



**Zoning Ordinance Revision: Staff Draft of the General Development Regulations**

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**Description**

Staff Report and Staff Draft for Public Session on December 13, 2012  
Worksession on December 14<sup>th</sup> and possibly December 20<sup>th</sup>  
Zoning Ordinance Revision  
Fall 2012 Planning Board Review

**Summary:**

This report will evaluate changes to our current zoning ordinance that are proposed in the attached Staff Draft. The Staff Draft, itself, is a redline version of the Consolidated Draft published July 2012, incorporating comments and suggestions received since its release. A new Staff Draft will accompany each staff report and will cumulatively update sections of the Consolidated Draft corresponding to the review schedule. As the title suggests, this report will cover the administration and procedures of the code.

# Discussion of the Staff Draft of Article 59-8 Administration and Procedures

## Introduction

This report will evaluate changes to our current zoning ordinance that are proposed in the attached Staff Draft. The Staff Draft, itself, is a redline version of the Consolidated Draft, incorporating comments and suggestions received since its release in July. A new Staff Draft will accompany each staff report and will update sections of the Consolidated Draft corresponding to the review schedule.

As the title suggests, this report will cover the Administration and Procedures of the code. The Administration and Procedures were initially released in draft form to the Zoning Advisory Panel in the spring of this year. Staff received comments and feedback on the draft text, made revisions and incorporated the Administration and Procedures into the Consolidated Draft released in July. Since the release of the Consolidated Draft, Staff has continued to receive comments and feedback. In light of these comments and further review of this article, additional revisions have been made to the Consolidated Draft represented by the attached Staff Draft. Below is a summary, by section, of changes from the current code that are proposed in the Staff Draft. In addition, changes made to the Consolidated Draft are also highlighted.

## Division 8.1. Review Authority and Approvals Required

### Summary of Division 8.1.

The intent of the overviews in this Division is to provide the reader with a quick synopsis of the review and approval authority of the various departments, boards, and the council involved in ensuring compliance with the zoning code. The second table also provides an introduction to the applicability of each application, i.e., when a particular application is required.

### Summary of Changes from Current Code

In the current code, there is a table providing a key to regulatory approvals per zone in Article 59-D. These tables replace that table and sort by application type rather than zone. The review processes that these tables describe are the same procedures that currently exist; the primary changes are in the timeframes, submittal requirements, and findings for each zone. There are numerous technical differences as well. The changes to these sections are noted in each applicable summary below.

### Summary of Changes from Consolidated Draft

There are several changes from the consolidated draft:

- “Floating Zone Map Amendment” has been renamed “Local Map Amendment”;
- Because of their similar review processes:
  - Applications for floating and Euclidean zones have been consolidated;
  - Minor and major corrective map amendments have been consolidated;
  - Sectional and district map amendments have been consolidated;
- The hearing examiner does not review corrective map amendments.

## **Division 8.2. District Council Approvals**

### Summary of Division 8.2.

Division 8.2 covers those applications that are decided by the District Council:

- Local Map Amendments, Sec. 8.2.1
- Corrective Map Amendments, Sec. 8.2.2
- Sectional and District Map Amendments, Sec. 8.2.3
- Zoning Text Amendments, Sec. 8.2.4

### Sec. 8.2.1. Local Map Amendments

#### *Summary of Sec. 8.2.1., Local Map Amendments*

This Division covers Local Map Amendments, which are requests for a specific zone by a property owner. Both “Euclidean” zones (Article 59-4) and “floating” zones (Article 59-5) may be requested. The process is identical, but to approve a local map amendment for a Euclidean zone, there is a specific “change or mistake” threshold that must be satisfied. This threshold is largely based on case law and the findings in this section are succinct in deference to that body of law.

The process for submittal, review, and decision making is similar to the current code. The Hearing Examiner accepts applications and forwards them to the Planning Director<sup>1</sup> which leads the review by all applicable agencies. To ensure an application is complete, Staff is considering a revised approach for review of an application by the Planning Department before it is accepted. A similar review may be proposed for conditional uses. Because technical staff at the Planning Department does most of the analysis, site visits, and reporting, it seems to make sense that they should ensure all relevant material is included in an application. This change has not been codified and may be an issue beyond the zoning ordinance and established by rules of procedure.

After receipt of an application, the Planning Director then provides a report and recommendation to the Planning Board, who holds a public meeting and then forwards a recommendation to the Hearing Examiner. The Hearing Examiner then holds a public hearing on the application and forwards their report and recommendation to the District Council. Finally, the District Council renders a decision on the application. There are opportunities for review of the public record, providing testimony, public discussion, oral argument, etc. at each stage. The steps are timed, with an ability to extend, when applicable; important milestones in the review process must be publicly noticed via mail, signs on site, and/or the internet.

After a decision is made, there are particular rules for subsequent applications, the scope of approval, recording procedures, and amendments.

#### *Summary of Changes from Current Code for Sec. 8.2.1., Local Map Amendments*

The regulations that determine when a property owner may request a specific floating zone are established in Article 59-5. This Division only covers the regulations for submitting, reviewing, and making a decision on a local map amendment.

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<sup>1</sup> For the purposes of review and decision authority, the proposed code uses “Planning Director” to include Planning Department Staff.

Currently, there is no summary of the process, submittal requirements, or findings for Euclidean zone local map amendments in the current code. Instead, there are separate sections covering the three basic types of floating zone local map amendments: diagrammatic, development plan, and schematic development plan. The diagrammatic plan only applies to rezoning to the MXN zone. It is proposed that each of these be consolidated into one application because the submittal requirements and required findings are similar in nature and there are no distinguishing or unique regulations that entail separate review processes.

The current regulations for diagrammatic, development plan, and schematic development plans are provided at the end of this staff report. Because Staff is recommending consolidation there are, of course, several notable changes. It is the intent of these changes to not only streamline the process, but rationalize the review requirements. Every local map amendment for a floating zone is followed by a site plan(s), which provides a detailed review including separate findings on compatibility, adequacy of open space and circulation, and conformance with environmental regulations among other topics. It is Staff's opinion that approval of a floating zone should decide basic issues regarding larger planning objectives, the public interest, intents of the zone, appropriate general layout, and ensuring that there will be no adverse neighborhood impacts.

Following on the change in the findings, the submittal requirements have been changed to align with the findings. No requirement for a traffic study, stormwater management concept, or forest conservation plan is required. Because detailed review will follow and – typically – will result in numerous changes, these documents are more appropriate for review concurrently with the detailed site plan(s). On the other hand, to ensure that an application is feasible, the basic strategies for stormwater, environmental mitigation, and traffic impacts are incorporated into the review.

The steps for review of a local map amendment are generally similar to the current code with modifications to certain technical aspects and the introduction of certain time restrictions. New specific sections on the scope of approval, recording procedures, and amendments are meant to ensure the applicants and the public understand what is entailed by approval or disapproval of an application. An allowance for minor amendments – specifically delineated – is proposed to allow ministerial approval of changes that do not increase intensity or decrease mitigating restrictions such as buffers or setbacks.

#### *Summary of Changes from Consolidated Draft for Sec. 8.2.1., Local Map Amendments*

Other than the name change, the primary change from the Consolidated Draft is the combining of floating and Euclidean local map amendments. The process for each is identical and where, as in the submittal requirements and approval criteria, there are differences – these have been given separate subsections.

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

Finally, some additional changes to the proposed Consolidated Draft include reinstatement of sections on reconsideration, subsequent applications, dismissal of an application, and several minor clarifications.

### Sec. 8.2.2. Corrective Map Amendments

#### *Summary of Sec. 8.2.2., Corrective Map Amendments*

This section covers the process to review and make decisions on corrections to the zoning maps, which are the legal descriptions of zones on the various properties under the jurisdiction of the District Council. These corrections range from minor typographical or administrative errors to errors based on incorrect information before the District Council. An example of the latter would be if a zone that requires the presence of public water and sewer was applied to land that was incorrectly thought to have such a connection.

#### *Summary of Changes from Current Code for Sec. 8.2.2., Corrective Map Amendments*

There are no significant changes to this process from the current code. The various sections have been reorganized and elaborated on to fit the new format and sections.

#### *Summary of Changes from Consolidated Draft for Sec. 8.2.2., Corrective Map Amendments*

The primary change from the Consolidated Draft is the combining of minor and major corrective map amendments. The process for each is identical and where there are differences, as in the submittal requirements and approval criteria, separate subsections have been created.

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

Finally, Staff recommends reinstatement of a section on consideration of a corrective map amendment (Sec. 8.2.2.E.5).

### Sec. 8.2.3. Sectional and District Map Amendments

#### *Summary of Sec. 8.2.3., Sectional and District Map Amendments*

This section covers the submittal requirements, review process, decision criteria, and subsequent steps for review of a map amendment that covers a distinct area made of up several properties. These map amendments are for changes (or reconfirmation) to Euclidean zones and must be based on a comprehensive statement describing the rationale in support of the proposed zoning changes. Sectional and district map amendments may only be applied for by the Planning Board or the District Council.

#### *Summary of Changes from Current Code for Sec. 8.2.3., Sectional and District Map Amendments*

There is no substantive change to the review process for sectional or district map amendments. A key change, however, is that there are no specific “applicability” standards for the Euclidean Zones under Article 59-4. Instead, each has an intent statement and, following a comprehensive analysis, may be applied to properties under the District Council’s plenary zoning authority. Application of a Euclidean zone in the proposed code is based on an “approved master, sector, comprehensive, or functional plan” (Sec. 8.2.3.D).

*Summary of Changes from Consolidated Draft for Sec. 8.2.3., Sectional and District Map Amendments*

The primary change from the Consolidated Draft is the combining of sectional and district map amendments. The process for each is identical and where, as in the submittal requirements and approval criteria, there are differences – these have been given separate subsections.

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

Finally, Staff recommends reinstatement of sections on submittal requirements (Sec. 8.2.3.B.4) and expanded language under the decision and recording procedures sections.

Sec. 8.2.4. Zoning Text Amendments

*Summary of Sec. 8.2.4., Zoning Text Amendments*

This section covers the submittal requirements, review process, decision criteria, and subsequent steps for review of zoning text amendments.

*Summary of Changes from Current Code for Sec. 8.2. 4., Zoning Text Amendments*

There is no substantive change to the review process for zoning text amendments.

*Summary of Changes from Consolidated Draft for Sec. 8.2.4., Zoning Text Amendments*

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

Finally, Staff recommends reinstatement of sections on quorum requirements, voting, and the effective date of a decision (Sec. 8.2.4.E) and expanded language under the recording procedures sections.

## **Division 8.3. Regulatory Approvals**

### Summary of Division 8.3.

Division 8.3 covers the regulatory approvals that are made by the Hearing Examiner, the Board of Appeals, and the Planning Board.

- Conditional Use Plan, Sec. 8.3.1
- Variance, Sec. 8.3.2
- Sketch Plan, Sec. 8.3.3
- Site Plan, Sec. 8.3.4

### Sec. 8.3.1. Conditional Use Plan

#### *Summary of Sec. 8.3.1., Conditional Use Plan*

What is currently known as a “special exception” has been renamed “conditional use” because the uses regulated by this Section are allowed, but must meet conditions of approval beyond a permitted or limited use and must be approved by the Board of Appeals. Because some conditional use applications are more like site plans, it is assumed by the proposed code, that technical staff from the Planning Department may become more involved in the review and hearing process for especially complicated applications than has been true in the recent past.

The applicability, submittal requirements, review process, decision criteria, and subsequent steps for a conditional use decision are delineated in this section:

- Conditional use plan must be submitted for any conditional use;
- Site plans are not required by code for any property or part of a property subject to a conditional use, but may be required by the Hearing Examiner or Board of Appeals;
- The Hearing Examiner may decide some conditional use applications, but most are decided by the Board of Appeals;
- Submittal requirements include:
  - Zoning certification,
  - Identification of neighboring property owners,
  - An approved NRI/FSD;
  - Forest conservation plan application,
  - Stormwater management application,
  - Traffic statement/study,
  - Site inventory,
  - Utility concept,
  - Written description of operational features,
  - Development plans, and
  - Development program and inspection schedule;
- Special considerations for telecommunications towers;
- Review steps and timeframes;
- Approval criteria (findings);
- Decision regulations; and
- Steps for withdrawal, subsequent applications, scope of approval, recording procedures, and amendments.

A special section on compliance and enforcement is included in this section.

*Summary of Changes from Current Code for Sec. 8.3.1., Conditional Use Plan*

Aside from reorganization, clarification, and simplification, the conditional use submittal requirements and findings are the most significant changes. Numerous meetings were held with the Hearing Examiner and Board of Appeals while drafting these sections.

It should be remembered that, in addition to the general submittal requirements and approval criteria that apply to all conditional uses, there are specific requirements under each conditional use in Article 59-3. The current general submittal requirements are attached to this staff report (59-G-1.21) as are the proposed submittal requirements in the redlined Staff Draft (Sec. 8.3.1.B.6). The proposed submittal requirements are similar to site plan submittal requirements and are intended to ensure that the reviewing and deciding bodies can make a fair determination of compatibility and mitigation of adverse impacts.

The findings for approval have been significantly modified:

Existing “general considerations”:

- (a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:
  - (1) Is a permissible special exception in the zone.
  - (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.
  - (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board’s technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.
  - (4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.
  - (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
  - (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
  - (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.
  - (8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
  - (9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.
    - (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.
    - (B) If the special exception:
      - (i) does not require approval of a new preliminary plan of subdivision; and



(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

**59-G-1.22. Additional requirements.**

(a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

(b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:

(1) The property is in a zone requiring site plan approval, or

(2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

**59-G-1.23. General development standards.**

(a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

(b) **Parking requirements.** Special exceptions are subject to all relevant requirements of [Article 59-E](#).

(c) **Minimum frontage.** In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section [59-G-1.21](#):

(1) Rifle, pistol and skeet-shooting range, outdoor.

(2) Sand, gravel or clay pits, rock or stone quarries.

(3) Sawmill.

(4) Cemetery, animal.

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.

(6) Equestrian facility.

(7) Helipport and helistop.

(d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

(e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

(f) **Signs.** The display of a sign must comply with [Article 59-F](#).

(g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

(h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

- (2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

**59-G-1.24. Neighborhood need.**

In addition to the findings and requirements of [Article 59-G](#), the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- (1) Automobile filling station.
- (2) Automobile and light trailer rental lot, outdoor.
- (3) Automobile, truck and trailer rental lot, outdoor.
- (4) Automobile sales and service center.
- (5) Swimming pool, community.
- (6) Swimming pool, commercial.

**59-G-1.25. County need.**

In addition to the findings of [Article 59-G](#), the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- (1) Eating and drinking establishments—Drive-in restaurant.
- (2) Funeral parlors and undertaking establishment.
- (3) Hotel, motel or inn.
- (4) Rifle, pistol and skeet shooting range, outdoor.
- (5) Sanitary fill, incinerator, or private solid waste transfer station.
- (6) Public use heliport/helistop.
- (7) Conference center with lodging.

**59-G-1.26. Exterior appearance in residential zones.**

A structure to be constructed, reconstructed or altered pursuant to a special exception in a residential zone must, whenever practicable, have the exterior appearance of a residential building of the type otherwise permitted and must have suitable landscaping, streetscaping, pedestrian circulation and screening consisting of planting or fencing whenever deemed necessary and to the extent required by the Board, the Hearing Examiner or the District Council. Noise mitigation measures must be provided as necessary.

Obviously, many of these criteria apply to individual uses and they have been put under the applicable conditional use standards. Other criteria, such as landscaping, buffering, and lighting mitigation have been added to the general development regulations under Article 59-7. The inherent versus non-inherent impacts have been rewritten to be more rigorous and defensible.

The “need” requirements have been removed because they have proven to be difficult to analyze or establish in any meaningful way. Staff believes that the individual and general approval criteria and the public process provide enough information and regulation to make a fair decision. The “exterior appearance” requirement has also been removed; this requirement can be added by condition under the compatibility finding.

Proposed “approval criteria”:

1. To approve a conditional use plan, the Hearing Examiner or Board of Appeals must find that the proposed development:
  - a. satisfies and is consistent with any previous approval(s) that encumbers the subject site or, if not, that the previous approval(s) be amended;
  - b. satisfies all applicable use standards, development standards, and general requirements required by the zone;
  - c. is consistent with the recommendations of the applicable master or sector plan and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

- d. directs, shields, or screens outdoor lighting to ensure the maximum illumination level at any property line abutting a detached house building type in a Rural Residential or Residential zone, is no greater than 0.1 footcandle;
  - e. satisfies the requirements of Sec. 7.2.6.M, Facilities for Conditional Uses in Residential Zones and Sec. 7.5.7, Buffering and Screening.
  - f. will not have significant non-inherent adverse impacts in the following categories:
    - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties;
    - ii. a lack of parking, traffic, noise, odors, dust, or illumination; or
    - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.
    - iv. A conditional use plan may be denied if it has non-inherent adverse effects in any of the above categories and the overall assessment of both inherent and non-inherent adverse impacts warrants denial to avoid undue harm to the general neighborhood.
  - g. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Conditional use plans that are consistent with the recommendations of a master plan do not alter the nature of an area.
  - h. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Board of Appeals must consider that the impact does not necessarily need to be controlled as stringently as if it were adjacent to a Residential zone.
2. If adequate public facilities are being tested:
- a. and a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner or Board of Appeals must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or
  - b. and a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

Several other changes of note:

- Most special exceptions currently require an affirmative vote of 4 members of BOA. Conditional uses as proposed in the Staff Draft would only require 3 votes (Sec. 8.3.1.D.2.a);
- Currently, an applicant can't refile an application for an SE for 36 months. As proposed in the Staff Draft, they can be refiled after 18 months (Sec. 8.3.1.G.1);
- The time frame between the date of acceptance of an application to the date of the hearing has been established at 120 days (Sec. 8.3.1.C.3.a);
- Changes in the modification of a conditional use are now under a section on amendments (Sec. 8.3.1.J).

#### *Summary of Changes from Consolidated Draft for 8.3.1., Conditional Use Plan*

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

Staff recommends reinstatement of sections on ownership disclosure, Planning Director review discretion, oral argument, withdrawal of an application and expanded language under the approval criteria, decision, recording procedures, amendment, and compliance and enforcement sections.

#### Sec. 8.3.2. Variance

##### *Summary of Sec. 8.3.2., Variance*

This section provides the regulations for reviewing any application requesting a “modification from the standards or requirements of [the Zoning Code that is] not subject to a waiver or alternative compliance plan”. (Sec. 8.3.2.A.1)

### *Summary of Changes from Current Code for Sec. 8.3.1., Conditional Use Plan*

Most sections are not substantively different from the current code except for organization, clarity, and simplification. The proposed approval criteria, however, have been modified:

To approve a variance, the Board of Appeals must find that:

1. Special circumstances or conditions exist that are peculiar to the property or structure(s) for which the variance is sought and do not apply generally to properties or structures in the same zone. Special circumstances or conditions include, but are not limited to, the following situations:
  - a. Exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary spatial conditions peculiar to a specific property;
  - b. The proposed development involves utilization of an existing legal nonconforming property or structure;
  - c. The proposed development contains areas subject to environmentally sensitive features and/or buffers;
  - d. The proposed development involves property or structures of historical significance; and/or
  - e. The proposed development promotes the established historic or traditional development standards of a street or neighborhood;
2. The special circumstances or conditions are not the result of actions by the applicant;
3. The requested variance is the minimum necessary to overcome the practical difficulties imposed by the unusual or extraordinary situations or conditions;
4. The variance can be granted without substantial impairment to the intent and integrity of the General Plan or the applicable master or sector plan; and
5. Granting the variance will not be adverse to the use and enjoyment of adjoining properties.

The purpose of these changes is to allow property owners to construct buildings and structures that maintain traditional patterns, to further protect environmentally sensitive areas, and to allow legally nonconforming or historic structures to be reused. These allowances are balanced against the existing standards regarding adverse impacts, etc. listed in 3-5, above.

### *Summary of Changes from Consolidated Draft for 8.3.2., Variance*

The approval criteria described above were rewritten for the Staff Draft after further discussions with various stakeholders. Other sections have only been expanded or clarified.

### Sec. 8.3.3. Sketch Plan

#### *Summary of Sec. 8.3.3., Sketch Plan*

A sketch plan is required for optional method development in the Commercial/Residential and Employment Zones. This section describes the applicability, application requirements, review, approval criteria, decision, and subsequent steps for sketch plan applications.

### *Summary of Changes from Current Code for Sec. 8.3.3., Sketch Plan*

There are no substantive changes from the current code. This section has reorganized, clarified, and simplified the current requirements for a sketch plan based on the C/R zones in Div. 59-C-15.

### *Summary of Changes from Consolidated Draft for 8.3.3., Sketch Plan*

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

#### Sec. 8.3.4. Site Plan

##### *Summary of Sec. 8.3.4., Site Plan*

A site plan is a detailed review of development and is required based on a development's:

- Zone;
- Use;
- Intensity of development (FAR, units/acre, or building height); and/or
- Abutting or confronting property zone.

This section describes the applicability, application requirements, review, approval criteria, decision, and subsequent steps for site plan applications.

##### Summary of Changes from Current Code for Sec. 8.3.4., Site Plan

The primary change in the proposed code is that site plans are required based on several factors (listed above) rather than generally by a particular zone or for a particular use (Sec. 8.3.4.A.3). The intent is to ensure review of applications based on impact and expectations for certain areas. For example, review of a commercial use at a low intensity in a commercial/residential zone would not be required, whereas the same use (at the same intensity and in the same zone) would require a site plan if it were next to a residentially zoned property housing a single-family dwelling. Thus, use, intensity, and adjacency serve to provide the appropriate review based on context. The table in Sec. 8.3.4.A.3 covers all zones, uses, intensities, and adjacencies. Overlay zones stipulate whether a site plan is required in Article 59-4.

The review process for site plans is the same; the submittal requirements and approval criteria have been modified but with no substantive change in intent. The timeframes are new and the outline ensures a better understanding of the steps.

##### Summary of Changes from Consolidated Draft for 8.3.1., Conditional Use Plan

Review of these sections by counsel for the Planning Board, the District Council, the Hearing Examiner, and the Board of Appeals has resulted in numerous tweaks to language. These changes are mostly intended to keep the process clear, concise, and consistent with current practice and understandings.

## **Division 8.4. Administrative Approvals**

### Summary of Division 8.4.

This division establishes several administrative approvals, including building permit, use and occupancy permit, temporary use permit, licensing for Home Occupation and Home Health Practitioner, sign permit, sign permit variance, and the sign installer license. As with other approvals, this section provides uniform information regarding applicability, application requirements, approval process, and approval criteria. Some approvals have information on appeals while others contain recording procedures, validity periods, and/or compliance and enforcement regulations.

### Summary of Changes from Current Code for Division 8.4.

The information contained in the Division 8.4 is not new. The administrative approvals proposed in the Staff Draft are copied from several sections of the current code. The text has been modified slightly for clarity and consistency.

### Summary of Changes from Consolidated Draft for Division 8.4.

The only significant changes from the Consolidated Draft are:

- Removal of Sec. 8.4.7 Written Interpretation, which will be in the definitions section; and
- Reinstatement of the parking facility plan for building permits that require at least 25 parking spaces.

## **Division 8.5. Notice Standards**

### Summary of Division 8.5.

This division establishes the noticing standards for all applications. A table has been provided (Sec. 8.5.1) for easy review of the notice requirements including:

- Newspaper advertisement;
- Pre-submittal meeting;
- Application sign;
- Mailed notice of application;
- Mailed notice of hearing;
- Permit sign; and
- Internet advertisement.

### Summary of Changes from Current Code for Division 8.5, Notice Standards

This division is entirely new but composed of sections from throughout the current code. Importantly, this consolidation allows standardization of the various noticing requirements. Staff is working with the various review and approval bodies to finalize presentation and dimensional standards for signs, mailings, and internet advertisement. Notice is required via at least the same means as currently required and has been enhanced in some cases. The intent is to modernize public notice and ensure that appropriate stakeholders can easily become aware of applications and part of the conversation regarding their review and approval or denial.

### Summary of Changes from Consolidated Draft

This section is entirely new.

## **Division 8.6. Special Provisions**

### Summary of Division 8.6.

This section contains information on the powers of the various review bodies as well as the Sign Review Board. It also provides information of the establishment and collection of certain development fees.

### Summary of Changes from Current Code

These provisions are taken from the current code.

### Summary of Changes from Consolidated Draft

The powers of the Board of Appeals and the Sign Review Board were included in this section of the Consolidated Draft. In the Staff Draft, a section on the Hearing Examiner and the Planning Board has been added. The information on fees is also new in the Staff Draft.



## **Division 8.7. Nonconformities**

### Summary of Division 8.7

The purpose of this division is to establish the regulations regarding:

- Exemptions from the revised code and conversion;
- Provisions for conditions (buildable lots, re-subdivisions, and one-family dwellings) predating 1958;
- Annexed areas;
- Un-platted parcels with detached houses;
- Continuations of nonconforming structures and uses;
- Exceptions for housing projects constructed before 1945; and
- Non-complying multi-unit dwellings.

Interim uses that do not conform to the current code are provided in other sections – such as parking lot landscaping – and are not considered nonconformities.

Existing “site design” has been added to consideration to allow for instances where the newer “form-based” elements of the code may not be satisfied. In addition, special consideration has been made for several categories:

- Existing structures, site design, or uses as of the adoption date of the new code;
- Existing structures, site design, or uses as of the adoption date of the district map amendment (mapping conversion);
- Previously buildable lots;
- Plans pending as of the adoption date of the new code; and
- Plans pending as of the adoption date of the district map amendment (mapping conversion).

A 180-day period to file under the previous code after the adoption date of the new code has been provided to ensure fair application and implementation.

### Summary of Changes from Current Code

It is the intent of this section to carry forward the very specific regulations regarding certain properties, uses, and structures that are contained in the current code but consolidate the various “grandfathering” language found in most zones regarding legally non-conforming properties, uses, and structures. There are allowances for expansion, which currently range from no allowance to 500 square feet to 30,000 square feet depending on zone, and regulations on when compliance with the new code is required and what part of development is covered by the new regulations.

The changes from the current code affect commercial and mixed-use properties most. Comparison with the current code is difficult at best and the Staff Draft is an attempt to “rethink” the way we consider nonconformities. As noted, in many cases, there is very specific language for specific properties, structures, and uses – these have been retained. More general language is proposed for the numerous zones that had broader “renovation, continuation, etc” language that Staff feels is the appropriate way to balance allowances for renovation and expansion against the vision of more contemporary, pedestrian-oriented, and sustainable development.

Finally, Staff is compiling a specific table for Article 59-3 listing those uses that are considered permitted as of the adoption date of the new code, but for which an application may no longer be made. This will ensure they are not considered non-conforming and that, if legally existing, may be renovated, rebuilt, etc. as if they were permitted uses in the applicable zones.

Summary of Changes from Consolidated Draft

This Division is entirely new.

## **Division 8.8. Violations, Penalties and Enforcement**

### Summary of Division 8.8.

This division establishes the general regulations for violations of the Code and Civil fines.

### Summary of Changes from Current Code for Division 8.8.

The information contained in the Division 8.4 is not new; the language is copied from the current code. The text has been modified slightly for clarity and consistency.

### Summary of Changes from Consolidated Draft for Division 8.8.

Two sections from Division 8.8 have been moved to the Planning Board's section under Special Provisions because they only concern powers of the Planning Board (Sec. 8.6.3.B).

# ARTICLE 59-8. ADMINISTRATION AND PROCEDURES

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## Div. 8.1. Review Authority & Approvals Required

### Sec. 8.1.1. Overview of Review & Approval Authority

The following table provides an overview of the authority granted the various bodies under this Chapter; additional authority may be granted elsewhere in the Montgomery County Code. This table does not define legal responsibilities and is only provided for the convenience of the reader.

Approval Requested	Section Reference	Authority							
		Sign Review Board	DPS Director and/or Staff	Development Review Committee	Planning Director and/or Staff	Planning Board	Hearing Examiner	Board of Appeals	District Council
<b>District Council Approvals</b>									
Local Map Amendment	8.2.1			I	R	R	R		D
Corrective Map Amendment	8.2.2				R	R			D
Sectional or District Map Amendment	8.2.3				R	R			D
Zoning Text Amendment	8.2.4		R		R	R			D
<b>Regulatory Approvals</b>									
Conditional Use Plan	8.3.1			I	R	I	R/D	D	
Variance	8.3.2				I	I	I	D	
Sketch Plan	8.3.3			R	R	D			
Site Plan	8.3.4			R	R	D			
<b>Administrative Approvals</b>									
Building Permit	8.4.1		D				I	A	
Use & Occupancy and Temporary Use Permit	8.4.2		D				I	A	
Home Occupation and Home Health Practitioner Registration	8.4.3		D						
Sign Permit	8.4.4		D				I	A	
Sign Permit Variance	8.4.5	R	D				I	A	
Sign Installer License	8.4.6		D						

KEY: A = Appeal D = Decision I = If requested by a reviewing, deciding, or appellate body R = Review and recommendation

## Sec. 8.1.2. Overview of Approvals Required

The following table provides an overview of the approvals required under this Article (Article 59-8). Details of the required submittal requirements and necessary criteria for approval are discussed in the Sections referenced. These explanations are not legal definitions and are only provided for the convenience of the reader.

Application	Section Reference	Applicability
<b>District Council Approvals</b>		
Local Map Amendment	8.2.1	A local zoning change to apply a Floating or Euclidean zone to a specific property.
Corrective Map Amendment	8.2.2	Correction of an error in the application or mapping of a comprehensive rezoning.
Sectional or District Map Amendment	8.2.3	A comprehensive rezoning of an area or areas of the County implementing a master sector plan, functional, or comprehensive plan.
Zoning Text Amendment	8.2.4	A change in the text of this Code.
<b>Regulatory Approvals</b>		
Conditional Use Plan	8.3.1	Use of any property for a conditional use, as designated by Article 59-3.
Variance	8.3.2	A request for modification of any requirement of this Code.
Sketch Plan	8.3.3	Development under the optional method.
Site Plan	8.3.4	Development under optional method requires approval of a site plan after approval of a sketch plan; development under a Floating zone requires approval of a site plan after approval of a Floating Zone Map Amendment. Development under standard method requires site plan approval as indicated in Section 8.3.4.
<b>Administrative Approvals</b>		
Building Permit	8.4.1	Required before any building or structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started. See exemptions in Section 8.4.1.
Use & Occupancy and Temporary Use Permits	8.4.2	Required before any building, structure, or land can be used or can be converted, wholly or in part, from one use to another. See exemptions in Section 8.4.2.
Home Occupation and Home Health Practitioner Registration	8.4.3	All low impact and major impact home occupations and low impact and major impact home health practitioners must register with the DPS.
Sign Permit	8.4.4	A sign permit is required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy in compliance with a sign concept plan, does not require a permit. See exemptions in Section 7.6.3.
Sign Permit Variance	8.4.5	Any sign not listed in Div 7.6, or which does not conform to the requirements in Div 7.6, may apply for a sign permit variance from DPS.
Sign Installer License	8.4.6	The provisions of the sign installer license apply to a business which chooses to provide certification as a licensed sign installer.

## Div. 8.2. District Council Approvals

### Sec. 8.2.1. Local Map Amendment

#### A. Applicability & Description

1. A local map change to apply a Floating or Euclidean zone to a specific property requires approval of a Local Map Amendment.
2. A Local Map Amendment is intended to apply to a specific property.
  - a. A Floating zone is intended to implement comprehensively planned developments through specific land uses and building types.
  - b. A Euclidean zone is based on a change in the character of a neighborhood or a mistake in the facts and trends used to justify a Sectional or District Map Amendment.
3. The Local Map Amendment is a written and drawn description of a specific property and the rationale in support of the application intended to provide sufficient information to allow the District Council to make the necessary findings for approval.
4. An applicant may propose binding elements with a Local Map Amendment when requesting a Floating zone.

#### B. Application Requirements

1. The Hearing Examiner accepts the application for all Local Map Amendment applications. Within 5 days after acceptance for filing, the District Council must forward the application to the Planning Board.
2. Applicant
  - a. The applicant must be a government agency, own the subject property, or be authorized by the owner to file the application. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.
  - b. An application must specify the names of all persons having a substantial interest in the property subject to the application including all persons with a share in the property amounting to 5% or more (whether held in

an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of all contract purchasers and all persons holding a mortgage, deed of trust, or option to purchase the property. The application must include a statement disclosing political contributions to the treasurer or political committees of candidates for County Council and County Executive or slates which contribute to candidates for County Council or County Executive as required by state law. The disclosure statement must be submitted on a form approved by the District Council.

3. A pre-application meeting with Planning Department Staff is recommended.
4. Public notice is required under Div. 8.5.
5. The applicant must submit the following for review:
  - a. Application form and fees approved by the District Council;
  - b. Statement explaining how the proposed development satisfies the criteria to grant the application;
  - c. For a Floating zone application, exhibits showing:
    - i. current zone and proposed zone;
    - ii. existing site conditions and vicinity;
    - iii. existing or approved adjacent land uses, buildings, and rights-of-way;
    - iv. building densities, massing, heights, and the anticipated uses;
    - v. locations of open spaces and preliminary stormwater management strategy;
    - vi. pedestrian, bicycle, and vehicular circulation, parking, and loading;
    - vii. estimated range of the maximum peak hour trips;
    - viii. general phasing outline of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications;
    - ix. any binding elements on the application; and

- x. if binding elements are proposed, an unexecuted covenant suitable for filing in the land records reflecting any restricted development standards, development program, or limitations on uses that will be applicable to the property if the District Council approves the application.
- d. For a Euclidean zone application, exhibits showing:
  - i. the subject property and the proposed neighborhood showing uses and zoning; and
  - ii. an explanation of the changes that have occurred in the neighborhood since the original zoning or previous comprehensive rezoning or evidence of the alleged mistake made by the District Council in support of the requested Euclidean zone.
- 6. Applications may not be modified to increase the area proposed to be reclassified or to change the zoning classification without providing revised public notice and
- 7. Applications must be available to public inspection during regular office hours but must not be removed from the Hearing Examiner's office except by court order.

### C. Review and Recommendation

#### 1. Planning Director Review

The Planning Director must issue a report and recommendation a minimum of 10 days before the Planning Board public meeting. The report and recommendation must be made available to the applicant and public.

#### 2. Planning Board Review

- a. The Planning Board must hold a public meeting on the application.
- b. The Planning Board must provide a recommendation on the application to the Hearing Examiner no later than 15 days before the Hearing Examiner's public hearing.

### 3. Hearing Examiner Review

- a. The Hearing Examiner must hold a public hearing on a Local Map Amendment application within 90 days of the date the application is accepted.
- b. The Hearing Examiner may postpone the public hearing if done at least 5 days before the scheduled date and must provide notice of the new hearing date.
  - i. The Hearing Examiner may issue subpoenas to compel the attendance of witnesses and production of documents at any public hearing and administer an oath to any witness.
  - ii. Within 45 days after the close of the record of the public hearing, the Hearing Examiner must forward a report and recommendation to the District Council. The report must also be made available to the applicant and public.
  - iii. The Hearing Examiner may extend the time to forward the report and recommendation once by up to 45 days without the District Council's approval and again by up to 45 days with the District Council's approval.
  - iv. Within 10 days after transmittal of the Hearing Examiner's report and recommendation any party of record or any aggrieved party may file a written request for an opportunity to present oral argument before the District Council.
    - (a) A copy of the request must be sent to the Hearing Examiner and each party of record as listed by the Hearing Examiner.
    - (b) The request must state the matters desired to be presented at the oral argument and, if oral argument is granted, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. The District Council may grant the request, deny the request, or remand the request to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.



- (c) Within 5 days after a request for oral argument is filed with the Hearing Examiner's office, any interested party may rebut, in writing, a request for oral argument or request to participate in oral argument if oral argument is allowed. Any rebuttal must be concise and limited to matters raised by the party who requested oral argument. Any rebuttal to a request for oral argument must be sent to the Hearing Examiner and each party who participated at the hearing, as listed by the Hearing Examiner.

#### D. Approval Criteria

1. For a Floating zone application, the District Council must find that the Local Map Amendment will:
  - a. substantially conform to the objectives of the general plan and other applicable County plans;
  - b. be in the public interest by supporting Council approved policies or regulations;
  - c. meet the intent of the proposed zone and requirements of this Chapter;
  - d. be compatible with existing and approved adjacent development;
  - e. demonstrate a capability to provide adequate and safe internal infrastructure, open space, public amenities, and pedestrian and/or transportation circulation; and
  - f. provide a development phasing program that is sufficient to ensure a continued balance of development and public improvements.
2. For a Euclidean zone application, the District Council must find that:
  - a. the applicant has proved a substantial change in the character of the neighborhood since the original zoning or comprehensive rezoning or that a mistake was made by the District Council; and
  - b. for this reason, the result of the change is that the current zoning classification is not in the public interest or that the result of the mistake made by the District Council is that a different zone should have been applied to the property.

#### E. Decision

1. The District Council must make its decision on the record.
2. An affirmative vote of 5 members of the District Council is required to adopt the Hearing Examiner's recommendation, except in the case of a Floating zone application, when the Floating zone is not recommended by the applicable master or sector plan and the Planning Board or applicable municipality does not recommend approval of the application, a vote of 6 members is required. If the required number of affirmative votes is not obtained, the application is disapproved.
3. The District Council must issue a resolution and opinion reflecting its decision on the application within 60 days of the Hearing Examiner's transmittal to the District Council, unless such time is extended by the District Council, or remand the application to the Hearing Examiner for further consideration.
4. Any party of record or any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision within 30 days of the District Council's action under the Maryland Rules of Procedure.
5. The decision of the District Council on any application for a Local Map Amendment is final; except, that the District Council on its own motion may, within 30 days thereafter, reconsider its decision on any application. The adoption of a resolution on such motion to reconsider must stay the time within which an appeal may be filed in the Circuit Court pursuant to State law.
6. The District Council may dismiss an application for Local Map Amendment in the following circumstances unless the applicant shows good cause that the application should not be dismissed:
  - a. The application has been pending for 2 years or longer;
  - b. The application has not been actively pursued by the applicant; and
  - c. The Hearing Examiner, after giving the applicant 30 days' notice of intention to do so, recommends dismissal of the application.

#### F. Subsequent Applications

1. Subsequent applications are subject to the following:

- a. Filing a subsequent application is prohibited for land that was in whole or in part the subject of a previous zoning application approved or denied on its merits within the last 18 months.
  - b. Filing a subsequent application is prohibited for land that was in whole or in part the subject of a previous zoning application for the same zoning classification filed within the last 36 months and decided on its merits.
  - c. The time limitations in Sec. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b (above) do not apply when the previous application(s), which would bar the filing of a new application, was filed by a governmental agency not at the owner's request.
  - d. The time limitations in Sec. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b (above) do not apply when the previous application(s), was denied due to a lack of the required number of affirmative votes.
  - e. An application by the District Council may be accepted at any time without regard to the time limitation in Sec. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b (above).
  - f. The time limitation in this Section (Sec. 8.2.1.F.1) may be waived by the District Council after consideration of a new petition by the applicant showing substantial new facts which would warrant reapplication or if the application is withdrawn following public notice.
2. All subsequent actions required by the applicant or an agency are measured from the date of the District Council's resolution or the final court action, as applicable.
  3. If a Local Map Amendment for a Floating zone is approved, the applicant or successor must submit a site plan(s) under this Article (Article 59-8) prior to any development under the newly approved zoning classification.

## G. Scope of Approval

1. Approval of a Local Map Amendment entitles the applicant or successor to develop under the requirements of this Chapter.
2. In the case a Floating zone is approved, the binding elements or conditions approved by the District Council are binding upon the applicant, successors, and assigns.

## H. Recording Procedures

1. For a Local Map Amendment approved for a Floating zone with binding elements, an executed covenant reflecting the binding elements must be filed in the land records. Certification of the filing must be provided to the Planning Board with any subsequent site plan(s) applications. Covenants must remain in effect until the property is rezoned, an amendment to the Local Map Amendment is approved, or the covenant is amended.
2. The Local Map Amendment, revised in accord with the District Council's resolution in the case of approval of a Floating zone, must be provided to the Hearing Examiner for certification.
3. The certified Local Map Amendment must be maintained in the permanent files of the Hearing Examiner.
4. The District Council must send a copy of the resolution, opinion, and certified Local Map Amendment to the Planning Board to update the zoning map. A copy of the District Council's resolution must also be sent to the applicant and all parties of record. DPS must send a copy of the resolution and opinion to the Supervisor of Assessments for Montgomery County; the Department of Finance; the Department of Environmental Protection; and the Board of Appeals.

## I. Amendments

1. A Local Map Amendment to a Euclidean zone is only amended through the approval of a Local, Sectional, or District Map Amendment.
2. A Local Map Amendment to a Floating zone may be approved under one of the following methods:
  - a. Major amendments to an approved Local Map Amendment follow the same procedures as an original application. Major amendments include any requests to increase density or height, add a previously disallowed use, decrease setbacks, or make changes to any binding elements or conditions of approval.
  - b. Minor amendments to an approved Local Map Amendment may be approved administratively by the Hearing Examiner. Minor amendments include any changes that do not increase density or height; decrease setbacks; or alter the approved binding elements.

- i. Public notice is required under Div. 8.5.
- ii. A public hearing is not required if no objection to the application is received within 15 days of the mailed notice of the filed application. If an objection to the application is received within 15 days of the mailed notice of the filed application, a public hearing must be held under the same procedures as an original application.

## Sec. 8.2.2. Corrective Map Amendment

### A. Applicability & Description

1. Correction of an administrative or technical error or in the findings of fact in the application of a Sectional or District Map Amendment requires approval of a Corrective Map Amendment.
2. A Corrective Map Amendment may cover one or more properties.
3. The purpose of a Corrective Map Amendment is to enable the District Council to correct depictions of a zoning boundary line(s) resulting from administrative or technical errors or from an error or omission in the findings of fact during the District Council's proceedings regarding a prior Map Amendment.
4. A Corrective Map Amendment is not a basis for determining change in the character of the neighborhood.

### B. Application Requirements

1. The District Council accepts the application for all Corrective Map Amendments.
2. Only the Planning Board can apply for a Corrective Map Amendment.

### C. Review and Recommendation

#### 1. Planning Director Review

- a. The Planning Director must issue a report and recommendation at least 7 days before the Planning Board meeting. The report and recommendation must be made available to the public.
- b. The Planning Director's report and recommendation must include:
  - i. A description of each subject area of land proposed for rezoning.

- ii. A map depicting the existing and proposed zoning for each subject area of land; and
- iii. A statement describing the rationale in support of the zoning change.

#### 2. Planning Board Review

- a. The Planning Board may adopt the Planning Director's report and recommendation as a consent item on its agenda or hold a public meeting.
- b. The Planning Board must file a recommendation on the application to the District Council.

### D. Approval Criteria

The Planning Board must show that there are errors or inaccurate depictions of the zoning boundary line(s) on an adopted map.

### E. Decision

1. The District Council must conduct a public hearing and make its decision on the record.
2. An affirmative vote of 5 members of the District Council is required to adopt or modify the Planning Board's recommendation. If the required number of affirmative votes is not obtained, the application is disapproved.
3. The District Council must issue a resolution and opinion on the application within 60 days of the close of record, unless such time is extended by the District Council, or remand the application to the Planning Board for further consideration.
4. Any party of record or any part aggrieved by a decision of the District Council may file a petition for judicial review of the decision within the time and manner prescribed within the Maryland Rules of Procedure.
5. A public hearing may be adjourned, continued, suspended, deferred, or postponed either to a time certain or for a reasonable period of time by the District Council on public announcement. The District Council on its own or at the suggestion of the Planning Board, may determine that some or all of the proposed adjustments should be considered comprehensively as part of a future master plan review and therefore dismiss the application, in full or in part, as appropriate.

**F. Subsequent Applications**

All subsequent actions are measured from the date of the District Council's resolution or the final court action, as applicable.

**G. Scope of Approval**

Approval of a Corrective Map Amendment entitles any affected property owner to develop under the requirements of this Chapter.

**H. Recording Procedures**

1. The District Council's resolution on the Corrective Map Amendment must be maintained in the permanent files of the Planning Board.
2. The District Council must send a copy of the resolution and opinion to the Planning Board to update the zoning map and all property owners included in the application.

**I. Amendments**

A Corrective Map Amendment is only amended through the approval of a Local, Sectional, or District Map Amendment.

**Sec. 8.2.3. Sectional and District Map Amendment****A. Applicability and Description**

1. The approval of a Sectional Map Amendment is required for the rezoning of an area of the County implementing a master or sector plan.
2. The approval of a District Map Amendment is required for the rezoning of an area, areas, or the entire County implementing a comprehensive or functional plan.

**B. Application Requirements**

1. The District Council accepts the application for all Sectional or District Map Amendments. Within 5 days after acceptance for filing, the District Council must forward the application to the Planning Board.
2. Only the Planning Board or District Council may apply for a Sectional or District Map Amendment.
3. Public notice is required under Div. 8.5.

4. For a Sectional Map Amendment, the applicant must submit the following for review:

- a. The designation or description of the area sufficient to identify:
  - i. the boundaries of each area proposed for the same zoning classification together with indications where such classification, if adopted, would result in changes of classification, the nature of the changes and the boundaries of the land covered by such changes.
  - ii. all roads, streets, alleys, governmental parks or other public areas in public ownership or on public rights-of-way and all streams and railroad rights-of-way within the area covered by the map, and the names thereof.
- b. A map or map series of the area prepared by a civil engineer, surveyor, or the Planning Board and certified to be correct and in conformity with this Section (Sec. 8.2.3.B.3).
- c. A statement describing the rationale in support of the proposed zoning changes or adjustments. The application must include the total acres in the application, and the acres proposed for rezoning and the acres proposed for reconfirmation of existing zoning.

**C. Review and Recommendation****1. Planning Director Review**

- a. The Planning Director must issue a report and recommendation at least 10 days before the Planning Board public meeting. The report and recommendation must be made available to the applicant and public.
- b. The Planning Director's report and recommendation must include:
  - i. A description of the subject area proposed for comprehensive rezoning;
  - ii. Maps depicting the proposed zoning for each subject area; and
  - iii. In the case of a District Map Amendment, an analysis of the policy issue that is the subject of the comprehensive or functional plan.

## 2. Planning Board Review

- a. The Planning Board must hold a public meeting on the Planning Director's report and recommendation.
- b. The Planning Board must file a recommendation on the application to the District Council.

## D. Approval Criteria

Approval of a Sectional or District Map Amendment must be based on an approved master, sector, comprehensive, or functional plan.

## E. Decision

1. The District Council must conduct a public hearing and make its decision on the record.
2. An affirmative vote of 5 members of the District Council is required to adopt the applicable recommendation, except in the case when an applicable municipality does not recommend approval of the application a vote of 6 members is required. If the required number of affirmative votes is not obtained, the application is disapproved.
3. The District Council must issue a resolution and opinion reflecting its decision on the application within 60 days of the close of record, unless such time is extended by the District Council, or remand the application to the Planning Board for further consideration.
4. Any party of record or any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision within 30 days of the District Council's action under the Maryland Rules of Procedure.
5. The decision of the District Council on any application for a Sectional or District Map Amendment is final; except, that the District Council on its own motion may, within 30 days thereafter, reconsider its decision on any application. The adoption of a resolution on such motion to reconsider must stay the time within which an appeal may be filed in the Circuit Court pursuant to State law.

## F. Subsequent Applications

All subsequent actions are measured from the date of the District Council's resolution or the final court action, as applicable.

## G. Scope of Approval

Approval of a Sectional or District Map Amendment entitles any affected property owner to develop under the requirements of this Chapter.

## H. Recording Procedures

1. The District Council's resolution on the Sectional or District Map Amendment must be maintained in the permanent files of the Planning Board.
2. The District Council must send a copy of the resolution and opinion to the Planning Board to update the zoning map. A copy of the District Council's resolution must also be sent to the applicant and all parties of record. DPS must send a copy of the resolution and opinion to the Supervisor of Assessments for Montgomery County; the Department of Finance; the Department of Environmental Protection; and the Board of Appeals.

## I. Amendments

Amendments to a Sectional or District Map Amendment are made by subsequent Map Amendments.

## Sec. 8.2.4. Zoning Text Amendment

### A. Applicability and Description

A change in the text of this Code requires approval of a Zoning Text Amendment.

### B. Application Requirements

1. Any individual or government agency may request that a Zoning Text Amendment be introduced.
2. Only the District Council or any individual member(s) may introduce a Zoning Text Amendment.
3. When a Zoning Text Amendment is introduced:
  - a. The District Council must hold a public hearing no later than 60 days after introduction, unless the District Council extends the hearing date.

- b. The District Council must transmit the Zoning Text Amendments to the Planning Director, the County Executive, the Board of Appeals, and the Hearing Examiner within 5 days of introduction by the District Council and notify them of the hearing date.
- 4. Public notice is required under Div. 8.5.

### C. Review and Recommendation

#### 1. Planning Director Review

The Planning Director must issue a report and recommendation at least 7 days before the Planning Board public meeting. The report and recommendation must be made available to the public.

#### 2. Planning Board Review

- a. The Planning Board may adopt the Planning Director's report and recommendation as a consent item on its agenda.
- b. The Planning Board must file a recommendation on the application to the District Council at least 5 days prior to the District Council Hearing. The recommendation(s) must also be made available to the public.

#### 3. Other Agency Review

If the County Executive, the Board of Appeals, or the Hearing Examiner make a recommendation on the Zoning Text Amendment to the District Council it must be filed at least 5 days before the District Council hearing. The recommendation must also be made available to the public in general.

### D. Approval Criteria

The approval of a zoning text amendment must be in the public interest.

### E. Decision

- 1. The District Council must conduct a public hearing; a quorum of the District Council is not required to conduct a public hearing on a Zoning Text Amendment. The District Council must make its decision on the record.
- 2. An affirmative vote of 5 members of the District Council is required to adopt the introduced Zoning Text Amendment; with or without modifications. If the required number of affirmative votes is not obtained, the application is

disapproved. Any District Council member who was not present at the hearing must review the record and sign a statement that the member reviewed the record before voting on the amendment.

- 3. The vote on final adoption of a Zoning Text Amendment must be a roll call vote.
- 4. Each Zoning Text Amendment takes effect 20 days after the District Council adopts it, unless the ordinance adopting it specifies a different date.
- 5. Any Zoning Text Amendment not acted upon within 2 years of the date of its public hearing, or within the term of office of the Council that conducted the public hearing, whichever expires first, must not be considered or acted upon unless it is again introduced and set for public hearing.

### F. Scope of Approval

Approval of a Zoning Text Amendment entitles any affected property owner to develop under the requirements of this Chapter.

### G. Recording Procedures

- 1. All adopted Zoning Text Amendments must be accompanied by an opinion of the District Council stating its conclusions and reasons, which must be maintained in the permanent files of the County Attorney.
- 2. The District Council must promptly send a copy of the opinion and Zoning Text Amendment to the Chapter to the County Executive, the Planning Board, the Hearing Examiner, the Board of Appeals, the Supervisor of Assessments, DPS, the Department of Finance, and all parties of record.
- 3. This Chapter must be updated within 45 days of approval of any Zoning Text Amendment.

### H. Amendments

Amendments to a Zoning Text Amendment are made by subsequent Zoning Text Amendments.

## Div. 8.3. Regulatory Approvals

### Sec. 8.3.1. Conditional Use Plan

#### A. Applicability and Description

1. Use of any property for a conditional use, as designated by Article 59-3, requires approval of a conditional use plan.
2. The conditional use plan will be used to determine if the proposed development is in compliance with this Chapter.
3. Conditional use plan applications may encompass all or any part of a property, but when the application does not encompass the entire area included in any previous approval, the application must demonstrate its relation to and coordination with other approvals.
4. Conditional use plan applications must satisfy the conditions and/or binding elements and be consistent with any and all previous approvals that encumber the subject property unless amended.
5. A site plan is not required for a property, or any portion thereof, subject to a conditional use plan except when it is a condition of approval by the Hearing Examiner or the Board of Appeals.

#### B. Application Requirements

1. The Board of Appeals or Hearing Examiner accepts the conditional use plan applications as determined by which body is authorized to make the final decision under Article 59-3.
2. The Board of Appeals or Hearing Examiner must hold a public hearing on a conditional use plan within 120 days of the date an application is accepted.
3. Ownership:
  - a. An applicant must own the subject property or be authorized by the owner to file the application.
  - b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.

- c. An application must specify the names of all persons having a substantial interest in the property subject to the application including all persons with a share in the property amounting to 5 percent or more (whether held in an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of all contract purchasers and all persons holding a mortgage, deed of trust, or option to purchase the property. The application must include a statement disclosing political contributions to the treasurer or political committees of candidates for County Council and County Executive or slates which contribute to candidates for County Council or County Executive as required by state law. The disclosure statement must be submitted on a form approved by the District Council.
4. A pre-application meeting with Planning Department Staff is recommended.
5. Public notice is required under Div. 8.5.
6. The applicant must submit the following for review:
  - a. application form and fees as approved by the District Council;
  - b. statement explaining how the proposed development satisfies the criteria to grant the application; and
  - c. additional submittal requirements:
    - i. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
    - ii. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/4 mile;
    - iii. approved Natural Resources Inventory/Forest Stand Delineation;
    - iv. Forest Conservation Plan application, if required under Chapter 22A, or an approved preliminary forest conservation plan or exemption for telecommunication tower applications;
    - v. Stormwater Management Concept or Water Quality Plan application, if required under Chapter 19 ;

- vi. Traffic Statement or Study, accepted for review by the Planning Director;
- vii. inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- viii. existing and proposed dry and wet utility plan if changes to these facilities are proposed;
- ix. written description of operational features of the proposed use;
- x. plans of proposed development showing:
  - (a) footprints, ground-floor layout, and heights of all buildings and structures;
  - (b) required open spaces and recreational amenities;
  - (c) layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
  - (d) rough grading;
  - (e) landscaping and lighting; and
  - (f) supplementary documentation showing or describing the application's conformance to previous approvals and/or applicable requirements.
- xi. development program and inspection schedule detailing the construction phasing for the project;
- xii. for a telecommunication tower application, photographic simulations of the tower and site seen from at least 3 directions, including from every abutting and confronting properties; and
- xiii. if a sketch plan was approved for the property, a table of proposed public benefits and the incentive density points requested for each.

## C. Review and Recommendation

### 1. Planning Director Review

- a. The Planning Director has the discretion to provide a report and recommendation for review by the Planning Board at a public meeting or to issue a report and recommendation directly to the Hearing Examiner, except that a Planning Director's report and recommendation on a telecommunication tower application must be sent directly to the Hearing Examiner.
- b. If the Planning Director provides a report and recommendation to the Planning Board, they must issue the report and recommendation a minimum of 10 days before the Planning Board public meeting. The report and recommendation must be made available to the applicant and the public.
- c. If the Planning Director provides a report and recommendation to the Hearing Examiner, they must issue the report and recommendation a minimum of 10 days before the Hearing Examiner's public hearing.

### 2. Planning Board Review

- a. The Planning Board may adopt the Planning Director's report and recommendation as a consent item on its agenda.
- b. The Planning Board must provide a recommendation on the application to the Hearing Examiner a minimum of 10 days before the Hearing Examiner's public hearing.

### 3. Hearing Examiner Review if the Board of Appeals is the Deciding Body

- a. The Hearing Examiner must conduct a public hearing under the Board of Appeals' rules of procedure, as approved by the District Council.
- b. The Hearing Examiner may postpone the public hearing and must provide mailed notice to all parties of record of the new hearing date.



- c. The Hearing Examiner may issue subpoenas to compel the attendance of witnesses and production of documents at any public hearing and administer an oath to any witness.
- d. Within 30 days of the close of the record of the public hearing, the Hearing Examiner must forward a report and recommendation to the Board of Appeals. The report and recommendation must be sent to the applicant and all parties of record and made available to the public.
- e. The Hearing Examiner may extend the time to forward the report and recommendation once by up to 30 days without the Board of Appeals' approval and again by up to 30 days with the Board of Appeals' approval.
- f. Within 10 days after transmittal of the Hearing Examiner's report any party of record or any aggrieved party may file a written request for an opportunity to present oral argument before the Board of Appeals.
  - i. The written request must be filed with the Hearing Examiner and must concisely identify the matters desired to be presented at the oral argument.
  - ii. Within 5 days after a request for oral argument is filed, any interested party may rebut, in writing, a request for oral argument or request to participate in oral argument if oral argument is allowed. Any rebuttal to a request for oral argument must be sent to the Hearing Examiner and each party who participated at the hearing, as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.
  - iii. The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, a public hearing must be held and the argument must be limited to matters contained in the record compiled by the Hearing Examiner.
  - iv. Thereafter, the matter must be decided either as provided in Sec. 8.3.1.E, (below), or remanded to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.

#### 4. Withdrawal of an Application

- a. When an application for a conditional use is withdrawn, notice must be sent to all parties entitled to notice of the filing of the application.
- b. When a case is withdrawn at least 30 days before the initial hearing the Board of Appeals may allow the application to be withdrawn without prejudice to the limitations on refiling specified in Sec 8.3.1.F.1.
- c. When a case is withdrawn 30 days or less from the date of the hearing, withdrawal must be with prejudice.

#### D. Approval Criteria

- 1. To approve a conditional use plan, the Hearing Examiner or Board of Appeals must find that the proposed development:
  - a. satisfies and is consistent with any previous approval(s) that encumbers the subject site or, if not, that the previous approval(s) be amended;
  - b. satisfies all applicable use standards, development standards, and general requirements required by the zone;
  - c. is consistent with the recommendations of the applicable master or sector plan and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;
  - d. directs, shields, or screens outdoor lighting to ensure the maximum illumination level at any property line abutting a detached house building type in a Rural Residential or Residential zone, is no greater than 0.1 footcandle;
  - e. satisfies the requirements of Sec. 7.2.6.M, Facilities for Conditional Uses in Residential Zones and Sec. 7.5.7, Buffering and Screening.
  - f. will not have significant non-inherent adverse impacts in the following categories:
    - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties;
    - ii. a lack of parking, traffic, noise, odors, dust, or illumination; or
    - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.

- iv. A conditional use plan may be denied if it has non-inherent adverse effects in any of the above categories and the overall assessment of both inherent and non-inherent adverse impacts warrants denial to avoid undue harm to the general neighborhood.
  - g. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Conditional use plans that are consistent with the recommendations of a master plan do not alter the nature of an area.
  - h. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Board of Appeals must consider that the impact does not necessarily need to be controlled as stringently as if it were adjacent to a Residential zone.
2. If adequate public facilities are being tested:
- a. and a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner or Board of Appeals must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or
  - b. and a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage.

## E. Decision

1. If the Hearing Examiner is deciding the application, the Hearing Examiner must issue a decision on the application within 30 days of the close of the record to:
  - a. approve;
  - b. approve with conditions; or
  - c. disapprove the application.

2. If the Board of Appeals is deciding the application:
  - a. An affirmative vote of 3 members of the Board of Appeals is required to adopt the Hearing Examiner's recommendation with or without modifications. If the required number of affirmative votes is not obtained, the application is disapproved. Any Board of Appeals member who votes on a conditional use and was not present for any portion of the hearing must read and sign the transcript of that portion of the testimony and must review all exhibits introduced at the hearing.
  - b. The Board of Appeals must issue a resolution reflecting the Board of Appeals' decision within 30 days of the close of the record unless such time is extended by the Board of Appeals.
3. The Hearing Examiner or Board of Appeals may add or modify conditions of approval, such as operational restrictions, parking, and/or landscape and lighting regulations.
4. Any party of record or any party aggrieved by a decision of the Hearing Examiner or Board of Appeals may file a petition for judicial review of the decision within the time and manner prescribed within the Maryland Rules of Procedure.

## F. Subsequent Applications

1. If the conditional use plan is denied, a new application proposing substantially the same development for the same property may not be filed within 18 months after a final decision, unless the Hearing Examiner or Board of Appeals finds that the applicant provides relevant new facts that warrant reapplication.
2. All subsequent actions required by the applicant or an agency are measured from the date the Hearing Examiner's or Board of Appeals' resolution was issued or a final court action, as applicable.

## 3. Conforming Permits

On any property where a conditional use is requested, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement:

- a. until the Hearing Examiner or Board of Appeals approves a conditional use plan; and
- b. unless any building, structure, or improvement conforms to the approved conditional use plan.

#### 4. Permits Exempt from Conformance to Approved Conditional Use Plans

- a. On any property where a conditional use plan was approved, DPS may, without finding of conformance to the approved conditional use plan, issue a sediment control permit or building permit to:
  - i. construct an accessibility improvement;
  - ii. repair an existing structure; or
  - iii. replace an existing structure to no more than the same footprint and height approved.
- b. On a property where a conditional use plan was approved, any owner or owners' association may, without finding of conformance to the approved conditional use plan, change landscaping that was not required as a condition of approval for screening or buffering and/or install a site element or construct a paved surface or structure that meets all applicable standards and requirements of the applicable zone, and does not conflict with any conditions of approval.
- c. On a residential lot created under the approval of a conditional use plan and sold to a private homeowner, that owner may, without finding of conformance to the approved conditional use plan, obtain a permit for improvements to landscaping and site elements that were not required as a condition of approval for screening or buffering and/or install a site element or construct a paved surface or structure that meets all applicable standards and requirements of the applicable zone, and does not conflict with any conditions of approval.
- d. DPS must submit a copy of any permit issued under this Section (Sec. 8.3.1.F.4) to the Hearing Examiner or Board of Appeals for inclusion in the record of the conditional use plan.
- e. Any modification or improvement allowed under this Section (Sec. 8.3.1.F.4) does not require an amendment to the conditional use plan.

#### G. Scope of Approval

- 1. A conditional use plan expires within 24 months from the date of the issuance of the decision or resolution, unless a longer period is established by the decision or resolution, if the use is not established or a building permit has not been obtained for the applicable use.
- 2. Development activities under this Section (Sec. 8.3.1) must conform to the approved conditional use plan and any conditions, including operational restrictions.
- 3. It is the conditional use holder's responsibility to notify the Board of Appeals of any change in land ownership or change in circumstances or conditions affecting the conditional use.

#### H. Recording Procedures

- 1. The approved conditional use plan and Hearing Examiner decision or Board of Appeals resolution must be maintained in the permanent files of the Hearing Examiner or the Board of Appeals, as applicable.
- 2. A copy of the decision of the Board of Appeals or Hearing Examiner on each conditional use application must be sent to the applicant, the Planning Board, DPS, the Department of Finance, all parties entitled to notice of filing, and any other parties of record.
- 3. The decision must be indicated on the official zoning maps of the Planning Department by use of an appropriate code number or symbol.

#### I. Amendments

- 1. Major amendments to an approved conditional use plan follow the same procedures, must meet the same criteria, and are subject to the same requirements as the original conditional use plan, except as indicated in Sec. 8.3.1.1.1.a (below). Major amendments include, without limitation, any requests to increase density or height, to make changes to any conditions of approval, or to increase the intensity of the use.
  - a. The public hearing must be limited to consideration of the proposed modifications noted in the Board of Appeal's notice of public hearing and to:

- i. discussion of those aspects of the conditional use that are directly related to those proposals, and
  - ii. the general landscape, streetscape, pedestrian circulation, noise, and screening requirements for a conditional use in a Rural Residential or Residential zone if the modification proposes an expansion of the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less,
- b. The Board of Appeals must make a determination on the issues presented. The Board of Appeals may reaffirm, amend, add to, delete or modify the existing terms and/or conditions of the conditional use. The Board of Appeals may require the underlying conditional use to be brought into compliance with the general landscape, streetscape, pedestrian circulation, noise, and screening requirements for a Rural Residential or Residential zone if:
- i. the proposed modification expands the total floor area of all structures or buildings by more than 25%, or 7,500 square feet, whichever is less, and
  - ii. the expansion, when considered in combination with the underlying conditional use, changes the nature or character of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected.
2. Minor amendments to an approved conditional use plan may be approved administratively by the Hearing Examiner or Board of Appeals, as applicable. Minor amendments include any changes that do not increase density or height; decrease setbacks where abutting detached residential uses; increase intensity of use; or alter the conditions of approval imposed by the Hearing Examiner or Board of Appeals.
- a. Public notice is required under Div. 8.5.
  - b. Public Hearing
    - i. A public hearing is not required if no objection to the application is received within 15 days of the mailed notice of the filed application.

- ii. If an objection to the application is received within 15 days of the mailed notice of the filed application a public hearing must be held under the same procedures as an original application.

## J. Compliance and Enforcement

1. DPS and the Board of Appeals must establish a regular inspection program for conditional uses. DPS must perform the inspections according to the established schedule and must perform inspections if a complaint alleging failure to comply with the terms or conditions of a conditional use plan is filed with DPS or the Board of Appeals. If a complaint is filed, DPS must inspect the premises of the within 21 days of receiving the complaint, or more promptly if requested by the Board of Appeals, to determine the validity of the complaint.
2. If the inspection finds a violation of the terms and/or conditions of the conditional use plan, DPS must direct the conditional use plan holder to correct the violation within a given time frame to be no less than 15 days from the date of inspection. When the time to correct the violation expires, DPS must reinspect the premises. If the violation has not been corrected, DPS must file a report with the Board of Appeals describing the nature of the violation, the corrective action ordered by DPS, and the time allowed to correct the violations.
3. If the inspection finds that no violations exist, written findings must state that the conditional use complies with the terms and conditions of the conditional use approval.
4. If, under this Article (Article 59-8), the Board of Appeals receives a written notice from DPS that the terms or conditions of a conditional use plan or that the terms, conditions, or restrictions attached to the grant of any permit issued under this Article (Article 59-8) are not being complied with, the Board of Appeals may order the conditional use plan holder and the property owner to appear before the Board of Appeals at a date, time, and place specified to show cause why the conditional use should not be revoked.
5. If the inspection finds that the conditional use has been abandoned, DPS must forward written notice of its findings to the last recorded holder of the conditional use and to the property owner. The conditional use holder

- and property owner have 60 days from the date of mailing of the notice, to submit a written statement confirming or challenging the abandonment and requesting that conditional use be continued.
- a. If the conditional use holder and the property owner acknowledge that the conditional use has been abandoned, DPS must notify the Board of Appeals. The Board of Appeals must adopt and issue a written resolution finding the conditional use to have been abandoned and ordering the conditional use revoked.
  - b. If either the conditional use holder or the property owner challenge the abandonment and request that the conditional use be continued, DPS must notify the Board of Appeals, and the Board of Appeals must convene a public show cause hearing to determine whether or not the conditional use was abandoned and whether it should be revoked.
  - c. If either the conditional use holder or property owner does not respond DPS must notify the Board of Appeals of its findings, and the Board of Appeals must issue to the conditional use holder and the property owner an order to appear before the Board of Appeals to show cause why the conditional use should not be revoked.
  - d. If either the conditional use holder or the property owner appear before the Board of Appeals to show cause why the conditional use should not be revoked, the Board of Appeals must adopt and issue a resolution finding the conditional use to have been abandoned and ordering the conditional use revoked.
6. The notice of a show cause hearing must be issued to the conditional use plan holder and the property owner by certified mail, return receipt requested. Notification must also be sent to DPS, and to all parties who have submitted written complaints concerning the conditional use and must:
- a. include the nature of the alleged violations;
  - b. state that the hearing is limited to a consideration and a determination of the validity of the allegations; and
  - c. advise the conditional use plan holder and the property owner that failure to attend and participate in the hearing may result in issuance of an order revoking the conditional use.

7. The Board of Appeals must conduct a show cause hearing limited to consideration of the issues noted in the order and notice of hearing. The Board of Appeals may reaffirm or revoke the conditional use or amend, add to, delete or modify the existing terms or conditions of the conditional use. The decision of the Board of Appeals must be by the adoption of a written resolution within 15 days of the close of record and copies of the resolution transmitted to the conditional use plan holder, the property owner, DPS, the Planning Director, and other relevant parties.
8. Revocation by the Board of Appeals of any conditional use must be so noted in the official zoning maps of DPS and the Planning Department.

## Sec. 8.3.2. Variance

### A. Applicability and Description

1. A modification from the standards or requirements of this Chapter, not subject to a waiver or alternative compliance plan by the applicable deciding body, requires approval of a variance.
2. If an applicant requests a modification that is subject to a waiver or alternative compliance plan by the applicable deciding body and that waiver is denied, the applicant can apply for a variance.

### B. Application Requirements

1. The Board of Appeals accepts all variance applications.
2. An application for a variance may be made only by an entity or a person with a financial, contractual, or proprietary interest in the proposed property.
3. Public notice is required under Div. 8.5.
4. The applicant must submit the following for review:
  - a. application form and fees as required by the Board of Appeals.
  - b. documentation of interest in the proposed development site under Sec. 8.3.2.B.2.
  - c. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application.
  - d. additional submittal requirements:

- i. survey plat or scaled drawing showing boundaries, frontage, and topography;
- ii. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
- iii. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/4 mile;
- iv. scale plans, illustrations, sections, elevations, and/or specifications showing all existing and proposed buildings and structures; and
- v. supplementary documentation to be introduced in support of the application.

### C. Review and Recommendation

1. The Board of Appeals may request review by the Planning Director, Planning Board, and/or Hearing Examiner.
2. If a review by the Planning Director, Planning Board, and/or Hearing Examiner is requested, the review follows the same procedure as a conditional use plan.

### D. Approval Criteria

To approve a variance, the Board of Appeals must find that:

1. Special circumstances or conditions exist that are peculiar to the property or structure(s) for which the variance is sought and do not apply generally to properties or structures in the same zone. Special circumstances or conditions include, but are not limited to, the following situations:
  - a. Exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary spatial conditions peculiar to a specific property;
  - b. The proposed development involves utilization of an existing legal non-conforming property or structure;
  - c. The proposed development contains areas subject to environmentally sensitive features and/or buffers;
  - d. The proposed development involves property or structures of historical significance; and/or

- e. The proposed development promotes the established historic or traditional development standards of a street or neighborhood.
2. The special circumstances or conditions are not the result of actions by the applicant;
3. The requested variance is the minimum necessary to overcome the practical difficulties imposed by the unusual or extraordinary situations or conditions;
4. The variance can be granted without substantial impairment to the intent and integrity of the General Plan or the applicable master or sector plan; and
5. Granting the variance will not be adverse to the use and enjoyment of adjoining properties.

### E. Decision

1. The Board of Appeals must conduct a public hearing within 60 days of the date an application is accepted.
2. Within 30 days after the close of the record of the public hearing, the Board of Appeals must act by a majority of those present at the public hearing to approve, approve with conditions, or disapprove the application. If the required number of affirmative votes is not obtained, the application is disapproved.
3. Any party of record or any party aggrieved by a decision of the Board of Appeals may file a petition for judicial review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.

### F. Subsequent Applications

1. If a variance is denied, a new application proposing substantially the same development for the same property may not be filed within 18 months after a resolution is adopted unless the Board of Appeals finds that the applicant provides relevant new facts that warrant reapplication.
2. All subsequent actions required by the applicant or an agency are measured from the date of the Board of Appeals' resolution or the final court action, as applicable.

## G. Scope of Approval

1. A variance is valid for 12 months, during which time a building permit must be obtained for the applicable building, structure, or use.
2. Approval of a variance entitles the applicant or successor to obtain a building permit or file a site plan or conditional use plan to the standard(s) granted by the variance.
3. The conditions approved by the Board of Appeals are binding upon the applicant, successors, and assigns.

## H. Recording Procedures

The Board of Appeals' resolution must be maintained in the land records and permanent files of the Board of Appeals.

## I. Amendment

There are no amendments to a variance.

## Sec. 8.3.3. Sketch Plan

### A. Applicability and Description

1. Development under optional method in the CRT, CR, EOF, or LSC zone requires approval of a sketch plan.
2. A sketch plan provides the opportunity for the Planning Board to consider the appropriate balance of public benefits and development rights.

### B. Application Requirements

1. The Planning Director accepts applications for all sketch plans.
2. An application for a sketch plan may be made only by an entity or person with a financial, contractual, or proprietary interest in the proposed development site.
3. If any land or right-of-way encompassed by a sketch plan application is owned or controlled by the State, County, or any other private or public entity, a written agreement or authorization from that entity or agency must be submitted with the sketch plan application.
4. Disclosure of ownership must satisfy the Land Use Article of the Annotated Code of Maryland.

5. A pre-application meeting with Planning Department Staff is recommended.
6. Public notice is required under Div. 8.5.
7. The applicant must submit the following for review:
  - a. application form and fees as required by the Planning Director;
  - b. vicinity map at 1" = 200';
  - c. site inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
  - d. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/2 mile;
  - e. documentation of interest in the proposed development site under Sec. 8.3.3.B.2. and Sec.8.3.3.B.3;
  - f. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application; and
  - g. illustrative plans showing:
    - i. building densities, massing, heights, and the anticipated mix of uses;
    - ii. locations of public use and other open spaces;
    - iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
    - iv. estimated range of the maximum peak hour trips; and
    - v. relationships between existing or proposed adjacent buildings and rights-of-way;
  - h. a table of proposed public benefits and the incentive density points requested for each; and
  - i. a general phasing outline of structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.

## C. Review and Recommendation

### 1. Planning Director Review

- a. The Planning Director must issue a report and recommendation a minimum of 10 days before the Planning Board public hearing. The report and recommendation must be made available to the applicant and public.
- b. The Planning Director may postpone the public hearing by up to 30 days once without Planning Board approval and by up to 30 days once again if the extension is approved by the Planning Board. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

## D. Approval Criteria

To approve a sketch plan, the Planning Board must find that the following elements are appropriate in concept and appropriate for further detailed review at site plan. The sketch plan must:

1. meet the objectives, general requirements, and standards of this Chapter;
2. further the recommendations and objectives of the applicable master or sector plan;
3. achieve compatible internal and external relationships between existing and pending nearby development;
4. provide satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading;
5. propose an outline of public benefits that supports the requested incentive density; and
6. establish a feasible and appropriate phasing plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.

## E. Decision

1. The Planning Board must conduct a public hearing within 90 days of the date an application is accepted.
2. Within 30 days after the close of the record of the public hearing, the Plan-

ning Board must act by majority vote of those present at the public hearing to:

- a. approve;
  - b. approve subject to modifications, conditions, or binding elements; or
  - c. disapprove the application.
3. Any party of record or any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.

## F. Subsequent Applications

1. If a sketch plan is denied, a new application proposing substantially the same development for the same property may not be filed within 18 months after a final decision, unless the Planning Board finds that the applicant provides relevant new facts that warrant reapplication.
2. All subsequent actions required by the applicant or an agency are measured from the date of the Planning Board's resolution or the final court action, as applicable.
3. If a sketch plan is approved, a site plan(s) must be submitted under this Article (Article 59-8) within 36 months of date of the mailing of the resolution, unless a longer period is established by the resolution.

## G. Scope of Approval

1. Approval of a sketch plan entitles the applicant or successor to file a site plan(s) under the optional method development standards and requirements and according to the conditions and binding elements approved with the sketch plan.
2. The conditions or binding elements approved by the Planning Board are binding upon the applicant, successors, and assigns.

## H. Recording Procedures

The Planning Board resolution must be maintained in the permanent files of the Planning Department.



## I. Amendments

During site plan review, the Planning Board may approve amendments to the binding elements or conditions of an approved sketch plan.

1. Amendments to the binding elements or conditions of an approved sketch plan may be approved if such amendments are:
  - a. requested by the applicant;
  - b. recommended by the Planning Board staff and agreed to by the applicant; or
  - c. made by the Planning Board, based on a staff recommendation or on its own initiative, if the Planning Board finds that a change in relevant facts and circumstances since sketch plan approval demonstrates that the binding element or condition is not consistent with the applicable master or sector plan or does not meet the requirements of this Chapter.
2. Notice of proposed amendments to the binding elements must be identified in the site plan application if requested by the applicant, or in the final notice of the site plan hearing if recommended by Planning Board staff and agreed to by the applicant.
3. For any amendments to the binding elements or conditions, the Planning Board must make the applicable sketch plan findings in addition to the findings necessary to approve a site plan under this Article (Article 59-8).

### Sec. 8.3.4. Site Plan

#### A. Applicability and Description

1. Development under the optional method requires approval of a site plan after approval of a sketch plan.
2. Development under a Floating zone requires approval of a site plan after approval of a Local Map Amendment.
3. Development under the standard method requires site plan approval as indicated in the following table:

**Determining when a site plan is required:**

Subject Property's Zone	Proposed Use	Proposed Intensity (gross floor area in SF, units, or building height in feet)	Abutting or Confronting Property's Zone	Site Plan Required
Agricultural, Rural <u>Residential</u> , or Residential Detached	Any	Any	Any	No
Residential Townhouse or Residential Multi-Unit	Any	< 20 units <u>and</u> ≤ 40'	Any	No
		≥ 20 units or > 40'	Any	Yes
Commercial/Residential or Employment	Permitted	≤ 10,000 SF, ≤ 10 units, <u>and</u> ≤ 40'	Any	No
		> 10,000 SF, > 10 units, or > 40'	Agricultural, Rural <u>Residential</u> , Residential, or Floating	Yes
	Limited	Any	Agricultural, Rural <u>Residential</u> , Residential, or Floating	If required under <u>Article 59-3</u> ; if not required under Article 59-3, applicability is determined under the Permitted use thresholds in this table
			<u>Commercial/Residential, Employment, or Industrial</u>	<u>No</u>
Industrial	Any	≤ 40'	Agricultural, Rural <u>Residential</u> , Residential, or Floating	Yes
			Commercial/Residential, Employment, or Industrial	No
		> 40'	Any	Yes
Overlay	Any	Any	Any	If required by the applicable Overlay zone under <u>Article 59-4</u> or if required by the underlying zone.

4. A site plan provides a detailed overview of the applicant's development. Site plan will be used to determine if the proposed development is in compliance with current laws, regulations, this Code; and is substantially consistent with the applicable master or sector plan and approved guidelines.
5. Site plan applications may encompass all or any part of a property, but when not inclusive of any previous approval that encompasses the entire property, the application must demonstrate its relation to and coordination with other approvals or submittals.
6. Site plan applications must satisfy the conditions and/or binding elements and be consistent with any and all previous approvals that apply to the subject property.
7. A site plan is not required for any property or area within a property that is subject to a conditional use plan, unless the Hearing Examiner or Board of Appeals requires one.

## B. Application Requirements

1. The Planning Director accepts the application for all site plans.
2. An application for a site plan may be made only by an entity or a person with a financial, contractual, or proprietary interest in the proposed development site.
3. If any land or right-of-way encompassed by a site plan application is owned or controlled by the State, County, or any other entity or agency, a written agreement or authorization from that entity or agency must be submitted with the site plan application.
4. Disclosure of ownership must conform to the Land Use Article of the Annotated Code of Maryland.
5. A pre-application meeting with Planning Department Staff is recommended.
6. Public notice is required under Div. 8.5
7. The applicant must submit the following for review:
  - a. application form and fees as required by the Planning Director;
  - b. vicinity map at 1" = 200';
  - c. site inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
  - d. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/2 mile;
  - e. documentation of interest in the proposed development site under Sec.8.3.4.B.2. and Sec.8.3.4.B.3;
  - f. statement of justification outlining how the proposed development satisfies the standards and criteria for the granting of the application;
  - g. verification that the applicant has posted notice on the property, notified affected parties, and held a pre-submittal meeting with the public, as required by Planning Board regulations;
  - h. additional submittal requirements:
    - i. approved Natural Resources Inventory/Forest Stand Delineation plan;
    - ii. Stormwater Management Concept Application or, if required, a Water Quality Plan Application;
    - iii. Traffic Statement or Study accepted by the Planning Director, if not submitted with a previous or concurrent application;
    - iv. existing and proposed dry and wet utility plan;
    - v. plans of proposed development showing:
      - (a) footprints, ground-floor layout, and heights of all building and structures;
      - (b) required open spaces and recreational amenities;
      - (c) detailed layout and dimensions for all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
      - (d) grading;
      - (e) landscaping and lighting; and
      - (f) supplementary documentation showing or describing the application's conformance to previous approvals and/or applicable requirements.

- i. a development program and inspection schedule detailing the construction phasing for the project;
- j. a final Forest Conservation Plan application; and
- k. if a sketch plan was approved for the property, a table of proposed public benefits and the incentive density points requested for each.

### C. Review and Recommendation

#### 1. Planning Director Review

- a. The Planning Director must issue a report and recommendation a minimum of 10 days before the Planning Board hearing. The report and recommendation must be made available to the applicant and public.
- b. The Planning Director may postpone the public hearing by up to 30 days once without Planning Board approval and by up to 30 days once again if the extension is approved by the Planning Board. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

### D. Approval Criteria

To approve a Site Plan, the Planning Board must find that the proposed development:

1. satisfies and is consistent with any previous approval(s) that apply to the subject site;
2. satisfies all applicable use standards, development standards, and general requirements required by this Chapter;
3. is substantially consistent with the recommendations of the applicable master or sector plan and any guidelines approved by the Planning Board that implement the applicable plan;
4. is compatible with existing and approved adjacent development;
5. provides safe, well-integrated circulation patterns and building massing and, where required, open spaces and site amenities; and
6. meets the requirements of other applicable sections of the Montgomery County Code under jurisdiction of the Planning Board, including:

- a. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and
- b. Chapter 22A, Forest Conservation.

### E. Decision

1. The Planning Board must conduct a public hearing within 120 days of the date an application is accepted.
2. Within 30 days after the close of the record of the public hearing, the Planning Board must act by majority vote of those present at the public hearing to:
  - a. approve;
  - b. approve subject to modifications or conditions; or
  - c. disapprove the application.
3. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.

### F. Subsequent Applications

1. If the site plan is denied, a new application proposing substantially the same development for the same property may not be filed within 18 months after a final decision, unless the Planning Board finds that the applicant has provided relevant new facts that warrant reapplication.
2. All subsequent actions required by the applicant or an agency are measured from the date of the Planning Board's resolution or the final court action, as applicable.

#### 3. Conforming Permits

On any property where a site plan approval is requested, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement:

- a. until the Planning Board approves a site plan; and
- b. a bond has been approved under Sec. 8.3.4.J; and

- c. unless any building, structure, or improvement conforms to the approved site plan as certified by the Planning Department.

#### 4. Permits Exempt from Conformance to Approved Site Plans

- a. On any property where a site plan was approved DPS may, without finding of conformance to the approved site plan, issue a sediment control permit or building permit to:
  - i. construct an accessibility improvement;
  - ii. repair an existing structure; or
  - iii. replace an existing structure to no more than the same footprint and height approved.
- b. On a property where a site plan was approved, any owner or owners' association may, without finding of conformance to the approved site plan, change landscaping that was not required as a condition of approval for screening or buffering and/or install a site element or construct a paved surface or structure that meets all applicable standards and requirements of the applicable zone does not conflict with any conditions of approval.
- c. On a residential lot created under the approval of a site plan and sold to a private homeowner, that owner may, without finding of conformance to the approved site plan, obtain a permit for improvements to landscaping and site elements that were not required as a condition of approval for screening or buffering and/or install a site element or construct a paved surface or structure that meets all applicable standards and requirements of the applicable zone and does not conflict with any conditions of approval.
- d. DPS must submit a copy of any building or site permit approved under this Section (Sec. 8.3.4) to the Planning Director for inclusion in the record of the site plan.
- e. Any modification to an improvement shown on an approved site plan that is identified in this Section (Sec. 8.3.4) does not require an amendment to the site plan.

#### G. Scope of Approval

1. A site plan expires unless a certified site plan, as defined and reviewed by the Planning Director, is approved within 24 months of Planning Board approval, measured from the date of the resolution.
2. A site plan does not become effective until the final record plat is recorded for any approved subdivision plan underlying the subject property.
3. A certified site plan does not expire unless the underlying subdivision plan's adequate public facilities review, as determined by Section 50-35(d) of the Montgomery County Code, expires or changes to the applicable zoning map, text, or other applicable laws or regulations require the certified site plan to be modified.
4. Development activities under this Section (Sec. 8.3.4) must satisfy the approved site plan and any conditions or restrictions.

#### H. Recording Procedures

The certified site plan and Planning Board resolution must be maintained in the permanent files of the Planning Department.

#### I. Amendments

1. Major amendments to an approved site plan follow the same procedures, must meet the same criteria, and are subject to the same requirements as the original site plan.
  - a. Major amendments include any requests to increase density or height or to make changes to any conditions of approval.
  - b. Uncontested major amendments may be approved on the Planning Board's consent agenda.
2. Minor amendments to an approved site plan may be approved administratively by the Planning Director. Minor amendments include any changes that do not increase density or height; decrease setbacks where abutting detached residential uses; or alter the intent, objectives, or requirements expressed or imposed by the Planning Board.
  - a. Public notice is required under Div. 8.5,
  - b. Public Hearing

- i. A public hearing is not required if no relevant objection to the application is received within 15 days of the mailed notice of the filed application.
- ii. If a relevant objection to the application is received within 15 days of the mailed notice of the filed application a public hearing must be held under the same procedures as an original application.

## J. Compliance and Enforcement

1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property under development is not in compliance with a certified site plan, it may:
  - a. impose a civil fine or administrative civil penalty authorized by Section 50-41;
  - b. suspend or revoke the site plan;
  - c. approve a compliance program which would permit the applicant to take corrective action to comply with the certified site plan;
  - d. allow the applicant to propose modifications to the certified site plan; or
  - e. take any combination of these actions.
2. If the Planning Board suspends or revokes a site plan, DPS must immediately suspend any applicable building permit under which construction has not been completed, or withhold any applicable use-and-occupancy permit, until the Planning Board reinstates the site plan or approves a new site plan for the development.
3. The Planning Board may require the applicant to post a commercially acceptable form of surety securing compliance with and full implementation of specified features of the certified site plan in an amount set by the Planning Board. If such surety is required, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit until such surety is accepted.

## Div. 8.4. Administrative Approvals

### Sec. 8.4.1. Building Permit

#### A. Applicability

1. A building permit is required before any building or structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started.
2. Exemptions from building permit requirement:
  - a. Any building or structure used exclusively for agricultural purposes on land used exclusively for agriculture, except for:
    - i. a building or structure used for a purpose that is not exclusively agricultural, including conditional uses, even though located on otherwise agricultural land; or
    - ii. an equestrian facility, building, or structure intended for use by participants or spectators at an equestrian event.
  - b. The following public utility equipment:
    - i. any structure and its attached cross arms carrying overhead electric power and energy transmission and distribution lines that carry 69,000 volts or less;
    - ii. equipment installed and maintained by a public utility subject to regulation by the State Public Service Commission; or
    - iii. poles or structures used for street lights, fire alarm boxes, traffic signals, or similar municipal equipment installed by the state or a local municipality.

#### B. Application Requirements

Each application for a building permit must be accompanied by 2 copies of a plan drawn to scale showing:

1. the lot upon which the building is proposed to be erected; lot dimensions, lot and block numbers, and subdivision name, if any;
2. the name and width of abutting streets;

3. the location, dimensions, and use of existing buildings and other structures on the lot;
4. the location, dimensions, and proposed use of buildings and other structures for which a permit is requested;
5. front and rear yard widths; and
6. north point, date, and scale of plan.

#### C. Approval Process

DPS accepts the applications for all building permits.

#### D. Approval Criteria

1. DPS must determine that proposed work conforms to the uses and amount of development authorized under this Chapter or other applicable law and for which the adequacy of public facilities is determined after:
  - a. review of a preliminary plan of subdivision or site plan if required under this Chapter or Chapter 50; or
  - b. building permit review if required under Chapter 8.
2. For a conditional use plan, variance, or site plan:
  - a. Proposed work must comply with all terms and conditions set by the deciding body in the resolution or decision granting the approval, including any exhibits referred to in the decision.
  - b. DPS, in its exercise of reasonable discretion, may allow minor adjustments during construction that do not substantially alter the size, location, or external appearance of any approved building(s), structure(s) or use(s). DPS must immediately notify the deciding body of any deviations from the approval of the deciding body.
  - c. Any change proposed during construction that would substantially alter the location or external appearance of any approved building(s), structure(s), or use(s) requires an amendment under this Article (Article 59-8).

- d. The County may suspend or revoke any building permit for construction if the construction does not comply with all terms and conditions set by the deciding body.
- 3. A building permit must not be issued during the time permitted by law or rule of court to file an appeal from:
  - a. Any decision or resolution by a deciding body under this Article (Article 59-8).
  - b. A decision of judgment of a court in a proceeding which seeks to affirm, reverse, modify, or nullify a decision of a deciding body or to remand the same to the deciding body. DPS is prohibited from issuing a building permit during the pendency of such court proceedings or a proceeding before the Board of Appeals; provided, that nothing herein shall be construed to prohibit the issuance of a building permit for any use which would have been permitted under this Chapter for the subject property immediately prior to a decision under Sec. 8.4.1.D.3.a hereof unless such use will not be permitted under the requested change in classification or grant which was the subject of such decision.
    - i. A building permit may be issued, however, while an appeal from the grant of a Sectional Map Amendment by the District Council may be filed or is pending if the permit is for development and use under the zoning classification imposed on the property by the Sectional Map Amendment. Such a building permit must contain a condition that the development must comply with all the requirements of the zoning classification imposed by the Sectional Map Amendment and any sketch plans and site plans that may have been approved by the Planning Board under the optional method of development. The development pursuant to such building permit (i.e., the construction of footings on the site) has a vested interest to continue and be used under the zoning classification imposed by the Sectional Map Amendment.
    - ii. In order to facilitate the orderly coordination of the issuance of building permits with the County zoning procedures, in this Chapter,

applications for building permits must be rejected if all or any part of such application lies within the boundaries of an application for an amendment to the zoning map, filed under the applicable provisions of this Chapter. However, no such application can be rejected under the provisions of this subsection if such application would otherwise satisfy the requirements of both the existing zoning classification and the proposed zoning classifications of the application for an amendment to the zoning map. Any application rejected under the provisions of the subsection may be resubmitted without an additional fee and shall be acted upon following the final disposition by the District Council of the amendment to the zoning map; provided, that whenever action by the District Council on any such zoning map amendment is still pending, on the whole or any part of the land covered by a building permit application, after the passage of 6 months from the date of the original submission of the building permit application, an application for a building permit rejected under this subsection may be refiled without an additional fee and must not be rejected again under the provisions of this subsection.

- 4. Until the application has been submitted to the Planning Director for review for conformity with this Chapter, a building permit must not be issued for:
  - a. construction of a new principal structure;
  - b. construction that increases the gross floor area of an existing commercial structure; or
  - c. construction that increases the gross floor area of any residential structure by more than 500 feet.

#### E. Appeal

Any party of record or any party aggrieved by the decision of DPS may file an appeal for review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.



## Sec. 8.4.2. Use & Occupancy and Temporary Use Permits

### A. Applicability

1. A use-and-occupancy permit is required before any building, structure, or land can be used or can be converted, wholly or in part, from one use to another.
2. Exemptions from use-and-occupancy permit requirement:
  - a. land or buildings used exclusively for agricultural purposes;
  - b. a use for which a valid occupancy permit was issued and not revoked before June 1, 1958;
  - c. a family day care facility (up to 8 persons); and
  - d. a transitory use.

### B. Application Requirements

Each application for a use-and-occupancy permit must be accompanied by 2 copies of a plan drawn to scale showing:

1. the lot on which a use is proposed; lot dimensions, lot and block numbers and subdivision name, if any;
2. the location, extent, and layout for the proposed use and any other pertinent information; and
3. north point, date and scale of plan.

### C. Approval Process

DPS accepts the application for all use-and-occupancy and temporary use permits.

### D. Approval Criteria

1. DPS must certify compliance with this Chapter.
2. Any building, structure, or land to be used must comply with the requirements, representations, plans, and conditions contained in the decision or resolution of the deciding body.
3. On the basis of a thorough final inspection, DPS must verify that construction or alteration has been completed, according to the decision or resolution.

4. A temporary use-and-occupancy permit may be issued subject to any restrictions in Article 59-3.

### E. Appeals

Any party of record or any party aggrieved by the decision of DPS may file an appeal for review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.

## Sec. 8.4.3. Home Occupation and Home Health Practitioner Registration

### A. Applicability

All low impact and major impact home occupations and low impact and major impact home health practitioners must register with DPS.

### B. Application Requirements

An application for registration must include the following:

1. a signed affidavit of compliance that affirms that the applicant:
  - a. complies with the applicable standards in Sec. 3.3.3.E or Sec. 3.3.3.F;
  - b. will take whatever action is required by DPS to bring the home occupation or home health practitioner's office into compliance if complaints of noncompliance are received and verified.
2. the manner in which the operation of the home occupation or home health practitioner satisfies the use standards in Sec. 3.3.3.E or Sec. 3.3.3.F;
3. the location of the lot or parcel by street address and either lot and block number or liber and folio;
4. the zone in which the lot or parcel is located;
5. area of the lot or parcel, in square feet or acres;
6. the total floor area of the dwelling unit and the amount of floor area to be used for the home occupation or home health practitioner as well as the floor area of any existing accessory building to be used for the home occupation or home health practitioner;
7. the location and number of off-street parking spaces;
8. proof of home address; and

9. other pertinent information required by DPS.
10. For a home health practitioner's office:
  - a. a copy of the use- and-occupancy permit required under [Section 8.4.2](#); and
  - b. the location of any indoor waiting room for patients, if more than one patient will be on the premises at the same type.

### C. Approval Process

DPS accepts the application for all home occupation and home health practitioner registrations.

### D. Approval Criteria

DPS issues a Certificate of Registration if the applicant:

- a. satisfies [Section 3.3.3.E](#) or [Section 3.3.3.F](#); and
- b. has an approved on-site inspection, as required by DPS.

### E. Recording Procedures

DPS must maintain the Home Occupation and Health Practitioner Registry that is readily available for public inspection.

### F. Compliance and Enforcement

1. If DPS receives a complaint about a home occupation or home health practitioner's office, an inspector must inspect the property and determine, within 90 days after receipt of the complaint, whether there is a violation of the provisions of this Section (Sec. 8.4.3) or [Section 3.3.3.E](#) or [Section 3.3.3.F](#).
2. If DPS determines that there is a violation, DPS may issue a warning notice, and the violation must be corrected within 30 days after the warning notice is issued. In the case of any violation that could be remedied with a conditional use plan, a petition must be filed within 60 business days for a conditional use plan for a major home occupation or home health practitioner under [Section 3.3.3.E](#) or [Section 3.3.3.F](#). Operation of the low impact home occupation or home health practitioner's office may continue until the Board of Appeals has acted on the petition if the violation is corrected before the application for conditional use is filed. If the Board of Appeals denies the conditional use plan, the home occupation or home health practitioner's

office must cease immediately or operate under the requirements for a low impact home occupation or home health practitioner's office.

3. DPS may issue a citation under [Div 8.8](#):
  - a. immediately, instead of a warning notice under [Sec 8.4.3.F.2](#); or
  - b. 30 days or more after the warning notice was issued under [Sec 8.4.3.F.2](#).

## Sec. 8.4.4. Sign Permit

### A. Applicability

1. A sign permit is required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy in compliance with a sign concept plan, does not require a permit.
2. Signs listed in [Sec. 7.6.3](#) are exempt from the sign permit requirement.

### B. Application Requirements

1. The property owner and the sign installer must file a joint application for the sign permit on forms provided by DPS. If the property owner has an agent or lessee, the agent and the lessee must also sign each permit form. The application must be accompanied by all required fees and the following:
  - a. a scale drawing of the sign showing all dimensions and visual characteristics, including structural and architectural supports;
  - b. a scale drawing of the site showing:
    - i. the proposed location of the sign, including setbacks;
    - ii. the location and size of all other signs on the property;
    - iii. the location, dimensions, and distance from property lines of all buildings on the site;
    - iv. the location, and name of all streets which abut the property;
    - v. the frontage dimensions of the site along each street which abuts the property;
    - vi. the existing elevation and grade of the site and the proposed contour lines;

- c. a valid electrical permit or a completed application for an electrical permit under **Chapter 17**, if the application is for an illuminated sign;
- d. a completed building permit application pursuant to **Chapter 8** for a sign requiring structural support;
- e. payment of the sign permit fee as adopted by District Council Resolution;
- f. other information that may be required by DPS to insure compliance with **Div 7.6** or other Sections of the Code; and
- g. a sign concept plan if:
  - i. the lot or parcel is in a Commercial/Residential, Employment, or Industrial zone and is requesting more than 800 square feet of total sign area;
  - ii. the development consists of more than one lot or parcel in a Commercial/Residential, Employment, or Industrial zone developed under a management control plan where one or more individual lots or parcels is requesting more than 800 square feet of total sign area. When used for such development, a sign concept plan may include one or more individual sites or parcels whose total sign area does not exceed 800 square feet; or
  - iii. the development uses optional method within an urban renewal area.
- 2. DPS must waive all required fees if:
  - a. the primary applicant is a non-profit organization that is on the Planning Board's list of civic and homeowners associations; and
  - b. the size of the proposed sign is smaller than a maximum size set by a regulation adopted by the Director of DPS under **method (2)**.
- 3. DPS may waive or reduce all required fees if:
  - a. the primary applicant is a non-profit organization that by law is exempt from federal income taxes and demonstrates that its annual revenue during its most recent fiscal year was less than an amount set by a regulation adopted by the Director of DPS under **method (2)**; and

- b. the size of the proposed sign is smaller than a maximum size set by a regulation adopted by the Director of DPS under **method (2)**.

### C. Approval Process

DPS accepts all sign permit applications.

### D. Approval Criteria

1. A sign permit must be issued by DPS as follows:
  - a. upon review of the application, DPS determines that the proposed sign or sign concept plan meets the requirements of **Div 7.6**; or
  - b. upon submission of the application packet and a written certification by a licensed sign installer that the proposed sign meets the requirements of **Div 7.6**.
2. DPS has the authority to resolve any dispute or to interpret any ambiguity in this Section (**Sec. 8.4.4**).

### E. Validity

A sign permit becomes invalid when:

1. the sign for which the permit was issued is not erected within 6 months from the date of issuance;
2. the sign for which the permit was issued is moved or substantially altered;
3. DPS revokes the permit for failure to comply with an order issued by DPS stipulating corrective action for improper maintenance;
4. the application for a sign permit contained inaccurate information; or
5. the terms of the permit have not been satisfied.

### F. Appeal

Any party may appeal to the Board of Appeals under **Sec 8.6.1** for the following:

1. any final action of DPS related to permits and licenses within 30 days of the action;
2. any final action of DPS with respect to Sign Review Board recommendations within 30 days of the action; and
3. any final decision of the Sign Review Board.

## G. Compliance and Enforcement

1. The sign permit must be displayed in a location on or near the sign that permits a person to read the permit while standing on the ground, including on the sign itself, on its supporting structure, or other reasonable and visible location.
2. Compliance is the responsibility of the joint applicants for a sign permit, including the property owner or agent of the property where the sign is erected, along with the lessee, if any, and the sign installer. DPS may initiate enforcement proceedings against one or all of these individuals, jointly or severally.
3. Upon identification and presentation of proper credentials, DPS may enter a site during normal business hours to inspect a sign displayed on a building, structure, lot or parcel in the County to determine compliance with this Code.
4. DPS may order the removal of any sign that violates this Code, or interferes with traffic or public safety. The removal must be performed at the expense of the responsible party.
5. DPS may revoke, suspend, refuse to issue, or refuse to reissue any permit or license under this Code.

## Sec. 8.4.5. Sign Permit Variance

### A. Applicability

Any sign not listed in **Div 7.6**, or which does not conform to the requirements in **Div 7.6**, may apply for a sign permit variance from DPS.

### B. Application Requirements

1. DPS accepts all sign variance applications and a hearing date is schedule with the Sign Review Board.
2. A list of the persons and organizations notified 15 days prior to the hearing including:
  - a. the owner and all residents of each property that is contiguous or opposite to the proposed location of the sign. A condominium's council of

unit owners may be notified instead of the owner and residents of each individual condominium;

- b. the head officer of any citizens association on file with the Planning Board that represents the area where the sign would be located;
- c. any municipality or special taxing district in which the proposed sign would be located;
- d. the technical staff of the Planning Board if the sign would be located on property subject to a site plan; and
- e. any other person or organization that expressed an interest in writing to DPS or the applicant before the notice is sent.

### C. Approval Criteria

1. For all sign permit variances, DPS must consider:
  - a. the sign's size, shape, color, design elements, location, or cost;
  - b. compatibility of the proposed sign with the surrounding property, the proximity of other signs, and the characteristics of the area; and
  - c. any recommendation of the Planning Board or its technical staff.
2. DPS, after a hearing, may approve an application for a sign permit variance from the sign requirements of **Div 7.6** if:
  - a. the strict application of the sign requirements of **Div 7.6** would result in a particular or unusual practical difficulty, exceptional or undue hardship, or significant economic burden on an applicant;
  - b. the sign permit variance is the minimum reasonably necessary to overcome any exceptional conditions; and
  - c. the sign permit variance can be granted without substantial impairment of the purpose of **Div 7.6**.
3. After a hearing, DPS or designee may revoke a previously granted sign permit variance if:
  - a. the applicant supplied inaccurate information, or
  - b. the terms of a variance have not been met.

4. DPS is prohibited from varying any requirement of [Sec. 8.4.5](#) and from approving a sign permit variance for any sign prohibited under [Sec. 7.6.4](#).
5. DPS may approve a sign permit variance without a Sign Review Board hearing if:
  - a. after receiving notice under [Sec. 8.4.5.B.2.](#), no person has expressed an intention by a specified deadline to oppose the application or otherwise appear at the hearing; and
  - b. DPS concludes that approval of a sign permit variance would not create any negative impact on the area where the sign is or would be located.
6. DPS may approve a variance for a sign on property subject to a conditional use if the Board of Appeals has approved the sign. Nothing in this Section ([Sec. 8.4.5](#)) prevents DPS or designee from imposing more restrictive conditions than the Board of Appeals, but DPS or designee must not approve a sign permit variance which is less restrictive than any condition set by the Board of Appeals.
7. DPS or designee may impose conditions and terms when approving a sign permit variance.
8. DPS or designee must notify each party of record of the sign permit variance decision when it is issued.

#### D. Appeal

Any party may appeal to the Board of Appeals under [Sec. 8.6.1](#) for the following:

1. any final action of DPS related to permits and licenses within 30 days of the action;
2. any final action of DPS with respect to Sign Review Board recommendations within 30 days of the action; or
3. any final decision of the Sign Review Board.

### Sec. 8.4.6. Sign Installer License

#### A. Applicability

The provisions of the sign installer license apply to a business which chooses to provide certification as a licensed sign installer.

#### B. Application Requirements

1. The joint applicants for a sign installer license must submit a complete application on a form approved by DPS, indicating:
  - a. the complete business identification including the address and telephone number of the business, the names of the principals, partners, and officers, and any affiliates of the business;
  - b. a statement of the experience, education, and training of the principal employee in the sign related activity;
  - c. other information which DPS may require.
2. A certificate of current general liability insurance, from an insurance company qualified to do business in the State of Maryland, of at least \$500,000 single limit for bodily injury and property damage per occurrence including contractual liability, personal injury, and independent contractors must accompany the application form.
3. A check in the amount of the application fee, examination fee, and license fee.

#### C. Approval Process

1. The applicant must establish and DPS may verify the minimum eligibility requirements of an applicant to be examined for a license as follows:
  - a. The applicant must have been regularly and principally employed in sign related activity for 2 years immediately preceding the application. DPS may credit the 2 years of experience upon certification of relevant education at a trade school or other educational institution which DPS deems to be comparable. One year (30 semester hours or Continuing Education Units) of relevant education may be considered as one year of experience. DPS may credit up to the maximum of 2 years of experience with education.
  - b. The applicant must be of good character. DPS may ascertain the character of the applicant from the references provided by the applicant and from independent sources, including the office of consumer affairs, the State of Maryland Office of the Attorney General, and the records of the department.

2. Upon the applicants satisfying the minimum requirements and filing a complete application for a license, DPS must provide the applicant with access to the sign ordinance and other related regulations and must schedule the applicant for an examination.
3. The applicant must receive a passing grade on an examination based upon the standards of this Article (Article 59-8) and administered by DPS.
  - a. DPS must grade the examination within 20 days of the examination date and notify the applicant, in writing, within 10 days of determining the results of the examination.
  - b. An applicant who fails to pass the examination is entitled to one reexamination, without resubmitting the license application. An applicant who fails to pass the reexamination must submit a new application for a license.
4. A license must be issued jointly to the business and to a person who is principally employed by the business and responsible for supervising the sign related activity. A business may obtain licenses for multiple employees.

#### D. Validity

1. A license is valid for one year from the date of issuance, and may be renewed by applying in person at DPS. Applicants for renewal must provide to DPS:
  - a. certification that the insurance requirements of [Sec. 8.4.6.B .2](#) remain in compliance;
  - b. a check in the amount of the renewal fee; and
  - c. other information which DPS may require.
2. A license is not transferable. If the person and the business holding a license terminate their association, the license becomes invalid and a new license must be obtained.
3. A license is issued based upon the information submitted at the time of application. Any changes in the information must be submitted to DPS promptly.

#### E. Denial, Suspension or Revocation

1. DPS may suspend, revoke, refuse to issue, or deny renewal of a license if the applicant or licensee:
  - a. has secured the license through misrepresentation;
  - b. has failed to correct without additional charge, violations of any provisions of this Article (Article 59-8);
  - c. has been found by a court or the Board of Appeals to have violated the same provision of this Article (Article 59-8) more than 2 times;
  - d. has been found guilty of deceptive business practices;
  - e. has committed an act of gross negligence; or
  - f. has failed to notify DPS of changes to the information required on the license application.
2. DPS must provide written notice to the applicant or licensee of any action taken under [Sec. 8.4.6.E.1](#). The notice must:
  - a. contain a statement of the reasons for the action taken and the right of appeal to the Board of Appeals; and
  - b. be delivered personally to the applicant, licensee, or authorized business representative or sent by certified mail to the local address in the license application.
3. A license may be suspended for up to 120 days upon a finding by DPS that a violation of [Sec. 8.4.6.E.1](#) has occurred.
4. Following a revocation or refusal to renew, a licensee may request reinstatement after one year has elapsed.

#### F. Appeal

The suspension, revocation, denial or refusal to issue or renew a sign installer's license may be appealed to the Board of Appeals under [Sec 8.6.1.C](#).

## Div. 8.5. Notice Standards

### Sec. 8.5.1. Notice Required

Notice is required for each application according to the following table:

<u>Application</u>	<u>Newspaper</u>	<u>Pre-Submittal Meeting</u>	<u>Application Sign</u>	<u>Mailed Application Notice</u>	<u>Mailed Hearing Notice</u>	<u>Permit Sign</u>	<u>Internet Posting</u>
<b><u>District Council Approvals</u></b>							
<u>Local Map Amendment</u>			<u>x</u>	<u>x</u>	<u>x</u>		<u>TBD</u>
<u>Corrective Map Amendment</u>							<u>TBD</u>
<u>Sectional or District Map Amendment</u>	<u>x</u>						<u>TBD</u>
<u>Zoning Text Amendment</u>	<u>x</u>						<u>TBD</u>
<b><u>Regulatory Approvals</u></b>							
<u>Conditional Use Plan</u>			<u>x</u>	<u>x</u>	<u>x</u>		<u>TBD</u>
<u>Sketch Plan</u>		<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>TBD</u>
<u>Site Plan</u>		<u>x</u>	<u>x</u>	<u>x</u>	<u>x</u>		<u>TBD</u>
<b><u>Administrative Approvals</u></b>							
<u>Building Permit</u>						<u>x</u>	<u>TBD</u>
<u>Use &amp; Occupancy and Temporary Use Permit</u>							<u>TBD</u>
<u>Home Occupation and Home Health Practitioner Registration</u>							<u>TBD</u>
<u>Sign Permit</u>							<u>TBD</u>
<u>Sign Permit Variance</u>				<u>x</u>			<u>TBD</u>
<u>Sign Installer License</u>							<u>TBD</u>

KEY: x = Required

## **Sec. 8.5.2. Notice Specifications**

The following notice requirements are the minimum necessary to ensure appropriate notice for communities impacted by a particular application. Further notice specifications may be required by the applicable intake or deciding body, as allowed by law.

### **A. Newspaper Notice**

1. When an application is accepted, the intake body must publish a notice of the public hearing in at least 2 newspapers of general circulation in the county at least 30 days prior to the hearing date.
2. The notice must include the date and place of hearing, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), requested use and/or density of development, and phone and website for the applicable intake agency.

### **B. Pre-Submittal Meeting**

1. Before an application may be accepted, the applicant must hold a public meeting to present the proposed application and respond to questions and comments.
2. A list of attendees and a record of the pre-submittal meeting must be provided with the application.
3. The applicant must post a sign advertising the pre-submittal meeting, equivalent to the requirement for an application sign, at least 15 days before the meeting, but no more than 90 days before filing the application.
4. The applicant must mail notice advertising the pre-submittal meeting to the same recipients required under mailed application notice at least 15 days before the meeting.
5. The notices must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), requested use and/or density of development, and phone and website for the applicable intake agency.

### **C. Application Sign**

1. Before an application may be accepted, the applicant must post at least one sign along every frontage; if the frontage is more than 500 feet, a sign must be posted at least every 500 feet.
2. The sign must be a minimum of 24 inches tall by 36 inches wide; white or yellow in background color; with black lettering and characters at least 2 inches in height.
3. The sign must include the date of filing; application number and name; location of property; property size; zone (and requested zone, if applicable); requested use, density, or structure description; and phone and website for the applicable intake agency.

### **D. Mailed Application Notice**

1. Before an application may be accepted, the applicant must provide mailed notice of the application to all abutting and confronting property owners, community associations, and parties of record within the required radius.
2. The mailing must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), requested use and/or density of development, and phone and website for the applicable intake agency.

### **E. Mailed Hearing Notice**

1. At least 10 days before a hearing may be held, the deciding body must provide mailed notice of the hearing to all abutting and confronting property owners, community associations, and parties of record within the required radius.
2. The mailing must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), requested use and/or density of development, and phone and website for the applicable intake agency.



**F. Permit Sign Notice**

1. After a permit is approved, the applicant must post a minimum of one sign along every frontage; if the frontage is more than 500 feet, a sign must be posted at least every 500 feet.
2. The sign must be a minimum of 24 inches tall by 36 inches wide; white or yellow in background color; with black lettering and characters at least 2 inches in height.
3. The sign must include the date of approval; application number and name; location of property; property size; zone; approved use, density, or structure description; and phone and website for the applicable approval agency.

**G. Internet Posting**

To be determined.

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## Div. 8.6. Special Provisions

### Sec. 8.6.1. Board of Appeals

#### A. Powers

1. In addition to any other power described in this Division (Div. 8.6), the Board of Appeals may compel the attendance of witnesses at hearings or meetings, and the chair or another member may administer oaths.
2. Nothing in this Chapter authorizes the Board of Appeals to reverse or modify any refusal of permit or any other order, requirement, decision or determination which conforms to this Chapter and which, therefore, is not erroneous, or to validate, ratify, or legalize any violation of law or regulation. The Board of Appeals must not amend any provision of this Chapter or the zoning map.

#### B. Duties

In addition to any other duties described in this Division (Div. 8.6), the Board of Appeals must:

1. ensure that a minimum of 3 members of the Board of Appeals are present when hearing or deciding any matter under this Chapter;
2. keep minutes of its proceedings, meetings and hearings; and
3. take each final action under this Chapter by written resolution. Each resolution must contain a statement of the grounds and findings forming the basis for each decision, and the full text of the resolution and the record of the members' votes must be incorporated into the Board of Appeals minutes. Any action or decision of the Board of Appeals under this Chapter requires the affirmative vote of at least 3 members.

#### C. Filing of Appeals

1. Appeals to the Board of Appeals may be made by any person, board, association, corporation, or official allegedly aggrieved by the grant or refusal of a building or use-and-occupancy permit or by any other administrative decision based or claimed to be based, in whole or in part, upon this Chapter, including the zoning map.
2. Any appeal relative to a variance or any administrative appeal may be filed

with the Board of Appeals only after refusal of issuance or revocation of a building or use-and-occupancy permit by DPS or after the issuance of a permit in cases where it is alleged that such permit has been issued erroneously.

3. Appeals must be made on forms provided for that purpose, and all information required on such forms must be furnished by the appellant. Forms must be filed with the clerk to the Board of Appeals, and the appellant must pay the clerk for expenses incidental to the appeal. No form will be accepted by the clerk unless it contains all pertinent information and is accompanied by the required fee to defray expenses.
4. Except as otherwise specifically provided by statute, any administrative appeals to the Board of Appeals from any action, inaction, decision or order of a department of the County government must be considered de novo.

### Sec. 8.6.2. Hearing Examiner

#### A. Assignment of Hearing Examiner

1. The County Council, sitting as the District Council, may assign one or more Hearing Examiners in the Office of Zoning and Administrative Hearings to conduct hearings for Local Map Amendments.
2. Any Hearing Examiner assigned to conduct hearings for Local Map Amendments must not, within one year after serving as a Hearing Examiner, act as agent or attorney in any proceeding or other matter before any County agency or officer involving property which was the subject of a Local Map Amendment pending during the Hearing Examiner's service as Hearing Examiner.

#### B. Duties

1. The Hearing Examiner must recommend rules and regulations to the District Council to govern the conduct of public hearings and of other functions of the Hearing Examiner's office and must perform such other tasks and duties as the District Council from time to time may assign.
2. The Hearing Examiner's office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommenda-

tions to the Board of Appeals under this Chapter and upon request of the Board of Appeals and with approval of 3 of its members, any other matter pending before the Board of Appeals.

3. The Hearing Examiner's office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the District Council for Local Map Amendments. The Hearing Examiner may:
  - a. postpone or continue a public hearing to a time certain or for a reasonable time if:
    - i. the Hearing Examiner finds that the pendency of any proposed master plan, sector plan, plan amendment, highway plan, capital improvement program, zoning or planning study, zoning text amendment, pending court case, or other relevant matter may substantially affect the application under consideration; or
    - ii. the applicant or another party for good cause requests a postponement or continuance.
  - b. extend the time for closing the record, either to a time certain or for a reasonable time, if:
    - i. the Hearing Examiner finds additional information or government action is necessary on any relevant issue; or
    - ii. the applicant or another party requests a delay for good cause.
  - c. allow an applicant to withdraw an application for a Local Map Amendment at any time. If a request for withdrawal is filed after the notice of hearing is published, an application to reclassify all or any part of the land in the previous application must not be filed within the time limit in Sec. 8.2.1.F, unless the District Council specifies that the time limits will not apply to a future application.
  - d. The District Council may, by resolution, order the Hearing Examiner to postpone or continue a public hearing or the issuance of a report and recommendation on a Local Map Amendment application, either to a time certain or for a reasonable time, when a delay is necessary to allow sufficient time for the District Council to approve any master plan, sec-

tor plan, plan amendment, zoning or planning study, highway plan or project, zoning text amendment, sewer, water, or other capital improvements project, which may have a substantial effect on any local map amendment application before the Hearing Examiner.

- e. The district council may by resolution, and for good cause shown, cancel, negate, void or suspend any order of the hearing examiner suspending, postponing, deferring, or continuing any public hearing.

### **Sec. 8.6.3. Planning Board**

#### **A. Certification of Plans**

1. The Planning Board may adopt regulations that allow an applicant to submit engineered drawings after the Planning Board acts on an application. These plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board's approval.
2. A sediment control permit, building permit, or use-and-occupancy permit must not be issued unless each strictly complies with a certified site plan.

#### **B. Powers**

1. In addition to any other remedy provided by law, any violation of a Planning Board action, as defined in Section 50-41, may be enforced under Div 8.6 or under Section 50-41, at the discretion of the Planning Board.
2. The Planning Board may assign a hearing officer designated by the Planning Board, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter or any other Planning Board action as defined in Section 50-41. The hearing officer must submit the required report and recommendation to the Planning Board a maximum of 60 days after the hearing record closes, but the hearing officer may by order extend the time to file the report .

### **Sec. 8.6.4. Sign Review Board**

#### **A. Composition**

1. The Sign Review Board consists of 5 members:

- a. appointed by the County Executive and confirmed by the District Council, and subject to **Section 2-148**;
  - b. who are residents of the County;
  - c. one of whom must operate a business in the County; and
  - d. one of whom must be an architect licensed in Maryland. The Executive must request from the Potomac Valley Chapter of Maryland, American Institute of Architects, recommendations of architects who are qualified to serve on the Board, but the Executive is not limited to the Chapter's recommendation.
2. One member must be designated as chair by the County Executive, subject to confirmation by the District Council.
  3. Each member serves a 3-year term, except that an appointment to fill a vacancy occurring before a term expires is for the remainder of the unexpired term.

**B. Duties**

1. The Sign Review Board must:
  - a. meet at least once a month at the call of the chair;
  - b. exercise its powers and duties only when a minimum of 3 members are present;
  - c. provide written decisions and actions of the within 10 days of the decision or action in a format as required DPS;
  - d. approve the examination for the sign installer license administered by DPS under **Sec. 8.4.6**; and
  - e. exercise its powers and duties according to the procedures adopted by Council Resolution. These procedures must include:
    - i. the keeping of records of meetings and hearings;
    - ii. the establishment of requirements for hearing notification;
    - iii. the orientation and training of new members;
    - iv. the issuance of an annual report of activities and accomplishments;
    - v. standards of conduct regarding conflict of interest;

- vi. standards of ethics; and
- vii. the procedure for admission of evidence and testimony.

**C. Powers**

The Sign Review Board may:

1. advise DPS whether an application for a permit complies with this Chapter or needs a variance;
2. order the appearance of a person or evidence at a hearing before them; and
3. approve a right-of-way sign under **Sec. 7.6.4.F.3**. after receiving a recommendation from the appropriate transportation jurisdiction.

**Sec. 8.6.5. Fees**

**A. Establishing Fees**

1. DPS, the Hearing Examiner, and the Board of Appeals may establish fees, approved by Council resolution, to cover the cost of administration of this Chapter.
2. The Planning Board must establish its own fees for processing applications where the Planning Board is the deciding body by resolution of the Commission.
3. The District Council may set and amend by resolution differential filing fees for Local Map Amendments. The fees should be based on the costs of processing a zoning application. A resolution to establish or amend the filing fees may only be adopted after the District Council has held a public hearing on reasonable notice. No filing fee is required for any application filed by the District Council or another government agency, unless the application is filed at the request of a person with a financial, contractual, or proprietary interest in the property.

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

1. The District Council may waive 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, sector plan, sectional map amendment, or zoning text amendment which 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 Sec 8.6.5.B.1 (above) is satisfied.

## Div. 8.7. Exemptions and Nonconformities

### Sec. 8.7.1. Exemptions

#### A. Exemptions from Revised Zoning Code and District Map Amendment of 2013

##### 1. Existing Structure, Site Design, or Use Conforming as of [date of adoption minus one]

A structure, site design, or use that is lawfully existing and conforms to the zoning code on [date of adoption minus one] but not on [date of adoption] is deemed to be conforming and may, at the option of the owner, be continued, renovated, repaired, reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet, subject to the full requirements of zoning in effect on [date of adoption minus one] and any applicable approved plans. An enlargement above the limitations of this Section (Sec. 8.7.1.A.1) must comply with current zoning requirements. A use located in a building or structure deemed conforming under this Section (Sec. 8.7.1.A.1) may be converted to any permitted non-residential or residential use up to the density limits for the land use established by the zoning in effect on [date of adoption].

##### 2. Existing Structure, Site Design, or Use Conforming as of [date of District Map Amendment minus one]

A structure, site design, or use that is lawfully existing and conforms to the zoning code on [date of district map amendment minus one] but not on [date of district map amendment] is deemed to be conforming and may, at the option of the owner, be continued, renovated, repaired, reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet, subject to the full requirements of zoning in effect on [date of adoption minus one] and any applicable approved plans. An enlargement above the limitations of this Section (Sec. 8.7.1.A.2) must comply with current zoning requirements. A use located in a building or structure deemed conforming under this Section (Sec. 8.7.1.A.2) may be converted to any permitted non-residential or resi-

dential use up to the density limits for the land use established by the zoning in effect on [date of adoption].

##### 3. Previously Buildable Lot

Any lot that was recorded by subdivision plat prior to [date of district map amendment], or for which a preliminary plan of subdivision is pending or approved no later than [180 days from date of district map amendment] is buildable even though it may not meet the area and dimensional requirements of the zone in which it is located. Any such lot may be developed under the zoning development standards in effect when the lot was recorded.

##### 4. Plans Pending as of [date of adoption]

A property subject to an approved development plan, schematic development plan, diagrammatic plan, project plan, sketch plan, preliminary plan, site plan, or special exception on [date of adoption], or for which a complete application for approval of such a plan or special exception has been accepted no later than [180 days after date of adoption], may continue to obtain required approvals or be built at any time subject to the zoning in effect and the plans approved or accepted for filing on [date of adoption minus one]. If approved and built, a structure, site design, or use subject to such a plan is deemed to be conforming and may be reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet subject to the full requirements of the zoning in effect on [date of adoption minus one] and any applicable approved plans. An enlargement above the limitations of this Section (Sec. 8.7.1.A.4) must comply with current zoning requirements.

##### 5. Plans Pending as of [date of District Map Amendment]

A property subject to an approved development plan, schematic development plan, diagrammatic plan, project plan, sketch plan, preliminary plan, site plan, or special exception on [date of district map amendment], or for which a complete application for approval of such a plan or special exception has been accepted no later than [180 days after date of district map amendment], may continue to obtain required approvals or be built at any time subject to the zoning in effect and the plans approved or accepted for filing on [date of district map amendment minus one]. If approved and built, a

structure, site design, or use subject to such a plan is deemed to be conforming and may be reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet subject to the full requirements of the zoning in effect on [date of adoption minus one] and any applicable approved plans. An enlargement above the limitations of this Section (Sec. 8.7.1.A.5) must comply with current zoning requirements.

**6. Special Provisions for a Property Deemed Conforming under Sec. 8.7.1.A.2 or Sec. 8.7.1.A.5 that is Subject to a Special Exception or Development Plan**

- a. If a property is subject to a development plan or schematic development plan, the structures, site design, and uses may be continued, renovated, repaired, reconstructed to the same size and configuration, or enlarged only as long as and to the extent that the property fully complies with the development plan or schematic development plan and all associated binding elements or covenants.
- b. If a property is subject to a special exception, the structures, site design, and uses may be continued, renovated, repaired, reconstructed to the same size and configuration, or enlarged only as long as and to the extent that they fully comply with the terms and conditions of their approval.
- c. If a property was subject to an approved development plan or special exception on [date of adoption minus one], the Planning Board in approving any sketch plan, preliminary plan, or site plan must consider the terms and conditions of the approved development plan or special exception.
- d. If a development plan application that was accepted and pending on [date of district map amendment] or accepted no later than [180 days after date of district map amendment] is approved, once rezoned under the development plan the property to which the development plan applies is subject to the requirements of the approved zoning classification as stated in the zoning code as of [date of adoption minus one].

**7. Existing Nonconformities**

A structure, use, or site design that was nonconforming on [date of adoption minus one] may be continued, renovated, repaired, or reconstructed only as permitted under the zoning code as of [date of adoption minus one] and any applicable approved plans.

**B. Special Provisions for Conditions Predating 1958**

**1. Buildable Lot under Previous Ordinance**

Any lot that was recorded by subdivision plat prior to June 1, 1958, or any lot recorded by deed prior to June 1, 1958 that does not include parts of previously platted properties, and that was a buildable lot under the law in effect immediately before June 1, 1958, is a buildable lot for building a detached house only, even though the lot may have less than the minimum area for any Residential zone. Any such lot may be developed under the zoning development standards in effect when the lot was recorded except that:

- a. a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance;
- b. any new detached house on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgomery County Planning District must comply with the standards in Sec. 8.7.1.B.3.b;
- c. the maximum building height and maximum building coverage for any building or structure must comply with the current standard of the zone in which the lot is now classified. In addition to compliance with the maximum building height and the maximum building coverage standards, any building or structure constructed under a building permit issued after August 24, 1998 that conforms to the lot area and width standards of the zone in which the lot is classified must comply with the current yard requirements of the zone in which the lot is classified, and
- d. an established building line setback must conform to the standards for determining the established building line in effect for the lot when construction occurs. Any building permit issued before November 23, 1997

must conform to the development standards in effect when the lot was recorded.

## **2. Resubdivision of R-60 Lots**

Any lot in the R-60 zone that had frontage of less than 180 feet or an area of less than 18,000 square feet before June 1, 1958, may be resubdivided into lots with frontage of not less than 50 feet and an area of not less than 5,000 square feet if the majority of the recorded lots in the same block have frontages of less than 60 feet or areas of less than 6,000 square feet. These resubdivided lots (except outlots) are buildable lots.

## **3. One-Family Dwelling**

Any one-family dwelling in an Agricultural, Rural Residential, or Residential zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building. The dwelling may be altered, renovated, or enlarged, or replaced by a new dwelling, under the zoning development standards in effect when the lot was recorded, except that:

- a. a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance;
- b. one-family dwellings and accessory structures on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgomery County Planning District must comply with the setback, yard, and area coverage standards applicable to the lot in the 1956 Zoning Ordinances for the Upper Montgomery Planning District;
- c. the maximum building height and maximum building coverage in effect when the building is altered, renovated, enlarged, or replaced by a new dwelling applies to the building; and
- d. an established building line setback must conform to the standards for determining the established building line in effect for the lot when any alteration, renovation, enlargement, or replacement by a new dwelling occurs. Any building permit issued before November 23, 1997 must conform to the development standards in effect when the lot was recorded.

## **4. Resubdivision of Lots, Parts of Lots, or Parcels with Dwellings**

- a. Any 2 or more tracts of land created by deed or plat before June 1, 1958 may be consolidated by record plat into one buildable lot, even if the new lot does not meet the width and size requirements of the underlying zone, if:
  - i. the tracts of land are under common ownership;
  - ii. a habitable one-family dwelling located on the tracts, before July 20, 2009, crossed a property line created by deed or plat documented by a professionally certified house location plan, previously issued demolition permit, or similar substantial evidence; and
  - iii. all the tracts of land on which the dwelling is, or was, located are included in the newly created lot.
- b. The dwelling on any lot created under Sec. 8.7.1.B.4.a (above) may be altered, renovated, enlarged, or replaced by a new dwelling under the zoning development standards in effect when the application is approved, even if the lot's width and size standards are not satisfied.

## **C. Special Provisions for the Area of the City of Takoma Park Annexed into Montgomery County on July 1, 1997**

### **1. Existing Buildings and Structures**

Any building or structure which was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and was constructed within the Annexation Area under a building permit issued prior to February 10, 1998, is a conforming building or structure in Montgomery County and may be:

- a. altered, renovated, or enlarged under the Montgomery County Zoning Ordinance, or
- b. reconstructed after a fire, flood, or similar event under the building permit for the property in effect prior to unification, if the property had a valid use-and-occupancy permit issued by Prince George's County prior to July 1, 1997.



## 2. Existing Uses

Any use existing within the Annexation Area that had a valid use-and-occupancy permit from Prince George's County on June 30, 1997 may continue as a conforming use.

## 3. Buildable Lot

- a. A building permit may be issued for a detached house on property:
  - i. recorded by a deed prior to January 1, 1982, whether or not the property has been previously platted, as long as it remains otherwise buildable under the Prince George's County Zoning and Subdivision regulations in effect on June 30, 1997 and
  - ii. meeting the exception to platting requirements in Chapter 50 of this Code.
- b. A lot recorded by plat prior to November 29, 1949, which meets the requirements of the 1928 Zoning Ordinance, is a buildable lot under the provisions of Sec. 8.7.1.B.1.

## D. Exemptions for Unplatted Parcels Containing Detached House Dwelling Units

A parcel, created by deed, that contains a lawfully constructed detached house, excluding a farm tenant dwelling, is exempt from the area and dimensional requirements of its current zone, and may be recorded under Chapter 50 if the resulting lot meets the requirements of the zone in place when the dwelling was constructed.

## Sec. 8.7.2. Nonconforming Uses and Structures

### A. Continuation

A nonconforming use may be continued, subject to the following limits:

#### 1. Extension

A nonconforming use of a building, structure, or lot must not be extended in any way. However, a nonconforming use may be initiated or extended throughout those parts of a building or structure that were designed or arranged for the use if the building or structure was substantially completed before:

- a. June 1, 1958; or
- b. the effective date of the zoning text or map amendment that made it nonconforming.

## 2. Structural Alterations

Except as otherwise provided in this Chapter, a nonconforming building or structure may be altered, renovated, or enlarged only if the construction will conform the building or structure to the requirements for the zone in effect when construction begins.

## 3. Change of Use

A building in which a nonconforming use has been changed in whole or in part to a more restricted use must not be converted to a less restricted use.

## 4. Abandonment of Use

If a nonconforming use is abandoned, it must not be reestablished, subject to Sec. 8.7.2.A.6(below). A nonconforming use is abandoned if the nonconforming use stops for at least 6 months.

## 5. Reconstruction

If a building or structure devoted to a nonconforming use is destroyed or seriously damaged, it must not be repaired or reconstructed to continue the nonconforming use. Serious damage means damage that reduces the value of the building or structure by more than half its value immediately before the damage occurs.

## 6. Historic Resources

Any nonconforming use that has ceased operations for more than 6 months may be reestablished if the use is:

- a. located in a historic structure or on a historic site identified in the Master Plan for Historic Preservation; and
- b. consistent with the historic use of the property as documented in the Locational Atlas of Historic Sites, the Master Plan for Historic Preservation, or the land records.

## 7. Nonconforming Use Certification

The owner of property who wishes to establish that the use of the property is nonconforming, under the provision of this Code, must submit an application in a form prescribed by DPS. A nonconforming use certification must be issued by DPS if DPS determines that the use of the property is a nonconforming use as defined herein.

## B. Exceptions

### 1. Housing Projects Constructed before 1945

Repairs, structural alterations, and additions may be made to any housing project constructed before January 1, 1945, with 3 or more one-family detached dwelling units, that was owned by any government agency when originally constructed, except that:

- a. the number of dwelling units in the housing project must not be increased;
- b. a subdivision of land must not be affected by the repairs, alterations, or additions;
- c. repairs, structural alterations, or additions must not reduce any front yard to less than the average of all front yards on the same side of the right-of-way. The average is computed from the centerline of the right-of-way on which the dwelling fronts to the existing front building line of the dwelling. This average must not be reduced below the average on March 1, 1959;
- d. repairs, structural alterations, or additions must not reduce any side yard between dwellings to less than 18 feet;
- e. repairs, structural alterations, or additions must not decrease any rear yard to less than 20 feet or decrease the sum of the rear yards between any 2 dwellings to less than 40 feet; and
- f. buildings and structures must not cover more than 25% of the net area of the lot.

### 2. Opportunity Housing Project

A housing project developed under Chapter 2, Article IX is not a nonconforming use.

### 3. Swimming Pools for Motels

One swimming pool may be constructed on land adjoining a motel if the land was used before June 1, 1958 for a nonconforming motel use. However, the swimming pool must be used only by the guests or occupants of that motel.

### 4. Repair of Dwellings on Flood Plains

If a detached house existing on September 1, 1971, that is located within a 100-year flood plain and abuts a creek or other recess, cove, bay, or inlet in the shore of a river, is damaged or destroyed by flood to the extent of not more than 75% of the reconstruction value of the building, the dwelling may be repaired or reconstructed to preexisting dimensions.

### 5. Nonconformity through Public Taking

A building or structure is not a nonconforming building or structure if:

- a. the building or structure:
  - i. was otherwise lawful on:
    - (a) June 1, 1958; or
    - (b) the date of an amendment to this Chapter; or
  - ii. is on an otherwise lawful lot; and
- b. the lot on which the building or structure is located is reduced in area by a taking under eminent domain or another government action that would otherwise make the building or structure nonconforming because a dimension of the building or structure, or the location on the lot, is deficient.

The building or structure may be repaired, altered, or reconstructed, if it is an otherwise lawful use, except that the construction must not change any dimension of the building or structure that is deficient.

### 6. Alteration, Renovation, Enlargement, and Reconstruction of a

**Nonconforming Detached House**

A detached house built on a lot recorded on or after June 1, 1958, that is a nonconforming building, may be:

- a. altered, renovated, or enlarged under the zoning development standards in effect for the zone when the dwelling was originally constructed; or
- b. reconstructed after a fire, flood, or similar event, under the zoning development standards in effect for the zone when the dwelling was originally constructed, except that the maximum building height for the zone in effect when the dwelling is reconstructed applies to the reconstruction.

**7. Residential Lots Reclassified from R-60 to R-90 Zone**

A lot in the R-90 zone that was recorded by deed or subdivision plat in the R-60 zone before June 26, 1990, may be developed with a detached house and accessory structures under the development standards of the R-60 zone that were in effect when the lot was recorded.

**C. Noncomplying Multi-Unit Dwellings****1. Legislative Purpose**

The District Council for Montgomery County, Maryland, hereby finds that since March 6, 1928, the effective date of the first Montgomery County Zoning Ordinance, and continuing to date, there has existed within the county the practice of converting single family residences located in single family zones to use as multi-family residential uses; that during World War II and immediately thereafter there existed a severe housing shortage in the Washington, D.C. metropolitan area, including Montgomery County, Maryland; that during the above-referenced period the housing shortage was appreciably abated and remedied by the acts of owners of single family residences, many of which were located in single family zones, in converting said single family residences to multi-family residential uses; that while it is established that conversions from single to multi-family residential use were conducted throughout the County, it is further established that the majority of the structures converted were located in Takoma Park, Maryland; and that the conversions of single to multi-family residential use were encouraged by and conducted with the knowledge and tacit approval of the City of Takoma

Park and the Maryland- National Capital Park and Planning Commission, the state agency and body corporate which until October 1951, was vested with the power, duty and responsibility for the enforcement of the zoning laws in Montgomery County, Maryland and the City of Takoma Park. The County Council further finds that in February 9, 1953, because of its inability to ascertain which residences located in a single-family zone were lawful uses, nonconforming uses or unlawful uses, the City of Takoma Park passed Ordinance No. 1166 which implied in part, that single family residences converted to multi-family use in contravention of the zoning ordinance would be deemed lawful if the owners of said residences registered them with the City of Takoma Park; that the original owners and the transferees of the owners of the single family residences converted to multi-family residential use have continued to operate such use in reliance upon the representations of the City of Takoma Park that such uses were lawful, if registered; that purchasers who have paid the higher market value and taxes incident thereto for income producing property have relied upon representations by the City of Takoma Park that such uses were lawful, if registered. The County Council further finds that there continues to exist a serious shortage of dwelling units in Montgomery County; that the past conversions of single family residences to multi-family residential use have provided and continue to provide a source of low and moderate income dwelling units in the county; that some of the single family residences converted to multi-family residential uses are owned by senior adults whose livelihood is largely dependent upon income from the rental units. The District Council recognizes that because the records concerning zoning enforcement prior to October 1951 transferred to the County from the Maryland-National Capital Park and Planning Commission do not provide data sufficient to determine the scope of the problem of conversions to unlawful multi-family uses and because the data offered by the City of Takoma Park merely reflects the number of owners who voluntarily registered with the city and excludes all other possible conversions, there exists no adequate means of determining which residences have been unlawfully converted to multi-family residential use subject to prosecution under the zoning ordinance. Moreover, the County Council recognizes that equitable principles argue for the protection of owners of properties and their transferees located in Takoma Park who relied upon representations

from city administrators that the conversions to multi-family residential use were lawful, and for protection of owners of properties located in Takoma Park and elsewhere in the County who, absent evidence of enforcement by the Maryland-National Capital Park and Planning Commission or by the County, assumed that theirs was a lawful use. Therefore, the County Council enacts this text amendment as a means of establishing uniform standards and criteria for remedying the problem of unlawful conversions from single family to multi-family residential uses and, in so doing, incorporates the concepts of equity necessary to protect those who should be deemed faultless. Further, the County Council finds that the date of January 1, 1954 represents the demarcation ending the period of encouragement and endorsement by government officials for conversion of single family residences to multi-family residential uses and that owners who converted prior to that date did so under color of law and should be held harmless. The Council also recognizes that enactment of this text amendment requiring phase-out of all post-1954 conversions, and phase-out no later than 10 years from the effective date of this text amendment of pre-1954 conversions, may create practical difficulties or unusual hardships. It is the Council's intention to develop and consider a legislative mechanism such as a special exception or use variance for those properties so affected to be considered for continuation. Such a mechanism to continue such uses would include a public hearing and a determination that such continuation would not be detrimental to the use of surrounding properties or the neighborhood.

## **2. Termination of Multi-Family Dwellings**

Any building or structure located in a Residential Detached zone which, subsequent to December 31, 1953, has been used or converted to use as a multi-family dwelling and any building or structure, located in a Residential Detached zone, which at any time prior to January 1, 1954, has been used or converted to use as a multi-family dwelling must register and meet the requirements provided for registration as a noncomplying use in Section 8.7.2.C.4 (below) no later than September 1, 1979. If not registered, the noncomplying use must be discontinued and the number of dwelling units within the building or structure must be reduced to the number permitted in the zone in which the building or structure is located.

## **3. Temporary Continuation of Multi-Family Uses**

As of March 23, 1978, any building or structure converted to multi-family use in a single family residential zone may be continued until September 1, 1979.

## **4. Continuation of Noncomplying Multi-Family Dwellings Existing before January 1, 1954**

Any building or structure located in a single family residential zone which has been converted and used continuously as a multi-family dwelling from before January 1, 1954, to March 23, 1978, may continue the use for a period not to exceed 10 years even though the buildings, structures or uses do not comply with the regulations applicable to the zone in which the building, structure or use is located, under this Section (Sec. 8.7.2.C). Buildings or structures located in a single family residential zone which were originally constructed as multi-family dwellings are exempt from the 10-year phase-out if they meet all other requirements of this Section (Sec. 8.7.2.C).

- a. All noncomplying multi-family dwellings in existence before January 1, 1954, and converted and used continuously from before January 1, 1954, to March 23, 1978, must be registered with DPS under the following procedure:
  - i. Applications for registration must be filed on forms provided by DPS;
  - ii. Each application for registration must be accompanied by notarized affidavits or such other evidence as may be appropriate to establish that the multi-family dwelling use existed prior to January 1, 1954, and has existed continuously since then;
  - iii. Each application for registration must be accompanied by evidence of a use-and-occupancy certificate and a rental facility license, if required;
  - iv. Each application for registration must be accompanied by a registration fee.
- b. DPS must publish, in a newspaper of local distribution, notice of all applications for registrations and must allow 30 days after publication for the filing of comments by the public, other agencies, municipalities and concerned parties. DPS may hold a public hearing on any application for registration for which objections are received.

- c. DPS must make an inspection of each property for which an application for registration has been submitted and each such property must be brought into compliance with all applicable codes and regulations of both the County and municipal jurisdictions within 180 days after notification of violation or deficiencies.
  - d. DPS must deny any application or revoke or suspend any registration upon failure to comply with the provisions of this Section (Sec. 8.7.2.C) or upon conversion to other use. Any decision of DPS hereunder may be appealed to the Board of Appeals.
  - e. Structural alterations of a building or structure which do not conform to the provisions of the zoning district in which it is located may be made only if the building is being altered to conform to the provisions of this section or to conform with other applicable codes or regulations.
  - f. No registered noncomplying multi-family dwelling is allowed to be extended, expanded or increased in intensity of use in any way.
  - g. No registered noncomplying multi-family dwelling which has been changed in whole or in part to a less intensive use is allowed to revert to a more intensive use, except that the owner of noncomplying multi-family dwelling that was originally constructed as a multi-family dwelling may temporarily reduce the number of units, provided that the reason for the temporary reduction is to provide a larger unit for the property owner's own use. No noncomplying use, once abandoned, is allowed to be re-established. For the purpose of this Section (Sec. 8.7.2.C), "abandoned" is defined as the cessation of use as a multi-family dwelling for a period of 6 months or more.
  - h. In the event of destruction or serious damage by fire, flood or similar cause, no registered noncomplying multi-family dwelling is allowed to be reconstructed for the purpose of carrying on the noncomplying use. "Serious damage" shall be defined as damage which reduces the market value of any structure by more than one-half.
  - i. Each registered multi-family dwelling must be maintained in good condition and in compliance with all applicable federal, state, County and municipal laws and regulations. DPS must establish a regular schedule of inspections to be made of each registered multi-family dwelling, said inspection to coincide with the biennial rental facility licensing inspection, where applicable.
  - j. The County Executive, by written regulation, must establish administrative procedures, exterior maintenance standards necessary to protect the public health, safety and welfare, off-street parking requirements, registration fees in an amount sufficient to pay the costs to the County to administer this Section (Sec. 8.7.2.C), and an inspection schedule applicable to buildings, structures, and lands registered under this Section (Sec. 8.7.2.C). The County Executive, by written regulation, may establish an administrative procedure to allow the City of Takoma Park to administer the registration procedure for properties located in the City if the City adopts the procedures in Sec. 8.7.2.C.4. The regulation must allow the Director to vary the specific requirements for off-street parking upon a finding that the strict imposition of those requirements would be physically impossible for a noncomplying multi-family dwelling use to achieve due to lot/house configuration or other extenuating circumstances.
- 5. Special Provisions for Properties in the City of Takoma Park Annexed into Montgomery County on July 1, 1997**
- a. Any building or structure located in a single-family residential zone which has been converted and used continuously as a multi-family dwelling and has a valid use-and-occupancy permit as of January 1, 2001 may continue, provided that the use is registered with DPS. A registered multi-family use is subject to the provisions of Sections 8.7.2.C.4.b,c,d,e,f,g,i, and j. Any such multi-family use which does not register becomes noncomplying and must terminate the noncomplying use by July 1, 2001.
  - b. In the event of destruction or serious damage by fire, flood or similar cause, a registered multi-family dwelling is allowed to be reconstructed for the purpose of continuing the multi-family use. However, the use cannot be expanded beyond what is in existence at the time the use is registered. If reconstruction or repair brings the use into compliance with the provisions of the zone in which the use is located, the multi-family use cannot be reestablished.

## Div. 8.8. Violations, Penalties, and Enforcement

### Sec. 8.8.1. Generally

- A. Any violation of this Code may be punished as provided in state law.
- B. In addition to all other remedies provided by law, any violation of this Code may, as an alternative, be punished by a civil fine equal to the maximum allowed by the Land Use Article of the Maryland Code as amended and any penalty allowed by regulation adopted under method (2). Each day a violation continues is a separate offense.