

Readoption of the zMOD Zoning Ordinance
Comments Submitted to Planning Commission for Hearing 3 May 2023
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1. Introduction

The Board of Holmes Run Valley Citizens Association opposes the adoption of the zMOD Ordinance in its current form. The ordinance contains 11 or more substantive zoning ordinance amendments that have not been vetted with residents via the county’s standard process of dedicated staff reports and hearings.

Hearings to consider reinstating the current zMOD Ordinance should not be held until publication of the necessary staff reports and sufficient time has been provided interested parties to review the reports and prepare testimony based on the information provided. Moreover, adoption of the 11 or more new/amended regulations clearly cannot be accomplished in the time available in a single Board hearing.

As described in Sect 4, the May zMOD hearings should focus on the single question of adopting the restructured 1978 ordinance absent additional substantive amendments. The additional amendments can be inserted at a later time in accordance with our zoning ordinance amendment process.

2. Structure of the Paper

Sect 3 reviews early history of the zMOD Program, in particular regarding the scope and limited objectives of the restructuring project. Sect 4 focuses on the issues raised in the introduction, missing staff reports and inadequate time in hearings to allow effective resident participation.

Sect 5, beginning on pg 4, discusses eight amendments that zMOD made to 1978 regulations utterly unrelated to restructuring and updating the ordinance. It discusses as well one regulation zMOD added for a new use (data centers) The objective of discussing the nine amendments is to demonstrate that all are substantive and require staff reports and hearings. In the interest of time, two new zMOD regulations (live-work development and electric vehicle charging stations) are not discussed

Sect 5 contains a number of tables and paragraphs of text extracted from the two ordinances. It is *not* necessary to delve into this material in order to understand the paper. The material is there to “prove” the discussion in the paper and provide additional background and context for those interested. The paper is much shorter than it appears.

3. zMOD Project Background

In the beginning, Mar 2017 thru Jan 2018, program leaders clearly intended that restructuring would not make gratuitous amendments to regulations. That is, no change would be made to 1978 Ordinance regulations for a purpose other than restructuring the ordinance and adding regulations for new and emerging uses. At some point, gratuitous changes became acceptable. Maybe these changes came from developers and other special interests. Maybe the new Board that took office in Jan 2020 wasn't aware of the commitment. Some history:

On 28 March 2017, in a Development Process Committee meeting, Barbara Byron provided the Board its first briefing on the zMOD Program. ([Video record](#) at 00min:30sec). She explained that the program is in three parts:

1. Reformat and restructure the zoning ordinance;
2. Expedite high priority zoning ordinance (ZO) amendments, e.g., by using abbreviated staff reports; and
3. Improve the process by which ZO amendments are authorized and created.

She described the 1978 Ordinance as 40 years old, difficult to use, troubled by redundancies, and not adaptable to publication on the Internet. Hence the need for restructuring. Ms. Byron gave no indication that the restructuring would make changes to existing regulations beyond those changes necessary for restructuring.

On 24 Jan 2018, Chairman Sharon Bulova hosted a public meeting at the Govt Center to launch the public phase of zMOD restructuring project. The project objectives she described were limited to an ordinance more readable and user friendly with a new format and more rational use categories as well as more up-to-date regulations given new and emerging uses. Similarly, Don Elliott, representing Clarion Associates, the contractor selected for restructuring, described the

scope of the project as restructuring the ordinance, adding new and emerging uses, and modernizing the list of uses. Elliott stated that Clarion had *not* been hired to rewrite existing regulations, that such was not in his contract, and that they had not been asked to align the ZO with county development goals. (See 0hr:40min and 0hr:51min in the meeting [video record](#)). Clearly, at that time there was no intention on the part of either Bulova or Elliott to amend regulations not related to restructuring and updating.

On 16 Apr 2018, Leslie Johnson briefed the Mason District Council on the restructuring project describing its purpose and scope in terms very like Chairman Bulova's. Notwithstanding the sincerity of Ms. Johnson's briefing, meeting participants expressed the concern that opening up the ordinance for restructuring would invite gratuitous amendments. Ms. Johnson responded that there was no intention of making gratuitous changes.

The upshot of this history is the restructured zMOD Ordinance that the Board majority accepted on 23 Mar 2021 contains eight (possibly more) substantive revisions of 1978 regulations that are altogether unrelated to restructuring and updating as follows:

- | | |
|---|---|
| (). Accessory Living Units | (). P-District Bulk Regulations |
| (). Free Standing Accessory Structures | (). Limited Cluster Subdivision Open Space |
| (). Home-Based Business | (). Commercial Revitalization District Bulk Regs |
| (). Limiting BZA Authority | (). Food Trucks |

While in the early days the expressed intent of the project clearly was limited to restructuring and updating, at some point the Board, consciously or otherwise, made a decision to allow substantive regulation amendments not related to restructuring. For example, in the 23 Mar 2021 hearing, Chairman McKay expressed the opinion that *not* amending Home-Based Business regulations while restructuring would have been an "opportunity missed." ([Video record](#) at 5hr:55min)

It is distressing to notice that the county has gone from a commitment to residents that gratuitous amendments would not be made during restructuring, to gratuitous amendments as riders on restructuring are opportunities not to be missed, to substantive amendments to the zoning ordinance no longer require staff reports and hearings.

Now the zMOD Ordinance is a Trojan Horse of substantive, controversial, gratuitous, unauthorized zoning regulation amendments.

4. Staff Reports and Hearings Required

zMOD restructured the 1978 Ordinance and modernized the document with plain language, graphics, and hyperlinks. It then published the ordinance on the Internet in a format compatible with a range of devices. It also added a number of new regulations for new and emerging uses. As expected, restructuring the ordinance required editorial changes to the text of a number of 1978 Ordinance regulations as well as reformatting the entire document.

Unexpectedly, in the process of restructuring the ordinance, staff also made substantive changes to eight 1978 regulations that are utterly unrelated to restructuring and equally unrelated to new

and emerging uses. In the context of the zMOD restructuring project, these amendments are entirely gratuitous.

In no case has a staff report been prepared to explain and justify any of the gratuitous amendments. Similarly, no staff report has been prepared for any of the new zMOD regulations for new and emerging uses. The purpose of staff reports is to provide concise, easy-to-understand information for all interested parties, including decision makers, explaining the terms of and *rationale for* proposed ordinance amendments. They are recognized universally as necessary for proper, appropriate, defensible land use decisions. Staff reports are required for the eight gratuitous amendments as well as for the three or more new regulations for new and emerging uses.

Apparently the Board intends to adopt the eight gratuitous amendments plus all of the new regulations en masse in its 9 May hearing. That's a total of at least 11; the number of new regulations is three or more. A resident on 9 May wishing to address all 11 in his/her allotted three minutes would be limited to 16.4 seconds to speak to each one, inadequate time for effective public participation in the decision making process.

Hearings to consider reinstating the current zMOD Ordinance should not be held until publication of the necessary staff reports and sufficient time has been provided interested parties to review the reports and prepare testimony based on the information provided. Moreover, adoption of the 11 or more new/amended regulations clearly cannot be accomplished in the time available in a single Board hearing. A number of hearings will be required.

There is value in reinstating that portion of the zMOD Ordinance that constitutes the restructured 1978 Ordinance as soon as reasonably possible. The solution may be to delete the gratuitous amendments (in each case, put back the text in the 1978 Ordinance) and delete the new regulations. None of these changes would significantly affect the remainder of the document. The gratuitous amendments and new regulations, including their staff reports and hearings, can be taken up at a later time.

5. Eight Gratuitous Amendments and Data Centers

The following section briefly summarizes principal issues associated with the eight gratuitous amendments and the new amendment for data centers, nine substantive amendments in all.

For each amendment, a modicum of background and context is provided followed, in the case of the gratuitous amendments, by a comparison of the 1978 and zMOD regulations. Principal issues are identified and recommendations for addressing the issues are given. The purpose is to demonstrate that the issues are substantive in their potential consequences for our residential neighborhoods. As a result, and in accordance with county norms, staff reports and hearings are required.

A 39-page [paper](#) providing a comprehensive discussion of the issues (less data centers) was distributed to the Planning Commission and the Board on 18 Jan 2021, seven weeks prior to the 9 Mar 2021 Board hearing.

5.1. Accessory Living Units

The table below summarizes principal 1978 and zMOD ordinance regulations for interior accessory living units (ALUs). A chart providing a comprehensive comparison of the regulations is in Sect 4.4 of the 39-page [paper](#) submitted on 18 Jan 2021.

Excerpts of Principal Regulations for Interior ALUs

Regulation	1978 Ordinance (Sect. 8-918)	zMOD Ordinance (Sect. 4102.7.B)
Permit Required	Special	Administrative
Primary Dwelling	ALU is allowed only in association with a single family detached dwelling.	Same
Floor Area	Not exceeding 35% of gross floor area of principal dwelling.	Not exceeding lesser of 800 sf and 40% of principal dwelling gross floor area. No limit on floor area if ALU is in basement of principal dwelling.
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.	ALU limited to max of 2 people. One unit must be owner occupied.
On-Site Parking	BZA shall determine whether an additional off-street parking space is required.	One additional space is required beyond the number required for a single family detached dwelling. One space must provide convenient access to the street.
County Inspections	Owner shall allow inspections of property during reasonable business hours upon prior notice.	If approved by administrative permit, no requirement to allow county inspections.
Allowed by Special Permit		Increased size, no requirement for additional parking space. If approved by special permit, permit may require county inspections during reasonable business hours.

The *1978 Ordinance* (the current version of the 1978 ordinance) reflects the original intention of ALUs, namely to provide an independent living unit in one’s home for family members (or others) who are able to live independently but occasionally may need help, for example, “mother-in-law suites.” A special permit is required, the ALU or the principal dwelling must be occupied by a person over 55 or disabled, and the county has the right to inspect the property to assure that it does not morph into a boarding house (i.e., a house crowded with families beyond the limit permitted by the ordinance).

The principal benefit of the special permit is it allows neighbors to participate in establishing appropriate development conditions to assure ALU compatibility with the neighborhood. The

principal value of the requirement to allow inspections is it permits county inspectors to enter the premises to investigate resident complaints that an ALU is not complying with regulations, for example, overcrowding.

The zMOD Ordinance inappropriately transforms the ALU allowed in the 1978 Ordinance for elderly/disabled residents by special permit into a functional two-family duplex available to anyone via administrative permit. Dropping the special permit requirement excludes neighbors from their rightful opportunity to negotiate development conditions when the single-family house next door becomes a two-family house. And by deleting the ability of the county to inspect the premises, zMOD invites an easy second transition - this one from duplex to boarding house.

ALUs should require special permits and the permits should include the county’s right to inspect the premises upon prior notice.

The list of zMOD’s *Notable Changes from the 1978 Ordinance* simply summaries the zMOD Ordinance (the zMOD ordinance dated 23 Mar 2021) requirements for ALUs. It provides no substantive justification for the amendment, forecasts no benefit for the county community, and make no suggestion for managing unintended damaging consequences potentially imposed upon neighbors and neighborhoods.

This zMOD amendment is not related to restructuring the 1978 Ordinance or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance pending an appropriate staff report and hearings.

5.2. Free Standing Accessory Structures

The following table compares regulations for enclosed freestanding accessory structures (FASs) allowed by-right for single family detached homes in R-districts..

Summary of Regulations for Enclosed Freestanding Accessory Structures Allowed By-Right for Single Family Detached Homes in R-Districts.

Regulation	1978 Ordinance (Sect 4120.7A(5&6))	zMOD Ordinance (Sect 10-102 thru 104)
Number of enclosed structures	Only one enclosed structure.	No limit.
Area of enclosed structure(s)	200 sf.	Sum total area of all enclosed FASs may not exceed 50% of gross floor area of dwelling unit.
Height:		
Lots < 36,000 sf	Per regulations of zoning district.	20 ft.
Lots > 36,000 sf	Per regulations of zoning district.	Per regulations of zoning district.
Side Setback:		
Height < 8.5 ft	No limit. May be on lot line.	No limit. May be on lot line.
8.5 ft <Ht< 12 ft	Minimum side setback of zoning district. (15 ft in R-2 district.)	5 ft.

Regulation	1978 Ordinance (Sect 4120.7A(5&6))	zMOD Ordinance (Sect 10-102 thru 104)
Ht > 12 ft	Minimum side setback of zoning district.	Minimum side setback of zoning district.
Rear Setback:		
Height < 8.5 ft	No limit. May be on lot line.	No limit. May be on lot line.
8.5 ft <Ht< 12 ft	Distance equal to structure height.	5 ft.
Ht > 12 ft	Distance equal to structure height.	Distance equal to structure height.
Front Yard Limitations:		
Lots < 36,000 sq ft	Only certain structures are allowed in front yard.	Only specified structures are allowed in front yard.
Lots > 36,000 sq ft	Storage and other structures are allowed in front yard. Only certain structures are allowed within the minimum required front setback.	Structures, except composting, are allowed in the front yard. Only specified structures are allowed within the minimum required front setback.
Rear Yard Coverage	30%.	30%.
Allowed by special permit	Rear yard coverage up to 60%. Side yard coverage up to 50%.	Rear yard coverage to 60%. Side yard coverage up to 50%. Increased structure height and total area of enclosed FASs.

The principal differences between the two ordinances are:

- By-right, zMOD allows an unlimited number of enclosed structures with a combined total area equal to 50% of the dwelling (1000 sf for a 2000 sf home). The 1978 Ordinance sets a limit of only one enclosed FAS and the area must not exceed 200 sf.
- By-right, zMOD allows a structure between 8.5 ft and 12 ft tall as close as 5 ft to rear and side lot lines. The 1978 Ordinance limits any structure taller than 8.5 ft to be a distance equal to the structure height from the rear lot line and to meet the side set back requirement of the zoning district (15 ft for R-2).
- By special permit, zMOD allows increased sum total area of the enclosed FASs and increased structure heights. Like the 1978 Ordinance, it allows rear and side yard coverage up to 60% and 50% respectively Sect 10-102 of the 1978 Ordinance states that structure area may *not* be increased by special permit.

On lots with areas less than 36,000 sf, zMOD limits structure heights to 20 ft while the 1978 Ordinance allows heights up to the maximum permitted by zoning district regulations. But it's difficult to imagine a 200 sf enclosed structure much taller than 20 ft.

The freestanding accessory structures that zMOD allows by right easily would overwhelm neighbors and neighborhoods. Structures allowed by right should be limited to the structures allowed by the 1978 ordinance. Any increase in the number of structures, areas of structures, or heights should require special permits. Special permits would allow neighbors to participate in deciding where, to what degree, and under what conditions additional structures would be allowed.

The list of *Notable Changes from the 1978 Ordinance* states that the FAS standards were revised to increase flexibility in locating the structures.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance pending an appropriate staff report and hearings.

5.3. Home-Based Business

The table below compares home-based business (HBB) regulations in the 1978 Ordinance with those in the zMOD Ordinance, in both cases assuming business operations under administrative permits. The principal differences are in the range of uses allowed, equipment limitations, ability of the county to inspect the premises, and additional uses allowed by special permit.

The uses allowed in the 1978 Ordinance are limited principally to cottage industries and schools of special education. zMOD allows a greatly expanded list of uses, including production of anything manageable within an oversized two-car garage and retail sales of anything legal to sell in Virginia . (Deliveries must be accomplished online or offsite.)

Similarly, in the interest of limiting noise and vibration, the 1978 Ordinance limits mechanical and electrical equipment used in home businesses to devices normally found in a home or small office. zMOD places no limit on home-business equipment.

Finally, by special permit, the 1978 Ordinance allows barbershops and home professional offices (clients). zMOD allows barbershops. In addition it allows outdoor activities, a larger floor area, additional employees with expanded work hours, and more customers.

The 1978 Ordinance requires home businesses to allow county inspections during reasonable hours. In the absence of complaints from neighbors, inspections cost neither the county nor the business owner anything. But the value of the insurance that inspections provide neighbors is immeasurable. They allow the county to enter home-business premises to investigate neighbors' concerns. Without authority for inspections, the county has no right to enter premises no matter the angst expressed in no matter how many neighbor complaints. Astonishingly, zMOD has dropped the county's right to inspect home businesses.

As a note, the yard signs shown in the table below as allowed under zMOD are a consequence of a relatively recent signs amendment. They were not introduced by zMOD.

zMOD's home businesses allowed by administrative permits threaten neighborhoods. The range of uses allowed is nearly unlimited as is the electrical and mechanical equipment permitted on site. The special permit process allows the owner to continuously grow the business in floor area, employees, and customers. And zMOD's generous regulation for enclosed freestanding accessory structures (i.e. area up to 50% of dwelling gross floor area) would provide abundant space in workshops located on neighbors' lot lines, with attendant workshop noise and vibration as well as light pollution and loss of privacy from shop windows.

No matter the damaging consequences for neighbors, no matter their concerns, the county has no ability to inspect the premises. Home business activities allowed by administrative permit

should be limited to a range similar to those permitted by the 1978 Ordinance. A wider scope should require a special permit. In both cases, county inspections should be allowed.

The list of *Notable Changes from the 1978 Ordinance* simply summaries the zMOD Ordinance provisions for HBBs. Like the other amendments, it provides no substantive justification, forecasts no benefit, and makes no suggestion for managing unintended damaging consequences potentially imposed upon neighbors.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance pending an appropriate staff report and hearings.

Comparison of Regulations for Home Businesses with Administrative Permits

Regulation	1978 Ordinance (Home Occupations, Art 10-300)	zMOD Ordinance (Home-Based Business, Sect 4102.7.H)
Permit Required	Administrative	Administrative
Uses Permitted	Artists, authors, composers, dressmakers, tailors, home crafts, office, schools of special education, riding lessons.	Retail sales with sales & delivery offsite or online; health and exercise facility; repair and rental of household items such as musical instruments, sewing machines, radios and watches; offices; 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.
Use Limitations	Antique shops, barbershops and beauty parlors (except by special permit), 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 Ordinance does not characterize uses considered inappropriate for home businesses.
Appearance of the Property	No exterior evidence that dwelling is other than a residence. Business must be conducted entirely within enclosed structures.	Other than signs, no exterior evidence that property is other than a dwelling. Business must be conducted entirely within enclosed structures.
Outdoor Signs and Displays	Signs not permitted. Outside display or storage of business-related goods, equipment, or materials is not allowed.	Up to three yard signs, none exceeding 4 sf or taller than 4 ft, are permitted per 7100.4.D. Outside display or storage of business-related goods, equipment, or materials is not allowed.
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.

Regulation	1978 Ordinance (Home Occupations, Art 10-300)	zMOD Ordinance (Home-Based Business, Sect 4102.7.H)
Employees on Site	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 single-family detached dwelling, one non-resident employee is permitted regardless of the number of HBBs and day care facilities on the lot. A non-resident employee may work on-site only between 7:00 AM and 6:00 PM.
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 are allowed only for instructional activities with health and exercise facility or specialized instruction center. Customers are limited to 4 at one time and 8 per day. Hours during which customers may visit the premises are limited to 8:00 AM – 9:00 PM. If a home day care facility is on-site, HBB customers are not allowed. If HBB has on-site customers or clients, one designated off-street parking space must be provided.
Equipment Limitations	No mechanical or electrical equipment other than normally found in a home or small office.	No limitation.
County Inspections	Dwelling shall be open for county inspection during reasonable hours.	No requirement.
Hours of Operation	No limitation.	No limitation.
Floor Area	No limitation.	Floor area, including storage, is limited to max of 400 sf.
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 and trailers are not allowed.
Allowed by Special Permit	Barbershops and beauty parlors Home professional office	Barbershops and hair salons, outdoor activities, larger floor area, additional employees, different work hours for employees, and more customers.

5.4. Limiting BZA Authority

Article 8, Special Permits, of the 1978 Ordinance, excerpted below, requires the BZA, in approving special permits, to assure that the permitted use will be compatible with the surrounding community. Sect. 8-001 stipulates that where a use would not be compatible with the neighborhood, the BZA should deny the special permit. Sect. 8-006 requires that the proposed use should not hinder the use or development of nearby properties or impair their values. The regulations are blanket requirements that apply to BZA processing of all special permits.

ARTICLE 8 SPECIAL PERMITS (1978 Ordinance)

8-000 GENERAL PROVISIONS

8-001. Purpose and Intent

.....

The BZA may approve a special permit under the provisions of this Article, when it is concluded that the proposed use complies with all specified standards and that such use will be compatible with existing or planned development in the general area. In addition, in approving a special permit, the BZA may stipulate such conditions and restrictions, including, but not limited to, those specifically contained herein, to ensure that the use will be compatible with the neighborhood in which it is proposed to be located. Where such cannot be accomplished, or it is determined that the use is not in accordance with all applicable standards of this Ordinance, the BZA shall deny the special permit.

8-006 General Standards

.....

3. The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance with the applicable zoning district regulations and the adopted comprehensive plan. The location, size and height of buildings, structures, walls and fences, and the nature and extent of screening, buffering and landscaping shall be such that the use will not hinder or discourage the appropriate development and use of adjacent or nearby land and/or buildings or impair the value thereof.

The corresponding language below from the zMOD Ordinance in Sect. 8100.4, Special Permits, simply states that the BZA may approve special permit applications that conform to ZO requirements and may impose limitations on the use. The requirement for the BZA to determine that the use would be compatible has been dropped.

8100.4 Special Permits (“Adopted” zMOD Ordinance)

.....

B. Authority

.....

(2) Limits on Authority

.....

(b) The BZA is authorized to determine whether a special permit application conforms to the provisions of this Ordinance. Upon a determination of conformity, the BZA may approve the special permit subject to the conditions and restrictions it deems necessary.

The fundamental purpose of the zoning ordinance is to guard against incompatible development, and **the BZA has unambiguous, blanket authority, more directly an obligation, to deny special permit applications for incompatible uses. Sect 8100.4 of the zMOD Ordinance does not reflect that authority.**

The blanket authority and obligation of the BZA to assure compatibility in its decision making should be clearly stated in Sect. 8100.4, Special Permits. So it is in Article 8 of the 1978 Ordinance and so it should be in Sect 8100.4 of the zMOD Ordinance.

The list of *Notable Changes from the 1978 Ordinance* dated 5 Apr 2023 makes no mention of the changes made to the description of BZA’s authority in Article 8.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance.

5.5. P-District Bulk Regulations

Sect. 16-102 of the 1978 Ordinance provides design standards applicable to all planned developments. Sect. 16-102.1, in part, requires P-districts to 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 development.

Sect. 16-102. Design Standards (1978 Ordinance)

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.

The clear meaning of Sect. 16-102.1 is that P-district bulk regulations and landscape and screening (L&S) provisions at the periphery of P-districts should generally conform to those of adjacent properties.

In restructuring zMOD, Sect. 16-102 was moved to Sect. 2105.1, Standards for All Planned Districts. In the process, Sect. 16-102.1, the requirement for compatibility at P-district peripheries was dropped. The rationale for the deletion given in *Notable Changes from the 1978 Ordinance* dated 5 Apr 2023 is that Sect. 16-102.1 is meaningless because L&S requirements depend upon land use, not zoning district. The rationale, of course, is both specious and senseless.

Bulk regulations absolutely depend upon zoning district, so the provisions in Sect. 16-102.1 regarding bulk are perfectly stated. L&S requirements today are written in terms of land use and land use broadly implies zoning district (e.g., residences are in R- and P-districts). No one familiar with the ZO has difficulty understanding the intent of Sect. 16-102.1 and how to apply it at peripheries of P-districts. **The regulation certainly is not meaningless, and it should be retained in its entirety in Sect. 2105.1 of the zMOD Ordinance.**

Removing the requirement would encourage P-district developments looming over residential developments on the other side of the district boundary, for example, in Seven Corners, Bailey's Crossroads, and Annandale. The Board has adequate authority and flexibility to apply the regulation appropriately to P-district developments on a case-by-case basis.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance.

5.6. Limited Cluster Subdivision Open Space

In Sect 2-309.4, the 1978 Ordinance requires that, in a cluster subdivision, at least 75% of open space or one acre, whichever is less, must be a contiguous area with no dimension less than 50 ft. In Sect 5100.3.A(3)(d), the zMOD Ordinance deleted the 50-ft requirement.

In R-C, R-E, and R-1 through R-4 districts, the Code of Fairfax County in Sect 101-2-8 allows reduced lot sizes and setbacks in order to bring homes closer together and conserve open space in cluster subdivisions. In an effort to assure that a significant area of open space is conserved, the 1978 Ordinance requires that *75% of required open space or one acre, whichever is less, must be a contiguous area with minimum dimensions of 50 ft.*

In place of the 50 ft requirement, the zMOD Ordinance substitutes a requirement that *75% or one acre must be provided as contiguous usable open space.*

Open space is an area intended to provide light and air, and designed for either scenic or recreational purposes. It may include lawns, walkways, recreation areas, playgrounds, natural areas, and water bodies. By definition, usable open space is designed for recreation including athletic fields and courts, playgrounds, and walking paths. Usable open space is simply open space that one can walk on.

Usable open space is not an effective substitute for the 50 ft requirement. Accepting usable open space in lieu of the minimum 50-ft dimension would allow scattered fragments of land connected by sidewalks and trails to qualify as the significant contiguous area of OPEN space intended for preservation by the Code and required by the 1978 Ordinance. 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 has flexibility to approve deviations from open space requirements on a case-by-case basis.

Notable Changes from the 1978 Ordinance dated 5 Apr 2023 provides no rationale for the amendment. It simply states that the 50-ft requirement has been replaced by a requirement for usable open space.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance pending an appropriate staff report and hearings.

5.7. Commercial Revitalization District Bulk Regulations

The table below lists nominal setback and building height limits for commercial districts (C-districts) in CRDs (Commercial Revitalization Districts). These limits are nearly the same in the 1978 and zMOD Ordinances. The 1978 Ordinance regulations are in Appendix 7 and Article 4. zMOD's are in Sect 2103 and Sect 3102.3.B&C

Bulk Regulations for C-Districts in CRD's in 1978 and zMOD Ordinances

Zoning District	Min. Front Set Back, ft	Max. Building Height, ft
C1- Low Rise Office Transitional	20	35
C2 - Limited Office	20	40
C3 - Office	20	90
C4 - High Intensity Office	20	120
C5 - Neighborhood Retail Commercial	20	40
C6 - Community Retail Commercial	20	40
C7 - Regional Retail Commercial	20	90
C8 - Highway Commercial	20	40

The difference between the two ordinances is in the means by which setback and building height limits may be waived or modified in CRD's. See table below. The 1978 Ordinance allows modifications only by special exceptions. The zMOD Ordinance allows modifications by special exceptions but also allows reduced setbacks and increased building heights if they are specifically stated in the Comp Plan. In addition, the Director is given unlimited authority to waive setback requirements during site plan review.

Means for Modifying C-District Setback and Height Regulations in CRD's

Ordinance	Waive/Modify Min. Setbacks	Increase Max. Building Height
1978 Ordinance	Special Exception	Special Exception
zMOD Ordinance	Special Exception Comp Plan Director during site plan review	Special Exception Comp Plan

The effect of the zMOD amendment is to provide additional options for squeezing more and taller buildings onto a parcel of land. The five CRD's (Annandale, Bailey's Crossroads, McLean, Richmond Highway, and Springfield) are surrounded by residential developments. Higher density development in these CRD's facilitated by reduced setbacks and increased building heights promises immense buildings looming over homes in adjacent neighborhoods blocking sunlight and compromising privacy in yards. Higher density development also implies increased noise, air, and light pollution not to mention traffic.

Special exceptions are a public process, a process that allows affected residents an opportunity to engage in decision making that directly affects their homes, their families, and their quality of life. The special exception process is appropriate for coordinating allowances for reduced setbacks and increased building heights with the surrounding community.

On the other hand, language overriding zoning regulations absolutely does not belong in the Comprehensive Plan. Where one needs to know the setbacks and heights that apply to a parcel of land, it should be sufficient to look in the zoning ordinance for regulations corresponding to the

zoning district and any overlays. If overriding language is allowed in the Comp Plan, a second step would be necessary to search for that language.

zMOD has made a substantial effort to simplify locating information in the zoning ordinance. Nothing would be more counterproductive to that effort than to require searching the Comp Plan for overriding setback and height regulations. The Comp Plan utterly lacks a functional table of contents and the organization is a puzzle. Few documents are more difficult to search. Secondly, the Comp Plan is guidance; regulations have no place in the document. Finally, the Comp Plan is limited to conceptual plot layouts devoid of details relevant to deciding appropriate setbacks and heights.

There may be instances in the 1978 Ordinance that allow overriding zoning regulations in the Comp Plan. If so, they should be expunged. In the meantime, the zMOD Ordinance should not perpetuate the practice.

The Director should *not* be allowed to make unlimited modifications to setback regulations during the plan review process. The practice would provide no opportunity for affected residents to participate.

Notable Changes from the 1978 Ordinance states that zMOD made these changes “to encourage redevelopment.”

This zMOD amendment is not related to restructuring or to new uses. It should be deleted and replaced by the language in the 1978 Ordinance pending an appropriate staff report and hearings.

5.8. Food Trucks

Sect 2-510 of the 1978 Ordinance allows food trucks as an accessory use in any C-district or I-district in conjunction with a principal use consisting of a minimum of 25,000 sf gross floor area. They are allowed as well on any construction site with an active building permit and ongoing construction activity. With the exception of construction sites, the 1978 Ordinance does not allow food trucks to operate on properties in R-districts.

By administrative permit, Sect. 4102.8.E of the zMOD Ordinance would allow food trucks to operate on properties of all non-residential uses in R-districts and all residential areas of P-districts without regard to lot size or proximity to neighbors. The zMOD Ordinance 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. Instances of non-residential uses are ubiquitous in the county’s neighborhoods. Some instances are large scale, but the land area of many is no more than that of a standard residential lot.

Curiously, zMOD allows non-residential uses in R-districts to have food trucks but denies residential uses in conventional R-districts the same privilege.

Non-residential uses in R-districts are expected to be well behaved and residential in character. However, realistically, residents should be concerned about the likelihood of non-residential uses sponsoring disruptive 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.E of the zMOD Ordinance should be amended to include explicit provisions for better assuring that food truck events in residential districts would be compatible with neighborhoods. The provisions might include:

- Participants should be limited to people directly associated with the non-residential use sponsoring the event and their guests.
- No food truck operation should be allowed within 50 ft of any property line.
- An individual on-site representing 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.
- Hours of operation should be limited, e.g., 9 AM to 7 PM.
- A minimum lot size
- All parking on site.

Notable Changes from the 1978 Ordinance states that the amendment was made to reflect the increasing popularity of food trucks.

This zMOD amendment is not related to restructuring or to new uses. It should be deleted pending an appropriate staff report and hearings.

5.9. Data Centers

The early days of zMOD restructuring recognized that it would be appropriate to add regulations for new uses, that is, uses that have emerged recently albeit without dedicated ordinance regulations. Data centers is one of those new uses. Prior to restructuring, data centers had been regulated as telecommunication facilities, which are not allowed by right in R-districts, but are allowed by right in C-1 thru C-8 districts and elsewhere. The zMOD Ordinance allows data centers by right in C-3, C-4, I-2 thru I-6, PRC, PDC, and PTC districts.

Allowing data centers by right potentially threatens residential districts. They are a notorious source of persistent noise, and may have integral diesel-powered electrical generators with attendant noxious emissions. Proposed regulations for data centers should be substantiated by information in a dedicated staff report that describes experience with data centers elsewhere and considers the need for special permits where data centers could be proposed nearby residential and other sensitive districts. Special permits would allow affected residents and neighborhoods to participate in setting appropriate development conditions to assure compatibility.

Notable Changes from the 1978 Ordinance simply summarizes the proposed regulations.

The data center regulation should be deleted pending an appropriate staff report and hearings.