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October 28, 2013

VIA IZIS

Anthony Hood, Chairman
Zoning Commission
441 4th Street, NW
Suite 200-S
Washington, DC 20001

Re: Subtitles G, H, I, and K of Draft Zoning Regulations (September 2013) -- Comments Concerning Big-Box Retail Development

Dear Chairman Hood and Members of the Zoning Commission:

The District of Columbia ("District") has undertaken the important task of rewriting its Zoning Code for the first time in more than 50 years. The Zoning Commission has the responsibility of approving a new Zoning Code. As part of this process, citizens were invited to submit Comments suggesting changes to the District's Zoning Code. We submit these Comments today on behalf of our clients who reside in the District and have concerns about the impact of "big-box" development on their communities. Our clients are a coalition of various groups and individuals, including United Food and Commercial Workers ("UFCW") International Union Local 400, Institute for Local Self Reliance, DC Jobs with Justice, Georgia Avenue Community Development Taskforce, Respect DC, Ward 4 Thrives, Faith Strategies, Edna Doggett, Pastor Grayland S. Hagler, Maria-Raquel McFadden, Andrea Rosen, and ANC 4D Commissioner Renee Bowser. ANC 4D has also passed a Resolution supporting the proposal in these Comments. Our clients' concerns arise because the District does not meaningfully regulate big-box development. At the same time, the D.C. Office of Planning ("OP"), which had the responsibility of proposing a draft new Zoning Code ("Draft") and submitting it to the Zoning Commission, did not adopt any policy regulating big-box development in its Draft.

Therefore, we submit these Comments for the purpose of proposing that the District regulate big-box development. To this end, these Comments (1) describe big-box development; (2) discuss the current legal environment for big-box development in the District and its effect on such development in the District; and (3) propose that the

District require that developers of big-box stores secure a special exception as a means of regulating this type of development. These Comments further incorporate the rationales for this proposal.

I. BIG-BOX RETAIL DEVELOPMENT

A. What is “Big-Box” Development?

A “big-box” retail store is typically a building with a height of 30 feet or more, simple and rectangular in construction, and ranging in size from 75,000 to 260,000 square feet. It generally includes a large parking lot or part of a larger shopping center. JENNIFER EVANS-COWLEY, MEETING THE BIG BOX CHALLENGE: PLANNING, DESIGN, AND REGULATORY STRATEGIES 6 (Planning Advisory Service Report No. 537, American Planning Association) (March, 2006).

There are four major types of big-box stores: (1) Large general merchandise stores; (2) Category Killers; (3) Outlet Stores; and (4) Warehouse Clubs. THEODIS L. PERRY, JR., MANAGING MARYLAND’S GROWTH: MODEL AND GUIDELINES – “BIG BOX” RETAIL DEVELOPMENT 4 (Maryland Department of Planning) (October, 2001); *see also* EVANS-COWLEY, at 6-7. “Although grocery stores may be similar in size to typical big-boxes, ranging from 20,000 to 100,000 square feet, most definitions of big-box retail specifically exempt stores whose primary function is the sale of grocery items.” EVANS-COWLEY, at 7.

Large general merchandise stores offer a wide selection of products at discount prices. K-Mart, Target, and Wal-Mart are examples of large general merchandise stores. *Id.* A supercenter, which is a subset of large general merchandise stores, includes a grocery store in addition to its wide-selection of discount products. EVANS-COWLEY, at 6.

Category killers offer a large selection and low prices, but only offer products of the same type. Examples of these stores include Home Depot, Best Buy, and Barnes and Noble. *Id.* at 7.

Outlet stores typically the discount arms of major department stores. Examples of these stores include Nordstrom Rack, Burlington Coat Factory, and Big Lots. *Id.*

Warehouse clubs offer a variety of bulk goods at wholesale prices, but only offer a limited number of product items (5,000 or less). Examples of these stores include Costco, BJ’s, and Sam’s Club. *Id.*; *see also* PERRY, at 4.

B. Trends in Big-Box Development

Historically, big-box retailers have built stores in suburban and exurban markets. However, as the Maryland Department of Planning presciently stated in 2001, “[w]hile big-box retailers have continued to locate in rural and suburban areas, there is a growing trend toward more retail development in existing urban areas. Urban areas are becoming more attractive due to increased saturation or over-expansion of retailers in suburban markets.” PERRY, at 13. Indeed, big-box retailers, particularly the large general merchandise stores, “have realized a new business model” and have begun expanding into cities because “suburbs are already chock-full of Targets and Walmarts, not to mention Kmart or Petsmarts.” Franklyn Cater, *Big-Box Retailers Move to Smaller Stores in Cities*, NPR, Dec. 21, 2010, <http://www.npr.org/2010/12/21/132231472/big-box-retailers-move-to-smaller-stores-in-cities>. “The urban markets are really the last frontier yet to be conquered by retail. . . . And as some of their traditional marketplaces become saturated, they are trying to move into some of these additional areas to take advantage of them.” *Id.*; see also JULIE L. DAVIS, ET AL., THE IMPACT OF AN URBAN WAL-MART STORE ON AREA BUSINESSES: AN INTERIM EVALUATION OF ONE CHICAGO NEIGHBORHOOD’S EXPERIENCE 2 (Loyola University at Chicago and University of Illinois at Chicago) (2008) (“Having achieved nearly complete coverage of non-urban markets, mega-retailer Wal-Mart has turned its attention to urban expansion”).

C. Unique Impacts of Big-Box Retail

The larger size of big-box stores, and particularly large general merchandise stores, create planning problems that fall into two general categories. EVANS-COWLEY, at 14. The first category is related to traditional planning problems, which include issues such as traffic congestion, circulation, and aesthetics. MARLON G. BOARNET, ET AL., EMERGING PLANNING CHALLENGES IN RETAIL: THE CASE OF WAL-MART 435 (Journal of the American Planning Association, Vol. 71, No. 4) (Autumn, 2005). The second category concerns problems involving economic development. EVANS-COWLEY, at 14. Professor Evans-Cowley writes, “[f]or planners or elected officials to not plan for large-scale retail is to negate the relevance of these stores and to underestimate the retailers’ ardent interests in pursuing new markets.” EVANS-COWLEY, REGULATORY STRATEGIES FOR BIG BOXES 6 (Zoning Practice, American Planning Association) (2005).

Regardless of whether a citizen, neighborhood group, or elected official believes that big-box retail has an overall positive or negative impact on a given area, the effect of big-box retail on the local economy, both in terms of its overall effect on wages and its

overall effect on employment, cannot be ignored. While big-box retail creates jobs, a big-box store is not an effective economic development tool.

The quality of the local economy is determined by the types of jobs in that community. “If a local economy is heavily dependent on retail jobs, the overall quality of the economy will be low, due to low wages produced by retail jobs.” EVANS-COWLEY, MEETING THE BIG BOX CHALLENGE, at 28. Economist William H. Fruth writes,

There is nothing wrong with having retail in the economy . . . but the act of purchasing drains wealth from the area. Retail is absolutely dependent upon the condition of the local economy. It cannot grow any greater than the amount of disposable income within the economy. It will decline if the flow of money into an area is reduced. It does not create wealth but absorbs wealth. A vibrant, dynamic retail sector is not the cause of a strong local economy, but the result of it.

WILLIAM H. FRUTH, THE FLOW OF MONEY AND ITS IMPACT ON LOCAL ECONOMIES 9 (National Association of Industrial and Office Properties: The Forum for Commercial Real Estate) (2003). Because big-box retail wages are lower than other local wages, the overall negative impact on the economy is greater than any positive impact that a big-box store may have on prices. EVANS-COWLEY, at 28.

The planning literature suggests that big-box retailers displace sales at existing businesses, which are forced to either downsize or close, resulting in job losses and declining tax revenue. For example, in 2006, when Wal-Mart opened in the West Side neighborhood of Chicago, twenty-three of the 191 businesses in the surrounding area closed within one year. DAVIS, at 11. The same study of the Chicago Wal-Mart concluded that Wal-Mart displaced a significant amount of sales from businesses in the immediate area and that the store even reduced overall retail sales in some nearby districts. *Id.* at 16. “Even in its first year of operation, Wal-Mart [changed] the landscape of Chicago’s West Side business community.” *Id.*

Other studies have shown that locally owned stores generate much greater benefits for the local economy than national chains. In a 2007 study of San Francisco local businesses, the researchers found that local businesses buy more goods and services locally and employ more people locally per unit of sales. CIVIC ECONOMICS, THE SAN FRANCISCO RETAIL DIVERSITY STUDY (May, 2007). The study found that every \$1 million spent at local bookstores created \$321,000 in additional economic activity in the

area, including \$119,000 in wages paid to local employees. *Id.* at 17. By comparison, that same \$1 million dollars spent at chain bookstores generated only \$188,000 in local economic activity, including \$71,000 in wages paid to local employees. *Id.*

II. THE DISTRICT

Based on these trends and the nature of big-box development, it is necessary to consider policy proposals the District should adopt in response to big-box development. These Comments first evaluate the District's existing Zoning Code ("Existing Code") and compare it to the proposed text of the Draft proposed and submitted by OP for permitting big-box development. It then proposes amendments to the Draft in order to better regulate these developments.

A. Existing Code

Under the permitted uses for commercial zones in the Existing Code (denoted with the letter "C" and a number and often times a letter), the District allows as-of-right commercial retail development regardless of the total amount of square footage the proposed development occupies.¹ This rule covers various types of commercially zoned land, including land zoned C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, and C-3-C. *See* District of Columbia Municipal Regulations ("DCMR") §§ 11-701, 11-721, 11-741, and 11-751. Pursuant to the Existing Code, the only oversight that the District has over as-of-right development in commercial zones is when its Office of Planning ("OP") conducts what is known as "Large Tract Review" before said development may proceed to the permitting stage. As discussed below, this process does not constitute an approval or denial of the development, and it only applies to developments in certain zones that are of a certain size (i.e., 50,000 square feet or larger). Moreover, commercial development is permitted in residential zones through the Planned Unit Development ("PUD") process.²

B. Draft Zoning Regulations

The proposed Draft makes some changes, but remains substantively similar to the Existing Code. For example, unlike the Existing Code, the Draft provides a definition for "Retail." It defines "Retail" as:

¹ Total amount of square footage is determined by adding the amount of square footage a store uses on each floor it occupies. For example, a store that uses 50,000 square feet on three floors each occupies a total of 150,000 square feet.

² For permitted uses in residential zones under the Existing Code, *see* DCMR §§ 11-201, 11-300, 11-320, 11-330, and 11-350.

- (a) Any use engaging primarily in the on-site sale of goods, wares, or merchandise directly to the consumer or persons without a resale license. These uses include goods commonly sold to individuals in small quantities for their direct use.
- (b) Examples include, but are not limited to: shop, appliance, computer, jewelry, fabric, department, or grocery stores, clothing or gift boutique, and pawn and antique shops.
- (c) Exceptions: This use group does not include wholesale goods commonly sold to businesses in bulk, corner store use, or uses which more typically would fall within the Arts Design and Creation, Food and Alcohol Services, Automobile-related, Firearm Sales, Marine, Production, Distribution, and Repair, or Sexually-based Business use groups.

Draft, Subtitle B, Chapter 2 Use Groups, § 201.30; *compare with* DCMR § 11-1991.1. According to this definition, the Draft does not distinguish retail stores based on their square footage. Any big-box retail store would fall under the use definition for Retail.

As it relates to the regulation of retail stores through zoning, the Draft is similar to the Existing Code, but the nomenclature has changed. Whereas in the Existing Code the “C” zones, which represented commercial zones, permitted retail uses, in the Draft, the “M” zones have replaced the “C” zones and permit retail uses. The difference is that, under the Draft, the “M” zones are broader than the “C” zones. The “M” zones represent mixed-use zones and allow for not only commercial uses, but also institutional and residential uses. For the purposes of regulating commercial retail development in the District, the “M” zones correspond closely to the former “C” zones. Zones C-1, C-2-A, C-2-B, C-2-C, C-3-A, C-3-B, C-3-C, and CR³ have been replaced with zones M-3, M-4, M-5, M-6, M-7, M-8, M-9, and M-10, respectively.⁴ See Draft, Subtitle G, Chapter 3 Mixed Use Zones – M-3, M-4, M-5, M-6, M-7, M-8, M-9, and M-10 attached herein as Exhibit A at pp. 1-2.

³ CR stands for “Commercial Residential.”

⁴ The nomenclature for downtown zones that permitted commercial uses has changed from “C-4” and “C-5” in the Existing Code to “D” in the Draft. See Draft, Subtitle I, Chapter 2 Downtown Zones and Zone Tables. Some of these zones also provide for as-of-right retail development. See Draft, Subtitle I, Chapter 4 Zone Based Use Requirements and Permissions, § 402.2 (c).

Significantly, however, the Draft does not impose any limitations on the new M zones that permit retail uses. Sites zoned M-3 through M-10 still allow for as-of-right commercial retail development. *See* Draft, Subtitle G, Chapter 14 Use Permissions attached herein as Exhibit B at pp. 2, 7, 14, and 20. A developer of this site does not require any approval from a District agency for the type of retail sought, regardless of the stores' square footage or impact on the neighborhood.

This "as-of-right" policy also applies to sites that permit commercial retail development in what was previously known as neighborhood commercial overlay districts in the Existing Code. These sites are now known as neighborhood mixed use zones in the Draft, and are denoted with an "N" (i.e., N-1, N-2).⁵ These sites are a hybrid of two zones: a commercial (now mixed-use) zone and an overlay zone. But the overlay zone in the Draft does not add any additional limitations on the types of retail that can be built. *See* Draft, Subtitle H, Chapter 11 Use Permissions for N Zones attached herein as Exhibit C at p. 1. Rather, a site in this zone has additional development standards a building must meet, such as height and floor area ratio requirements.⁶

C. Effect of District's Land-Use Policies on Big-Box Development

As reflected in its Draft and the Existing Code, the District has neither implemented nor proposed any meaningful policy regulating big-box development. Because the District does not regulate these stores, Wal-Mart, for example, has identified the District as its top jurisdiction to further its strategy of entering the country's urban markets, given that it has already saturated the country's suburban and exurban markets. Indeed, Wal-Mart's proposals to develop five stores in the District are unprecedented for an urban jurisdiction with a population of well less than a million residents.

⁵ Under the Draft, the numbers in "N-1" or "N-2" represent the neighborhood in which the zoning is assigned. For example, a site zoned "N-1" refers to the Macomb-Wisconsin Neighborhood Mixed Use Zone and a site zoned "N-2" refers to the Takoma Neighborhood Mixed Use Zone. By contrast, in the Existing Code, these zones were denoted by the initials of the neighborhood, such as "MW" for Macomb-Wisconsin or "TK" for Takoma.

⁶ Similar to establishing the neighborhood mixed use zones, the Draft establishes special purpose ("SP") zones. The purpose of these zones is "to provide for single large sites that require a cohesive, self-contained set of regulations to guide site design, building height and bulk, land uses, or other aspects of development." Draft, Subtitle K, Chapter 1 Introduction to Special Purpose Zones, § 100.1. Most of these zones also allow for as-of-right retail development. *See* Draft, Subtitle K.

D. Proposed Amendments

1. Special Exception for “Big-Box” Development in the District

The absence of regulations for big-box stores means that the District does not require the developers and owners of these stores to participate in a public process that would weigh the costs and benefits of these projects. In the District, this process takes the form of requiring an applicant to secure a special exception administratively through the Board of Zoning Adjustment (“BZA”). As explained below, the Draft should require that a developer secure a special exception to build big-box retail.

a. Define Big-Box Retail by Creating a New Use

The Draft does not include a definition for big-box retail. “Definitions are important because they form the ‘threshold’ for regulations.” Evans-Cowley, at 7. The new code should provide a definition for “big-box retail” that is distinct from the code’s definition of “retail.” Big-box retail should be defined as:

Any single-use, whether stand-alone or within a multi-building development, wherein said single-use building occupies at least 75,000 square feet of gross leasable area.

b. Require a Special Exception for Big-Box Retail

According to the BZA’s website, a special exception is “a conditioned permitted use in a particular zone district; that is, the use is permitted provided certain specific criteria are met.” <http://dcoz.dc.gov/services/bza/bza.shtm#special>. Jurisdictions require special exceptions for big-box stores because their effect on land relative to other uses is unique in terms of adversely affecting traffic, the environment, adjacent small businesses, and the character of a neighborhood. Among the jurisdictions of the Washington metropolitan region, Montgomery County, Prince George’s County, Fairfax County, and Prince William County require a proposal for a big-box store to satisfy special exception criteria in at least some of its zones or for certain retail uses before the proposal may proceed to the permitting stage. To the extent that a development is zoned on land that permits a particular use by special exception (some zones prohibit special exceptions), Montgomery County and Prince George’s County require a special exception for combination retail stores, while Fairfax County and Prince William County⁷ require a

⁷ Prince William County labels its special exception a “special use.”

special exception for large retail establishments. *See* Montgomery County Zoning Code attached herein as Exhibit D at pp. 5-6; Prince George's County Zoning Code attached herein as Exhibit E at p. 2; Fairfax County Zoning Code attached herein as Exhibit F and at <http://www.fairfaxcounty.gov/dpz/zoningordinance/articles/art04.pdf>; and Prince William County Zoning Code attached herein as Exhibit G at p. 3, No. 53. The District is the only jurisdiction in the region that does not require these stores to secure a special exception under at least some circumstances. That the District is the single outlier among these jurisdictions is notable since the adverse effect of big-box development on the surrounding community is arguably more acute in an urban environment compared to its suburban counterparts.

The process of securing a special exception would ensure that a proposal can only win approval if it satisfies a given set of criteria, thereby helping to prevent undesirable development. It would provide an opportunity for the public to weigh in on whether it supports or opposes a particular project. And it would empower public officials to exercise regulatory authority over this process. Thus, developers would be more accountable to the public for their projects and the public would gain the confidence that the proposals were fairly vetted before receiving approval or denial.

For these reasons, the District should adopt a process by which big-box stores must secure a special exception to be built in the District. This policy would apply to any zone in the Draft that permits big-box retail development as-of-right, including mixed use ("M") zones, neighborhood mixed use ("N") zones, downtown ("D") zones, and special purpose ("SP") zones. The Zoning Commission's comprehensive review of the District's Zoning Code presents the District with the best opportunity to enact this process.

The BZA currently makes decisions on whether to approve special exceptions for commercial establishments that are otherwise permitted in a given zone and the BZA maintains this authority in the Draft. The Draft sets forth that the BZA is "authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2), to grant special exceptions, as provided in this title, where, in the judgment of the [BZA], the special exceptions:

- (a) Will be in harmony with the general purpose and intent of the Zoning Regulations and Maps;
- (b) Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning maps; and

(c) Subject in specific cases to the special conditions specified in this title.

Draft, Subtitle Y, Chapter 8 Special Exceptions, § 801.2. Moreover, “[t]he applicant for a special exception shall have the full burden to prove no undue adverse impact and shall demonstrate such through evidence in the public record. If no evidence is presented in opposition to the case, the applicant shall not be relieved of this responsibility.” *Id.* at § 801.3.

Previously, the District has required a special exception in 108 different circumstances based on the desired use and zone. *See* DCMR § 11-3104. Such uses span from animal shelters and art galleries to repair garages and warehouses. Because the BZA handles special exceptions, it would be most practical to extend this authority to the review of special exceptions for proposed big-box stores. The District is in an advantageous position to incorporate this change by broadening BZA’s scope of authority to include approving special exceptions to big-box stores since the BZA already has significant experience overseeing this process. In turn, the BZA would need to make little, if any, adjustments to the exercise of its authority.

As noted above, the Draft requires that each commercial establishment subject to a special exception meet not only general criteria, such as harmony with the intent of the Zoning Regulations, but also criteria specific to the site of the proposal. For instance, to secure a special exception for a Community-based Institutional Facility, this facility must have “[u]ses for one to twenty (20) persons, not including resident supervisors or staff and their families.” Draft, Subtitle G, Chapter 14 Use Permissions, § 1412.2 (b); *see also* Exhibit B at pp. 3-4. Thus, this type of facility could not secure a special exception if more than twenty persons resided there (excluding staff and their families).

For the reasons discussed below, the type-specific conditions a proposed big-box store must meet in order to secure a special exception should include the following:

(1) Economic Impact

The BZA should be required to find that the proposed big-box development will not have an undue adverse economic impact on the community. A finding that the proposal will not result in an undue adverse economic impact on the community should be informed by reaching the following conclusions:

- 1.) Existing retail in the vicinity of the proposal’s location currently does not serve the market for a particular product or set of products;

2.) The effect on existing retail in this vicinity will be negligible; and

3.) The proposal will not adversely impact:

- a. the choice and cost of goods and services for consumers;
- b. the retention of revenue in the local economy;
- c. the opportunities for local suppliers;
- d. wages and benefits in the local economy;
- e. District revenues;
- f. public service and maintenance costs resulting from a development's construction and operation; and
- g. government services for the business and employees.

Whether the proposal will have an undue adverse economic impact should be based on the data provided by an economic and fiscal impact study and other evidence submitted to the BZA. The economic and fiscal impact study should be conducted by a qualified analyst selected by the District and paid for by a fee assessed to the developer.

Economic impact assessments are analogous to environmental impact assessments and would allow the District to more carefully review the proposal. Indeed, Professor Marlon Boarnet, Professor of Planning, Policy, and Design at the University of California, Irvine, explained the usefulness of economic impact analyses and wrote,

[L]and use controls initially prohibited undesirable activities altogether, but later came to permit them in some instances but not others, and later still to mitigate the negative impacts of otherwise desirable activities. If the regulation of superstores evolves in similar fashion, planners would need to first credibly document the scale, scope, and distribution of impacts. If community costs exceed benefits, the project could be rejected. Or, if benefits exceeded costs but their distribution was objectionable, the project could be rejected (and substantial benefits foregone) or approved with modifications to mitigate its costs. The last has the most appeal, as it captures the benefits while explicitly addressing objections.

BOARNET, at 444.

Naturally, the impacts of a big-box store could vary depending on the proposed location within the District. An economic impact analysis would allow the District to

evaluate the impacts of a big-box store on a case-by-case basis and would promote orderly economic development by reducing the possibility of dramatically harming the District's existing employment base.

(2) Compatibility with the Physical Environment of the Surrounding Community⁸

Big-Box stores are often out-of-scale with the various structures that constitute the physical environment of a community. It is therefore imperative that the BZA make the following findings of fact to ensure that a proposal is consistent in size and character with the surrounding community:

- 1.) Will be consistent with any recommendation in a master plan;
- 2.) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses;
- 3.) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone;
- 4.) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone; and
- 5.) Will not adversely affect the health, safety, security, morals, or general

⁸ The criteria proposed under this section are modeled after the specific criteria that a combination retail store in Montgomery County must satisfy to secure a special exception. See Exhibit D at pp. 1-2, 5-6. For purposes of comparison, criteria a big-box store must fulfill to secure a special exception in Prince George's County, Fairfax County, and Prince William County have been included in Exhibit E at pp. 1-2, Exhibit F at pp. 1-2, and Exhibit G at pp. 4-5, respectively.

welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(3) Traffic

Big-Box stores cause serious traffic problems due to the high concentration of automobiles relied upon by customers in order to frequent these stores. To mitigate this problem, the BZA must make the finding of fact that the site has direct vehicular access to an existing arterial or major highway and the streets and roads adjoining the site must be adequate to accommodate the increased traffic. The applicant must provide a traffic impact study to demonstrate that acceptable peak hour levels of service will result after taking into account existing and programmed roads, and any improvements to be provided by the applicant.

(4) Parking

Traffic problems are associated with big-box stores in part because these stores are permitted to accommodate nearly all of their customers' automobiles in their parking lots. If the number of parking spaces a big-box store can develop is not regulated, then a jurisdiction's transportation system will be unable to adequately handle the additional vehicle trips that increases in parking spaces generate. Accordingly, the parking lots of big-box stores must be regulated to avoid these problems.

A desirable approach to this problem is to impose a ceiling on the number of parking spaces a store may build based on the square footage of that store ("parking maximums"). An alternative approach would be to require an applicant for a special exception to demonstrate that the designated parking at the proposed big-box stores will not have adverse effects on traffic. A special exception would not be awarded to the applicant until the BZA makes a finding of fact that such parking will not have this effect. If the BZA finds that the applicant's parking proposal falls short, it may require that the applicant make changes to its parking scheme and condition the awarding of a special exception on a finding that these changes will mitigate against adverse traffic effects.

(5) Conditional Approval

Some big-box proposals may be unable to meet the type-specific criteria to secure a special exception unless certain conditions are incorporated into the proposal.

Therefore, the BZA may require that a proposal make certain changes as a condition of receiving a special exception, which the Draft has already authorized the BZA to do. *See* Draft, Subtitle Y, Chapter 8 Special Exceptions, § 801.4.

2. Large Tract Review

It is not clear from the Draft that it makes any changes to the Large Tract Review (“LTR”) process. Changes to this process are necessary given the way LTR works and in view of the proposal to require a special exception for big-box development.

Under current regulations, the only oversight that the District has concerning as-of-right development is through the LTR process for developments that exceed 50,000 square feet located in some, but not all, commercial zones (excludes zones C-3-C, C-4, and C-5).⁹ This process is conducted by OP, and the developer must submit an application pursuant to Section 10-B2301.3 of the DCMR. This application includes, but is not limited to, a site and development plan; general circulation plan; and statement concerning the extent to which the proposal furthers the District’s goals and planning objectives. *Id.* The purpose of the LTR process is to assess the application’s consistency with DC laws, including the Comprehensive Plan; potential traffic, neighborhood and design impact; and quality of life and environmental impact. DCMR § 10-B2302.1. OP also solicits feedback from “other city agencies, ANC, and impacted community.” <http://planning.dc.gov/DC/Planning/Across+the+City/Zoning/Citywide+Development+Review+and+Zoning+Reports/Large+Tract+Review>. Nevertheless, OP has stated on its website that “[t]his is not a process resulting in an approval or denial by OP or any other entity. Rather, it is an administrative review by multiple District agencies and the affected community to identify issues and provide feedback to the developer prior to applying for a building permit.” *Id.* (emphasis in original). Thus, LTR must be reformed so that it has a more meaningful impact on the direction of large-scale development in the District, and at the same time is incorporated into the proposed special exception process in order to avoid any conflict or duplication of processes over land-use decisions.

To this end, we propose that OP use LTR as a vehicle through which it would make a recommendation to the BZA regarding whether the BZA should approve or deny a special exception. This process would enable OP to exercise its expertise in evaluating

⁹ LTR also applies to large tract development located on a site of three or more acres, and to a subdivision on a site of three to ten acres in area, if warranted. DCMR § 10-B2300.1. For exemptions to this requirement, *see* DCMR § 10-B2304.1.

the merits of a proposal, which would cover all aspects of the developer's LTR application, while providing OP with greater influence over the direction of large scale development in the District. Moreover, the BZA would benefit from OP's institutional knowledge in deciding whether to approve or deny the special exception. This proposal would seamlessly integrate OP's role in conducting LTR with the new requirement of securing a special exception.

CONCLUSION

The District stands alone in the Washington metropolitan region in lacking land-use policies that regulate big-box development. The intrusion of big-box stores into the District without regulatory oversight conflicts with the District's reputation as a modern and forward-thinking city. This situation is exacerbated by the absence of any public process to evaluate the merits of these proposals. Requiring that proposed big-box stores secure a special exception before they may proceed is a modest, common sense solution that will align the District with mainstream policies found in its surrounding jurisdictions. Indeed, this proposal is especially appropriate since the District has required that other businesses with less adverse impacts secure special exceptions to operate. *See DCMR § 11-3104.* It will also empower the BZA with greater regulatory authority.

Of course, not all new development is undesirable, and often times, new development is warranted. This process will reward those proposals that are meritorious and discourage those that are not. The Zoning Commission's consideration of a comprehensive rewrite to the Zoning Code represents the best opportunity for the District to make this proposal a reality.

Thank you for your time and consideration in this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Michael Kroopnick". The signature is written in a cursive, flowing style.

Michael Kroopnick
G. Macy Nelson

cc: Clients



CHAPTER 3 MIXED USE ZONES – M-3, M-4, M-5, M-6, M-7, M-8, M-9, AND M-10

300 PURPOSE AND INTENT

300.1 The M-3 through M-10 zones are mixed use zones that are intended to be applied throughout the city consistent with the density designation of the Comprehensive Plan. A zone may be applied to more than one density designation

300.2 TO BE DELETED

300.3 The M-3 zone (C-1):

- (a) Is intended to permit low density mixed use development; and
- (b) Is designed to provide convenient retail and personal service establishments for the day-to-day needs of a local neighborhood, as well as residential and limited community facilities with a minimum impact upon surrounding residential development.

300.4 The M-4 zone (C-2-A):

- (a) Is intended to permit moderate density mixed use development;
- (b) Is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and
- (c) Shall be located in low and moderate density residential areas with access to main roadways or rapid transit stops, and shall include office employment centers, shopping centers, and moderate bulk mixed use centers.

300.5 The M-5 zone (C-2-B):

- (a) Is intended to permit medium density, compact mixed-use development with an emphasis on residential use;
- (b) Is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and
- (c) Shall be located on arterial streets, in uptown and regional centers, and at rapid transit stops.

300.6 The M-6 zone (C-2-C):

- (a) Is intended to permit medium to high density mixed-use development with a focus on residential use; and

- (b) Is designed to provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core.

300.7 The M-7 zone (C-3-A):

- (a) Is intended to permit medium density mixed-use development; and
- (b) Shall be located on arterial streets, in uptown and regional centers, and at rapid transit stops.

300.8 The M-8 zone (C-3-B):

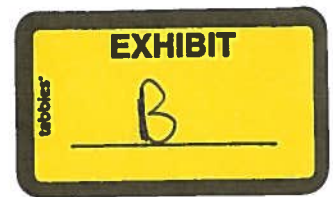
- (a) Is intended to permit medium density mixed-use development with a focus on employment;
- (b) Is intended for uptown locations, where a large component of development will be office-retail and other nonresidential uses; and
- (c) Shall be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops.

300.9 The M-9 zone (C-3-C):

- (a) Is intended to permit high density mixed-use development including office, retail, housing with a focus on employment;
- (b) Shall be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops.

300.10 The M-10 zone (CR):

- (a) Is intended to permit medium to high density mixed-use development with a balance of uses conducive to a higher quality of life and environment for residents, businesses, employees, and institutions;
- (b) Shall be applied to areas where a mixture of uses and building densities is intended to carry out elements of the Comprehensive Plan, small area plans or framework plans, including goals in employment, population, transportation, housing, public facilities, and environmental quality;
- (c) Requires a level of public space at the ground level; and
- (d) Allows residential and nonresidential bulk to be apportioned between two or more lots in the same square.



- (i) Utility uses, subject to the following conditions:
- (1) A basic utility use;
 - (2) A use as an optical transmission node (OTN) shall be permitted subject to the following:
 - i. Any new construction of a freestanding structure used primarily for the purpose of housing an OTN shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and
 - ii. There shall be no advertisement on the structure.
 - (3) Any construction necessary for the utility or OTN shall be subject to requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.
- (j) Miscellaneous uses, subject to the following conditions:
- (1) The board finds that the use is appropriate in furthering the objectives of the waterfront areas;
 - (2) The facility shall be designed to enhance the visual and recreational opportunities offered by the Waterfront;
 - (3) The use shall not adversely affect the present character or future development of the neighborhood; and
 - (4) No dangerous or otherwise objectionable traffic conditions shall result from the establishment of the use.

1410 TO BE DELETED

1411 BY RIGHT USES - ZONE GROUP D

1411.1 The following uses shall be permitted By Right (P) or By Right with Conditions (C):

Uses	M-3 (C-1)
Medical Care	P
Agriculture, Large	P
Agriculture, Residential	P
Arts Design and Creation	P
Chancery	P
Daytime Care for 5 or fewer + staff	C

Uses	M-3 (C-1)
Eating and Drinking Establishment	C
Education (Private)	P
Education (Public)	P
Emergency Shelter	C
Entertainment Assembly, and Perf Arts	C
Government, Local	P
Home Occupation	P
Institutional, General	P
Institutional, Religious	P
Lodging	P
Medical Care	P
Motor Vehicle Gas Sales	C/S
Office	P
Parking	P
Parks and Recreation	P
Residential	P
Retail	P
Service (Financial)	P
Service (General)	C/S
Transportation Infrastructure	P
Utilities	C/S
Other Accessory Uses	A

1411.2 The following conditions shall apply to the By Right with Conditions (C) uses in the above table:

- (a) Daytime Care Uses shall be permitted by right for no more than 5 persons not including resident supervisors or staff and their families.
- (b) Eating and Drinking Establishment uses shall be permitted by right, except for:
 - (1) A fast food establishment, a drive-through or drive-in operation and a food delivery business shall not be permitted;
 - (2) A Prepared food shop with no limitation on seats shall apply to a prepared food shop in Square 5912.
 - (3) A fast food establishment with no drive-through shall be permitted in Square 5912, Square 3499 (Lot 3), and Square 3664 (Lot 820) by right.

- (c) Emergency Shelter Use for no more than four (4) persons, not including resident supervisors or staff and their families shall be permitted by right..
- (d) Entertainment, Assembly, and Performing Arts uses shall be permitted by right except for a bowling alley.
- (e) Motor Vehicle Uses shall be permitted by right subject to the following conditions:
 - (1) A Gasoline service station with a valid certificate of occupancy that has not been replaced by another use with a valid certificate of occupancy;
 - (2) Gasoline service station as an accessory use to a parking garage or public storage garage; provided:
 - i. All portions of the gasoline service station shall be located entirely within the garage;
 - ii. No part of the accessory use shall be visible from a sidewalk; and
 - iii. Signs or displays indicating the existence of the accessory use shall not be visible from the outside of the garage.
- (f) Service (General) uses shall be permitted by right subject to the following conditions:
 - (1) The use does not involve installation of automobile accessories; and
 - (2) A laundry or dry cleaning facility shall not exceed twenty-five hundred square feet (2,500 sq. ft.) of gross floor area.
- (g) Utility uses limited to optical transmission nodes shall be permitted by right.

1412

SPECIAL EXCEPTION USES - ZONE GROUP D (C-1)

1412.1

The following uses shall be permitted if approved by the Board of Zoning Adjustment as a special exception under Y Chapter 8, subject to the provisions of this section.

Uses	M-3 (C-1)
Animal Care and Boarding	S
Community-based Inst. Facility	S
Daytime Care - 6 or more	S
Education (College/University)	S

Uses	M-3 (C-1)
Eating and Drinking Establishment	S
Motor Vehicle - Gas Sales	C/S
Parking	C
Retail	C/S
Service (General)	C/S
Utilities	C/S

1412.2

The following conditions shall apply to the Special Exception (S) uses in the above table:

- (a) Animal Care and Boarding Uses subject to the following conditions:
 - (1) The use is a veterinary office or hospital subject to the following conditions:
 - iv. A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808 (h) (1), except domesticated dogs;
 - v. No more than fifty percent (50%) of the gross floor area of the veterinary hospital may be devoted to the boarding of animals;
 - vi. The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - vii. The veterinary hospital shall not abut an existing residential use or a residential zone;
 - viii. External yards or other external facilities for the keeping of animals shall not be permitted;
 - ix. Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses; and
 - (2) The Board may impose additional requirements as it deems necessary to protect adjacent or nearby properties;
- (b) Community-based Institutional Facilities: Uses for one to twenty (20) persons, not including resident supervisors or staff and their families;
- (c) Daytime Care Uses: Uses for up to fifteen (15) persons not including resident supervisors or staff and their families.

- (d) Eating and Drinking Establishment uses that are a Prepared Food Shop with more than eighteen seats for patrons.
- (e) Education (College/University) Uses: Uses subject to the conditions of X Chapter 1.
- (f) Emergency Shelter Uses: Uses for up to fifteen (15) persons, not including resident supervisors or staff and their families subject to the following conditions:
 - (1) There shall be no other property containing an Emergency Shelter for seven (7) or more persons in the same square, or within a radius of five hundred feet (500 ft.) from any portion of the property.
 - (2) There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.
 - (3) The proposed shelter shall meet all applicable code and licensing requirements.
 - (4) The shelter shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.
 - (5) The Board may approve more than one (1) Emergency Shelter facility in a square or within five hundred feet (500 ft.) from the property only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.
- (g) Entertainment, Assembly, and Performing Arts Uses: A bowling alley subject to the following conditions:
 - (1) The use shall not be within twenty-five feet (25 ft.) of a residential zone unless separated by a street or alley.
 - (2) Soundproofing to the extent deemed necessary for the protection of adjoining and nearby property shall be required.
- (h) Motor Vehicle uses subject to the following conditions:
 - (1) The use is a gasoline service station to be established or enlarged, subject to the following conditions:
 - (2) The station shall not be located within twenty-five feet (25 ft.) of a residential zone unless separated from the residential zone by a street or alley.

- (3) The operation of the use shall not create dangerous or other objectionable traffic conditions.
- (4) Required parking spaces may be arranged so that all spaces are not accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space.
- (i) Parking Uses subject to the following conditions:
 - (1) The parking spaces are accessory spaces elsewhere than on the same lot or part of a lot on which the principal use is permitted,
 - (2) The parking spaces will be established within the square in which the principal use is located.
- (j) Retail uses otherwise permitted with conditions that do not comply with the conditions.
- (k) Service uses otherwise permitted with conditions that do not comply with the conditions.
- (l) Utilities uses subject to the requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.

1413 TO BE DELETED

1413.1 In addition to the permission and restrictions of this section, the Arts Uses and Use Group requirements of C Chapter 24, Preferred Arts Uses and Credits, shall apply to the M-29 and M-30 zones.

1414 BY RIGHT USES - ZONE GROUP E (C-2-A/B/C) ZONES

1414.1 The following uses shall be permitted By Right (P) or By Right with Conditions (C):

- (a) Uses permitted by right in any R, RF, A, or M-3 zone;
- (b) In the M-29 and M-30 zones, uses identified as Preferred Arts Uses in Subtitle C, Chapter 24 shall be permitted; and
- (c) Uses in the following table identified with a P or C:

Uses	M-4, M-18 M-25, M-26 M-27, M-28 M-29 (C-2-A)	M-5, M-6 M-19, M-20 M-30 (C-2-B/C)	M-33 and M-34
Animal Care and Boarding	C, S	C, S	C, S
Agriculture, Large	P	P	P
Agriculture, Residential	P	P	P
Arts Design and Creation	P	P	P
Chancery	P	P	P
Community-based Inst. Facility	S	S	S
Daytime Care	C, S	C, S	C, S
Eating and Drinking	C, S	C, S	-
Education (College/University)	-	P	C, S
Education (Private)	P	P	P
Education (Public)	P	P	P
Emergency Shelter	C, S	C, S	C, S
Entertainment Assembly, and Perf Arts	P	P	-
Firearms	C	C	-
Government, Local	P	P	P
Home Occupation	P	P	P
Institutional, General	P	P	P
Institutional, Religious	P	P	P
Lodging	P	P	-
Medical Care	P	P	P
Motor Vehicle	C, S	C, S	-
Office	P	P	P
Parks and Recreation	P	P	P
Residential	P	P	C, S
Retail	P	P	C, S
Service (Financial)	P	P	P
Service (General)	P	P	C, S
Transportation Infrastructure	P	P	C, S
Utilities	C, S	C, S	C, S
Other Accessory Uses	A	A	A

(d) A drive-through accessory to any permitted use shall not be permitted.

1414.2

The following conditions shall apply to the By Right with Conditions (C) uses in the above table

(a) Eating and Drinking Establishment uses shall be permitted in other than the M-33 and M-34 zones subject to the following conditions:

- (1) In the M-4, M-25 and M-27 zone a fast food establishment, a drive-through, drive-in operation or food delivery business shall not be permitted.
- (2) In other than the M-4 zones a fast food establishment or food delivery business shall be subject to the following conditions:
 1. No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a residential zone, unless separated therefrom by a street or alley;
 2. If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line;
 3. Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residential zone; and
 4. The use shall not include a drive-through.
 5. Subparagraphs (1) and (2) shall not apply to a fast food establishment located in Square 5912.
- (b) Daytime Care Uses for up to twenty (20) persons not including resident supervisors or staff and their families.
- (c) Emergency Shelter Use for no more than four (4) persons, not including resident supervisors or staff and their families shall be permitted by right.
- (d) Firearms retail sales establishments subject to the following conditions:
 - (1) No portion of the establishment shall be located within three hundred feet (300 ft.) of:
 - (2) A residential zone or the M-1 or M-2 zone; or
 - (3) A church or other place of worship, public or private school, public library, or playground.
- (e) Motor Vehicle Uses, in other than the M-4, M-25, M-27, M-33 and M-34 zones, shall be limited to following and subject to the corresponding conditions:

- (1) A Gasoline service station with a valid certificate of occupancy that has not been replaced by another use with a valid certificate of occupancy
 - (2) Gasoline service station as an accessory use to a parking garage or public storage garage; provided:
 - i. All portions of the gasoline service station shall be located entirely within the garage;
 - ii. No part of the accessory use shall be visible from a sidewalk; and
 - iii. Signs or displays indicating the existence of the accessory use shall not be visible from the outside of the garage.
- (f) Retail uses shall be permitted subject to the following conditions:
- (1) In the M-4, M-25, M-27, M-33 and M-34 zones, uses involving the installation of automobile accessories shall not be permitted;
 - (2) In the M-33 and M-34 zones, uses involving the sale of boats, marine items, cars, motorcycles or other motor vehicles, or off-premise alcoholic beverages shall not be permitted; and
 - (3) The off-premises beer and wine sales accessory use in the grocery store located in Square 2572, Lot 36 may continue provided that it shall not occupy more than 2,078 square feet of the store's gross floor area.
- (g) Service (General) uses shall be permitted by right subject to the following conditions:
- (1) A laundry or dry cleaning facility shall not exceed twenty-five hundred square feet (2,500 sq. ft.) of gross floor area; and
 - (2) In the M-33 and M-34 zones, a funeral parlor, mortuary or similar establishment, a parcel delivery service, or any on-site dry cleaning establishments shall not be permitted.
- (h) Utility uses limited to optical transmission nodes shall be permitted by right.
- (i) Notwithstanding G § 1414.1, the Zoning Commission may approve a planned unit development that permits a hotel use integrating the First Church Christ Scientist building on a new lot created by combining Lots 872, 875, and 127 of Square 2560, and within such hotel, but only within the First Church Christ Scientist building, permit a restaurant and bar use;

provided that the Zoning Commission may also permit food and alcohol to be served in the enclosed pool, the meeting rooms, the guestrooms, and the rooftop area located in the proposed addition to the First Church Christ Scientist building/or so long as such addition and the First Church Christ Scientist building are being operated together as a hotel.

1415 SPECIAL EXCEPTION USES – ZONE GROUP E

1415.1 The following uses shall be permitted in Zone Group E if approved by the Board of Zoning Adjustment as a special exception under Y Chapter 8, subject to the provisions of this section.

Uses	M-4, M-18 M-25, M-26 M-27, M-28 M-29 (C-2-A)	M-5, M-6 M-19, M-20 M-30 (C-2-B/C)	M-33 and M-34
Animal Care and Boarding	S	S	S
Daytime Care	S	S	S
Eating and Drinking	S	S	-
Education (College/University)	S	-	S
Emergency Shelter	S	S	S
Entertainment Assembly, and Perf Arts	S	S	-
Firearms	S	S	-
Motor Vehicle	S	S	-
Parking	S	S	S
Utilities	S	S	S

1415.2 The following conditions shall apply to the Special Exception (S) uses in the above table:

- (a) Any use that does not comply with the conditions of G §1414 may apply for permission by special exception.
- (b) Animal Care and Boarding Uses, subject to the following conditions:
 - (1) The use shall not abut an existing residential use or a residential zone;
 - (2) The use shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste; and shall utilize industry standard sound-absorbing materials, such as acoustical floor and ceiling panels, acoustical concrete and masonry, and acoustical landscaping;
 - (3) External yards or other external facilities for the keeping of animals shall not be permitted except that an Animal Shelter may have external yards or other external facilities for the keeping of

animals which shall be entirely located a minimum of two hundred (200) feet from an existing residential use or residential zone; and

- (4) All animal waste shall be placed in closed waste disposal containers and shall utilize a qualified waste disposal company to collect and dispose of all animal waste at least weekly. Odors shall be controlled by means of an air filtration system (for example, High Efficiency Particulate Air "HEPA" filtration) or an equivalently effective odor control system.
- (c) Community-based Institutional Facilities for up to twenty (20) persons, not including resident supervisors or staff and their families;
- (d) Daytime Care Uses for more than six (6) persons not including resident supervisors or staff and their families.
- (e) Eating and Drinking Establishments only in the M-5, M-6, M-19 and M-30 zones, that are either Fast food Establishments or Food Delivery Businesses subject to the following conditions:
 - (1) No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a residential zone unless separated therefrom by a street or alley.
 - (2) If any lot line of the lot abuts an alley containing a zone district boundary line for a residential zone, a continuous brick wall at least six feet (6 ft.) high and twelve inches (12 in.) thick shall be constructed and maintained on the lot along the length of that lot line. The brick wall shall not be required in the case of a building that extends for the full width of its lot.
 - (3) Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residential zone.
 - (4) The use shall not include a drive-through.
 - (5) There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a residential zone.
 - (6) The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions
- (f) Emergency shelter: for five (5) to twenty-five (25) persons, not including resident supervisors or staff and their families

- (g) Education (College/University) uses in the M-4 and M-33 zones subject to the conditions of X Chapter 1;
- (h) Motor Vehicle uses:
 - (1) A gasoline service station to be established or enlarged, subject to the following conditions:
 - i. The station shall not be located within twenty-five feet (25 ft.) of a residential zone unless separated from the residential zone by a street or alley.
 - ii. The operation of the use shall not create dangerous or other objectionable traffic conditions.
 - iii. Required parking spaces may be arranged so that all spaces are not accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to permit the parking and removal of any vehicles without moving any other vehicle onto public space.
 - (2) Motorcycle sales and repair uses wholly located within a building no portion of a which shall be located within fifty feet (50 ft.) of a residential zone or the M-1, M-2, M-16, M-17, or M-24 zones.
- (i) Parking Uses: Accessory parking spaces elsewhere than on the same lot or part of a lot on which the principal use is permitted
- (j) In the M-33 and M-34 zones, a parking lot or garage shall be permitted by special exception subject to the following:
 - (1) The parking lot or garage shall not be within twenty-five feet (25 ft.) of a residential zones, unless separated by a street or alley
 - (2) The parking lot or garage shall meet the conditions for accessory parking specified in C §§ 1912 through 1915.;
 - (3) The parking lot or garage and any associated noise, shall not adversely affect adjacent and nearby property or be detrimental to the health, safety, convenience, or general welfare of persons living, working, or visiting in the area; and
 - (4) The Board may require that all or a portion of the parking spaces be reserved for the following:
 - i. Residential parking;

- ii. Unrestricted commercial parking;
- iii. Accessory parking for uses within eight hundred feet (800 ft.); and
- iv. Shared parking for different uses by time of day.

(k) Service uses:

- (1) A laundry or dry cleaning facility shall not exceed twenty-five hundred square feet (2,500 sq. ft.) of gross floor area.
- (2) Massage Establishment provided the use shall not be objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions.
- (l) Utilities, not otherwise permitted by right, subject to the requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.

1416 TO BE DELETED

1416.1 In addition to the permission and restrictions of this section, the Arts Uses and Use Group requirements of Subtitle C, Chapter 24, Preferred Arts Uses and Credits, shall apply to the M-31 zone.

1417 BY RIGHT USES- ZONE GROUP F (C-3)

1417.1 The following uses shall be permitted By Right (P) or By Right with Conditions (C):

- (a) Uses permitted by right in any R, RF, A, or Use Groups C-1/C-2;
- (b) In the M-31 zone uses identified as Preferred Arts Uses in Subtitle C, Chapter 24 shall be permitted, and
- (c) Uses in the following table identified with a P or C:

Uses	M-7, M-8, M-9 M-21, M-22 M-31, M-35 (C-3)
Animal Care and Boarding	C, S
Agriculture, Large	P
Agriculture, Residential	P
Arts Design and Creation	P
Chancery	P
Daytime Care	P
Eating and Drinking	C, S

Uses	M-7, M-8, M-9 M-21, M-22 M-31, M-35 (C-3)
Education (College/University)	P
Education (Private)	P
Education (Public)	P
Emergency Shelter	P
Entertainment Assembly, and Perf Arts	P
Firearms	C
Government, Local	P
Home Occupation	P
Institutional, General	P
Institutional, Religious	P
Lodging	P
Medical Care	P
Motor Vehicle	C, S
Office	P
Parking	S
Parks and Recreation	P
Residential	P
Retail	P
Service (Financial)	P
Service (General)	C, S
Transportation Infrastructure	P
Utilities	C, S
Other Accessory Uses	A

1417.2 The following conditions shall be applicable to the uses or use categories as indicated by a "C" in the above table.

- (a) Eating and Drinking Establishment uses: All uses shall be permitted by right, except the following specific uses shall be subject to the corresponding conditions:
 - (1) In the M-7 (C-3-A) M-31(C-3-A /ARTS), M-35 (C-3-A/FT) zones no part of a lot on which fast food establishment or food delivery business is located shall be within twenty-five feet (25 ft.) of a residential zone, unless separated therefrom by a street or alley;
 - (2) A drive-through accessory to a fast food establishment shall be permitted, subject to the provisions for drive-through in Subtitle C.

- (b) Firearms retail sales establishments subject to the following conditions:
- (1) No portion of the establishment shall be located within three hundred feet (300 ft.) of:
 - (2) A residential zone or the M-1, M-2, M-16, M-17 or M-24 zone; or
 - (3) A church or other place of worship, public or private school, public library, or playground.
- (c) Motor Vehicle Uses: All uses shall be permitted by right, except the following specific uses shall be subject to the corresponding conditions:
- (1) A Gasoline service station with a valid certificate of occupancy that has not been replaced by another use with a valid certificate of occupancy;
 - (2) A Gasoline service station as an accessory use to a parking garage or public storage garage; provided:
 1. All portions of the gasoline service station shall be located entirely within the garage;
 2. No part of the accessory use shall be visible from a sidewalk; and
 3. Signs or displays indicating the existence of the accessory use shall not be visible from the outside of the garage.
 - (3) Motorcycle sales and repair uses wholly located within a building no portion of which shall be located within fifty feet (50 ft.) of a residential zone or the M-1, M-2, M-16, M-17, or M-24 zones.
- (d) Parking Uses: All parking uses shall be permitted by right, except Accessory parking spaces elsewhere than on the same lot or part of a lot on which the principal use is permitted.
- (e) Retail Uses: All uses except the installation of automobile accessories shall not be permitted in the M-4, M-25 and M-27 zones.
- (f) Service (General) uses: All uses shall be permitted by right, except the following specific uses shall be subject to the corresponding conditions:
- (1) A laundry or dry cleaning facility shall not exceed five thousand square feet (5,000 sq. ft.) of gross floor area;
 - (2) Any establishment that has as a principal use the administration of massages, only in M-9 (C-3-C), M-22 (C-3-C/DC) zones;

provided, that no portion of the establishment shall be located within two hundred feet (200 ft.) of a residential zone.

(g) Utility Uses: All uses shall be permitted by right, except the following specific uses shall be subject to the corresponding conditions:

(1) An Electronic Equipment Facility (EEF) use may also locate without restriction below the ground floor but shall occupy no more than twenty-five percent (25%) of the above ground constructed gross floor area of the building.

1418 SPECIAL EXCEPTION USES – ZONE GROUP F (C-3)

1418.1 The following uses shall be permitted in the Zone Group F if approved by the Board of Zoning Adjustment as a special exception under Y Chapter 8 and subject to the provisions of this section.

Uses	M-7, M-8, M-9 M-21, M-22 M-31, M-35 (C-3)
Animal Care and Boarding	S
Daytime Care	S
Eating and Drinking	S
Firearms	S
Motor Vehicle	S
Parking	S
Service	S
Sexually Oriented Business	S
Utilities	S

1418.2 The following conditions shall apply to the Special Exception (S) uses in the above table:

- (a) Community-based Institutional Facilities: Uses for up to twenty (20) persons, not including resident supervisors or staff and their families;
- (b) Daytime Care Uses for more than six (6) persons not including resident supervisors or staff and their families.
- (c) Eating and Drinking Establishments in the M-7 (C-3-A) M-31(C-3-A /ARTS), M-35 (C-3-A/FT) zones:
 - (1) Fast Food Establishments or Food Delivery Businesses subject to the following conditions:

- i. No part of the lot on which the use is located shall be within twenty-five feet (25 ft.) of a residential zone unless separated therefrom by a street or alley;
 - ii. Any refuse dumpsters shall be housed in a three (3) sided brick enclosure equal in height to the dumpster or six feet (6 ft.) high, whichever is greater. The entrance to the enclosure shall include an opaque gate. The entrance shall not face a residential zone;
 - iii. The use shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions;
 - iv. The use shall be located and designed so as to create no dangerous or other objectionable traffic conditions;
 - v. There shall be adequate facilities to allow deliveries to be made and trash to be collected without obstructing public rights-of-way or unreasonably obstructing parking spaces, aisles, or driveways on the site; and
 - vi. There shall be no customer entrance in the side or rear of a building that faces a street or alley containing a zone district boundary line for a residential zone.
- (d) Motor Vehicle Uses: The following uses shall be permitted by special exception subject to the corresponding conditions:
- (1) Uses otherwise permitted by right with conditions that do not comply with the conditions.
 - (2) A gasoline service station or vehicle repair garage, to be established or enlarged, subject to the following conditions:
 - i. The station shall not be located within twenty-five feet (25 ft.) of a residential zone unless separated from the residential zone by a street or alley.
 - ii. The operation of the use shall not create dangerous or other objectionable traffic conditions.
 - iii. Required parking spaces may be arranged so that all spaces are not accessible at all times. All parking spaces provided under this subsection shall be designed and operated so that sufficient access and maneuvering space is available to

permit the parking and removal of any vehicles without moving any other vehicle onto public space.

- (3) Motorcycle sales and repair uses wholly located within a building no portion of which shall be located within fifty feet (50 ft.) of a residential zone or the M-7, M-8, M-21, or M-22 zones.
- (e) Parking Uses: Accessory parking spaces elsewhere than on the same lot or part of a lot on which the principal use is permitted,
- (f) Service uses:
 - (1) Use otherwise permitted with conditions that do not comply with the conditions.
 - (2) Any establishment that has as a principal use the administration of massages may locate within two hundred feet (200 ft.) of any residential zone, if the establishment shall be compatible with other uses in the area, shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions.
- (g) Sexually-oriented Business Establishment (SOBE): A SOBE use subject to the corresponding conditions:
 - (1) No portion of the establishment shall be located within six hundred feet (600 ft.) of a residential zone or M-1, M-2, M-16, M-17 or M-24 zones.
 - (2) No portion of the establishment shall be located within six hundred feet (600 ft.) of a church, school, library, playground, or the area under the jurisdiction of the Commission of Fine Arts pursuant to the Shipstead-Luce Act, approved May 16, 1930 (46 Stat. 366, as amended; D.C. Official Code § 6-611.01 (formerly codified at D.C. Code § 5-410 (1994 Repl.))).
 - (3) No portion of the establishment shall be located within three hundred feet (300 ft.) of any other sexually-oriented business establishment.
 - (4) There shall be no display of goods or services visible from the exterior of the premises.
 - (5) The establishment shall be compatible with other uses in the area.
 - (6) The use shall not become objectionable because of its effect on the character of the neighborhood or because of noise, traffic, or other conditions.

- (7) The establishment shall not have an adverse impact on religious, educational, or governmental facilities located in the area.

(h) Utilities Uses:

- (1) An EEF shall not occupy more than fifty percent (50%) of the constructed gross floor area of the building,
- (2) An applicant seeking a special exception for an EEF shall demonstrate, in addition to the requirements of Subtitle Y, Chapter 8, that the proposed use will not, as a consequence of its design, operation, low employee presence, or proximity to other EEFs, inhibit future revitalization of the neighborhood, reduce the potential for vibrant streetscapes, deplete street life, or inhibit pedestrian or vehicular movement.
- (3) In evaluating whether an EEF will have any of the adverse impacts described above, the Board shall consider, in addition to other relevant factors, the:
 - i. Absence of retail uses or a design capable of accommodating retail uses in the future;
 - ii. Presence of security or other elements in the design that could impair street life and pedestrian flow;
 - iii. Disruption of existing or elimination of officially proposed pedestrian or vehicular routes; and
 - iv. Inability of the EEF to be adapted in the future for permitted uses.
 - v. The Board, in weighing the potentially adverse factors listed above, shall consider the economic development potential of the area in which the EEF is proposed to be established and shall give greater negative weight to these factors if the EEF is to be located in proximity to an existing or proposed Metrorail station or along a pedestrian corridor.
 - vi. The Board may give positive weight to any economic benefits that the proposed EEF will have on adjacent properties, including the potential for increased business activity within the neighborhood, if that activity will foster economic development.
 - vii. The Board may impose requirements pertaining to design, appearance, landscaping, parking, and other such

requirements as it deems necessary to protect adjacent property and to achieve an active, safe, and vibrant street life.

- (i) Uses not otherwise permitted by right, subject to the requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.

1419 TO BE DELETED

1420 BY RIGHT USES – ZONE GROUP G (CR)

1420.1 The following uses shall be permitted By Right (P) or By Right with Conditions (C):

- (a) In the M-32 zone uses identified as Preferred Arts Uses in Subtitle C, Chapter 24 shall be permitted, and
- (b) Uses in the following table identified with a P or C:

Uses	M-10, M-23 M-32, M-36 (CR)
Agriculture, Large	P
Agriculture, Residential	P
Arts, Design and Creation	P
Chancery	P
Daytime Care	P
Eating and Drinking Establishments	C
Education (Private)	P
Education (Public)	P
Emergency Shelter	C, S
Home Occupation	P
Institutional, General	P
Institutional, Religious	P
Lodging	P
Office	P
Parks and Recreation	P
Residential	P
Retail	P
Service (Financial)	P
Service (General)	C
Transportation Infrastructure	P
Utilities	C, S
Other Accessory Uses	A

1420.2 The following conditions shall apply to the By Right with Conditions (C) uses in the above table

- (a) Eating and Drinking Establishment Uses: All uses shall be permitted by right except a drive-through shall not be permitted.
- (b) Emergency Shelter Use for no more than four (4) persons, not including resident supervisors or staff and their families, shall be permitted by right.
- (c) Service (General) Uses: All uses shall be permitted by right, except a sexually-oriented business establishment or any establishment that has as a principal use the administration of massages shall not be permitted.
- (d) Utility uses: Only an Electronic Equipment Facility (EEF) use under either or both of the following circumstances:
 - (1) The EEF use occupies no more than twenty-five percent (25%) of the above ground constructed gross floor area of the building, provided that no EEF use is located on the ground floor; or
 - (2) The EEF use is located below ground floor.

1420.3 In the M-32 (CR/ARTS) zone, the uses, permissions and conditions of the Arts Use Group and the requirements of Subtitle C, Chapter 24, Preferred Arts Uses and Credits shall apply in addition to the use permission and restrictions of this chapter.

1421 SPECIAL EXCEPTION USES – ZONE GROUP G (CR)

1421.1 The following uses shall be permitted in Zone Group G if approved by the Board of Zoning Adjustment as a special exception under Y Chapter 8, subject to the provisions of this section.

Uses	M-10, M-23 M-32, M-36 (CR)
Animal Care and Boarding	S
Community-based Inst. Facility	S
Education (College/University	S
Emergency Shelter	C S
Entertainment Assembly, and Perf Arts	S
Medical Care	S
Motor Vehicle	S
PDR	S
Utilities	C S
Miscellaneous	S

The following conditions shall apply to the Special Exception (S) uses in the above table:

- (a) Animal Care and Boarding use considered a veterinary office or hospital subject to the following conditions:
 - (1) A veterinary hospital may board any animal permitted to be lawfully sold in the District of Columbia, pursuant to D.C. Official Code § 8-1808 (h)(1), except domesticated dogs;
 - (2) No more than fifty percent (50%) of the gross floor area of the veterinary boarding hospital may be devoted to the boarding of animals;
 - (3) The veterinary hospital shall be located and designed to create no objectionable conditions to adjacent properties resulting from animal noise, odor, or waste;
 - (4) The veterinary hospital shall not abut an existing residential use or a residential zone;
 - (5) External yards or other external facilities for the keeping of animals shall not be permitted; and
 - (6) Pet grooming, the sale of pet supplies, and incidental boarding of animals as necessary for convalescence, are permitted as accessory uses.
- (b) Community-based institutional Facilities for one (1) to twenty (20) persons, not including resident supervisors or staff and their families subject to the following conditions:
 - (1) There shall be no other property containing a community-based residential facility for seven (7) or more persons in the same square;
 - (2) There shall be no other property containing a community-based residential facility for seven (7) or more persons within a radius of five hundred feet (500 ft.) from any portion of the subject property;
 - (3) There shall be adequate, appropriately located, and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility;
 - (4) The proposed facility shall meet all applicable code and licensing requirements;

- (5) The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area; and
 - (6) The Board may approve more than one (1) community-based residential facility in a square or within five hundred feet (500 ft.) only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.
- (c) Education (College/University) uses subject to the conditions of X Chapter 1.
- (d) Emergency shelters for five (5) to twenty-five (25) persons, not including resident supervisors or staff and their families subject to the conditions of CBIF above.
- (e) Entertainment, Assembly, and Performing Arts Uses: A bowling alley subject to the following conditions:
- (1) The use shall not be within twenty-five feet (25 ft.) of a residential zone unless separated by a street or alley.
 - (2) Soundproofing to the extent deemed necessary for the protection of adjoining and nearby property shall be required.
- (f) Medical Care Uses subject to the following conditions:
- (1) The facility shall be designed to enhance the visual and recreational opportunities offered by the waterfront.
 - (2) The facility shall be located so that it is not likely to become objectionable to surrounding and nearby property because of noise, traffic, or parking.
 - (3) There shall be a demonstrated need for the facility.
 - (4) The applicant shall submit to the Board a detailed plan for the hospital or clinic and accessory facilities which shall include:
 - i. Location, height, and bulk of all improvements, but not limited to buildings, parking, and loading facilities;
 - ii. Screening, signs, and public utility facilities; and
 - iii. A description of the activities to be carried on at the hospital or clinic, including the capacities of the various facilities within the hospital or clinic.

- (g) Motor Vehicle Uses considered automobile or motorcycle sales or repair, subject to the following conditions:
- (1) Use for vehicle sales or repair shall be located so that it is not objectionable to other uses on the same or neighboring property because of noise, fumes, or other conditions.
 - (2) Use for vehicle sales or repair shall not result in dangerous or otherwise.
 - (3) The use for vehicle sales or repair, and all its accessory facilities, including automobile storage, shall be located within a building.
 - (4) No portion of a building use for vehicle sales or repair shall be used within fifty feet (50 ft.) of a residential zone or M-1, M-2, M-16, M-17 or M-24 zones.
- (h) A Metropolitan Police Department vehicle maintenance facility or equestrian unit under provided the vehicle maintenance facility or equestrian unit shall be located so that it is not likely to become objectionable to adjoining or nearby property because of noise or fumes.
- (i) Utility uses, subject to the following conditions:
- (1) A basic utility use;
 - (2) A use as an optical transmission node (OTN) shall be permitted subject to the following:
 - i. Any new construction of a freestanding structure used primarily for the purpose of housing an OTN shall be built to appear compatible with surrounding construction, including exterior building material, fenestration, and landscaping; and
 - ii. There shall be no advertisement on the structure.
 - (3) Any construction necessary for the utility or OTN shall be subject to requirements for setbacks, screening, or other requirements, as the Board deems necessary for the protection of neighboring or adjacent property.
- (j) Production Distribution and Repair (PDR) Uses: the following uses shall be permitted as a special exception if the Board considers that this use is appropriate in furthering the objectives of the M-10 (CR), M-23 (CR/DC), M-32 (CR/ARTS), and M-36 (CR/FT) zones, subject to the conditions of (5):

- (1) Use for experimental research or testing laboratory
 - (2) Use for building service trade
 - (3) Warehouse or wholesaler use
 - (4) Use for light manufacturing, processing, fabricating, or milling.
 - (5) The use shall:
 - i. Not result in dangerous or otherwise objectionable traffic conditions.
 - ii. Have no adverse effects on other uses on the same or adjoining properties.
 - iii. Have no outdoor storage of materials, and
 - iv. There shall be adequate off-street parking for trucks and other service vehicles.
 - (6) Any other PDR use shall not be permitted.
- (k) Miscellaneous Uses: Other uses, except PDR uses, shall be permitted as a special exception, if the Board
- (1) Determines that this use is appropriate in furthering the objectives of the zone, subject to the provisions of this section;
 - (2) Uses authorized under this section shall not adversely affect the present character and future development of the neighborhood; and
 - (3) No dangerous or otherwise objectionable traffic conditions shall result from the establishment of any miscellaneous use.

1102 USES IN N ZONES

- 1102.1 Uses in those parts of a building or lot in an N zone that are not within a designated use area shall be permitted by H §§ 1103 and the remainder of this chapter.
- 1102.2 When there is a difference between use permissions and condition of this section and the designated use provisions, the more restrictive provisions or conditions shall apply.
- 1102.3 The following uses shall be permitted for each Zone Group by the permission indicated and subject to any conditions for each Zone Group.

Uses	ZONE GROUP A N-1	ZONE GROUP B N-2, N-3, N-4, N-7 N-9, N-10, N-11 N-14, N-16, N-17	ZONE GROUP C N-5 N-6, N-8, N-12 N-13, N-15
N Zone Designated uses	P	P	P
Agriculture, Large	P	P	P
Agriculture, Residential	P	P	P
Animal Care and Boarding	C, S	C, S	C, S
Art Design and Creation	P	P	P
Chancery	P	P	P
Community-based Inst. Facility	S	S	P
Daytime Care	C	C	P
Eating and Drinking Estab.	C, S	C, S	C, S
Educ. Coll. and Universities	S	C, S	P
Education, Private	P	P	P
Education, Public	P	P	P
Emergency Shelter	C, S	C, S	P
Entertainment & Performing Arts	C	P	P
Firearm Sales	-	C	C
Government, Local	P	P	P
Health Care	P	P	P
Institutional, General	P	P	P
Institutional, religious	P	P	P
Lodging	P	P	C
Motor vehicle-related	S	C, S	C, S
Office	P	P	P
Parking	P	P	P
Parks and Recreation	P	P	P
Residential	P	P	P
Retail	P	P	P
Services, Financial	P	P	P
Services, General	C	P	P
Transportation Infrastructure	P	P	P
Utilities	C	C	C, S

59-G-1.2.1. Standard for evaluation.

A special exception must not be granted without the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with inherent adverse effects, are a sufficient basis to deny a special exception.

59-G-1.21. General conditions.

(a) A special exception may be granted when the Board or the Hearing Examiner finds from a preponderance of the evidence of record that the proposed use:

- (1) Is a permissible special exception in the zone.
- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.
- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the Commission. Any decision to grant or deny a special exception must be consistent with any recommendation in a master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.
- (4) Will be in harmony with the general character of the neighborhood, considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.
- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.
- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master plan do not alter the nature of an area.

(8) Will not adversely affect the health, safety, security, morals, or general welfare of residents, visitors, or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

(9) Will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities.

(A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of granting the special exception.

(B) If the special exception:

(i) does not require approval of a new preliminary plan of subdivision; and

(ii) the determination of adequate public facilities for the site is not currently valid for an impact that is the same as or greater than the special exception's impact;

then the Board of Appeals or the Hearing Examiner must determine the adequacy of public facilities when it considers the special exception application. The Board of Appeals or the Hearing Examiner must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

(C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

(b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

(c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

59-G-1.22. Additional requirements.

(a) The Board, the Hearing Examiner, or the District Council, as the case may be, may supplement the specific requirements of this Article with any other requirements necessary to protect nearby properties and the general neighborhood.

(b) Using guidance by the Planning Board, the Board, the Hearing Examiner, or the District Council, as the case may be, may require a special exception to comply with Division 59-D-3 if:

(1) The property is in a zone requiring site plan approval, or

(2) The property is not in a zone requiring site plan approval, but the Planning Board has indicated that site plan review is necessary to regulate the impact of the special exception on surrounding uses because of disparity in bulk or scale, the nature of the use, or other significant factors.

59-G-1.23. General development standards.

(a) **Development Standards.** Special exceptions are subject to the development standards of the applicable zone where the special exception is located, except when the standard is specified in Section G-1.23 or in Section G-2.

(b) **Parking requirements.** Special exceptions are subject to all relevant requirements of Article 59-E.

(c) **Minimum frontage.** In the following special exceptions the Board may waive the requirement for a minimum frontage at the street line if the Board finds that the facilities for ingress and egress of vehicular traffic are adequate to meet the requirements of section 59-G-1.21:

(1) Rifle, pistol and skeet-shooting range, outdoor.

(2) Sand, gravel or clay pits, rock or stone quarries.

(3) Sawmill.

(4) Cemetery, animal.

(5) Public utility buildings and public utility structures, including radio and T.V. broadcasting stations and telecommunication facilities.

(6) Equestrian facility.

(7) Heliport and helistop.

(d) **Forest conservation.** If a special exception is subject to Chapter 22A, the Board must consider the preliminary forest conservation plan required by that Chapter when approving the

special exception application and must not approve a special exception that conflicts with the preliminary forest conservation plan.

(e) **Water quality plan.** If a special exception, approved by the Board, is inconsistent with an approved preliminary water quality plan, the applicant, before engaging in any land disturbance activities, must submit and secure approval of a revised water quality plan that the Planning Board and department find is consistent with the approved special exception. Any revised water quality plan must be filed as part of an application for the next development authorization review to be considered by the Planning Board, unless the Planning Department and the department find that the required revisions can be evaluated as part of the final water quality plan review.

(f) **Signs.** The display of a sign must comply with Article 59-F.

(g) **Building compatibility in residential zones.** Any structure that is constructed, reconstructed or altered under a special exception in a residential zone must be well related to the surrounding area in its siting, landscaping, scale, bulk, height, materials, and textures, and must have a residential appearance where appropriate. Large building elevations must be divided into distinct planes by wall offsets or architectural articulation to achieve compatible scale and massing.

(h) **Lighting in residential zones.** All outdoor lighting must be located, shielded, landscaped, or otherwise buffered so that no direct light intrudes into an adjacent residential property. The following lighting standards must be met unless the Board requires different standards for a recreational facility or to improve public safety:

(1) Luminaires must incorporate a glare and spill light control device to minimize glare and light trespass.

(2) Lighting levels along the side and rear lot lines must not exceed 0.1 foot candles.

59-G-1.24. Neighborhood need.

In addition to the findings and requirements of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:

- (1) Automobile filling station.
- (2) Automobile and light trailer rental lot, outdoor.
- (3) Automobile, truck and trailer rental lot, outdoor.
- (4) Automobile sales and service center.

- (5) Swimming pool, community.
- (6) Swimming pool, commercial.

59-G-1.25. County need.

In addition to the findings of Article 59-G, the following special exceptions may only be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:

- (1) Eating and drinking establishments—Drive-in restaurant.
- (2) Funeral parlors and undertaking establishment.
- (3) Hotel, motel or inn.
- (4) Rifle, pistol and skeet shooting range, outdoor.
- (5) Sanitary fill, incinerator, or private solid waste transfer station.
- (6) Public use heliport/helistop.
- (7) Conference center with lodging.

59-G-2.15. Combination Retail Store.

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

- (a) The building must be designed in a way that reduces the buildings massive scale and contributes to its visual interest. Long building walls should be broken-up with projections or recessions or other effective treatments that improve building design.
- (b) Parking areas must provide safe, convenient, and efficient access, and landscaped to define vehicular drives and pedestrian areas.
- (c) The site must have direct vehicular access to an existing arterial or major highway and the streets and roads adjoining the site must be adequate to accommodate the increased traffic generated. The applicant must provide a traffic impact study to demonstrate that acceptable peak hour levels of service will result after taking into account existing and programmed roads, and any improvements to be provided by the applicant.

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

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

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

59-G-1.3. Compliance with special exception grant.

(a) **Inspection of operations.** The Department, in conjunction with the Board, must establish a regular inspection program for special exception uses. All special exception uses must be inspected annually; except that the Board and the Department may specifically agree that a particular special exception use or category of uses requires a more frequent or less frequent schedule of inspections. The Department must inspect all special exceptions as scheduled in the inspection program.

(1) If the inspection shows that the operation of the special exception does not comply with all terms and conditions of its grant, the Department must direct the special exception holder to correct the violation within a time certain. The special exception holder must be granted at least 15 days to correct each violation. This Section does not prohibit the Department from ordering the special exception holder to correct the violation in less than 15 days where an emergency poses an immediate threat to the public health, safety, welfare, or convenience, or delay in correcting the violation would impose unusual individual or community hardship.

When the time to correct the violation has expired, the Department must reinspect the premises to determine whether the violation has been corrected.

(2) Within 30 days after any inspection required by this section, the Department must file with the Board written findings which indicate any noncompliance with any term or condition of the special exception use.

(3) If the Department finds that no violations exist, the written findings must state that the special exception complies with the terms and conditions of the special exception grant. However, if the Department finds that the operation of the special exception does not comply with the terms and conditions of its grant, the written findings must describe the nature of the violation, the corrective action ordered by the Department, and the time allowed to correct the violations.

(4) Within 30 days after any reinspection required by this subsection, if the Department finds that the noted violations have been corrected, it must file written findings with the Board. If, however, violations continue to exist, the Department must notify the Board of its findings; the Department may recommend modification of the terms and conditions of the special

SUBDIVISION 9. SPECIAL EXCEPTION APPROVAL.

Sec. 27-317. Required findings.

- (a) A Special Exception may be approved if:
- (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
 - (2) The proposed use is in conformance with all the applicable requirements and regulations of this Subtitle;
 - (3) The proposed use will not substantially impair the integrity of any validly approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or Functional Master Plan, the General Plan;
 - (4) The proposed use will not adversely affect the health, safety, or welfare of residents or workers in the area;
 - (5) The proposed use will not be detrimental to the use or development of adjacent properties or the general neighborhood; and
 - (6) The proposed site plan is in conformance with an approved Type 2 Tree Conservation Plan; and
 - (7) The proposed site plan demonstrates the preservation and/or restoration of the regulated environmental features in a natural state to the fullest extent possible in accordance with the requirement of Subtitle 24-130 (b)(5).
- (b) In addition to the above required findings, in a Chesapeake Bay Critical Area Overlay Zone, a Special Exception shall not be granted:
- (1) where the existing lot coverage in the CBCA exceeds that allowed by this Subtitle, or
 - (2) where granting the Special Exception would result in a net increase in the existing lot coverage in the CBCA.
- (CB-75-1989; CB-28-2010; CB-76-2010; CB-34-2011)

Editor's Note:

Section 3 of CB-28-2010 provides that a development project for which all required development applications have been approved by the Planning Board, Zoning Hearing Examiner, or District Council, and appeal periods have not expired as of September 1, 2010, is grandfathered; or a development project that has an approved preliminary plan of subdivision, but has not completed subsequent processes such as final plat or site plan as of September 1, 2010, is grandfathered for that portion of the project covered by the preliminary plan.

Section 3 of CB-34-2011 provides that a development project for which all required development applications have been approved by the Planning Board, Zoning Hearing Examiner, or District Council, notwithstanding any appeal period, is grandfathered regarding the provisions of CB-28-2010 that became effective on September 1, 2010, or any subsequent revisions in conformance with the grandfathered approval; or a development project that has an approved preliminary plan of subdivision, notwithstanding any further development review requirements including record plats is grandfathered regarding the provisions of CB-28-2010 that became effective on September 1, 2010, or any subsequent revisions in conformance with the grandfathered approval for that portion of the project covered by the preliminary plan.

Sec. 27-348.02. Department or Variety Stores Combined With Food and Beverage Stores.

(a) Department or Variety Stores and Department or Variety Stores combined with Food and Beverage Stores permitted in the use tables by Special Exception (SE) in the I-3, C-S-C and C-M zones shall be subject to the following requirements:

(1) The site shall have frontage on and direct vehicular access to an existing arterial roadway, with no access to primary or secondary streets.

(2) The applicant shall demonstrate that local streets surrounding the site are adequate to accommodate the anticipated increase in traffic.

(3) The site shall contain pedestrian walkways within the parking lot to promote safety.

(4) The design of the parking and loading facilities shall ensure that commercial and customer traffic will be sufficiently separated and shall provide a separate customer loading area at the front of the store.

(5) All buildings, structures, off-street parking compounds, and loading areas shall be located at least:

(A) One hundred (100) feet from any adjoining land in a Residential Zone, or land proposed to be used for residential purposes on an approved Basic Plan for a Comprehensive Design Zone, approved Official Plan for an R-P-C Zone, or any approved Conceptual or Detailed Site Plan; and

(B) Fifty (50) feet from all other adjoining property lines and street lines.

(6) All perimeter areas of the site shall be buffered or screened, as required by the Landscape Manual; however, the Council may require additional buffering and screening if deemed necessary to protect surrounding properties.

(7) The building entrance and nearby sidewalks shall be enhanced with a combination of special paving, landscaping, raised planters, benches and special light fixtures.

(8) The application shall include a comprehensive sign package and a comprehensive exterior lighting plan.

(9) The applicant shall use exterior architectural features to enhance the site's architectural compatibility with surrounding commercial and residential areas.

(10) Not less than thirty percent (30%) of the site shall be devoted to green area.
(CB-2-2002; CB-13-2012; CB-64-2012)

Sec. 27-318. Conditional approval.

When a Special Exception is approved, any requirements or conditions deemed necessary to protect adjacent properties and the general neighborhood may be added to those of this Subtitle.



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- (7) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:
 - (a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet of gross floor area, or five (5) percent of the approved gross floor area up to a maximum of 2500 square feet of gross floor area; and
 - (b) the maximum permitted FAR for the zoning district shall not be exceeded.
- C. For all approved special exception uses, any request for an addition shall require the provision of written notice by the requester in accordance with the following:
 - (1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
 - (2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester affirming that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and the Tax Map references for all parcels notified. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

When it is determined by the Zoning Administrator that a modification is not in substantial conformance with the approved special exception, such modification shall require the approval of an amendment to the special exception in accordance with Sect. 014 below or a new special exception.

9-005 Establishment of Categories

For purposes of applying specific conditions upon certain types of special exception uses, and for allowing special exception uses to be established only in those zoning districts which are appropriate areas for such uses, all special exception uses are divided into categories of associated or related uses, as hereinafter set forth in this Article 9.

9-006 General Standards

In addition to the specific standards set forth hereinafter with regard to particular special exception uses, all such uses shall satisfy the following general standards:

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1. The proposed use at the specified location shall be in harmony with the adopted comprehensive plan.
2. The proposed use shall be in harmony with the general purpose and intent of the applicable zoning district regulations.
3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.
4. The proposed use shall be such that pedestrian and vehicular traffic associated with such use will not be hazardous or conflict with the existing and anticipated traffic in the neighborhood.
5. In addition to the standards which may be set forth in this Article for a particular category or use, the Board shall require landscaping and screening in accordance with the provisions of Article 13.
6. Open space shall be provided in an amount equivalent to that specified for the zoning district in which the proposed use is located.
7. Adequate utility, drainage, parking, loading and other necessary facilities to serve the proposed use shall be provided. Parking and loading requirements shall be in accordance with the provisions of Article 11.
8. Signs shall be regulated by the provisions of Article 12; however, the Board may impose more strict requirements for a given use than those set forth in this Ordinance.

9-007

Conditions and Restrictions

In addition to those standards set forth in this Article, the Board, in approving a special exception, may impose such conditions and restrictions upon the proposed use as it may deem necessary in the public interest to secure compliance with the provisions of this Ordinance and to protect the viability of the implementation of the adopted comprehensive plan. Such conditions or restrictions may include but need not be limited to a time limitation on the length of the exception in accordance with the provisions of Sect. 008 below and may require the posting of a guarantee or bond in a reasonable amount by the applicant.

9-008

Time Limitations, Extensions, Renewals

In addition to the time limits set forth in this Article, the Board may require, as a condition of the approval of any special exception, that it shall be approved for a specified period of time; that it may be subsequently extended for a designated period by the Zoning Administrator; or that it

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- C. Notwithstanding the provisions of Sect. 014 above, offices in residential districts approved prior to January 24, 1977 may be renewed for one five (5) year period under the ordinances in effect at the time the permit/exception was originally granted, provided that the principal user is the same as the one who originally received the special permit or exception. Thereafter, any renewal shall be subject to the provisions of this Ordinance.
- D. Notwithstanding the provisions of Par. A through C above, in the R-30 District, offices shall be subject only to the following standards:
 - (1) Such use shall be located only on the lower two (2) floors of the primary building, or in an accessory structure as may be approved by the Board.
 - (2) The aggregate floor area of all non-residential uses, to include offices, shall not exceed fifteen (15) percent of the total gross floor area.
 - (3) Adequate off-street parking shall be provided in accordance with the provisions of Par. 4 of Sect. 11-102.
- 2. In the C-5, C-6, C-7, C-8 and C-9 Districts, the Board may approve a special exception to allow office uses at a greater percentage of the maximum FAR than that permitted by right. For the purpose of this provision, maximum FAR shall mean the maximum FAR permitted by right, as set forth in the applicable zoning district, or as increased by an approved special exception in accordance with Sect. 618 below.

9-516

Additional Standards for Parking, Commercial Off-Street

- 1. In the C-3, I-2 and I-3 Districts, such parking facilities shall be allowed only as an integral design element of a site plan for an office, commercial or industrial building or building complex containing not less than 30,000 square feet of gross floor area.
- 2. Notwithstanding the bulk regulations of the zoning district in which located, any parking space that is located on the ground and is open to the sky may be located in any required yard but not closer to any front lot line than ten (10) feet, except as may be qualified by the provisions of Article 13.

Parking structures and any structure accessory to a commercial parking lot shall be subject to the bulk regulations of the zoning district in which located, except parking structures which are completely underground may be located in any required yard, but not closer than one (1) foot to any lot line.
- 3. Such parking facilities shall be used solely for the parking of vehicles in operating condition. No motor vehicle repair work except emergency service shall be permitted in association with such a parking facility.
- 4. Such parking facilities shall be provided with safe and convenient access to a street. If any parking space is located contiguous to a street, the street side thereof shall be curbed, and ingress and egress shall be provided only through driveway openings through the curb of such dimension, location and construction as may be approved by the Director in accordance with the Public Facilities Manual.

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5. All such parking facilities shall be in accordance with the provisions of Par. 11 of Sect. 11-102.
6. All lighting fixtures used to illuminate such parking facilities shall be in conformance with the performance standards for outdoor lighting set forth in Part 9 of Article 14.

9-517

Additional Standards for Plant Nurseries

1. As stated in the definition, a plant nursery shall be an establishment designed primarily for the propagation, cultivation, growing, and/or maintenance of nursery stock for gardens, grounds, yards, and indoor use, such as trees, plants, shrubs, sod, seeds and vines, and the retail sales of such nursery stock and of items designed solely to maintain and preserve the life and health of nursery stock such as soil, mulch, plant food/nutrients, fertilizers, herbicides and insecticides. A plant nursery shall be compatible with the adjacent residential or industrial area and shall not include the sale of a wide range of products normally associated with a hardware, building supply or craft store. However, if deemed appropriate, the Board may allow the retail sales of related items as an accessory use, in accordance with the following:
 - A. The type of accessory retail items to be sold shall be reviewed and approved by the Board and may include landscaping materials such as railroad ties, landscaping timbers, wall stones and pavers; pots/planters; garden accents such as statuary, birdhouses, birdfeeders, birdbaths, decorative plant hangers, arbors and trellises; water gardens, water plants, fish and other water garden animals; watering cans and sprinklers; gardening gloves, aprons and hats; gardening and horticulture books and publications; wheelbarrows; garden carts; firewood; non-powered hand tools commonly associated with gardening and landscaping; hoses and hose reels; and other similar items. Additionally, artificial/dried plants and flowers and seasonal/holiday decorations may be sold, provided that, during the months of February through October, the gross floor area devoted to the sale of such items shall not exceed twenty (20) percent, and during the months of November through January, the gross floor area devoted to the sale of such items shall not exceed fifty (50) percent, of the total gross floor area designated on the special exception plat for the sale of all retail items. However, in no event shall items such as the following be sold: electric or gasoline powered tools; motorized equipment; sheds and outdoor storage containers; play houses or play sets; indoor furniture or outdoor lawn or patio furniture; hot tubs, spas or pools; barbecue grills; propane fuel; foodstuffs (except in conjunction with an approved special event or festival); or clothing.
 - B. The area and extent of all indoor and outdoor areas used for accessory retail sales shall be designated on the special exception plat and shall be clearly subordinate to the plant nursery use. The Board may condition the location, size and extent of any areas or structures used for the retail sale of accessory items, to include a requirement for such sales areas to be within a fully enclosed structure. For nurseries which sell artificial/dried plants and flowers and seasonal/holiday decorations in accordance with Par. 1A above, the floor area devoted to such sales shall be limited to one (1) fully enclosed structure. The location of the areas within

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COMMERCIAL, OFFICE AND INDUSTRIAL DISTRICTS >> PART 401. - COMMERCIAL DISTRICTS >>

EXHIBIT

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PART 401. - COMMERCIAL DISTRICTSSec. 32-401.10. - B-1, General Business District; Purpose and IntentSec. 32-401.11. - Uses permitted by rightSec. 32-401.12. - Secondary usesSec. 32-401.13. - Special UsesSec. 32-401.14. - Development standardsSec. 32-401.15. - SetbacksSec. 32-401.20. - B-2, Neighborhood Business District; Purpose and IntentSec. 32-401.21. - Uses permitted by rightSec. 32-401.22. - Secondary usesSec. 32-401.23. - Special UsesSec. 32-401.24. - Development standardsSec. 32-401.25. - SetbacksSec. 32-401.30. - B-3, Convenience Retail District; Purpose and IntentSec. 32-401.31. - Uses permitted by rightSec. 32-401.32. - Secondary useSec. 32-401.33. - Special usesSec. 32-401.34. - Development standardsSec. 32-401.35. - SetbacksSecs. 32-401.40—32-401.47. - Reserved**Sec. 32-401.10. - B-1, General Business District; Purpose and Intent.**

The B-1 district is intended to implement the regional commercial center and general commercial land use classifications of the comprehensive plan. It is generally intended to provide areas for community-scale retail, office, and institutional uses in appropriate areas. The purpose of this district is to also promote retail employment opportunities and to enhance the tax base of Prince William County. The B-1 district is not designed to implement the non-retail employment based land uses reflected in the comprehensive plan; non-retail uses, however, are permitted within the district to complement and support the retail purposes.

(Ord. No. 04-78, 12-21-04; Ord. No. 09-30, 5-19-09; Ord. No. 12-22, Attch., 3-13-12)

Sec. 32-401.11. - Uses permitted by right.

The following uses shall be permitted by right in the B-1 district:

1. Adult day-care facility.
2. Alarm systems operations, office.
3. Ambulance service (commercial).
4. Assisted living facility.
5. Barber shop or beautician studio, tanning and toning salon (one set of toning equipment only).
6. Brewery and bottling associated with a restaurant.
7. Business school.

8. Cafeteria/lunchroom/snack bar/automat.
9. Catering—Commercial (off premises).
10. Catering—Commercial (on or off premises).
11. Child-care facility.
12. Civic club.
13. College, university or seminary.
14. Commercial artist or photographer's studio.
15. Commercial bus station.
16. Cultural arts center.
17. Data and computer services.
18. Dry cleaning/garment processing facility, retail, less than 3,000 square feet.
19. Dry cleaning pick-up facility.
20. Event center/meeting hall.
21. Financial institution.
22. Garden center.
23. Greenhouse or nursery.
24. Hospital.
25. Hotel or motel.
26. Household equipment and appliance service.
27. Institute for special education and training.
28. Interior design and decorating shop.
29. Laundromat.
30. Lawn mower service.
31. Locksmith.
32. Medical or dental laboratory.
33. Medical or dental office and clinic.
34. Mortuary, funeral home (except in shopping centers or shopping malls).
35. Motor vehicle parts, retail.
36. Nursing or convalescent care facility.
37. Office.
38. Office equipment sales, lease and service.
39. Optical and eye care facility.
40. Package, telecommunications and courier service.
41. Pet grooming service.
42. Photographic processing laboratory.
43. Place of religious worship or assembly.
44. Private school (no boarding).
45. Quick service food store.
46. Radio or TV broadcasting station.
47. Recording studio.
48. Recreation facility, commercial (indoor).
49. Recycling collection points, subject to the standards in [section 32-250.84](#)
50. Religious institution.
51. Restaurant.

52. Restaurant, carry-out.
53. Retail store, less than 80,000 square feet.
54. School of special instruction.
55. Shoe repair.
56. Shopping center A, B, C or D (See Part 100).
57. Tailor, seamstress shop.
58. Theater (drive-in).
59. Theater (indoor).
60. Tool and equipment rental (minor).
61. Trade, conference or convention center.
62. Trade, technical and vocational school.
63. Travel agency.
64. Veterinary hospital.
65. Wedding Chapel (except in shopping centers or shopping malls).

(Ord. No. 94-1, 1-11-94; Ord. No. 97-74, 7-22-97; Ord. No. 98-30, 4-21-98; Ord. No. 99-50, 7-6-99; Ord. No. 03-52, 7-1-03; Ord. No. 04-78, 12-21-04; Ord. No. 06-77, 9-5-06; Ord. No. 09-30, 5-19-09; Ord. No. 11-40, Attch. A, 9-13-11)

Sec. 32-401.12. - Secondary uses.

The following uses shall be permitted by right in the B-1 district only in conjunction with and secondary to a permitted principal use, either existing or proposed for concurrent construction in accordance with the provisions of [section 32-400.14](#):

1. Fraternity, sorority, secondary to college, university or seminary (on campus only).
2. Helistop.
3. Watchman's dwelling.
4. Live entertainment in accordance with the provisions of [section 32-400.15](#)

(Ord. No. 04-78, 12-21-04; Ord. No. 09-30, 5-19-09)

Sec. 32-401.13. - Special Uses.

The following uses shall be permitted in the B-1 district with a Special Use Permit:

1. Ambulance service, maintenance facility.
2. Boat sales (excluding non motorized), rental or lease, storage, service, or repair.
3. Car wash (manned or self-service).
4. Commercial kennel.
5. Commercial parking.
6. Company vehicle service facility.
7. Continuing care retirement community.
8. Crematory, secondary to a hospital, mortuary, or funeral home.
9. Donated materials collection center.
10. Farmer's market.
11. Flea market.
12. Heliport.
13. Marina.

Sec. 32-700.50. - Application for a special use permit.

1.

An application for a special use permit may be made by a property owner, for his property, for any special use permitted in the zoning district in which his property is located. A duly authorized agent for an owner may make application, provided a legally sufficient power of attorney, meeting the requirements of subsection 32-700.03.1(c) as approved by the county attorney's office, has been executed.

2.

In addition to an application by a property owner, a special use permit application may be initiated by resolution of the board of county supervisors, or by resolution of the planning commission.

3.

An application for a special use permit shall be made to the planning office and shall include the items listed in this section. Except for the filing fee, and unless otherwise determined at a preapplication conference by the planning director or his designee, 25 collated sets of the following information shall be submitted:

(a)

Those items listed by subsections 32-700.20.1, 32-700.20.2, 32-700.20.3 and 32-700.20.5 through 32-700.20.12.

(b)

A special use permit plan consistent with section 140 of the design and construction standards manual for sketch plans. The elements required in the special use permit plan shall be determined by the planning director or his designee following the preapplication conference required by section 32-700.05 based upon the size, scale, complexity and impact of the proposed request. When required, each element of the special use permit plan shall conform to the standards set forth hereafter unless specifically waived or modified by the planning director or his designee:

(1)

An environmental constraints analysis in accordance with section 32-700.21.6.

(2)

Phasing plan, if applicable.

(3)

Special signage proposals, if desired, in accordance with the provisions of section 32-250.23

(4)

General site grading plan.

(c)

Other information as desired by the applicant.

(d)

Such additional information as may be reasonably required by the county in order for the planning office, the planning commission, or the board of county supervisors to make a proper evaluation of the proposal, such as but not limited to:

(1)

Hours of operation.

(2)

Estimated number of patrons, clients, patients, pupils, etc.

(3)

Estimate of distribution of traffic by mode and time of day.

4.

Except for the filing fee, the planning director may waive the submission requirements, or any portion thereof, set forth in subsection 3. above, provided such information is not necessary for the proper review of the application.

5.

The county shall be under no obligation to accept an application for a special use permit if it does not meet all of the requirements of section 32-700.50 of this chapter.

(Ord. No. 02-05, 1-22-02; Ord. No. 04-78, 12-21-04)

Sec. 32-700.51. - Additional submission requirements for town center special use permit requests.

In addition to the requirements for special use permits in section 32-700.50, the design guideline submittal requirements in section 32-280.35, and any other submitted exhibits that can demonstrate compliance with this section, the special use permit application for a town center shall contain the following (multiple overlay sheets allowed if needed and match lines shall indicate where several sheets join [1 inch equals 100 feet at a minimum and at a 24-inch by 36-inch maximum sheet size]):

1.

A town center street grid plan with geometric characteristics for each block that defines public and private streets, roadway alignments (exclude cul-de-sacs and no-outlet streets), typical sectionals, alleys, shared access driveways, delivery and emergency vehicle access and loading, easements, right-of-way widths, sidewalks, paths and trails, speed limits and design speed, lengths, curb radius, paving width and on- and off-street parking characteristics.

(a)

A traffic impact analysis is required subject to the criteria established in the design and construction standards manual.

(b)

Estimated parking tabulations for both on- and off-street parking for land uses proposed for each block in each land bay including an assessment for shared and off-site parking which may supersede requirements of this chapter and the design and construction standards manual.

2.

A schematic land use plan depicting land bays and blocks prescribing minimum to maximum ranges: uses, yard dimensions and building setbacks, block size, pedestrian access including sidewalks and paths, heights of buildings and structures, lot coverage, density and FAR, recreation spaces, open space and areas intended for tree preservation, watercourses, lakes, resource protection areas, wetlands, floodplains, steep slopes (25 percent or more) and cemeteries.

3.

A phasing plan, which identifies in order how development, public facilities, and other improvements and amenities will be provided, constructed, dedicated or reserved.

4.

A community facilities and infrastructure analysis and plan, which may include police and fire protection facilities, schools, libraries, water and sewer facilities, recreational facilities,

commuter lots, recycling collection points and other elements that may be identified for public use.

5.

An urban design guideline that addresses in narrative and/or graphic form building and structure characteristics within each block, building and structure heights, massing, setbacks, percentage of lot coverage, and general footprint and location to address density or FAR.

6.

A streetscape and landscape schematic plan which demonstrates, using typical details, sections and specifications for, planting concepts in building and parking lot setback areas adjacent to the street, street median landscaping, sidewalk landscaping and parking lot screening and landscaping using primarily indigenous drought tolerant species.

7.

A contingency plan, acceptable to the department of fire and rescue, to address responsibilities for cleanup from firefighting. The plan should also address containment of water from fire fighting or run-off in the event of a discharge or release of hazardous materials, and notification procedures to public agencies.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Section 32-280.35, which derived from Ord. No. 99-6, adopted Jan. 16, 1996, was relocated to this section pursuant to Ord. No. 04-78, adopted Dec. 21, 2004. Former §§ 32-700.51—32-700.57 were renumbered accordingly.

Sec. 32-700.52. - Review process for an application for a special use permit.

An application for a special use permit shall be reviewed in a manner similar to an application for a zoning map amendment, as set forth by sections 32-700.41, 32-700.42 and 32-700.43 of this chapter, provided, however, that the one year time limit in section 32-700.43 shall not apply.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-32-700.51 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.

Sec. 32-700.53. - Concurrent processing.

Site and subdivision plans can be concurrently processed with a special use permit application consistent with the long range land use designation of the comprehensive plan upon the request of the applicant if the applicant acknowledges responsibility for costs related to site and subdivision plan submittal regardless of whether the special use permit application is approved or denied. The submission of plans may not be accepted until the first round of comments have been received from special use permit application review agencies.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-32-700.52 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.

Sec. 32-700.54. - Matters to be considered in reviewing an application for a special use permit.

The planning commission, in considering its recommendation on an application for a special use permit, and the board of county supervisors, in considering what action to take on an application for a special use permit, shall review such an application with consideration for the following factors:

1.
The nature of the proposed use, including factors such as traffic, noise, light, hours of operation, and number of employees involved.
2.
The character of the existing area, including existing structures and structures under construction, existing public facilities and public facilities under construction, and private, commercial and/or service facilities available within the existing area.
3.
The area's designation on the county's comprehensive plan, and relevant text provisions of the plan.
4.
The minimum off-street parking area required and the amount of space needed for the loading and unloading of trucks.
5.
Whether the public health, safety and welfare will be preserved, and any reasonable conditions necessary for such preservation.
6.
Any other factors relating to the purposes of zoning that the planning commission and/or board of county supervisors, in its legislative discretion, shall consider as relevant.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-700.53 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.

Sec. 32-700.55. - Conditions attached to the approval of a special use permit.

1.
In approving a special use permit, the board of county supervisors may attach reasonable conditions, including an expiration date, to such approval with or without the applicant's consent. Once a special use permit is approved with conditions attached, such conditions shall be considered as a part of the text of this chapter, and may be administered and enforced by the zoning administrator. A violation of an attached condition shall be considered a violation of this chapter.
2.
A condition attached to the approval of a special use permit may only be modified by a subsequent application for a special use permit.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-700.54 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.

Sec. 32-700.56. - Special use permit general provisions.

1.

After approval of a special use permit by the board of county supervisors, the applicant shall have one year to submit site or subdivision plans for the approved use and shall occupy the site and commence the use within five years of approval of the site plan, provided that the board of county supervisors may allow, at the time and as part of approval, a longer period. If the use has not begun as provided above, the special use permit shall be void, and the use may not thereafter be begun except upon approval of another special use permit.

2.

After approval of a special use permit by the board of county supervisors, the use approved may intensify and/or expand, provided that any conditions attached to the approval shall not be violated. If intensification and/or expansion will violate any attached conditions, a new special use permit shall be obtained before such intensification and/or expansion may be approved.

3.

Except for family day-care permitted in accordance with subsection 32-300.02.15 and not conditioned upon site plan approval, all uses permitted by a special use permit shall require site plan approval in accordance with the provisions of part 800 of this chapter.

4.

If an approved special use ceases operation for a period of one year, for any reason, the special use permit shall become void, and thereafter the use may only be conducted after another special use permit has been approved.

5.

A special use permit shall be transferable with the land, provided that the use for which it was obtained does not change.

6.

Unless otherwise provided in the permit, a special use permit shall have an indeterminate duration provided that the use for which it was obtained is commenced as required in subsection 2. and continues without abandonment as provided in subsection 4. in accordance with its terms. (Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-700.55 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.

Sec. 32-700.57. - Special use permit deviation.

Minor deviations from an approved special use permit plan are allowed without filing of a new special use permit application provided all deviations are shown on a site or subdivision plan. The zoning administrator shall determine, prior to the approval of site or subdivision plans, that the deviation(s) do not substantially alter conditions of the approved special use permit or the approved special use permit master plan.

(Ord. No. 04-78, 12-21-04)

Editor's note—

Former § 32-700.56 renumbered as set out herein pursuant to Ord. No. 04-78, adopted Dec. 21, 2004.