

FAIRFAX COUNTY



ZONING ORDINANCE MODERNIZATION PROJECT

EXECUTIVE SUMMARY OF ZONING ORDINANCE PROPOSED FOR PUBLIC HEARING NOVEMBER 24, 2020

Introduction

This document summarizes the proposed changes to the Fairfax County Zoning Ordinance that are included in the attached draft proposed for Board public hearing authorization. Appendix 1 lists the notable changes as compared to the current Ordinance and identifies which changes have been made since the previously posted Consolidated Draft of June 30, 2020. Appendix 2 summarizes in a table the changes to how uses may be permitted in the various zoning districts. Appendix 3 provides a summary and discussion of the proposed revisions for accessory living units (previously known as accessory dwelling units), and Appendix 4 addresses the proposed regulations for home-based businesses. The footnotes in the annotated version of the draft Zoning Ordinance provide detailed tracking of the proposed substantive changes. Edits for readability generally are not footnoted. It should be noted that these footnotes will not be part of the adopted Ordinance but serve as a way to identify the source of the text from the current Ordinance and any proposed changes to the current text.

This summary is organized as follows:

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Background

Scope of the Project

The Zoning Ordinance Modernization project (zMOD) has been included on the Zoning Ordinance Amendment Work Program since 2016. The goals of this project are to modernize the County's Zoning Ordinance, to make the regulations easier for all stakeholders to understand, and to remove inconsistencies, gaps, and ambiguities that have found their way into the Ordinance since initial adoption of the current Ordinance in 1978. In addition to creating a new, more intuitive format and organization, creating new graphics, and editing the text for readability, this Phase I of the modernization effort has focused on certain revisions to the uses, including adding new use names, consolidating uses, creating new uses where appropriate, developing updated definitions, and making revisions to some of the use regulations. Fewer non-editorial changes are proposed to the other parts of the Ordinance, although some changes are expected to be the focus of Phase II updates (such as an amendment to the parking regulations, which is a separate topic on the Work Program). After adoption, the Ordinance will be made available in a new online format that will be responsive to different types of devices from a cell phone to a tablet and desktop.

Timeline and Outreach

Since the project kickoff in January of 2018, Clarion Associates has been assisting Fairfax County with the zMOD project. The proposed draft has been developed and released in installments as shown below to facilitate public review and comment.

Date	Installment
April 2018	Zoning Ordinance Structure Options Report
September 2018	Industrial Uses Draft
November 2018	Public, Institutional, and Community Uses Draft
January 2019	Agricultural and Commercial Uses Draft
April 2019	Residential, Accessory, and Temporary Uses Draft
May 2019	Consolidated Draft of Use Regulations (Article 4)
July 2019	Revised Consolidated Draft of Use Regulations (Article 4) Endorsed by the Board on July 16, 2019
August 2019	Districts Draft
October 2019	Development Standards, Parking, and Signs Draft
March 2020	General Provisions, Administration, Procedures, and Enforcement Draft
June 2020	Consolidated Zoning Ordinance Draft

The attached draft represents an update to the previously released installments and the June 2020 Consolidated Draft, and includes changes from feedback received throughout the process and additional work by staff and Clarion, as described in Appendix 1. This draft represents the new proposed Zoning Ordinance and will be presented to the Board on December 1, 2020, to request authorization to advertise public hearings.



Extensive public outreach has been a hallmark of the zMOD project, which has employed a variety of ways to inform and engage the public.

- **Meetings** – Both in-person and remote meetings have been conducted by Clarion Associates and County staff throughout the process and will continue until the Board’s public hearing and decision on the revised Ordinance. There have been meetings for the general public, as well as presentations to specific community groups, including land use committees in all nine magisterial districts. Certain meetings have been streamed live on Facebook to provide an avenue for participation for those who could not attend in person, and those videos are archived on the zMOD website. Presentations have been given to elected and appointed officials, including the Board of Supervisors’ Land Use Policy Committee, the Planning Commission’s Land Use Process Review Committee, the Board of Zoning Appeals, the Architectural Review Board, and the History Commission. Videos of the Board of Supervisor’s Land Use Policy Committee are available at: <https://www.fairfaxcounty.gov/boardofsupervisors/2020-board-meetings>
- **Website** – zMOD has a dedicated [website](#) that includes contact information and posted drafts, presentations, and videos, and lists of previous and upcoming meetings.
- **Email** – zMOD has a dedicated email address. Many comments have been submitted to this email address, and staff responds to questions raised. zMOD also has an email Listserv for announcements.
- **Social Media and Channel 16** – Notices of the release of drafts, upcoming meetings, and surveys have been posted to the Fairfax County Zoning Facebook page and Nextdoor. The zMOD project has also been featured on Channel 16 through a public service announcement on the June 2020 Consolidated Draft, as well as twice on the Planning Commission Roundtable show.
- **Videos** – Clarion Associates created videos that provide an overview of the individual releases of the use regulations. Videos for the June 2020 Consolidated Draft are available in English and Spanish. Channel 16 created videos to summarize and accompany the surveys for accessory living units and home-based businesses.
- **Newsletters** – Information about drafts and meetings has been included in the members of the Board of Supervisors’ individual newsletters.
- **Surveys** – An initial survey about ways to improve the current Ordinance was conducted in early 2018 and the results were posted on February 26, 2018. In spring 2020, surveys were conducted on accessory dwelling units and home-based businesses; information about these survey results was included in a memorandum to the Board dated June 30, 2020, and posted on the zMOD website.
- **Work Groups** – Three informal work groups (one each for citizens, industry, and land use attorneys) have been created to provide a sounding board for continued discussions. These members also serve as liaisons with their other community groups and contacts to help disseminate project information.

Structure and Organization

The proposed updated Zoning Ordinance consolidates the current 20 articles and six appendices into nine articles and one appendix. An overview of the content included in each of the new nine articles is provided below:



Article 1 – General Provisions

Article 1 lays the groundwork for the Ordinance, including the enabling legislation, the Ordinance structure, and the purpose and intent statements.

Article 2 – Zoning Districts

Article 2 includes the specific zoning districts and associated regulations, including aerial imagery and tables describing key lot and building dimensional standards (e.g. building height and setbacks).

Article 3 – Overlay and Commercial Revitalization Districts

Article 3 incorporates information currently located in Article 7 and separate appendices into the body of the Ordinance. Regulations related to Historic Overlay Districts, Commercial Revitalization Districts, and other overlay districts are included in this article.

Article 4 – Use Regulations

Article 4 includes all land uses, how they are permitted in the various zoning districts, and associated use regulations. This article contains revisions from today's regulations, including new and consolidated uses, changes in some permissions, and revisions to use-specific standards that, depending on the use, may change the way that the use is established in the various zoning districts.

The proposed Ordinance arranges uses into two use tables. There is a use table for the conventional districts and one for the planned districts. In both use tables, the uses are listed along the left-hand column and ultimately will be hyperlinked to their definitions. Along the right-hand column, the use-specific standards are listed and will also be hyperlinked. Each district is listed across the top, and the planned district table further distinguishes principal and secondary uses, as well as the areas for the PRC District. The two tables are organized according to a three-tiered hierarchy that groups similar uses together as follows:

- Use Classifications: Each use is grouped under one of seven broad classifications: Agriculture; Residential; Public, Institutional, and Community; Commercial; Industrial; Accessory; and Temporary.
- Use Categories: Categories are subgroups within each classification that have common functional or physical characteristics. For example, the Recreation and Entertainment category falls under the Commercial Uses classification, and the Household Living category falls under the Residential Uses classification.
- Uses: Uses are the specific land uses that can be established within a category, such as a Banquet or Reception Hall within the Recreation and Entertainment category or a Stacked Townhouse within the Household Living category.

Article 5 – Development Standards

The new Article 5 includes the following topics:

- Lot, Bulk, and Open Space Regulations (including setbacks and permitted extensions)
- Affordable Dwelling Unit Program



- Earthborn Vibration Standards
- Water and Sewer Facility Requirements
- Grading, Erosion, Sediment Control, and Drainage
- Floodplain Regulations
- Common Open Space and Improvements
- Private Streets
- Landscaping and Screening
- Outdoor Lighting

Most of the current Zoning Ordinance provisions, including the Affordable Dwelling Unit program, have been carried forward without substantive change.

Article 6 – Parking and Loading

This article includes the parking and loading standards from the current Article 11. As part of this Phase I, parking rates have been updated where needed to correspond to the new uses. A separate review of parking rates will take place as a subsequent Phase II amendment.

Article 7 – Signs

This article carries forward the current sign regulations that were amended in March 2019 without any substantive changes.

Article 8 – Administration, Procedures, and Enforcement

Article 8 includes the following topics:

- Review Procedures
- Submission Requirements
- Fee Schedule
- Review and Decision-Making Bodies
- Nonconformities
- Condominiums, and Condominium and Cooperative Conversions
- Enforcement, Violations, and Penalties

The standards have been substantially reorganized from the current Ordinance to bring together related provisions and reduce repetition where possible.

Article 9 – Definitions and Ordinance Interpretation

Article 9 includes Ordinance interpretations of words and terms used in the Ordinance, a list of abbreviations, and the definitions. All land uses are defined, as opposed to the current Ordinance, where only some of the uses are defined. The use definitions have been simplified where appropriate and the detailed regulations, which at times were included in definitions, are instead contained in the use-specific standards. This approach, along with the classification and category structure, will assist with use determinations as the market develops new uses.

Appendix 1 –Provisions Relating to Previous Approvals

Appendix 1 includes the general and specific provisions relating to the status of previous approvals. Unlike the appendices to the current Ordinance, Appendix 1 will not be part of the Ordinance but will be posted on the Zoning Ordinance webpage for reference.

Next Steps

- Board Authorization of public hearings scheduled for December 1, 2020
- Planning Commission and Board of Supervisors public hearings targeted for early 2021 (Jan – Mar)
- Delayed effective date for the adopted Zoning Ordinance

Questions?

If you have questions or comments about any aspect of the zMOD project, please e-mail zMOD staff at DPDzMODComments@fairfaxcounty.gov or visit the project website at <https://www.fairfaxcounty.gov/planning-development/zmod>.

If you would like to receive e-mail updates about the project, please visit the website and click “Add Me to the zMOD E-Mail List.” You may also follow us at <https://www.facebook.com/fairfaxcountyzoning/>

NOTABLE CHANGES FROM THE CURRENT ORDINANCE

This appendix outlines the notable changes from the current Zoning Ordinance. Additional information can be found in the footnotes in the annotated version of the draft updated Ordinance. Changes incorporated since the release of the Consolidated Draft on June 30, 2020, are identified with this bullet: ➤

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.** Currently, 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, may seek special permit approval to modify setback requirements. These standards are straightforward and may easily be applied administratively as opposed to through a public hearing process. As such, the proposal allows dwellings meeting these standards to apply the setbacks that were in effect in 1982 with administrative review.
- ❖ **Deleted Zoning Districts.** The R-P (Residential-Preservation) and I-1 (Light Industrial Research) Districts are proposed to be removed, as there is no land currently 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. Since the June 2020 Consolidated Draft, the following new change is included:
 - The diagrams that illustrate the lot and building dimensional standards for each conventional zoning district have been updated to more clearly reflect that the front and rear setbacks extend across the entire width of the lot from side lot line to side lot line.
- ❖ **Planned “P” Districts.**
 - **Comparison to Conventional District.** The requirement for P districts to generally conform with the bulk regulations and landscaping and screening provisions of the most similar conventional zoning district (Par. 1 of Sect. 16-102) has not been included in the proposed draft. P district developments can only be approved through a specific application and public hearings before the Planning Commission and the Board and must include a development plan that shows how the site will be developed. The general standards for planned developments require conformance with the Comprehensive Plan and consideration of surrounding development. Staff evaluates issues such as the location and height of buildings,

and landscaping and screening on a case by case basis. Therefore, the additional standard is not always appropriate given individual circumstances and has been deleted.

- **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 current zoning district have not been carried forward. These density bonus provisions have not been used recently and are no longer thought to be appropriate.
- **PDH Secondary Use Limitations.** The secondary use limitations have been updated based on the proposed use classification system. In addition, the current 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 would continue to be limited by the number of dwelling units times a square foot factor per unit.
- **P District General Standard.** Based on comments received during outreach, since the June 2020 Consolidated Draft, the following new change is included:
 - The general standard that carries forward Par. 3 of Sect. 16-101 of the current 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.** In the previous draft, the standard from Par. 2 of Sect. 3-A02 of the current Ordinance that requires agricultural uses in the R-A District to cover not less than 75 percent of the land area had been carried forward as a use standard for an agricultural operation. Since the June 2020 Consolidated Draft, the following new change is included:
 - The standard 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. This change is in recognition that the R-A District has been developed largely with single-family dwellings. Currently, 13 properties in the County are zoned to the R-A District covering a total of approximately 95 acres. Eight of these properties have been developed with single-family dwellings, and there is no evidence of agricultural products being produced. Six of these eight are on five acres, which would not meet the minimum size requirement of five acres for a principal use of agriculture, in addition to the area devoted to the dwelling. The remaining five lots are vacant, with only one appearing to be used for the production of agricultural products. The proposed revision recognizes the current development pattern while preserving open space and the potential for future agricultural operations.
- ❖ **Stacked Townhouse Dwelling.** Stacked townhouses, often referred to as two-over-twos, are a common building type in the County, but are not specifically addressed in the Zoning Ordinance. They are currently 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 purposed of affordable dwelling unit calculations. Article 2 contains the building and dimensional standards for this new dwelling type. The proposal aligns the setbacks of stacked townhouses 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.

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 are currently 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 are currently found in Article 7 and Appendix 7 have been brought together, and the repetition for the five CRDs has been eliminated.
 - **Building Height.** Increased flexibility is included in the current standards that apply to CRDs in order to encourage redevelopment. The proposed draft expands flexibility in maximum building height 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 today’s standards, interior parking lot landscaping in CRDs is only required when 20 or more parking spaces are being added to a development. In order to further revitalization efforts, the draft proposes to require interior parking lot landscaping 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 is currently included in all non-CRD parking reductions and has been expanded to those in CRDs.
 - **Setbacks.** Currently, in commercial districts, a front setback is required to be a minimum of 20 feet unless the Comprehensive Plan specifies 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 draft proposes to allow 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 has been added.

- ❖ **Historic Overlay Districts (HODs).** This section has been reorganized to bring the provisions currently 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 are proposed to be 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 current standard that building height must be compatible with the intent of the district is not brought forward, as it is too subjective.
 - **Request to Establish an HOD.** Current Par. 2 of Sect. 7-203 regarding the procedures to establish or revise an HOD is 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 existing special permit use “older structures.” The proposed use would allow 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, will be prohibited.
- ❖ **Associated Service Uses.** Accessory service uses are renamed associated service uses to more accurately reflect their relationship to their principal land uses. Associated 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 current framework for accessory service uses includes conflicting and outdated standards, some of which are difficult to interpret, permit, and enforce. The draft includes revisions intended to create a simplified and uniform approach to these provisions. The revisions include changes to the list of uses, the districts where they are allowed, and to the standards. The types of uses, such as a child care center in a multifamily building or a carryout restaurant in an office or industrial complex, are intended to focus on those which are most often

found in association with the principal uses and which should be allowed if they conform 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.** In the June 2020 Consolidated Draft, the standards for outdoor storage and display were reorganized, consolidated, and revised as general standards for residential, commercial, and industrial districts. In residential districts, outdoor storage is limited to 100 square feet, must be located on the rear half of the lot, and must be screened from view of first story windows of the neighboring dwelling unit. Since the June 2020 Consolidated Draft, the following new changes are included for outdoor storage in residential areas:
 - The 100-square foot limitation is carried forward for residential districts and the residential areas of P districts. However, the requirement for outdoor storage to be on the “rear half” of the lot has been clarified to require that it not be in the front yard. The current standard is ambiguous and, depending on the placement of the dwelling on the lot, could result in storage in the front yard. In addition, the allowance for storage if it is screened from the view of first story windows of neighboring dwellings has been deleted because it does not afford screening from neighboring second story decks and windows which have been the subject of enforcement complaints.
- ❖ **Performance Standards.** The references that are currently 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

No significant changes are included. The previous placeholders for the pending Agritourism Zoning Ordinance amendment have been removed, as the timeline for that separate amendment has been extended beyond the anticipated adoption date of the new Zoning Ordinance.

- ❖ **Farm Winery, Limited Brewery, and Limited Distillery.** The current Ordinance allows 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 is not a defined term in the Ordinance. However, the Ordinance does define “major thoroughfare” to include principal and minor arterials as listed in Appendix 8 of the current Zoning Ordinance. In order to bring this reference into alignment with the terms utilized in the Zoning Ordinance and in consultation with staff involved with the related Zoning Ordinance amendment in 2016, the previous draft replaced the term major arterial with major thoroughfare. Subsequently, during outreach, questions were raised as to whether major thoroughfare was the intended term. Since the June 2020 Consolidated Draft, the following new change is included:

- The term major arterial was added during the motion for adoption of the amendment and was not vetted. It is understood from the discussion at the hearing that the Board intended to distinguish a principal arterial from a local road, but the disposition of minor arterials was not specified. Nevertheless, given a generic meaning of the word “major,” the Board may have intended to use the term principal arterial. To clarify this issue, with this draft, the term major thoroughfare 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 work space 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 Dwelling.** 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.** Since the June 2020 Consolidated Draft, this new use has been added with standards discussed below:
 - 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 are proposed 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. The definition for an adult day care center has been modified to distinguish it from an adult day support center. A link to a memorandum with more information on this use can be found [here](#).
- ❖ **Child Care Center and Private School.** Among other limitations, outdoor recreation areas are required to be located outside the minimum front setback. Currently, this standard can be modified by special exception in the commercial and industrial districts only. Since the June 2020 Consolidated Draft, the following new change is included:

- 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 would allow 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.
- ❖ **Independent Living Facility.** Since the June 2020 Consolidated Draft, based on a request during outreach, the following new change is included:
 - An example calculation and table explaining how to calculate monthly rent based on bedrooms, adjustment factor, and AMI has been added.
- ❖ **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. The new use is proposed with the same permissions as a light utility facility. Since the June 2020 Consolidated Draft, based on comments received during outreach, the following new change is included:
 - A standard has been added that in the R-A District, a solar power facility must be located on the same property with an agricultural operation. This revision supports the purpose of the R-A District. Solar power facilities in other jurisdictions and countries have been co-located with grazing and other agricultural uses.
- ❖ **Specialized Instruction Center.** This use has 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 or 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. This standard would not preclude the walking of boarded animals. Since the June 2020 Consolidated Draft, the following new change is included:
 - During outreach, it was noted that early morning hours in the summer can be an important exercise time for animals, and depending on the lot size and other factors, may not impact surrounding properties. Therefore, a standard has been added allowing the Board to modify the time limitation, 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 will be 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.** Like with a 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 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 current Ordinance, catering is considered most similar to either a business service and supply 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 today's Ordinance, establishments growing and selling nursery stock and related items are considered either: a) a plant nursery; b) retail sales; or c) agriculture if the sales are wholesale. The proposed draft 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 current 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. Permission changes resulting from the consolidation of uses are included in Appendix 2, Tables 2 through 5. 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 use-specific 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 10-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.** Since the June 2020 Consolidated Draft, this new use has been added with standards discussed below:
 - Currently, a massage establishment licensed in accordance with Chapter 28.1 of the County Code is 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 are 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, is proposed which would consolidate massage as licensed under Chapter 28.1 and the specific types of massages that were previously considered personal service. The permissions will be aligned with those of the office use.
- ❖ **Office.** This use consolidates seven current 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. Under the current provisions, in the C-5 through C-8 Districts, the total gross floor area devoted to office use may not exceed certain percentages of the maximum floor area ratio allowed in the district. For example, in the C-5 District, an office use may only occupy 30 percent of the permitted 0.30 FAR. An increase in the percentage is allowed by special exception, but the increase is capped in the C-5, C-6, and C-8 Districts. To allow for consideration of office uses that may be compatible in a retail setting, the special exception standard has been revised to allow office up to 100 percent of the permitted FAR in the C-5 through C-8 Districts.
- ❖ **Pet Grooming Establishment.** Under the current Ordinance, this use is 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 would be allowed by special exception in certain commercial and industrial districts and in certain P districts. In response to feedback received during outreach, since the June 2020 Consolidated Draft, the following new change is included:
 - The definition for public entertainment has been revised to clarify that it 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 current 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. 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. Since the June 2020 Consolidated Draft, the following new change is included:
 - 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, since the June 2020 Consolidated Draft, the following new change is included:
 - 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 would be allowed. This will permit 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 proposed new use will be allowed in C-3, C-4, I-2 through I-6, PRC, PDC, and PTC Districts. Use-specific standards are 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 would be allowed in the C-3 and C-4 Districts and 80,000 square feet of gross floor area would be allowed in the I-2 and I-3 Districts. There would be no size limit in these districts if the use is located in an existing building or with special exception approval. Since the June 2020 Consolidated Draft, the following new change is included:
 - The ability to exceed the 80,000 square foot limitation if repurposing an existing building as described above, is expanded to include the I-2 and I-3 Districts.
 - A proposed change to the parking requirement is discussed in Article 6 below.
- ❖ **Goods Distribution Hub.** This new use is created to accommodate last-mile distribution and allows for small, local distribution centers to be located in more urban and densely populated areas close to their final destination. In previous drafts, size limits of 6,000 or 10,000 square feet, depending on the zoning district, were added, as well as a requirement that trucks distributing goods from the site are limited to 28 feet in length. Based on accelerated market trends and research on the changing nature of retail, since the June 2020 Consolidated Draft, the following new changes are included:
 - Additional flexibility on the size of the space has been included when repurposing an existing building. The standards would allow up to 80,000 square feet of gross floor area when at least ten percent of the area is either retail sales or another use that provides direct interaction

- with the public. Keeping a small retail or customer interaction area would retain the commercial nature desired in the retail districts.
- Any site wishing to exceed the 80,000 square foot size limit could seek special exception approval if additional aesthetic, parking, and on-site circulation standards are met.
- 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 would not be permitted to be stored on-site.
- ❖ **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.** Based on feedback received during outreach, since the June 2020 Consolidated Draft, the following change is made:
 - A storage yard would be allowed with special exception approval when in association with self-storage in the I-3 and I-4 Districts. This storage yard would be 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.** Since the June 2020 Consolidated Draft, the following standard is included:
 - A new standard prohibiting more than five inoperable vehicles from being stored outside has been added to carry forward the current limitation in the definitions of automobile graveyard and junkyard.

Accessory Uses

- ❖ **Accessory Living Units and Home-Based Businesses.** See Appendices 3 and 4.
- ❖ **Caretakers Quarters.** With the previous draft, the permissions and standards were revised to align the use more closely with an accessory living unit. Permissions were changed from a permitted accessory use to a use requiring special permit approval, and a maximum size of 800 square feet was added (with a range of 700 to 1,200 square feet advertised for Board consideration). Since the Consolidated Draft, the following new change is included:
 - If the Board removes the age and disability requirement for accessory living units, the separate caretaker quarters use would not be needed. Therefore, an advertised option has been added to delete this use if the Board removes the age and disability requirement for accessory living units.
- ❖ **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 will be 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. Since the June 2020 Consolidated Draft, the following new change is included:

- A clarification has been added that solar canopies are not limited to the nine-foot height limitation applied to electric vehicle equipment, as they would be subject to the location requirements of freestanding accessory structures.
- ❖ **Fences and Walls.** Par. 3H of Sect. 10-104 of the current Ordinance allows 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. Since the June 2020 Consolidated Draft, the following new change is included:
 - 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.
- ❖ **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 current provisions, an accessory storage structure (shed) is 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) are 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 permits 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. Staff recommends that a range from 10 to 12 feet be advertised for Board consideration.

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. Staff recommends that a range of 15 feet to 25 feet be advertised for Board consideration. The current size limit of 200 square feet for a storage structure in the R-2 through R-20 Districts has not been carried forward because, in practice, the limit is circumvented by referring to a structure as a “workshop” or other use instead of a shed. Instead, a new cumulative standard is proposed 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.

Since the June 2020 Consolidated Draft, the following new changes have been added:

- Freestanding accessory structures that exceed 12 feet in height must meet the minimum side setback for the zoning district. Provisions have been added, based on current interpretation, to clarify the side setback in P districts without proffered yards. In the PDH, PDC, PRM, and PTC Districts, the side setback is considered to be 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.
- The Zoning Ordinance allows 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 will allow 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. New graphics are included to illustrate the front yard setback requirements for basketball standards and gardening.
- Currently, solid waste and recycling containers (including containers on residential lots) are 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.
 - ❖ **Gate Posts.** Instead of allowing an unlimited height, the maximum height of a gate post is now limited to ten feet.
 - ❖ **Home Day Care Facility.** This use has been renamed from home child care facility, and the definitions and standards now clarify that, in accordance with State law, up to three aged, infirmed, or handicapped adults may also be cared for under the provisions of this use.
 - ❖ **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 would not be 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. Since the June 2020 Consolidated Draft, the additional following change is included:
 - 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.** Since the June 2020 Consolidated Draft, the following new change is included:
 - Instead of being a permitted accessory use, this use would now require approval of an administrative permit.
 - ❖ **Solar Collection System.** This is a new use that codifies existing 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.
 - ❖ **Shipping Containers.** Since the June 2020 Consolidated Draft, the following new change is included:

- Based on current 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 non-residential uses, they are subject to the location standards, floor area ratio, and other requirements of the zoning district.
- ❖ **Vehicle Storage.** Since the June 2020 Consolidated Draft, the following new changes are included:
 - The standard regarding inoperable vehicles that carries forward Par. 13 of Sect. 10-102 of the current Ordinance has been relocated from Article 6 (Parking and Loading) to a new subsection on vehicle storage under the general standards for accessory uses.
 - A new standard has been added to designate any vehicles covered by a tarp as outdoor storage, and thus they will be 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. A range of zero to three vehicles will be advertised for Board consideration.

Temporary Uses

- ❖ **Food Truck.** These regulations have been revised to reflect their increasing popularity. Currently, food trucks are permitted to operate on certain commercial and industrial properties subject to specific hours of operation and location restrictions. They are now proposed to also be 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 will be 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 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.** In the April 2019 Residential, Accessory, and Temporary Uses draft, the submission deadline for an administrative permit for a temporary use had been changed from 21 days prior to the event to six weeks prior to the event, given the need to coordinate with multiple agencies. However, based on feedback received and additional review of the typical application processing time, the submission deadline has been revised to be 30 days prior to the event instead of six weeks.
- ❖ **Special Event.** This temporary use has been generalized because of the wide variety of civic, community, business, and entertainment events that individuals and organizations may want to conduct for short periods of time. Instead of listing specific types of events (such as circuses, fairs, and carnivals), the special event use 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. In an effort to further expand placemaking opportunities, additional changes since the June 2020 Consolidated Draft are included:

- 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 Non-RUP for seasonal sales in commercial districts (from Par. 15 of Sect. 17-104 of the current 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 current 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 current 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 current 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 is proposed to be deleted. A carport is defined as not having any enclosure more than 18 inches in height, other than the required supports for its roof and the side of the building to which the carport is attached. Current provisions that allow the extension into the minimum setback have resulted in many violations, as homeowners subsequently add storage units to the rear of the carport or enclose the carport as a garage or living space, often without permits. The proposed change, which would require carports to comply with the same setbacks as the dwelling, would only apply to future construction.
- ❖ **Cluster Subdivision Open Space.** Currently, the Ordinance specifies 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 today’s regulations, corner lots must 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 can take the dimension of the side setback. For instance, in the R-2 District, a corner lot is 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 proposed standards require a 25-foot rear setback rather than the smaller side setback dimension. This 25-foot rear setback would not apply to existing structures or additions to existing structures. This change is in response to concerns raised by community groups about new homes being built to the minimum setbacks, sometimes as small as eight feet, leaving less space for a functional rear yard. Even with providing the 25-foot rear setback, the larger lot width currently required for corner lots more than compensates for the two front yard setbacks, resulting in a larger buildable area as compared to interior lots.

- ❖ **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 proposed 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 3 feet in width. Since the June 2020 Consolidated Draft, the following new change is included:
 - In response to a comment received during outreach, a clarification has been made that 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 current 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.** Since the June 2020 Consolidated Draft, the following new change is included:
 - The current Ordinance only permits accessory uses and structures when they are accessory to 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.** Since the June 2020 Consolidated Draft, the following new change is included:

- 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 codified in the proposed Ordinance.
- ❖ **P District Setbacks.** Currently, 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. Since the June 2020 Consolidated Draft, the following new change is included:
 - 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 the heading for this provision refers to “abutting” lots, it has only been 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 current 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 will be able to modify the setback when meeting the requirement would prevent development of the lot in accordance with the Ordinance. In addition, the current 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.
- ❖ **Transitional Screening & Barriers.** The Transitional Screening and Barrier Matrix from current Article 13 has been carried forward with updates where uses were consolidated. All uses are now listed and new uses are integrated into the table based on current practice or the most similar use.
- ❖ **Waiver of Minimum Lot Size.** Several standards for this special exception are revised. Currently, a standard requires the preservation of all existing vegetation. In certain situations, the existing vegetation is of poor quality, and staff would prefer to see it replaced with new appropriate 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, an existing requirement that the proposal reduces impervious surface is typically impractical, as these lots are often undeveloped substandard lots, and any proposed development would result in an increase in the existing impervious surface. This 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. As previously noted, parking rates will be the subject of a comprehensive review as part of a subsequent Zoning Ordinance amendment.
 - **Data Center.** Since the June 2020 Consolidated Draft, this parking rate (1 space per 1.5 employees plus 1 space per company vehicle) has been revised to base the number of required parking spaces on the number of employees on major shift instead of the occupancy load. For this use, basing the rate on the occupancy load may result in an artificially high requirement.
 - **Farm Winery, Limited Brewery, or Limited Distillery:** Since the June 2020 Consolidated Draft, the parking rate for a farm winery, limited brewery, or limited distillery has been corrected to clarify that there is no minimum parking requirement when the use is allowed by right, as an agritourism use that is exempt from site plan and building permit processes. When the use is subject to special exception approval, the parking rate is based on a review of each proposal to include factors such as the number of spaces required to accommodate employees and visitor parking.
 - **Stacked Townhouse.** This new use is 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.

Article 7 – Signs

- ❖ **Construction Project Signage.** Active construction projects for residential development are allowed to have 60 square feet of signage. Consistent with current practice, 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

- ❖ **Accessory Living Unit Submission Requirements.** Under current provisions, when applying for an accessory dwelling unit (now accessory living unit), documentation must be provided to certify that someone occupying the property meets the age or disability requirement. If the person has a disability and does not have a certification from the Social Security Administration, Veterans Administration, or Railroad Retirement Board, a written declaration must be submitted from two doctors (one of who must base their statement on a physical examination) certifying that the individual is “permanently and totally disabled.” This is then defined as “unable to engage in any substantial gainful activity by reasons of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of the person’s life.” This language has been modified to require either certification from one of the previously mentioned groups or from one doctor certifying that a person meets the definition of a “person with a disability” in the Fair Housing Amendments Act of 1988. This is consistent with current Zoning Ordinance

provisions for requesting an accommodation for an accessibility improvement related to setback requirements. If the Board adopts revised standards for accessory living units that do not contain an age or disability requirement, this submission requirement will be deleted. A discussion of the standards applicable to accessory living units is included in Appendix 3.

- ❖ **BZA Term Expiration.** Currently, the Clerk to the BZA must notify the Circuit Court at least 30 days prior to the expiration of a BZA member's term. The timeframe has been extended to 60 days and a requirement to also notify the Board within this timeframe has been added.
- ❖ **Development Plan Submission.** The Zoning Ordinance currently allows for submission of a proposed development plan within 60 days after the initial application for a rezoning or subsequent amendment. Based on current practice and in order to provide for efficient review and processing of applications and their associated development plans, this allowance has not been carried forward. Similarly, the current text which allows an application to retain its hearing date when the application is amended prior to 40 days before the public hearing has not been carried forward, as the decision whether to reschedule a public hearing depends on the substance of the amendment.
- ❖ **Easements.** Generalized development plan, final development plan, PRC plan, special exception, special permit, and variance applications are currently 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. In the previous draft, these requirements were revised to require that all existing and proposed utility easements must be shown, regardless of width. This change may require completion of a title search earlier in the development process and increase the cost of a typical plat by \$200 to \$400; however, this information has been requested during public hearings and will facilitate a more careful review of the proposed development layout, as well as prevent issues later in the development process where utilities may conflict with elements proposed on the plan. Since the June 2020 Consolidated Draft, the following new change is included:
 - Additional outreach on this topic has taken place, and the language for the proposed submission requirement has been revised to include all existing utility easements and the preliminary location(s) of new or relocated utilities.
- ❖ **Electronic Copies.** Recognizing the ongoing development of ePlans and the new Planning Land Use System, known as PLUS, for online submission of applications and permits, 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 will be able to 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 current Ordinance. With the previous draft, the following fees were proposed to be reduced:
 - **Accessory Living Units.** Since a new administrative permit option is being proposed, staff recommends a new \$200 application fee and a \$70 renewal fee (with an advertised range from \$0 to \$435 for the application and \$0 to \$70 for Board consideration). The \$70 renewal fee has also been applied to the accessory living unit special permit, which replaces the current fee of $\frac{1}{8}$ of the current application fee of \$435, which equals \$54.38. No change is proposed to the current fee of \$435 for a special permit for an accessory living unit.
 - **Deletion of Land Area Only.** Currently, an amendment to a previously approved PCA, DPA, FDPA, CDP, PRC Plan, or concurrent CDP/FDP for a deletion of area falls under "All Other Uses

- Without New Construction” and requires ½ the prevailing application fee. Based on the limited staff review required when only land area is being deleted, a new fee of ¼ the prevailing fee (with an advertised range of ¼ to ½ for Board consideration) has been proposed.
- **Home-Based Business.** Similar to the accessory living unit, with the new administrative permit being proposed to replace the current home occupation permit (\$50 fee) and home professional office/barber shop or beauty salon special permits (\$16,375 fee), staff recommends a \$100 fee (with an advertised range of \$50 to \$200 for Board consideration). For a special permit, staff recommends \$435 (with an advertised range of \$435 to \$910).
 - **Waiver of Certain Sign Regulations.** This special exception fee is currently \$16,375 but has been reduced to \$8,260 to match the current Comprehensive Sign Plan fee (which is a similar application type applicable to planned districts). A range from \$8,260 to \$16,375 will be advertised for Board consideration.

Since the June 2020 Consolidated Draft, the following additional fee changes are proposed:

- **Alternative Use of Historic Building.** This is a proposed new special exception use. In the previous draft, no fee was specified, so the standard fee of \$16,375 for a special exception would apply. However, to facilitate adaptive reuse of historic buildings, it is recommended that a fee of \$8,180 be assigned. A range of \$8,180 to \$16,375 will be advertised for Board consideration.
- **Congregate Living Facility.** In an effort to more closely align the fee for this use with the \$1,100 fee for other group living uses, such as group household and religious group living, while recognizing that these facilities may require additional staff review, the fee for this special exception is proposed to be reduced from \$16,375 to \$8,180. A range of \$4,085 to \$16,375 will be advertised for Board consideration.
- **Floodplain.** With the previous draft, the special exception fee was reduced from \$16,375 to \$8,180 for one single-family detached dwelling in a floodplain. Based on concerns raised during outreach that lowering the fee may encourage more construction in the floodplain, the reduced fee has been 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. A range of \$8,180 to \$16,375 will be advertised.
- **Quasi-Public Park, Playground, Athletic Field.** In recognition of the community use and quasi-public nature of these facilities, the fee for this special exception is proposed to be reduced from \$16,375 to \$8,180. A range of \$8,180 to \$16,375 will be advertised for Board consideration.
- ❖ **Geotechnical Review Board and Tree Commission.** As the Zoning Ordinance does not contain provisions relating to the substance of their duties, the sections within current Article 19 relating to the Geotechnical Review Board (GRB) and the Tree Commission have not been carried forward. The GRB provisions will be relocated to Chapter 107 of the County Code and the Tree Commission duties will be relocated to Chapter 122. This change will be processed as a separate amendment that is currently scheduled for authorization in January. If authorized, the Planning Commission public hearing is anticipated to be held in February, and the Board public hearing in March of 2021.

- ❖ **Limitation on Rehearing.** The Zoning Ordinance prohibits the Board from rehearing an application that is 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. Since the June 2020 Consolidated Draft, the additional following change is included:
 - Outreach was conducted on an additional proposed submission requirement that would require existing and proposed topography to be shown for projects that involve changes to topography. No concerns were noted during outreach, and the submission requirement has been added.
- ❖ **Modification of Submission Requirements.** The Zoning Ordinance currently includes 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.** Currently, an application for rezoning to the PTC District must identify any development that is 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 currently refers to modifications that can 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 does not currently 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 current 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 current 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 current Ordinance are slightly different or not required for variance applications. The variance requirements are 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 current 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.** Since the June 2020 Consolidated Draft, the following change is included:
 - 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.** Since the June 2020 Consolidated Draft, the following change is included:
 - 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.** Since the June 2020 Consolidated Draft, the following change is included:
 - 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 current 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.** Since the June 2020 Consolidated Draft, the following changes are included:

- In the definition of landscaped open space, the subjective language requiring it to be aesthetically pleasing has been deleted. This is consistent with the revision made in the previous draft to the term landscaping.
- 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 current Ordinance.
- ❖ **Patio.** A new definition has been added for a patio, which is currently 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 current 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 current 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 will be a part of the Board adoption, but will not be part of the adopted Zoning Ordinance. Rather, it will be 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.** Since the June 2020 Consolidated Draft, the additional following change is included:
 - The term “grandfathering provisions” has been replaced with a more easily understood and descriptive reference of “provisions relating to previous approvals.”
- ❖ **Home-Based Businesses.** Since the June 2020 Consolidated Draft, the additional following change is included:
 - 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.

Changes in Permissions from the Current Ordinance

The table below summarizes the proposed changes in permissions as compared to the current Ordinance. Additional details on changes to the associated use-specific standards and permissions are included in Appendix 1. Changes to associated service uses are not listed in the table below but are also described in Appendix 1 and further detailed in the footnotes in the annotated version of the draft Ordinance. All permission changes proposed since the June 2020 Consolidated Draft are discussed in Appendix 1.

Table 1: Changes in Permissions		
Use	Affected District	Change in Permission A = Accessory Use AP = Administrative Permit Use SE = Special Exception Use SP = Special Permit Use
Agricultural and Related Uses		
Stable, Riding or Boarding	R-A	Ancillary veterinary hospital from not allowed to SP
	PRC (Residential)	From SP to SE if not shown on a PRC development plan and PRC plan
	R-A through R-1	From SP to either SP or SE if in conjunction with a rezoning or another SE, at applicant's discretion
Residential Uses		
Dwelling, Stacked Townhouse (New Use)	R-12 through R-16, PDH, PRC, PDC, PRM, PCC	See discussion in Appendix 1: Notable Changes
Live-Work Development (New Use)	PRC, PDC, PRM, PTC	See discussion in Appendix 1: Notable Changes
Religious Group Living	PRC	From SP to SE if not shown on a PRC development plan and PRC plan
Residence Hall	R-C	From SE to not allowed
	I-4	From not allowed to SE
	PRM	From not allowed to allowed if shown on a development plan or by SE
Public, Institutional, and Community Uses		
Adult Day Support Center (New Use)	R-1 through R-MHP, C-1 through C-8, I-I through I-6, PDH, PRC, PDC, PRM, PTC, and PCC	See discussion in Appendix 1: Notable Changes
Alternate Use of Public Facility	R-A	From SE to not allowed
	PRM, PRC Convention / Conference Center	From not allowed to allowed if shown on a development plan/PRC development plan and PRC plan or by SE
Child Care Center	R-A and R-C	Nursery school from SE to not allowed
	R-E	From SE to not allowed

	C-5 through C-8	From SE to allowed
	PCC	From not allowed to allowed if shown on a development plan or by SE
Club, Service Organization, or Community Center	R-C through R-MHP, I-2 through I-4	Community clubs, centers, meeting halls and other recreational/social use by a non-profit (Group 4 uses #1 and #4): from SP to SE
	C-1 through C-4, I-5 and I-6	Community clubs/meeting halls and other recreational/social use by a non-profit (Group 4 uses #1 and #4): from not allowed to SE
	C-5 and C-6	Other recreational/social use by a non-profit (Group 4 use #4): from SP to by right
		Swimming pools/archery ranges (when part of a community center – Group 4, use #1): from SP to by right
	C-7 and C-8	Other recreational/social use by a non-profit (Group 4 use #4): from not allowed to by right
		Swimming pools/archery ranges (when part of a community center – Group 4, use #1): from not allowed to by right
	PRC	From not allowed to allowed when shown on a PRC development plan and PRC plan or by SE in the Convention/Conference Center area
		The use remains permitted when shown on a PRC development plan and PRC plan, but the option for an SP is changed to an SE in all other areas
College or University	PRM	From not allowed to allowed when shown on a development plan or by SE
College or University	C-1 through C-3	From SE to by right
	PDC	From a secondary use to a principal use when shown on a development plan or by SE
Community Swim, Tennis, and Recreation Club	PRM	From not allowed to allowed when shown on a development plan or by SE
Cultural Facility/Museum	PRC Convention/Conference	From not allowed to allowed when shown on a PRC development plan and PRC plan or by SE
Religious Assembly	PRC	From SP to SE if not shown on a PRC development plan and PRC plan
Religious Assembly with Private School, Specialized Instruction Center, or Child Care Center	C-5 through C-8	From SE to by right to reflect the change in permissions to child care center
School, Private	R-A	From SE to not allowed
Specialized Instruction Center	R-E	From SE to not allowed
	I-6	From not allowed to SE
Cemetery	PRC	From SP to SE if not shown on a PRC development plan and PRC plan

Crematory	PRC	From SP to SE if not shown on a PRC development plan and PRC plan
Funeral Home	R-E through R-MHP	Funeral chapel from SE to SP
	PDC	From not allowed to allowed when shown on a development plan or by SE
	PRC	From SP to SE if not shown on a PRC development plan and PRC plan
Airport	R-E	From SE to not allowed
Helipad	C-5	From not allowed to SE
	PRC Convention/ Conference	From not allowed to allowed when shown on a development plan or by SE
Solar Power Facility (New Use)	R-A through R-MHP, C-1 through C-8, I-1, I-2, I-3 through I-6 PDH, PRC, PDC, PRM, PTC	See discussion in Appendix 1: Notable Changes
Utility Facility, Heavy	I-5	Supply yard for public utility/incidental office and maintenance from SE to allowed
Commercial Uses		
Animal Shelter	C-5 through C-8	From not allowed to either allowed by right if indoor or by SE if outdoor
	PRC (Residential)	From not allowed with outdoor facilities to allowed if shown on a PRC development plan and PRC plan or by SE
Kennel	C-5 through C-8	From not allowed with outdoor facilities to SE
	PDH, PRC, PDC, PRM, PTC	From not allowed with outdoor facilities to allowed if shown on the development plan/PRC development plan and PRC plan or by SE
Pet Grooming Establishment (New Use)	C-5 through C-8, PDH, PRC, PDC, PRM, PTC	See discussion in Appendix 1: Notable Changes
Veterinary Hospital	R-A through R-1	From SP to SE
	C-3 and C-4	From not allowed to allowed
	C-5 through C-8, I-3 through I-6	From not allowed with outdoor facilities to SE
	PDH, PRC, PDC, PRM, PTC	From not allowed with outdoor facilities to allowed if shown on the development plan/PRC development plan and PRC plan or by SE
Catering (New Use)	C-3 through C-8, I-3 through I-6, PDH, PRC, PDC, PRM, PTC	See discussion in Appendix 1: Notable Changes
Hotel or Motel	C-3 and C-4	From SE to allowed
Retreat Center	R-MHP	From SE to not allowed
	R-E and R-1	From not allowed to SE
Drive-through Financial Institution	PTC	From allowed only if shown on a final development plan to allowed also by SE

Financial Institution	PTC	From allowed only if shown on a final development plan to allowed also by SE
Office	R-E and R-1	Scientific research and development from SE to not allowed
	C-1 through C-4, C-7, and C-8	Scientific research and development from SE to allowed or SE
	C-5 and C-6	Scientific research and development from not allowed to allowed or SE
Office in a Residential District	R-C and R-E	From SE to not allowed
Massage Therapy Establishment (New Use)	C-1 through C-8, I-1 through I-6, PDH, PRC, PDC, PRM, PTC, PCC	See discussion in Appendix 1: Notable Changes
Banquet or Reception Hall (New Use)	C-1 through C-8, PDH, PRC, PDC, PRM, PTC	See discussion in Appendix 1: Notable Changes
Commercial Recreation, Indoor	See separate permission changes in Tables 2 and 3 below	
Commercial Recreation, Outdoor	See separate permission changes Tables 4 and 5 below	
Entertainment, Public (New Use)	C-5 through C-8, I-2 through I-6, PRC, PDC, PRM, PTC, PCC	See discussion in Appendix 1: Notable Changes
Golf Course or Country Club	I-2 through I-6	From SE to not allowed
	PRM	From not allowed to allowed if shown on a final development plan or by SE
Health and Exercise Facility, Large	C-3 and C-4	From not allowed to either allowed or SP
Health and Exercise Facility, Small	R-E through R-MHP	From SE to not allowed
	PRC (Residential)	From allowed if shown on a development plan or by SE to not allowed
Marina, Commercial	PTC	From allowed to not allowed
Quasi-public Park, Playground, or Athletic Field	PRM	From not allowed to allowed if shown on a final development plan or by SE
Smoking Lounge (New Use)	C-5 through C-8, I-2 through I-6, PRC, PDC, PTC	See discussion in Appendix 1: Notable Changes
Stadium or Arena	PDC	From not allowed to SE
Zoo or Aquarium	C-7, C-8	From not allowed to SP
	PDC, PTC	From not allowed to allowed if shown on a final development plan or by SE
Convenience Store	R-2 through R-8	Convenience center: from SE to not allowed
Drive-through Pharmacy	PTC	From allowed only if shown on a final development plan to allowed also by SE
Garden Center	C-5 through C-8	From not allowed to allowed
	PDH, PRC, PDC, PRM, PTC	From not allowed to allowed or if shown on a development plan, PRC development plan, and PRC plan or by SE
	R-3, R-4, I-4 through I-6	From SE to not allowed

Retail Sales, General	R-E through R-8	Convenience center: from SE to not allowed
	C-5 through C-8	Adult bookstores: from SP to by right in C-7, and from not allowed to by right in C-5, C-6, and C-8 Districts.
	C-8	Auction establishments: From SP to allowed
	PDH, PRM, PDC, PTC, PRC (all but Residential)	Adult bookstores: from not allowed to allowed if shown on a development plan, PRC development plan, and PRC plan
Car Wash	PTC	From allowed only if shown on a final development plan to allowed also by SE
Commercial Off-Street Parking	PRM	From allowed only if shown on a final development plan to not allowed
Truck Rental Establishment	I-4	From not allowed to SE
Vehicle Fueling Station	PTC	From allowed only if shown on a final development plan to allowed also by SE
Vehicle Repair and Maintenance, Light	PTC	From allowed only if shown on a final development plan to allowed also by SE
Vehicle Sales, Rental, and Service	C-3, C-4, C-6 through C-8	From SE to allowed or SE
Industrial Uses		
Data Center (New Use)	C-3, C-4, I-2 through I-6, PRC, PDC, PTC	See discussion in Appendix 1: Notable Changes
Goods Distribution Hub (New Use)	C-3 through C-8, PDC, PTC	See discussion in Appendix 1: Notable Changes
Self-Storage	I-3	From SE to allowed
Warehouse	I-3	From not allowed to SE
Wholesale Facility	PTC	From not allowed to allowed if shown on a final development plan
Contractor's Office and Shop	I-3	From not allowed to allowed
Storage Yard	I-3 and I-4	From not allowed to SE
Accessory Uses		
Accessory Living Unit	R-A through R-8, PDH, PRC, PDC, PTC	From SP to AP if located within a single-family detached dwelling; no change if located in a freestanding structure on lots greater than two acres.
Caretakers Quarters	R-A, R-C, R-E	From A to SP
	R-1	Servants quarters: From A to SP Quarters of a caretaker, watchman, or tenant farmer, and his family: From not allowed to SP
	R-2, R-3, R-4	Servants quarters: From A to not allowed
Electric Vehicle Charging (New Use)	R-A through R-MHP, C-1 through C-8, I-2 through I-6, PDH, PRC, PDC, PRM, PTC, PCC	See discussion in Appendix 1: Notable Changes
Gardening and Composting	I-I	From not allowed to allowed

Home Day Care Facility	PRC	From SP to SE if not shown on a PRC development plan and PRC plan
Home-Based Business	R-A through R-MHP	Home professional office: From SP to AP Barber shop or beauty parlor as a home occupation: From SP to AP
	PRM and PTC	Home professional office: From not allowed to AP or SP
Limited Riding or Boarding Stable	PDH, PRC, PDC, PRM, PTC	From allowed if shown on final development plan/development plan and PRC plan to not allowed
Residence for Manager or Employee	All districts	From A to AP Carried forward SE and SP permissions
Solar Collection System (New Use)	R-A through R-MHP, C-1 through C-8, I-I through I-6, PDH, PRC, PDC, PRM, PTC, PCC	See discussion in Appendix 1: Notable Changes
Temporary Uses		
Food Truck	R-A through R-MHP	From not allowed in residential areas to allowed by AP or SE/SP when in conjunction with an approved nonresidential use
	PDH, PRC, PDC, PRM, PTC, PCC	From not allowed in residential areas of planned districts to allowed by AP or if shown on an approved development plan, PRC development plan, and PRC plan when in conjunction with an approved nonresidential use

The Indoor Commercial Recreation and Outdoor Commercial Recreation uses each consolidate multiple current uses that are permitted in different ways throughout the zoning districts. Tables 2 through 5 below provide additional detail on the permission changes resulting from these use consolidations. Information on the use-specific standards applicable to each use is included in Appendix 1.

Table 2: Indoor Commercial Recreation Permission Changes Conventional Districts																
Existing Permissions for Indoor Commercial Recreation Uses:																
Use	Commercial Districts								Industrial Districts							
	C-1	C-2	C-3	C-4	C-5	C-6	C-7	C-8	I-1	I-2	I-3	I-4	I-5	I-6		
Amusement arcades							P									
Billiard/pool hall					SP	SP	SP	SP								
Bowling alley			SP	SP		SP	P	P					SP	SP		
Commercial recreation centers																
Commercial recreation use, any other similar (indoor)							SP	SP								
Commercial recreation parks, including mechanical or motorized amusement rides/devices (indoor)							SP	SP					SP	SP		
Commercial swimming pools, tennis courts, and similar courts (indoor)			P	P	P	P	P	P								
Indoor archery ranges, fencing and other similar indoor recreation uses			SP	SP	SP		P	P								
Indoor firing ranges							SP	SP								
Indoor firing ranges, archery ranges, fencing and other similar indoor recreation uses						SP					SP	SP	SP	SP		
Miniature golf courses, indoor			SP	SP	SP	P	P	P								
Skating facilities, indoor			SP	SP	SP	SP	P	P								
Theaters			SE	SE		P	P	P				SE	SE	SE		
Proposed Permissions:																
Commercial Recreation, Indoor			P SP SE	P SP SE	P	P	P	P				SP SE	SP SE	SP SE	SP SE	

Table 3: Indoor Commercial Recreation Permission Changes Planned Districts														
Existing Permissions for Indoor Commercial Recreation Uses:														
Use	PDH		PRC					PDC		PRM		PTC	PCC	
	Principal	Secondary	Residential	Neighborhood Convenience Center	Village Center	Town Center	Convention/ Conference Center	Principal	Secondary	Principal	Secondary		Principal	Secondary
Amusement arcades					✓/SE	✓/SE			✓/SE			✓/SE		
Billiard/pool hall		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		
Bowling alley		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE			✓/SE		✓/SE
Commercial recreation centers					✓/SP	✓/SP								
Commercial recreation use, any other similar (indoor)					✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		
Commercial recreation parks, including mechanical or motorized amusement rides/devices (indoor)							✓/SP							
Commercial swimming pools, tennis courts, and similar courts (indoor)		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		✓/SE
Indoor archery ranges, fencing and other similar indoor recreation uses		✓/SE									✓/SE	✓/SE		
Indoor firing ranges														
Indoor firing ranges, archery ranges, fencing and other similar indoor recreation uses						✓/SP	✓/SP		✓/SE					✓/SE
Miniature golf courses, indoor		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE			✓/SE		
Skating facilities, indoor		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		
Theaters					✓	✓	✓	✓/SE			✓/SE	✓/SE		✓/SE
Proposed Permissions:														
Commercial Recreation, Indoor		✓/SE			✓/SE	✓/SE	✓/SE		✓/SE		✓/SE	✓/SE		✓/SE

Table 4: Outdoor Commercial Recreation Uses Permission Changes – Conventional Districts

Existing Permissions for Outdoor Commercial Recreation Uses:																													
Use	Residential Districts														Commercial Districts								Industrial Districts						
	R-A	R-C	R-E	R-1	R-2	R-3	R-4	R-5	R-8	R-12	R-16	R-20	R-30	R-MHP	C-1	C-2	C-3	C-4	C-5	C-6	C-7	C-8	I-1	I-2	I-3	I-4	I-5	I-6	
Baseball hitting and archery ranges, outdoor			SE	SE															SE	SE	SE	SE			SE	SE	SE	SE	
Commercial recreation parks, including mechanical or motorized amusement rides/devices																					SP	SP					SP	SP	
Commercial recreation use, any other similar																					SP	SP							
Commercial swimming pools, tennis courts and similar courts			SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP		SP	SP	SP	SP	SP	SP	SP		SP	SP	SP	SP	SP	
Drive-in motion picture theaters																					SE	SE					SE	SE	
Golf driving range		SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE	SE		SE	SE	SE	SE	SE	
Miniature golf course																				SP	SP	SP			SP	SP	SP	SP	
Miniature golf course ancillary to golf driving ranges			SE	SE																									
Skating facilities																				SP	SP	SP					SP	SP	
Skeet and trapshooting ranges		SP	SP	SP																									
Proposed Permissions:																													
Commercial Recreation, Outdoor		SP SE	SP SE	SP SE															SE	SE	SE	SE	SE	SE		SE	SE	SE	SE

Table 5: Outdoor Commercial Recreation Uses Permission Changes Planned Districts														
Existing Permissions for Outdoor Commercial Recreation Uses:														
Use	PDH		PRC					PDC		PRM		PTC	PCC	
	Principal	Secondary	Residential	Neighborhood Convenience Center	Village Center	Town Center	Convention/ Conference Center	Principal	Secondary	Principal	Secondary		Principal	Secondary
Baseball hitting and archery ranges, outdoor			✓/SE											
Commercial recreation parks, including mechanical or motorized amusement rides/devices							✓/SP							
Commercial recreation use, any other similar					✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		
Commercial swimming pools, tennis courts and similar courts		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		✓/SE
Drive-in motion picture theaters														
Golf driving range		✓/SE	✓/SE						✓/SE					
Miniature golf course		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE			✓/SE		
Miniature golf course ancillary to golf driving ranges														
Skating facilities		✓/SE			✓/SP	✓/SP	✓/SP		✓/SE		✓/SE	✓/SE		
Skeet and trapshooting ranges														
Proposed Permissions:														
Commercial Recreation, Outdoor		✓/SE	✓/SE	✓/SE	✓/SE	✓/SE	✓/SE		✓/SE		✓/SE	✓/SE		

Accessory Living Units

This is a new name proposed for the current “accessory dwelling unit,” which is a subordinate living space including areas for eating, sleeping, living, and sanitation. The proposed name change is in response to feedback that the name, accessory dwelling unit, has been confused with affordable dwelling units. In Fairfax, the abbreviation, “ADU,” has long been used to refer to affordable dwelling units which are created under specific Ordinance provisions. In addition to a new name, several changes to the approval process and standards are proposed, but many of the current standards are being brought forward. This appendix is divided in the following sections: Timeline and Outreach, Summary of Standards, Background Information, and Summary of Advertised Options.

Throughout the Country, the accessory living unit concept is widely used to integrate additional housing options into existing single-family areas and to allow for flexibility for homeowners. Accessory living units can provide mortgage relief, housing options for family members, friends, or caretakers, and opportunities for older adults to age-in-place in a home that may otherwise be too large for their own purposes. These units can also allow renters to live in single-family neighborhoods. With limitations on occupancy, size, and entrances, these units can be integrated and blended into existing single-family detached developments.

Timeline and Outreach

Proposed revisions to the standards for accessory dwelling units were first included in the April 2019 draft for the Residential, Accessory, and Temporary Uses. Based on feedback, revisions were included in the May 2019 draft of use regulations. Additional revisions were incorporated in the July 2019 revised draft of use regulations, as well as the June 2020 Consolidated Draft. As outlined below, further revisions are included in this November 2020 draft. In addition to these documents, several additional memorandums have been issued and an [FAQ page](#) is available on the website. Throughout the process, the ALU topic has been the subject of extensive discussion at a minimum of 43 public meetings. A survey was conducted in the spring of 2020, and the results can be found [here](#).

Although the outreach has been substantial and by the time public hearings are held, almost two years will have been devoted to the discussion and development of the proposed ALU standards, some have suggested that the proposed revisions should be considered as a separate amendment. Staff believes that given the robust community discussions that have resulted in proposed revisions, such as a parking rate, and a breadth of advertised options, the topic is ready for review as part of the public hearing process.

Summary of Standards

It is important to note that the Zoning Ordinance has included provisions for accessory dwelling units for 37 years and that the revisions under consideration as part of zMOD retain most of the standards in today’s Ordinance.

Current standards proposed to be carried forward:

- This use is only permitted in association with a single-family detached dwelling.
- There can only be two bedrooms.
- Occupancy is limited to two people.

- The owner must live on the property.
- A detached ALU requires a minimum of two acres and special permit approval.
- All applicable regulations for building, safety, health, and sanitation must be met.
- The County may inspect the property.
- The approval does not transfer to a new owner.
- The conditions must be recorded in the land records.
- Any external entrances must be from the side or rear (see discussion below).
- The approval is subject to renewal (see discussion of timeframe below).

The new and revised standards are discussed below. Primarily, concerns have been raised during outreach regarding the first two topics below, the administrative permit process and removing the age or disability requirement. It should be noted that we have also heard comments that the proposed changes are still too restrictive. In particular, some have expressed that the two-acre limit for detached ALUs is too large for Fairfax and forces these units into low-density areas far from transit and activity centers.

- **Administrative Permit.** Staff proposes to allow interior ALUs that meet all the standards to be approved with an administrative permit rather than requiring a special permit and public hearing before the Board of Zoning Appeals. Feedback during outreach has been mixed, with some in support of the administrative approval process, and others indicating that they want to be notified of proposed ALUs in their neighborhood and to have the opportunity to participate in a public hearing. Based on these concerns, staff recommends that the option to retain the special permit process for all ALUs be advertised for Board consideration. However, staff support of an administrative permit is founded on the objective nature of the standards. Most special permit applications for the current accessory dwelling unit use are approved, with standard conditions that typically mirror the Zoning Ordinance requirements. For those that were denied, occupancy violations were cited most often as a reason. Occupancy standards would remain, and the administrative permit allows for lawful inspections. The streamlined administrative permit process supports the recommendations of the Older Adults Committee and the Communitywide Housing Strategic Plan to expand affordable housing and resources for older adults and persons with disabilities.

A public hearing process would be retained for detached ALUs and for applicants that request an increase in size, or a modification of the entrance and access requirements or the parking requirement. It should be noted that the current Zoning Ordinance regulations allow occupancy of a dwelling by a family with one or two persons related by blood or marriage and their children plus two unrelated roomers or boarders of any age by right without any public hearing process. Because the occupancy standards for the principal dwelling that has an ALU do not permit those two additional roomers or boarders, the effect of an ALU is not to increase the number of people permitted in the dwelling, but merely to allow them to occupy a more independent space with kitchen facilities.

- **Age and Disability.** The draft includes an option for the Board to consider removing the current requirement that someone on the property, either in the principal dwelling or the ALU, be at least 55 years in age or a person with a disability. During outreach with the Board at its February 4, 2020 Land Use Policy Committee meeting, there was discussion about whether this requirement

should be removed in order to expand access to this type of housing opportunity, such as to a young adult starting a new job or a married couple saving to buy a home. According to our research and information from Clarion Associates, we have not identified any other jurisdictions that currently impose an age or disability requirement.

Feedback on this option has been mixed, with some in favor of the change, but others have expressed concerns that removing the restriction will result in a proliferation of ALUs which in turn could result in impacts to community character, traffic, infrastructure, and parking. With respect to the concern about the proliferation of ALUs, as indicated by the experiences of other jurisdictions, the modest proposed changes are unlikely to result in a large volume of ALUs over a short period of time. The proposed standards retain a number of more restrictive standards as compared to other jurisdictions. With the occupancy limit of two people, ALUs will not burden roadways or other infrastructure. Regarding community character, standards are included to ensure that a dwelling with an ALU does not look like a duplex (see Design of Entrances and Access below). The setbacks for the zoning district apply to any proposed addition.

- **Parking.** Currently, with the special permit, the BZA evaluates whether the off-street parking will be sufficient to meet the needs of the principal dwelling and the ALU. This evaluation is being carried forward for the special permit approvals. Based on feedback received during outreach, a new parking requirement is proposed for interior units approved with an administrative permit. Off-street parking would need to equal the requirement for the dwelling plus one additional space. On a public street, this would mean that a total of three off-street parking spaces would need to be provided and on a private street, four off-street parking spaces would need to be provided. The current Zoning Ordinance requirement that limits front yard driveway surfacing to 25 or 30 percent in the R-1 through R-4 District is being carried forward, so this will prohibit excessive paving to meet this parking requirement. A special permit could be applied for if the required off-street parking is not provided.
- **Size.** Currently, the size of an accessory dwelling unit is limited to 35 percent of the principal dwelling unit for interior units. For detached units, the size is limited to 35 percent of the total of the principal dwelling plus the freestanding accessory structure. In order to maintain the subordinate nature of ALUs and reduce the potential for overly large units that resemble second dwellings, staff recommends the addition of square footage limitations. For an interior unit, it is recommended that the size of the ALU be up to 800 square feet or 40 percent of the size of the principal dwelling, whichever is less. A range of 500 to 1,200 square feet would be advertised for Board consideration. The interior size limit could be increased with special permit approval. In addition, as suggested at the Board's Land Use Policy Committee on July 21, 2020, an option will be advertised to allow the size to be exceeded if the ALU is proposed to fully utilize the floor area in a basement or cellar. Some community groups have expressed concern about this larger size essentially creating a duplex. For a detached unit, an ALU could be up to 1,200 square feet, with a range from 700 to 1,500 square feet advertised for Board consideration. The detached ALU would still need to be clearly subordinate to the principal dwelling.

Staff reviewed a sample of approved accessory dwelling units: 30 interior accessory dwelling units had an average size of 1,087 square feet and 27 detached units had an average size of 1,321

square feet. These sizes are based on the current limit of 35 percent of the dwelling and are slightly larger than the recommended sizes. The proposed size limits recognize that an ALU is limited to two bedrooms and that the unit is intended to be subordinate. Shared spaces are not counted toward the square footage of the ALU, and a larger size for an interior unit could be approved with a special permit.

- **Renewal.** Currently, a special permit for an accessory dwelling unit is issued for a period of five years and may be renewed by the Zoning Administrator for five-year periods. In response to concerns about monitoring and enforcement, it is recommended that the renewal timeframe be reduced to an initial two-year period, with subsequent renewals being up to five years, based on the record of compliance.
- **Well and Septic.** A new standard is proposed based on comments received during outreach to require Health Department approval if there is an onsite well or septic system prior to issuance of an administrative permit. The Health Department is included in the review of special permit applications.
- **Fire Safety.** Another new standard based on comments received during outreach will require a fire extinguisher as well as smoke detectors and carbon monoxide detectors (if needed) that are interconnected with the principal dwelling. This is a standard that currently applies to short-term lodging.
- **Design of Entrances and Access.** The Ordinance currently requires any external entrances to be located on the side or rear of the dwelling unless the BZA approves an alternative location. This requirement is carried forward, with the caveat that it applies to new entrances. In addition, for an interior ALU, a new standard requires any proposed garage or carport to be located immediately adjacent to any existing garage or carport and must use the same driveway and curb cut. This standard is intended to prevent the approval of additions that cause the dwelling to appear as a duplex. A modification of the entrance and access standards could be approved by special permit.

Background Information

Number of Applications

Since adoption of the provisions for accessory dwelling units in 1983, 219 applications for accessory dwelling units have been approved (37 of which are now expired) and 17 have been denied (as of October 2020). This represents an average of about six applications per year. If the Board approves the administrative permit process for interior units and/or removes the age or disability requirement, there is likely to be an increase in the number of applications. However, based on a review of other jurisdictions that have amended their regulations to remove impediments, the increase in the number of applications is anticipated to be modest. This will allow for monitoring of the new regulations and amendment of the standards if appropriate. Arlington County amended their regulations for accessory dwelling units, effective January 2018 and May 2019. Since then, they have approved a total of 32 attached and 38 detached accessory dwellings (2018 – October 29, 2020). Montgomery County amended their regulations, effective December 2019. Based on conversations with their staff, due to COVID they have not seen an increase in the number of applications this year.

Affordable Housing and Demographic Information

While ALUs should not be confused with affordable dwelling units (known as ADUs), they can be part of the solution to the County's housing needs. The Fairfax County Department of Housing and Community Development (HCD) has responded that there is an overarching need for housing that is affordable at all income levels in the [Washington region](#) in general, and specifically in Fairfax County. It is projected that Fairfax County needs to increase its housing supply at all affordability levels. According to research conducted by George Mason University, it is anticipated that over 62,184 households will be added to Fairfax County at all income levels over the next 13 years. Of that, approximately 30% need to be affordable at 80% AMI and lower. The demand for affordable housing, coupled with the high costs of land and construction, makes it difficult to provide sufficient housing at moderate prices and rents. To address the affordable housing issue, the Board of Supervisors and the Fairfax Redevelopment and Housing Authority have focused on efforts that include the use of existing parcels of public land on which to develop more affordable housing, the County's Affordable Dwelling Unit Ordinance, and the Workforce Dwelling Unit policy. Unlike those efforts that lead to new committed-affordable housing units, additional ALUs that may result from changes proposed as part of zMOD are not intended to lead to more committed-affordable housing. Rather, the changes are part of a range of options in the affordable housing toolbox (to include development, policy improvements, and land use changes) that are expected to increase the overall supply of housing in Fairfax County. It is reasonable to expect that some ALUs, given their location within or on the property of an owner-occupied dwelling, may be more affordable than certain other rental opportunities, and as noted above, ALUs can supplement the income for homeowners.

Clarion Associates has provided information on the demographics of accessory dwelling unit occupancy in several jurisdictions that have conducted detailed surveys.¹ According to this information, most of the occupants are 20 to 50 years old and about 90 percent have no children. Over half of the units are occupied by tenants and, at least in the case of one jurisdiction, most of the rents are affordable to lower income one or two-person households. Additionally, one jurisdiction reported that over 70 percent of the occupants have at least a four-year degree, and another reported that almost half are employed in a professional occupation. Staff is prepared to monitor the ALU program and any changes approved by the Board, including topics, such as anticipated monthly rent, relationship of occupants, and total number of vehicles associated with the dwelling.

¹ Sausalito, California (2011); Portland, Eugene, and Ashland, Oregon (2013); Portland, Oregon (2018); and Boulder, Colorado (2017).

Summary of Jurisdictions

Accessory Dwelling Units by Jurisdiction							
	Age/ Disability Limit?	Size	Process	Location	Owner- Occupied	Max # of People	Parking
Fairfax (Existing)	55+/ person with a disability	35% of principal structure	Special permit with public hearing	Interior; Detached with 2+ acres	Yes	2	Determined by BZA
Arlington	None	Footprint of 560- 650 SF; Up to 750 SF interior space; Entire basement if wholly within	Administrative process with affidavit	Interior; Detached with 5-ft setback and 25-ft height	Yes	3	Maintain 1-2 spaces or create 1 space if none exist
D.C.	None	Only allowed if principal structure exceeds 1,200 SF - then allows 35%	Administrative process	Interior; Detached anywhere in rear and out of side setback and 20-ft height	Yes	3	None
Montgomery County	None	Interior: 1,200 SF Detached: 50% of the footprint of the principal dwelling; 10% of the lot area; or 1,200 square feet of gross floor area.	Administrative process with affidavit	Interior; Detached must meet lot coverage, setback and height requireme nts	Yes	2 over 18 years old	1 on-site parking space required in addition to any spaces required for the dwelling. No parking if within one mile of metro or MARC
Loudoun County	None	70% or 2,500 SF, whichever is less	Administrative process	Interior and Detached allowed	No	None	1 space

Summary of Advertised Options for ALUs

Topic	Posted Draft	Advertised Range or Option
Administrative Permit	Administrative permit for interior ALUs that meet the requirements	Keep the special permit process for all ALUs
Interior ALU size	800 square feet or 40% of the principal dwelling, whichever is less	500 to 1,200 square feet or 40% of the principal dwelling, whichever is less
Interior ALU size if located in the basement or cellar	800 square feet or 40% of the principal dwelling, whichever is less	Option to exceed 800 square feet with administrative approval if the ALU is in the basement or cellar
Age or disability	A person 55 years in age or older or a person with a disability	Retain or remove the current requirement for someone on the property to be at least 55 years old or a person with a disability If the age or disability requirement is removed, the related standard for reasonable access and mobility would be removed, as well as the Caretaker Quarters use which would no longer be needed
Detached ALU Size	1,200 square feet	700 to 1,500 square feet

Home-Based Businesses

The home-based business use is a consolidation of the current home occupation, home professional office, and barber shop or beauty parlor as a home occupation. While a home occupation requires an administrative permit, the home professional office and barber shop or beauty parlor as a home occupation require special permit approval and a public hearing with the BZA. The current fee for these types of special permit applications is \$16,375. Under current provisions, four customers at a time and eight customers in a day are only allowed for a school of special education home occupation (e.g., classes in music, art, exercise, or any other form of instructional activity), and for a home professional office or barber shop/beauty parlor that receives special permit approval. Other types of occupations or non-professional offices are not allowed to have customers. Home occupations are currently permitted to have one non-residential employee, while the BZA may approve a home professional office to have up to four employees on lots less than two acres and up to six employees on lots two acres or larger. A barbershop or beauty parlor as a home occupation is not permitted to have any non-resident employees. The intent of the revisions is to create a single, more equitable set of standards that protects residential neighborhoods while also recognizing the wide range of occupations and businesses that are often conducted in a home.

Timeline and Outreach

The home-based business use has been significantly revised throughout the zMOD process in response to feedback received. During outreach, comments have been provided supporting the additional flexibility and modernization of this use to allow for entrepreneurs to start out in their homes before moving to a larger commercial space, especially in response to current small-scale entrepreneurial trends. Concerns have been raised about the impact of employees and customers in residential areas, especially with potential parking and traffic implications.

Summary of Standards

The following standards are brought forward from the June 2020 Consolidated Draft:

- A home-based business is only permitted to be conducted in a person's dwelling that is their primary residence or an associated accessory structure.
- **Exterior Evidence:**
 - There may be no exterior evidence that the dwelling is used in any way other than for a dwelling. Because of recent changes to the Sign Ordinance regulations, a yard sign that is permitted for all other residential dwellings is also permitted for this and any other accessory use. These yards signs are limited to a total square footage of 12 feet with no single sign exceeding four square feet in area or a height of four feet.
 - No outdoor storage of goods used in connection with the home-based business is allowed.
- **Vehicles:**
 - Only one commercial vehicle is permitted, which is subject to the commercial vehicle limitations.

- Vehicles delivering any related materials to or from the home-based business are limited to a maximum length of 28 feet. Semitrailers for delivery or distribution are not permitted.
- **Employees:** For single-family detached dwellings, one non-resident employee is permitted on-site between 7:00 AM and 6:00 PM.
- **Customers or Clients:**
 - A range will be advertised to allow the Board to consider from zero to four customers on-site at one time and zero to eight customers on-site in any one day.
 - No customers or clients are permitted if the site has a home day care facility, which is a separate use with different customer and employee limitations.
 - If the use involves on-site customers, one off-street parking space must be designated.
 - Hours are limited from 8 AM to 9 PM. Appointments must be made with 15 minutes between each appointment.
- A permit may only be issued to the applicant and is not transferable to another resident, address, or occupation.
- **Special Permit.** An applicant can request special permit approval to have additional employees, different work hours, or to allow more customers or clients.

The following standards have been added or revised since the June 2020 Consolidated Draft:

- **Permitted Uses.** The following uses are the only uses permitted as a home-based business. This is a change from the previous approach where a list of *prohibited* uses was included. The standards now expressly say which uses are permitted in a more user-friendly approach:
 - General retail sales, where the sale and delivery of items occurs exclusively online or off-site;
 - Health and exercise facility, small (such as yoga, Pilates, or other exercise studios);
 - Household repair and rental service, limited to repairing small household items such as musical instruments, sewing machines, radios, and watches;
 - Office;
 - Personal service, limited to a barbershop or hair salon, sewing, or tailoring. A hair salon may not include other services such as nail, facial, or massage services;
 - Music, photography, and art studios;
 - Small-scale production, limited to items created on-site and home-based food production, where the sale and delivery of items occurs exclusively online or off-site; and
 - Specialized instruction center (such as music lessons, language classes, or other instructional activities).
- **Size.** The area used by the home-based business is limited to 400 square feet. The size may be increased with special permit approval. An advertised range from 200 square feet to 750 square feet will be included for Board consideration.
- **Employees:** While single-family detached units would be permitted to have one non-resident employee, based on feedback received during outreach and concerns about parking, no non-resident employees are permitted in any other dwelling type. This is more restrictive than today's

regulations, which allow a non-resident employee for all dwelling unit types. An option for the Board to consider allowing one employee for all dwelling types will be advertised.

- **Customers or Clients:**
 - Following outreach meetings, customers and clients have been further limited to two customers or clients at the site at a time with a cumulative maximum of six customers or clients on-site in any one day. The cumulative maximum number includes all home-based businesses and short-term lodging guests on-site. This number is reduction from today's permissions for instructional home occupations, which permits four pupils at a time and eight in one day and is in response to concerns raised about traffic and parking impacts.
 - If the home-based business has customers or clients, the designated parking space must be available for customer or client parking.
 - For general retail sales and small-scale production uses, customers are only permitted when viewing samples of handcrafted items.
- **Special Permit.** Special permit options are included to allow outdoor activities, such as swimming or soccer lessons, and to allow a larger area.

Summary of Advertised Options for Home-Based Businesses

Topic	Posted Draft	Advertised Range or Option
Size of home-based business	400 square feet	200 to 750 square feet
Number of employees	1 for single-family detached dwellings and 0 for other types of dwellings by administrative permit; Additional employees by special permit	Allow the Board to consider permitting 1 employee for all types of dwellings by administrative permit; Additional employees would still be allowed by special permit
Number of customers at a time	2 at a time in all types of dwellings	0 to 4 at a time (This would allow the Board to consider differentiating based on dwelling unit type, up to 4 at a time.)
Number of customers in a day	6 in all types of dwellings	0 to 8 per day (This would allow the Board to consider differentiating based on dwelling unit type, up to 8 per day.)