



Comments on zMOD's Proposed Changes to Zoning Ordinance Regulations
Submitted to Fairfax County Board of Supervisors and Planning Commission
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This paper is available online at https://holmesrun.org/2021/01/18/comments-zmod-nov-draft.

1. Introduction

The following comments on the 24 Nov 2020 zMOD draft are submitted on behalf of the Holmes Run Valley Citizens Association of 636 households in Falls Church, Fairfax County. The paper includes comments previously submitted by Clyde Miller. Earlier papers may be put aside.

1.1. Hijacked zMOD

The zMOD Program has two parts. Part A is the current effort to restructure the zoning ordinance by improving the organization of the material, using clear language, and populating the document with effective tables and graphics. Part A is intended to be finished some time midyear. Part B is an activity of indefinite duration to expedite selected zoning ordinance amendments via abbreviated staff reports and other shortcuts. On 24 Jan 2018, Board Chairman Sharon Bulova led zMOD's kickoff public meeting and described the goals and scope of Part A. She described the need for restructuring and was clear that the effort would include combining some uses, eliminating a few no longer needed, and adding new ones looking to the future. The activity would produce a new list of uses, and, of course, it has.

The meeting was clear that the restructuring effort would not introduce gratuitous changes to regulations, that is, substantive changes not related to restructuring.¹ Unfortunately, at some point in time, Part A was hijacked. It now is being used as the means for proposing controversial gratuitous regulation changes in seven areas:

- Home-based businesses (HBBs)
- Accessory Living Units (ALUs)
- Freestanding accessory structures
- P-district regulations
- Commercial Revitalization District regulations
- Food trucks
- Cluster subdivision open space

These changes are the source of all the controversy and angst that now surround zMOD. The changes jeopardize neighborhoods by substantially expanding uses allowed while choking off means by which residents are able to protect their communities. The principal problems are:

- Proposals to change regulations without thinking thru unintended consequences and providing effective protections for neighborhoods,
- Proposals to nullify current regulations that protect neighborhoods and the Board has authority to modify on a case-by-case basis,
- Proposals for administrative permits where special permits are required to allow resident participation in shaping developments in their communities,
- Proposed uses insufficiently limited in scope by ordinance language, and
- Inadequate provisions for county inspections where uses have a potential to damage communities.

¹ The meeting video is available on the zMOD Web site.

1.2. Organization of the Paper

Section 2 provides a summary of comments on pages 4-12. Links are provided to sections in the remainder of the paper that explain the comments.

Much of the bulk of this paper is dedicated to providing copies of ordinance text to save readers moving back and forth between the paper and ordinance documents.

1.3. Abbreviations

ALU	Accessory Living Unit
AO	Advertised option
AP	Administrative permit
CRD	Commercial Revitalization District
HHB	Home-based business
PD	Principal dwelling
SFD	Single-family detached
SP	Special permit
STL	Short-term lodging
ZO	Zoning ordinance

The paper cites sections of both the zMOD draft and the current ZO. The format of zMOD section numbers is NNNN.N.L. The format of section numbers in the current ZO is NN-NNN.N. N for number, L for letter.

2. Summary of Comments

2.1. Zoning Ordinance Is the First Line of Defense

Some residents happily will trash their properties to earn a few dollars. Neighbors and neighborhoods pay the price. The number of such residents may be small, but the price their neighbors pay can be dear. For many, the home is the focus of family life and its value is the foundation of their economic security.

The zoning ordinance provides the first line of defense against incompatible developments damaging residential neighborhoods. Consequently, it is essential that the language of regulations proposed by zMOD adequately protects homes and unintended consequences of regulations are thought through and mitigated.

2.2. Too Many Accessory Uses Are Too Many

zMOD allows ALUs, STLs, home day care, keeping of animals, and any number of HBBs *by right* on a lot with a SFD dwelling in any R-district, including R-1, R-2, R-3, R-4, R-5, and R-8. For all of the other dwelling types, mobile home park, apartment, and single-family attached, the same accessory uses are allowed *by right* with the exception of ALUs. At the same time, zMOD allows single-family homes to construct *by right* enclosed freestanding accessory buildings covering their lots to the extent of 50% of the dwelling gross floor area. zMOD proposes lots of accessory buildings to accommodate lots of accessory uses!

Apparently, zMOD proposes only three limitations on multiple accessory uses on residential properties. While STLs are allowed in dwellings with ALUs, they are prohibited in the ALU proper. Home day care facilities are not allowed to have HBBs with customers. Finally, the cumulative number of customers and clients on sites with both HBBs and STLs would be limited to a certain number, e.g., six. With zMOD, there is a potential for accessory uses to overwhelm neighborhoods.

zMOD should prepare a table of accessory uses, dwelling types, and lot sizes detailing the restrictions currently proposed for limiting numbers and combinations of accessory uses. Consideration should be given to proposing additional regulations to better protect neighborhoods, for example, to require special permits for certain combinations of uses and/or when the number of uses on-site reaches a certain number.

2.3. Home-Based Businesses

HBBs raise concerns about neighborhood impacts, including: pedestrian and vehicular traffic, relentless noise and activity, the neighbor's encroaching accessory buildings, loss of privacy, clutter and trash, light pollution, signs, and the character of the customers businesses would attract to the neighborhood.

2.3.1. Special Permits Engage Residents

Where uses have a significant ability to affect the quality of life in a neighborhood, residents should be involved in deciding whether and under what terms the use would be allowed. Unfortunately, zMOD

is proposing administrative permits in lieu of special permits for a number of uses capable of significantly degrading communities.

The principal distinction between administrative and special permits is the neighborhood engagement inherent in the special permit process. The applicant is required to notify affected neighbors by certified mail that s/he is applying for a permit, and the county posts signboards on the property with the same message. County staff publishes a report describing proposed alterations to the property as well as the accessory use that would be installed (e.g., a hair salon). A public hearing is held before the Board of Zoning Appeals (BZA) to provide neighbors an opportunity to state their concerns, and those concerns frequently are addressed by placing formal limitations (known as *development conditions*) on the applicant's use of the property. Finally, in granting a permit, the BZA is required to make an objective determination that the use, all considered, would be compatible with the residential character of the neighborhood.

The special permit process provides transparency for the affected community, and residents formally are engaged in deciding the scope and parameters of the use, including whether or not the use should be allowed on the property in question.

By comparison, residents are shut out and defenseless in the dialogue between applicant and county staff that is the basis of the administrative permit process. Notification of neighbors is not required, no opportunity is provided for tailoring the use to the neighborhood via development conditions, and there is no hearing or BZA determination of compatibility. Staff simply makes the decision.

zMOD's proposal for ubiquitous administrative permits effectively assumes an infallible county staff whose permits produce safe and compatible outcomes so reliably that the particular interests and views of neighbors are irrelevant and unnecessary details. One can understand that, for uses potentially intrusive, residents are not willing to risk their neighborhoods on zMOD's injudicious assumption.

Moreover, county staff appropriately responds to the priorities of the Board of Supervisors. Where a supervisor has a priority, staff naturally is expected to lean forward and get the job done. Realistically, permit decisions consigned to county staff may be dictated by supervisors' interests.

Where uses may significantly impact communities, special permits are required.

2.3.2. Home Businesses Should Be Limited

zMOD is proposing three unlimited/unqualified home business uses that should not be allowed, retail sales, small-scale production, and health and exercise. Not every business legal in the State of Virginia is an appropriate home business. Similarly, not every retail sales business is appropriate; sale of guns, even by properly licensed vendors, should not be allowed as a home business. Not every production business is appropriate; home production of the bludgeons, body armor, and accessories favored domestic extremist groups should not be allowed. Nor is every health and exercise activity wanted; massage frequently is offered by these businesses and jazzercise's throbbing loud music would be intrusive.

Home businesses allowed in regulations should be narrowly described so that their neighborhood impacts can be inferred. The impacts of unqualified uses such as retail sales are impossible to predict.

The retail sales, small-scale production, and health and exercise uses proposed by zMOD should not be allowed. In addition, a list of examples of HBB uses not allowed should be included in the ordinance that, together with the list of uses allowed, would better bracket the realm of uses allowed.

Why has zMOD made the astonishing proposal to allow manufacture of anything legal in Virginia as a home business? There are two possibilities. The first is the language means just what it says - permits would be issued without regard for the products to be produced. Hopefully, this is not the reason. The second possibility is zMOD intends that county staff would use their judgment regarding products allowed in the process of reviewing permits. That is, staff would decide what's allowed. This possibility presents a number of unreasonable implications:

- Residents would have no ability to comment on or even to know the criteria the county uses to limit products that could be manufactured and sold by home businesses in their neighborhoods.
- The criteria easily could be informal and largely left to the judgment of the individual staff member processing a permit application.
- District supervisors, through staff, would have nearly unlimited ability to dictate uses acceptable in a neighborhood on a case-by-case basis.

None of these implications is acceptable. Unlimited/unqualified uses should not be allowed.

2.3.3. County Inspections and Special Permits Are Essential

The opportunity for more flexibility in home business regulations lies in county inspections and special permits. Provisions for county inspections in ordinance regulations cost nothing and do not encumber land use. At the same time, they provide neighborhoods highly effective protection against uses violating regulations and development conditions thereby damaging communities. zMOD senselessly has expunged provisions for county inspections from HBB (and ALU) regulations. All HBBs and ALUs should be required to allow county inspections.

Special permits allow neighbors to tailor uses to their neighborhoods. Administrative permits shut them out thereby seeding distrust and resistance to change.

2.3.4. Conclusions Regarding HBBs

The language in the current zoning ordinance places appropriate limits on the home business use. It generally is limited to offices and home arts and crafts. (Barbershops are allowed, but require special permits.) Any business allowed by administrative permit is subject to county inspections and any with customers (with two minor exceptions) requires a special permit.²

zMOD should consider establishing two tiers of HBBs, a first tier of benign uses not allowed on-site customers (possibly home offices and some arts and crafts) and a second tier of potentially intrusive uses that are allowed customers. The first tier could reply upon administrative permits. The second should require special permits.

Ordinance language should appropriately limit the scope of all uses and should provide examples of uses not allowed.

² The exceptions are small private schools limited to four students at a time, 8 per day, and horseback riding lessons.

HBBs allowed customers should require SPs, and all HBBs should be required to allow county inspections. Special permits and inspections are effective tools for promoting flexibility in regulations.

2.4. Accessory Living Units

One principal concern regarding ALUs is the risk that SFD neighborhoods would be redeveloped at twice the density - R-2 neighborhoods morph into R-4, and R-4 into R-8. Double-density redevelopment risks overwhelming infrastructure to the point that it would not support a reasonable standard of living for residents. Some SFD neighborhoods are heavily congested as it is.

A second concern is that ALUs, with their second kitchens, are attractive candidates for conversion into boarding houses, dwellings with many more occupants than allowed by the ZO. Double-density redevelopment and boarding houses easily would destabilize neighborhoods. The special permits, allowances for county inspections, and age/disability requirements of the current accessory dwelling program reduce the risk that the units would damage communities. In addition, the age/disability requirement provides a payback benefit of community service that makes a certain amount of risk worth taking.

2.4.1. Comments on zMOD's ALU Proposal

zMOD thoughtlessly is proposing ALUs allowed by right with no county inspection requirement, no binding assurance that ALU owners would comply with regulations, and (optionally) no age/disability restriction. Such ALUs potentially would be unstable and threatening to neighborhoods. Once the second kitchen is installed, there would be no incentive for the homeowner to stay in the ALU program and nothing would compel him/her to stay. S/he could drop out, keep the kitchen, duck the ALU regulations, and rent the unit to two people under regulations governing dwelling occupancy (or pursue the boarding house option).

zMOD should think through the unintended consequences of changing accessory dwelling regulations and propose regulations to adequately protect communities. Should ALU owners be required to submit affidavits as they are in Arlington and Montgomery Counties, and, if so, to what effect? Would an ordinance requirement like Arlington's to allow county inspections be effective? Should the density of ALUs in a neighborhood be limited as they are in Montgomery County?

Regulations for accessory dwellings should not be changed until such time as changes have been thought through and the means for mitigating risks to residential communities can be explained and documented.

2.4.2. An Alternative ALU Proposal

Consideration might be given to a two-year pilot program along the following lines:

Limit ALU Density: Do not accept an application for an ALU if any of the 40 closest SFD homes currently has an ALU permit.

County Inspections: Require the homeowner to allow county inspections of the ALU and the principal dwelling as long as the second full kitchen remains in the SFD dwelling. Require the homeowner to notify tenants of the inspection requirement (per Arlington).

Special Permit: Require an SP as a means for neighbors to engage in the decision to allow the ALU and to participate in establishing development conditions to tailor it to the neighborhood. In the BZA

hearing the homeowner should be required to explain, with plat and floor plan information, how s/he intends to meet ALU requirements (floor area limits, parking, etc.).

Affidavit: Require an affidavit expressing the homeowner's commitment to comply with ALU requirements and the development conditions.

This approach allows nearly unfettered deployment of ALUs while effectively protecting neighborhoods. It should be given serious consideration.

2.5. Freestanding Accessory Structures

The current ZO allows a single-family dwelling one enclosed freestanding accessory structure. The floor area may not exceed 200 sq ft. zMOD proposes to allow, by right, any number of enclosed freestanding accessory structures with a combined floor area up to 50% of the gross floor area of the dwelling. The list below summarizes changes that should be made to the zMOD proposal. Rationale is in Sections 3.2 and 7.

- By right, enclosed freestanding accessory structures should be limited to one in number not to exceed 200 sq ft in floor area. Additional structures and/or floor area should require a special permit.
- By right, HBB uses should be limited to 200 sq ft of accessory structures of all types. Additional area for HBB uses should require a special permit.
- The proposal to allow enclosed freestanding accessory structures up to 12 ft tall as close as 5 ft to the property line should not be adopted. Enclosed structures taller than 8 1/2 ft should not be allowed in minimum side setbacks. In minimum rear setbacks, freestanding accessory structures taller than 8 1/2 ft should be no closer to the property line than the height of the structure.
- HBBs should not be allowed to occupy an enclosed freestanding accessory structure any part of which covers any part of a minimum yard setback unless otherwise provided for in development conditions.
- HBB physical use of accessory structures of any type should be limited to 8 AM to 5 PM, Monday thru Friday, unless otherwise provided for in development conditions,
- If enclosed freestanding accessory structures on the lot exceed in floor area the floor area allowed for the HBB use, the floor area used by the HBB use should be clearly designated.

2.6. Changes to Development Regulations

zMOD is proposing to change three development regulations:

- P-Districts: zMOD proposes to delete the requirement that P-districts must taper down in density and provide compatible landscaping and screening at their peripheries. The purpose of the regulations is to protect adjacent communities from encroachment by incompatible high-density (P-district) developments.
- Commercial Revitalization Districts: A second proposal, for CRDs, would allow a reduction of setbacks in C districts from the current 25-40 ft to 20 ft and would allow an increase in building heights in C-6 and C-8 districts from 40 to 50 ft.
- Cluster Subdivision Open Space: In a cluster subdivision, the current ZO requires that at least 75% of open space or one acre, whichever is less, must be a contiguous area with no dimension less than 50ft. The draft proposes to delete the 50-ft requirement.

In all three cases, current regulations allow the Board to waive/modify the requirements on a case-by-case basis.

The P-district change absolutely should not be accepted. The current regulation provides existing residential neighborhoods adjacent to P-districts essential protection against being overwhelmed by future high-density (P-district) development.

The CRD change should not be adopted. Rolling limits back in the ordinance would allow increased density in all currently planned CRDs. The Board has necessary authority to relax the limits on a case-by-case basis in collaboration with residents in special exception and rezoning hearings. The limits should not be rolled back unilaterally for all future developments by modifying the ZO.

The cluster subdivision change should not be adopted. The Board has authority to waive the requirement on a case-by-case basis.

2.7. Food Trucks

zMOD proposes that food trucks, with administrative permits, should be allowed to operate on private properties of non-residential uses in R-Districts. The draft promises that the county, in issuing the permits, would establish conditions necessary to protect public health, safety, and welfare and to adequately protect adjoining properties from any adverse impacts of the food truck operation. The issue here is similar to the promise that, in issuing administrative permits for HBBs, the county, in its wisdom, would allow only those that would not trouble neighbors.

The proposed food truck regulation should include specific criteria for allowing food truck operations (e.g., only one food truck (not three!), and no food truck within 100 ft of property lines).

2.8. Conflict or Collaboration?

The gratuitous regulation changes proposed by zMOD would greatly expand the range of HBB uses allowed. For three of the new uses (retail sales, small-scale production, and health and exercise), the scope of the uses would not be limited by regulations. County staff and/or the district supervisor would decide case-by-case what's appropriate for the neighborhood. Where special permits are required today for HBBs and ALUs, administrative permits would be issued by the same cohort, staff and supervisors. Residents would not be allowed to participate.

ALUs would be allowed by right, possibly without age/disability restrictions, though no one appears to have thought through the unintended consequences. Provisions for county inspections of uses senselessly would be tossed out the window.

Three themes are apparent in zMOD's proposals:

- The first is an effort to push residents out of the process making land-use decisions affecting their neighborhoods. Decision making would be moved to staff where supervisors can get their hands on them.
- The second is a disregard for repercussions for quality of life in residential neighborhoods. How else could zMOD propose changes to accessory dwelling regulations without thinking through the consequences?
- The third is a goal to change regulations for the sake of changing regulations. Why else would zMOD propose to delete provisions for county inspections?

The purpose of the zoning ordinance is to mitigate the risk of incompatible developments, in particular, in residential communities. At the same time, regulations should be flexible and effective in promoting the economic success of the county community.

Supervisors should consider whether the path to a more flexible and effective ordinance is thru an authoritarian purge of residents' participation and neighborhood protections or thru devices such as special permits and county inspection that foster collaboration and common cause in the county community.

2.9. Table of Summary Comments

The following table offers a concise summary of comments on specific regulations. Numbers in the left column are links to sections describing the reasoning behind comments.

Summary of Comments on Proposed Regulations

Topic	Proposed Change	Response
HBB: Uses Allowed (Sec 3.2)	zMOD proposes expansive unlimited (unqualified) uses for home businesses.	Such uses, in particular, retail sales, small-scale production, and health and exercise establishments should not be allowed.
HBB: Uses Not Allowed (Sec 3.2)	The draft does not include a list of HBB uses not allowed.	A list should be provided in order to better define the boundary between uses allowed and not allowed.
HBB: Customers (Sec 3.2)	zMOD would allow businesses without SPs to have customers on site.	Any HBB allowed customers on-site should require an SP. The number allowed should be settled in a BZA hearing with homeowners and codified in development conditions. Controlling business activity by limiting the number of customers is not practical otherwise.
HBBs: Customers for Internet Businesses (Sec 3.2)	zMOD allows HBBs that are limited to Internet sales to have customers on-site for shopping, etc.	Any HBB restricted to Internet sales as a means for isolating the business from the neighborhood should not be allowed customers on-site for any purpose.
HBB Non-Resident Employees (Sec 3.2)	The draft would allow employees not residents of the dwelling to work from 6 AM to 7 PM daily.	The hours should be limited to 8 AM to 5 PM in order to provide neighbors relief from relentless noise and activity next door.
HBB: Outdoor Signs (Sec 3.2)	Draft proposes to allow permanent outdoor signs, 24x365	Permanent outdoor signs should not be allowed. Sect. 7100.4.D should be amended accordingly.
HBB: Floor Area (Sec 3.2)	Draft proposes 400 sq ft. (AO: 200-750 sq ft.) for HBBs all of which may be in freestanding accessory structures.	The total area floor area of all accessory structures used for home business by-right should be limited to 200 sq ft. More by SP.
HBB: County Inspections (Sec 3.2)	Draft proposes that HBBs would not be required to allow county inspections.	County inspections, like SPs, are a powerful tool for allowing more flexible regulations while protecting neighborhoods. All HBBs should be required to allow county inspections.
HBB: Permit Submission Requirements (Sec 3.3)	The permit data submission requirements for special permits described in the draft are inadequate.	The requirement should be expanded to cover the full range of home business uses proposed.

Topic	Proposed Change	Response
HBB; Hours for Customers (Sec 3.2)	zMOD does not propose to limit hours customers may be on-site.	Hours for customers on-site should be limited to 8 AM to 9 PM.
HBB: Hours of Operation (Sec 3.2)	zMOD places no limit on the hours of operation of HBBs.	Hours of operation of potentially intrusive HBBs should be limited to 8 AM to 5 PM weekdays.
ALU: Permit Requirement (Sec 4.4)	zMOD would allow ALUs by right (i.e., by administrative permits).	All ALUs should require special permits. The process is essential for establishing appropriate development conditions to assure compatibility with neighborhoods.
ALU: How Many Accessory Uses Are Allowed? (Sec 4.2)	zMOD places no limit on the number of accessory uses dwellings are allowed.	Arlington and Montgomery Counties place limits on accessory uses dwellings with ALUs are allowed. zMOD should do the same for all dwellings, with and without ALUs.
ALU: Floor Area (Sec 4.4)	zMOD proposes the lesser of 800 sq ft (AO:500-1200) and 40% of PD gross floor area with no limit on floor area if ALU is in the basement.	Floor area should be limited to the lesser of 650 sq ft and 35% of the gross floor area of the dwelling regardless of location of ALU in dwelling. A larger floor area could be allowed by development conditions. Large ALU floor areas encourage conversion of SFD homes into duplexes.
ALU: Occupancy (Sec 4.4)	zMOD proposes, as an option, that the age/disability restriction should be dropped.	The age/disability requirement should be retained until such time as regulations can be developed to reliably assure that ALUs permitted will remain regulated ALUs and not morph into unregulated duplexes and or boarding houses.
ALU: On-Site Parking (Sec 4.4)	zMOD would require one additional on-site parking space. The parking space would not be required to have unencumbered access to the street.	On-site parking requirements should be established on a case-by-case basis in development conditions. All parking spaces designated for ALU occupants should have unencumbered access to the street.
ALU: Inspections (Sec 4.4)	zMOD proposes no requirement for ALU county inspections.	All dwellings permitted ALUs should be required to allow inspections by the county as long as the dwelling has more than one full kitchen.
ALU: Submission Reqmts for Permits (Sec 4.4)	zMOD's submission requirements are limited to plat and floor plan information plus age and disability documentation.	The requirements should be expanded to include affidavits and other devices to better assure that ALUs will be compatible with neighborhoods.
Roomers: (Not an ALU issue) (Sec 4.3)	zMOD has dropped the requirement that roomers allowed by home occupancy regulations may not be transients.	The requirement should be clearly stated in zMOD regulations. It provides neighborhoods essential crime protection.
Planned "P" Districts (Sec 5)	zMOD proposes to delete the existing requirement that P districts taper down in density and provide compatible landscaping and screening at their peripheries.	Change should not be adopted. The requirement provides residential neighborhoods essential protection against being overwhelmed by adjacent future high-density P-district developments, for example homes adjacent to Seven Corners, Bailey's Crossroads, and Annandale CRDs.

Topic	Proposed Change	Response
Commercial Revitalization Districts (Sec 6)	In CRDs, this proposed change would allow a reduction of setbacks in C districts from the current 25-40 ft to only 20 ft and would allow an increase in building heights in C-6 and C-8 districts from 40 to 50 ft.	Change should not be adopted. Rolling limits back in the ordinance would allow increased density in all currently planned CRDs. The Board has necessary authority to relax the limits on a case-by-case basis in collaboration with residents in special exception and rezoning hearings. The limits should not be rolled back unilaterally for all future developments by modifying the ZO.
Freestanding Accessory Structures (Sec 7)	Proposed change would allow the current limit on areas enclosed within structures to increase by right from one structure limited to 200 sq ft to an unlimited number of structures with a combined enclosed area equal to 50% of the dwelling gross floor area. In addition, it would allow 12-ft-tall structures as close to the lot line as 5 ft.	Change should not be adopted. The one-structure and 200-sq-ft area limits should be retained with a provision for increase by special permit. The proposal to allow structures up to 12 ft tall as close to the property line as 5 ft should not be adopted.
Freestanding Accessory Structures: Locations of Structures for HBBs. (Sec 3.2)	Draft does not limit HBB use of accessory structures.	An HBB use should not be allowed to occupy an enclosed freestanding accessory structure any part of which covers a minimum yard setback.
Freestanding Accessory Structures: Hours for HBBs. (Sec 3.2)	Draft does not limit HBB use of accessory structures.	HBB use of accessory structures should be limited to 8 AM to 5 PM, Monday to Friday.
Freestanding Accessory Structures: Structures Used by HBBs. (Sec 3.2)	Draft does not limit HBB use of accessory structures.	If enclosed freestanding accessory structures on the lot exceed in area the floor area allowed for the HBBs, the area used by the HBBs should be clearly designated.
Food Trucks (Sec 8)	By administrative permit, draft would allow food trucks to operate on property of every non-residential use in a residential community without regard to lot size or proximity to neighbors.	The proposed regulations should be amended to include specific provisions adequately protecting communities from unintended consequences of food truck operations, e.g., the number of food trucks allowed.
Cluster Subdivision Open Space (Sec 9)	In a cluster subdivision, the current ZO requires that at least 75% of open space or one acre, whichever is less, must be a contiguous area with no dimension less than 50ft. zMOD proposes to delete the 50-ft requirement.	The proposed change should not be adopted. The requirement should be retained. The Board has authority to waive the requirement on a case-by-case basis.

3. Home-Based Business

Exhibit 3.1 summarizes zMOD's HBB proposal as well as principal home business regulations in the current ordinance. In both cases, the exhibit describes by-right regulations, the regulations corresponding to administrative permits.³ The regulations for home businesses apply to all dwelling types from mobile home parks to apartments to single-family homes, both attached and detached.

Exhibit 3.2 then summarizes the zMOD proposal for freestanding accessory structures and principal corresponding regulations in the current ZO. With one minor exception, home businesses must be conducted in enclosed structures, either the dwelling or freestanding accessory structures on the lot.⁴ Consequently, the regulations proposed by zMOD for accessory structures are pertinent to considering the ramifications of regulations proposed for home businesses. A discussion of regulations for enclosed freestanding accessory structures is in Section 7.

3.1. Summary of Current Home Business Regulations

By right (that is, by administrative permit), the current ZO allows home businesses as follows:

- Businesses Allowed: Businesses allowed largely are limited to home offices and arts and crafts.
- Customers: Customers are not allowed with two exceptions, riding lessons and schools limited to four students and 8 students per day.
- Non-Resid Employee: One employee not a resident of the dwelling is allowed but only from 8 AM to 5 PM on weekdays.
- Outdoor Signs: Outdoor signs are not allowed.
- Floor Area and Accessory Structures: Per Exhibit 3.2, any enclosed freestanding accessory structure used by a home business today is limited to one structure with an area not exceeding 200 sq ft. The current ZO does not limit the floor area used by home businesses.
- Equipment Used: Equipment used by a business is limited to equipment found normally in homes and small offices.
- County Inspection: Home businesses must be open to county inspection during reasonable hours.
- Hours of Operation: Customers, where allowed, may be on site only during the hours of 8:00 AM to 9:00 PM.

By special permit, the current ZO for home businesses would allow the following:

- Businesses Allowed: Home professional offices, barber shops, and hair salons would be allowed as additional uses.
- Customers: The number of customers allowed for the additional uses would be determined by development conditions.
- Non-Resid Employees: Home professional offices are limited to 4 people on site including any non-resident employee(s). Barbershops and hair salons are not allowed non-resident employees.
- Outdoor Signs: Outdoor signs would not be allowed.
- Floor Area, Equipment Used, and County Inspections. Any provisions regarding floor area, equipment used, and county inspections would be determined by development conditions.

³ The exhibit omits horseback riding lessons allowed by the current ZO. Riding lessons are of no consequence in most neighborhoods and zMOD has moved them to the Limited Riding or Boarding Stable use. They would no longer be considered a home business.

⁴ The exception is zMOD's proposal to allow outdoor activities such as swimming lessons by special permit.

- **Hours of Operation:** Customers, where allowed, may be on site only during the hours of 8:00 AM to 9:00 PM.

Imagine a neighborhood hosting a number of home businesses under the current ZO. The businesses are not likely to intrude upon the residential character of the community. The uses allowed, with the possible exception of barber shops and hair salons which require SPs, are benign - mostly home offices and arts and crafts. The county has the right to inspect any business allowed by administrative permit. Customers across all home businesses are limited to 4 students at a time in schools plus customers specified in development conditions in SPs negotiated with the community. Businesses, with the exception of barbershops/hair salons and home professional offices, are allowed only one employee not a resident of the dwelling. Home professional offices are limited to a total of 4 employees, including any who are non-residents. Barbershops/hair salons are not allowed any non-resident employee. Outdoor signs are not be allowed, and any use of enclosed accessory structures is limited to one structure not exceeding 200 sq ft. For the three uses requiring SPs, provisions related to floor area, equipment used, county inspections, and parking are negotiated with the community and codified in development conditions. The current ZO allows appropriately limited business uses in R-districts at the same time providing effective safeguards protecting the residential character of neighborhoods.

Not so with zMOD. The zMOD proposal threatens neighborhoods with an expansive list of business uses, some unqualified, and uses are not supported by adequate safeguards for neighborhoods.

3.2. zMOD's HBB Proposal

Businesses Allowed: zMOD proposes a number of by-right home business uses that are unlimited in scope (i.e., unqualified) and potentially damaging to communities, in particular, retail sales, small-scale production, and health and exercise. Some by-right uses are customer-intensive, e.g., barbershops. Unlimited uses potentially damaging to communities should not be allowed, and any business allowed customers should require a special permit.

- zMOD proposes a small-scale production use for which regulations describe no limit on articles that could be produced. The neighborhood impacts⁵ of unlimited uses are unpredictable. For example, residents perhaps would be comfortable that a use narrowly described as "Repair of household items such as musical instruments, watches and clocks, and small appliances" because its impacts on neighborhoods are predictable. However, it would be unreasonable to expect them to accept a use with the unqualified description, "Repair of household items," because it would allow repair of any item arguably found in a home. Its impacts are not predictable.

A particular concern with zMOD's unqualified retail sales and small-scale production uses is the character of customers, suppliers, salespeople, and enthusiasts the businesses would attract to neighborhoods. As examples, one small-scale production shop might specialize in weapons, body armor, and accessories favored by domestic urban combat and extremist groups; and a retail sales outlet might specialize in adult entertainment goods.

⁵ Neighborhood impacts include pedestrian and vehicular traffic, relentless noise and activity, neighbor's encroaching accessory buildings, loss of privacy, clutter and trash, light pollution, signs, and the character of the customers a business would attract to the neighborhood.



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Retail sales, small-scale production, and health and exercise uses are unlimited/unqualified uses that should not be allowed as home businesses. Home production uses allowed by state law of course should be permitted.⁶

- Barbershops and hair salons are customer intensive. They should require special permits.
- zMOD's regulations should include a discussion and list of uses not allowed. It should be clear in regulations that not all businesses legal in Virginia are appropriate as home businesses in Fairfax County. Similarly, businesses that use or produce quantities of hazardous materials and/or use or produce quantities of high-value materials, either of which would raise concerns regarding neighborhood safety and security, should not be allowed. The current ZO includes a list of businesses not allowed. zMOD should do the same.

- Summary of Arlington County Home Businesses Allowed: Arlington County's zoning ordinance, updated in 2019, lists home businesses allowed and not allowed. The scope of businesses allowed is constrained in comparison to the expansive list of uses proposed by zMOD. Arlington does not allow a dwelling with an ALU any additional accessory use other than the home business use. In particular, an ALU is not allowed short-term lodging guests.

• Home Occupations Permitted	• Home Occupations Not Permitted
<ul style="list-style-type: none"> • Homestay (Airbnb, Craigslist, VRBO, ...) • Artist, photographer, sculptor • Author, composer, editor, translator, writer • Contractor or service business • Dressmaker, seamstress and tailor • Food preparation and home occupations • Home crafts such as lapidary work, macramé... • Office of an ordained minister of religion • Office of an accountant, architect, bookkeeper... • Office of a salesman, sales representative... • Repair services, such as musical instruments, watches and clocks, small household appliances, and toys or models 	<ul style="list-style-type: none"> • Amusement or dance parlor • Antique shop • Barber shop or beauty salon • Funeral home or chapel • Gift shop • Kennel or other boarding of animals • Medical or dental clinic, hospital, nursing home • Motor vehicle repair or sales • Nursery school • Repair or testing of internal combustion engines • Restaurant or tearoom • Tourist home, boardinghouse, rooming house • Veterinary clinic or animal hospital

Customers: By right (by administrative permit), zMOD would allow uses that are customer-intensive (e.g., health and exercise, barbershops, and hair salons) at the same time limiting the number of customers allowed, for example, to 2 at a time and 6 per day. Attempts to limit activities of customer-intensive home businesses by limiting the number of customers served would be impractical to enforce. Who is to count the number of people coming and going throughout the day? How would one know the customers vs. friends stopping by for a chat vs. neighbors coming to borrow a cup of sugar? The current ordinance, with the exception of small schools and riding lessons, requires businesses with customers to obtain an SP. zMOD should do the same without exception.

- In many cases, it may be reasonable to allow by right businesses without customers. But where customers are allowed, limits on the number should be established in earnest discussions with business owners in BZA hearings and codified in development conditions.

⁶ Virginia Cottage Food Laws permit home-based food production and distribution from private homes. Obviously, zMOD regulations must comply and any requirement for SPs tempered accordingly.

- The zMOD regulation proposed in *Row H: Customers and Parking* of Exhibit 3.1 would allow customers to shop in on-line retail sales outlets and small-scale production shops. Any business limited to on-line sales and offsite distribution should be limited strictly to on-line and offsite operations. On-site customers should not be allowed for any purpose.

Non-Resid Employees: zMOD is proposing that all home businesses (including small-scale production) would be allowed to operate full-steam at all hours of the day and night, 24x365. The only limitation proposed is that non-resident employees may be on site for only 11 hours, 7 AM to 6 PM daily.

- The hours for non-resident employees on-site should be limited to 8 AM to 5 PM weekdays in order to provide neighbors some relief from incessant activity next door.

Outdoor Signs: Outdoor signs for home businesses should not be allowed all day every day as proposed by zMOD. An appropriate limit should be established for home business (and household living) uses, for example, sign display limited to 30 consecutive days, three times per year, for an annual total not to exceed 90 days. zMOD should amend Sect. 7100.4.D accordingly. An increase in home business signage via SP should not be allowed.⁷

Floor Area and Accessory Structures: The use of freestanding accessory structures for HBB uses should be limited. zMOD is proposing to allow home businesses to occupy a total floor area between 200 to 750 sq ft, all of which may be in enclosed freestanding accessory structures. If the structure(s) are less than 8 1/2 ft tall, all 750 sq ft (if that's the number) could be constructed on the neighbor's property line. Structures less than 8 1/2 ft tall possibly would be used mainly for storage. The need for vertical space to accommodate flooring and a roof may reduce headroom to the point that the structures would not be the best work spaces. zMOD offers a second option for structures more appropriate for work rooms. If the structure is less than 12 ft tall it could be located just 5 ft inside the business owner's property line. From that short distance, business activity could impose a constant stream of noise, commotion, light pollution and gawking on neighbors, 24x365.

- The floor area allowed HBBs in freestanding accessory structures should be limited to 200 sq ft. The limit could be increased by special permit.
- An HBB use should not be allowed to occupy an enclosed freestanding accessory structure any part of which covers a minimum yard setback.
- The hours that a home business may access any freestanding accessory structures should be limited to 8AM to 5 PM weekdays, whether the structure is used for storage or is used as a work room or another purpose.
- If enclosed freestanding accessory structures on the lot exceed in floor area the limit allowed for home business, the area used for home business should be clearly designated.

County Inspection: zMOD makes no provision for county inspections. However, all home businesses should be required to allow county inspection of premises during reasonable business hours as is

⁷ The previous signs ordinance did not allow residential uses (i.e., household living plus the accessory uses permitted in R-districts) to erect permanent signs. These uses were allowed to erect signs but only for specified, limited periods of time. In Mar 2019, the Board adopted a new signs ordinance that allows residential uses to erect the permanent signs described by the note following Exhibit 3.1. The signs ordinance may not regulate signs by the content of the message displayed. Consequently, limiting signs for home businesses would similarly limit signs for household living, appropriately returning signage regulations in R-districts to time-limited standards.

currently required for Home Occupations. County inspections are an effective tool for adding flexibility to ordinance regulations while protecting the residential character of neighborhoods.

Hours of Operation: zMOD places no limit on hours customers may be on-site.

- Customers on-site should be limited to 8 AM to 9 PM.
- zMOD is proposing an expansive list of HBBs some of which would be benign in the sense that there would be little exterior evidence of their operation. Conversely, the operation of some HBBs may be more intrusive. The hours of operation of potentially intrusive HBBs should be limited to 8 AM to 5 PM, Monday thru Friday.

Submission Requirements: Submission requirements for home business special permits listed in Sect. 8101.3.E(5) on pg. 630 of the annotated draft should be thought through and expanded to include:

- A plat supported by digital photographs showing:
 - The location and description of any freestanding accessory structure to be used by the business whether or not enclosed,
 - The location of on-site parking space for any commercial vehicle to be used, and
 - The location of on-site parking space(s) for customers, if any.
- Requirements for retail sales and small-sale production uses including:
 - Descriptions of the items to be sold and products produced,
 - Description of equipment to be used if different from that commonly found in homes and small offices.
 - Descriptions of any hazardous materials used in production or offered for sale, including how they will be stored and secured (for the safety of neighbors),
 - Description of any high-value items that will be stored on-site, including how they will be stored and secured (to assure that the business will not be a "mark" that attracts burglars).
- Requirements for health and exercise uses:
 - Description of services to be provided and the associated facilities and equipment
- Requirements for barbershops, hair salons:
 - Description of any materials used that are not commonly found in households.
 - Description of how trash and waste products will be disposed.

By special permit zMOD would allow business activities outdoors, larger floor areas, additional employees, different/expanded hours for non-resident employees on-site, and more customers. In addition, the BZA could require additional off-street parking.

**Exhibit 3.1. Summary of Regulations for Home Businesses with Administrative Permits:
Current Zoning Ordinance Regulations and the zMOD Proposal**

(SFD = single-family detached, AO = advertised option, HBB = home-based business,
STL = short-term lodging, sf = square feet)

Regulation	Current ZO (Home Occupations, Article 10-300)	Home-Based Businesses (zMOD Annotated Draft, Sect. 4102.7.I, pg 363.)
A. Permit Required	Administrative	Administrative
B. Uses Permitted	Artists, authors, composers, dressmakers, tailors, home crafts, office, schools of special education limited to 4 students/class, 8 per day.	Retail sales with sales & delivery offsite or online; health and exercise (massage?) facility; repair and rental of household items such as musical instruments, sewing machines, radios and watches; offices; barbershop or hair salon; sewing and tailoring; music and photo studio; art studio; small-scale production limited to items created on-site, including food production, with sales and delivery offsite or online; specialized instruction center.
C. Use Limitations	Antique shops, barbershops and beauty parlors, restaurants, gift shops, repair services, kennels, and veterinary hospitals are not allowed. Except for articles produced on site, no stock in trade may be stored, displayed or sold on site.	zMOD does not characterize uses considered inappropriate for home businesses.
D. Appearance of the Property	No exterior evidence that dwelling is other than a residence. Business must be conducted entirely within enclosed structures.	Other than a sign as permitted by 7100.4.D, no exterior evidence that property is other than a dwelling. (1) Business must be conducted entirely within enclosed structures.
E. Outdoor Signs and Displays	Signs not permitted. Outside display or storage of business-related goods, equipment, or materials is not allowed.	Signs <u>are</u> permitted. Outside display or storage of business-related goods, equipment, or materials is not allowed.
F. Relationship of Business to Dwelling Occupants	Business must be conducted by permit holder within a dwelling that is his or her primary residence, or within an accessory building.	Same.
G. Employees	All residents of property may be employed in the business plus one employee. One non-resident employee may be on-site but only between 8:00 AM and 5:00 PM, Monday through Friday.	All residents of property may be employed in the business. In a SFD dwelling, one non-resident employee is permitted regardless of the number of HBBs and day care facilities on the lot. (AO: Allow one non-resident employee in all dwelling types.) A non-resident employee may work on-site only between 7:00 AM and 6:00 PM.

Exhibit 3.1. Summary of Regulations for Home Businesses with Administrative Permits (cont.)

Regulation	Current ZO (Home Occupations, Article 10-300)	Home-Based Businesses (zMOD Annotated Draft, Sect. 4102.7.I, pg 363.)
H. Customers and Parking	Customers not allowed except for schools and riding lessons. Class size for all schools is limited to 4 students, 8 students per day. No requirement to provide off-street parking for employees or students of schools or riding lessons. Customers and parking requirements for SP uses per development conditions.	In all dwelling types, a max of two customers is permitted on-site at any one time. (AO: 0-4) A max of 6 customers is permitted on-site in any one day, including all HBBs on-site and STL customers. (AO: 0-8) If a home day care facility is on-site, HBB customers are not allowed. For general retail sales and small-scale production uses, on-site customers are not allowed, except customers may visit the site to view samples of items created on-site. If HBB has on-site customers, one designated off-street parking space must be provided. Customers are permitted only by appointments with at least 15 minutes between appointments.
I. Equipment Limitations	No mechanical or electrical equipment other than normally found in a home or small office.	No limitation.
J. County Inspections	Dwelling shall be open for county inspection during reasonable hours.	No requirement.
K. Hours of Operation	No limitation.	Hours during which customers may visit the premises are limited to 8:00 AM – 9:00 PM.
L. Floor Area	No limitation.	HBB area, including storage, is limited to max of 400 sf. (AO: 200 - 750 sf)
M. Vehicles Used	One commercial vehicle is permitted per dwelling unit subject to Sect. 102.16, limitations on parking commercial vehicles in R-districts.	One commercial vehicle is permitted per dwelling unit subject to Sect. 4102.1.B(2), limitations on parking commercial vehicles in R-districts. Vehicles used for delivery or distribution must not exceed 28 ft in length. Semitrailers ...are not allowed.

(1) Sect. 7100.4.D would allow a HBB to display 12 sf of "minor" signage comprised of up to three signs each no larger than 4 sq ft. and no higher than 4 ft. The signs would need to be "designed to be easily moved" and could not be illuminated. They could be permanent, 24 x 365.

Exhibit 3.2. Summary of By-Right Regulations for ENCLOSED Freestanding Accessory Structures

Regulation	Current ZO	zMOD Draft
Number of Structures	One enclosed structure.	No limit.
Area within enclosed structure(s)	200 sf. May NOT be increased by SP.	50% of gross floor area of dwelling. May be increased by SP.
Height:		
<ul style="list-style-type: none"> • () Lots < 36,000 sf • (R-2 lots and smaller) 	Per regulations of zoning district. (Reg is 35 ft in R-2 district)	20 ft. (15-25 ft advertised) May be increased by SP.
<ul style="list-style-type: none"> • () Lots > 36,000 sf • (R-1 lots and larger) 	Per regulations of zoning district. (Reg is 35 ft in R-1 district)	Per regulations of zoning district.
Setback, Side:		
() Ht < 8.5 ft	0 ft.	0 ft.
() 8.5 ft <Ht< 12 ft (10-12 ft advertised)	Per regulations of zoning district. (Reg is 15 ft in R-2 district)	5 ft.
() Ht > 12 ft (10-12 ft advertised)	Per regulations of zoning district.	Per regulations of zoning district.
Setback, Rear:		
() Ht < 8.5 ft	0 ft.	0 ft.
() 8.5 ft <Ht< 12 ft (10-12 ft advertised)	Distance equal to structure height.	5 ft.
() Ht > 12 ft (10-12 ft advertised)	Distance equal to structure height.	Distance equal to structure height.
Front Yard Limitation		
() Lots < 36,000 sq ft	Enclosed structures not allowed.	Same.
() Lots > 36,000 sq ft)	Enclosed structures are allowed but not in minimum required front setback.	Same.
Rear Yard Coverage	30%.	30%.
Side Yard Coverage	No limit.	No limit.

4. Accessory Living Unit

An accessory living unit (ALU) is limited to two bedrooms and two occupants, complete with a full kitchen, that may be constructed as an accessory to any single-family detached (SFD) home.⁸ If the lot size is less than 2 acres, the ADU must be inside the house, an *interior ALU*. On lots larger than 2 acres, the ALU may be interior or standalone. There can be only one ALU on the property and the homeowner is required to live on the property. The interior ALU effectively turns the single-family home into a two-household “duplex.” The standalone ALU adds a second dwelling unit to the property.

ALUs were adopted as a valuable housing option for older and/or disabled residents, in particular, for family members of the property owner who need housing and/or monitoring and support. Today, ALU approval requires a special permit.

4.1. ALUs Benefit Owners and Burden Neighbors

While ALUs may be an attractive option for some homeowners, the benefits they gain come at the expense of their neighbors. An ALU transforms one dwelling into two wholly independent dwellings, each fully capable of supporting a family. The two-family dwellings will take up more "space" in their neighborhoods than the single-family dwellings they replace, and many SFD neighborhoods already are congested. ALUs will increase traffic, on-street parking, noise, congestion, and outdoor activity. Many neighborhoods will simply lack the infrastructure (on-street parking space!) necessary to support any significant number of ALUs, including some neighborhoods in R-1 and R-2 districts but especially those in R-3, R-4, R-5, and R-8 districts.

ALUs will encourage crowding more buildings onto residential lots. Homeowners may elect to create dwelling space for interior ALUs by building an addition to the house. Or they may create the space by constructing freestanding accessory structures for workshops and other occasional home activities. Or they may build freestanding structures for storage space to clear out the house. In all such cases, neighbors' vistas may be sullied and obstructed. Once open views of trees and sky may become views of walls, in particular, the walls of crude sheds right on or just five feet beyond the property line.

zMOD gives ALU homeowners ample opportunity to fill their yards with enclosed accessory structures:

- Cover rear setback 30%: zMOD (and the current ZO) allows 30% of the minimum rear setback of an SFD dwelling to be covered by an extension of the dwelling, accessory structures, or any combination of the two (Sect 4102.7.A(5) on pg 342 of the annotated draft). Coverage may be increased by SP.
- Cover side setback 100%: There is no limit to the degree to which enclosed freestanding accessory structures may cover minimum side setbacks.
- Enclose 50% of dwelling GFA: zMOD would allow the floor area of enclosed accessory structures on the lot of a single-family home to equal 50% (!) of the gross floor area of the dwelling. (Sect. 4102.7.A(6))
- 20 ft high (2 stories!): The enclosed freestanding structures on lots that are equal in area to or smaller than lots typical of R-2 districts could be as tall as 20 ft (15-25 ft advertised).

⁸ In the current ZO ALUs are referred to as accessory dwelling units, ADUs.

- And right on the property line: Enclosed freestanding structures less than 8 1/2 ft tall could be constructed on side and rear property lines; those less than 12 ft tall may be located as close to property lines as 5 ft.

Taken together, zMOD's regulations for HBBs, ALUs, and freestanding accessory structures easily will wreck neighborhoods.

4.2. Contingencies and Other Concerns

The potential for properly established ALUs to disrupt neighborhoods is one concern. There are others.

Duplex Redevelopments: If and where ALUs are allowed substantial floor areas, individual and corporate developers are encouraged to purchase and demolish SFD homes, then replace them with de facto duplexes. No rezoning would be required and homeowners would gain two homes in place of the one demolished. Creeping ALU development in a neighborhood would have the potential to destabilize the community. Consequently, the floor areas of ALUs should be kept small compared to the floor areas of the dwelling units.

Dropout Homeowners: Homeowners may back out of their ALU agreements and take on roomers as tenants in order to avoid complying with ALU regulations. Homeowners are allowed two ALU tenants or two roomers. Once an owner has a permit and the kitchen is in, what's the profit in continuing as an ALU? zMOF proposes that, where a homeowner does not comply with regulations, s/he (presumably) would lose the permit but would be allowed keep the kitchen. (Sect 4102.7.B(12)) Occupancy of the dwelling then must be in accordance with Sect. 4102.3.A, the section that allows two roomers. A similar situation arises in the event the owner sells the property. The new owner may elect to step out of the ALU program and keep the kitchen. In both cases, the result is an unregulated duplex.

Boarding Houses: It is well known that the county has limited authority and limited capability to control the number of occupants in any dwelling unit. Compared to an ALU with two tenants, a house with two kitchens may be more valuable as a "boarding house," that is, a house with substantially more occupants than allowed by the ZO. Allowing ALUs without age/disability restrictions would substantially increase the risk of ALU-to-boarding-house conversions.

ALUs Plus How Many Other Accessory Uses?: A dwelling with an ALU in Arlington County is allowed only home business uses as additional accessory uses. In Montgomery County, ALUs are not allowed the short-term lodging use. How many additional accessory uses would ALUs be allowed in Fairfax County?

Babies and the Like: What happens if the two ALU tenants must take on a third person? If the tenants are limited by age and/or disability, the likelihood of such an event is reduced. But what's the plan should the need occur, for example, with a young couple having a baby? Would tenants understand that they must move out within a certain period of time? Will people be thrown out of their ALUs?

Arlington County has developed an affidavit that appears to address some of these issues. A copy is in Exhibit 4.3 at the end of this section. When means have been devised to mitigate the risks and concerns above, the capability to formulate effective regulations will improve. In the meantime, it's clear that any notion to allow ALUs by right simply has not been thought through, and county inspections of ALUs are essential.

4.3. Roomers

Sect 4102.3.A on pg 268 of the annotated draft allows any dwelling unit occupied by one or two or more persons related by blood or marriage to have two roomers as long as the dwelling does not have an ALU. A dwelling unit may have 2 roomers or it may have two tenants in an ALU but not both.

Roomers and ALU tenants can have similar impacts on neighbors. What's the expected relationship between roomers and ALU tenants? It seems likely that the two populations are, to some degree, distinct, that is, composed of different people. Homeowners who make the investment necessary to install a second kitchen are likely to price their ALUs significantly higher than the rent paid by a typical roomer in the neighborhood. Rooms are an option principally for low-income individuals and couples. ALUs potentially are the more expensive option. In the article on accessory dwellings in the Real Estate section of the 9 Jan Washington Post, a Los Angeles builder of ALUs noted that the new units generally rent at market rates.

zMOD Regulations Allow Transient Roomers. zMOD has dropped the limitation that roomers may not be transients. The requirement is in the current ZO and is necessary to protect neighborhoods from criminal elements such as human and drug traffickers.

In the current ZO, Sect 2-502 allows dwellings occupied by one or two or more persons related by blood or marriage to have two roomers. Sect 10-302.7 (Home Occupations) stipulates that roomers may not be transients.

zMOD did not carry forward from the current ZO either Sect 10-302 or the prohibition of transients. zMOD's Sect 4102.3.A simply allows roomers. Transients are not prohibited. No reason is given for deleting the prohibition of transients, and the change is not mentioned in the introductory material of the draft.

zMOD should amend Sect 4102.3 (dwelling occupancy) to clearly state that roomers may not be transients.

4.4. zMOD's ALU Proposal

zMOD is proposing to extensively roll back ALU regulations, both regulations that limit neighborhood impacts and regulations designed to assure that ALUs will be compatible with neighborhoods on a case-by-case basis. Exhibit 4.1 summarizes the principal changes. Exhibit 4.2, at the end of this section, provides a comprehensive summary of both regulations, zMOD and the current ZO.

Exhibit 4.1. Summary of Principal Regulation Changes Proposed by zMOD for Interior ALUs (SFD = single family detached, PD = principal dwelling, AO = advertised option, sf = square feet)

Regulation	Interior ALUs	Interior ADUs
	zMOD Annotated Draft, Sect. 4102.7B, pg 355	Current ZO, Sect. 8-918, pg 8-59
Permit Required	Administrative	Special
Floor Area	Not exceeding lesser of 800 sf (AO: 500-1200 sf) and 40% of PD gross floor area. (1) No limit on floor area if ALU is in basement of the PD.	Not exceeding 35% of gross floor area of PD.
Occupancy	ALU limited to max of 2 people. One unit must be owner occupied. One unit must be occupied by person 55 or older or by person with disability. (AO: Delete the age/disability requirement.)	Same except, of course, there is no advertised option.



Exhibit 4.1. Summary of Principal Reg. Changes Proposed by zMOD for Interior ALUs (cont.)

Regulation	Interior ALUs zMOD Annotated Draft, Sect. 4102.7B, pg 355	Interior ADUs Current ZO, Sect. 8-918, pg 8-59
On-Site Parking	One additional space is required beyond the number required for an SFD dwelling. Only one space must provide convenient access to the street.	BZA shall determine whether an additional off-street parking space is required.
Inspections	No requirement.	Owner shall allow inspections of property during reasonable business hours upon prior notice.
Submission Requirements for Permit	Per Zoning Administrator (Sect. 8101.3.E(8)), pg 630. Specific submission requirements for interior ALUs are not prescribed.	Plat showing boundaries and area of property, location and dimensions of buildings, means for ingress/egress to property, location of wells and septic fields, and easements. Dimensioned floor plan depicting floor areas of both PD unit and ADU.

The following are comments offered on the principal ALU regulation changes proposed by zMOD.

Permit required: ALUs universally should require SPs. Staff reviewing an administrative permit application against a list of ordinance requirements cannot reliably judge compatibility of an ALU with its neighborhood. The neighbors are the experts and will bear the burden of the new dwelling. Their input is essential, and they have an inalienable right to be consulted and engaged in determining development conditions.

Floor area: As pointed out above, limited ALU floor area allowances are important for discouraging neighborhoods being redeveloped into duplexes. The lesser of 800 sf and 40% of the gross floor area is excessive. A baseline of 650 sf and 35% of the gross floor area is more appropriate. The notion to allow an ALU to cover the full basement regardless of size should not be adopted. If floor area exceeding the baseline is wanted, the issue can be addressed during the SP process. The full-basement proposal may have been taken from the Montgomery County ordinance. That ordinance does not allow dwellings with ALUs to lodge short-term renters and differs from the zMOD proposal in other significant respects.

Occupancy: The difference between an ALU with an age/disability restriction and one without is the difference between a granny apartment, possibly in a relative's home, and a for-profit apartment in the landlord's house. If the principal motive of the ALU is homeowner income, a number of contingencies need to be addressed as described above. In the meantime, the age/disability restriction should remain.

ALUs in Fairfax County today are accessible to 40% to 50% of the population likely to be shopping for housing. According to the 2019 county demographic report, 35% of the population over 20 years old is over 55 years old. This 35% has direct access to the ALU option today. And only one of the ALU tenants is required to be 55 or older. Consequently, an additional 5-15% of the over-20 population could have access via their relationships with older residents or simply by filling a vacancy where an ALU has only a single occupant.

Dropping the age/disability requirement may triple the customer based for ALUs from 35% of the 20-55 age group to 100%. Even so, the customer based may remain very small. Only a few residents are living in ALUs today.

On-Site Parking: ZMOD proposes that one additional parking space beyond the number required for an SFD dwelling must be provided. It's a perfect example of a specious regulatory requirement. There will be cases in which the additional parking is not needed and the requirement will be the reason the homeowner decides to not construct an ALU. And there will be cases in which one additional parking space is wholly inadequate, and neighbors forever will have tenants' cars parking in the street with two wheels on their lawns. Parking requirements should be decided by the BZA on a case-by-case basis during the process for issuing special permits.

All parking spaces designated for ALUs should have direct access to the street. Otherwise tenants will be parking in the street.

Inspections: A requirement allowing county inspections of ALUs is mandatory, both to protect the neighborhood and to protect tenants. As pointed out in the 9 Jan issue of the Washington Post Real Estate section, some ALUs offered by landlords are nothing more than a bathroom in a basement.

Submission Requirements for Special Permits: The special permit data submission requirements listed in Sect 8101.3.E(8) on pg 630 of the annotated draft are limited to plat information, a dimensioned floor plan with digital photos, and age and disability documentation. They should be expanded to include affidavits and/or other devices to assure that ALUs will be compatible with their communities.

Exhibit 4.2. Summary of Regulations for Interior ALUs and ADUs

(SFD = single family detached, PD = principal dwelling, AO = advertised option, sf = square feet)

Regulation	Interior ALUs zMOD Annotated Draft, Sect. 4102.7B, pg 355	Interior ADUs Current ZO, Sect. 8-918, pg 8-59
Permit Required	Administrative (AO: Special)	Special
Principal Dwelling (PD)	PD must be single family detached (SFD) dwelling. Only one ALU per lot.	Same.
Location	ALU must be wholly contained within PD. ALU must be directly accessible to PD unit via an interior space...	ALU must be wholly contained within PD.
Entrance	Any <u>new</u> external entrance must be located on the side or rear of PD.	Any external entrance must be located on side or rear of PD.
Garage & Driveway	Any new garage/carport must be adjacent to existing garage/carport. Driveway and curb cut for ALU must be same as that used by PD unit.	No requirement.
Floor Area	Not exceeding lesser of 800 sf (AO: 500-1200 sf) and 40% of PD gross floor area. (1) (AO: No limit on floor area if ALU is in basement of the PD.)	Not exceeding 35% of gross floor area of PD.
Bedrooms	Maximum of 2.	Same.
Occupancy	One unit must be owner occupied. One unit must be occupied by person 55 or older or by person with disability. ALU limited to max of 2 people. (AO: Delete age/disability reqmt. Require only that one unit must be owner occupied.)	Same except, of course, there is no advertised option.

Exhibit 4.2. Summary of Regulations for Interior ALUs and ADUs (cont.)

Regulation	Interior ALUs zMOD Annotated Draft, Sect. 4102.7B, pg 355	Interior ADUs Current ZO, Sect. 8-918, pg 8-59
Occupancy of PD Unit	Occupancy limits of principal dwelling unit are same as those for any dwelling unit in county except roomers are not allowed and the unit may not be a group household or group residential facility. (2)	Occupancy of principal dwelling unit is limited to a family of 1 or 2 or more people related by blood or marriage and their children <u>or</u> a group of up to 4 people unrelated by blood or marriage functioning as a household.
Provisions for Persons with Disabilities	An ALU occupied by person with disability must provide for access and mobility....	Same.
On-Site Parking	One additional space is required beyond the number required for the SFD dwelling. Only one space must provide convenient access to the street.	BZA shall determine whether an additional off-street parking space is required.
Determination of Compatibility with Neighborhood		BZA shall determine that the ADU together with other ADUs in the area will not disrupt the predominant character of the neighborhood.
Building and Health Regulations	ALU must meet all applicable building regs. If served by well/septic, ALU must obtain Health Dept approval. ALU shall not constitute a subdivision of the lot.	ADU must meet all applicable building regs. ADU shall not constitute a subdivision of the lot.
Fire Regulations	Must have fire extinguisher and smoke and CO detectors....	No requirement.
Land Records	Owner must record permit among county land records.	Clerk to the BZA shall record the permit among county land records.
Inspections	No requirement.	Owner shall allow inspections of property during reasonable business hours upon prior notice.
Term of Permit	Initial permit will be issued for 2-year period. May be renewed for 5-year periods if ALU compliant with regulations.	Initial permit will be issued for 5-year period. May be renewed for 5-year periods if ADU compliant with regulations.
Penalty for Noncompliance with Regulations	ALU may not be occupied as a dwelling unit. Property must comply with standard occupancy limits for dwelling units in Fairfax County. Removal of the kitchen and other facilities is not required.	No requirement.
Submission Requirements for Permit	Sect. 8101.7 on pg 641 of the annotated draft states that, for admin permits, the Zoning Administrator may require any information found to be necessary to review and administer regulations. Specific submission requirements for interior ALUs are not prescribed. (3)	Plat showing boundaries and area of property, location and dimensions of buildings, means for ingress/egress to property, location of wells and septic fields, and easements. Dimensioned floor plan depicting floor areas of both PD unit and ADU.

(1). Gross floor area includes area of any PD basement with headroom exceeding 6 feet 6 inches.

(2). More specifically, occupancy is limited to 2 or more people related by blood or marriage and their children, or 1 or 2 people and their dependent children functioning as a household, or a group of up to 4 people unrelated by blood or marriage functioning as a household.

(3) Sect. 8108.3.E(8) on pg 630 of the annotated draft provides special permit submission requirements for standalone ALUs. They include only a plat, dimensioned floor plan, photographs of ALU rooms, and proof of age or documentation of disability as appropriate.



Since 1974

Exhibit 4.3. Arlington County Affidavit of Compliance for Accessory Dwellings (<https://building.arlingtonva.us/permits/accessory-dwelling/>)

DEPARTMENT OF COMMUNITY PLANNING, HOUSING AND DEVELOPMENT

AFFIDAVIT OF COMPLIANCE



I, _____, make this affidavit in order to comply with Section 12.9.2 of the Arlington County Zoning Ordinance ("ACZO"). Under penalty of perjury, I swear that the following statements are true and correct.

I am the owner of the property known as _____ (street address of the "Property"). My ownership is shown among the land records of the Clerk of the Circuit Court of Arlington County at Deed Book _____, page _____. The Property is improved with a one-family detached dwelling. The one-family detached dwelling contains an Accessory Dwelling ("AD") which complies in all respects with the requirements of the ACZO, including by way of illustration and not limitation, the following:

- a. No more than three (3) persons do now, or will at any time, occupy the AD;
- b. I occupy, as my full-time residence, one of the dwelling units on the Property. At any point, if I do not occupy either the main dwelling or the AD as my full-time residence, the Property may be occupied by no more than one (1) family.
- c. I hereby agree to permit the Arlington County Zoning Administrator or his or her designee to make annual inspections of the AD to ensure compliance with the ACZO.
- d. I hereby agree to cooperate with the Zoning Administrator and his or her designee to ensure compliance with the ACZO.
- e. I have advised all tenants residing in the AD of the annual inspection requirement and of their obligation to cooperate with the Zoning Administrator to ensure compliance with the ACZO.
- f. I hereby certify that no accessory use is being conducted in the AD, except home occupations as permitted and regulated in Sections 12.9.11 and 12.9.12 of the ACZO.
- g. I hereby certify that I have made no alterations in the physical structure located on the Property or the parking located on the Property, nor have I changed the use of the Property in any material way since the last Affidavit of Compliance, which I executed.
- h. I hereby certify that if I make any structural alterations to the AD, or if there is a change in ownership

Accessory Dwelling
Affidavit of Compliance
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Since 1974

Exhibit 4.3. Arlington County Affidavit of Compliance for Accessory Dwellings (cont.)
(<https://building.arlingtonva.us/permits/accessory-dwelling/>)

of the main dwelling, I will execute, within ten calendar days of such change, a new Affidavit of Compliance, consistent with ACZO requirements.

i. The Property and all structures thereon, including the AD, comply with all requirements of the ACZO.

I make this affidavit on this _____ day of _____, 20_____.

Signature of Owner

Printed Name of Owner

COMMONWEALTH OF VIRGINIA
COUNTY OF ARLINGTON

Subscribed and sworn before me this this _____ day of _____, 20_____.

Notary: _____

My Commission expires: _____

5. Planned (P) Districts.

Proposed Change: Delete the existing requirement that P-districts must taper down in density and provide compatible landscaping and screening at their peripheries in order to protect adjacent communities from encroachment by incompatible high-density developments.

DraftText, pg 7. **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.

Response: Change should not be adopted. The current requirement provides existing residential neighborhoods adjacent to planned P districts essential protection against being overwhelmed by future high-density development, for example homes adjacent to Seven Corners, Bailey's Crossroads, and Annandale CRDs.

Rationale: Current ordinance regulations (Sect. 16-102.1, text below) require a P district (a planned development district) to generally conform with the bulk regulations and landscaping and screening provisions of the most similar conventional zoning district at the periphery of the district.⁹ zMOD proposes to delete this requirement.¹⁰

The purpose of the regulation is to protect properties outside but adjacent to a P district (i.e., protect the neighbors). It requires that P districts "taper down" their high-density developments (reduce their bulk, in particular, building heights) at their peripheries so as to be compatible with (not overwhelm) adjacent properties. In addition, the regulation requires P districts to provide landscaping and screening at their peripheries that is compatible with their neighbors. The regulation is effective only at the periphery of a P district; it does not affect parcels wholly inside.

The regulation provides neighborhoods bordering P districts essential protection against high-density P-district developments overshadowing their communities. In particular, it protects residents living nearby CBCs, CRAs, CRDs and TSAs.¹¹

⁹ Bulk regulations limit the density of development. In the ordinance they are usually expressed in terms of maximum building heights and minimum setbacks. The purpose of landscape and screening regulations is to provide visual separation between and among adjacent developments.

¹⁰ Sect. 16-102 in the current ZO has been carried forward to Sect. 2105.1.D in the draft with the exception that Sect 16-102.1 has been deleted.

¹¹ Community Business Centers (CBCs) are older community-serving commercial areas that, over time, emerged along major highways. These centers typically are planned for more than 1,000,000 sq ft of commercial space. Commercial Revitalization Districts (CRDs) and Commercial Revitalization Areas (CRAs) are areas in older commercial districts, in particular CBCs, that the county has designated for high-density P-district development to encourage economic growth, enlarge the tax base, and absorb expected population growth. Currently, there are nine CRD/CRAs in the county: Annandale, Bailey's Crossroads, Seven Corners,

Unfortunately, the draft text underlined in the first paragraph above misleads readers. The sentence states that the current ordinance requires "P districts to generally conform with the bulk regulations and landscaping and screening provisions of the most similar conventional zoning district." But the current ordinance does no such thing! P districts are required to conform only at their peripheries. Reviewers reading on pg 7 of the draft that the quoted requirement has been deleted may think it a good thing and agree with zMOD's proposed change. As a consequence, neighborhoods adjacent to P districts easily could lose critical protection against encroaching high-density developments. The text on page 7 of the draft suggests that zMOD may have misunderstood the purpose of the regulation proposed for deletion.

Ordinance Text:

Sect. 16-102. Design Standards. Current ZO, pg 16-3.

Whereas it is the intent to allow flexibility in the design of all planned developments, it is deemed necessary to establish design standards by which to review rezoning applications, development plans, conceptual development plans, final development plans, PRC plans, site plans and subdivision plats. Therefore, the following design standards apply:

1. In order to complement development on adjacent properties, at all peripheral boundaries of the PDH, PRM, PDC, PRC, and PCC Districts the bulk regulations and landscaping and screening provisions must generally conform to the provisions of that conventional zoning district which most closely characterizes the particular type of development under consideration. In a rezoning application to the PDC, PRM or PCC District that is located in a Commercial Revitalization District or in an area that is designated as a Community Business Center, Commercial Revitalization Area or Transit Station Area in the adopted comprehensive plan, this provision has general applicability and applies only at the periphery of the Commercial Revitalization District, Community Business Center, Commercial Revitalization Area, or Transit Station Area, as necessary to achieve the objectives of the comprehensive plan. In the PTC District, such provisions have general applicability and only at the periphery of the Tysons Corner Urban Center, as designated in the adopted comprehensive plan.
2. Other than those regulations specifically set forth in Article 6 for a particular P district, the open space, off-street parking, loading, sign and all other similar regulations set forth in this Ordinance shall have general application in all planned developments.

Lake Anne, Lincolnia, McLean, Merrifield, Richmond Highway, and Springfield. Transit Station Areas (TSAs) are districts surrounding transit (Metro) stations that are planned for high-density P-district development.

6. Commercial Revitalization Districts

Proposed Change: In CRDs, the proposed change would allow a reduction of setbacks in C districts from the current 25-40 ft to only 20 ft and would allow an increase in building heights in C-6 and C-8 districts from 40 to 50 ft.

Draft Text, pg 9. **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.

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. zMOD 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.

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.

Response: The change should not be adopted. Setbacks and building height limits serve to moderate the intensity of high-density developments allowed in CRDs. Rolling limits back in the ordinance would allow increased density in all currently planned CRDs. The Board has necessary authority to relax the limits on a case-by-case basis in collaboration with residents in special exception and rezoning hearings. The limits should not be rolled back unilaterally by modifying the ZO.

Rationale: The proposed change would establish 20 ft as an adequate front yard setback in any C district in a CRD. In the current CRD ordinance, the minimum setback is specified as the setback required in the underlying district but not less than 20 ft. As pointed out above, setbacks in C districts range from 25-40 ft depending upon building heights. The change proposed by Sect. 3102.3C(2) (text below), immediately would reduce these setbacks from 25-40 ft to 20 ft for all C districts in CRDs.

Plans for CRDs in the Comprehensive Plan typically were developed by citizen task forces with the implicit assumption that the zoning ordinance would not subsequently be changed to erode protections, like setbacks, that moderate the density of development in their communities.

In addition, Section 3102.3.B (text below) gives the Board all the authority necessary to modify setback and building height requirements in conjunction with a special exception or rezoning. Special exception and rezoning procedures engage residents in deciding what works in their community. They are the proper procedures for deciding modifications to setbacks in CRDs.

The same applies to building heights. In the current ordinance, building heights in C-6 and C-8 districts in a CRD district are limited to 40 ft. The proposed change in Sect. 3102.3.C(1) immediately would increase these heights, "by right," to 50 ft.

Ordinance Text:

3102.3.B Special Exception Uses. zMOD Draft.

In addition to all uses permitted by special exception in the underlying zoning district regulations, the following uses, modifications, and waivers may be approved either as a special exception or in conjunction with a rezoning:

- (1) Vehicle transportation service in the C-6, C-7, and C-8 Districts;
- (2) Modification or waiver of the minimum lot size requirements, setback requirements, or minimum open space requirements;
- (3) Increase in the maximum building height in the C-3, C-4, C-5, C-6, C-7, C-8, I-2, I-3, I-4, I-5, I-6, Districts in accordance with 8100.3;
- (4) Increase in maximum permitted floor ratio in the C-6, C-7, C-8, I-3, I-4, I-5, and I-6 Districts;
- (5) Increase in the amount of permitted office in accordance with subsection 4102.5.M(3); and
- (6) Modification or waiver of the standards for commercial revitalization districts set forth in this section.

3102.3.C(1) Maximum Building Height. zMOD Draft.

As specified in the underlying zoning district regulations, except that for land zoned C-6 or C-8, a maximum height of 50 feet is allowed by right. However, a greater height is permitted if the Comprehensive Plan specifies a height greater than the height of the underlying zoning district.

3102.3.C(2) Setback Requirements. zMOD Draft.

- (a) As specified in the underlying zoning district regulations, except the front setback in a commercial district is either:
 1. 20 feet; or
 2. A lesser distance if the Comprehensive Plan specifies a lesser distance, but only if any recommended plantings, streetscape treatments, or other amenities are provided in general accordance with the Comprehensive Plan.
- (b) In addition to the modification or waiver of the setback requirements permitted in B above, for developments located in areas where specific design guidelines have been established in the Comprehensive Plan, the Director in approving a site plan may approve a reduction of setbacks if this reduction is in accordance with the Comprehensive Plan.

7. Freestanding Accessory Structures

Proposed Change: Change would allow the current limit on areas enclosed within structures to increase by right from one structure limited to 200 sq ft to an unlimited number of structures with a combined enclosed area equal to 50% of the dwelling gross floor area. In addition, it would allow structures as tall as 12-ft as close to the lot line as 5 ft.

Draft Text pg. 18. **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. (More in draft on pg 18.)

Response: Change should not be adopted. It would allow residents of single-family dwellings to construct garages (as an example) completely out of proportion with their neighborhoods, blocking neighbors' views and encroaching on their open space and privacy outdoors. The one-structure and 200-sq-ft limit should be retained with a provision for increase by special permit. The proposal to allow structures up to 12 ft tall as close to the property line as 5 ft should not be accepted.

Rationale: The current ordinance, in Sect 10-104 lists 13 categories of accessory structure ranging from gate posts to portable storage containers, wayside stands, amateur-radio antennas, and fences surrounding tennis courts and swimming pools. The list is carried forward in the draft to Sect. 4102.7.A The regulations in the draft for freestanding accessory structures are based on two of the categories in the current ordinance: 10-104.10, "Freestanding Accessory Storage Structures" and 10-104.12, "Other Freestanding Structures."

The table below compares the regulations in the draft for freestanding accessory structures with the corresponding regulations in the current ordinance. The summary is for properties occupied by single-family detached homes not on corner lots. Notes in the table regarding advertised regulations pertain only to the draft.

The regulations in the current ordinance and the draft apply to all single-family dwellings.

Presumably they apply as well to every existing and new non-residential use (place of worship, private school, commercial recreation facility, etc.). The regulations describe:

- The number of freestanding accessory structures allowed,
- The maximum combined area that can be enclosed within structures,
- Structure heights and setbacks,
- Limitations on structures allowed in the front yard, and
- Coverage of minimum required rear and side yards, that is, the degree to which structures may cover the minimum required rear and side setbacks specified for the zoning district.

zMOD proposes that limitations on structure heights and the areas enclosed within structures may be relaxed by special permit. Similarly, the allowance for rear yard coverage may be increased by SP.

Regulations proposed are similar to current regulations in a number of areas, including front yard limitations, rear setback coverage, and structure setbacks for heights less than 8.5 ft and greater than 12 ft.

However, the proposal to allow any number of enclosed accessory structures up to 8.5-ft tall to sit on the property line and enclose a combined area equal to 50% of the gross floor area of the dwelling is simply out of the question from a neighbor's point of view. Allowing even one enclosed 8.5-ft-tall structure with an area of 200 sq ft on the property line per the current ordinance should be expected to challenge neighbors' forbearance in most residential settings. Stepping up from one structure enclosing 200 sq ft to an unlimited number of structures enclosing an area equal to 50% of the dwelling's gross floor area is simply unreasonable. Who among us would accept these structures on our lot lines? The by-right limitations of one structure and 200 sq ft should be retained with an increase in number of structures and enclosed floor area available via a special permit.

Similarly, the proposal to allow enclosed structures 12 ft tall in minimum required setbacks as close to the property line as 5 ft should be withdrawn. The current ordinance does allow structures as tall as 8.5 ft within 5 ft of the lot line, even on the lot line. But there's an important difference between structures 8.5 and 12 ft tall. It's the difference between a storage shed and a workshop. An 8.5-ft-tall structure with foundation, pitched roof, and necessary floor and roof framing is not likely to serve as a comfortable workshop. The headroom and storage space would be limited. However, a 12 ft tall structure would provide an efficient workspace at the same time treating the neighbor to a loss of privacy and light pollution from the workshop's windows as well as an unwelcome source of noise just 5 ft away.

- Staff briefed the 12-ft/5-ft proposal at a public meeting on 23 Apr 2019. In justifying the 5-ft proposal, staff stated that a large percentage of complaints filed with Department of Code Compliance regarding accessory structures was associated with structures up to 12 ft tall that had encroached as close to lot lines as 5 ft. Staff concluded that allowing such structures by right in the ordinance would reduce significantly the number of complaints filed with DCC. Perhaps. However, more logically, the complaints filed with DCC demonstrate that structures up to 12 ft tall located as close to lot lines as 5 ft annoy neighbors and should not be allowed!

Summary of Regulations for Freestanding Accessory Structures

Regulation	Current ZO	zMOD Draft
Number of Structures	One enclosed structure. (1) No limit on number of other structures.	No limit. (4)
Area within enclosed structure(s)	200 sf. (1)	50% of gross floor area of dwelling unit. (4)
Height:		
• () Lots < 36,000 sf (6)	Per regulations of zoning district. (2)	20 ft. (4) (15-25 ft advertised)
• () Lots > 36,000 sf	Per regulations of zoning district. (2)	Per regulations of zoning district. (4)
Setback, Side:		
() Ht < 8.5 ft	No limit. (2)	No limit. (4)
() 8.5 ft < Ht < 12 ft (10-12 ft advertised)	Minimum side setback of zoning district. (2)	5 ft.
() Ht > 12 ft (10-12 ft advertised)	Minimum side setback of zoning district. (2)	Minimum side setback of zoning district. (4)

Summary of Regulations for Freestanding Accessory Structures (cont.)

Regulation	Current ZO	zMOD Draft
Setback, Rear:		
() Ht < 8.5 ft	No limit. (2)	No limit. (4)
() 8.5 ft < Ht < 12 ft (10-12 ft advertised)	Distance equal to structure height. (2)	5 ft. (4)
() Ht > 12 ft (10-12 ft advertised)	Distance equal to structure height. (2)	Distance equal to structure height. (4)
Front Yard Limitation		
() Lots < 36,000 sq ft	Only certain structures are allowed in front yard. (2, 10)	Only specified structures are allowed in front yard. (4,7)
() Lots > 36,000 sq ft	Storage and other structures allowed in front yard except only certain structures are allowed within the minimum required front setback. (2, 10)	Structures, except composting, are allowed in the front yard with the further exception that only specified structures are allowed within the minimum req'd front setback. (4,7)
Rear Yard Coverage (8)	30%. (3)	30%. (5)
Side Yard Coverage (8)	No limit. (9)	No limit. (9)

(1). 10-102.25, pg 10-5. Current regulations are restrictive regarding addition of freestanding garages to residential properties. The by-right regulations limit the addition of enclosed accessory structures to one in number with an area limited to 200 sq ft. The area may not be increased by special permit. County staff has made exceptions in the past in order to allow residents to construct freestanding garages on their properties.

(2). 10-104.10, pg 10-17.

(3). 10-103.3, pg 10-10. An increase in rear yard coverage is allowed by special permit.

(4). 4102.7.A(6). No height limitation is stated for lots larger than 36,000 sq ft. Height and enclosed area limitations may be increased by special permit.

(5). 4102.7.A(14). An increase in rear yard coverage is allowed by special permit.

(6). 36,000 sq ft is the minimum lot size in an R-1 district. Consequently, lots greater than 36,000 sq ft roughly correspond to the R-1 and the R-E, R-C, R-P, and R-A districts. Lots smaller generally are in the R-2 and remaining residential districts.

(7) "Specified structures" are limited to flag poles, landscaping, basketball hoops, and gardening limited to 100 sq ft.

(8). Rear yard coverage refers to the degree to which structures cover the area within the minimum required rear setback. Side yard coverage is similarly defined.

(9). No regulation was found limiting or allowing side yard coverage. Since accessory structures less than 8.5 ft in height are allowed to occupy side yards without qualification, it is presumed that no limit applies to the extent to which side yards may be covered by accessory structures.

(10). 10-104.12, pg 10-18. The "certain structures" allowed are limited to a statue, basketball standard, flagpole, and gardening less than 100 sq ft.

8. Food Trucks

Proposed Change: By administrative permit, draft would allow food trucks to operate on property of every non-residential use in a residential community without regard to lot size or proximity to neighbors. Currently, food trucks are not allowed to operate on lots in R-districts.

Draft Text, pg 20: 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.

Response: Change should not be adopted. The proposed regulations should be amended to include provisions adequately protecting communities from unintended consequences of food truck operations.

Rationale: Food trucks are allowed to operate on county and park properties in accordance with county and park authority regulations. They are allowed to operate on public roads per VDOT regulations, and they are allowed to operate on private property per zoning ordinance regulations. This discussion pertains only to the latter.

By administrative permit, Sect. 4102.8.F(2)(d) of the draft would allow food trucks to operate on properties of all non-residential uses in residential districts and all residential areas of P districts without regard to lot size or proximity to neighbors. The draft lists more than 35 non-residential uses allowed in residential districts, including places of worship, private schools, instruction centers, community centers, commercial recreation facilities, and community swim/recreation clubs.

Realistically, residents should be concerned about the likelihood of non-residential uses sponsoring frequent celebrations and fund-raising events featuring one or more food trucks. Specific concerns include traffic control and parking, noise, commotion, crowd control, and security associated with attracting non-residents into the neighborhood. Sect. 4102.8.F(5) should be amended to include explicit provisions for assuring that food truck events in residential districts will be compatible with neighborhoods.

- Participants should be limited to neighbors and people directly associated with the non-residential use sponsoring the event, e.g., students, family members, teachers, and staff of a private school. People who are neither residents of the neighborhood nor associated with the sponsoring organization should not be admitted to the event.
- No food truck operation should be allowed within 100 ft of any property line.
- An individual on-site from the sponsoring organization should be designated as responsible for traffic management and security.
- Event duration should be limited to 4 hours.
- Only one food truck should be allowed.
- All parking on site.

Ordinances Text:

Sect. 2-510. Sales from Vehicles (Synopsis). Current ZO, pg 2-38. Currently, by right, food trucks operations are allowed on any active construction site and, in conjunction with a principal use consisting of a minimum of 25,000 square feet of gross floor area, are allowed in any C or I district as well as the commercial area of any P district. The food truck operator must have a food truck operator permit and the property owner must obtain a food truck location permit. Food truck operation on any site is limited to 4 hours/day. A maximum of three food trucks is permitted at any one location at the same time.

Sect. 4102.8.F. Food Trucks (Synopsis). zMOD Draft. zMOD would expand the area of operation of food trucks by allowing them to operate on properties of all non-residential uses in residential districts and all residential areas of P districts. Operation on any one site would be limited to 12 times per calendar year. An administrative permit would be required. The draft states that the county, in approving the permit, would establish conditions necessary to protect the public health, safety, and welfare and to adequately protect adjoining properties from any adverse impacts of the food truck operation. The time limitation (12/year) could be extended by special exception or special permit.



9. Cluster Subdivision Open Space

Proposed Change: In a cluster subdivision, the current ZO requires that at least 75% of open space or one acre, whichever is less, must be a contiguous area with no dimension less than 50ft. The draft proposes to delete the 50-ft requirement.

Draft Text, pg 21. **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 is defined in the Ordinance to include areas designed for active or passive recreation such as athletic fields and courts, playgrounds, and walking and bicycle trails.

Response: The proposed change should not be adopted. The requirement that 75% of required open space or one acre, whichever is less, must be contiguous with no dimension less than 50 ft should be retained. Where the requirement cannot be met reasonably, the Board has authority to waive the requirement.

Rationale: In R-C, R-E, and R-1 through R-4 districts, reduced lot sizes and setbacks are allowed in order to bring homes closer together and conserve open space in cluster subdivisions in accordance with the Code of Fairfax County, Sect. 101-2.8 (text below). In an effort to assure that significant areas of open space will be conserved, the current zoning ordinance requires that 75% of required open space or one (1) acre, whichever is less, must be a contiguous area with minimum dimensions of 50ft.

zMOD proposes that a requirement for 75% contiguous usable open space should be substituted for the requirement that 75% of the space must be contiguous with minimum dimensions of 50 ft. By definition (below), usable open space is space designed for recreation. Substituting a usable open space requirement would allow scattered fragments of spaces connected by sidewalks to qualify as the significant area of contiguous open space intended for preservation by the Code and the current zoning ordinance.

The 50-ft requirement applies only to 75% of the required open space or one acre, whichever is less. In addition, with the exception of R-2 districts and cluster subdivisions in R-3 and R-4 districts that are larger than 3.5 acres, the Board of Supervisors may approve deviations from open space requirements on a case-by-case basis. The requirement should remain in the ordinance.

Ordinance Text:

Sect. 101-2-8. Cluster Subdivision Provisions. Code of Fairfax County.

When the topography or other physical characteristics of the property are such that a cluster subdivision will preserve open space, steep slopes, floodplains, Resource Protection Areas and/or desirable vegetation, a cluster subdivision may be permitted ... provided that:

.....

(b). Open space shall be provided pursuant to the regulations of the zoning district in which located and Sect. 2-309 of the Zoning Ordinance. To the greatest extent possible and as determined by the Urban Forest Management Division, existing trees shall be preserved within the open space area.

.....

Sect. 2-309.4. Open Space/Cluster Subdivision. Current ZO, pg 2-15/2-16.

In cluster subdivisions, at least seventy-five (75) percent of the minimum required open space or one acre, whichever is less, shall be provided as a contiguous area of open space, which has no dimension less than fifty (50) feet. Deviations from this provision may be permitted with Board of Supervisors' approval of a Category 6 special exception for waiver of open space requirements or appropriate proffered conditions for cluster subdivisions in the R-C, R-E and R-1 Districts and for cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of two (2) acres or greater but less than three and one-half (3.5) acres, if it finds that such deviation will further the intent of the Ordinance, the adopted comprehensive plan and other adopted policies. No deviation from this provision shall be permitted for cluster subdivisions in the R-2 District and cluster subdivisions in the R-3 and R-4 Districts which have a minimum district size of three and one-half (3.5) acres or greater. In cluster subdivisions wherein the required open space will approximate five (5) acres in area, generally such open space shall be so located and shall have such dimension and topography as to be usable open space.

Sect. 5100.3.A(3)(d). Open Space Requirements/Cluster Subdivisions. zMOD Draft.

In cluster subdivisions, at least 75 percent of the minimum required open space or one acre, whichever is less, must be provided as a contiguous area of usable open space. For cluster subdivisions in which the required open space will approximate five acres in area, the open space must be usable open space as defined in Article 9, based on location, dimension, and topography, unless a deviation is permitted according to the following:

1. The Board approves a waiver of open space requirements as a special exception or with appropriate proffered conditions for cluster subdivisions in the R-C, R-E, and R-1 Districts; or
2. The Board finds that the deviation will further the intent of the Ordinance, the Comprehensive Plan, and other adopted policies for cluster subdivisions in the R-3 and R-4 Districts that have a district size of two acres to less than three and one-half acres.
3. No deviation from this provision is permitted for cluster subdivisions in the R-2 District, or in cluster subdivisions in the R-3 and R-4 Districts that have a minimum district size of three and one-half acres or greater.

Sect. 9102. Open Space (def). zMOD Draft.

That area of a lot that is intended to provide light and air, and is designed for either scenic or recreational purposes. Open space may include...lawns, decorative planting, walkways, active and passive recreation areas, children's playgrounds, fountains, swimming pools, undisturbed natural areas, community gardens, wooded areas, water bodies and those areas where landscaping and screening are required ...

Sect. 9102. Open Space, Usable (def). zMOD Draft.

Open space that is designed for recreation. Examples include athletic fields and courts, swimming pools, golf courses, playgrounds, boating docks, and walking, bicycle or bridle trails.