



Zoning Ordinance Modernization Project



zMOD Status and Agreement on Approach to Restaurants and Signs Amendments

Development Process Committee

July 18, 2017

Barbara Byron, Director, OCR

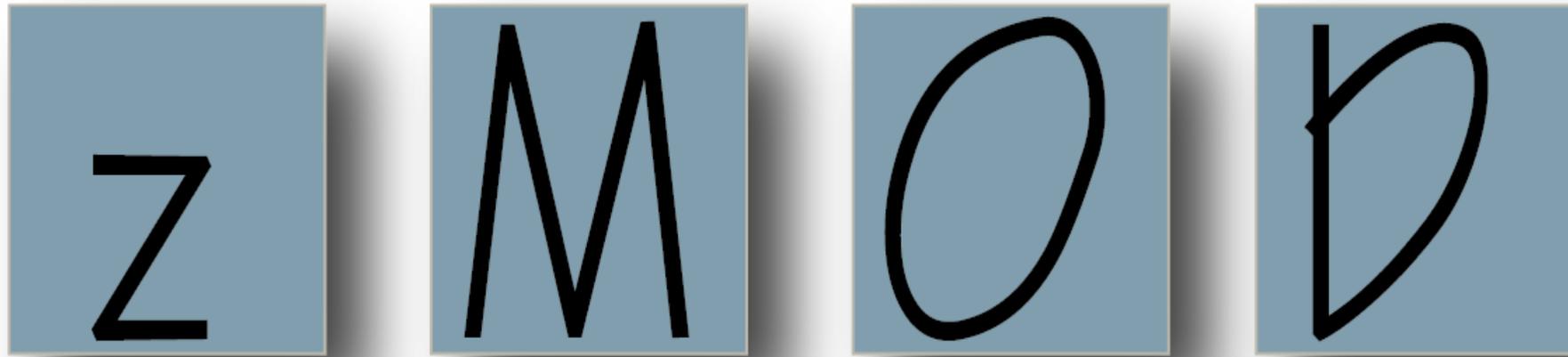
Carmen Bishop/Drew Hushour, ZAD/DPZ

zMOD – General Updates

- RFP for consultant services issued
 - Responses to RFP received; under evaluation
- Staff has been using the approaches developed with zMOD on other amendments and has been coordinating internal process changes with ZED

Minor Modifications Amendment Outreach and Engagement

- Citizen's Working Group – first meeting June 28
- North and South Citizens Meetings – July 10 and 12
- Northern Virginia Builders Association (NVBIA)/NAIOP – July 13
- Land Use Attorneys – July 26
- Public Hearing dates: PC – October 26 and BOS – Nov. 21
- Staff is developing internal processes for the variations that will go to the Board as an Action Item



Initial Amendments – Restaurants and Signs

Restaurants Amendment

- Presentation on general approach, outreach and schedule
- Board discussion and concurrence

Presentation and Discussion

The proposed amendment focuses on:

- Definitions
- Where and how restaurants would be permitted
- Parking

Why Are We Proposing This Amendment?

- The current regulations can limit business practices and opportunities to establish restaurants at some appropriate locations
- The definitions need to be revised to eliminate outdated operational characteristics, and create more generic definitions to accommodate current and future trends
- The use limitations should be clarified and simplified to remove unnecessary impediments and improve permitting

Current Definitions

The **current** definitions are based on detailed operational characteristics:

| Use | Minimum Criteria | YES | NO |
|---------------------------------|---|--------------------------|--------------------------|
| Eating Establishment | Individual menus for customers | <input type="checkbox"/> | <input type="checkbox"/> |
| | Served by restaurant employee | <input type="checkbox"/> | <input type="checkbox"/> |
| | Non-disposable plates, containers, utensils | <input type="checkbox"/> | <input type="checkbox"/> |
| | Tables cleared by employees | <input type="checkbox"/> | <input type="checkbox"/> |
| Fast Food Restaurant | Disposable plates, containers, utensils | <input type="checkbox"/> | <input type="checkbox"/> |
| | Over the counter service | <input type="checkbox"/> | <input type="checkbox"/> |
| | Tables cleared by customers | <input type="checkbox"/> | <input type="checkbox"/> |
| | At least 45% of g.f.a. devoted to food preparation, storage and related activities and not accessible to the public | <input type="checkbox"/> | <input type="checkbox"/> |
| | Drive-thru window service | <input type="checkbox"/> | <input type="checkbox"/> |
| Quick-Service Food Store | Less than 5,000 s.f. of net floor area | <input type="checkbox"/> | <input type="checkbox"/> |
| | Retail sale of food and other items | <input type="checkbox"/> | <input type="checkbox"/> |

Proposed Definitions

Restaurant types have evolved and many, such as the popular fast-casual establishments, blur the previous distinctions. Future changes in operational practices are likely to continue this trend

The **proposed** definitions would classify most as Restaurants, except for:

- Restaurants with Drive-throughs, and
- Carryout Restaurants

(the complete definitions are included in the Summary of the proposed amendment)

Where Would They Be Permitted?

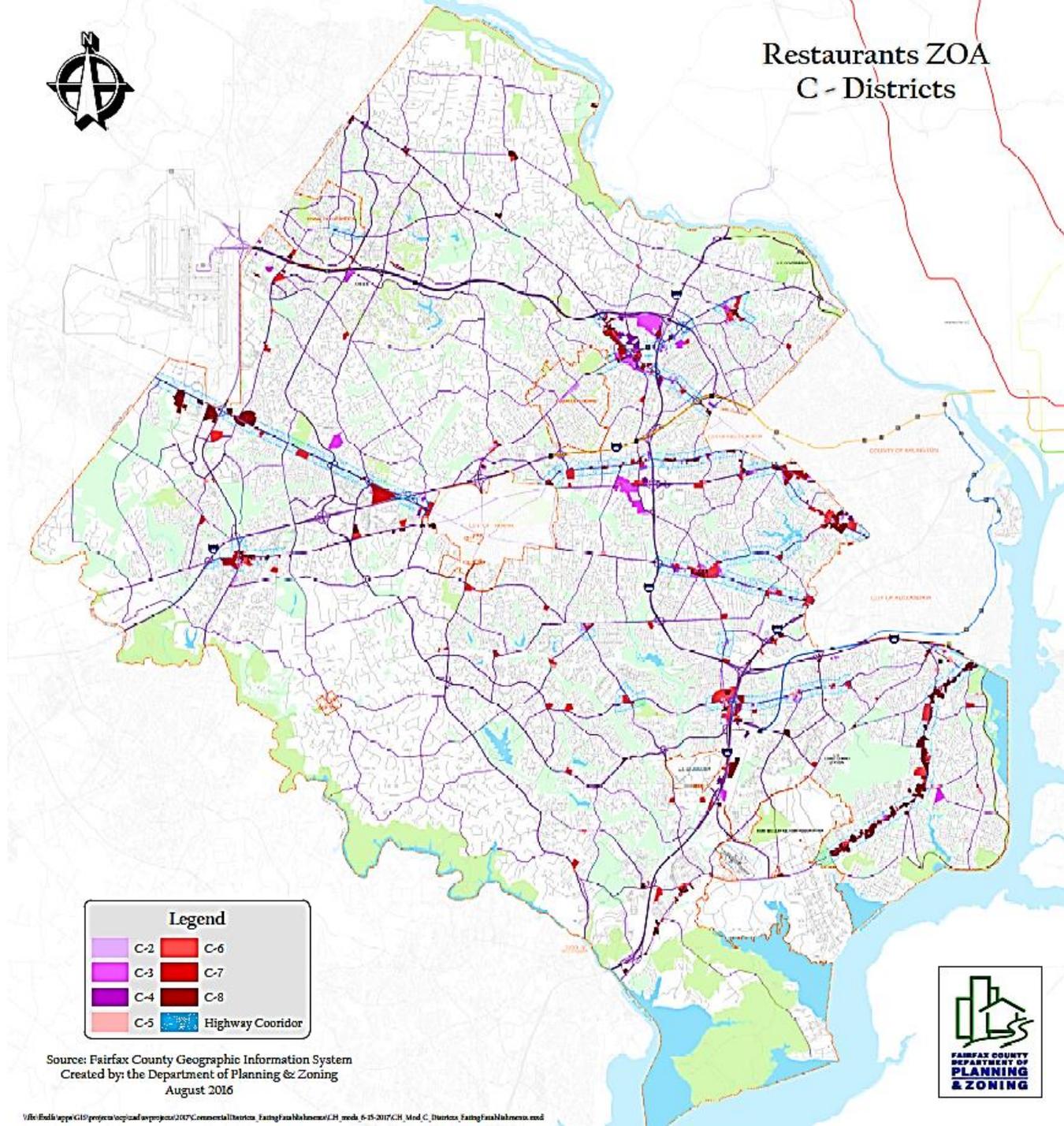
Office Districts (C-2 – C-4): A **restaurant** or **carryout** would be permitted by right when located on a ground level of a building with a minimum of 3 floors. Others may be permitted by Special Exception (SE)

Retail Districts (C-5 – C-8): A **restaurant** or **carryout** would be permitted by right. A restaurant with a **drive-through** would require a SE

Highway Corridor Overlay: A **drive-through** would still continue to require a SE



Restaurants ZOA C - Districts



| Legend | |
|--------|------------------|
| C-2 | C-6 |
| C-3 | C-7 |
| C-4 | C-8 |
| C-5 | Highway Corridor |

Source: Fairfax County Geographic Information System
Created by: the Department of Planning & Zoning
August 2016



Where Would They Be Permitted? – (cont'd)

Planned Districts:

- Generally, a **restaurant** or **carryout** would continue to be permitted when shown on the approved development plan, or by Special Exception
- Existing limitations on **drive-throughs** would remain:
 - not permitted in PRM
 - SE required in PDH
 - limited in PTC
- In PDC, the fast food limitations would be deleted and a drive-through could be permitted as a secondary use or by SE

Where Would They Be Permitted? – (cont'd)

*In certain circumstances, in C- or P-Districts, fast food restaurants with no drive-through currently operating under a SE would now be by-right and would no longer be subject to the previous conditions

Industrial Districts:

- In I-2 – I-4, a **restaurant** would be permitted with SE approval
- In I-5 & I-6, a **restaurant, carryout** or **drive-through** would be permitted with SE
- The option would remain for a restaurant as an accessory service use in I-1 – I-6 industrial districts

Current Parking

Eating Establishment

1 space/4 table seats + 1 space/2 counter seats + 1 space/2 employees, for both freestanding and within shopping centers

Fast Food Restaurant

1 space/2 seats for freestanding, or
SF of GFA @ the shopping center rate within centers

Quick-service Food Store

6.5 spaces/1,000 SF of GFA for freestanding, or
SF of GFA @ the shopping center rate within centers

Proposed Parking

Option 1: Convert to square footage of gross floor area

- Apply the “equivalent” rates:
 - eating establishment rate for restaurants, and
 - fast food rate for drive-throughs
- Apply quick-service food store rate for carryouts
- Within a shopping center, restaurants would be parked at the shopping center rate, except those over 5,000 SF would be parked at the restaurant rate

Option 2: Retain the current standards pending further study, applying the equivalent rates as above

Proposed Parking– (cont'd)

Example under Option 1:

- 6,000 SF restaurant with 212 table seats, 30 counter seats and 25 peak shift employees
 - Current requirement: $212/4 + 30/2 + 25/2 = 81$ spaces
 - Proposed: base the parking on gross floor area
 - The best equivalent number is still under review
 - For discussion only, a review of 67 restaurants indicates that the current Zoning Ordinance rates may equal an average of 9 spaces/1,000 SF, or 13 spaces/1,000 SF at the 85th percentile
 - $6,000 \text{ SF} \times (13/1000) = 78$ spaces

Quick-service Food Stores – Definition

The **current** definition is broad and applies to typical convenience stores, as well as small grocery or specialty food stores.

The **proposed** definition would include convenience stores, but would exclude specialty food stores, such as small grocery or gourmet food stores which would be defined as retail sales, while other establishments such as many bakeries would be carryout restaurants.

C-9 (Super Regional Retail) District

No property is currently zoned or anticipated to be zoned to the C-9 District.

Instead of revising the C-9 District to reflect the new definitions, the proposed amendment would delete the district in its entirety.

Draft Schedule

- Land Use Aides June 27
- PC Land Use Committee July 13
- **BOS Development Process Committee July 18**
- Authorization of Concept by BOS July 25
- Citizen Committee July/September
- Citizen/Industry Engagement ongoing
- BOS Development Process Comm. w/ text September
- BOS Authorization w/ text October 24
- Planning Commission Public Hearing November 30
- BOS Public Hearing January

Direction Needed from Board

- Does the Board support ...
 - General approach?
 - Schedule?
- Parking options
- Suggestions for community outreach

Sign Amendment

- First of two amendments proposed to sign ordinance
- Presentation on the need for the amendment, general approach, and schedule
- Board discussion and concurrence on concept
- Draft amendment text to follow

Presentation and Discussion

- Overview of basis for the amendment
- Focus of current amendment:
 - ❑ Rewrite existing regulations in a “content neutral” manner
 - ❑ Reorganize regulations into a more user-friendly format
 - ❑ Make certain minor policy changes to the regulations
- Larger policy decisions regarding signs will be considered in a second amendment in 2018

Why Are We Proposing This Amendment?

- United States Supreme Court decided Reed v. Town of Gilbert on June 18, 2015
- Case Facts:
 - ❑ Gilbert, AZ sign code required a permit for all signs
 - ❑ 23 exceptions to permit requirement, including “political signs,” “ideological signs,” and “temporary directional signs relating to qualifying events”
 - ❑ Different treatment of non-commercial signs. Stricter limitations on some signs based on message and/or communicator

Why Are We Proposing This Amendment?

- Supreme Court decided that the Gilbert ordinance was “content-based” and could not survive the strict scrutiny required by the First Amendment *to protect freedom of speech*
- Regulations applied to particular speech because of the topics discussed and/or expressed on the sign itself – thereby regulating some kinds of speech and not others

“The restrictions in the Sign Code that apply to any given sign thus depend entirely on the communicative content of the sign. If a sign informs its reader of the time and place a book club will discuss John Locke’s Two Treatises of Government, that sign will be treated differently from a sign expressing the view that one should vote for one of Locke’s followers in an upcoming election, and both signs will be treated differently from a sign expressing an ideological view rooted in Locke’s theory of government.”

– Justice Thomas, for the majority

Impact on Sign Regulations

- When a court applies the “strict scrutiny” test to a regulation, it must be narrowly tailored to address a compelling government interest
- If a regulation fails that test, it is presumed to be unconstitutional
- Any local ordinance containing content-based restrictions will probably fail the test and be invalidated

What Can We Regulate?

- The majority and concurring opinions included discussion of those sign characteristics that could be regulated by government
 - ❑ Majority opinion: size, materials, moving parts, portability and lighting, but unclear about commercial vs. non-commercial speech and on-site vs. off-site signs
 - ❑ Concurring opinion: location, freestanding vs. attached, fixed vs. changing electronic display, commercial vs. residential, total number of signs allowed, time restrictions on advertising events, governmental signs, lighting and on-site vs. off-site signs

How Does Fairfax County's Ordinance Fare?

- Fairfax County's sign ordinance needs to be amended to respond to the Gilbert decision
- Existing ordinance regulates and/or classifies certain sign types based, in whole or in part, on the message
- Primary areas of concern include prohibited signs, exempt signs, and broad sign categories

Example from Current/Proposed Text (Par. 13.B. of Section 12-203)

Current text:

*“One (1) freestanding building identification sign may be permitted for each detached building which houses a principal use within an office park. **Such sign(s) shall be limited to identifying the name of the building and/or the individual enterprises located therein, the address, trademark or identifying symbol or any combination thereof.** No such sign shall exceed twenty (20) square feet in area or eight (8) feet in height or be located closer than ten (10) feet to any lot line.”*

Proposed text:

“One (1) freestanding sign, up to twenty (20) square feet in area and eight (8) feet in height, may be permitted for each detached building which houses a principal use within an office park. Such sign cannot be located closer than ten (10) feet to any lot line.”

Proposed Amendment

- Size of permanent signs generally remains the same
- Temporary and prohibited signs – significant revisions that attempt to align proposed with current regulations
- Format – more user friendly
- Substantive changes to:
 - temporary signage
 - digital sign provisions
 - wall sign amounts to align commercial and industrial uses

Next Steps

- 2nd Draft text – July
- Staff from DPZ and the Office of the County Attorney to schedule 1/1s with each Board member – July/August
- Present to PC Land Use Committee, Citizen Committee, and BOS Development Process Committee in early fall

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Discussion and Questions

- Board discussion
- Suggestions for community outreach