

JANUARY 7, 2019

ORDINANCE NO. PZ-19-02

AN ORDINANCE ADOPTED BY THE BOARD OF COMMISSIONERS
OF THE TOWN OF FUQUAY-VARINA, NC
AMENDING THE TOWN CODE OF ORDINANCES
PART 9, LAND DEVELOPMENT ORDINANCE
(CLEAN-UP AMENDMENT #7).

CTA-2018-09

NOW, THEREFORE, BE IT ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina the following:

Section 1. Article F USE REGULATIONS is amended as follows:

§9-1255, b. Agriculture & Animal Related Uses

- (2) **Accessory Use, Residential – Chickens.** Chickens that are not part of a bona fide farm are permitted under the following standards:
- A. *Standards for Chickens as an Accessory Use.* Chickens within a structure on a zoning lot for single-family detached residential use in the Residential Agricultural Zoning (RA) Zoning District, Residential Low Density (RLD) Zoning District, Residential Medium Density (RMD) Zoning District, Residential High Density (RHD) Zoning District, and Planned Unit Development (PUD) Zoning District, are permitted under the following standards:
- i. *Chicken Coop & Pen Permit Required.* A building chicken coop & pen permit must be obtained through the Planning Department that shall include submittal of a plot plan showing the location and dimensions of the chicken coop and chicken pen, with setback dimensions from all property lines.
 - ii. *Maximum Number.* The maximum number of female chickens (hens) permitted in accordance with the following standards. Roosters are prohibited.
 1. *Corporate Limits.* The maximum number of hens shall not exceed five (5).
 2. *Extraterritorial Jurisdiction (ETJ).* The maximum number of hens shall not exceed 10.
 - iii. *Personal Use Only.* The use of chickens on a zoning lot shall be for personal use only; no eggs, chicks, adult chickens and process chickens shall be sold. The sale or distribution of compost using chicken manure shall be prohibited.
 - iv. *Design & Construction of the Coop.* The chicken coop shall be designed and constructed to secure chickens in the coop during non-daylight hours with proper ventilation, suitable shelter, protected from weather conditions and security from rodents, wild birds and predators.

- v. *Design & Construction of the Pen.* The chicken pen shall be designed and constructed to secure chickens in the pen during daylight hours; all four (4) sides of the pen shall be fenced a minimum of six (6) feet high using gauge wire with a self-latching gate. The chicken coop shall be located within or attached to the fenced pen area.
- vi. *Dimensions of Coop & Pen.*
 - 1. *Corporate Limits.* The chicken coop shall have a maximum size of 12 feet by 12 feet in any direction. The pen shall have a maximum size of 300 square feet.
 - 2. *Extraterritorial Jurisdiction.* The chicken coop and pen shall have no minimum or maximum size requirement.
- vii. *Prohibited Coop Locations.* A chicken coop and pen shall not include residential structures or garages, nor be located within any designated buffer, landscape easement, stormwater management area, conservation easement, or utility easement (water, sewer, or storm drainage).
- viii. *Located in Rear Yard Only.* The chicken coop and/or pen shall only be permitted in the rear yard, as defined in the Land Development Ordinance, of a zoning lot and shall comply with a minimum setback of 15 feet from the side and rear property lines, and in addition:
 - 1. *Proximity to Residential Structures.* The chicken coop and pen shall be located closer to the owners' principal structure than any adjacent principal structure.

B. *Required Maintenance*

- i. *Maintenance.* The chicken coop shall be clean and sanitary, with all droppings and organic materials properly disposed of.
- ii. *Prohibited Activity.* On-site slaughter of chickens shall be prohibited.
- iii. *Disposal.* If a chicken dies from causes other than slaughter, it shall be promptly placed into a plastic bag, which shall be closed securely and disposed with household waste.

- (3) ***Accessory Use, Residential – Agricultural Animals.*** Agricultural animals, as defined, shall be permitted on residential lots in the Town's extraterritorial jurisdiction (ETJ) under the following standards, unless otherwise provided by the Land Development Ordinance.

- A. *Maximum Number.* Agricultural animals, as defined, shall be permitted in accordance with the following:
 - 1. *Lots Less Than One (1) Acre.* No more than two (2) agricultural animals shall be permitted.
 - 2. *Lots One (1) to Two (2) Acres.* No more than five (5) agricultural animals shall be permitted.

3. *Lots Greater than Two (2) Acres.* No maximum number of agricultural animals shall apply to lots greater than two (2) acres in size.
 - B. *Location.* Any stable or structure housing animals shall be a minimum of 100 feet from any adjacent residential structure.
 - C. *Fenced Enclosure.* Any fence enclosure shall be permitted in accordance with the following standards:
 1. The fenced area or other enclosure, not including stable, shall be located at a minimum of four (4) feet from any adjacent property line, or zero (0) feet if agreed mutually by adjoining property owners through an agreement.
- Fence Permit. A fence permit is required from the Town in accordance with Article Q Procedures & Administration, §9-1808 Common Application Procedures, I. Fence Permit.

**No text amendments are proposed for (1) and (4)–(10) of this section, hence they are omitted.*

§9-1255, p. Miscellaneous Use, (1) Accessory Use, E. Accessory Use, Residential,

- viii. *Prohibited Use.* In the corporate limits, an accessory structure shall not be used for commercial or home occupation purposes; neither shall they be rented, leased or sold separately from the primary structure, see Subsection p. (4) Home Occupation below.

**No text amendments are proposed for i.–vii. of this section; hence they are omitted.*

§9-1255, p. Miscellaneous Use, (4) Home Occupation,

- A. *Permitted Home Occupations.* Only the following uses may be permitted as a home occupation:
 - i. *Childcare Not Requiring State Regulations.* Childcare permitted as a home occupation shall be such that it is not regulated by the State of North Carolina. In no case shall the terms of this Section be construed to exempt an in-home or commercial day care from applicable regulations and licensing of the State.
 - ii. *Barbershop / Beauty Salon.*
 - iii. *Dog Grooming.* No overnight boarding or kennel operations as herein permitted in the Land Development Ordinance.
 - iv. *Office Use.* Any administrative or office occupation that does not require a separate permit or inspection from the Town or other governing entity.
 - v. *Catering Service.* Catering service using conventional residential oven/stove only. The owner of the service is responsible for compliance with any Wake County Health Department requirements and must be coordinated with the Town's Inspections Department.
 - vi. *Teacher / Tutor.*
 - viii. *Home Crafts.* Weaving, pottery, canning.

- ix. *Art / Services.* Photography, tailor, sculptor, painter, computer repair, notary public, small engine repair.
- x. *Gunsmith.* The manufacturing of firearms as approved and permitted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives shall be permitted in the Town's extraterritorial jurisdiction (ETJ) only. This does not include the manufacturing or sale of ammunition.

B. *General Standards*

- i. *Maximum Total Area.* The maximum total area permitted for the home occupation, per property, is as provided:
 - 1. *Corporate Limits.* The maximum total area for the home occupation shall not exceed 250 square feet of the residential dwelling unit, including an attached garage.
 - 2. *Extraterritorial Jurisdiction (ETJ).* The maximum total area for the home occupation shall not exceed 750 square feet.
- ii. *Advertising.* Advertising for a home occupation shall follow the following standards:
 - 1. *Corporate Limits.* Advertising is prohibited.
 - 2. *Extraterritorial Jurisdiction (ETJ).* Advertising is permitted in accordance with the standards provided in Article L Signs, §9-1555 Zoning District Sign Regulations, b. Nonresidential Use Sign in Residential Zoning Districts, (4) Permanent Attached Sign Standards.
- iii. *Outdoor Staging Prohibited.* No outdoor staging, display and storage of materials, goods, supplies, or equipment shall be permitted.
- iv. *Owner & Employees of the Home Occupation.* The owner or principal of the home occupation shall reside in the residential dwelling unit in which the business is located. The number of employees of the home occupation shall be in accordance with the following standards:
 - 1. *Corporate Limits.* No person may be employed on the property in connection with the home occupation who is not a resident of the residential dwelling unit.
 - 2. *Extraterritorial Jurisdiction (ETJ).* No more than one (1) person may be employed on the property in connection with the home occupation who is not a resident of the residential dwelling unit.
- v. *Activities within Residential Dwelling.* All activities conducted by the home occupation shall occur in accordance with the following standards:
 - 1. *Alteration of Residential Dwelling Prohibited.* There shall not be any alteration of the residential dwelling unit, appearance, or expansion of the dwelling specifically for the purpose of a home occupation.

2. *Corporate Limits.* All activities conducted by the home occupation shall be entirely within the principal residential dwelling unit, which may include an attached garage.
 3. *Extraterritorial Jurisdiction (ETJ).* Activities used in conjunction with the home occupation may occur within an accessory building or structure.
- vi. *One (1) Home Occupation.* No more than one (1) home occupation shall be permitted per location.
- vii. *Visitors or Customers for the Home Occupation*
1. *Hours of Operation.* No visitors in conjunction with the home occupation shall be permitted between the hours of 9:00 PM and 8:00 AM.
 2. *Duration of Visits.* Visitors in conjunction with the home occupation shall be limited to no more than six (6) during a 24-hour period.
 - I. *Corporate Limits.* Visitors in conjunction with the home occupation shall be limited to no more than two (2) visitors at one (1) time.
 - II. *Extraterritorial Jurisdiction (ETJ).* Visitors in conjunction with the home occupation shall be limited to no more than four (4) at one (1) time.
- ix. *Number of Vehicles.* No vehicle(s) shall be parked at the residential dwelling unit where the home occupation is located as a staging area for employees, deliveries or contractors to commute to a job site.
1. *Corporate Limits.* No more than one (1) vehicle shall be parked or used in connection with the home occupation on the property of the residential dwelling unit.
 2. *Extraterritorial Jurisdiction (ETJ).* No more than two (2) vehicles shall be parked or used in connection with the home occupation on the property of the residential dwelling unit.
- xi. *Shipping Products & Goods.* Products and goods shall be shipped directly to the customer from the manufacturer. Direct sales and/or rentals of products and goods shall be prohibited.
- xii. *Nuisance or any Undue Disturbance Prohibited.* The home occupation shall not constitute a nuisance or any undue disturbance to adjacent residential units.
- xiii. *Home Occupation Permit.* No party shall conduct a home occupation without having first received a home occupation permit. Such home occupation permit shall not be transferred to any other person, nor shall that permit be valid at any address other than the address appearing on the home occupation permit.
- xiv. *Nonconforming Home Occupations.* Home occupations established legally prior to the effective date of the Land Development Ordinance, or before the Town was authorized jurisdiction over such property, may be continued as a legal nonconforming use, provided adequate documentation of such is submitted to the Planning Department.

- xv. *Prohibited Home Occupations.* A home occupation use that cannot meet the applicable standards and requirements for the proposed use is prohibited, in addition to the following:
 - 1. *Materials Prohibited.* No toxic, explosive, flammable, radioactive, combustible or other hazardous materials as defined by the Fire Protection Code and North Carolina State Building Code shall be used, sold, or stored on the property.
 - 2. *Vehicle Repair.* Vehicle and large engine related uses and repairs shall not be permitted.

**No text amendments are proposed for (2), (3), and (5)–(13) of this section; hence they are omitted.*

Section 2. Article G LOT & STRUCTURE PROVISIONS is amended as follows:

§9-1303 Fence & Wall Installations,

a. Fence Material

- (1) ***Corporate Limits.*** A fence may be constructed of wood, masonry, stone, wrought-iron, black aluminum, synthetic material or chain-link, unless otherwise provided by the Land Development Ordinance. Fencing shall be installed with the finished surface facing out to a public street or an adjacent property. The use of chain-link fencing shall require the chain-link to be covered with a plastic coating of either black or green.
- (2) ***Extraterritorial Jurisdiction (ETJ).*** No fence material shall be prohibited. Fencing shall be installed with the finished surface facing out to a public street or an adjacent property.

b. Fence Placement

A fence shall be installed a minimum of three (3) inches inside the property line and corner of the property on which the fence is being installed, except where property owners on either side of the property line consent to placement of the fence on and along the property line. In such case the adjoining property owner(s) shall provide a written affidavit agreeing to the location.

- (1) ***Placement in Buffer & Easement.*** Where a fence is proposed within a perimeter buffer that is part of a lot, regulated by **Article O Landscaping & Tree Protection Standards**, such fence shall be placed a minimum of eight (8) feet from the rear property line. The rear and side perimeter buffer plant materials shall be located on both sides of the proposed fence, where applicable. In no case shall a fence be located within a dedicated easement for any purpose, except as otherwise permitted herein.
- (2) ***Clearance from Finished Grade.***
 - A. *Corporate Limits.* A minimum two (2) inch clearance from the bottom of a fence to the finished grade shall be provided, where applicable, to allow for unobstructed passage of water runoff. This requirement is not applicable to masonry, hedges, chain-link fence, split rail fence or the like.

- B. *Extraterritorial Jurisdiction (ETJ)*. A minimum two (2) inch clearance from the bottom of a fence to the finished grade shall be provided, where applicable, to allow for unobstructed passage of water runoff for privacy fences only.

c. **Residential Zoning Districts**

- (1) **Front Height**. The maximum height of a fence in the zoning lot front yard shall not exceed four (4) feet, paralleling the front property line or right-of-way line and along the side property lines to the front plane of the principal building. Opaque fences shall be prohibited in the front yard.
- (2) **Side & Rear Height**. The maximum height of a fence in the zoning lot side or rear yard, paralleling along the side or rear property line or right-of-way line from the front plane of the principal building to the rear property line shall be in accordance with the following standards:
 - A. *Corporate Limits*. The maximum height of a fence in the zoning lot side or rear yard is six (6) feet.
 - B. *Extraterritorial Jurisdiction*. There is no maximum fence height in the zoning lot side or rear yard.

**No text amendments are proposed for d., e., f., and g. of this section; hence they are omitted.*

Section 3. Article K NONCONFORMITIES is amended as follows:

§9-1500 Purpose & Intent,

Within the provisions established by the Land Development Ordinance, there exist uses of land, structures, lots and signs that were lawfully established before the Land Development Ordinance became effective (December 30, 2016), as amended, or before the Town was authorized jurisdiction over such property, that now do not conform to the terms, standards and/or regulations of the Land Development Ordinance. The purpose of this Article is to regulate and limit the continued existence of those uses of land, structures, lots and signs that do not conform to the provisions of the Land Development Ordinance or as may be amended. The provisions of this Article are designed to curtail substantial investment in nonconformities and to preserve the integrity of the Land Development Ordinance.

Section 4. Article L SIGNS is amended as follows:

§9-1555 Zoning District Sign Regulations, b. Nonresidential Use Sign in Residential Zoning Districts, (4) Permanent Attached Sign Standards,

- A. *Sign Surface Area*. The maximum surface area for all permanent attached signs shall be 24 square feet except as otherwise provided.
- B. *Home Occupation Signage*. In the Town's extraterritorial jurisdiction (ETJ), one (1) ground sign advertising a home occupation is permitted in accordance with the following standards:

- i. *Illumination*. Illuminated signs are prohibited.
- ii. *Material*. The sign shall be made of wood (painted or not) only.
- ii. *Surface Area*. The sign shall not exceed four (4) square feet per side.
- iii. *Maximum Height*. The sign shall be no higher than four (4) feet above grade.

Section 5. Article S INTERPRETATIONS & DEFINITIONS is amended as follows:

§9-1900 General Definitions, a.,

- (17) **ANIMAL, AGRICULTURAL**. The term defining animals considered an accessory use to an agricultural use, whether used for personal enjoyment or for commercial purposes, generally accepted outdoor farm animals that graze in open fields, fenced pens or structures for training, home use, sales or breeding and production, including horses, cattle, sheep, chickens, ducks, geese, pigs, goats, mules, donkeys, llamas, or alpacas. This term does not include cats, dogs, potbellied pigs, or other Domestic Animal, defined in the Land Development Ordinance. Also known as farm animal or non-domesticated animal.

**No text amendments are proposed for other parts of this section; hence they are omitted.*

§9-1902 Use Classifications, h.,

- (2) **HOME OCCUPATION**. The term defining an occupation or activity which is clearly incidental and secondary to the use on the premises as a residential dwelling, that does not change the character of the home, and which is carried on by a party who resides on the premises.

**No text amendments are proposed for other parts of this section; hence they are omitted.*

Section 6. Article Q PROCEDURES & ADMINISTRATION is amended as follows:

§9-1808 Common Application Procedures,

q. Home Occupation Permit

The Land Development Ordinance permits, under certain conditions and standards, the operation of a home occupation within the resident's home for the purpose of operating a business in accordance with **Article F Use Regulations, §9-1255 Use Standards, p. Miscellaneous Use. (3).**

- (1) **Home Occupation Permit**. Any person within the corporate limits or extraterritorial jurisdiction of the Town of Fuquay-Varina that has interest in operating a home occupation on the premises of their residence shall make an application to the Planning Department requesting a home occupation permit.
- (2) **Fee & Approval**. The Planning Department shall provide the home occupation permit after payment has been made to the Town. The fee is based on the Fee Schedule adopted by the Town Board of Commissioners annually.

BE IT FURTHER ORDAINED, by the Board of Commissioners of the Town of Fuquay-Varina that this ordinance shall take effect immediately upon its adoption.

Adopted this the 7th day of January 2019 in Fuquay-Varina, North Carolina.

FUQUAY-VARINA, NORTH CAROLINA

ATTEST:

John W. Byrne, Mayor

(TOWN SEAL)

Rose H. Rich, Town Clerk

