

Older Adult Accommodations and Services Zoning Ordinance Amendment

Development Process Committee: April 3, 2018

(See Attachment for Key to Abbreviations)

Introduction

As part of the 2016 Zoning Ordinance Amendment Work Program (ZOAWP), the Board included an item to evaluate “Older Adult Housing” to further the goals of the 50+ Plan recommendations that were adopted by the Board in September 2014. That amendment was carried over to the current 2017 ZOAWP as “Older Adult Accommodations and Services” which is the subject of staff’s current Zoning Ordinance Amendment analysis.

As reported in the 50+ Community Action Plan 2017 Annual Progress Report, the Fairfax population of 70-79 year olds will more than double to 88,000 between 2010 and 2040 and the cohort of residents aged 80+ will increase nearly two and a half times to 62,000 in the same timeframe. By 2040, the total cohort of adults aged 50 and up is estimated to reach 452,000, which will be approximately 33% of the total County population. This is causing a demand for more accommodation choices and care services that are specifically designed to serve an older adult population. Additionally, the traditional models of housing/accommodations and the provision of care services to older adults have evolved over time and the current provisions of the Zoning Ordinance do not readily accommodate the models being presented today. The proposed amendment will establish new uses that specifically address these needs and will modify the existing provisions to further accommodate a full spectrum of housing/accommodations/services for an older adult population.

Current Provisions Related to Housing/Accommodations/Care of Older Adults

1. Independent Living Facilities

Independent Living Facilities (ILF) are currently allowed by special exception in the R-E through R-MHP Residential Districts and the C-1 through 4 Commercial Districts (Office) and is allowed by right when shown on an approved development plan in all Planned Development Districts, and all of which are subject to a number of additional standards set forth in the Zoning Ordinance. ILFs are comprised of dwelling units that are specifically limited to persons who are elderly and/or for persons with disabilities/handicaps. The units are required to be complete dwelling units (including a kitchen) and must feature components that make the unit more readily and universally accessible for an older adult population. The facility is required to provide supportive services, such as meals, emergency response features, recreation, and transportation or other features that serve this population. Land development applications to date have included ILF facilities of all dwelling unit types, including single family detached, townhouses, villas and multiple family. There has been a spectrum of services offered at these facilities, from minimal offerings such as a common exercise/social space to extensive services including meals, transportation, housekeeping/ laundry, and available assistance with activities of daily living.

2. Assisted Living Facilities/Nursing Home/Memory Care Facility and Similar (all classified as a Medical Care Facility under the Zoning Ordinance)

Medical care facilities are permitted by special exception in the R-E through R-MHP Residential Districts, the C-1 through C-8 Commercial Districts and the I-1 through I-6 Industrial District. Medical care

facilities are also allowed by right when shown on an approved development plan in all Planned Development Districts, and all of which are subject to a number of additional standards set forth in the Zoning Ordinance. Any facility that is operated for the prevention, diagnosis or treatment of human conditions and facilities for the care of aged/disabled persons receiving nursing care or services related to an acute and chronic conditions is deemed to be a medical care facility. As such, a medical care facility includes everything from a general hospital to a skilled nursing facility or assisted living facility (ALF).

3. Adult Day Health Care and Senior Center

The Zoning Ordinance does not currently include these specific uses. By way of interpretation, it has been determined that an adult day care center is most similar to a child care center and is subject to the same location requirements. Specifically, the use is allowed by special exception in the R-E through R-MHP Residential Districts and the C-5 through C-8 (retail) Commercial Districts. In the Industrial Districts, the use is allowed by right when it complies with specific use limitations and is located within an office or industrial park and serves the employees of that park. The use is allowed by special exception when those limitations are not met. Child/adult care centers are also allowed by right in all of the Planned Development Districts when shown on an approved development plan and in the C-1 through C-4 (office) Commercial Districts. In addition, child care centers and, thus, adult care centers, have been permitted in a dwelling or in association with a place of worship.

Senior centers, the majority of which provide daytime social and recreational opportunities for seniors, are primarily operated by the County and are classified as a public use. Senior centers operated by a private entity would be deemed a community club or a public benefit association if operated by a non-profit. A community club is allowed by right in all P Districts, when shown on the development plan, and in the C-5 through C-8 Commercial Districts. Community clubs are also allowed by special permit in the I-1 through I-4 Industrial Districts. Public benefit associations are allowed by right in all P Districts, when shown on the development plan, and in the C-5 through C-8 Commercial Districts. Public benefit associations are also allowed by special exception in all Residential Districts, the C-1 through C-7 Commercial Districts and the I-2 through I-6 Industrial Districts.

Amendment Concept

Originally identified by the Zoning Ordinance as “housing for the elderly,” the provisions addressing housing/services for older adults were modified in 2003 to create the independent living facility and to specify that an assisted living facility was deemed to be a medical care facility. These provisions readily accommodate stand-alone ILF and ALF developments, but since that time, it has become more common to find developments that include a spectrum of uses blended in the same development and, oftentimes, in the same buildings. This mix of uses is not readily accommodated by the existing provisions and the proposed amendment will work to resolve this circumstance. Additionally, the County has undertaken initiatives directed at addressing the needs for older adults in terms of housing and accommodations, services and care. The 50+ Community Action Plan (adopted by the Board in 2014) includes a variety of recommendations for changes that will better accommodate the growing population of citizens over the age of 50.

To address these areas of opportunity, the proposed Zoning Ordinance Amendment will create new uses to accommodate the market products that are being offered for the housing, accommodations and care of older adults and to look forward to what market products may be offered in the future. The changes

will also address existing uses to clarify the provisions and integrate the new uses to establish a full spectrum of opportunities for housing, accommodations and services for older adults.

Staff has identified the following topic areas for consideration and possible amendment:

1. Create a new continuing care retirement community zoning district and use that will accommodate a full range of accommodation options and provide board and life/medical care primarily to older adults. This use relates to the business model classified by the State as a Continuing Care Retirement Community (CCRC), as regulated by the Insurance provisions of the Code of Virginia. This model requires an up-front payment, plus a monthly/periodic service fee with lodging and services provided pursuant to a contract/agreement between parties. This model is unique in that it doesn't follow the traditional "for rent" or "for sale" types of tenancy. The contract/agreement model also ensures the movement of people throughout the development as their care needs may change over time.
2. Create a new continuing care facility use that accommodates a business model that mixes a traditional independent living facility use with one or more types of medical care facilities, such as assisted living, memory care or nursing facilities to serve older adults and persons with a disability/handicap. These models do not require an up-front cost of entry and they are not subject to the State's CCRC regulations, but they do require a monthly service fee that covers rent plus services that could include meals, transportation, recreation/activities, and some assistance with activities of daily living. In these models, there is no guarantee of movement from the independent living unit to a medical care unit if care needs change.
3. Modify the existing uses in the Zoning Ordinance to update and clarify the terminology and ensure that the new uses properly integrate with the existing provisions to create a full spectrum of opportunities to provide for housing, accommodations and services/care. The analysis would include an assessment of the continued appropriateness of the existing affordable housing, parking, density multiplier and bonus, and other provisions.
4. Add adult day health care centers and senior centers as specific uses in the Zoning Ordinance. Currently, adult day health care centers have been interpretively administered as "child care centers" under the existing provisions. While this initially appeared to be the appropriate method of administration, staff has become more aware of the differences between the levels of care provided at each type of facility and believes that the Zoning Ordinance should be amended to reflect that.
5. Create an age-restricted housing use that would promote the development of age-appropriate housing styles, sizes and designs to provide options for older adults, including those who want to "downsize" but remain in the Fairfax County community. Smaller single family houses on smaller lots designed with accessibility and universal design features that serve older adults will expand housing choices to include communities that offer desirable housing but not a mandatory service or care package. Housing types are often described as cottages or villas and could be offered as an option to traditional residential development as a special exception use that is incentivized with bonus density to foster development and the opportunity to provide for affordable housing.

Phasing of Amendments

Given the breadth of changes proposed, staff proposes to address the changes in phases. Phase 1 would include the development of a Planned Continuing Care District and use, which will be the main focus of the April 3, 2018 Development Process Committee meeting. Subject to Board concurrence, staff will prepare a draft strawman for distribution to industry and community representatives for review and comment. Staff will also conduct several community meetings to present and discuss the proposal, to be held in various geographic locations around the County in April through June. Should additional Board review be warranted prior to authorization, staff will schedule the item for an additional Development Process Committee meeting in July or September, with authorization/public hearings to occur in October to December.

Phase 2 would include the creation of the new Continuing Care Facility use to more readily accommodate business models that mix independent living and medical care uses in a single facility, but does not include CCRC uses. This phase will also include any changes necessary to the current ILF and MCF/ALF uses to ensure compatibility with the new use, and will add the adult day health care center and senior centers to the Zoning Ordinance provisions. Staff has been working with developers of this business model and is developing concepts for the proposed use. Staff anticipates a September Development Process Committee meeting, additional outreach to industry and the community in October through December, and authorization/public hearings to occur in January to March 2019.

Phase 3 will include the development of a specific age-restricted housing use (no services), which will require extensive outreach to the homebuilding industry, among other interested parties. It is likely that this phase will be researched up in early 2019 with a Development Process Committee meeting, public outreach and hearings occurring in the spring through fall of 2019.

PHASE 1 – Specific Changes Related to Continuing Care Retirement Communities

Staff is proposing to create a new zoning district and a new use for continuing care retirement communities. These uses are referred to as CCRCs under Title 38.2 of the Code of Virginia, which establishes regulations related to insurance. A CCRC requires the approval of a certificate from the State Corporation Commission. A CCRC is defined by the State to include facilities that provide board, lodging and nursing services pursuant to an agreement/contract and in consideration of fees paid. The fees take the form of an up-front cost of entry (styled as a buy-in or the purchase of a long-term care policy) and a monthly or other periodic fee for services. This arrangement is not the standard forms of tenancy that include lease arrangements or fee simple ownership, but rather it creates a contract relationship between a service provider and a customer through the insurance provisions of the Code of Virginia. To appropriately incorporate this use into the Zoning Ordinance, staff is proposing to create a new zoning district, to be called Planned Continuing Care Retirement Community or PCC, to address the unique nature of this business model.

Staff notes that there may be situations where a property is already zoned to a Planned Development District, such as PTC, PRM, PDC or PRC, where it is not desirable for the property to be rezoned to the new PCC District in order to accommodate a CCRC. To address this, staff is also proposing to create a new use of Continuing Care Retirement Community that would be allowed as a principal use in these four districts. This will facilitate the development of a CCRC in areas where the existing rezoning approval and in those areas where the zoning district has specific geographic applicability, such as the

PTC District for the Tysons Corner urban area or PRC District for Reston and other areas. Similarly, properties that have been rezoned to the PDC or PRM Districts to develop mixed uses typically have unified development plans and proffers that tie the development together. As such, staff believes that the Zoning Ordinance should include a CCRC use that would be permitted in these districts when shown on a development plan or by special exception. As a result, with the Board's concurrence, staff is proposing that this amendment will include both a new CCRC use to apply to property zoned PTC, PRC, PRM and PDC and a new CCRC use that would apply to all other areas.

Other topic areas for considerations are:

1. Affordability Considerations

Typically, all independent living facility units and other types of residential units have a requirement for the provision of affordable housing. The CCRC use is distinctively different from these uses, so the typical affordability calculations cannot be readily utilized. To address this, staff is proposing that an applicant be given the flexibility to propose a methodology for addressing the County's affordability goals in a manner specifically appropriate to the development being proposed. Such proposal could include, among other things, any combination of price-controlled accommodations, land or money for the purpose of constructing affordable accommodations for older adults and/or persons with a disability/handicap, subsidies for accommodations and services, or the provision of price-controlled employee housing. The affordability components could be provided on-site or off-site with the overall goal of enhancing the availability of affordable accommodations/care services for older adults throughout the County.

In developing these provisions, staff seeks the Board's input regarding whether the Zoning Ordinance should specify minimum contributions in these categories. For example, should a cash contribution be a minimum of \$1.50 per square foot of approved floor area or a land contribution be a minimum of .5 acres for every 200 people to be accommodated in the CCRC? ***These numbers are purely for example and are not being specifically proposed at this time.*** The advantage of having a specified minimum expectation is that it provides a baseline against which the proposal can be evaluated. The downside is that the County-wide development opportunities for CCRCs are wide-ranging, so there may not be a one-size-fits-all minimum value for these affordability parameters. What may work well in a very urban area like Tysons may not work well in more suburban parts of the County.

2. Relationship of Zoning Provisions to the Guidelines of the Comprehensive Plan

The appropriate maximum floor area ratio, or FAR, level for the proposed PCC District is still under consideration. Staff proposes the development of a formula that will convert the density/intensity recommendations of the comprehensive plan to an appropriate maximum intensity level for the continuing care retirement community use. For example, there could be a sliding scale such that a residential land use recommendation for not more than 5 dwelling units per acre (du/ac) could accommodate a maximum FAR of 0.30 for a CCRC or a recommendation for 16-30 du/ac could accommodate a 0.75 FAR, and so on. For areas planned for non-residential uses, the conversion may allow that retail uses at a 0.20 FAR could accommodate a CCRC at 0.30 FAR or office uses at 0.70 FAR could accommodate a CCRC at 1.0 FAR. The idea is to develop an equivalency type formula that considers the impacts of a CCRC at that location in lieu of the underlying plan recommendation for density or intensity. Staff is currently collecting data to determine the actual FAR of ILF and ALF developments in the County to better inform the development of this formula.

In addition to relating the Zoning Ordinance intensity/density to the Comprehensive Plan, the actual use recommendation needs to be addressed. Staff is proposing that the new zoning district provisions

would specify that a rezoning to a PCC District could generally be appropriate in areas planned for residential, institutional, or commercial (retail, office, service) uses. This may necessitate a change to the Policy Plan language and such would be developed as part of the continuing work on this proposal.

3. Secondary Versus Accessory Uses

With the creation of the new PCC District, staff is proposing to allow a CCRC use as a principal use. As is typical with most planned development districts, there are also a number of uses can be allowed as secondary uses that would serve not only the users of the principal use, but also the users of nearby developments. Typical secondary uses can include offices, retail sales, recreation, restaurants, and service businesses. Staff believes secondary uses may be appropriate in association with a CCRC in some geographic areas where mixed uses are recommended, but also believes that areas such as those planned for low density residential may not be appropriate for including an array of secondary uses of a commercial nature. Additionally, conversations with developers of CCRCs indicate that the industry is constantly evolving. When asked about this issue, it was noted that the communities are typically gated and secured for a number of reasons, so secondary uses within the gated portion of the community may not be practical. On the other hand, there was thought that the future may include partnerships with medical office developers, retail businesses relevant to older adults (pharmacy, etc.) and myriad other services which would make the option for secondary uses necessary.

Staff proposes to include secondary uses in the PCC District, subject to Board approval on a case-by-case basis, to address current opportunities for mixed use developments and to accommodate the future evolution of the CCRC industry. Staff is seeking the Board's input on this proposal. Should the Board determine that secondary uses are not desired in association with CCRCs, then all uses approved for the development would have to be exclusively accessory to the CCRC use.

Conclusion

Staff believes that this series of amendments are necessary to further the goals of the 50+ Action Plan and to remedy the cumbersome application of the existing use categories that serve an older adult population with the actual market business models addressing the housing and care needs of older adults. With the Board's concurrence on the proposed direction of this amendment and discussion of the topics noted above, staff will finalize a draft strawman for circulation and will establish opportunities for community discussion of the proposal before seeking authorization for the amendment.

Abbreviations Used for Older Adult Accommodations and Services

ALF – Assisted Living Facility

CCRC – Continuing Care Retirement Community

DU/A – Dwelling Units Per Acre

FAR – Floor Area Ratio

ILF – Independent Living Facility

MCF – Medical Care Facility

PCC – Planned Continuing Care Retirement Community District (Proposed)

PDC – Planned Development Commercial District

PRC – Planned Residential Community District

PRM – Planned Residential Mixed Use District

PTC – Planned Tysons Corner Urban District

ZOAWP – Zoning Ordinance Amendment Work Program