

PHED Committee #1  
July 13, 2009

**MEMORANDUM**

July 9, 2009

TO: Planning, Housing, and Economic Development Committee  
FROM: Jeff Zyontz,  Legislative Attorney  
SUBJECT: Zoning Text Amendment 09-03, Home Occupations and Residential Off-Street Parking

Summary of staff recommended changes to ZTA 09-03 to:

- 1) amend Chapter 26 in a new Bill to increase the floor area required per person to 300 square feet per adult for the first 1,200 square feet, and 500 square feet for every additional adult;
- 2) add a definition of temporary parking;
- 3) amend the violation provision to allow the Planning Board the option of finding violations under the subdivision regulations;
- 4) amend the citation provision to give the County the option of issuing a citation or a warning to correct a violation;
- 5) amend the footnote concerning the RMH-200 zone to allow pre-existing heavy commercial vehicles to the extent previously permitted;
- 6) add a provision to exclude businesses conforming to their zoning that are currently using heavy commercial from the limitations on heavy commercial vehicle and front yard surfaced area; and
- 7) add the R-40 zone to the zones restricting on-site parking.

**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.

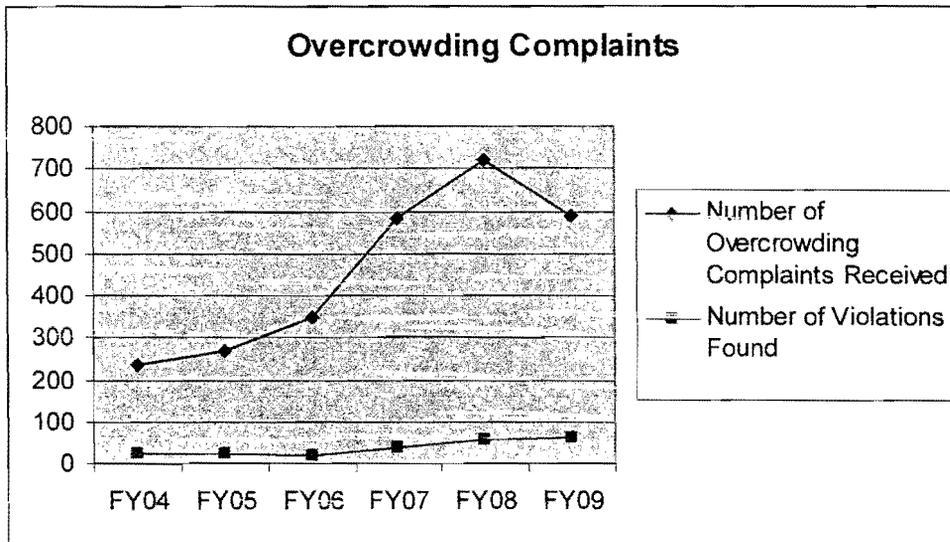
Recreational vehicle owners complained that the front yard parking restrictions would make it impossible to park their vehicles on their lots. The owners of commercial trucks parked on large lots requested relief from ZTA 09-03 and the current provisions in residential zones. A long-standing business,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

Councilmember Floreen requested the following information on the number of overcrowding complaints and the County's responses to those complaints.

Overcrowding complaints have increased as a percentage of total complaints and in absolute numbers in the past 5 years.<sup>1</sup> Between FY04 and FY09, overcrowding went from 2.5 percent of all complaints to 5.7 percent. In absolute numbers, overcrowding complaints increased from 236 in FY04 to 588 in FY09. County inspectors found violations in 7.8 percent of the complaints over the past 5 years. Violations increased from 23 in FY04 to 60 in FY09. Citations were issued for 24 percent of the violations in the past 5 years. All violations were corrected, even in the absence of a citation.

<sup>1</sup> Data provided by Executive Staff as follows:

<b>Department of Permitting Services (DPS)</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>Total</b>
Total Number of Complaints Received	2,698	3,070	3,322	3,730	4,043	4,130	20,993
Number of Overcrowding Complaints Received	43	43	70	90	63	72	381
Unfounded Complaints	36	37	62	80	47	54	316
Notice of Violation Issued	7	6	8	10	16	18	65
Violation Corrected	7	6	8	10	16	18	65
Citation Issued	0	1	0	1	2	1	5
Applicable Montgomery County Code Section: 59-C-1.31.Land Uses (a) Residential							
<b>Dept. Housing &amp; Community Affairs</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>Total</b>
Total Number of Complaints Received	6,575	5,955	7,458	6,812	6,779	6,123	39,702
Number of Overcrowding Complaints Received	193	225	277	492	655	516	2,358
Unfounded Complaints	177	207	268	466	616	474	2,208
Notice of Violation Issued	16	18	9	26	39	42	150
Violation Corrected	16	18	9	26	39	42	150
Citation Issued	3	3	3	6	27	5	47
Applicable Montgomery County Code Section: 26-5.Space, Use, Location							
<b>Total DPS and Housing</b>	<b>FY04</b>	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>	<b>Total</b>
Total Number of Complaints Received	9,273	9,025	10,780	10,542	10,822	10,253	60,695
Number of Overcrowding Complaints Received	236	268	347	582	718	588	2,739
Number of Violations Found	23	24	17	36	55	60	215
Unfounded Complaints	213	244	330	546	663	528	2,524
Notice of Violation Issued	23	24	17	36	55	60	215
Violation Corrected	23	24	17	36	55	60	215
Citation Issued	3	4	3	7	29	6	52



Department of Permitting Services provided a map showing where overcrowding complaints were received in the past 5 years.<sup>2</sup> Most complaints are received in areas with smaller and older housing units.

### Issues

- 1) Should the County focus directly on overcrowding?

Many people associate residential parking problems with overcrowding.<sup>3</sup> ZTA 09-03 would reduce some of the clutter created by excessive cars by limiting parking in front yards. It would not limit parking in the rear of the house or on-street.

The number of cars at any given household is generally related to the number of adults.<sup>4</sup> The County's current minimum space requirements were adopted in 1962.<sup>5</sup> The average number of cars per household in the United States went from 1.3 per household to 2.1 between 1962 and 2008.<sup>6</sup> A one-family house built before 1958 was required to build 1 parking space on-site, but even that space was not required under certain circumstances.<sup>7</sup>

Vehicle registration is a State issue. There is no limit to the numbers of cars that can be registered to a single address. The County regulates the number of people per household by its

<sup>2</sup> See © page 48.

<sup>3</sup> The number of passenger cars per household has gone up over time, even though the average number of people per household has declined.

<sup>4</sup> The number of registered vehicles in the County will soon exceed the number of licensed drivers, if it has not done so already.

<sup>5</sup> Ordinance Number 4-122 §8, February 6, 1962.

<sup>6</sup> U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States-2008*, Washington, DC, 2008.

<sup>7</sup> The 1955 Zoning Ordinance allowed a house to be constructed without any on-site parking if the slope between the street and the house exceeded a specified standard.

definition of family in the Zoning Ordinance and the number of people allowed per square foot of floor area in the housing code.

#### A) Families

DHCA and DPS estimate that people related by blood or marriage are found at the site of overcrowding complaints more than half the time.<sup>8</sup> There is no limit to the size of a family in the Zoning Ordinance.<sup>9</sup> The United States Supreme Court struck down a local housing ordinance that limited families to parents and their children.<sup>10</sup> The Court has allowed restrictions on the number of unrelated individuals.<sup>11</sup> Some state courts found the distinction between biological families and unrelated individuals illegal. The Supreme Court of New York found that as long as the unrelated individuals functioned as a family, they must be treated as a family. Unrelated individuals function as a family if “the household seems to be a relatively normal, stable, and permanent family unit and the household does not provide a framework for transients or transient living”. When those circumstances exist, a New York jurisdiction may not treat unrelated individuals differently than families.<sup>12</sup> The Supreme Court of California invalidated a single-family zoning ordinance that prohibited more than 5 unrelated people from living together as a single housekeeping unit. The Court held that regulations based on the relationships (or lack thereof) violated California’s constitution that established a right to privacy.<sup>13</sup> The Maryland Court of Appeals struck down a local ordinance that treated students and non-students differently.<sup>14</sup> The Maryland Court of Appeals has not otherwise limited the regulation of unrelated individuals.

#### B) Unrelated individuals

The Zoning Ordinance limits the number of unrelated individuals in a dwelling to 5. Some jurisdictions have limited the number of unrelated individuals in a home to less than 5.<sup>15</sup> If a complaint is filed, code enforcement staff questions household members to determine if they are

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<sup>8</sup> DPS complaints are 50-50 between related and unrelated households; DHCA estimates that 60 percent of the complaints involve related households.

<sup>9</sup> §59-A- 2.1 Definitions:

Family: An individual or 2 or more persons related by blood or marriage, or a group of not more than 5 persons, excluding servants, not related by blood or marriage, living together as a single housekeeping group in a dwelling unit.

<sup>10</sup> *Moore v. East Cleveland*, 431 U.S. 494, (1977).

<sup>11</sup> An ordinance that defined family as one or more persons related by blood, adoption, or marriage, living and cooking together as a single housekeeping unit or 2 people living and cooking together as a single housekeeping unit though not related by blood, adoption, or marriage . . . ." was found to be reasonable, not arbitrary, and rationally related to permissible state objectives in *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974). Maximum occupancy limits were found to not violate the federal Fair Housing Act in *City of Edmonds v. Oxford House*, 514 U.S. 725 (1992).

<sup>12</sup> *City of White Plains v. Ferraioli*, 34 N.Y.2d 300 (1974). Age restrictions for unrelated individuals were found unconstitutional in *McMinn v. Town of Oyster Bay*, 66 N.Y.2d 544 (1985). New York’s due process provision was violated when the number of unrelated individuals was regulated, but the number of family members was not similarly limited, in *Baer v. Town of Brookhaven*, 73 N.Y.2d 942 (1989).

<sup>13</sup> *City of Santa Barbara v. Adamson*, 27 Cal.3d 123 (1980).

<sup>14</sup> *Kirsch v. Prince George's County*, 331 Md. 89 (1993).

<sup>15</sup> 3 or less – City of Lynchburg, Virginia ; 4 or less – Salisbury, Maryland; Campbell County, Virginia; and Blacksburg, Virginia.

unrelated. If the residents claim that they are related, the staff asks how the individuals are related. Staff does not require documents to determine if a family relationship exists. It would be extremely invasive to ask for birth certificates, marriage certificates, or adoption papers. The documents of residents alone may be insufficient to determine a family relationship, if the relative that the residents have in common is not also a resident.<sup>16</sup> In responding to overcrowding complaints, DHCA and DPS estimate that unrelated individuals are found at the site of the complaint more than 40 percent of the time.

C) Maximum occupancy

I) People Per Square foot

The Supreme Court upheld occupancy limits in a local housing ordinance that did not consider the familial relationship of the occupants.<sup>17</sup> The number of people per residence in the County is regulated by the housing code. Currently, every dwelling unit in the County must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant. Using these standards, the floor area of a typical 8 by 32 foot FEMA trailer is sufficient for 2 people to live on a permanent basis. In addition, each bedroom for an individual must be at least 70 square feet. Another 50 square feet is required for each additional person in the room. For comparison, a federal prison cell for 1 person in a super maximum-security facility is 7 by 12 feet, or 84 square feet.<sup>18</sup>

In 1985, U.S. households had, on average, 740 square feet of living space per person (with the median being 596 square feet per person). In 2005, the size of the living space per person had increased, on average, by almost 24 percent to 916 square feet per person (with a median of 675 square feet per person).<sup>19</sup>

The Montgomery County average square footage of living space of single-family detached houses built in the 1960s was 1,872 square feet.<sup>20</sup> In the period between 2000 and 2006, the average was 3,272 square feet. Most of the complaints about overcrowding come from areas with older, more modest houses. Under the census definition of overcrowding (165 square feet per person), 12 people in a 1,872 square foot house would be overcrowding. The County's general standard (150 square foot for 1 person and 100 square foot for every additional person) would allow up to 18 people, but that number would be reduced by approximately 10 people because of the calculations for bedroom space.<sup>21</sup>

The County Code excludes bathrooms, closets, kitchens, cellars, and hallways from the allowable sleeping areas. Under the housing code, a single-family house of 2,600 square feet of

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<sup>16</sup> The birth and marriage certificates of cousins would not indicate a family relationship without knowing the common grandparents and the grandparents' children.

<sup>17</sup> *Moore v. East Cleveland*, 431 U.S. 494 (1977).

<sup>18</sup> 60 Minutes, CBS news.

<sup>19</sup> *Measuring Over Crowding*, Prepared for the Department of Housing and Urban Development, 2007. The authors of the report asserted that overcrowding occurred when each person had less than 165 square feet of space.

<sup>20</sup> M-NCPPC housing data.

<sup>21</sup> Estimate made by DHCA staff.

finished space could allow approximately 20 residents.<sup>22</sup> DHCA inspectors generally find 8 to 10 people at the sites of overcrowding complaints.

The County Housing Code adopted the minimum space standards from the international building code; however, these standards are not used everywhere. California requires 300 square feet for every person. Some jurisdictions only limit the number of adults by the size of the dwelling unit. The Virginia building code allows 4 adults (older than 22 years) in 1,200 square feet of habitable space, plus 1 additional adult for every additional 500 square feet of floor area.

## II) People Per Room

Jurisdictions that have a limit on the number of people per habitable space usually have a limit on the number of people per room. The conventional standard used by the Census Bureau to determine overcrowding was 2.00 persons per room in 1940, but it was lowered to 1.50 by 1950, and down to 1.00 by 1960.<sup>23</sup> In 2005, 2.4 percent of households in the United States were overcrowded as measured by the standard of more than 1 person per room.<sup>24</sup> Frederick, Maryland limits occupancy to 1.5 people per habitable room (a child under 12 years of age counts as .5 of a person<sup>25</sup>). Alfred, New York allows 2 people in a bedroom less than 180 square feet but more than 3 people in a bedroom greater than 180 square feet. The County limits number of people per room by the square footage in the room; there is no absolute upper limit on the number of people per room.

### D) Options to address overcrowding

#### I) Increase the floor area or rooms required per adult.

Changing the number of people allowed per square foot of floor area or per room will have an adverse effect on affordable housing. The staff from the Department of Housing and Community Affairs points out that increased standards would increase the number of overcrowding violations. Increased standards for adults could reduce manifestations of overcrowding, such as traffic and parking concerns. It could make accessory apartments as a permitted use more palatable. To the extent that ZTA 09-03 is successful in reducing the number of cars parked on-site, those cars will compete for on-street parking spaces and thereby potentially make it more difficult for neighbors to find on-street parking. This would increase the visible effects of overcrowding in residential neighborhoods. **Staff recommends essentially adopting the Virginia minimum space standards of 300 square feet per adult up to 1,200 square feet and 500 square feet per adult above 1,200 square feet. This amendment to Chapter 26 would have to be done in a new Bill, since it is beyond the scope of ZTA 09-03 or the other 3 Bills that were the subject of the public hearing on June 9.**

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<sup>22</sup> Estimate made by DHCA staff.

<sup>23</sup> The Census standard counts all rooms.

<sup>24</sup> Ibid.

<sup>25</sup> Staff does not know if, to avoid a violation, any 12 year olds have been made homeless as a birthday present.

## II) Manage parking

The County lacks the authority to limit the number of vehicles registered by the residents of a house. But the County can control parking. ZTA 09-03 only limits parking in the front yard. Parking could be limited in the rear yard as well, or it could be limited per square foot of land area.

On-street parking may be more of a concern than parking in side yards and rear yards. Where there are persistent overcrowding complaints, the County can institute its residential parking permit system.<sup>26</sup> Each house could be allowed to buy a permit for every vehicle registered to the house, with an upper limit on the number of permits allowed for each house. There are no upper limits on the number of car permits per house in the current residential parking permit areas.

ZTA 09-03 uses the term “temporary parking”, which may occur anywhere on a lot.<sup>27</sup> Testimony at the hearing recommended adding a definition of temporary to avoid its abuse.<sup>28</sup> There are 2 types of temporary parking: 1) parking regularly for a limited duration; and 2) parking that occurs infrequently. Temporary parking that occurs every day or every week is more annoying to neighbors than parking that occurs irregularly and infrequently. Parking that occurs less frequently than once every 60 days for up to 3 consecutive days could be temporary parking. **Staff recommends adding a definition of temporary parking to the Ordinance.**

### 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. **Staff does 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 the remedy for site plan violations.<sup>29</sup> Subdivision violations and zoning actions are referred to in the current zoning law’s violation provision.<sup>30</sup> Section 50-41 in the subdivision law references zoning violations and subdivision

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<sup>26</sup> There are 59 voluntary residential parking permit areas in the County. At the cost of \$35 per year per vehicle, residents may buy a permit for every car registered to a house in those areas. One guest permit per house may also be purchased.

<sup>27</sup> Line 582, footnote 12.

<sup>28</sup> The Montgomery Civic Federation suggested the following definition:

Parking that is irregular and infrequent, or cyclical parking occurring over no more than a single period, which is longer than 60 days in length, in any calendar year.

<sup>29</sup> Under the Zoning Ordinance, the Planning Board also approves project plans. Project plans always require an approved site plan.

<sup>30</sup> §59-A-1.3(c):

violations.<sup>31</sup> The Planning Board wants the option of issuing citations under §59-A-1.3(b) or proceeding under §50-41. **Given the current reference to §50-41 and the content of §50-41, Council staff supports this change.**

The Planning Board recommended an amendment to ZTA 09-03 to allow it to issue fines of \$1,000 for those elements of the code under their authority.<sup>32</sup> ZTA 09-03 as introduced removed dollar limits and referred to class A violations defined elsewhere in the code. **Staff recommends removing the dollar limits, because §50-41 has citation dollar limits.**<sup>33</sup> The staff-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 50-14 may be enforced under subsection (b) or under Section 50-41, at the discretion of the Planning Board.

B) Should the County be authorized to 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.<sup>34</sup> A warning would give the owner 30 days to correct the violation.<sup>35</sup> 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.

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

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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.

<sup>31</sup> §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.

<sup>32</sup> 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 50-14 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.

<sup>33</sup> §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.

<sup>34</sup> 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.

<sup>35</sup> 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.

not likely to enforce a citation until the warning expired. **Staff recommends that §59-A-3.43(d) be revised to read:**

The Department may issue a citation under Section 59-A-1.3 without a warning under subsection D.

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

ZTA 09-03 is silent on the mechanics of enforcing the limits on “surfaced area” in front yards. Currently, the Department of Permitting Services (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 a provision 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 the satisfaction of DPS that the surfaced area existed before ZTA 09-03 took effect. DPS would require the removal of any new surfaced area over the limits in ZTA 09-03. **Staff recommends enacting ZTA 09-03 as introduced on this issue. DPS may recommend a paving permit if experience indicates enforcement problems.**

4) Definitions

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 currently limits commercial vehicle parking in residential zones to vehicles 19 feet in length or less.<sup>36</sup> The proposed definition 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 is more permissive than the current law.

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

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<sup>36</sup> §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....

Tandem axle trailers may be classified as heavy commercial vehicles, depending on their size, under ZTA 09-03.<sup>37</sup> The Hillandale Citizens Association wants to include any vehicle that hauled trash or that can be categorized as a hearse as a commercial vehicle. The Association also recommends making home-based tow truck businesses operate as a special exception. There is a particular problem with different vehicles being brought to a residential area.

Staff understands that 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. These provisions would make a special exception for residential tow trucks unnecessary.

B) Proof of home address

A home occupation must be the home of the person undertaking the occupation. Currently, the Zoning Ordinance requires that the worker must reside in the home at least 220 days per year.<sup>38</sup> DPS's experience found this provision unenforceable. An inspector or a resident is not in a position to monitor a house every day of the year. ZTA 09-03 would require proof of home address; it 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.

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 documentation that would prove one's home address requires citizenship or legal residence status: 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 recommended by the Hillandale Civic Association, specify the documentation it determines to be sufficient evidence that the work site is the home of the person working, rather than leave the issue to Executive regulations.<sup>39</sup>

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. **Staff recommends enacting ZTA 09-03 as introduced.**

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<sup>37</sup> A larger boat would require a tandem axle trailer.

<sup>38</sup> §59-A-6.1(a)1.

<sup>39</sup> The Hillandale Civic Association recommended "rigorous document – not a utility bill, or other miscellaneous document."

C) Visits

The Zoning law allows home occupations that have minimum impact on their neighbors. One attribute 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. **Staff recommends 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 Ordinance specifically 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. In order for the Executive 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 allow DPS to know when construction terminated. **Staff recommends ZTA 09-03 as introduced.**

6) Home Occupations

Under the current zoning law, there are 3 types of home occupations: no impact; registered; and medical practitioner. Increased activity could cause a no-impact occupation to register with DPS; all medical practitioners must also register. Some home occupations exceed the allowable 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 some definitions:

- A) A violation that could be corrected by the approval of a special exception must cease operation or comply with the conditions of a registered home occupation before a special exception is filed. The current Ordinance is not clear on this point.
- B) The requirement for a log is removed. The Hillandale Citizens Association recommends retaining the requirement for a log. DPS believes that the logs have not been beneficial to their enforcement.
- C) Allowable equipment is more generalized 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 per week (5 per week) would not be 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.

**Staff recommends enacting ZTA 09-03 as introduced concerning these matters.**

- 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 were formerly allowed. Heavy commercial vehicles would be prohibited. It does require all vehicles parked in the front yard to be in a surfaced area. **Staff recommends 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.**

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. **Staff recommends revising ZTA 09-03 to avoid interfering with a conforming business.**

Another business that parks heavy commercial vehicles on R-200 lots just under 2 acres in size wants to be allowed to continue to park the vehicles. The current Ordinance does not allow these vehicles to be parked on residentially zoned lots. The business that testified has not been able to provide proof that it is a legal non-conforming use. It appears to be a current zoning violation; these facts are yet to be determined. In either event, ZTA 09-03 as introduced would not change their status. The business is asking relief from current restrictions. Allowing 3 heavy commercial vehicles to be parked on a large lot might resolve their problem, but may cause problems for their neighbors.

- B) Recreational Vehicles

ZTA would continue to allow one recreational vehicle per lot. It must be parked on a surfaced area, except when loading and unloading. Even though 1 recreational vehicle is allowed to be parked on a lot, on a small lot the surfaced area allowed 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 exceed the surfaced area limits. Staff does not have a resolution for this problem, given the intent of ZTA 09-03.

- 6) 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.<sup>40</sup> Testimony from the Civic Federation recommended limiting

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<sup>40</sup> Corner lots have 2 front yards.

the parking below the percentages recommended by ZTA 09-03 and applying the percentage to the side and rear yard as well. The Hillandale Citizens Association only recommends allowing coverage of 50 percent of the front yard in areas with an on-street parking shortage.

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.<sup>41</sup> A limit on parking in the rear and side yards is more an attempt to limit overcrowding or temporary activity. Staff's recommendations to limit occupancy per square foot and define temporary parking might resolve some concerns, but they would not address impervious surface concerns or adverse appearance effects.

The Executive's testimony recommended a revision to ZTA 09-03 to include the R-40 zone. R-40 zones created 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 310 square feet allowed by ZTA 09-03 (39 percent of an 800 square foot front yard) would also be the maximum for lots in this zone. **Staff recommends revising ZTA 09-03 to include the R-40 zone, knowing that it may have limited effects.**

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<u>This packet contains:</u>	<u>© page number</u>
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<sup>41</sup> Prince Georges County limits parking to paved areas to limit blight and enhance property values.

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

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

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

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**AN AMENDMENT** to the Montgomery County Zoning Ordinance to:

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

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

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

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

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

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

2   **DIVISION 59-A-1. PURPOSE AND APPLICABILITY**

3   \*   \*   \*

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

5   (a)   Any violation of this Chapter may be punished as provided in State law.

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

11   \*   \*   \*

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

13   **Division 59-A-2. DEFINITIONS AND INTERPRETATION.**

14   **Sec. 59-A-2.1. Definitions.**

15   \*   \*   \*

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

24   \*   \*   \*

25   **Commercial vehicle, heavy:** [A duly licensed and registered vehicle used to  
26   transport passengers or property to further a commercial enterprise. A commercial

27 vehicle must not be used as an office nor have customer entry for a retail  
28 transaction. For the purposes of this Chapter the following are also commercial  
29 vehicles] Any motor vehicle, tandem axle trailer, or semi-trailer used for carrying  
30 freight or merchandise, or used in the furtherance of any commercial enterprise  
31 that is:

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

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

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

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

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

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

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

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

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

51 **Commercial vehicle, light:** Any motor vehicle or trailer used for carrying freight  
52 or merchandise, or used in the furtherance of any commercial enterprise that is not  
53 a heavy commercial vehicle. A light commercial vehicle must not be used as an

54 office or have any entry for transactions. A recreational vehicle, a motor vehicle  
55 owned by the County or other government agency, or a machine or a vehicle for  
56 agricultural use is not a light commercial vehicle.

57 \* \* \*

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

60 \* \* \*

61 **Home health practitioner's office:** The office of a health practitioner who resides  
62 in the dwelling unit in which the office is located. For this purpose, a health  
63 practitioner is defined as a person who is licensed or certified by a Board under the  
64 Maryland Department of Health and Mental Hygiene and has an advanced degree  
65 in the field from an accredited educational institution, except that this definition  
66 excludes an electrologist, mortician, nursing home administrator, pharmacist, or  
67 veterinarian. This definition includes a registered nurse or physician's assistant  
68 only if that person has an advanced degree in the field and practices independently.  
69 A home health practitioner's office that does not qualify for registration [in  
70 accordance with] under Sections 59-A-3.4 and 59-A-6.1(a) and (d) may obtain a  
71 special exception as a major home occupation, [in accordance with] under Section  
72 59-G-2.29.

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

77

78 A home occupation has the following characteristics:

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

102 A home occupation includes, but is not limited to, the office of a member of a  
103 recognized profession, such as a lawyer, accountant, architect, engineer, or  
104 veterinarian who resides in the dwelling unit in which the office is located. A home  
105 occupation does not include the following: bed-and-breakfast establishment,

106 boardinghouse, day care facility, display of furniture not made in the home for sale  
107 in the home or at an offsite location, landscape contractor, private educational  
108 institution, tourist home, or the repair and maintenance of motor vehicles.

109 \* \* \*

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

117 \* \* \*

118 **Home occupation, major:** A home occupation[, as defined above, that is]  
119 regulated [in accordance with] under the special exception provisions of Section  
120 59-G-2.29; it may include a home health practitioner's office whenever that office  
121 does not qualify for registration [in accordance with] under Sections 59-A-3.4 and  
122 59-A-6.1.

123 **Home occupation, no impact:** A home occupation[, as defined above, that is]  
124 regulated [in accordance with] under the applicable requirements and standards of  
125 59-A-6.1(a) and (b) and is not required to register.

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

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

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

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

138 \* \* \*

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

141 \* \* \*

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

145 \* \* \*

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

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

149 \* \* \*

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

151 **59-A-3.21. Generally.**

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

156 (a) [A building used exclusively as a one-family, detached dwelling or for uses  
157 incidental to the residential use. A registered home occupation or a no-  
158 impact home occupation is deemed to be incidental to the residential use. A

159 registered home health practitioner's office is not incidental; it requires a  
160 use-and-occupancy permit unless it is subject to the exemption provisions of  
161 Section 59-A-6.1(d)(9). The use-and-occupancy permit cannot be issued  
162 unless the practitioner has signed the Affidavit of Compliance required by  
163 Section 59-A-3.42.]

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

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

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

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

169 \* \* \*

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

172 **59-A-3.41. Requirement.**

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

183 **59-A-3.42. Application.**

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

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

205 **59-A-3.43. Compliance and Enforcement.**

- 206 (a) By signature of the Affidavit of Compliance, the applicant for a registered  
207 home occupation or home health practitioner's office affirms that he or she  
208 resides in the dwelling unit in question and agrees to [comply with] satisfy  
209 Section 59-A-6.1 of this Chapter and to take whatever action is required by  
210 the Department to bring the home occupation or practitioner's office into  
211 compliance, if complaints of noncompliance are received and verified.

- 212 (b) [When the application for the registered home occupation is completed and  
213 the affidavit is signed, the Department must determine whether the home  
214 occupation or practitioner's office, as described in the application, complies  
215 with the applicable sections of this Chapter. If it does comply, the] The  
216 Department must record [it] the home occupation in the Home Occupation  
217 and Health Practitioner Registry and issue a Certificate of Registration if the  
218 Department determines that the application satisfies the applicable sections  
219 of this Chapter. A registered home occupation may begin operation  
220 [without] after an approved on-site inspection. The home occupation or  
221 practitioner's office must [not] be recorded in the Registry, and the  
222 Certificate must [not] be issued only if the home occupation or practitioner's  
223 office, as described, [does not comply fully with] satisfies Section 59-A-6.1.
- 224 (c) The Home Occupation and Health Practitioner Registry must be readily  
225 available for public inspection. If the Department receives [written notice of  
226 a violation of] a complaint about a registered home occupation or home  
227 health practitioner's office, an inspector must inspect the property and  
228 determine, within 90 days after receipt of the complaint, whether there is a  
229 violation of the provisions of this [section] Section or Section 59-A-6.1. [If  
230 the Department determines that there is no violation, the operator of the  
231 home occupation or home health practitioner's office and the complainant  
232 must be so notified in writing.]
- 233 (d) If the Department determines [at any time] that there is a violation, a  
234 warning [must] may be issued, and the violation must be corrected within 30  
235 days. [If it is not corrected, the Department must notify the operator of the  
236 home occupation or home health practitioner's office that either:]
- 237 [(1) The home occupation or home health practitioner's office must cease  
238 immediately; or

239 (2)] In the case of any violation that might be remedied with a special  
240 exception, a petition must be filed within [10] 60 business days for a  
241 special exception for a major home occupation [in accordance with]  
242 under Section 59-G-2.29. Operation of the registered home occupation  
243 or home health practitioner's office may continue until the Board has  
244 acted on the petition, provided the violation is corrected [during this  
245 period. The] before the application for a special exception is filed. If  
246 the Board denies the special exception, the home occupation or home  
247 health practitioner's office must cease immediately [if the Board  
248 denies the special exception] or operate under the provisions for a  
249 registered home occupation or home health practitioner's office.

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

257 \* \* \*

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

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

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

263 (a) The following provisions apply to a no-impact home occupation, a registered  
264 home occupation, and to a home health practitioner's office:

- 265 (1) Each home occupation operator or home health practitioner must  
266 [reside in the home for a period of at least 220 days in each calendar  
267 year] show proof of home address.
- 268 [(2) Each home occupation or home health practitioner must maintain a  
269 log of all visits made to the home in connection with the use; this log  
270 must be available to the Department on request.]
- 271 [(3)](2) The amount of floor area used for the home occupation or home  
272 health practitioner's office must not exceed 33 percent of the [total  
273 floor] eligible area of [the dwelling unit and] any existing [accessory]  
274 building on the same lot or parcel. [Any enlargement of the total floor  
275 area resulting from construction completed on or after the date of  
276 commencement of the home occupation or within the 18 months  
277 immediately preceding commencement of the home occupation must  
278 be excluded from the total floor area on which this calculation is  
279 based.]
- 280 [(4)](3) [No] Any equipment or process that creates a nuisance [such as  
281 noise, vibration, glare, fumes, odors, or electrical or electronic  
282 interference detectable at or beyond the lot line of a detached dwelling  
283 unit or the floor, ceiling or party wall of an attached dwelling unit is]  
284 or violates any law is not allowed in connection with the operation of  
285 a home occupation or home health practitioner's office, nor is this  
286 operation allowed to involve use, storage, or disposal of:
- 287 (A) A quantity of a petroleum product sufficient to require a special  
288 license or permit from the fire marshal; or
- 289 (B) Any material defined as hazardous or required to have a special  
290 handling license by the Montgomery County Code, as  
291 amended, or the Annotated Code of Maryland, as amended,

292                   except that disposal of medical waste must be regulated [as  
293                   provided in] by Maryland State Laws and Regulations.

294       [[5)](4)       [No truck] Truck deliveries are not permitted, except for parcels  
295                   delivered by public or private parcel services that customarily make  
296                   residential deliveries.

297       [[6)](5)       A home occupation or home health practitioner's office found to  
298                   be in violation of any provision of Section 59-A-6.1 is subject to the  
299                   enforcement procedures [stated in] under Section 59-A-3.43(c), (d),  
300                   and (e).

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

302               (1)       It must be conducted by a member or members of the family[, as  
303                   defined in Section 59-A-2.1,] residing in the dwelling unit. No non-  
304                   resident employees are permitted.

305               (2)       A maximum of 5 visits per week, including deliveries, is allowed in  
306                   connection with no-impact home occupations on one lot or parcel.  
307                   [For the purposes of this section, a “visit” is defined as a visit to the  
308                   home by one automobile transporting one or more clients or  
309                   customers.]

310               (3)       [No] The sale of goods on the premises is not allowed.

311               (4)       Display or storage of goods is limited to samples of merchandise that  
312                   may be ordered by customers to whom it will be delivered at off-site  
313                   locations, or merchandise awaiting such delivery, but [in no event  
314                   must] the storage of merchandise awaiting delivery must not exceed  
315                   30 square feet of floor area.

316               (5)       [No equipment] Equipment or facilities may not be used other than:

317                   (A)       Domestic or household equipment;

- 318 (B) Office equipment[, such as a typewriter, word processor,  
319 calculator or computer]; or
- 320 (C) [Art or handicraft equipment, such as a hand loom, spinning  
321 wheel, potter's wheel, kiln, and woodworking tools, or wine-  
322 making and beer-making equipment.] Any equipment  
323 reasonably necessary for art production, handicrafts, or making  
324 beer or wine.
- 325 (6) If an accessory building is used for any part of the no-impact home  
326 occupation, there must be no external evidence of such use. [No more  
327 than] Only one accessory building may be used for this purpose. A  
328 new accessory building must not be constructed for the purpose of  
329 conducting the home occupation. For the purpose of this section an  
330 accessory building must [have existed for at least 18 months prior to  
331 the onset of the business activity in order to be used as a part of the  
332 home occupation] be an eligible area.
- 333 (7) In the residential one-family zones regulated by Section 59-C-1.3 and  
334 in recorded residential subdivisions in the agricultural zones regulated  
335 by Division 59-C-9, any commercial vehicle that is parked or garaged  
336 on-site in connection with the no-impact home occupation must  
337 [comply with] satisfy the regulations for commercial vehicles in  
338 Section 59-C-1.31[, titled "Land Uses."]. In townhouse and multiple  
339 family dwellings in zones other than residential one-family or  
340 agricultural, one light commercial vehicle may be parked on-site in  
341 connection with this use, if parked in a garage.
- 342 (8) The display of a sign must [comply with the requirements established  
343 in] satisfy Article 59-F of this [chapter] Chapter.

- 344 (9) A no-impact home occupation must have no discernible impact on the  
345 surrounding neighborhood and must be accessory to the residential  
346 use of the dwelling unit in which it occurs.
- 347 (10) In the R-60 and R-90 zones[:
- 348 (A) Not], not more than [one] two motor [vehicle] vehicles [of a  
349 patron, client, or any other non-resident using,] visiting[, or  
350 associated with] a no-impact home occupation may be parked at  
351 the same time on a lot or parcel where a home occupation is  
352 conducted.
- 353 (c) A registered home occupation in a residential or agricultural zone, as  
354 [provided by] allowed under Section 59-C-1.31, 59-C-1.71, 59-C-2.3 or 59-  
355 C-9.3, must [comply with] satisfy the following standards:
- 356 (1) A maximum of 2 registered home occupations is allowed in any one  
357 dwelling unit.
- 358 (2) It must be conducted by a member or members of the family[, as  
359 defined in Section 59-A-2.1,] residing in the dwelling unit, and may  
360 employ no more than one nonresident assistant or business associate  
361 [who is required to be at the dwelling unit for any length of time  
362 during the 24-hour day]. For the purposes of this section, no more  
363 than one employee may visit the dwelling unit within any 24 hour  
364 period. The arrival and departure of the nonresident assistant or  
365 associate are not included in (3) below.
- 366 (3) A maximum of 20 visits per week, and no more than 5 per day,  
367 excluding deliveries, is allowed in connection with one or both  
368 registered home occupations on one lot or parcel. [For the purposes of  
369 this section, a "visit" is defined as a visit to the home by one  
370 automobile transporting one or more clients or customers. Visits by]

371 Trips to the home occupation by employees or business associates for  
372 the purpose of picking up paychecks or work orders, or collecting  
373 equipment or merchandise for use, sale, or delivery at off-site  
374 locations are not permitted.

375 (4) The sale of goods on the premises is limited to:

376 (A) Handicrafts or art products or similar hand-made products or  
377 services such as dressmaking, hand-weaving, block-printing,  
378 jewelry, pottery, and musical instruments, which are produced  
379 on site by a resident of the dwelling; or

380 (B) [Up to 5 visits per month that involve the] The sale of items  
381 customarily ordered on the premises of the registered home  
382 occupation for delivery at a later date, to customers at other  
383 locations. However, the delivery of the goods to the customer  
384 must occur off-site.

385 (5) Display or storage of goods is prohibited except for:

386 (A) Such handmade items as enumerated in paragraph (4)(A)  
387 above; or

388 (B) Samples of merchandise that may be ordered by customers to  
389 whom it will be delivered at off-site locations, or merchandise  
390 awaiting such delivery.

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

393 (6) [No equipment or facilities may be used other than] Only the  
394 following equipment or facilities may be used:

395 (A) Domestic, household, or lawn maintenance service equipment;

396 (B) Office equipment[, such as but not limited to a typewriter, word  
397 processor, calculator or computer]; or

398 (C) [Art or handicraft equipment, such as but not limited to a hand  
399 loom, spinning wheel, potter's wheel, kiln or woodworking  
400 tools.] Any equipment reasonably necessary for art production,  
401 handicrafts, or making wine or beer.

402 (7) If an existing accessory building is used for any part of the registered  
403 home occupation, there must be no external evidence of such use. [No  
404 more than] Only one existing accessory building may be used for this  
405 purpose. [A new] An accessory building must [not be constructed for  
406 the purpose of conducting the registered home occupation. For the  
407 purpose of this section an accessory building must have existed for at  
408 least 18 months prior to the onset of the business activity in order to  
409 be used as part of the home occupation] be an eligible area.

410 (8) A registered home occupation must not require construction of any  
411 off-street parking area other than that required by the residential use,  
412 except that any lot, including one recorded [prior to] before June 1,  
413 1958, with less than the minimum area required by the zone, must  
414 have 2 off-street parking spaces. [Newly constructed spaces must be  
415 located in the side or rear yard.] If there is a common parking area  
416 serving more than one dwelling unit, as in the case of multiple-family  
417 or other attached dwelling units, parking in connection with the  
418 registered home occupation must not encroach on parking serving  
419 neighboring dwelling units.

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

421 (A) Not more than two motor vehicles [of any non-resident  
422 employee, patron, client, or any other non-resident person  
423 associated with] of anyone visiting a registered home

424 occupation may be parked at the same time on a lot or parcel  
425 where a registered home occupation is conducted.

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

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

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

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

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

451 (E) For a registered home occupation [for which] with a registration  
452 certificate [had been] issued before November 18, 2002, a home  
453 occupation residential parking area [that accommodates] for  
454 more than two parked motor vehicles may continue to be used  
455 and maintained, [provided that] if such area has been used for  
456 parking for a registered home occupation for not less than three  
457 years [prior to] before November 18, 2002.

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

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

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

473  
474 <sup>1</sup> The setback may be reduced up to 50 percent if a four-  
475 foot high solid wood fence, masonry wall, berm,  
476 evergreen landscaping six feet high [at a time of planting]  
477 when planted, or a combination, effectively screens from  
478 view from the ground of adjoining or confronting

479 property, vehicles parked in the home occupation  
480 residential parking area.

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

487 <sup>3</sup> For a corner lot, the side yard adjoining a public right-  
488 of-way [shall] must be considered as a front yard, and the  
489 front yard setbacks apply.

490 (10) In the Residential One-Family Zones regulated by Section 59-C-1.3  
491 and in recorded residential subdivisions in the Agricultural Zones  
492 regulated by Division 59-C-9, any light commercial vehicle that is  
493 parked or garaged on-site in connection with the registered home  
494 occupation must [comply with] satisfy the regulations for light  
495 commercial vehicles in Section 59-C-1.31[, title "Land Uses."]. In the  
496 Townhouse and Multiple-Family Zones regulated by Sections 59-C-  
497 1.7 and 59-C-2.3, respectively, one light commercial vehicle may be  
498 parked on-site in connection with this use if parked in a garage.

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

501 (d) A home health practitioner's office, in those agricultural or residential zones  
502 where it is allowed as a registered use [in accordance with] under Section  
503 59-C-1.31, 59-C-2.3, or 59-C-9.3, must [comply with] satisfy the following  
504 requirements, except as provided in Paragraph (d)(9), below:

- 505 (1) A use-and-occupancy permit is required[, in accordance with] under  
506 Section 59-A-3.2.
- 507 (2) No more than 2 resident health practitioners are allowed; [no] a  
508 nonresident health practitioner is not allowed, but nonresident support  
509 staff is allowed. A nurse or physician's assistant under the supervision  
510 of the resident health practitioner is deemed to be support staff.
- 511 (3) The home health practitioner(s) may be allowed to treat more than one  
512 patient or client at a time, provided that this does not result in more  
513 than 5 vehicle trips containing not more than 10 patients arriving or  
514 departing at the same appointment time.
- 515 (4) Clients, patients, or other visitors must visit by appointment only and  
516 must be informed of the correct address and parking location.  
517 Emergency patients may visit without appointment; abuse of this  
518 exemption may lead to revocation of the Certificate of Registration.
- 519 (5) An indoor waiting room is required if more than one patient or client  
520 will be on the premises at the same time.
- 521 (6) The sale of goods on the premises is prohibited, except for medication  
522 prescribed by the health practitioner or a prescribed remedial device  
523 that cannot be obtained from a commercial source.
- 524 (7) Off-street parking must be provided [in accordance with] under the  
525 requirement for a medical practitioner's office, as stated in Section 59-  
526 E-3.7. If the lot is in any one-family zone regulated by Section 59-C-  
527 1.3, the parking must be screened; the screening must be equivalent to  
528 that required by Section 59-E-2.92, and newly constructed parking  
529 must be located at the side or rear yard. If there is a common parking  
530 area serving more than one dwelling unit, as in the case of multiple-  
531 family dwelling units, parking in connection with the home health

532 practitioner's office must not encroach on parking serving neighboring  
533 dwelling units.

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

536 (9) A home health practitioner who was in practice at the registered  
537 location [prior to] before February 5, 1990[,] is exempt from the  
538 requirements to:

539 (A) Obtain a use-and-occupancy permit, [as specified by] under  
540 Paragraph (1) above;

541 (B) Provide an indoor waiting room, [as specified by] under  
542 Paragraph (5) above;

543 (C) [Comply with] Satisfy the off-street parking provisions of  
544 Paragraph (7), above; and

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

550 \* \* \*

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

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

553 \* \* \*

554 **Sec. 59-C-1.3 Standard Development**

555 The procedure for approval is specified in Chapter 50.

556 **59-C-1.31. Land uses.**

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

558 - **Permitted Uses.** Uses designated by the letter "P" are permitted on any lot  
 559 in the zones indicated, subject to all applicable regulations.  
 560 - **Special Exception Uses.** Uses designated by the letters "SE" may be  
 561 authorized as special exceptions, [in accordance with the provisions of]  
 562 under Article 59-G.  
 563

	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60	R-40	R-4plex	RMH 200
* * *										
<b>(b) Transportation, communication and utilities.</b>										
Airstrips, in the common open space.		P								
Amateur radio facility.	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE	P <sup>51</sup> /SE
Cable communications system.	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>	SE <sup>9</sup>
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. <sup>46</sup>										
Parking of automobiles, off-street, in connection with commercial uses.	P <sup>39</sup>	P <sup>39</sup>	P <sup>39</sup>	P <sup>39</sup> , 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.  <u>Vehicles and machinery for agricultural use may be parked without restrictions.</u>	P <sup>11,13</sup>	P <sup>11</sup>	P <sup>11</sup>	P <sup>12,13</sup>	P <sup>12</sup>	P <sup>[12]</sup> *					
Pipelines, aboveground.	SE		SE	SE	SE	SE	SE	SE	SE	SE	SE
Pipelines, underground.	P	P	P	P	P	P	P	P	P	P	P

564 \* \* \*

565 <sup>11</sup> [Including farm vehicles and farm machinery for agricultural use. ] Not more  
566 than 3 light commercial vehicles and not more than one unoccupied recreation  
567 vehicle may be parked on any lot at any one time. One additional recreation  
568 vehicle may be used on a lot for dwelling purposes for not more than 3 days in any  
569 month. A tow truck is not permitted to park with a [disabled car] vehicle attached.  
570 The provision for parking motor vehicles off- street in connection with any use  
571 permitted in the RE-1 zone does not apply to a lot reclassified from the R- 200 to  
572 the RE-1 zone that does not meet the minimum lot size requirement of the RE-1  
573 zone. A lot reclassified from the R-200 to the RE-1 zone that does not meet the  
574 minimum lot size requirement of the RE-1 zone is subject to the motor vehicle off-  
575 street parking provision in effect for the lot before the lot was reclassified from the  
576 R-200 to the RE-1 zone. To provide for a reasonable period of amortization, the  
577 use of a lot reclassified from the R-200 to the RE-1 zone that does not conform to  
578 this provision may continue to operate for one year following [(the effective date  
579 of this ZTA) [May 22, 2006]] May 22, 2006. [On that date, the] After that date,

580 the use of the lot must [be brought into conformity with] satisfy this provision or  
581 cease to operate.

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

597 \* \* \*

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

604 \* \* \*

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

605 \* \* \*

606 \* a) Any surfaced area existing before {date of adoption} is not limited by  
607 this 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  
 609                     tract that has its primary access from a primary residential street,  
 610                     minor arterial road, major highway or arterial, or any State road;

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

613     \*   \*   \*

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

615     **DIVISION 59-C-9.        AGRICULTURAL ZONES.**

616     \*   \*   \*

617     **59-C-9.3     Land uses.**

618     \*   \*   \*

	Rural	RC	LDRC	RDT	RS	RNC	RNC/TDR
<b>(f) Transportation, Communication and Utilities:</b>							
Airstrip, associated with farm.		SE <sup>2</sup>	SE	SE			
Amateur radio facility.	P <sup>46/</sup> SE						
Cable communication system. <sup>10</sup>	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 <sup>2,11</sup>	SE <sup>2,11</sup>	SE <sup>11</sup>			
Parking of motor vehicles, other than heavy commercial vehicles, off-street, in connection with any	P <sub>-</sub> *	P <sub>-</sub> *	P <sub>-</sub> *	P <sub>-</sub> *	P	P <sub>-</sub> *	P <sub>-</sub> *

use permitted. <u>Vehicles and machinery for agricultural use may be parked on any size lot without restrictions.</u> <u>A tow truck is not permitted to park with a vehicle attached on any size lot or parcel.</u>							
Parking of motor vehicles, off-street, in connection with commercial uses.	P <sup>39</sup>			P <sup>39</sup>			
* * *							

619

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

627 \* \* \*

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

629

630 **Sign, portable:** A sign installed on a support or structure that permits removal or  
631 relocation of the sign by pulling, carrying, rolling, or driving, such as a sign with  
632 wheels; a menu or sandwich board sign; an inflatable sign; an umbrella, but not a  
633 canopy sign, may be a temporary sign or a limited duration sign, but not a  
634 permanent sign. A sign attached or painted on a vehicle parked and visible from  
635 the public right-of-way is also bound by this division unless it is a currently  
636 licensed and registered vehicle used in the daily operation of the business. This

637 does not include a sign on [a] any light or heavy commercial vehicle as defined in  
638 59-A-2.1. which is operated within the public right-of-way.

639

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

642 \* \* \*

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

644 \* \* \*

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

653 \* \* \*

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

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

- 664 (A) the Hearing Examiner has provided written notice of the  
665 renewal date;
- 666 (B) renewal has been granted or denied, or the special exception  
667 holder has declined to renew the special exception; or
- 668 (C) the holder of the special exception has failed to respond to the  
669 notice of renewal before the special exception expires.
- 670 (2) If the special exception holder declines to renew, notice of the  
671 consequent expiration of the special exception must be sent by regular  
672 mail to the special exception holder, the property owner, and all other  
673 persons entitled to notice.
- 674 (3) If the holder of the special exception does not reply to notification of  
675 the renewal date within 30 days from the mailing of the notice, a  
676 second notice shall be sent to the special exception holder and the  
677 property owner by certified mail, stating the date on which the special  
678 exception will expire if a renewal application is not received. If no  
679 reply to the second notice is received, the Hearing Examiner must  
680 issue an Order stating that the special exception has expired. The  
681 Order must be sent to the special exception holder and the property  
682 owner by certified mail and to all other persons entitled to notice of  
683 the special exception, by regular mail.
- 684 (4) Upon receipt of an application for renewal, the Hearing Examiner  
685 must issue notice of a public hearing. The Hearing Examiner must  
686 conduct this public hearing at least 30 days after notice is sent to all  
687 parties entitled to notice of the original special exception hearing. The  
688 public hearing on the renewal may be waived by the Hearing  
689 Examiner if the inspection of the premises indicates that the special  
690 exception is in compliance with the applicable provisions of this

691 Chapter and conditions established by the Board of Appeals, and the  
692 parties entitled to notice are given an opportunity to request a hearing  
693 and fail to do so.

694 (5) If a special exception holder requests modification of the terms and  
695 conditions of the special exception in conjunction with a renewal  
696 request, the Hearing Examiner may make a decision on the requested  
697 modification as part of the decision on the renewal, without a public  
698 hearing, if in the Hearing Examiner's judgment:

699 (A) the modification does not substantially alter the nature,  
700 character, intensity of use or the conditions of the original  
701 grant; and

702 (B) the parties entitled to notice are given an opportunity to request  
703 a hearing and fail to do so.

704 (6) If, in the Hearing Examiner's judgment, the requested modification  
705 represents a significant change that would not substantially alter the  
706 nature, character, intensity of use or the conditions of the original  
707 grant, the Hearing Examiner may make a decision on the modification  
708 and the renewal only after a public hearing convened with proper  
709 notice .

710 \* \* \*

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

713

714 This is a correct copy of Council action.

715

716

717 \_\_\_\_\_  
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.

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 *RK*  
Ralph Wilson, Zoning Supervisor *RW*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To amend the provisions and definitions for: home occupations and home occupation special exceptions; violations; use and occupancy permits; commercial vehicles; and off-street parking surfaces and locations.

**TEXT AMENDMENT:** No. 09-03  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** District Council at the Request of the County Executive  
**INTRODUCED DATE:** May 5, 2009

**PLANNING BOARD REVIEW:** June 4, 2009  
**PUBLIC HEARING:** June 9, 2009; 7:30pm

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**STAFF RECOMMENDATION:** Staff provides the following comments

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

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

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

## ANALYSIS

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

### I. Amend the provisions and definitions concerning home occupations

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

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

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

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

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

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

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

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

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

Currently, commercial vehicles are generally defined as vehicles of more than 10,000 pounds of vehicle weight or having a carrying load capacity of more than  $\frac{3}{4}$  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

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**Debra S. Borden**  
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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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Council President Phil Andrews

June 9, 2009

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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.

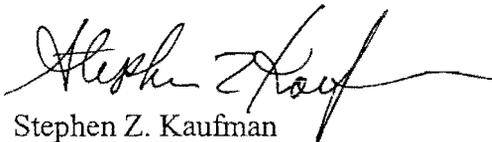
Accordingly, we respectfully suggest on behalf of our client the following language be added to the grandfather provisions to address ambiguities as they relate to existing commercial uses in the affected zones:

"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

**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, 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, 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 or parcel containing at least 65,000 square feet 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 or parcel containing less than 65,000 square feet 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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7/8/2009

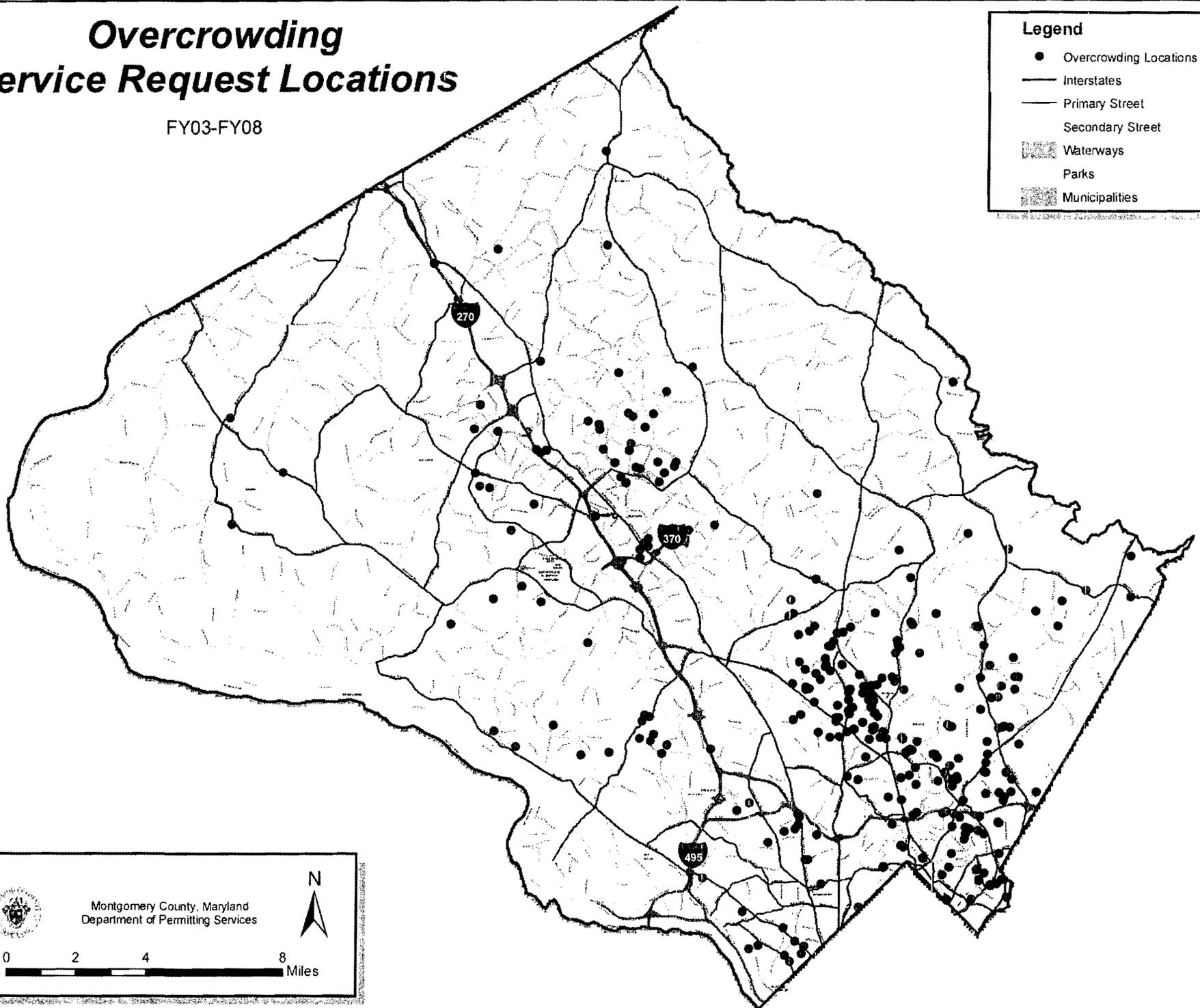
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# Overcrowding Service Request Locations

FY03-FY08

**Legend**

- Overcrowding Locations
- Interstates
- Primary Street
- Secondary Street
- ▨ Waterways
- ▨ Parks
- ▨ Municipalities



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Montgomery County, Maryland  
Department of Permitting Services



0 2 4 8 Miles