

**Kathy L. Smith**  
**Board of Supervisors**  
4900 Stonecroft Boulevard  
Chantilly, VA 20151



703-814-7100  
sully@fairfaxcounty.gov  
www.fairfaxcounty.gov/sully

## **Sully District**

### **JOINT BOARD MATTER WITH CHAIRMAN JEFF MCKAY**

**May 7, 2024**

#### **AUTHORIZATION OF AMENDMENTS TO CHAPTER 112.1 (ZONING ORDINANCE)**

In March 2021 the Board, culminating a multiyear public process, voted to adopt a modernized Zoning Ordinance, known as zMOD and designated as Chapter 112.1 of the County Code. Due to the COVID-19 pandemic, the Board held its public hearing and vote during electronic meetings, relying on legislation passed by the General Assembly in response to the pandemic. The Fairfax County Circuit Court had rejected an effort to stop the public hearing and vote, and Chapter 112.1 took effect on July 1, 2021. But on March 23, 2023, the Virginia Supreme Court, in *Berry vs. Board of Supervisors*, declared Chapter 112.1 void because it was adopted via electronic means.

On May 9, 2023, the Board readopted zMOD as Chapter 112.2 inclusive of all amendments adopted through March 22, 2023, and including a few minor changes for clarity. As part of the adoption of zMOD 112.2, the Board also included a clause that for any period when Chapters 112.1 and 112.2 are both in effect, Chapter 112.1 would supersede Chapter 112.2. That clause anticipated the possibility that Chapter 112.1 might ultimately be validated.

Fast Forward to today. In April, the Governor signed HB 816 and SB 244, both passed unanimously by the General Assembly during the 2024 Session. These bills, which take effect July 1, 2024, provide relief to public bodies that used electronic communications to hold public meetings and public hearings during the COVID emergency. As a result of this legislation, the Board's action to adopt zMOD in 2021 is retroactively validated as of July 1, 2024, when Chapter 112.1 will again become the operative Zoning Ordinance and supersede Chapter 112.2.

Since the readoption of zMOD on May 9, 2023, as Chapter 112.2, the Board has adopted seven additional amendments to the Zoning Ordinance. Those amendments include Parking and Loading Regulations, Outdoor Lighting Around Turner Farm Park Observatory, Signs Part II, Landscaping and Screening, Outdoor Dining, Minor and Editorial Revisions and Changes to Reflect Virginia Code Updates, and lastly the recent amendment to increase Zoning Application Fees and Planned District Recreation Minimum Expenditure; that last amendment was approved to take effect on July 1, 2024. Therefore, in order to ensure that on July 1, 2024, when the original zMOD Ordinance goes back into effect, it mirrors Chapter 112.2 inclusive of all subsequent amendments, the Board must readopt, as part of Chapter 112.1, all of the amendments I just mentioned, plus the clarifying changes adopted with Chapter 112.2, prior to July 1, 2024.

To accomplish this, Mr. Chairman and Members of the Board, I move that the Board adopt the Resolution attached as Attachment 1 authorizing the advertisement of public hearings before the Planning Commission on June 12, 2024 and before the Board on June 25, 2024 on all changes that have occurred to the Zoning Ordinance since May 9, 2023.

In addition, the Board previously authorized advertisement of amendments to Chapter 112.2 with regard to regulation of data centers. Those amendments are expected to be considered by the Planning Commission and Board in June and July of this year. To make sure that corresponding amendments are considered for Chapter 112.1, I also move that the Board adopt the Resolution attached as Attachment 2 authorizing the advertisement of public hearings before the Planning Commission on June 5, 2024, and before the Board on July 16, 2024, on similar amendments to Chapter 112.1 regarding data centers.