

# Board of Supervisors Land Use Policy Committee

March 16, 2021

Electronic Meeting

## ***Board of Supervisors (Board) Members participated:***

Jeff McKay, Chairman  
Penelope Gross, Mason District (Vice Chairman)  
James Walkinshaw, Braddock District  
John Foust, Dranesville District  
Walter Alcorn, Hunter Mill District  
Rodney Lusk, Lee District  
Dan Storck, Mount Vernon District  
Dalia Palchik, Providence District  
Pat Herrity, Springfield District  
Kathy Smith, Sully District (Committee Chair)

The Land Use Policy Committee (Committee) meeting was called to order at 1:31 p.m.

The summary of the February 2, 2021, Committee meeting was accepted.

## **DEQ Proposed Amendments:**

Jerry Stonefield, Site Code Research and Development Branch, Land Development Services and Eleanor Ku Coddling, Stormwater Planning Division, Department of Public Works and Environmental Services presented the two proposed amendments to the state Chesapeake Bay Preservation Area Designation and Management Regulations (Regulations) that have been proposed by the Virginia Department of Environmental Quality (DEQ).

Mr. Stonefield described that the proposed amendments are in response to legislation adopted during the 2020 session and propose to incorporate criteria for the preservation of mature trees and coastal resilience and adaptation to climate change. The Regulations, if adopted as currently proposed, will necessitate changes to the Fairfax County Chesapeake Bay Preservation Ordinance (CBPO).

Ms. Coddling discussed the mature trees amendment proposed by DEQ to incorporate criteria that will require the preservation and protection of mature trees, and where removed, trees must be replanted to the maximum extent practicable. The amendment also requires that where Resource Protection Area (RPA) buffers are to be established, trees must be planted where practicable. Staff supports the proposed amendments but will seek clarification on specific language to avoid unintended consequences of unspecific language.

Mr. Stonefield described the proposed amendment regarding coastal resilience and adaptation to climate change. The proposed climate change amendment will: require the county to consider the impacts of climate change during the review of proposed developments and allow conditions; allow adaptive measures in the RPA; and require the county to adopt the provisions within three years of the effective date. Staff described three key considerations of the proposed amendment: the amendments would prohibit exceptions for encroachments within the seaward 50 feet of the RPA buffer, including exceptions for loss of buildable area and minor additions; prohibit exceptions for projects based solely on fill within the RPA or 100 feet of the RPA; and mandate the model to be used when evaluating impacts.

Mr. Stonefield concluded the presentation with a description of next steps of the process. With input on the key considerations and permission from the Committee, staff will prepare and submit comments to DEQ during the comment periods, which close May 3, 2021. DEQ will convene a Stakeholder Advisory Committee in mid-May to discuss all comments received. DEQ intends to present final regulations to the State Water Control Board for adoption in June.

Discussion ensued, with questions from several Committee members. Staff explained that the locality is required to adopt the necessary provisions regarding climate adaptation within three years and will be responsible for enforcement. The mature trees amendment does not include a provision for delayed adoption. Comments were made regarding the importance of local control, and the issue of whether the prohibition of granting exceptions would constitute a taking of private property.

The exception provisions that allow new homes, additions and fill were discussed. The Loss of Buildable Area provision exists to allow new construction on lots that were created before the adoption of the RPA. The minor addition provision allows additions to homes that existed before the RPA was designated. The potential liability the proposed prohibition may create for the county would have to be deferred to the Office of the County Attorney (OCA). A public hearing is required for new homes within the 50 seaward feet, and mitigation is required as a condition for approval of the encroachment. Supervisor Gross stated that it would be helpful to obtain an opinion from OCA regarding the issues, and Chairman McKay suggested we provide examples with our comments to the state showing the environmental benefit achieved when exceptions are approved.

Discussion about the preservation of mature trees included comments about saving trees but recognizing they may become a safety hazard, and how the maximum extent practicable criteria would be applied during the review of proposed land development projects with respect to the proposed layout and planting trees when establishing vegetated buffers.

A comment was made that staff should get feedback from Exception Review Committee (ERC) and Environmental Quality Advisory Council (EQAC). Staff said they had already reached out to the groups but will follow-up.

With the concurrence of the Committee, staff will coordinate with OCA, reach out to the ERC and EQAC for feedback, and prepare comments on the Mature Trees and Climate Change amendments as discussed and submit the comments to DEQ prior to the close of the public comment periods.

**Zoning Ordinance Modernization (zMOD) Project:**

Staff in attendance were Barbara Byron, Director, Department of Planning and Development (DPD), Leslie Johnson, Zoning Administrator, DPD, Carmen Bishop, Deputy Zoning Administrator, DPD, Casey Judge, Senior Planner, DPD, David Stoner, Deputy County Attorney, Office of the County Attorney (OCA), Laura Gori, Assistant County Attorney, OCA, Tom Fleetwood, Director, Housing and Community Development, Adrian Joye, Environmental Health Program Manager, Health Department, and Karen McClellan, Operations Manager, Department of Code Compliance.

Ms. Judge and Ms. Bishop provided an overview of accessory living units (ALU), home-based businesses, and regulations for flags and flagpoles. The current standards, staff recommendations, Planning Commission recommendations, and advertised options for each were discussed. The process of enforcement would remain unchanged with enforcement occurring when a complaint is received and during renewal inspections of accessory living units, and it was not anticipated that any additional staffing resources would be needed for enforcement. New standards for home-based businesses were proposed, including the requirement for Health Department approval prior to approval of an administrative permit or special permit approval for any dwelling served by a well or septic system, and the limitation that a home-based business may not use, store, or generate certain materials in an amount that requires a permit under Chapter 62 of the County Code. These standards would be proactive and would ensure that potential issues could be addressed.

Staff responded to a number of questions from the committee. It was clarified that under the proposal, any home-based business would be permitted to have two customers at a time and six in a day except for retail sales and small-scale production uses. These uses could have customers visit the site to view samples, but they could not leave with a purchased product. This limitation would ensure that neighborhoods do not resemble convenience stores. Under the current Ordinance, other than for instructional activities, there was no path forward for “non-professional” uses to have customers or clients at the home. There was a comment that there have been challenges with enforcement, and questions were raised about inspections and how many inspectors were in enforcement. No changes were made to the standards related to the ability to inspect with administrative permits, and 32 investigators were in the Department of Code Compliance at that time. It was explained that residents could provide anonymous complaints to the Board offices or to Code Compliance, but the investigator would get more information to assist their investigation if they can contact the complainant.

The approach to broad use definitions was explained, as well as the replacement of the word “shall” throughout the Ordinance. Staff explained the density of stacked townhouses in the PRC District and that the 2.7 persons per acre applies per unit, but not per stack of units. The proposed parking rate for stacked townhouses was in between that of single-family attached and multifamily dwellings. It was clarified that certain uses, like kennels and animal shelters with outdoor components, would be subject to Board approval on a case-by-case review basis, and the use-specific standards for the airport use carry forward the current heliport permissions.

Questions about the ALU renewal process timeframe were addressed, and the occupancy limitations of who and how many people could occupy a dwelling were discussed. In response to affordability questions, staff mentioned that the ALUs add to the housing stock, and there may be opportunities to connect some of the potential landlords to participants in the Housing Choice Voucher program. There was a request to include a requirement of notifying the public that an application was filed and what the decision was on the application. In response to a question about the proposed reduction of the fee for an addition to or replacement of a single-family dwelling in a floodplain, staff explained that this reduction was for flood safety improvements to be made without the barrier of the existing \$16,375 fee.

There was a comment that zMOD includes major changes that should not be done as a part of this project but should be done separately. It was asked if new positions would be needed for the administrative processes, and staff did not anticipate any new positions needed. Information on the number of hours needed for administrative review, enforcement, and the resident time and costs for current applications was requested. The experiences of other jurisdictions who have made changes to their regulations were also discussed, and it was mentioned that the fears that have been heard have not occurred in these other jurisdictions. A comment was made that several dozen additional ALUs per year are anticipated to be established as a part of these changes.

The Committee meeting adjourned at 3:04 p.m.

The next Committee meeting is scheduled for May 25, 2021, at 1:30 p.m.