

# ARTICLE 59-8. ADMINISTRATION AND PROCEDURES

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## Division 8.1. Review Authority and Approvals Required

### Section 8.1.1. In General

The applicant has the burden of [proof going forward with the evidence,] production and has the burden of proof by a preponderance of the evidence on all questions of fact.

### Section 8.1.2. Overview of Review and Approval Authority

The following table provides an overview of the authority granted the various bodies under this Chapter. This table does not define legal responsibilities and is only provided for the convenience of the reader.

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

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

### Section 8.1.3. Overview of Approvals Required

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

Application	Section Reference	Applicability
<b>District Council Approvals</b>		
Local Map Amendment	8.2.1	A local zoning change to apply a Floating or Euclidean zone to a specific property.
Corrective Map Amendment	8.2.2	Correction of an error in the application or mapping of a comprehensive rezoning.
Sectional or District Map Amendment	8.2.3	A comprehensive rezoning of an area or areas of the County.
Zoning Text Amendment	8.2.4	A change in the text of this Chapter.
<b>Regulatory Approvals</b>		
Conditional Use	8.3.1	Use of any property for a conditional use, as designated by Article 59-3.
Variance	8.3.2	A request to deviate from any requirement of this Chapter.
Sketch Plan	8.3.3	Required for development under the optional method.
Site Plan	8.3.4	Optional method development requires approval of a site plan after approval of a sketch plan. Development under a Floating zone requires approval of a site plan after approval of a Local Map Amendment. Development under standard method <u>may require [requires] site plan approval [as indicated in Sec.] under Section 8.3.4.</u>
<b>Administrative Approvals</b>		
Building Permit	8.4.1	Required before any building or structure can be erected, moved, [structurally] altered, [added to,] or enlarged[ and before any excavation]. See exemptions in [Sec.] Section 8.4.1.
Use-and-Occupancy and Temporary Use Permits	8.4.2	Required before any building, structure, or land can be used or can be converted, in whole or in part, from one use to another. See exemptions in [Sec.] Section 8.4.2.
Sign Permit	8.4.3	Required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy that satisfies a sign concept plan, does not require a permit. See exemptions in [Sec.] Section 7.7.3.
Sign [Permit] Variance	8.4.4	Any sign not listed in [Div] Division 7.7, or that does not satisfy the requirements in [Div] Division 7.7, may apply for a sign [permit] variance from the Sign Review Board.
[Sign Installer License]	[8.4.5]	[Required for any business that chooses to provide certification as a licensed sign installer.]
[Administrative Zoning District Line Adjustment]	[8.4.5]	[An administrative correction of an error in a zoning district line.]

## Division 8.2. District Council Approvals

### Section 8.2.1. Local Map Amendment

#### A. Applicability and Description

1. A zoning map change to apply a Floating or Euclidean zone to an individual property requires approval of a Local Map Amendment.
2. The Local Map Amendment application describes the property and the basis for the requested zoning change.
3. When requesting a Floating zone, an applicant may propose binding elements with a Local Map Amendment application. A binding element may include, but is not limited to, a restriction on use and building type that the zone would otherwise allow; a limit on a development standard to less than the maximum allowed; or a general development requirement beyond the minimum required. A binding element binds the applicant, and any successor or assign, unless lawfully amended.

#### B. Application Requirements

1. An applicant must file a Local Map Amendment application with the Hearing Examiner.
  - a. Before filing, the applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness no later than 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
  - b. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness no later than 10 days after receipt.
  - c. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner, who will accept the application and establish a hearing date under Sec. 8.2.1.C.]

1. [d.] The applicant must be a government agency, own the subject property, or be authorized by the owner to file the application. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, the applicant must submit written authorization from that entity or agency with the application.

#### [2. Public notice is required under Division 8.5.]

2. [3.] The applicant must submit the following for review:
  - a. An application form and fees approved by the District Council[;].
  - b. The identity of each person who has a substantial interest in the property under the application, including any person with a share in the property amounting to 5% or more (whether held in an individual or corporate capacity) of the full cash value of the property after subtracting all mortgages, deeds of trusts, liens, and encumbrances. The application must also contain the names of any contract purchaser or person holding a mortgage, deed of trust, or option to purchase the property.
  - c. A statement disclosing political contributions to the treasurer or political committee of any candidate for County Council and County Executive or slate that contributes to candidates for County Council or County Executive, under State law. The applicant must submit the disclosure statement on a form approved by the District Council.
  - d. A statement explaining how the proposed development satisfies the criteria to grant the application[;].
  - e. For a Floating zone, a floating zone plan depicting:
    - i. building location, density, massing, height, and anticipated use;
    - ii. locations of open spaces and preliminary stormwater management strategy;
    - iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
    - iv. any binding element on the application. An applicant who proposes a binding element must submit an unexecuted covenant suitable for filing in the land records reflecting any restriction on the development

standards, development program, or use that will be applicable to the property if the District Council approves the application; and

- v. the following additional information:
  - (a) current and proposed zone;
  - (b) existing site conditions and vicinity;
  - (c) existing or approved adjacent land uses, buildings, and rights-of-way;
  - (d) a Traffic Study under the Planning Board's LATR Guidelines if the incremental increase in vehicular peak-hour trips between the density of the base zoning and the density of the requested floating zone meets the minimum applicability requirement in the LATR Guidelines; and
  - (e) general phasing of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications.
- f. For a Euclidean zone application, exhibits showing:
  - i. the subject property and the proposed neighborhood, identifying uses and zoning; and
  - ii. an explanation of the changes that have occurred in the neighborhood since the original zoning or previous comprehensive rezoning, or evidence of the alleged mistake made by the District Council in the previous Sectional or District Map Amendment, in support of the requested Euclidean zone.

- 3. [The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.](#)
- 4. [The applicant must submit any required revisions to the Planning Director.](#)

[The Planning Director must review the revised application for completeness within 10 days after receipt.](#)

- 5. [After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner, who will accept the application and establish a hearing date under Section 8.2.1.C](#)
- 6. [Public notice is required under Division 8.5.](#)
- 7. [\[4.\]New public notice must be provided for any modification to an application \[applications\] requesting an increase in the area proposed to be reclassified or requesting a change to the zoning classification\[; and\].](#)
- 8. [\[5.\]The Hearing Examiner must make applications available for public inspection during regular office hours.](#)

### C. Hearing Date

- 1. The Hearing Examiner must [schedule a \[begin a\] public hearing to begin](#) on a Local Map Amendment application [\[no later than\] within](#) 120 days after the application was accepted.
- 2. The Hearing Examiner may postpone the public hearing if done [\[at least\] a minimum of](#) 10 days before the scheduled date [unless extraordinary circumstances make such notice impossible](#), and must provide notice of the new hearing date.
- 3. The Hearing Examiner may issue a subpoena to compel the attendance of witnesses and production of documents at any public hearing and administer an oath to any witness.

### D. Review and Recommendation

#### 1. Planning Director Review

The Planning Director must [\[issue and make available to the applicant and the public\] publish](#) a report and recommendation [\[no later than\] a minimum of](#) 10 days before the Planning Board public meeting. [\[The report and recommendation must be made.\]](#)

## 2. Planning Board Review

- a. The Planning Board must hold a public meeting on the application.
- b. The Planning Board must provide a recommendation on the application to the Hearing Examiner [no later than] a minimum of 7 days before the Hearing Examiner's public hearing.

## 3. Hearing Examiner Review

- a. The Hearing Examiner must forward a report and recommendation to the District Council [no later than] within 45 days after the close of the record of the public hearing. The Hearing Examiner must also make the report available to the applicant and public.
- b. The Hearing Examiner may extend the time to forward the report and recommendation once by up to 45 days without the District Council's approval and again by up to 45 days with the District Council's approval.
- c. Any party of record or aggrieved party may, [no later than] within 10 days after [transmittal of] the Hearing Examiner's issues a report and recommendation, file a written request with the District Council to present oral argument.
  - i. Any party who submits a request for oral argument must send a copy of the request to all parties of record.
  - ii. The request must concisely state the matters desired to be presented at the oral argument. The District Council may grant or deny the request. [If the District Council grants the request, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. ]The District Council may, on its own motion, require oral argument on any aspect of the case. When oral argument is allowed, the District Council must:
    - (a) set the day and time for oral argument;
    - (b) limit oral argument to specific topics;
    - (c) set time limits for oral argument; and
    - (d) specify the order of presentations.

- iii. Each oral argument must be limited to matters contained in the record compiled by the Hearing Examiner.
- iv. After oral argument, the District Council must either decide the application or remand the application to the Hearing Examiner for clarification or taking additional evidence.
- v. [iii.] Any interested party may, [no later than] within 5 days after a request for oral argument is filed with the District Council, file a written opposition to a request for oral argument or request to participate in oral argument if oral argument is allowed. The opposition must be concise and limited to matters raised by the party who requested oral argument. Any party who files an opposition or request to participate must send a copy to all parties of record.

## 4. Withdrawal of Application

The Hearing Examiner may allow an applicant to withdraw an application for a Local Map Amendment at any time before the Hearing Examiner issues the report.

## E. Necessary Findings

1. A Floating zone application that satisfies Article 59-5 may not be sufficient to require approval of the application.
2. [1.] For a Floating zone application the District Council must find that the floating zone plan will:
  - a. substantially conform with the recommendations of the applicable master plan, general plan, and other applicable County plans;
  - b. further the public interest;
  - c. [meet] satisfy the intent, purposes, and standards of the proposed zone and requirements of this Chapter;
  - d. be compatible with existing and approved adjacent development;
  - e. [demonstrate the ability to provide adequate and safe internal infrastructure, open space, public amenities, and pedestrian and transportation circulation] generate traffic that does not exceed the critical lane volume or volume/capacity ratio standard as applicable under the Planning

Board's LATR Guidelines, or, if traffic exceeds the applicable standard, that the applicant demonstrate an ability to mitigate such adverse impacts; and

- f. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, not adversely effect the character of the surrounding neighborhood.
3. [2.]For a Euclidean zone application, the District Council must find:
  - a. a substantial change in the character of the neighborhood since the original zoning or comprehensive rezoning, or that a mistake was made by the District Council when it applied the existing zoning;
  - b. the requested zone is in the public interest; and
  - c. the requested zone is compatible with the surrounding area.

#### F. Decision

1. The District Council must make its decision to approve, deny, or remand the application to the Hearing Examiner on the record.
2. Generally, [An] an affirmative vote of 5 members of the District Council is required to approve an application;[, except that when a Floating zone application is not recommended by the applicable master plan and the Planning Board or applicable municipality does not recommend approval of the application, a vote of 6 members is required] however, an affirmative vote of 6 members of the District Council is required to approve an application if:
  - a. approval would be contrary to the recommendation of the municipality in which the property is located; or
  - b. the Planning Board does not recommend approval of the application.

If the required number of affirmative votes is not obtained, the application is denied.

3. For a Floating zone:
  - a. Before the close of the administrative record the applicant must submit to the Hearing Examiner an executed covenant that reflects any restriction on the development standards, development program, or use in the approved floating zone plan.

- b. The executed covenant must also state that the restricted development standards, development program, or use remain in full effect until the property is rezoned or the floating zone plan is amended and an amended covenant is executed and recorded.
- c. The applicant must file the executed covenant in the land records of Montgomery County [no later than] within 10 days after approval of the application by the District Council and submit certification of such filing to the Planning Board with the site plan application. The Planning Board must not accept a site plan application without this certification.
4. The District Council must issue a resolution and opinion reflecting its decision on the application [no later than] within 60 days after the Hearing Examiner's transmittal to the District Council, unless such time is extended by the District Council, or remand the application to the Hearing Examiner for further consideration.
5. Any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision [no later than] within 30 days after the District Council's action under the Land Use Article.
6. The decision of the District Council on any application for a Local Map Amendment is final, except that the District Council on its own motion may, within 30 days, reconsider its decision on any application. A decision to reconsider stays the time in which a party may file for petition for judicial review.
7. After giving the applicant 30 days' notice, the Hearing Examiner may recommend that the District Council dismiss an application if:
  - a. the application has been pending for 2 years or longer; and
  - b. the applicant has not actively pursued the application.The District Council may dismiss the application unless the applicant shows good cause that the application should not be dismissed.

#### G. Subsequent Actions

1. Filing of subsequent Local Map Amendment applications are limited as follows:

- a. Filing a Local Map Amendment application is prohibited for land that was in whole or in part the subject of a previous zoning application decided on its merits within the last 18 months.
  - b. Filing a Local Map Amendment application is prohibited for land that was in whole or in part the subject of a previous zoning application for the same zoning classification filed within the last 36 months and decided on its merits.
  - c. The time limitations in [Sec.] Section 8.2.1.G.1.a and [Sec.] Section 8.2.1.G.1.b do not apply when the previous application, which would bar the filing of a new application, was filed by a governmental agency not at the owner's request.
  - d. The District Council may waive the time limitations in [Sec.] Section 8.2.1.G.1.a if an applicant submits a petition that shows substantial new facts that would warrant reapplication.
2. All development in a Floating zone requires site plan approval under [Sec.] Section 8.3.4.

## H. Recording Procedures

1. For a Local Map Amendment for a Floating zone:
  - a. If a floating zone plan includes a binding element, the applicant must file an executed covenant reflecting the binding element in the land records and provide certification of the filing to the Planning Board with any subsequent site plan application. The covenant must remain in effect until the District Council rezones the property or removes the binding element that the covenant reflects.
  - b. The applicant must provide the floating zone plan that satisfies the District Council's resolution to the Hearing Examiner for certification in a format approved by the Hearing Examiner, [no later than] within 10 days after the District Council issues its resolution.
  - c. The Hearing Examiner must maintain the certified floating zone plan in the Hearing Examiner's permanent files, and publish an electronic copy.
  - d. The District Council must send a copy of the resolution [and certified floating zone plan] to the Planning Board to update the zoning map. The

District Council must also send a copy of the resolution to the applicant, all parties of record, [and] DPS, [DPS must send a copy of the resolution to] the Supervisor of Assessments for Montgomery County, the Department of Finance, the Department of Environmental Protection[,], and the Board of Appeals.

2. For a Local Map Amendment for an Euclidean zone, the District Council must send a copy of the resolution to the Planning Board to update the zoning map. The District Council must also send a copy of the resolution to the applicant, all parties of record, [and] DPS, [DPS must send a copy of the resolution and opinion to] the Supervisor of Assessments for Montgomery County, the Department of Finance, the Department of Environmental Protection, and the Board of Appeals.

## I. Amendment to a Floating Zone Plan

There are 2 ways to amend a floating zone plan:

1. A major amendment to an approved floating zone plan follows the same procedures as an original application. A major amendment includes any request to increase density or height, add a previously disallowed use, decrease a setback, or make a change to any binding element of approval.
2. At site plan, the Planning Board may approve an amendment to an approved floating zone plan that does not increase density or height, add a previously disallowed use, decrease a setback, or change any binding element.

## J. Compliance and Enforcement

1. [Whenever a complaint is filed] Any individual or governmental agency may file a complaint alleging [substantial] noncompliance with any binding element of an approved floating zone plan[,], with DPS, [must investigate the complaint and, if] If the complaint is found to have reasonable cause, DPS must provide a [written summary of the investigation] notice of noncompliance to the complaining party, the [zoning applicant or a successor in interest] property owner, [the Planning Board,] and the Hearing Examiner. [Any individual or governmental agency may file a complaint.]
2. Upon receipt of the [investigative report] notice of noncompliance, the Hearing Examiner must schedule a show cause hearing to determine whether the property owner has failed to comply with a binding element and whether



any such failure merits sanctions including reversion to the previous zoning category. The hearing will be conducted after providing the parties and the public with 30 days notice. The Hearing Examiner must provide the District Council with a report and recommendation [no later than] within 30 days after the close of the hearing record. A hearing is not required if the complaint is withdrawn or the alleged noncompliance is corrected to the satisfaction of DPS.

3. If the District Council finds, after consideration of the Hearing Examiner's report and recommendation, that a party has failed to satisfy any binding element of an approved floating zone plan, it may adopt a resolution providing appropriate sanctions including reversion to the previous zoning classification. Upon the property's reversion to the previous zoning classification, all development standards of the previous zone apply. The reversion sanction will not apply where the District Council finds substantial compliance with the binding elements.

## Section 8.2.2. Corrective Map Amendment

### A. Applicability and Description

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

### B. Application Requirements

1. Only the Planning Board may file an application for a Corrective Map Amendment with the District Council.

2. Public notice is required [for accepted applications] under [Div.] Division 8.5.

### C. Review and Recommendation

#### 1. Planning Director Review

- a. The Planning Director must [issue and make publicly available] publish a report and recommendation [at least] a minimum of 7 days before the Planning Board meeting.
- b. The Planning Director's report and recommendation must include:
  - i. A description of the area of land proposed for rezoning;
  - ii. A map depicting the existing and proposed zoning for the area of land; and
  - iii. A statement of reason for the zoning change.

#### 2. Planning Board Review

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

### D. Necessary Findings

The Planning Board must show that there is an error or inaccurate depiction of the zoning boundary line on an adopted map.

### E. Decision

1. The District Council must conduct a public hearing and make its decision on the record to approve, deny, or remand the application to the Planning Board for further consideration.
2. An affirmative vote of 5 members of the District Council is required to approve a Corrective Map Amendment. If the required number of affirmative votes is not obtained, the application is denied.
3. The District Council must issue a resolution and opinion on the application [no later than] within 60 days after the close of record, unless such time is

extended by the District Council, or remand the application to the Planning Board for further consideration.

4. Any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision [\[no later than\] within](#) 30 days after the District Council's action [under the Land Use Article](#).
5. A public hearing may be adjourned, continued, suspended, deferred, or postponed either to a time certain or for a reasonable period of time by the District Council on public announcement. The District Council, on its own or at the suggestion of the Planning Board, may determine that some or all of the proposed adjustments should be considered comprehensively as part of a future master plan review and therefore dismiss the application.

#### F. Recording Procedures

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

### Section 8.2.3. Sectional and District Map Amendment

#### A. Applicability and Description

1. A Sectional Map Amendment rezones or confirms the zoning of a substantial area of the County.
2. A District Map Amendment rezones or confirms the zoning of the entire County.

#### B. Application Requirements

1. Only the Planning Board or District Council may apply for a Sectional or District Map Amendment.
2. [The District Council, or its designee, accepts the application for a Sectional or District Map Amendment. The District Council must forward the application to the Planning Board no later than 5 days after acceptance for filing.](#)
3. Public notice is required under Div. 8.5.]

2. For a Sectional Map Amendment, the applicant must submit the following for review:
  - a. The designation or description of the area sufficient to identify:
    - i. the zone boundaries and existing and proposed zoning;
    - ii. all roads, streets, alleys, public parks or other areas in public ownership or on public rights-of-way, and all streams and railroad rights-of-way within the area covered by the map, and the names thereof.
  - b. A map or map series of the area prepared by a civil engineer, surveyor, or the Planning Board, and certified to be correct and satisfying [\[this\] Section 8.2.3 \[\(Section 8.2.3\)\]](#).
  - c. [A digital copy of the map indicating the existing zoning and the proposed zoning.](#)
  - d. A statement of the reasons for the proposed zoning changes or adjustments. The application must include the total acres in the application, the acres proposed for rezoning, and the acres proposed for reconfirmation of existing zoning.
3. [The District Council, or its designee, accepts the application for a Sectional or District Map Amendment. If the Planning Board is not the applicant the District Council must forward the application to the Planning Board within 5 days after acceptance for filing.](#)
4. [Public notice is required under Division 8.5.](#)

#### C. Review and Recommendation

##### 1. Planning Director Review

- a. The Planning Director must [\[issue and make publicly available\] publish](#) a report and recommendation [\[at least\] a minimum of](#) 10 days before the Planning Board public meeting.
- b. The Planning Director's report and recommendation must include:
  - i. A description of the area proposed for rezoning; and
  - ii. Maps depicting the proposed zoning.

## 2. Planning Board Review

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

## D. Decision

1. The District Council must conduct a public hearing and make its decision to approve with or without modification, deny, or remand the application to the Planning Board for additional analysis.
2. [An affirmative vote of 5 members of the District Council is required to adopt the Sectional or District Map Amendment, except that when an applicable municipality does not recommend approval of the application a vote of 6 members is required. If the required number of affirmative votes is not obtained, the application is denied. If the zoning is not recommended in a master plan or by the Planning Board, a vote of 6 members is required.] Generally, an affirmative vote of 5 members of the District Council is required to approve an application; however, an affirmative vote of 6 members of the District Council is required to approve an application if:
  - a. approval would be contrary to the recommendation of the municipality in which the property is located; or
  - b. the Planning Board does not recommend approval of the application.
3. The District Council must issue a resolution and opinion reflecting its decision on the application [no later than] within 60 days after the close of record, unless the time is extended by the District Council.
4. [4. Any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision no later than 30 days after the District Council's action.]
4. [5.] The decision of the District Council on any application for a Sectional or District Map Amendment is final except that the District Council on its own motion may, within 30 days, reconsider its decision on any application. [A

reconsideration stays the time in which a petition for judicial review may be filed.]

## E. Recording Procedures

1. The Planning Board must maintain the District Council's resolution on the Sectional or District Map Amendment in its permanent files.
2. The District Council must send a copy of the resolution to the Planning Board to update the zoning map. The District Council must also send a copy of the resolution to all parties of record, [and] DPS. [DPS must send a copy of the resolution to] the Supervisor of Assessments for Montgomery County, the Department of Finance, the Department of Environmental Protection, and the Board of Appeals.

## Section 8.2.4. Zoning Text Amendment

### A. Applicability and Description

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

### B. Application Requirements

1. Any individual or government agency may request the District Council or an individual District Council member to sponsor a Zoning Text Amendment.
2. Only the District Council may introduce a Zoning Text Amendment.
3. The District Council must [transmit] send the Zoning Text Amendment to the Planning Director, the County Executive, the Board of Appeals, and the Hearing Examiner [no later than 5 days after introduction] and notify them of the District Council's public hearing date.
4. Public notice is required under [Div.] Division 8.5.

### C. Review and Recommendation

#### 1. Planning Director Review

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

## 2. Planning Board Review

- a. The Planning Board may consider the Planning Director's report and recommendation as a consent item on its agenda or hold a public meeting to consider the recommendation.
- b. The Planning Board must submit a recommendation on the application to the District Council [at least 5 days] before the District Council Hearing. The recommendation must also be made available to the public.

## 3. Other Agency Review

The County Executive, the Board of Appeals, or the Hearing Examiner [must] may submit and make publicly available any recommendation on a Zoning Text Amendment to the District Council [at least 5 days before the District Council hearing].

## [D. Necessary Findings

The approval of a Zoning Text Amendment must be in the public interest and further the County's plans and policies.]

## D. [E.] Decision

1. The District Council must hold a public hearing [no later than] within 60 days after introduction, unless the District Council extends the hearing date. A quorum of the District Council is not required to conduct a public hearing on a Zoning Text Amendment.
2. [At least] A minimum of 5 members of the District Council must vote in the affirmative to adopt a Zoning Text Amendment.
3. Any District Council member who was not present at the hearing must review the record and sign a statement that he or she reviewed the record before voting on the amendment.
- [4. The final adoption of a Zoning Text Amendment must be a roll call vote.]
4. [5. Each] A Zoning Text Amendment takes effect 20 days after the District Council adopts it, unless the resolution adopting it specifies a different date.
5. [6.] If the District Council does not act on a Zoning Text Amendment within the earlier of 2 years of the date of its public hearing or expiration of the term of office of the District Council that conducted the public hearing, it

may not do so unless the Zoning Text Amendment is again introduced and set for public hearing.

## [F. Recording Procedures

1. When the District Council adopts a Zoning Text Amendment, it must also adopt and maintain in its permanent files an opinion stating the reasons for its adoption.
2. The District Council must promptly send a copy of the opinion and Zoning Text Amendment to the County Executive, the Planning Board, the Hearing Examiner, the Board of Appeals, the Supervisor of Assessments, DPS, and the Department of Finance, and all persons entering their appearance at the hearing.]

## Division 8.3. Regulatory Approvals

### Section 8.3.1. Conditional Use

#### A. Applicability and Description

1. Use of any property for a conditional use[, as designated by] under Article 59-3[.] requires approval of a conditional use application.
2. A conditional use application may include all or part of a property[, but when the application does not contain the entire area included in any previous approval, the application must demonstrate its relation to and coordination with other approvals].
3. A conditional use application must satisfy the conditions and binding elements of, and be consistent with, any effective previous approvals on the subject property.
4. An area covered by a conditional use approval requires a site plan only if:
  - a. the area is included in a sketch plan; or
  - b. the use standards in Article 59-3 require it[; or
  - c. the Board of Appeals or Hearing Examiner requires it].

#### B. Application Requirements

- [1. Conditional use applications are filed with either the Board of Appeals or the Hearing Examiner depending on which body is authorized to make the final decision under Article 59-3:
  - a. Before filing, the applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness no later than 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
  - b. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness no later than 10 days after receipt.

- c. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner or Board of Appeals, who will accept the application and establish a hearing date under Sec. 8.3.1.C.]

#### 1. [2.] Ownership:

- a. An applicant must own the subject property or [show authorization from] be authorized by the owner to file the application.
- b. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.

#### [3. Public notice is required for accepted applications under Div. 8.5.]

#### 2. [4.] The applicant must submit the following for review:

- a. application form and fees as approved by the District Council;
- b. proof of ownership or authorization;
- c. statement of how the proposed development satisfies the criteria to grant the application;
- d. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
- e. list of abutting and confronting property owners in the County tax records;
- f. list of any civic and homeowners associations within 1/2 mile;
- g. Traffic Statement or Study, accepted for review by the Planning Director;
- h. [inventory] map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- i. existing and proposed dry and wet utility plan if changes to these facilities are proposed;
- j. written description of operational features of the proposed use;

- k. if exterior changes are proposed, plans of the proposed development showing:
    - i. footprints, ground-floor layout, and heights of all buildings and structures;
    - ii. required open spaces and recreational amenities;
    - iii. layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
    - iv. rough grading;
    - v. landscaping and lighting;
    - vi. approved Natural Resources Inventory/Forest Stand Delineation, [if required under Chapter 22A](#);
    - vii. Forest Conservation Plan application, if required under [Chapter 22A](#), or an approved preliminary forest conservation plan; telecommunication tower applications [\[are exempt from this requirement\] must include an approved Forest Conservation Plan or a letter from the Planning Department confirming that a Forest Conservation Plan is not required under Chapter 22A](#);
    - viii. Stormwater Management Concept or Water Quality Plan application, if required under [Chapter 19](#); and
    - ix. supplementary documentation showing or describing how the application satisfies previous approvals and applicable requirements.
  - l. development program and inspection schedule detailing any construction phasing for the project; and
  - m. for a telecommunication tower application, photographic simulations of the tower and site seen from areas with a direct view of the tower, including a minimum of at least 3 directions.
3. [The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.](#)

4. [The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.](#)
5. [After the Planning Director verifies that the application is complete, the applicant must file the final application with the Hearing Examiner, who will accept the application and establish a hearing date under Section 8.3.1.C.](#)
6. [Public notice is required under Division 8.5.](#)

### C. Hearing Date

1. The Hearing Examiner must [\[begin\] schedule](#) a public hearing [to begin \[no later than\] within](#) 120 days after the date an application [\[is\] was](#) accepted.
2. The Hearing Examiner may postpone the public hearing and must send notice to all parties of record of the new hearing date.
3. The Hearing Examiner may issue a subpoena to compel the attendance of witnesses at a public hearing and production of documents and administer an oath to any witness.

### D. Review and Recommendation

#### 1. Planning Director Review

- a. The Planning Director may provide a report and recommendation for review by the Planning Board at a public meeting or issue a report and recommendation directly to the Hearing Examiner. The Planning Director must provide a report and recommendation on a telecommunication tower application directly to the Hearing Examiner.
- b. If the Planning Director provides a report and recommendation to the Planning Board, the Planning Director must [\[issue and make publicly available\] publish](#) the report and recommendation a minimum of 10 days before the Planning Board public meeting.
- c. If the Planning Director provides a report and recommendation to the Hearing Examiner, the Planning Director must [\[issue\] publish](#) the report and recommendation a minimum of 10 days before the Hearing Examiner's public hearing.

## 2. Planning Board Review

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

## 3. Hearing Examiner Review

When the Board of Appeals is the deciding body:

- i. The Hearing Examiner must forward a report and recommendation to the Board of Appeals no later than 30 days after the close of the record of the public hearing. The Hearing Examiner must notify the applicant and all parties who participated in the hearing that the report and recommendation are complete and available for review.
- ii. The Hearing Examiner may extend the time to forward the report and recommendation once by up to 30 days without the Board of Appeals' approval. Any extension beyond 30 days requires approval by the Board of Appeals.
- iii. Any party of record or aggrieved party may, no later than 10 days after transmittal of the Hearing Examiner's report, file a written request to present oral argument before the Board of Appeals.
  - (a) A written request must be filed with the Board of Appeals and must concisely identify the matters to be presented at the oral argument.
  - (b) Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument. An opposition to a request for oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.

(c) The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner.

(d) Thereafter, the Board of Appeals must decide the matter under [Sec.] Section 8.3.1.F, or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.]

## 3. [4.]Amendment of an Application

- a. An applicant may amend the application before the hearing if the Hearing Examiner approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an amendment would materially alter an applicant's proposal or evidence, the Hearing Examiner may postpone the hearing to a date that permits all interested parties adequate time to review the amendment.
- b. The applicant must forward a copy of any proposed amendment to the Planning Board. The Hearing Examiner must keep the record open for [a reasonable time] no more than 30 days to provide an opportunity for the Planning Board or its staff to comment. Within that time, the Planning Board or its staff must comment on the amendment or state that no additional review and comment are necessary.

## 4. [5.]Withdrawal of an Application

[a.] The [Board of Appeals] Hearing Examiner or [its] the Hearing Examiner's designee must send a notice to all parties entitled to notice of the [filing of the application] hearing when an applicant withdraws an application for a conditional use.

- [b. If an applicant withdraws an application a minimum of 30 days before the initial hearing, the Planning Board may allow the application to be withdrawn without the limitations on refiling specified in Sec 8.3.1.G.1.
- c. Withdrawal of an application fewer than 30 days from the date of the hearing must be with prejudice.]

## E. Necessary Findings

1. To approve a conditional use application, the Hearing Examiner [or Board of Appeals] must find that the proposed development:
  - a. satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;
  - b. satisfies the requirements of the zone, use standards under Article 59-3, and applicable general requirements under Article 59-7;
  - c. substantially conforms with the recommendations of the applicable master plan;
  - d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;
  - e. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;
  - f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:
    - i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner [or Board of Appeals] must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; or
    - ii. if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; and
  - g. [will not have a significant non-inherent adverse impact] will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:
    - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;
    - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or
    - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.
2. Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must [whenever practicable, have the exterior appearance of a detached house, duplex, or townhouse building type as allowed in the zone] be compatible with the character of the residential neighborhood.
3. The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.
4. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner [or Board of Appeals] must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.
5. A conditional use must be denied if any of the findings required in Section 8.3.1.E.1.a through Section 8.3.1.E.1.e cannot be made. A conditional use may be denied if it has non-inherent adverse effects in any of the categories in Section 8.3.1.E.1.g and the overall assessment of both inherent and non-inherent adverse impacts warrants denial to avoid undue harm to the general neighborhood.]
5. The following conditional uses may only be approved when the Hearing



Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- a. Filling Station;
  - b. Light Vehicle Sales and Rental (Outdoor);
  - c. Swimming Pool (Community); and
  - d. the following Recreation and Entertainment Facility use: swimming pool, commercial.
6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:
- a. Funeral Home; Undertaker;
  - b. Hotel, Motel;
  - c. Shooting Range (Outdoor);
  - d. Landfill, Incinerator, or Transfer Station; and
  - e. a Public Use Helipad, Heliport or a Public Use Helistop.

## F. Decision

- [1. If the Hearing Examiner is deciding the application, the Hearing Examiner must issue a decision on the application no later than 30 days after the close of the record to approve, approve with conditions, or deny the application. The Hearing Examiner, by order, may extend the time to issue a decision.
2. If the Board of Appeals is deciding the application, it must:
  - a. vote in public session to approve, approve with conditions, deny the application, or to remand to the Hearing Examiner for additional evidence or clarification. An affirmative vote of 4 members of the Board of Appeals is required when 5 members are present, or an affirmative vote of 3 members is required when 4 or 3 members are present to approve a con-

ditional use. Any Board of Appeals member who votes on a conditional use and was not present for any portion of the hearing must read and sign the transcript of that portion of the testimony and must review all exhibits introduced at the hearing.

- b. The Board of Appeals must issue a resolution reflecting the Board of Appeals' decision no later than 30 days after the close of the record unless such time is extended by the Board of Appeals.
3. The Hearing Examiner or Board of Appeals may impose conditions of approval regarding operations, parking, landscaping, and lighting to ensure compatibility with the general neighborhood.
4. Any party of record or any party aggrieved by a decision of the Hearing Examiner may file an appeal with the Board of Appeals. Any party aggrieved by a decision of the Board of Appeals may file a petition for judicial review of the decision no later than 30 days after the Board of Appeals' action.]

### 1. Hearing Examiner

- a. The Hearing Examiner must issue a report and proposed decision no later than 30 days after the close of the record of the public hearing. The proposed decision may recommend that the application be approved, approved with conditions, or denied. The Hearing Examiner may supplement the specific requirements of this Chapter with any other requirements necessary to protect nearby properties and the general neighborhood. The Hearing Examiner may by order extend the time to issue the report and proposed decision.
- b. The Hearing Examiner must notify the Board of Appeals, the applicant, and all parties who participated in the hearing that the report and proposed decision are complete and available for review. If a timely request for oral argument is not received under Section 8.3.1.F.1.c, the Hearing Examiner's report and proposed decision becomes the final decision.
- c. Any party of record or aggrieved party may, no later than 10 days after the transmittal of notification that the Hearing Examiner's report and proposed decision are available for review, file a written request to present oral argument before the Board of Appeals. The filing of such a

request transfers jurisdiction over the matter from the Hearing Examiner to the Board of Appeals.

- i. A written request for oral argument must be filed with the Board of Appeals and the Hearing Examiner, and must concisely identify the matters to be presented at the oral argument.
- ii. Any party of record or aggrieved party may, no later than 5 days after a request for oral argument is filed, file a written opposition or request to participate in oral argument. An opposition to a request for oral argument must be sent to the Board of Appeals and all parties as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.
- iii. The Board of Appeals may, in its discretion, grant or deny an oral argument request. If the Board of Appeals grants a request for oral argument, the argument must be limited to matters contained in the record compiled by the Hearing Examiner.
- iv. Regardless of whether the Board of Appeals has elected to hear oral argument, the Board of Appeals must, under Section 8.3.1.F.2, approve or deny the conditional use application or remand it to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.

## **2. Board of Appeals**

- a. If the Board of Appeals is deciding the application, it must make the necessary findings under Section 8.3.1.E and must:
  - i. vote in public session to approve, approve with conditions, or deny the application, or to remand the application to the Hearing Examiner for additional evidence or clarification. An affirmative vote of 4 members of the Board of Appeals is required to approve a conditional use when 5 members are present, otherwise an affirmative vote of 3 members is required. Any Board of Appeals member who votes on a conditional use and was not present for any portion of the hearing must read and sign the transcript of that portion of the testimony and must review all exhibits introduced at the hearing; and

- ii. issue a resolution reflecting the Board of Appeals' decision no later than 30 days after voting on the matter, unless such time is extended by the Board of Appeals.
- b. All matters decided under Section 8.3.1.F.2 must be decided on the basis of the evidence or record, but the Board of Appeals may decide any matter heard by the Hearing Examiner and presented to the Board of Appeals for decision solely on the basis of the Hearing Examiner's report and proposed decision.
  - c. The Board of Appeals may supplement the specific requirements of this Chapter with any other requirements necessary to protect nearby properties and the general neighborhood.

## **G. Appeal**

Any party aggrieved by a decision of the Board of Appeals may, within 30 days after the Board of Appeals' action, file a petition for judicial review of the decision under the Land Use Article (Section 22-403).

## **H. [G.]Subsequent Actions**

1. If the conditional use application is denied, a new application proposing substantially the same development for the same property may not be filed within 18 months after a final decision, unless the Hearing Examiner [or Board of Appeals] finds that the applicant provides material new facts that warrant reapplication.

### **2. Conforming Permits**

DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement associated with a conditional use

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

### 3. Permits Exempt from Conformance to Approved Conditional Uses

- a. On any property with an approved conditional use, DPS may, without a finding of conformance to the approved conditional use, issue a sediment control permit or building permit to:
  - i. construct an accessibility improvement;
  - ii. repair an existing structure without changing its height or footprint; or
  - iii. replace an existing structure to no more than the same footprint and height approved.
- b. DPS must submit a copy of any permit issued under [this] Section 8.3.1.H.3 [(Section 8.3.1.G.3)] to the Hearing Examiner [or] and the Board of Appeals for inclusion in the record of the conditional use.
- c. Any modification or improvement allowed under [this] Section 8.3.1.H.3 [(Section 8.3.1.G.3)] does not require an amendment to the conditional use application.

### I. [H.]Duration of Approval

1. A conditional use [expires within] that is not established or has not obtained a building permit within 24 months from the date of the issuance of the decision or resolution expires, unless a longer period is established by the decision or resolution<sup>1</sup>, if the use is not established or a building permit has not been obtained for the applicable use.
2. The Board of Appeals or the Hearing Examiner may extend the time limit for a conditional use to be established or obtain a building permit if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. An individual extension must not exceed 12 months. If the Board of Appeals or the Hearing Examiner grants an extension, it must set a date by which the erection or alteration of the building must begin or the use must be established.
3. Development activities under [this] Section 8.3.1 [(Section 8.3.1)] must sat-

isfy the approved conditional use and any conditions, including operational restrictions.

4. The conditional use holder must notify the Board of Appeals of any change in land ownership or change in circumstances or conditions affecting the conditional use.

### J. [I.]Recording Procedures

1. The Hearing Examiner or the Board of Appeals must maintain in their permanent files any conditional use application that they approve along with any written decision.
2. A copy or notice of the decision of the Board of Appeals or Hearing Examiner on each conditional use application must be sent to the applicant, the Board of Appeals or Hearing Examiner, as appropriate, the Planning Board, DPS, the Department of Finance, all parties entitled to notice of filing, and any other parties of record.
3. The Planning Director must indicate the decision on the official zoning map by use of an appropriate code number or symbol.

### K. [J.]Amendments

#### 1. Major Amendment

- a. A major amendment to a conditional use is one that changes the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.
- b. A major amendment to a conditional use follows the same procedures, must meet the same criteria, and must satisfy the same requirements as the original conditional use application, except that,
  - i. The public hearing must be limited to consideration of the proposed modifications specified in the notice of public hearing and to those aspects of the conditional use that are directly related to those proposals; and

- ii. The Hearing Examiner or the Board of Appeals, as applicable, may require the underlying conditional use to satisfy the conditional use requirements of the applicable zone, to the extent necessary to avoid substantial adverse effects on the surrounding neighborhood.

## 2. Minor Amendment

- a. A minor amendment to a conditional use may be approved administratively by the Hearing Examiner or Board of Appeals, as applicable, depending on which entity approved the conditional use. A minor amendment to a conditional use is one that does not change the nature, character, or intensity of the conditional use to an extent that substantial adverse effects on the surrounding neighborhood could reasonably be expected, when considered in combination with the underlying conditional use.
- b. When a minor amendment is granted, the Board of Appeals or Hearing Examiner must send a copy of the resolution to the applicant, the Board of Appeals or Hearing Examiner, as appropriate, the Planning Board, DPS, the Department of Finance, all parties entitled to notice at the time of the original filing, and current abutting and confronting property owners. The resolution must state that any party may, [no later than] within 15 days after the resolution is sent, request a public hearing on the Board of Appeals' or Hearing Examiner's action. The request for public hearing must be in writing, and must specify the reason for the request and the nature of the objection or relief desired. If a request for a hearing is received, the deciding body must suspend its administrative amendment and conduct a public hearing to consider whether the amendment substantially changes the nature, character, or intensity of the conditional use or its effect on the immediate neighborhood. If the Board of Appeals or Hearing Examiner determines that such impacts are likely, then the amendment application must be treated as a major amendment application. A decision of the Hearing Examiner may be appealed on the basis of the Hearing Examiner's record to the Board of Appeals.

## L. [K.] Compliance and Enforcement

- 1. DPS and the Board of Appeals [or the Hearing Examiner] must establish a regular inspection program for conditional uses. DPS must perform the inspections according to the established schedule, and must perform additional inspections if DPS, the Board of Appeals, or the Hearing Examiner receive a complaint alleging failure to satisfy the terms or conditions of a conditional use. If a complaint is filed, DPS must inspect the premises of the conditional use [no later than] within 21 days after receiving the complaint, or more promptly if requested by the Board of Appeals or the Hearing Examiner, to determine the validity of the complaint.
- 2. If the inspection finds a violation of the terms or conditions of the conditional use, DPS must direct the conditional use holder to correct the violation [within a time certain to be no fewer than 15 days from the date of inspection]. When the time to correct the violation expires, DPS must reinspect the premises. If the violation has not been corrected, DPS must file a report with the Board of Appeals or the Hearing Examiner describing the nature of the violation, the corrective action ordered by DPS, and the time allowed to correct the violation.
- 3. If DPS finds that no violation exists, it must report to the Hearing Examiner or Board of Appeals that the conditional use satisfies the terms and conditions of the conditional use approval.
- 4. If the Board of Appeals or the Hearing Examiner receives a written notice from DPS that the conditional use holder is violating the terms or conditions of a conditional use or the terms, conditions, or restrictions attached to the grant of any permit issued under the conditional use approval, the Board of Appeals or the Hearing Examiner must order the conditional use holder and the property owner to appear before the Board of Appeals or the Hearing Examiner to show cause why the conditional use should not be revoked.
- 5. If DPS finds that a conditional use has been abandoned, DPS must forward written notice of its findings to the last recorded holder of the conditional use and to the property owner. The conditional use holder and property owner, no later than 60 days after the date of sending notice, must submit

- a written statement confirming the abandonment or challenging it and requesting that the use be continued.
- a. If the conditional use holder and the property owner acknowledge that the conditional use has been abandoned, DPS must notify the Board of Appeals or the Hearing Examiner. The Board of Appeals or the Hearing Examiner must adopt and issue a written resolution finding the conditional use to have been abandoned and ordering it revoked.
  - b. If either the conditional use holder or the property owner challenges the abandonment and requests that the conditional use be continued, DPS must notify the Board of Appeals or the Hearing Examiner, and the Board of Appeals or the Hearing Examiner must convene a public show cause hearing to determine whether or not the conditional use was abandoned and whether it should be revoked.
  - c. If neither the conditional use holder nor the property owner responds, DPS must notify the Board of Appeals or the Hearing Examiner of its findings, and the Board of Appeals or the Hearing Examiner must issue to the conditional use holder and the property owner an order to appear before the Board of Appeals or the Hearing Examiner to show cause why the conditional use should not be revoked.
  - d. If neither the conditional use holder nor the property owner appears before the Board of Appeals or the Hearing Examiner to show cause why the conditional use should not be revoked, the Board of Appeals or the Hearing Examiner must revoke the conditional use approval.]
5. [6.] The notice of a show cause hearing must be issued to the conditional use holder and the property owner by certified mail, return receipt requested. Notification must also be sent to DPS, and to any party who submitted a written complaint concerning the conditional use, and must:
- a. include the nature of the alleged violations;
  - b. state that the hearing is limited to a consideration and a determination of the validity of the allegations; and
  - c. advise the conditional use holder and the property owner that failure to attend and participate in the hearing may result in revocation of the conditional use.
6. [7.] The Board of Appeals or the Hearing Examiner must conduct a show cause hearing limited to consideration of the issues identified in the notice of hearing. The Board of Appeals or the Hearing Examiner may reaffirm or revoke the conditional use or amend, add to, delete or modify the existing terms or conditions. The Board of Appeals or the Hearing Examiner must make a determination on the issues presented [no later than] within 15 days after the close of record. The decision of the Board of Appeals or the Hearing Examiner must be by the adoption of a written resolution and copies of the resolution must be transmitted to the conditional use holder, the property owner, DPS, the Planning Director, and other relevant parties.
7. If DPS finds that a conditional use has been abandoned, DPS must forward written notice of its findings to the last recorded holder of the conditional use and to the property owner. The conditional use holder and property owner, within 60 days after the date of sending notice, must submit a written statement confirming the abandonment or challenging it and requesting that the use be continued.
- a. If the conditional use holder and the property owner acknowledge that the conditional use has been abandoned, DPS must notify the Board of Appeals or the Hearing Examiner, as appropriate. The Board of Appeals or Hearing Examiner must adopt and issue a written resolution finding the conditional use to have been abandoned and ordering it revoked.
  - b. If either the conditional use holder or the property owner challenges the abandonment and requests that the conditional use be continued, DPS must notify the Board of Appeals or the Hearing Examiner, as appropriate, and the Board of Appeals or Hearing Examiner must convene a public show cause hearing to determine whether or not the conditional use was abandoned and whether it should be revoked.
  - c. If neither the conditional use holder nor the property owner responds, DPS must notify the Board of Appeals or Hearing Examiner of its findings, and the Board of Appeals or Hearing Examiner, as appropriate must issue to the conditional use holder and the property owner an order to appear before them to show cause why the conditional use should not be revoked.

- d. If neither the conditional use holder nor the property owner appears before the Board of Appeals or Hearing Examiner, as appropriate, to show cause why the conditional use should not be revoked, the deciding body must revoke the conditional use approval.
- 8. The Planning Director must note the revocation of any conditional use in the official zoning maps.

## Section 8.3.2. Variance

### A. Applicability and Description

The Board of Appeals may grant a variance [for development that does not meet the requirements] from any requirement of this Chapter.

### B. Application Requirements

1. A property owner or another party authorized by the property owner may file a variance application with the Board of Appeals.
  - [2. Public notice is required for accepted applications under Div. 8.5.]
2. [3.]The applicant must submit the following for review:
  - a. application form and fees required by the Board of Appeals;
  - b. documentation of interest in the proposed development site under [Sec.] Section 8.3.2.B.1;
  - c. statement of justification outlining how the proposed development satisfies the criteria for approving the application;
  - d. survey plat or scaled drawing showing boundaries, frontage, and topography;
  - e. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
  - f. list of abutting and confronting property owners in the County tax records;
  - g. list of any civic and homeowners associations within 1/2 mile;
  - h. scale plans, illustrations, sections, elevations, or specifications showing all existing and proposed buildings and structures; and

- i. supplementary documentation to be introduced in support of the application.

### 3. Public notice is required under Division 8.5.

### C. Hearing Date

The Board of Appeals must [begin] schedule a public hearing to begin no later [no later than] within 60 days after the application [is] was accepted, except that the hearing date may be extended to 120 days from acceptance if the Board of Appeals requests advice from the Planning Director, Planning Board, or the Hearing Examiner.

### D. Review and Recommendation

1. The Board of Appeals may request review by the Planning Director, Planning Board, or Hearing Examiner.
2. If the Board of Appeals requests review by the Planning Director, Planning Board, or Hearing Examiner the review follows the same procedure as a conditional use application.
3. When an error committed or discovered during the course of construction on a site where a property owner holds a valid building permit to construct a detached house or townhouse building type in a new residential subdivision results in the violation of a required setback, and a variance would involve less than 10% of the setback requirement, the Board of Appeals may hear the application for the variance at the next regularly scheduled hearing if:
  - a. the property owner makes a written request to the Board of Appeals; and
  - b. the Board of Appeals members present make a unanimous vote to allow the application.

### 4. Amendment of an Application

An applicant may amend the application before the hearing if the Board of Appeals approves a motion to amend after giving 10 days' notice to all parties entitled to original notice of filing. If an amendment would alter materially an applicant's proposal or evidence, the Board of Appeals may postpone the hearing to a date that permits all interested parties adequate time to review the amendment.

## E. Necessary Findings

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

1. Denying the variance would result in no reasonable use of the property; or
2. [1.] One or more of the following unusual or extraordinary situations or conditions exist:
  - a. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;
  - b. the proposed development uses an existing legal nonconforming property or structure;
  - c. the proposed development contains environmentally sensitive features or buffers;
  - d. the proposed development contains a historically significant property or structure; or
  - e. the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood [or]
  - [f. denying the variance would result in an inability to legally use the property].
3. [2.] The special circumstances or conditions are not the result of actions by the applicant;
4. [3.] The requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;
5. [4.] The variance can be granted without substantial impairment to the intent and integrity of the general plan [or] and the applicable master plan; and
6. [5.] Granting the variance will not be adverse to the use and enjoyment of abutting properties.

## F. Decision

1. The Board of Appeals must act by an affirmative vote of 3 members to approve, approve with conditions, or deny the application [no later than]

within 30 days after the close of the record of the public hearing. If the required number of affirmative votes is not obtained, the application is denied.

2. Any party aggrieved by a decision of the Board of Appeals may file a petition for judicial review of the decision [no later than] within 30 days after the Board of Appeals action to the Circuit Court and thereafter to the Court of Special Appeals. If a decision on a variance is appealed to a court, this time limit runs from the date of the final court order in the appeal.

## [G. Subsequent Actions

If the Board of Appeals denies a variance application, a new application proposing substantially the same development for the same property may not be filed within 18 months after a resolution is adopted unless the Board of Appeals finds that the applicant provides material new facts that warrant reapplication.]

## G. [H]Duration of Approval

1. [A building permit, if required, must be obtained for the applicable building, structure, or use, or an application filed for any site plan or conditional use application required no later than 12 months after the approval of a variance. If a decision on a variance is appealed to a court, this time limit runs from the date of the final court order in the appeal.] The applicant must submit an application for a building permit, site plan, or conditional use within 12 months after the issuance of a variance.
2. After approval of a variance, the Board of Appeals may extend the time limit to obtain a building permit or file an application for a site plan or conditional use if the evidence of record establishes that drawing of architectural plans, preparation of the land, or other factors involved in the particular use will delay the start of construction or the establishment of the use beyond the period of validity. If the Board of Appeals grants an extension, the Board of Appeals must set a date by which the erection or alteration of the building must be started or the use established.
3. Approval of a variance entitles the applicant or successor to obtain a building permit or file a site plan or conditional use application to the standard granted by the variance.
4. The conditions approved by the Board of Appeals are binding upon the applicant, successors, and assigns.

## H. [1]Recording Procedures

The Board of Appeals[ resolution] must [be maintained in the land records and] [maintain any resolution concerning a variance in its](#) permanent files [of the Board of Appeals]. [The applicant for a variance must record an approved variance in the land records within 30 days after approval.](#)

## Section 8.3.3. Sketch Plan

### A. Applicability and Description

1. Development under optional method in the CRT, CR, EOF, or LSC zone requires approval of a sketch plan.
2. A sketch plan describes a project at an early stage to provide the public and the Planning Board the chance to review a proposed development for general design, density, circulation, public benefits, and relationship to the master plan before a developer is required to expend significant resources on design and engineering.

### B. Application Requirements

- [1. The Planning Director accepts applications for all sketch plans.
  - a. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness no later than 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
  - b. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness no later than 10 days after receipt.
  - c. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Sec. 8.3.3.C.]

1. [2.] An applicant must own the subject property or be authorized by the owner to file the application.
2. [3.] If any land or right-of-way encompassed by a sketch plan application is owned or controlled by the State, County, or any other private or public entity, a written agreement or authorization from that entity or agency must be submitted with the sketch plan application.

[4. Public notice is required for accepted applications under Div. 8.5.]

3. [5.] The applicant must submit the following for review:
  - a. application form and fees required by the Planning Director;
  - b. vicinity map at 1" = 200';
  - c. site [inventory] map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
  - d. list of abutting and confronting property owners in the County tax records;
  - e. list of any civic and homeowners associations within 1/2 mile;
  - f. documentation of interest in the proposed development site under [Sec. 8.3.3.B.2] [Section 8.3.3.B.1](#) and [Sec. 8.3.3.B.3] [Section 8.3.3.B.2](#);
  - g. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application; and
  - h. illustrative plans showing:
    - i. building densities, massing, heights, and the anticipated mix of uses;
    - ii. locations of public use and other open spaces;
    - iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
    - iv. estimated range of peak hour trips; and
    - v. relationships between existing or proposed adjacent buildings and rights-of-way;
  - i. a table of proposed public benefits and the incentive density points requested for each;



- j. a general phasing of structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications; and
  - k. fees set by the Planning Board.
4. [The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.](#)
  5. [The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.](#)
  6. [After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 8.3.3.C.](#)
  7. [Public notice is required under Division 8.5.](#)

### C. Hearing Date

The Planning Board must [\[conduct\] schedule](#) a public hearing [to begin. \[no later than\] within](#) 90 days after the date an application [\[is\] was](#) accepted. The Planning Director may postpone the public hearing by up to 30 days once without Planning Board approval and by an additional 30 days if the extension is approved by the Planning Board. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

### D. Review and Recommendation

The Planning Director must [\[issue and make publicly available\] publish](#) a report and recommendation a minimum of 10 days before the Planning Board public hearing. The report and recommendation must be made available to the applicant and public.

### E. Necessary Findings

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

1. meet the objectives, general requirements, and standards of this Chapter;
2. substantially conform with the recommendations of the applicable master plan;
3. satisfy [\[Sec. 8.7.1.A.6.c\] any development plan or schematic development plan in effect on {one day minus effective date}](#);
4. achieve compatible internal and external relationships between existing and pending nearby development;
5. provide satisfactory general vehicular, pedestrian, and bicyclist access, circulation, parking, and loading;
6. propose an outline of public benefits that supports the requested incentive density and is appropriate for the specific community; and
7. establish a feasible and appropriate phasing plan for all structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications.

### F. Decision

[\[1.\]](#) The Planning Board must act [\[no later than\] within](#) 30 days after the close of the record of the public hearing by majority vote of those present at the public hearing to approve; approve with modifications, conditions, or binding elements; or deny the application. A binding element may include, but is not limited to, a restriction on use or building type that the zone would otherwise allow; a limit on a development standard to less than the maximum allowed; a general development requirement beyond the minimum required; establishment of the public benefits that must be provided; or establishing the general layout and massing of buildings, open space, and circulation. A binding element binds the applicant, and any successor or assign, unless lawfully amended.

[\[2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision no later than 30 days after the Planning Board's action.\]](#)

## G. Subsequent Actions

If a sketch plan is approved, a site plan under [Sec.] [Section 8.3.4](#) must be submitted [no later than] [within](#) 36 months after date of the sending of the resolution, unless a longer period is established by the resolution.

## H. Recording Procedures

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

## I. Amendments

During site plan review, the Planning Board may approve an amendment to any binding element or condition of an approved sketch plan.

1. An amendment to a binding element or condition of an approved sketch plan must be:
  - a. requested by the applicant;
  - b. recommended by the Planning Board staff and agreed to by the applicant; or
  - c. made by the Planning Board, based on a staff recommendation or on its own initiative, if the Planning Board finds that a change in material facts and circumstances since sketch plan approval demonstrates that the binding element or condition does not substantially conform with the recommendations of the applicable master plan or does not [\[meet the requirements of\] satisfy](#) this Chapter.
2. Notice of a site plan application must include any proposed amendment to a binding element requested by the applicant. Notice of the site plan hearing must include any proposed amendment to a binding element recommended by Planning Board staff and agreed to by the applicant.
3. For any amendment to a binding element or condition, the Planning Board must make the applicable sketch plan findings in addition to the findings necessary to approve a site plan under [\[this\] Article 59-8. \[\(Article 59-8\).\]](#)

## Section 8.3.4. Site Plan

### A. Applicability and Description

1. Development under the optional method requires approval of a site plan after approval of a sketch plan.
2. Development under a Floating zone requires approval of a site plan after approval of a floating zone plan.
3. Development under the standard method requires site plan approval as indicated in the table in [\[Sec.\] Section 8.3.4.A.8](#).
4. A site plan provides a detailed overview of the applicant's development. Site plan review will be used to determine if the proposed development satisfies current laws, regulations, and this Chapter, and substantially conforms with the recommendations of the applicable master plan and approved guidelines.
5. A site plan application may encompass all or any part of a property and must demonstrate its relation to and coordination with other applicable approvals or submittals.
6. Site plan applications must satisfy the conditions and binding elements of and be consistent with any and all previous approvals that apply to the subject property.
7. An area covered by a conditional use approval requires a site plan only if:
  - a. the area is included in a sketch plan; [or](#)
  - b. the use standards in [Article 59-3](#) require it[, [or](#)
  - c. [the Board of Appeals or Hearing Examiner](#) requires it].

8. A site plan is required under standard method development as follows:

Subject Property's Zone	Proposed Use	Proposed Intensity (units, gross floor area in SF, or building height in feet)	Abutting or Confronting Property's Zone (determined by base zone, not Overlay zone)	Site Plan Required
Agricultural, Rural Residential, or Residential Detached	Permitted	Any	Any	No
	Limited	Any	Any	Yes, if required for the use under <a href="#">Article 59-3</a> ; otherwise, site plan requirement follows the Permitted use requirement for same zone in this table.
Residential Townhouse or Residential Multi-Unit	Permitted	< 20 units and ≤ 40' [OR for general buildings: < 10,000 SF and ≤ 40']	Any	No
		≥ 20 units or > 40' [OR for general buildings: ≥ 10,000 SF or > 40']	Any	Yes
	Limited	< 20 units and ≤ 40' [OR for general buildings: < 10,000 SF and ≤ 40']	Any	Yes, if required for the use under <a href="#">Article 59-3</a> ; otherwise, site plan requirement follows the Permitted use requirement for same zone in this table.
		≥ 20 units or > 40' [OR for general buildings: ≥ 10,000 SF or > 40']	Any	Yes
Commercial/Residential or Employment	Permitted	< 10,000 SF and ≤ 40'	Any	No
		≥ 10,000 SF or > 40'	Agricultural, Rural Residential, Residential, or Residential Floating	Yes
	Limited	Any	All other zones	No
Industrial	Permitted	Any	Agricultural, Rural Residential, Residential, or Residential Floating	Yes
		> 40'	Commercial/Residential, [or] Employment, <a href="#">Commercial/Residential Floating, or Employment Floating</a>	Yes
		Any	Industrial <a href="#">or Industrial Floating</a>	No
	Limited	Any	Any	Yes, if required for the use under <a href="#">Article 59-3</a> ; otherwise, site plan requirement follows the Permitted use requirement for same zone in this table.
Overlay	Any	Any	Any	If required by the applicable Overlay zone under <a href="#">Article 59-4</a> or if required by the underlying zone.

## B. Application Requirements

[1. The Planning Director accepts the application for all site plans.

- a. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness no later than 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
- b. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness no later than 10 days after receipt.
- c. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Sec. 8.3.4.C.]

1. [2.]Ownership:

- a. An applicant must own the subject property or be authorized by the owner to file the application.
- b. If any land or right-of-way encompassed by a site plan application is owned or controlled by the State, County, or any other entity or agency, a written agreement or authorization from that entity or agency must be submitted with the site plan application.

[3. Public notice is required under Div.8.5]

2. [4.]The applicant must submit the following for review:

- a. application form and fees required by the Planning Director;
- b. vicinity map at 1" = 200';
- c. site [inventory] map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;

- d. list of abutting and confronting property owners in the County tax records;
- e. list of any civic and homeowners associations within 1/2 mile;
- f. documentation of interest in the proposed development site under [Sec. 8.3.4.B.2] [Section 8.3.4.B.1](#);
- g. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application;
- h. verification that the applicant has posted notice on the property, notified affected parties, and held a pre-submittal meeting with the public under the Planning Department's Development Review Manual;
- i. Traffic Statement or Study accepted by the Planning Director, if not submitted with a previous or concurrent application;
- j. environmental documentation or exemption for:
  - i. an approved Natural Resources Inventory/Forest Stand Delineation;
  - ii. Stormwater Management Concept Application or, if required, a Water Quality Plan Application; and
  - iii. a final Forest Conservation Plan application;
- k. existing and proposed dry and wet utility plan;
- l. plans of proposed development showing:
  - i. footprints, ground-floor layout, and heights of all building and structures;
  - ii. required open spaces and recreational amenities;
  - iii. detailed layout and dimensions for all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
  - iv. grading;
  - v. landscaping and lighting; and
  - vi. documentation demonstrating how the application satisfies previous approvals and applicable requirements.
- m. a development program and inspection schedule detailing the construction phasing for the project;

- n. if a sketch plan was approved for the property, a table of proposed public benefits and the incentive density points approved for each; and
  - o. if common open space is required, a description of how the common use and adequate maintenance of common open space will be assured.
3. The applicant must submit an initial application to the Planning Director for approval of completeness. The Planning Director must review the application for completeness within 10 days after receipt. An application is incomplete if any required element is missing or is facially defective, e.g., a drawing that is not to scale or lacks proper signatures. The assessment of completeness must not address the merits of the application.
  4. The applicant must submit any required revisions to the Planning Director. The Planning Director must review the revised application for completeness within 10 days after receipt.
  5. After the Planning Director verifies that the application is complete, the applicant must file the final application with the Planning Director, who will accept the application and establish a hearing date under Section 8.3.4.C.
  6. Public notice is required under Division 8.5.

### C. Hearing Date

The Planning Board must [conduct] schedule a public hearing to begin [no later than] within 120 days after the date an application is accepted. The Planning Director may postpone the public hearing by up to 30 days once without Planning Board approval and for an additional 30 days if the extension is approved by the Planning Board. Any extension of the public hearing must be noticed by mail and on the hearing agenda with the new public hearing date indicated.

### D. Review and Recommendation

#### 1. State and County Agencies

- a. Reviewing State and County agencies and utilities must submit initial comments before the Development Review Committee meeting established under the Planning Department's Development Review Manual.
- b. The applicant must submit revised drawings to address the comments a minimum of 65 days before the date of the hearing. The Planning Direc-

tor may extend the deadline if the applicant submits a written request [no later than] within 15 days after the revised drawings were due. If no written request is received or an extension is not granted, the application is deemed withdrawn.

- c. State and County agencies and utilities must submit a final recommendation on the application a minimum of 45 days before the date of the hearing.

#### 2. Planning Director

The Planning Director must [issue and make publicly available] publish a report and recommendation a minimum of 10 days before the Planning Board hearing.

#### 3. Withdrawal of an Application

The Planning Board must send a notice to all parties entitled to notice of the hearing when an applicant withdraws an application for a site plan.

- a. When an application is withdrawn a minimum of 30 days before the initial hearing, the Planning Board may allow the application to be withdrawn without prejudice.
- b. Withdrawal of an application fewer than 30 days before the date of the hearing must be with prejudice.]

### E. Necessary Findings

1. When reviewing an application, the findings of approval only apply to the area encompassed by the application.
2. To approve a site plan, the Planning Board must find that the proposed development:
  - a. [1.] satisfies any previous approval that applies to the site, including any development plan or schematic development plan in effect on {one day minus effective date} [and Sec. 8.7.1.A.6.b and Sec. 8.7.1.A.6.c];
  - b. [2.] satisfies applicable use standards, development standards, and general requirements under this Chapter;

- c. [3. meets] satisfies the applicable requirements of [other applicable sections of the Montgomery County Code under jurisdiction of the Planning Board, including]:
    - i. [a.] Chapter 19, Erosion, Sediment Control, and Stormwater Management; and
    - ii. [b.] Chapter 22A, Forest Conservation.
  - d. [4.] provides safe, well-integrated parking, circulation patterns, [and] building massing and, where required, open spaces and site amenities;
  - e. [5.] substantially conforms with the recommendations of the applicable master plan and any guidelines approved by the Planning Board that implement the applicable plan; [and]
  - f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the development is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required the Planning Board must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage;
  - g. on a property in a Rural Residential or Residential zone, is compatible with the character of the residential neighborhood; and
  - h. [6.] on a property in all other zones, is compatible with existing and approved or pending adjacent development.
3. To approve a site plan for a Restaurant with a Drive-Thru, the Planning Board must also find that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood.

## F. Decision

1. The Planning Board must act [no later than] within 30 days after the close of the record of the public hearing by majority vote of those present at the

public hearing to approve, approve with modifications or conditions, or deny the application. The Planning Board must issue a resolution reflecting its decision within this 30 day time period unless extended for up to an additional 30 days.

2. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision [no later than] within 30 days after the Planning Board's action to the Circuit Court and thereafter to the Court of Special Appeals.
3. The Planning Board may adopt regulations that allow an applicant to submit engineered drawings after the Planning Board acts on an application. These plans must be certified by the Planning Director to confirm that the drawings reflect the Planning Board's approval.

## G. Subsequent Actions

### 1. Conforming Permits

For any development requiring site plan approval, DPS must not issue a sediment control permit, building permit, or use-and-occupancy permit for any building, structure, or improvement unless:

- a. the Planning Board has approved a site plan;
- b. a bond has been approved under [Sec.] Section 8.3.4.K.3;
- c. such building, structure, or improvement satisfies the certified site plan and conditions of approval.

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

- a. On any property covered by an approved site plan, DPS may issue a sediment control permit or building permit without finding of conformance to the approved site plan to:
  - i. construct a handicapped accessibility improvement;
  - ii. construct a bikeshare facility;
  - iii. install outdoor lighting with full cut-off fixtures;
  - iv. repair an existing structure to any extent allowed by the certified site plan; or

- v. replace an existing structure to no more than the same footprint and height approved.
- b. DPS must submit a copy of any building or site permit approved under [this] Section 8.3.4 [(Section 8.3.4)] to the Planning Director for inclusion in the record of the site plan.
- c. On a property where a site plan was approved, any owner or owners' association may, without finding of conformance to the approved site plan, change landscaping that was not required as a condition of approval for screening or install a site element or construct a paved surface or structure that meets all applicable development standards under Article 59-4 and general requirements under Article 59-7 [of the Chapter] and does not conflict with any conditions of approval.
- d. Any change allowed under [this] Section 8.3.4.G.2 [(Section 8.3.4.G.2)] does not require an amendment to the site plan.

#### H. Duration of Approval

- 1. A site plan expires unless a certified site plan, as defined and reviewed by the Planning Director, is approved [no later than] within 24 months after Planning Board approval.
- 2. A site plan does not become effective until a record plat is recorded that satisfies any approved subdivision plan for the subject property.
- 3. A development must satisfy the zoning in effect at the time a building permit is issued as well as the requirements of a certified site plan.
- 4. Development activities under [this] Section 8.3.4 [(Section 8.3.4)] must satisfy the certified site plan and any conditions of approval.

#### I. Recording Procedures

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

#### J. Amendments

- 1. A major amendment to an approved site plan must follow the same procedures, meet the same criteria, and satisfy the same requirements as the original site plan, except as modified under [Sec.] Section 8.3.4.J.1.b.

- a. A major amendment includes any request to increase density or height or to make a change to any condition of approval.
  - b. The Planning Board may approve an uncontested major amendment on its consent agenda if the Planning Director publishes a report and recommendation on the amendment [at least] a minimum of 10 days before the Planning Board meeting.
- 2. The Planning Director may approve a minor amendment to an approved site plan. A minor amendment includes any change that does not increase density or height; decrease a setback abutting a detached residential use; or alter the intent, objectives, or requirements of the Planning Board in approving the site plan. A minor amendment may also be approved to reduce the approved parking to satisfy Article 59-7.
    - a. Public notice is required under [Div.] Division 8.5.
    - b. A public hearing is required if an objection to the application is received [no later than] within 15 days after the notice of the filed application is sent. A public hearing must be held under the same procedures as an original application. If an objection to the application is not received within the 15 days, a public hearing is not required.

#### K. Compliance and Enforcement

- 1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property under development is not in compliance with a certified site plan, it may:
  - a. impose a civil fine or administrative civil penalty authorized by Chapter 50 ([Sec.] Section 50-41);
  - b. suspend or revoke site plan approval;
  - c. order a compliance program that would permit the applicant to take corrective action to satisfy the certified site plan;
  - d. allow the applicant to propose modifications to the certified site plan; or
  - e. take any combination of these actions.
- 2. If the Planning Board suspends or revokes a site plan, DPS must immediately suspend any applicable building permit under which construction has not



been completed, or withhold any applicable use-and-occupancy permit, until the Planning Board reinstates the site plan or approves a new site plan for the development.

3. The Planning Board may require the applicant to post a commercially acceptable form of surety securing compliance with and full implementation of specified features of the certified site plan in an amount set by the Planning Board. If such surety is required, DPS must not issue a [sediment control permit,] building permit[,], or use-and-occupancy permit until such surety is accepted.

## Division 8.4. Administrative Approvals

### Section 8.4.1. Building Permit

#### A. Applicability

1. A building permit is required before any building or structure can be erected, moved, [structurally] altered, [added to,] or enlarged [and before any excavation can be started] under Chapter 8.
2. A building permit is not required for:
  - a. Any building or structure used exclusively for agricultural purposes on land used exclusively for agriculture, except for:
    - i. a building or structure used for a purpose that is not exclusively agricultural, including conditional uses, even though located on otherwise agricultural land; or
    - ii. an equestrian facility, building, or structure intended for use by participants or spectators at an equestrian event.
  - b. The following public utility equipment:
    - i. any structure and its attached cross arms carrying overhead electric power and energy transmission and distribution lines that carry 69,000 volts or less;
    - ii. equipment installed and maintained by a public utility under regulation by the State Public Service Commission; or
    - iii. poles or structures used for street lights, fire alarm boxes, traffic signals, or similar municipal equipment installed by the State or a local municipality.

#### B. Application Requirements

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

1. the lot upon which the building is proposed to be erected; lot dimensions, lot and block numbers, and subdivision name, if any;
2. the name and width of adjacent streets;
3. the location, dimensions, and use of existing buildings and other structures on the lot;

4. the location, dimensions, and proposed use of buildings and other structures for which a permit is requested;
5. front and rear yard widths;
6. north point, date, and scale of plan; and]
- [7. for] For projects that do not require [a] site plan approval or conditional use [application] approval and have more than 10 parking spaces, an application for building permit must include a plan showing the location and design of entrances and exits to public roads; the location and size of all buildings and structures; the location of parking spaces, directional markings, traffic-control devices and signs; and [compliance with Div.] that it satisfies Division 7.2.

#### C. Review and Recommendation

DPS must submit the application to the Planning Director for review for any building permit that requests

1. construction of a new principal structure;
2. construction that increases the gross floor area of an existing commercial structure; or
3. construction that increases the gross floor area of any residential structure by more than 500 square feet.

The Planning Director must confirm in writing that the application satisfies this Chapter.

#### D. Approval Process

DPS accepts the applications for all building permits.

#### E. Necessary Findings

- [1. In addition to any requirements under Chapter 8, to approve a building permit, DPS must determine that the proposed work satisfies the amount of development and use authorized under this Chapter or other applicable law and for which the adequacy of public facilities is determined after:
  - a. review of a preliminary plan of subdivision or site plan if required under this Chapter or Chapter 50; or

- b. building permit review if required under Chapter 8.
- 2. For a site with a conditional use, variance, or site plan:
  - a. Proposed work must satisfy all terms and conditions set by the deciding body in the resolution or decision granting the approval, including any exhibits referred to in the decision.
  - b. The County may suspend or revoke any building permit for construction if the construction does not satisfy all terms and conditions set by the deciding body. ]

[3]For a site with a conditional use:

- 1. DPS may allow minor adjustments during construction that do not substantially alter the size, location, or external appearance of any approved building, structure, or use. DPS must immediately notify the deciding body of any deviations from the approval of the deciding body.
- 2. Any change proposed during construction that would substantially alter the location or external appearance of any approved building, structure, or use requires an amendment under [this] Article 59-8. [(Article 59-8).]

#### **[F. Appeal**

Any party aggrieved by a decision of DPS may file an appeal for review of the decision with the Board of Appeals.]

### **Section 8.4.2. Use-and-Occupancy and Temporary Use Permits**

#### **A. Applicability**

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

- c. a Family Day Care (Up to 8 Persons); and
- d. a Transitory Use.

#### **B. Application Requirements**

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

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

#### **C. Approval Process**

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

#### **D. Necessary Findings**

- 1. DPS must certify compliance with this Chapter.
- 2. Any building, structure, or land on a site with any previous development approval must satisfy the requirements, representations, plans, and conditions contained in the decision or resolution of the deciding body.
- 3. On the basis of a [thorough] final inspection, DPS must verify that construction or alteration has been completed according to the applicable decision or resolution.
- 4. A temporary use permit may be issued if the use satisfies the applicable use standards under Article 59-3.

#### **[E. Appeals**

Any party aggrieved by the decision of DPS may file an appeal for review of the decision with the Board of Appeals under its rules of procedure.]

### Section 8.4.3. Sign Permit

#### A. Applicability

1. A sign permit is required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy that satisfies a sign concept plan, does not require a permit.
2. Signs listed in [Sec.] Section 7.7.3 and Section 7.7.12 are exempt from the sign permit requirement.

#### B. Application Requirements

1. The property owner and the sign installer must file a joint application for the sign permit on forms provided by DPS. If the property owner has an agent or lessee, the agent and the lessee must also sign each permit form. The application must be accompanied by all required fees and the following:
  - a. a scale drawing of the sign showing all dimensions and visual characteristics, including structural and architectural supports;
  - b. a scale drawing of the site showing:
    - i. the proposed location of the sign, including setbacks;
    - ii. the location and size of all other signs on the property;
    - iii. the location, dimensions, and distance from property lines of all buildings on the site;
    - iv. the location and name of all streets that abut the property;
    - v. the frontage dimensions of the site along each street that abuts the property;
    - vi. the existing elevation and grade of the site and the proposed contour lines;
  - c. a valid electrical permit or a completed application for an electrical permit under Chapter 17, if the application is for an illuminated sign;
  - d. a completed building permit application under Chapter 8 for a sign requiring structural support;
  - e. payment of the sign permit fee as adopted by District Council Resolution;

- f. other information that may be required by DPS to insure compliance with [Div] Division 7.7 or other sections of the Chapter; and
- g. a sign concept plan if:
  - i. the lot or parcel is in a Commercial/Residential, Employment, or Industrial zone and is requesting more than 800 square feet of total sign area;
  - ii. the development consists of more than one lot or parcel in a Commercial/Residential, Employment, or Industrial zone developed under a management control plan where one or more individual lots or parcels is requesting more than 800 square feet of total sign area, even if such development includes one or more individual sites or parcels whose total sign area does not exceed 800 square feet; or
  - iii. the development uses optional method within an urban renewal area.

#### 2. DPS must waive all required fees if:

- a. the primary applicant is a non-profit organization that is on the Planning Board's list of civic and homeowners associations; and
- b. the size of the proposed sign is smaller than the maximum size under [Section 7.7.5] Division 7.7.

#### 3. DPS may waive or reduce all required fees if:

- a. the primary applicant is a non-profit organization that by law is exempt from federal income taxes and demonstrates that its annual revenue during its most recent fiscal year was less than an amount set by DPS under Method (2); and
- b. the size of the proposed sign is smaller than the maximum size under [Section 7.7.5] Division 7.7.

#### C. Approval Process

DPS accepts all sign permit applications.

#### D. Necessary Findings

1. DPS may issue a sign permit based on one of the following:

- a. its determination, upon review of the application, that the proposed sign or sign concept plan [meets the requirements of] satisfies [Div] Division 7.7; or
  - b. submission of the application packet and a written certification by a [licensed] sign installer that the proposed sign [meets the requirements of] satisfies [Div] Division 7.7.
2. DPS has the authority to resolve any dispute or to interpret any ambiguity in [this] Section 8.4.3 [(Section 8.4.3)].

#### E. Validity

A sign permit becomes invalid when:

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

#### F. Appeal

Any decision of DPS or the Sign Review Board may be appealed to the Board of Appeals [no later than] within 30 days after the date of the action or decision appealed.

#### G. Compliance and Enforcement

1. The sign permit must be displayed in a location on or near the sign that permits a person to read the permit while standing on the ground, including on the sign itself, on its supporting structure, or in another reasonable and visible location.
2. Compliance is the responsibility of the joint applicants for a sign permit, including the property owner or agent of the property where the sign is erected, along with the lessee, if any, and the sign installer. DPS may initiate enforcement proceedings against one or all of these individuals or entities, jointly or severally.

3. Upon identification and presentation of proper credentials, DPS may enter any site in the County during normal business hours to inspect a sign displayed on a building, structure, lot, or parcel to determine compliance with this Chapter.
4. DPS may order the removal of any sign that violates this Chapter, or interferes with traffic or public safety. The removal must be performed at the expense of the responsible party.
5. DPS may revoke, suspend, refuse to issue, or refuse to reissue any permit or license under this Chapter.

### Section 8.4.4. Sign [Permit] Variance

#### A. Applicability

Any sign not listed in [Div] Division 7.7, or which does not satisfy the requirements in [Div] Division 7.7, may apply for a sign [permit] variance from DPS.

#### B. Application Requirements

DPS accepts all sign [permit] variance applications and a hearing date is scheduled with the Sign Review Board.

#### C. Necessary Findings

1. For all sign [permit] variances, the Sign Review Board must consider:
  - a. the sign's size, shape, color, design elements, location, or cost;
  - b. compatibility of the proposed sign with the surrounding property, the proximity of other signs, and the characteristics of the area; and
  - c. any recommendation of the Planning Board or its technical staff.
2. After a hearing, the Sign Review Board may approve an application for a sign [permit] variance from the sign requirements of [Div] Division 7.7 if:
  - a. the strict application of the sign requirements of [Div] Division 7.7 would result in a particular or unusual practical difficulty, exceptional or undue hardship, or significant economic burden on an applicant;
  - b. the sign [permit] variance is the minimum reasonably necessary to overcome any exceptional conditions; and

- c. the sign [permit] variance can be granted without substantial impairment of the purpose of [Div.] Division 7.7.
3. After a hearing, the Sign Review Board may revoke a previously granted sign [permit] variance if:
  - a. the applicant supplied inaccurate information, or
  - b. the terms of a variance have not been followed.
4. The Sign Review Board is prohibited [from varying any requirement of Sec. 8.4.5 and] from approving a sign [permit] variance for any sign prohibited under [Sec.] Section 7.7.4.
5. The Sign Review Board may approve a sign [permit] variance without a hearing if:
  - a. after receiving notice under [Sec.] Section 8.5.2.E, no person has expressed an intention by a specified deadline to oppose the application or otherwise appear at the hearing; and
  - b. the Sign Review Board concludes that approval of a sign [permit] variance would not create any negative impact on the area where the sign is or would be located.
6. The Sign Review Board may approve a variance for a sign on property with a conditional use approval if the Board of Appeals has approved the sign. Nothing in [this] Section 8.4.4 [(Section 8.4.4)] prevents the Sign Review Board from imposing more restrictive conditions than the Board of Appeals, but the Sign Review Board must not approve a sign [permit] variance which is less restrictive than any condition set by the Board of Appeals.

#### D. Decision

1. The Sign Review Board may impose conditions and terms when approving a sign [permit] variance.
2. The Sign Review Board must notify each party of record of the sign [permit] variance decision when it is issued.
3. If a sign [permit] variance is approved, the applicant must apply for the appropriate sign permits.

#### E. Appeal

Any party of record may appeal any final decision of the Sign Review Board [no later than] within 30 days after the action to the Board of Appeals under [Sec.] Section 8.6.1.

#### F. Compliance and Enforcement

DPS must enforce the conditions and terms of a sign [permit] variance.

### [Section 8.4.5. Sign Installer License

#### A. Applicability

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

#### B. Application Requirements

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

#### C. Approval Process

1. The applicant must establish and DPS may verify the minimum eligibility requirements of an applicant to be examined for a license as follows:

- a. The applicant must have been regularly and principally employed in sign related activity for 2 years immediately preceding the application. DPS may credit the 2 years of experience upon certification of relevant education at a trade school or other educational institution which DPS deems to be comparable. One year (30 semester hours or Continuing Education Units) of relevant education may be considered as one year of experience. DPS may credit up to the maximum of 2 years of experience with education.
  - b. The applicant must be of good character. DPS may ascertain the character of the applicant from the references provided by the applicant and from independent sources, including the office of consumer affairs, the State of Maryland Office of the Attorney General, and the records of the department.
2. Upon the applicants satisfying the minimum requirements and filing a complete application for a license, DPS must provide the applicant with access to the sign ordinance and other related provisions and must schedule the applicant for an examination.
  3. The applicant must receive a passing grade on an examination based upon the standards of this Article (Article 59-8) and administered by DPS.
    - a. DPS must grade the examination no later than 20 days after the examination date and notify the applicant, in writing, no later than 10 days after determining the results of the examination.
    - b. An applicant who fails to pass the examination is entitled to one reexamination, without resubmitting the license application. An applicant who fails to pass the reexamination must submit a new application for a license.
  4. A license must be issued jointly to the business and to a person who is principally employed by the business and responsible for supervising the sign related activity. A business may obtain licenses for multiple employees.

#### D. Validity

1. A license is valid for one year from the date of issuance, and may be renewed by applying in person at DPS. Applicants for renewal must provide to DPS:

- a. certification that the insurance requirements of Sec. 8.4.5.B.2 remain in compliance;
  - b. a check in the amount of the renewal fee; and
  - c. other information which DPS may require.
2. A license is not transferable. If the person and the business holding a license terminate their association, the license becomes invalid and a new license must be obtained.
  3. A license is issued based upon the information submitted at the time of application. Any changes in the information must be submitted to DPS promptly.

#### E. Denial, Suspension or Revocation

1. DPS may suspend, revoke, refuse to issue, or deny renewal of a license if the applicant or licensee:
  - a. has secured the license through misrepresentation;
  - b. has failed to correct without additional charge, violations of any provisions of this Article (Article 59-8);
  - c. has been found by a court or the Board of Appeals to have violated the same provision of this Article (Article 59-8) more than 2 times;
  - d. has been found guilty of deceptive business practices;
  - e. has committed an act of gross negligence; or
  - f. has failed to notify DPS of changes to the information required on the license application.
2. DPS must provide written notice to the applicant or licensee of any action taken under Sec. 8.4.5.E.1. The notice must:
  - a. contain a statement of the reasons for the action taken and the right of appeal to the Board of Appeals; and
  - b. be delivered personally to the applicant, licensee, or authorized business representative or sent by certified mail to the local address in the license application.

3. A license may be suspended for up to 120 days upon a finding by DPS that a violation of Sec. 8.4.5.E.1. has occurred.
4. Following a revocation or refusal to renew, a licensee may request reinstatement after one year has elapsed.

#### **F. Appeal**

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

### **[Section 8.4.6. Administrative Zoning District Line Adjustments**

- A. The Planning Director may certify an adjustment to a zoning district line when:
  1. More accurate parcel information, such as a sealed survey plat or a recorded plat, becomes available and evidence indicates that the property boundary was intended to match the zoning district line; and
  2. Adopted rezoning documentation clearly depicts a discrepancy between a zoning district line as shown on the digital zoning layer and the updated property boundary.
- B. When an administrative zoning district line adjustment is approved, the Planning Director must send a copy of the certification to all abutting and confronting property owners. The certification must state that any party, no later than 30 days after the certification is sent, may make a written request for public review by the Planning Board. If a request for public review is received, the Planning Director must suspend the certification of the administrative zoning district line adjustment and schedule a public review with the Planning Board. At the public review, the Planning Board may decide to approve the Planning Director's certification or require the administrative zoning district line adjustment to follow the procedures for a Corrective Map Amendment under Sec. 8.2.2.]



## Division 8.5. Notice Standards

### Section 8.5.1. Notice Required

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

Application	Newspaper	Pre-Submittal Meeting	Application Sign	[Individual] Application Notice	[Individual] Hearing Notice	[Individual] Resolution or Opinion Notice	Building Permit Sign Notice	Website Posting
<b>District Council Approvals</b>								
Local Map Amendment			x	[x]	x			x
Corrective Map Amendment					x			x
Sectional or District Map Amendment	x							x
Zoning Text Amendment	x							x
<b>Regulatory Approvals</b>								
Conditional Use			x		x	x		x
Variance			x		x			
Sketch Plan		x	x	[x]	x	x		x
Site Plan		x	x	[x]	x	x		x
<b>Administrative Approvals</b>								
Building Permit							x	x
Use and Occupancy and Temporary Use Permit								
Sign Permit								
Sign [Permit] Variance				[x]	x			
[Sign Installer License]								
<b>Amendments to Approvals</b>								
Major Floating Zone Plan Amendment			x	[x]	x	x		x
Minor Floating Zone Plan Amendment			x	x				x
Major Conditional Use Amendment			x	[x]	x	x		x
Minor Conditional Use Amendment						x		x
Major Site Plan Amendment			x	[x]	x	x		x
Minor Site Plan Amendment				x				x

KEY: x = Required

## Section 8.5.2. Notice Specifications

The following notice requirements are the minimum necessary to ensure appropriate notice for communities impacted by an application. For notice required under [Sec.] Section 8.5.1, the following standards apply.

### A. Newspaper Notice

1. When an application is accepted, the intake body must publish a notice of the public hearing in at least 2 newspapers of general circulation in the County a minimum of 30 days before the hearing date.
2. The notice must include the date and place of hearing, applicant, application number and name, location of property, property size, zone, density of development, and telephone number and website for the applicable intake agency. The notice for a Zoning Text Amendment must also include a brief summary of the proposed amendment.

### B. Pre-Submittal Meeting

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

### C. Application Sign

1. [Before an application may be accepted, the] The applicant must post at least one sign along every frontage within 5 days after an application is accepted; if the frontage is more than 500 feet, a sign must be posted at least every 500 feet.
2. The sign must be made of a durable material; a minimum of 24 inches tall by 36 inches wide; white or yellow in background color; with black lettering and characters at least 2 inches in height.
3. The sign must include:
  - a. the date of filing;
  - b. application number and name;
  - [c. location of property;
  - d. property size;]
  - c. [e. zone (and )requested zone, if [applicable)] a Local Map Amendment;
  - d. [f.] proposed use, density, or structure description, if not a Local Map Amendment;
  - e. [g.] and telephone number and website for the applicable intake agency.

### D. [Individual] Application Notice

1. [Before] When an application [may be] is accepted, the applicant must send notice of the application to all abutting and confronting property owners, civic and homeowners associations within 1/2 mile, any municipality within [1/4] 1/2 mile, and pre-submittal meeting attendees if applicable. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium. [For a sign permit variance, if the property has an approved site plan the applicant must also notify the Planning Director.]
2. The notice must include the applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), proposed use and density of development, and telephone number and website for the applicable intake agency.

[3. For conditional uses and variances the notice must:

- a. state where interested parties can access the complete application;
- b. inform the recipient of the requirements for prehearing statements for groups or organizations desiring to appear in opposition; and
- c. inform the recipient if the application has been referred to the Planning Board for review and recommendation, where required.]

#### E. [Individual] Hearing Notice

1. [For a Local Map Amendment and a conditional use, a minimum of 30 days before the hearing, the] The deciding body must send notice of the hearing within 5 days after an application is accepted to all abutting and confronting property owners, civic and homeowners associations within 1/2 mile, any municipality within 1/4] 1/2 mile, and pre-submittal meeting attendees if applicable. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium.
2. [For all other applications, a minimum of 10 days before the hearing, the deciding body must send notice of the hearing to all abutting and confronting property owners, civic and homeowners associations within 1/2 mile, any municipality within 1/4 mile, and pre-submittal meeting attendees if applicable. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium.] For a sign [permit] variance, the deciding body must also send notice of the hearing to any special taxing district in which the proposed sign would be located and the technical staff of the Planning Board if the sign would be located on a property with a site plan.
3. The notice must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), proposed use or density of development when applicable, and telephone number and website for the applicable intake agency.
4. A hearing may be postponed or continued if the time and place of the continued hearing is publicly announced at the time of the adjournment or notice is given to all parties of record as required for the original application.

#### F. [Individual] Resolution or Opinion Notice

1. The deciding body or its designee must provide [individual] notice of the approved resolution or opinion to all parties that were notified of the hearing and any additional parties of record [no later than] within 10 days after a resolution or opinion is [adopted] issued.
2. The notice must provide the date the decision was made, a summary of the decision, a copy of the resolution or opinion or a website link to a copy, and the phone number, address, and website of the applicable deciding body.

#### G. Building Permit Sign Notice

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

#### H. Website Posting

1. During review, the applicable intake agency or designee, must post the application on its website [no later than] within 15 days after acceptance.
2. When the Planning Director provides a recommendation report on an application decided by the Planning Board, the Planning Director must post the recommendation report on the Planning Board's website [at least] a minimum of 10 days before the Planning Board hearing. In cases where an application is decided by the Hearing Examiner, the Board of Appeals, or the District Council, the Planning Director's recommendation report must be posted on the Planning Board's website [at least] a minimum of 7 days before the Planning Board meeting.
3. When the Hearing Examiner provides a recommendation report on an application decided by the Board of Appeals or the District Council, the Hearing

Examiner must post the recommendation report on [\[the deciding body's\] its](#) website [\[at least\] a minimum of](#) 10 days before the Board of Appeals or the District Council hearing.

4. After a decision is made, the applicable deciding body or designee, must post on its website the resolution reflecting its decision and if approved, plans certified by the deciding body or designee, modified from the submitted plans to satisfy the decision.
5. When DPS accepts a building permit application, DPS must post on its website the application information and track the status of review. After a decision is made, DPS must post on the internet its decision and, if approved, a summary of the approval, including at least the approved use and gross floor area.

## Division 8.6. Special Provisions

### Section 8.6.1. Board of Appeals

#### A. Powers

[1.] In addition to any other power described in [this Division (Div. 8.6)] [Division 8.6](#), the Board of Appeals may compel the attendance of witnesses at hearings or meetings, and the chair or another member may administer oaths.

[2. Nothing in this Chapter authorizes the Board of Appeals to:

- a. reverse or modify any denial of a permit or any other order, requirement, decision, or determination under this Chapter;
- b. to validate, ratify, or legalize any violation of law or requirement; or
- c. amend any provision of this Chapter or the zoning map.]

#### B. Duties

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

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

#### C. Filing of Appeals

1. Appeals to the Board of Appeals may be made:
  - a. by any person, board, association, corporation, or official allegedly aggrieved by the grant or refusal of a building or use-and-occupancy permit or by any other administrative decision based or claimed to be based, in whole or in part, upon this Chapter, including the zoning map, or
  - b. about property affected by the master plan of highways.

[2. Any variance or administrative appeal may be filed with the Board of Appeals only after refusal of issuance or revocation of a building or use-and-occupancy permit by DPS or after the issuance of a permit in cases where it is alleged that such permit has been issued erroneously.]

2. [3.] Appeals must be made on forms provided for that purpose. Completed forms must be filed with the clerk to the Board of Appeals, and the appellant must pay the clerk for expenses incidental to the appeal. The clerk will accept the form only if it contains all pertinent information and is accompanied by the required fee to defray expenses.

3. [4.] Except as otherwise specifically provided by statute, Board of Appeals review of any action, inaction, decision or order of a department of the County government must be de novo.

4. [5.] DPS must satisfy the prehearing submission requirements of [Chapter 2A](#).

### Section 8.6.2. Hearing Examiner

#### A. Assignment of Hearing Examiner

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

#### B. Duties

1. The Hearing Examiner must recommend rules and procedures to the District Council to govern the conduct of public hearings and of other functions of the Hearing Examiner's office and must perform such other tasks and duties as the District Council from time to time may assign.
2. [The Hearing Examiner's office has the functions and duties of scheduling

and conducting public hearings and rendering written reports and recommendations to the Board of Appeals under this Chapter and upon request of the Board of Appeals and with approval of 3 of its members, any other matter pending before the Board of Appeals.] The Hearing Examiner schedules and conducts public hearings for all conditional use applications. The Hearing Examiner may schedule and conduct a hearing or write a report and recommendation for any other matter pending before the Board of Appeals upon request of the Board of Appeals and with approval of 3 of its members.

3. The Hearing Examiner's office has the functions and duties of scheduling and conducting public hearings and rendering written reports and recommendations to the District Council for Local Map Amendments. The Hearing Examiner may:
  - a. postpone or continue a public hearing to a time certain or for a reasonable time if:
    - i. the Hearing Examiner finds that the pendency of any proposed master plan, plan amendment, highway plan, capital improvement program, zoning or planning study, zoning text amendment, pending court case, or other relevant matter may substantially affect the application under consideration; or
    - ii. the applicant or another party for good cause requests a postponement or continuance.
  - b. extend the time for closing the record, either to a time certain or for a reasonable time, if:
    - i. the Hearing Examiner finds additional information or government action is necessary on any relevant issue; or
    - ii. the applicant or another party requests a delay for good cause.
  - c. The District Council may, by resolution, order the Hearing Examiner to postpone or continue a public hearing or the issuance of a report and recommendation on a Local Map Amendment application, either to a time certain or for a reasonable time, when a delay is necessary to allow sufficient time for the District Council to approve any master plan, plan amendment, zoning or planning study, highway plan or project, zoning text amendment, sewer, water, or other capital improvements project,

which may have a substantial effect on any Local Map Amendment application before the Hearing Examiner.

- d. The District Council may by resolution, and for good cause shown, cancel, negate, void or suspend any order of the Hearing Examiner suspending, postponing, deferring, or continuing any public hearing.

### **[C. Conditional Uses Decided by the Hearing Examiner**

In addition to the authorization given to the Board of Appeals to hear and decide petitions for conditional use applications under Chapter 2 (Sec. 2-112, Jurisdiction), the Hearing Examiner may hear and decide petitions for conditional use applications for the following uses:

1. Home Occupation (Major Impact) and Home Health Practitioner (Major Impact) in the Residential Multi-Unit, Commercial/Residential, and Employment zones;
2. Home Health Practitioner (Low Impact) in the Residential Multi-Unit zones;
3. Equestrian Facility for 2 or fewer horses in the RE-2 zone;
4. Renewal of a conditional use originally granted by the Board of Appeals or Hearing Examiner for a Home Occupation (Major Impact), a Home Health Practitioner (Low Impact), and a Home Health Practitioner (Major Impact);
5. Group Day Care (9 - 12 Persons);
6. Day Care Center (13 - 30 Persons);
7. Attached Accessory Apartment; and
8. Detached Accessory Apartment.]

### **Section 8.6.3. Planning Board**

- A. In addition to any other remedy provided by law, any violation of a Planning Board action, as defined in Chapter 50 (Section 50-41), may be enforced under [Div] Division 8.6 or under Chapter 50 (Section 50-41), at the discretion of the Planning Board.
- B. The Planning Board may assign a hearing officer designated by the Planning Board, including a Hearing Examiner from the Office of Zoning and Administrative Hearings, to conduct a public hearing and submit a report and recommendation on any alleged violation of this Chapter or any other Planning Board

action as defined in Chapter 50 (Section 50-41). The hearing officer must submit the required report and recommendation to the Planning Board a maximum of 60 days after the hearing record closes, but the hearing officer may by order extend the time to file the report .

- C. Any provision adopted by the Planning Board to implement [this] Article 59-8 is subject to District Council review and disapproval as if the provision were submitted to the District Council under Method 2 of Chapter 2 (Section 2A-15).

## Section 8.6.4. Sign Review Board

### A. Composition

1. The Sign Review Board consists of 5 members:
  - a. appointed by the County Executive and confirmed by the District Council, and under Chapter 2 (Section 2-14.8);
  - b. who are residents of the County;
  - c. one of whom must operate a business in the County; and
  - d. one of whom must be an architect licensed in Maryland. The Executive must request from the Potomac Valley Chapter of Maryland, American Institute of Architects, recommendations of architects who are qualified to serve on the Board, but the Executive is not limited to the Chapter's recommendation.
2. One member must be designated as chair by the County Executive, and confirmed by the District Council.
3. Each member serves a 3-year term, except that an appointment to fill a vacancy occurring before a term expires is for the remainder of the unexpired term.

### B. Procedures

The Sign Review Board must:

1. meet a minimum of once a month at the call of the chair;
2. exercise its powers and duties only when a minimum of 3 members are present;
3. provide written decisions and actions of the Sign Review Board [no later

than] within 10 days after the decision or action in a format required by DPS; and

- [4. approve the examination for the sign installer license administered by DPS under Section 8.4.5; and ]
4. [5.] exercise its powers and duties according to the procedures adopted by District Council resolution. These procedures must include:
  - a. the keeping of records of meetings and hearings;
  - b. the establishment of requirements for hearing notification;
  - c. the orientation and training of new members;
  - d. the issuance of an annual report of activities and accomplishments;
  - e. standards of conduct regarding conflict of interest;
  - f. standards of ethics; and
  - g. the procedure for admission of evidence and testimony.

### C. Powers

The Sign Review Board may:

1. advise DPS whether an application for a permit satisfies this Chapter or needs a variance;
2. approve or revoke a sign [permit] variance under Section 8.4.4;
3. order the appearance of a person or evidence at a hearing before them; and
4. approve a right-of-way sign under Section 7.7.4.F.3. after receiving a recommendation from the appropriate transportation jurisdiction.

## Section 8.6.5. Fees

### A. Establishing Fees

1. Where DPS, the Hearing Examiner, the Board of Appeals, or the District Council is the deciding body, fees to cover the cost of administering this Chapter must be approved by District Council resolution. A resolution to establish or amend the filing fees may only be adopted after the District Council has held a public hearing [on] after reasonable notice. A filing fee is not required for any application filed by the District Council or another

government agency, unless the application is filed at the request of a person with a financial, contractual, or proprietary interest in the property.

2. Where the Planning Board is the deciding body, fees to cover the cost of administering this Chapter must be approved by resolution of the Planning Board.
3. For Local Map Amendments and conditional use applications, 25% of the established fee must be paid directly to the Planning Board and 75% must be paid directly to the Hearing Examiner, Board of Appeals, or District Council as applicable.

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

1. The District Council may waive or refund any Local Map Amendment required filing fee, in whole or in part, if:
  - a. the application has not been advertised for public hearing;
  - b. the application has been advertised for public hearing but the applicant files a request to withdraw it **[no later than] within** 90 days after a master plan, Sectional Map Amendment, or Zoning Text Amendment that materially affects the property is approved, or condemnation proceedings or public acquisition of the subject property has been initiated; or
  - c. the applicant shows that undue hardship will result if the refund is not approved.
2. The Hearing Examiner may refund a Local Map Amendment filing fee of less than \$25,000, if any condition of [\[Sec\] Section 8.6.5.B.1](#) is satisfied.

#### **C. Waiving or Refunding of Variance Fees**

If a variance is needed because of an error by a government agency in its approval of a site plan, the Board of Appeals may waive or refund all or part of the filing fee.



## Division 8.7. Exemptions and Nonconformities

### Section 8.7.1. Exemptions

#### A. Existing Structure, Site Design, or Use on {effective date}

##### 1. Structure and Site Design

A structure or site design existing on {effective date} that does not meet the zoning standards on or after {day after effective date} is conforming and may be continued, renovated, repaired, or reconstructed if the floor area, height, and footprint of the structure is not increased, except as provided for in Section 8.7.1.C.

##### 2. Use

Any use that was conforming or not nonconforming on {one day before effective date} and that would otherwise be made nonconforming by the application of zoning on {effective date} is conforming, but may not expand.

#### B. Application Approved or Filed for Approval before {effective date}

##### 1. Application in Progress before {effective date}

Any development plan, schematic development plan, diagrammatic plan, concept plan, project plan, sketch plan, preliminary plan, record plat, site plan, special exception, variance, or building permit filed or approved before {effective date} must be reviewed under the standards and procedures of the Zoning Ordinance in effect {one day before the effective date}. Any complete Local Map Amendment application submitted to the Hearing Examiner by April 1, 2014, must also be reviewed under the standards and procedures of the Zoning Ordinance in effect {one day before the effective date}. The approval of any of these applications will allow the applicant to proceed through any other required application or step in the process within the time allowed by law or plan approval, under the standards and procedures of the Zoning Ordinance in effect {one day before the effective date}.

##### 2. Application Approved before {effective date}

Any structure or site design approved before {effective date} may be implemented by the property owner under the terms of the applicable plan.

#### 3. Plan Amendment for Plans Approved or Pending before {effective date}

- a. Until {effective date plus 25 years}, an applicant may apply to amend any previously approved application (listed in Section 8.7.1.B.1 or Section 8.7.1.B.2), under the development standards and procedures of the property's zoning on {one day before effective date}, if the amendment:
  - i. does not increase the approved density or building height unless allowed under Section 8.7.1.C; and
  - ii. either:
    - (a) retains at least the approved setback from property in a Residential Detached zone that is vacant or improved with a Single-Unit Living use; or
    - (b) satisfies the setback required by its zoning on or after {effective date}.
- b. An applicant may apply for a minor site plan amendment to amend the parking requirements of a previously approved application (listed in Section 8.7.1.B.1 or Section 8.7.1.B.2) in a manner that satisfies the parking requirements of Section 7.2.3 and Section 7.2.4.

#### 4. Repair, Renovation, and Rebuilding Rights under Section 8.7.1.B

Any structure or site design implemented under Section 8.7.1.B is conforming and may be continued, renovated, repaired, or reconstructed.

#### 5. Development with a Development Plan or Schematic Development Plan Approved before {effective date}

Any development allowed on property subject to the binding elements of a District Council approved development plan or schematic development plan on {effective date} must satisfy those binding elements until the property is subject to a Sectional Map Amendment that implements a master plan approved after {effective date} or is rezoned by Local Map Amendment.

#### 6. Density Transfers Approved before {effective date}

On a property that is subject to an effective density transfer easement and density transfer deed, the total density or density associated with a commer-

cial or residential use, including any density approved by an amendment of a previously approved application listed in Section 8.7.1.B.1, may exceed that allowed by the existing zoning as long as the total density or density associated with a commercial or residential use does not exceed that allowed by the density transfer easement and density transfer deed.

### C. Expansion of Floor Area Existing on {effective date}

#### 1. Limited Rights under Zoning before {effective date}

Until {effective date plus 25 years}, on land that is located in a Commercial/ Residential, Employment, or Industrial zone, an applicant for a preliminary plan amendment, site plan amendment, or a building permit may increase the floor area on the site by the lesser of 10% of the gross floor area on the site on {effective date} or 30,000 square feet, except for properties with 2,000 square feet or less of floor area, which may expand up to 30% of the gross floor area on the site on {effective date}, following the procedure and standards of the property's zoning on {effective date minus one}, if:

- a. The building does not exceed the height limits and density of the property's zoning in effect on {one day before effective date};
- b. Any building on the site is no closer to property in a Residential Detached zone that is vacant or improved with a Single-Unit Living use than any existing structure on the site on {effective date} or satisfies the setbacks of the current zoning; and
- c. If a site plan or site plan amendment is required by the property's zoning on {one day before the effective date}, then a site plan or a site plan amendment is approved under the standards of site plan approval on {one day before the effective date}.

#### 2. Expansion above Section 8.7.1.C.1 or Amendment after Section 8.7.1.B.3.a

Any portion of an enlargement that exceeds Section 8.7.1.C.1 must satisfy the applicable standards and procedures for the current zoning. After {effective date plus 25 years}, any amendment to a previously approved application must satisfy the applicable standards and procedures for the current zoning to the extent of (a) any expansion, and (b) any other portion of an approved development that the amendment changes.

### D. Residential Lots and Parcels

#### 1. Residential Lot

Unless adjoining lots have merged by virtue of ownership and zoning requirements, DPS may issue a building permit for a detached house on any Residential or Rural Residential zoned lot identified on a plat recorded before {effective date} without regard to the street frontage and lot size requirements of its zoning, except as provided in Section 8.7.1.D.3.b.

#### 2. Pre-1958 Parcel

A detached house on a parcel or part of a lot that has not changed in size or shape since June 1, 1958, exclusive of changes due to public acquisition, may be constructed under its current zoning without regard to the minimum lot width at the front lot line or may be reconstructed either on its current footprint and up to its current maximum building height or in a manner that satisfies the setback and height requirements of its current zoning.

#### 3. Pre-1928 Lot

- a. In addition to the provisions of Section 8.7.1.D.1, a new or reconstructed detached house on any lot recorded before 1928 must satisfy the front, rear, and side yard setbacks of the 1928 Zoning Ordinance; however, a new building must satisfy the established building line requirements under Section 4.4.2.C if applicable.
- b. Before DPS may issue a building permit for a new detached house on a lot less than 5,000 square feet in land area that was recorded before 1928 and adjoins vacant land in common ownership any time since November 8, 2012, the lot must be subdivided with such adjoining property.

#### 4. Damage in Flood Plain

If a detached house that is located within a 100-year flood plain and abuts any waterway, is damaged or destroyed by flood to the extent of up to 75% of the reconstruction value of the building, the dwelling may be repaired or reconstructed to preexisting dimensions.

### [A. Exemptions from Revised Zoning Ordinance and District Map

## Amendment of 2013]

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

A structure, site design, or use that is lawfully existing and satisfies the zoning ordinance on {date of adoption minus one} but not on {date of adoption} is deemed to be conforming and may, at the option of the owner, be continued, renovated, or repaired to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet, subject to the full requirements of zoning in effect on {date of adoption minus one} and any applicable approved plans. Reconstruction of a structure, site design, or use that is lawfully existing and satisfies the zoning ordinance on {date of adoption minus one} but not on {date of adoption} is deemed to be conforming but is only allowed within 15 years of {date of adoption}. Reconstruction of a structure, site design, or use that is involuntarily demolished by fire, wind, falling debris, water, or other force of nature is not subject to this 15-year limit. An enlargement above the limitations of this Section (Section 8.7.1.A.1) must satisfy current zoning requirements. A use located in a building or structure deemed conforming under Section (Section 8.7.1.A.1) may be converted to any permitted non-residential or residential use up to the density limits for the land use established by the zoning in effect on {date of adoption}.]

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

A structure, site design, or use that is lawfully existing and satisfies the zoning ordinance on {date of district map amendment minus one} but not on {date of district map amendment} is deemed to be conforming and may, at the option of the owner, be continued, renovated, or repaired to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet, subject to the full requirements of zoning in effect on {date of adoption minus one} and any applicable approved plans. Reconstructions of a structure, site design, or use that is lawfully existing and satisfies the zoning ordinance on {date of district map amendment minus one} but not on {date of district map amendment} is deemed to be conforming but are only allowed within 15 years of {date

of district map amendment minus one}. Reconstruction of a structure, site design, or use that is involuntarily demolished by fire, wind, falling debris, water, or other force of nature is not subject to this 15-year limit. An enlargement above the limitations of this Section (Section 8.7.1.A.2) must satisfy current zoning requirements. A use located in a building or structure deemed conforming under this Section (Section 8.7.1.A.2) may be converted to any permitted non-residential or residential use up to the density limits for the land use established by the zoning in effect on {date of adoption}.]

### [3. Previously Buildable Lot

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

### [4. Plans Approved or Pending as of {date of adoption}

A property subject to an approved development plan, schematic development plan, diagrammatic plan, concept plan under the Great Seneca Science Corridor Master Plan, project plan, sketch plan, preliminary plan, site plan, or special exception on {date of adoption}, or for which a complete application for approval of such a plan or special exception has been accepted no later than {180 days after date of adoption}, may continue to obtain required approvals or be built at any time subject to the zoning in effect and the plans approved or accepted for filing on {date of adoption minus one}. If approved and built, a structure, site design, or use subject to such a plan is deemed to be conforming and may be reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet subject to the full requirements of the zoning in effect on {date of adoption minus one} and any applicable approved plans only if a building permit for the reconstruction is issued within 15 years of the date of approval. Reconstruction of a structure, site design, or use that is involuntarily demolished by fire, wind, falling debris, water, or other force of nature is not subject to this 15-year limit. An enlargement above the

limitations of this Section (Section 8.7.1.A.4) must satisfy current zoning requirements. ]

**[5. Plans Approved or Pending as of {date of District Map Amendment}]**

A property subject to an approved development plan, schematic development plan, diagrammatic plan, concept plan under the Great Seneca Science Corridor Master Plan, project plan, sketch plan, preliminary plan, site plan, or special exception on {date of district map amendment}, or for which a complete application for approval of such a plan or special exception has been accepted no later than {180 days after date of district map amendment}, may continue to obtain required approvals or be built at any time subject to the zoning in effect and the plans approved or accepted for filing on {date of district map amendment minus one}. If approved and built, a structure, site design, or use subject to such a plan is deemed to be conforming and may be reconstructed to the same size and footprint, or enlarged by no more than the lesser of 10% of the total existing gross floor area on site or 30,000 square feet subject to the full requirements of the zoning in effect on {date of adoption minus one} and any applicable approved plans only if a building permit for the reconstruction is issued within 15 years of the date of approval. Reconstruction of a structure, site design, or use that is involuntarily demolished by fire, wind, falling debris, water, or other force of nature is not subject to this 15-year limit. An enlargement above the limitations of this Section (Section 8.7.1.A.5) must satisfy current zoning requirements.]

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

- a. If a property is subject to a development plan or schematic development plan, the structures, site design, and uses may be continued, renovated, repaired, reconstructed to the same size and configuration, or enlarged only as long as and to the extent that the property fully satisfies the development plan or schematic development plan and all associated binding elements or covenants.
- b. If a property is subject to a special exception, the structures, site design, and uses may be continued, renovated, repaired, reconstructed to the

same size and configuration, or enlarged only as long as and to the extent that they fully satisfy the terms and conditions of their approval.

- c. If a property was subject to an approved development plan or special exception on {date of adoption minus one}, the Planning Board in approving any sketch plan, preliminary plan, or site plan must consider the terms and conditions of the approved development plan or special exception.
- d. If a development plan application that was accepted and pending on {date of district map amendment} or accepted no later than {180 days after date of district map amendment} is approved, once rezoned under the development plan the property to which the development plan applies must satisfy the approved zoning classification as stated in the zoning ordinance as of {date of adoption minus one}.]

**[7. Existing Nonconformities**

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

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

**[1. Buildable Lot under Previous Ordinance**

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

- a. a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District must meet the development standards in the 1928 Zoning Ordinance;

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

## [2. Resubdivision of R-60 Lots

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

## [3. One-Family Dwelling

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

- a. a lot recorded before March 16, 1928, in the original Maryland-Washington Metropolitan District, must meet the development standards in the 1928 Zoning Ordinance;
- b. one-family dwellings and accessory structures on a lot legally recorded by deed or subdivision plat before June 1, 1958, in the Upper Montgom-

ery County Planning District must satisfy the setback, yard, and area coverage standards applicable to the lot in the 1956 Zoning Ordinances for the Upper Montgomery Planning District;

- c. the maximum building height and maximum building coverage in effect when the building is altered, renovated, enlarged, or replaced by a new dwelling applies to the building; and
- d. an established building line setback must conform to the standards for determining the established building line in effect for the lot when any alteration, renovation, enlargement, or replacement by a new dwelling occurs. Any building permit issued before November 23, 1997 must conform to the development standards in effect when the lot was recorded.]

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

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

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

### [1. Existing Buildings and Structures

Any building or structure that was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and was constructed within the

Annexation Area under a building permit issued before February 10, 1998, is a conforming building or structure in Montgomery County and may be:

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

## [2. Existing Uses

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

## [3. Buildable Lot

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

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

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

## Section 8.7.2. Nonconforming Use[, Structure, or Site Design]

### [A. Continuation]

A lawful nonconforming use[, structure, or site design] may be continued, under the following limits:

#### A. [1. Extension] Expansion

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

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

#### [2. Structural Alterations

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

#### [3. Change of Use

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

#### B. [4.] Abandonment of Use

If a nonconforming use is abandoned, it must not be reestablished[, subject to Sec. 8.7.2.A.6] unless it is a historic resource and satisfies Section 8.7.2.C. A nonconforming use is abandoned if the nonconforming use [stops] ceases for at least 6 consecutive months.

#### [5. Reconstruction

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

### C. [6.] Historic Resources

Any nonconforming use that has ceased operations for [more than] at least 6 consecutive months may be reestablished if the use is:

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

### D. [7.] Lawful Nonconforming Use Certification

The owner of property who wishes to establish that [the] a use[, structure, or site design] on the property is lawfully nonconforming, under the provision of this Chapter, must submit an application in a form [prescribed] provided by DPS. A nonconforming use certification must be issued by DPS if DPS determines that the use of the property is a nonconforming use as defined herein.

### [B. Exceptions]

#### [1. Housing Projects Constructed before 1945

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

- a. the number of dwelling units in the housing project must not be increased;
- b. a subdivision of land must not be affected by the repairs, alterations, or additions;
- c. repairs, structural alterations, or additions must not reduce any front yard to less than the average of all front yards on the same side of the right-of-way. The average is computed from the centerline of the right-of-way on which the dwelling fronts to the existing front building line of the dwelling. This average must not be reduced below the average on March 1, 1959;
- d. repairs, structural alterations, or additions must not reduce any side yard between dwellings to less than 18 feet;

- e. repairs, structural alterations, or additions must not decrease any rear yard to less than 20 feet or decrease the sum of the rear yards between any 2 dwellings to less than 40 feet; and
- f. buildings and structures must not cover more than 25% of the net area of the lot.]

#### [2. Opportunity Housing Project

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

#### [3. Swimming Pools for Motels

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

#### [4. Repair of Dwellings on Flood Plains

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

#### [5. Nonconformity through Public Taking

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

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

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

**[6. Alteration, Renovation, Enlargement, and Reconstruction of a Nonconforming Detached House**

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

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

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

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

**[C. Noncomplying Multi-Unit Dwellings]**

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

Any structure located in a single family residential zone that was originally constructed as a multi-family dwelling and is registered as a multi-family dwelling as of [date of adoption minus one] may be continued as long as it remains registered and complies with the following:

- a. The structural alterations of a building or structure that does not conform to the provisions of the zoning district in which it is located may be made only if the building is being altered to conform to the provisions of this Section or to conform with other applicable codes or regulations.
- b. A registered noncomplying multi-family dwelling is prohibited from extending, expanding or increasing in intensity of use in any way.

- c. A registered noncomplying multi-family dwelling that has been changed in whole or in part to a less intensive use is prohibited from reverting to a more intensive use, except that the owner of noncomplying multi-family dwelling that was originally constructed as a multi-family dwelling may temporarily reduce the number of units if the reason for the temporary reduction is to provide a larger unit for the property owner's own use. A noncomplying use, once abandoned, is prohibited from re-establishing. For the purpose of this Section (Section 8.7.2.C), "abandoned" is defined as the cessation of use as a multi-family dwelling for a period of 6 months or more.
- d. In the event of destruction or serious damage by fire, flood or similar cause, no registered noncomplying multi-family dwelling is allowed to be reconstructed for the purpose of carrying on the noncomplying use. "Serious damage" is defined as damage that reduces the market value of any structure by more than one-half.
- e. Each registered multi-family dwelling must be maintained in good condition and in compliance with all applicable Federal, State, County and municipal laws and regulations. DPS must establish a regular schedule of inspections to be made of each registered multi-family dwelling, said inspection to coincide with the biennial rental facility licensing inspection, where applicable.
- f. The County Executive, by written regulation, must establish administrative procedures, exterior maintenance standards necessary to protect the public health, safety and welfare, off-street parking requirements, registration fees in an amount sufficient to pay the costs to the County to administer this Section (Section 8.7.2.C), and an inspection schedule applicable to buildings, structures, and lands registered under this Section (Section 8.7.2.C). The County Executive, by written regulation, may establish an administrative procedure to allow the City of Takoma Park to administer the registration procedure for properties located in the City if the City adopts the procedures in this Section. The regulation must allow DPS to vary the specific requirements for off-street parking upon a finding that the strict imposition of those requirements would be physically



impossible for a noncomplying multi-family dwelling use to achieve due to lot/house configuration or other extenuating circumstances.]

**[2. Special Provisions for Properties in the City of Takoma Park Annexed into Montgomery County on July 1, 1997**

- a. Any building or structure located in a single-family residential zone that has been converted and used continuously as a multi-family dwelling and has a valid use-and-occupancy permit as of January 1, 2001 may continue if the use is registered with DPS. A registered multi-family use must satisfy the provisions of Sec. 8.7.2.C.1.a through Sec. 8.7.2.C.1.c, Sec. 8.7.2.C.1.e and Sec. 8.7.2.C.1.f. Any such multi-family use that does not register becomes noncomplying and must terminate the noncomplying use by July 1, 2001.
- b. In the event of destruction or serious damage by fire, flood or similar cause, a registered multi-family dwelling is allowed to be reconstructed for the purpose of continuing the multi-family use; however, the use cannot be expanded beyond what is in existence at the time the use is registered. If reconstruction or repair brings the use into compliance with the provisions of the zone in which the use is located, the multi-family use cannot be reestablished.]

## Division 8.8. Violations, Penalties, and Enforcement

### Section 8.8.1. Generally

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