



County of Fairfax, Virginia

MEMORANDUM

DATE: May 19, 2020

TO: Fairfax County Planning Commission

FROM: Leslie B. Johnson, Zoning Administrator *LBJ*
Barbara Byron, Director, Department of Planning and Development *Barbara Byron*

SUBJECT: zMOD Response to Planning Commission Land Use Process Review Committee

On May 7, 2020, staff presented an update on the zMOD project to the Planning Commission Land Use Process Review Committee. We appreciate the opportunity to provide this update as well as your continued attention to this project as considerable work has gone into the drafting of a much-needed modernized Zoning Ordinance over the past two and a half years. During this meeting, concerns were raised by some Commissioners regarding public engagement, the scope of the project, accessory dwelling units, and home-based businesses; in response, we would like to provide clarification and additional information on these topics. As always, we appreciate the Commission's feedback and are available to answer any further questions.

zMOD Public Engagement

During the committee meeting, concerns were raised about the zMOD process in terms of transparency and public involvement. We believe strongly that these comments were misplaced and were disheartened to hear them, as we are proud of the public outreach that has been a hallmark of the process. We have worked to provide multiple avenues for engagement in order to reach as many Fairfax County residents as possible. Since the kickoff in January 2018, staff has presented at 64 publicly accessible meetings. While some of these meetings took place at the Fairfax County Government Center, 17 of the public meetings were held throughout the County at regularly-scheduled community land use groups in all nine magisterial districts. Staff has also hosted 16 community meetings specifically focusing on the zMOD project, and many of these presentations were also streamed on Facebook Live and posted on the zMOD website after the conclusion of the meeting for those who were unable to attend in-person but were still interested in viewing the presentation. According to the Facebook statistics, these videos have been viewed by hundreds of individuals. The zMOD project has also been presented to the Board's Land Use Policy Committee (previously the Development Process Committee) ten times, which is televised and may also be live-streamed. All recorded presentations are posted on our zMOD website. A list of the specific public meetings is included as Appendix 1.



PLANNING & DEVELOPMENT

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In addition to public meetings, the [zMOD website](#) includes links to all posted drafts, presentations, and short videos prepared by our consultant, Clarion Associates. We have distributed information about the project through an email Listserv, district newsletters, and social media. The zMOD-specific email is continuously monitored to respond to questions and comments received. We have also received helpful input from a Citizens Workgroup that includes members from each magisterial district, a Land Use Attorneys Workgroup, and a Builders and Industry Workgroup. In addition, staff has discussed the zMOD project on the PC Roundtable televised on Channel 16.

In response to the current COVID 19 pandemic, we have delayed the zMOD project timeline to allow for ample and robust citizen engagement. In an effort to continue to receive public feedback and engage on specific topics while the zMOD consolidated draft is being prepared for release, staff has provided short videos and surveys on the topics of accessory dwelling units and home-based businesses. Staff is available to present virtually to community land use groups and has begun to do so. The workgroups will continue to meet virtually to discuss the project as well.

Scope of the zMOD Project

Concerns were expressed during the meeting that the zMOD project has gone beyond its scope in order to push through changes without public involvement. This is a misperception of both the scope and the efforts taken to ensure transparency. From the beginning, the scope of this phase 1 of zMOD has included not just a new format and editing for plain English, but also substantive revisions to modernize land uses and to correct other gaps and inconsistencies. This scope was publicized and presented in numerous presentations on the project. Furthermore, per our commitment from the onset, all changes are footnoted in the drafts and summarized in cover memos. The project has involved the release of nine major installments and several other memos in order to maximize time for public review and comment. We are just now, after two and a half years of work, almost ready to release a consolidated draft. This draft will incorporate revisions based on the substantial feedback we have received. The release will include a cover memo that summarizes all of the substantive changes proposed, including those presented in the cover memos that accompanied the individual releases. Other topic-specific Zoning Ordinance amendments continue on a parallel track with zMOD, and following phase 1, there will be other major topic-specific updates as part of a phase 2.

Accessory Dwelling Units

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 a majority of the standards in today's Ordinance. A comparison of the current and proposed standards that apply to accessory dwelling units is shown below:

| Current Standards | Proposed Standards |
|---|---|
| Special permit required for both interior and detached units | Revised for interior units to an administrative process No change for detached units |
| Only permitted in conjunction with a single family detached dwelling and only one unit is permitted | No change |

| Current Standards | Proposed Standards |
|--|--|
| A maximum of two bedrooms and two occupants are allowed | No change |
| A detached unit is only permitted on a lot two acres or larger | No change |
| Maximum 35% of total gross floor area | Revised to allow a maximum of 1,200 sq.ft. and must be subordinate to the principal dwelling; a larger size could be allowed by special permit |
| One of the units must be owner-occupied | No change |
| One of the units must be occupied by a person who is 55 years of age or older, or disabled | Options will be included to allow consideration for retaining or removing this standard per direction from the Board |
| Occupancy of the principal unit is limited to one "family" or four unrelated persons | Edited and revised to allow two single parents |
| May not be used for short-term lodging purposes | No change |
| External entrances must be located on the side or rear of the dwelling | Carried forward, clarified, and added limits on garages and curb cuts |
| Board of Zoning Appeals (BZA) will review parking | Revised for interior units: administrative process requires one space be designated No change for detached units |
| BZA will determine that the unit will not disrupt the predominant character of the neighborhood | No longer applicable for interior units No change for detached units – addressed by a general special permit standard |
| All regulations for building, safety, health, and sanitation must be met | No change |
| The owner must allow inspections of the property | No change |
| The permit must be recorded in the land records | No change |
| Permits are approved for five-year periods and may be renewed if all standards are continued to be met | No change |
| The owner must allow inspections of the property | No change |
| | New: If the approval expires or the standards are no longer met, the accessory dwelling unit may not be occupied as a separate dwelling unit, but facilities do not need to be removed |

These changes were highlighted with the Planning Commission and the Board during previous outreach meetings and were also included in the July 1, 2019 draft on Consolidated Use Regulations. This draft was endorsed by the Board on July 16, 2019. Subsequently, during outreach with the Board at its February 4, 2020 Land Use Policy Committee meeting, there was discussion about removing the requirement that an occupant of either the accessory or principal dwelling unit be either 55 years or older or have a disability 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. The Board requested that staff conduct outreach on this issue. We have begun the outreach process, including an online survey and will add the option to remove the age/disability requirement in the upcoming consolidated draft.

A number of questions and comments raised by the Planning Commission are addressed below:

There should be a distinction between interior accessory dwelling units and detached accessory dwelling units. It was noted in the meeting that separate definitions, standards, and processes may be needed for interior and detached units. Although the draft carries forward a single definition for all accessory dwelling units, differences in the process and standards are specified in the use-specific standards. Detached accessory dwelling units are only permitted on a lot greater than two acres, where interior units do not have a minimum lot size.

Accessory dwelling units may not be appropriate in all zoning districts, lots without access to public water or sewer, or in areas containing sensitive environmental or historic resources. Accessory dwelling units are only permitted in conjunction with a single family detached home. Lots on septic systems would be required to obtain all applicable Health Department approvals for additional bedrooms. A detached accessory dwelling unit on a lot containing environmental restrictions like a Resource Protection Area or a Historic Overlay District would be reviewed for impacts as part of the special permit process and may be subject to additional review requirements.

A percentage size limitation, such as 50 percent, should be considered to ensure the unit is subordinate. Currently, the maximum size of an accessory dwelling unit is 35 percent of the gross floor area. Staff is considering including a maximum percentage in addition to the maximum square footage.

There should be a minimum distance between accessory dwelling units, such as 500 feet. Standards such as the designated parking space for interior units, and continuing to require a special permit for a detached unit have been proposed as a way to protect neighborhood character without adding a distance requirement that would not treat all lots similarly.

Residents want the public hearing process to have an opportunity to weigh in on additional people in their neighborhoods. The process is only proposed to be changed for interior units; detached units would continue to require approval of a special permit from the BZA.

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 an accessory dwelling unit do not permit those two additional roomers or boarders, the effect of an accessory dwelling unit 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.

The proposed administrative permit standards are objective and can be implemented administratively. Most special permit applications are approved, with standard

conditions. According to our records, out of a total of 294 special permit applications for accessory dwelling units, only 16 have been denied, with occupancy violations cited most often as a reason. Occupancy standards would remain, and the administrative permit allows for inspections and enforcement.

How does this proposal coincide with our affordable housing goals? While accessory dwelling units 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 accessory dwelling units that may result from changes proposed as part of zMOD are not intended to necessarily 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.

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.

What are other jurisdictions doing? The table included in Attachment 2 summarizes the research on surrounding jurisdictions. Of the jurisdictions reviewed, Fairfax County is the only one with an age/disability requirement.

Home-Based Businesses

With respect to the proposed home-based business use, the Planning Commission committee requested a clear outline and comparison with other uses that may take place in the home,

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

which staff will provide with the consolidated draft. Questions were also asked about the proposed list of prohibited uses. The list of prohibited uses is provided in Attachment 3.

There were also questions and comments about the potential impacts of home-based businesses on surrounding neighbors in terms of signage, hazardous or incendiary materials, and noise. With the recent Supreme Court decision and the County's resultant amendment to Article 12 on Signs, the Zoning Ordinance is not able to regulate sign content. All residential areas are permitted to have yard signs up to 12 square feet in area, with no one sign exceeding four square feet. Since the content of the sign cannot be regulated, an individual could advertise a home business both today and with the proposed revisions. In terms of hazardous or incendiary materials, these would be regulated by State Code requirements. In addition, many hazardous materials will be excluded through the prohibition on all uses in the Industrial Classification. Lastly, all home-based businesses would be subject to the applicable regulations in the Noise Ordinance.

We will continue to review the feedback on this use and will include revisions with the consolidated draft for further discussion.

We hope that this clarifies and responds to the questions raised at the Planning Commission committee meeting. We plan to return to the Planning Commission Land Use Process Review Committee to present the consolidated draft in July. In the meantime, if you have any additional questions, please contact us at any time.

cc: Fairfax County Board of Supervisors
Bryan J. Hill, County Executive
Rachel Flynn, Deputy County Executive
Jill Cooper, Director, Clerk Services

zMOD Public Meetings

Board of Supervisors Development Process/Land Use Policy Committee

- Accessory Dwelling Units, Home-Based Businesses, and Freestanding Accessory Structures, February 4, 2020, 11:00 a.m.
- Clarion Presentation on zMOD Zoning Districts & Development Standards, October 22, 2019, 11:00 a.m.
- zMOD Update and Electric Vehicle Charging Spaces, September 10, 2019, 11:00 a.m.
- Clarion Presentation on the Consolidated Draft of Use Regulations, May 14, 2019, 3:00 p.m.
- Draft for Agricultural and Commercial Uses, March 12, 2019, 9:30 a.m.
- Draft for Public, Institutional, and Community Uses, December 11, 2018, 9:30 a.m.
- Clarion Presentation on the Zoning Ordinance Structure and Industrial Uses, October 9, 2018, 11:00 a.m.
- Clarion Presentation on Fundamentals, Trends, and Uses, May 8, 2018, 9:30 a.m.
- zMOD Status Update, January 30, 2018
- Initial Project Presentation, March 28, 2017

Planning Commission/Land Use Process Review Committee

- zMOD Update - Accessory Dwelling Units and Home-based Businesses, May 7, 2020 at 7:30 p.m. (electronic meeting)
- Clarion Presentation on zMOD Zoning Districts & Development Standards, October 23, 2019, 7:30 p.m.
- Zoning Ordinance Amendment Work Program, May 23, 2019, 7:30 p.m.
- Clarion Presentation on the Consolidated Draft of Use Regulations, May 15, 2019, 7:30 p.m.
- Draft for Agriculture and Commercial Uses, March 7, 2019, 7:30 p.m.
- Draft for Public, Institutional, and Community Uses, November 28, 2018, 7:00 p.m.
- Clarion Presentation on the Zoning Ordinance Structure and Industrial Uses, October 9, 2018, 7:30 p.m.
- zMOD Update, September 12, 2018, 6:30 p.m.
- zMOD Update, July 18, 2018, 7:30 p.m.
- Clarion Presentation on Fundamentals, Trends, and Uses, May 9, 2018, 7:00 p.m.

zMOD Outreach Meetings and Zoning Open Houses

- Clarion Presentation on zMOD Zoning Districts & Development Standards, October 22, 2019, 7:00 p.m., Fairfax County Government Center
- South County Zoning Open House, September 10, 2019, 7:00 p.m.
- Zoning Open House, July 22, 2019, 7:00 p.m., Fairfax County Government Center
- Clarion Presentation on the Consolidated Draft of Use Regulations, May 14, 2019, 7:00 p.m., Fairfax County Government Center
- Community Meeting for Residential, Accessory, and Temporary Uses, April 23, 2019, 7:00 p.m., Fairfax County Government Center
- Community Meeting for Agriculture and Commercial Uses, February 25, 2019, 7:00 p.m., Fairfax County Government Center

- Community Meeting for Public, Institutional, and Community Uses, January 8, 2019, 7:00 p.m.
- Clarion Presentation on the Zoning Ordinance Structure and Industrial Uses, October 10, 2018, 7:00 p.m., McNair Elementary School, Herndon
- Clarion Presentation on the Zoning Ordinance Structure and Industrial Uses, October 11, 2018, 7:00 p.m., Lee High School, Springfield
- Zoning Open House, June 4, 2018, 7:00 p.m., South County High School, Lorton
- Zoning Open House, May 23, 2018, 7:00 p.m., Chantilly High School, Chantilly
- Zoning Open House, May 21, 2018, 7:00 p.m., Colvin Run Elementary School, Vienna
- Clarion Presentation on Fundamentals, Trends, and Uses, May 10, 2018, 7:00 p.m., South County Governmental Center
- Clarion Presentation on Fundamentals, Trends, and Uses, May 8, 2018, 7:00 p.m., Marshall High School, Falls Church
- Community Kick-off Meeting with Clarion, January 24, 2018, 7:00 p.m., Fairfax County Government Center
- Zoning Open House, July 26, 2017, 7:00 p.m., Herrity Building, 12055 Government Center Parkway

Community Meetings

- Joint Sully District Land Use and Transportation Committee, May 18, 2020, 7:00 p.m. (electronic)
- Mason District Civic/HOA Leaders, March 14, 2020, 10:00 a.m., Mason District Governmental Center
- Lee District Land Use Committee, March 9, 2020, 7:00 p.m., Franconia Governmental Center
- Clifton Town Hall, February 19, 2020, 12641 Chapel Road, Clifton
- Braddock District Land Use and Environment Committee, January 21, 2020, Kings Park Library
- Federation of Citizens Associations, January 16, 2020, Mason District Governmental Center
- West Fairfax County Citizens Association and Sully District Council Citizens Association Joint Meeting, December 16, 2019, Sully District Government Center
- Reston Planning and Zoning, November 18, 2019, North County Governmental Building
- Mason District Council, October 30, 2019, Mason District Government Center
- Braddock Land Use Committee, October 15, 2019, 7:30 p.m., Kings Park Library
- Great Falls Citizen Association, September 16, 2019, 7:00 p.m., Great Falls Library
- McLean Citizens Association, July 30, 2019, 7:30 p.m., McLean Community Center
- Mason District Land Use Committee, May 28, 2019, 7:00 p.m., Mason District Governmental Center
- Mt. Vernon Council of Citizens Association, April 24, 2019, 7:00 p.m., Mt. Vernon Governmental Center
- BC7RC, April 16, 2019, 7:30 p.m., Mason District Governmental Center
- Mason District Council, April 16, 2018, 7:00 p.m., Mason District Governmental Center
- Providence Land Use Committee, September 13, 2017, Providence Community Center

- Lee District Land Use Committee, September 11, 2017, Franconia Governmental Center

Other Meetings

- NVBIA/NAIOP, February 20, 2020 at 8:30 a.m., Herrity Building, 12055 Government Center Parkway
- Architectural Review Board (ARB), October 10, 2019, 6:30 p.m., Lorton Workhouse Arts Center
- Board of Zoning Appeals, September 18, 2019, 9:00 a.m., Fairfax County Government Center
- Fairfax County History Commission, June 5, 2019, 7:30 p.m., Fairfax City Regional Library
- NVBIA/NAIOP, May 16, 2019, 8:00 a.m., Herrity Building, 12055 Government Center Parkway
- Fairfax County Architectural Review Board, May 9, 2019, 6:30 p.m., Fairfax County Government Center
- NVBIA/NAIOP, March 21, 2019, 8:30 a.m., Herrity Building, 12055 Government Center Parkway
- Fairfax County Architectural Review Board, February 14, 2019, 6:30 p.m., Fairfax County Government Center
- NVBIA/NAIOP, January 10, 2019, 8:30 a.m., Herrity Building, 12055 Government Center Parkway
- NVBIA/NAIOP, October 11, 2018, 8:00 a.m., Herrity Building, 12055 Government Center Parkway

| Accessory Dwelling Units by Jurisdiction | | | | | | | | |
|--|------------------------------|--|---------------------------------------|-------------------|--|-----------------|---------------------|--|
| | Age/Disability Limit? | Size | Process | Interior Allowed? | Detached Allowed? | Owner-Occupied? | Maximum # of People | Parking Requirements |
| Fairfax (Existing) | 55+/person with a disability | 35% of principal structure | Special permit with public hearing | Yes | Only 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 | Yes | Yes - 5 foot 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 | Yes | Yes - 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 | Yes | Yes – must meet total lot coverage and all setback/height requirements | 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 | Yes | Yes | No | None | 1 space |

**Home-Based Business
Prohibited Uses**

Category: Health Care

- Adult Day Care Center
- Continuing Care Facility
- Independent Living Facility
- Medical Care Facility

Category: Animal-Related Services

- Animal Shelter
- Kennel
- Pet Grooming Establishment
- Veterinary Hospital

Category: Food and Lodging, except for home-based food production

- Bed and Breakfast
- Catering
- Hotel or Motel
- Restaurant
- Restaurant, Carryout
- Restaurant with Drive through
- Retreat Center

Category: Personal and Business Services, except a barbershop or hair salon, dressmaker, seamstress, or tailor

- Business Service
- Household Repair and Rental Service
- Personal Service

Category: Recreation and Entertainment, except a health and exercise facility, small

- Banquet or Reception Hall
- Campground
- Commercial Recreation, Indoor
- Commercial Recreation, Outdoor
- Entertainment, Adult
- Entertainment, Public
- Golf Course or Country Club
- Health and Exercise Facility, Large
- Marina, Commercial
- Marina, Private Noncommercial
- Quasi-public Park, Playground, or Athletic Field
- Smoking Lounge
- Stadium or Arena

- Zoo or Aquarium

Category: Vehicle-Related

- Car Wash
- Commercial Off street Parking
- New Vehicle Storage
- Truck Rental Establishment
- Vehicle Fueling Station
- Vehicle Repair and Maintenance, Heavy
- Vehicle Repair and Maintenance, Light
- Vehicle Sales, Service, and Rental
- Vehicle Transportation Services

Classification: Industrial Uses, except home crafts such as jewelry making or ceramics

Category: Freight Movement, Warehousing, and Wholesale Distribution

- Data Center
- Freight Distribution Hub
- Goods Distribution Hub
- Self storage
- Warehouse
- Wholesale Facility

Category: Industrial Services and Extraction of Materials

- Building Materials Storage and Sales
- Contractor's Office and Shop
- Extraction Activities
- Petroleum Products Storage Facility
- Specialized Equipment and Heavy Vehicle Sale, Rental, or Service
- Storage Yard
- Vehicle Storage or Impoundment Yard

Category: Production of Goods

- Craft Beverage Production Establishment
- Production or Processing
- Production or Processing, Heavy
- Small scale Production Establishment

Category: Waste and Recycling Facilities

- Junkyard
- Mixed Waste Reclamation Facility
- Recycling Center
- Solid Waste Disposal Facility