

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS

Round 23, Item B (Home Occupation Use)

Town Council Meeting
October 11, 2012

EXECUTIVE SUMMARY

The purpose of this item is to consider a proposed amendment to the Land Development Ordinance prepared in response to concerns raised by staff of the Inspections and Permits Department, and the Planning Department. The proposed amendment has been developed and evaluated for consistency with the Comprehensive Plan, and the opportunity for public review and comment has been provided in accordance with Section 3.4 of the Land Development Ordinance.

Town Council conducted a public hearing for the proposed amendment on June 28, 2012. The Planning and Zoning Board recommended approval by a vote of 8-1 at its meeting on September 10, 2012.

OVERVIEW

SCHEDULE

Planning and Development Committee	May 17, 2012
Advertisements in <i>The Cary News</i>	June 13, 2012 June 20, 2012
Public Hearing	June 28, 2012
Planning and Zoning Board Work Session	August 20, 2012
Planning and Zoning Board Meeting	August 20, 2012
Planning and Zoning Board Meeting	September 10, 2012
Final Action by Town Council	October 11, 2012
Effective	October 11, 2012

SUMMARY OF PROPOSED AMENDMENT

The proposed amendment would eliminate the requirement for an Accessory Use Permit for home occupations where no customers or outside employees would visit the site. Some examples of how this change would impact some of the more common home occupations in Cary are as follows:

Still Need Permit

Music Lessons
Photo Studio
Home Day Care
Yoga/Art Lessons
Wholesale/Catering of Baked Goods

No Longer Require Permit

Web designer
Photo Editing (all email)
Tax Preparation (all online)
Business involving administrative work only

In addition, the proposed amendment would reduce the area allowed for certain types of home occupations from 20% to 10% of the heated floor area of the dwelling. This change is recommended by staff in order to avoid triggering the applicability of NC Commercial Building Code requirements.

FISCAL IMPACT

Although LDO amendments can have a cumulative impact on staff resources, we believe that the overall impact of these proposed changes and clarifications will have a nominal impact and can thus be readily absorbed by existing staff.

STAFF RECOMMENDATION

1. Staff recommends that the Town Council approve LDO Amendment Round 23, Item B, including Option 1, which would place a 10% limit on the percentage of the heated floor area of the residence that could be occupied by a Type II home occupation use.
2. Staff recommends that the Town Council approve Option A or Option B related to consistency and reasonableness of the proposed amendment as stated below:

Option A *(recommended if the proposed LDO amendment is approved):*

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 23, Item B (Home Occupation Use)

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 23, Item B is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, LDO Amendment Round 23, Item B, is reasonable and in the public interest.

Approved: October 11, 2012

Harold Weinbrecht, Jr.
Mayor

Date

Option B *(recommended if the proposed LDO amendment is denied):*

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 23, Item B (Home Occupation Use)

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 23, Item B is consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, denial of LDO Amendment Round 23, Item B is reasonable and in the public interest.

Approved: October 11, 2012

Harold Weinbrecht, Jr.
Mayor

Date

SUMMARY OF PROCESS AND ACTIONS TO DATE

TOWN COUNCIL PUBLIC HEARING (*June 28, 2012*)

The Town Council public hearing was held on June 28, 2012. There were no comments on this item.

CHANGES TO PROPOSED TEXT AFTER THE PUBLIC HEARING

The proposed text was reorganized to clarify that the proposed change to reduce the maximum area of the home occupation from 20% to 10% of the floor area of the residence applies only to home occupations that require an accessory use permit.

PLANNING AND ZONING BOARD WORK SESSION (*August 20, 2012*)

A board member expressed a preference for allowing home occupations such as photo studios and music lessons to occupy up to 20% of the residence if the owner was willing to comply with applicable requirements of the State Building Code.

PLANNING AND ZONING BOARD MEETING (*August 20, 2012*)

There was continued discussion regarding concern with limiting the size of any home occupations that may have on-site customers to 10% of the floor area of the residence. As an example, it was noted that 10% of a smaller residence may be smaller than a room within which a piano lesson may be conducted. There were also questions concerning the applicability of both the existing and proposed space limitations to day care homes. The board continued discussion of the proposed amendment to its September 10, 2012 meeting.

REVISION AND CLARIFICATION IN RESPONSE TO PLANNING AND ZONING BOARD CONCERNS

1. HOME OCCUPATIONS

If the public is invited onto the premises and the home occupation exceeds 10% of the heated floor area of the structure, then the NC State Building Code requires upgrade of a structure to meet commercial rather than residential building code standards. In such instances where a single-family home becomes subject to commercial building code rather than residential building code, a variety of improvements are required. Some examples of these improvements are:

- Installing sprinklers in portions of home utilized for the home occupation;
- Provision of required parking (1st space provided must be a handicap accessible parking space);
- Handicap accessible path from parking area to home; and
- Availability of handicap-accessible restroom.

Achieving the various requirements for a given situation can be complicated (have to change door widths, install ramps, etc.) and expensive. For that matter, staff's various interactions with residents seeking home occupations suggest that these requirements are cost-prohibitive in many situations. In addition, there is also a philosophical debate as to when a home occupation reaches the point where it begins to alter the residential appearance and functionality of a home. Finding the appropriate balance between the primary residential use and the accessory non-residential component is the challenge of this section of the LDO - allowing homeowners and tenants the ability to conduct minor business-related activities in their homes in a manner that protects neighborhood character, maintains surrounding property values, and minimizes negative nuisance impacts for adjoining residents.

In response to board comments related to the proposed size limits, staff has revised and reorganized Section 5.3.4(C) to include a second option under section 5.3.4(C)(2) that would maintain the current size limit of 20% of the heated floor area for all home occupation uses, while adding a requirement that the property owner acknowledge the potential applicability of the commercial building code requirements if the area used for the home occupation exceeds 10% of the heated floor area.

These two options can be summarized as follows:

	OPTION 1	OPTION 2
Type I Home Occupation	No Permit Required; Limit to 20% or 500 SF (lesser) Not subject to Comm. Bldg. Code	No Permit Required; Limit to 20% or 500 SF (lesser); Not subject to Comm. Bldg. Code
Type II Home Occupation	Permit Required; Limit to 10% or 500 SF (lesser); Does not trigger Comm. Bldg. Code	Permit Required; Limit to 20% or 500 SF (lesser); Would trigger Comm. Bldg. Code requirements if greater than 10%
Require Owner Signature on Application Form re Potential State Building Code Requirements?	No (Not Applicable)	Yes

2. DAY CARE HOMES

While large and small day care homes do operate within operator-occupied residences, and thus may seem similar in nature to a home occupation use, they are handled separately by the LDO. In particular, day care homes are subject to licensing requirements by the State of North Carolina, and are also subject to a different and more specialized set of use-specific standards contained in LDO Sections 5.3.4(L) and (M).

A key difference between the standards that apply to home day care uses and those that apply to home occupation use is the size limitation. Specifically, the size limitations that currently apply to home occupations do not apply to home day care uses. In addition, there are specific building code and other requirements applicable to day care homes, including limits regarding the number and ages of the children supervised.

In response to board comments related to the applicability of the proposed accessory use changes to day care homes, staff has taken this opportunity to revise some minor incorrect section references found in the Permitted Use Tables that are located in LDO Section 5.1. We recommend inclusion of these minor changes with this amendment.

PLANNING AND ZONING BOARD MEETING (*September 10, 2012*)

The Planning and Zoning Board recommended approval of Option 1 of the proposed amendment by a vote of 8-1. Option 1 would limit the size of all home occupation use to a maximum of 10% of the heated floor area of the residence. *Option 2 would allow the home occupation use to occupy up to 20% of the heated floor area of the residence. Acknowledgment by the property owner that significant upgrades to the existing structure may be triggered if the proposed home occupation occupies more than 10% of the heated floor area of the residence would be required.*

PROPOSED TEXT

5.3.4 ACCESSORY USES AND STRUCTURES: Accessory Uses and Structures Allowed

(C) Home Occupations

A home occupation shall be permitted as accessory to a principal dwelling unit, ~~provided that~~ in accordance with the following:

~~(1)~~ **Accessory Use Permit Required**

~~Prior to establishing the home occupation, the operator shall obtain an Accessory Use Permit pursuant to the procedures set forth in Section 3.5, if the proposed use meets all of the standards set forth below.~~

~~(2)~~ **Size/Area**

~~The business or service is located within the dwelling or an associated accessory building, and does not exceed twenty (20) percent of the combined floor area of the structures or five hundred (500) square feet, whichever is less.~~

(1) General Requirements

The following standards apply to all home occupation uses:

~~(3)~~ **(a) Employees and Residency**

~~(a)~~ (i) The principal person or persons providing the business or service resides in the dwelling on the premises.

~~(b)~~ (ii) The home occupation employs no more than one (1) person who does not reside on the premises.

~~(4)~~ **(b) Neighborhood Compatibility**

~~(a)~~ (i) The home occupation causes no change in the external appearance of the existing buildings and structures on the property.

~~(b)~~ (ii) There shall be no commercial vehicles, and no more than two (2) noncommercial vehicles associated with the home occupation.

~~(c)~~ (iii) There is sufficient off-street parking for patrons of the home occupation, with the number of off-street parking spaces required for the home occupation to be provided and maintained in addition to the space or spaces required for the dwelling itself pursuant to Section 7.8 of this Ordinance.

~~(d)~~ (iv) No additional parking areas other than driveways shall be located in the required front setback.

~~(e)~~ (v) There are no advertising devices on the property, or other signs of the home occupation, which are visible from outside the dwelling or accessory building. However, home occupation signs are allowed in the Town Center.

~~(f)~~ (vi) The property contains no outdoor display or storage of goods or services that are associated with the home occupation.

~~(g)~~ (vii) Wholesale or retail sales of goods do not occur on the premises.

~~(h)~~ (viii) The home occupation does not create traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.

~~(5)~~ **(c) Compliance Regulations for Food Preparation**

~~Prior to receiving an Accessory Use Permit for businesses associated with food preparation or catering, the applicant must show proof of compliance with all County environmental and health regulations and NC State Building Code regulations.~~

OPTION 1

(2) Size and Area

(a) Type I Home Occupation

A Type I home occupation involves administrative support for the rendering of a service off-site in exchange for monetary fees or other remuneration, and complies with all of the following:

- (i) no customers or clients visit the home;
- (ii) no employees living outside the home are physically employed at the residence;
- (iii) no delivery of goods or materials to the home is required in connection with the business; and
- (iv) no material goods or products are produced, stored, or manufactured at the residence.

A Type I home occupation may occupy up to twenty (20) percent of the heated floor area of the residence, or five hundred (500) square feet, whichever is less.

(b) Type II Home Occupation

A Type II home occupation involves the rendering of service on-site, or administrative or other support for the rendering of a service off-site in exchange for monetary fees or other remuneration in a manner that complies with the general requirements specified in Section 5.3.4(C)(1), but does not qualify as a Type I Home Occupation.

A Type II home occupation may occupy up to ten (10) percent of the heated floor area of the residence, or five hundred (500) square feet, whichever is less.

(3) Applicability of Accessory Use Permit

Approval of an accessory use permit shall be required for all Type II home occupation uses.

(4) Applicability to Small and Large Day Care Homes

Requirements of this Section 5.3.4(O) do not apply to Large and Small Day Care Homes, which are regulated by Sections 5.3.4(L) and 5.3.4(M), respectively.

OPTION 2

(2) Size and Area

A home occupation may occupy up to twenty (20) percent of the heated floor area of the residence, or five hundred (500) square feet, whichever is less.

(3) Applicability of Accessory Use Permit

(a) Type I Home Occupation

A Type I home occupation involves administrative support for the rendering of a service off-site in exchange for monetary fees or other remuneration, and complies with all of the following:

- (i) no customers or clients visit the home;
- (ii) no employees living outside the home are physically employed at the residence;
- (iii) no delivery of goods or materials to the home is required in connection with the business; and
- (iv) no material goods or products are produced, stored, or manufactured at the residence.

Approval of an accessory use permit is not required for a Type I home occupation.

(b) Type II Home Occupation

A Type II home occupation involves the rendering of service on-site, or administrative or other support for the rendering of a service off-site in exchange

for monetary fees or other remuneration in a manner that complies with the general requirements specified in Section 5.3.4(C)(1), but does not qualify as a Type I Home Occupation.

Approval of an accessory use permit is required prior to operation of a Type II home occupation. The accessory use permit application shall include a signature from the property owner acknowledging that if the proposed home occupation use occupies more than 10% of the heated floor area of the residence, significant upgrades to the existing structure may be required in order to comply with applicable requirements of the North Carolina Commercial Building Code.

4) Applicability to Small and Large Day Care Homes

Requirements of this Section 5.3.4(O) do not apply to Large and Small Day Care Homes, which are subject instead to LDO Sections 5.3.4(L) and 5.3.4(M), respectively.

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT TC & CT)																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																	
Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2																	
Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT			Use-Specific Stds
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	NC	CC	RC	
ACCESSORY USES																	
Accessory Uses	Day care home, large	S	S	S	S	S	S	S						S	S	S	5.2.2(L) 5.3.4(L)
Accessory Uses	Day care home, small	A/S	A/S	A/S	A/S	A/S	A/S										5.3.4(B) 5.3.4(M)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES																
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																
Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
		ACCESSORY USES														
Accessory Uses	Day care home, small	A	A					P			A	A	A	A		5.2.2(B) 5.3.4(M)
Accessory Uses	day care home, large															5.3.4(B) 5.3.4(L)

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