) Should the County focus directly on overcrowding?

Staff recommended limiting the number of adults in a dwelling unit based on the floor area of the dwelling unit. In staff's opinion, this would be a direct method to prevent the problems of overcrowding identified in public testimony. **The Committee did not recommend any revisions to the housing code.**

2) Splitting the ZTA

ZTA 09-03 includes 2 major subject areas. It was advertised with a detailed description. It is as transparent as any other complex ZTA. **The Committee did not recommend splitting ZTA 09-03 into 2 separate ZTAs.**

3) Violations

A) Should the Planning Board's authority under subdivision regulations to penalize zoning violations be clarified? Should the Planning Board impose higher fines on zoning violations than the County?

The Planning Board determines the presence of and remedy for site plan violations.[1] Subdivision violations and zoning actions are referred to in the current zoning law's violation provision.[2] Section 50-41 in the subdivision law applies to zoning and subdivision violations.[3] The Planning Board wants the option of issuing citations under §59-A-1.3(b) or proceeding under §50-41. This change would correct

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[1] Under the Zoning Ordinance, the Planning Board also approves project plans. Project plans always require an approved site plan.

[2] §59-A-1.3(c):

> 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.

[3] §50-41 (a):

> "Planning Board Action. A final decision on a preliminary plan, site plan, project plan, supplementary plan, water quality plan or other plan, including all associated terms, conditions, requirements and other obligations or limits, made by the Planning Board under state law and Chapters 50 and 59, including any regulations issued under state or County law.

the current ambiguity in the Planning Board's authority. **Given the current reference to §50-41 and the content of §50-41, the Committee supported this change.**

The Planning Board recommended an amendment to ZTA 09-03 to allow it to issue fines up to $1,000 for those elements of the Code under its authority.[4] ZTA 09-03, as introduced, removed dollar limits and referred to class A violations, defined elsewhere in the Code. **The Committee recommended removing the dollar limits because §50-41 has citation dollar limits.**[5] The recommended §59-A-1.3(c) would then read:

> 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.

B) Should the County issue a citation if an unexpired notice of violation is outstanding?

ZTA 09-03 would allow the County to issue a citation, even if a warning of violation was issued.[6] A warning would give the owner 30 days to correct the violation.[7] The County also wants the authority to issue a citation instead of a warning, at its discretion. The County wants this authority as a way to correct each violation in the shortest possible time. This is similar to the Executive's proposals in Bill 22-09.

As a practical matter, the County would never get a court hearing on a citation until after the warning expired. A warning would generally give the offender 30 days to correct the violation (60 days, if the correction requires a special exception). Even if a hearing were held, the judge is not likely to enforce a citation until the warning expired. **The Committee recommended revising ZTA 09-03 to not allow a citation within a warning period.**

C) Can the County find violations of the proposed limits on front yard surfaced area?

ZTA 09-03 is silent on how the County will enforce the limits on "surfaced area" in front yards. Currently, DPS does not issue permits for paving or gravel on residential lots. DPS does not intend to do so, even if ZTA 09-03 is approved. The Hillandale Citizens Association recommended an amendment to require paving permits. DPS intends to respond to complaints. If the surfaced area exceeds Code limits, the homeowner may avoid a violation by proving to DPS that the surfaced area existed before ZTA 09-03 took effect. DPS would require the owner to remove any new surfaced area over the limits in ZTA 09-03. **The Committee recommended enacting ZTA 09-03 as introduced on this issue. DPS may recommend a paving permit if experience indicates enforcement problems.**

4) Definitions

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[4] The Planning Board's proposed revision would add the following to §59-A-1.3:

> In addition to all other remedies provided by law, any violation of a Planning Board action as defined in 50-41 may be enforced as enumerated here and in Chapter 50-41, and be punished by a civil fine not exceeding $1,000 for the initial violation and $500 for each day the violation continues.

[5] §50-41 (c)(2):

> The maximum amount of the fine for each violation of a Planning Board Action is set at $500.00 for each day that the violation has occurred.

[6] ZTA 09-03 proposes to add the following as a replacement for §59-A-3.43(e):

> 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.

[7] ZTA 09-03 would amend §59-A-3.43(d):

> If the Department determines that there is a violation, a warning may be issued, and the violation must be corrected within 30 days.

ZTA 09-03 would amend or establish the definitions of:

automobile parking facility;
commercial vehicle (distinguishing heavy and light);
proof of home address (detail left to regulations);
home occupations - limiting vehicles associated with landscaping occupations;
eligible area for home occupation;
visits for home occupations; and
surfaced area (for parking).

A) Commercial vehicles

A footnote in the zoning law limits commercial vehicle parking in residential zones to vehicles up to 19 feet long.[8] This ZTA would define light commercial vehicles as those that are shorter than 21 feet. It would also increase the allowable load capacity from ¾ ton to 1 ton. In these respects, ZTA 09-03 would be more permissive than the current law.

All aspects of the proposed definition would conform to amendments recently approved in Bill 27-08, which limited the parking of heavy commercial (longer than 21 feet or with a load capacity greater than 1 ton) vehicles on-street in residential areas. Heavy commercial vehicles would be required to park only in commercial areas.

Tandem axle trailers may be classified as heavy commercial vehicles, depending on their size, under this ZTA.[9] The Hillandale Citizens Association wants to include as a commercial vehicle any vehicle that hauls trash or that can be categorized as a hearse. The Association also recommends making home-based tow truck businesses operate as a special exception.

Tow trucks would be classified as heavy commercial vehicles under ZTA 09-03. Parking any heavy commercial vehicle would be prohibited under ZTA 09-03. Staff recommended ZTA 09-03 as introduced. **The Committee recommended amending ZTA 09-03 to allow smaller tow trucks to be parked on residential lots.**

B) Proof of home address

A home occupation must be in the home of the person who performs the occupation. Currently, the Zoning law requires that the worker must reside in the home at least 220 days a year.[10] DPS found this provision unenforceable because an inspector or a resident cannot monitor a house every day of the year. ZTA 09-03 would require proof of home address, and defines proof of home address as:

> ...any valid document showing where a person lives as established by regulations under method 2 of Section 2A-15.

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[8] §59-C-1.31(b) footnote 12:

> ...One 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....

[9] A larger boat would require a tandem axle trailer.

[10] §59-A-6.1(a)1.

ZTA 09-03 does not specify the documents that would be sufficient to determine proof of home address. Proof of citizenship or immigration status would **not** be required, although some types of documentation that would prove one's home address require citizenship or legal residence status, such as a driver's license, voter registration, or passport. Documents that are evidence of home address but do not prove immigration status include vehicle registrations, financial accounts, and utility bills. The Council can, as the Hillandale Civic Association recommended, specify the documents that would be sufficient evidence that a work site is the home of the person working, rather than leave the issue to Executive regulations.[11]

The County Civic Federation recommended that registered home occupation applications for rented property require the applicant to submit the rental agreement between the owner and the renter. It is a reasonable assumption that an owner would evict any tenant who occupied the owner's house without consent. **The Committee recommended enacting ZTA 09-03 as introduced.**

C) Visits

The Zoning law allows home occupations that have minimum impacts on their neighbors. One element of the impact of an occupation is the number of visits related to the occupation. The ZTA would add a definition of home occupation visits as follows:

> Any trip to the home occupation site for any purpose related to the home occupation.

This is a broad definition that includes any trip by any mode of transportation by employees, customers, or suppliers. ZTA 09-03 would remove the requirement for maintaining a log of visitors to a home occupation. DPS enforcement would rely on observations of staff or neighbors. **The Committee recommended ZTA 09-03 as introduced.**

5) Use and Occupancy permit

ZTA 09-03 would require a use and occupancy permit for single-family dwelling units. Currently, the Zoning law exempts residential buildings from this requirement. A final inspection would be required before a use and occupancy permit is approved. Currently, some building permit applicants do not obtain a final inspection before occupying a house. The result is that DPS cannot distinguish between finished houses and unfinished construction projects. For the County to limit interminable construction sites next to neighbors, knowing which sites are still unfinished is a necessary precondition. Requiring a use and occupancy permit will let DPS know when construction terminated. **The Committee recommended ZTA 09-03 as introduced.**

6) Home Occupations

The current zoning law allows 3 types of home occupations: no impact; registered; and medical practitioner. Increased activity could require a no-impact occupation to register with DPS; all medical practitioners must also register. Some home occupations exceed the limits of a registered home occupation but may be allowed as a special exception. ZTA 09-03 would clarify or amend some provisions, in addition to the changes made by revising definitions:

A) A violation that could be corrected by the approval of a special exception must stop operation or comply with the conditions of a registered home occupation before a special exception is filed. The current law is not clear on this point.

[11] The Hillandale Civic Association recommended "rigorous document – not a utility bill, or other miscellaneous document."

B) The requirement for a log is removed. The Hillandale Citizens Association recommends retaining the log requirement. DPS believes that the logs have not aided their enforcement.
C) The list of allowable equipment is updated and broadened to allow for technological changes. As an example, few offices now have typewriters.
D) The on-site parking for a no-impact home occupation is increased from 1 space to 2 spaces, but the number of visits (5 per week) is not changed.
E) On-site employees are clearly limited to 1 in a 24 hour period.
F) An unenforceable trip limit involving the sale of items is removed, but the current total trip limits are retained.

The Committee recommended ZTA 09-03 as introduced.

7) Use limit

A) Commercial Vehicles

ZTA 09-03 does not change the number of commercial vehicles permitted in each zone. It allows light commercial vehicles to the same extent that commercial vehicles are now allowed. Heavy commercial vehicles would be prohibited. It requires all vehicles parked in the front yard to be in a surfaced area. **The Committee recommended revising the new footnote in the use table to allow heavy commercial vehicles in the RMH-200 zone, to the extent that they are currently allowed. To do otherwise would reverse the Council's previously approved grandfather clause.**

Testimony from a conforming commercial use in a residential zone wanted assurance that the use limits would not apply to their business. ZTA 09-03 is overbroad in the respect that it applies to commercial uses. **The Committee recommended revising ZTA 09-03 to avoid interfering with a conforming stone quarry business.** This can be accomplished by the following footnote:

> Stone and rock quarries allowed in the R-200 zone may continue to provide parking for heavy commercial vehicles associated with the use.

Another business that parks heavy commercial vehicles on R-200 lots less than 2 acres in size testified that it should be allowed to continue to park the vehicles. The current law does not allow these vehicles to be parked on residentially zoned lots. The business that testified has not been able to prove that it is a legal non-conforming use. Rather, it appears to violate the current zoning law; these facts are yet to be determined. In either event, ZTA 09-03 as introduced would not change its status. The business is asking relief from current restrictions. Allowing 3 heavy commercial vehicles to be parked on a large lot might resolve its problem but may cause problems for the neighbors. **The Committee recommended ZTA 09-03 as introduced.**

B) Recreational Vehicles

This ZTA would continue to allow one recreational vehicle per lot, which under Bill 27-08 must be parked on a surfaced area, except when loading and unloading. Even though 1 recreational vehicle could be parked on a lot, on a small lot the surfaced area may be less than the area needed for a recreational vehicle. These vehicles are no longer allowed to park on-street. Testimony contended that the 18-hour period allowed for on-street loading was too short. ZTA 09-03 would allow 1 recreational vehicle on-site, but it may make the front yard off-limits on small lots if the area needed for parking the recreational vehicle would exceed the surfaced area limits. **The Committee recommended ZTA 09-03 as introduced.**

8) Surfaced area limit

ZTA 09-03 would limit the front yard surfaced area for parking to the greater of 310 square feet or a percentage of the front yard.[12] The Civic Federation recommended limiting the parking below the percentages recommended by ZTA 09-03 and applying the percentage to the side and rear yards as well. The Hillandale Citizens Association recommended allowing coverage of 50 percent of the front yard in areas with an on-street parking shortage. A resident of Aspen Hill complained about cars tightly packed on a neighboring yard.

Limiting parking as proposed by civic testimony would limit impervious surface but would also force more cars to seek on-street parking. ZTA 09-03 addresses a problem of neighborhood hygiene.[13] To that end, tightly packed cars are more appropriate for a commercial car storage lot than a residential neighborhood. **The Committee recommended requiring at least 160 square feet of surfaced area for every car parked on the area. (This would increase the minimum amount of surfaced area to 320 square feet.) The Committee also recommended including a definition of temporary parking in the ZTA.**[14]

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. **The Committee recommended revising ZTA 09-03 to include the R-40 zone, although it may have limited effects.**

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[12] Corner lots have 2 front yards.
[13] Prince Georges County limits parking to paved areas to limit blight and enhance property values.
[14] Temporary parking is infrequent (not more than once a month) or a total of 12 days a year.

Zoning Text Amendment No: 09-03
Concerning: Home Occupations and Residential Off-Street Parking
Draft No. & Date: 3 – 9/22/09
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 sections 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 AND 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.*

OPINION

Zoning Text Amendment (ZTA) 09-03, introduced at the request of the County Executive on May 5, 2009 would amend the Zoning Ordinance to:

1) allow the Department of Permitting Services (DPS) to immediately issue a citation to a person violating home occupation provisions;
2) require DPS to conduct on-site inspections before approving home occupations;
3) require use and occupancy certificates for certain dwellings;
4) require a person conducting a home occupation to prove that they live at the home being used for the business;
5) clarify the number of allowable trips to a home occupation;
6) define heavy and light commercial vehicles and prohibit off-street parking of heavy commercial vehicles on residentially zoned property;
7) limit the amount of parking on the front yard of a residential parcel; and
8) make the text of the Zoning Ordinance more precise, concise, and decisive.

The Planning Board transmitted its comments about ZTA 09-03 in a letter dated June 5, 2009. The Planning Board expressed concern that a single ZTA changed 2 subject areas: home occupations and off-street parking. The Board suggested that splitting the ZTA into those 2 subject areas would aid transparency. Finally, the Board recommended revisions to the enforcement provision to give the Planning Board the same enforcement powers as authorized under the subdivision ordinance. Planning staff did not recommend any revisions other than splitting the ZTA into 2 subject areas.

The County Council held a public hearing on June 9, 2009 to receive testimony concerning the proposed text amendment. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held worksessions on July 13, September 14, and September 21, 2009 to review the amendment. On September 21, 2009 the Committee (2-0-1; Councilmember Knapp abstaining) recommended the approval of ZTA 09-03 with the following changes:

1) allow the Planning Board the option of finding violations under the subdivision regulations;
2) allow the issuance of a citation immediately or after a warning period has expired;
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) allow pre-existing heavy commercial vehicles parking in the RMH-200 zone to continue their use;
6) allow stone or rock quarries in the R-200 zone that are currently parking heavy commercial vehicles on their site to continue the use;
7) require at least 160 square feet of surfaced area for each vehicle parked in the front yard;
8) apply the parking provision of ZTA 09-03 to the R-40 zone; and
9) amend the minimum amount of surfaced area to 320 square feet without regard to the size of the front yard.

The District Council reviewed Zoning Text Amendment No. 09-03 at a worksession held on October 6, 2009 and agreed with the recommendations of the Planning, Housing, and Economic Development Committee.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 09-03 will be approved as amended.

ORDINANCE

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 any other remedy 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.

[[(c)]](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.

* * *

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

29 facility must not be used [[for storage of]] to store dismantled or wrecked motor vehicles,
30 vehicle parts [[thereof]], or junk. An automobile sales lot is not a parking facility [[for the
31 purposes of this]] [chapter] under this Chapter. This definition includes 6 or more parking
32 spaces serving a special exception use. (See [section] Section 59-E-2.[92]83 for special
33 requirements applying to a smaller parking area serving a special exception use in a one-
34 family residential zone.)

35 * * *

36 **Commercial vehicle, heavy**: [A duly licensed and registered vehicle used to transport
37 passengers or property to further a commercial enterprise. A commercial vehicle must
38 not be used as an office nor have customer entry for a retail transaction. For the purposes
39 of this Chapter the following are also commercial vehicles] Any motor vehicle, tandem
40 axle trailer, or semi-trailer used for carrying freight or merchandise, or used in the
41 furtherance of any commercial enterprise that is:

42 (a) [vehicles of more] greater than 10,000 pounds gross vehicle weight;

43 (b) [vehicles with a manufacturers] rated by the manufacturer with a load capacity of
44 [more than 3/4] more than one ton;

45 [(c) vehicles registered as commercial vehicles by the Motor Vehicle Administration of
46 the state of Maryland or other jurisdiction;

47 (d) "for hire" vehicles as classified by the Maryland Motor Vehicle Administration;

48 (e) a funeral motor vehicle or ambulance as classified by the Maryland Motor Vehicle
49 Administration; or

50 (f) a freight trailer or semitrailer as defined by the Maryland Motor Vehicle
51 Administration;]

52 (c) 21 feet long or longer, measured from the extremes of the vehicle, including any
53 object on the vehicle; or

54 (d) more than 8 feet high, with properly inflated tires, measured from the ground to the
55 highest part of the vehicle, including any racks but excluding any antennas.

56 A recreational vehicle, a motor vehicle owned by the County or other government
57 agency, or a [farm] machine or [farm] vehicle for agricultural use is not a heavy
58 commercial vehicle. A tow truck that is less than 10,000 pounds gross vehicle weight,
59 shorter than 21 feet in length as measured under subsection (c), and less than 8 feet as
60 measured under subsection (d) is also not a heavy commercial vehicle.
61 **Commercial vehicle, light**: Any motor vehicle or trailer used for carrying freight or
62 merchandise, or used in [[the]] furtherance of any commercial enterprise that is not a
63 heavy commercial vehicle. A light commercial vehicle must not be used as an office or
64 have any entry for transactions. A recreational vehicle, a motor vehicle owned by the
65 County or other government agency, or a machine or [[a]] vehicle for agricultural use is
66 not a light commercial vehicle.
67 * * *
68 **Home address, proof of**: Any valid document showing where a person lives as
69 established by regulations under method 2 [[of Section 2A-15]].
70 * * *
71 **Home health practitioner's office**: The office of a health practitioner who resides in the
72 dwelling unit in which the office is located. For this purpose, a health practitioner is
73 [[defined as]] a person who is licensed or certified by a Board under the Maryland
74 Department of Health and Mental Hygiene and has an advanced degree in the field from
75 an accredited educational institution, [[except that this definition excludes]] but not
76 including an electrologist, mortician, nursing home administrator, pharmacist, or
77 veterinarian. [[This definition includes a]] A registered nurse or physician's assistant is a
78 health practitioner only if that person has an advanced degree in the field and practices
79 independently. A home health practitioner's office that does not qualify for registration
80 [in accordance with] under Sections 59-A-3.4 and 59-A-6.1(a) and (d) may obtain a
81 special exception as a major home occupation[[,]] [in accordance with] under Section 59-
82 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.

* * *

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

Division 59-A-3. BUILDING AND 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).

167 The use-and-occupancy permit cannot be issued unless the practitioner has signed
168 the Affidavit of Compliance required by Section 59-A-3.42.]
169 [(b)] Land or buildings used exclusively for agricultural purposes.
170 [(c)] (b) A use for which a valid occupancy permit was issued and not revoked
171 [immediately prior to] before June 1, 1958.
172 [(d)] (c) A child day care facility for up to 8 children.
173 [(e)] (d) A transitory use.
174 * * *
175 **Sec. 59-A-3.4. Registration of a home occupation or home health practitioner's**
176 **office.**
177 **59-A-3.41. Requirement.**
178 Any home occupation (except a no-impact home occupation), or home health
179 practitioner's office[, as defined in Section 59-A-2.1,] that [complies with] satisfies
180 Section 59-A-6.1 and is not required to have a special exception must be registered with
181 the Department. [At the time of registration, the] An application for registration must be
182 submitted to the Department. The Department must give the registrant a copy of the
183 applicable [[regulations]] [as stated in] requirements under Section 59-A-6.1 when the
184 applicant submits the application. [An application must be submitted to the Department,
185 which] The Department must maintain the Home Occupation and Health Practitioner
186 Registry and issue a Certificate of Registration if the use [complies with] satisfies Section
187 59-A-6.1.
188 **59-A-3.42. Application.**
189 The application must include an Affidavit of Compliance with those [[regulations]]
190 requirements, which the applicant must sign. It must also provide the following
191 information:
192 (a) Manner in which the operation of the home occupation [complies with] satisfies
193 Section 59-A-6.1;

194 (b) Location of the [[property]] lot or parcel by street address and either lot and block
195 number or liber and folio;
196 (c) Zone in which the [[property]] lot or parcel is located;
197 (d) Area of the lot or parcel, in square feet or acres;
198 (e) Total floor area of the dwelling unit and the amount of floor area to be [utilized]
199 used for the home occupation; floor area of any existing accessory building to be
200 [utilized] used for the home occupation;
201 (f) Location and number of off-street parking spaces;
202 (g) [Evidence that the applicant resides in the home for a period of at least 220 days in
203 each calendar year] Proof of home address; and
204 (h) Other pertinent information required by the Department.
205 (i) For a home health practitioner's office only, evidence that the practitioner is
206 exempt from [[the provision of]] Section 59-A-6.1(d)(9) if applicable. If the
207 practitioner is not exempt, a copy of the use-and-occupancy permit required by
208 Section 59-A-3.21(a) must accompany the application, and the practitioner must
209 describe the location of [an] any indoor waiting room for patients.
210 **59-A-3.43. Compliance and Enforcement.**
211 (a) By signature of the Affidavit of Compliance, the applicant for a registered home
212 occupation or home health practitioner's office affirms that he or she resides in the
213 dwelling unit in question and agrees to [comply with] satisfy Section 59-A-6.1 [[of
214 this Chapter]] and [[to]] take whatever action is required by the Department to
215 bring the home occupation or practitioner's office into compliance[[,]] if
216 complaints of noncompliance are received and verified.
217 (b) [When the application for the registered home occupation is completed and the
218 affidavit is signed, the Department must determine whether the home occupation
219 or practitioner's office, as described in the application, complies with the applicable
220 sections of this Chapter. If it does comply, the] The Department must record [it]
221 the home occupation in the Home Occupation and Health Practitioner Registry and

222 issue a Certificate of Registration if the Department determines that the application
223 satisfies the applicable [[sections]]requirements of this Chapter. A registered home
224 occupation may begin operation [without] after an approved on-site inspection.
225 The home occupation or practitioner's office must [not] be recorded in the
226 Registry, and the Certificate must [not] be issued only if the home occupation or
227 practitioner's office, as described, [does not comply fully with] satisfies Section 59-
228 A-6.1.

229 (c) The Home Occupation and Health Practitioner Registry must be readily available
230 for public inspection. If the Department receives [written notice of a violation of] a
231 complaint about a registered home occupation or home health practitioner's office,
232 an inspector must inspect the property and determine, within 90 days after receipt
233 of the complaint, whether there is a violation of the provisions of this [section]
234 Section or Section 59-A-6.1. [If the Department determines that there is no
235 violation, the operator of the home occupation or home health practitioner's office
236 and the complainant must be so notified in writing.]

237 (d) If the Department determines [at any time] that there is a violation, the Department
238 may issue a warning [must] [[may be issued]] notice, and the violation must be
239 corrected within 30 days after the warning notice is issued. [If it is not corrected,
240 the Department must notify the operator of the home occupation or home health
241 practitioner's office that either:]

242 [(1) The home occupation or home health practitioner's office must cease
243 immediately; or

244 (2)] In the case of any violation that [[might]] could be remedied with a special
245 exception, a petition must be filed within [10] 60 business days for a special
246 exception for a major home occupation [in accordance with] under Section
247 59-G-2.29. Operation of the registered home occupation or home health
248 practitioner's office may continue until the Board has acted on the petition [[,
249 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: [[at any time, including after the issuance of a warning under subsection (d), even if time remains for remedial action to be taken.]]

(1) immediately, instead of a warning notice under Subsection (d); or

(2) 30 days or more after the warning notice was issued under Subsection (d).

* * *

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.]

277 [(3)](2) The amount of floor area used for the home occupation or home health
278 practitioner's office must not exceed 33 percent of the [total floor] eligible
279 area of [the dwelling unit and] any existing [accessory] building on the same
280 lot or parcel. [Any enlargement of the total floor area resulting from
281 construction completed on or after the date of commencement of the home
282 occupation or within the 18 months immediately preceding commencement
283 of the home occupation must be excluded from the total floor area on which
284 this calculation is based.]

285 [(4)](3) [No] Any equipment or process that creates a nuisance [such as noise,
286 vibration, glare, fumes, odors, or electrical or electronic interference
287 detectable at or beyond the lot line of a detached dwelling unit or the floor,
288 ceiling or party wall of an attached dwelling unit is] or violates any law is
289 not allowed in connection with the operation of a home occupation or home
290 health practitioner's office, nor is this operation allowed to involve use,
291 storage, or disposal of:

292 (A) A quantity of a petroleum product sufficient to require a special
293 license or permit from the fire marshal; or

294 (B) Any material defined as hazardous or required to have a special
295 handling license [[by the Montgomery County Code, as amended, or
296 the Annotated Code of Maryland, as amended]] under State and
297 County law, except that disposal of medical waste must be regulated
298 [as provided in] by [[Maryland]] State [[Laws]]laws and
299 [[Regulations]] regulations.

300 [(5)](4) [No truck] Truck deliveries are not permitted, except for parcels delivered
301 by public or private parcel services that customarily make residential
302 deliveries.

303 [(6)](5) A home occupation or home health practitioner's office found to be in
304 violation of [[any provision of]] Section 59-A-6.1 is subject to the
305 enforcement procedures [stated in] under Section 59-A-3.43(c), (d), and (e).
306 (b) A no-impact home occupation must comply with the following standards:
307 (1) It must be conducted by a member or members of the family[, as defined in
308 Section 59-A-2.1,] residing in the dwelling unit. No non-resident employees
309 are permitted.
310 (2) A maximum of 5 visits per week, including deliveries, is allowed in
311 connection with no-impact home occupations on one lot or parcel. [For the
312 purposes of this section, a "visit" is defined as a visit to the home by one
313 automobile transporting one or more clients or customers.]
314 (3) [No] The sale of goods on the premises is not allowed.
315 (4) Display or storage of goods is limited to samples of merchandise that may be
316 ordered by customers to whom [[it]]the merchandise will be delivered at off-
317 site locations, or merchandise awaiting such delivery, but [in no event must]
318 the storage of merchandise awaiting delivery must not exceed 30 square feet
319 of floor area.
320 (5) [No equipment] Equipment or facilities [[may]]must not be used, other than:
321 (A) Domestic or household equipment;
322 (B) Office equipment[, such as a typewriter, word processor, calculator or
323 computer]; or
324 (C) [Art or handicraft equipment, such as a hand loom, spinning wheel,
325 potter's wheel, kiln, and woodworking tools, or wine-making and
326 beer-making equipment.] Any equipment reasonably necessary for art
327 production, handicrafts, or making beer or wine.
328 (6) If an accessory building is used for any part of the no-impact home
329 occupation, there must be no external evidence of such use. [No more than]
330 Only one accessory building may be used for this purpose. A new accessory

331 building must not be constructed [[for the purpose of conducting]]to conduct
332 the home occupation. For the purpose of this [[section]] Section, an
333 accessory building must [have existed for at least 18 months prior to the
334 onset of the business activity in order to be used as a part of the home
335 occupation] be an eligible area.
336 (7) In the residential one-family zones regulated by Section 59-C-1.3 and in
337 recorded residential subdivisions in the agricultural zones regulated by
338 Division 59-C-9, any commercial vehicle that is parked or garaged on-site in
339 connection with the no-impact home occupation must [comply with] satisfy
340 the regulations for commercial vehicles in Section 59-C-1.31[, titled "Land
341 Uses."]. In townhouse and multiple family dwellings in zones other than
342 residential one-family or agricultural, one light commercial vehicle may be
343 parked on-site in connection with this use, if the vehicle is parked in a
344 garage.
345 (8) The display of a sign must [comply with the requirements established in]
346 satisfy Article 59-F [[of this [chapter] Chapter]].
347 (9) A no-impact home occupation must have no discernible impact on the
348 surrounding neighborhood and must be accessory to the residential use of
349 the dwelling unit in which it occurs.
350 (10) In the R-60 and R-90 zones[:
351 (A) Not], not more than [one] two motor [vehicle] vehicles [of a patron,
352 client, or any other non-resident using,] visiting[, or associated with] a
353 no-impact home occupation may be parked at the same time on a lot
354 or parcel where a home occupation is conducted.
355 (c) A registered home occupation in a residential or agricultural zone, as [provided by]
356 allowed under Section 59-C-1.31, 59-C-1.71, 59-C-2.3 or 59-C-9.3, must [comply
357 with] satisfy the following standards:

358 (1) [[A maximum of]] No more than 2 registered home occupations [[is]] are
359 allowed in any [[one]] dwelling unit.
360 (2) [[It]] The home occupation must be conducted by a member or members of
361 the family[, as defined in Section 59-A-2.1,] residing in the dwelling unit,
362 and may employ no more than one nonresident assistant or business
363 associate [who is required to be at the dwelling unit for any length of time
364 during the 24-hour day]. For the purposes of this [[section]] Section, no
365 more than one employee may visit the dwelling unit within any 24 hour
366 period. The arrival and departure of the nonresident assistant or associate are
367 not [[included]] counted in Paragraph (3) [[below]].
368 (3) [[A maximum of]] No more than 20 visits per week, and no more than 5 per
369 day, excluding deliveries, [[is]] are allowed in connection with one or both
370 registered home occupations on one lot or parcel. [For the purposes of this
371 section, a "visit" is defined as a visit to the home by one automobile
372 transporting one or more clients or customers. Visits by] Trips to the home
373 occupation by employees or business associates for the purpose of picking
374 up paychecks or work orders, or collecting equipment or merchandise for
375 use, sale, or delivery at off-site locations are not permitted.
376 (4) The sale of goods on the premises is limited to:
377 (A) Handicrafts or art products or similar hand-made products or services
378 such as dressmaking, hand-weaving, block-printing, jewelry, pottery,
379 and musical instruments, which are produced on site by a resident of
380 the dwelling; or
381 (B) [Up to 5 visits per month that involve the] The sale of items
382 customarily ordered on the premises of the registered home
383 occupation for delivery at a later date, to customers at other locations.
384 However, the delivery of the goods to the customer must occur off-
385 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]] 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.

414 [Newly constructed spaces must be located in the side or rear yard.] If there
415 is a common parking area serving more than one dwelling unit, as in the case
416 of multiple-family or other attached dwelling units, parking in connection
417 with the registered home occupation must not encroach on parking serving
418 neighboring dwelling units.

419 (9) In the R-60 and R-90 zones:

420 (A) Not more than two motor vehicles [of any non-resident employee,
421 patron, client, or any other non-resident person associated with] <u>of</u>
422 <u>anyone</u> <u>visiting</u> a registered home occupation may be parked at the
423 same time on a lot or parcel where a registered home occupation is
424 conducted.

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

432 (i) a driveway 12 feet or less in width that provides direct access
433 for a motor vehicle to a public or private right-of-way, to a
434 garage, carport, or a home occupation residential parking area
435 for one car; or[,]

436 (ii) a driveway 20 feet or less in width that provides direct access
437 for a motor vehicle to a garage, carport, or home occupation
438 residential parking area for more than one car.

439 (C) Before a Certificate of Registration may be issued, the operator of the
440 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

470

471 [1] The setback may be reduced up to 50 percent if a four-foot
472 high solid wood fence, masonry wall, berm, evergreen
473 landscaping six feet high [at a time of planting] when planted,
474 or a combination, effectively screens from view from the
475 ground of adjoining or confronting [[property]] lots or parcels,
476 vehicles parked in the home occupation residential parking
477 area.

478 [2] The setback may be reduced up to 50 percent if a six-foot high
479 solid wood fence, masonry wall, berm, evergreen landscaping
480 six feet high [at time of planting] when planted, or a
481 combination, effectively screens from view from adjoining or
482 confronting [[property]] lots or parcels, vehicles parked in the
483 home occupation residential parking area.

484 [3] For a corner lot, the side yard adjoining a public right-of-way
485 [shall] must be considered as a front yard, and the front yard
486 setbacks apply.

487 (10) In the Residential One-Family Zones regulated by Section 59-C-1.3 and in
488 recorded residential subdivisions in the Agricultural Zones regulated by
489 Division 59-C-9, any light commercial vehicle that is parked or garaged on-
490 site in connection with the registered home occupation must [comply with]
491 satisfy the regulations for light commercial vehicles in Section 59-C-1.31[,
492 title "Land Uses."]. In the Townhouse and Multiple-Family Zones regulated
493 by Sections 59-C-1.7 and 59-C-2.3, respectively, one light commercial
494 vehicle may be parked on-site in connection with this use if parked in a
495 garage.

496 (11) The display of a sign must [comply with the requirements established in]
497 satisfy Article 59-F [[of this [chapter] Chapter]].

498 (d) A home health practitioner's office, in those agricultural or residential zones where
499 it is allowed as a registered use [in accordance with] under Section 59-C-1.31, 59-
500 C-2.3, or 59-C-9.3, must [comply with] satisfy the following requirements, except
501 as provided in Paragraph (d)(9)[[, below]]:

502 (1) A use-and-occupancy permit is required[, in accordance with] under Section
503 59-A-3.2.

504 (2) No more than 2 resident health practitioners are allowed; [no] a nonresident
505 health practitioner is not allowed, but nonresident support staff is allowed. A
506 nurse or physician's assistant[[under the supervision of]] who is supervised
507 by the resident health practitioner is [[deemed to be]] support staff.

508 (3) The home health practitioner[[(s)]] may [[be allowed to]] treat more than
509 one patient or client at a time, [[provided that this does]] but not [[result in]]
510 more than 5 vehicle trips containing not more than 10 patients [[arriving or
511 departing]] may come or leave at the same appointment time.

512 (4) Clients, patients, or other visitors must visit by appointment only and must
513 be informed of the correct address and parking location. Emergency patients
514 may visit without appointment; abuse of this exemption may lead to
515 revocation of the Certificate of Registration.

516 (5) An indoor waiting room is required if more than one patient or client will be
517 on the premises at the same time.

518 (6) The sale of goods on the premises is prohibited, except for medication
519 prescribed by the health practitioner or a prescribed remedial device that
520 cannot be obtained from a commercial source.

521 (7) Off-street parking must be provided [in accordance with] under the
522 requirement for a medical practitioner's office, as stated in Section 59-E-3.7.
523 If the lot is in any one-family zone regulated by Section 59-C-1.3, the
524 parking must be screened; the screening must be equivalent to that required
525 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]]; and

(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.

554 - **Special Exception Uses.** Uses designated by the letters "SE" may be authorized
555 as special exceptions, [in accordance with the provisions of] under Article 59-G.
556

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	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, other than heavy commercial vehicles, off-street, in connection with any use permitted in the zone. Vehicles and machinery	P[11,13]	P[11]	P[11]	P[12,13]	P[12]	P[12]	P[12]	P[12]	P[12]	P [[12]] *

for agricultural use may be parked without restrictions.										
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]

579 vehicle attached. One recreation vehicle may be parked on a lot or parcel; however, it
580 must not be used for dwelling purposes for more than 3 days in any month. [Up to three
581 commercial vehicles owned or operated by the resident of the property may be parked on
582 any lot or parcel in the RMH-200 zone, provided: (1) the lot or parcel used to park
583 commercial vehicles is at least one acre in size; (2) the commercial vehicles are parked in
584 the rear yard of the lot or parcel; and (3) use of the lot or parcel to park commercial
585 vehicles was established before October 23, 2000.] Parking for any vehicle or trailer in a
586 front yard must be on a surfaced area; however, temporary parking for visitors, and
587 loading, unloading, or cleaning vehicles or trailers is permitted on any area. Temporary
588 parking is infrequent; not more than 12 days per year.

589 * * *

590 [39] Parking of motor vehicles is permitted in [[an]] a historic district [[in accordance with
591 the provisions of Sec.]] under Section 59- A-6.22. Parking of heavy commercial vehicles
592 in connection with a stone or rock quarry is not limited.

593 * * *

594 * One light commercial vehicle may be parked on any lot or parcel. A tow truck is not
595 permitted to park with a vehicle attached. One recreation vehicle may be parked on a lot
596 or parcel; however, it must not be used for dwelling purposes for more than 3 days in any
597 month. Not more than three [[light]] heavy commercial vehicles may be parked on any
598 lot or parcel in the RMH-200 zone at any time, provided: (1) the lot or parcel used to park
599 light commercial vehicles is at least one acre in size; (2) the light commercial vehicles are
600 parked in the rear yard of the lot or parcel; (3) use of the lot or parcel to park light
601 commercial vehicles was established before October 23, 2000 ; and (4) the resident of the
602 [[property]] lot or parcel is the owner or operator of the vehicles.

603 * * *

604

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4 plex	RMH 200
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	
-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:				30*	30*	30*	35*	35*		

605 * * *

606 * (a) Any surfaced area existing before {date of adoption} is not limited by this

607 provision if it is not increased in area[[;]].

608 (b) Surfaced area may be a maximum of 50 percent of the front yard of a tract
609 that has its primary access from a primary residential street, minor arterial
610 road, major highway or arterial, or any State road[[;]].
611 (c) Surfaced area consisting of 2 parking spaces no larger than [[310]] 320
612 square feet in total area is not limited by this provision.
613 (d) No more than one vehicle may be parked for every 160 square feet of
614 surfaced area.
615 (e) The limit on surfaced area does not apply to stone or rock quarries in the R-
616 200 zone.
617 * * *
618 **Sec. 5. DIVISION 59-C-9 is amended as follows:**
619 **DIVISION 59-C-9. AGRICULTURAL ZONES.**
620 * * *
621 **59-C-9.3 Land uses.**
622 * * *

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
(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, other than heavy commercial vehicles, off-street, in connection with any use permitted. Vehicles and machinery for agricultural use may be parked on any size lot without restrictions. A tow truck is not permitted to park with a vehicle attached on any size lot or parcel.	P*	P*	P*	P*	P	P*	P*
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

640 commercial vehicle as defined in Section 59-A-2.1. which is operated within the public
641 right-of-way.

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

644 * * *

645 **Section 59-G-2.29. Home occupation, major**

646 (k) In the Residential One-Family Zones regulated by Section 59-C-1.3 and in
647 recorded residential subdivisions in the Agricultural Zones regulated by Division
648 59-C-9, any commercial vehicle that is parked or garaged on-site in connection
649 with the home occupation must comply with the regulations for commercial
650 vehicles in **[[**section**]]** Section 59-C-1.31 **[[**, title "Land Uses."**]]**. In the Townhouse
651 and Multiple-Family Zones regulated by Sections 59-C-1.7 and 59-C-2.3,
652 respectively, one light commercial vehicle may be parked on-site in connection
653 with the home occupation if parked in a garage.

654 * * *

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

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

665 (A) the Hearing Examiner has provided written notice of the renewal date;

666 (B) renewal has been granted or denied, or the special exception holder
667 has declined to renew the special exception; or

668 (C) the holder of the special exception has failed to respond to the notice
669 of renewal before the special exception expires.
670 (2) If the special exception holder declines to renew, notice of the consequent
671 expiration of the special exception must be sent by regular mail to the
672 special exception holder, the [[property]] land owner, and all other persons
673 entitled to notice.
674 (3) If the holder of the special exception does not reply to notification of the
675 renewal date within 30 days [[from the mailing of]] after the notice was
676 mailed, a second notice [[shall]] must be sent to the special exception holder
677 and the [[property]] land owner by certified mail, stating the date on which
678 the special exception will expire if a renewal application is not received. If
679 no reply to the second notice is received, the Hearing Examiner must issue
680 an Order stating that the special exception has expired. The Order must be
681 sent to the special exception holder and the [[property]] land owner by
682 certified mail and to all other persons entitled to notice of the special
683 exception[[,]] by regular mail.
684 (4) Upon receipt of an application for renewal, the Hearing Examiner must issue
685 notice of a public hearing. The Hearing Examiner must conduct this public
686 hearing at least 30 days after notice is sent to all parties entitled to notice of
687 the original special exception hearing. The public hearing on the renewal
688 may be waived by the Hearing Examiner if the inspection of the premises
689 indicates that the special exception is in compliance with the applicable
690 provisions of this Chapter and conditions established by the Board of
691 Appeals, and the parties entitled to notice are given an opportunity to request
692 a hearing and fail to do so.
693 (5) If a special exception holder requests modification of the terms and
694 conditions of the special exception in conjunction with a renewal request,
695 the Hearing Examiner may make a decision on the requested modification as

696 part of the decision on the renewal, without a public hearing, if [[in]] the
697 Hearing [[Examiner's judgment]] Examiner finds that:
698 (A) the modification does not substantially alter the nature, character,
699 intensity of use or the conditions of the original grant; and
700 (B) the parties entitled to notice are given an opportunity to request a
701 hearing and fail to do so.
702 (6) If[[, in]] the Hearing [[Examiner's judgment]] Examiner finds that the
703 requested modification represents a significant change that would not
704 substantially alter the nature, character, intensity of use or the conditions of
705 the original grant, the Hearing Examiner may make a decision on the
706 modification and the renewal only after a public hearing convened with
707 proper notice .
708 * * *
709 **Sec. 8. Effective date.** This ordinance takes effect 180 days after the date of
710 Council adoption.
711
712 This is a correct copy of Council action.
713
714 _____
715 Linda M. Lauer, Clerk of the Council

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

OFFICE OF THE CHAIRMAN

MONTGOMERY COUNTY PLANNING BOARD

The Maryland-National Capital Park and Planning Commission

June 5, 2009

TO: The County Council for Montgomery County, Maryland, sitting as the District Council for the Maryland-Washington Regional District in Montgomery County, Maryland

FROM: Montgomery County Planning Board

SUBJECT: Zoning Text Amendment No. 09-03

BOARD RECOMMENDATION

The Montgomery County Planning Board of The Maryland–National Capital Park and Planning Commission reviewed Zoning Text Amendment No. 09-03 at its regular meeting on June 4, 2009. After careful review of the material of record, the Board, by a 5:0 vote, provides the following comments.

Overall, the Board believes that it is confusing to include home occupation revisions and off-street parking modifications within one text amendment. The Board agrees with the merits of the County Executive's directive to improve the County's ability to enforce regulations pertaining to home occupations and off-street parking in residential neighborhoods. The Board has no objection to the proposed plain language clarifications or 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 because these should simplify the enforcement of home occupation regulations. The Planning Board, however, is concerned that the provisions limiting off-street parking in front yards in one-family residential zones will have more far-reaching, broader impacts than controlling the parking associated only with home occupations. The Board believes that the off-street parking recommendations should be addressed separately from the home occupation modifications to ensure transparency for those who will be impacted by the legislation.

8787 Georgia Avenue, Silver Spring, Maryland 20910 Chairman's Office: 301.495.4605 Fax: 301.495.1320
www.MCParkandPlanning.org E-Mail: mcp-chairman@mncppc.org

The subject text amendment also proposes changes to Section 59-A-1.3 (Violations, penalties, and enforcement.) to allow any violation of the zoning regulations to be punished as a class A violation under Section 1-19. In addition to the changes proposed, the Board recommends language that retains its enforcement authority on Planning Board actions as defined in Section 50-41. Language reflecting the Board's proposed modifications is included in an amended version of the text amendment and is attached to this memorandum.

CERTIFICATION

This is to certify that the attached report is a true and correct copy of the technical staff report and the foregoing is the position taken by the Montgomery County Planning Board of The Maryland-National Capital Park and Planning Commission, on a motion by Commissioner Cryor, seconded by Commissioner Presley, and with Commissioners Cryor, Presley and Alfandre, Vice-Chairman Robinson and Chairman Hanson voting in favor of the motion, taken at the Board's regular meeting held in Silver Spring, Maryland, on Thursday, June 4, 2009.

Royce Hanson
Chairman

RH: GR

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

MCPB
Item #
6/4/09

DATE:	May 27, 2009
TO:	Montgomery County Planning Board
VIA:	Rose Krasnow, Chief, Development Review Ralph Wilson, Zoning Supervisor
FROM:	Greg Russ, Zoning Coordinator
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. <u>Amend the provisions for renewing a special exception for a home occupation</u> *(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 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

Testimony of Assistant Chief Administrative Officer Thomas Street
Public Hearing, June 9, 2009
ZTA 09-03, Home Occupations and Residential Off-Street Parking
Bill 22-09, Enforcement of County Laws – Notice of Violation - Appeals
Bill 23-09, Unused Vehicles - Storage
Bill 24-09, Buildings – Permits and Inspections

Good evening.

I am Thomas Street, Montgomery County Assistant Chief Administrative Officer. I want to thank Council President Andrews for sponsoring Zoning Text Amendment (ZTA) 09-03, and Bills 22-09, 23-09, and 24-09 on behalf of the County Executive, and the full Council for its timely consideration of these items. ZTA 09-03 proposes changes to County's Zoning Ordinance, while Bills 22-09, 23-09 and 24-09 propose changes to several chapters of the County Code. This legislative package modifies the authority of the County's code enforcement agencies, amends the definition of rubbish in Chapter 26, clarifies portions of Chapters 26 and 48 regarding unused and inoperable vehicles, and establishes a building permit life for detached one-and-two family dwellings and townhouses and their accessory structures.

Since his election in 2006, the County Executive has met with numerous individuals and civic groups from around the County to discuss neighborhood concerns about code-related problems and their negative effect on communities. These individuals and groups raised issues relating to unkempt properties, solid waste, impassable streets, untagged or abandoned vehicles, cars parked on front lawns, and home-based businesses. They also expressed concern about the length of time between the issuance of a notice of violation and correction of that violation.

In response to these concerns, the Executive created a Code Enforcement Work Group which he charged with conducting a comprehensive review of code enforcement activities and making recommendations to improve public safety, preserve the character of residential neighborhoods, and otherwise preserve and enhance the quality of life in the County. That Work Group was comprised largely of Executive staff representing the various agencies whose responsibilities include enforcing the County Code.

The Work Group, with the assistance of County Council staff, reviewed a number of case studies, identified a number of general issues common to many of the case studies, and developed a set of recommendations that are intended to address many of the issues that concern communities throughout the county. Proposed solutions fall into three broad categories:

1. Legislative changes;
2. Improved coordination and cross training for inspectors; and
3. Education and outreach programs for residents and community associations.

The legislative proposals that are the subject of this public hearing implement many of the recommendations of the Work Group and are part of a bold plan endorsed by the County Executive to remedy negative conditions that have evolved in residential neighborhoods over a long period of time. Collectively, the proposals attempt to strike a balance between addressing

safety and quality of life issues and respecting the change in residential land use that has occurred over the last 50 to 60 years.

The Council, by enacting Bill 27-08 in January, has already implemented the Work Group's and the County Executive's recommendations regarding on-street parking of heavy-commercial and recreational vehicles in residential neighborhoods.

ZTA 09-03 would amend the Zoning Ordinance to:

1. Allow DPS to immediately issue a citation to a person violating home occupation provisions;
2. Require DPS to conduct on-site inspections before approving a registered home occupation;
3. Require use and occupancy certificates for certain dwellings;
4. Require a person conducting a home occupation to provide proof of the person's home address;
5. Clarify the limits on the number of client visits to a home occupation;
6. Clarify the limits on the number of employee visits to a registered home occupation;
7. Define heavy and light commercial vehicles and prohibit off-street parking of heavy commercial vehicles on residentially zoned property;
8. Limit the amount of parking on the front yard of certain residential parcels; and
9. Make the text of the Zoning Ordinance more precise, concise, and decisive.

I would like to add that the County Executive will be asking for a technical amendment regarding limits on parking on the front of residential parcels. He would like R-40 properties treated the same as R-60 properties.

Bill 22-09 would expedite the process for resolving code violations and repeal obsolete language in the fire safety code.

Bill 23-09 would resolve discrepancies between Chapters 26 and 48 regarding storage of unused or inoperable vehicles and give sole enforcement authority for these types of violations to the Department of Housing and Community Affairs.

Bill 24-09 would require certain detached one-and-two family dwellings and townhouses to obtain an approved final inspection within 18 months after DPS issues an initial building permit. Under current law, there is no deadline for a final, approved inspection and many projects languish without any progress.

In closing I want to emphasize the County Executive's view that the issues addressed in the various proposals are inter-related and that the Council would be best served by considering these bills as a comprehensive package.

Thank you for your time this evening. The County Executive looks forward to working with you in passing this important legislative package.

June 9, 2009

MCCF Testimony to County Council on ZTA 09-03, Home Occupation - Residential Parking

I am Jim Humphrey, testifying on behalf of the Montgomery County Civic Federation as Chair of the Planning and Land Use Committee. We are generally supportive of the purposes of ZTA 09-03 to strengthen the sections of the County Code relating to home occupations and residential parking. We ask that Council members consider the Federation's concerns regarding the following three issues.

- In the case of a renter-occupant operating a registered home-based business, we suggest that written agreement of the property owner be a requirement of the application.
- As to the percentage of paving to be allowed in front yards in certain residential zones, we are concerned that the 50% limit placed on properties with primary access from a state road, primary residential street or minor arterial road is too high, particularly for certain R-90 zoned lots with small front yards or on undersized R-60 zoned lots in older, established down county neighborhoods.
- We recommend amendments to Footnote 12 (line 582 of the bill) be changed to require parking on a surfaced area anywhere on a lot in the effected zones, not just in the front yard. Also, while language in Footnote 12 allows temporary parking on any area for visitors, loading, unloading, or cleaning vehicles or trailers, there is no definition of "temporary parking" in the definitions section of Chapter 59. We therefore suggest that the following definition be added to Sec.59-A-2.1 of the County Code, the definitions section of the zoning ordinance: "*Temporary parking.* Parking that is irregular and infrequent, or cyclical parking occurring over no more than a single period, which is no longer than 60 days in length, in any calendar year."

As always, the Federation stands ready to assist Council members in your consideration of this legislation. Thank you.

Hillandale Citizens Association

Comments on Code Enforcement Legislation: ZTA 09-03, Bill: 22-09, 23-09 & 24-09
Before Montgomery County Council June 9, 2009

The Hillandale Citizens Association has been anxiously awaiting improvements in the county's code enforcement efforts and is eager to have legislative improvements to aid in better enforcement. During this process, we took a proactive approach including having the Code Enforcement Task Force address our community last fall. Based on our experience with enforcement issues, many community meetings and a review of these four pieces of legislation, we respectfully request that Council give additional consideration to the following issues:

ZTA 09-03: Home Occupations and Residential Parking

- We acknowledge the new category of "heavy commercial vehicles" and the relationship to the recent on-street parking bill. But, **we have specific concerns that vehicles modified to haul trash, which are currently not permitted on residential property, will become legal.** Also, neighbors have used the existing code to control a funeral-parlor owner from parking hearses at his home (not his business location). **Please do not eliminate the hearse prohibition.**
- Having experience with business operators with partial ownership interest in a property, but not residing at the home, **we request that the proof of residence be specified by Code** (not by Executive Regulation) **and that the proof be a "rigorous" document** — not a utility bill, or other miscellaneous document.
- In the case of a renter-occupant operating a registered home-based business, **we ask that written agreement of the property owner be a requirement** of the application.
- Elimination of the requirement of a "visitor log" from a registered home occupation will make it more difficult to determine when a business grows into a major home occupation, triggering a special exception. **Please do not eliminate the "visitor log" requirement.**
- With a limitation of one "light commercial vehicle" parking on a residential property, **more light commercial vehicles will be forced onto residential streets.** For example, a home in our area now has four ubiquitous white utility trucks parked on the property and three on the street. This legislation will result in six light commercial vehicles associated with one home to be parked on the street.
- Pavement of front yards in residential zones has stimulated a lot of discussion in our community. There is concern about the increase in impervious surfaces and the resulting impact on mature trees, especially street trees. Others recognize that passage along narrow streets is becoming more difficult and unsafe. As such, we suggest the following changes to the proposed legislation:

  —**All paving of front yards be done under the approval of a "paving permit" issued by DPS.** This would provide for verification of the allowable size, any corner lot considerations and help eliminate drainage issues. Our R-90 area has lots ranging in size from under 9,000 square feet to lots in excess of 35,000 square feet. We have neighborhood areas with miniscule front yards, which will only qualify for the minimum 310' provision and lots that have enormous county ROWs, which may or may not be recognized by an owner as an area that may not be paved. A permit is needed to assure compliance.

  —Furthermore, our area also has a state, an arterial and two primary-residential roads. The 50% paving limit would cover properties along all these roads. 50% paving of front yards will adversely affect the appearance and character of our neighborhoods along Cresthaven Drive and Schindler Drive. **We request that within a permit system, that 50% paving be allowed only if: (1) on-street parking is not available by parking prohibition, or (2) the area has a demonstrated shortage of on-street parking.**

—Council should also be aware that paving of entire back yards, although few, is happening.

- **Please make home-based tow truck businesses operate under provisions of a Special Exception in all small lot residential zones.** We have two tow truck operations at three different locations in our neighborhood. One is owned/operated by the homeowner and the other business owner is a boarder who switches between a rental home and an accessory apartment. We have instances when inoperable vehicles were/are stored — for hours, or weeks — at the houses or on our streets. Towing businesses must be regulated to assure that residential neighborhoods are not negatively impacted, including from back-up beeps! As part of the Special Exception process, we request that a Maryland "business entity" registration be required. Further, if the business is located at a rental home, the property owner must provide authorization.

Bill 22-09: Notice of Violation/Appeals

Removing the ability to appeal "other decisions" or "a decision not to issue a Notice of Violations" by executive departments is broad and overreaching. There are administrative decisions and/or interpretations made by departments that should be first challenged before the Board of Appeals.

Bill 23-09: Unused Vehicles

- **We suggest the definition be: "Either inoperable, or not currently registered."**
- Furthermore, **we request that operability be demonstrated as part of enforcement**.
- Any extended storage authorization should be made part of the DHCA Data Mining system.

Bill 24-09: Building Permits

- In lengthening the total permit validity from one year to eighteen months, we are concerned that certain projects, such as infill rebuilds will continue to linger and become safety hazards/attractive nuisances for children and others. **We request that any permit requiring a foundation, or any permit associated with an unoccupied structure, have a fencing requirement.** Commercial building permits require a fence.
- **We request that validity of a demolition permit be limited to 30, or possibly 90 days.** We have structures pending demolition for years that have become noted "eyesore landmarks." By having a shortened permit time, action will be more swift and tied to the original decision to demolish. There must also be a requirement of a final inspection on demolition projects that are not immediately progressing to a building phase.

Other Legislation Required:

The parking facility standard (59-E-3.7) for religious facilities is based on requiring one space for every four seats. Since some religious facilities do not have seats, DPS has declined to use occupancy standards to require adequate parking. Furthermore, the code's reliance on use of other nearby commercial parking facilities to augment the on-site parking does not seem to require agreement from those private property owners. A religious facility in our neighborhood has several structures on a R-90 lot with the Temple's main auditorium accommodating 275 persons. Using the 1:4 parking ratio, 68.75 parking spaces would be required. But, under a U&O issued by DPS, 18 on-site parking spaces and an allowance for 25 off-site parking spaces (at a shopping center clearly marked for no walk-offs) is deemed sufficient. **The parking facility code must be amended to cover religious auditoriums/facilities that do not have seats.**

by The Hillandale Citizens Association
Eileen Finnegan, 10404 Sweetbriar Parkway, Silver Spring, MD 20903

LINOWES AND BLOCHER LLP
ATTORNEYS AT LAW

June 9, 2009

Stephen Z. Kaufman
301.961.5156
skaufman@linowes-law.com

Debra S. Borden
301.961.5250
dborden@linowes-law.com

Phil Andrews, President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

Re: Testimony for Submission into Record of ZTA 09-03 – Home Occupations and Residential Off-Street Parking (the "ZTA")

Dear Council President Andrews:

This firm represents Tri-State Stone & Building Supply, Inc., Ben Porto & Son, LTD and the Porto family ("Tri State") located at 8200 Seven Locks Road in Potomac (the "Property"). The quarry and building supply have been owned and operated by the Porto family at this location since 1924. The Property is zoned R-200 and the quarry was previously a legal non-conforming use. In accordance with a recommendation contained in the Potomac Sub-region Master Plan, approved and adopted in April, 2002, which recommended a zoning text amendment legalizing the long-standing use of the Property, the quarry and building supply operation became a permitted use. Section 59-C-1.3 (f).

Tri State is concerned about the proposed ZTA in that it fails to acknowledge the long-term and continuous existence of permitted commercial uses located in residential zones. Specifically, the language, which is confusing and appears to limit parking to light commercial vehicles, and exclude heavy commercial vehicles, and which limits impervious surface area to 50% along major roads, if applied to Tri State, would make it very difficult for Tri State to operate its permitted business in the zone. While language has been proposed that would grandfather a lot used to park light commercial vehicles established before October 23, 2000, there is no mention of permitting heavy commercial vehicles for existing commercial uses permitted in residential zones, or the ability to modify areas of imperviousness as business operations require.

In addition, the fact that before October 23, 2000 Tri State operated a legal non-conforming stone quarry on the Property which was converted to a permitted use in 2002, leaves an open

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7200 Wisconsin Avenue | Suite 800 | Bethesda, MD 20814-4842 | 301.654.0504 | 301.654.2801 Fax | www.linowes-law.com

question as to whether the parking of heavy or light commercial vehicles was "established" prior to the effective date for the purpose of this ZTA.

Accordingly, we respectfully suggest on behalf of our client the following language be added to the grandfather provisions to address ambiguities as they relate to existing commercial uses in the affected zones:

"Any business use on residentially zoned properties where a business was established prior to the effective date of this provision and which is otherwise regulated by other applicable chapters of the Montgomery County Code, is exempt from the parking and imperviousness limitations of this Section."

Thank you for your attention to this matter. Should you have any questions, please feel free to contact us .

Very truly yours,

LINOWES AND BLOCHER LLP

Stephen Z. Kaufman

Debra S. Borden

cc: Mr. Brian Porto
Mr. Gregory Russ

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Zyontz, Jeffrey

From: Larry Gordon [lgordon@srgpe.com]
Sent: Thursday, June 18, 2009 12:29 PM
To: Street, Thomas
Cc: Zyontz, Jeffrey; 'gregory.russ@montgomeryplanning.org'
Subject: ZTA 09-03: Proposed Amendments for Off-Street Commercial Vehicle Parking

Dear Tom,

Pursuant to my recent phone conversations with you, Jeff Zyontz and Greg Russ on behalf of our clients, Copeland Trucking, set forth below are two alternative Amendments to ZTA 09-03 intended to allow for limited heavy commercial vehicle parking on larger residential lots or parcels. Please contact me at your earliest convenience to discuss these alternative proposals.

1. Allow a total of up to 3 vehicles used for recycling to be parked off-street on lots or parcels containing at least 65,000 square feet (i e, a rounded 1.5 acres, with a maximum of one vehicle per half acre) in all residential zones. Amend the land use category in the Table following Line 563 as follows: "Vehicles and machinery for agricultural use, <u>including not more than 3 vehicles parked on a lot or parcel containing a minimum of 65,000 square feet and which vehicles are used solely for the collection, hauling and deposit at any location of agricultural, paper and/or plastic waste materials for recycling,</u> may be parked without restrictions."

2. Allow a total of 3 vehicles of any size in the RE-2, RE-2C, RE-1 and R-200 zones provided that the lot or parcel contains at least 65,000 square feet. Amend the land use category in the Table following Line 563 and Footnote 11 beginning at Line 565 as follows: "Parking of motor vehicles, [other than heavy commercial vehicles] off-street, in connection with any use permitted in the zone." Footnote 11 – "Not more than 3 [light] commercial vehicles and not more than one unoccupied recreation vehicle may be parked on any lot <u>or parcel containing at least 65,000 square feet</u> at any one time. Not more than 3 light commercial vehicles and not more than one unoccupied recreation vehicle may be parked on any lot <u>or parcel containing less than 65,000 square feet</u> at any one time...." In conjunction with these Amendments, Footnote 11 would then be applied to the RE-2, RE-2C, RE-1 and R-200 zones and Footnote 12 would no longer be applied to the R-200 zone.

Certainly, other amendments could be crafted to achieve the desired results, while still accomplishing the fundamental objectives of the current draft. The above proposals are for purposes of initiating discussion. We look forward to working with you, Jeff and Greg and, ultimately, the County Council, to achieve a mutually satisfactory outcome.

Best regards,
Larry Gordon, Esq.
Shulman Rogers Gandal Pordy & Ecker
301-230-6576

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