

**FAIRFAX COUNTY PLANNING COMMISSION  
LAND USE PROCESS COMMITTEE  
THURSDAY, MAY 25, 2017**

**PRESENT:** James T. Migliaccio, Lee District, Chairman  
Ellen J. Hurley, Braddock District  
Earl L. Flanagan, Mount Vernon District  
Phillip A. Niedzielski-Eichner, Providence District  
Karen A. Keys-Gamarra, Sully District  
James R. Hart, Commissioner At-Large  
Janyce N. Hedetniemi, Commissioner At-Large

**ABSENT:** John C. Ulfelder, Dranesville District  
Peter F. Murphy, Springfield District

**OTHERS:** Frank A. de la Fe, Hunter Mill District  
Julie M. Strandlie, Mason District  
Timothy J. Sargeant, Commissioner At-Large  
John W. Cooper, Clerk, Planning Commission  
Barbara Byron, Office of Community Revitalization  
Fred Selden, Department of Planning and Zoning (DPZ)  
Kevin Guinaw, Zoning Evaluation Division, DPZ  
Sophia Fisher, Planning Division (PD), DPZ  
Meghan Van Dam, PD, DPZ

**ATTACHMENTS:**

- A. Zoning Ordinance Modernization Project (zMOD)
- B. Existing Zoning Ordinance Text, 18-204 Proffered Condition Regulations
- C. Minor Modifications to Approved Zonings
- D. Plan Amendment 2016-CW-4CP Office Building Repurposing

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Chairman James T. Migliaccio called the meeting to order at 7:01 p.m. in the Board Conference Room, 12000 Government Center Parkway, Fairfax, Virginia, 22035.

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Barbara Byron, Office of Community Revitalization and Kevin Guinaw, Zoning Evaluation Division, DPZ, discussed with the Committee members the status of the Zoning Ordinance Modernization Project (zMOD) and agreement of approach to Minor Modifications Amendment. The topics discussed included:

- zMOD general updates;
- Outreach engagement;
- First phase amendments;
- Minor Modifications Amendment applicability;
- Overview of actions to date;
- Public notice requirements; and
- Next steps.

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Meghan Van Dam, Planning Division (PD), Department of Planning and Zoning (DPZ), and Sophia Fisher PD, DPZ, discussed with the Committee the background, description and timing of the plan amendment 2016-CW-4CP Office Building Repurposing.


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The meeting was adjourned at 8:06 p.m.  
James T. Migliaccio, Chairman

An audio recording of this meeting is available in the Planning Commission Office, 12000 Government Center Parkway, Suite 330, Fairfax, Virginia 22035.

Minutes by: Inna Kangarloo

Approved: December 7, 2017

  
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John W. Cooper, Clerk to the  
Fairfax County Planning Commission



# Zoning Ordinance Modernization Project

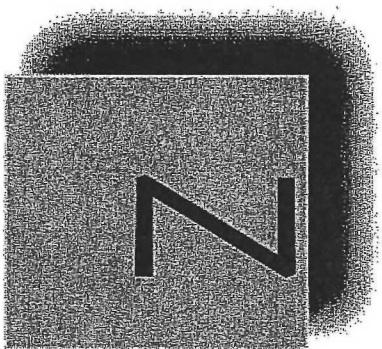
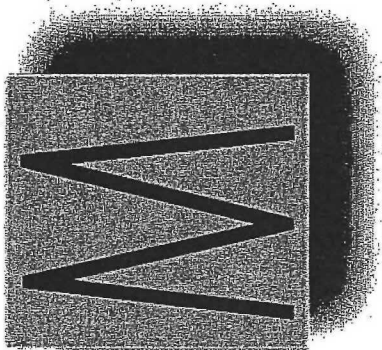
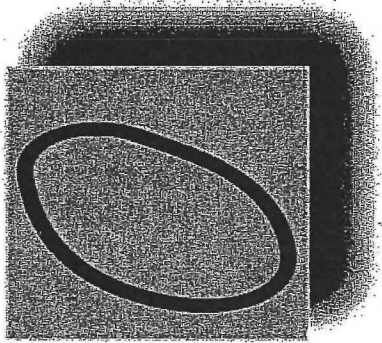
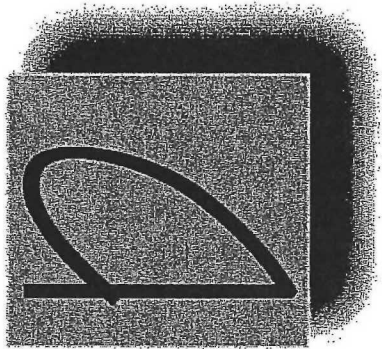


zMOD Status and Agreement on Approach to Minor Modifications Amendment

Planning Commission Land Use Process Committee

May 25, 2017

Barbara Byron  
Director, OCR





## zMOD - General Updates

- RFP for consultant services issued; submission response date - June 16, 2017; consultant(s) anticipated to be on board – fall 2017
- Staff has been using the approaches developed with zMOD on other amendments and has been coordinating internal process changes with ZED

## Outreach and Engagement

- We have set up topical meetings with the Planning Commission's Land Use Committee
- We had the first meeting with the Board's Land Use Aides
- We are anticipating scheduling the first meeting of the Citizen's Working Group in June
- We have presented zMOD to groups including the Economic Advisory Commissions Implementation Committee (EAC/IC) and the Northern Virginia Builders Association (NVBIA)/NAIOP

# First Phase Amendments

- Eating Establishments/Fast Food
  - Internal discussions and those with stakeholder community have begun
  - Will present schedule at the next Development Process Committee
- Signs (first Phase related to content neutrality)
  - First draft of Ordinance written – under internal review
  - Will present schedule at the next Development Process Committee
- PDH
  - Minor modification amendment and 30% lot coverage amendment will assist with certain of the PDH issues
  - Will be next amendment undertaken
- Minor Modifications

# Minor Modifications Amendment

Applicability

**Will affect proffered rezonings,  
special exceptions and special  
permits**

## Balance

The Minor Modifications amendment strikes a balance that:

- addresses the need for additional flexibility to respond to changing circumstances
- retains the protections expected by the community

## Overview of Actions to Date

- Revised text written for proffered rezonings to inform recommendations
- “Plain English” outreach paper completed describing major components of amendment
- Proposed schedule developed



## The Minor Modification Amendment:

- does not change that proffers and development conditions are part of the zoning regulations of the property, unless changed by a subsequent zoning action by the Board
- streamlines and reformats the text to be more user friendly; eliminates duplicate text and unnecessary verbiage; uses more understandable language

For proffered rezonings, special exceptions and special permits

- continues to allow the Zoning Administrator to permit certain administrative changes provided that they are in substantial conformance with the approval and remain true to the intent of the approved proffers or development conditions
- adds more staff flexibility to the existing provisions in four areas

1. Exempts solar collectors and other innovative energy technology structures less than 10 feet in height from building height and roof top coverage limitations

*Addresses instances where, for example, solar collectors on the roof of a multi-story office building would have exceeded the allowable building height and rooftop coverage limits*

2. Excludes from the definition of gross floor area and the calculation of FAR any incidental increase in interior space created by the replacement of a façade material on an existing building

*Addresses an issue that arose in the repositioning of an existing office building, where the replacement of the precast façade with a glass façade increased interior space which resulted in a floor area which exceeded the maximum permitted*

### 3. Permits staff to change color of signs and typeface

*Addresses instances where an amendment was required to change the color of signs for a bank when the corporate colors changed*

#### 4. Increases the allowable size for minor building additions and simplifies the provisions

Current Provisions		Proposed Provisions	
Places of Worship and Places of Worship with child care centers/schools	The greater of 500 square feet or 5% of the total approved floor area up to a maximum of 2500 square feet		
All Other Uses (less than 50,000 square feet GFA)	5% of the approved floor area up to a maximum of 500 square feet	All Uses	5% of the approved floor area up to a maximum of 2500 square feet
All Other Uses (50,000 square feet GFA or greater)	1% of the approved floor area		

*treats all uses the same, making it easier for property owners to determine how much of an addition is allowable; clarifies that cellar space could be allowed as a minor building addition*

## Additional Requests - New Avenue for Approval

Adds additional flexibility and streamlines the process by creating a new avenue for the Board to act on five types of requests, with public notice, as an Action Item at a Board meeting



# Public Notice Requirements

- For an application affecting no more than 25 parcels, written notice goes
  - To the owners of those parcels
  - To the owners of any parcels abutting and or across the road from the affected parcels
  - If any portion of the affected property is within a P District, to an HOA that has members owning property located within 2,000 feet of the affected property
- For an application affecting more than 25 parcels, notice goes to the owners of all parcels
- Timing of notice: at least 5 days before the BOS action by law, but County can establish longer time period

1. Permits the addition or modification of a use which is not specifically precluded by proffers or conditions, if the new use does not have a greater land use impact than the approved use(s)

*Allows new uses in places such as shopping centers*

2. Permits an increase in building height, provided the resultant height does not exceed 15% of the approved height, add more than one story, exceed the maximum height of the zoning district, or materially impact adjacent properties

*Addresses circumstances that arise during final engineering such as the discovery of subsurface rock that would be costly to remove and therefore would necessitate a change in elevation and an increase in building height*

3. Permits a modification to proffered minimum yard dimensions and distances from lot lines for decks, patios, and other permitted extensions related to single-family dwellings and for setbacks in other uses, if the modified dimensions would not adversely impact adjacent properties and not impact other proffered elements such as streetscape

*Addresses homeowner requests to modify minimum yard dimensions and setbacks beyond those which can be approved as minor modifications and developer requests to modify setbacks*

4. Permits the modification or deletion of active recreation uses shown on a development plan

*Addresses requests from HOAs or Management Companies to change a proffered active recreation facility to a completely passive recreation facility to reflect community preferences*

5. Permits modification of proffer commitments to technologies and transportation demand measures, including commitments to alternative transportation modes such as shuttle service, that are underutilized or have become obsolete or ineffective as circumstances have changed

*Address circumstances that have occurred where a shuttle was proffered, but a public bus system has abrogated the need for the shuttle, or when there has been a proffer to the distribution of metro smart cards at a hotel, which is too specific and not well utilized*

# Schedule - Minor Modification Amendment

- |   |                   |
|---|-------------------|
| • BOS Development Process Committee             | May 23            |
| • PC Land Use Process Committee                 | May 25            |
| • Authorization of concept by BOS               | June 5 or June 20 |
| • Citizen Committee                             | June              |
| • Citizen/Industry Engagement                   | June – September  |
| • BOS Development Process Committee/ Draft Text | July or September |
| • BOS Authorization with Text                   | September 26      |
| • Planning Commission Public Hearing October.   | TBD               |
| • BOS Public Hearing                            | November 21       |





## **EXISTING ZONING ORDINANCE TEXT**

**18-204****Proffered Condition Regulations**

5. Notwithstanding the provisions of Part 4 of Article 1, minor modifications to the proffered conditions may be permitted when it is determined by the Zoning Administrator that such are in substantial conformance with the proffered conditions and that such: are in response to issues of topography, drainage, underground utilities, structural safety, layout, design, vehicular circulation, or requirements of the Virginia Department of Transportation or Fairfax County; or are accessory uses; or are accessory structures or minor building additions as permitted by Par 5A(7) or 5B(7) below.
  - A. For proffered rezonings for all uses, other than churches, chapels, temples, synagogues and other such places of worship (hereinafter places of worship) or places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:
    - (1) Change the amount of land area or permit a more intensive use from that approved pursuant to the proffered conditions; or
    - (2) Result in an increased parking requirement, except for any additional parking which may be required for any building additions or modifications permitted under Par. 5A(7) below; or
    - (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
    - (4) Reduce the effectiveness of approved transitional screening, buffering, landscaping or open space; or
    - (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or
    - (6) Result in an increase in the amount of clearing and/or grading for a stormwater management facility, including any clearing and/or grading associated with spillways, inlets, outfall pipes or maintenance roads, that reduces non-stormwater management open space, tree save and/or landscaping area on the lot; or

(7) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use and minor additions to buildings may be permitted, provided that the sum total of all such structures or additions shall not exceed the following:

- (a) five (5) percent of the approved gross floor area or 500 square feet of gross floor area, whichever is less, when the total gross floor area shown on the proffered development plan is less than 50,000 square feet; or
- (b) one (1) percent of the approved gross floor area when the total gross floor area shown on the proffered development plan is 50,000 square feet or more; or
- (c) 250 square feet of gross floor area of accessory storage structure uses when the total gross floor area shown on the proffered development plan is 10,000 square feet or less; and
- (d) the maximum permitted density; or
- (e) the maximum permitted FAR for the zoning district in which located.

B. For proffered rezonings for places of worship and places of worship with a child care center, nursery school or private school of general or special education, the modifications shall, in no event:

- (1) Permit an expansion of the hours of operation from that approved pursuant to the proffered conditions; or
- (2) Permit an increase in the number of seats, parking spaces or students, if applicable, which exceeds more than ten (10) percent of the amount approved pursuant to the proffered conditions; or
- (3) Permit uses other than those approved pursuant to the proffered conditions, except that accessory uses in accordance with this paragraph may be permitted; or
- (4) Reduce the effectiveness of approved transitional screening, buffering, and landscaping or open space; or
- (5) Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development or part thereof to adjacent property; or

- (6) Result in an increase in the amount of clearing and/or grading for a stormwater management facility, including any clearing and/or grading associated with spillways, inlets, outfall pipes or maintenance roads, that reduces non-stormwater management open space, tree save and/or landscaping area on the lot; or
  - (7) Include the addition of any building or additions to buildings except that accessory structures clearly subordinate to the use, and minor additions to buildings may be permitted, provided that:
    - (a) the sum total of all such structures or additions shall not exceed the greater of 500 square feet of gross floor area, or five (5) percent of the approved gross floor area up to a maximum of 2500 square feet of gross floor area; and
    - (b) the maximum permitted FAR for the zoning district shall not be exceeded.
- C. For all proffered rezonings, any request for an addition shall require the provision of written notice by the requester in accordance with the following:
- (1) the notice shall include the letter of request with all attachments as submitted to the Zoning Administrator, a statement that the request has been submitted, and where to call for additional information; and
  - (2) the notice shall be sent to the last known address of the owners, as shown in the real estate assessment files of the Department of Tax Administration, of all property abutting and across the street from the site, or portion thereof, which is the subject of the request, and shall be delivered by hand or sent by certified mail, return receipt requested.

The request for an addition submitted to the Zoning Administrator shall include: an affidavit from the requester affirming that the required notice has been provided in accordance with the above; the date that the notice was delivered or sent; the names and addresses of all persons notified; and the Tax Map references for all parcels notified. No request for an addition shall be considered by the Zoning Administrator unless the affidavit has been provided in accordance with this paragraph.

When it is determined by the Zoning Administrator that a modification is not in substantial conformance with the proffered conditions, such modification shall require the resubmission and amendment of the proffered conditions in accordance with the provisions of Par. 6 below.

Notwithstanding the above, any modification to a proffered condition to provide an accessibility improvement shall be permitted and shall not require approval of a proffered condition amendment.

6. Once conditions have been approved, and there is cause for an amendment which would not be in substantial conformance with the proffered conditions, or there is a request to proffer conditions on a parcel not currently the subject of a proffered condition, then an application shall be filed for an amendment. An amendment application may be filed on a portion of the property subject to proffered conditions, upon a determination by the Zoning Administrator that the amendment (a) would not adversely affect the use of the property subject to the proffered conditions but not incorporated into the amendment application, (b) would not inhibit, adversely affect, or preclude in any manner the fulfillment of the proffered conditions applicable to the area not incorporated into the amendment application, (c) would not adversely affect the vehicular and pedestrian circulation, connectivity, landscaping and streetscape applicable to the area not incorporated into the amendment application, and (d) would not increase the overall approved density/intensity for the development, provided however, within the PTC District, for a multiple phased development, an increase in the intensity may be approved for any portion of such development, provided it does not adversely affect the intensity applicable to the area not incorporated into the amendment application. Previously approved proffered conditions which are not subject to the amendment request shall remain in full force and effect. If the amendment concerns an approved generalized development plan, such application shall include the submission requirements for a generalized development plan set forth in Sect. 202 above, except the Zoning Administrator may waive any submission requirement if such requirement is not necessary for an adequate review of the generalized development plan amendment application. Such amendment shall be the subject of public hearing in accordance with the provisions of Sect. 205 below.
7. The Zoning Administrator shall be vested with all necessary authority on behalf of the Board to administer and enforce proffered conditions. Such authority shall include the ability to order, in writing, the remedy of any noncompliance with a proffered condition and the ability to bring legal action to insure compliance including injunction, abatement, or other appropriate action or proceedings, as provided for in Part 9 of this Article.
8. The Zoning Administrator, or his agent, may require a guarantee, satisfactory to the Board, in an amount sufficient for and conditioned upon the construction of any physical improvements required by the proffered conditions, or a contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Board or agent thereof, upon the submission of satisfactory evidence that the construction of such improvements has been completed in whole or in part.
9. Failure to meet or comply with any proffered condition shall be sufficient cause to deny the issuance of any permits, Building Permits, Residential and Non-Residential Use Permits as may be deemed appropriate by the Zoning Administrator.
10. Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board. Such appeal shall be filed within thirty (30) days from the date of the decision appealed by filing a notice of appeal with the Clerk to the Board and a notice and filing fee as provided for in Sect. 106 above with the Zoning Administrator. Such notice shall be a written statement specifying the grounds on which aggrieved and the basis for the appeal.

## Minor Modifications to Approved Zonings

May 25, 2017

Typically, land use actions are approved with a set of conditions (proffers for rezonings and development conditions for Special Exceptions and Special Permits) to address site specific and/or operational aspects of the proposal. These may include conformance with a specific layout or design; delineation of an environmental area to be preserved; specific uses allowed; or, limits on such things as hours of operation. These proffers and conditions become part of the zoning of the property and any development must be in "substantial conformance" with them. However, it is frequently the case that modifications to an approval are requested, either based on detailed design and engineering done at the time of construction, or because needs have changed over time. The Zoning Ordinance allows what are termed "minor modifications" to be approved administratively by the Zoning Administrator to address these issues. However, for a minor modification to be approved, it cannot:

- Change the amount of land area or permit a more intensive use;
- Result in an increased parking requirement;
- Permit uses other than those approved;
- Reduce the effectiveness of approved screening, buffering, landscaping or open space;
- Permit changes to bulk, mass, orientation or location which adversely impact the relationship of the development to adjacent property; or
- Result in an increase in the amount of clearing and/or grading for a stormwater management facility

This proposed amendment to the Zoning Ordinance is designed to address the need for additional flexibility to respond to changing circumstances, while retaining the protections expected by the community. The proposed Zoning Ordinance Amendment would:

- Maintain that proffers and development conditions are part of the zoning regulations of the property, unless they are changed by a subsequent zoning action;
- Streamline and reformat the existing text to be more user friendly by eliminating duplicate text and unnecessary verbiage, and by using language that is more easily understandable; and,
- Maintain the basic provisions of the Zoning Ordinance that allow the Zoning Administrator to permit certain administrative changes to proffers and development conditions if they are in substantial conformance with the approval and remain true to the intent of the approved proffers or development conditions, except to add more flexibility to the existing provisions in the four areas described below.

1. Exempt solar collectors and other innovative energy technology structures less than 10 feet in height from building height and roof top coverage limitations.

*This change addresses instances where, for example, solar collectors on the roof of a multi-story office building would have exceeded the allowable building height and rooftop coverage limits. This exemption is consistent with County policy to promote energy conservation and green building practices.*

2. Exclude from the definition of gross floor area and the calculation of FAR any incidental increase in interior space created by the replacement of a façade material on an existing building.

*This change addresses an issue that arose in the repositioning of an existing office building, where the replacement of the precast façade with a glass façade increased interior space which resulted in a floor area which exceeded the maximum allowed. This change facilitates County policy to advance the repositioning and repurposing of existing buildings.*

3. Permit a change in the color of signs and typeface.

*This change addresses instances where an amendment was required to change the color of signs for a bank when the corporate colors changed.*

4. Increase the allowable size for minor building additions and simplify the provisions. Currently, minor building additions have different rules for different categories of uses and development size, as indicated in the table below.

Current Provisions		Proposed Provisions	
Places of Worship and Places of Worship with child care centers/schools	The greater of 500 square feet or 5% of the total approved floor area up to a maximum of 2500 square feet	All Uses	5% of the approved floor area up to a maximum of 2500 square feet
All Other Uses (less than 50,000 square feet GFA)	5% of the approved floor area up to a maximum of 500 square feet		
All Other Uses (more than 50,000 square feet GFA)	1% of the approved floor area		

*This change would simplify the provisions by treating all uses the same. A simplified approach will make it easier for property owners to determine how much of an addition is allowable under this minor building addition provision. This amendment would also clarify that the same amount of cellar space could be allowed as a minor building addition.*



The proposed Amendment creates a new avenue for the Board to approve certain requests as an Action Item, with public notice, as set forth below:

1. The addition or modification of a use which is not specifically precluded by proffers or conditions, if the new use does not have a greater land use impact than the approved use(s).

*This change is based upon a request by the Board to add the flexibility to allow new uses in places such as shopping centers.*

2. An increase in building height based upon final engineering or design issues, provided the resultant height does not exceed 15% of the approved height, exceed one story, exceed the maximum height of the zoning district, or materially impact adjacent properties.

*This change is designed to address circumstances that arise during final engineering such as the discovery of subsurface rock that would be costly to remove and therefore would necessitate a change in elevation and an increase in building height.*

3. A modification to proffered minimum yard dimensions and distances from lot lines for decks, patios, and other permitted extensions related to single-family dwellings and for setbacks in other uses, if the modified dimensions would not adversely impact adjacent properties and not impact other proffered elements such as streetscape.

*This change is designed to address a request to modify minimum yard dimensions and setbacks beyond those which can be approved as minor modifications. The need has arisen where homeowners have located or proposed to locate structures within proffered minimum yards or setbacks and can be resolved only by the removal of the structures or the submission of PCA and/or FDPA applications.*

4. Modification or deletion of active recreation uses shown on a development plan.

*This change is proposed to address requests from HOAs or Management Companies to change a proffered active recreation facility to a completely passive recreation facility to reflect community preferences.*

5. Modification of proffer commitments to technologies and transportation demand measures, including commitments to alternative transportation modes such as shuttle service, that are underutilized or have become ineffective or obsolete as circumstances have changed.

*This would address circumstances that have occurred where a shuttle was proffered, but a public bus system has abrogated the need for the shuttle, or when there has been a proffer to the distribution of metro smart cards at a hotel, which is too specific and not well utilized.*

For these requests, public notice is required as follows:

- For an application affecting no more than 25 parcels, written notice goes
  - To the owners of those parcels.
  - To the owners of any parcels abutting and or across the road from the affected parcels.
  - If any portion of the affected property is within a P District, to an HOA that has members owning property located within 2,000 feet of the affected property.
- For an application affecting more than 25 parcels, notice goes to the owners of all parcels.
- Timing of notice: at least 5 days before the BOS action by law, but County can establish longer time period.

The changes proposed in this Zoning Ordinance Amendment represent potential additional flexibility for the Zoning Administrator and the Board to respond to request related to proffers and development conditions. Approval of these requests is not a matter of right; each request will be evaluated on its merits based on the provisions of the Zoning Ordinance by county staff and coordinated with the respective Board member and Planning Commissioner.

## Plan Amendment 2016-CW-4CP *Office Building Repurposing*

### **Background**

On October 18, 2016, the Fairfax County Board of Supervisors (Board) authorized Plan Amendment (PA) 2016-CW-4CP to facilitate the repurposing of vacant and/or underutilized office buildings for alternative uses such as residential or institutional uses. As of mid-2016, the inventory of vacant office space exceeds 19 million square feet, the largest number in county history. The repurposing of existing buildings is frequently more sustainable than the demolition and replacement of structures and can shorten the time of the building to market. Repurposing vacant structures to accommodate new uses supports Goals 2.8 and 3.1 of county's Economic Success Plan.

### **Project Description**

The proposed amendment would add new guidance to the Land Use section of the Policy Plan as a new appendix entitled, "Guidelines for Building Repurposing." The new appendix would provide guidance for considering uses other than those envisioned by the current Comprehensive Plan for vacant office buildings in certain mixed-use centers such as Tysons Urban Center and the Merrifield Suburban Area, as well as industrial areas. By adding this policy, repurposing proposals that meet the guidelines set forth in the new appendix could be considered without the need to amend the Comprehensive Plan on a site-by-site basis. The amendment would not preclude the Board's ability to authorize a concurrent plan amendment and rezoning review process, as per county policy.

### **Timing**

Planning Commission: Anticipated September 2017  
Board of Supervisors: Anticipated November 2017

### **Strategic Plan to Facilitate the Economic Success of Fairfax County**

*Goal 2.8: Study and implement ways to repurpose empty or obsolete commercial space for residential uses; urban schools or other public facilities; art and cultural purposes; live/work/manufacture uses; and/or start-up companies. Engage stakeholders in research and recommendations.*

*Goal 3.1: Streamline the process for amending the Comprehensive Plan. This would allow for greater agility and flexibility to respond to specific business opportunities and could reduce the overall time to market.*



Bailey's Upper Elementary School, an example of repurposing a vacant office building to an institutional use, opened for the 2014-15 school year.

For more information, contact Sophia Fisher, DPZ:  
[sophia.fisher@fairfaxcounty.gov](mailto:sophia.fisher@fairfaxcounty.gov); 703-324-1349



To request this information in an alternate format, contact the Fairfax County Department of Planning and Zoning at 703-324-1334, TTY 711.



