

# FAIRFAX COUNTY



## ZONING ORDINANCE MODERNIZATION PROJECT

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### NOTABLE CHANGES FROM THE 1978 ORDINANCE

APRIL 6, 2021

#### Introduction

This document summarizes the notable changes found in the new zMOD Ordinance (adopted by the Board on March 23, 2021 with an effective date of July 1, 2021) from the previous 1978 Fairfax County Zoning Ordinance. Information is generally grouped by Article, with classification groupings in Article 4 – Use Regulations. Additional information can be found in the footnotes in the [annotated version of the adopted Zoning Ordinance](#).

#### Article 1 – General Provisions

- ❖ **Purpose Statements.** The purpose statements have been reorganized and edited, with new references added related to facilitating an equitable community and to promoting an overall sense of community through placemaking.

#### Article 2 – Zoning Districts

- ❖ **Angle of Bulk Plane.** This older methodology based on the height of the building using an angle to determine minimum setbacks has been simplified. The formula, termed “angle of bulk plane,” and effective building height have been deleted and replaced with tables that capture the same or similar setbacks relative to height without reliance on the formula.
- ❖ **Certain R-C District Setback Modifications.** Previously, certain lots comprehensively rezoned to the R-C District in 1982 that are either (a) subject to a final plat approved prior to July 26, 1982, or (b) recorded with a final consent decree entered in specific Chancery Numbers, could seek special permit approval to modify setback requirements. Dwellings meeting these standards can now apply the setbacks that were in effect in 1982 with administrative review rather than special permit approval.
- ❖ **Deleted Zoning Districts.** The R-P (Residential-Preservation) and I-1 (Light Industrial Research) Districts have been removed, as there was no land zoned to these districts.
- ❖ **New Graphics.** Graphics have been added to better illustrate lot and building dimensional standards, building height measurement, location regulations for decks and other accessory structures, and other provisions of the Ordinance.
- ❖ **Planned “P” Districts.**
  - **Comparison to Conventional District.** The requirement for P districts to generally conform with the landscaping and screening provisions of the most similar conventional zoning

- district (Par. 1 of Sect. 16-102) was not brought forward. The provision had no practical meaning, since transitional screening and barrier requirements are based on land use, not zoning district. No landscaping and screening requirements have been removed.
- **PDH Density Bonus.** The density bonuses allowed in the PDH District for design features, historic preservation, or proposed development at a lower density than the previous zoning district have not been carried forward.
  - **PDH Secondary Use Limitations.** The secondary use limitations have been updated based on the proposed use classification system. In addition, the previous requirement that secondary uses of a commercial nature be designed to serve primarily the needs of the residents of the planned development has been revised to require secondary uses in the commercial classification to be designed as an integrated component of the development. This shifts the focus to design and layout, instead of whether a particular secondary use primarily serves the planned development. The maximum land area devoted to commercial uses continues to be limited by the number of dwelling units times a square foot factor per unit.
  - **P District General Standard.** The general standard that carries forward Par. 3 of Sect. 16-101 of the previous Ordinance has been revised to better capture the intent of the requirement for planned developments to protect natural resources. The new language refers to natural ecosystem components instead of “scenic assets and natural features,” and includes a broader list of examples, including meadows, healthy soils, and heritage resources.
- ❖ **R-A District.** The standard from Par. 2 of Sect. 3-A02 of the previous Ordinance that requires agricultural uses in the R-A District to cover not less than 75 percent of the land area has been relocated to the R-A District standards and has been broadened to allow open space as well as agricultural operations to comprise the minimum 75 percent.
  - ❖ **Stacked Townhouse Dwelling.** Stacked townhouses, often referred to as two-over-twos, are a common building type in the County, but were not specifically addressed in the 1978 Zoning Ordinance. They were interpreted to be multifamily dwellings but listing this type of housing separately allows separate standards to be assigned where appropriate, such as for parking, which is discussed below under Article 6. In Article 4, the permissions for stacked townhouses have been aligned with those of multifamily dwellings. In Article 5, stacked townhouses are grouped with single-family detached and attached units for the purpose of affordable dwelling unit calculations. Article 2 contains the building and dimensional standards for this new dwelling type. The setbacks of stacked townhouses are aligned with those of single-family attached dwellings, but a taller building height has been proposed to accommodate the stacked design. In the R-12, R-16, and R-20 Districts, the maximum height of stacked townhouses is 60 feet. In Affordable Dwelling Unit Developments, in the R-5 through R-20 Districts, the maximum building height varies by zoning district from 50 to 60 feet. In the PRC District, stacked townhouses have been added to the population factor for single-family attached units, meaning they are subject to a population factor of 2.7 persons per unit rather than the multifamily population factor of 2.1 persons per unit.

## Article 3 – Overlay and Commercial Revitalization Districts

- ❖ **Airport Noise Overlay District.** The uses listed in the noise compatibility table have been updated to correspond with the use tables in Article 4. Accessory and temporary uses were not carried forward as the noise level standards are based on the principal use. New uses were assigned the levels for the most similar use, while some changes are proposed for consolidated uses. For instance, theaters were previously not allowed in any of the noise impact areas, but they have been consolidated with other indoor recreation uses which are allowed with acoustical treatment measures.
- ❖ **Commercial Revitalization Districts (CRDs).** This section has been extensively reorganized and consolidated. Provisions that were found in Article 7 and Appendix 7 of the previous Ordinance have been brought together, and the repetition for the five CRDs has been eliminated.
  - **Building Height.** Flexibility in maximum building height is expanded in a similar manner as it applies to setback requirements by allowing an increase in the building height permitted in the underlying zoning district if the height is specifically permitted in the Comprehensive Plan.
  - **Interior Parking Lot Landscaping.** Under previous standards, interior parking lot landscaping in CRDs was only required when 20 or more parking spaces were being added to a development. Interior parking lot landscaping is now required when the resultant parking lot contains a total of 20 or more parking spots, which is the same standard that applies to non-CRD districts.
  - **Parking Reduction.** The ability for the Board to include appropriate conditions on parking reductions has been added. This language was previously included in all non-CRD parking reductions and was expanded to those in CRDs.
  - **Setbacks.** Previously, in commercial districts, a front setback was required to be a minimum of 20 feet unless the Comprehensive Plan specified a distance that is equal to or less than the front setback for the underlying zoning district. In the various commercial districts, the front setback requirement ranges from 25 feet to 40 feet, or more, depending on the height of the building. The adopted Ordinance now allows 20 feet or a lesser setback if it is specified in the Comprehensive Plan. This change clarifies that the front setback would never be required to be greater than 20 feet in a commercial district in a CRD. In addition, like with Commercial Revitalization Areas, Community Business Centers, and Transit Station Areas, the ability for the Director to modify or waive setback requirements as a part of site plan approval was added.
- ❖ **Historic Overlay Districts (HODs).** This section has been reorganized to bring the provisions previously found in an appendix into the body of the Ordinance and consolidated to remove repetition. Notable changes include:
  - **Archaeological Survey.** While consultation with the Park Authority archaeologists is required, the procedural details of archaeological survey requirements were relocated out of the Zoning Ordinance and into a separate document maintained by the Park Authority. As a part of the submission requirements, it has been clarified that for applications within or contiguous to an HOD, a Phase I archaeological study is only needed if found to be required following submission of the Archaeological Survey Data Form.

- **Criteria.** The criteria for establishing an HOD have been edited to follow the National Register criteria of significance.
- **Height.** In the Lake Anne Village Center, the previous standard that building height must be compatible with the intent of the district was not brought forward.
- **Request to Establish an HOD.** Previous Par. 2 of Sect. 7-203 regarding the procedures to establish or revise an HOD was not carried forward, as the procedures for all map amendments (rezoning) are included in new Article 8.

## Article 4 – Use Regulations

The changes in Article 4 are summarized below according to the seven use classifications, beginning with the general use standards that affect all uses.

### General Use Standards

- ❖ **Alternative Use of Historic Buildings.** This use replaces the previous special permit use “older structures.” The use allows the Board to approve a special exception for nonresidential uses within any structure listed on the Fairfax County Inventory of Historic Sites, with the intent being to incentivize the preservation of historically significant sites through the allowance of appropriate adaptive reuse. Although not all buildings on the Inventory are residential, many are, and the proposed uses must be compatible with the surrounding neighborhoods. Therefore, uses in the animal-related category (e.g., kennel), vehicle-related category (e.g., vehicle repair, vehicle fueling station), and the entire industrial classification, except for craft beverage production and small-scale production establishments, are prohibited.
- ❖ **Associated Service Uses.** Associated service uses (new name for accessory service uses) are intended to provide a convenient service to the residents in a multifamily development, or to employees in an office or industrial park. These are uses that are not otherwise allowed by right in the districts where they are permitted as associated service uses. The revisions create a simplified and uniform approach and include changes to the list of uses, the districts where they are allowed, and to the standards.
- ❖ **Modifications or Waivers.** A new section has been added that clearly states which standards can be waived or modified. The Board may modify or waive any use standards in Article 4 in conjunction with approval of proffered conditions or a special exception, but the standards, procedures, or provisions in the other Articles may only be modified or waived if specifically permitted by the Zoning Ordinance. Zoning or subdivision requirements for a planned district may also be waived by the Board in conjunction with rezoning applications. No definition may be modified and the BZA may not modify or waive standards unless specifically provided for in the Ordinance.
- ❖ **Outdoor Storage.** Standards for outdoor storage and display were reorganized, consolidated, and revised as general standards for residential, commercial, and industrial districts. In residential districts and the residential areas of P districts, outdoor storage is still limited to 100 square feet and must not be located in the front yard.
- ❖ **Performance Standards.** The references that were previously included in Article 14, Performance Standards, are now included as part of a general standard that requires compliance with other local,

state, or federal requirements. The standard includes specific references to air pollution, fire and explosion hazards, radiation hazards, electromagnetic radiation and interference, and liquid and solid wastes.

## **Agricultural and Related Uses**

- ❖ **Farm Winery, Limited Brewery, and Limited Distillery.** The previous Ordinance allowed a farm winery, limited brewery, and limited distillery to have up to 200 guests, or if access is from a “major arterial,” up to 300 guests. Major arterial was not a defined term in the Ordinance. To clarify this issue, the term has been replaced with principal arterial.

## **Residential Uses**

- ❖ **Live-Work Development.** This new use is for a structure or part of a structure in which individual units are specifically designed to accommodate a residential dwelling unit and a flexible workspace for office-type uses. Use standards prohibit 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 that typically require installation of specialized equipment.
- ❖ **Religious Group Living and Residence Hall.** A new use standard requires that in the industrial and commercial districts, religious group living must be located in conjunction with a religious assembly use, and a residence hall must be located in conjunction with a private school, a college or university, or a religious assembly use.
- ❖ **Stacked Townhouse Dwelling.** This is a new use that is discussed above in Article 2 and below in Article 6.
- ❖ **Length of Rows of Single-family Attached and Stacked Townhouse Dwellings.** The maximum length of a contiguous building has been extended from 240 feet to 250 feet, excluding any utility closet. This change will help accommodate the width of brick and bay windows for a standard building group.

## **Public, Institutional, and Community Uses**

- ❖ **Adult Day Support Center.** This is a new use to allow day support services for adults with intellectual or developmental disabilities. Adult day support centers focus on continuing education and skill-based training, such as job training skills and peer interaction, to help individuals become independent and integrated with the community. The permissions align with those of a child care center. This use is included in the Community, Cultural, and Educational Facilities category and would not require review by the Health Care Advisory Board (HCAB). With the addition of this new use, no changes were made to the permissions or standards for the adult day care center use which is included in the Health Care category and requires special exception approval by the Board and review by HCAB.
- ❖ **Child Care Center and Private School.** Among other limitations, outdoor recreation areas are required to be located outside the minimum front setback. Previously, this standard could be modified by special exception in the commercial and industrial districts only. The reference which limits the ability to modify the location of outdoor recreation areas only when the facility is located

in commercial and industrial districts has been removed. This allows a modification of the outdoor recreation location to be requested as a part of the special exception in residential and planned districts as well.

- ❖ **Club, Service Organization, or Community Center.** A new standard has been added that allows the Board to consider and condition accessory non-member events when this use is located in residential districts. The use is not permitted to host these types of events if they are not expressly approved by the Board.
- ❖ **College or University.** The use has been changed from a special exception use to a permitted use in the C-1, C-2, and C-3 Districts with the addition of use standards. These standards require the use to be located within enclosed buildings and prohibit residential, athletic, or large-scale assembly facilities.
- ❖ **Funeral Home.** Columbaria would now be allowed within an enclosed building in commercial and industrial districts.
- ❖ **Solar Power Facility.** This is a new use added for utility-scale operations in order to clarify the permissions and associated standards, including requirements for setbacks of solar panels and decommissioning plans. This use does not apply to the private collection of solar energy that is permitted as an accessory use.
- ❖ **Specialized Instruction Center.** Previously known as a school of special education, the permissions for this use have been changed from not allowed to a special exception use in the I-6 District if it involves vocational training, such as commercial driving schools, mechanical or trade schools, or similar types of instruction.

## Commercial Uses

- ❖ **Animal Shelter, Kennel, and Veterinary Hospital.** Special exception standards prohibiting outdoor facilities in commercial and planned districts have been removed. A new special exception standard has been added that requires animals to be kept indoors between 10:00 p.m. and 7:00 a.m. to align with the Noise Ordinance but allows for the leashed walking of animals and for Board modification of the hours, considering factors such as lot size and proximity to existing and planned residential development.
- ❖ **Banquet or Reception Hall.** This is a new use that clarifies where event spaces as a principal use are allowed by special exception in the C-1 through C-4 Districts, by right in the C-5 through C-8 Districts, and in planned districts. These facilities are leased on an event-specific basis for receptions, meetings, banquets, and other similar events.
- ❖ **Bed and Breakfast.** Similar to the club, service organization, or community center use, a new standard has been added that allows the Board to consider and condition accessory rentals for events for individuals not staying overnight as guests when the use is located in residential districts. The use is not permitted to host these types of events if they are not expressly approved by the Board.
- ❖ **Catering.** Under the previous Ordinance, catering was considered most similar to either a business service and supply service establishment or production/processing. This new use separately defines catering and brings forward permissions from both of those other uses and expands them from not allowed to by right in the C-3 and C-4 Districts.

- ❖ **Commercial Off-Street Parking.** Language has been added to clarify that this use is for the parking of passenger vehicles and not for the storage of commercial vehicles.
- ❖ **Garden Center.** Under the 1978 Ordinance, establishments growing and selling nursery stock and related items were considered either: a) a plant nursery; b) retail sales; or c) agriculture if the sales are wholesale. The new Ordinance creates a single use with different use standards applicable depending on if the use is permitted by right or requires special exception approval.
- ❖ **Indoor Commercial Recreation and Outdoor Commercial Recreation.** Each of these two uses consolidates multiple previous uses with similar operational functions and land use impacts. In order to allow for new or emerging forms of recreation, the consolidated uses do not specifically list the individual types of activities that could take place in an indoor or outdoor recreation facility. New standards for uses involving firearms have been added to each use.
  - For indoor commercial recreation, the use is permitted by right in the C-3 and C-4 Districts if repurposing an existing building; otherwise, either a special exception is required (if in conjunction with a rezoning or other special exception use) or a special permit. In the C-5 District, indoor commercial recreation is permitted by right if limited to 6,000 square feet in size. In the C-6 through C-8 Districts, the use is permitted by right with no district-specific use standards. In the I-3 through I-6 Districts, indoor commercial recreation is permitted either by special exception (if in conjunction with a rezoning or other special exception use) or by special permit. Indoor commercial recreation is permitted in the planned districts if shown on an approved development plan/PRC development plan and PRC plan, or by special exception.
  - Outdoor commercial recreation in the R-C, R-E, and R-1 Districts is limited to ropes courses, paintball, firing ranges, skeet and trapshooting ranges, and other similar uses, which require special permit approval, and golf driving ranges which require special exception approval. A ten-acre minimum lot size has been added for a ropes course, and a 25-acre minimum lot size has been added for paintball. A 15-acre minimum lot size has been added for golf driving ranges located in the R-C, R-E, and R-1 Districts, consistent with the minimum size for golf courses. Except for ropes courses, paintball, firing ranges, skeet and trapshooting ranges, and other similar uses, which are only allowed in the R-C, R-E, and R-1 Districts, all other outdoor commercial recreation uses are allowed in the C-3 through C-8 and I-2 through I-6 Districts with special exception approval. In the PDH, PRC, PDC, PRM, and PTC Districts, the use is permitted if shown on an approved development plan/PRC development plan and PRC plan, or by special exception.
- ❖ **Massage Therapy Establishment.** Previously, a massage establishment licensed in accordance with Chapter 28.1 of the County Code was deemed to be an office use, while certain types of massages, such as a massage to the scalp, face, neck, shoulders, arms, hands, or feet, or to the upper body while fully clothed and seated in a chair, that do not require licensing were considered a personal service use. This differentiation has caused confusion and in order to better identify the use for both zoning and licensing purposes, a separate new use, massage therapy establishment, was added which consolidated massage as licensed under Chapter 28.1 and the specific types of massages that were previously considered personal service. The permissions are aligned with those of the office use.



- ❖ **Office.** This use consolidates seven previous uses, including general office and research and development uses. The consolidation allows scientific research and development as part of the office use in all commercial and industrial districts, and in the PDC and PTC Districts, subject to use standards that would not allow the manufacturing or mass production of goods. Standards have been added to the commercial and planned districts addressing explosive and potential hazardous materials. The maximum percentages of office in the C-5 through C-8 Districts were carried forward, but the increase that is allowed by special exception has been revised to allow office up to 100 percent of the permitted FAR in order to allow for consideration of office uses that may be compatible in a retail setting.
- ❖ **Pet Grooming Establishment.** Under the previous Ordinance, this use was considered to be most similar to a personal service establishment. To avoid confusion, pet grooming has been made a separate use with similar permissions, except it is not permitted as an associated service use.
- ❖ **Public Entertainment.** This is a new use intended to include establishments where the focus is similar to a nightclub or bar with music, dancing, and entertainment activities predominantly catering to adults. Public entertainment is allowed by special exception in certain commercial and industrial districts and in certain P districts. Public entertainment includes restaurants that exceed the accessory entertainment allowed as part of a restaurant, as well as smoking lounges that meet the characteristics of public entertainment, such as staying open past 10:00 p.m. and having live entertainment.
- ❖ **Restaurant.** A new standard limiting the size of accessory entertainment to 15 percent of the publicly accessible area or 250 square feet (whichever is larger) replaces the previous 1/8 of the dining area limitation. The standard notes that accessory entertainment and smoking activities are allowed while food service is available and provides examples of accessory entertainment. Accessory hookah and other smoking activities are not subject to the size limitation for entertainment but must comply with indoor clean air requirements.
- ❖ **Smoking Lounge.** This is a new use which clarifies where hookah, cigar clubs, and other smoking lounges are allowed as a principal use by right or with special exception, special permit, or development plan approval in certain commercial, industrial, and planned districts. A smoking lounge does not have other entertainment activities and typically closes by 10:00 p.m. Standards also clarify that hookah and other smoking activities are allowed as accessory uses to a restaurant or public entertainment use.
- ❖ **Truck Rental Establishment.** A standard has been added that requires all trucks to be parked on-site. Truck rental is allowed by right in the I-5 and I-6 Districts and by special exception in the C-5 through C-8 Districts. The permissions have been expanded to allow truck rental by special exception in the I-4 District when in association with a self-storage facility.
- ❖ **Vehicle Sales, Rental, and Service.** Vehicle rental is allowed with special exception approval in the C-3, C-4, C-6, C-7, C-8, I-3, I-4, and I-5 Districts and with approval in the PDC, PRC, PRM, and PTC Districts. In response to industry feedback, standards have been added to allow vehicle rental by right in the C-3, C-4, C-6, C-7, and C-8 Districts if the office is limited to 2,500 square feet and the number of rental vehicles is limited to 15. No by-right car wash, maintenance, or refueling is allowed. This permits smaller rental establishments in commercial areas and allow rental companies to stay competitive with gig economy opportunities.



## Industrial Uses

- ❖ **Data Center.** Previously interpreted to be a type of “telecommunications facility,” a data center would have been allowed in virtually all zoning districts. The new use is allowed in C-3, C-4, I-2 through I-6, PRC, PDC, and PTC Districts. Use-specific standards were added requiring associated equipment, including emergency power generators and equipment, to be enclosed or screened in all districts other than the I-4 through I-6 Districts to limit noise and visual impacts. A maximum size of 40,000 square feet of gross floor area is allowed in the C-3 and C-4 Districts and 80,000 square feet of gross floor area is allowed in the I-2 and I-3 Districts. These size limitations can be exceeded if repurposing an existing building. There are no size limits in these districts if the use is located in an existing building or with special exception approval.
- ❖ **Goods Distribution Hub.** This new use is created to accommodate last-mile distribution and allows for small, local distribution centers to be located in the C-3 through C-8, PDC, and PTC Districts. The standards allow establishments up to 6,000 or 10,000 square feet in size, depending on the zoning district, and up to 80,000 square feet of gross floor area in buildings existing as of July 1, 2021, when at least ten percent of the area is either retail sales or another use that provides direct interaction with the public. In addition to the size limitations, to ensure the site does not resemble a freight distribution hub or motor vehicle terminal, only five vehicles that exceed 21 feet in length could be stored in a surface parking lot. Any vehicles exceeding 28 feet in length are not permitted to be stored on-site. Special exception approval may be granted to allow repurposing of buildings that exceed 80,000 square feet, or to exceed the vehicle limitations.
- ❖ **Self-Storage.** This use is changed from a special exception use to by-right in the I-3 District with additional standards, including requirements for screening, appearance, and parking of trucks. See also the discussions of new standards for vehicle storage (storage yard) and truck rental in association with a self-storage facility.
- ❖ **Storage Yard.** A storage yard is allowed with special exception approval when in association with self-storage in the I-3 and I-4 Districts. This storage yard is limited to vehicle storage, and the Board may impose conditions on the type of vehicles, as well as the size, location, and screening of outdoor storage.
- ❖ **Vehicle Storage or Impoundment Yard.** A new standard prohibiting more than five inoperative vehicles from being stored outside has been added to carry forward the previous limitation in the definitions of automobile graveyard and junkyard.

## Accessory Uses

- ❖ **Accessory Living Units and Home-Based Businesses.** See the [Summary of Adopted Accessory Living Unit Provisions](#) and the [Summary of Adopted Home-Based Business Provisions](#).
- ❖ **Basketball Standards.** The Zoning Ordinance previously allowed basketball standards to be located in a front yard if they are at least 15 feet from the front lot line and 12 feet from a side lot line. Rather than specifying a uniform distance from the side lot line, the side setback has been revised to require either 12 feet, or a distance equal to the minimum side setback for the zoning district, whichever is less. This allows a distance from the side lot line that is consistent with the principal structure. The language has also been revised to require the 15-foot setback from “any front yard lot

line” to address corner lots which have two front yards, but officially still only have one front lot line. This same revision has been applied to the 15-foot front setback for gardens.

- ❖ **Electric Vehicle Charging.** This is a new use intended to encourage electric vehicle usage in the County. Standards have been added limiting the height of dispensers and associated equipment, permitting associated solar canopies, and requiring landscaping and screening requirements. Electric vehicle charging spaces are counted towards the minimum required number of parking spaces. A standard limiting digital display area to one-square foot is included, and any additional display area would be regulated as a sign.
- ❖ **Fences and Walls.** Par. 3H of Sect. 10-104 of the previous Ordinance allowed the Board or BZA to approve an increase in fence or wall height in conjunction with the approval of proffered conditions or another special exception or special permit application. This standard has been revised to limit this increase to non-residential uses and to require that the increased fence height is needed to support the use.
- ❖ **Flags and Flagpoles.** A new subsection was added to carry forward the current limit of three flags per lot, and to establish new height limits for flagpoles of 25 feet for lots with single-family dwellings and manufactured homes and 60 feet for lots with other uses. A special permit for an increase in flagpole height was added. Flagpoles are subject to a five-foot front setback and must comply with the location regulations for freestanding accessory structures in the side or rear yard. Changes to the flag definition include the addition of “regardless of content” and the deletion of “or attached at the top of a pole and draped.”
- ❖ **Freestanding Accessory Structures.** Regulations have been revised regarding permitted height, setback, and size requirements to allow additional flexibility in the location of freestanding accessory structures. Under the previous provisions, an accessory storage structure (shed) was allowed to be up to eight and one-half feet in height and located in any side or rear yard, while all other freestanding accessory structures (such as play equipment, gazebos, and garages) were limited to seven feet in height if located in any side or rear yard. The revised provisions eliminate this inconsistency between sheds and other accessory structures and permit all freestanding accessory structures up to eight and one-half feet in height to be located in any side or rear yard. 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 a distance equal to the height of the structure from the rear lot line.

Provisions have been added to clarify the side setback for freestanding accessory structures in P districts without proffered yards. In the PDH, PDC, PRM, and PTC Districts, the side setback is the setback of the most similar conventional district under the cluster provisions, or the minimum distance from the dwelling to the side lot line, whichever is less. In the PRC District, the minimum side setback is considered to be eight feet, which is the minimum setback for a cluster subdivision.

A standard has been added limiting the maximum height of any enclosed structure accessory to a single-family dwelling to 20 feet on lots that are 36,000 square feet or less. The previous size limit of 200 square feet for a storage structure in the R-2 through R-20 Districts was not carried forward

because, in practice, the limit was circumvented by referring to a structure as a “workshop” or other use instead of a shed. Instead, a new cumulative standard was added for lots 36,000 square feet or less with single-family dwellings, restricting the total of all enclosed freestanding accessory structures to no more than 50 percent of the gross floor area of the principal structure. Both the maximum height and percentage limitations may be exceeded with special permit approval from the BZA.

- ❖ **Gateposts.** Instead of allowing an unlimited height, the maximum height of a gatepost is now limited to ten feet.
- ❖ **Home Day Care Facility.** This use was 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.
- ❖ **Keeping of Animals.** This use was modified based on updates to the Virginia State Code regarding boarding establishments. The regulations permit fewer than five 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 is not permitted to exceed the maximum limitations based on minimum lot size, unless a special permit is approved by the BZA. In addition, the term “commonly accepted pets” has been deleted to allow the Department of Animal Sheltering to make the determination on which animals are considered companion animals and which animals are consider exotic under Chapter 41.1 of the County Code. A standard has been added to clarify that the BZA may not approve a special permit to allow a rooster, as roosters are only allowed in conjunction with an agricultural operation.
- ❖ **Residence for Manager or Employee.** Instead of being a permitted accessory use, this use will now require approval of an administrative permit.
- ❖ **Shipping Containers.** Based on previous interpretation, standards have been added stating that shipping or sea cargo containers are not permitted as an accessory structure or use in conjunction with a residential dwelling except as temporary storage during construction with an active building permit. With nonresidential uses, they are subject to the location standards, floor area ratio, and other requirements of the zoning district.
- ❖ **Solar Collection System.** This use codifies previous interpretations on accessory solar panels, which includes both rooftop and ground-mounted systems. 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 of the zoning district by up to five feet. Freestanding solar collection systems must meet the accessory structure setback and height requirements.
- ❖ **Solid Waste and Recycling Containers.** Previously, solid waste and recycling containers (including containers on residential lots) were not permitted to be located in a driveway. Since these types of containers are often kept in driveway areas, this prohibition has been removed. Standards continue to prohibit containers from being located in any required parking space and, if located in a minimum front setback, require a 15-foot setback from any front lot line and screening.

- ❖ **Vehicle Storage.** A new standard has been added to designate any vehicles covered by a tarp as outdoor storage, and thus they are subject to the size and other regulations applicable to outdoor storage in the zoning district. A new standard has also been added to specify that a maximum of two vehicles may be stored under a fitted cover in residential areas.

## Temporary Uses

- ❖ **Food Truck.** Previously, food trucks were permitted to operate on certain commercial and industrial properties subject to specific hours of operation and location restrictions. They are now also permitted in conjunction with approved nonresidential uses, such as swim clubs, private schools, and religious assembly uses, in residential zoning districts and the residential areas of planned districts. These food trucks are subject to the same applicable standards as in the commercial and industrial districts, including the maximum of four hours per day, and an additional limit of 12 times per location, per year. This limitation may be exceeded if approved by the Board or BZA in conjunction with a special exception or special permit, respectively. Food trucks are also permitted as part of a special event.
- ❖ **General Standards for Temporary Uses.** The submission deadline has been revised from 21 days to 30 days prior to the event given the need to coordinate with multiple agencies.
- ❖ **Special Event.** Instead of listing specific types of events (such as circuses, fairs, and carnivals), the special event use now applies to all types of short-term events that do not fall within the definition of any other temporary use. The requirement that the 21-day time limit for the event be applied consecutively has been deleted. This will allow a one-day event to occur over an extended time period, such as a weekly entertainment function at a community pool or religious assembly. Also, the requirement that the principal administrative offices of the sponsor be located in the 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. The business promotional activity use is consolidated into the special event use. As a part of this consolidation, the requirement that special events be sponsored by a non-profit organization only applies to open-air markets and seasonal sales for nonresidential uses in residential districts. The event timeframe limitation of 14 days within a three-month period has been removed, and all special events are now subject to the 21-day timeframe. The standards for the 21-day NonRUP for seasonal sales in commercial districts (from Par. 15 of Sect. 17-104 of the previous Ordinance) have been included under the special event use and cross-referenced to the site plan section in Article 8.

## Other Changes

- ❖ **Office or Industrial Complex.** Throughout Article 4, the previous requirement for certain uses, like religious assembly, child care center, and private school, to be permitted by right in industrial districts if located in an “office or industrial building complex containing a minimum gross floor area of 30,000 square feet” has been replaced with a requirement that they be located in an “office or industrial complex that is planned, designed, constructed, and managed on an integrated and coordinated basis.”

## Article 5 – Development Standards

- ❖ **Affordable Dwelling Unit Example Calculations.** The previous outdated example of how affordable dwelling units are calculated has been replaced with four new examples based on development types, including single-family attached or stacked townhouse dwellings, multifamily dwellings, mixed dwellings (some combination of single-family or stacked and multifamily), and mixed-use.
- ❖ **Carport Extension.** The previous allowance for a carport to extend up to five feet into any minimum side setback if it is no closer than five feet from the lot line has been deleted. The change requiring carports to comply with the same setbacks as the dwelling only applies to future construction.
- ❖ **Cluster Subdivision Open Space.** Previously, the Ordinance specified that at least 75 percent of the required open space in cluster subdivisions be provided as a contiguous area with no dimension being less than 50 feet. The minimum 50-foot dimension has been replaced with a requirement that the area be usable open space. Usable open space (see discussion below under Article 9) is defined in the Ordinance to include areas designed for recreation such as athletic fields and courts, playgrounds, and natural areas with walking and bicycle trails.
- ❖ **Corner Lots.** Under previous regulations, corner lots had to provide the minimum front setback adjacent to both streets, but in the R-E through R-8 Districts, the rear setback on a corner lot could take the dimension of the side setback. For instance, in the R-2 District, a corner lot was required to provide a 35-foot front setback from the lot lines which abut each street, and a 15-foot setback from the lot lines which abut both adjoining lots, in lieu of providing a 25-foot setback from the rear lot line. The new standards require a 25-foot rear setback rather than the smaller side setback dimension. The rear lot line is opposite the shorter street line. This 25-foot rear setback applies only to new construction and does not apply to existing structures or additions to existing structures.
- ❖ **Decks and Patios.** Standards allowing decks to extend into setbacks are reorganized into a user-friendly table and revised to allow certain deck modifications. The standards allow: a) a deck of any height to have a privacy screen that is not solid below the deck; b) an attached deck of any height to have a privacy screen above the deck on no more than two sides extending from the dwelling, with a maximum height of 8.5 feet from the deck floor; and c) an attached deck of any height to have elements such as pergolas, trellises, and overhanging planters that are 8.5 feet high and no more than three feet in width. Privacy screens and other features above the deck are only permitted with attached decks. Any screening or design features on detached decks or patios are subject to the applicable fence or freestanding accessory structure regulations.
- ❖ **Floodplain Setback.** A clarification is added to clearly state that the required 15-foot setback from a floodplain applies even if there is a property line between the floodplain and a structure, which is reflective of previous practice. Additionally, it has been clarified that the requirement for an 18-inch vertical separation (freeboard) between the lowest part of a structure and the water-surface elevation of the 100-year floodplain applies not only to development within a floodplain, but also on any lot where a floodplain is located or on a lot abutting a floodplain. This clarification is also consistent with the Public Facilities Manual (PFM) and long-standing practice.
- ❖ **Floodplain Accessory Uses and Structures.** The previous Ordinance only permitted accessory uses and structures in conjunction with single-family detached and attached dwellings. This ability to have accessory uses and structures has been expanded to include stacked townhouse dwellings and manufactured homes.

- ❖ **Landscaping.** The requirement for a landscaping strip between a parking lot and abutting property lines to be four feet in width and have trees planted every 50 feet is replaced with a requirement for the landscaping strip to be planted in accordance with the PFM. The PFM notes that planting areas should be eight feet wide and trees should be no closer than four feet from a restrictive barrier. Also, the transitional screening and barrier matrix is updated so that the uses correspond to the principal uses in the new Article 4. New uses have been integrated based on current practice or the most similar use.
- ❖ **Lighting.** An exemption to the requirement for a maximum Correlated Color Temperature has been added for signs, as color temperature is not applicable to colored lights.
- ❖ **Limitations on Subdivisions.** A long-standing interpretation that allows for Zoning Ordinance requirements to be satisfied over a single site plan, regardless of internal subdivision lines, is now codified.
- ❖ **P District Setbacks.** Previously, when there are no proffered setbacks, the setbacks applied for alterations to single-family dwellings in the PDH, PDC, PRM, and PTC Districts are those for the cluster provisions of the most similar conventional district. The setback can now be either the cluster setbacks for the most similar conventional district or the existing distance to the lot line established by the dwelling on the lot, whichever is less. Setbacks for dwellings that are destroyed or damaged by natural disaster may also take on the existing distances to the lot lines established by the previous dwelling on the lot.
- ❖ **Setbacks from Interstates and Railroad Tracks.** The Ordinance requires principal buildings to be set back a certain distance (depending on building type) from the rights-of-way of interstate highways, the Dulles Toll Road, and railroad tracks. Because in the previous Ordinance the heading for this provision refers to “abutting” lots, it was only applied to lots that are touching the right-of-way. The term abutting is not carried forward in the heading, and this revision results in a requirement that the specified setback, such as a minimum of 200 feet from railroad tracks, is applied to all lots that are within the 200-foot setback, not just those directly abutting the right-of-way. The Ordinance allows modifications to be approved by the Board. The previous provision that this setback does not apply to lots recorded prior to 1978 where the setback would negate the use of the lot is clarified. For these pre-existing lots, the Zoning Administrator can modify the setback when meeting the requirement would prevent development of the lot in accordance with the Ordinance. In addition, the interpretation that allows an exemption for a minor lot line adjustment is added.
- ❖ **Special Permit for Accessory Structures on Through Lots.** A new special permit option is added to allow through lots (which are lots that have frontage on two or more streets but are not a corner lot) to locate accessory structures in a front yard serving as the functional rear yard. Standards are added requiring the structure to meet the front setback requirements, to be in character with the existing development on the lot, and to be harmonious with the surrounding development.
- ❖ **Waiver of Minimum Lot Size.** Several standards for this special exception have been revised. Previously, a standard required the preservation of all existing vegetation. This standard has been revised to require preservation of quality vegetation, while also allowing the replacement of vegetation with species that are suited to post-development conditions. Also, a previous requirement that the proposal reduces impervious surface has been changed to require less impervious surface as compared to what could be built without approval of the waiver.

## Article 6 – Parking and Loading

- ❖ **Parking Rates.** The parking rates have been organized into a table and updated to correspond to the principal uses in the new Article 4. New uses have been assigned rates based on the Land Development Services’ “Land Use – Parking Rate Table,” previous zoning applications, or the rate for the most similar use. The stacked townhouse use has been assigned a rate of 2.3 spaces/unit, which is in between the rate of 1.6 spaces/unit for multifamily units and 2.7 spaces/unit for single-family attached dwellings. Stacked townhouses are also added to the parking rates for transit station areas based on the number of bedrooms, consistent with the current practice. Parking rates will be the subject of a comprehensive review as part of a subsequent Zoning Ordinance amendment.

## Article 7 – Signs

- ❖ **Construction Project Signage.** Active construction projects for residential development are allowed to have 60 square feet of signage. Residential development has been defined as having a minimum of three dwelling units under development as a single project.

## Article 8 – Administration, Procedures, and Enforcement

- ❖ **BZA Term Expiration.** Previously, the Clerk to the BZA was required to notify the Circuit Court at least 30 days prior to the expiration of a BZA member’s term. The timeframe was extended to 60 days and a requirement to also notify the Board within this timeframe has been added.
- ❖ **Development Plan Submission.** The Zoning Ordinance previously allowed for submission of a proposed development plan within 60 days after the initial application for a rezoning or subsequent amendment, but this allowance was not carried forward. Similarly, the previous text which allows an application to retain its hearing date when the application is amended prior to 40 days before the public hearing was not carried forward.
- ❖ **Easements.** Generalized development plan, final development plan, PRC plan, special exception, special permit, and variance applications were previously required to include the location of all existing public utility easements having a width of 25 feet or more and major underground utility (i.e., transmission pipeline) easements regardless of width. Language for the revised submission requirement now includes all existing utility easements and the preliminary location(s) of new or relocated utilities.
- ❖ **Electronic Copies.** A new standard allows the submission of only one paper copy of all submission requirements if an application is submitted electronically, unless otherwise determined by the Zoning Administrator or Director of LDS. Staff can request additional paper copies during the review process.
- ❖ **Fee Schedule.** A table with the fees for each application type has been added. Most of the fees have been carried forward from the previous Ordinance. The following fees have been added or reduced:
  - **Accessory Living Units.** A new administrative permit application fee of \$200 and a \$70 renewal fee have been added. The \$70 renewal fee has also been applied to the accessory living unit special permit, which replaced the previous fee of  $\frac{1}{8}$  of the current application fee of \$435, which equals \$54.38. No change was made to the \$435 special permit fee.



- **Deletion of Land Area Only.** Previously, an amendment to a previously approved PCA, DPA, FDPA, CDP, PRC Plan, or concurrent CDP/FDP for a deletion of area fell under “All Other Uses Without New Construction” and required ½ the prevailing application fee. The new fee is ¼ the prevailing fee.
- **Home-Based Business.** A new administrative permit fee of \$100 and a special permit fee of \$435 replace the current fees for a home occupation permit (\$50) and a home professional office or barber shop or beauty salon special permit (\$16,375).
- **Waiver of Certain Sign Regulations.** The previous special exception of \$16,375 was reduced to \$8,260 to match the Comprehensive Sign Plan fee.
- **Congregate Living Facility.** The fee for this special exception was reduced from \$16,375 to \$8,180.
- **Floodplain.** The fee has been reduced from \$16,375 to \$8,180 and is limited to additions to or replacement of a single-family dwelling existing as of the effective date of this Ordinance in order to allow for needed flood safety improvements to occur to existing homes. Applications for more than one dwelling or where there is not an existing dwelling would continue to have the fee of \$16,375.
- **Quasi-Public Park, Playground, Athletic Field.** The fee for this special exception application was reduced from \$16,375 to \$8,180.
- ❖ **Limitation on Rehearing.** The 1978 Zoning Ordinance prohibited the Board from rehearing an application that was substantially the same on the same property within 12 months of the application being withdrawn or denied. This limitation has been deleted for special exceptions and special permits, as the State Code only grants this authority for rezonings and proffered condition amendments.
- ❖ **Minor Modifications.** Based on current practice, the minor modification provisions have been revised to clarify that they also apply to a PRC plan.
- ❖ **Minor Site Plans.** Requirements have been added for minor site plans to show landscaping and for the plan to be certified by a professional, which is generally consistent with current practice. An additional submission requirement requires existing and proposed topography to be shown for projects that involve changes to topography.
- ❖ **Modification of Submission Requirements.** The Zoning Ordinance previously included different provisions for the modification of submission requirements based on application type. These have been replaced with a single standard that allows (except for the application form, legal description, affidavit, and application fee, if applicable) any other submission requirement to be modified or waived by the Zoning Administrator or the Director of LDS for site plan submissions when it has been determined that the requirement is not necessary for review of the application.
- ❖ **PTC District – Distance from Metro.** Previously, an application for rezoning to the PTC District was required to identify any development located within certain distances (one-eighth, one-quarter, and one-half mile) from the Metro station entrance. A one-third mile distance has been added, consistent with Comprehensive Plan provisions that recommend specific density ranges within this area.
- ❖ **Reasonable Accommodation.** In various provisions, the Zoning Ordinance previously referred to modifications that could be made to allow an accessibility improvement. These references have

been revised to add “or other reasonable accommodation.” This is intended to allow modifications to zoning requirements as necessary to be consistent with the requirements of the Fair Housing Act and other Federal nondiscrimination laws.

- ❖ **Repair of Nonconforming Structures.** The Zoning Ordinance did not allow for the repair of a nonconforming structure whose physical condition is unsafe or unlawful. This has been revised based on the definition of an unsafe structure in the Virginia Maintenance Code to prohibit the repair of a structure that is “so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely” or has occurred. This standard meets the intent of limiting the restoration of nonconforming structures while allowing more minor repairs such as window replacement that could be prohibited under the previous Ordinance.
- ❖ **Solar Power Facility Decommissioning.** In response to a State Code amendment, language has been added to the Ordinance requiring any solar power facility subject to “2232 review” as a public utility to submit a bonded agreement for decommissioning of the facilities, equipment, or devices.
- ❖ **Timeframe for Decision.** The requirement for a rezoning to be heard and decided within 12 months and a special permit or variance within 90 days has been changed from “shall” in the previous Ordinance to “should,” consistent with the State Code which is directory with regard to these timeframes, not mandatory.
- ❖ **Variance Plat Submission Requirements.** While many submission requirements for special exception and special permit applications are identical, certain requirements in the previous Ordinance are slightly different or not required for variance applications. The variance requirements have been aligned with those of special exceptions and special permits by adding the following submission requirements which are typically needed for an appropriate review of an application:
  - A statement confirming the ownership of the property;
  - Photographs to be labeled and a preference for digital photography;
  - Identification of construction dates, if known, and indication of whether a structure will be retained or demolished;
  - Existing right-of-way centerline delineation and dimensions to the edge of pavement; and
  - A statement from the Health Department that available water and sewer facilities are adequate, if applicable.
- ❖ **Withdrawing Applications.** The provisions relating to withdrawal and dismissal of applications have been revised and clarified. A new provision specifies that 90 percent of the filing fee will be refunded for applications that are administratively withdrawn because an applicant refuses or neglects to make needed corrections after submission but prior to acceptance of the application.

## Article 9 – Definitions and Ordinance Interpretations

New definitions are included for consolidated or new uses, and previous definitions have been revised to relocate certain details to the use standards. Notable revisions to certain definitions are discussed with their related uses and topics above. Additional changes to definitions include:

- ❖ **Alternative Lending Institution.** This definition has been updated to include establishments that offer short-term loans online if associated appraisals or other services are provided in person.
- ❖ **Development Plan.** The definition for “development plan” has been revised to apply generally to the various types of plans required to be submitted with a rezoning application. The specific types, including generalized, conceptual, final, and PRC development plans are also defined.
- ❖ **Gardening and Composting.** The reference to flowers and ornamental plantings has been removed to clarify that flowers and ornamental plants grown on a lot would be considered landscaping rather than a garden and would not be subject to the size and location regulations for gardens in a front yard.
- ❖ **Grade.** The definition of grade has been modified to address retaining walls, consistent with Technical Bulletin 19-01 and current interpretations for accessory structures. For the purpose of measuring height, the grade must extend ten feet from a principal structure in order to use the higher elevation, and five feet from an accessory structure. This is a reduction from the previous interpretation of six feet for accessory structures. For the purpose of measuring the height of a fence or wall, a retaining wall establishes the finished grade.
- ❖ **Open Space Definitions.**
  - In the definition of landscaped open space, the subjective language requiring it to be aesthetically pleasing has been deleted.
  - The definition of usable open space has been revised to include the natural areas that are associated with walking, hiking, bicycle, or bridle trails.
- ❖ **Noncompliant.** Noncompliant has been defined to replace “not nonconforming” as used in Article 15 in the previous Ordinance.
- ❖ **Patio.** A new definition has been added for a patio, which was previously defined as a deck.
- ❖ **Privacy Yard.** The requirement for a privacy yard to be enclosed on at least two sides with a fence or wall has been deleted.
- ❖ **Recreational Vehicle or Travel Trailer.** The previous definition for travel trailer has been updated and the size limits have been deleted since some of the RVs currently sold do not meet these older dimensions.
- ❖ **Street, Major Thoroughfare.** Appendix 8 of the previous Ordinance (Listing of Roadways by Functional Classification) and its reference in this definition have been replaced with a reference to the Roadway System Functional Classification in the Comprehensive Plan’s Policy Plan, as this is the source for Appendix 8.
- ❖ **Tiny House.** A definition has been added for a tiny house to assist with questions about this type of structure.
- ❖ **Wireless Facility.** The subsets of the definition have been updated in accordance with current state and federal regulations.

## Appendix 1 –Provisions Relating to Previous Approvals

Appendix 1 of the Ordinance includes the provisions that relate to previous approvals. Appendix 1 was a part of the Board adoption but is not part of the adopted Zoning Ordinance. Rather, it is a reference that will be conveniently located on the website and will specify how previous approvals are to be treated under the new Ordinance. Going forward, this appendix will include a list of subsequent Zoning

Ordinance amendments which provide specific allowances for prior approvals. Most of the provisions associated with previous amendments did not need to be carried forward, but some, such as those relating to parking for the Restaurants amendment adopted in 2018, have been incorporated directly into the text of the appropriate articles of the Zoning Ordinance.

- ❖ **Grandfathering.** The term “grandfathering provisions” has been replaced with more easily understood and descriptive references.
- ❖ **Flagpoles.** Lawfully existing flagpoles as of July 1, 2021, will be allowed to remain, and are not subject to the new height limits. New or replaced flagpoles will need to comply with the Ordinance.
- ❖ **Freestanding Accessory Structures.** Similarly, lawfully existing freestanding accessory structures as of July 1, 2021, are not required to comply with the new standards for maximum height or cumulative square footage. Modifications to those structures that increase height are required to comply and all existing square footage would be counted toward the maximum allowed for any new or expanded structures.
- ❖ **Home-Based Businesses.** A provision has been added to clarify that lawfully existing home occupations, home professional offices, and barbershops or beauty parlors as a home occupation may continue, subject to any conditions of approval and standards in effect at the time of approval. However, any modifications to the use will require approval of an administrative permit or special permit for a home-based business in conformance with this Ordinance.

## Questions?

If you have additional questions, please email our zMOD staff at [DPDzMODComments@fairfaxcounty.gov](mailto:DPDzMODComments@fairfaxcounty.gov).

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