Comments on Seven Substantive Ordinance Changes Proposed by the zMOD Consolidated Draft Dated 30 Jun 2020

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1. Introduction and Purpose

This paper offers comments on seven substantive changes proposed in zMOD's 30 Jun consolidated draft (CD) that directly affect residential neighborhoods. The subject of one change, freestanding accessory structures, has received some attention in public meetings. The remaining six have received little or no attention.

This paper does not discuss accessory living units (ALUs), nor does it discuss home-based businesses (HBBs). A paper dated 5 May commenting on these topics is available on line at https://holmesrun.org/2020/05/06/zmods-flawed-adu-hhb-amendments/. zMOD has since made minor modifications to the proposed ALU/HBB regulations, but the principal issues described on 5 May remain major concerns.

The purpose of this paper is two-fold. The first is to offer constructive comments on the seven proposed changes from the perspective of a concerned resident. Residents naturally should support a more effective zoning ordinance supporting our economic success. However, an ordinance that inadequately protects residential communities from incompatible development will only threaten success. The talented, educated, and experienced workforce upon which success depends will not want to live here.

Secondly, the paper provides a comprehensive description of each of the seven areas as a means for helping residents understand and comment on the proposals. The list of notable changes on pgs 7-30 of the consolidated draft (CD) names more than 100 proposed changes but offers scant information regarding particulars. For example, there are few if any comparisons of new regulations with the current regulations. In addition, the CD seldom provides section numbers for areas of the current zoning ordinance (ZO) affected, and it almost never cites the sections of the CD where the new regulations can be found. The list of notable changes has been sufficient to alert residents that many changes have been made but insufficient for helping them understand either the changes or their potential consequences. One result has been a ration of unproductive angst and exasperation among residents. A second has been the several weeks of searching and scrolling through documents that were required to produce this paper.

The paper is available on line at https://holmesrun.org/2020/11/16/zmods-consolidated-draft.

2. Background:

The goal of the zMOD Program is to "modernize" the zoning ordinance as a means for helping the county execute the March 2015 *Strategic Plan to Facilitate the Economic Success of Fairfax County*. The plan is based on recommendations of the county's Economic Advisory Commission.

Staff briefed the Board on the zMOD Program proposal on 28 Mar 2017. The kickoff briefing to the public led by Chairman Sharon Bulova occurred on 24 Jan 2018. On 1 July 2019, a draft of revised use regulations was released for public comment. The 708-page consolidated draft of a proposed new ordinance was published for comment on 30 June 2020.

The current plan for completing the revision of the zoning ordinance per the zMOD Web site is:
- 23 Nov: Release revised draft ordinance.
- 1 Dec: Request Board authorization to advertise public hearings.
- Jan: Public hearing before the Planning Commission.
- Mar: Public hearing before the Board (Board of Supervisors).

3. Summary of Comments

Each of the following sections of this paper comments on one of the seven proposed changes taken in the order that the change is listed among notable changes on pgs 7-30 of the CD. Each section title is the name given the change in the CD, and the first part of each section is a copy of the text in the CD describing the change. The next part titled "Response" provides a concise statement of the comment. It is followed by "Rationale" describing the basis for the response. The "Conclusion" summarizes the comment. The last part of each section titled "Ordinance Text" provides copies of pertinent sections of the current ZO and/or proposed regulations in the CD to save readers moving back and forth between this paper and bulky ordinance documents. Much of the bulk of this paper is dedicated to providing copies of ordinance text. Ordinance document sections and page numbers are cited throughout for readers seeking additional information.

Comments offered are in two principal categories. A comment that a change should not be adopted means that it is considered counter to the requirement to preserve the character of our residential communities, and zMOD please should drop the proposal. Obviously, changes that should not be

adopted should not be advertised. A comment that the change should not be advertised as is means that the text of the proposal should be revised prior to advertising for public comment.

The table below provides a concise summary of comments on the seven changes. Section numbers in the left-hand column are hyperlinks to following sections of this paper.

Summary of Comments on Seven Proposed Changes

Proposed Change	Description	Comment
Planned "P" Districts (Section 4)	The CD proposes to delete the existing requirement that P districts 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.	Change should not be adopted. The current requirement provides existing residential neighborhoods essential protection against being overwhelmed by nearby future high-density P-district developments, for example homes adjacent to Seven Corners, Bailey's Crossroads, and Annandale CRDs. The current requirement should not be deleted. **Of the seven changes, this proposal has the greatest potential to permanently damage residential neighborhoods.**
Commercial Revitalization Districts (Section 5)	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. 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.
Freestanding Accessory Structures (Section 6)	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 advertised as is. It would allow a resident in a 2200 sq ft home to construct a 36 ft x 30 ft three-car garage and hobby workshop (with a roof pitched 4:12) within 5 ft of his/her lot line to the extreme detriment of neighbors. The one-structure-at-200-sq-ft limit should be retained with a provision for increase by special permit. The 12ft/5ft proposal should be dropped. **This change has the second greatest potential for damaging residential communities.**
Food Trucks (Section 7)	By administrative permit, CD 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.	Change should not be advertised as is. The proposed regulations should be amended to include provisions adequately protecting communities from unintended consequences of food truck operations.

Summary of Comments on Seven Proposed Changes (cont.)

Special Events (Section 8)	CD has rewritten a concise, current regulation for issuing temporary special permits for large-scale events such as circuses and horse shows. The rewrite is an ambiguous, indefinite regulation covering broadly special events from large to small, including all short-term events that do not qualify as temporary uses.	Change should not be advertised as is. It should be thought through and rewritten.
Cluster Subdivision Open Space (Section 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. The CD proposes to delete the 50-ft requirement.	Change should not be adopted. The purpose of the current requirement is to preserve a significant area of contiguous open space to be enjoyed by residents. The proposed change is not consistent with the purpose of cluster subdivisions and should not be adopted.
Construction Project Signage (Section 10)	CD would allow 60-sq-ft signs 10 ft tall on lots in residential districts whereon active construction of any structure for a new non-residential use or for more than 2 residential units is active. The signs would be allowed for 2 years or until construction is finished, whichever occurs sooner.	Change should not be advertised as is. Sixty-square-foot signs are seldom compatible with residential neighborhoods. For construction of non-residential uses and a few homes, a 16-sq-ft sign 4 ft tall should be more than adequate.

4. Planned "P" Districts.

CD Text, 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 superfluous.*

Response: The change should not be adopted and should not be advertised. Deleting the requirement as proposed would deprive communities adjacent to P districts of essential protection against encroachment by incompatible, high-density development.

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.[1] The CD proposes to delete this requirement.[2]

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) 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 again high-density P-district developments overshadowing their communities. In particular, it protects residents living nearby CBCs, CRAs, CRDs and TSAs.[3] The regulation should be retained and not advertised for deletion.

Unfortunately, the CD 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

[1] Bulk regulations limit the density of development. In the ordinance they are usually expressed in terms of maximum building heights and minimum setbacks (aka "yards," the minimum distance allowed between a building and its property lines - front, rear, and sides). The purpose of landscape and screening regulations is to provide visual separation between and among adjacent developments.

[2] Sect. 16-102 in the current ZO has been carried forward to Sect. 2105.1.D, pg 135, in the CD with the exception that Sect 16-102.1 has been deleted per zMOD's proposal discussed in this section.

[3] 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, 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.

ordinance does no such thing! P districts are required to conform only at their peripheries. Reviewers reading on pg 7 of the CD 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 CD suggests that zMOD may have misunderstood the purpose of the regulation proposed for deletion.

Conclusion: The regulation in Sect. 16-102.1 should not be deleted. It should be carried forward to Sect. 2105.1.D of the consolidated draft. **Of the seven changes discussed in this paper, this change to P district regulations has the greatest potential to permanently damage residential communities.**

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.

5. Commercial Revitalization Districts

CD Text, pg 8. **Commercial Revitalization Districts (CRDs).** With the previous draft, this section had been extensively reorganized and consolidated. The changes described below for building height and landscaping were included with the previous draft; the additional changes are new with the current draft.

Setbacks. Currently, 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 height of the building. This draft proposes to allow 20 feet or a lesser setback that 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 CRD. In addition, like with Commercial Revitalization Areas, Community Business Centers, and Transit Station Areas, this draft adds the ability for the Director to modify or waive setback requirements as a part of site plan approval.

Building Height. Increased flexibility is included in the current standards that apply to CRDs in order to encourage redevelopment. The proposed draft expands this flexibility to maximum building height in the same manner as it applies to setback requirements. While setbacks are specified in the underlying zoning district, a lesser front setback is permitted if specified in the Comprehensive Plan. The proposed draft would also allow an increase in the building height permitted in the underlying zoning district if the height is permitted in the Comprehensive Plan.

Response: The changes should not be adopted and should not be advertised. Unilaterally, they would allow development density increases in all CRDs beyond the levels anticipated at the time current plans for CRDs were formulated by citizen task forces and adopted by the Board. The Board has ample authority to increase development densities on a case-by-case basis in hearings in collaboration with citizens.

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) of the CD (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 will 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 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) of the CD (text below), immediately would increase these heights, "by right," to 50 ft.

Conclusion: The proposed changes should not be adopted or advertised. The limits on development density provided by current setback and building height regulations in the ZO have informed a number

of citizen task forces that produced plans for CRDs. The proposed changes unilaterally would allow development densities exceeding those allowed at the time plans were adopted. The Board has the necessary authority to increase development densities on a case-by-case basis with citizen participation in public special exception and rezoning hearings.

Ordinance Text:

3102.3.B Special Exception Uses. zMOD CD, pg 185.

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 CD, pg 185.

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 CD, pg 186.

(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.

6. Freestanding Accessory Structures

CD Text pg. 14. ***Freestanding Accessory Structures.*** *In the previously posted draft, the regulations were revised regarding permitted height, setback, and size requirements to allow additional flexibility in the location of freestanding accessory structures. Under the current provisions, there is a distinction between "accessory structures," which are allowed to be up to seven feet in height in any side or rear yard, and "accessory storage structures," which are allowed to be up to eight and one-half feet in height in any side or rear yard. The proposal eliminates this inconsistency between sheds and other 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.*

In the attached consolidated draft, a new standard has been added limiting the maximum height of any enclosed structure accessory to a single-family dwelling to 20 feet on lots that are 36,000 square feet or less. Staff recommends that a range of 15 feet to 25 feet be advertised for Board consideration. Regarding size, for lots 36,000 square feet or less, a new standard has been added restricting the cumulative total of all enclosed freestanding accessory structures to no more than 50 percent of the gross floor area of the principal structure. Both the maximum height and percentage limitations may be exceeded with special permit approval from the BZA.

Response: The change should not be advertised as is. It would allow an indefinite number of enclosed freestanding accessory structures, with a total enclosed area as large as one-half the gross floor area of the dwelling, to be constructed in the yards of every lot in an R district. Any of these enclosed structures less than eight and one-half feet tall could be constructed on neighbors' lot lines. Minimum required side setbacks on both sides of the house and 30% of the minimum required rear setback could be covered with enclosed freestanding accessory structures. The current ordinance allows only a single enclosed structure limited to an area not exceeding 200 sq ft.

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 CD to Sect. 4102.7.A The regulations in the CD 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 on pg. 11 below compares the regulations in the CD 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. A few differences related to single-family attached homes and corner lots are in the ordinance sections referenced in the table. Notes in the table regarding advertised regulations pertain only to the CD.

The regulations in the current ordinance and the CD 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.

The CD 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 by the CD 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 in the CD 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? One solution would be to continue to allow one structure limited to 200 sq ft by right and to allow the possibility of permitting increased numbers of enclosed structures and increased areas 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 where one would want to have sufficient wall cabinets and work benches. 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. The video is available on the zMOD Web site. In justifying the 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. Probably. However, taken the other way, the complaints filed with DCC demonstrate that structures less than 12 ft tall located as close to lot lines as 5 ft annoy neighbors and should not be allowed!

Conclusion: Enclosed freestanding accessory structures, in addition to any existing standalone garage, should be limited to one per lot not to exceed 200 sq ft in area with a provision for allowing an increase in number and area by special permit. The proposal to allow any structure taller than 8.5 ft in minimum required side and rear setbacks should be withdrawn. **Of the seven changes discussed herein, the proposed changes to regulations for freestanding accessory structures have the second greatest potential for damaging residential properties.**

Summary of Regulations for Freestanding Accessory Structures

Regulation	Current ZO	zMOD CD
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)	Per regulations of zoning district. (2)	5 ft.
() Ht > 12 ft (10-12 ft advertised)	Per regulations of zoning district. (2)	Per regulations of zoning district. (4)
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), pg 314. 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), pg 322. 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.

7. Food Trucks

CD Text, pg 16: ***Food Truck.*** *These regulations have been revised to reflect their increasing popularity. Currently, food trucks are permitted to operate on certain commercial and industrial properties subject to specific hours of operation and location restrictions. They are now proposed to also be permitted in conjunction with approved nonresidential uses, such as swim clubs, private schools, and religious assembly uses, in residential zoning districts and the residential areas of planned districts.*

Response: The proposed change should not be advertised as is. As explained below, appropriate limitations should be added to Section 4102.8.F(5) to better assure that food truck operations in residential districts can be safe and compatible with the residential character of neighborhoods.

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 CD 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 CD 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 fund-raising events and such 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. For example:

- 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.

Conclusion: Using residential neighborhoods to stage food truck events for non-residential uses potentially is not compatible with the peace, quiet, safety, and security that residents cherish. The food truck regulations in Sect. 4102.8.F(5) should be amended to include appropriate provisions to protect communities and to assure that the provisions will be included as sponsor responsibilities in the proposed administrative permit.

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 CD, pg 347. zMOD would expand the area of operation of food trucks by allowing them to operates 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 CD 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.

8. Special Events.

CD Text, pg. 16: ***Special Event.*** *This temporary use has been generalized because of the wide variety of civic, community, business, and entertainment events that individuals and organizations may want to conduct for short periods of time. Instead of listing specific types of events (such as circuses, fairs, and carnivals), the special event use applies to all types of short-term events that do not fall within the definition of any other temporary use. The current standards have been carried forward, including the requirement for the event to be sponsored by a charitable, educational, or nonprofit organization, but the requirement that the 21-day time limit for the event be consecutive has been deleted. This will allow a one-day event to occur over an extended time period, such as a flea market or a weekly entertainment function at a community pool or religious assembly.*

Response: The proposed change should not be advertised as is. In a neighborhood, it would provide any non-residential use making a pretense of being charitable, educational or nonprofit license to claim 21 days of special events notwithstanding agreements with residents limiting the activities and events of the use. At the same time, it would provide no standard for identifying events too small to require licenses. Residents would have a basis to insist, as an example, that any musical event at the church in their neighborhood would require a permit.

Rationale: Sections 8-801.1 and 8-804 of the current ZO (text below) make provisions for special events of up to 21 consecutive days duration provided that:

- Events are limited to carnivals, circuses, festivals, fairs, horse shows, dog shows, steeplechase, music festivals, turkey shoots, sale of Christmas trees or other seasonal commodities and other similar activities. (Sect. 8-801.1)
- Events must be sponsored by a volunteer fire company, local chamber of commerce, veterans' organization, service club, civic organization, place of worship or religious organization, sports or hunt club, charitable, educational or nonprofit organization or recognized chapter thereof whose principal administrative offices are located within the county. (Sect. 8-804.2)
- Where the event would be a circus, fair, or carnival, the Zoning Administrator must determine that the owners are of good repute. (Sect. 8-804.3)

In summary, the current ordinance makes clear provisions for large-scale events sponsored by local nonprofit and service organizations with some assurance that the entities managing events are of good repute.

As a replacement and extension of the existing regulations, Sect. 4102.8.J and 9103.7 of the CD (text below) propose wide-ranging, indefinite regulations. They:

- Define special events broadly to include small-scale events, in particular "the wide variety of civic, community, business, and entertainment events that individuals and organizations may want to conduct for short periods of time" and "all types of short-term events that do not fall within the definition of any other temporary use." (Quoted text from CD Text above.)
- Delete the requirements for a determination of good repute and that the principal administrative offices of the sponsor should be located in the county. (Footnote 787 on pg 352 of the CD.)
- Delete the requirement that the time limit for the event be 21 consecutive days and instead allow the event to occur over 21 individual days scattered over an unspecified period of time.
- Allow the sponsor of an event to be anyone or any organization, county resident or not, with a claim to charitable, educational, or nonprofit status.

The zMOD proposal is unclear regarding the range of events regulated, in particular, how small an event is small enough to avoid regulation. Will a church planning a Christmas concert require a permit? Will

a Buddish New Year's celebration require one? In addition, no requirement assures that permit applicants likely would be known to the county community.

The lack of definition in the draft's proposal for permitting special events jeopardizes neighborhood agreements with non-residential uses regarding their activities. In some cases, the frequency and intensity of activities of non-residential uses are clearly limited by development conditions in their special exceptions and special permits. However, in many SEs and SPs activities and events are not limited because no one thought about it when the SE/SP was drafted. Other non-residential uses have no SE or SP whatsoever because they were founded before the county issued permits.[4] In cases lacking definitive development conditions, the ethic governing events may be only verbal agreements with neighbors that have been worked out, sometimes with difficulty, over a period of several years.

Offering county permits for 21 days of special events to all non-residential uses that qualify as charitable, educational, or nonprofit potentially would nullify neighborhood agreements. Why should any use abide by its verbal agreement limiting events when the county will give it a permit for a full 21 days worth?

Conclusion: The current ordinance is effective. It clearly describes the types of events regulated and the expected qualifications of permit applicants. The CD proposal is indefinite regarding the scope of events regulated and the expected qualifications of applicants. Its lack of definition risks upsetting sometimes tenuous neighborhood agreements with non-residential uses regarding the frequency and intensity of their activities and events.

The proposal in the CD should be thought through and rewritten. Alternatively, zMOD could simply carry forward the text in Sect. 8-801.1 and 8-804.

Ordinance Text:

Sect. 8-801. Group 8 Special Permit Uses. Current ZO, pg 8-45.

1. Carnival, circus, festival, fair, horse show, dog show, steeplechase, music festival, turkey shoot, sale of Christmas trees or other seasonal commodities and other similar activities.
2. Construction material yards accessory to a construction project.
3. Contractors' offices and equipment sheds to include trailers accessory and adjacent to an active construction project.
4. Promotional activities of retail merchants.
5. Subdivision and apartment sales and rental offices.
6. Temporary dwellings or mobile homes.
7. Farmers markets.
8. (Deleted by Amendment #18-476, Adopted December 4, 2018, Effective December 5, 2018)
9. Temporary portable storage containers.
10. Community gardens.

Sect. 8-804. Standards and Time Limits for Carnivals and Other Uses Set Forth in Par. 1 of Sect. 801 Above. Current ZO, pg 8-46.

1. A temporary special permit may be issued for a period not to exceed twenty-one (21) consecutive days.

[4] The activities and events of non-residential uses easily can upset neighborhoods. A church on a local street in my neighborhood has no SP or SE. It's been here quietly for many years. It changed hands recently and has become very active to the point that one neighbor of the church has put a for-sale sign in front of her home.

2. All permitted activities shall be sponsored by a volunteer fire company, local chamber of commerce, veterans' organization, service club, civic organization, place of worship or religious organization, sports or hunt club, charitable, educational or nonprofit organization or recognized chapter thereof whose principal administrative offices are located within the County.
3. Where the activity is a circus, fair or carnival, and the owner of the circus, fair or carnival is an entity other than the sponsoring organization, the sponsoring organization shall furnish the Zoning Administrator the name and address of the owner or owners of the circus, fair or carnival. The Zoning Administrator shall determine, from previous performance and other information, that the owner or owners are of good repute.
4. The sponsoring organization shall furnish the Health Director information as to sanitary arrangements and facilities to be used by the public and employees…..
5. The Zoning Administrator shall not issue a temporary special permit for a carnival or circus where such activity, as proposed, will:
   A. Occur within two (2) miles of any other carnival or circus for which a temporary special permit has been previously obtained under this Section, and
   B. Commence within a time period of three (3) weeks from the ending date of any other carnival or circus within a two (2) mile radius for which a temporary special permit has been previously obtained under this Section.
6. No temporary special permit shall be issued unless adequate provision is made for off-street parking and loading requirements.
7. The Zoning Administrator shall notify the Animal Services Division of the Police Department upon receipt of an application for a temporary special permit involving the display or exhibition of animals……..

Sect. 4102.8.J. Special Event. zMOD CD, pg 352.

Standards when permitted by administrative permit:

(1) An administrative permit may be issued for a period not to exceed 21 days.[5] Any request for a longer period of time or any renewal or extension of a permit may be approved by the BZA, subject to the same procedure as specified in subsection 8101.3 for the original issuance of the permit.
(2) All permitted activities must be sponsored by a charitable, educational, or nonprofit organization operating within the County.
(3) The sponsoring organization must furnish the Zoning Administrator the name and address of the property owner and operator of the special event.
(4) The Zoning Administrator may not issue an administrative permit for a carnival or circus where the proposed activity will:
   (a) Occur within two miles of any other carnival…..
   (b) Commence within a time period of three weeks from the ending date of any other carnival or circus within a two-mile radius …..
(5) No administrative permit may be issued unless adequate provision is made for off-street parking and loading requirements.

[5] This sentence seems to imply 21 consecutive days. However, the CD Text above is clear that the intention is 21 days of events that could be 21 consecutive days, or 21 one-day events, or any combination of days adding up to 21. No limit is specified for the total period of time that the permit would be valid. It could be indefinite. Presumably, after an applicant has celebrated its 21 events, it would be allowed to apply for a permit for another 21.

(6) The Zoning Administrator will notify the Animal Services Division of the Police Department upon receipt of an application for an administrative permit involving the display or exhibition of animals….

Standards when permitted by special permit:

(7) An application for any such approval by the BZA must be filed 120 days before the date on which the permit is to take effect.

(8) A special event as a special permit use must comply with the standards in subsections (1) through (6) above.

Sect. 9103.7. Temporary Uses. zMOD CD, pg 702.

Special Event. (def.): Temporary outdoor activities held on private property, including, but not limited to, seasonal sales, cultural events, musical events, celebrations, festivals, fairs, carnivals, and circuses.

9. Cluster Subdivision Open Space

CD Text, pg 17. ***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 and should not be advertised. 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.

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.

The CD 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.

Conclusion: The change would not comply with the intention of the Code and the current zoning ordinance to preserve a significant area of open space in cluster subdivisions and would not serve the interests of residential communities. The change should not be adopted or advertised. The 50-ft requirement should be retained.

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 CD, pg 393.

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 CD, pg 657.

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 CD, pg 658.

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.

10. Construction Project Signage

CD Text, Pg 20. **Construction Project Signage.** Consistent with current practice, a minimum of three dwelling units has been added in order to have the allowed 60 square feet of signage for active construction projects for residential development.

Response: The proposed changes should not be advertised as is. Sixty-square-foot signs designating construction projects in residential districts are not compatible with the character of our neighborhoods.

Rationale: Sect. 12-105.3 of the current signs ordinance (below) allows the display of a 60-sq-ft sign 10 ft tall for up to 2 years (or project completion whichever occur sooner) in any residential district in conjunction with active construction of a new residential development. No such sign is allowed today for construction of a non-residential use (e.g. a church or private school). A 60-sq-ft sign 10 ft tall is an enormous sign for any residential setting. Presumably, a residential development warranting such a sign during its construction would be comprised on ten's of dwelling units.

Surprisingly the CD proposes in Sect. 7104.4.C (below) to allow these intrusive signs for any residential development of more than two (!) units. In addition, it extends the regulation to allow 60-sq-ft signs for up to 2 years during construction of any building intended for a new non-residential use, which would include a new, small private school like the one on a local street around the corner from my home that was reconstructed in 2010.

Conclusion: Sixty-sq-ft signs for construction projects would not be compatible with residential communities. Sixteen-sq-ft signs no taller than 4 ft might be acceptable to neighbors.

Ordinance Text:

Sect. 12-105.3. Minor Signs/Signs During Active Construction. Current ZO, pg 12-7.

Signs during active construction or alterations to residential, commercial, and industrial buildings are permitted, as follows:

A. For a new residential, commercial or industrial development, one sign per lot, not to exceed 60 square feet in area and a height of 10 feet. For lots containing multiple road frontages, one additional sign per street frontage is allowed, limited to 32 square feet in area and a height of 8 feet. No sign may be located closer than 5 feet to any lot line.

All signs must be removed within 14 days following completion of the construction of the development, as determined by the Zoning Administrator, and no sign may be displayed for more than 2 years from the date of the issuance of the first building permit for the development. If construction has not been completed within this timeframe and building permits are active for the development, a sign permit is required to allow the continued display of any sign.

B. For an individual single-family dwelling unit undergoing construction, improvement or renovation, one sign, not to exceed 4 square feet in area or a height of 4 feet is allowed.

No sign can be displayed before commencement of the improvement or renovation work, and the sign must be removed within 7 days after the improvement or renovation is completed with all necessary inspections approved, or within 6 months, whichever is less.

Sect. 7104.4.C. Minor Signs/Signs During Active Construction. zMOD CD, pg 506.
Signs during active construction or alterations to residential, commercial, and industrial buildings are permitted, as follows:
(1) For a new nonresidential development, or for a new residential development containing a minimum of three dwelling units, one sign is allowed, not to exceed 60 square feet in area and a height of ten feet. For such new developments located on multiple road frontages, one additional sign per street frontage is allowed, limited to 32 square feet in area and a height of eight feet. No sign may be located closer than five feet to any lot line. All signs must be removed within 14 days following completion of the construction of the development, as determined by the Zoning Administrator, and no sign may be displayed for more than two years from the date of the issuance of the first building permit for the development. If construction has not been completed within this timeframe and building permits are active for the development, a sign permit is required to allow the continued display of any sign.
(2) For an individual single-family dwelling unit undergoing construction, improvement, or renovation, one sign, not to exceed four square feet in area or a height of four feet is allowed. No sign can be displayed before commencement of the improvement or renovation work, and the sign must be removed within seven days after the improvement or renovation is completed with all necessary inspections approved, or within six months, whichever is less.