



County of Fairfax, Virginia

MEMORANDUM

DATE: June 7, 2019

TO: Board of Supervisors

FROM:  Leslie B. Johnson
Zoning Administrator

SUBJECT: zMOD Follow-Up on Accessory Dwelling Units and Home-Based Businesses

During the May 14, 2019 presentation to the Development Process Committee, questions were raised regarding the proposed revisions to accessory dwelling units and home-based businesses as presented in the Consolidated Draft of Use Regulations, dated May 1, 2019. Based on the comments received at that meeting and other outreach meetings, the proposed regulations have been revised; the questions and comments received, as well as the proposed revisions are outlined below. A revised Consolidated Draft will be posted later this month for consideration for general endorsement with an action item at the July 16, 2019 Board meeting. zMOD staff will be reaching out to your staff to receive any preliminary comments on these revisions to accessory dwelling units and home-based businesses prior to the July 16 meeting.

Accessory Dwelling Units

As included in the previous drafts, instead of the special permit requirement, staff proposes an administrative permit process for approval of an accessory dwelling unit that is located within the principal dwelling unit. A detached accessory dwelling unit would continue to require approval of a special permit. During outreach, there was general support for this change in procedure, which would reduce the time and cost associated with approval of interior accessory dwelling units while generally maintaining the same standards. Additional comments received during outreach are condensed and summarized in Attachment 2 based on meetings with the public, Board Development Process Committee, Planning Commission Land Use Process Review Committee, Citizens Work Group, Land Use Attorneys Work Group, Industry and Builders Work Group, Land Use Aides, NVBIA/NAIOP, staff, and certain land use committees and local groups.

In addition, staff reviewed the sizes of a sample of 31 accessory dwelling units approved by the BZA. Based on this review, the average size of an accessory dwelling unit contained within the principal dwelling is 1,060 square feet, and the average size of a detached accessory dwelling unit is 1,189 square feet. Proposed revisions to the previous draft are summarized below and the draft text is included in Attachment 1:

- Delete the maximum size limitation of 35 percent and include a more equitable size limitation of 1,200 square feet for both interior and detached units. A larger size could be

allowed for an interior unit with special permit approval. It is recommended that a range of 700 to 1,200 square feet be advertised;

- Clarify that the size includes any cellar space; and
- Allow the option for the principal dwelling unit to be occupied by two parents or guardians with their children, functioning as a single household (not just one “family”).

Consideration of additional changes to the standards, such as reducing the minimum lot size for a detached accessory dwelling unit, are not proposed as part of the zMOD project, but should be reviewed in the context of other affordable housing initiatives.

Home-Based Businesses

The proposed home-based business use is a consolidation of the current home occupation (administrative permit), home professional office (special permit), and barber shop or beauty parlor as a home occupation (special permit). Currently, customers are allowed to come to a permitted home occupation for a school of special education (e.g., classes in music, art, or exercise), and to a home professional office or barber shop or beauty parlor that has received special permit approval. Other types of occupations or non-professional offices are not allowed to have customers. The intent of the proposed revisions is to create a single, more equitable set of standards that protects residential neighborhoods while recognizing the wide range of activities that are now often conducted in a home. During outreach with the same groups as listed above, staff received comments regarding home-based businesses which are condensed and summarized in Attachment 2.

Based on the feedback, staff has revised the proposed standards for employees and the number of customers allowed at a time to differentiate based on the type of unit, recognizing that parking is typically more limited with townhouse and multifamily dwellings. For equity, however, the same cumulative number of customers would be allowed in a day for all types of units. Proposed revisions to the previous draft are summarized below and the draft text is included in Attachment 1:

- Allow only one nonresident employee per lot with a single family dwelling;
- Delete the ability to have a nonresident employee with all other types of dwellings;
- Delete the option to have any customers if a home daycare facility is operated on the lot;
- Allow up to four customers at a time in a single family dwelling;
- Allow only two customers at a time for all other types of dwellings; and
- Continue to allow a cumulative of eight customers in a day for all types of units.

ATTACHMENT 1: Draft Standards for Accessory Dwelling Units and Home-Based Businesses

ATTACHMENT 2: Summary of Comments

cc: Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Elizabeth Teare, County Attorney
Jill Cooper, Executive Director, Planning Commission

Revised Draft Text

A. Accessory Dwelling Units

Standards when permitted by administrative permit:

- (1) An accessory dwelling unit is permitted only in association with a single family detached dwelling unit, and there must be no more than one accessory dwelling unit per single family lot.
- (2) An accessory dwelling unit must be wholly contained within the structure of a single family detached dwelling unit and must have direct access to the principal dwelling through an interior space that is finished, temperature controlled, and fully enclosed.
- (3) Any proposed external entrances for an accessory dwelling unit must be located on the side or rear of the dwelling, and not on the same façade as the external entrances serving the principal dwelling. Any proposed garage or carport entrance must be located directly adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that which serves the principal dwelling.
- (4) The gross floor area, including any cellar space, of the accessory dwelling unit must not exceed 1,200 square feet [advertised range: 700 to 1,200 square feet], unless a larger size is allowed by the BZA with special permit approval.
- (5) The accessory dwelling unit may not contain more than two bedrooms.
- (6) The occupancy of the accessory dwelling unit and the principal dwelling unit must be in accordance with the following:
 - (a) One of the dwelling units must be owner occupied.
 - (b) One of the dwelling units must be occupied by:
 1. Any person 55 years of age or over; or
 2. Any handicapped person, with handicapped defined in accordance with the Federal Fair Housing Amendments Act of 1988.
 - (c) The accessory dwelling unit may be occupied by a maximum of two people.
 - (d) The principal single family dwelling unit may be occupied by not more than one of the following:
 1. One person or two or more persons related by blood or marriage and any number of natural children, foster children, stepchildren, or adopted children;
 2. Two parents or guardians with their dependent children, including natural children, foster children, stepchildren or adopted children, functioning as a single household; or
 3. A group of not more than four persons not related by blood or marriage.
 - (e) An accessory dwelling unit occupied by a handicapped person must provide for reasonable access and mobility, based on the specific needs of the handicapped person. Measures for reasonable access and mobility must be specified in the permit

application. Generally, reasonable access and mobility for handicapped persons includes:

1. Uninterrupted access to one entrance; and
 2. Accessibility and usability of one toilet room.
- (7) One designated parking space must be available for the accessory dwelling unit.
- (8) An accessory dwelling unit must meet all applicable regulations for building, safety, health, and sanitation, and the construction of an accessory dwelling unit is not deemed to be a subdivision of the lot on which located.
- (9) Upon issuance of the administrative permit, the owner will record a copy of the permit among the land records of Fairfax County. The permit must contain a description of the subject property and must be indexed in the Grantor Index in the name of the property owners.
- (10) The owner must allow inspections of the property by County personnel during reasonable hours upon prior notice.
- (11) An administrative permit for an accessory dwelling unit may be issued to the owner and approved for a period not to exceed five years from the date of approval. Such administrative permits may be extended for succeeding five-year periods by the Zoning Administrator.

Standards when permitted by special permit:

- (12) The BZA may approve a special permit for an accessory dwelling unit that does not meet the standards in subsections (2) or (3) above to permit an accessory dwelling unit in a freestanding structure on a lot of two acres or more or to modify the location of any external entrance and access from the street.
- (13) The accessory dwelling unit must conform to all other applicable standards in subsections (1) and (5) through (8) above.
- (14) The gross floor area, including any cellar space, of the accessory dwelling unit must not exceed 1,200 square feet [advertised range: 700 to 1,200 square feet].
- (15) The BZA may require the provision of designated off-street parking spaces in addition to the requirements specified in [reference to relocated Article 11] for a single family detached dwelling unit.
- (16) Upon the approval of a special permit, the owner will record a copy of the BZA's approval, including all accompanying conditions among the land records of Fairfax County. The resolution must contain a description of the subject property and must be indexed in the Grantor Index in the name of the property owners.

B. Home-Based Business

Standards when permitted by administrative permit:

- (1) A home-based business is allowed in any dwelling unit subject to approval by the Zoning Administrator and the provisions listed below. Each permit for a home-based business is revocable by the Zoning Administrator because of the failure of the owner or operator of

the use covered by the permit to observe all requirements of the permit and the Zoning Ordinance.

- (2) A home-based business must be conducted by the home-based business permit applicant within the dwelling that is their primary residence or in an accessory building permitted by this Ordinance that is normally associated with a residential use that is clearly subordinate to the principal use of the lot as a dwelling.
- (3) A home-based business may not include uses within the following use categories or classification:
 - (a) Health care uses;
 - (b) Animal-related uses;
 - (c) Food and lodging, except for Cottage Food Operations approved by the Fairfax County Health Department;
 - (d) Personal and business services, except a barbershop or hair salon, dressmaker, seamstress, or tailor;
 - (e) Recreation and entertainment uses, except a health and exercise facility, small;
 - (f) Retail sales uses, except a photography or art studio;
 - (g) Vehicle-related uses; and
 - (h) Industrial uses, except home crafts such as jewelry making or ceramics
- (4) The premises must have the exterior appearance of a dwelling or residential accessory building. There must be no exterior evidence that the property is used in any way other than for a dwelling. The home-based business must take place entirely within enclosed structures.
- (5) Outside display or storage of goods, equipment, or materials used in connection with the home-based business is not allowed.
- (6) **Employees:**
 - (a) The home-based business permit applicant and other persons who use the dwelling as their primary residence may be involved in the home-based business use.
 - (b) In a single family detached dwelling, only one nonresident employee is allowed, regardless of the number of home-based businesses or home daycare facilities operating on the lot. This employee, whether paid or not, may work on the premises only between the hours of 7:00 AM to 6:00 PM, Monday through Friday.
 - (c) In a single family attached, stacked townhouse, multifamily, or manufactured home dwelling, no nonresident employees are allowed.
- (7) **Customers or clients:**
 - (a) If a home daycare facility is operated on the lot, no customers or clients may be allowed for the home-based business.
 - (b) In a single family detached dwelling, a maximum of four customers or clients are permitted at any given time. In a single family attached, stacked townhouse, multifamily, or manufactured home dwelling, a maximum of two customers or clients are permitted at any given time.

- (c) A cumulative maximum of eight customers or clients are permitted in any one day, including all home-based businesses and short-term lodging that are operated on the lot.
 - (d) The hours may not exceed 8:00 AM to 9:00 PM.
 - (e) Customers or clients must be scheduled on an appointment basis, with a minimum of 15 minutes between appointments.
 - (f) The limitations on customers or clients may be exceeded in accordance with [*reference to special permit procedure*].
- (8) Only one commercial vehicle is permitted per dwelling unit, subject to the provisions of [*reference to relocated Sect. 10-102*].
- (9) The dwelling where the home-based business is being conducted must be open for inspection to County personnel during reasonable hours upon prior notice.
- (10) A permit for a home-based business is valid for only the original applicant and is not transferable to any resident, address, or any other occupation. Upon termination of the applicant's residency, the home-based business permit becomes null and void.

Standards when permitted by special permit:

- (11) The BZA may approve a special permit for a home-based business which exceeds the limitations above for employees, customers, or clients, subject to all other standards above and only if the BZA determines that the proposed business, together with all other nonresidential uses in the area, will not modify or disrupt the predominantly residential character of the area.

zMOD Outreach Comments
April through May 2019
Accessory Dwelling Units
Consider removing the age and disability limitations
Keep the age and disability limitations because of concerns about the number of people and vehicles
Requiring 2+ acres for a detached accessory dwelling unit is too restrictive
It is important to have an upper limit on the square footage for a detached unit
Concern was expressed that allowing a detached unit on less than two acres would effectively change an R-1 District to an R-2 District
Allowing a detached unit on less than two acres would be consistent with the allowance for “granny pods”
Concern was expressed about a detached accessory dwelling unit once the home is sold to another buyer who does not meet the age and disability requirements
Concern that the 1,500-sq. ft. limit is too high
Concern was expressed that locations such as at the end of a court don’t have enough room for parking
Is the basement included in the gross floor area?
The descriptions for occupancy of a dwelling and accessory dwelling unit should be updated
Size limits and other standards should be viewed through the equity lens (general comment)
Home-Based Businesses
Concerns were expressed about home-based businesses when there isn’t adequate parking, water, and sewer
Will the rules be circumvented by saying it is a hobby and not a business?
Parking is a major concern and that is not addressed in the standards
Customers should not be allowed when a daycare is onsite
Concerns about impacts on residential neighborhoods and allowing home businesses when commercial and office properties are vacant
The regulations should be expressed in simple terms, such as a single cumulative standard for the total number of employees and customers
For the cumulative number of customers with short-term lodging, does it need to be clarified how it is counted if some guests leave in the morning and others arrive in the evening?
The same standard for identifying a designated parking space as included for accessory dwelling units could also be included for this use
A special permit should be required in order to address concerns about parking and hours of operation
Customers are more of a concern with townhouses and multifamily than with detached units
Size limits and other standards should be viewed through the equity lens (general comment)