

Dear Commissioners,

I commend your review of the current iteration of zMod. I still have many zMod concerns, but in this letter I shall try to be concise and stick to issues that I believe can be still be resolved in the short time you have left before you must vote.

To reiterate: As mentioned in my previous letter, I have a rather thorough understanding of what the Zoning Ordinance Modernization Project is supposed to accomplish because, from the very beginning of zMod discussions and up until a year ago, James Migliaccio and I were the Planning Commissioners assigned to shepherd zMod through the PC's part of the process. Much of the work put into the current zMod iteration was "house cleaning" the old, existing Zoning Ordinance and its inconsistencies and making the entire process more streamlined and user-friendly. The new charts, photos charts, and hot links will be very useful for applicants and for the public in general.

During the years that this long and tedious "house cleaning" was underway, a few zoning updates did proceed individually through the normal vetting process. We were assured that most difficult and contentious issues would come later and specifically NOT be part of zMod Phase One. However, the current zMod iteration does contain some significant substantive changes that have not received the normal public vetting. Here are several among the details that should be clarified and resolved prior to the Planning Commission vote on zMod:

1. Much of the current unhappiness with zMod will be eased if the new Accessory Living Units (ALUs) and Home Based Businesses (HBBs) "by right" are eliminated, and instead require special permits with public hearings and notifications to neighbors. It is noted that staff indicates relatively few new ALUs are expected to appear in the County. This implies that not much additional staff work would be needed if Special Permits were to be required, with public hearings and notification to the neighbors. [However, home occupations that have NO impact on the neighborhood, that is, not clients or customers ever come to the premises and the homeowner does not have an extra vehicle for work, should be "by right" and not be required to obtain a permit.]
2. Similarly, public entertainment and indoor recreation uses (including smoking lounges, shooting ranges, craft beverage production, etc.) must **NOT** be "by right" in or next to residential areas, but instead require Special Permits with notifications and public hearings. Of special concern are the PRC, the C-5 District (neighborhood-oriented convenience shopping), and the C-6 District (retail commercial and service uses oriented to serve multiple neighborhoods within the community).
3. As discussed in the Planning Commission session on February 3, 2021, applications for ALUs and HBBs in areas served by wells and/or septic systems need to receive some sort of review and approval by the Health Department in addition to special permits with public hearings and notifications to neighbors.
4. An issue I have not yet heard addressed when discussing possible elimination of the current ALU age 55 / disability requirement is that page 355 states,

“(2) An accessory living unit must be wholly contained within the structure of a single-family detached dwelling unit and must have direct access to the principal dwelling through an interior space that is finished, temperature controlled, and fully enclosed.

“(3) Any new external entrance proposed for an accessory living unit must be located on the side or rear of the dwelling. Any proposed garage or carport must be located directly adjacent to any existing garage or carport, and the associated driveway and curb cut must be the same as that which serves the principal dwelling.”

If ALUs are indeed to be rented to non-relatives and relative strangers, wouldn't this “direct access” requirement, (which may even force renters to use the owner's garage entrance into and passage through their home) create a potential security issue and gross invasion of privacy?

5. Many of the proposed rules are not easy to comprehend by the general public. Prior to the PC vote, please task staff to create and submit to the PC a comprehensive, user-friendly “FAQ” list to include, at a minimum, the following questions:

a. Will ALUs be affordable housing? [Some people do not seem to understand that ALUs are not the same as ADUs. Nothing in zMod requires these new rental units to be “affordable.”]

b. What is the interrelationship between ALUs, HBBs, Short Term Lodgings (STLs), and Home Day Care Facilities? Specifically, what are the combined rules and total daily limits for parking and the number of visiting clients?

c. Re: the two-person limit for ALUs - How will the county count regular overnight guests, like "significant others," or children who frequently visit a parent in a divorce situation? What happens if a couple has a baby? Who is responsible for violations, the renter or the homeowner? [Telling the public that such situations will be handled on a case-by-case basis does not provide enough information to the general public.]

d. Page 364 states, “The total area used for the home-based business, including storage, is limited to a maximum size of 400 square feet [advertised range of 200 to 750 square feet].” How will the county enforce the “square feet, including storage” rule for HBBs? How might the government prevent the homeowner from storing some business-related materials elsewhere in the house? [If the “including storage” rule cannot be enforced, why even have such a rule?]

e. One last point I have not yet heard mentioned: Can the homes of military personnel on orders outside the Capitol area (yet who still vote and pay taxes and otherwise maintain their Fairfax County residency) be counted as “owner-occupied”? Or instead, must their possibly long-term tenants be evicted, perhaps on very short notice, if the military homeowner receives such orders?

E. J. "Nell" Hurley