

ARTICLE 59-8. ADMINISTRATION AND PROCEDURES

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Div. 8.1. Review Authority and Approvals Required

Sec. 8.1.1. 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 Approvals							
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
Regulatory Approvals							
Conditional Use	8.3.1			R	I	R/D	D
Variance	8.3.2			I	I	I	D
Sketch Plan	8.3.3			R	D		
Site Plan	8.3.4			R	D		
Administrative Approvals							
Building Permit	8.4.1		D			I	A
Use and Occupancy and Temporary Use Permit	8.4.2		D			I	A
Home Occupation and Home Health Practitioner Registration	8.4.3		D				
Sign Permit	8.4.4		D			I	A
Sign Permit Variance	8.4.5	D				I	A
Sign Installer License	8.4.6		D				

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

Sec. 8.1.2. Overview of Approvals Required

The following table provides an overview of the approvals required under this Article (Article 59-8). Details of the 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
District Council Approvals		
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 Code.
Regulatory Approvals		
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 Code.
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 requires site plan approval as indicated in Section 8.3.4.
Administrative Approvals		
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 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 Section 8.4.2.
Home Occupation and Home Health Practitioner Registration	8.4.3	All low impact and major impact home occupations and low impact and major impact home health practitioners must register with DPS.
Sign Permit	8.4.4	Required when a sign is constructed, erected, moved, enlarged, illuminated, or substantially altered. Routine maintenance, including painting, cleaning, changing copy where permitted, or changing copy in compliance with a sign concept plan, does not require a permit. See exemptions in Section 7.7.3.
Sign Permit Variance	8.4.5	Any sign not listed in Div 7.7, or which does not conform to the requirements in Div 7.7, may apply for a sign permit variance from the Sign Review Board.
Sign Installer License	8.4.6	Required for any business that chooses to provide certification as a licensed sign installer.

Div. 8.2. District Council Approvals

Sec. 8.2.1. Local Map Amendment

A. Applicability and Description

1. A local zoning map change to apply a Floating or Euclidean zone to an individual property requires approval of a Local Map Amendment.
2. A Local Map Amendment is intended to apply to an individual property.
 - a. A Floating zone is intended to allow development through a comprehensively designed project with specific standards, land uses, and building types.
 - b. A Euclidean zone is based on a change in the character of a neighborhood or a mistake in the facts on which a Sectional or District Map Amendment was based.
3. The Local Map Amendment application describes the property and the basis for the requested zoning change.
4. When requesting a Floating zone, an applicant may propose binding elements with a Local Map Amendment application. Binding elements may include, but are not limited to, restrictions on uses and building types on the property that would otherwise be allowed by the zone; limits on development standards to less than the maximum allowed; or requirements for general development regulations beyond the minimum(s) required. Binding elements are binding upon the applicants, successors, and assigns, unless lawfully amended.

B. Application Requirements

1. Local Map Amendment applications are filed with the Hearing Examiner.
 - a. Within 5 days of receipt, the Hearing Examiner must forward the application to the Planning Department for approval of the application.
 - b. The Planning Department must notify the applicant if the application is incomplete within 10 days of receipt. An application is considered 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.

- c. The applicant must submit any required revisions to the Planning Department. The revised application must be reviewed for completeness within 10 days of receipt.
 - d. When the application is deemed complete by the Planning Department, the Planning Department must advise the Hearing Examiner, who will accept the application and establish a hearing date. The applicant must provide the Hearing Examiner with the revised application deemed complete by the Planning Department.
2. Applicant:
 - a. The applicant must be a government agency, own the subject property, or be authorized by the owner to file the application. If any land or right-of-way is owned or controlled by the State, County, or any other entity or agency, written authorization from that entity or agency must be submitted with the application.
 - b. An application must identify each person who has a substantial interest in the property subject to 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 all contract purchasers and all persons holding a mortgage, deed of trust, or option to purchase the property. The application must include a statement disclosing political contributions to the treasurer or political committees of candidates for County Council and County Executive or slates that contribute to candidates for County Council or County Executive as required by state law. The disclosure statement must be submitted on a form approved by the District Council.
 3. A pre-application meeting with Planning Department Staff is recommended.
 4. Public notice is required under [Div. 8.5](#).

5. The applicant must submit the following for review:
 - a. Application form and fees approved by the District Council;
 - b. Statement explaining how the proposed development satisfies the criteria to grant the application;
 - c. For a Floating zone application:
 - i. exhibits showing:
 - (a) current zone and proposed zone;
 - (b) existing site conditions and vicinity;
 - (c) existing or approved adjacent land uses, buildings, and rights-of-way;
 - (d) estimated peak hour trips;
 - (e) general phasing outline of structures, uses, rights-of-way, sidewalks, dedications, and future preliminary and site plan applications; and
 - ii. a floating zone plan depicting:
 - (a) building density, massing, height, and anticipated use;
 - (b) locations of open spaces and preliminary stormwater management strategy;
 - (c) pedestrian, bicycle, and vehicular circulation, parking, and loading;
 - (d) any binding elements on the application; and
 - iii. if binding elements are proposed, an unexecuted covenant suitable for filing in the land records reflecting any restricted development standards, development program, or limitations on uses that will be applicable to the property if the District Council approves the application.
 - iv. If a property proposed for development lies within a special protection area, the applicant must submit water quality inventories and plans and secure required approvals under [Article V of Chapter 19](#).

The floating zone plan should demonstrate how any water quality protection facilities proposed in the preliminary water quality plan can be accommodated on the property as part of the project.

- d. 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.
6. Applications may not be modified to increase the area proposed to be reclassified or to change the zoning classification requested without providing revised public notice; and
7. Applications must be available for public inspection during regular office hours but must not be removed from the Hearing Examiner's office except by court order.

C. Review and Recommendation

1. Planning Director Review

The Planning Director must issue a report and recommendation no fewer than 10 days before the Planning Board public meeting. The report and recommendation must be made available to the applicant and public.

2. Planning Board Review

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

3. Hearing Examiner Review

- a. The Hearing Examiner must hold a public hearing on a Local Map Amendment application within 120 days of the date the application is accepted.
- b. The Hearing Examiner may postpone the public hearing if done at least 10 days before the scheduled date, and must provide notice of the new hearing date.
- c. The Hearing Examiner may issue subpoenas to compel the attendance of witnesses and production of documents at any public hearing and administer an oath to any witness.
- d. Within 45 days after the close of the record of the public hearing, the Hearing Examiner must forward a report and recommendation to the District Council. The report must also be made available to the applicant and public.
- e. 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.
- f. Within 10 days after transmittal of the Hearing Examiner's report and recommendation any party of record or any aggrieved party may file a written request for an opportunity to present oral argument before the District Council.
 - i. A copy of the request must be sent to the Hearing Examiner and each party of record as listed by the Hearing Examiner.
 - ii. The request must state the matters desired to be presented at the oral argument and, if oral argument is granted, the argument must be limited to matters contained in the record compiled by the Hearing Examiner. The District Council may grant the request or deny the request.
 - iii. Within 5 days after a request for oral argument is filed with the Hearing Examiner's office, any interested party may oppose, in writing, a request for oral argument or request to participate in oral argument if oral argument is allowed. Any opposition must be concise and limited

to matters raised by the party who requested oral argument, and must be sent to the Hearing Examiner and each party who participated at the hearing, as listed by the Hearing Examiner.

4. Withdrawal of Application

The Hearing Examiner may allow an applicant to withdraw an application for a Local Map Amendment at any time. If a request for withdrawal is filed after the notice of hearing is published, an application to reclassify any part of the land must comply with [Sec. 8.2.1.F](#).

D. Necessary Findings

1. For a Floating zone application the District Council must find that the floating zone plan will:
 - a. be substantially consistent with the recommendations of the applicable master plan, general plan, and other applicable County plans;
 - b. further the public interest by supporting District Council approved policies or regulations;
 - c. meet 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;
 - f. provide a development phasing program that is sufficient to ensure a continued balance of development and public improvements required to be implemented by the applicant; and
 - g. when applying a non-Residential Floating zone to a property previously under a Residential Detached zone, will not adversely effect the character of the surrounding neighborhood.
2. For a Euclidean zone application, the District Council must find that the applicant has demonstrated 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 in applying the existing zoning.

E. Decision

1. The District Council must make its decision to approve, deny, or remand the application to the Hearing Examiner on the record.
2. 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. If the required number of affirmative votes is not obtained, the application is denied.
3. The Covenant
 - a. Before the close of the administrative record the applicant must submit to the Hearing Examiner a fully executed covenant that reflects the restricted development standards, development program, or limited uses and any accompanying or qualifying text material as contained in the approved floating zone plan.
 - b. The executed covenant must also clearly state that the restricted development standards, development program, or limited uses 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. Upon approval of the application by the District Council, the applicant must immediately file the executed covenant in the land records of Montgomery County. Certification of such filing must be submitted to the Planning Board at the time of submission of the site plan. A site plan cannot be processed for review or approved by the Planning Board until the certification of filing is submitted.
4. The District Council must issue a resolution and opinion reflecting its decision on the application within 60 days of the Hearing Examiner's transmittal to the District Council, unless such time is extended by the District Council, or remand the application to the Hearing Examiner for further consideration.
5. Any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision within 30 days of the District Council's action under the Maryland Rules of Procedure.

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 thereafter, reconsider its decision on any application. The adoption of a resolution in favor of such motion to reconsider must stay the time within which an appeal may be filed in the Circuit Court pursuant to State law.
7. After giving the applicant 30 days notice, the Hearing Examiner may recommend dismissal of an application if:
 - a. the application has been pending for 2 years or longer; and
 - b. the application has not been actively pursued by the applicant.

The District Council may dismiss the application unless the applicant shows good cause that the application should not be dismissed.

F. Subsequent Applications

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. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b do not apply when the previous application(s), which would bar the filing of a new application, was filed by a governmental agency not at the owner's request.
 - d. The time limitations in Sec. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b do not apply when the previous application(s), was denied due to a lack of the required number of affirmative votes.
 - e. An application by the District Council may be accepted at any time without regard to the time limitation in Sec. 8.2.1.F.1.a and Sec. 8.2.1.F.1.b.

- f. The time limitations in this Section (Sec. 8.2.1.F.1) may be waived by the District Council after consideration of a new petition by the applicant showing substantial new facts that would warrant reapplication.
2. All subsequent actions required by the applicant or an agency are measured from the date of the District Council's resolution or the final court action, as applicable.
3. If a Local Map Amendment for a Floating zone is approved, the applicant or successor must submit a site plan under this Article (Article 59-8) prior to any development under the newly approved zoning classification.

G. Scope of Approval

1. Approval of a Local Map Amendment application entitles the applicant or successor to develop under the requirements of this Chapter.
2. When a floating zone plan is approved, any binding element approved by the District Council is binding upon the applicant, successors, and assigns.

H. Recording Procedures

1. For a Local Map Amendment for a Floating zone:
 - a. For a floating zone plan with binding elements, an executed covenant reflecting the binding elements must be filed in the land records. Certification of the filing must be provided to the Planning Board with any subsequent site plan application. Covenants must remain in effect until the property is rezoned or an amendment to the floating zone plan is approved.
 - b. The floating zone plan, in accord with the District Council's resolution, must be provided to the Hearing Examiner for certification in a format approved by the Hearing Examiner.
 - c. The certified floating zone plan must be maintained in the permanent files of the Hearing Examiner.
 - 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 and all parties of record. 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 and all parties of record. DPS must send a copy of the resolution and opinion to the Supervisor of Assessments for Montgomery County; the Department of Finance; the Department of Environmental Protection; and the Board of Appeals.

I. Amendment to a Floating Zone Plan

An amendment to a floating zone plan may be approved under one of the following methods:

1. Major amendments to an approved floating zone plan follow the same procedures as an original application. Major amendments include any request to increase density or height, add a previously disallowed use, decrease setbacks, or make changes to any binding elements of approval.
2. Minor amendments to an approved floating zone plan may be approved administratively by the Hearing Examiner. Minor amendments must not include any changes that increase density or height, decrease setbacks, add a previously disallowed use, or alter the approved binding elements.
 - a. Public notice is required under **Div. 8.5**.
 - b. A public hearing is not required if no material objection to the application is received within 15 days of the mailed notice of the filed application. If an objection to the application is received within 15 days of the mailed notice of the filed application, a public hearing must be held under the same procedures as an original application.

J. Compliance and Enforcement

1. Whenever a complaint is filed alleging substantial noncompliance with any binding element of an approved floating zone plan, DPS must investigate the complaint and, if the complaint is found to have reasonable cause, provide a written summary of the investigation to the complaining party,

the zoning applicant or a successor in interest, the Planning Board, and the Hearing Examiner. Complaints may be filed by government agencies and individuals.

2. Upon receipt of the investigative report, the Hearing Examiner must schedule a show cause hearing to determine whether noncompliance with the binding elements exists and whether it 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 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 comply with any of the binding elements of an approved floating zone plan, it may adopt a resolution providing appropriate sanctions including reversion of the zoning to the previous zoning classification applicable to the property. Upon reversion to the previous zoning classification, the property will be subject to all development standards of the previous zone. The reversion sanction will not apply where the District Council finds substantial compliance with the binding elements.

Sec. 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 a prior Map Amendment.

4. A Corrective Map Amendment is not a basis for determining change in the character of the neighborhood.

B. Application Requirements

1. A Corrective Map Amendment application must be filed with the District Council.
2. Only the Planning Board can apply for a Corrective Map Amendment.
3. Public notice is required under **Div. 8.5**.

C. Review and Recommendation

1. Planning Director Review

- a. The Planning Director must issue a report and recommendation at least 7 days before the Planning Board meeting. The report and recommendation must be made available to the public.
- b. The Planning Director's report and recommendation must include:
 - i. A description of each subject area of land proposed for rezoning;
 - ii. A map depicting the existing and proposed zoning for each subject area of land; and
 - iii. A statement describing the rationale in support of the zoning change.

2. Planning Board Review

- a. The Planning Board may adopt the Planning Director's report and recommendation as a consent item on its agenda or hold a public meeting 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 are errors or inaccurate depictions of the zoning boundary line(s) on an adopted map.

E. Decision

1. The District Council must conduct a public hearing and make its decision on the record 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 within 60 days of the close of record, unless such time is extended by the District Council, or remand the application to the Planning Board for further consideration.
4. Any party aggrieved by a decision of the District Council may file a petition for judicial review of the decision within the time and manner prescribed within the Maryland Rules of Procedure.
5. A public hearing may be adjourned, continued, suspended, deferred, or postponed either to a time certain or for a reasonable period of time by the District Council on public announcement. The District Council, on its own or at the suggestion of the Planning Board, may determine that some or all of the proposed adjustments should be considered comprehensively as part of a future master plan review and therefore dismiss the application, in full or in part, as appropriate.

F. Subsequent Applications

All subsequent actions are measured from the date of the District Council's resolution unless a court rules otherwise.

G. Scope of Approval

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

H. Recording Procedures

1. The District Council's resolution on the Corrective Map Amendment must be maintained in the permanent files of the Planning Board.
2. The District Council must send a copy of the resolution and opinion to the

Planning Board to update the zoning map and all property owners included in the application.

Sec. 8.2.3. Sectional and District Map Amendment

A. Applicability and Description

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

B. Application Requirements

1. The District Council, or its designee, accepts the application for all Sectional or District Map Amendments. Within 5 days after acceptance for filing, the District Council must forward the application to the Planning Board.
2. Only the Planning Board or District Council may apply for a Sectional or District Map Amendment.
3. Public notice is required under **Div. 8.5**.
4. For a Sectional Map Amendment, the applicant must submit the following for review:
 - a. The designation or description of the area sufficient to identify:
 - i. the boundaries of each area proposed for the same zoning classification together with indications where such classification, if adopted, would result in changes of classification, the nature of the changes and the boundaries of the land covered by such changes;
 - ii. all roads, streets, alleys, 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 in conformity with this Section (Sec. 8.2.3).
 - c. A statement describing the rationale for the proposed zoning changes or adjustments. The application must include the total acres in the ap-

plication, the acres proposed for rezoning, and the acres proposed for reconfirmation of existing zoning.

C. Review and Recommendation

1. Planning Director Review

- a. The Planning Director must issue a report and recommendation at least 10 days before the Planning Board public meeting. The report and recommendation must be made available to the applicant and public.
- b. The Planning Director's report and recommendation must include:
 - i. A description of the area proposed for comprehensive rezoning; and
 - ii. Maps depicting the proposed zoning for each subject area.

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. Necessary Findings

An application for a Sectional or District Map Amendment must be decided on the basis of the evidence of record. It can be approved, with or without modification, in whole or in part, as the District Council deems appropriate, as a map amendment with the force and effect of law, or it may be denied.

E. 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.
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.

3. The District Council must issue a resolution and opinion reflecting its decision on the application within 60 days of the close of record, unless the 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 within 30 days of the District Council's action under the Maryland Rules of Procedure.
5. The decision of the District Council on any application for a Sectional or District Map Amendment is final except that the District Council on its own motion may, within 30 days thereafter, reconsider its decision on any application. The adoption of a resolution on such motion to reconsider must stay the time within which an appeal may be filed in the Circuit Court pursuant to State law.

F. Subsequent Applications

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

G. Scope of Approval

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

H. Recording Procedures

1. The District Council's resolution on the Sectional or District Map Amendment must be maintained in the permanent files of the Planning Board.
2. The District Council must send a copy of the resolution to the Planning Board to update the zoning map. The District Council must also send a copy of the resolution to the applicant and all parties of record. 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.

Sec. 8.2.4. Zoning Text Amendment

A. Applicability and Description

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

B. Application Requirements

1. Any individual or government agency may request that a Zoning Text Amendment be introduced.
2. Only the District Council or any individual member(s) may introduce a Zoning Text Amendment.
3. The District Council must transmit the Zoning Text Amendment to the Planning Director, the County Executive, the Board of Appeals, and the Hearing Examiner within 5 days of introduction and notify them of the District Council's public hearing date.
4. Public notice is required under **Div. 8.5**.

C. Review and Recommendation

1. Planning Director Review

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

2. Planning Board Review

- a. The Planning Board may 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 prior to the District Council Hearing. The recommendation(s) must also be made available to the public.

3. Other Agency Review

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

D. Necessary Findings

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

E. Decision

1. The District Council must hold a public hearing no later than 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. The District Council must make its decision on the record.
2. An affirmative vote of 5 members of the District Council is required to adopt the introduced Zoning Text Amendment with or without modifications. 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. If the required number of affirmative votes is not obtained, the amendment fails.
3. The vote on final adoption of a Zoning Text Amendment must be a roll call vote.
4. Each Zoning Text Amendment takes effect 20 days after the District Council adopts it, unless the ordinance adopting it specifies a different date.
5. Any Zoning Text Amendment not acted upon within 2 years of the date of its public hearing, or within the term of office of the District Council that conducted the public hearing, whichever expires first, must not be considered or acted upon unless it is again introduced and set for public hearing.

F. Recording Procedures

1. All adopted Zoning Text Amendments must be accompanied by an opinion of the District Council stating the reasons for its adoption, which the County Attorney must maintain in its permanent files.
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, the Department of Finance, and all parties of record.
3. This Chapter must be updated within 45 days of approval of any Zoning Text Amendment.

Div. 8.3. Regulatory Approvals

Sec. 8.3.1. Conditional Use

A. Applicability and Description

1. Use of any property for a conditional use, as designated by **Article 59-3**, requires approval of a conditional use application.
2. The conditional use application will be used to determine if the proposed development is in compliance with this Chapter.
3. Conditional use applications may encompass all or any part of a property, but when the application does not encompass the entire area included in any previous approval, the application must demonstrate its relation to and coordination with other approvals.
4. Conditional use applications must satisfy the conditions and binding elements of, and be consistent with, any previous approvals that encumber the subject property, unless amended.
5. A site plan filed under **Sec. 8.3.4** is not required for a property, or any portion thereof, subject to a conditional use application, except when it is a condition of approval by the Hearing Examiner or the Board of Appeals.

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. No later than 5 days after receiving an application, the Hearing Examiner or Board of Appeals must forward the application to the Planning Department for review.
 - b. The Planning Department must inform the applicant whether the application is incomplete within 10 days of receipt. An application is considered 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.

- c. The applicant must submit any required revisions to the Planning Department. The revised application must be reviewed for completeness within 10 days of receipt.
 - d. When the application is deemed complete by the Planning Department, the Planning Department must advise the Hearing Examiner, who will accept the application and establish a hearing date. The applicant must provide the Hearing Examiner or Board of Appeals with the revised application deemed complete by the Planning Department.
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 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. A pre-application meeting with Planning Department Staff is recommended.
4. Public notice is required under **Div. 8.5**.
5. The applicant must submit the following for review:
 - a. application form and fees as approved by the District Council;
 - b. statement explaining how the proposed development satisfies the criteria to grant the application; and
 - c. additional submittal requirements:
 - i. certified copy of official zoning vicinity map showing the area within at least 1,000 feet surrounding the subject property;
 - ii. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/4 mile;
 - iii. approved Natural Resources Inventory/Forest Stand Delineation;
 - iv. Forest Conservation Plan application, if required under **Chapter 22A**, or an approved preliminary forest conservation plan; telecommunication tower applications are exempt from this requirement;

- v. Stormwater Management Concept or Water Quality Plan application, if required under **Chapter 19** ;
- vi. Traffic Statement or Study, accepted for review by the Planning Director;
- vii. inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
- viii. existing and proposed dry and wet utility plan if changes to these facilities are proposed;
- ix. written description of operational features of the proposed use;
- x. if exterior changes are proposed, plans of the proposed development showing:
 - (a) footprints, ground-floor layout, and heights of all buildings and structures;
 - (b) required open spaces and recreational amenities;
 - (c) layout of all sidewalks, trails, paths, roadways, parking, loading, and bicycle storage areas;
 - (d) rough grading;
 - (e) landscaping and lighting; and
 - (f) supplementary documentation showing or describing the application's conformance to previous approvals and applicable requirements.
- xi. development program and inspection schedule detailing any construction phasing for the project;
- xii. for a telecommunication tower application, photographic simulations of the tower and site seen from at least 3 directions, including from every abutting and confronting property; and
- xiii. if a sketch plan was approved for the property, a table of proposed public benefits and the incentive density points requested for each.

C. Review and Recommendation

1. Planning Director Review

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

2. Planning Board Review

- a. The Planning Board may 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

- a. The Hearing Examiner must conduct a public hearing within 120 days of the date an application is accepted, following rules of procedure as approved by the District Council.
- b. The Hearing Examiner may postpone the public hearing and must provide mailed notice to all parties of record of the new hearing date.
- c. The Hearing Examiner may issue subpoenas to compel the attendance of witnesses and production of documents at any public hearing and administer an oath to any witness.

- d. If 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, and again by up to 30 days with the Board of Appeals' approval.
 - iii. Within 10 days after transmittal of the Hearing Examiner's report, any party of record or any aggrieved party may file a written request for an opportunity to present oral argument before the Board of Appeals.
 - (a) The written request must be filed with the Hearing Examiner and must concisely identify the matters desired to be presented at the oral argument.
 - (b) Within 5 days after a request for oral argument is filed, any interested party may oppose, in writing, a request for oral argument or request to participate in oral argument if oral argument is allowed. Any opposition to a request for oral argument must be sent to the Hearing Examiner and each party who participated at the hearing, as listed by the Hearing Examiner, and must be concise and limited to matters raised by the party who requested oral argument.
 - (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, a public hearing must be held and the argument must be limited to matters contained in the record compiled by the Hearing Examiner.
 - (d) Thereafter, the matter must be decided either as provided in [Sec. 8.3.1.E](#), or remanded to the Hearing Examiner for clarification or the taking of additional evidence, if appropriate.

4. Amendment of an Application

- a. 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.
- b. The applicant must forward a copy of each proposed amendment to the Planning Board. The record must remain open for a reasonable time 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 further review and comment are necessary.

5. Withdrawal of an Application

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

D. Necessary Findings

- 1. To approve a conditional use application, the Hearing Examiner or Board of Appeals must find, for each of the following elements, that the proposed development:
 - a. complies with any previous approval on the subject site or, if not, that the previous approval must be amended;
 - b. satisfies requirements of the zone, use standards under [Article 59-3](#), and applicable general regulations under [Article 59-7](#);
 - c. is substantially consistent with the recommendations of the applicable master plan and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

- d. will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; conditional use applications that are substantially consistent with the recommendations of a master plan do not alter the nature of an area;
 - e. 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:
 - i. and 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. and 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.
 - f. will not have a significant non-inherent adverse impact in any of the following categories:
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties;
 - 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. A conditional use must be denied if any of the findings required in Sec. 8.3.1.D.1.a through Sec. 8.3.1.D.e cannot be made. A conditional use may be denied if it has non-inherent adverse effects in any of the categories in Sec.

8.3.1.D.1.f and the overall assessment of both inherent and non-inherent adverse impacts warrants denial to avoid undue harm to the general neigh+

- 3. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Board of Appeals must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.

E. Decision

- 1. The Hearing Examiner or Board of Appeals must hold a public hearing on a conditional use application within 120 days of the date an application is accepted.
- 2. If the Hearing Examiner is deciding the application, the Hearing Examiner must issue a decision on the application within 30 days of the close of the record to approve, approve with conditions, or deny the application.
- 3. If the Board of Appeals is deciding the application, a vote must be taken 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 conditional use.
 - a. If the required number of affirmative votes is not obtained, the application is denied. Any Board of Appeals member who votes on a conditional use and was not present for any portion of the hearing must read and sign the transcript of that portion of the testimony and must review all exhibits introduced at the hearing.
 - b. The Board of Appeals must issue a resolution reflecting the Board of Appeals' decision within 30 days of the close of the record unless such time is extended by the Board of Appeals.
- 4. The Hearing Examiner or Board of Appeals may add conditions of approval, with or without the consent of the applicant, such as operational restrictions and hours of operation, and may modify general regulations such as parking, landscaping, and lighting to ensure compatibility with the general neighborhood.

5. 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 within the time and manner prescribed within the Maryland Rules of Procedure.

F. Subsequent Applications

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. All subsequent actions required by the applicant or an agency are measured from the date the Hearing Examiner's decision or Board of Appeals' resolution was issued or the date of a final court action, as applicable.

3. Conforming Permits

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

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

4. Permits Exempt from Conformance to Approved Conditional Uses

- a. On any property where a conditional use was approved, DPS may, without 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 (Sec. 8.3.1.F.4) to the Hearing Examiner or Board of Appeals for inclusion in the record of the conditional use.
- c. Any modification or improvement allowed under this Section (Sec. 8.3.1.F.4) does not require an amendment to the conditional use application.

5. Conditional Use Renewal for a Home Occupation (Major) or Home Health Practitioner (Major)

- a. The Hearing Examiner must provide written notice 60 days before an upcoming renewal date to each holder of a renewable conditional use, with instructions to submit a renewal application and request an inspection by DPS, if the holder of the conditional use wishes to renew for 2 more years. The conditional use continues in effect until:
 - i. the Hearing Examiner has provided written notice of the renewal date;
 - ii. renewal has been granted or denied, or the conditional use holder has declined to renew the conditional use; or
 - iii. the holder of the conditional use has failed to respond to the notice of renewal before the conditional use expires.
- b. If the conditional use holder declines to renew, notice of the consequent expiration of the conditional use must be sent by regular mail to the conditional use holder, the land owner, and all other persons entitled to notice.
- c. If the holder of the conditional use does not reply to notification of the renewal date within 30 days after the notice was mailed, a second notice must be sent to the conditional use holder and the land owner by certified mail, stating the date on which the conditional use will expire if a renewal application is not received. If no reply to the second notice is received, the Hearing Examiner must issue an Order stating that the conditional use has expired. The Order must be sent to the conditional use holder and the land owner by certified mail and to all other persons entitled to notice of the conditional use by regular mail.

- d. Upon receipt of an application for renewal, the Hearing Examiner must issue notice of a public hearing. The Hearing Examiner must conduct this public hearing at least 30 days after notice is sent to all parties entitled to notice of the original conditional use hearing. The public hearing on the renewal may be waived by the Hearing Examiner if the inspection of the premises indicates that the conditional use is in compliance with the applicable provisions of this Chapter and conditions established by the Board of Appeals, and the parties entitled to notice are given an opportunity to request a hearing and fail to do so.
- e. If a conditional use holder requests modification of the terms and conditions of the conditional use in conjunction with a renewal request, the Hearing Examiner may make a decision on the requested modification as part of the decision on the renewal, without a public hearing, if the Hearing Examiner finds that:
 - i. the modification does not substantially alter the nature, character, intensity of use, or the conditions of the original grant; and
 - ii. the parties entitled to notice are given an opportunity to request a hearing and fail to do so.
- f. If the Hearing Examiner finds that the requested modification represents a significant change that would not substantially alter the nature, character, intensity of use, or the conditions of the original grant, the Hearing Examiner may make a decision on the modification and the renewal only after a public hearing convened with proper notice.

G. Scope of Approval

- 1. A conditional use expires within 24 months from the date of the issuance of the decision or resolution, unless a longer period is established by the decision or resolution, if the use is not established or a building permit has not been obtained for the applicable use. If a decision on a conditional use is appealed to a court, this time limit runs from the date of the final court order in the appeal.
- 2. The Board of Appeals may extend the time limit for a 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. Each extension must not exceed 12 months. 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. Development activities under this Section (Sec. 8.3.1) must conform to the approved conditional use and any conditions, including operational restrictions.
- 4. It is the conditional use holder's responsibility to notify the Board of Appeals of any change in land ownership or change in circumstances or conditions affecting the conditional use.

H. Recording Procedures

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

I. Amendments

- 1. Major amendments to an approved conditional use follow the same procedures, must meet the same criteria, and are subject to the same requirements as the original conditional use application, except as indicated in Sec. 8.3.1.1.a. Major amendments include, without limitation, any requests to increase density or height, to make changes to any conditions of approval, to decrease setbacks where abutting detached residential uses, or to increase the intensity of the use.
 - a. The public hearing must be limited to consideration of the proposed modifications noted in the Board of Appeal's notice of public hearing and to:

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

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

J. Compliance and Enforcement

1. DPS and the Board of Appeals must establish a regular inspection program for conditional uses. DPS must perform the inspections according to the established schedule, and must perform additional inspections if a complaint alleging failure to comply with the terms or conditions of a conditional use is filed with DPS or the Board of Appeals. If a complaint is filed, DPS must inspect the premises of the conditional use within 21 days of receiving the complaint, or more promptly if requested by the Board of Appeals, to determine the validity of the complaint.
2. If the inspection finds a violation of the terms or conditions of the conditional use, DPS must direct the conditional use holder to correct the violation within a given time frame to be no less than 15 days from the date of inspection. When the time to correct the violation expires, DPS must reinspect the premises. If the violation has not been corrected, DPS must file a report with the Board of Appeals describing the nature of the violation, the corrective action ordered by DPS, and the time allowed to correct the violations.
3. If the inspection finds that no violations exist, written findings must state that the conditional use complies with the terms and conditions of the conditional use approval.
4. If, under this Article (Article 59-8), the Board of Appeals receives a written notice from DPS that the terms or conditions of a conditional use or the terms, conditions, or restrictions attached to the grant of any permit issued under this Article (Article 59-8) are not being complied with, the Board of Appeals must order the conditional use holder and the property owner to appear before the Board of Appeals at a date, time, and place specified to show cause why the conditional use should not be revoked.
5. If an inspection finds that the conditional use has been abandoned, DPS must forward written notice of its findings to the last recorded holder of the conditional use and to the property owner. The conditional use holder and property owner have 60 days from the date of mailing of the notice to sub-

- mit a written statement confirming the abandonment, or challenging it and requesting that the conditional use be continued.
- a. If the conditional use holder and the property owner acknowledge that the conditional use has been abandoned, DPS must notify the Board of Appeals. The Board of Appeals must adopt and issue a written resolution finding the conditional use to have been abandoned and ordering it revoked.
 - b. If either the conditional use holder or the property owner challenge the abandonment and request that the conditional use be continued, DPS must notify the Board of Appeals, and the Board of Appeals must convene a public show cause hearing to determine whether or not the conditional use was abandoned and whether it should be revoked.
 - c. If either the conditional use holder or the property owner does not respond, DPS must notify the Board of Appeals of its findings, and the Board of Appeals must issue to the conditional use holder and the property owner an order to appear before the Board of Appeals to show cause why the conditional use should not be revoked.
 - d. If neither the conditional use holder or the property owner appear before the Board of Appeals to show cause why the conditional use should not be revoked, the Board of Appeals must adopt and issue a resolution finding the conditional use to have been abandoned and ordering the conditional use revoked.
6. The notice of a show cause hearing must be issued to the conditional use holder and the property owner by certified mail, return receipt requested. Notification must also be sent to DPS, and to all parties who have submitted written complaints concerning the conditional use, and must:
 - a. include the nature of the alleged violations;
 - b. state that the hearing is limited to a consideration and a determination of the validity of the allegations; and
 - c. advise the conditional use holder and the property owner that failure to attend and participate in the hearing may result in revocation of the conditional use.
 7. The Board of Appeals must conduct a show cause hearing limited to consideration of the issues identified in the notice of hearing. The Board of Appeals may reaffirm or revoke the conditional use or amend, add to, delete or modify the existing terms or conditions. Within 15 days of the close of record the Board of Appeals must make a determination on the issues presented. The decision of the Board of Appeals 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.
 8. Revocation by the Board of Appeals of any conditional use must be so noted in the official zoning maps of the Planning Department.

Sec. 8.3.2. Variance

A. Applicability and Description

1. A variance may be granted for development that:
 - a. does not meet the standards or requirements of this Chapter; and
 - b. cannot be or is not achieved by a waiver or alternative compliance plan approved by the applicable deciding body.
2. If an applicant requests a modification that is subject to a waiver or alternative compliance plan by the applicable deciding body and that waiver is denied, the applicant can apply for a variance.

B. Application Requirements

1. All variance applications are filed with the Board of Appeals.
2. An applicant must own the subject property or be authorized by the owner to file the application.
3. Public notice is required under **Div. 8.5**.
4. The applicant must submit the following for review:
 - a. application form and fees as required by the Board of Appeals.
 - b. documentation of interest in the proposed development site under **Sec. 8.3.2.B.2**.

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

C. Review and Recommendation

1. The Board of Appeals may request review by the Planning Director, Planning Board, or Hearing Examiner.
2. If a review by the Planning Director, Planning Board, or Hearing Examiner is requested, the review follows the same procedure as a conditional use application.
3. If a property owner holds a valid building permit to construct a detached house or townhouse building type in a new residential subdivision and an error committed or discovered during the course of construction on the site results in a violation of the specified setback requirements in the zone in which the property is located, and the variance required to overcome this error would involve less than 10% of the particular setback requirement which had been violated, the Board of Appeals may hear the application for a variance at the first 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.

D. Necessary Findings

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

1. One or more of the following unusual or extraordinary situations or conditions exist:
 - a. exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary spatial conditions peculiar to a specific property;
 - b. the proposed development involves utilization of an existing legal non-conforming property or structure;
 - c. the proposed development contains areas subject to environmentally sensitive features or buffers;
 - d. the proposed development involves property or structures of historical significance; or
 - e. the proposed development is substantially consistent with the established historic or traditional development standards of a street or neighborhood.
2. The special circumstances or conditions are not the result of actions by the applicant;
3. The requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Code would impose due to the unusual or extraordinary situations or conditions on the property;
4. The variance can be granted without substantial impairment to the intent and integrity of the general plan or the applicable master plan; and
5. Granting the variance will not be adverse to the use and enjoyment of abutting properties.

E. Decision

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

F. Subsequent Applications

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

G. Scope of Approval

1. A variance is valid for 12 months, during which time a building permit must be obtained for the applicable building, structure, or use, or an application filed for any site plan or conditional use application required. 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.
2. The Board of Appeals may extend the time limit for a variance 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(s) granted by the variance.
4. The conditions approved by the Board of Appeals are binding upon the applicant, successors, and assigns.

H. Recording Procedures

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

Sec. 8.3.3. Sketch Plan

A. Applicability and Description

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

B. Application Requirements

1. The Planning Director accepts applications for all sketch plans.
2. An applicant must own the subject property or be authorized by the owner to file the application.
3. If any land or right-of-way encompassed by a sketch plan application is owned or controlled by the State, County, or any other private or public entity, a written agreement or authorization from that entity or agency must be submitted with the sketch plan application.
4. Disclosure of ownership must satisfy the [Land Use Article of the Annotated Code of Maryland](#).
5. A pre-application meeting with Planning Department Staff is recommended.
6. Public notice is required under [Div. 8.5](#).
7. The applicant must submit the following for review:
 - a. application form and fees as required by the Planning Director;
 - b. vicinity map at 1" = 200';
 - c. site inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal

descriptions on the proposed development site and within 500 feet of the perimeter boundary;

- d. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/2 mile;
- e. documentation of interest in the proposed development site under **Sec. 8.3.3.B.2.** and **Sec. 8.3.3.B.3;**
- f. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application; and
- g. illustrative plans showing:
 - i. building densities, massing, heights, and the anticipated mix of uses;
 - ii. locations of public use and other open spaces;
 - iii. pedestrian, bicycle, and vehicular circulation, parking, and loading;
 - iv. estimated range of the maximum peak hour trips; and
 - v. relationships between existing or proposed adjacent buildings and rights-of-way;
- h. a table of proposed public benefits and the incentive density points requested for each;
- i. a general phasing outline of structures, uses, rights-of-way, sidewalks, dedications, public benefits, and future preliminary and site plan applications; and
- j. fees set by the Planning Board.

C. Review and Recommendation

Planning Director Review

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

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

E. Decision

1. The Planning Board must conduct a public hearing within 90 days of the date an application is accepted. 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.
2. Within 30 days after the close of the record of the public hearing, the Planning Board must act by majority vote of those present at the public hearing to approve; approve subject to modifications, conditions, or binding elements; or deny the application. Binding elements may include, but are not limited to, restrictions on uses and building types on the property that would otherwise be allowed by the zone; limitations on development standards to less than the maximum allowed; or requirements for general development regulations in addition to the minimum(s) required; establishment of the public benefits that must be provided; or establishing the general layout and massing of buildings, open space, and circulation. Binding elements are binding upon the applicants, successors, and assigns, unless lawfully amended.
3. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review of the decision within the time and manner prescribed by the Maryland Rules of Procedure.

F. Subsequent Applications

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

G. Scope of Approval

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

H. Recording Procedures

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

I. Amendments

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

1. Amendments to the binding elements or conditions of an approved sketch plan may be approved if such amendments are:
 - a. requested by the applicant;
 - b. recommended by the Planning Board staff and agreed to by the applicant; or
 - c. made by the Planning Board, based on a staff recommendation or on its own initiative, if the Planning Board finds that a change in material

facts and circumstances since sketch plan approval demonstrates that the binding element or condition is not substantially consistent with the recommendations of the applicable master plan or does not meet the requirements of this Chapter.

2. Notice of proposed amendments to the binding elements must be identified in the site plan application if requested by the applicant, or in the final notice of the site plan hearing if recommended by Planning Board staff and agreed to by the applicant.
3. For any amendments to the binding elements or conditions, the Planning Board must make the applicable sketch plan findings in addition to the findings necessary to approve a site plan under this Article (Article 59-8).

Sec. 8.3.4. Site Plan

A. Applicability and Description

1. Development under the optional method requires approval of a site plan after approval of a sketch plan.
2. Development under a Floating zone requires approval of a site plan after approval of a floating zone plan.
3. Development under the standard method requires site plan approval as indicated in the table in Sec. 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 is in compliance with current laws, regulations and this Code, and is substantially consistent 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. A site plan is not required for any property or area within a property that is subject to a conditional use, unless the Hearing Examiner or Board of Appeals requires one.

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	If required for the use under Article 59-3; if not required under Article 59-3, site plan requirement follows the Permitted use thresholds 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	If required for the use under Article 59-3; if not required under Article 59-3, site plan requirement follows the Permitted use thresholds 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
			All other zones	No
	Limited	Any	Any	If required for the use under Article 59-3; if not required under Article 59-3, site plan requirement follows the Permitted use thresholds for same zone in this table.
Industrial	Permitted	≤ 40'	Agricultural, Rural Residential, Residential, or Residential Floating	Yes
			All other zones	No
		> 40'	Any	Yes
	Limited	Any	Any	If required for the use under Article 59-3; if not required under Article 59-3, site plan requirement follows the Permitted use thresholds for same zone in this table.
Overlay	Any	Any	Any	If required by the applicable Overlay zone under Article 59-4 or if required by the underlying zone.

B. Application Requirements

1. The Planning Director accepts the application for all site plans.
2. A pre-application meeting with Planning Department Staff is recommended.
3. Ownership:
 - a. An applicant must own the subject property or be authorized by the owner to file the application.
 - b. If any land or right-of-way 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.
 - c. Disclosure of ownership must conform to the **Land Use Article of the Annotated Code of Maryland**.
4. Public notice is required under **Div. 8.5**
5. The applicant must submit the following for review:
 - a. application form and fees as required by the Planning Director;
 - b. vicinity map at 1" = 200';
 - c. site inventory map showing existing buildings, structures, circulation routes, significant natural features, historic resources, zoning, and legal descriptions on the proposed development site and within 500 feet of the perimeter boundary;
 - d. list of abutting and confronting property owners in the County tax records and any citizen's association(s) within 1/2 mile;
 - e. documentation of interest in the proposed development site under **Sec. 8.3.4.B.3**;
 - f. statement of justification outlining how the proposed development satisfies the standards and criteria required to grant the application;
 - g. verification that the applicant has posted notice on the property, notified affected parties, and held a pre-submittal meeting with the public, as required by Planning Board regulations;
 - h. approved Natural Resources Inventory/Forest Stand Delineation plan;
 - i. Stormwater Management Concept Application or, if required, a Water Quality Plan Application;
 - j. Traffic Statement or Study accepted by the Planning Director, if not submitted with a previous or concurrent 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. supplementary documentation showing or describing the application's conformance to previous approvals and applicable requirements.
 - m. a development program and inspection schedule detailing the construction phasing for the project;
 - n. a final Forest Conservation Plan application;
 - o. if a sketch plan was approved for the property, a table of proposed public benefits and the incentive density points requested for each; and
 - p. if common open space is required, a description of the procedure and methods to be followed for assuring the common use and adequate maintenance of common open space.

C. Review and Recommendation

1. State and County Agencies

- a. State and County agencies and utilities must submit initial comments prior to 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 at least 65 days before the date of the hearing. If revised drawings are not received by this deadline, the Planning Director may extend the deadline or recommend denial without prejudice.
- c. State and County agencies and utilities must submit a final recommendation on the application at least 45 days before the date of the hearing.

2. Planning Director

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

3. Withdrawal of an Application

- a. When a case is withdrawn at least 30 days before the initial hearing, the Planning Board may allow the application to be withdrawn without prejudice and the limitations on refiling specified in Sec 8.3.4.F.1.
- b. When a case is withdrawn 30 days or less from the date of the hearing, withdrawal must be with prejudice.

D. Necessary Findings

To approve a site plan, the Planning Board must find that the proposed development:

- 1. complies with any previous approval(s) that apply to the site;
- 2. satisfies all applicable use standards, development standards, and general requirements under this Chapter;
- 3. meets the requirements of other applicable sections of the Montgomery County Code under jurisdiction of the Planning Board, including:
 - a. Chapter 19, Erosion, Sediment Control, and Stormwater Management; and
 - b. Chapter 22A, Forest Conservation.
- 4. provides safe, well-integrated circulation patterns and building massing and, where required, open spaces and site amenities;
- 5. is substantially consistent with the recommendations of the applicable mas-

ter plan and any guidelines approved by the Planning Board that implement the applicable plan; and

- 6. is compatible with existing and approved or pending adjacent development.

E. Decision

- 1. The Planning Board must conduct a public hearing within 120 days of 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.
- 2. Unless a decision is deferred, within 30 days after the close of the record of the public hearing, the Planning Board must act by majority vote of those present at the public hearing to approve, approve subject to 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.
- 3. Any party aggrieved by a decision of the Planning Board may file a petition for judicial review no later than 30 days from the date of mailing of the resolution.
- 4. 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.

F. Subsequent Applications

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

3. Conforming Permits

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. 8.3.4.J](#);
- c. such building, structure, or improvement conforms to the certified site plan and conditions of approval.

4. 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 (Sec. 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 standards and requirements of the Code does not conflict with any conditions of approval.
- d. On a residential lot created under the approval of a site plan and sold to a private homeowner, that owner may, without finding of conformance to the approved site plan, obtain a permit for improvements to landscaping

and site elements that were not required as a condition of approval for screening or install a site element or construct a paved surface or structure that meets all applicable standards and requirements of the Code and does not conflict with any conditions of approval.

- e. Any modification to an improvement shown on an approved site plan that is identified in this Section (Sec. 8.3.4) does not require an amendment to the site plan.

G. Scope of Approval

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

H. Recording Procedures

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

I. Amendments

1. Major amendments to an approved site plan follow the same procedures, must meet the same criteria, and are subject to the same requirements as the original site plan, except as modified under Sec. 8.3.4.1.1.b.
 - a. Major amendments include any requests to increase density or height or to make changes to any conditions of approval.
 - b. Uncontested major amendments may be approved on the Planning Board's consent agenda, provided that the Planning Director publishes a

- report and recommendation on the amendment at least 10 days before the Planning Board meeting.
2. Minor amendments to an approved site plan may be approved administratively by the Planning Director. Minor amendments include any changes that do not increase density or height; decrease setbacks where abutting detached residential uses; or alter the intent, objectives, or requirements expressed or imposed by the Planning Board.
 - a. Public notice is required under **Div. 8.5**.
 - b. Public Hearing
 - i. A public hearing is not required if no material objection to the application is received within 15 days of the mailed notice of the application.
 - ii. If a material objection to the application is received within 15 days of the mailed notice of the filed application, a public hearing must be held under the same procedures as an original application.
 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.

J. Compliance and Enforcement

1. If the Planning Board finds, after holding a public hearing or designating a hearing officer to hold a public hearing, that a property under development is not in compliance with a certified site plan, it may:
 - a. impose a civil fine or administrative civil penalty authorized by **Section 50-41**;
 - b. suspend or revoke site plan approval;
 - c. order a compliance program that would permit the applicant to take corrective action to comply with the certified site plan;
 - d. allow the applicant to propose modifications to the certified site plan; or
 - e. take any combination of these actions.
2. If the Planning Board suspends or revokes a site plan, DPS must immediately suspend any applicable building permit under which construction has not been completed, or withhold any applicable use-and-occupancy permit, until the Planning Board reinstates the site plan or approves a new site plan for the development.

Div. 8.4. Administrative Approvals

Sec. 8.4.1. Building Permit

A. Applicability

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

B. Application Requirements

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

1. the lot upon which the building is proposed to be erected; lot dimensions, lot and block numbers, and subdivision name, if any;
2. the name and width of 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 projects that do not require a site plan or conditional use application and have more than 10 parking spaces, 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. 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 conforms to 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 proposed work conforms to the uses and amount of development authorized under this Chapter or other applicable law and for which the adequacy of public facilities is determined after:

- a. review of a preliminary plan of subdivision or site plan if required under this Chapter or Chapter 50; or
 - b. building permit review if required under Chapter 8.
2. For a site with a conditional use, variance, or site plan:
- a. Proposed work must comply with all terms and conditions set by the deciding body in the resolution or decision granting the approval, including any exhibits referred to in the decision.
 - b. The County may suspend or revoke any building permit for construction if the construction does not comply with all terms and conditions set by the deciding body.
3. For a site with a conditional use:
- a. DPS, in its reasonable discretion, 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.
 - b. 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 (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.

Sec. 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 comply with the requirements, representations, plans, and conditions contained in the decision or resolution of the deciding body.
3. On the basis of a thorough final inspection, DPS must verify that construction or alteration has been completed according to the applicable decision or resolution.
4. A temporary use-and-occupancy permit may be issued subject to any restrictions in Article 59-3.

E. Appeals

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

Sec. 8.4.3. Home Occupation and Home Health Practitioner Registration

A. Applicability

All Home Occupations (Low Impact) and Home Health Practitioners (Low Impact) not requiring a conditional use must register with DPS.

B. Application Requirements

An application for registration must include the following:

1. a signed affidavit of compliance that affirms that the applicant:
 - a. complies with the applicable standards in [Sec. 3.3.3.G](#) or [Sec. 3.3.3.H](#); and
 - b. will take whatever action is required by DPS to bring the Home Occupation or Home Health Practitioner's office into compliance if complaints of noncompliance are received and verified;
2. the manner in which the operation of the Home Occupation or Home Health Practitioner satisfies the use standards in [Sec. 3.3.3.G](#) or [Sec. 3.3.3.H](#);
3. the location of the lot by street address and either lot and block number or liber and folio;
4. the zone in which the lot is located;
5. area of the lot or parcel, in square feet or acres;
6. the total floor area of the dwelling unit and the amount of floor area to be used for the Home Occupation or Home Health Practitioner, as well as the floor area of any existing accessory building to be used for the Home Occupation or Home Health Practitioner;
7. the location and number of off-street parking spaces;
8. proof of home address;
9. other pertinent information required by DPS; and
10. for a Home Health Practitioner's office,
 - a. a copy of the use- and-occupancy permit required under [Section 8.4.2](#); and
 - b. the location of any indoor waiting room for patients, if more than one patient will be on the premises at the same time.

C. Approval Process

DPS accepts the application for all Home Occupation and Home Health Practitioner registrations.

D. Necessary Findings

DPS must issue a Certificate of Registration if the applicant:

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

E. Recording Procedures

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

F. Compliance and Enforcement

1. If DPS receives a complaint about a Home Occupation or Home Health Practitioner's office, an inspector must inspect the property and determine, within 90 days after receipt of the complaint, whether there is a violation of the provisions of this Section (Sec. 8.4.3) or [Sec. 3.3.3.G](#) or [Sec. 3.3.3.H](#).
2. If DPS determines that there is a violation, DPS may issue a warning notice, and the violation must be corrected within 30 days after the warning notice is issued.
 - a. In the case of any violation that could be remedied with a conditional use application, a petition must be filed within 60 business days for a conditional use for a Home Occupation (Major Impact) under [Sec. 3.3.3.H](#) or a Home Health Practitioner (Major Impact) under [Sec. 3.3.3.G](#).
 - b. A hearing on a petition for a conditional use filed in the case of a Home Occupation (Low Impact) or Home Health Practitioner (Low Impact) found to be in violation of [Sec. 3.3.3.G](#) or [Sec. 3.3.3.H](#) must be scheduled within 30 days, or as soon as the Hearing Examiner's calendar permits. The Hearing Examiner does not have authority to grant the applicant any extension of the hearing in such a case.
 - c. Operation of the Home Occupation (Low Impact) or Home Health Practitioner (Low Impact) may continue until the Board of Appeals has acted on the petition, if the violation is corrected before the application

for conditional use is filed. If the Board of Appeals denies the conditional use application, the Home Occupation or Home Health Practitioner must cease immediately or operate under the requirements for a Home Occupation (Low Impact) or a Home Health Practitioner (Low Impact).

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

Sec. 8.4.4. Sign Permit

A. Applicability

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

B. Application Requirements

1. The property owner and the sign installer must file a joint application for the sign permit on forms provided by DPS. If the property owner has an agent or lessee, the agent and the lessee must also sign each permit form. The application must be accompanied by all required fees and the following:
 - a. a scale drawing of the sign showing all dimensions and visual characteristics, including structural and architectural supports;
 - b. a scale drawing of the site showing:
 - i. the proposed location of the sign, including setbacks;
 - ii. the location and size of all other signs on the property;
 - iii. the location, dimensions, and distance from property lines of all buildings on the site;
 - iv. the location and name of all streets 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 pursuant to **Chapter 8** for a sign requiring structural support;
- e. payment of the sign permit fee as adopted by District Council Resolution;
- f. other information that may be required by DPS to insure compliance with **Div 7.7** or other Sections of the Code; and
- g. a sign concept plan if:
 - i. the lot or parcel is in a Commercial/Residential, Employment, or Industrial zone and is requesting more than 800 square feet of total sign area;
 - ii. the development consists of more than one lot or parcel in a Commercial/Residential, Employment, or Industrial zone developed under a management control plan where one or more individual lots or parcels is requesting more than 800 square feet of total sign area, 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 a maximum size set by a regulation adopted by the Director of DPS under **method (2)**.
3. DPS may waive or reduce all required fees if:
 - a. the primary applicant is a non-profit organization that by law is exempt from federal income taxes and demonstrates that its annual revenue during its most recent fiscal year was less than an amount set by a regulation adopted by the Director of DPS under **method (2)**; and

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

C. Approval Process

DPS accepts all sign permit applications.

D. 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 **Div 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 **Div 7.7**.
2. DPS has the authority to resolve any dispute or to interpret any ambiguity in this Section (**Sec. 8.4.4**).

E. Validity

A sign permit becomes invalid when:

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

F. Appeal

Any decision of DPS or the Sign Review Board may be appealed to the Board of Appeals within 30 days of 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 Code.
4. DPS may order the removal of any sign that violates this Code, or interferes with traffic or public safety. The removal must be performed at the expense of the responsible party.
5. DPS may revoke, suspend, refuse to issue, or refuse to reissue any permit or license under this Code.

Sec. 8.4.5. Sign Permit Variance

A. Applicability

Any sign not listed in **Div 7.7**, or which does not conform to the requirements in **Div 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 7.7** if:

- a. the strict application of the sign requirements of **Div 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 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. 8.4.6** and from approving a sign permit variance for any sign prohibited under **Sec. 7.7.4**.
 5. The Sign Review Board may approve a sign permit variance without a hearing if:
 - a. after receiving notice under **Sec. 8.4.5.B.2.**, no person has expressed an intention by a specified deadline to oppose the application or otherwise appear at the hearing; and
 - b. 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 subject to a conditional use if the Board of Appeals has approved the sign. Nothing in this Section (**Sec. 8.4.5**) 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 within 30 days of the action to the Board of Appeals under **Sec. 8.6.1**.

F. Compliance and Enforcement

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

Sec. 8.4.6. Sign Installer License

A. Applicability

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

B. Application Requirements

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

C. Approval Process

1. The applicant must establish and DPS may verify the minimum eligibility requirements of an applicant to be examined for a license as follows:
 - a. The applicant must have been regularly and principally employed in sign related activity for 2 years immediately preceding the application. DPS may credit the 2 years of experience upon certification of relevant education at a trade school or other educational institution which DPS deems to be comparable. One year (30 semester hours or Continuing Education Units) of relevant education may be considered as one year of experience. DPS may credit up to the maximum of 2 years of experience with education.
 - b. The applicant must be of good character. DPS may ascertain the character of the applicant from the references provided by the applicant and from independent sources, including the office of consumer affairs, the State of Maryland Office of the Attorney General, and the records of the department.
2. Upon the applicants satisfying the minimum requirements and filing a complete application for a license, DPS must provide the applicant with access to the sign ordinance and other related regulations and must schedule the applicant for an examination.
3. The applicant must receive a passing grade on an examination based upon the standards of this Article (Article 59-8) and administered by DPS.
 - a. DPS must grade the examination within 20 days of the examination date and notify the applicant, in writing, within 10 days of determining the results of the examination.
 - b. An applicant who fails to pass the examination is entitled to one reexamination, without resubmitting the license application. An applicant who fails to pass the reexamination must submit a new application for a license.
4. A license must be issued jointly to the business and to a person who is principally employed by the business and responsible for supervising the sign related activity. A business may obtain licenses for multiple employees.

D. Validity

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

E. Denial, Suspension or Revocation

1. DPS may suspend, revoke, refuse to issue, or deny renewal of a license if the applicant or licensee:
 - a. has secured the license through misrepresentation;
 - b. has failed to correct without additional charge, violations of any provisions of this Article (Article 59-8);
 - c. has been found by a court or the Board of Appeals to have violated the same provision of this Article (Article 59-8) more than 2 times;
 - d. has been found guilty of deceptive business practices;
 - e. has committed an act of gross negligence; or
 - f. has failed to notify DPS of changes to the information required on the license application.
2. DPS must provide written notice to the applicant or licensee of any action taken under **Sec. 8.4.6.E.1**. The notice must:
 - a. contain a statement of the reasons for the action taken and the right of appeal to the Board of Appeals; and

- b. be delivered personally to the applicant, licensee, or authorized business representative or sent by certified mail to the local address in the license application.
3. A license may be suspended for up to 120 days upon a finding by DPS that a violation of [Sec. 8.4.6.E.1.](#) has occurred.
4. Following a revocation or refusal to renew, a licensee may request reinstatement after one year has elapsed.

F. Appeal

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

Div. 8.5. Notice Standards

Sec. 8.5.1. Notice Required

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

Application	Newspaper	Pre-Submittal Meeting	Application Sign	Mailed Application Notice	Mailed Hearing Notice	Building Permit Sign Notice	Internet Posting
District Council Approvals							
Local Map Amendment			X	X	X		X
Corrective Map Amendment					X		X
Sectional or District Map Amendment	X						X
Zoning Text Amendment	X						X
Regulatory Approvals							
Conditional Use			X	X	X		X
Variance			X	X	X		
Sketch Plan		X	X	X	X		X
Site Plan		X	X	X	X		X
Administrative Approvals							
Building Permit						X	X
Use and Occupancy and Temporary Use Permit							
Home Occupation and Home Health Practitioner Registration							
Sign Permit							
Sign Permit Variance				X	X		
Sign Installer License							
Amendments to Approvals							
Major Floating Zone Plan Amendment			X	X	X		X
Minor Floating Zone Plan Amendment			X	X			X
Major Conditional Use Amendment			X	X	X		X
Minor Conditional Use Amendment				X			X
Major Site Plan Amendment			X	X	X		X
Minor Site Plan Amendment				X			X

KEY: x = Required

Sec. 8.5.2. Notice Specifications

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

A. Newspaper Notice

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

B. Pre-Submittal Meeting

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

C. Application Sign

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

D. Mailed Application Notice

1. Before an application may be accepted, the applicant must provide mailed notice of the application to all abutting and confronting property owners, community associations, and parties of record within the required radius under **Sec. 8.5.2.D.2**. A condominium's council of unit owners may be notified instead of the owner and residents of each individual condominium. In addition, for a sign permit variance the Planning Department must be notified if the property is subject to a site plan.
2. The required radius for the mailed notice is:
 - a. 1/4 mile for a Local Map Amendment, a conditional use, or a variance; and
 - b. 1/2 mile for a sketch plan or site plan.
3. The mailing 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 phone and website for the applicable intake agency.
4. For conditional uses and variances the mailing 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. Mailed Hearing Notice

1. For a Local Map Amendment, at least 30 days prior to the hearing, the deciding body must provide mailed notice of the hearing to all abutting and confronting property owners, community associations, and parties of record within the required radius under **Sec. 8.5.2.D.2**. 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, at least 10 days prior to the hearing, the deciding body must provide mailed notice of the hearing to all abutting and confronting property owners, community associations, and parties of record within the required radius under **Sec. 8.5.2.D.2**. 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, mailed notice of the hearing must also be sent to any municipality or 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 subject to a site plan.
3. The mailing must include the date and place of meeting, applicant, application number and name, location of property, property size, zone (and requested zone, if applicable), proposed use or density of development when applicable, and phone 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. 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

low in background color; with black lettering and characters at least 2 inches in height.

3. The sign must include the date of approval; application number and name; location of property; property size; zone; approved use, density, or structure description; and phone and website for the applicable approval agency.

G. Internet Posting

1. During review, the applicable intake agency or designee, must post the application on the internet no later than 15 days after acceptance.
2. When the Planning Director provides a recommendation report on an application decided by the Planning Board, the Planning Department must post the recommendation report on the internet at least 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 Department's recommendation report must be posted on the internet at least 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 internet at least 10 days before the Board of Appeals or the District Council hearing.
4. When the Hearing Examiner is the deciding body, the Hearing Examiner must post the recommendation report on the internet at least 10 days before the hearing.
5. After a decision is made, the applicable deciding body or designee, must post on the internet the resolution reflecting its decision and if approved, plans certified by the deciding body or designee, modified from the submitted plans to conform to the decision.
6. When DPS accepts a building permit application, DPS must post on the internet 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.

Div. 8.6. Special Provisions

Sec. 8.6.1. Board of Appeals

A. Powers

1. In addition to any other power described in this Division (Div. 8.6), the Board of Appeals may compel the attendance of witnesses at hearings or meetings, and the chair or another member may administer oaths.
2. Nothing in this Chapter authorizes the Board of Appeals to:
 - a. reverse or modify any denial of a permit or any other order, requirement, decision, or determination that conforms to this Chapter;
 - b. to validate, ratify, or legalize any violation of law or regulation; 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), 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.
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. No form will be accepted by the clerk unless it contains all pertinent information and is accompanied by the required fee to defray expenses.
4. Except as otherwise specifically provided by statute, Board of Appeals review of any action, inaction, decision or order of a department of the County government must be de novo.
5. DPS must comply with the prehearing submission requirements of **Chapter 2A**.

Sec. 8.6.2. Hearing Examiner

A. Assignment of Hearing Examiner

1. The County Council, sitting as the District Council, may assign one or more Hearing Examiners in the Office of Zoning and Administrative Hearings to conduct hearings for Local Map Amendments.
2. Any Hearing Examiner assigned to conduct hearings for Local Map Amendments must not, within one year after serving as a Hearing Examiner, act as agent or attorney in any proceeding or other matter before any County agency or officer involving property 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 regulations to the District Council to govern the conduct of public hearings and of other functions of the Hearing Examiner's office and must perform such other tasks and duties as the District Council from time to time may assign.

2. The Hearing Examiner's office has the functions and duties of scheduling and conducting public hearings and rendering written reports and 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.
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 [Section 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.

Sec. 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 [Section 50-41](#), may be enforced under [Div 8.6](#) or under [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 [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 regulation adopted by the Planning Board to implement this Article is subject to District Council review and disapproval as if the regulation were submitted to the County Council under method 2 of [Section 2A-15](#).

Sec. 8.6.4. Sign Review Board

A. Composition

1. The Sign Review Board consists of 5 members:
 - a. appointed by the County Executive and confirmed by the District Council, and subject to [Section 2-148](#);
 - b. who are residents of the County;
 - c. one of whom must operate a business in the County; and
 - d. one of whom must be an architect licensed in Maryland. The Executive must request from the Potomac Valley Chapter of Maryland, American Institute of Architects, recommendations of architects who are qualified to serve on the Board, but the Executive is not limited to the Chapter's recommendation.
2. One member must be designated as chair by the County Executive, subject to confirmation by the District Council.
3. Each member serves a 3-year term, except that an appointment to fill a vacancy occurring before a term expires is for the remainder of the unexpired term.

B. Duties

In addition to the approval authority for sign permit variance under [Sec. 8.4.5](#), the Sign Review Board must:

1. meet at least 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 within 10 days of the decision or action in a format as required DPS;

4. approve the examination for the sign installer license administered by DPS under [Sec. 8.4.6](#); and
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 complies with this Chapter or needs a variance;
2. order the appearance of a person or evidence at a hearing before them; and
3. approve a right-of-way sign under [Sec. 7.7.4.F.3](#) after receiving a recommendation from the appropriate transportation jurisdiction.

Sec. 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 reasonable notice. No filing fee is required for any application filed by the District Council or another government agency, unless the application is filed at the request of a person with a financial, contractual, or proprietary interest in the property.
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 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 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.

Div. 8.7. Exemptions and Nonconformities

Sec. 8.7.1. Exemptions

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

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

A structure, site design, or use that is lawfully existing and conforms to the zoning code on [date of adoption minus one] but not on [date of adoption] is deemed to be conforming and may, at the option of the owner, be continued, renovated, 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 conforms to the zoning code 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]. An enlargement above the limitations of this Section (Sec. 8.7.1.A.1) must comply with current zoning requirements. A use located in a building or structure deemed conforming under this Section (Sec. 8.7.1.A.1) may be converted to any permitted non-residential or residential use up to the density limits for the land use established by the zoning in effect on [date of adoption].

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

A structure, site design, or use that is lawfully existing and conforms to the zoning code on [date of district map amendment minus one] but not on [date of district map amendment] is deemed to be conforming and may, at the option of the owner, be continued, renovated, 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 conforms to the zoning code on [date of district map amendment minus one] but not on [date of district map amendment minus one] is deemed to be conforming but are only allowed within 15 years of [date of district map amendment minus one]. An enlargement above the limitations of this Section (Sec. 8.7.1.A.2) must comply with current zoning requirements. A use located in a building or structure deemed conforming under this Section (Sec. 8.7.1.A.2) may be converted to any permitted non-residential or 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 prior to [date of district map amendment], or for which a preliminary plan of subdivision is pending or approved no later than [180 days from date of district map amendment] is buildable even though it may not meet the area and dimensional requirements of the zone in which it is located. Any such lot may be developed under the zoning development standards in effect when the lot was recorded.

4. Plans Pending as of [date of adoption]

A property subject to an approved development plan, schematic development plan, diagrammatic plan, concept plan as required by 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]. Such applications are subject to Sec. 8.3.4.C.1.b. 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. An enlargement above the limitations of this Section (Sec. 8.7.1.A.4) must comply with current zoning requirements.

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

A property subject to an approved development plan, schematic development plan, diagrammatic plan, concept plan as required by 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. An enlargement above the limitations of this Section (Sec. 8.7.1.A.5) must comply with current zoning requirements.

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

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

extent that they fully comply with the terms and conditions of their approval.

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

7. Existing Nonconformities

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

B. Special Provisions for Conditions Predating 1958

1. Buildable Lot under Previous Ordinance

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

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

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

2. Resubdivision of R-60 Lots

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

3. One-Family Dwelling

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

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

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

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

- a. Any 2 or more 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 which was lawful under the Prince George's County Zoning Ordinance in effect on June 30, 1997, and was constructed within the Annexation Area under a building permit issued prior to February 10, 1998, is a conforming building or structure in Montgomery County and may be:

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

2. Existing Uses

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

3. Buildable Lot

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

D. Exemptions for Unplatted Parcels Containing Detached House Dwelling Units

A parcel, created by deed, that contains a lawfully constructed detached house, excluding a farm tenant dwelling, is exempt from the area and dimensional

requirements of its current zone, and may be recorded under Chapter 50 if the resulting lot meets the requirements of the zone in place when the dwelling was constructed.

Sec. 8.7.2. Nonconforming Uses and Structures

A. Continuation

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

1. Extension

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

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

2. Structural Alterations

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

3. Change of Use

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

4. Abandonment of Use

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

5. Reconstruction

If a building or structure devoted to a nonconforming use is destroyed or seriously damaged, it must not be repaired or reconstructed to continue the

nonconforming use. Serious damage means damage that reduces the value of the building or structure by more than half its value immediately before the damage occurs.

6. Historic Resources

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

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

7. Nonconforming Use Certification

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

B. Exceptions

1. Housing Projects Constructed before 1945

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

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

the dwelling. This average must not be reduced below the average on March 1, 1959;

- d. repairs, structural alterations, or additions must not reduce any side yard between dwellings to less than 18 feet;
- e. repairs, structural alterations, or additions must not decrease any rear yard to less than 20 feet or decrease the sum of the rear yards between any 2 dwellings to less than 40 feet; and
- f. buildings and structures must not cover more than 25% of the net area of the lot.

2. Opportunity Housing Project

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

3. Swimming Pools for Motels

One swimming pool may be constructed on land 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. Legislative Purpose

The District Council for Montgomery County, Maryland, hereby finds that since March 6, 1928, the effective date of the first Montgomery County Zoning Ordinance, and continuing to date, there has existed within the county the practice of converting single family residences located in single family zones to use as multi-family residential uses; that during World War II and immediately thereafter there existed a severe housing shortage in the Washington, D.C. metropolitan area, including Montgomery County,

Maryland; that during the above-referenced period the housing shortage was appreciably abated and remedied by the acts of owners of single family residences, many of which were located in single family zones, in converting said single family residences to multi-family residential uses; that while it is established that conversions from single to multi-family residential use were conducted throughout the County, it is further established that the majority of the structures converted were located in Takoma Park, Maryland; and that the conversions of single to multi-family residential use were encouraged by and conducted with the knowledge and tacit approval of the City of Takoma Park and the Maryland- National Capital Park and Planning Commission, the state agency and body corporate which until October 1951, was vested with the power, duty and responsibility for the enforcement of the zoning laws in Montgomery County, Maryland and the City of Takoma Park. The County Council further finds that in February 9, 1953, because of its inability to ascertain which residences located in a single-family zone were lawful uses, nonconforming uses or unlawful uses, the City of Takoma Park passed Ordinance No. 1166 which implied in part, that single family residences converted to multi-family use in contravention of the zoning ordinance would be deemed lawful if the owners of said residences registered them with the City of Takoma Park; that the original owners and the transferees of the owners of the single family residences converted to multi-family residential use have continued to operate such use in reliance upon the representations of the City of Takoma Park that such uses were lawful, if registered; that purchasers who have paid the higher market value and taxes incident thereto for income producing property have relied upon representations by the City of Takoma Park that such uses were lawful, if registered. The County Council further finds that there continues to exist a serious shortage of dwelling units in Montgomery County; that the past conversions of single family residences to multi-family residential use have provided and continue to provide a source of low and moderate income dwelling units in the county; that some of the single family residences converted to multi-family residential uses are owned by senior adults whose livelihood is largely dependent upon income from the rental units. The District Council recognizes that because the records concerning zoning enforcement prior to October 1951 transferred to the County from the Maryland-National Capital Park and Planning Commis-

sion do not provide data sufficient to determine the scope of the problem of conversions to unlawful multi-family uses and because the data offered by the City of Takoma Park merely reflects the number of owners who voluntarily registered with the city and excludes all other possible conversions, there exists no adequate means of determining which residences have been unlawfully converted to multi-family residential use subject to prosecution under the zoning ordinance. Moreover, the County Council recognizes that equitable principles argue for the protection of owners of properties and their transferees located in Takoma Park who relied upon representations from city administrators that the conversions to multi-family residential use were lawful, and for protection of owners of properties located in Takoma Park and elsewhere in the County who, absent evidence of enforcement by the Maryland-National Capital Park and Planning Commission or by the County, assumed that theirs was a lawful use. Therefore, the County Council enacts this text amendment as a means of establishing uniform standards and criteria for remedying the problem of unlawful conversions from single family to multi-family residential uses and, in so doing, incorporates the concepts of equity necessary to protect those who should be deemed faultless. Further, the County Council finds that the date of January 1, 1954 represents the demarcation ending the period of encouragement and endorsement by government officials for conversion of single family residences to multi-family residential uses and that owners who converted prior to that date did so under color of law and should be held harmless. The Council also recognizes that enactment of this text amendment requiring phase-out of all post-1954 conversions, and phase-out no later than 10 years from the effective date of this text amendment of pre-1954 conversions, may create practical difficulties or unusual hardships. It is the Council's intention to develop and consider a legislative mechanism such as a special exception or use variance for those properties so affected to be considered for continuation. Such a mechanism to continue such uses would include a public hearing and a determination that such continuation would not be detrimental to the use of surrounding properties or the neighborhood.

2. Termination of Multi-Family Dwellings

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

3. Temporary Continuation of Multi-Family Uses

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

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

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

- a. All noncomplying multi-family dwellings in existence before January 1, 1954, and converted and used continuously from before January 1, 1954, to March 23, 1978, must be registered with DPS under the following procedure:
 - i. Applications for registration must be filed on forms provided by DPS;
 - ii. Each application for registration must be accompanied by notarized affidavits or such other evidence as may be appropriate to establish

that the multi-family dwelling use existed prior to January 1, 1954, and has existed continuously since then;

- iii. Each application for registration must be accompanied by evidence of a use-and-occupancy certificate and a rental facility license, if required;
- iv. Each application for registration must be accompanied by a registration fee.
- b. DPS must publish, in a newspaper of local distribution, notice of all applications for registrations and must allow 30 days after publication for the filing of comments by the public, other agencies, municipalities and concerned parties. DPS may hold a public hearing on any application for registration for which objections are received.
- c. DPS must make an inspection of each property for which an application for registration has been submitted and each such property must be brought into compliance with all applicable codes and regulations of both the County and municipal jurisdictions within 180 days after notification of violation or deficiencies.
- d. DPS must deny any application or revoke or suspend any registration upon failure to comply with the provisions of this Section (Sec. 8.7.2.C) or upon conversion to other use. Any decision of DPS hereunder may be appealed to the Board of Appeals.
- e. Structural alterations of a building or structure which do not conform to the provisions of the zoning district in which it is located may be made only if the building is being altered to conform to the provisions of this section or to conform with other applicable codes or regulations.
- f. No registered noncomplying multi-family dwelling is allowed to be extended, expanded or increased in intensity of use in any way.
- g. No registered noncomplying multi-family dwelling which has been changed in whole or in part to a less intensive use is allowed to revert to a more intensive use, except that the owner of noncomplying multi-family dwelling that was originally constructed as a multi-family dwelling may temporarily reduce the number of units, provided that the reason for the temporary reduction is to provide a larger unit for the property owner's

own use. No noncomplying use, once abandoned, is allowed to be re-established. For the purpose of this Section (Sec. 8.7.2.C), "abandoned" is defined as the cessation of use as a multi-family dwelling for a period of 6 months or more.

- h. In the event of destruction or serious damage by fire, flood or similar cause, no registered noncomplying multi-family dwelling is allowed to be reconstructed for the purpose of carrying on the noncomplying use. "Serious damage" shall be defined as damage which reduces the market value of any structure by more than one-half.
- i. Each registered multi-family dwelling must be maintained in good condition and in compliance with all applicable federal, state, County and municipal laws and regulations. DPS must establish a regular schedule of inspections to be made of each registered multi-family dwelling, said inspection to coincide with the biennial rental facility licensing inspection, where applicable.
- j. The County Executive, by written regulation, must establish administrative procedures, exterior maintenance standards necessary to protect the public health, safety and welfare, off-street parking requirements, registration fees in an amount sufficient to pay the costs to the County to administer this Section (Sec. 8.7.2.C), and an inspection schedule applicable to buildings, structures, and lands registered under this Section (Sec. 8.7.2.C). The County Executive, by written regulation, may establish an administrative procedure to allow the City of Takoma Park to administer the registration procedure for properties located in the City if the City adopts the procedures in Sec. 8.7.2.C.4. The regulation must allow the Director to vary the specific requirements for off-street parking upon a finding that the strict imposition of those requirements would be physically impossible for a noncomplying multi-family dwelling use to achieve due to lot/house configuration or other extenuating circumstances.

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

- a. Any building or structure located in a single-family residential zone which has been converted and used continuously as a multi-family dwelling and

has a valid use-and-occupancy permit as of January 1, 2001 may continue, provided that the use is registered with DPS. A registered multi-family use is subject to the provisions of Sections 8.7.2.C.4.b,c,d,e,f,g,i, and j. Any such multi-family use which does not register becomes noncomplying and must terminate the noncomplying use by July 1, 2001.

- b. In the event of destruction or serious damage by fire, flood or similar cause, a registered multi-family dwelling is allowed to be reconstructed for the purpose of continuing the multi-family use. However, the use cannot be expanded beyond what is in existence at the time the use is registered. If reconstruction or repair brings the use into compliance with the provisions of the zone in which the use is located, the multi-family use cannot be reestablished.

Div. 8.8. Violations, Penalties, and Enforcement

Sec. 8.8.1. Generally

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