

# FAIRFAX COUNTY



## ZONING ORDINANCE MODERNIZATION PROJECT

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### RESIDENTIAL, ACCESSORY, AND TEMPORARY USES

APRIL 9, 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 categorizing 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 (April 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. County staff conducted a round of outreach meetings on those uses in January 2019. In February 2019, the third installment, which included definitions and regulations for commercial and agricultural uses, was posted for public review, and County staff conducted a round of outreach meetings on those uses in February and March. 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 fourth installment of the proposed updated use regulations – those related to residential, accessory, and temporary 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 residential, accessory, and temporary 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 Residential, Accessory, and Temporary Uses

Major changes to the residential, accessory, and temporary uses are summarized below.

### Uses

Residential uses are grouped into the following two categories: Household Living and Group Living. Eleven residential uses are presented, including two new uses, **Dwelling**, **Stacked Townhouse** and **Live-Work Development**.

The proposed draft more clearly distinguishes between accessory uses (subordinate uses to a principal use that may continue for an extended period of time) and temporary uses (which often occur over short periods of time). While accessory uses can be any use in connection with, incidental to, and on the same lot with a permitted principal use or structure, the draft only lists those accessory uses that are separately defined and require additional regulations or standards. Two new uses, **Electric Vehicle Charging** and **Solar Collection System**, have been added, which brings the total number of accessory uses to 17. The draft lists ten temporary uses. In addition, **Gardening and Composting** (an accessory use), **Community Garden** (a temporary use), and **Farmers Market** (a temporary use) are included as placeholders in this draft, as they are the subject of a separate pending Zoning Ordinance amendment.

Under the current Zoning Ordinance, both accessory uses and accessory structures are listed together with associated use limitations and use regulations. This accessory use classification focuses mainly on uses, and accessory structures are not listed as individual uses in the use tables, but they will continue to be regulated as structures. Outdated uses and structures, such as guest houses or fallout shelters, have not been carried forward, and certain specific accessory structures, including decks, carports, and other permitted extensions are not included in this draft and will be located in Article 5, Dimensional Standards.

As with the other categories of uses, the proposed revisions consolidate similar activities 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
<b>Residential Uses</b>	
Manufactured Home	Mobile home
	Manufactured home
<b>Accessory Uses</b>	
Caretaker Quarters	Servants quarters
	Quarters of a caretaker, watchman or tenant farmer, and his family
Home-Based Business	Barber shop or beauty parlor as a home occupation
	Home occupation
	Home professional office

Combined Uses	
New Combined Use	Existing Uses
Residence for Manager or Employee	Residence for a proprietor or storekeeper and his/her family located in the same building as his/her place of occupation and a residence for an employee and his/her family located within the same building as a funeral home or chapel
	Dwelling unit for a watchman, custodian, proprietor or owner and his/her family whose employment or business is directly related to the principal use
Temporary Uses	
Construction Site Office and Storage	Construction materials yard accessory to a construction project
	Contractor's offices and equipment sheds to include trailers accessory and adjacent to an active construction project

### 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 residential, accessory, and temporary 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 A = Accessory Use; AP = Administrative Permit
Residential Uses		
Religious Group Living	PRC	From allowed if shown on a development plan and PRC plan or by SP to allowed if shown on a development plan and PRC plan or by SE
Residence Hall	R-C	From SE to not allowed
	I-4	From not allowed to SE
Accessory Uses		
Accessory Dwelling Unit	R-A through R-8	From SP to AP if located within a single family detached dwelling; no change if located in a freestanding structure on lots greater than two acres.
Caretakers Quarters	R-A, R-C, R-E	From A to SP
	R-1	From A to SP for Servants quarters From not allowed to SP for Quarters of a caretaker, watchman, or tenant farmer, and his family)
	R-2, R-3, R-4	From A to not allowed for Servants quarters
Home Daycare Facility	PRC	From allowed if shown on a development plan and PRC plan or by SP to allowed if shown on a development plan and PRC plan or by SE
Home-Based Business	See permission changes discussed below	

Changes in Permissions		
Use	Affected District	Change in Permission
		SE = Special Exception Use; SP = Special Permit Use A = Accessory Use; AP = Administrative Permit
Limited Riding or Boarding Stable	PDH, PRC, PDC, PRM, PTC	From allowed if shown on final development plan/development plan and PRC plan to not allowed because of low likelihood of adequate land being available
Temporary Uses		
Food Truck	R-C through R-MHP	From not allowed to AP for permitted or approved nonresidential uses

**Discussion of Notable Changes:**

- ❖ The new use, **Stacked Townhouse Dwelling**, includes a type of structure currently interpreted to be a multiple family dwelling. The permissions have been carried forward, but listing this type of housing separately will allow separate standards to be developed where appropriate. When the parking rates in Article 11 are restructured to match the revised uses, a new rate will be established for this use. In this draft, the standard that limits the maximum length of a single family attached structure to 240 feet has been applied to the stacked townhouse dwelling as well.
- ❖ The **Live-Work Development** is a structure or part of a structure in which areas intended for occupancy by a single owner, tenant, or user are specifically designed to accommodate a residential dwelling unit, a flexible work space for office-type uses, or both. This recognizes an emerging use that would be allowed as a principal use if shown on a final development plan in the PDC, PRM, and PTC Districts. The new use standards prohibit as part of the work space any activity that is not a permitted, special permit, or special exception use in that district, and medical and dental services, research and experimentation, and similar activities which typically require installation of specialized equipment are specifically prohibited.
- ❖ In the commercial and industrial districts, a new use standard requires that the **Religious Group Living** use must be located in conjunction with a religious assembly use. Religious Group Living will be added to the combined use, Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center use within the public, institutional, and community use classification when the Consolidated Draft of the use regulations is prepared, and this standard will also be applied. Similarly, a new use standard requires that a **Residence Hall** in the commercial and industrial districts must be located in conjunction with a private school, a college or university, or a religious assembly use.
- ❖ The regulations that apply to **Freestanding Accessory Structures** have been revised in regards to permitted height, setback, and size requirements to allow some additional flexibility with regard to the location of freestanding accessory structures. Under the current provisions, there is a distinction between “accessory structures,” which are allowed to be up to seven feet in height in any side or rear yard, and “accessory storage structures,” which are allowed to be up to eight and one-half feet in height in any side or rear yard. The proposal eliminates this inconsistency between sheds and other structures and permits all freestanding accessory structures up to eight and one-half feet in height to be located in any side or rear yard. Based on a review of the heights of accessory storage structures approved with special permit applications, a new standard allows all accessory structures between

eight and one-half feet and 12 feet in height to be located five feet from any side and rear lot lines. Any accessory structures that exceed 12 feet in height would need to comply with the required side yard setback, and the required rear yard setback or a distance equal to the height of the structure from the rear lot line, whichever is less. Any accessory structure that exceeds 25 feet in height or the height of the existing principal structure must obtain special permit approval from the BZA. Regarding size, a new standard has been added, based on a long-standing Zoning Administrator determination, which will restrict the cumulative total of all freestanding accessory structures to no more than 50 percent of the gross floor area of a principal structure. The ability to exceed this percentage with special permit approval from the BZA has been added as a new use standard.

- ❖ Currently, all **Accessory Dwelling Units** require special permit approval from the BZA. In accordance with the recommendations of the 50+ Committee and the Communitywide Housing Strategic Plan to expand affordable housing and resources for older adults and persons with disabilities, the draft proposes a streamlined process for administrative approval of an accessory dwelling unit if it is located within the principal dwelling. In order to allow for review of layout, character, and parking, an accessory dwelling unit located in a detached structure would continue to require special permit approval from the BZA. The current special permit standards have been carried forward for the administrative permit, except that the discretionary review of parking is replaced with a requirement to designate that one of the parking spaces will remain available for the accessory dwelling unit. To maintain the appearance of a single family dwelling, as opposed to a duplex, a standard has been added for the administrative permit that any garage or carport entrance be located adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that for the principal dwelling.
- ❖ The **Caretaker Quarters** use permits an accessory residence in a detached structure for agricultural or domestic workers providing child care, housekeeping, or grounds maintenance on primarily agricultural and residential uses in the R-A, R-E, R-C, and R-1 Districts. This proposal changes the use from a permitted accessory use to a special permit use, and removes the use from being allowed in the R-2 through R-4 Districts.
- ❖ The new **Electric Vehicle Charging** use is permitted as accessory to any use other than a single-family dwelling. It must be located in a parking lot or structure that serves a principal use, must not interfere with vehicle, bicycle, or pedestrian circulation, and cannot contain a canopy or roof if located on the top level of an open parking structure. The standards also clarify that these spaces count towards the minimum required number of parking spaces.
- ❖ **Home Daycare Facility** has been renamed from home child care facility, and the definitions and standards now clarify that, in accordance with State law, up to three aged, infirmed, or handicapped adults may also be cared for under the provisions of this use.
- ❖ The use standards for the accessory **Home-based Business** use have been significantly revised. Home-based businesses that meet the proposed use standards may be approved by the Zoning Administrator. Those that exceed the limits in the use standards for customers or clients and employees may be approved with a special permit from the BZA. In recognition of the wide range of activities that are now often conducted from a residential dwelling, the new standards do not include

the current non-exclusive list of possible home occupation activities, but instead include a short list of prohibited activities. The specifically prohibited activities include uses within the following use categories: health care uses, animal-related uses, food and lodging uses (except for low-risk home food preparation), the provision of personal or businesses services (except a barbershop, hair salon, dressmaker, seamstress, or tailor), recreation and entertainment uses (except a small health and exercise facility), retail sales uses (except photography or art studios), vehicle-related uses, and industrial uses (except home crafts like making jewelry or ceramic items).

The standards continue to require that there be no exterior evidence that the property is used in any way other than as a dwelling, and the home business must take place entirely inside the dwelling or permitted accessory structure. Limitations on mechanical or electrical equipment and the prohibition of stock in trade on the premises were not carried forward because they are outdated and difficult to enforce.

Currently, only a private school of special education, such as music lessons or yoga classes, may have customers come to the home. The draft proposes to treat all home businesses the same with respect to employees and customers. As outlined in the table below, two options are included for initial consideration during the review of this draft for each of the following factors: the maximum number of employees, the maximum number of customers at one time, and the cumulative number of customers in a day. Both options include consideration of the cumulative effect of home-based businesses, home daycare, and short-term lodging. For the cumulative number of customers, Option 1 would not allow any customers associated with a home-based business and would not allow short-term lodging on the same property that has a home daycare, in recognition of the impact of both drop-off and pick-up of children. Option 2 would allow a cumulative number of eight customers associated with all home-based businesses, short-term lodging, and home daycare facilities with no prohibition on a home daycare facility being located on the same property. For example, if a home daycare has four children, then a home-based business operating on the same property could have four customers per day, but if a home daycare is approved by the BZA for twelve children, then a home-based business would not be allowed to have any customers because the cumulative maximum of eight has been exceeded.

Comparison of Current and Proposed Options for Home-based Business			
	Maximum No. of Employees	Maximum No. of Home-based Business Customers at a Time	Cumulative No. of Customers/Day
Proposed Option 1	1 total	0 if a home daycare is on-site 2 for home-based business (if no daycare)	0 if a home daycare is on-site 8 total for home business & short-term lodging (if no daycare)
Proposed Option 2	1 for each business or daycare	4	8 total for home business, short-term lodging & home daycare
Current Home Occupation Permit	1 for each occupation	4 – school of special education only	8 – school of special education only
Current Home Professional Office SP	4 or 6 on 2 acres or more	Determined by BZA	Determined by BZA
Current Home Child Care	1 total Additional with Board or BZA approval	5 – multifamily or townhouse 7 – single family detached Up to 12 with Board or BZA approval	5 – multifamily or townhouse 7 – single family detached Up to 12 with Board or BZA approval
Current Short-term Lodging	n/a	6 adults	6 adults (60 nights/year)

- ❖ The **Keeping of Animals** has been modified based on recent updates to the Virginia State Code regarding boarding establishments. The regulations permit fewer than five commonly accepted pets that are not owned by the resident to be sheltered, fed, and watered in exchange for a fee to be excluded from the definition of a “boarding establishment.” The new language would allow short-term boarding, through services like Rover, DogVacay, and Fetch, to occur without the need of a special exception for a Kennel. However, the total number of dogs on-site would not be permitted to exceed the maximum limitations based on minimum lot size, unless a special permit is approved by the BZA.
- ❖ In accordance with Solsmart and Solarize Fairfax recommendations, the **Solar Collection System** use is a new use that codifies existing interpretations on accessory solar panels, which includes both rooftop and ground-mounted systems. In order to differentiate from the utility-scale Solar Power Facility, the distinction has been added to this definition that accessory solar collection systems must primarily meet on-site demands. A new standard allows roof-mounted solar collection systems to exceed the maximum building height by up to five feet. Freestanding solar collection systems must meet the accessory structure setback and height requirements.
- ❖ The **Food Truck** regulations have been revised to reflect their increasing popularity as supplements to a variety of events. They are now also proposed to be permitted as a temporary use in conjunction with approved nonresidential uses in residential zoning districts and residential areas of planned districts, subject to a limitation that the food trucks can operate a maximum of 12 times per year on

those properties. This limitation may be exceeded if approved by the Board or BZA in conjunction with a special exception or special permit.

- ❖ The **Special Event** temporary use has been generalized because of the wide variety of civic, community, business, and entertainment events that individuals and organizations may want to conduct for short periods of time. Instead of listing specific types of events (such as circuses, fairs, and carnivals), it now applies to all types of short-term events that do not fall within the definition of any other temporary use. The current standards have been carried forward, but the requirement that a permit time period be consecutive has been deleted. Also, the requirement that the principal administrative offices of the sponsor be located in County has been deleted, as well as the requirement that the Zoning Administrator determine that the owner of a circus, fair, or carnival be of good repute.
- ❖ **Alternative Use of Historic Buildings** replaces an existing use, “older structures,” which requires special permit approval from the BZA, and allows the Board to approve a special exception for nonresidential uses within a structure on the Fairfax County Inventory of Historic Sites. The intent of this application is to incentivize the preservation of historically significant sites through the allowance of appropriate adaptive reuse. Standards include a recommendation from the Architectural Review Board for any exterior modifications, any parking or loading spaces to be located out of the minimum required yards, and the use of applicable use standards as a guide when reviewing the application proposal.

### Next Steps

- Public meeting on Residential, Accessory, and Temporary Uses on April 23, 2019, 7:00 PM, at the Fairfax County Government Center.
- In late April/early May, a Consolidated Draft integrating the proposed changes to all four installments of land uses 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](mailto:DPZZMODComments@fairfaxcounty.gov)).
- Clarion Associates will return in mid-May 2019 for another round of public meetings to present the consolidated draft of all of the proposed 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](mailto:dpzzmodcomments@fairfaxcounty.gov) or visit the project website at [www.fairfaxcounty.gov/planning-zoning/zmod](http://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/>

