



**Committee:** PHP

**Committee Review:** At a future date

**Staff:** Livhu Ndou, Legislative Attorney

**Purpose:** To introduce agenda item – no vote expected

**Keywords:** #ConditionalUse #LimitedUse

#HearingExaminer #OZAH #PreliminaryPlan

AGENDA ITEMS #2A&2B

December 12, 2023

**Introduction**

## SUBJECT

Zoning Text Amendment (ZTA) 23-11, Regulatory Approvals – Conditional Use  
Subdivision Regulation Amendment (SRA) 23-02, Preliminary Plan – Approval Procedures

Lead Sponsor: Council President Friedson

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

To introduce ZTA and SRA

## DESCRIPTION/ISSUE

ZTA 23-11, Regulatory Approvals – Conditional Use, will streamline the Office of Zoning and Administrative Hearing's (OZAH) processes. SRA 23-02, Preliminary Plan – Approval Procedures, will allow concurrent review of a preliminary plan and conditional use application.

## SUMMARY OF KEY DISCUSSION POINTS

- SRA 23-02 will allow concurrent review of a preliminary plan and conditional use application. The preliminary plan approval will be a “conditional approval” contingent on the approval of the conditional use.
- ZTA 23-11 will streamline OZAH's processes by:
  - allowing limited use approval in certain zones for the following uses: Equestrian Facility, Home Health Practitioner, Home Occupation (Major Impact), Retail/Service Establishment, Rural Country Market, and Automobile Storage Lot;
  - increasing Family Day Care from 8 to 12 persons and eliminating Group Day Care (9-12 Persons);
  - consolidating Home Health Practitioner (Low Impact) and Home Health Practitioner (Major Impact);
  - consolidating Retail/Service Establishment (85,001 SF and Over) and Retail/Service Establishment (120,001 SF and Over);
  - not requiring additional notice for waiver of a parking requirement;
  - not requiring landscaping plans that provide more than the minimum requirements to go through the alternative method of compliance;
  - allowing the Hearing Examiner to dismiss inactive applications; and
  - allowing the Hearing Examiner to waive or refund conditional use fees.

- A public hearing is tentatively scheduled for January 23, 2024.

**This report contains:**

ZTA 23-11

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SRA 23-02

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Ordinance No.: \_\_\_\_\_  
Zoning Text Amendment No.: 23-11  
Concerning: Regulatory Approvals –  
Conditional Use  
Revised: 12/4/2023 Draft No.: 1  
Introduced: December 12, 2023  
Public Hearing: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

**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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Lead Sponsor: Council President Friedson

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

- (1) change certain conditional uses to limited uses;
- (2) remove the application notice requirement for certain parking waivers;
- (3) allow approval of certain landscaping plans under the alternative method of compliance;
- (4) allow the Hearing Examiner to dismiss inactive conditional use applications;
- (5) allow the Hearing Examiner to approve waivers and refunds of filing fees under certain circumstances; and
- (6) generally amend the development procedures for certain regulatory approvals.

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

Division 1.4.	“Defined Terms”
Section 1.4.2.	“Specific Terms and Phrases Defined”
Division 3.1.	“Use Table”
Section 3.1.5.	“Transferable Development Rights”
Section 3.1.6.	“Use Table”
Division 3.2.	“Agricultural Uses”
Section 3.2.4.	“Equestrian Facility”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”
Division 3.4.	“Civic and Institutional Uses”
Section 3.4.4.	“Day Care Facility”
Division 3.5.	“Commercial Uses”
Section 3.5.11.	“Retail Sales and Service”

Section 3.5.13.	“Vehicle Service”
Division 6.2.	“Parking, Queuing, and Loading”
Section 6.2.4.	“Parking Requirements”
Section 6.2.10.	“Parking Waiver”
Division 6.3.	“Open Space and Recreation”
Section 6.3.4.	“Rural Open Space”
Division 6.8.	“Alternative Compliance”
Section 6.8.1.	“Alternative Method of Compliance”
Division 7.3.	“Regulatory Approvals”
Section 7.3.1.	“Conditional Use”
Division 7.6.	“Special Provisions”
Section 7.6.5.	“Fees”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*  
*Underlining indicates text that is added to existing law by the original text amendment.*  
*[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.*  
*Double underlining indicates text that is added to the text amendment by amendment.*  
*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*  
*\* \* \* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*



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**2. Residential**

- a. Attached Accessory Dwelling Unit
- b. Detached Accessory Dwelling Unit
- c. Residential Care Facility (Up to 8 Persons)
- d. Residential Care Facility (9 - 16 Persons)
- e. Residential Care Facility (Over 16 Persons)
- f. Guest House
- g. Home Health Practitioner [(Low Impact)]
- [h. Home Health Practitioner (Major Impact)]
- [i]h. Home Occupation (Low Impact)
- [j]i. Home Occupation (Major Impact)

**3. Civic and Institutional**

- a. Charitable, Philanthropic Institution
- [b. Group Day Care (9 - 12 Persons)]
- [c]b. Day Care Center (13 - 30 Persons)
- [d]c. Day Care Center (Over 30 Persons)
- [e]d. Private Club, Service Organization
- [f]e. Religious Assembly

\* \* \*

**Section 3.1.6. Use Table**

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.



USE OR USE GROUP	Definition s and Standards	Ag	Rural Residential			Residential												Commercial / Residential			Employment				Industrial				
						Residential Detached								Residential Townhouse			Residential Multi-Unit												
						AR	R	RC	RNC	RE- 2	RE- 2C	RE-1	R- 200	R-90	R-60	R- 40	TLD											TMD	THD
[Group Day Care (9 -12 Persons)]	[3.4.4.D]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[L]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[C]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	[P]	
Day Care Center (13 - 30 Persons)	[3.4.4.E] <u>3.4.4.D</u>	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	
* * *																													
COMMERCIAL																													
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RETAIL SALES AND SERVICE	3.5.11																												
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Retail/Service Establishment (85,001[-120,000] SF and Over)	3.5.11.B																			L	L	L	L			L	L	L	
[Retail/Service Establishment (120,001 SF and Over)]	[3.5.11.B]																			[L]	[L]	[C]	[C]			[L]	[L]	[L]	
* * *																													
Rural Country Market	3.5.11.D	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>	[C] <u>L/C</u>																				
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VEHICLE SERVICE	3.5.13																												
Automobile Storage Lot	3.5.13.A																									C			
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**Sec. 3. DIVISION 59-3.2 is amended as follows:**

**Division 3.2. Agricultural Uses**

\* \* \*

**Section 3.2.4. Equestrian Facility**

**A. Defined**

Equestrian Facility means any structure or land that is used primarily for the care, breeding, boarding, rental, riding, or training of horses or the teaching of equestrian skills. Equestrian Facility includes events such as competitions, exhibitions, or other displays of equestrian skills.

**B. Use Standards**

1. Where an Equestrian Facility is allowed as a limited use, it must satisfy the following standards:
  - a. The minimum gross acreage per horse is as follows:
    - i. for 1-2 horses, 2 acres;
    - ii. for 3-10 horses, one acre per horse; and
    - iii. for more than 10 horses, 10 acres plus an additional one-half acre for each horse over 10.
  - b. In the RNC zone, a maximum of 5 horses is allowed.
  - c. In the RE-2, RE-2C, RE-1, and R-200 zones, a maximum of 5 horses are allowed if the following standards are satisfied:
    - i. The horses are kept for non-commercial purposes. Commercial purposes include boarding horses not owned by the resident for a fee, instruction in equestrian skills for a fee, and events such as competitions, exhibitions, or other displays of equestrian skills.

78                   ii.     The maximum number of horses is determined by the  
79                             minimum lot sizes in Section 3.2.4.B.1.a.

80                   iii.     State requirements for nutrient management concerning  
81                             animal waste must be met.

82           [c]d. Any Equestrian Facility that keeps or boards more than 10  
83                   horses must meet all nutrient management, water quality, and  
84                   soil conservation standards of the County and State. A nutrient  
85                   management plan prepared by a qualified professional and a  
86                   soil conservation and water quality plan prepared by the  
87                   Montgomery Soil Conservation District Board must be  
88                   submitted through a letter of certification by the landowner to  
89                   DPS, or other relevant agency. Enforcement of the nutrient  
90                   management, water quality, and soil conservation plans is the  
91                   responsibility of the State of Maryland. The landowner must  
92                   obtain all plans within one year after starting operations.

93           [d]e. Each building, show ring, paddock, outdoor arena, and manure  
94                   storage area must be located at least 100 feet from any existing  
95                   dwelling on an abutting property.

96           [e]f. Amplified sound must satisfy Chapter 31B.

97           [f]g. Any outdoor arena lighting must direct light downward using  
98                   full cutoff fixtures; producing any glare or direct light onto  
99                   nearby properties is prohibited. Illumination is prohibited after  
100                   10:00 p.m. on Friday or Saturday, and after 9:00 p.m. on  
101                   Sunday through Thursday.

102           [g]h. Equestrian events are restricted as follows:

Site Requirements	Hours of Operation		Number of Participants and Spectators			
	Su-Th	Fr-Sa	Event	Informal Event	Minor Event	Major Event
			0-25	26-50	51-150	151-300
Up to 17.9 acres	6am-9pm	6am-10pm	Unlimited on any day	None	None	None
18 - 24.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	None	None
25 - 74.9 acres	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	None
75+ acres and direct access to a roadway with an Area Connector or higher classification	6am-9pm	6am-10pm	Unlimited on any day	Unlimited on Sat, Sun and holidays; maximum of 6 weekdays per month	Maximum of 7 per year	Maximum of 3 per year lasting up to 3 consecutive days each

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- [h].i. A permit must be obtained from DPS for each event involving between 151 and 300 participants and spectators, per day. The applicant must specify the nature of the event, the anticipated attendance of spectators and participants, the number of days the event will take place, the hours during which the event will take place, the area to be used for parking, any traffic control measures intended to be put in place, and any other information determined by DPS to be relevant to the issuance of the permit. A fee for issuance of the permit may be set by DPS.
- [i].i. An Equestrian Facility conditional use application may be filed with the Hearing Examiner to deviate from any limited use standard regarding: number of participants and spectators; number of events each year; event acreage; or hours of operation. [An Equestrian Facility conditional use approval must be renewed every 5 years. Before the conditional use is

119 renewed the Hearing Examiner must evaluate the effectiveness  
120 of the terms and conditions of the original approval.]

121 2. Where an Equestrian Facility is allowed as a conditional use, it may  
122 be permitted by the Hearing Examiner under all applicable limited use  
123 standards, Section 7.3.1, Conditional Use, and the following  
124 standards:

125 a. If the subject lot abuts property in the AR zone, screening under  
126 Division 6.5 is not required.

127 b. In the AR, R, RC, and RNC zones:

128 i. The Equestrian Facility must not adversely affect  
129 abutting land uses or the surrounding road network.

130 ii. In evaluating the compatibility of an Equestrian Facility  
131 on the surrounding land uses, the Hearing Examiner must  
132 consider that the impact of an agricultural use on  
133 surrounding land uses in an Agricultural or Rural  
134 Residential zone does not necessarily need to be  
135 controlled as stringently as the impact in a Residential  
136 zone.

137 c. In the RE-2, RE-2C, RE-1, and R-200 zones:

138 i. Any Equestrian Facility on less than 5 acres must  
139 establish through a pasture maintenance plan, feeding  
140 plan, and any other documentation the Hearing Examiner  
141 requires, that the site contains sufficient open pasture to  
142 ensure proper care of the horses and proper maintenance  
143 of the site.

144 ii. The Hearing Examiner may limit or regulate more  
145 stringently than limited use standards the following:

- 146 (a) the number of horses that may be kept or boarded;
- 147 (b) the number of horses that may be rented out for
- 148 recreational riding or instruction;
- 149 (c) the number and type of equestrian events that may
- 150 be held in a one-year period; and
- 151 (d) the hours of operation of any equestrian event or
- 152 activity.
- 153 iii. The facility operator must satisfy the state requirements
- 154 for nutrient management concerning animal waste.

155 \* \* \*

156 **Sec. 4. DIVISION 59-3.3 is amended as follows:**

157 **Division 3.3. Residential Uses**

158 \* \* \*

159 **Section 3.3.3. Accessory Residential Uses**

160 \* \* \*

161 **G. Home Health Practitioner**

162 **1. Defined[, In General]**

163 a. Home Health Practitioner means the office of a health  
 164 practitioner who is licensed or certified by a Board under the  
 165 Maryland Department of Health and Mental Hygiene, has an  
 166 advanced degree in the field from an accredited educational  
 167 institution, and who resides in the dwelling unit in which the  
 168 office is located. Home Health Practitioner includes a registered  
 169 nurse or physician’s assistant if that person has an advanced  
 170 degree in the field and practices independently. Home Health  
 171 Practitioner does not include an electrologist, mortician, nursing  
 172 home administrator, pharmacist, or veterinarian.

173            b. Home Health Practitioner is limited to 2 health practitioners,  
174            one of whom must be a resident, and up to 3 non-resident  
175            support persons in any 24-hour period.

176            **2. Use Standards [for All Home Health Practitioners]**

177            a. A Home Health Practitioner is prohibited in an apartment,  
178            [multi use] multi-use, and general building type.

179            b. Screening under Division 6.5 is not required.

180            c. To maintain the residential character of the dwelling:

181            i. The use must be conducted by an individual or  
182            individuals residing in the dwelling unit.

183            ii. The use must be conducted within the dwelling unit or  
184            any accessory building and not in any open yard area.  
185            The use must be subordinate to the use of the dwelling  
186            for residential purposes and any external modifications  
187            must be consistent with the residential appearance of the  
188            dwelling unit.

189            iii. Exterior storage of goods or equipment is prohibited.

190            iv. The maximum amount of floor area used for the Home  
191            Health Practitioner is 33% of the eligible floor area of the  
192            dwelling unit plus any existing accessory building on the  
193            same lot, or 1,500 square feet, whichever is less.

194            v. An existing accessory building may be used for the home  
195            health practice, but external evidence of such use is  
196            prohibited. Only one accessory building may be used and  
197            it must be an eligible area.

198            vi. Equipment or facilities are limited to:

199            (a) office equipment; or

- 200 (b) medical equipment.
- 201 vii. Any equipment or process that creates a nuisance or
- 202 violates any law is prohibited in connection with the
- 203 operation of a home health practice.
- 204 viii. Disposal of medical waste must be regulated by State
- 205 laws and regulations.
- 206 ix. Truck deliveries are prohibited, except for parcels
- 207 delivered by public or private parcel services that
- 208 customarily make residential deliveries.
- 209 x. Appointments are required for visits, but emergency
- 210 patients may visit outside the specified hours or without
- 211 appointment.
- 212 xi. Clients, patients, or other visitors must be informed of the
- 213 correct address and parking location in advance of any
- 214 appointment.
- 215 xii. In a Residential zone, any additional parking must be
- 216 located behind the front building line.
- 217 d. The applicant must provide valid proof of home address as
- 218 established by Executive regulations under Method 2 of
- 219 Chapter 2 (Section 2A-15).
- 220 e. In the AR zone, this use may be prohibited under Section 3.1.5,
- 221 Transferable Development Rights.

222 **[3. Home Health Practitioner (Low Impact)]**

223 **[a. Defined**

224 Home Health Practitioner (Low Impact) means a Home Health  
225 Practitioner that is limited to 2 resident health practitioners and one  
226 non-resident support person in a 24-hour period.]

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**[b. Use Standards**

Where a Home Health Practitioner (Low Impact) is allowed as a limited use, it must satisfy the following standards:]

[i]f. Treatment of more than one patient or client at a time is allowed, but not more than 3 vehicle trips containing not more than 10 patients may come or leave at the same appointment time.

g. A Home Health Practitioner may only operate between the hours of 7:00 a.m. and 7:00 p.m.

[ii]h. The sale of goods on the premises is prohibited, except for medication prescribed by the health practitioner or a prescribed remedial device that cannot be obtained from a commercial source.

[iii]i. A maximum of one Home Occupation [(Low Impact)] and one Home Health Practitioner [(Low Impact)] is allowed on the same site. A Home Health Practitioner is not permitted on a site that is already approved for any other conditional use under Section 7.3.1, Conditional Use or a Home Occupation (Major Impact).

[iv]j. An indoor waiting room must be provided if more than one patient or client will be on the premises at the same time.

[v]k. Parking must be screened under Section 6.2.9.B or Section 6.2.9.C, depending on the number of parking spaces provided.

l. Where a Home Health Practitioner is allowed as a conditional use, the limited use standards of this Section apply, except the hours of operation; number of clients, customers, patients, or other visitors allowed; and the on-site sale of goods may be



254 determined by the Hearing Examiner under Section 7.3.1,  
255 Conditional Use.

256 **[c]m. Registration**

257 Any Home Health Practitioner [(Low Impact)] must register  
258 with DPS.

259 **i. Application Requirements**

260 An application for registration must include the  
261 following:

262 (a) a signed affidavit of compliance that affirms that  
263 the applicant:

264 (1) satisfies the applicable standards in Section  
265 3.3.3.G; and

266 (2) will take whatever action is required by DPS  
267 to bring the Home Health Practitioner (Low  
268 Impact) into compliance if complaints of  
269 noncompliance are received and verified;

270 (b) the manner in which the operation of the Home  
271 Health Practitioner [(Low Impact)] satisfies the use  
272 standards in Section 3.3.3.G;

273 (c) the location of the lot by street address and either  
274 lot and block number or liber and folio;

275 (d) the zone in which the lot is located;

276 (e) area of the lot or parcel, in square feet or acres;

277 (f) the total floor area of the dwelling unit and the  
278 amount of floor area to be used for the Home  
279 Health Practitioner [(Low Impact)], as well as the  
280 floor area of any existing accessory building to be

- 281 used for the Home Health Practitioner [(Low
- 282 Impact)];
- 283 (g) the location and number of off-street parking
- 284 spaces;
- 285 (h) proof of home address;
- 286 (i) other pertinent information required by DPS;
- 287 (j) a copy of the use-and-occupancy permit required
- 288 under Section 7.4.2; and
- 289 (k) the location of any indoor waiting room for
- 290 patients, if more than one patient will be on the
- 291 premises at the same time.

292 **ii. Approval**

- 293 (a) DPS must issue a Certificate of Registration if the
- 294 applicant:
- 295 (1) satisfies Section 3.3.3.G; and
- 296 (2) has an approved on-site inspection.
- 297 (b) DPS must maintain a Home Health Practitioner
- 298 Registry that is readily available for public
- 299 inspection.

300 **iii. Compliance and Enforcement**

- 301 (a) If DPS receives a complaint about a Home Health
- 302 Practitioner [(Low Impact)], an inspector must
- 303 inspect the property and determine, within 90 days
- 304 after receipt of the complaint, whether there is a
- 305 violation of the provisions of Section 3.3.3.G.
- 306 (b) If DPS determines that there is a violation, DPS
- 307 may issue a warning notice, and the violation must

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- be corrected within 30 days after the warning notice is issued.
- (1) In the case of any violation that could be remedied with a conditional use approval, a petition must be filed within 60 days after the warning notice is issued for a conditional use for a Home Health Practitioner [(Major Impact)] under Section 3.3.3.G.4.
  - (2) A hearing on a petition for a conditional use filed in the case of a Home Health Practitioner [(Low Impact)] found to be in violation of Section 3.3.3.G must be scheduled within 30 days, or as soon as the Hearing Examiner's calendar permits. The Hearing Examiner does not have authority to grant the applicant any extension of the hearing in such a case.
  - (3) Operation of the Home Health Practitioner [(Low Impact)] may continue until the Hearing Examiner has acted on the petition, if the violation is corrected before the application for conditional use is filed. If the Hearing Examiner denies the conditional use application, the Home Health Practitioner [(Low Impact)] must cease immediately or operate under the requirements for a Home Health Practitioner [(Low Impact)].

- 335 (c) DPS may issue a citation under Division 7.8:
- 336 (1) immediately, instead of a warning notice
- 337 under Section 3.3.3.G.3.c.iii(b); or
- 338 (2) 30 days or more after the warning notice
- 339 was issued under Section 3.3.3.G.3.c.iii(b).

340 **[4. Home Health Practitioner (Major Impact)**

341 **a. Defined**

342 Home Health Practitioner (Major Impact) means a Home Health  
343 Practitioner limited to 2 resident health practitioners and 2 or more  
344 non-resident support persons in any 24-hour period.]

345 **[b. Use Standards**

346 Where a Home Health Practitioner (Major Impact) is allowed as a  
347 conditional use, it may be permitted by the Hearing Examiner under  
348 Section 7.3.1, Conditional Use, and the following standards:

- 349 i. The hours of operation and number of clients, customers,  
350 patients or other visitors allowed during that time are  
351 determined by the Hearing Examiner.
- 352 ii. The maximum number of deliveries is determined by the  
353 Hearing Examiner.
- 354 iii. On-site sale of goods is determined by the Hearing  
355 Examiner.
- 356 iv. The Hearing Examiner may grant a conditional use for a  
357 Home Health Practitioner (Major Impact) on the same  
358 site as a Home Health Practitioner (Low Impact), a Home  
359 Occupation (Low Impact), or a Home Occupation (No  
360 Impact) if it finds that both together can be operated in a

361 manner that satisfies Section 3.3.3.G.4 and Section 7.3.1,  
362 Conditional Use.

363 v. The Hearing Examiner must not grant a conditional use  
364 for a Home Health Practitioner (Major Impact) where the  
365 site is already approved for any other conditional use  
366 under Section 7.3.1, Conditional Use.

367 vi. An indoor waiting room must be provided.

368 vii. Screening under Division 6.5 is not required.]

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370 **H. Home Occupation**

371 **1. Defined, In General**

372 Home Occupation means any occupation that provides a service or product  
373 and is conducted within a dwelling unit by a resident of the dwelling unit.  
374 Home Occupation does not include Home Health Practitioner (see Section  
375 3.3.3.G, Home Health Practitioner), Bed and Breakfast (see Section 3.5.6.B,  
376 Bed and Breakfast), Day Care Facility (see Section 3.4.4, Day Care  
377 Facility), display of furniture not made in the home for sale in the home or at  
378 an off-site location, Landscape Contractor (see Section 3.5.5, Landscape  
379 Contractor), or Educational Institution (Private) (see Section 3.4.5,  
380 Educational Institution (Private)).

381 **2. Use Standards for all Home Occupations**

382 a. Screening under Division 6.5 is not required.

383 b. To maintain the residential character of the dwelling:

384 i. The use must be conducted by an individual or  
385 individuals residing in the dwelling unit.

386 ii. The use must be conducted within the dwelling unit or  
387 any accessory building and not in any open yard area.

388 The use must be subordinate to the use of the dwelling  
389 for residential purposes and require no external  
390 modifications that detract from the residential appearance  
391 of the dwelling unit.

392 iii. Exterior storage of goods or equipment is prohibited.

393 iv. The maximum amount of floor area used for the Home  
394 Occupation must not exceed 33% of the total eligible  
395 area of the dwelling unit and any existing accessory  
396 building on the same lot, or 1,500 square feet, whichever  
397 is less.

398 v. An existing accessory building may be used for the  
399 Home Occupation, but external evidence of such use is  
400 prohibited. Only one accessory building may be used and  
401 it must be an eligible area.

402 vi. Equipment or facilities are limited to:  
403 (a) domestic or household equipment;  
404 (b) office equipment; or  
405 (c) any equipment reasonably necessary for art  
406 production, handcrafts, or making beer or wine.

407 vii. Any equipment or process that creates a nuisance or  
408 violates any law is prohibited in the operation of a Home  
409 Occupation.

410 viii. A Home Occupation is prohibited to use, store, or  
411 dispose of:

412 (a) a quantity of a petroleum product sufficient to  
413 require a special license or permit from The Fire  
414 Marshal; or

415 (b) any material defined as hazardous or required to  
416 have a special handling license under State and  
417 County law.

418 ix. Truck deliveries are prohibited, except for parcels  
419 delivered by public or private parcel services that  
420 customarily make residential deliveries.

421 x. Display or storage of merchandise to be delivered must  
422 not be visible outside of the residence and must be  
423 contained within the maximum floor area available for  
424 the Home Occupation.

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

428 xii. A second kitchen in the home for catering or making  
429 food for off-site delivery or sales is prohibited.

430 xiii. The maintenance or repair of motor vehicles for  
431 compensation is prohibited.

432 \* \* \*

433 **5. Home Occupation (Major Impact)**

434 **a. Defined**

435 Home Occupation (Major Impact) means a Home Occupation that is  
436 limited to 2 non-resident employees in any 24-hour period and is  
437 regulated under Section 7.3.1, Conditional Use.

438 **b. Use Standards**

439 i. Where a Home Occupation (Major Impact) is allowed as  
440 a limited use, it must satisfy the following standards:

- 441 (a) The maximum number of visits is 35 per week,  
442 and no more than 8 per day, excluding deliveries  
443 and the arrival and departure of any non-resident  
444 employee.
- 445 (b) Visitors must wait inside the dwelling unit.
- 446 (c) In-person sale of goods is limited to:
- 447 (1) the products of dressmaking, hand-weaving,  
448 block-printing, the making of jewelry,  
449 pottery or musical instruments by hand, or  
450 similar arts or hand-crafts performed by a  
451 resident of the dwelling; and
- 452 (2) a maximum of 5 sales per month of items  
453 ordered for delivery at a later date to  
454 customers at other locations (delivery of  
455 goods must occur off-site).
- 456 (d) Display or storage of goods is limited to:
- 457 (1) the products listed in Section  
458 3.3.3.H.5.b.i.(c); and
- 459 (2) samples of merchandise that may be ordered  
460 by customers for delivery at other locations.
- 461 (e) Display or storage of merchandise to be delivered  
462 must not be visible outside of the residence and  
463 must be contained within the maximum floor area  
464 available for the Home Occupation.
- 465 (f) Home Occupation (Major Impact) may not be on a  
466 site that is already approved for another



467 conditional use under Section 7.3.1, Conditional  
468 Use or Home Health Care Practitioner.

469 (h) The applicant must provide valid proof of home  
470 address as established by Executive regulations  
471 under Method 2 of Chapter 2 (Section 2A-15).

472 (i) Screening under Division 6.5 is not required.

473 ii. Where a Home Occupation (Major Impact) is allowed as  
474 a conditional use, it may be permitted by the Hearing  
475 Examiner under Section 7.3.1, Conditional Use, and the  
476 following standards:

477 [i.](a) The maximum number of visits and deliveries is  
478 determined by the Hearing Examiner.

479 [ii.](b) An indoor waiting room must be provided.

480 [iii.](c) In-person sale of goods is limited to:

481 [(a)](1) the products of dressmaking, hand-  
482 weaving, block-printing, the making of  
483 jewelry, pottery or musical instruments by  
484 hand, or similar arts or hand-crafts  
485 performed by a resident of the dwelling; and

486 [(b)](2) a maximum of 5 sales per month of  
487 items ordered for delivery at a later date to  
488 customers at other locations (delivery of  
489 goods must occur off-site).

490 [iv.](d) Display or storage of goods is limited to:

491 [(a)](1) the products listed in Section  
492 3.3.3.H.5.b.iii.(a); and

493 [(b)](2) samples of merchandise that may be  
494 ordered by customers for delivery at other  
495 locations.

496 [v.](e) Display or storage of merchandise to be  
497 delivered must not be visible outside of the  
498 residence and must be contained within the  
499 maximum floor area available for the Home  
500 Occupation.

501 [vi.](f) The Hearing Examiner may grant a  
502 conditional use for a Home Occupation (Major  
503 Impact) on the same site as a Home Occupation  
504 (Low Impact), a Home Occupation (No Impact), or  
505 a Home Health Practitioner [(Low Impact)] if [it]  
506 the Hearing Examiner finds that both together can  
507 be operated in a manner that satisfies Section  
508 3.3.3.H.5 and Section 7.3.1, Conditional Use.

509 [vii.](g) The Hearing Examiner must not grant a  
510 conditional use for a Home Occupation (Major  
511 Impact) where the site is already approved for any  
512 other conditional use under Section 7.3.1,  
513 Conditional Use.

514 [viii.](h) The applicant must provide valid proof of  
515 home address as established by Executive  
516 regulations under Method 2 of Chapter 2 (Section  
517 2A-15).

518 [ix.](i) Screening under Division 6.5 is not required.

519 [x.](j) In the AR zone, this use may be prohibited  
520 under Section 3.1.5, Transferable Development  
521 Rights.

522 \* \* \*

523 **Sec. 5. DIVISION 59-3.4 is amended as follows:**

524 **Division 3.4. Civic and Institutional Uses**

525 \* \* \*

526 **Section 3.4.4. Day Care Facility**

527 **A. Defined, In General**

528 Day Care Facility means an establishment where care is provided for less than 24  
529 hours a day, for which the provider is paid, for any of the following: children under  
530 the age of 17 years; developmentally disabled persons; handicapped individual; or  
531 any elderly individual. Day Care Facility includes accessory preschool and  
532 kindergarten educational programs that are accredited by the State.

533 **B. Exemptions**

534 The conditional use standards in Section [3.4.4.E.2.b] 3.4.4.D.2.b and Section  
535 [3.4.4.F.2.b.i] 3.4.4.E.2.b.i through Section [3.4.4.F.2.b.v] 3.4.4.E.2.b.v do not  
536 apply to a Day Care Center operated by a nonprofit organization and located in:

- 537 1. a structure owned or leased by a religious organization and used for  
538 worship, or a structure located on premises owned or leased by a  
539 religious organization that is adjacent to premises regularly used as a  
540 place of worship;
- 541 2. a structure used for private, parochial education purposes that is  
542 exempted from the conditional uses standards under Section 3.4.5,  
543 Educational Institution (Private); or
- 544 3. a publicly-owned building.

545 **C. Family Day Care (Up to [8] 12 Persons)**

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**Defined**

Family Day Care (Up to [8] 12 Persons) means a Day Care Facility for a maximum of [8] 12 people in a dwelling where for child day care the registrant is the provider and a resident, or the registrant is not a resident but more than half the children cared for are residents. The provider’s own children under the age of 6 are counted [within the group of 8] toward the maximum number of people allowed. For care of senior adults or persons with disabilities the registrant is the provider. Family Day Care (Up to [8] 12 Persons) does not include more than 2 non-resident staff members on-site at any time or a provider that is not a resident and does not meet the requirement for a non-resident provider (see Section [3.4.4.E] 3.4.4.D., Day Care Center (13-30 Persons)).

1. The registrant must be the provider and a resident. If the provider is not a resident, the provider may file a conditional use application for a Day Care Center (13-30 Persons) (see Section 3.4.4.D).
2. No more than 3 non-resident staff members may be on-site at any time.

**[D. Group Day Care (9 -12 Persons)**

**1. Defined**

Group Day Care (9-12 Persons) means a Day Care Facility for 9 to 12 people where staffing, operations, and structures comply with State and local regulations and the provider’s own children under the age of 6 are counted towards the maximum number of people allowed.

**2. Use Standards**

- a. Where a Group Day Care (9-12 Persons) is allowed as a limited use, it must satisfy the following standards:

- 572 i. The facility must not be located in a townhouse or duplex  
573 building type.
- 574 ii. In a detached house, the registrant is the provider and a  
575 resident. If the provider is not a resident, the provider  
576 may file a conditional use application for a Day Care  
577 Center (13-30 Persons) (see Section 3.4.4.E).
- 578 iii. In a detached house, no more than 3 non-resident staff  
579 members are on-site at any time.
- 580 iv. In the AR zone, this use may be prohibited under Section  
581 3.1.5, Transferable Development Rights.
- 582 b. Where a Group Day Care (9-12 Persons) is allowed as a  
583 conditional use, it may be permitted by the Hearing Examiner  
584 under all limited use standards and Section 7.3.1, Conditional  
585 Use.]

586 **[E]D. Day Care Center (13 - 30 Persons)**

587 **1. Defined**

588 Day Care Center (13-30 Persons) means a Day Care Facility for 13 to 30  
589 people where staffing, operations, and structures satisfy State and local  
590 regulations. A Day Care Center (13-30 Persons) includes a Family Day Care  
591 (Up to [8] 12 Persons) [and Group Day Care (9-12 Persons)] where the  
592 provider is not a resident and cannot meet the non-resident provider  
593 requirement.

594 **2. Use Standards**

595 Where a Day Care Center (13-30 Persons) is allowed as a conditional use, it  
596 may be permitted by the Hearing Examiner under Section 7.3.1, Conditional  
597 Use, and the following standards:

- 598 a. The facility must not be located in a townhouse or duplex
- 599 building type.
- 600 b. An adequate area for the discharge and pick up of children is
- 601 provided.
- 602 c. The number of parking spaces under Division 6.2 may be
- 603 reduced if the applicant demonstrates that the full number of
- 604 spaces is not necessary because:
- 605 i. existing parking spaces are available on abutting property
- 606 or on the street abutting the site that will satisfy the
- 607 number of spaces required; or
- 608 ii. a reduced number of spaces would be sufficient to
- 609 accommodate the proposed use without adversely
- 610 affecting the surrounding area or creating safety
- 611 problems.
- 612 d. For a Family Day Care where the provider is not a resident and
- 613 cannot meet the non-resident provider requirement, screening
- 614 under Division 6.5 is not required.
- 615 e. In the AR zone, this use may be prohibited under Section 3.1.5,
- 616 Transferable Development Rights.

617 **[F]E. Day Care Center (Over 30 Persons)**

618 \* \* \*

619 **Sec. 6. DIVISION 59-3.5 is amended as follows:**

620 **Division 3.5. Commercial Uses**

621 \* \* \*

622 **Section 3.5.11. Retail Sales and Service**

623 \* \* \*

624 **B. Retail/Service Establishment**

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**1. Defined**

Retail/Service Establishment means a business providing personal services or sale of goods to the public. Retail/Service Establishment does not include Animal Services (see Section 3.5.1, Animal Services) or Drive-Thru (see Section 3.5.14.E, Drive-Thru).

**2. Use Standards**

- a. Where a Retail/Service Establishment is allowed as a limited use, it must satisfy the following standards:
  - i. In the R-10 zone:
    - (a) The apartment building type must contain a minimum of 150 dwelling units, be a minimum of 60 feet in height, and be on a site with a minimum of 5 acres.
    - (b) A maximum of 10% of the gross floor area of the building or 10,000 square feet, whichever is less, may be used for the Retail/Service Establishment use.
    - (c) Only small-scale retail sales and personal service establishments are permitted. Small-scale retail sales and personal service establishments provide convenience goods and services typically requiring frequent purchase and a minimum of travel by occupants of the nearby commercial area and adjacent residential neighborhood.
  - ii. In the CRN zone:
    - (a) If the subject lot abuts or confronts a property zoned Agricultural, Rural Residential, or

- 652 Residential Detached that is vacant or improved  
653 with an agricultural or residential use, site plan  
654 approval is required under Section 7.3.4.
- 655 (b) A Retail/Service Establishment over 15,000 square  
656 feet of gross floor area must be a grocery store.
- 657 iii. In the CRT, GR, and NR zones, if the subject lot abuts or  
658 confronts a property zoned Agricultural, Rural  
659 Residential, or Residential Detached that is vacant or  
660 improved with an agricultural or residential use, site plan  
661 approval is required under Section 7.3.4.
- 662 iv. In the CRT, CR, GR, and NR zones, where a  
663 development is located within 1/2 mile of a Metro station  
664 entrance and has a minimum 50,000 square foot footprint  
665 or a minimum of 100,000 square feet of all gross floor  
666 area designed for a single user, it must satisfy the  
667 following standards:
- 668 (a) In addition to any street-facing entrance  
669 requirement, all sides of a building that front an  
670 abutting public right-of-way must have at least one  
671 active entrance.
- 672 (b) Parking facilities, excluding access driveways,  
673 must be located below-grade or in a structure  
674 behind or within the primary building.
- 675 (c) The maximum building footprint of the area  
676 designed for a single Retail/Service Establishment  
677 use is 80,000 square feet.



- 678 (d) Additional floor area equal to at least 20% of the  
679 footprint designed for the largest Retail/Service  
680 Establishment must be provided as street level  
681 retail spaces with less than 5,000 square feet of  
682 tenant gross floor area each. These spaces must be  
683 located at street level, and a secondary entrance  
684 accessing the primary Retail/Service Establishment  
685 use is prohibited. At least 50% of the additional  
686 tenant space(s) must be located along the facade  
687 where the primary active customer entrance for the  
688 largest single Retail/Service Establishment is  
689 located.
- 690 (e) If applicable, full architectural parapets or  
691 equivalent features must be used around the entire  
692 building to conceal rooftop mechanical equipment.
- 693 (f) Any residential floor area or office floor area must  
694 be equal to or greater than the gross floor area  
695 designed for the subject Retail/ Service  
696 Establishment. At least 50% of the gross floor area  
697 of the non-retail component must be located above  
698 the street level retail footprint.
- 699 (g) Section 3.5.11.B.2.a.iv.(c) through Section  
700 3.5.11.B.2.a.iv.(f) do not apply if more than 75%  
701 of the gross floor area of the Retail/ Service  
702 Establishment is a cellar.
- 703 (h) For a project greater than 500,000 square feet of  
704 gross floor area, the Planning Board may approve

- 705 a development that does not satisfy Section  
706 3.5.11.B.2.a.iv.(a) through Section 3.5.11.B.2.a.iv.  
707 (f) if it finds that the project, through an alternative  
708 design, results in a more appropriate configuration  
709 of the site.
- 710 (i) Section 3.5.11.B.2.a.iv does not apply to a regional  
711 shopping center.
- 712 v. In the EOF zone, Retail/Service Establishment is limited  
713 to a maximum of 30% of the gross floor area on the  
714 subject site.
- 715 vi. In the LSC zone, if the tract is larger than 5 acres,  
716 Retail/Service Establishment is limited to a maximum of  
717 10% of the gross floor area of development approved  
718 under one application. If site plan approval is required  
719 under Section 7.3.4, the Planning Board may approve a  
720 maximum of 15% of the gross floor area for  
721 Retail/Service Establishment if the Planning Board finds  
722 that unique circumstances are present and the area would  
723 be enhanced by additional retail activity.
- 724 vii. In the IL and IM zones, Retail/Service Establishment is  
725 limited to:
- 726 (a) building and food service supply, home design and  
727 furnishings, wholesale or retail;
- 728 (b) computer programming and software sales and  
729 service, including data banks, and data retrieval;

- 730 (c) wholesale trades limited to sale or rental of  
731 products intended for industrial or commercial  
732 users; and
- 733 (d) other Retail/Service Establishment uses or a  
734 combination of Office, Retail/Service  
735 Establishment, or Restaurant uses that occupy a  
736 maximum of 35% of the mapped FAR.
- 737 viii. In the IH zone, Retail/Service Establishment is limited to:
- 738 (a) building and food service supply, home design and  
739 furnishings, wholesale or retail;
- 740 (b) computer programming and software sales and  
741 service, including data banks, and data retrieval;  
742 and
- 743 (c) wholesale trades limited to sale or rental of  
744 products intended for industrial or commercial  
745 users.
- 746 ix. For Retail/Service Retail/Service Establishments 120,001  
747 square feet and over:
- 748 (a) Any facade longer than 100 horizontal feet must  
749 incorporate wall plane projections or recesses.
- 750 (b) Street level retail facades that front public or  
751 private streets or parking areas must provide  
752 transparent glazing for at least 60 percent of the  
753 horizontal length of the building façade between  
754 the height, at a minimum, of 3 feet and 8 feet  
755 above the walkway grade. Transparent glazing

756 includes transparent windows, unobstructed  
757 display windows, or transparent store doors.

758 (c) All sides of a building that front an abutting public  
759 right-of-way must have at least one active retail,  
760 residential, or office entrance.

761 (d) Areas for storage, truck parking, trash collection,  
762 or compaction and loading must be screened from  
763 public rights-of-way.

764 (e) Variations in rooflines must be used when  
765 possible. Full architectural parapets or equivalent  
766 features must be used around the entire building to  
767 conceal rooftop mechanical equipment.

768 [b. Where a Retail/ Service Establishment is allowed as a  
769 conditional use, it may be permitted by the Hearing Examiner  
770 under Section 7.3.1, Conditional Use, and the following  
771 standard:

772 The building must be designed in a way that reduces its scale  
773 and contributes to its visual interest. Long building walls should  
774 have projections, recessions, or other effective treatments that  
775 improve building design.]

776 \* \* \*

777 **D. Rural Country Market**

778 **1. Defined**

779 Rural Country Market means the display and retail sale in a rural or  
780 residential area of agricultural products and farm food products certified as  
781 non-potentially hazardous by the Department of Health and Human  
782 Services. A Rural Country Market includes the display and sale of non-

783 edible farm products only if the products are grown and processed on farms  
784 in the State of Maryland. Rural Country Market does not include the sale or  
785 storage of bread, cheese, or other foodstuffs produced in a commercial  
786 kitchen, or an eating and drinking establishments (see Section 3.5.3, Eating  
787 and Drinking).

788 **2. Use Standards**

789 a. Where a Rural Country Market is allowed as a [conditional]  
790 limited use, it [may be permitted by the Hearing Examiner  
791 under Section 7.3.1, Conditional Use, and] must satisfy the  
792 following standards:

793 [a]i. The minimum tract area is 2 acres.

794 [b]ii. The maximum height is 20 feet, unless located in an  
795 existing building.

796 [c]iii. The minimum setback from the street and from any side  
797 or rear lot line is 50 feet [except that the minimum  
798 setback from the street may be reduced to 25 feet if the  
799 Hearing Examiner finds that the smaller setback would  
800 be compatible with surrounding uses. The Hearing  
801 Examiner may approve the use of an existing structure  
802 that does not meet these requirements if the Hearing  
803 Examiner finds that the use is suitable and compatible  
804 with the surrounding area].

805 b. Where a Rural Country Market is allowed as a conditional use,  
806 it may be permitted by the Hearing Examiner under Section  
807 7.3.1, Conditional Use, all applicable limited use standards, and  
808 the following standards:

- 809                    i.     The minimum setback from the street under  
810                    3.5.11.D.2.a.iii. may be reduced to 25 feet if the Hearing  
811                    Examiner finds that the smaller setback would be  
812                    compatible with surrounding uses.
- 813                    ii.    The Hearing Examiner may approve the use of an  
814                    existing structure that does not meet these requirements if  
815                    the Hearing Examiner finds that the use is suitable and  
816                    compatible with the surrounding area.

817                    \*   \*   \*

818     **Section 3.5.13. Vehicle Service**

819     **A.     Automobile Storage Lot**

820             **1.     Defined**

821             Automobile Storage Lot means the storage of automobiles in connection  
822             with a towing operation. Automobile Storage Lot does not include the  
823             storage of junked cars.

824             **2.     Use Standards**

825             a.     Where an Automobile Storage Lot is allowed as a limited use, it  
826             must satisfy the following standards:

- 827             i.     Vehicles must be stored or parked only on a hard surface  
828             that is constructed of impervious material resistant to  
829             erosion, is adequately treated to prevent dust emission,  
830             and is surrounded by a raised curb. The parking and  
831             storage area must be set back 15 feet from any right-of-  
832             way, 25 feet from any lot line abutting land in an  
833             Agricultural, Rural Residential, or Residential Detached  
834             zone, and 3 feet from any other lot line.

- 835                   ii.    Access to the site from a street with a residential  
836                                   classification is prohibited.
- 837                   iii.   The tract on which an Automobile Storage Lot use is  
838                                   allowed must be less than 10 acres in size.
- 839                   iv.   On-site illumination must be 0.5 footcandles or less at the  
840                                   lot line, excluding street lights within the right-of-way.
- 841                   b.   Where an Automobile Storage Lot is allowed as a conditional  
842                                   use, it may be permitted by the Hearing Examiner under  
843                                   Section 7.3.1, Conditional Use.

844  
845   \*   \*   \*

846                   **Sec. 7. DIVISION 59-6.2 is amended as follows:**

847                   **Division 6.2. Parking, Queuing, and Loading**

848   \*   \*   \*

849                   **Section 6.2.4. Parking Requirements**

850                   \*   \*   \*

851                   **B.    Vehicle Parking Spaces**

852

USE or USE GROUP	Metric	AGRICULTURAL, RURAL RESIDENTIAL, RESIDENTIAL, AND INDUSTRIAL ZONES	Commercial/Residential and Employment Zones		
			Within a Parking Lot District or Reduced Parking Area		Outside a Parking Lot District or Reduced Parking Area
		Baseline Minimum	Baseline Minimum	Baseline Maximum	Baseline Minimum
<b>RESIDENTIAL</b>					
* * *					
ACCESSORY RESIDENTIAL USES					
* * *					
Home Health Practitioner [(Low Impact)] [Home Health Practitioner (Major Impact)]	Home Health Practitioner	1.00	1.00	1.00	1.00
	Non-Resident Employee	1.00	1.00	1.00	1.00
	plus, Each Client Allowed per Hour	1.00	1.00	1.00	1.00
	(in addition to residential spaces)				
* * *					
<b>CIVIC AND INSTITUTIONAL</b>					
* * *					
DAY CARE FACILITY					
* * *					
Family Day Care [Group Day Care]	Non-Resident Employee (in addition to residential spaces)	1.00	0.50	1.50	1.00
	Required spaces may be allowed on the street abutting the site				
* * *					

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\* \* \*



854 **Section 6.2.10. Parking Waiver**

855 The deciding body may waive any requirement of Division 6.2, except the required  
856 parking in a Parking Lot District under Section 6.2.3.H.1, if the alternative design  
857 satisfies Section 6.2.1. [Any request for a waiver of the vehicle parking space  
858 requirement under Section 6.2.4.B requires application notice under Section  
859 7.5.2.D.]

860 \* \* \*

861 **Sec. 8. DIVISION 59-6.3 is amended as follows:**

862 **Division 6.3. Open Space and Recreation**

863 \* \* \*

864 **Section 6.3.4. Rural Open Space**

865 **A. General Requirements**

866 \* \* \*

867 **4. Uses in Rural Open Space**

868 a. In the RC zone, the following uses allowed under Article 59-3  
869 are prohibited in any rural open space area:

870 \* \* \*

- 871 [xiii. Group Day Care (9 - 12 Persons);]
- 872 [xiv]xiii. Day Care Center (13 - 30 Persons);
- 873 [xv]xiv. Day Care Center (Over 30 Persons);
- 874 [xvi]xv. Private Club, Service Organization;
- 875 [xvii]xvi. Public Use (Except Utilities);
- 876 [xviii]xvii. Religious Assembly;
- 877 [xix]xviii. Animal Boarding and Care;
- 878 [xx]xix. Veterinary Office/Hospital;
- 879 [xxi]xx. Media Broadcast Tower;
- 880 [xxii]xxi. Country Inn;



908 **Sec. 9. DIVISION 59-6.8 is amended as follows:**

909 **Division 6.8. Alternative Compliance**

910 **Section 6.8.1. Alternative Method of Compliance**

911 A. The applicable deciding body may approve an alternative method of  
912 compliance with any requirement of Division 6.1 and Division 6.3 through  
913 Division 6.6 if it determines that there is a unique site, a use characteristic,  
914 or a development constraint, such as grade, visibility, an existing building or  
915 structure, an easement, or a utility line. The applicable deciding body must  
916 also determine that the unique site, use characteristic, or development  
917 constraint precludes safe or efficient development under the requirements of  
918 the applicable Division, and the alternative design will:

- 919 [A]1. satisfy the intent of the applicable Division;
- 920 [B]2. modify the applicable functional results or performance standards the  
921 minimal amount necessary to accommodate the constraints;
- 922 [C]3. provide necessary mitigation alleviating any adverse impacts; and
- 923 [D]4. be in the public interest.

924 B. Landscaping plans that provide more than the minimum requirements in  
925 Division 6.5 may be approved by the applicable deciding body without  
926 regard to this section.

927 \* \* \*

928 **Sec. 10. DIVISION 59-7.3 is amended as follows:**

929 **Division 7.3. Regulatory Approvals**

930 **Section 7.3.1. Conditional Use**

931 \* \* \*

932 **D. Review and Recommendation**

933 **1. Planning Director Review**

- 934 a. The Planning Director may provide a report and  
935 recommendation for review by the Planning Board at a public  
936 meeting or issue a report and recommendation directly to the  
937 Hearing Examiner. The Planning Director must provide a report  
938 and recommendation on a telecommunication tower application  
939 directly to the Hearing Examiner.
- 940 b. If the Planning Director provides a report and recommendation  
941 to the Planning Board, the Planning Director must publish the  
942 report and recommendation a minimum of 10 days before the  
943 Planning Board public meeting.
- 944 c. If the Planning Director provides a report and recommendation  
945 to the Hearing Examiner, the Planning Director must publish  
946 the report and recommendation a minimum of 10 days before  
947 the Hearing Examiner’s public hearing.

948 **2. Planning Board Review**

- 949 a. The Planning Board may consider the Planning Director’s  
950 report and recommendation as a consent item on its agenda or  
951 hold a public meeting to consider the recommendation.
- 952 b. The Planning Board must provide a recommendation on the  
953 application to the Hearing Examiner a minimum of 7 days  
954 before the Hearing Examiner’s public hearing.

955 **3. Amendment of an Application**

- 956 a. An applicant may amend the application before the hearing if  
957 the Hearing Examiner approves a motion to amend after giving  
958 10 days’ notice to all parties entitled to original notice of filing.  
959 If an amendment would materially alter an applicant’s proposal  
960 or evidence, the Hearing Examiner may postpone the hearing to

961 a date that permits all interested parties adequate time to review  
962 the amendment.

963 b. The applicant must forward a copy of any proposed amendment  
964 to the Planning Board. The Hearing Examiner must keep the  
965 record open for no more than 30 days to provide an opportunity  
966 for the Planning Board or its staff to comment. Within that  
967 time, the Planning Board or its staff must comment on the  
968 amendment or state that no additional review and comment are  
969 necessary.

970 **4. Dismissal or Withdrawal of an Application**

971 a. The Hearing Examiner may dismiss an application if the  
972 application has been pending for more than one year and the  
973 applicant has not actively pursued the application.

974 i. The Hearing Examiner must notify the applicant of the  
975 contemplated dismissal at the applicant's last known  
976 address at least 60 days before dismissing the case.

977 ii. The applicant may stay the dismissal by filing a motion  
978 before the case is dismissed.

979 iii. The Hearing Examiner may grant the motion for good  
980 cause shown.

981 b. The Hearing Examiner or the Hearing Examiner's designee  
982 must send a notice to all parties entitled to notice of the hearing  
983 when [an applicant withdraws] an application for a conditional  
984 use is withdrawn.

985 \* \* \*

986 **Sec. 11. DIVISION 59-7.6 is amended as follows:**

987 **Division 7.6. Special Provisions**

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**Section 7.6.5. Fees**

**B. Waiving or Refunding of Local Map Amendment Fees**

- 1. The District Council may waive or refund any Local Map Amendment required filing fee, in whole or in part, if:
  - a. the application has not been advertised for public hearing;
  - b. the application has been advertised for public hearing but the applicant files a request to withdraw it within 90 days after a master plan, Sectional Map Amendment, or Zoning Text Amendment that materially affects the property is approved, or condemnation proceedings or public acquisition of the subject property has been initiated; or
  - c. the applicant shows that undue hardship will result if the refund is not approved.
- 2. The Hearing Examiner may refund a Local Map Amendment filing fee of less than \$25,000, if any condition of Section 7.6.5.B.1 is satisfied.

**C. Waiving or Refunding of Conditional Use Fees**

The Hearing Examiner may waive or refund a filing fee for a conditional use, in whole or in part, if:

- 1. the application has not been advertised for public hearing;
- 2. the application has been advertised for public hearing but the applicant files a request to withdraw it within 90 days after a master plan, map amendment, or Zoning Text Amendment that materially affects the property is approved;



Ordinance No.: \_\_\_\_\_  
Subdivision Regulation Amendment No.: 23-02  
Concerning: Preliminary Plan – Approval  
Procedures  
Revised: 12/04/2023 Draft No.: 1  
Introduced: December 12, 2023  
Public Hearing: \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Effective: \_\_\_\_\_

**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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Lead Sponsor: Council President Friedson

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**AN AMENDMENT to:**

- (1) allow the Director to approve a minor change to a preliminary plan application when associated with a conditional use;
- (2) and generally amend the subdivision amendment provisions.

By amending:

Montgomery County Code	
Chapter 50.	“Subdivision of Land”
Division 50.4.	“Preliminary Plans”
Section 50.4.2.	“Approval Procedures”

**EXPLANATION:** ***Boldface** indicates a Heading or a defined term.*

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

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

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

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

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



*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

