

## Key

Red underlined text provides either the section reference or a use name change in the draft

Text highlighted in bright green deals with floating zones that will be retained in the new code

Text highlighted in yellow is language that staff intends to add to the next draft

Text highlighted in turquoise deals with grandfathering language. All grandfathering provisions are located in Sec. 8.7.1 of draft

Text with ~~red strikethrough~~ has not been included in the draft Zoning Code

3/29/2013

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## DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.\*

The uses listed in this Division, as shown on the index table below, may be allowed as special exceptions in any zone where they are so indicated, as provided in this Article, subject to the standards and requirements in this Division and the general conditions specified in Section 59-G-1.21.

### USE    SECTION

Abattoir	G-2.00.2	<u>Sec. 3.2.8. Slaughterhouse</u>
Accessory apartment	G-2.00	<u>Sec. 3.3.3.B &amp; C Accessory Apartment</u>
Accessory dwelling	G-2.00.1	<u>Sec. 3.3.3.D. Farm Tenant Dwelling</u>
Airstrip associated with farming operations	G-2.00.4	<u>Sec. 3.2.10.C. Farm airstrip</u>
Amateur radio facility	G-2.00.5	<u>Sec 3.5.14.B. Amateur Radio Facility (over 65')</u>
Ambulance or rescue squad, privately supported, nonprofit	G-2.01	<u>Sec. 3.4.1 Ambulance or Rescue Squads (Private)</u>
Animal boarding place	G-2.02	<u>Sec. 3.5.1.B. Animal Boarding and Care</u>
<del>Animal cemeteries</del>	<del>G-2.03</del>	<del>Not in any use table in current code</del>
Antique shop	G-2.04	<u>Sec. 3.5.11.B. Rural Antique shop</u>
Art or cultural centers	G-2.05	<u>Sec.3.4.3. Cultural Institution</u>
Auction facility	G-2.05.1	<u>Sec. 3.2.1. Agricultural Auction Facility</u>
Automobile filling stations	G-2.06	<u>Sec. 3.5.13.C. Fuel Sales</u>
Automobile, light truck and light trailer rentals, outdoor	G-2.07	<u>Sec.3.5.12.A. Light vehicle Sales and Rental (Indoor)</u>
Automobile storage lots	G-2.08	<u>Sec. 3.5.13.A. Automobile storage lots</u>
Automobile, truck and trailer rentals, outdoor	G-2.09	<u>Sec. 3.5.12.C. Light Vehicle Sales and Rental (Outdoor)</u>
Bed-and-breakfast lodging	G-2.09.2	<u>Sec. 3.5.6.B. Bed and Breakfast</u>
<del>Blacksmith</del>	<del>G-2.09.1</del>	<del>Use removed</del>
<del>Boardinghouse</del>	<del>G-2.10</del>	<del>Use removed</del>
Cable communication system	G-2.10.1	<u>Sec. 3.5.2.A. Cable Communications System</u>
Campground	G-2.11	<u>Sec. 3.5.10.B. Campground</u>
Car Wash	G-2.11.1	<u>Sec. 3.5.13.B. Car Wash</u>
Catering facility, outdoors	G-2.11.2	<u>Sec. 3.5.10. Recreation and Entertainment Facility</u>
Cemetery and family burial site	G-2.12	<u>Sec.3.5.4.A. Cemetery</u>

Chancery and international organization G-2.12.1 Considered an office, but not proposed in any zone as Conditional Use  
 Charitable and philanthropic institution G-2.21 Sec. 3.4.2. Charitable, Philanthropic Institution  
 Child day care facility G-2.13.1 Sec. 3.4.4. Day Care Facility  
 Clinic G-2.14 Sec. 3.5.7.A. Medical and Dental Clinic  
 Combination retail store G-2.15 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use  
 Conference center with lodging G-2.15.1 Considered a hotel, motel, but not proposed in any zone as Conditional Use  
 County market G-2.15.2 Sec. 3.5.11.C. Rural Country Market  
 Day care facility for senior adults and persons with disabilities G-2.13 Sec. 3.4.4. Day Care Facility  
 Dwellings G-2.36.2 Considered a household living use, but not proposed in any zone as Conditional Use  
 Drive-in restaurants G-2.16 Considered a Drive-Thru Facility, but not proposed in any zone as Conditional Use  
~~Eating and drinking establishment in the O-M Zone~~ G-2.181 Considered a restaurant and proposed as a P in EOF  
 Educational institution, private G-2.19 Sec. 3.4.5. Educational Institution (Private)  
~~Electric power transmission/distribution lines~~ ~~See G-2.43~~ Considered a Transmission Line, but not proposed in any zone as a Conditional Use  
 Equestrian facility in an agricultural zone G-2.49.1 Sec. 3.2.4. Equestrian Facility  
 Equestrian facility in a residential zone G-2.49 Sec. 3.2.4. Equestrian Facility  
 Family burial site G-2.11 Sec. 3.5.4.A Cemetery  
 Farm machinery, sales, storage or service G-2.21.2 Sec. 3.2.5. Farm Supply, Machinery Sales, Storage, and Service  
 Farm supply, sales, storage or service G-2.21.3 Sec. 3.2.5. Farm Supply, Machinery Sales, Storage, and Service  
 Farm tenant mobile home G-2.21.4 Sec. 3.3.3.D. Farm Tenant Dwelling  
 Fertilizer mixing plants G-2.22 Consolidated into Sec. 3.6.4.B. Heavy Manufacturing and Production, but not proposed as Conditional Use  
 Funeral parlor or undertaking establishment G-2.23 Sec. 3.5.4.C. Funeral Home, Undertaker  
 Golf course, country club, and private club G-2.24 Sec. 3.5.10.D. Golf Course, Country Club  
~~Golf course in the RDT zone~~ ~~G-2.241~~ Use only allowed through grandfathering  
 Golf driving range G-2.25 3.5.10.G "Recreation and Entertainment Facility, Outdoor (Capacity up to 1,000)  
 Grain elevator G-2.25.1 Sec. 3.2.2 Agricultural Processing  
 Group home, large G-2.26 Sec. 3.2.2.E. Residential Care Facility (9-16 persons)  
 Group picnic, catering and recreational facility G-2.26.1 Sec. 3.5.10.G. Recreation and Entertainment Facility Outdoor (Capacity up to 1000) or Sec. 3.5.10.H. Recreation and Entertainment Facility Outdoor (capacity over 1000)  
 Heliport and helistop G-2.27 Sec. 3.6.6.B Helipad, Heliport  
 Highway fuel and food service G-2.28 Sec. 3.5.13.C. Fuel Sales  
 Home occupation, major G-2.29 Sec. 3.3.3.F. Home Occupation (Major Impact)  
 Hospice care facility G-2.30.1 Sec. 3.3.2.E. Residential Care Facility  
 Hospital G-2.31 Sec. 3.4.6. Hospital  
 Hospital, veterinary G-2.32 Sec. 3.5.1.C Veterinary Office/ Hospital  
~~Hotels and motels~~ ~~G-2.33~~ Considered a hotel, motel, but not proposed in any zone as Conditional Use  
 Housing and related facilities for senior adults and persons with disabilities G-2.35 Sec. 3.3.2.C Independent Living Facility for Seniors or Persons with Disabilities  
 Landscape contractor G-2.30.00 Sec. 3.5.5. Landscape Contractor  
 Life care (continuing care) facility G-2.35.1 Sec. 3.3.2.E Residential Care Facility  
 Manufacture of mulch and composting G-2.30.000 Sec. 3.2.2 Agricultural Processing  
~~Medical practitioner's office for use of other than a resident of the building~~ ~~G-2.36~~  
 Meeting centers G-2.36.4 Consolidated into Sec. 3.5.10.C. Conference Center, but not proposed in any zone as Conditional Use  
 Milk plant G-2.36.1 Sec. 3.2.2 Agricultural Processing  
 Nursery, horticultural retail G-2.30 Sec. 3.2.7.A. Nursery (Retail)  
 Nursery, horticultural wholesale G-2.30.0 Sec. 3.2.7.B. Nursery (Wholesale)  
 Nursing home and domiciliary care homes G-2.37 Sec. 3.3.2.E. Residential Care Facility

Offices, general G-2.38.1 Consolidated into Sec. 3.5.8.A. Office, but not proposed in any zone as Conditional Use

Offices, professional, nonresidential G-2.38 Sec. 3.5.8.B. Nonresident Professional

~~Parking facilities, off street, at locations more than 500 feet walking distance from the entrance to a non-residential establishment to be served G-2.40 Use removed~~

~~Parking of automobiles, off street, in an industrial zone, in connection with any use permitted in a commercial zone G-2.39.1 Use removed~~

~~Parking of automobiles, off street, in connection with commercial uses G-2.39 Use Removed~~

Personal living quarters G-2.41.2 Sec. 3.3.2.D. Personal Living Quarters

Pet shops G-2.41 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

Pipeline, above ground See G-2.43 Sec 3.6.7.A. Pipeline (Aboveground)

Private club and service organization G-2.42 Sec. 3.4.8. Private Club, Service Organization

Public utility buildings and structures G-2.43 Sec. 3.6.7.C Public Utility Building or Structure

Radio and television broadcasting stations and towers G-2.44 Sec. 3.5.2.C Media Broadcast Tower

Recreational or entertainment establishments, commercial G-2.45 Sec. 3.5.10.F, G, or H. Recreation and Entertainment Facility

Retail and service establishments G-2.46 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

Retail establishments in a multiple-family dwelling G-2.47 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

Retail establishment in an office building G-2.48 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

Rifle or pistol ranges, indoor G-2.50 Sec. 3.5.10.I. Shooting Range (Indoor)

Rifle, pistol and skeet shooting ranges, outdoor G-2.51 Sec. 3.5.10.J. Shooting Range (Outdoor)

Rock or stone quarries G-2.52 Sec. 3.6.5. Mining, Excavation

Sand, gravel or clay pits See G-2.52 Sec. 3.6.5. Mining, Excavation

Sanitarium See G-2.31 Sec. 3.4.6. Hospital

Sawmills G-2.54 Sec. 3.2.2 Agricultural Processing

~~Secondary agricultural processing, not otherwise specified G-2.54.1~~

Solid waste transfer station, sanitary landfill, or incinerator G-2.54.2 Sec. 3.6.9.B. Landfill, Incinerator, or Transfer Station

Storage, outdoor G-2.54.3 Sec. 3.6.8.D. Storage Facility, but not proposed in any zone as Conditional Use

Swimming pools, commercial G-2.55 Sec. 3.5.10. Recreation and Entertainment Facility

Swimming pools, community G-2.56 Sec. 3.4.11. Swimming Pool (Community)

~~Teahouse and restaurants in residential zones G-2.57~~

Telecommunications facility. G-2.58 Sec. 3.5.2.B. Freestanding Wireless Communications Tower

Theaters, indoor G-2.60 Sec. 3.5.10. Recreation and Entertainment Facility

Theater, legitimate G-2.59 Sec. 3.5.10. Recreation and Entertainment Facility

Tire, battery, and accessory stores G-2.62 Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

Winery G-2.63 Sec. 3.2.9 Winery

#### **Sec. 59-G-2.00. Accessory apartment. Sec. 3.3.3 (A-B) Accessory Apartment attached/Detached**

A special exception may be granted for an accessory apartment on the same lot as an existing one-family detached dwelling, subject to the following standards and requirements: Accessory apartments are limited uses under certain circumstances, but many of the standards below apply if the use is limited or conditional . This section reflects the standards in effect prior to the effective date of ZTA 12-11.

(a) **Dwelling unit requirements:**

(1) Only one accessory apartment may be created on the same lot as an existing one- family detached dwelling. Sec. 3.3.3.A.2.a.i

(2) The accessory apartment must have at least one party wall in common with the main dwelling on a lot of one acre (43,560 square feet) or less. Only attached accessory apartments are allowed in R-90, R-60, R-40. On a lot of more than one acre, an accessory apartment may be added to an existing one-family detached dwelling, ~~or may be created through conversion of a separate accessory structure already existing on the same lot as the main dwelling on December 2, 1983. An accessory apartment may be permitted in a separate accessory structure built after December 2, 1983, provided:~~

- (i) ~~The lot is 2 acres or more in size; and~~
- (ii) ~~The apartment will house a care-giver found by the Board to be needed to provide assistance to a senior adult, ill or disabled relative of the owner-occupant.~~

Detached accessory apartments allowed in RE zones and, RC, R, AR regardless of when accessory structure is built.

(3) ~~An addition or extension to a main dwelling may be approved in order to add additional floor space to accommodate an accessory apartment. All development standards of the zone apply. An addition to an accessory structure is not permitted.~~

(4) The one-family detached dwelling in which the accessory apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for special exception. Sec. 3.3.3.B.2.b

(5) The accessory apartment must not be located on a lot: Sec. 3.3.3.A.2.a.iv

- (i) ~~That is occupied by a family of unrelated persons; or~~
- (ii) Where any of the following otherwise allowed residential uses exist: guest room for rent, boardinghouse or a registered living unit; or
- (iii) That contains any rental residential use other than an accessory dwelling in an agricultural zone.

(6) Any separate entrance must be located so that the appearance of a single-family dwelling is preserved. Sec. 3.3.3.B.2.a (modified)

(7) ~~All external modifications and improvements must be compatible with the existing dwelling and surrounding properties.~~

(8) The accessory apartment must have the same street address (house number) as the main dwelling. Sec. 3.3.3.A.2.a.iii(a)

(9) The accessory apartment must be subordinate to the main dwelling. The floor area of the accessory apartment is limited to a maximum of 1,200 square feet. ~~The 1,200 square foot limitation does not apply to an accessory apartment located in a separate existing accessory structure located on the same lot as the main dwelling. The maximum floor area for a separate existing accessory structure must be less than 50 percent of the total floor area of the main dwelling, or 2,500 square feet, whichever is less.~~ 3.3.3.A.2.a.iii

**(b) Ownership requirements:**

(1) ~~The owner of the lot on which the accessory apartment is located must occupy one of the dwelling units, except for bona fide temporary absences not exceeding 6 months in any 12-month period. The period of temporary absence may be increased by the Board upon a finding that a hardship would otherwise result.~~

~~(2) Except in the case of an accessory apartment that exists at the time of the acquisition of the home by the applicant, one year must have elapsed between the date when the owner purchased the property (settlement date) and the date when the special exception becomes effective. The Board may waive this requirement upon a finding that a hardship would otherwise result.~~

~~(3) Under no circumstances is the owner allowed to receive compensation for the occupancy of more than one dwelling unit.~~

~~(4) For purposes of this section, "owner" means an individual who owns, or whose parent or child owns, a substantial equitable interest in the property as determined by the board.~~

~~(5) The restrictions under (1) and (3) above do not apply if the accessory apartment is occupied by a senior adult who has been a continuous tenant of the accessory apartment for at least 20 years.~~

**(c) Land use requirements:**

~~(1) The minimum lot size is 6,000 square feet, except where the minimum lot size of the zone is larger. A property consisting of more than one record lot, including a fraction of a lot, is to be treated as one lot if it contains a single one family detached dwelling lawfully constructed prior to October, 1967. All other development standards of the zone must also apply, including setbacks, lot width, lot coverage, building height and the standards for an accessory building in the case of conversion of such a building.~~

(2) An accessory apartment must not, when considered in combination with other existing or approved accessory apartments, result in an excessive concentration of similar uses, including other special exception uses, in the general neighborhood of the proposed use (see also Section 59-G-1.21(a)(7) which concerns excessive concentration of special exceptions in general). Sec. 3.3.3.A.2.c.ii

(3) Adequate parking must be provided. There must be a minimum of 1 2 off-street parking spaces Sec. 7.2.4.D, unless the Board makes either of the following findings:

(i) More spaces are required to supplement on-street parking; or

(ii) Adequate on-street parking permits fewer off-street spaces. Sec. 3.3.3.A.c.i

~~Off street parking spaces may be in a driveway but otherwise must not be located in the yard area between the front of the house and the street right of way line.~~

~~(d) Data to accompany application. The Board may waive for good cause shown any of the data required to accompany an application for special exception upon written request of the applicant. The Board may accept plans or drawings prepared by the applicant so long as they are substantially to scale and provide information the Board determines is adequate.~~

(e) Any accessory apartment approved by the Board between December 2, 1983, and October 30, 1989, in accordance with the standards in effect during that period, is a conforming use and it may be continued as long as the accessory apartment complies with the conditions imposed by the Board and all provisions of Division 59-G-1.

~~(f) Notice by sign required for continuation of use by new property owner. If a new property owner applies to continue an existing accessory apartment as a minor modification, a sign giving notice of the application must be erected and maintained as required by Sec. 59-G-1.3(c).~~

**Sec. 59-G-2.00.1. Accessory dwelling, Sec. 3.3.3.D. Farm Tenant Dwelling no longer a Special Exception**

A special exception may be granted for an accessory dwelling, or dwellings, in addition to the main dwelling on a tract or parcel that is primarily in agricultural use, subject to the following requirements:

~~—(a)—The accessory dwelling was originally constructed or previously converted to use on the farm as a principal dwelling, farm tenant dwelling, or guest house as defined in section 59-A-2.1 but is not required for such use at the time the application is filed. A farm tenant mobile home cannot be converted to use as an accessory dwelling unless it is permanently affixed to a foundation.~~ A dwelling that was a farm tenant dwelling in existence prior to June 1, 1958 in the RE-2, Rural, RC, and RDT zones may be rented to a non-farm family for residential purposes and is not subject to the requirements of this section as an accessory dwelling. Sec. 3.3.3.D.2.c.

~~—(b)—An accessory dwelling must not be located on a recorded lot in residential, nonagricultural use or on a lot created in accordance with the rural cluster development provisions of section 59-C-9.5.~~

(c) The total number of accessory dwellings must not exceed 4 on any one lot or parcel. If there is also an accessory apartment, as regulated by section 59-G-2.00, on the parcel, the total number of accessory dwellings, as regulated by this section, must not exceed 3. Sec. 3.3.3.D.1.

~~(d)—Accessory dwellings, when considered in combination with other approved accessory dwellings and apartments, must not result in an excessive concentration of similar uses in the general neighborhood.~~

(e) There must be adequate water supply and sewerage disposal systems to serve the occupants of the accessory dwelling and any other residence on the property. Sec. 3.3.3.D.2.b

(f) Adequate parking must be provided. There must be a minimum of 2-1 off-street parking spaces per accessory dwelling.

~~—(g)—Accessory dwellings must not be detrimental to the use and peaceful enjoyment of surrounding properties or the general neighborhood, and must not cause any objectionable noise, traffic, or other adverse impacts.~~

~~(h)—Data to accompany application: The board may waive, for good cause shown, any of the data required to accompany an application for a special exception upon written request of the applicant. The board may accept plans or drawings prepared by the applicant so long as they are substantially to scale and provide all information that the board determines is adequate.~~

~~—(i)—Accessory dwellings are subject to the same legislative review and annual reporting provisions applicable to accessory apartments, as set forth in section 59-G-2.00(f) and (g).~~

(j) Such a dwelling unit is excluded from the density calculations set forth in sections 59-C-9.41, “Density in RDT Zone,” and 59-C-9.6, “Transfer of Density — Option in RDT Zone.” Once the land is subdivided, the dwelling is not excluded. Sec. 3.3.3.D.2.a

#### **Sec. 59-G-2.00.2. Abattoir. Sec. 3.2.8. Slaughterhouse**

A special exception may be granted for an abattoir, subject to the following requirements:

(a) The minimum area of the lot must be 20 acres. Sec. 3.2.8

(b) The minimum setback from any property line must be 75 feet. Sec. 3.2.8

(c) The board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.3. Conditional Use Decision

- (d) The property must front on and have direct access to a road built to primary or higher standards.
- (e) Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse, as stated in article 59-E. [Sec. 7.2.4](#) or [Sec. 7.2.5](#)
- (f) In evaluating the compatibility of this special exception with surrounding land uses, the board must determine whether those uses are primarily agricultural or residential. The board must consider the fact that this is a use related to agriculture when located in the rural Cluster or Rural Density Transfer Zone, and its impact on other agricultural uses does not necessarily need to be controlled as stringently as its impact on residential uses. [Sec. 8.3.1.D.1.h. Approval Criteria](#) The use is not permitted, however, in the portion of a rural cluster development regulated by section [59-C-9.52.](#)” [Sec. 7.3.4. A.4 Uses Prohibited in the Rural Open Space](#)

**~~Sec. 59-G-2.00.3. Reserved.~~**

**Sec. 59-G-2.00.4. Airstrip associated with farming operations. [Sec 3.2.10.C. Farm Airstrip](#)**

A special exception may be granted for an airstrip on a farm, as defined in section [59-A-2.1](#), subject to the following requirements:

- (a) Only one airplane is permitted to be permanently housed at the airstrip.
- (b) The applicant must obtain a favorable air space determination from the Federal Aviation Agency (FAA) in response to an application filed on Form FAA 7480.1, titled “Notice of Proposed Landing Area Established,” or whatever form number and title the FAA may require.
- (c) The aircraft using the airstrip must aid farming operations.
- (d) The airstrip must not be paved.
- (e) The airstrip must be set back from any property line a minimum of 1,000 feet.

**Sec. 59-G-2.00.5. Amateur radio facility. [3.5.14.B. Amateur Radio Facility \(Over 65 feet in height\)](#)**

An amateur radio facility must satisfy the following standards:

(1) An amateur radio facility must not exceed 65 feet in height, unless it can be demonstrated that the additional height is the minimum needed to engage in radio communications under a license issued by the Federal Communications Commission. ~~At the completion of construction, before the support structure may be used to transmit or receive any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure are in conformance with the height and location of the support structure as authorized in the building permit~~

(2) Any amateur radio facility existing before December 26, 2005 that exceeds 65 feet in height is a conforming structure.

**Sec. 59-G-2.01. Ambulance or rescue squad, privately supported, nonprofit. [Sec. 3.4.1 Ambulance or Rescue Squads \(Private\)](#)**

Ambulance services or rescue squads, which are private, nonprofit organizations and are not operated for the purpose of carrying on a trade or business, may be allowed subject to the following minimum area, frontage or setback requirements:



- (a) Total area—20,000 square feet.
- (b) Frontage—100 feet.
- (c) Setback, front—30 feet.
- (d) Side and rear—25 feet from side and rear property lines.

**Sec. 59-G-2.02. Animal boarding place. Sec. 3.5.1.B. Animal Boarding and Care**

(a) In any central business district, commercial, or transit station where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:

(1) Exterior runs, exercise yards, or other such facilities for the keeping of animals are not permitted. Sec.3.5.1.B.2.b.ii(a)

(2) All interior areas for the keeping of animals must be soundproofed. Sec.3.5.1.B.2.b.ii (b)

~~—(3)—In the C-1 zone, an animal boarding place must be located at least 75 feet from the nearest residentially-zoned land, and must be operated in conjunction with a veterinary hospital.---~~

(b) In any residential or rural zone where permitted by special exception, an animal boarding place must comply with the following conditions and requirements:

(1) The minimum lot size is 2 acres or the minimum required in the zone, whichever is greater. Sec.3.5.1.B.2.b.i(a)

(2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line a minimum of 200 feet and screened from adjacent residential properties. Sec.3.5.1.B.2.b.i(b) All exterior exercise areas and runs must be fenced for the safe confinement of animals. Sec.3.5.1.B.2.b.i(c)

~~(3) For all buildings in which animals will be present, maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure. Replaced with~~ Sec.3.5.1.B.2.b.i(h) For all buildings in which animals will be contained, sound levels emanating from the interior of the building must satisfy Chapter 31B as measured at the property line.

(4) All buildings and accessory structures must be set back from any property line a minimum of ~~50~~75 feet. Sec.3.5.1.B.2.b.i(g)

(5) No animal may be outdoors between ~~9~~6 p.m. and ~~7~~8 a.m. Sec.3.5.1.B.2.b.i(d)

~~—(6)—On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m.—. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time. Replaced with~~ Sec.3.5.1.B.2.b.i(f) The sound at the nearest property line cannot exceed 60 dBA.

(7) Dogs must not be walked or exercised in outdoor areas that are off-site. Sec.3.5.1.B.2.b.i(e)



(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. ~~Applications submitted without this information are incomplete and will not be accepted or assigned a case number. Sec.3.5.1.B.2.b.i(m)~~

(i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.

(ii) detailed floor plans that show all the interior areas, including runs and kennels, and

(iii) site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.

(9) The board must specify a minimum number of off-street parking spaces equal at least to the number of employees on the maximum shift plus three. The required number of parking spaces must in no case be less than 3. Sec. 7.2.4.D

(10) The Board may regulate hours of operation. The Board may also regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept. Sec.3.5.1.B.2.b.i(k)

(11) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%. Sec.3.5.1.B.2.b.i(j)

(12) All litter and animal waste must be contained and controlled on the site. Sec.3.5.1.B.2.b.i(i)

(13) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect. Sec.3.5.1.B.2.b.i(i)

(c) Any animal boarding place lawfully existing before November 1, 1977, is a conforming use and may be extended, enlarged or modified by special exception subject to the provisions of this section.

#### **Sec. 59-G-2.03. Animal cemeteries.**

~~Subject to the provisions of any state or local law, an animal cemetery may be allowed.~~

#### **Sec. 59-G-2.04. Antique shop. Sec. 3.5.11.B. Rural Antique Shop**

An antique shop may be allowed in an existing building or part of an existing building if the Board finds:

(a) The original character of the building is maintained;

(b) The structure is 5 or more years old; and

(c) The property adjoins land in the RDT Zone if it is located in the R-200 ~~and RMH-200 zones.~~

#### **Sec. 59-G-2.05. Art or cultural centers. Sec. 3.4.3. Cultural Institution**

~~A noncommercial art or cultural center may be allowed, upon a finding by the board that the proposed use will not constitute a nuisance because of traffic, noise, number of persons or physical activity and that the proposed use is operated by a nonprofit organization not organized or operated for the purpose of carrying on a trade or business, no part of the net earnings of which inures to the benefit of any member of such organization or individual. Such use~~

~~may consist of one or more buildings or structures which the board shall find will be devoted entirely to the furtherance of the arts or culture, including but not limited to a theater, museum, classrooms or any combination thereof, and may provide for a restaurant or snack bar designed solely for service of food or refreshments to persons utilizing the facilities of the proposed center. The lot, parcel or tract of land upon which the proposed center is to be located shall have a minimum area of 2 acres and, except as hereinafter noted, the requirements of the I-3 zone as to setbacks, area and lot coverage, landscaping, site plan approval and other requirements shall be met. Sec. 3.4.3.B.~~

~~Notwithstanding the provisions of this section and of the schedule of parking space requirements contained in article 59-E of this chapter, the number of automobile off-street parking spaces required on site, which shall consist of the total of the individual requirements provided by this chapter for each subsidiary use to principal art or cultural center use, may be reduced by not more than 75 percent if the principal use is located within 500 feet of any parking lot serving another use within the same zone, permission for the use of which has been granted in writing by the owner or tenant thereof; provided, that there are available on such lot sufficient spaces to make up the additional spaces required by the proposed use.~~

#### **Sec. 59-G-2.05.1. Auction facility. Sec. 3.2.1 Agricultural Auction Facility**

The board may authorize an auction facility upon a finding that the use will not impose adverse effects on surrounding uses because of noise, traffic, or other factors, and subject to the following regulations: Sec. 8.3.1.D

~~—(a) Merchandise to be auctioned must be limited to farm equipment and such items as antiques, collectibles, furniture, dishes, clothing, books, and similar items in keeping with the rural character of the area.~~ The board may specify the types of goods to be auctioned. Sec. 3.2.1.B.3

(b) Evening and weekend operations may be permitted, but the board must regulate hours of operation so as to prevent adverse impact on adjoining residential uses. Sec. 3.2.1.B.4

(c) If any adjoining property is in residential use, the noise level at the common property line must not exceed the requirements of chapter 31B. Sec. 3.2.1.B.5 The agricultural exemption of section 31B-14(c) is not applicable to an auction facility. Sec. 3.2.1.B.6

(d) The minimum area of the lot must be 5 acres. Sec. 3.2.1.B.1

(e) Minimum setback of the auction area, whether or not enclosed within a building and the parking area, must be 50 feet from any property line if the adjoining property is in residential use. Sec. 3.2.1.B.2

(f) On-site parking must be provided in accordance with the requirements for general retail sales as stated in article 59-E. Sec. (parking)

~~**Note:** These provisions do not apply to a one-time sale such as a yard sale, estate sale, or sale required by legal action.~~

#### **Sec. 59-G-2.06. Automobile filling stations. Sec. 3.5.13.C. Fuel Sales**

(a) An automobile filling station may be permitted, upon a finding, in addition to findings required in division 59-G-1, that:

(1) The use will not constitute a nuisance because of noise, fumes, odors or physical activity in the location proposed. Sec. 8.3.1.D.1.f. Conditional Use Approval Criteria

(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic

pattern from such buildings, ~~Sec. 8.3.1.D.1.f. or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital, or other public use or place of public assembly.~~

(3) The use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density and number of similar uses. Sec. 8.3.1.D.

(b) In addition, the following requirements must be complied with:

(1) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions and advertising pertaining to screening shall be as provided for in article 59-E. Screening shall not be required on street frontage. Sec. 8.3.1.D.1.e & Sec. 7.5.7

(2) Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or to station driveways are prohibited. Sec. 3.5.13.C.2.e

(3) Lighting is not to reflect or cause glare into any residential zone. Sec. 8.3.1.D.1.d

(4) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in section 59-A-2.1, and such driveways shall not exceed 30 feet in width; ~~Sec. 3.5.13.C.2.c. provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway.~~

(5) Each gasoline pump or other service appliance must be located on the lot at least 10 feet behind the building line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building. Sec. 3.5.13.C.2.g. There must be at least 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line. Sec. 3.5.13.C.2.h

(6) Light automobile repair work may be done at an automobile filling station; provided, that no major repairs, spray paint operation or body or fender repair is permitted. Sec. 3.5.13.C.1. Definition

(7) Vehicles shall not be parked so as to overhang the public right-of-way. Sec. 3.5.13.C.2.i

~~—(8)— In a C-1 zone, an automobile, light truck and light trailer rental, as defined in section 59-G-2.07, and in a C-2 zone, an automobile, truck and trailer rental lot, as defined in section 59-G-2.09, may be permitted as a part of the special exception, subject to the provisions set forth for such uses in this section.~~ In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception. Sec. 3.5.13.C.1

(9) In a Rural Village Overlay Zone the following additional standards apply for new development: Sec. 4.8.4.B.2.a.ii. Rural Village Overlay Zone

(A) Car wash is prohibited.

(B) Pump canopies must not exceed 35 feet in height.

(C) Any structure approved for the use must not exceed the scale and bulk of existing commercial structures in the village.

**Sec. 59-G-2.07. Automobile, light truck and light trailer rentals, outdoor. 3.5.12.C. -Light Vehicle/Equipment (Outdoor)**

~~A lot for the storage and rental of only the following rental vehicles: Automobiles and light trailers of such limited size and capacity so as to be capable of being safely towed by a passenger motor vehicle designed for carrying less than 10 passengers, and light duty panel trucks which shall not have a cab separate from the storage portion of the body, may be allowed, upon the findings required by this section to be made by the board in the case of “automobile, truck and trailer rentals, outdoor.”~~

**Sec. 59-G-2.08. Automobile storage lots. Sec. 3.5.13.A Automobile Storage Lot**

An automobile storage lot may be permitted for use in connection with a towing operation, but not for the storage of junked cars.

**Sec. 59-G-2.09. Automobile, truck and trailer rentals, outdoor. 3.5.12.C. -Light Vehicle/Equipment (Outdoor)**

~~—(a)—A lot for the storage and rental of only the following rental vehicles: automobiles, light trailers of such limited size and capacity so as to be capable of being safely towed by a passenger motor vehicle designed for carrying less than 10 passengers, and light and medium duty trucks may be allowed, upon a finding by the board that:~~

(1) The use will not constitute a nuisance because of noise, fumes, or odors or physical activity in the location proposed. Sec. 8.3.1.D. f

(2) The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, ~~Sec. 8.3.1.D.1.f or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground or hospital, or other public use or place of public assembly.~~

(3) The use at the proposed location will not adversely affect nor retard the local development of the general neighborhood or of the commercial zone in which the lot is proposed considering service required, population, character, density and number of similar uses. Sec 8.3.1.D.1.f

(b) In addition, the following requirements must be complied with:

~~—(1)—Gasoline pumps and other service appliances shall not be permitted, nor shall any major repairs, spray paint operation or body or fender repair be permitted; except, that not more than one gasoline pump shall be permitted, but only for the fueling of rental vehicles.~~

(2) Vehicles shall be stored or parked only within a hard surfaced area constructed of material which will assure a surface resistant to erosion and adequately treated to prevent dust emission, surrounded by a raised curb. The curb shall be located so that no vehicle can be parked or stored within 15 feet of any street line, nor within 15 feet of any property line adjoining land in a residential zone, nor within 3 feet of any property line. Sec. 3.5.12.C.2.b  
~~In a C-2 zone, the entire lot shall be on or near grade with the most traveled abutting street or highway.~~

(3) There shall be at least 20 feet between access driveways on each street, and all driveways shall be perpendicular to the curb or street line. Sec. 3.5.12.C.2.c

(4) When such use occupies a corner lot, no access driveway shall be located less than 20 feet from the intersection of the front and side street lines of the lot, as defined in section 59-A-2.1, and no such driveway shall exceed 30 feet in width. Sec. 3.5.12.C.2.d  
~~In areas where no master plan of highways has been adopted, the street line shall be considered to be at least 40 feet from the centerline of any abutting street or highway.~~

(5) Product displays, parked vehicles and other obstructions which would adversely affect visibility at intersections or to driveways are prohibited. Sec. 3.5.12.C.2.e

(6) Lighting shall be low level and so arranged as not to reflect or cause glare into any residential zone. Sec. 8.3.1.D.1.d

(7) When such lot abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the lot shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. The failure of the owner and/or operator to maintain any required plantings so that they exist in a flourishing and healthy condition is grounds for revocation of the occupancy permit. Location, maintenance, vehicle sight distance provisions and the prohibition of advertising upon the screening shall be as provided for in the screening requirements contained in article 59-E. Screening shall not be required on street frontage. Sec. 8.3.1.D.1.e & Sec. 7.5.7

**Sec. 59-G-2.09.1. Blacksmith. Use not retained**

~~A special exception may be granted for a blacksmith, subject to the following requirements:~~

~~—(a)—The minimum area of the lot must be 5 acres.~~

~~—(b)—The minimum setback from any property line must be 50 feet, except that the minimum setback from the street may be reduced to 25 feet if the board finds that:~~

~~—(1)—The site is in an agricultural rather than a residential zone; and~~

~~—(2)—The reduced setback would be compatible with surrounding uses.~~

~~—(c)—The board may regulate hours of operation, numbers of vehicles and personnel employed and other on-site operations to prevent adverse impact on adjoining uses.~~

~~—(d)—Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse, under Article 59-E.~~

~~—(e)—Adequate screening must be provided for all parking areas and all areas devoted to on-site operations, to prevent adverse impact on adjoining uses.~~

~~—(f)—In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones.~~

**Sec. 59-G-2.09.2. Bed-and-breakfast lodging. 3.5.6.B. Bed and Breakfast**

A special exception may be granted for a bed-and-breakfast lodging in a one-family detached dwelling unit, subject to the following requirements:

(a) The owner of the dwelling unit in which the bed-and-breakfast lodging is located must occupy the dwelling unit, and the bed-and-breakfast use must be Sec. 3.5.6.B.1 ~~subordinate to the residential use.~~

(b) The minimum area of the lot or parcel must be 9,000 square feet but not less than the minimum lot or parcel area for the zone. [Sec.3.5.6.B.2.a.vii](#)

(c) The Board may deny a petition for a bed-and-breakfast lodging with frontage on and access to a road built to less than primary standards if it finds that road access will not be safe and adequate for the anticipated traffic to be generated or the level of traffic would have an adverse impact on neighboring residences. [Sec. 3.5.6.B.2.b.i.](#)

(d) On a lot or parcel of less than 2 acres (87,120 square feet), a maximum of 3 bedrooms may be designated as guest rooms for transient visitors, for which compensation is charged. If the bed-and-breakfast lodging is located on a lot or parcel of 2 acres or more, 4 or 5 bedrooms may be designated as guest rooms. [Sec. 3.5.6.B.2.a.viii.](#)

(e) A bed-and-breakfast lodging is not permitted in a dwelling unit that also provides guest rooms for roomers or in a dwelling that includes an accessory apartment. [Sec. 3.5.6.B.2.a.i](#)

(f) Off-street parking must be provided in accordance with the requirements of Section [59-E-3.7](#) unless the Board finds that use of on-street parking for the bed-and-breakfast lodging or the residential use will not have an adverse impact on neighboring residential uses [Sec. 7.2.4.D.](#) The off-street parking area must be screened in accordance with Section [59-E-2.83.](#) [More than 3 spaces: Sec. 7.5.6.B.](#) The required off-street spaces must be located only in the rear yard, in the portion of a driveway traversing the side or rear yard, or in a driveway traversing the front yard if the Board has approved the location and design of the front-yard driveway. Required spaces must not be located in a front-yard driveway if there is adequate space in the side or rear yard or if the Board finds that they cannot be adequately screened in accordance with Section [59-E-2.83.](#) [Sec. 3.5.6.B.2.a.ix.](#)

(g) The display of a sign must include the official house number assigned by the Commission. [Sec. 3.5.6.B.2.a.ii](#)

(h) Breakfast is the only meal that may be served to a transient visitor; and meals must not be provided for compensation to any other nonresident of the dwelling unit. [Sec. 3.5.6.B.2.a.iii.](#) ~~Food service is subject to regulations of the Department of Health and Human Services.~~

(i) In order to preclude adverse neighborhood impact and assure that the residential use remains predominant, the Board may limit the number of transient visitors who may be accommodated at one time or the number of visits in a one-month period. [Sec. 3.5.6.B.2.b.ii](#)

(j) A transient visitor must not remain in a bed-and-breakfast lodging for more than 2 weeks in any one visit. [Sec. 3.5.6.B.2.a.iv.](#)

(k) The owner of the dwelling unit must maintain a record of all transient visitors who stay in the bed-and-breakfast lodging. [Sec. 3.5.6.B.2.a.v.](#) ~~If requested, the owner must give a copy of this record to the Department or another County agency.~~

(l) The owner must register the bed-and-breakfast lodging with the Department. [Sec. 3.5.6.B.2.a.vi.](#)

(m) In the R-60 zone, an owner-occupied detached dwelling operated as a bed-and-breakfast lodging facility for not more than 2 individuals on or before November 14, 1988, is a conforming use, and may be continued, structurally altered, reconstructed or repaired, so long as it remains an otherwise lawful use. The owner of such a lodging need not obtain a special exception under this Section meet the minimum lot or parcel size requirement of subsection (b). The owner of such a lodging must maintain a record of all transient visitors and register the lodging with the Department, as provided in subsections (k) and (l).

#### **Sec. 59-G-2.10. Boardinghouse. [Use not retained](#)**

~~A boarding house must conform to the following:~~

- ~~—(a) It is owner occupied;~~
- ~~—(b) It is not located within 1,000 feet of another boardinghouse; and~~
- ~~—(c) It provides one off street parking space per tenant room in the one family residential zones.~~

**Sec. 59-G-2.10.1. Cable communications system. Sec. 3.5.2.A. Cable Communications System**

- (a) Structures, buildings and facilities in which or on which component elements of a cable communications system are located or which otherwise support the system, and which are operated by the entity operating the cable communications system pursuant to a franchise awarded by Montgomery County, may be allowed upon approval by the board of appeals. Sec. 3.5.2.A.2.c.
- (b) Offices are not permitted in residential zones as part of the cable communications system. Sec. 3.5.2.A.2.d.
- (c) Any proposed tower must have a setback of one foot from all property lines for every foot of height of a tower. Sec. 3.5.2.A.2.a
- ~~—(d) A petition for special exception under this section may be filed on a project basis.~~
- (e) Any component element of a cable communications system that qualifies as a permitted use in the zone in which it is to be located is not required to obtain special exception approval. Sec. 3.5.2.A.2.f
- (f) The location of the proposed community access centers/studios must be consistent with the cable communications plan approved by the County Council. Sec. 3.5.2.A.2.b.

**Sec. 59-G-2.11. Campground. 3.5.10.B. Campground**

A campground must conform to the following requirements:

- (a) The area of a lot, parcel or tract of land to be used must contain at least 10 acres and must have a frontage of at least 150 feet abutting a public highway, street, road or other public right-of-way; provided, that the Board is authorized to waive the requirement for a minimum frontage if it finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of Article 59-E of this chapter. Sec. 3.5.10.2.c.
- (b) Any campsite must be located at least 100 feet from any boundary or property line of such lot, parcel or tract of land, or a distance of at least 125 feet from the centerline of any public highway, street, road or other public right-of-way. Sec. 3.5.10.2.d.
- (c) The density of campsites in a campground must not exceed an average of 15 campsites per acre of the developed portion of the campground, inclusive of service roads, toilet facilities and service buildings. Sec. 3.5.10.2.a. Each campsite, excluding parking space, must provide a minimum of 900 square feet, Sec. 3.5.10.2.b and must either provide parking space for one automobile which will not interfere with the convenient and safe movement of traffic, or equivalent parking must be provided in a central area. Sec. 7.2.4.D
- (d) Special conditions, such as provision for fencing and/or planting or other landscaping, additional setback from property lines, and other reasonable requirements deemed necessary to safeguard community interest and welfare, may be invoked by the board as requisites to the grant of special exception. Sec. 8.3.1.E.4

**Sec. 59-G-2.11.1. Car wash. Sec. 3.5.13.B. Car Wash**



In addition to meeting the general conditions for the grant of a special exception a car wash may be allowed provided that:

- (a) ~~in the C-2 and C-4 zones~~, a lot proposed for a car wash is at least 100 feet from a lot zoned residential. Sec. 3.5.13.B.2.vi.(a). (modified)
- (b) the operation of the car wash will not be a nuisance because of noise, fumes, odors, traffic or physical activity Sec. 8.3.1.D.1.f
- (c) the car wash is effectively screened by a natural terrain feature, solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, or other effective screening measure, including exterior landscaping as deemed appropriate by the Board of Appeals. Sec. 7.5.7.C.9
- (d) lighting is not to reflect or cause glare into any residential area. Sec. 8.3.1. D.1.d
- (e) when a car wash occupies a corner lot, the ingress or egress driveways are located at least 20 feet from the intersection of the front and side street lines of the lot. Sec. 3.5.13.B.2.a.i.
- (f) there are no obstructions which adversely affect visibility at intersections or to the car wash driveways. Sec. 3.5.13.B.2.a.ii.
- (g) all driveways are perpendicular to the curb or street line. Sec. 3.5.13.B.2.a.iii.
- (h) one parking space for each employee, and vehicle stacking space equivalent to 5 times the vehicle capacity of the automatic car wash and 3 times the vehicle capacity of the manual car wash bays, is provided. Sec. 7.2.4.D with modifications
- (i) the applicant demonstrates that the vehicles using the car wash will not queue off-site. Sec. 3.5.13.B.2.v.

A car wash lawfully existing prior to October 8, 1991 which does not conform to the requirements of this section is not a nonconforming use. Any expansion or enlargement must comply with the special exception standards set forth in this section.

**Sec. 59-G-2.11.2. Catering facility, outdoors. 3.5.10.G. Recreation and Entertainment Facility, Outdoors (capacity up to 1,000)**

A special exception may be granted for a catering facility outdoors, subject to the following requirements.

- (a) the site must be zoned R-200 Sec. 3.1.7. (Use table) ~~and recommended for the PD zone in an approved and adopted master or sector plan;~~
- (b) the site must be 80 acres or more in size; Sec. 3.5.10.G.2.b.ii.
- (c) the maximum building height is 20 feet; Sec. 3.5.10.G.2.b.iii.
- (d) any structure, building, or parking area must be setback from any property line a minimum of 100 feet; Sec. 3.5.10.G.2.b.iv.
- (e) the site must have direct access to a public road that is built to primary or higher standards; and Sec. 3.5.10.G.2.b.v.

(f) other than a permanent food preparation building, permanent structures are limited to open pavilions. [3.5.10.G.2.b.vi.](#)

**Sec. 59-G-2.12. Cemetery and family burial site. [3.5.4.A. Cemetery](#)**

(a) ~~Subject to any applicable health protection provisions of the State and County Codes,~~ a cemetery, family burial site or other place for the burial of the dead may be allowed; provided, that:

(1) The proposed location is compatible with adjacent land uses, existing or proposed highways and any other elements or factors deemed to affect the public health, safety and welfare of the inhabitants of the area. [Sec. 3.5.4.A.2.a](#)

(2) All grave sites must be sufficiently set back to establish a buffer between the site and surrounding properties. The buffer area so created must be suitably landscaped with trees and shrubs. [Sec. 3.5.4.A.2.b.](#)

(3) If the subject property is located in an area not served by public water and sewer, water table tests must be conducted to assure that there is adequate filtration of drainage between burial depth and the level of high water table. [Sec. 3.5.4.A.2.c](#)

(4) Any cemetery lawfully existing prior to the effective date of this ZTA [ May 6, 2002] is a conforming use, and may be extended, enlarged, or modified by special exception subject to the provisions set forth in this section.

(b) A family burial site is allowed only as an accessory use on a residentially developed property and may only be approved on a lot or parcel that is appropriate to the circumstances and is at least 25 acres in size. A family burial site must be set back at least 100 feet from any adjoining residential property and at least 50 feet from an existing street or from a proposed street, as shown on a master or sector plan. The use of any property for a family burial site must be recorded in the land records of Montgomery County. [Sec. 3.5.4.A.2.d](#)

**Sec. 59-G-2.12.1. Chancery and International Organization. [Sec. 3.5.8.A. Office but use standards not retained](#)**

~~A special exception may be granted for a chancery or an international organization subject to the following conditions:~~

~~—(a)— **Required Supporting Documents.**~~

~~—(1)— In addition to the filing requirements of Section [59-A-4.22](#), the application for special exception must be accompanied by a letter or other communication indicating that the State Department has been notified of the proposed location.~~

~~—(2)— A detailed statement of the existing and intended use of each building must be provided, including the number of employees, occupants and visitors anticipated on the site.~~

~~—(3)— The applicant must provide any other details, plans, or statements pertinent to the application required by the Board of Appeals.~~

~~—(b)— **Development Standards.** In the One Family Residential Zones regulated by Section [59-C-1.32](#), the development standards are as follows:~~

~~—(1)— Minimum lot size: twice the minimum required by Section [59-C-1.32](#).~~

~~—(2)— Minimum side yard setback: twice the minimum required in Section [59-C-1.32](#).~~

- ~~—(3) Minimum road frontage: twice the minimum required by Section 59-C-1.32.~~
- ~~—(4) Minimum green area: 50%~~
- ~~—(5) Maximum floor area ratio: 0.2.~~
- ~~—(6) The property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction of travel.~~
- ~~—(c) In all other zones where a chancery or international organization is allowed by special exception, the development standards are those of the zone.~~
- ~~—(d) Parking must be provided on site in accordance with the requirements for a general office, as stated in Section 59-E-3.7.~~

**Sec. 59-G-2.13. Day care facility for senior adults and persons with disabilities. 3.4.4. Day Care Facility (Various sizes)**

A day care facility or center for up to 40 senior adults and persons with disabilities may be allowed if the Board finds:

- (1) That such use will not constitute a nuisance because of traffic, insufficient parking, number of individuals being cared for, noise or type of physical activity. Sec. 8.3.1.D.1-d
- (2) That the applicant possesses a valid certificate to operate an elderly and medically handicapped day care facility issued by the secretary of the Maryland Department of Health and Mental Hygiene; and Sec. 3.4.4.(in definitions)
- ~~—(3) That any property to be used as a day care facility is of sufficient size to accommodate the proposed number of residents and staff.~~

The requirements of this section do not apply to day care facilities or centers for senior adults and persons with disabilities which are operated by a nonprofit organization in buildings, structures or on premises owned or leased by a religious organization and which premises are regularly used as a place of worship, or are located on premises owned or leased by a religious organization adjacent to premises regularly used as a place of worship, or are used for private parochial educational purposes which are exempted under the provisions of this section for private educational institutions or are located in publicly owned school buildings. Sec. 3.4.4.B

**Sec. 59-G-2.13.1. Child day care facility. Sec. 3.4.4. Day Care Facility (Various sizes)**

- (a) The Hearing Examiner may approve a child day care facility for a maximum of 30 children if:
- (1) a plan is submitted showing the location of all buildings and structures, parking spaces, driveways, loading and unloading areas, play areas and other uses on the site; Sec. 8.3.1
- (2) parking is provided in accordance with the Parking Regulations of Article 59-E.

The number of parking spaces may be reduced by the Hearing Examiner if the applicant demonstrates that the full number of spaces required in Section 59-E-3.7 is not necessary because: Sec. 7.2.3.B

(A) existing parking spaces are available on adjacent property or on the street abutting the site that will satisfy the number of spaces required; or

(B) a reduced number of spaces would be sufficient to accommodate the proposed use without adversely affecting the surrounding area or creating safety problems;

(3) an adequate area for the discharge and pick up of children is provided; [Sec. 3.4.4.E.2.b.](#)

~~(4) the petitioner submits an affidavit that the petitioner will:~~

~~(A) comply with all applicable State and County requirements;~~

~~(B) correct any deficiencies found in any government inspection; and~~

~~(C) be bound by the affidavit as a condition of approval for this special exception; and~~

(5) the use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity. [Sec. 8.3.1.D.1.f](#) The hearing examiner may require landscaping and screening and the submission of a plan showing the location, height, caliper, species, and other characteristics, in order to provide a physical and aesthetic barrier to protect surrounding properties from any adverse impacts resulting from the use. [Sec. 8.3.1. D.1.e & Sec. 7.5.7](#)

(b) A child day care facility for 31 or more children may be approved by the Board of Appeals subject to the regulations in subsection (a), and the following additional requirements:

(1) a landscaping plan must be submitted showing the location, height or caliper, and species of all plant materials; and [Sec. 8.3.1. B.6.x\(e\)](#)

(2) in the one-family residential zones, facilities providing care for more than 30 children must be located on a lot containing at least 500 square feet per child. The Board may reduce the area requirement to less than 500 square feet, but not less than 250 square feet, per child if it finds that: [Sec. 3.4.4.F.2.b.iv](#)

(A) the facility will predominantly serve children of an age range that require limited outdoor activity space;

(B) the additional density will not adversely affect adjacent properties;

(C) additional traffic generated by the additional density will not adversely affect the surrounding streets; and

(D) adequate provisions for drop-off and pick-up of students will be provided. [Sec. 3.4.4.F.2.b.ii.](#)

The Board may limit the number of students outside at any one time. [Sec. 3.4.4.F.2.b.iii.](#)

(c) The requirements of Section [59-G-2.13.1](#) do not apply to a child day care facility operated by a nonprofit organization and located in: [Sec. 3.4.4.B](#)

(1) a structure owned or leased by a religious organization and used for worship;

(2) a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;

(3) a structure used for private parochial educational purposes which is exempted from the special exception standards under Section 59-G-2.19(c); or

(4) a publicly owned building.

**Sec. 59-G-2.14. Clinic. Sec. 3.5.7.A. Clinic (Up to 4 medical practitioners)**

A special exception may be approved for a medical or dental clinic in which no more than 4 medical practitioners are present at any one time, subject to the following standards:

(a) Development standards as specified in the applicable zone and in Section G-1.23 except:

(1) Minimum frontage: 100 feet. Sec. 3.5.7.A.2.a.

(2) Minimum setback from adjoining lot: 40 feet. Sec. 3.5.7.A.2.b

(b) The property must front on and have direct access to a public street or roadway Sec. 3.5.7.A.2.c. ~~having more than one through travel lane in each direction of travel; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds the access to be appropriate and not detrimental to existing residential uses on the primary street.~~

(c) Office space suitable for the practice of the profession is unavailable in either the nearest commercial zone or the nearest medical clinic office building constructed according to a special exception grant. Sec. 3.5.7.A.2.d

(d) Additional medical practitioners, no more than four, may be present at any one time only if the presence of these additional practitioners will not generate additional patient related traffic. The additional practitioners are only allowed to: Sec. 3.5.7.A.2.e

(1) assist a practitioner in a specific surgical or diagnostic procedure; or

(2) perform administrative work related to the treatment of patients on site the same day.

A written record must be kept for inspection by county enforcement staff identifying the physicians on site, and their schedules of seeing patients and performing administrative work.

(e) The Board may limit hours of operation, number of practitioners and employees, and the number, character and extent of accessory services. Sec. 8.3.1.E.3

~~—(f)— Hours of operation for any accessory service that is part of the clinic, including a laboratory or pharmacy for use by patients of medical practitioners in the clinic, must be no earlier and no later than those of medical practitioners in the clinic.~~

A special exception for a medical or dental clinic for five or more medical practitioners may be continued, subject to the following requirements, if the petition was granted prior to February 20, 1989:

(a) Development standards are as follows:

(1) Minimum lot area: 40,000 square feet.

(2) Minimum frontage: 200 feet.

(3) Minimum setback from all property lines: 40 feet, except that the setbacks may be reduced if found to be compatible within an historic district as set forth in Sec. 59-A-6.23.

(4) Maximum building height: as specified in the zone.

(5) Maximum lot coverage: 15 percent.

(b) The property must front on and have direct access to a public road built to arterial or higher standards; except that access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds this access to be appropriate and not detrimental to existing residential uses on that primary street.

(c) Any accessory service that is part of the clinic, including a laboratory or pharmacy for use by patients of medical practitioners in the clinic, must comply with the following standards:

(1) Direct access from the street is prohibited; any access must be from an interior lobby or hallway or from a parking area that does not front on a public street.

(2) Hours of operation must be no earlier and no later than those of medical practitioners in the clinic.

(d) Adequate parking must be provided on site in accordance with the requirements for a medical or dental clinic, as stated in article 59-E, and further limitations, if any, prescribed by the Board.

(e) The Board may limit hours of operation, numbers of practitioners and employees, and the number, character and extent of accessory services.

(f) A medical or dental clinic for which a petition was approved prior to February 20, 1989, is a conforming use. The special exception may be amended in accordance with the modification provisions of section 59-G-1.3(c), except that the Board may not approve any extension or enlargement of the conditions of the special exception approved prior to February 20, 1989, as they apply either to the floor area or height of the building, or to the area or coverage of the lot. The Board may approve an enlargement of the parking area only if it is necessary to comply with the provisions of article 59-E or to accommodate additional practitioners. The Board may not approve any accessory service that was not approved prior to February 20, 1989.

(g) In approving a modification of the petition as previously approved, the Board must find that the use at the location in question will not be detrimental to the surrounding residential community because of traffic, noise or physical activity and will not adversely affect the present character or future development of that community as a residential area.

(h) In approving a modification of the petition as previously approved, the Board must make a finding of neighborhood need, as provided in section 59-G-1.24. When making this finding, the Board must solicit the comments and recommendations of the Health Services Planning Board, or its successor, among others. It must also find that there is no available office space that is suitable for a medical or dental clinic in either a nearby commercial zone or a nearby medical or dental clinic constructed in accordance with the provisions of this section.

(i) If the structure is destroyed or suffers serious damage by fire, flood or similar cause, it is subject to the prohibition on reconstruction of a nonconforming use, as stated in section 59-G-4.15, unless the Board makes a new finding of neighborhood need for a clinic at that location, as provided in section 59-G-1.24. "Serious damage" is defined as damage that reduces the value of the structure by more than half its prior value.

**Sec. 59-G-2.15. Combination Retail Store** Considered a Retail/ Service Establishment, but not proposed in any zone as Conditional Use

~~A special exception for a combination retail store may be granted, subject to the following requirements:~~

~~—(a)— The building must be designed in a way that reduces the buildings massive scale and contributes to its visual interest. Long building walls should be broken up with projections or recessions or other effective treatments that improve building design.~~

~~—(b)— Parking areas must provide safe, convenient, and efficient access, and landscaped to define vehicular drives and pedestrian areas.~~

~~—(c)— The site must have direct vehicular access to an existing arterial or major highway and the streets and roads adjoining the site must be adequate to accommodate the increased traffic generated. The applicant must provide a traffic impact study to demonstrate that acceptable peak hour levels of service will result after taking into account existing and programmed roads, and any improvements to be provided by the applicant.~~

~~—(d)— The site must be screened from any abutting residentially zoned property by the natural terrain or by a solid wall or fence, not less than five feet in height, together with a three foot wide planting strip on the outside of the wall or fence, planted in shrubs and evergreens three feet high at the time of the original planting.~~

~~—(e)— Product displays, parked vehicles and other obstructions that reduce visibility at intersections or at entrances and exits to and from the site are not permitted.~~

~~—(f)— Lighting must not reflect, or cause glare, on any property located in a residential zone.~~

**Sec. 59-G-2.15.1. Conference center with lodging. Considered a hotel, motel, but not proposed in any zone as Conditional Use**

~~An executive, corporate or educational conference center may be allowed provided that all standards and requirements of the zone are met. In addition, a conference center must be located on a lot at least 10 acres in size. A conference center is not a hotel, motel or inn which is regulated elsewhere in this article and is concerned primarily with overnight lodging.~~

**Sec. 59-G-2.15.2. Country market. 3.5.11.C. Rural Country Market**

A country market must conform to the following:

(a) The minimum tract area is 2 acres. Sec. 3.5.11.C.2.a

(b) The minimum setback from the street and from any side or rear lot line is 50 feet, except that the minimum setback from the street may be reduced to 25 feet if the Board finds that the smaller setback would be compatible with surrounding uses. The Board may approve the use of an existing structure that does not meet these requirements if the Board finds that the use is suitable and compatible with the surrounding area.

(c) The maximum building height is one story or 20 feet, except that any higher structure that existed before the special exception application was filed may be used upon approval of the Board of Appeals. Sec. 3.5.11.C.2.b

(d) The display of a sign must comply with the requirements established in Article 59-F of this chapter.

(e) A country market for which a building permit was issued before March 25, 1986, does not require a special exception, but must comply with the development and sign standards of (a), (b), (c) and (d) above.

**Sec. 59-G-2.16. Drive-in restaurants. Sec. 3.5.14.D. Drive-Thru Facility- not proposed in any zone as a conditional use**

~~A drive in restaurant may be allowed, upon a finding, in addition to findings required in division 59-G-1, that:~~



~~—(a)— The use will not constitute a nuisance because of noise, illumination, fumes, odors or physical activity in the location proposed.~~

~~—(b)— The use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads and intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic patterns from such buildings or cause frequent turning movements across sidewalks and pedestrian ways, thereby disrupting pedestrian circulation within a concentration of retail activity.~~

~~—(c)— The use of the proposed location will not preempt frontage on any highway or public road in such manner so as to substantially reduce the visibility and accessibility of an interior commercial area zoned or proposed for commercial use which is oriented to the same highway or public road.~~

~~—(d)— When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use shall be screened by a solid wall or a substantial, sightly, solid fence, not less than 5 feet in height, together with a 3 foot wide planting strip on the outside of such wall or fence, planted in shrubs and evergreens 3 feet high at the time of original planting and which shall be maintained in good condition. Location, maintenance, vehicle sight distance provisions, advertising and parking areas pertaining to screening shall be as provided for in the requirements contained in article 59 E.~~

~~—(e)— Product displays, parked vehicles and other obstructions which adversely affect visibility at intersections or at entrances and exits to and from, such use are prohibited.~~

~~—(f)— Lighting is not to reflect or cause glare into any residential zone.~~

~~—(g)— When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot, as defined in section 59 A 2.1, and such driveways shall not exceed 25 feet in width; provided, that in areas where no master plan of highways has been adopted, the street line shall be considered to be at least 60 feet from the centerline of any abutting street or highway.~~

**Sec. 59-G-2.17. Reserved.**

**Sec. 59-G-2.18. Reserved.**

**Sec. 59-G-2.181. Eating and Drinking Establishments in the O-M Zone. Sec. 3.5.3.B Restaurant, but proposed as a permitted use**

~~In the O M Zone, an eating and drinking establishment with an exterior patron entrance may be allowed in an office building subject to the general findings of Division 59 G 1.2. An eating and drinking establishment in the O M zone may have patronage on weeknights, Saturdays and Sundays; provided that:~~

~~(1) there exists sufficient off street parking to accommodate the patrons of the eating and drinking establishment, and (2) the operation of the eating and drinking establishment will not adversely effect the use and enjoyment of surrounding properties.~~

**Sec. 59-G-2.19. Educational institutions, private. Sec. 3.4.5. Educational Institution (Private)**

(a) **Generally.** A lot, tract or parcel of land may be allowed to be used for a private educational institution if the board finds that:

(1) the private educational institutional use will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood; [Sec. 3.4.5.C.2.i.](#)

(2) except for buildings and additions completed, or for which a building permit has been obtained before (date of adoption [April 2, 2002]), the private educational institution must be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution will be located on a lot, tract, or parcel of land of 2 acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood; [Sec. 3.4.5.C.2.ii.](#)

(3) the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community; and [Sec. 3.4.5.C.2.iii.](#)

(4) the private educational institution must conform with the following standards in addition to the general development standards as specified in Section G-1.23:

a. **Density**—The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board considering the following factors: [Sec. 3.4.5.C.2.iv.](#)

1. Traffic patterns, including:

a) Impact of increased traffic on residential streets;

b) Proximity to arterial roads and major highways;

c) Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;

d) Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and

2. Noise or type of physical activity;

~~3. Character, percentage, and density of existing development and zoning in the community;~~

~~4. Topography of the land to be used for the special exception; and~~

5. Density greater than 87 pupils per acre may be permitted only if the Board finds that (i) the program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements; (ii) the additional density will not adversely affect adjacent properties; (iii) additional traffic generated by the additional density will not adversely affect the surrounding streets. [Sec. 3.4.5.C.2.v.](#)

b. **Buffer**—All outdoor sports and recreation facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facility must be designed and sited to protect adjacent properties from noise, spill light, stray balls and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fences and walls. [Sec. 3.4.5.C.2.vi & vii.](#)

(b) If a Private Educational Institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, the Board must find, in

addition to the other required findings for the grant of a Private Education Institution special exception, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board. Sec. 3.4.5.C.2.viii.

The Board may limit the number of participants and frequency of events authorized in this section. Sec. 3.4.5.C.2.ix.

**(c) Programs Existing before April 22, 2002.**

(1) Where previously approved by the Board, a private educational institution may continue the operation of (i) tutoring and college entrance exam preparatory courses, (ii) art education programs, (iii) artistic performances, (iv) indoor and outdoor recreation programs, or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized in 59-G-2.19(b) are established in the Board's approval.

(2) Where not previously approved by the Board, such programs may continue until April 22, 2004. Before April 22, 2004, the underlying special exception must be modified to operate such programs, whether such programs include students or non-students of the school. The Board may establish a limit on the number of participants and frequency of events for authorized programs.

~~—(d) **Site plan.**~~

~~—(1) In addition to submitting such other information as may be required, an applicant shall submit with his application a site plan of proposed development. Such plan shall show the size and shape of the subject property, the location thereon of all buildings and structures, the area devoted to parking and recreation facilities, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.~~

~~—(2) No special exception, building permit or certificate of occupancy shall be granted or issued except in accordance with a site plan of development approved by the board. In reviewing a proposed site plan of development the board may condition its approval thereof on such amendments to the plan as shall be determined necessary by the board to assure a compatible development which will have no adverse effect on the surrounding community, and which will meet all requirements of this chapter. Any departure from a site plan of development as finally approved by the board shall be cause for revocation of the special exception, building permit or certificate of occupancy, in the manner provided by law.~~

(e) **Exemptions.** The requirements of Section G-2.19 do not apply to the use of any lot, lots or tract of land for any private educational institution, or parochial school, which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any agency thereof, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution special exception in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the Board of Appeal's decision was issued. Sec. 3.4.5.B.

(f) **Nonconforming uses.** Nothing in this chapter shall prevent any existing private educational institution which obtained a special exception prior to the effective date of this chapter, from continuing its use to the full extent authorized under the resolution granting the respective special exception, subject, however, to division 59-G-4 of this chapter.

(g) **Public Buildings.**

(1) A special exception is not required for any private educational institution that is located in a building or on premises that have been used for a public school or that are owned or leased by Montgomery County. [Sec. 3.4.5.C.2.x](#)

(2) However, site plan review under Division 59-D-3 is required for:

(i) construction of a private educational institution on vacant land owned or leased by Montgomery County; or [Sec. 3.4.5.C.2.xi](#)

(ii) any cumulative increase that is greater than 15% or 7,500 square feet, whichever is less, in the gross floor area, as it existed on February 1, 2000, of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County. Site plan review is not required for: (i) an increase in floor area of a private educational institution located in a building that has been used for a public school or that is owned or leased by Montgomery County if a request for review under mandatory referral was submitted to the Planning Board on or before February 1, 2000, or (ii) any portable classroom used by a private educational institution that is located on property owned or leased by Montgomery County and that is in place for less than one year.

(h) **Applications filed before May 6, 2002.** Any application filed before May 6, 2002 for a private educational institution special exception or modification of a private educational institutional special exception must comply with the requirements of [Article 59-G](#) and [Article 59-E](#) in effect at the time the special exception was filed.

**Sec. 59-G-2.20. Electric power transmission and distribution lines.** [Sec. 3.6.7.E Transmission Lines \(above ground\)](#)

See section [59-G-2.43. \(Public utility buildings and structures\)→ 3.6.7.C Public Utility Building or Structure](#)

**Sec. 59-G-2.21. Charitable or philanthropic institution.** [Sec. 3.4.2. “Charitable, Philanthropic Institution”](#)

(a) **Development standard.** A special exception may be granted for a charitable or philanthropic institution, subject to the following requirements:

(1) In the Agricultural Zones regulated by the development standards of Section C- 9.4, a charitable or philanthropic institution may be granted only if it is for re-use of an existing building. The development standards are those of the applicable zones except: [Sec. 3.4.2.B.1](#)

(i) Minimum lot size: twice the minimum required by section C-9.4.

(ii) Maximum lot size: 2 acres. This requirement may be waived to accommodate a residential camp for seriously ill children.

(iii) Minimum side yard setback: twice the minimum required by section C- 9.4.

(iv) Minimum frontage: twice the minimum required by section C-9.4.

(v) Minimum green area: 50 percent.

(vi) Maximum FAR: 0.2.

(vii) Maximum lot coverage: half the maximum permitted by section C-9.4.

~~(viii) Maximum building height: as specified in section C-9.4.~~

(ix) The property must front on and have direct access to a public road built to arterial or higher standards, with the possible exception of properties in the rural, rural cluster, and rural density transfer zones. In those three zones, frontage on and access to an arterial or higher standard is not required if the board finds that road access via the primary or secondary road will be safe and adequate for the anticipated traffic to be generated.

(2) In the One-Family Residential Zones regulated by Section C-1.32, the development standards are those of the applicable zones except: Sec. 3.4.2.B.2

(i) Minimum side yard setback: twice the minimum required by Section C-1.32.

(ii) Minimum frontage: twice the minimum required by Section C-1.32.

(iii) Minimum green area: 50 percent in R-60, R-90, and RMH zones; 60 percent in R-150 and R-200 zones; 70 percent in RE-1, RE-2, and RE-2C zones.

(iv) Maximum FAR: 0.25 ~~for residential, recreational, and environmental uses; 0.25 or 100,000 square feet, whichever is less, for office uses.~~ Any charitable or philanthropic institution established by special exception before May 6, 2002 may expand to a 0.25 total floor area ratio.

(v) Maximum building height: 35 feet in R-60 and R-90 zones; 50 feet in R-150, R-200, RE-1, RE-2, RE-2C, and RMH zones.

(vi) The property must front on and have direct access to a public street or roadway having more than one through travel lane in each direction of travel. Access to a corner lot may be from an adjoining primary street, constructed to primary standards, if the Board finds this access to be appropriate and not detrimental to existing residential uses on that primary street. This requirement does not apply to any charitable or philanthropic institution facility that lawfully exists on May 6, 2002.

(vii) Outdoor recreational facilities must be located, landscaped, or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The facilities must be designed and sited to protect adjacent properties from noise, spill light, stray balls, odors, and other objectionable impacts by providing appropriate screening measures, such as sufficient setbacks, evergreen landscaping, solid fencing, and walls. ~~The setback must not be less than twice the rear yard setback of the zone.~~ This requirement does not apply to outdoor recreational facilities which lawfully exist on May 6, 2002.

(viii) For residential and office uses, standards (2)(i) and (iv) do not apply to the use of an existing building that exists lawfully at least 3 years before the special exception petition is filed. Any expansion or addition to the existing building must comply with the standards in effect at the time a modification is filed. Under Review

~~(3) In the C-1 and C-3 Zones, the development standards are those of the applicable zones.~~

(b) **Parking Standard.** Sec. 7.2.4. D

(1) Off-street parking space must be provided as follows:

(i) Residential: one parking space for every 2 residents, and one space for every 2 employees on the largest work shift.

(ii) Recreational and Environmental: the total number of required parking spaces for each component of the proposed development under Section E-3.7 for auditorium, health club, commercial swimming pool, commercial recreational establishment, and other similar uses.

(iii) Office: same as general office under Section E-3.7.

(2) The Board may modify the off-street parking space requirements if warranted because of the program, method of operation, or clientele.

(3) All other parking design standards must comply with Section E-2.83 and other applicable sections of Article 59-E.

(c) **Waiver.**

(1) If the property is designated as a historic resource by the master plan for historic preservation, the Board may waive development standards (a)(1)(i) through (ix) and (a)(2)(i) through (viii).

(2) If the special exception is for a new building to be located on the property of an existing religious institution, the Board may waive the standards (a)(1)(ix) and (a)(2)(vi).

(3) The Board must not grant any waiver as stated in Sections (c)(1) and (2) unless it finds that:

(i) Road access will be safe and adequate for the anticipated traffic to be generated;

(ii) Road access will not have a significantly adverse impact on the surrounding neighborhood; and

(iii) The grant of the waiver will not cause other significant adverse impacts on the surrounding neighborhood.

(4) In the agricultural zones, a special exception for a charitable or philanthropic institution may be granted only if it is for re-use of an existing building. Sec. 3.4.2.B.1.a. The Board may waive this restriction to approve a residential camp for seriously ill children and their immediate family members, operated or sponsored by a non-profit organization under the following conditions. Immediate family members may attend sessions jointly with or separate from the sessions attended by the children. Separate sessions for immediate family members are only permitted as a secondary camp activity. The camp may include facilities for overnight accommodations and for support services related to camp activities. The camp must be compatible with adjacent land uses.

(5) A charitable or philanthropic institution for which a petition was approved before May 6, 2002, is a conforming use. Any such special exception may be modified under Section 59-G-1.3(c), subject to the following conditions:

(i) Any expansion or enlargement must comply with the standards specified in Sections (a) and (b) above, except that, if the land area has not been enlarged, the board may waive the maximum lot size in agricultural zones or the FAR standard or the road frontage requirement stated in Sections (a)(1)(ii), (vi), (ix) and (a)(2)(iv), (vi) above in accordance with anticipated future expansion that has not been commenced or completed as of August 15, 1988, but that was expressly recognized in the conditions or record of the approved special exception.

(ii) In any zone where the special exception is no longer allowed, any amendment to the special exception must comply with the standards in the R-60 zone, as stated in Sections (a) and (b) above.

**Sec. 59-G-2.21.1. Family burial site. Sec. 3.5.4.A. Cemetery**

See section 59-G-2.12, “Cemeteries,” for applicable standards and requirements.

**Sec. 59-G-2.21.2. Farm machinery. Sec. 3.2.5. Farm supply, Machinery Sales, Storage, Service**

**Sales, storage, or service:** A special exception may be granted for an establishment selling, storing, or servicing farm machinery, subject to the following requirements:

- (a) The minimum area of the lot must be 5 acres. The board may require a larger area if warranted by the size and characteristics of the inventory. Sec. 3.2.5.B.1
- (b) The minimum setback from any property line must be 75 feet, except that the minimum setback from the street may be reduced to 50 feet if the board finds that: Sec. 3.2.5.B.2
  - (1) The site is in an agricultural rather than a residential zone; and
  - (2) The smaller setback would be compatible with surrounding uses.
- (c) The board may regulate hours of operation, numbers of vehicles and personnel employed and other on-site operations so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.3
- ~~(d) The property must front on and have direct access to a road built to primary or higher standards.~~
- (e) Adequate parking must be provided on site in accordance with the requirements for farm machinery and supply, as stated in article 59-E, Sec. 7.3.4 or Sec. 7.3.5
- (f) Adequate screening must be provided for all parking areas and all exterior areas devoted to on-site operations and storage of inventory and equipment so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.D.1.e and Sec. 7.5.7.
- (g) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. Sec. 8.3.1.D.1.h

**Sec. 59-G-2.21.3. Farm supply. Sec. 3.2.5. Farm supply, Machinery Sales, Storage, Service**

**Sales, storage, or service:** A special exception may be granted for an establishment selling, storing, or servicing farm supply materials, subject to the following requirements:

- (a) The minimum area of the lot must be ~~2-5~~ acres. Sec. 3.2.5.B.1
- (b) The minimum setback from any property line must be ~~50-75~~ feet, except that the minimum setback from the street may be reduced to ~~25-50~~ feet if the board finds that: Sec. 3.2.5.B.2
  - (1) The site is in an agricultural rather than a residential zone; and
  - (2) The smaller setback would be compatible with surrounding uses.
- (c) The board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.3
- ~~(d) The property must front on and have direct access to a road built to primary or higher standards.~~



(e) Adequate parking must be provided on site in accordance with the requirements for farm machinery and supply, as stated in article 59-E, [Sec. 7.3.4](#) or [Sec. 7.3.5](#)

(f) Adequate screening must be provided for all parking areas and all exterior areas devoted to on-site operations and storage of inventory and equipment, so as to prevent adverse impact on adjoining uses. [Sec. 8.3.1.D.1.e](#) and [Sec. 7.5.7](#).

(g) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. [Sec. 8.3.1.D.1.h](#)

(h) Provisions (a) and (b) above, apply only to petitions filed on or after March 25, 1986. A farm supply establishment which does not comply with these provisions and for which a petition was filed with the board prior to March 25, 1986, is not a nonconforming use and may be repaired or reconstructed to the dimensions that existed on March 25, 1986 in the event of a fire or other natural disaster.

Accordingly, such a special exception may be amended as provided in the modification provisions of section [59-G-1.3\(c\)](#).

**Sec. 59-G-2.21.4. Farm tenant mobile home. [Sec. 3.3.3.D. Farm tenant Dwelling \(not proposed in any zone as a Conditional Use\)](#)**

A special exception may be granted for 2 or 3 mobile homes for occupancy by tenants who are also agricultural workers actively engaged in farming on a full-time or part-time basis on the farm on which the farm tenant mobile homes are located. The mobile homes may be either single-wide or double-wide units and must comply with the following regulations: [Sec. 3.3.3.D.1.](#)

~~—(a) Each mobile home must comply with the definition of a “mobile (manufactured) home” stated in section [59-A-2.1](#).~~

~~—(b) The mobile home must comply with all relevant provisions of other chapters of the Montgomery County Code pertaining to dwelling units.~~

**Sec. 59-G-2.22. Fertilizer mixing plants. (dry mixing) [Sec. 3.6.4.B. Heavy Manufacturing and Production \(proposed as a ‘P’ where allowed\)](#)**

~~A fertilizer mixing plant may be allowed, upon a finding that such use will not affect adversely the use or development of the surrounding area.~~

**Sec. 59-G-2.23. Funeral parlor or undertaking establishment. [Sec. 3.5.4.C. Funeral Home, Undertaker](#)**

A funeral parlor or undertaking establishment may be allowed if the Board finds:

(a) The use is devoted to services typical to funeral parlor and undertaking establishment operations; however, the cremation of remains is expressly prohibited. [Sec. 3.5.4.C.2.a](#). A funeral parlor may include a dwelling or sleeping facilities either as a separate building or a portion of the main building to be occupied by the owner or an employee of the establishment. [Sec. 3.5.4.C.2.b](#).

(b) The property and building must conform to the following: [Sec. 3.5.4.C.2.c](#)

(1) Minimum lot area, for single-family residential zones: 2 acres; ~~for all other zones: 1 ½ acres.~~

(2) Minimum side yard setback, 50 feet each side.

(3) Minimum rear yard setback, 50 feet.

(4) Public water and sewer are available and must be used for the operation of the facilities, except in an Agricultural Zone. Where public water and sewer are not available, no chemicals may be used in burial preparation.

~~(5) The grounds and exterior of all buildings must be kept and maintained in conformity with the prevailing standards of the community.~~

(6) Frontage upon and access to a street or roadway having more than one through travel lane in each direction of travel.

(c) Any funeral parlor or undertaking establishment lawfully existing prior to March 13, 1989, is a conforming use and may be extended, enlarged, or modified by special exception subject to the provisions of this section.

**Sec. 59-G-2.24. Golf course and country club. Sec. 3.5.10.D. Golf Course, Country Club**

A golf course or country club must adhere to the following standards and requirements:

(a) The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed in connection with such use, Sec. 3.5.10.D.1 ~~provided the availability of such services is not reasonably expected to draw an excessive amount of traffic through local residential streets.~~

(b) All standards of the applicable zones must apply except:

(1) Maximum building coverage - 3% Sec. 3.5.10.D.2.a

(2) Minimum setback for a main building - 50 feet Sec. 3.5.10.D.2.b

(3) ~~The Board may waive the provisions of Sec. 59-C-1.326(a) regarding the location of accessory buildings.~~

(4) The site must have a minimum of 200 feet of frontage on a road of arterial or higher classification in a residential zone. Sec. 3.5.10.D.2.c

(c) All outdoor lighting must be located, shielded, landscaped or otherwise buffered so that no direct light intrudes into any residential area. Sec. 8.3.1.D.1.d

(d) All major outdoor activity areas, such as tennis courts, swimming pools, and golf course playing surfaces must be set back at least 100 feet from property lines adjoining a one-family residential use. The Board may reduce this setback where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use. Sec. 3.5.10.D.2.d

(e) Any golf course established by special exception before May 6, 2002 is a conforming use and may be modified in accordance with the special exception standards in effect at the time the modification is filed.

**Sec. 59-G-2.241. Golf Course in the RDT Zone. Sec. 3.5.10.D Golf Course, Country Club (grandfathered only)**

The Board may authorize a golf course with minor accessory uses such as a snack bar, a golf or pro shop for the incidental sale and service of golf equipment, a driving range, locker rooms, and other similar facilities including limited lodging for golfers and guests. The Board may not approve a golf course if any of the acreage is included as

part of the land needed to meet the dwelling unit density requirements in the RDT zone. In approving a golf course in the RDT Zone, the Board must find that the following requirements and standards can be met:

(a) The application for a golf course special exception was filed with the Board of Appeals prior to June 16, 1992.

(b) A golf course in the RDT Zone must not be located within 3 miles of any other golf course in the RDT Zone.

(c) A 200-foot open space or agricultural buffer must be maintained between a proposed golf course use and an abutting public road, an adjoining property that is actively farmed or adjoining property developed with other uses allowed in the RDT Zone.

(d) The maximum building height limit must not exceed 2 stories of 35 feet.

(e) All buildings and structures must be compatible with agricultural architecture.

(f) No outdoor lighting is permitted except for security and safety purposes. Any such lighting must be shielded so that direct light is not visible from any residence and would not adversely affect an adjoining road, highway, or other nearby use.

(g) Off-street parking must be provided in accordance with the provisions of Article 59-E. A golf course must provide at least 4 parking spaces per hole plus one space per employee.

(h) The Board must also find that:

(1) The use will not have an adverse impact on any neighboring use because of traffic, noise, number of patrons, level of activity, or environmental impact.

(2) Development is in accordance with Planning Board guidelines or other criteria for the protection of environmentally sensitive features including adjoining agricultural uses.

(i) Accessory lodging to accommodate golfers and guests may be allowed only under the following circumstances:

(1) use of the golf course and facilities associated with the golf course is limited to members of the golf course and invited guests of those members;

(2) lodging is available only to members of the golf course and invited guests of those members;

(3) not more than eight bedrooms are provided and not more than sixteen individuals are accommodated at any given time;

(4) the special exception holder maintain a record of all individuals who are provided lodging. Upon request, the special exception holder must provide a copy of the record to the Department or other County agency;

(5) a lodging facility must not exceed 11,000 square feet in floor area, including hallways, service areas, lobby and other space directly related or part of the lodging facility, and must be compatible with the rural character of the surrounding area and must be architecturally consistent with the rural character of the neighborhood and other existing structures on the golf course; and

(6) If the golf course is opened for play to the general public, lodging is no longer be permitted, and any structure previously approved for lodging may only be used in accordance with the special exception provisions of 59-G-2.241.

Any golf course in the RDT zone for which an application was filed before April 12, 1992 and subsequently approved by the Board of Appeals is a conforming use and may be modified in accordance with the provisions of this section.

**Sec. 59-G-2.25. Golf driving range. Sec. 3.5.10.G “Recreation and Entertainment Facility, Outdoor”  
(Capacity up to 1,000)**

~~A special exception may be granted for a golf driving range, including teaching and training facilities and the incidental sales and service of golf equipment. Where allowed in a commercial zone, it is subject to the requirements of the zone. Where allowed in a residential zone, it is subject to the following requirements:~~

~~—(a)—The minimum building setback from all property lines is 50 feet.~~

~~—(b)—The maximum building height is 15 feet.~~

~~—(c)—Berms may be required, if needed to screen the parking and tee-off areas from nearby residences or other uses.~~

~~—(d)—The Board has authority to regulate hours of operation and the level of activity.~~

~~—(e)—The Board must find that:~~

~~——(1)——The site is large enough to protect adjacent properties from errant golf shots and from visual and other potential impacts. The Board may consider the use of mitigation measures when making this determination.~~

~~——(2)——The property has direct access to a public road that:~~

~~———(A)——Is built to primary or higher standards;~~

~~———(B)——Is of sufficient width and capacity to accommodate the traffic generated by the golf driving range; and~~

~~———(C)——Provides safe access without detrimental impact on the adjoining neighborhood.~~

~~——(3)——Development is in accordance with planning board guidelines or other criteria for the protection of environmentally sensitive features.~~

~~—(f)—The Board must review the special exception every two years.~~

~~Conditions may be imposed by the Board of Appeals in accordance with §59-G-1.22.~~

**Sec. 59-G-2.25.1. Grain elevator. Sec. 3.2.2 Agricultural Processing**

A special exception may be granted for a grain elevator, subject to the following requirements:

(a) The minimum area of the lot must be ~~5-10~~ acres. Sec.3.2.2.B.1

(b) The minimum setback from any property line must be 75 feet. Sec.3.2.2.B.2

(c) The board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations so as to prevent adverse impact on adjoining uses. [Sec. 8.3.1.E.3](#)

(d) The property must front on and have direct access to a road built to primary or higher standards. [Sec.3.2.2.B.3](#)

(e) Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or a warehouse, as stated in [article 59-E](#), [Sec. 7.2.4](#) and [Sec. 7.2.5 Required Parking](#)

(f) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. [Sec. 8.3.1. D.h](#)

**Sec. 59-G-2.26. Group home, large. (def: 9-16) [Sec. 3.3.2.E.3. Residential Care facility \(9 to 16 persons\)](#)**

(a) **When allowed.** In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the Board of Appeals:

~~——(1) That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.~~

(2) That the site to be used as a group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.

(3) That off-street parking must be provided in the amount of one parking space for every 2 residents and one space for every 2 employees on the largest work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted. [\(Sec. Parking, Board discretion to increase amount required\)](#)

~~(b) **Decision to be expedited.** In order to expedite a decision regarding a proposed group residential facility, the Board must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.~~

**Sec. 59-G-2.26.1. Group picnic, catering and recreation facility. [Sec. 3.5.10.G. Recreation and Entertainment Facility, Outdoor \(Capacity up to 1,000 Persons\)](#) and [Sec. 3.5.10.H. Recreation and Entertainment Facility, Outdoor \(Capacity over 1,000 Persons\)](#)**

A special exception may be granted for a group picnic, catering, and recreation facility, subject to the following requirements:

- a. The site must be 80 acres or more in size;
- b. The maximum building height is 50 feet;
- c. Any structure or building must be set back from any property line a minimum of 50 feet;
- d. The site must have direct access to a public road that is built to primary or higher standards;
- e. Outdoor catering and recreational facilities must be located, landscaped or otherwise buffered so that the activities associated with the facilities will not constitute an intrusion into adjacent residential properties. The

facilities must be designed and sited to protect adjacent residential properties from objectionable impacts by providing adequate screening measures.

f. Off-street parking must be sufficient to accommodate the number of people participating in the events and adequately screened.

**Sec. 59-G-2.27. Heliport and helistop. Sec. 3.6.6.B. Helipad, Heliport**

~~—(a) **Purpose.** Private use and public use heliports/helistops may be allowed if found to be compatible with nearby existing and master planned land uses. Compatibility must include such factors as safety, noise and the impact of proposed flight paths on nearby existing and master planned land uses. The standards and requirements of this section are intended to prevent adverse effects on existing and master planned residential use or other noise sensitive land uses that could result from heliport/helistop operations.~~

~~Rotorcraft facilities shall be classified as either a public use or private use facility, and also classified as being either a heliport or helistop. It is further the intent of these regulations to encourage a small number of public use rotorcraft facilities to serve major employment centers, rather than to encourage a proliferation of private use facilities throughout the county.~~

(b) **Application.** All applications for heliport/helistop special exceptions must contain the following information:

(1) An aerial photograph showing the primary impact area, as defined in subsection (e), at a scale no less than one inch equals 400 feet showing the location of the proposed heliport/helistop; the approach and departure routes and altitudes within the primary impact area; the location of all residences, schools, churches, hospitals, and other areas used for the open assembly of people, and other noise sensitive uses that exist, have been approved for development, or are master planned within the primary impact area.

(2) A map showing the intended flight paths and altitudes within the secondary impact area, as defined in subsection (e). This map must indicate the proposed routes and altitude restrictions, if any, found to be acceptable by the Federal Aviation Administration.

(3) Information concerning the type of rotorcraft facility proposed (heliport/helistop); the nature of the use (public use/private use); type, weight and noise characteristics of rotorcraft that would use the facility; the proposed number of operations and approximate time of day that landings and departures would occur for each type of rotorcraft; and finally, the facility's proposed operating hours.

(4) A plan must be submitted for the Board's approval that contains the same information as required for the contents of a site plan which are enumerated in section 59-D-3.2. In addition, the plan must comply with all the heliport design guideline recommendations in the Federal Aviation Administration's Heliport Design Guide, Advisory Circular No. 150/5390-1B, dated August 22, 1977, and as subsequently amended. These guidelines are the minimum standards for the design and approval of a heliport/helistop plan. Exemptions to specific standards contained in the heliport design guide may be approved by the Board of Appeals, but only after receiving a recommendation for approval of the requested exemption from the Federal Aviation Administration.

(5) A detailed noise analysis showing how operations at the proposed heliport/helistop are designed both to minimize noise exposure and to comply with the noise compatibility criteria contained in subsection (e).

(6) For elevated facilities, an architectural drawing must be submitted which has been certified by a structural engineer licensed by the State of Maryland as demonstration that the structure will support the static and dynamic loads of rotorcraft proposed to use the facility, and that the fire safety regulations, as established in NFPA Publication #418, current edition, or any other regulations in effect at the time of application, have been satisfied.

(7) A copy of the “Notice of Landing Area Proposal,” a copy of the Federal Aviation Administration's response to the Notice of Landing Area Proposal, and a copy of the Air Space Determination from the Federal Aviation Administration must be submitted.

(8) In addition to the above requirements, the Board may require any additional information and analyses that may be relevant as the evidence of record and the public interest shall require.

~~(c) **Special requirements for public use heliport/helistop.** In addition to the information required in subsection (b), the following information is required for any public use heliport/helistop:~~

~~—(1)— A statement demonstrating the public need for the public use facility, in accordance with the requirements of section 59 G 1.25, title “County Need.”~~

~~—(2)— Information concerning the anticipated origin and destination of rotorcraft that would use the facility. The information should indicate any major employment centers to be served by the facility as well as a proposed schedule for commuter or other commercial operations.~~

~~—(d) **Special requirements for private use heliport/helistop.** In addition to the information required in subsection (b), an application for a private use heliport/helistop must provide information that demonstrates that the proposed rotorcraft facility will not have an adverse effect on the surrounding community which might preclude the approval of a planned public heliport/helistop because of an unacceptable increase in the ambient noise levels, as defined in subsection (e).~~

**(e) Noise standards.**

(1) **Impact areas.** All applications for heliports/helistops must provide noise analysis sufficient to make a finding of noise compatibility at noise-sensitive locations around the facility (hereafter called the primary impact area) and along and under the principal access routes (the secondary impact area). The primary impact area includes the rotorcraft facility and the area within 4000-foot radius from the helipad. The secondary impact area includes all areas in the county along and under the principal access routes to the rotorcraft facility excluding the primary impact area. [Sec. 3.6.6.B.2.a](#)

(2) **Noise analysis.** The heliport/helistop noise analysis must include a description of detailed operational procedures to minimize noise levels affecting sensitive land uses in both the primary and secondary impact areas (“fly neighborly” procedures). Based on use of these procedures and worst-day noise scenario with peak usage of the facility, projected rotorcraft noise levels<sup>1</sup> (in terms of day-night average sound level or DNL) must be developed using models approved for use by the Federal Aviation Administration (see FAA Advisory Circular 150/5020-2). This worst-day operational scenario becomes the maximum allowable limit for the type, weight and noise characteristics of the rotorcraft proposed to use the facility; proposed number of operations; and approximate time of day that landings and departures could occur. Public use facilities are allowed 10 days per calendar year with operations in excess of their maximum approved level, not to exceed a 20 percent increase in the number of approved operations, so long as the extra operations do not occur during the nighttime hours (10:00 p.m. to 7:00 a.m.) or other designated noise sensitive hours. [Sec. 3.6.6.B.2.b](#)

(3) **Noise standards.** Rotorcraft operations are considered noise compatible if ambient DNL noise levels at noise sensitive areas with rotorcraft operations (post-rotorcraft ambient noise levels) exceed pre-rotorcraft ambient DNL levels by one decibel or less. If rotorcraft operations already exist in the vicinity, the cumulative impact of all operations must be calculated to determine compliance. In accordance with the purpose clause, public-use facilities must be given preference over private use facilities in the allocation of noise capacity for rotorcraft operations. [Sec. 3.6.6.B.2.c](#)



In lieu of monitoring ambient conditions, the following noise-compatible land use planning goals for various land use types and densities must be used, as generally shown in the following table: [Sec. 3.6.6.B.2.d](#)

Maximum Compatible Sound Levels	
Land Use/Approximate Density Residential	Day/Night Average Sound Level (DNL) in A-Weighted Decibels
Rural (less than or equal to 1 unit per acre)	55 dBA
Suburban (2 units to 15 units per acre)	60 dBA
Urban (multi-family and high rise)	65 dBA

Based on this table and the compatibility standard of allowing only a one-decibel increase in the ambient levels, the following table designates maximum rotorcraft sound levels:

Maximum Rotorcraft Sound Levels	
Land Use/Approximate Density Residential	Rotorcraft Day/Night Average Sound Level (DNL)
Rural (less than or equal to 1 unit per acre)	49
Suburban (2 units to 15 units per acre)	54
Urban (multi-family and high rise)	59

In cases where ambient noise levels significantly differ from those in the Maximum Compatible Sound Levels Table, <sup>1</sup> measurements or modeling may be performed for the purposes of establishing compatibility standards appropriate to the ambient environment. Office, commercial and industrial land uses are generally considered to be noise-compatible land uses and will not be reviewed for noise impacts with the following two exceptions: (1) situations where it appears likely that workers will be subjected to noise levels in excess of  $LEQ_1 = 75$  dBA for an 8-hour period; (2) in CBD or Transit Station areas, where amenity spaces are provided, if it appears that noise impacts may be of such magnitude as to significantly reduce the usefulness or inhibit the proper function of these spaces for their intended purpose(s). In addition to the cumulative noise standards, the Board of Appeals may designate additional conditions for use in the public interest which may include, but not be limited to, restricting the number of rotorcraft operations, restricting the hours of operation of the facility, restricting operations of high noise generating rotorcraft during noise-sensitive hours, or any combinations thereof.

(4) **Noise standards for on-ground facilities.** All on-ground operations, with the exception of operations on the helipad, are subject to the standards of the Montgomery County Noise Control Ordinance, Chapter 31B, "Noise Control," Montgomery County Code, as amended. In particular, heliport maintenance operations must be subject to these standards. [Sec. 3.6.6.B.2.e](#)

~~—(f) **Action by the Board.** A helistop/heliport may be approved by the Board upon a finding that:~~

~~—(1) The helistop/heliport complies with the provisions of Division 59 G 1.~~

~~—(2) The helistop/heliport complies with the noise standards contained in subsection (e) of this section.~~

~~—(3)— The flight path(s) or routes proposed will minimize noise exposure to existing and master planned residential communities or other noise sensitive activities.~~

~~—(4)— A private use helistop/heliport will not be contrary to the public interest as specified in the purpose section for helistop/heliport special exception.~~

(g) **Time limits.** Permission to use a site for a private use helistop/heliport may be granted by the Board for a 5-year period or such shorter period as the Board may specify in granting the special exception. The special exception may be renewed by the Board for additional periods, not to exceed 5 years each, upon the same findings required for the initial approval by the Board. Sec. 3.6.6.B.2.f.

(h) **Monitoring operations.** Operators of approved heliports/ helistops must maintain an accurate log of all rotorcraft operations, specifying each operation that occurs including the type of rotorcraft and the date and time of the operation. This log must be available for inspection by the Department as part of any inspection of operations for special exceptions under Section 59-G-1.3. Failure to maintain the log or failure to make the log available to the Department as part of an inspection is a violation of the special exception approval. Sec. 3.6.6.B.2.g

#### **Sec. 59-G-2.28. Highway fuel and food service. Sec. 3.5.13.C. Fuel Sales**

(a) A Highway fuel and food service may be permitted on a minimum size lot of ~~50,000 sq.ft~~ 20,000 ft. upon a finding that:

(1) The requirements for an automobile filling station as set forth in 59-G-2.06 are satisfied;

~~—(2)— The requirements for a drive in restaurant as set forth in 59-G-2.16 are satisfied, if a drive in is proposed;~~

~~—(3)— The property has at least 100 feet of frontage on a road with an existing or master planned right of way of at least 120 feet; and~~

~~—(4)— The floor area of the food facility patron area is less than the floor area of the fuel facility patron area.~~

For a drive-thru facility, use standards of Sec.3.5.14.D would apply

#### **Sec. 59-G-2.29. Home occupation, major. Sec. 3.3.3.F.5 Home Occupation (Major Impact) and Sec. 3.3.3.E.4. Home Health Practitioner (Major Impact)**

The use of a dwelling for a major home occupation, including a professional or home health practitioner's office that is not in accordance with Sections 59-A-3.4 and 59-A-6.1, may be allowed, subject to the following provisions:

(a) The use must be clearly subordinate to the use of the dwelling for residential purposes. The amount of floor area used for the major home occupation must not exceed 33 percent or 1,500 square feet, whichever is less, of the total floor area of the dwelling unit and any existing accessory building on the same lot or parcel. Sec. 3.3.3.F.b.iv. & Sec. 3.3.3.E.2.b.iv. ~~Any enlargement of the total floor area resulting from construction completed on or after the date of application for the special exception or within 18 months immediately preceding the application must be excluded from the total floor area on which this calculation is based.~~

(b) The use must be conducted within the dwelling unit or any existing accessory building and not in any open yard area of the lot or parcel on which the dwelling is located. Sec. 3.3.3.E.2.b.ii & Sec. 3.3.3.F.2.ii. Exterior storage of goods or equipment is not permitted. Sec. 3.3.3.E.2.b.iii & Sec. 3.3.3.F.2.b.iii. ~~No separate detached building may be constructed on the lot or parcel for the express purpose of specifically operating the home occupation.~~ No more than one existing accessory building may be used for this purpose. Sec. 3.3.3.E.2.b.v. & Sec.

~~3.3.3.F.2.b.v. The use may, however, involve off site activities such as sales, client contact and other matters related to the home occupation.~~

(c) The Board may grant a special exception for a major home occupation on the same property as a registered home occupation, if it finds that both together can be operated in accordance with the provisions of this section and Section 59-G-1.2, title “Conditions for Granting.” The Board must not grant a special exception for more than one major home occupation on the same property or approve such a use if the property is also approved for a different special exception in accordance with this Division 59-G-2. Sec. 3.3.3.E.4.b.iv-vi. & Sec. 3.3.3.F.4.b.vii-ix

(d) The home occupation office must be conducted only by members of the family, as defined in Section 59-A-2.1, residing in the dwelling and a maximum of 2 nonresident employees or associates to be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic. Sec. 3.3.3.F.5.b.i The Board may allow more than 2 nonresident employees for a health practitioner's practice; however, no nonresident health practitioner is allowed. Sec. 3.3.3.E.4.a. ~~In any case where customers, clients or patients visit the dwelling, there must be no more than 2 resident operators of the home occupation or 2 resident health practitioners or other professionals practicing in the dwelling; abuse of this exemption may lead to revocation of the Certificate of Registration.~~

(e) Clients, customers, patients or other visitors in connection with the home occupation must visit by appointment only. Sec. 3.3.3.E.4.b.i. The Board may specify the hours during which they may visit and may limit the number of clients, customers, patients, or other visitors during those periods. An indoor waiting room must be provided. In the case of a home health practitioner, as defined in Section 59-A-2.1, emergency patients may visit outside the specified hours or without appointment; Sec. 3.3.3.E.2.b.x. ~~abuse of this exemption may lead to revocation of the special exception.~~

(f) No equipment or process that creates noise, vibration, glare, fumes, odors or electrical or electronic interference detectable at or beyond the lot line is allowed as part of the special exception activity, Sec. 8.3.1.D.1.f nor is it allowed to involve use, storage or disposal of:

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

(2) Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated as provided in Maryland State Laws and Regulations. Sec. 3.3.3.E.2.viii, Sec 3.3.3.F.2.viii

(g) The only allowable equipment or facilities are those needed for:

(1) Domestic or household purposes;

(2) General office purposes, such as but not limited to a personal computer, calculator, word processor, or typewriter; or

(3) Art or handicraft equipment, such as but not limited to a hand loom, spinning wheel, kiln, or woodworking tools. Sec 3.3.3.F.2.vi

(4) In the case of a home health practitioner, as defined in Section 59-A-2.1, medical equipment may also be used, subject to the provisions of Paragraph (f), above. Sec 3.3.3.E.2.b.vi.

(h) The sale of goods on the premises is prohibited, except for:

(1) The products of dressmaking, hand-weaving, block-printing, the making of jewelry, pottery or musical instruments by hand, or similar arts or handicrafts performed by a resident of the dwelling; or

(2) No more than 5 sales per month of items customarily ordered for delivery to customers at off-site locations. [Sec 3.3.3.F.5.b.iv](#)

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

(1) Such handmade items as are enumerated in paragraph (h)(1) above; or

(2) Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery. [Sec 3.3.3.F.5.b.v](#)

The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited. [Sec 3.3.3.F.2.xi](#)

(j) Except as provided in Paragraph (2), off-street parking must be provided on-site in accordance with the relevant provisions of [Article 59-E](#), as follows:

(1) For a home health practitioner, the Board may require the number of spaces specified in Section [59-E-3.7](#) for “office, medical practitioner.” Alternatively, and for any other use encompassed by this Section [59-G-2.29](#), there must be one parking space for each nonresident employee or associate plus one parking space for every client or customer allowed by the conditions of the special exception to visit in any one-hour period. These spaces must be in addition to the number of spaces required for the residential use of the property. [Sec. 7.2.4.D](#)

(2) In determining the necessary amount of on-site parking, the Board may take into account the availability of on-street parking spaces, but on-street parking must not be allowed in connection with the home occupation or professional office if it will have an adverse impact on neighboring residences. [Sec. 7.3.4 or Sec. 7.3.5.](#)

(3) Screening must be provided in accordance with Section [59-E-2.83](#). The required spaces must be located in the side or rear yard, except that the Board may approve parking in a driveway traversing the front yard if it finds that there is inadequate space for the parking or necessary screening in the side or rear yard, and the front-yard driveway can be screened in accordance with Section [59-E-2.83](#) [Sec. 7.2.6.L \(with modification\)](#). If an applicant can establish, to the satisfaction of the Board, that a front-yard parking area was constructed prior to February 5, 1990, in order to satisfy the parking requirements for a residential professional office as a permitted use, the Board may waive the requirement for side or rear yard parking if it finds that such action will not have an adverse impact on neighboring residences.

(k) In the Residential One-Family Zones regulated by Section [59-C-1.3](#) and in recorded residential subdivisions in the Agricultural Zones regulated by Division [59-C-9](#), any commercial vehicle that is parked or garaged on-site in connection with the home occupation must comply with the regulations for commercial vehicles in Section [59-C-1.31](#). [Sec. 7.2.6.P. Commercial Vehicle Parking for Properties with a Residential Use](#) In the Townhouse and Multiple-Family Zones regulated by Sections [59-C-1.7](#) and [59-C-2.3](#), respectively, one light commercial vehicle may be parked on-site in connection with the home occupation, if parked in a garage.

~~—(l) The Board may restrict deliveries by truck in volume and frequency and may limit them to~~ deliveries by public or private services that also deliver to private homes [only](#).

(m) Reserved.

(n) A special exception for a major home occupation is granted for a two-year period, and the special exception may be renewed if it is operated in compliance with the findings and conditions of the Board in the initial grant and satisfies Section [59-G-1.3](#). [Sec 3.3.4.E.4.b.vii and Sec 3.3.4.F.5.b.xi](#)

(1) The Hearing Examiner must provide written notice 60 days before an upcoming renewal date to each holder of a renewable special exception, with instructions to submit a renewal application and request an inspection

by the Department of Permitting Services, if the holder of the special exception wishes to renew for two more years. The special exception continues in effect until: [Sec. 8.3.1.F.5](#)

- (A) the Hearing Examiner has provided written notice of the renewal date;
- (B) renewal has been granted or denied, or the special exception holder has declined to renew the special exception; or
- (C) the holder of the special exception has failed to respond to the notice of renewal before the special exception expires.

(2) If the special exception holder declines to renew, notice of the consequent expiration of the special exception must be sent by regular mail to the special exception holder, the land owner, and all other persons entitled to notice.

(3) If the holder of the special exception does not reply to notification of the renewal date within 30 days after the notice was mailed, a second notice must be sent to the special exception holder and the land owner by certified mail, stating the date on which the special exception will expire if a renewal application is not received. If no reply to the second notice is received, the Hearing Examiner must issue an Order stating that the special exception has expired. The Order must be sent to the special exception holder and the land owner by certified mail and to all other persons entitled to notice of the special exception by regular mail.

(4) Upon receipt of an application for renewal, the Hearing Examiner must issue notice of a public hearing. The Hearing Examiner must conduct this public hearing at least 30 days after notice is sent to all parties entitled to notice of the original special exception hearing. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the special exception is in compliance with the applicable provisions of this Chapter and conditions established by the Board of Appeals, and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.

(5) If a special exception holder requests modification of the terms and conditions of the special exception in conjunction with a renewal request, the Hearing Examiner may make a decision on the requested modification as part of the decision on the renewal, without a public hearing, if the Hearing Examiner finds that:

- (A) the modification does not substantially alter the nature, character, intensity of use, or the conditions of the original grant; and
- (B) the parties entitled to notice are given an opportunity to request a hearing and fail to do so.

(6) If the Hearing Examiner finds that the requested modification represents a significant change that would not substantially alter the nature, character, intensity of use, or the conditions of the original grant, the Hearing Examiner may make a decision on the modification and the renewal only after a public hearing convened with proper notice.

(o) In those zones where a professional office for a resident of a dwelling was permitted by right prior to February 5, 1990, and if a use-and-occupancy permit for the professional office was issued prior to February 5, 1990, the office may be continued as a nonconforming use, as provided in Division 59-G-4. (See Section [59-C-1.31](#), [59-C-2.3](#) or [59-C-9.3](#).)

#### **Sec. 59-G-2.30. Nursery, horticultural retail. [Sec. 3.2.7.A. Nursery, Retail](#)**

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors [Sec.8.3.1](#). ~~It is not uncommon for this use to be proposed in combination with a wholesale horticultural nursery, a~~

~~landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.~~

- (1) The sale of the following materials and equipment directly related to residential gardening is allowed:
  - (i) Plants, trees, shrubs, seeds, and bulbs, whether or not grown or produced on site;
  - (ii) Fertilizers, plant foods, and pesticides; and
  - (iii) Hand tools, hand spraying, and watering equipment. [Sec. 3.2.7.A.1](#)
- (2) The incidental sale of seasonal items may also be allowed. [Sec. 3.2.7.A.2.e](#)
- (3) The following restrictions on operations apply:
  - (i) Tools and equipment for sale must not be displayed outdoors. [Sec. 3.2.7.A.2.d](#)
  - (ii) The sale of general hardware or power equipment is not allowed. [Sec. 3.2.7.A.2.f](#)
  - (iii) The board may limit hours of operation and number of employees to prevent adverse impact on adjoining uses. [Sec. 8.3.1 E.3](#)
  - (iv) The manufacture of mulch, other than by composting of plant material, is not allowed. [Sec. 3.2.7.A.2.g](#)
- (4) Location and development standards are as follows:
  - (i) The minimum area of the lot is 2 acres. [Sec. 3.2.7.A.2.a](#)
  - (ii) The minimum building setback from any property line is 50 feet. [Sec. 3.2.7.A.2.b](#)
  - (iii) Adequate parking must be provided on site in accordance with the requirements for general retail sales under [Article 59-E](#). [Sec. 7.2.4](#) and [Sec. 7.2.5](#)
  - (iv) The property must front on and have direct access to a public road built to primary or higher standards, ~~with the possible exception of properties in the Rural, Rural Cluster, and Rural Density Transfer zones.~~ In the Rural, Rural Cluster, and Rural Density Transfer zones, frontage on and access to a public road built to primary or higher standard is not required if the Board makes the following findings:
    - Road access will be safe and adequate for the anticipated traffic to be generated; and
    - The use at this location will not be an intrusion into an established residential neighborhood. [Sec. 3.2.7.A.2.c](#)

These requirements apply only to petitions filed on or after March 25, 1986. A nursery or commercial greenhouse special exception for which a petition was filed with the Board prior to March 25, 1986, is a conforming use and may be amended in accordance with the modification provision of Section [59-G-1.3\(c\)](#).

- (5) Any retail nursery or garden center established as a permitted use before October 22, 1985, and any retail nursery established pursuant to a building permit application filed before October 22, 1985, is not required to obtain a special exception, except for any future expansion or diversification beyond the scope of paragraphs (1) and (2).

**Sec. 59-G-2.30.0. Nursery, horticultural - wholesale. [Sec. 3.2.7.B “Nursery, Wholesale”](#)**

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. Sec. 8.3.1.D.1

~~It is not uncommon for this use to be proposed in combination with a retail horticultural nursery, a landscape contractor, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board's opinion must specify which combination of uses is approved for the specified location.~~

(1) Plants, trees, shrubs, seeds, and bulbs may be grown or produced and sold on a wholesale basis. Sec. 3.2.7.B.1

(2) Fertilizers, plant foods, and pesticides must not be produced but may be stocked and sold on a wholesale basis. 3.2.7.B.1

~~(3) The following activities are not allowed unless the Board has also approved a retail nursery or garden center under Section 50-G-2.30(1):~~

~~—(i) The sale or storage of any equipment other than equipment needed in the operation of the nursery or greenhouse.~~

~~—(ii) The retail sale of plant materials or garden supplies or equipment.~~

(4) The minimum area of the lot is 2 acres. 3.2.7.B.2.a

(5) The minimum building setback from any property line is 50 feet. 3.2.7.B.2.b

(6) Parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse in Article 59-E, Sec. 7.2.4 or Sec. 7.2.5.

(7) Adequate screening and buffering must be provided for all parking areas and other on-site operations having a potentially adverse impact on adjoining residential or agricultural uses. Sec. 8.3.1.D.1.e and Sec. 7.5.7

(8) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. Sec. 8.3.1.D.1.h

#### **Sec. 59-G-2.30.00. Landscape contractor. Sec. 3.5.5. Landscape Contractor**

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. Sec. 8.3.1.D.1

~~It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery, or a mulch/compost manufacturing operation. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.~~

(1) The minimum area of the lot must be 2 acres if there are any on-site operations, ~~including parking or loading of trucks or equipment.~~ Sec. 3.5.5.B.1

(2) Areas for parking and loading of trucks and equipment as well as other on-site operations must be located a minimum of 50 feet from any property line. Sec. 3.5.5.B.2 Adequate screening and buffering to protect adjoining



uses from noise, dust, odors, and other objectionable effects of operations must be provided for such areas.

[Sec.8.3.1.D.e and Sec. 7.5.7](#)

(3) The number of motor vehicles and trailers for equipment and supplies operated in connection with the contracting business or parked on site must be limited by the Board so as to preclude an adverse impact on adjoining uses. Adequate parking must be provided on site for the total number of vehicles and trailers permitted. [Sec. 3.5.5.B.3](#)

(4) No sale of plant materials or garden supplies or equipment is permitted unless the contracting business is operated in conjunction with a retail or wholesale nursery or greenhouse. [Sec. 3.5.5.B.4](#)

(5) The Board may regulate hours of operation and other on-site operations so as to prevent adverse impact on adjoining uses. [Sec. 8.3.1.E.3](#)

(6) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessary need to be controlled as stringently as the impact of a special exception in the residential zones. [Sec. 3.5.5.B.6](#)

#### **Sec. 59-G-2.30.000. Manufacture of mulch and composting. [Sec. 3.2.2. Agricultural Processing](#)**

This use may be allowed together with incidental buildings upon a finding by the Board of Appeals that the use will not constitute a nuisance because of traffic, noise, hours of operation, number of employees, or other factors. [Sec. 8.3.1.D.1.](#) ~~It is not uncommon for this use to be proposed in combination with a wholesale or retail horticultural nursery or a landscape contractor. If a combination of these uses is proposed, the Board opinion must specify which combination of uses is approved for the specified location.~~

(1) The minimum area of the lot must be ~~105~~ acres.

(2) The operating ~~area as well as areas for parking and loading~~ must be a minimum of ~~50-75~~ feet from any property line [Sec. 3.2.2. B.2](#) and adequately enclosed, screened, and buffered, or otherwise constructed or arranged so as to protect adjoining uses from noise, dust, odors, and other objectionable impacts. [Sec. 8.3.1.D.e and Sec. 7.5.7](#)

(3) The Board may regulate the hours of operation so as to prevent any adverse impact on adjoining uses. [Sec. 8.3.1.E.3](#)

(4) The Board may limit the number of motor vehicles operated in connection with the business or parked on the site so as to preclude an adverse impact on adjoining uses. [Sec. 8.3.1.E.3](#)

Adequate parking must be provided on site for the total number of vehicles permitted; and must not be less than required for an industrial or manufacturing establishment or warehouse, under [Article 59-E, Sec. 7.2.4 or Sec. 7.2.5](#)

(5) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. [Sec. 8.3.1.D.1.h](#)

#### **Sec. 59-G-2.30.1. Hospice care facility. [Sec. 3.3.5.E. Residential Care Facility](#)**

A hospice care facility may be allowed if the Board finds:

(1) That such use will not constitute a nuisance because of the number of residents, noise, vehicle traffic or parking, or other physical activity; [Sec. 8.3.1.D.1](#)



(2) That the applicant possesses a valid certificate to operate a freestanding hospice care facility issued by the secretary of the Maryland Department of Health and Mental Hygiene; and [Sec. 3.3.5.E.b](#)

~~—(3)— That any property to be used as a hospice care facility is of sufficient size to accommodate the proposed number of residents and staff.~~

#### **Sec. 59-G-2.31. Hospitals. [Sec. 3.4.6. Hospital](#)**

A hospital or sanitarium building may be allowed if the Board finds that it will not create a nuisance because of traffic, noise, or the number of patients or persons cared for; that it will not affect adversely the present character or future development of the surrounding residential community; [Sec. 3.4.6.B.1.](#) and if the lot, parcel, or tract of land on which the buildings to be used are located conforms to the following minimum requirements; except that, in the C-2 and C-O zones, the minimum area and frontage requirements do not apply:

(1) **Minimum area.** Total area, 5 acres. [Sec. 3.4.6.B.2](#)

(2) **Minimum frontage.** Frontage, 200 feet. [Sec. 3.4.6.B.3](#)

(3) **Setback.** No portion of a building shall be nearer to the lot line than a distance equal to the height of that portion of the building, where the adjoining or nearest adjacent land is zoned single-family detached residential or is used solely for single-family detached residences, and in all other cases not less than 50 feet from a lot line. [Sec. 3.4.6.B.4](#)

(4) **Off-street parking.** Off-street parking shall be located so as to achieve a maximum of coordination between the proposed development and the surrounding uses and a maximum of safety, convenience and amenity for the residents of neighboring areas. [Sec. 3.4.6.B.5](#)

Parking shall be limited to a minimum in the front yard. [Sec. 3.4.6.B.6](#) ~~Subject to prior board approval, a hospital may charge a reasonable fee for the use of off street parking. Green area shall be located so as to maximize landscaping features, screening for the residents of neighboring areas and to achieve a general effect of openness.~~

~~—(5)— **Commission recommendation.** The board or the applicant shall request a recommendation from the commission with respect to a site plan, submitted by the applicant, achieving and conforming to the objectives and requirements of this subsection for off street parking and green area.~~

(6) **Building height limit.** Building height limit, 145 feet. [Sec. 3.4.6.B.7](#)

#### **Sec. 59-G-2.32. Hospital, veterinary. [Sec. 3.5.1.C. Veterinary Office/Hospital](#)**

(a) In any commercial, central business district or transit station zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements: [Sec. 3.5.1.C.2.b.ii.](#)

(1) There must be no runs, exercise yards, or other facilities for the keeping of animals in any exterior space.

(2) All areas for the keeping of animals must be soundproofed.

(b) In any residential or rural zone where permitted by special exception, a veterinary hospital must comply with the following conditions and requirements: [Sec. 3.5.1.C.2.b.i\(a\)](#)

(1) In the R-150, R-90, and R-60 zone, the ~~maximum-minimum~~ lot size is one-half acre. In the R-60 zone a veterinary hospital must be located along a major highway with an existing right-of-way width of no less than 90 feet, and be adjacent to or confronting a central business district or a property zoned for commercial use.

(2) Exterior areas used to exercise, walk, or keep animals must be set back from any property line ~~200-75~~ feet and screened from adjacent residential properties. All exterior exercise areas and runs must be fenced for the safe confinement of animals.

(3) For all buildings in which animals will be present, ~~sound levels emanating from the interior of the building must satisfy Chapter 31B as measured at the property line maximum expected interior sound levels must be reduced to 40 dBA (A-weighted decibels) outside, measured at ten feet from the structure. Sec. 3.5.1.C.2.b.i(h)~~

(4) All buildings and accessory structures must be set back from any property line a minimum of 50 feet. Sec. 3.5.1.C.2.b.i(g)

(5) No animal may be outdoors between ~~6 p.m. and 8 a.m.~~ 9pm-7am. Sec. 3.5.1.C.2.b.i(d)

(6) ~~On weekdays, the sound at the nearest receiving property line must not exceed 60 dBA. Sec. 3.5.1.C.2.b.i(f) between the hours of 8 a.m. to 6 p.m. and 50 dBA between the hours of 6 p.m. to 8 a.m. On Saturdays, Sundays, and federal holidays, the sound at the nearest receiving property line must not exceed 60 dBA between the hours of 9 a.m. to 6 p.m. and 50 dBA between 6 p.m. and 9 a.m. Terms are defined in accordance with the Montgomery County Noise Ordinance (Chapter 31B of the Montgomery County Code). In any event, the predicted maximum receiving property line sound levels must not exceed the characteristic ambient sound levels by more than 3 dBA at any time.~~

(7) Dogs must not be walked or exercised in outdoor areas that are off-site. Sec. 3.5.1.C.2.b.i(e)

(8) In addition to the submittal requirements in Sec. 59-A-4.22, the applicant must submit the following information. ~~Applications submitted without this information are incomplete and will not be accepted or assigned a case number. Sec. 3.5.1.C.2.b.i(n)~~

(i) acoustical engineering studies that demonstrate that the proposed use meets the standards in Sec. 59-G-2.02(b)(3) and (6) above. The studies must show the worst scenario sound level. The statement of operations must be sufficiently detailed to allow determination of how often the worst scenario sound level occurs.

(ii) detailed floor plans that show all the interior areas and their use designations,

(iii) site plans that show the layout of all exterior areas used to exercise, walk, or keep animals.

(9) The Board must specify a minimum number of off-street parking spaces, taking into consideration the number of employees on the maximum shift, the number of doctors practicing simultaneously, and the number of appointments and deliveries. This number must in no case be less than 5. Sec. 7.2.4.D & Sec. 7.2.5.E

(10) The Board may regulate the number of animals that may be boarded, exercised, walked, or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked, or kept. Sec. 3.5.1.C.2.b.i(k)

(11) The Board may regulate the office hours and the number of appointments. Animals may be seen by appointment only. Emergency patients and visits to pick up prescriptions and pet-related items may also occur, within office hours only and without prior scheduling; abuse of this exemption may lead to revocation of the special exception. A written log of all appointments and drop-in and emergency client activities must be kept, to be available for inspection by County authorities. Sec. 3.5.1.C.2.b.i(l)

(12) Any accessory operation, such as grooming or the sale of pet food and supplies, must be set forth in the statement of operations and must be limited as an accessory activity to a percentage of sales not to exceed 20%. Sec. 3.5.1.C.2.b.i(j)

(13) All litter and animal waste must be contained and controlled on the site. Sec. 3.5.1.C.2.b.i(i)

(14) Animals may be kept overnight at the hospital only for medical purposes. Sec. 3.5.1.C.1. ~~If animals are kept for non-medical purposes, a separate application for an animal boarding place must be approved.~~

(15) If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect. Sec. 3.5.1.C.2.b.i(m)

(c) Any veterinary hospital lawfully existing prior to the effective date of this ordinance is a conforming use, and may be extended, enlarged or modified by special exception subject to the provisions set forth in this section.

**Sec. 59-G-2.33. Hotels and motels. Sec. 3.5.6.C. Hotel, Motel (not proposed in any zone as a Conditional Use)**

~~A hotel, motel or inn may be allowed; provided, that all the requirements imposed in the zone are met; and provided further, that special conditions, such as for additional fencing and/or planting or other landscaping, additional setback from property lines, location and arrangement of lighting and other reasonable requirements deemed necessary to safeguard the general community interest and welfare may be invoked by the board as requisites to the grant of special exception.~~ An apartment hotel lawfully existing prior to April 26, 1966, may be allowed to increase the number of its guest rooms to more than 20 percent, but not above 45 percent of its total dwelling units in accordance with the requirements of this chapter, including those standards of this section which may reasonably be applied to an existing facility. Such an apartment-hotel is not required to maintain any guest rooms.

**Sec. 59-G-2.34. Reserved.**

~~—Editor's note Section 59-G-2.34, relating to rural resort hotels, was repealed by Ord. No. 10-69, § 9.~~

**Sec. 59-G-2.35. Housing and related facilities for senior adults and persons with disabilities Sec. 3.3.2.C. Independent Living Facility for Seniors or Persons with Disabilities**

A special exception may be granted for housing and related facilities for senior adults or persons with disabilities, subject to the following provisions:

(a) Prerequisites for granting:

(1) A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Sec. 3.3.2.C.2.b.iii Income levels are defined as follows:

(A) "MPDU income" is the income limit determined by the Department of Housing and Community Affairs in the administration of the moderately priced dwelling unit (MPDU) program, as prescribed by Chapter 25A.

(B) "Low income" is income at or below 60 percent of the area median income adjusted for household size.

(C) "Very low income" is income at or below 50 percent of the area median income adjusted for household size.

(D) “Area median income” is as determined annually by the U.S. Department of Housing and Urban Development. [Sec. 1.5.1. Definitions](#)

(2) The site or the proposed facility has adequate accessibility to or provides on site public transportation, medical service, shopping areas, recreational and other community services frequently desired by senior adults or persons with disabilities. [Sec. 3.3.2.C.2.b.i](#)

~~—(3) The site or the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.~~

(b) Occupancy of a dwelling unit is restricted to the following: [Sec. 3.3.2.C.2.a.iii](#)

(1) A senior adult or person with disabilities, as defined in Section [59-A-2.1](#);

(2) The spouse of a senior or disabled resident, regardless of age or disability;

(3) A resident care-giver, if needed to assist a senior or disabled resident; or

(4) In a development designed primarily for persons with disabilities rather than senior adults, the parent, daughter, son, sister or brother of a handicapped resident, regardless of age or disability.

Additional Occupancy Provisions are:

(5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal “Fair Housing Act,” Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, “familial status” refers to discrimination against families with children.)

(6) Resident staff necessary for operation of the facility are also allowed to live on site. [Sec. 3.3.2.C.2.a.ii](#)

(c) Development standards, other than density, in residential zones where allowed by special exception:

(1) Minimum setbacks:

(A) From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified by the zone applies. [Sec. 3.3.2. C.2.b.vi](#)

(B) From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater. [Sec. 3.3.2. C.2.b.vii](#)

(2) Maximum building height: four stories or the height of the applicable zone, whichever is less. Additional height up to six stories is permitted if the additional height is in conformity with the general character of the neighborhood considering population density, design, scale and bulk of the proposed building, traffic and parking conditions. [3.3.2. C.2.b.v](#)

(3) Maximum lot coverage: As specified by the relevant zone.

(4) Minimum green area: [3.3.2. C.2.b.viii](#)

(A) R-60, R-90, and the RT Zones: 50 percent

(B) R-150 and R-200 Zones: 60 percent

(C) RE-1, RE-2, and RE-2C Zone: 70 percent, except where the minimum green area requirement is established in an approved and adopted master plan.

The Board may reduce the green area requirement by up to 15% if it is necessary to accommodate a lower building height for compatibility reasons.

~~—(d)—Development standards, other than density, in the R-30, R-20, R-10 and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that the lot coverage and building setbacks may be modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.~~

~~(e)—Maximum density:~~

~~—In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-40, RT-6, RT-8, RT-10, and RT-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the development standards by Paragraph (e) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, title “Housing Standards,” of this Code, as amended.~~

(f) Parking and loading:

Parking must be provided in accordance with the provisions of Section 59-E-3.7 and Section E-2.83. The Board must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident senior adults or persons with disabilities. When considering the need for additional parking, the Board may consider the availability of nearby public or private parking facilities. Div 7.2

(g) Additional provisions:

(1) One or more of the following ancillary facilities and services may be included to serve the residents and possibly nonresident senior adults or persons with disabilities. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized. Sec. 3.3.2.C.2.b.ii

(A) Provision for on-site meal service; Sec. 3.3.2.C.1

(B) Medical or therapy facilities or space for mobile medical or therapy services;

(C) Nursing care;

(D) Personal care services;

(E) Day care for senior adults or persons with disabilities;

(F) On-site facilities for recreation, hobbies or similar activities; or

(G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.

(2) Retail facilities may be included to serve exclusively the residents of the building. Sec. 3.3.2.C.2.b.ii

(3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical and public services within a one-mile radius of the proposed facility. [Sec. 3.3.2.C.2.b.i](#)

(4) Construction is subject to all applicable Federal, State and County licenses or certificates. [Sec. 3.3.2.C.2.a.i](#)

**(h) Provisions governing facilities approved prior to March 7, 1990:**

(1) A housing facility for senior adults or persons with disabilities existing before May 6, 2002, is a conforming use and structure, and may be continued in accordance with the terms and conditions of the special exception grant. Modifications may be approved that are in compliance with the special exception standards in effect at the time the modification is filed. If damaged, the facility may be rebuilt, repaired or reconstructed as it existed on May 6, 2002.

(2) A housing facility for senior adults or persons with disabilities existing on March 7, 1990, or for which a petition was approved prior to March 7, 1990, located on property containing at least 85 acres of land, may be extended, enlarged, or modified in accordance with the special exception standards in effect prior to March 7, 1990.

**Sec. 59-G-2.35.1. Life care (continuing care) facility. [3.3.2.E.3. Residential Care Facility \(Over 16 persons\)](#)**

A special exception may be granted for a life care (continuing care) facility, provided:

(a) The applicant has filed with the Maryland Office on Aging a Letter of Intent to provide continuing care, as provided in Article 70B of the Annotated Code of Maryland, as amended. [Sec. 3.3.2.E.1.b](#)

(b) Prior to construction, the applicant has obtained the following approvals from the appropriate State agencies: (not applicable to any special exception converted to a life care facility before May 6, 2002)

(1) A Final Certificate of Registration for a continuing care facility from the Maryland Office on Aging, in accordance with Article 70B and the applicable Maryland Regulations. [Sec. 3.3.2.E.1.b](#)

(2) An exemption from a Certificate of Need for a health care facility from the Maryland Health Resources Planning Commission (MHRPC), in accordance with the applicable sections of Article 19, title "Health Care Facilities." [Sec. 3.3.2.E.1.b](#)

~~—(c) The contract between the operator of the facility and a resident as well as the entrance fee or deposit and periodic service charges paid by the resident are structured to provide the resident with a continuity of residential occupancy and health care, potentially for life:~~ (not applicable to any special exception converted to a life care facility before May 6, 2002)

(d) Occupancy of the dwelling units is restricted to persons ~~62~~55 years of age or older, with the following exceptions: [Sec. 3.3.2.E.4.b.vi](#)

(1) The spouse of a resident, regardless of age; or

(2) Another relative of a resident, 50 years of age or older.

If a resident dies while residing at the life care facility, the resident widow, widower or other surviving relative may be allowed to remain even though he or she has not reached the age of 62. Resident staff necessary for operation of the facility are also allowed to live on site. At least 80 percent of the dwelling units must be occupied by at least one person per unit who is 55 years of age or older.

~~(e) The facility must include the following:~~

~~—— (1) Dwelling units for independent or assisted living, or both. “Assisted living” is defined as providing meals plus other services to persons who may need some supervision or assistance in the activities of daily living but who do not need hospital or nursing care.~~

~~—— (2) A nursing home for the care of residents of the life care facility. If allowed by the terms of the exemption issued by the MHRPC (see Paragraph (b)(2), above), the nursing home may serve nonresidents for the first 5 years after the facility opens for occupancy. At the end of that 5 year period, occupancy of the nursing home must be restricted to residents of the life care facility, unless the Board makes a finding at that time that such a restriction would cause an undue hardship in terms of adequate patient care or financial feasibility, and the MHRPC agrees not to impose the restriction.~~

(f) The facilities may provide ancillary services and facilities, such as but not limited to transportation, a common dining room and kitchen, recreation area, meeting or activity rooms, library, chapel, convenience commercial area, or other services and facilities for the enjoyment, service or care of the residents. Such facilities must be conveniently located in relation to the remainder of the development, particularly the dwelling units; they must not be externally advertised. The Board may restrict their use to residents and staff only. Sec. 3.3.2.E.4.b.i.

(g) Development standards:

(1) Maximum residential density: 15 units per acre of gross tract area, with the following exceptions: Sec. 3.3.2.E.4.b.i.

(A) If the zone in which the facility is located permits a higher density, the maximum density of that zone applies, ~~subject to the optional provisions for moderately priced dwelling units included in accordance with Chapter 25A of this Code, as amended.~~

~~(B) If the facility is located in a P-D, Planned Development Zone, the applicable standard is that for housing for senior adults or persons with disabilities, as stated in Paragraph (d) of Section 59 C 7.14.~~

(C) For property in a one-family residential zone, the Board may require a lower density for reasons of compatibility with the surrounding uses. 3.3.2.E.4.b.vii

(2) Development is subject to the provisions of the residential portions of the MPDU provisions of Section 25A-5 of this Code. Sec. 3.3.2.E.4.b.v

(3) Minimum setback from street right-of-way: 25 feet or the setback prescribed by the zone, whichever is greater, except as provided in Paragraph (8), below. Front setback for general building type

(4) Minimum setbacks from all other external lot lines, except as provided in Paragraph (8), below: Sec. 3.3.2.E.2.c.ii.(e)

(A) ~~For a one family detached or attached dwelling unit or a townhouse: 2 feet of setback for each one foot of building height, as measured at the elevation of the building facing that lot line.~~

~~—— (B) For a multiple family dwelling, the nursing home or any other nonresidential building: 100 feet from any lot line separating the site from land zoned or master planned for one family residential use, and 50 feet from a lot line adjoining any other existing or planned use.~~

(5) Maximum building height, except as provided in Paragraph (8), below: ~~35 feet.~~ Max building height of zone

(6) Maximum lot coverage: as specified by the applicable zone. [Article 59-4](#)

(7) Minimum green area, except as provided in Paragraph (8), below: 50 percent. [Sec. 3.3.2.E.2.c.ii.\(c\)\(2\)](#)

(8) If the property is in a multiple-family zone regulated by Division 59-C-2, a CBD zone regulated by Division 59-C-6, any PUD Zone regulated by Division 59-C-7, or the TS-R Zone regulated by Division 59-C-8, the development standards of the relevant zone apply. [Article 59-4](#)

(h) Parking must be provided in accordance with the standards for (1) housing and related facilities for senior adult or person with disabilities and (2) a nursing home, as provided in Division 59-E-3, title “Numbers of Spaces Required;” the numbers of spaces required for the 2 uses are additive. [Sec. 7.2.4.D.](#) The provisions of Division 59-E-2, title “Plans and Design Standards,” apply. [Sec. 7.5.6 \(with modifications\)](#)

(i) An existing facility that receives a Certificate of Registration as a continuing care facility from the Maryland Office on Aging, in accordance with Article 70B of the Annotated Code of Maryland, as amended, or a facility for which special exceptions have been granted in accordance with Sections 59-G-2.35 and 59-G-2.37, in order to qualify for such certification, is a conforming use. It may be constructed and operated in compliance with the conditions of the applicable special exceptions and amended in accordance with the provisions of Sections 59-G-2.35 and 59-G-2.37 in effect at the time the amendment to the special exception is granted. If damaged the facility may be rebuilt, repaired and/or reconstructed.

**Sec. 59-G-2.36. Medical practitioners' office for use of other than a resident of the building. [Use not retained](#)**

~~—(a)—In all residential zones other than specified in Subsection (b) below, one or more offices of not more than 2 full time medical practitioners may be permitted, provided that:~~

~~—(1)—The exterior of the premises is not changed or altered in appearance;~~

~~—(2)—Not less than 50 percent of the floor space of the building is devoted to residential uses;~~

~~—(3)—Office space suitable for the practice of the profession is unavailable in either the nearest commercial zone or the nearest medical clinic office building constructed according to a special exception grant;~~

~~—(4)—Additional medical specialists are not employed more than an aggregate of 40 hours per week and there are never more than 2 medical professionals, whether general practitioners or medical specialists, in such office on any one day. In consideration of an application for part time medical specialist, the Board must consider the total number of employees and the total number of patients at any one time;~~

~~—(5)—The maximum number of nonprofessional support staff must be determined by the Board, taking into account the impact on neighboring residences of the resultant parking and traffic;~~

~~—(6)—Such use will not constitute a nuisance because of noise, traffic or physical activity; and~~

~~—(7)—Such use will not tend to affect adversely the use and development of neighboring properties and the general neighborhood.~~

~~—(b)—In the R-H, R-10, R-20 and R-30 zones, one or more offices for one or more medical practitioners may be permitted provided, that:~~

~~—(1)—The exterior of the building presents an appearance consistent with the character of the neighborhood;~~



~~—(2)—The proposed use will not adversely affect surrounding residential uses because of noise, lighting, traffic or physical activity;~~

~~—(3)—No office shall be located on a floor above the highest ground level entrance and the interior office entrance shall be located so as to minimize distance from the exterior entrance;~~

~~—(4)—Reserved;~~

~~—(5)—Off street parking spaces shall be provided as required in article 59 E of this chapter which shall be in addition to those spaces required for the residential portion of the building and shall be specifically designated for the use of the patients of the medical practitioners.~~

#### **Sec. 59-G-2.36.1. Milk plant, Sec. 3.2.2. Agricultural Processing**

A special exception may be granted for a milk plant, subject to the following requirements:

- (a) The minimum area of the lot must be 10 acres. Sec. 3.2.2.B.1
- (b) The minimum setback from any property line must be 75 feet. Sec. 3.2.2.B.2
- (c) The board may regulate hours of operation, numbers of vehicles and personnel and other on site operations so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.3
- (d) The property must front on and have access to a road built to primary or higher standards. Sec. 3.2.2.B.3
- (e) Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse, as stated in article 59-E. Sec. 7.2.4
- (f) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. Sec. 8.3.1.D.1.h The use is not permitted, however, in the portion of a rural cluster development regulated by section 59-C-9.52. Sec. 7.3.4

#### **Sec. 59-G-2.36.2. Dwellings. Not proposed in any zone as a conditional use**

~~—(a)—Dwellings in a commercial or industrial district must be compatible with existing or planned development on the same lot or tract and be compatible with the surrounding area. Dwellings developed in a commercial or industrial district may be combined with proposed or existing office, retail or industrial development or may be developed in lieu of non-residential development, provided there remains adequate land zoned for such development to serve the immediate neighborhood.~~

~~—(b)—Dwellings in a commercial or industrial district are subject to the following standards:~~

~~—(1)—Not more than twenty-five percent (25%) of the land which is either zoned or recommended for commercial or industrial zoning in the applicable approved and adopted master plan may be used for housing.~~

~~—(2)—Dwellings in a commercial or industrial district must meet the development standards of the applicable zone concerning minimum setbacks, green area, and lot coverage. The base residential density is 6.0 units per acre, which may be increased up to 21.5 units per acre if at least 35 percent of the units are productivity housing for households with incomes at and below the area-wide median income, as provided for in Chapter 25B, Article IV, of the County Code. The maximum height allowed in the applicable commercial zone may be adjusted not to exceed a~~

~~total height of 50' to accommodate residential development above a commercial structure as authorized under Sec. 59-G-1.23. These standards apply to all buildings on a site, including those that contain housing. The required green area may be adjusted to assure compatibility of uses, or to accommodate housing if not otherwise feasible or appropriate.~~

~~—(3)— Access must be provided by one or more direct driveways to a public street. The entrance must be located and appropriately lighted to assure safe access for residents, whether or not commercial or industrial uses on the same lot are in operation.~~

~~—(4)— A minimum of one (1) on site parking space per dwelling unit must be provided. Additional parking spaces must be provided up to the total required by the relevant standards of Section 59-E-3.7, except that the Board may approve shared parking in accordance with the provisions of Section 59-E-3.1 to accommodate these additional spaces.~~

~~—(5)— The property must be located in an area served by public water and sewer and must be in water and sewer categories 1, 2, or 3.~~

~~—(c)— Design plan.~~

~~—(1)— In addition to submitting such other information as may be required, a design plan of proposed development must also be submitted at the time the application is made. The design plan must show the size and shape of the subject property, the location of all buildings and structures, the area devoted to parking, any recreation facilities to be provided, all access roads and drives, the topography and existing major vegetation features, the proposed grading, landscaping and screening plans and such other features necessary for the evaluation of the plan.~~

~~—(2)— No special exception, building permit or certificate of occupancy may be granted or issued except in accordance with a design plan of development approved by the Board of Appeals. The Board may condition its approval of a design plan on such amendments as determined necessary to assure an internally compatible development which will have no adverse effect on the surrounding community.~~

#### **Sec. 59-G-2.36.4. Meeting centers. Sec. 3.5.10.C. Conference Center**

A meeting center with no lodging facilities may be allowed provided that all standards and requirements of the zone are met. In addition, the following special conditions must be complied with:

(a) When such use abuts a residential zone and is not effectively screened from the residential use by natural terrain features, the zone must be screened by additional planting, a solid wall or a substantial visually suitable, solid fence of appropriate height. Sec. 8.3.1.D.1.e and Sec. 7.5.7.

(b) Lighting, including permitted illuminated signs and on-site lighting, must be arranged so as not to reflect or cause glare into any residential zone. Further automobile headlight glare from the use must be fully screened from any abutting residential use. Sec. 8.3.1.D.1.d

(c) For any application, the Board may regulate hours of operation and other on-site operations to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.3

(d) Full compliance with the parking requirements of Chapter 59-E including as appropriate, the parking facilities requirements, the mixed use parking requirements, the off-site parking spaces requirements, and the parking facilities plan requirements. Sec. 7.2.5

(e) The board may reduce weekday, daytime mixed use parking requirements under Section 59-E-3.1 where public parking is available or when the meeting center will be utilized during weekday, daytime hours by uses which are located within 800 feet of the meeting center and provide their own parking spaces. Sec. 7.2.5

**Sec. 59-G-2.37. Nursing home or domiciliary care home. Sec. 3.3.2.E. Residential Care Facility (Over 16 persons)**

(a) A nursing home of any size, or a domiciliary care home for more than 16 residents (for 16 residents or less see "Group home") may be allowed if the board can find as prerequisites that:

(1) the use will not adversely affect the present character or future development of the surrounding residential community due to bulk, traffic, noise, or number of residents; Sec. 8.3.1

(2) the use will be housed in buildings architecturally compatible with other buildings in the surrounding neighborhood; and Sec. 3.3.E.3.b.ii. & Sec. 3.3.E.4.b.vii

~~—(3) the use will be adequately protected from noise, air pollution, and other potential dangers to the residents.~~

(4) The Board of Appeals may approve separate living quarters, including a dwelling unit, for a resident staff member within a nursing home or domiciliary care home. Sec. 3.3.2.E.1.c. (but Board approval not required)

~~—(b) The following requirements must apply to a nursing home housing 5 patients or less:~~

~~—(1) The minimum lot area must be as stated for the applicable zone but in no case less than 7,500 square feet.~~

~~—(2) The minimum street frontage must be 50 feet.~~

~~—(3) Minimum setbacks, minimum green area, maximum coverage and maximum height are those prescribed in these regulations for the zone.~~

(c) The following requirements apply to all new nursing homes, additions to existing nursing homes where the total number of residents is 6 17 or more, and to all domiciliary care homes for more than 16 residents. Sec. 3.3.2.E.4.b.iv.

(1) The minimum lot area in the rural zone must be 5 acres or 2,000 square feet per bed, whichever is greater.

(2) In all other zones, the minimum lot area must be 2 acres or the following, whichever is greater:

a. In the RE-2, RE-2C, RE-1 and R-200 zones, 1,200 square feet for each bed.

b. In the R-150, R-90, R-60 and R-40 zones, 800 square feet for each bed.

c. In the R-T, R-30 and R-20 zones, 600 square feet for each bed.

d. In the R-10, R-H, C-O, C-T and C-2 zones, 300 square feet for each bed.

e. In the town sector and planned neighborhood zones, 800 square feet per bed.

(3) Minimum side yards are those specified in the zone, but in no case less than 20 feet. Div 59-4. Side yard setback for general buildings

(4) Maximum coverage, minimum lot frontage, minimum green area, minimum front and rear yards and maximum height, are as specified in the applicable zone. Div 59-4

(d) Off-street parking must be provided in the amount of one space for every 4 beds and one space for 2 employees on the largest work shift, except the board may specify additional off-street parking spaces where the method of operation or type of care to be provided indicates an increase will be needed. [Sec.7.2.4.D](#) & [Sec. 7.2.5.E](#)

(e) An application must be accompanied by a site plan, drawn to scale, showing the location of the building or buildings, parking areas, landscaping, screening, access roads, height of buildings, topography, and the location of sewers, water lines, and other utility lines. The site plan must also show property lines, streets, and existing buildings within 100 feet of the property, and indicate the proposed routes of ingress and egress for automobiles and service vehicles. A vicinity map showing major thoroughfares and current zone boundaries within one mile of the proposed home, must be included. [Sec. 8.3.1.B. Conditional Use Plan- Application Requirements](#)

~~(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.

#### **Sec. 59-G-2.38. Offices, professional, nonresidential. [Sec. 3.5.8.B. Nonresidential Professional](#)**

(a) An existing single-family structure may be used for professional office purposes by any member or members of a recognized profession, such as a doctor, lawyer, architect, accountant, engineer, or veterinarian, ~~but not including the following:~~ [Sec. 3.5.8.B.1](#)

~~——(1) a medical, dental, or veterinarian clinic;~~

~~——(2) an in patient treatment facility; or~~

(3) a general business office, such as an insurance company office, a trade association, a manufacturing company, an investment company, a bank, or a real estate company. [Sec. 3.5.8.B.2.a](#)

~~(b) The property must satisfy one of the following criteria:~~

~~——(1) be 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;~~

(2) be designated as suitable for a nonresidential professional office in the R-60 zone on an approved and adopted master or sector plan and located along a highway with an existing right-of-way width of at least 90 feet or along a portion of an arterial road designated as a boundary of a Central Business District; [Sec. 3.5.8.B.2.b.i.](#)

(3) be located in the R-90 zone and: [Sec. 3.5.8.B.2.b.ii.](#)

(A) designated as historic in the Master Plan for Historic Preservation;

(B) located along a highway with an existing right-of-way of at least 120 feet; and

(C) contain a structure formerly used for nonresidential purposes; or

(4) ~~be located in the R-200 zone and abut a fire station, police station, ambulance squad, or rescue squad on more than 1 lot line.~~ Sec. 3.5.8.B.2.b.iii.

(c) The Board must find that the property: Sec. 3.5.8.B.2.C

- (1) will not constitute a nuisance because of traffic or physical activity;
- (2) will not affect adversely the use and development of adjacent property;
- (3) will have at least 25 percent of the lot area devoted to green area.

~~—(d)—The Board may allow for other than a building designated as historic in the Master Plan of Historic Preservation, the exterior of the premises to be changed, altered, or modified, provided the single family character and the basic residential appearance of the building are retained. A historic area work permit must be obtained before any work may be done to alter the exterior features of a historic structure.~~

**Sec. 59-G-2.38.1. Offices, general. Sec. 3.5.8.B. The standards below are replaced with a limitation on offices to a maximum of 50% of GFA in the IL where this is a conditional use**

~~A special exception may be granted for general offices under 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 adopted Montgomery County capital improvements program or the state highway administration's 5-year program for construction with public or private financing; or~~

~~—(iii)—Public bus, rail, or other forms of mass transportation are available or programmed within the area affected or within one-third mile of the application under consideration so that the roads under (1) and (2) above will provide adequate road capacity to meet existing and future traffic demand.~~

~~—(iv)—In its determination of the adequacy of a road to accommodate traffic, the Board shall consider the recommendation of the state highway administration or County Department of Transportation, the applicable levels of traffic service, peak hour use and average use, and any other information presented.~~

~~—(2)—The approval of the general office use will not increase traffic to the extent that other industrial, commercial, or residential uses that are permitted by right are precluded from development within the traffic analysis area.~~

~~(b)—In the RS zone, a general office use may be allowed if the Board finds, in addition to the general findings required in Division 59-G-1, that the location of the proposed use is adequately accessible and the proposed use will~~

~~not have an unacceptably adverse effect on nearby roads. The location must be deemed adequately accessible by existing or proposed roads and public transportation facilities if either:~~

~~— (1) — 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 recorded lots; or~~

~~— (2) — the proposed office use will not increase traffic to the extent that other industrial, commercial, or residential uses that are permitted by right are precluded from development in the same traffic analysis area as the proposed office.~~

~~In assessing the adequacy of a road to accommodate traffic under paragraph (1), the Board must consider the recommendation of the State Highway Administration or County Department of Transportation, the applicable levels of traffic service, peak hour use and average use, and any other relevant information. This subsection should be generally applied in a manner which closely parallels the application of Section 50-35(k) and the County Growth Policy. The recommendations of the Planning Board under this subsection must be based on its standards applying Section 50-35(k) and the Growth Policy, and the Board of Appeals must adopt these recommendations unless the Board of Appeals finds that a modification is justified by the weight of the evidence in the case. In its recommendations, the Planning Board must consider and report the recommendations of the State Highway Administration and County Department of Transportation, the applicable levels of traffic service, peak hour use and average use, and any other information presented.~~

**Sec. 59-G-2.39. Parking of automobiles, off-street, in connection with commercial uses. Sec. 3.5.9.D. Surface Parking for Commercial Uses in an Historic District**

A special exception may be granted for off-street parking of motor vehicles in connection with commercial uses, subject to the following findings and requirements:

(a) Off-street parking at this location will not constitute a nuisance because of traffic, noise, or physical activity; Sec. 8.3.1.D.1

~~— (b) — The commercial uses to be served by the facility are not in the C-T or the C-1 zone, unless the land in the C-1 zone complies with the exceptions to this provision stated in either subparagraph (h) or subparagraph (i), below;~~

~~— (c) — The land on which the facility is to be located is not reserved for street or highway purposes;~~

~~— (d) — The facility is in compliance with the applicable provisions of article 59-E, particularly the parking area screening provisions of section 59-E-2.9;~~

~~— (e) — No charge is to be made for the first hour of parking unless the facility is located within the boundary of a parking lot district as defined in chapter 60 of this Code;~~

~~— (f) — No service of any kind is to be provided to persons occupying vehicles parked in such a facility; and~~

~~— (g) — No spaces in the facility are to be used for automobile service, repair or storage, other than the storage of new cars by a new car dealer at a location adjacent to or separated only by a street from land in the C-2 zone. The board may limit the number of new cars to be stored at the facility.~~

(h) If off-street parking is required to accommodate additional development on property zoned C-1 and substantially developed in accordance with those uses permitted in the C-1 zone prior to March 16, 1971, a special exception for parking of automobiles may be granted subject to the following conditions:

(1) There is insufficient land in the C-1 zone to accommodate the amount of parking required by the additional development;

(2) The applicable approved and adopted master plan anticipated the provision of parking on residentially zoned land in connection with commercial uses in the C-1 zone;

(3) This special exception will be an addition to a previously granted special exception for off-street parking at the same general location; and

(4) The total of the area in the C-1 zone together with the area used for parking in the residential zone (exclusive of areas devoted to landscaping and driveways) will not exceed 15 acres.

(i) If the land in the one-family residential zone is specifically designated as suitable for special exception uses on a master plan approved and adopted on or before January 25, 1967, a special exception may be granted for parking of automobiles in connection with commercial uses in the C-1 zone, subject to the following conditions:

(1) The land is part of a single parcel which is divided into 2 or more different zoning categories, and the portions that are not in the C-1 zone do not have direct and usable frontage on a public street; and

(2) The adjacent land in the C-1 zone was not substantially developed in retail commercial uses prior to January 1, 1968.

**Sec. 59-G-2.39.1. Parking of automobiles, off-street in an industrial zone, in connection with any use permitted in a commercial zone. Use not retained**

~~A special exception may be granted for off-street parking of motor vehicles on industrially zoned land in connection with any use allowed in a commercial zone, subject to the following:~~

~~—1.—The commercial uses to be served by the parking facility must adjoin the industrially zoned land being used to accommodate the parking;~~

~~—2.—The portion of industrially zoned land being used for parking must not be (1) more than 3 acres; or (2) front on a master planned or existing public street or public right-of-way;~~

~~—3.—In cases where the C-1 zone is being served, the commercial building must not: (a) cover more than 50% of the lot, and (b) exceed a floor area ratio of 1.0;~~

~~—4.—The parking facility must comply with the applicable provisions of Article 59 E. Parking is allowed on the site for the limited purpose of accommodating the commercial use being served;~~

~~—5.—No service of any kind is to be provided to persons occupying vehicles parked in such a facility; and~~

~~—6.—Off-street parking at this location must not constitute a nuisance because of traffic, noise or physical activity.~~

**Sec. 59-G-2.40. Parking facilities, off-street, at locations more than 500 feet walking distance from the entrance to a nonresidential establishment to be served. Use not retained**

~~Off-street parking facilities for motor vehicles in connection with nonresidential uses located more than 500 feet walking distance from the entrance to the establishment to be served may be allowed if such off-street parking facilities are not located on land recommended for residential uses on an approved and adopted master or sector~~

~~plan. In addition, the board must find that such parking facilities will not constitute a nuisance because of traffic, noise or physical activity.~~

**Sec. 59-G-2.41. Pet shops. Sec. 3.5.11.Retail Sales and Service, but not proposed in any zone as a Conditional Use**

~~Pet shops may be allowed; provided, that the actual store or premises in which the pet shop is located is at least 75 feet from any lot in any residential zone; that the proposed use shall not be incompatible with, or detrimental to, any existing uses on abutting lots in a C-1 or C-2 zone; that no animals may be kept for boarding; that no animals may be kept for breeding; that only animals for retail sale shall be maintained or kept on the premises; that all animal pens shall have glass enclosed fronts and each pen or cage shall be connected to an outside ventilating system or other appropriate air filtration system. This provision shall not apply to feathered birds which may be maintained in bird cages. There shall be no space on the exterior of the building for the maintaining or for the usage of the animals, and all animals shall be maintained within the pet shop.~~

**Sec. 59-G-2.41.1. Pipeline, above ground. 3.6.7.A. Pipeline (Aboveground)**

See section 59-G-2.43.

**Sec. 59-G-2.41.2. Personal living quarters. 3.3.2.D Personal Living Quarters (Over 50 Individual Living Units)**

A special exception may be granted for personal living quarters containing fifty (50) or more individual living units if the following requirements are met:

1. An applicant for a PLQ must submit documentary evidence which shows how the maintenance and management of the PLQ will be provided by the applicant. If appropriate, the Board of Appeals may require on-site management and maintenance of a PLQ based on the size of the PLQ development, the type of ILUs provided in the development, and the services provided to the residents of the PLQ. Sec. 3.3.2.D.2.b.i.
2. The Board of Appeals may require an annual inspection of the Special Exception, as appropriate, to determine compliance with the terms and conditions of its grant. Sec. 8.3.1.J.1
3. The PLQ may have common assembly or recreation space which is to be in addition to space devoted to common circulation areas, shared cooking or sanitation facilities, and mechanical or other service areas. Such common space may be required as follows: Sec. 3.3.2.D.2.b.ii.
  - (a) 10% of the gross floor area of the PLQ, if the smallest ILU has a gross floor area from 150 square feet to 199 square feet;
  - (b) 5% of the gross floor area of the PLQ, if the smallest ILU has a gross floor area above 200 square feet.

**Sec. 59-G-2.42. Private clubs and service organization. 3.4.8. Private Club, Service Organization**

A private club or service organization, including a community building, must meet the following standards:

- (a) Lot size: Twice the minimum required in the zone, up to a maximum of 3 acres. Sec. 3.4.8.B.2.a.
- (b) Maximum building coverage: 15% up to a maximum building coverage, including accessory buildings, of 20,000 square feet. Sec. 3.4.8.B.2.c
- (c) ~~Green area~~Open Space: 50% Sec. 3.4.8.B.2.d



(d) Frontage: Twice the minimum required in the zone. General building type standards require more than twice the minimum frontage

(e) Parking: 2.5 spaces per each 1,000 square feet of floor area. Sec.7.2.4.D

**Sec. 59-G-2.42.1. Reserved.**

**Sec. 59-G-2.43. Public utility buildings and structures. Sec. 3.6.7.C. Public Utility Building or Structure**

(a) A public utility building or public utility structure may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts. For other buildings or structures regulated by this section, the Board must make the following findings:

(1) The proposed building or structure at the location selected is necessary for public convenience and service. Sec. 3.6.7.C.2.b.i

(2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties. Sec. 3.6.7.C.2.b.ii

(b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of a residential building and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board. Sec. 3.6.7.C.2.b.iii

(c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the Board, adjacent residential developments and uses will not be adversely affected by the proposed use. Sec. 3.6.7.C.2.b.iv.

(d) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electric service; telephone offices; railroad, bus, trolley, air and boat passengers stations; and above ground pipelines. Sec. 3.6.7.C.1

(e) Reserved.

(f) In addition to the authority granted by Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety or general welfare. Sec. 8.3.1. E.3

~~—(g) Petitions for special exception under this section may be filed on project basis.~~

(h) A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted. Under Review

**Sec. 59-G-2.44. Radio and television broadcasting stations and towers. Sec. 3.5.2.C. Media Broadcast Tower**

(a)\* Any radio and television broadcasting station or tower must satisfy the following standards:

**\*Editor's note**—"a)" added editorially.

(1) A support structure must be set back from the property line as follows:

a. In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure. [Sec. 3.5.2.C.2.b.iii \(a\)](#)

b. In commercial and industrial zones, a distance of one foot from the property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties. [Sec. 3.5.2.C.2.b.iii \(b\)](#)

c. The setback from a property line is measured from the base of the support structure to the property line. [Sec. 3.5.2.C.2.b.iii](#)

d. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street. [Sec. 3.5.2.C.2.b.iii \(c\)](#)

(2) A support structure must be set back from any off-site dwelling as follows:

a. In agricultural and residential zones, a distance of 275 feet. [Sec. 3.5.2.C.2.b.iii\(a\)](#)

b. In all other zones, one foot for every foot in height. [Sec. 3.5.2.C.2.b.iii \(b\)](#)

c. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

d. The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street. [Sec. 3.5.2.C.2.b.iii \(c\)](#)

(3) The structure supporting the antenna used for radio and television broadcasting must not exceed 275 feet in height, unless it can be demonstrated that the additional height is necessary to comply with the minimum requirements established by the Federal Communications Commission. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit. [Sec. 3.5.2.C.2.b.iv.](#)

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. [Sec. 3.5.2.C.2.b.v.](#) The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height. [Sec. 7.5.7.A.2](#)

(5) The property owner must be an applicant for the special exception for each support structure. [Sec. 3.5.2.C.2.b.vi.](#) -Any radio or television antenna that is collocated on an existing tower with another radio or television antenna is not required to obtain a special exception. A modification of a radio and television station or

tower special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with a station or tower. [Sec. 3.5.2.C.2.b.ii.](#)

(6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County. [Sec. 3.5.2.C.2.b.viii.](#)

(7) Every freestanding radio and television broadcasting tower must be removed at the cost of the owner when no longer in use for more than 12 months. [Sec. 3.5.2.C.2.b.ix.](#)

(8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership. [Sec. 3.5.2.C.2.b.x.](#)

(9) Outdoor storage of equipment or other items is prohibited. [Sec. 3.5.2.C.2.b.vii.](#)

(10) Each owner of the facility is responsible for maintaining the facility in a safe condition. [Sec. 3.5.2.C.2.b.xi.](#)

(11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the tower. The recommendation must be no more than one year old. [Sec. 3.5.2.C.2.b.xi.](#)

(12) Prior to the Board granting any special exception for a radio and television broadcasting tower, the proposed facility must be reviewed by the County Transmission Facility Coordinating Group. [Sec. 3.5.2.C.2.b.xi.](#)

(b) Any radio and television broadcasting station or tower existing as of December 26, 2005 may continue as a conforming structure. However any structural change, repair, addition, alteration or reconstruction of a tower existing before December 26, 2005 must not result in an increase in the height of the tower above the height of the tower as it existed before December 26, 2005.

#### **Sec. 59-G-2.45. Recreational or entertainment establishments, commercial. [Sec. 3.5.10.G. Recreation & entertainment](#)**

~~A recreational or entertainment establishment of a commercial nature, such as a baseball, football or boxing stadium or arena, miniature golf course, golf or baseball driving range, a bowling alley, pool hall or billiard parlor, amusement centers, skateboard park, tennis court or swimming pool may be allowed; provided, that such use is not injurious to the surrounding area; and provided further, that in the industrial zones recreational establishments will be located as to assure the safety of the users of the facilities.~~

~~In the C-2 zone, recreational or entertainment establishments of a commercial nature, are limited to a baseball, football or boxing stadium or arena, swimming pool, miniature golf course, golf or baseball driving range, roller and ice skating rinks or amusement center, subject however, to the following requirements when located outdoors:~~

~~—(a)—When such use abuts the side and/or rear line of a lot in any residential zone, a solid wall or substantial, solid fence at least 6 feet in height shall be constructed and maintained along such lot line.~~

~~—(b)—Lighting is not to reflect or cause glare into any residential zone.~~

~~—(c)—When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.~~

~~Driveway entrances and exits shall not be located directly across a street or alley from nor less than 8 feet from residential property.~~

**Sec. 59-G-2.46. Retail and service establishments. 3.5.11.A. Retail/Service Establishment (not proposed in any zone as a conditional use)**

~~Small scale retail sales and personal service establishments may be permitted, provided the following requirements are met:~~

~~—(a)—The convenience goods and services provided are those usually requiring frequent purchase and a minimum of travel by occupants of the nearby commercial area and adjacent residential neighborhood; they include only the following types of establishments:~~

~~—(1)—Barbershop;~~

~~—(2)—Beauty shop;~~

~~—(3)—Delicatessen;~~

~~—(4)—Drugstore;~~

~~—(5)—Dry cleaning and laundry pick-up station;~~

~~—(6)—Eating and drinking establishment, excluding a drive-in;~~

~~(7) Florist, provided, that a florist in existence in the C-T zone on April 1, 1986, is not required to obtain a special exception and is not a nonconforming use, subject to the special regulations of section 59-C-4.307(a);~~

~~(8)—Newsstand;~~

~~—(b)—Each of the uses stated in paragraph (a), above, must be the subject of a separate special exception;~~

~~(c)—Parking in accord with the requirements of article 59 E, title "Off Street Parking and Loading," must be provided for these uses on site, notwithstanding the exceptions to on-site parking stated in section 59-C-4.307 of the C-T zone; and~~

~~—(d)—If located in an office building also occupied by unrelated office uses, the establishment must:~~

~~—(1)—Be located on the street level story and occupy a maximum of 50 percent of the floor area of that story; and~~

~~—(2)—Be located and constructed so as to protect other occupants of the building from noise, traffic, odors and interference with privacy.~~

**Sec. 59-G-2.47. Retail establishments in a multiple-family dwelling. 3.5.11.A. Retail/Service Establishment (not proposed in a any zone as a conditional use)**

~~Retail sales and personal service establishments in a multiple-family dwelling or group of dwellings may be permitted subject to the following requirements:~~

~~—(a)—Only the following types of establishments shall be permitted:~~

- ~~— Banks or savings and loan offices.~~
- ~~— Barber and beauty shops.~~
- ~~— Book stores.~~
- ~~— Drug stores.~~
- ~~— Dry cleaning and laundry pick-up stations.~~
- ~~— Florists.~~
- ~~— Food and beverage stores.~~
- ~~— Gift shops.~~
- ~~— Jewelry stores.~~
- ~~— Laundromats.~~
- ~~— Newsstands.~~
- ~~— Offices, banking.~~
- ~~— Restaurants.~~
- ~~— Variety and dry goods stores.~~

~~—(b)—The establishments shall be primarily for the service of the residents of the building or complex in which it is located, and no deliveries shall be made except to such residents.~~

~~—(c)—There must be no entrances directly from the exterior to the establishments.~~

~~—(d)—The establishments shall not be located on any floor above the ground level, except that a restaurant may be located on a top floor or penthouse.~~

~~—(e)—The establishments shall be so located and constructed as to protect tenants of the building from noise, traffic, odors, and interference with privacy.~~

**Sec. 59-G-2.48. Retail establishments in an office building. 3.5.11.A. Retail/Service Establishment (not proposed in a any zone as a conditional use)**

Retail sales and personal service establishments in an office building are subject to the following requirements:

~~—(a)—Only the following types of establishments are allowed:~~

- ~~— Barber and beauty shop.~~
- ~~— Delicatessen.~~
- ~~— Drug store.~~
- ~~— Dry cleaning and laundry pick-up station.~~
- ~~— Newsstand.~~
- ~~— Eating and drinking establishment.~~
- ~~— Specialty shop.~~

~~—(b)—The establishments must be primarily for the service of tenants and employees of the building or group of buildings on the same lot or group of contiguous lots in common ownership or control, and the tenants and employees of adjoining and confronting lots, except that the requirements of this section do not limit the patronage of an eating and drinking establishment on weeknights, Saturdays and Sundays; provided that: (1) there exists sufficient off-street parking to accommodate the patrons of the eating and drinking establishment, and (2) the operation of the eating and drinking establishment will not have adversely effect the use and enjoyment of surrounding properties.~~

~~—(c)—There must be no entrances directly from the exterior to the establishments except an eating and drinking establishment may have a direct entrance from the exterior of the building if the Board finds that a direct exterior entrance to the eating and drinking establishment will not adversely effect the use and enjoyment of surrounding properties.~~

~~—(d) The establishments must be so located and constructed as to protect tenants of the building from noise, traffic, odors and interference with privacy.~~

**Sec. 59-G-2.49. Equestrian facility in a residential zone. Sec. 3.2.4. Equestrian Facility**

The following provisions apply to an equestrian facility in any residential zone where a special exception is required:

(a) Minimum number of gross acres per horse: Sec. 3.2.4.B.1.a

(1) For 1-2 horses, 2 acres;

(2) For 3-10 horses, one acre per horse;

(2)\* For more than 10 horses, an additional one-half acre per horse.

**\*Editor's note**—Ord. No. 15-21, which added the text of paragraph (a), contained two subparagraphs numbered "(2)".

A 5-acre riding stable accommodating more than 10 horses for which a petition was filed with the board prior to March 25, 1986, is a conforming use and may be amended in accordance with the modification provisions of section 59-G-1.3(c).

(b) Each building, show ring, paddock, outdoor arena, and manure storage area must be located at least 100 feet from any existing dwelling on an adjacent tract of land. Sec. 3.2.4.B.1.c

(c) In order to prevent adverse impact on adjoining uses, the board may limit or regulate: Sec. 3.2.4.B.2.b.ii

(1) The number of horses that may be kept or boarded.

(2) The number of horses that may be rented out for recreational riding or instruction.

(3) The number and type of equestrian events that may be held in a one-year period.

(4) The hours of operation of any equestrian activity or event.

(d) Any equestrian facility on less than 5 acres must establish through a pasture maintenance plan, feeding plan and any other document the Board requires, that the property contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the property. Sec. 3.2.4.B.2.b.i

(e) All animal waste must be handled in accordance with state requirements for nutrient management. Sec. 3.2.4.B.2.b.iii

(f) Any equestrian facility that keeps or boards more than 10 horses must meet all nutrient management, water quality and soil conservation standards of the County and State. A nutrient management plan prepared by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to the Department of Permitting Services, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The land owner must obtain all plans within one year after commencement of operations. Sec. 3.2.4.B.1.b Any equestrian facility existing before April 5, 2004 must comply with the requirements of this subsection no later than March 2, 2005.

(g) Any outdoor arena lighting must direct light downward using full cutoff fixtures, not produce any glare or direct light onto nearby properties, and not be illuminated after 10 p.m. except for an equestrian event which must not be illuminated after 9 p.m. Sunday through Thursday. The Board may require that a lighting plan be submitted to Planning Board staff for approval. [Sec. 3.2.4.B.1.e](#)

**Sec. 59-G-2.49.1. An equestrian facility in an agricultural zone. [Sec. 3.2.4. Equestrian Facility](#)**

In addition to the standards of 59-C-9.31 for an equestrian facility permitted by right, the following standards apply to an equestrian facility in the agricultural zones where a special exception is required:

(a) The board may grant a special exception for an equestrian facility as provided in 59-C- 31(h) upon a finding that the equestrian facility will not adversely affect adjoining land uses or the surrounding road network. ~~[Sec. 3.2.4.B.2.a.i. The applicant has the burden of producing substantial evidence that the property has adequate access to accommodate the additional traffic and that the road from which the property has access and the nearest intersections operate at an acceptable level of service based on Local Area Transportation Review Guidelines.](#)~~

(b) In evaluating the compatibility of an equestrian facility special exception on the surrounding land uses in an agricultural zone, the Board must consider that the impact of an agricultural special exception on surrounding land uses in an agricultural zone does not necessarily need to be controlled as stringently as the impact of a special exception in a residential zone. [Sec. 3.2.4.B.2.a.ii.](#)

**Sec. 59-G-2.50. Rifle or pistol ranges, indoor. [Sec. 3.5.10.I. Shooting Range \(Indoor\)](#)**

~~An indoor, noncommercial rifle or pistol range may be allowed; provided, that such range is constructed in such a manner as to eliminate all danger to persons or property from flying projectiles. Nothing in this section shall be construed to relieve the appellant from compliance with chapter 57, "Weapons," of the County Code, as amended.~~

**Sec. 59-G-2.51. Rifle, pistol and skeet shooting ranges, outdoor. [Sec. 3.5.10.J. Shooting Range \(Outdoor\)](#)**

An outdoor rifle and skeet shooting range may be allowed if adjacent areas are predominantly undeveloped. Such a use, however, shall be for a period of ~~three~~ one year only, subject to renewal.

**Sec. 59-G-2.51.1. Reserved.**

**Sec. 59-G-2.52. Rock or stone quarries. [Sec. 3.6.5. Mining, Excavation](#)**

The temporary use for not more than 3 years, subject to renewal [Sec. 3.6.5.B.8](#), of vacant land for sand, gravel or clay pits, rock or stone quarries and other removal or extraction of natural material or deposits may be allowed, subject to such restrictions and safeguards as may, in the opinion of the board, be necessary to protect the residential property in the vicinity in accordance with the zone plan embodied in this chapter and the zone map. [Sec. 8.3.1.E.3](#)

**Sec. 59-G-2.53. Sand, gravel or clay pits. [Sec. 3.6.5. Mining, Excavation](#)**

See section [59-G-2.52](#).

**Sec. 59-G-2.53.1. Sanitarium. [Sec. 3.3.2.E Residential Care Facility](#)**

**Sec. 59-G-2.54. Sawmills. [3.2.2 "Agricultural Processing"](#)**

A sawmill special exception may be granted; provided, ~~no saw or other machinery will be located less than 50 feet from any lot line or street line~~ The minimum setback for any agricultural processing structure from any property line must be 75 feet., R and ~~all power saws and machinery will be secured against tampering and locked when not in use.~~

**Sec. 59-G-2.54.1. Secondary agricultural processing, not otherwise specified. No reference to this special exception in current zoning**

~~A special exception may be granted for secondary agricultural processing, subject to the following requirements:~~

- ~~—(a)— The minimum area of the lot must be 5 acres.~~
- ~~—(b)— The minimum setback from any property line must be 50 feet.~~
- ~~—(c)— The board may regulate hours of operation, numbers of vehicles and personnel employed and other on-site operations so as to prevent adverse impact on adjoining uses.~~
- ~~—(d)— The property must front on and have access to a road built to primary or higher standards.~~
- ~~—(e)— Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse, as stated in article 59 E.~~
- ~~—(f)— In evaluating the compatibility of this special exception with surrounding land uses, the board must determine whether those uses are primarily agricultural or residential. The board must consider the fact that this is a use related to agriculture when located in the Rural, Rural Cluster, or Rural Density Transfer zone, and its impact on other agricultural uses does not necessarily need to be controlled as stringently as its impact on residential uses. The use is not permitted, however, in the portion of a rural cluster development regulated by section 59 C 9.52.~~

**Sec. 59-G-2.54.2. Solid waste transfer station, sanitary landfill, or incinerator. Sec. 3.6.9. Landfill, Incinerator, or Transfer Station**

A special exception may be granted for a private solid waste transfer station, sanitary landfill, or incinerator, subject to the following provisions and in addition to the findings required in division 59-G-1:

- (a) The proposed use must meet all applicable requirements and conditions for State of Maryland permits ~~as set forth in Maryland Code Environment Article , Section 9-204 et seq. and Code of Maryland Regulations (COMAR) Section 26.04.07.~~ Sec 3.6.9.B.2.a
- (b) The applicant has provided a detailed plan, under which the applicant will be bound, showing the proposed truck haul route to the nearest major highway and traffic engineering studies and analyses demonstrating the effects of the proposed special exception use on present and projected levels of service, adequacy of the present and planned road system, road safety conditions, bridge capacity, and other factors related to traffic flow and safety. The Board must find that the proposed use will not adversely affect present and projected levels of service, adequacy of the present and planned road system, road safety conditions, bridge capacity and other factors related to traffic flow and safety. The detailed plan submitted by the applicant must include: Sec 3.6.9.B.2.b
  - (1) a map of the hauling route indicating the classification of all roads and the width of the respective rights-of-way, as well as the number of lanes as built.
  - (2) the load limits of all bridges which the hauling route will cross,



- (3) the segments of the road which are "closed" by curb and gutters, and "open" to roadside swales or ditches,
- (4) the hours and days when the property will accept vehicles, and
- (5) the steps which the applicant will take to maintain the hauling route free of debris from vehicles accessing or leaving applicant's facility and control the number of vehicles accessing and leaving the site on a daily, weekly, monthly, and extraordinary basis, and
- (6) designation of on-site queuing spaces sufficient to accommodate the anticipated hauling vehicles without causing the vehicles to queue into the public right-of-way. The number of queuing spaces must be at least one-half of the number of trucks expected during the peak hours of operation.
- (c) The applicant must have and adhere to an emergency notification and mitigation plan, acceptable to the Director, for instances when the presence of toxic, hazardous, or special medical wastes is discovered or suspected. [Sec 3.6.9.B.2.c](#)
- (d) The Board may limit hours of operation, number of vehicles and personnel employed, screening, landscaping, lighting, and method of operation to ensure that the conditions of [Section 59-G-1.21\(a\)](#) and this Section are met. ~~Sec. 8.3.1.E.3 The operator must maintain records of its operations that are acceptable and available to the Director for inspection during normal business hours.~~
- ~~(e) The site must be operated in a manner that contains noise, odors, air and water pollution at acceptable levels under County, State and federal laws or regulations.~~ To protect the public health, safety and welfare, the applicant must provide on-site and off-site monitoring of air pollution, noise, ground water, and surface waters in accordance with a plan acceptable to the Director. The applicant must describe how the transfer station operations will conform to the water quality and quantity requirements of Chapter 19, without any waiver. [Sec 3.6.9.B.2.d](#)
- (f) The site must conform to the National Fire Protection Association (NFPA) Standard 46, "Recommended Safe Practice for Storage of Forest Products" except that the standards are mandatory and not recommendations. [Sec 3.6.9.B.2.e](#)
- (g) Any transfer of solid waste or sorting of recyclable materials must occur only in a wholly enclosed building. [Sec 3.6.9.B.2.f](#)
- (h) The outdoor storage of solid waste or recyclable materials must be in leakproof, fly-and- rodent proof containers. [Sec 3.6.9.B.2.g](#)
- (i) Impervious surfaces must be provided for all areas where the handling, sorting, storage, or transporting of solid waste or recyclable materials occurs. [Sec 3.6.9.B.2.h](#)
- (j) Any water that comes into contact with solid waste must be discharged to the sanitary sewer system in conformance with an industrial discharge permit. [Sec 3.6.9.B.2.i](#)
- (k) Water runoff must be discharged only into the sanitary sewer system. [Sec 3.6.9.B.2.j](#)
- (l) A solid waste transfer station operation must not be located on any part of a floodplain or wetland, or within 300 feet of a stream. [Sec 3.6.9.B.2.k](#)
- (m) Each site must be accessible directly from a roadway consisting of sufficient lanes to provide separate turning lanes and through lanes for large trucks to assure safe ingress and egress and not impede through traffic. [Sec 3.6.9.B.2.l](#)

(n) There must be at least a 200 foot buffer between the proposed sorting and storage operations and any lot line. [Sec 3.6.9.B.2.m](#)

**Sec. 59-G-2.54.3. Storage, outdoor. [Sec. 3.6.8.D. Storage Facility \(not proposed as Conditional Use in any zone\)](#)**

~~A special exception may be granted for an outdoor storage use, including portable toilet storage, subject to the following requirements:~~

- ~~—(a)—The minimum area of the property must be 8 acres.~~
- ~~—(b)—The minimum setback from any property line must be 50 feet, except that the minimum setback may be reduced to 20 feet for structures that existed as of January 1, 1995, and if the site abuts land classified in the Rural Cluster Zone that is not developed under the cluster option of the Rural Cluster Zone.~~
- ~~—(c)—The property must front on and have direct access to a road built to primary or higher standards.~~
- ~~—(d)—Screening that prevents visual impact of the use to adjoining and confronting properties must be provided for all parking areas and all exterior areas devoted to on-site operations and the storage of inventory and equipment except where the use abuts or confronts commercially or industrially zoned property.~~
- ~~—(e)—The Board may regulate hours of operation, numbers of vehicles and personnel employed, and other on-site operations, including minor repairs to equipment and vehicles used in the operation of the business, so as to prevent adverse impact on adjoining uses.~~
- ~~—(f)—One and one-half parking spaces must be provided on-site for each 1,000 square feet of total floor area and sufficient area provided for loading and unloading of trucks.~~

**Sec. 59-G-2.55. Swimming pools, commercial. [Sec. 3.5.10. Recreation and Entertainment Facility](#)**

A commercial swimming pool, including accessory buildings, may be allowed, upon a finding by the board that such use will not constitute a nuisance because of traffic, noise or physical activity; [Sec. 8.3.1.D.1](#) ~~provided, that the following minimum area, frontage and setback requirements shall be complied with:~~

- ~~—(a)—Area, 5 acres.~~
- ~~—(b)—Frontage, 300 feet.~~
- ~~—(c)—Setback, 50 feet from the front property line, 35 feet from the rear line and 25 feet from each side property line.~~

**Sec. 59-G-2.56. Swimming pools, community. [Sec. 3.4.11. Swimming Pool \(Community\)](#)**

The provisions of subsection [59-G-1.21\(a\)](#) do not apply to this section. [Sec. 3.4.11.B](#) In any zone, a community swimming pool may be allowed provided that such use of land will conform to the following minimum requirements:

- (a) The swimming pool, including the apron and any buildings, must not at any point be closer than 75 feet from the nearest property line nor closer than 125 feet from any existing single-family or two-family dwelling; provided, that where the lot upon which it is located abuts a railroad right-of-way, publicly owned land or land in a commercial or industrial zone such pool may be constructed not less than 25 feet at any point from such railroad right-of-way, publicly owned land or commercial or industrial zone. [Sec. 3.4.11.B.2](#) Any buildings erected on the

site of any such pool must comply with the yard requirements of the zone in which the pool is located. Sec. 3.4.11.B.3

(b) A public water supply must be available and must be used for the pool or use of a private supply of water for the pool will not have an adverse affect on the water supply of the community. Sec. 3.4.11.B.4

(c) When the lot on which any such pool is located abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly owned land, a wall, fence or shrubbery must be erected or planted so as to substantially screen such pool from view from the nearest property of such land in a residential zone. Sec. 7.5.7. (with modifications)

(d) The following additional requirements must also be met: Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for off-street parking, additional fencing or planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements, ~~including a showing of financial responsibility by the applicant, may be required by the Board as requisite to the grant of a special exception. Financial responsibility must not be construed to mean a showing of a 100 percent cash position at the time of application but is construed to mean at least 60 percent.~~ Sec. 8.3.1. E

#### **Sec. 59-G-2.57. Teahouses and restaurants in residential zones.**

Prior to March 3, 1967, in any RE-2, R-200, R-90 or R-60 zone, a tea house or restaurant and buildings accessory thereto may be allowed. Any tea house or restaurant in the above zones lawfully existing on March 3, 1967, is a conforming use and may be continued, structurally altered, reconstructed or repaired so long as it remains an otherwise lawful use as previously permitted. Any alterations or reconstruction that results in an expansion of the existing floor area must be approved by special exception by the Board. No special exception for a tea house or restaurant in any of the above specified zones may be granted unless such tea house or restaurant was in existence and operating as such on March 3, 1967.

#### **Sec. 59-G-2.58. Telecommunications facility. Sec. 3.5.2.C. Telecommunications Tower**

(a) Any telecommunications facility must satisfy the following standards:

(1) A support structure must be set back from the property line as follows:

(A) In agricultural and residential zones, a distance of one foot from the property line for every foot of height of the support structure. Sec. 3.5.2.C.2.b.ii.(b)

(B) In commercial and industrial zones, a distance of one-half foot from the property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties. Sec. 3.5.2.C.2.b.ii.(c)

(C) The setback from a property line is measured from the base of the support structure to the perimeter property line. Sec. 3.5.2.C.2.b.ii

(D) The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if: Sec. 3.5.2.C.2.b.ii(d)

(i) the applicant requests a reduction; and

(ii) evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

(2) A support structure must be set back from any off-site dwelling as follows:

(A) In agricultural and residential zones, a distance of 300 feet. [Sec. 3.5.2.C.2.b.ii.\(b\)](#)

(B) In all other zones, one foot for every foot in height. [Sec. 3.5.2.C.2.b.ii.\(c\)](#)

(C) The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.

(D) The Board of Appeals may reduce the setback requirement in the agricultural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if: [Sec. 3.5.2.C.2.b.ii.\(d\)](#)

(i) the applicant requests a reduction; and

(ii) evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.

(3) The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure is in conformance with the height and location of the support structure as authorized in the building permit. [Sec. 3.5.2.C.2.b.iii](#)

(4) The support structure must be sited to minimize its visual impact. The Board may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties. [Sec. 3.5.2.C.2.b.iv](#) The support structure and any related equipment buildings or cabinets must be surrounded by landscaping or other screening options that provide a screen of at least 6 feet in height. [Sec. 7.5.7.](#)

(5) The property owner must be an applicant for the special exception for each support structure. [Sec. 3.5.2.C.2.b.v](#) A modification of a telecommunications facility special exception is not required for a change to any use within the special exception area not directly related to the special exception grant. [Sec. 3.5.2.C.2.b.vi](#) A support structure must be constructed to hold no less than 3 telecommunications carriers. The Board may approve a support structure holding less than 3 telecommunications carriers if: [Sec. 3.5.2.C.2.b.vii](#)

(A) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and

(B) the Board decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunications facility for all the carriers.

(6) No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County. [Sec. 3.5.2.C.2.a.iii](#)

(7) Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months. Sec. 3.5.2.C.2.b.ix

(8) All support structures must be identified by a sign no larger than 2 square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership. Sec. 3.5.2.C.2.b.x

(9) Outdoor storage of equipment or other items is prohibited. Sec. 3.5.2.C.2.b.viii

(10) Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility in a safe condition. Sec. 3.5.2.C.2.b.xi

(11) The applicants for the special exception must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than 90 days old, ~~except that a recommendation issued within one year before June 22, 2010, must be accepted for one year from the date of issuance.~~ The recommendation of the Transmission Facility Coordinating Group must be submitted to the Board at least 5 days before the date set for the public hearing. Sec. 3.5.2.C.2.b.i

(12) The Board must make a separate, independent finding as to need and location of the facility. The applicant must submit evidence sufficient to demonstrate the need for the proposed facility. Sec. 3.5.2.C.2.b.xii.

(b) Any telecommunications facility special exception application for which a public hearing was held before November 18, 2002 must be decided based on the standards in effect when the application was filed.

(c) Any telecommunications facility constructed as of November 18, 2002 may continue as a conforming use.

**Sec. 59-G-2.59. Theater, legitimate. Sec. 3.5.10.F. Recreation or Entertainment Facility, Indoor or Major**

The use of any lot, parcel or tract of land for a legitimate theater, including a dinner theater, and for buildings accessory to such theater, may be allowed, upon a finding by the board that:

(a) Such use will not constitute a nuisance because of traffic, noise, lighting, hours of operation, or number of patrons who will attend such theater; Sec. 8.3.1.D.1.f

(b) Such use will not affect adversely the present character or future development of the surrounding residential community; and Sec. 8.3.1.D.1.f

(c) ~~Such lot, parcel or tract of land on which the theater, accessory buildings and parking areas are located, or are to be located, has a minimum area of 5 acres; and a minimum frontage of 300 feet; and that the buildings and parking used in connection with the theater are set back a minimum of 50 feet from all property lines.~~ Covered by General Building Standards

**Sec. 59-G-2.60. Theaters, indoor. Sec. 3.5.10.F Recreation or Entertainment Facility, Indoor (Capacity up to 1,000 people) or Major (over 1,000)**

~~An indoor theater may be allowed; provided that the size of such theater is not so large as to be inconsistent with the purpose of the C-1 zone.~~

**Sec. 59-G-2.61. Reserved.**

**Sec. 59-G-2.62. Tire, battery, and accessory stores. Sec. 3.5.11.A. Retail/Service Establishment. Not proposed in any zone as a conditional use**

~~A tire, battery, and automobile accessory store may be permitted in an integrated shopping center subject to the following requirements:~~

- ~~—(a)—The use is incidental to a primary, permitted use and contains no more than 5 percent of the total floor area of such primary use.~~
- ~~—(b)—The use will not constitute a nuisance because of noise, illumination, fumes, odors or physical activity in the location proposed.~~
- ~~—(c)—Installation service shall be limited to those related products which are retailed by the primary user on the premises.~~
- ~~—(d)—Installation service shall be limited to enclosed buildings.~~
- ~~—(e)—No outdoor displays or storage of tires or like objects is allowed.~~

**Sec. 59-G-2.63. Winery. Sec. 3.2.10. Winery**

A special exception may be granted for a winery, subject to the following requirements:

- (a) The minimum area of the lot must be 10 acres. Sec. 3.2.10.B.2.a
- (b) The minimum setback from any property line must be 75 feet, except that the minimum setback from the street may be reduced to 50 feet if the board finds that: Sec. 3.2.10.B.2.b
  - (1) ~~The site is in an agricultural rather than a residential area; and~~
  - (2) The smaller setback would be compatible with surrounding uses.
- (c) The board may regulate hours of operation, numbers of vehicles and personnel employed and other on-site operations so as to prevent adverse impact on adjoining uses. Sec. 8.3.1.E.4
- (d) The property must front on and have access to a road built to primary or higher standards. Sec. 3.2.9.B.2
- ~~—(e)—The board must be notified if the winery intends to conduct public tours.~~
- (f) Adequate parking must be provided on site in accordance with the requirements for an industrial or manufacturing establishment or warehouse, as stated in article 59-E. In addition, there must be a minimum of 10 additional visitors' spaces if the winery conducts public tours. Sec. 7.2.4.B
- (g) In evaluating the compatibility of this special exception with surrounding land uses, the Board must consider that the impact of an agricultural special exception on surrounding land uses in the agricultural zones does not necessarily need to be controlled as stringently as the impact of a special exception in the residential zones. Sec. 8.3.1.D.3