



Sully District Council of Citizens Associations

JOINT SULLY DISTRICT LAND USE AND TRANSPORTATION COMMITTEE **TESTIMONY TO THE FAIRFAX COUNTY PLANNING COMMISSION ON THE ZMOD2** **(ZONING ORDINANCE MODERNIZATION PROJECT)**

3 MAY 2023

JSDLU&TC RESOLUTION ON ZMOD2

BACKGROUND (1 OF 2)

- The Joint Committee opposed Fairfax County's original Zoning Ordinance Modification Project (ZMOD) and the subsequent Agritourism amendment in 2021, with resolutions approved on 18 January 2021, and 19 April 2021
- The Fairfax County Board of Supervisors, over numerous citizen objections, and disregarding significant recommendations of the Fairfax County Planning Commission, adopted a rewrite of the Fairfax County Zoning Ordinance, known as ZMOD (Zoning Ordinance Modernization Project), on March 23, 2021
- The Fairfax County Board of Supervisors, again over numerous citizen objections, adopted the Agritourism amendment on June 22, 2021

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BACKGROUND (2 OF 2)

- On March 23, 2023, the Supreme Court of Virginia, in the case styled Berry v. Board of Supervisors, Record No. 211143, invalidated the purported ZMOD amendment, and declared it void ab initio, finding that the Board of Supervisors' actions prevented the public from participating in the manner required by the Virginia Freedom of Information Act, and potentially limited public participation and input into the process
- The court ruling invalidating ZMOD also invalidated all subsequent amendments to it
- On April 11, 2023, the Fairfax County Board of Supervisors authorized readvertising of the ZMOD amendment, together with all purported subsequent amendments, including Agritourism, for public hearings with the Planning Commission on May 3, 2023 and with the Board of Supervisors on May 9, 2023

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The Joint Committee Opposes Readoption of ZMOD

- The Joint Committee opposes readoption of ZMOD and the subsequent amendments in their current form
 - Based on Process
 - Based on Provisions:
 - *Accessory Apartments/Accessory Living Units (ALUs)*
 - *Expansion Of Home Businesses*
 - *Enforcement*
 - *Signage and Food Trucks*
 - *Accessory Structure Limitations & Data Centers*
 - *Agritourism*

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Opposition based on Process

- The Joint Committee **opposes the Fairfax County Board of Supervisors proceeding forward with adoption of ZMOD 2.0** at this time, without significant additional opportunity for citizens and groups to discuss the amendments collectively and ask questions regarding the likely impacts to county residents, and without meaningful interaction with the public, or sufficient time to propose constructive suggestions.
- The Joint Committee **reiterates its opposition to any action by the Fairfax County Board of Supervisors that fails to protect residential neighborhoods** from development impacts proposed by ZMOD 2.0 and including Agritourism, consistent with the objectives of the adopted Comprehensive Plan, including negative impacts on neighborhood traffic, congestion, excessive noise, environmental impacts, and other detrimental effects.
- The Joint Committee **reiterates its opposition to any action by the Fairfax County Board of Supervisors which fails to protect the Occoquan Watershed, including the aquifer and residential wells** used for drinking water, or fails to protect the natural communities, including flora and fauna, threatened species, and contiguous wildlife habitat

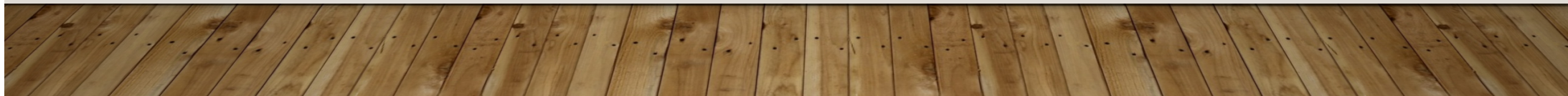
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Based on ZMOD 2 Provisions: *Accessory Apartments/Accessory Living Units (ALUs)*

- The Joint Committee **reiterates its opposition to the ZMOD abolishing the public hearing process for accessory apartments (ALUs) in single family dwellings.** The Joint Committee **supports retaining the previous public hearing process, as recommended by the Planning Commission in 2021.** Citizens are entitled to notice and an opportunity to be heard regarding proposed accessory apartments in their neighborhood, and mitigation of impacts on the neighbors and the local infrastructure from those uses, through development conditions and suggested modifications to any application. The abolition of public hearings with a streamlined process short-circuits citizen engagement.
- The Joint Committee **reiterates its opposition to the ZMOD abolition of the over 55/disabled criteria for accessory apartments (ALUs) in single family dwellings.** Opening up the accessory apartments to all tenants on all single family lots creates a de facto increase in density and generates unmanageable impacts on parking and infrastructure. The resulting increase in effective density is inconsistent with long standing objectives of the Comprehensive Plan to respect and protect stable residential neighborhoods. The Joint Committee **supports retaining the over 55/disabled criteria.**
- The Joint Committee **reiterates its opposition to allowing the maximum size limitation of an accessory apartment to be exceeded if the accessory apartment (ALU) is proposed to fully utilize the floor area in a basement or cellar.** Basements or cellars with separate entrances effectively create stacked duplex dwelling units. Teardowns with new larger ALUs on the lower level might be designed to take advantage of this loophole, changing the character of stable single-family neighborhoods.

3 May 2023

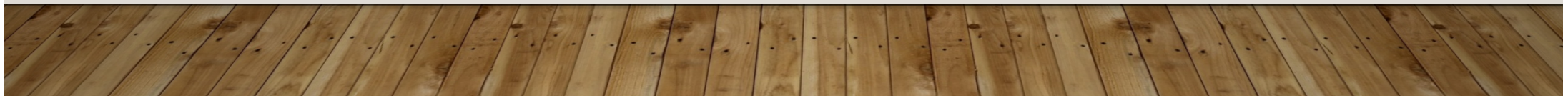
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Based on ZMOD 2 Provisions: *Expansion Of Home Businesses (1 of 2)*

- The Joint Committee **reiterates its opposition to ZMOD abolishing the public hearing process for home businesses such as beauty parlors and barbershops.** The Joint Committee again **opposes allowing those uses in homes served by well water and septic drain fields.** The Joint Committee again requests the Board of Supervisors to direct staff to study the potential environmental impacts on private wells, water quality and the food chain from allowing contaminants of emerging concern (CECs) from nonresidential uses on septic, to be released into the groundwater, without mitigation. Staff has not identified any safe threshold levels for chemicals such as dyes, bleaches, straighteners, or other toxic substances from these businesses, and how limits on the use of those chemicals would be monitored and enforced. Simple approval by the Health Department is not enough.
- The Joint Committee **reiterates its opposition to ZMOD allowing up to two home businesses on every single-family lot, including beauty parlors, barbershops, tailoring, repair shops, online sales, home food production, and other uses.** Combined with the abolition of the protections regarding accessory apartments, this additional commercialization and intensification changes the character of single-family residential neighborhoods, and the additional traffic and commotion creates unmitigated impacts and annoyance for adjacent neighbors.



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Based on ZMOD 2 Provisions: *Expansion Of Home Businesses (2 of 2)*

- The Joint Committee **reiterates its opposition to ZMOD allowing unlimited delivery traffic, with no limitation on the frequency of delivery vehicles or number of trips, for the home businesses on every single-family lot, including online sales and home food production.** The ZMOD proposal to instead limit only the size of delivery vehicles, and ignoring the frequency or number of trips, is inadequate to mitigate the obvious impacts on neighbors, including traffic volume and annoyance.
- The Joint Committee **reiterates its opposition to ZMOD allowing home-based businesses to obtain administrative permits for “special events” of up to 21 days.** The vague standards or limitations on these vague “special events,” such as size of crowds, numbers of vehicles, limitations on amplified music or loudspeakers, are inadequate to mitigate the disruptive impacts on residential neighborhoods. A public hearing, with notice to neighbors and an opportunity to comment, should be essential, before “special events” are authorized in a home business

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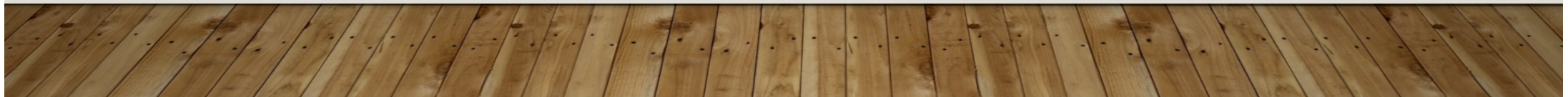
Based on ZMOD 2 Provisions: *Enforcement*

- The Joint Committee ***reiterates its opposition to the unrealistic and unenforceable caps on both the occupancy of accessory apartments and numbers of customers visiting the home businesses.*** Absent additional recordkeeping and monitoring, and proactive inspections, the suggested caps must rely on the honor system, and are insufficient to protect the neighbors.
- The Joint Committee ***reiterates its opposition to a ZMOD enforcement methodology with principal reliance on citizen monitoring and complaints for apartment occupancy or home business customer limitations,*** rather than relying on Fairfax County professional inspectors for enforcement of essential zoning ordinance criteria, as an alternative to adoption of readily enforceable objective standards.

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Based on ZMOD 2 Provisions: *Signage and Food Trucks*

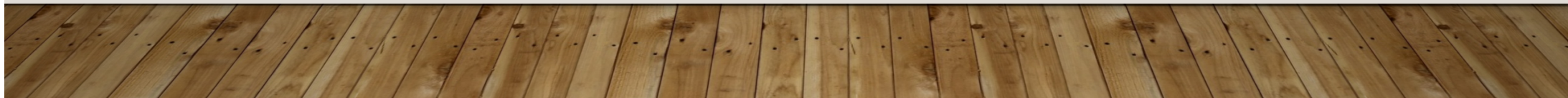
- The Joint Committee requests that ***the signage for home businesses on single family lots be minimized.*** The proposed 12 square foot limitation, coupled with the multiple yard signs allowed on any single-family lot for the home businesses, will cause visual clutter and detract from the residential character of single-family neighborhoods.
- The Joint Committee ***reiterates its opposition to ZMOD allowing food trucks in residential districts through administrative approval.*** Additional standards for maximum number of days, number of trucks, location and distance relative to residential properties should be included, to minimize impacts on neighborhoods



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Based on ZMOD 2 Provisions: *Accessory Structure Limitations & Data Centers*

- The Joint Committee **reiterates its opposition to ZMOD allowing by-right an unlimited number of enclosed freestanding accessory structures on a residential lot, with a combined enclosed area of up to 50 percent of the gross floor area of the principal structure.** The Joint Committee also **opposes ZMOD increasing the height of freestanding accessory structures on a residential lot to 25 feet, as excessive.** These changes are out of character with residential neighborhoods, and any such changes must require notice to the neighbors, and a case-by-case review with an opportunity for comment.
- The Joint Committee **strongly opposes ZMOD making data centers by right** in certain zoning districts. Data centers have enormous impacts on the environment and infrastructure, including electrical consumption, water usage, noise, pollution from diesel generators, impervious surface, and other potential impacts on the community. Data center uses must require a careful case by case review, with notice to neighbors and a meaningful public hearing, so that citizens may participate, and meaningful development conditions can be imposed, to mitigate impacts from the use, if it is to be allowed.



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Based on ZMOD 2 Provisions: *Agritourism*

The Joint Committee ***reiterates its opposition to the Agritourism provisions incorporated in ZMOD 2.0***, for the reasons previously stated. The Joint Committee opposes busting the Occoquan Downzoning to allow a new by right commercial use, with parking lots, on side roads in the R-C, as well as in the R-E district. Any such use must require notice to neighbors and a meaningful public hearing, and imposition of development conditions to mitigate impacts on the environment and the community.

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Conclusion

The Joint Committee asks the Planning Commission to **oppose the Fairfax County adoption of ZMOD 2.0** at this time, without significant additional opportunity for citizens and groups to discuss the amendments collectively and ask questions regarding the likely impacts to county residents, and without meaningful interaction with the public, or sufficient time to propose constructive suggestions.