



Testimony of Jennifer Falcone

Chair, Great Falls Citizens Association Land Use & Zoning Committee

Before the Fairfax County Planning Commission

Jan. 28, 2021

Good evening, I am Jennifer Falcone, Chair of the Great Falls Citizens Association Land Use & Zoning Committee. I reside at 10323 Georgetown Pike in Great Falls, in the Dranesville District.

I offer my comments tonight on behalf of the entire Executive Board of the Great Falls Citizens Association.

GFCA has been monitoring this multi-year process of amending and consolidating the Fairfax County Zoning Ordinance. As the Land Use & Zoning Committee Chair I have participated in the zMod Citizens Advisory work group. Additionally, the Land Use and Zoning Committee has facilitated several presentations by County staff to the membership of the GFCA on key elements of

the proposed ordinance amendments in areas of signage, home based businesses, accessory living units, outdoor lighting, and agritourism.

The purpose of the County's Zoning Ordinance Modernization proposal has been variously described by County officials as providing needed reformatting and restructuring; creating a more user-friendly, more readable, and up-to-date framework of zoning rules. Also, because it is 40 years old, it was described as needing re-booting with updated formats. Barbara Byron who briefed a committee of the Board of Supervisors in 2017 at the inception of zMOD stated that it will provide a means of processing prioritized zoning amendments of county-wide priority; and will offer process improvements and flexibility that eliminate the need for public hearings on minor modifications, and will combine uses into generic categories to accommodate emerging trends.

Also in 2017, former Board of Supervisors Chair, Sharon Bulova said that it would provide a contemporary framework for the implementation of zoning rules for Fairfax County into the future.

Zoning Administrator Leslie Johnson described zMOD as providing a process of bucketing uses into categories, so as uses change, the County will have a better ability to put new uses into a category.

Having laid all of that out publicly, the descriptions and stated objectives of the County's consultant and its staff in launching the zMod process were viewed as laudatory. Great Falls Citizens Association hoped that zMOD would result in appropriate revisions to the Zoning Code that would be rational, coherent, cohesive, and intelligible. A great many of the changes achieve that goal; but, regrettably, the focus on removing ambiguous or confusing language and content has been jeopardized by the inclusion of substantive changes found within the 600 plus pages of the proposal that supersedes the scope of the original plan.

These comments reiterate the GFCA's specific concerns regarding changes involving Zoning districts, Accessory Living Units Home-Based Businesses, and Signs that we have addressed in our correspondence to the Planning Commission earlier this week.

We question the process of including changes like these, at this time, especially under the cover of the stated purposes of a proposal that was intended to make the ordinance more readable and flexible.

Expansion of the number of home-based businesses allowed on a property and an increase of on-site customers in residential areas is now proposed. We believe that this is not a complementary use and would lead to a degradation of

the residential nature of neighborhoods across the County. GFCA opposes the blurring of this form of territorial division that zoning classification provides. We see elements of this proposal as interfering with the character and uniformity of a residential district versus the commercial district. It is the introduction of the onsite visits by customers that introduces more traffic and parking concerns that trigger the problems. This customer traffic makes the home-based business a very visible entity within a neighborhood, made even more noticeable by the introduction of business signage.

While staff has expressed that the ordinance was revised to conform to the holdings in *Reed v. Town of Gilbert, AZ*, which establishes the “content-neutral” standard for regulation, in doing so, we believe that staff’s approach exceeds the scope of the ruling and ignores subsequent decisions that clarify a local government’s ability to regulate commercial signage. The Ninth Circuit has held that *Reed* does not control regulation of commercial speech. A local government should regulate commercial signage in a residential zone.

It is foreseeable that if these changes to the ordinance are adopted, that gradually, streets and blocks of residential neighborhoods could transform into commercial zones, with special events and food trucks, especially as we see

businesses driven out of their leaseholds across the Country as a result of the impact of the COVID-19 pandemic and a growing number of cottage industries emerging. The enforcement of this process would be complaint-driven, as the County staff would be confronted with the burdensome task of auditing customer visits and daily transactions. This is untenable in our view, and underlies our concerns. An ordinance that cannot be effectively enforced should not be enacted.

While GFCA supports efforts to expand housing and resources in Fairfax County, GFCA objects to this proposal on the basis that elimination of the special permit process would also eliminate the opportunity for public notice and comment, an important aspect of ensuring the public's awareness of a modification of use of a residential property. Additionally we oppose removal of the age and disability requirements, and the increase of square footage. This change will result in an increase of density without notification to adjoining properties and without the public hearing process.

Accordingly, GFCA firmly believes that an undertaking of this magnitude is a relatively long-term task and requires much more public examination and comment on the specific and substantive elements of the proposal.

GFCFA recommends deferral of action on this ordinance, and we ask the Commission, at this time, to direct staff to limit the Phase 1 amendment to only those changes addressing readability and formatting. All other substantive changes should be removed and moved forward for consideration at a later date within Phase 2 of the zMod process.

Thank you.