

FAIRFAX COUNTY



ZONING ORDINANCE MODERNIZATION PROJECT

DRAFT

SUMMARY OF PROPOSED CHANGES TO USE REGULATIONS

MAY 1, 2019

Introduction

This document summarizes significant proposed changes to the Fairfax County Zoning Ordinance included in the attached Consolidated Draft of Fairfax County Use Regulations. More detailed descriptions of the proposed changes are listed in extensive footnotes in the Consolidated Draft. The Consolidated Draft was developed over the past 16 months through the combined work of Clarion Associates and the Fairfax County zMOD staff and with the input gained through extensive public outreach and engagement.

Background

Since early 2018, Clarion Associates has been assisting Fairfax County in modernizing its Zoning Ordinance through the zMOD project. The goals of this project are to update the County's list of permitted land uses and related regulations, to make the use regulations easier for the public, stakeholders, and property owners to understand, and to remove inconsistencies, gaps, and ambiguities that have found their way into the use regulations over the years. Public outreach meetings were conducted by Clarion Associates and County staff between January and May of 2018 to establish a new structure for these regulations and to update and categorize the land uses listed in the Zoning Ordinance. The updated use regulations were developed and released in four parts and were the subject of outreach meetings, as follows:

- [Industrial uses](#) (draft dated September 24, 2018)
- [Public, Institutional, and Community uses](#) (draft dated November 30, 2018)
- [Agricultural and Commercial uses](#) (draft dated January 31, 2019)
- [Residential, Accessory, and Temporary uses](#) (draft dated April 9, 2019)

A summary of changes in each of these installments was posted for public review along with the proposed Zoning Ordinance text. Those summaries are posted on the zMOD website and provide much more detail about the specific changes to the Zoning Ordinance in each of these use classifications.

Each installment of use regulations included:

1. Two tables showing where each use is allowed as a permitted, special exception (SE), or special permit (SP) use in each zoning district;
2. A reorganized list of general standards, as well as use-specific standards for the individual uses or categories of uses; and

3. A definition for each individual land use, as well as a definition for each broader category into which the uses are grouped.

Clarion Associates and staff have prepared a Consolidated Draft of the Fairfax County Use Regulations that integrates the four installments and reflects changes as a result of ongoing public and stakeholder review.

All land uses have now been combined into two use tables – one for the Residential, Commercial, and Industrial conventional districts, and one for the Planned districts. In both tables, the land uses are listed along the left-hand column, which will be hyperlinked to their definitions. The right-hand column contains cross-references to the use-specific standards, and these cross-references will also be hyperlinked to the Zoning Ordinance sections containing these use standards. Each district is listed across the top of each table, and the Planned district table further distinguishes principal and secondary uses, as well as the defined areas of the PRC District. During the drafting process, two new types of table entries were added: A+ indicates an Associated Service use (discussed below), and AP indicates a use that can be approved through an administrative permit. In addition, the designation for uses permitted in the Planned districts was revised from a P to a ✓ because the availability of a use in the Planned district is related to an approved development plan, while in other districts that is not necessarily the case. The Planned district table has also been updated to incorporate the new PCC (Planned Continuing Care) District that was approved by the Board of Supervisors as part of a recent Zoning Ordinance amendment related to health care uses.

Within each use table, land uses are organized into seven broad classifications:

- Agricultural and Related uses;
- Residential uses;
- Public, Institutional, and Community uses;
- Commercial uses;
- Industrial uses;
- Accessory uses;
- Temporary uses; and
- Other uses (which allows broader use of historic buildings in all districts).

The notable changes from each of the classifications are highlighted below, including revisions that have been incorporated since the initial release of each classification draft. As noted above, a more detailed description of proposed changes to use permissions and consolidations is included in the summary memo that accompanied the four previously-released drafts. In addition, all changes are footnoted in the attached Consolidated Draft.

Agricultural and Related Uses

Only minor changes to the County’s regulations for agricultural and related activities are proposed. There are four uses in this classification, including **Other Agritourism**, which is a placeholder for a Zoning Ordinance amendment currently under development to address Agritourism uses. The previous draft for Agricultural uses included an option for the Board to allow certain activities, such as fireworks displays

and hot air balloons, as part of a farm winery, limited brewery, or limited distillery. Based on feedback received, this option was deleted from the Consolidated Draft, and the appropriate activities will be considered as part of the Agritourism amendment.

Residential Uses

Residential uses are grouped into two categories:

- Household Living; and
- Group Living.

Two new uses, **Stacked Townhouse Dwelling** and **Live-Work Development** have been added, bringing the total number of uses to 11.

Notable changes to the Residential use regulations include:

- ❖ A new use, **Stacked Townhouse Dwelling**, includes a type of structure that is known as a two-over-two and functions more like a single family attached unit, but is currently interpreted to be a multiple family dwelling. Listing this type of housing separately will allow separate standards to be developed where appropriate. When the parking rates in Article 11 are restructured to match the revised uses, a new rate will be established for this use.
- ❖ **Live-Work Development** is a newly defined use for a structure or part of a structure intended for occupancy by a single owner or tenant that is specifically designed to accommodate a residential dwelling unit, a flexible work space for office-type uses, or both. This recognizes an emerging use that would be allowed as a principal use if shown on a final development plan in the PDC, PRM, and PTC Districts. The use standards prohibit any activity that is not a permitted, special exception, or special permit use in the district, medical and dental services, research and experimentation, and similar activities which typically require installation of specialized equipment.

Public, Institutional, and Community Uses

The 50 currently-listed public, institutional, and community uses have been combined into 26 uses, which are grouped into the following five categories:

- Community, Cultural, and Educational Facilities;
- Funeral and Mortuary Services;
- Health Care;
- Transportation; and
- Utilities.

Within the Health Care category, the definitions, permissions, and use standards for the **Adult Day Care Center**, **Continuing Care Facility**, **Independent Living Facility**, and **Medical Care Facility** uses reflect the content of a Zoning Ordinance amendment recently approved by the Board of Supervisors. This amendment also created a new Planned Continuing Care district, which now appears in the Use Table for the planned districts.

Within the Utilities category, the Wireless Telecommunications Facility use has been renamed to **Wireless Facility** based on another recent [amendment](#) approved by the Board; the permissions and standards included with the Public, Institutional, and Community Uses draft for this use category have been removed from this Consolidated Draft and will be integrated with a subsequent draft.

Notable changes to the Public, Institutional, and Community use regulations include:

- ❖ The new **Club, Service Organization, or Community Center** use includes many changes that result from consolidating two of the Community Group 4 special permit uses: a) Community Clubs, Centers, Meeting Halls, Swimming Pools, Archery Ranges, and b) Any Other Recreation or Social Use Operated by a Nonprofit Organization, with the Quasi-Public Category 3 special exception uses, Private Clubs and Public Benefit Associations. This consolidation resolves an overlap in the definitions of those uses and how they have been applied historically to specific circumstances. Given the scope of the potential activities, the consolidated use is carried forward as a special exception use. Since the release of the Public, Institutional, and Community Uses draft, in response to feedback received, staff added a standard where the Board may approve accessory non-member events, such as concerts or similar activities. The standard does not include a specific number of non-member events permitted per year, which allows the Board to consider location and site-specific factors when reviewing individual applications.
- ❖ **College or University** is changed from a special exception use to a by-right use in the C-1, C-2, and C-3 Districts because it has similar impacts to the office-type uses allowed in those districts. It is also changed from a secondary to a principal use in the PDC District. A proposed standard provides that the inclusion of any residential, athletic, or large-scale assembly facilities will still require special exception approval.
- ❖ The existing Private School of Special Education use has been divided into **Specialized Instruction Center** and **Health and Exercise Facility (Small or Large)**. With this separation, uses with an instructional focus (such as music lessons or professional certification classes) will be treated as Specialized Instruction Centers and fitness-based classes (such as yoga or karate schools) will fall under Health and Exercise Facility.
- ❖ A new **Solar Power Facility** use addresses utility-scale operations of solar power and has the same permissions as the **Light Utility Facility** use. Since the release of the Public, Institutional, and Community Uses draft, staff added an additional standard requiring submission of a decommissioning plan. Private collection of solar energy for a home or building is addressed in the Accessory use section of the Consolidated Draft.

Commercial Uses

The 80 current Commercial uses have been consolidated into 50 recommended uses, grouped into the following seven categories:

- Animal-Related Services;
- Food and Lodging;
- Office and Financial Institutions;
- Personal and Business Services;

- Recreation and Entertainment;
- Retail Sales; and
- Vehicle Related Uses.

Five uses are either new or are now called out separately from other existing uses: **Banquet or Reception Hall, Catering, Public Entertainment, Office in a Residential District, and Pet Grooming Establishment**. In addition, the ability to operate an aquarium has been added to **Zoo or Aquarium** use. Three uses have been deleted: Commercial Recreation Restaurants, Summer Theatres, and Convenience Centers. The three deleted uses have either not been established recently in the County or are proposed to be addressed in other ways. For example, a commercial recreation restaurant would be classified as two principal uses, a Restaurant and an Indoor Commercial Recreation use.

Notable changes to the Commercial use regulations include:

- ❖ The **Office** use now allows both traditional office uses and research and development activities that do not involve manufacturing, because the land use impacts of these uses are similar and many office-type uses engage in these activities in the course of product or prototype development. The standard that was included in the Commercial Uses draft that prohibited radioactive, explosive, toxic, or hazardous materials has been revised to establish limitations based on federal classifications for explosives and biological agents. The previous standard was not appropriate because many research and development uses, such as a medical office or testing facility, commonly involve the use of such materials. The proposed standards would allow the by-right limitations to be exceeded with special exception approval. All uses would remain subject to other local, state, and federal standards for building and operational safety protocols.
- ❖ The **Indoor Commercial Recreation** use has been drafted broadly to allow for new or emerging forms of recreation and does not specifically list the individual types of activities that could take place in an indoor recreation facility. Since the release of the Commercial Uses draft, staff has proposed to change the permissions for Indoor Commercial Recreation in the C-3 and C-4 Districts from requiring special exception or special permit approval to allowed by right if located in an existing building. If it is located in a proposed building, it would require special exception or special permit approval. This change is intended to promote office building repurposing. Additionally, the permissions are revised to allow the use with special exception or special permit approval in the I-2 District, to align with the permissions for outdoor recreation.
- ❖ The **Outdoor Commercial Recreation** use consolidates a broad range of outdoor activities with similar operational functions and land use impacts into one use. Use standards address off-street parking location, and the potential impacts from specific activities (such as mechanical or motorized rides, batting cages, or archery ranges). Since the release of the Commercial Uses draft, the permissions are proposed to be changed in the C-1 and C-2 Districts from allowed with special exception approval to not allowed.
- ❖ The new **Public Entertainment** use includes indoor establishments that focus primarily on entertainment activities for adult customers with less predictable impacts on the surrounding area (such as live entertainment, dancing, karaoke, or hookah lounges). The use is proposed to be allowed with special exception approval in several commercial and planned districts, so that the Board of Supervisors can take into consideration safety, noise, hours of operation, traffic, and compatibility

with adjacent properties, among other issues. Since the release of the Commercial Uses draft, based on feedback received, Public Entertainment has been added as a special exception use in the industrial districts when in conjunction with a restaurant, craft beverage production, or hotel or motel, where those uses are permitted. Public Entertainment is also intended to capture those uses that exceed the accessory entertainment allowed as part of a **Restaurant**. The current definition for Restaurant limits the size of a dance floor to one-eighth of the dining floor area. This has been revised and incorporated as a standard that limits accessory entertainment to that determined by the Zoning Administrator, and to a maximum of 15 percent of the square footage of the area accessible to the public, or 250 square feet, whichever is larger. Entertainment that exceeds this standard would be considered a Public Entertainment use.

- ❖ Since the release of the Commercial Uses draft, staff has proposed to change the **Large Health and Excise Facility** permissions in the C-3 and C-4 Districts from allowed by right to allowed by right only if located in an existing building. If it is located in a proposed building, it would require special permit approval. As with the similar approach with Indoor Commercial Recreation, this change is intended to promote office building repurposing and to better align with the other permissions in these districts.
- ❖ **Garden Center** is a new name for the current plant nurseries use. In recognition of the retail nature of the use, the permissions have been changed from allowed with special exception approval to not allowed in the R-3, R-4, I-4, I-5, and I-6 Districts. Based on discussions during outreach on this issue, staff reviewed whether the use should be allowed in the industrial districts. The form of the use that is more typical of and compatible with the industrial districts is accommodated with either the Contractor's Office and Shop or the Building Materials Storage and Sales use. The definition for the Building Materials Storage and Sales use has been revised to clarify that it may include the bulk storage and sale of landscaping materials.

Industrial Uses

The revised Industrial use classification involves the significant consolidation of outdated and narrowly defined uses, many of which focus on the specific type of good being produced rather than the impacts of that activity on surrounding areas and transportation systems. The 59 currently-listed industrial uses are combined into 21 uses that are grouped into the following four classifications:

- Freight Movement, Warehousing, and Wholesale Distribution;
- Industrial Services and Extraction of Materials;
- Production of Goods; and
- Waste and Recycling Facilities.

The permissions and standards for the **Small-Scale Production** use have been integrated following the adoption of a recent Zoning Ordinance amendment. In addition, since the release of the Industrial Uses draft, a new use, **Goods Distribution Hub**, has been added to address last-mile delivery. Standards regarding the type and length of vehicles permitted to distribute goods, as well as maximum sizes of the facility, have been included.

Notable changes to the Industrial use regulations include the following:

- ❖ **Data Center** has been added as a newly-defined use. Since the release of the Industrial Uses draft, in response to feedback received during outreach, the use has been changed from by-right to not allowed in the C-5 through C-8 Districts due to compatibility concerns. In the C-3, C-4, I-2, and I-3 Districts, it has also been changed from by-right to by-right or by special exception if use standards regarding size limitations are not met.
- ❖ Since the release of the Industrial Uses draft, based on feedback received during outreach, **Self-Storage** permissions have been changed in the I-3 District from requiring special exception approval to allowed, subject to use limitations on loading areas, visibility of storage doors and lighted hallways along building facades, and incidental parking prohibitions.

Accessory Uses

The Accessory use classification captures those accessory uses which have specific standards or permissions. There are a total of 17 accessory uses, including two new uses, **Electric Vehicle Charging** and **Solar Collection System**.

Notable changes to the Accessory use regulations include the following:

- ❖ The regulations that apply to **Freestanding Accessory Structures** have been revised to allow additional flexibility with regard to the location of freestanding accessory structures. Under the current provisions, there is a distinction between “accessory structures,” which are allowed to be up to seven feet in height in any side or rear yard, and “accessory storage structures,” which are allowed to be up to eight and one-half feet in height in any side or rear yard. The proposal eliminates this distinction and permits all freestanding accessory structures up to eight and one-half feet in height to be located in any side or rear yard. Based on a review of the heights of accessory storage structures approved with special permit applications, 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 the required rear yard setback or a distance equal to the height of the structure from the rear lot line, whichever is less. A standard has been added with the Consolidated Draft to clarify that regardless of the location standards for accessory structures, compliance with transitional screening standards is required.

In addition, two new standards have been added. The first would limit the height of any structure accessory to a single family dwelling to 25 feet or the height of the existing dwelling, whichever is less. This height limit could be exceeded with special permit approval from the BZA. Regarding size, a new standard has been added that applies to freestanding structures accessory to single family dwellings, except in the very low density R-A, R-C, and R-E Districts. Based on a long-standing Zoning Administrator determination, the cumulative total gross floor area of all freestanding accessory structures would be limited to no more than 50 percent of the gross floor area of the dwelling. This limitation could also be exceeded with special permit approval from the BZA.

- ❖ Currently, all **Accessory Dwelling Units** require special permit approval from the BZA. In accordance with the recommendations of the 50+ Committee and the Communitywide Housing Strategic Plan to expand affordable housing and resources for older adults and persons with disabilities, the draft proposes a streamlined process that would permit administrative approval of an accessory dwelling unit if it is located within the principal dwelling. In order to allow for review of layout, character, and parking, an accessory dwelling unit located in a detached structure would continue to require special permit approval from the BZA. The current special permit standards have been carried forward for the administrative permit, except that the discretionary review of parking is replaced with a requirement to designate that one of the existing parking spaces will remain available for the accessory dwelling unit. To maintain the appearance of a single family dwelling, as opposed to a duplex, a standard has been added for the administrative permit that any garage or carport entrance be located adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that for the principal dwelling.

The current standards, which have been brought forward, require a minimum of two acres to have a detached accessory dwelling unit. During outreach on the draft for Accessory uses, staff received feedback that the two-acre standard may be larger than necessary to accommodate a detached accessory dwelling unit, and it has been suggested that the Board consider a minimum lot size of one acre. Also, this consolidated draft adds a maximum size of 1,500 square feet for a detached accessory dwelling unit to the current size limitation of 35 percent of the principal dwelling unit, whichever is less.

- ❖ The use standards for the accessory **Home-based Business** use have been significantly revised. Home-based businesses that meet the proposed use standards may be approved by the Zoning Administrator, and those that exceed the limits in the use standards for customers or clients and employees may be approved with a special permit from the BZA. In recognition of the wide range of activities that are now often conducted from a residential dwelling, the new standards do not include the current non-exclusive list of possible home occupation activities, but instead specify the prohibited activities. The specifically prohibited activities include uses within the following use categories: health care uses, animal-related uses, food and lodging uses (except for Cottage Food Operations¹), the provision of personal or businesses services (except a barbershop, hair salon, dressmaker, seamstress, or tailor), recreation and entertainment uses (except a small health and exercise facility), retail sales uses (except photography or art studios), vehicle-related uses, and industrial uses (except home crafts like making jewelry or ceramic items).

The standards continue to require that there be no exterior evidence that the property is used in any way other than as a dwelling, and the home business must take place entirely inside the dwelling or permitted accessory structure. Limitations on mechanical or electrical equipment and the prohibition of stock in trade on the premises were not carried forward because they are outdated and difficult to enforce.

¹ Regulations for Cottage Food Operations are under development by the Health Department:
<https://www.fairfaxcounty.gov/health/sites/health/files/assets/documents/pdf/43.2-food-code-nov-2018.pdf>

Currently, only private schools of special education, such as music lessons or yoga classes, allow customers to come to the home. The draft proposes to treat all home businesses the same with respect to employees and customers. As outlined in the table below, two options are included for consideration for each of the following factors: the maximum number of employees, the maximum number of customers at one time, and the cumulative number of customers in a day. Both options include consideration of the cumulative effect of home-based businesses, home daycare, and short-term lodging. For the cumulative number of customers, Option 1 would not allow any customers associated with a home-based business and would not allow short-term lodging on the same property that has a home daycare, in recognition of the impact of both drop-off and pick-up of children. Option 2 would allow a cumulative number of eight customers associated with all home-based businesses, short-term lodging, and home daycare facilities with no prohibition on a home daycare facility being located on the same property. For example, if a home daycare has four children, then a home-based business operating on the same property could have four customers per day, but if a home daycare is approved by the BZA for twelve children, then a home-based business would not be allowed to have any customers because the cumulative maximum of eight has been exceeded. During initial outreach on this draft, it was suggested that it may also be appropriate to revise the limits on customers based on the type of dwelling unit.

Proposed Options for Home-based Business			
	Maximum No. of Employees	Maximum No. of Home-based Business Customers at a Time	Cumulative No. of Customers/Day
Proposed Option 1	1 total	0 if a home daycare is on-site 2 for home-based business (if no daycare)	0 if a home daycare is on-site 8 total for home business & short-term lodging (if no daycare)
Proposed Option 2	1 for each business or daycare	4	8 total for home business, short-term lodging & home daycare

- ❖ Accessory service uses have been renamed to **Associated Service Uses** to more accurately reflect their relationship to principal land uses. The current framework for accessory service uses includes conflicting and outdated standards, some of which are difficult to interpret, permit, and enforce. Therefore, the draft for the Commercial use classification included revisions intended to create a simplified and uniform approach to these provisions. Based on feedback received since publication of the draft standards with the Commercial use classification, staff has further revised the proposed standards. In particular, the maximum percent of the gross floor area of the building has been reduced from 15 percent to 10 percent, in recognition of the simplified list of uses and the necessary size for such subordinate uses. Additionally, the proposed maximum size for each establishment has been reduced to 2,500 square feet, and this limitation has been applied to all accessory service uses except for a child care center. Lastly, in the office and industrial districts, a personal service establishment

would only be allowed as part of an office building complex with a minimum of 30,000 square feet of gross floor area.

Temporary Uses

The draft includes ten Temporary Uses. Few changes are proposed; however, it is recommended that **Food Trucks** be allowed in conjunction with approved nonresidential uses in residential zoning districts and residential areas of planned districts, subject to a maximum of 12 times per year. This will allow food trucks at locations such as neighborhood pools and religious assembly uses. The previously published draft allowed the limitation to be exceeded with special exception or special permit approval, and the consolidated draft includes an additional allowance for the limit to be exceeded if approved as part of proffered conditions or a final development plan.

Other Uses

There is one use that could span several use classifications and is presented at the end of the use table. **Alternative Use of Historic Buildings** replaces the existing use “older structures,” which requires special permit approval from the BZA. Instead, the proposed use would allow the Board to approve a special exception for nonresidential uses within a structure listed on the Fairfax County Inventory of Historic Sites. The intent of this application is to incentivize the preservation of historically significant sites through the allowance of appropriate adaptive reuse. The process would require a recommendation from the Architectural Review Board for any exterior modifications.

Next Steps

- Clarion Associates will return in mid-May 2019 for another round of public meetings to present the Consolidated Draft of Fairfax County Use Regulations and to answer additional questions.
- Fairfax County staff members are available to answer questions and receive feedback on all released documents (DPZZMODComments@fairfaxcounty.gov).
- Work will continue throughout 2019 to develop a complete draft of the reorganized Zoning Ordinance with continued outreach along the way. This is intended to make the remaining content of the Ordinance more user-friendly through a more logical organization, internal consistency, better illustrations and graphics, and the use of plain English. Where it will promote these goals, current terminology may be changed; for example, the current definition of “required yards” may be revised to “setbacks”, which is more commonly used in newer Zoning Ordinances.

Questions?

If you have questions or comments about any aspect of the zMOD project, please e-mail zMOD staff at dpzzmodcomments@fairfaxcounty.gov or visit the project website at www.fairfaxcounty.gov/planning-zoning/zmod.

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