

# ARTICLE 59-3. USES AND USE STANDARDS

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## Div. 3.1. Use Table

### Sec. 3.1.1. Key to Use Table

The allowed use table in this Division identifies uses allowed in each zone. The key for this table is set forth below.

#### A. Permitted Use (P)

Indicates that the use is permitted by right in the zone.

#### B. Limited Use (L)

Indicates that the use, while allowed by right in the zone, must meet the use standards as set forth in Div. 3.2 through 3.8.

#### C. Conditional Use (C)

Indicates that the use requires approval by the Board of Appeals, or in certain cases, the Hearing Examiner, as a conditional use before it is allowed. Use standards in Div. 3.2 through 3.8 may also apply (see specific use standard).

#### D. Blank Cell

A blank cell indicates that a use is not permitted in that zone.

### Sec. 3.1.2. Use Definitions

- A. Definitions for each use or use group are included in Div. 3.2 through 3.8.
- B. Where a use definition in Div. 3.2 through 3.8 contains a list of included uses, these are to be considered typical or example uses, and not all-inclusive.
- C. Where a particular use is not specifically listed, the Director of Permitting Services may allow the use in accordance with the provisions of Sec. 3.1.4, Uses Not Specifically Listed.

### Sec. 3.1.3. Allowed Use Table

The following allowed use table identifies uses allowed in each zone.

USE OR USE GROUP	DEFINITION/ STANDARDS	RURAL			RESIDENTIAL								
		AC	RR	RR-C	RE-2	RE-1	RLD-20	RMD-9	RMD-6	RHD-6	RHD-4	RHD-2	
<b>AGRICULTURAL</b>													
Agricultural Auction Facility	Sec. 3.2.1	C											
Agricultural Processing	Sec. 3.2.2	L											
Community Garden	Sec. 3.2.3			L	L	L	L	L	L	L	L	L	L
Equestrian Facility	Sec. 3.2.4	L	C	C	C								
Farm Machinery Sales, Storage, Service	Sec. 3.2.5	C	C										
<b>FARMING</b>	Sec. 3.2.6												
Farming, Livestock	Sec. 3.2.6.A	P	P	L									
Farming, Small Animal	Sec. 3.2.6.B	P	P	P									
Farming, Produce	Sec. 3.2.6.C	P	P	P									
<b>NURSERY</b>	Sec. 3.2.7												
Nursery, Agricultural	Sec. 3.2.7.A	P	P	P	L	L							
Nursery, Retail	Sec. 3.2.7.B	C	C	C	C	C							
Winery	Sec. 3.2.8	L	L	L	L	L							
<b>ACCESSORY AGRICULTURAL USES</b>	Sec. 3.7												
Animal Husbandry	Sec. 3.7.2				L	L	L	L	L	L	L	L	L
Farm Airstrip or Helistop	Sec. 3.7.6	C	C	C									
Farm Stand	Sec. 3.7.7	L	L	L									
<b>TEMPORARY AGRICULTURAL USES</b>	Sec. 3.8												
Farmer's Market	Sec. 3.8.3	L	L	L	L	L	L	L	L	L	L	L	L
Seasonal Outdoor Sales	Sec. 3.8.4	P	L	L	L	L	L	L	L	L	L	L	L

Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Permitted

USE OR USE GROUP	DEFINITION/ STANDARDS	RURAL			RESIDENTIAL								
		AC	RR	RR-C	RE-2	RE-1	RLD-20	RMD-9	RMD-6	RHD-6	RHD-4	RHD-2	
<b>RESIDENTIAL</b>													
HOUSEHOLD LIVING	Sec. 3.3.1.A												
Single-Unit Living	Sec. 3.3.1.B	P	P	P	P	P	P	P	P	P	P	P	P
Two-Unit Living	Sec. 3.3.1.C				L	L	L	L	P	P	P	P	P
Multi-Unit Living	Sec. 3.3.1.D							L	L	L	P	P	
ACCESSORY HOUSEHOLD LIVING	Sec. 3.7												
Attached Accessory Dwelling	Sec. 3.7.4	L	L	L	L	L	L	L	L	L	L	L	L
Carriage House Dwelling	Sec. 3.7.5				L	L	L	L	L	L	L	L	L
Farm Tenant Dwelling	Sec. 3.7.8	L	L	L									
HOME OCCUPATION (ACCESSORY USE)	Sec. 3.7.9.A												
No Impact	Sec. 3.7.9.B	L	L	L	L	L	L	L	L	L	L	L	L
Low Impact	Sec. 3.7.9.C	L	L	L	L	L	L	L	L	L	L	L	L
Home Health Practitioner	Sec. 3.7.9.D	L	L	L	L	L	L	L	L	L	L	L	L
Major Impact	Sec. 3.7.9.E	C	C	C	C	C	C	C	C	C	C	C	C
GROUP LIVING	Sec. 3.3.2.A												
Assisted Living	Sec. 3.3.2.B		C	C	C	C	C	C	C	C	C	P	P
Dormitory	Sec. 3.3.2.C			C	C	C	C	C	C	C	C	P	P
Group Home, Small (Up to 8 Persons)	Sec. 3.3.2.D	P	P	P	P	P	P	P	P	P	P	P	P
Group Home, Large (Up to 16 Persons)	Sec. 3.3.2.D			C	C	C	C	C	C	C	C	C	C
Hospice, Small (Up to 6 Patients)	Sec. 3.3.2.E	C	C	P	P	P	P	P	P	P	P	P	P
Hospice, Large (Over 6 Patients)	Sec. 3.3.2.E				C	C	C	C	C	C	C	C	C
Nursing Home	Sec. 3.3.2.F			C	C	C	C	C	C	C	P	P	
Single Room Occupancy	Sec. 3.3.2.G										L	L	

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USE OR USE GROUP	DEFINITION/ STANDARDS	RURAL			RESIDENTIAL								
		AC	RR	RR-C	RE-2	RE-1	RLD-20	RMD-9	RMD-6	RHD-6	RHD-4	RHD-2	
<b>CIVIC &amp; INSTITUTIONAL</b>													
Charitable, Philanthropic Institution	Sec. 3.4.1			C	C	C	C	C	C				
<b>DAY CARE FACILITY</b>	Sec. 3.4.2.A												
Family Day Care (Up to 8 Persons)	Sec. 3.4.2.B	P	P	P	P	P	P	P	P	P	P	P	P
Group Day Care (Up to 12 Persons)	Sec. 3.4.2.C	L	L	L	L	L	L	L	L	L	L	L	L
Day Care Center (Over 12 Persons)	Sec. 3.4.2.D			C	C	C	C	C	C	C	C	C	C
Educational Institution (Private)	Sec. 3.4.3			C	C	C	C	C	C	C	C	C	C
Museum, Cultural/Art Exhibit, Library	Sec. 3.4.4			P	P	P	P	P	P	P	P	P	P
Park, Playground (Private)	Sec. 3.4.5		P	P	P	P	P	P	P	P	P	P	P
Private Club, Service Organization	Sec. 3.4.6			C	C	C	C	C	C				
Public Use (Except Utilities)	Sec. 3.4.7	P	P	P	P	P	P	P	P	P	P	P	P
Religious Assembly	Sec. 3.4.8	L	L	L	L	L	L	L	L	L	L	L	L
Swimming Pool (Community)	Sec. 3.4.9			C	C	C	C	C	C	C	C	C	C

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USE OR USE GROUP	DEFINITION/ STANDARDS	RURAL			RESIDENTIAL								
		AC	RR	RR-C	RE-2	RE-1	RLD-20	RMD-9	RMD-6	RHD-6	RHD-4	RHD-2	
<b>COMMERCIAL</b>													
ANIMAL SERVICES	Sec. 3.5.1.A												
Animal Care (Indoor)	Sec. 3.5.1.B	C	C	C	C	C	C						
Animal Care (Outdoor)	Sec. 3.5.1.C	C	C	C	C	C	C						
Farrier	Sec. 3.5.1.D	P	P	P	P	P							
Campground	Sec. 3.5.2		C	C									
COMMUNICATION FACILITY	Sec. 3.5.3												
Cable Communications System	Sec. 3.5.3.A		C	C	C	C	C	C	C	C	C	C	C
Media Broadcast Tower	Sec. 3.5.3.B	C	C	C	C	C	C	C	C	C	C	C	C
Wireless Freestanding Tower	Sec. 3.5.3.C	C	C	C	C	C	C	C	C	C	C	C	C
FUNERAL AND INTERMENT SERVICES	Sec. 3.5.4												
Cemetery	Sec. 3.5.4.A	C	C	C	C	C	C	C	C				
Golf Course, Country Club	Sec. 3.5.5			C	C	C	C	C	C				
LODGING	Sec. 3.5.6.A												
Bed & Breakfast	Sec. 3.5.6.B	L	L	L	L	L	L	L	C				
RESTAURANT	Sec. 3.5.7												
Country Inn	Sec. 3.5.7.A	C	C	C									
Shooting Range (Outdoor)	Sec. 3.5.8	C											
ACCESSORY COMMERCIAL USES	Sec. 3.7												
Amateur Radio Facility	Sec. 3.7.3	L	L	L	L	L	L	L	L	L	L	L	L
Wireless on Existing Structure	Sec. 3.7.11	L	L	L	L	L	L	L	L	L	L	L	L
TEMPORARY COMMERCIAL USES	Sec. 3.8												
Construction Administration or Sales Office	Sec. 3.8.2	L	L	L	L	L	L	L	L	L	L	L	L
Transitory use	Sec. 3.8.5	L	L	L	L	L	L	L	L	L	L	L	L

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USE OR USE GROUP	DEFINITION/ STANDARDS	RURAL			RESIDENTIAL								
		AC	RR	RR-C	RE-2	RE-1	RLD-20	RMD-9	RMD-6	RHD-6	RHD-4	RHD-2	
<b>INDUSTRIAL</b>													
Mining, Excavation	Sec. 3.6.1	C											
<b>UTILITIES</b>	Sec. 3.6.2												
Minor Public Utility	Sec. 3.6.2.A	L	L	L	L	L	L	L	L	L	L	L	L
Major Public Utility	Sec. 3.6.2.B	C	C	C	C	C	C	C	C	C	C	C	C
Other Public Utility Building or Structure	Sec. 3.6.2.C	C	C	C	C	C	C	C	C	C	C	C	C
<b>ACCESSORY INDUSTRIAL USES</b>	Sec. 3.7												
Sustainable Energy Generation	Sec. 3.7.10	L	L	L	L	L	L	L	L	L	L	L	L

Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Permitted

**Sec. 3.1.4. Uses Not Specifically Listed**

- A. Any use not specifically listed is expressly prohibited unless the Director of Permitting Services determines that the use is similar to an allowed use listed in this Division. Where the similar allowed use is subject to a use standard or conditional use approval, the proposed use must also be subject to such standard or conditional use approval.
- B. In order to determine if the proposed use has an impact that is similar in nature, function, and duration to the other use types allowed in a specific zone, the Director of Permitting Services must review relevant characteristics of the proposed use, including but not limited to the following:
  - 1. The size, type and volume of items sold and nature of inventory on the premises;
  - 2. The signage requirements and how the use advertises itself;
  - 3. Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution;
  - 4. The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, illumination, glare, vibration, radiation, and fumes;
  - 5. Any dangerous, hazardous, toxic, or explosive materials used on the premises;

- 6. The nature and location of storage and outdoor display of merchandise, whether enclosed, open, inside or outside the principal building; predominant types of items stored (such as business vehicles, work-in-process, inventory and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders);
- 7. The type, size, and nature of buildings and structures;
- 8. The number of employees and customers in relation to business hours and employment shifts;
- 9. Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site;
- 10. Parking requirements, turnover and generation, ratio of the number of spaces required, and the potential for shared parking with other use types; and
- 11. Any special public infrastructure requirements for serving the proposed use, including but not limited to water supply, wastewater output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities.



## Div. 3.2. Agricultural Uses

### Sec. 3.2.1. Agricultural Auction Facility

#### A. Defined

A sales establishment at which merchandise is sold to the highest bidder. Merchandise to be auctioned is limited to farm equipment, livestock and other farm products. Does not include a one-time sale such as a garage or yard sale, estate sale or sale required by legal action.

**[Editor's Note: Will require the addition of general building in the AC zone].**

#### B. Use Standards

Where an agricultural auction facility is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. Merchandise to be auctioned is limited to farm equipment and similar items in keeping with the rural character of the area. The Board of Appeals may specify the types of goods to be auctioned.
2. Evening and weekend operations may be permitted, but the Board of Appeals must regulate hours of operation so as to prevent adverse impact on adjoining residential uses.
3. Where any adjoining property is in residential use, the noise level at the common property line will not exceed the requirements of **Chapter 31B**. The agricultural exemption of **Sec. 31B-14(c)** is not applicable.

### Sec. 3.2.2. Agricultural Processing

#### A. Defined

Operations that transform, package, sort or grade livestock or livestock products, agricultural commodities, or plants or plant products (excluding forest products), into goods that are used for intermediate or final consumption, including goods for non-food use. Includes slaughterhouse, milk plant, and mulch or compost manufacturing. Does not include accessory use of grain elevators (see Sec. 3.2.6, Farming).

#### B. Use Standards

Where agricultural processing is allowed as a limited use, it is subject to the following conditions:

1. The minimum area of the lot must be 10 acres.
2. The minimum setback for any agricultural processing structure from any property line must be 75 feet.
3. The property must front on and have access to a road built to primary road or higher standards unless processing materials produced on-site.

### Sec. 3.2.3. Community Garden

#### A. Defined

Land gardened by a cooperative group of people for personal use or limited distribution. Includes cultivation of fruit, vegetables, flowers and ornamental plants. May include keeping of animals.

#### B. Use Standards

Where a community garden is allowed as a limited use, it is subject to the following conditions.

1. One hen, duck, turkey or other fowl, or one rabbit or similar small animal may be kept for every 1,000 square feet of land area. Roosters are not permitted. Structures for housing small animals shall be located a minimum of 25 feet from any property line.  
**[Editor's Note: Matches what is allowed for residence in same zone. Consultants suggestion, staff proposes removing this allowance]**
2. No more than four beehives, each containing one swarm, are allowed on a 20,000 square foot lot. One additional beehive is allowed for every 5,000 additional square feet. Hives must be located a minimum of 20 feet from any property line.

### Sec. 3.2.4. Equestrian Facility

#### A. Defined

A facility designed for training in equestrian skills and hosting events including show jumping, dressage and similar events of other equestrian disciplines. An equestrian facility may provide riding lessons and boarding of horses.

#### B. Use Standards

1. Where an equestrian facility is allowed as a limited use, it is subject to the following conditions:
  - a. The site provides the following minimum number of gross acres per horse:
    - i. For 1 to 2 horses, two acres;
    - ii. For 3 to 10 horses, one acre per horse;
    - iii. For more than 10 horses, an additional one-half acre per horse.
  - b. Each building, show ring, paddock, outdoor arena, or manure storage area is located at least 100 feet from any existing dwelling unit on an adjacent tract of land.
2. Where an equestrian facility is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following additional conditions:
  - a. Any equestrian facility on less than five acres has established through a pasture maintenance plan and feeding plan that the property contains sufficient open pasture to ensure proper care of the horses and proper maintenance of the property.
  - b. All animal waste must be handled in accordance with state requirements for nutrient management.
  - c. Any lighting associated with outdoor activity areas must meet the requirements of Div 5.6, Outdoor Lighting, and will not be illuminated after 10 PM.
  - d. Any equestrian facility that keeps or boards more than ten horses will meet all nutrient management, water quality and soil conservation standards of the County and State. A nutrient management plan prepared

by a qualified professional and a soil conservation and water quality plan prepared by the Montgomery Soil Conservation District Board must be submitted through a letter of certification by the landowner to the Department of Permitting Services, or other relevant agency. Enforcement of the nutrient management, water quality, and soil conservation plans is the responsibility of the State of Maryland. The land owner must obtain all plans within one year after commencement of operations.

- e. In order to prevent adverse impact on adjoining uses, the Board of Appeals may limit or regulate:
  - i. The number of horses that may be kept or boarded.
  - ii. The number of horses that may be rented out for recreational riding or instruction.
  - iii. The number and type of equestrian events that may be held in a one-year period.
  - iv. The hours of operation of any equestrian activity or event.

### Sec. 3.2.5. Farm Machinery Sales, Storage, Service

#### 1. Defined

The sales, storage or service of machinery used in farming for agricultural purposes. Does not include passenger vehicles and other machinery not associated with farming.

### Sec. 3.2.6. Farming

#### A. Farming, Livestock

#### 1. Defined

The keeping and raising of animals, including horses and donkeys (including miniature specimens), cows, llamas, alpacas, pigs, goats, sheep, poultry (including roosters), fish, game and fur-bearing animals. Includes accessory slaughtering and livestock auctions of animals raised on-site. Does not include confined animal feeding operations.

## 2. Use Standards

Livestock farming in the RR-C Zone is permitted only where it is associated with a farm that is part of the protected open space of a cluster development.

### B. Farming, Small Animal

#### 1. Defined

The keeping and raising of small animals including hens, ducks, turkeys, fish, rabbits and bees. Does not include confined animal feeding operations.

[Editor's Note: Dog, cat, bird breeding? Llama, alpaca, goat, miniature donkey/horse -- are these all "livestock"?]

### C. Farming, Produce

#### 1. Defined

The growing and harvesting of produce and other plant-based agricultural products. Includes the cultivation of crops including fruit, vegetables, corn, cotton, grain, nuts, cattle food and sod. Includes accessory processing and storage of produce grown on-site (includes grain elevators).

#### 2. Use Standards

Where produce farming is allowed as a limited use, it is subject to the following condition:

- a. No sod farms, grain elevators or accessory processing are allowed.

## Sec. 3.2.7. Nursery

### A. Nursery, Agricultural

#### 1. Defined

The propagation and care of young plants, shrubs and trees, often in large greenhouses. Includes wholesale sales to other nurseries, but does not include retail sales to the general public (see Retail Nursery below). Does not include landscape contracting (see Sec. XX).

[Editor's Note: Landscape contractor has not been addressed in this draft, pending staff analysis]

## 2. Use Standards

Where an agricultural nursery is allowed as a limited use, it is subject to the following conditions:

- a. The minimum area of the lot is two acres.
- b. The minimum building setback from any property line is 50 feet.

### B. Nursery, Retail

#### 1. Defined

The wholesale or retail sales of plants and plant materials grown on- or off-site, as well as garden supplies, equipment and related items. Includes garden supply stores, cut-your-own Christmas tree farms. Does not include landscape contracting (see Sec. XX).

[Editor's Note: Landscape contractor has not been addressed in this draft, pending staff analysis]

#### 2. Use Standards

Where a retail nursery is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. The property must front on and have access to a road built to a primary or higher standards.
- b. In a residential zone, the minimum area of the lot is two acres and the minimum building setback from any property line is 50 feet.

### **Sec. 3.2.8. Winery**

#### **A. Defined**

A facility for processing grapes or other fruit into wine for sale on-site or through wholesale or retail outlets.

#### **B. Use Standards**

Where a winery is allowed as a limited use, it is subject to the following conditions:

1. The minimum area of the lot is 10 acres.
2. The minimum setback for any structure from any property line is 75 feet.
3. The property must front on and have access to a road built to primary or higher standards.
4. Up to two special events such as a wedding, festival or other similar event may be allowed each calendar year. Additional events require conditional use permit approval by the Board of Appeals.

## Div. 3.3. Residential Uses

### Sec. 3.3.1. Household Living

#### A. Defined, In General

Residential occupancy of a dwelling unit by a household on a monthly or longer basis.

#### B. Single-Unit Living

##### 1. Defined

One dwelling unit contained in a single structure.

#### C. Two-Unit Living

##### 1. Defined

Up to two dwelling units contained in a single structure.

##### 2. Use Standards

Where two-unit living is allowed as a limited use, it is allowed only in a conservation development (see Sec. 4.4.6, Conservation Development).

#### D. Multi-Unit Living

##### 1. Defined

Three or more dwelling units contained in a single structure.

##### 2. Use Standards

Where multi-unit living is allowed as a limited use, it is allowed only in a conservation development (see Sec. 4.4.6, Conservation Development).

### Sec. 3.3.2. Group Living

#### A. Defined, in General

Residential occupancy of a structure by a group of people that does not meet the definition of any household living use. Tenancy is arranged on a monthly or longer basis. Generally, group living facilities have a common eating area for residents, and residents may receive care or training.

### B. Assisted Living

#### 1. Defined

A facility that provides housing and supportive services, supervision, personalized assistance, health-related services, or any combination that meets the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living in a way that promotes optimum dignity and independence for the individuals, as defined in Health-General Article, Subtitle 18, Assisted Living Facilities, of the State Code. Includes retirement community, independent living facility and senior housing. Does not include nursing home.

#### 2. Use Standards

Where an assisted living facility is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. The assisted living facility will not constitute a nuisance because of the number of residents, vehicle traffic or parking, or other physical activity.
- b. Any property to be used for an assisted living facility is of sufficient size to accommodate the proposed number of residents and staff.

### C. Dormitory

#### 1. Defined

A building or portion of a building used for sleeping purposes in connection with a school, college or other institution.

#### 2. Use Standards

Where a dormitory is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval.

## D. Group Home

### 1. Defined

A facility that offers supportive services or supervisory personnel to at least three and up to 16 individuals with special housing needs who are not related to the group home sponsor; and common, shared, or independent living, dining, kitchen, sanitary, and sleeping facilities, as defined in Housing and Community Development Article, Subtitle 6, Group Home Financing Program, of the State Code. Group homes are divided into two types based on the number of residents.

#### a. Small (3 to 8 Persons)

A group home capable of accommodating at least three and up to eight individuals.

#### b. Large (Up to 16 Persons)

A group home capable of accommodating at least three and up to 16 individuals.

### 2. Use Standards

Where a group home is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. Any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.
- b. Any site to be used as a group home for children provides ample outdoor play space appropriately equipped for the age and number of children to be cared for.
- c. In order to expedite a decision regarding a proposed group home, the Board of Appeals must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.

## E. Hospice

### 1. Defined

A facility providing a coordinated, interdisciplinary program of hospice care services for meeting the special physical, psychological, spiritual, and social

needs of dying individuals and their families, by providing palliative and supportive medical, nursing, and other health services through home or inpatient care during the illness and bereavement to individuals who have no reasonable prospect of cure as estimated by a physician, and to the families of those individuals, as defined in Health-General Article, Subtitle 9, Hospice Care Facilities, of the State Code. Hospices are divided into two types based on the number of patients.

#### a. Small (Up to 6 Patients)

A hospice capable of accommodating up to six patients.

#### b. Large (Over 6 Patients)

A hospice capable of accommodating more than six patients.

### 2. Use Standards

Where a hospice is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. The large hospice will not constitute a nuisance because of the number of residents, vehicle traffic or parking, or other physical activity.
- b. Any property to be used as a hospice is of sufficient size to accommodate the proposed number of residents and staff.

## F. Nursing Home

### 1. Defined

A facility that offers non-acute inpatient care to patients suffering from a disease, chronic illness, condition, disability of advanced age, or terminal disease requiring maximal nursing care without continuous hospital services, and who require medical services and nursing services rendered by or under the supervision of a licensed nurse together with convalescent, restorative, or rehabilitative services, as defined in Health-General Article, Subtitle 14, Nursing Homes, of the State Code. Includes life care facility.

## 2. Use Standards

Where a nursing home is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval.

## G. Single Room Occupancy

### 1. Defined

A facility that houses more than five residents primarily in individual rooms. Residents typically share bathrooms and kitchens, although some rooms may include kitchenettes, bathrooms or half-baths. A single room occupancy must be rented only on a long-term basis (more than 30 days).

### 2. Use Standards

Where a single room occupancy is allowed as a limited use, it is subject to the following conditions:

- a. Each single room occupancy unit that shares both a bath and a kitchen shall count as one-half of a dwelling unit.
- b. The owner must register the single room occupancy with the Department of Permitting Services.

## Div. 3.4. Civic & Institutional Uses

### Sec. 3.4.1. Charitable, Philanthropic Institution

#### A. Defined

A private, tax-exempt organization whose primary function is to provide either health, social, recreational, religious, or benevolent services, or research or educational activities in areas of benefit to the public such as health, medicine or conservation of natural resources. Does not include an organization for the purpose of operating a trade or business or whose primary purpose or function is promoting the economic advancement of its members, such as a professional or trade association or a labor union.

#### B. Use Standards

Where a charitable or philanthropic institution is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

##### 1. RR-C Zone

- a. The charitable or philanthropic institution is the re-use of an existing building.
- b. The property fronts on and has direct access to a public road built to arterial or higher standards. Frontage on and access to an arterial or higher standard is not required where the Board of Appeals finds that road access via the primary or secondary road will be safe and adequate for the anticipated traffic to be generated.

##### 2. Residential Zones

- a. The property fronts on and has direct access to a public street or roadway having more than one through travel lane in each direction of travel. Access to a corner lot may be from an adjoining primary street, constructed to primary street standards, if the Board of Appeals finds this access to be appropriate and not detrimental to existing residential uses on that primary street.
- b. Outdoor recreation facilities are screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.

- c. Any lighting associated with outdoor recreation facilities meets the requirements of Div 5.6, Outdoor Lighting.

### Sec. 3.4.2. Day Care Facility

#### A. Defined, in General

1. The care given for less than 24 hours a day, in a location other than the individual's residence, for which the provider is paid, to any of the following:
  - a. A child under the age of 13 years;
  - b. Any developmentally disabled person;
  - c. Any handicapped individuals; or
  - d. Elderly individuals.
2. The definition of day care facility does not include a non-public kindergarten in which an instructional program is offered or provided for children who are at least five years old; or a non-public elementary school in which an instructional program is offered or provided for children who are in grades one through eight (see Sec. 3.4.3. Educational Institution (Private)).

#### B. Family Day Care (Up to 8 Persons)

##### 1. Defined

A day care facility for a maximum of eight persons in the residence of the provider where staffing complies with state and local regulations, but no more than two nonresident staff members are on site at any time. The provider's own children under the age of six are counted within the group of eight.

#### C. Group Day Care (Up to 12 Persons)

##### 1. Defined

A day care facility for up to 12 persons where staffing complies with state and local regulations. The provider's own children under the age of six are counted within the group of 12.



## 2. Use Standards

Where a group day care is allowed as a limited use, it is subject to the following conditions:

- a. The facility meets all applicable State requirements for standards, licensing and inspections.
- b. Outdoor play areas are screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.
- c. Adequate area for the drop-off and pick up of clients is provided.

## D. Day Care Center (Over 12 Persons)

### 1. Defined

A day care facility for over 12 persons where staffing complies with state and local regulations.

### 2. Use Standards

#### a. Exemptions

The requirements of this section do not apply to a day care center operated by a nonprofit organization and located in:

- i. A structure owned or leased by a religious organization and used for worship or a structure located on premises owned or leased by a religious organization that is adjacent to premises regularly used as a place of worship;
- ii. A structure used for private parochial educational purposes which is exempted from the conditional use standards under Sec. 3.4.3; or
- iii. A publicly-owned building.

**[Editor's Note: Legal is working on accessory uses associated with religious organizations]**

#### b. Day Care Center Up to 30 Persons

Where a day care center for up to 30 persons is allowed as a conditional use, it may be permitted by the Hearing Examiner subject to the find-

ings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- i. The facility meets all applicable State requirements for standards, licensing and inspections.
- ii. Adequate area for the drop-off and pick up of clients is provided;
- iii. Outdoor play areas are screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.
- iv. The use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

### c. Day Care Center Over 30 Persons

Where a day care center for over 30 persons is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- i. The facility shall meet all applicable State requirements for standards, licensing and inspections.
- ii. All required parking is in the rear or side yards; however, required parking may be located between the structure and the street where the Board of Appeals finds that such parking is safe, not detrimental to the neighborhood, accessible, and compatible with surrounding properties.
- iii. Adequate area for the drop-off and pick-up of clients is provided.
- iv. Outdoor play areas are screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.
- v. In the RR-C, RE-2, RE-1, RLD-20, RMD-9 and RMD-6 zones, the day care center is located on a lot containing at least 500 square feet per person.
- vi. The use is compatible with surrounding uses and will not result in a nuisance because of traffic, parking, noise or type of physical activity.

### Sec. 3.4.3. Educational Institution (Private)

#### A. Defined

A private school or educational or training institution, however designated, that offers a program of college, professional, preparatory, high school, junior high school, elementary, kindergarten, or nursery school instruction, or any program of trade, technical or artistic instruction. A private educational institution may include tutoring and college entrance exam preparatory courses, art education programs, artistic performances, indoor and outdoor recreation programs and summer day camps, any of which may serve individuals who are not enrolled as students in the institution's academic program. Does not include schools operated by the County Board of Education.

#### B. Use Standards

**[Editor's Note: Legal is working on this section]**

1. The requirements of this section do not apply to the use of any property for any private educational institution or parochial school which is located in a building or on premises owned or leased by any church or religious organization, the government of the United States, the State of Maryland or any of its agencies, Montgomery County or any incorporated village or town within Montgomery County. This exemption does not apply to any private educational institution which received approval by the Board of Appeals to operate a private educational institution conditional use in a building or on a lot, lots or tract of land that was not owned or leased by any church or religious organization at the time the decision of the Board of Appeals was issued.
2. Where a private educational institution is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - a. The private educational institution will not constitute a nuisance because of traffic, number of students, noise, type of physical activity, or any other element which is incompatible with the environment and character of the surrounding neighborhood.
  - b. The private educational institution will be in a building architecturally compatible with other buildings in the surrounding neighborhood, and, if the private educational institution is located on a lot of two acres or less, in either an undeveloped area or an area substantially developed with single-family homes, the exterior architecture of the building must be similar to a single-family home design, and at least comparable to any existing homes in the immediate neighborhood.
  - c. That the private educational institution will not, in and of itself or in combination with other existing uses, affect adversely or change the present character or future development of the surrounding residential community.
  - d. The allowable number of pupils per acre permitted to occupy the premises at any one time must be specified by the Board of Appeals considering the following factors:
    - i. Traffic patterns, including:
      - ii. Impact of increased traffic on residential streets;
      - iii. Proximity to arterial roads and major highways;
      - iv. Provision of measures for Transportation Demand Management as defined in Section 42A-21 of the Montgomery County Code;
      - v. Adequacy of drop-off and pick-up areas for all programs and events, including on-site stacking space and traffic control to effectively deter queues of waiting vehicles from spilling over onto adjacent streets; and
      - vi. Noise or type of physical activity;
  - e. Density greater than 87 pupils per acre may be permitted only where the Board of Appeals finds that:
    - i. The program of instruction, special characteristics of students, or other circumstances justify reduced space and facility requirements;
    - ii. The additional density will not adversely affect adjacent properties; and
    - iii. Additional traffic generated by the additional density will not adversely affect the surrounding streets.
  - f. Outdoor recreation facilities are screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.

- g. Any lighting associated with outdoor recreation facilities meets the requirements of Div 5.6, Outdoor Lighting.
3. If a private educational institution operates or allows its facilities by lease or other arrangement to be used for: (i) tutoring and college entrance exam preparatory courses; (ii) art education programs; (iii) artistic performances; (iv) indoor and outdoor recreation programs; or (v) summer day camps, the Board of Appeals must find, in addition to the other required findings for the grant of a conditional use, that the activities in combination with other activities of the institution, will not have an adverse effect on the surrounding neighborhood due to traffic, noise, lighting, or parking, or the intensity, frequency, or duration of activities. In evaluating traffic impacts on the community, the Board of Appeals must take into consideration the total cumulative number of expected car trips generated by the regular academic program and the after school or summer programs, whether or not the traffic exceeds the capacity of the road. A transportation management plan that identifies measures for reducing demand for road capacity must be approved by the Board.
  4. The Board of Appeals may limit the number of participants and frequency of events authorized in this section.
  5. Where previously approved by the Board of Appeals, a private educational institution may continue the operation of: (i) tutoring and college entrance exam preparatory courses; (ii) art education programs; (iii) artistic performances; (iv) indoor and outdoor recreation programs; or (v) summer day camps, whether such programs include students or non-students of the school, if the number of participants and frequency of events for programs authorized are established in the Board of Appeal's approval.

### Sec. 3.4.4. Museum, Cultural/Art Exhibit, Library

#### A. Defined

A building or place where works of art, scientific specimens, or other objects of permanent value are kept and displayed. The objects are not typically offered for sale. Also a building housing books, periodicals and other material for reading, viewing, listening, study or reference.

### Sec. 3.4.5. Park, Playground (Private)

#### A. Defined

An area used for outdoor play or recreation, often containing recreational equipment such as slides or swings. Includes both passive and active facilities, trails and greenways.

### Sec. 3.4.6. Private Club, Service Organization

#### A. Defined

An incorporated or unincorporated association for civic, social, cultural, religious, literary, political, recreational or like activities, operated for the benefit of its members and not open to the general public.

#### B. Use Standards

Where a private club or service organization is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval.

### Sec. 3.4.7. Public Use (Except Utilities)

#### A. Defined

A publicly-owned or publicly operated use. Includes county office buildings, maintenance facilities, public schools and parks, post office, state and federal buildings. Does not include public utility building or structure (see Sec. 3.6.2, Utilities).

### Sec. 3.4.8. Religious Assembly

#### A. Defined

A meeting area for religious practices. Includes church, synagogue and mosque. Includes a cemetery or memorial garden on the premises.

**[Editor's Note: Include other ancillary facilities such as day care, gym, school, multi-purpose rooms, etc.?]**

#### B. Use Standards

Where a religious assembly facility is allowed as a limited use, it is subject to the following conditions:

1. **[Editor's Note: Standards to be created following legal research]**

### **Sec. 3.4.9. Swimming Pool (Community)**

#### **A. Defined**

A private swimming pool shared by a residential community. Does not include swimming pools integrated into multi-unit living projects or those pools associated with individual dwelling units.

#### **B. Use Standards**

Where a community swimming pool is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. The swimming pool, including the apron and any buildings, is not closer than 75 feet from the nearest property line or closer than 125 feet from any existing residential dwelling; provided, that where the lot abuts a public right-of-way or land in a commercial or industrial zone, the pool may be constructed not less than 25 feet at any point from the public right-of-way or commercial or industrial zone. Buildings must comply with the requirements of the zone in which the pool is located.
2. A public water supply is available and must be used for the pool or use of a private supply of water for the pool will not have an adverse affect on the water supply of the community.
3. When the lot abuts the rear or side lot line of, or is across the street from, any land in a residential zone, other than publicly-owned land, the pool must be screened in accordance with Div. 5.5, Landscaping and Screening.
4. Special conditions deemed necessary to safeguard the general community interest and welfare, such as provisions for parking, additional fencing, planting or other landscaping, additional setback from property lines, location and arrangement of lighting, compliance with County noise standards and other reasonable requirements, including a showing of financial responsibility by the applicant, may be required by the Board of Appeals as requisite to the grant of a conditional use. Financial responsibility must not be construed to mean a showing of a 100 percent cash position at the time of application but is construed to mean at least 60 percent.

## Div. 3.5. Commercial Uses

### Sec. 3.5.1. Animal Services

#### A. Animal Services, In General

##### 1. Defined, In General

Facility providing care for animals. Does not include any use considered accessory to farming.

##### 2. Use Standards for All Animal Services

- a. For all buildings in which animals will be present located within 75 feet of the property line of a rural or residential zone, maximum expected interior sound levels must be reduced to 40 dBA outside, measured at 10 feet from the building.
- b. For all buildings in which animals will be present located further than 75 feet from the property line of a rural or residential zone, maximum expected interior sound levels must be reduced to 60 dBA outside, measured at 10 feet from the building.
- c. The applicant must submit the following additional information:
  - i. Acoustical engineering studies that demonstrate that the proposed use will meet required noise levels. The studies must show the worst case scenario sound level (for example, full occupancy). The statement of operations must be sufficiently detailed to allow determination of how often the worst case scenario sound level occurs.
  - ii. Detailed floor plans that show all the interior areas, including runs and kennels.
  - iii. Site plan that show the layout of all exterior areas used to exercise, walk, or keep animals.
- d. Animals must not be walked or exercised in outdoor areas that are off-site.
- e. All litter and animal waste must be contained and controlled on the site.

- f. If the proposed use is located in an area that uses well water and septic facilities, the applicant must prove that the use will not have any negative effect on groundwater or septic systems.
- g. Where animal services are allowed as a conditional use, the Board of Appeals may regulate hours of operation. The Board of Appeals may also regulate the number of animals that may be boarded, exercised, walked or kept in runs or similar areas, and the manner in which animals are boarded, exercised, walked or kept.

#### B. Animal Care (Indoor)

##### 1. Defined

Any building or land used, designed or arranged for the care of animals without any outdoor activity. Includes indoor boarding, grooming, animal day care and veterinary service. Does not include outdoor activity or farrier.

##### 2. Use Standards

Where indoor animal care is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following condition:

- a. Exterior runs, exercise yards or other such facilities for the keeping of animals are not provided.

#### C. Animal Care (Outdoor)

##### 1. Defined

Any building or land used, designed or arranged for the care of animals that includes outdoor activity. Includes outdoor boarding, grooming, animal day care and veterinary service. Does not include farrier.

##### 2. Use Standards

Where outdoor animal care is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. The minimum lot size is two acres or the minimum required in the zone, whichever is greater.
- b. Exterior areas used to exercise, walk, or keep animals are from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.
- c. All exterior exercise areas and runs must be fenced for the safe confinement of animals.
- d. No animal may be outdoors between 10 PM and 6 AM.
- e. The sound at the nearest property line cannot exceed 60 dBA.

#### D. Farrier

##### 1. Defined

A specialist in equine hoof care, including the trimming and balancing of a horse's hoof and the placing of shoes on the horse's foot. Includes related blacksmithing.

### Sec. 3.5.2. Campground

#### A. Defined

A facility used for two or more tent or recreational vehicle campsites. Does not include sites for manufactured homes.

#### B. Use Standards

1. Where a campground is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - a. The density of campsites does not exceed an average of 15 campsites per acre of the developed portion of the campground, inclusive of service roads, toilet facilities and service buildings.
  - b. Each campsite, excluding parking space, provides a minimum of 900 square feet.
  - c. The site is at least 10 acres and has frontage of at least 150 feet abutting a public right-of-way; provided that the Board of Appeals is authorized

to waive the requirement for a minimum frontage where it finds that the facilities for ingress and egress of vehicular traffic are adequate.

- d. All campsites are located at least 100 feet from any property line, and at least 125 feet from the centerline of any public right-of-way.
- e. Special conditions, such as provision for fencing, planting or other landscaping, additional setback from property lines, and other reasonable requirements deemed necessary to safeguard community interest and welfare, may be invoked by the Board of Appeals as requisites to the grant of a conditional use.

### Sec. 3.5.3. Communication Facility

#### A. Cable Communications System

##### 1. Defined

A system of antennas, towers, and cables operated with the purpose of transmitting or receiving electronic signals, programs and services in which the signals are distributed to subscribing members of the public. Does not include any facility where the cables do not touch public rights-of-way and that serves only the occupants of a single parcel of land under common ownership or management.

##### 2. Use Standards

- a. Where a cable communications system is allowed as a conditional use, it may be allowed where the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - i. Any proposed tower has a setback of one foot from all property lines for every foot of height of a tower, measured from the base of the support structure to the property line.
  - ii. The location of the proposed community access centers or studios are consistent with the cable communications plan approved by the County Council.

- b. Any component element of a cable communications system that qualifies as a permitted use in the zone in which it is to be located is not required to obtain conditional use approval.

## B. Media Broadcast Tower

### 1. Defined

Any facility used to transmit radio or television communications that are intended to be received by the general public. Includes radio and microwave antenna. Does not include amateur radio antenna (see Sec. 3.7.3, Amateur Radio Facility) or wireless tower (see Sec. 3.5.3.C, Wireless Freestanding Tower).

### 2. Use Standards

- a. Prior to the Board of Appeals granting any conditional use for a media broadcast tower, the proposed facility must be reviewed by the County Transmission Facility Coordinating Group. The applicant for a conditional use must file a recommendation from the Transmission Facility Coordinating Group regarding the tower with the application. The recommendation must be no more than one year old.
- b. Where a media broadcast tower is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - i. All support structures are set back from the property line a distance of one foot from the property line for every foot of height of the support structure. The setback from a property line is measured from the base of the support structure to the property line. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.

- ii. All support structures are set back from any off-site dwelling in rural and residential zones, a distance of 275 feet and in all other zones, one foot for every foot in height. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling. The Board of Appeals may reduce the setback requirement in the rural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.
- iii. The structure supporting the media broadcast tower does not exceed 275 feet in height, except where it can be demonstrated that the additional height is necessary to comply with the minimum requirements established by the Federal Communications Commission.
- iv. The support structure has been sited to minimize its visual impact. The Board of Appeals may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties.
- v. The support structure and any related equipment buildings or cabinets are screened in accordance with Div. 5.5, Landscaping and Screening.
- vi. The property owner is an applicant for the conditional use for each support structure.
- vii. The equipment compound has sufficient area to accommodate equipment sheds or cabinets associated with a station or tower.
- viii. No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.



- ix. The media broadcast tower will be removed at the cost of the owner when no longer in use for more than 12 months.
- x. All support structures are identified by a sign no larger than two square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
- xi. The outdoor storage of equipment or other items is prohibited.
- xii. The owner of the facility is responsible for maintaining the facility in a safe condition.

### C. Wireless Freestanding Tower

#### 1. Defined

A structure other than a building with guyed or freestanding supporting antennas telecommunications or wireless transmission. Does not include amateur radio antenna (see Sec. 3.7.3, Amateur Radio Facility) or radio or TV tower (see Sec. 3.5.3.B, Media Broadcast Tower).

#### 2. Use Standards

Where a wireless freestanding tower is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. A support structure must be set back from the property line as follows:
  - i. No wireless freestanding tower is allowed in any scenic setback indicated on an approved and adopted master plan.
  - ii. In rural and residential zones, a distance of one foot from the property line for every foot of height of the support structure.
  - iii. In mixed use and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from mixed use or industrial

zoned properties, and one foot for every foot of height of the support structure from residential or rural properties.

- iv. The setback from a property line is measured from the base of the support structure to the perimeter property line.
  - v. The Board of Appeals may reduce the setback requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.
- b. A support structure must be set back from any off-site residential use as follows:
    - i. In rural and residential zones, a distance of 300 feet.
    - ii. In all other zones, one foot for every foot in tower height.
    - iii. The setback is measured from the base of the support structure to the base of the nearest off-site dwelling.
    - iv. The Board of Appeals may reduce the setback requirement in the rural and residential zones to a distance of one foot from an off-site residential building for every foot of height of the support structure if the applicant requests a reduction and evidence indicates that a support structure can be located in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, and visibility from the street.
  - c. The support structure and antenna must not exceed 155 feet in height, unless it can be demonstrated that additional height up to 199 feet is needed for service, collocation, or public safety communication purposes. At the completion of construction, before the support structure may be used to transmit any signal, and before the final inspection pursuant to the building permit, the applicant must certify to the Department of Permitting Services that the height and location of the support structure



- is in conformance with the height and location of the support structure as authorized in the building permit.
- d. The support structure must be sited to minimize its visual impact. The Board of Appeals may require the support structure to be less visually obtrusive by use of screening, coloring, stealth design, or other visual mitigation options, after considering the height of the structure, topography, existing vegetation and environmental features, and adjoining and nearby residential properties.
  - e. The support structure and any related equipment buildings or cabinets are screened in accordance with Div. 5.5, Landscaping and Screening.
  - f. The property owner must be an applicant for the conditional use for each support structure.
  - g. A modification of a conditional use is not required for a change to any use within the conditional use area not directly related to the conditional use grant.
  - h. A support structure must be constructed to hold no less than three telecommunications carriers. The Board of Appeals may approve a support structure holding less than three telecommunications carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and 2) the Board of Appeals decides that construction of a lower support structure with fewer telecommunications carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.
  - i. No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.
  - j. Every freestanding support structure must be removed at the cost of the owner of the telecommunications facility when the telecommunications facility is no longer in use by any telecommunications carrier for more than 12 months.

- k. All support structures must be identified by a sign no larger than two square feet affixed to the support structure or any equipment building. The sign must identify the owner and the maintenance service provider of the support structure or any attached antenna and provide the telephone number of a person to contact regarding the structure. The sign must be updated and the Board of Appeals notified within 10 days of any change in ownership.
- l. Outdoor storage of equipment or other items is prohibited.
- m. Each owner of the telecommunications facility is responsible for maintaining the telecommunications facility, in a safe condition.
- n. The applicants for the conditional use must file with the Board of Appeals a recommendation from the Transmission Facility Coordinating Group regarding the telecommunications facility. The recommendation must be no more than 90 days old.
- o. Prior to the Board of Appeals granting any conditional use for a telecommunications facility, the proposed facility must be reviewed by the County Transmission Facility Coordinating Group. The Board of Appeals and Planning Board must make a separate, independent finding as to need and location of the facility.

### **Sec. 3.5.4. Funeral and Interment Services**

#### **A. Cemetery**

##### **1. Defined**

A place used for the permanent interment of humans or animals or their cremated remains. Does not include an accessory cemetery or memorial garden on the premises of a religious institution (see Sec. 3.4.8, Religious Assembly).

##### **2. Use Standards**

Where a cemetery is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. The proposed location is compatible with adjacent land uses, existing or proposed highways and any other elements or factors deemed to affect the public health, safety and welfare of the inhabitants of the area.
- b. All grave sites are sufficiently set back to establish a buffer between the site and surrounding properties. The buffer area so created must be suitably landscaped with trees and shrubs.
- c. Where the subject property is located in an area not served by public water and sewer, water table tests must be conducted to assure that there is adequate filtration of drainage between burial depth and the level of high water table.

### Sec. 3.5.5. Golf Course, Country Club

#### A. Defined

The course and surrounding land maintained for the game of golf, including accessory maintenance facilities, putting greens and driving ranges, and club houses containing locker-rooms, restaurants and pro shops.

#### B. Use Standards

Where a golf course, with or without a country club, is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. The provision of food, refreshments, and entertainment for club or organization members and their guests may be allowed provided the availability of such services is not reasonably expected to draw an excessive amount of traffic.
2. Maximum building coverage is no more than three percent.
3. Minimum setback for a principal building is 50 feet.
4. Minimum of 200 feet of frontage on a road of arterial or higher classification in a residential zone.
5. Outdoor activity areas must be screened from adjacent residential properties in accordance with Div. 5.5, Landscaping and Screening.
6. Any lighting associated with outdoor activity areas must meet the requirements of Div 5.6, Outdoor Lighting.

7. All major outdoor activity areas, such as tennis courts, swimming pools, and golf course playing surfaces must be set back at least 100 feet from property lines adjoining any residential dwelling. The Board of Appeals may reduce this setback where it finds that landscaping, screening, fencing or other measures can mitigate the adverse effects on the adjoining residential use.

### Sec. 3.5.6. Lodging

#### A. Defined, In General

A facility for short-term overnight lodging of guests for compensation (typically for stays of less than 30 days).

#### B. Bed & Breakfast

##### 1. Defined

A detached house that is owner-occupied and in which no more than five guest rooms are provided. Meals are customarily served to guests.

##### 2. Use Standards

Where a bed & breakfast is allowed as a limited use, it is subject to the following conditions:

- a. A bed & breakfast is allowed in an owner-occupied detached house only.
- b. On a lot of less than two acres, a maximum of three bedrooms may be designated as guest rooms for which compensation is charged. If located on a lot of two acres or more, up to five bedrooms may be designated as guest rooms.
- c. The display of a sign must include the official house number.
- d. Breakfast is the only meal that may be served.
- e. Meals must not be provided for compensation to any nonresident of the bed and breakfast.
- f. A visitor must not remain in a bed & breakfast for more than two weeks in any one visit.
- g. A record of all overnight visitors must be maintained.
- h. The bed & breakfast must be registered with the Department of Permitting Services.

## Sec. 3.5.7. Restaurant

### A. Country Inn

#### 1. Defined

An establishment for dining in a rural area. A country inn may include a maximum of 12 overnight guest rooms.

#### 2. Use Standards

Where a country inn is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

- a. Minimum lot area is two acres.
- b. Maximum building coverage is 10 percent.
- c. Minimum setback from any street is 50 feet. Minimum setback from any other boundary of the lot is 75 feet. A lawfully existing structure may be used that does not meet these requirements.

## Sec. 3.5.8. Shooting Range (Outdoor)

### A. Defined

An outdoor rifle, pistol, skeet or trap shooting range.

### B. Use Standards

Where an outdoor shooting range is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. Adjacent areas are predominantly undeveloped.
2. The hours of operation are compatible with adjacent existing uses.
3. The use is established for a period of one year only, subject to renewal.

## Div. 3.6. Industrial Uses

### Sec. 3.6.1. Mining, Excavation

#### A. Defined

Uses that extract minerals and other solids and liquids from land. Includes borrow pit, gravel mining.

#### B. Use Standards

Where mining or excavation is allowed as a conditional use, it may be allowed where the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. The lot area has been determined by the sum of the area to be extracted plus that area required to meet the minimum setback standards, or the area required to meet the performance standards of this zone, whichever is greater. However, in no event shall the lot area be less than 10 acres.
2. Not more than 10 percent of the net area of the lot is covered by buildings, including accessory buildings.
3. All quarries, pits, open mines, processing plants, screening, sorting, storage, stoneworks, stone cutting, stone polishing, loading, batching, mixing, maintenance, service and repair equipment, facilities and structures will be set back from property lines an amount sufficient to achieve the performance standards.
4. Access to a public road is available.
5. No building or structure exceeds a height of 90 feet above the natural grade of the portion of the site upon which building or structure is situated, provided, however, that facilities for rail loading abutting the right-of-way of a railroad are permitted to extend to a height of 25 feet above the grade of the railroad at the property line abutting the railroad right-of-way.
6. Not less than 25 percent of the lot area designated for mineral resource development will be maintained in open space, including required buffer areas, landscaped or planted berms, forested areas or areas devoted to agriculture.
7. Access roads, security patrol roads, railroad sidings, identifications, direc-

tional and safety warning signs, security fences and acoustical or visual screens, berms or walls are permitted within the setback area.

### Sec. 3.6.2. Utilities

#### A. Minor Public Utility

##### 1. Defined

Any structure maintained by a public utility carrying overhead electric power and any energy transmission or distribution line carrying 69,000 volts or less, including accessory equipment and structures. Also includes structures used for streetlights, fire alarm boxes, traffic signals or similar equipment.

##### 2. Use Standards

Where a minor public utility is allowed as a limited use, it is subject to the following condition:

- a. Screening of all above-ground equipment boxes is required in accordance with Div. 5.5, Landscaping and Screening.

#### B. Major Public Utility

##### 1. Defined

Any structure maintained by a public utility carrying overhead electric power and any energy transmission or distribution line carrying in excess of 69,000 volts, including accessory equipment and structures. Includes any transmission pipeline and accessory equipment and structures, water treatment facility, waste treatment facility, recycling facility, landfill or transfer station.

##### 2. Use Standards

- a. Where a major public utility is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - i. The proposed building or structure at the location selected is necessary for public convenience and service.

- ii. The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.
- b. The findings of paragraph a. above do not apply to electric power transmission or distribution lines carrying in excess of 69,000 volts.
- c. A public utility building allowed in any rural or residential zone, must, whenever practicable, have the exterior appearance of a residential building and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board of Appeals.
- d. The Board of Appeals may approve a major public utility exceeding the height limits of the applicable zone where, in the opinion of the Board, adjacent residential uses will not be adversely affected by the proposed use.

- b. A public utility building or structure allowed in any rural or residential zone, must, whenever practicable, have the exterior appearance of a residential building and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board of Appeals.
- c. The Board of Appeals may approve a public utility building or structure exceeding the height limits of the applicable zone where, in the opinion of the Board of Appeals, adjacent residential uses will not be adversely affected by the proposed use.

### **C. Other Public Utility Building or Structure**

#### **1. Defined**

Any public utility building or structure not considered minor or major public utilities.

#### **2. Use Standards**

- a. Where any other public utility building or structure is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:
  - i. That the proposed building or structure at the location selected is necessary for public convenience and service.
  - ii. That the proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.

## Div. 3.7. Accessory Uses

### Sec. 3.7.1. Defined

- A. A use which is customarily incidental and subordinate to the principal use of a lot or the principal building, and located on the same lot as the principal use or building.
- B. An accessory structure is not attached by any part of a common wall or common roof to the principal building, except for an attached accessory dwelling.
- C. In addition to any other meaning the word “subordinate” may have in this definition, on a lot where the principal building is a detached house, except for an accessory agricultural building, subordinate means that the footprint of the accessory structure (and any accessory use) is less than 50 percent of the footprint of the principal building.

[Editor's Note: Additional exemption needed for carriage house?]

### Sec. 3.7.2. Animal Husbandry

#### A. Defined

Animal husbandry is the accessory practice of breeding and raising livestock for the purpose of produce to be primarily consumed on-site.

#### B. Use Standards

1. One hen, duck, turkey or other fowl, or one rabbit may be kept for every 1,000 square feet of land area. Roosters are not permitted. Structures for housing small animals must be located a minimum of 20 feet from any property line.
2. One beehive may be kept for every 2,000 square feet of land area, each containing one swarm. Hives must be located a minimum of 25 feet from any property line.

### Sec. 3.7.3. Amateur Radio Facility

#### A. Defined

Any facility used for personal, non-commercial radio communications licensed by the Federal Communications Commission.

#### B. Use Standards

Where an amateur radio facility is allowed as a limited use, it is subject to the following conditions:

1. An amateur radio facility must not exceed 65 feet in height, unless it can be demonstrated that the additional height is the minimum needed to engage in radio communications under a license issued by the Federal Communications Commission.

### Sec. 3.7.4. Attached Accessory Dwelling

#### A. Defined

A second dwelling unit that is part of the principal structure of a detached house, semi-detached or townhouse building type. Has a separate entrance. Subordinate to the principal dwelling.

[Editor's Note: Staff recommends limiting to detached house only]

#### B. Use Standards

Where an attached accessory dwelling is allowed as a limited use, it is subject to the following conditions:

1. Only one attached accessory dwelling is allowed in conjunction with each principal dwelling unit. Where an attached accessory dwelling is proposed, no carriage house dwelling is allowed associated with the same principal dwelling unit.
2. An addition or extension to a principal dwelling unit may be approved in order to add floor area to accommodate an attached accessory dwelling.
3. The separate entrance must be located so that the appearance of the building type is preserved.
4. The attached accessory dwelling must have the same street address (house number) as the principal dwelling.
5. The floor area of an attached accessory dwelling must not exceed 50 percent of the floor area of the principal dwelling, but in no case more than 1,200 square feet.

### Sec. 3.7.5. Carriage House Dwelling

#### A. Defined

A second dwelling unit that is located in a separate accessory structure on the same lot as the principal dwelling. Provides for cooking, eating, sanitation and sleeping. A carriage house dwelling is allowed only where the principal dwelling is a detached house. Subordinate to the principal dwelling.

**[Editor's Note: Can carriage house apply to an attached house and a town-house?]**

#### B. Use Standards

Where a carriage house dwelling is allowed as a limited use, it is subject to the following conditions:

1. Only one carriage house dwelling is allowed in conjunction with each principal dwelling unit. Where a carriage house dwelling is proposed, no attached accessory dwelling is allowed associated with the same principal dwelling unit.
2. The floor area of the carriage house dwelling is set out in Sec. XX. Carriage House.
3. An addition or extension to an existing accessory structure may be approved in order to add floor area to accommodate a carriage house dwelling.
4. A separate accessory structure may be approved in order to accommodate a carriage house dwelling.  
**[Editor's Note: Staff recommends only allowing carriage houses on lots one acre or more. If allowed on lots under one acre, staff suggests the carriage house add to or replace an existing garage.]**
5. The carriage house dwelling must have the same street address (house number) as the principal dwelling.

### Sec. 3.7.6. Farm Airstrip or Helistop

#### A. Defined

An accessory take-off and landing facility for an airplane or helicopter.

#### B. Use Standards

Where an airstrip or helistop is allowed as a conditional use, it may be permitted by the Board of Appeals subject to the findings established in Div. 6.5, Conditional Use Approval, and the following conditions:

1. The airstrip or helistop is necessary for the operation of the farm.
2. The airstrip or helistop must be unpaved.
3. No structure or hangar is allowed in association with the airstrip or helistop.
4. The airstrip or helistop is not part of a cluster development or in any open space created as part of a cluster development.

### Sec. 3.7.7. Farm Stand

#### A. Defined

A market stand at which farm products are sold directly to the public by the producer. Value-added agricultural products such as honey or jam, along with hand-made craft items, may be sold, provided their sale is ancillary to the sale of produce, plants and flowers.

**[Editor's Note: Link to Certified Agricultural Producer?]**

#### B. Use Standards

Where a farm stand is allowed as a limited use, it is subject to the following conditions:

1. The minimum tract area is two acres, or the minimum for the applicable zone, whichever is greater.
2. The minimum setback from the street and from any side or rear lot line is 50 feet. The maximum building height is one story and 20 feet. A lawfully existing structure may be used that does not meet these requirements.

### Sec. 3.7.8. Farm Tenant Dwelling

#### A. Defined

A dwelling unit occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis under the control of the owner or operator of

the farm on which the farm tenant dwelling is located. Includes a manufactured home or modular home.

## B. Use Standards

Where a farm tenant dwelling is allowed as a limited use, it is subject to the following conditions:

1. A farm tenant dwelling is excluded from any density calculations, provided that it remains accessory to a farm. If the property associated with a farm tenant dwelling is separately subdivided, these provisions no longer apply.
2. A farm tenant dwelling in existence prior to June 1, 1958, may be rented to a tenant other than an agricultural worker, provided that the dwelling meets all applicable health and safety regulations.

## Sec. 3.7.9. Home Occupation

### A. In General

#### 1. Defined, In General

An occupation that provides a service or product and is conducted within a dwelling unit without diminishing its residential character.

#### 2. Registration Required

All low impact home occupations, home health practitioners and major impact home occupations must be registered with the Department of Permitting Services. No registration is required for no impact home occupations.

#### 3. Use Standards for All Home Occupations

The following provisions apply to all types of home occupation:

- a. The use must be conducted within the dwelling unit or any accessory building and not in any open yard area. Exterior storage of goods or equipment is not permitted.
- b. The amount of floor area used for the home occupation must not exceed 33 percent of the total floor area of the dwelling unit and any existing accessory building on the same lot or parcel or 1,500 square feet, whichever is less.

- c. If an existing accessory building is used for any part of the home occupation, there must be no external evidence of such use. No more than one accessory building may be used for this purpose.
- d. No equipment or facilities may be used other than:
  - i. Domestic or household equipment;
  - ii. Office equipment, such as a computer, calculator or fax machine; or
  - iii. Art or handicraft equipment, such as a hand loom, spinning wheel, potter's wheel, kiln, woodworking tools, or wine-making and beer-making equipment.
  - iv. In the case of a home health practitioner, medical equipment may also be used.
- e. No equipment or process that creates a nuisance such as noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable at or beyond the lot line of a detached house or the floor, ceiling or party wall of any other dwelling unit is allowed in connection with the operation of a home occupation.
- f. No home occupation is allowed to involve use, storage, or disposal of:
  - i. A quantity of a petroleum product sufficient to require a special license or permit from the Fire Marshal; or
  - ii. Any material defined as hazardous or required to have a special handling license by the Montgomery County Code, as amended, or the Annotated Code of Maryland, as amended, except that disposal of medical waste must be regulated as provided in Maryland State Laws and Regulations.
- g. The number of visits allowed is set out by type of home occupation. For the purposes of this section, a "visit" is defined as a visit to the dwelling by one vehicle transporting one or more clients or customers.
- h. No truck deliveries are permitted, except for parcels delivered by public or private parcel services that customarily make residential deliveries.
- i. The storage of equipment or merchandise for collection by employees who will use or deliver it at off-site locations is prohibited.



- j. A second kitchen in the home for catering or making food for off-site delivery or sales is not permitted.

## B. No Impact Home Occupation

### 1. Defined

A no impact home occupation has no discernible impact on the surrounding neighborhood. No nonresident employees are allowed. Clients, customers, patients and visitors are not allowed to visit the premises. No sale of goods on the premises is allowed. Does not include the maintenance or repair of motor vehicles for compensation.

### 2. Use Standards

The following use standards apply to a no impact home occupation, in addition to the use standards for all home occupations.

- a. A no impact home occupation must have no discernible impact on the surrounding neighborhood.
- b. A no impact home occupation must be conducted by a member or members of the family residing in the dwelling unit. No nonresident employees are permitted.
- c. A maximum of five visits per week, including deliveries, is allowed in connection with no impact home occupations.
- d. No sale of goods on the premises is allowed.
- e. Display or storage of goods is limited to samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery, but in no event must the storage of merchandise awaiting delivery exceed 30 square feet of floor area.
- f. The repair and maintenance of motor vehicles for compensation must not be conducted as a no impact home occupation.

## C. Low Impact Home Occupation

### 1. Defined

A low impact home occupation has a limited impact on the surrounding neighborhood. No more than one nonresident employee is allowed. Clients,

customers and visitors must visit by appointment only, and no more than occasional visits are allowed. Limited sale of goods on the premises is allowed. Does not include the maintenance or repair of motor vehicles for compensation.

### 2. Use Standards

The following use standards apply to a low impact home occupation, in addition to the use standards for all home occupations.

- a. A maximum of two low impact home occupations are allowed in any one dwelling unit.
- b. The low impact home occupation must be conducted by a member or members of the family residing in the home, and may employ no more than one nonresident.
- c. A maximum of 20 visits per week, and no more than five per day, excluding deliveries, is allowed in connection with one or both registered home occupations on one lot or parcel.
- d. The sale of goods on the premises is limited to handicrafts or art products or similar hand-made products or services such as dressmaking, hand-weaving, block-printing, jewelry, pottery, and musical instruments, which are produced on site by a resident of the home.  
[Editor's Note: Expand list?]
- e. Indoor or outdoor display or storage of goods is prohibited except for:
  - i. Such handmade items as enumerated in paragraph d. above; or
  - ii. Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.

## D. Home Health Practitioner

### 1. Defined

The office of a health practitioner who resides in the home in which the office is located. For this purpose, a health practitioner is defined as a person who is licensed or certified by a Board under the Maryland Department of Health and Mental Hygiene and has an advanced degree in the field from an accredited

ited educational institution, except that this definition excludes an electrologist, mortician, nursing home administrator, pharmacist or veterinarian. This definition includes a registered nurse or physician's assistant only if that person has an advanced degree in the field and practices independently.

## 2. Use Standards

The following use standards apply to a home health practitioner, in addition to the use standards for all home occupations.

- a. No more than two resident health practitioners are allowed; no non-resident health practitioner is allowed, but nonresident support staff is allowed. A nurse or physician's assistant under the supervision of the resident health practitioner is deemed to be support staff.
- b. The home health practitioner may be allowed to treat more than one patient or client at a time, provided that this does not result in more than five vehicle trips containing not more than ten patients arriving or departing at the same appointment time.
- c. Clients, patients, or other visitors must visit by appointment only. Emergency patients may visit without appointment; abuse of this exemption may lead to revocation of the Certificate of Registration.
- d. An indoor waiting area is required.
- e. The sale of goods on the premises is prohibited, except for medication prescribed by the health practitioner or a prescribed remedial device that cannot be obtained from a commercial source.

## E. Major Impact Home Occupation

### 1. Defined

A major impact home occupation may have an impact on the surrounding neighborhood. Up to two nonresident employees are allowed. Clients, customers, patients and visitors must visit by appointment only. Limited sale of goods on the premises is allowed. Does not include the maintenance or repair of motor vehicles for compensation.

## 2. Use Standards

The following use standards apply to a major impact home occupation, in addition to the use standards for all home occupations. A major impact home occupation may be allowed where the Board of Appeals finds:

- a. The sale of goods on the premises is limited to handicrafts or art products or similar hand-made products or services such as dressmaking, hand-weaving, block-printing, jewelry, pottery, and musical instruments, which are produced on site by a resident of the home.  
[Editor's Note: Expand list?]
- b. The display or storage of goods is prohibited except for:
  - i. Such handmade items as are enumerated in a. above; or
  - ii. Samples of merchandise that may be ordered by customers to whom it will be delivered at off-site locations, or merchandise awaiting such delivery.
- c. The use may involve off-site activities such as sales, client contact and other matters related to the home occupation.
- d. The Board of Appeals may grant a conditional use for a major home occupation on the same property as a no impact or low impact home occupation where it finds that both together can be operated in accordance with the provisions of this section. The Board of Appeals must not grant a conditional use for more than one major impact home occupation on the same property.
- e. The major impact home occupation must be conducted only by members of the family residing in the dwelling and a maximum of two nonresident employees or associates.
- f. Clients, customers, patients or other visitors in connection with the home occupation must visit by appointment only.
- g. A conditional use for a major home occupation is granted for a two-year period and the conditional use may be renewed if it is operated in compliance with the findings and conditions of the Board of Appeals and satisfies the compliance procedures specified by paragraph F. below. 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 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.

## F. Home Occupation Compliance and Enforcement

1. By signature of the affidavit of compliance, the applicant for a home occupation affirms that they reside in the dwelling unit in question and agrees to comply with this section and to take whatever action is required by the Department of Permitting Services to bring the home occupation into compliance if complaints of noncompliance are received and verified.
2. When the application for the home occupation is completed and the affidavit is signed, the Department of Permitting Services must determine whether the home occupation, as described in the application, complies with the applicable sections of this code. If it does comply, the Department of Permitting Services must record it in the Home Occupation Registry and issue a Certificate of Registration. A home occupation may begin operation without an on-site inspection. The home occupation must not be recorded in the Registry, and the Certificate must not be issued if the home occupation, as described, does not comply fully with this section.
3. The Home Occupation Registry must be readily available for public inspection. If the Department of Permitting Services receives written notice of a violation of a registered home occupation, 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. If the Department of Permitting Services determines that there is no violation, the operator of the home occupation and the complainant must be so notified in writing.
4. If the Department of Permitting Services determines at any time that there is a violation, a warning must be issued, and the violation must be corrected within 30 days. If it is not corrected, the Department of Permitting Services must notify the operator of the home occupation that either:
  - a. The home occupation must cease immediately; or

- b. In the case of any violation that might be remedied with a conditional use, a petition must be filed within 10 business days for a conditional use for a major impact home occupation. Operation of the home occupation may continue until the Board of Appeals has acted on the petition, provided the violation is corrected during this period. The home occupation must cease immediately if the Board of Appeals denies the conditional use.
5. Violation of an order issued by the Department is subject to a penalty in accordance with [Section 59-A-1.3](#). The determination by the Department of Permitting Services as to whether there is a violation may be appealed to the Board of Appeals, in accordance with [Section 59-A-4.11](#).

## Sec. 3.7.10. Sustainable Energy Generation

### A. Defined

On-site renewable energy generation technologies such as a solar array, solar collection system, wind energy system, or geothermal energy system.

### B. Use Standards

Where sustainable energy generation is allowed as a limited use, it is subject to the following conditions:

1. A sustainable energy generation system must not be located in any required front yard setback area.
2. A sustainable energy generation system must meet the accessory structure setbacks for the applicable building type and zone.
3. A sustainable energy generation system must not exceed the district height for accessory structures without approval of a conditional use permit by the Hearing Examiner.
4. The blade tip or vane of any wind energy system must have a minimum ground clearance of 20 feet as measured at the lowest point of the arc of the blades. No blades may extend over parking areas, driveways, or sidewalks.
5. Where a solar easement or other interest in adjacent property is required, the applicant is responsible for negotiating with other property owners.

### Sec. 3.7.11. Wireless on Existing Structure

#### A. Defined

A wireless transmission facility mounted on an existing structure. Includes rooftop mounted antennas and related unmanned equipment building, equipment cabinets, or equipment room.

#### B. Use Standards

Where a wireless facility located on an existing structure is allowed as a limited use, it is subject to the following conditions:

1. An antenna is not permitted on a detached or attached house or associated accessory structure.
2. A structure constructed for the support of: (1) an antenna that is part of an amateur radio facility licensed by the Federal Communications Commission, or (2) an antenna to receive television imaging in the home, may not be used as a support structure for any other antenna.
3. No wireless on an existing structure is allowed in any scenic setback indicated on an approved and adopted master plan.
4. An antenna and a related unmanned equipment building or cabinet may be installed on a rooftop when the following standards are met:
  - a. The building must be greater than 50 feet in height in any residential zone.
  - b. In any other zone, the building must be at least 30 feet in height.
5. An antenna may be mounted on the facade of the building at a height of at least 30 feet in any nonresidential zone, and at a height greater than 50 feet in a residential zone.
6. An antenna may be attached to an existing structure on privately-owned land, including but not limited to a radio, television, or telephone transmission tower, a monopole, a light pole, a water tank, a silo, a barn or an overhead transmission line support structure.
7. An equipment building located on such a structure is subject to the requirements of paragraphs below.
  - a. An unmanned equipment building or cabinet must not exceed 560 square feet and 12 feet in height or 14 feet in height for a rooftop structure, including the support structure for the equipment building, except that a single equipment building in excess of 560 square feet, located at ground level, may be used for more than one telecommunication provider, where:
    - i. The overall square footage does not exceed 1,500 square feet and 12 feet in height;
    - ii. The building is used for more than one telecommunication provider operating from the same monopole or tower; and
    - iii. The building is reviewed by the Telecommunications Transmission Facility Coordinating Group in accordance with [Sec. 2-58E of the County Code](#).
  - b. If the equipment building or cabinet is at ground level in a residential zone, the building or cabinet must be faced with brick or other suitable material on all sides and surrounded by landscaping providing a screen of at least three feet in height, and must conform to the setback standards of the applicable zone.
  - c. If the equipment building is located on the roof of a building, the equipment building or cabinet and other structure, in combination with any other equipment building and structure, must not occupy more than 25 percent of the roof area.

## Div. 3.8. Temporary Uses

### Sec. 3.8.1. Defined

A use that is:

- A. Temporary in nature;
- B. Established for a fixed period of time with the intent to discontinue the use upon the expiration of such time; and
- C. Does not involve the construction or alteration of any permanent structure.

### Sec. 3.8.2. Construction Administration or Sales Office

#### A. Defined

A temporary office for construction administration or real estate sales.

#### B. Use Standards

Where a construction administration or sales office is allowed as a limited use, it is subject to the following conditions:

1. Requires a temporary use permit.
2. The use is limited to the construction, development or sale of buildings or structures within the same site or subdivision.
3. The use is allowed only for the duration of construction and sale of a project.

### Sec. 3.8.3. Farmer's Market

[Editor's Note: To be inserted following staff analysis]

### Sec. 3.8.4. Seasonal Outdoor Sales

#### A. Defined

The temporary sales of seasonal products offered annually for a limited period of time. Includes sale of pumpkins (Halloween) and evergreen trees (Christmas), as well as corn mazes.

#### B. Use Standards

Where seasonal outdoor sales are allowed as a limited use, they are subject to the following conditions:

1. Requires a temporary use permit.
2. The minimum area of the lot must be 20,000 square feet.
3. Except where seasonal outdoor sales occur on the site of a religious assembly use, the property must front on and have access to a road built to primary or higher standards.

[Editor's Note: Legal is working on accessory uses associated with religious organizations]

### Sec. 3.8.5. Transitory Use

#### A. Defined

A use on private property or the public right-of-way conducted from a vehicle or from a movable structure that remains in the same location for less than 24 hours.

#### B. Use Standards

Where a transitory use is allowed as a limited use, it is subject to the following conditions:

##### 1. Temporary Use Permit

Requires a temporary use permit.

##### 2. Uses Allowed

- a. A transitory use may be allowed on private property only if it would be allowed as a use permanently affixed to the land in the applicable zone. A transitory use must not be allowed unless it is:
  - i. Designated as a permitted (P) use or limited (L) use in the applicable zone; or
  - ii. Designated and approved as a conditional use (C) use in the zone.
- b. A transitory use may be located in the public right-of-way where it is in accordance with Chapter 47.

### 3. Location Restrictions

#### a. Green Area

A transitory use must not be located on any portion of the impervious area required by the zone in which the property is located.

#### b. Parking Lot

If a transitory use is located in a parking lot subject to a parking facility plan under [Article 59-E](#) a revised parking facility plan must be submitted for review and approval. The area occupied by the transitory use, plus an appropriate number of parking spaces as determined by the Director for the transitory use, must not also be counted as parking spaces required by [Section 59-E-3](#) for permanent uses on the property.

### 4. Registration

A transitory use must be registered under Chapter 47.

## Sec. 3.8.6. Temporary Uses Exempt from Permit

The following permitted temporary uses do not require a temporary use permit, provided they meet the following requirements.

### A. Construction Dumpsters

One construction dumpster is permitted on-site in association with a valid building permit. The use of such a dumpster must be strictly limited to the time actively underway. In no event must the use of dumpster continue past expiration of the building permit.

### B. Garage or Yard Sale

1. A garage sale or yard sales is the sale, on residential property, of goods previously used by a resident of the property. This also includes all similar sales activities such as moving sales, estate sales and community sale.
2. A garage sale is not a vending activity unless it exceeds the limits specified in Chapter 47.

### C. Self Storage Containers

1. One storage container for off-site storage of household or other goods located in any yard is permitted for a maximum of 30 consecutive days twice per calendar year.
2. The storage container must be placed completely on-site (and is not permitted to be placed in any type of public right-of-way).
3. The storage container must be placed on a paved surface.