



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
December 12, 2012

ZONING ORDINANCE AMENDMENT **Section 10-3-24**

The proposed amendment to Section 10-3-24 Definitions would modify the existing "Home Occupation" definition to include growing plants outside for business purposes. This type of use, on private and publicly owned property, has received awareness and support across the nation recently under the non-standardized term of "urban farming." The intent of the amendment is not to permit all farming practices (such as animal husbandry), but only those associated with horticulture.

The amendment would create an exception to the City's current home occupation requirement that all uses associated with a business on residential property are carried on wholly within a main building or accessory building. All other provisions of a home occupation would remain in place. The following is the existing definition of a home occupation along with the proposed text amendment, which is underlined:

Home Occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building, unless associated with horticulture, by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

Staff proposed the "horticulture exception" text amendment after contact with City residents Sam Frere and Dan Warren, both James Madison University students, who want to legally operate a horticulture business growing produce for local restaurants and citizens. Their business model is similar to the practice of a Community Supported Agriculture (CSA) operation, where farmers offer a box of vegetables and other products to individuals (also known as members or subscribers) for routine purchases (or subscriptions). Unlike a typical CSA, Frere and Warren noted they want to allow subscribers on a month to month basis.

Frere and Warren were recently featured in a Daily News Record (DNR) article drawing attention to their business. (The article is attached as an addendum to the staff report.) Before the article was published, Frere and Warren attempted to obtain a business license from the City.

Generally, when someone attempts to obtain a business license using their home address (on residentially zoned property), the Commissioner of Revenue requires the applicant to obtain a home occupation permit, which is free of charge, from the Department of Planning and Community Development to ensure the use is permitted. Because the business is not carried on in the main or accessory building they were unable to be classified as a home occupation and were unable to obtain their business license. This also meant the business could not be operated in the R-2 residential classification. Staff met with them and discussed their options, which involved the idea of amending the Zoning Ordinance to allow their desired use. After all of this occurred, and before Frere and Warren communicated with staff about how they wanted to proceed, the article was published. The DNR article refers to them being able to operate their business through a “pricey special-use permit,” however there is no such special use permit available to make their business legal.

A short time after the article was published, staff again met with Frere and Warren and gained more information about their practices, which in their particular case includes using every bit of their property to grow produce; arguably the most extreme example for those that would be interested in such practices. As noted by the DNR article, the two intend to run the operation as environmentally soundly as possible, and in discussions with staff, noted their aim to be considerate to their neighborhood as they hope such practices create a better community. At this point in time, the City has not received any concerns from their neighbors.

Staff recognized the use desired by Frere and Warren fits with recent social and land use trends that have citizen support. Because of this, staff determined it would be appropriate to initiate consideration of an ordinance amendment to allow horticultural uses as a permitted home occupation. We discussed different options, including various terminologies as well as making such practices a special use permit. However, with the recent portable restroom facilities issue, where staff was directed to establish general guidelines rather than allowing them through a special use permit process, staff decided to try and make it work through a home occupation permit.

As horticulture involves plant growth, and as plant growth occurs with almost all residential uses already, staff thought such an amendment could be made while maintaining the intent of the home occupation. During the official review, however, we concluded the amendment would create more problems than it would solve and that excepting horticultural businesses from the typical provisions of operating a home business entirely within a main building or accessory building would reduce zoning regulation protection afforded to surrounding residential property owners. Since staff proposed the amendment, typically we would have removed the proposition from consideration upon reaching such a conclusion, yet we thought there was merit in having a more public discussion regarding this use and allowed the Zoning Ordinance amendment to proceed to public hearing.

Staff is recommending against the amendment, as advertised, for the following reasons:

1. A primary intent of a home occupation permit is that no one should know through visual observation that the property is being used for anything other than a residential use. The definition states that “no advertising... display or storage or variation from the residential character of the premises” should occur. A horticultural use with equipment and materials stored outside is in conflict with this intent. In addition, noises and odors could be in conflict with the residential character.
2. Staff recognized upfront that “excepting” the intended use as “horticulture” was a vague approach to characterize the desired business. During the review staff talked about other

terminology such as “gardening business” and “small-scale gardening” but decided those terms were equally vague. Any of these terms would be inclusive of practices where large scale equipment could be used such as a landscaping business which keeps/stores equipment outside on their property, the keeping of other materials such as fertilizers, and others. Staff also discussed proposing an additional amendment to the Zoning Ordinance by defining “horticulture,” but decided otherwise because reason #1 above was still a main issue of concern.

3. Promoting this type of use could further complicate enforcement of the City’s tall grass and weeds ordinance. Property owners continually dispute that they do not have tall grass and weeds, but that what they have is a garden, meadow, or other vegetative growing practice, when staff is observing their property in a state of violation with the City’s tall grass and weeds ordinance. Issuing a permit for something that will at times have the appearance of tall grass and weeds may further complicate the enforcement of these regulations.

Please keep in mind that even if the Zoning Ordinance amendment is withdrawn from consideration or denied, individuals can maintain their property similarly to Frere and Warrens, where the end result is visually the same regardless of whether a home occupation permit is granted.

Although staff is recommending against the Zoning Ordinance amendment as advertised, as noted in the opening statement, “urban farming” is an issue that is receiving recognition and there are other localities that have adopted relevant ordinances. Recently, staff has learned of other terms that other cities are using including “commercial garden,” “market garden,” “urban garden,” or “urban farm.” Some of those locations have defined those terms and have established other guidelines including scale and location of operation. At this time, staff does not believe provisions such as setback requirements or setting a size or scale of operations would alleviate all of our concerns as listed above.

During the review period, staff was back and forth as to our position on the amendment, but determined there are many issues that still need to be resolved if this type of use is desired. If it is desirable to set a size or scale for these uses would it be believed that a lot similar in size to that which Frere and Warren hope to operate upon should be permitted? What scale or lot size is too large? Is there a size of property that would be too small? Should it be a by-right use or special use? If setbacks are desirable, does that mean that only inedible vegetation can be planted up to the property line? It should also be understood that if almost any such provisions were established, the horticulture operations desired by Frere and Warren, possibly would not be permitted.

In conclusion, if Planning Commission or City Council believes there is merit in devoting more staff time to research and draft such an ordinance, staff will continue working and bring back another proposal.

ORDINANCE AMENDING AND RE-ENACTING SECTION

10-3-24

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

**Be it ordained by the Council of the City of
Harrisonburg, Virginia:**

That Section 10-3-24 Definitions is amended by modifying the definition as shown:

Home occupation: Any occupation or activity which is clearly incidental to the use of the premises for dwelling purposes and which is carried on wholly within a main building or accessory building, unless associated with horticulture, by a member of a family residing on the premises, in connection with which there is no advertising on the premises, and no other display or storage or variation from the residential character of the premises, and in connection with which no person outside the family is employed and no equipment which is deemed to be in conflict with the intent of this definition. A home occupation shall not include beauty parlors, barber shops or doctors' offices for the treatment of patients. The foregoing notwithstanding, providing professional counseling services by appointment only for not more than ten (10) clients per week, and giving music lessons shall constitute home occupations.

The remainder of Section 10-3-24 is reaffirmed and reenacted in its entirety, except as hereby modified.

This ordinance shall be effective from the ____ day of _____, 2013.
Adopted and approved this ____ day of _____, 2013.

MAYOR

ATTESTE:

CLERK OF THE COUNCIL