



New Material
Attachment 13.

DEPARTMENT OF PERMITTING SERVICES

Douglas M. Duncan
County Executive

Robert C. Hubbard
Director

March 25, 2005

Jody S. Kline, Esquire
Miller, Miller & Canby
200-B Monroe Street
Rockville, Maryland 20850

Dear Mr. Kline: *Jody*

Thank you for your letter of March 1, 2005 requesting an interpretation of the definition of a professional office as it related to nonresidential professional office.

I have reviewed the information in your letter and concur that Brenneman & Pagenstecher, Inc. would be viewed as and qualify as a nonresident professional office. The Department of Permitting Services would expect that professional offices would have support staff.

If you need additional information please contact me at 240-77-6255.

Sincerely,

Susan

Susan Scala-Demby
Permitting Services Manager
Zoning



LAW OFFICES

MILLER, MILLER & CANBY

CHARTERED

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March 1, 2005

Ms. Susan Scala-Demby
Montgomery County Department of Permitting Services
255 Rockville Pike, 2nd Floor
Rockville, MD 20850

RE: Request for Interpretation of the Definition of "Professional"
as it is found in Sections 59-A-1 and Section 59-G-2.58

Dear Susan:

Our client, Brenneman & Pagenstecher, Inc., wishes to locate its offices in an existing (but now vacant) building (the "Sycamore Store"), located in a residential zone, by special exception, as an "office, professional, nonresidential". The purpose for this letter is to verify that Brenneman & Pagenstecher, Inc. would qualify as an office of professionals and thus would be eligible to petition for a special exception pursuant to Section 59-G-2.38 (attached) of the Montgomery County Zoning Ordinance.

Dean Brenneman (architect) and Peter Pagenstecher (builder) originally had their own firms – Dean and his associates creating remodeling plans for residences while Peter was in the business of reconstructing residences, sometimes those designed by Dean's firm. They merged their firms in 1997 to create a combined company dedicated to the art and craft of residential remodeling using a process the principals call "Architecture/Build" which they believe is significantly more sophisticated and more integrated than "Design/Build" as typically practiced.

By way of background, Mr. Pagenstecher's firm was formed in 1981. At the time of merger, his office staff consisted of only two full time employees and a part-time employee, all working out of a single room above one of the owner's garage. All other employees were carpenters or laborers who worked exclusively at job sites.

In 1997, Mr. Brenneman's firm had six full time and one part-time employee, all working in a single office. The merger of the respective firms allowed for not only the creation of a "seamless" process between design conception and product delivery but also for more efficiency in operation by consolidating administrative (i.e., bookkeeping, contract administration, etc.) functions.

As you review below the unique characteristics of Brenneman & Pagenstecher, Inc., keep in mind that most professional architecture firms administer the construction of their designs. Some architects accomplish this function through oversight of a general contractor. Others – such as Brenneman & Pagenstecher – retain more direct control over the construction work by negotiating and administering contracts directly with the various trades. They then regularly visit job sites to ensure that construction is proceeding in accordance with the design conceived and the plans prepared in the home office.

We recognize that a pure “builder” must locate its base of operations in space classified as “general office use”. For that reason, we have tried to explain above how Brenneman & Pagenstecher is, at its core, a professional architecture firm. Residential construction management is an integral part of the firm’s architectural product, but it is a function which is conducted almost exclusively outside of the home office.

To further ensure that use of the Sycamore Store will be devoted to professionals, Brenneman & Pagenstecher will structure its operations, and its special exception petition, so that the Sycamore Store will be used and occupied almost exclusively by those persons specifically identified in the Zoning Ordinance as “professionals” (registered, licensed or graduate architects and their associated administrative staff). Below is a detailed breakdown of B & P’s entire staff, their job functions and their work location.

Main Office Staff (Sycamore Store):

Qty	Position	Qualification/Job Function
1	Principal Architect	Registered Architect/oversees architectural process
3	Architectural Designers	Graduate Architects/prepare architectural plans & specifications
1	Office Manager	Assists Principal Architect & Manages office
1	Admin/Bookkeeping Asst.	General office assistance and bookkeeping
1	Principal Builder	Licensed Builder/oversees estimating and field staff

Contracting Office Staff (Orange, VA):

Qty.	Position	Qualification/Job Function
1	Estimator	Graduate Architect/estimates project costs and negotiates contracts
1	Assistant Estimator	Graduate Accountant/assists Estimator

Field Staff:

Qty	Position	Qualification/Job Function
1	Production Coordinator	Graduate Architect/facilitates communication between client, field staff, subs, suppliers & office
4	Lead Carpenters	Schedule subs & suppliers; manage jobsites
1	Customer Care Carpenter	Service past client needs
6	Carpenters	Perform carpentry under direction of Leads
1	Laborer/Driver	Haul materials and debris to/from jobsites

Note that four of the seven employees based in the home office are design professionals with degrees in Architecture. Two employees are administrative staff typically associated with the operation of an architect's office. Peter Pagenstecher, co-owner of the company ("Principal Builder"), will have a desk in the Sycamore Store from which he will participate in the collaborative design process when he is not in the field supervising B & P's own employees (listed) or firms with which it has contracted to perform specified work (e.g., stonework, plumbing, electrical, etc.). Although the "contracting office" is also run by "professionals", that operation is based in Orange, Virginia. The various employees involved with the actual construction of residences to be remodeled ("Field Staff") travel from home directly to job sites, will have no locker room facilities at Sycamore Grocery and will visit the headquarters offices infrequently.

In summary, we have tried to explain in this letter how Brenneman & Pagenstecher, Inc. is an integrated firm of design professionals and how its proposed use of the Sycamore Store would qualify as a nonresident professional office. What we are seeking is your office's confirmation of our understanding of Sections 59-A-1 (attached) and 59-G-2.38 of the Zoning Ordinance. Of course, should you require further information in order to respond to this request, we would be pleased to provide such information.

Thank you for your consideration of this letter.

Sincerely yours,

MILLER, MILLER & CANBY

A handwritten signature in black ink that reads "Jody". The signature is written in a cursive, slightly stylized font.

Jody S. Kline

JSK/dlt

Enclosures

cc: Dean Brenneman

MONTGOMERY COUNTY CODE
ZONING ORDINANCE
Chapter 59

§59-G-2.37

Article 59-G

- (f) An application for a special exception for this use must include an expansion plan showing the location and form of any expansions expected to be made in the future on the same site.
- (g) Any nursing home, or domiciliary care home for more than 16 residents lawfully established prior to November 22, 1977, is not a nonconforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.
- (h) Any application for nursing home and/or care home which is pending at the Board of Appeals as of February 24, 1997 at the request of the applicant, may be processed under the applicable provisions of the Zoning Ordinance in effect at the time the application was filed.

(Legislative History: Ord. No. 8-55, § 12; Ord. No. 13-47, § 13.)

Editor's note—Section 59-G-2.37 is cited in Concerned Citizens of Great Falls v. Constellation-Potomac, 122 Md. App. 700, 716 A.2d 353 (1998).

Cross references—Group residential care facilities, ch. 23A; hospitals, sanitariums, nursing and care homes, ch. 25.

Sec. 59-G-2.38. Offices, professional, nonresidential.

An existing single-family structure may be used for professional office purposes by any member or members of a recognized profession, such as doctors, lawyers, architects, accountants, engineers, veterinarians, but not including the following:

- (a) medical, dental or veterinarian clinics
- (b) in-patient treatment facilities
- (c) general business offices, such as the offices of insurance companies, trade associations, manufacturing companies, investment concerns, banks or real estate companies.

The property must be:

- (a) located in a central business district that is designated as being suitable for the transit station-residential (TS-R) zone on an approved and adopted sector plan; or,

MONTGOMERY COUNTY CODE
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Chapter 59

Article 59-G

- (b) designated as being suitable for nonresidential professional offices in the R-60 zone on an approved and adopted master or sector plan and is located along a major highway with an existing right-of-way width of no less than 90 feet or along that portion of an arterial road designated as a boundary of a central business district.

The Board must find that the property meets the following criteria:

- (a) Such use will not constitute a nuisance because of traffic or physical activity;
- (b) Such use will not affect adversely the use and development of adjacent properties;
- (c) A minimum of 25 percent of the lot area shall be devoted to green area;
- (d) The board may allow the exterior of the premises to be changed, altered or modified provided the single-family character and the basic residential appearance of the building is retained.

(Legislative History: Ord. No. 8-83, § 2; Ord. No. 9-37, § 1; Ord. No. 10-32, § 18; Ord. No. 13-76, §1; Ord. No. 14-47, § 1.)

Sec. 59-G-2.38.1. Offices, general.

A special exception may be granted for general offices subject to the following provisions:

- (a) In the I-4 zone, a general office use may be allowed upon a finding, in addition to the general findings required in Division 59-G-1, that the following 2 conditions are met:
 - (1) The location of such proposed use is adequately accessible by means of existing and proposed roads and public transportation facilities, and the proposed use will not have an unacceptably adverse effect on nearby roads. The location shall be deemed adequately accessible via roads and public transportation facilities if any of the following conditions are present:
 - (i) Existing publicly maintained, all-weather roads are adequate to accommodate the traffic that would be generated by the proposed use, in addition to existing traffic and traffic that will be generated by other development on existing recorded lots; or
 - (ii) Any additional roads, necessary in combination with existing roads to accommodate the additional traffic that would be generated by the proposed use, are proposed on an adopted master plan and are programmed for completion in the first 3 years of either the current

MONTGOMERY COUNTY CODE
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Chapter 59

§59-A-2.1

Article 59-A

Nursing home: A facility licensed, funded, certified, or registered by the State of Maryland or the County devoted primarily to the maintenance and operation of resources for the treatment and care of persons suffering from illness, disease, aging, or injury, not requiring extensive or intensive care that is normally provided in a hospital, but who require care in excess of room and board and who need the on-site availability of medical, nursing, convalescent or chronic care. A nursing home is not a "group home."

Office, general: An office for the use of (a) professional persons such as doctors, lawyers, accountants, etc., or (b) general business offices such as insurance companies, trade associations, manufacturing companies, investment concerns, banks and trust companies, real estate companies, etc., but not including any kind of retail or wholesale store or warehouse, except as otherwise provided herein.

Office, professional, nonresidential: An existing single-family structure used for professional office purposes by any member or members of a recognized profession, such as, but not limited to, doctors, lawyers, architects, accountants, engineers and veterinarians, but not including medical, dental or veterinarian clinics or inpatient treatment facilities. Professional offices do not include general business offices, such as the offices of insurance companies, trade associations, manufacturing companies, investment concerns, banks or real estate companies.

Office, professional, residential: See "home occupation" and "home health practitioner's office."

Opportunity housing project: A housing project developed pursuant to chapter 2, article IX, public facility area development, Montgomery County Code, as amended, and reviewed and approved by the district council in accordance with the procedure set forth in section 59-A-6.8.

Overlay zone: A geographic area that constitutes a mapped district superimposed over the underlying base zone on the official zoning map. An overlay zone includes development regulations and standards that either add to or modify the requirements of the underlying zone.

Paddock: A fenced area, internal to an equestrian facility, where horses are exercised or pastured. Paddock fencing is not perimeter fencing of an equestrian facility.

Parent: A parent includes a father or mother related to a child by blood or by adoption, including a father or mother of a legitimate or illegitimate child. A parent does not include a stepparent, a foster parent or grandparent.

Parking facility: See "automobile parking facility."

Parking lot: See "automobile parking lot, commercial."