

FAIRFAX COUNTY



ZONING ORDINANCE MODERNIZATION PROJECT

DRAFT

AGRICULTURAL AND COMMERCIAL USES

JANUARY 31, 2019

Background

Since early 2018, Clarion Associates has been assisting Fairfax County in modernizing its Zoning Ordinance through the zMOD project. Outreach meetings were conducted by Clarion Associates in January and May of 2018 to establish a new structure for these regulations and to outline a process for updating and recategorizing the land uses listed in the Zoning Ordinance. Drafts of the modernized use names and regulations are being released in installments according to the following schedule:

- Industrial uses (October 2018)
- Public, Institutional, and Community uses (December 2018)
- **Agricultural and Commercial uses (January 2019)**
- Residential, Accessory, and Temporary uses (March 2019)
- Consolidated draft of uses (April/May 2019)

In October 2018, Clarion conducted a round of outreach meetings to present the first installment of this work, which included definitions and regulations for industrial uses. In December 2018, the second installment, which included definitions and regulations for public, institutional, and community uses, was posted for public review and County staff conducted a round of outreach meetings on those uses in January 2019. All drafts are posted on the zMOD website and can be reviewed [here](#). We encourage you to review the drafts to familiarize yourself with the recommended organization, format, and use regulations.

This document presents the third installment of the proposed updated use regulations – those related to agricultural and commercial uses. The proposed regulations include new land use classifications and definitions that combine uses with similar impacts to improve user-friendliness, simplify administration, and improve alignment with how people live and businesses operate. The proposed changes also remove inconsistencies and fill in gaps in the current agricultural and commercial use regulations.

All revisions to the current Zoning Ordinance are footnoted in the document. Footnotes will continue to be used in drafts to identify carryover content and proposed changes throughout the zMOD process, but they will not be included in the final adopted Ordinance.

Proposed Revisions to Agricultural and Commercial Uses

Major changes to the agricultural and commercial uses are summarized below.

Uses

Agricultural uses are proposed to be grouped under one category: Agricultural and Related Uses. Within that category, two current agricultural uses are brought forward: Agricultural Operation, and Farm Winery, Limited Brewery, or Limited Distillery. Riding or Boarding Stable consolidates today's Riding/boarding stables and Veterinary hospital ancillary to riding or boarding stables. A new use, Other Agritourism, has been added as a placeholder that will be finalized with a pending amendment.

The 80 current commercial uses have been consolidated into a total of 50 recommended uses. Commercial uses are grouped into the following seven categories:

- ❖ Animal-Related Services
- ❖ Food and Lodging
- ❖ Office and Financial Institutions
- ❖ Personal and Business Services
- ❖ Recreation and Entertainment
- ❖ Retail Sales
- ❖ Vehicle-Related Uses

There are five uses that are either new or that now have been called out separately from other existing uses. These are: Banquet or Reception Hall, Catering, Public Entertainment, Office in a Residential District, and Pet Grooming Establishment. In addition, Aquarium has been added to Zoo or Aquarium. Three uses have been deleted: Commercial recreation restaurants, Summer theatres, and Convenience centers. The three deleted uses have either not been established recently in the County or are proposed to be included under other broad uses. For example, a commercial recreation restaurant would be classified as two principal uses, a restaurant and an indoor commercial recreation use.

As with the industrial uses and the public, institutional, and community uses, the proposed revisions consolidate similar uses into fewer uses with broader definitions. Uses that have been consolidated are set forth in the table below:

Combined Uses	
New Combined Use	Existing Uses
Stable, Riding or Boarding	Riding/boarding stables
	Veterinary hospital, ancillary to riding or boarding stables
Kennel	Kennels
	Kennels (indoors)
	Kennels, outdoor
	Veterinary hospital, ancillary to a kennel
Office	Establishment for scientific research, development, and training
	Establishments for scientific research and development
	Establishments for scientific research and development to include assembly, integration and testing of experimental prototype products as an incidental use
	Establishments for scientific research, development and training where assembly, integration and testing of products in a completely enclosed building is incidental to the principal use of scientific research, development and training
	Establishments for scientific research, development and training, where manufacturing, fabrication, production, testing, repair, storage, sale or resale of materials, goods and products is incidental to the principal use of scientific research, development and training
	Offices
	Offices, to include the display and sales of scientific, electronic or medical equipment of a type not customarily retailed to the general public
Personal Service	Garment cleaning establishments
	Personal service establishments
Commercial Recreation, Indoor	Amusement arcades
	Bowling alley
	Commercial recreation centers
	Commercial recreation use, any other similar (indoor)
	Commercial recreation parks, including mechanical or motorized amusement rides/devices (indoor)
	Commercial swimming pools, tennis courts and similar courts (indoor only)
	Indoor firing ranges, archery ranges, fencing and other similar indoor recreational uses
	Miniature golf courses, indoor
	Skating facilities, indoor

Combined Uses	
New Combined Use	Existing Uses
	Theaters
Commercial Recreation, Outdoor	Baseball hitting and archery ranges, outdoor
	Commercial recreation use, any other similar (outdoor)
	Commercial recreation parks, including mechanical or motorized amusement rides/devices (outdoor)
	Commercial swimming pools, tennis courts and similar courts (outdoor)
	Drive-in motion picture theaters
	Golf driving ranges
	Miniature golf course
	Miniature golf course, ancillary to golf driving ranges
	Skating facilities
	Skeet and trapshooting ranges
Health and Exercise Facility (Small or Large)	Health club
	Private school of special education (exercise-related uses)
Entertainment, Adult	Adult mini motion picture theatres
	Commercial nudity establishments
Entertainment, Public	Billiard and pool halls
	Dance halls
Convenience store	Quick service food stores
	Retail sales establishments selling convenience merchandise
Retail sales, general	Adult bookstores
	Auction establishments
	Retail sales establishments
Vehicle fueling station	Service stations
	Service station/mini-marts

Changes in Permissions

The term “permissions” refers to whether a listed use is allowed in a specific zoning district, and if so whether it is a Permitted (by-right), Special Permit (approved by BZA) or Special Exception (approved by Board of Supervisors) use. The proposed changes to permissions for agricultural and commercial uses are identified in the table below, followed by a discussion of the more notable changes:

Changes in Permissions		
Use	Affected District	Change in Permission
		SE = Special Exception Use SP = Special Permit Use
Stable, Riding or Boarding	R-A	Ancillary veterinary hospital from not allowed to SP
	PRC (Residential)	From SP to SE if not shown on a development plan and PRC plan
	R-A through R-1	From SP to either SP or SE at applicant's discretion
Animal Shelter	C-5 through C-8	From not allowed to either allowed by right if indoor or by SE if outdoor
	PRC (Residential)	From not allowed with outdoor facilities to allowed if shown on a development plan or by SE
Kennel	C-5 through C-8	From not allowed with outdoor facilities to SE
	PDH, PRC, PDC, PRM, PTC	From not allowed with outdoor facilities to allowed if shown on the development plan (PRC), final development plan or by SE
Veterinary Hospital	R-A through R-1	From SP to SE
	C-5 through C-8, I-3 through I-6	From not allowed with outdoor facilities to SE
	PDH, PRC, PDC, PRM, PTC	From not allowed with outdoor facilities to allowed if shown on the development plan (PRC), final development plan or by SE
Catering	C-3, C-4	Catering is currently allowed as either a Business service and supply Service establishment or Production/processing. These permissions are carried forward for the separately defined use, but are changed from not allowed to by right in the C-3 and C-4 Districts, subject to standards.
Hotel or Motel	C-3, C-4	From SE to by right
Retreat Center	R-MHP	From SE to not allowed
Drive-through Financial Institution	PTC	From allowed only if shown on a final development plan to allowed also by SE
Financial Institution	PTC	From allowed only if shown on a final development plan to allowed also by SE
Office	See permission changes discussed below	
Office in a Residential District	R-C, R-E	From SE to not allowed (This is a new name for an existing SE use)
Commercial Recreation, Indoor	See permission changes discussed below	
Commercial Recreation, Outdoor	See permission changes discussed below	
Golf Course or Country Club	I-2 through I-6	From SE to not allowed
	PRM	From not allowed to allowed if shown on a final development plan or by SE
Health and Exercise Facility, Small	R-E through R-MHP	From SE to not allowed (otherwise the permissions are carried forward from Private School of Special Education)

Changes in Permissions		
Use	Affected District	Change in Permission SE = Special Exception Use SP = Special Permit Use
	PRC (Residential)	From allowed if shown on a development plan or by SE to not allowed (current Private school of special education permission)
Entertainment, Public	C-6 through C-8	Dance hall from SP to SE
	C-5 through C-8	Billiard/pool hall from SP to not allowed in C-5, and from SP to SE in C-6 through C-8
	PDC, PRM	Dance hall from not allowed to allowed if shown on a final development plan or by SE
	PDH	Billiard/pool hall from allowed if shown on a final development plan or by SE to not allowed
	PRC (Village Center, Town Center, Convention/Conference Center)	From SP to SE if not shown on a development plan and PRC plan
Quasi-public Park, Playground, or Athletic Field	PRM	From not allowed to allowed if shown on a final development plan or by SE
Stadium or Arena	PDC	From not allowed to SE
Zoo or Aquarium	C-7, C-8	From not allowed to SP
	PDC, PTC	From not allowed to allowed if shown on a final development plan or by SE
Drive-through Pharmacy	PTC	From allowed only if shown on a final development plan to allowed also by SE
Garden Center	C-5 through C-8, PDH, PRC, PDC, PRM, PTC	From not allowed to allowed by right or if shown on a development plan (PRC), final development plan or by SE (currently plant nurseries are allowed as retail sales in in the commercial districts)
	R-3, R-4, I-4 through I-6	From SE to not allowed
Retail Sales, General	R-E through R-8	Convenience center changed from SE to not allowed
	C-5, C-6, C-7, C-8	Adult bookstores changed from SP to by right in C-7, and from not allowed to by right in C-5, C-6, and C-8 Districts.
	PDH, PRM, PDC, PTC, PRC (all but Residential)	Adult bookstores changed from not allowed to allowed if shown on a development plan (PRC) or final development plan
Car Wash	PTC	From allowed only if shown on a final development plan to allowed also by SE
Commercial Off-street Parking	PRM	From allowed only if shown on a final development plan to not allowed
Vehicle Fueling Station	PTC	From allowed only if shown on a final development plan to allowed also by SE
Vehicle Repair and Maintenance, Light	PTC	From allowed only if shown on a final development plan to allowed also by SE

Discussion of Notable Changes:

- ❖ The **Hotel or Motel** use is now proposed to be permitted by right in the C-3 and C-4 Districts, as the use is compatible with the purpose and intent of the districts and with other uses allowed in these office districts. This use previously required special exception approval.
- ❖ The **Office** use consolidates seven current uses, including general office and research and development uses. Scientific research and development is currently allowed only in the industrial districts (by right); in the C-1 through C-4, C-7, and C-8 Districts with special exception approval; and in the PDC and PTC Districts. The proposed permissions have been changed to allow research and development as part of the office use in all commercial, industrial, and planned districts, subject to use standards that would not allow toxic or hazardous materials or manufacturing. Staff is continuing to review whether additional use standards may be appropriate to address potential impacts while allowing flexibility in the use of office space.
- ❖ The **Indoor Commercial Recreation** use consolidates 10 current uses with similar operational functions and land use impacts. In order to allow for new or emerging forms of recreation, the consolidated use would not specifically list the individual types of activities that could take place in an indoor recreation facility. The use would be allowed as either an SP or SE use when it is being considered in conjunction with a rezoning or other application before the Board in the C-3 and C-4 Districts and the I-3 through I-6 Districts. An SE option has been added to allow those indoor commercial recreation uses concurrent with other SE uses to avoid the need for approval from both the Board and the BZA. The use would be permitted by right in the C-5 through C-8 Districts, subject to use standards, and allowed on a final development plan/development plan/PRC plan (or as an SE use) in the PDH, PDC, PRM, PTC, and PRC (in the Village Centers, Town Center, and Convention/Conference Center) Districts. The existing and proposed permissions for each of the 10 current uses are identified in Attachment 1 to this document.
- ❖ The **Outdoor Commercial Recreation** use consolidates 10 current uses with similar operational functions and land use impacts into one use. The permissions for the consolidated use allow it as an SP use in the R-C through R-1 Districts, although use standards limit the use to ropes courses, paintball, and firing, skeet, and trapshooting ranges in those districts. The use is allowed as an SE use in all commercial and industrial districts except the I-I District. Permissions in the planned districts are the same as those for Indoor Commercial Recreation, except that Outdoor Commercial Recreation uses are also allowed in the Residential and Neighborhood Convenience Center areas of the PRC District. Use standards address off-street parking location and the potential impacts from mechanical or motorized rides; target, skeet, paintball, and trapshooting ranges; and baseball hitting and archery ranges. The existing and proposed permissions for each of the 10 current uses are identified in Attachment 2 to this document.
- ❖ **Public Entertainment** is listed as a separate use to be allowed with special exception approval in the C-6 through C-8 Districts, and if shown on the approved development plan or with special exception approval in the PRC, PDC, PRM, and PTC Districts, where the Board can take into consideration safety, noise, hours of operation, traffic, and compatibility with adjacent properties, among other issues. This

use is intended to include establishments where the focus is primarily on entertainment activities for adult customers such as live entertainment, dancing, karaoke, billiards, and hookah lounges. Public Entertainment would also capture those uses which exceed the accessory entertainment allowed as part of a Restaurant. The current definition for Restaurant limits the size of a dance floor to one-eighth of the floor area available for dining. This has been revised and incorporated as a standard that limits the area for accessory entertainment to that determined by the Zoning Administrator, and to a maximum of 15 percent of the square footage of the area accessible to the public, or 250 square feet, whichever is larger. Entertainment that exceeds this standard would be considered a Public Entertainment use. The draft clarifies that hookah would be allowed in conjunction with a restaurant, but that, if hookah is offered after 10:00 p.m., or if it is operated as a principal use, it would be considered a Public Entertainment use. Although not included in the draft, staff is reviewing whether Public Entertainment should also be allowed by special exception in industrial districts if it is provided in conjunction with a restaurant.

- ❖ **The Convenience Store and Drive-through Financial Institution (C-5 through C-8), and Other Drive-through (only C-8)** uses are currently allowed by right if they are located within a shopping center that contains six other uses that are not a convenience store, drive-through financial institution, or other drive-through. The requirement prohibiting these three uses from being included in the six other uses has been removed. The proposed standards continue to require that when these uses are allowed by right, they are not freestanding, but are part of a building with at least six other uses.
- ❖ **Garden Centers:** Under today's Ordinance, establishments growing and selling nursery stock and related items are considered to be: a) plant nurseries, which are allowed by special exception in the R-A through R-4 and I-4 through I-6 Districts with strict limitations on what items can be sold as retail sales; b) retail sales in the C-5 through C-8 Districts; or c) agriculture if the sales are wholesale, which is allowed by right on a minimum of five acres in the R-A through R-1 Districts. The proposed draft creates a single use, Garden Center, to be allowed in retail commercial (C-5 through C-8) and planned districts, while retaining the requirement for special exception approval in the R-E, R-1, and R-2 Districts, subject to use standards. The use is changed from allowed by SE to not allowed in the R-3, R-4, I-4, I-5, and I-6 Districts, as it is not compatible with the purpose and intent of these districts. In the R-A and R-C Districts, the use would only be allowed as part of a bona fide agricultural operation.
- ❖ **Group 7, Older Structures:** The Zoning Ordinance currently includes a special permit that allows several uses, such as antique shops and restaurants, to be allowed in residential dwellings that existed prior to January 1, 1949. There are no approved special permits for Group 7 uses. Therefore, it is recommended that the current provisions not be carried forward, but instead, special permit standards will be included in the draft for the Residential use classification for uses that may be allowed in residential structures that are on the County Inventory of Historic Sites.
- ❖ **Associated Service Uses:** As discussed in the summary of changes to the public, institutional, and community uses, accessory service uses are renamed associated service uses to more accurately reflect their relationship to principal land uses. Associated service uses are intended to provide a convenient service to the residents in a multifamily development, or employees in an office or

industrial park, and are not otherwise allowed by right in the districts where they are listed as associated service uses. The current framework for accessory service uses includes conflicting and outdated standards, some of which are difficult to interpret, permit, and enforce. Therefore, the draft for the Commercial Uses classification includes revisions intended to create a simplified and uniform approach to these provisions. The revisions include changes to the list of uses, the districts where they are allowed, and to the standards. The types of uses are intended to focus on those which are most often found in association with the principal uses and which should be allowed through this streamlined process if they conform to the standards.

Uses/Districts

The following are recommended to be allowed as associated service uses:

- In a multifamily building in the R-20 and R-30 Districts: 1) Child Care, 2) Convenience Store, 3) Personal Service, and 4) Restaurant

This carries forward all of the uses currently allowed as accessory service uses in a multifamily development with their new and consolidated use names where applicable. However, the ability to have these uses in the R-12 and R-16 Districts is deleted because we do not currently have accessory service uses in these districts, and the density is likely too low to support the uses. The planned districts (PDH, PDC, and PRC) are also deleted because the uses are allowed in those districts.

- In the C-1 through C-4, and I-2 through I-6 Districts: 1) Business Service, 2) Carryout Restaurant, 3) Convenience Store, 4) Personal Service, and 5) Restaurant

Several uses are not carried forward as associated service uses in the commercial office (C-1 through C-4) and industrial districts. Health clubs are not included because fitness centers for employees are typically allowed as accessory uses. A residence for a manager or employee will also be addressed as an accessory use. Repair service and prescription establishments are not included as these uses do not typically need to be located as a convenience to employees where the use is not otherwise allowed. Drive-through financial institutions are currently allowed as either a special exception or an accessory service use in the I-5 and I-6 Districts, but we believe it is appropriate for this use to be reviewed as a special exception. Restaurants and Carryout Restaurants would not be associated service uses in the C-3 and C-4 Districts because the uses are allowed by right in those districts. In addition, the current permissions for health clubs and restaurants in the I-I District are not carried forward, given the limited and established nature of this district.

Standards

All associated service uses would be subject to the proposed standards that are incorporated as Section 4102.1.G under the General Standards in the attached document. These standards reconcile differences among the current standards and require all associated service uses to: 1) be located in the same building as the principal use; 2) not cumulatively exceed 15 percent of the building, and limit the size of individual personal service or business service establishments to a maximum of 5,000 square feet of gross floor area; 3) have hours that generally conform to the hours of the principal use,

but not to exceed 6:00 a.m. to 10:00 p.m.; and, 4) not be located in an individual dwelling unit. Associated services uses may use the parking rate for the principal use.

Next Steps

- In late March, proposed changes to the residential, accessory, and temporary use classifications will be posted on the zMOD project website for public review. The posting will be advertised by e-mail, Facebook, and other press releases.
- County staff are available to answer questions and receive feedback on all released documents (DPZZMODComments@fairfaxcounty.gov).
- Clarion Associates will return in mid-May 2019 for another round of public meetings to present a consolidated draft of the use regulations and to answer additional questions.
- Work will continue throughout 2019 to develop a complete draft of the reorganized Zoning Ordinance, with continued outreach along the way.

Questions?

If you have questions or comments about any aspect of the zMOD project, please e-mail zMOD staff at dpzzmodcomments@fairfaxcounty.gov or visit the project website at www.fairfaxcounty.gov/planning-zoning/zmod. If you would like to receive e-mail updates about this project, please visit the project website and click “Add Me to the zMOD E-Mail List.” You may follow us at <https://www.facebook.com/fairfaxcountyzoning/>

