

VANCE COUNTY

ORDINANCE AMENDING THE VANCE COUNTY ZONING ORDINANCE TO CLARIFY PROVISIONS IN RESPONSE TO APPROVED SESSION LAW 2013-126 (HOUSE BILL 276) AND SESSION LAW 2013-347 (SENATE BILL 505), TO CLARIFY LANGUAGE REGARDING HOME OCCUPATIONS, AND TO AMEND THE TABLE OF PERMITTED USES.

WHEREAS, The North Carolina General Assembly approved Senate Bill 505 (Session Law 2013-347) which provided clarifications and changes to the agricultural zoning exemptions and bonafide farm definition;

WHEREAS, The North Carolina General Assembly approved House Bill 276 (Session Law 2013-126) which provided clarifications and modernizes statues regarding zoning board of adjustments;

WHEREAS, the Vance County Planning Board has reviewed all of the proposed amendments to the Vance County Zoning Ordinance and has provided a recommendation for their approval.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS, that:

A. The Vance County Zoning Ordinance be amended as follows (deletions as ~~strikethroughs~~, additions shown as underlined text):

- 1) AMEND section 1.5 to update definition of bona fide farms as per Session law 2011-363, house bill 168 as follows: The provisions of this Ordinance shall not apply to bona fide farms. For purposes of this ordinance, the terms “agriculture”, “agricultural”, and “farming” refer to all of the following:
 1. The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
 2. The planting and production of trees and timber.
 3. Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
 4. Aquaculture as defined in N.C.G.S. 106-758.
 5. The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
 6. When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.
 7. A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes: as defined by the United States Department of Agriculture (USDA): any operation that sells at least one thousand dollars (\$1,000.00) average annual income (over a three year period from the date of application as a farm in the Vance County Tax Office) of agricultural commodities or that would have sold that amount of produce under normal circumstances, with a land area of ten (10) acres. Additionally the classification of a farm per the Vance County Tax Office (Use Value Assessment and Taxation of Agricultural, Horticultural, and Forestland G.S. 105-277.2 and 105-277.3) shall apply under this Section (documents/applications with complete definitions for tax purposes are available in the Vance County Tax Office):

1. A farm sales tax exemption certificate issued by the Department of Revenue.
2. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
3. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
4. A forest management plan.
5. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

~~☐ Agricultural Land—Land that is part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program.~~

~~☐ Forestland—Land that is part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program.~~

~~☐ Horticultural Land—Land that is part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program.~~

This Ordinance does not impose nor exercise any controls over croplands, timberlands, pasturelands, orchards, idle (land that is currently not cultivated or that is fallow-currently unplanted for crops) or other farmlands. Nor does it exercise control over any farmhouse, barn, poultry house, or other farm buildings, including tenant or other houses for persons working on said farms, as long as such houses shall be in the same ownership as the farm and located on the farm. Residences for non-farm use or occupancy and other non-farm uses shall be subject to the provisions of this Ordinance.

~~*NOTE:* Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products, grazing/raising of livestock and fowl, aquaculture, sod production, orchards, nurseries, land in government easement/conservation programs, and other products cultivated as part of a recognized commercial enterprise. Farming activities shall also be considered to mean the raising of crops, fruit, produce (row crops, fruit orchards, tree farms, commercial greenhouses) or the raising of livestock (example: chicken houses, swine enclosure, dairy barn, cattle or sheep grazing, hydroponic farming), inclusive of all related activities. Agri-tourism (see definition in this section) shall be included within this definition of a Bona Fide Farm.~~

- 2) AMEND Section 1.8 as follows: VESTED RIGHTS A vested right shall be deemed established with respect to any property upon the valid approval, or conditional approval, of a site-specific

development plan or a phased development plan, following notice and public hearing by the Board of Adjustment.

- 3) AMEND Section 6.3 as follows: BOARD OF ADJUSTMENT ACTION [...] The Board of Adjustment shall set and advertise a date and time for a public quasi-judicial hearing on the conditional use permit application. ~~Notice of a public hearing shall be given once a week for two (2) successive calendar weeks in a newspaper of general circulation, said notice to be published the first time not less than ten (10) nor more than twenty five (25) days prior to the date fixed for said hearing.~~ The applicant shall provide to the Planning and Development Department a list of the names and addresses of all adjacent property owners. A notice of the ~~public~~ hearing shall be mailed by the Zoning Administrator, RETURN RECEIPT REQUESTED, to each person on this list prior to the ~~public~~ hearing. The person mailing such notice shall certify that such notices have been mailed. Additionally notice of the ~~public~~ hearing must be posted on the affected property at least ten (10) days prior to the hearing. At the ~~public~~ hearing all interested persons shall be permitted to testify in sworn testimony. A person who is interested in the matter but who does not have a personal stake in the outcome (such as a likely effect on his or her property value) may attend and observe the hearing, but they have no legal right to offer evidence, ask questions, or otherwise directly participate in the matter. The Board of Adjustment shall consider the application and comments at the ~~public~~ hearing and may grant or deny the Conditional Use Permit. [...]
- 4) AMEND Section 6.10 O 9 b as follows: All property owners within a 1,500 foot radius and/or adjoining the property where the tower is proposed shall be notified, in writing, of the ~~public~~ hearings at which the application will be considered.
- 5) AMEND Section 8.1 as follows: ~~This section authorizes the Board of Adjustment, as appointed by the Vance County Board of Commissioners, to modify or vary regulations of this ordinance when strict compliance with the regulation or standard would result in practical difficulties or unnecessary hardships upon the subject property. Practical difficulties or Unnecessary hardships, for the purpose of this Ordinance, are defined as:~~ When unnecessary hardships would result from carrying out the strict letter of this zoning ordinance, the Board of Adjustment shall vary any of the provisions of this ordinance upon a showing of all of the following:
 - A. ~~If the applicant complies strictly with the provisions of the Ordinance, he or she can make no reasonable use of their property;~~ The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
 - B. ~~The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors, the community, or general public;~~ The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
 - C. ~~The hardship relates to the applicant's land and not personal circumstances;~~ The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
 - D. ~~The hardship is unique to the applicant's property, or nearly so, rather than a hardship shared by surrounding properties;~~ The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

- ~~E. The hardship is not the result of the applicant's own actions; and~~
- ~~F. The variance, if approved, will not result in the extension or expansion of a nonconforming situation in violation of this Ordinance and will not authorize the initiation of a nonconforming use of land.~~
- 6) AMEND Section 8.2 as follows: The Board of Adjustment is authorized to grant variances to the provisions of this ordinance in accordance therewith. No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance.
- 7) AMEND Section 8.5 as follows: Any interested party (defined as person (s) affected by the variance application) may be given the opportunity to present evidence or testimony, to cross-examine witnesses, to inspect documents, and to offer evidence or testimony in explanation or rebuttal. A person who is interested in the matter but who does not have a personal stake in the outcome (such as a likely effect on his or her property value) may attend and observe the hearing, but they have no legal right to offer evidence, ask questions, or otherwise directly participate in the matter. [...]
- 8) AMEND Section 8.6 A as follows: The Board of Adjustment must hold a ~~public~~ quasi-judicial hearing before taking action on a zoning variance application.
- 9) AMEND Section 8.7 as follows
- A. Appeals ~~from the enforcement and interpretation of this ordinance, and appeals for~~ Variances, shall be filed with the Zoning administrator, who shall transmit all such records to the Board of Adjustment.
 - B. The Board of Adjustment shall fix a reasonable time, not to exceed thirty (30) days, for the hearing of the variance, appeal. ~~and publish notice of such hearing in a newspaper of general circulation in Vance County five (5) days prior to the hearing.~~
 - C. ~~In addition,~~ The Zoning Administrator ~~may shall~~ post a sign on any property for which a Variance has been requested. The sign shall state the date, time, and a phone number to call for information on the Variance, and shall be posted at least 10 days, but not more than 25 days ~~three (3) days~~ prior to the ~~public~~ hearing date.
 - D. The concurring vote of four-fifths of the board shall be necessary to grant a variance. The Board of Adjustment, by a vote of at least a majority six (6) of its seven (7) members, may reverse any order, requirement, decision, or determination of the Administrator, or may decide in favor of the applicant a matter upon which the Board is required.
- 10) AMEND Section 8.8 D as follows: A denial of the application would cause ~~practical difficulties~~ ~~or~~ unnecessary hardships to the landowner;
- 11) AMEND Section 8.11 as follows: Change notice of appeal period to Superior Court from 45 to 30 days in accordance with state law.
- 12) AMEND Section 10.3 A as follows: Required Vote for Approval: A four-fifths (4/5) vote of its members shall be required to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. ~~A majority of the members shall be required to:~~
- 1. ~~Affirm or reverse any order, wholly or partially; modify a requirement, decision, determination or interpretation; of an administrative officer charged with enforcing this Ordinance;~~

2. ~~Decide in favor of the applicant on a matter upon which the Board is required to pass under this ordinance;~~
3. ~~Grant a variance from the provisions of the Ordinance; or~~

13) AMEND Section 10.3 D as follows: NOTE: VOTING REQUIREMENTS OF THE BOARD OF ADJUSTMENTS ARE ESTABLISHED BY NORTH CAROLINA GENERAL STATUTES UNDER G.S 153-345.1 and 160A-388 as referenced): ~~The board of adjustment, by a concurring vote of four-fifths of the board shall be necessary to grant a variance. its members, may reverse any order, requirement, decision, or determination of an administrative officer charged with enforcing an ordinance adopted pursuant to this Part, or may decide in favor of the applicant a matter upon which the board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari.~~ For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite ~~supermajority~~ majority if there are no qualified alternates available to take the place of such members.

14) AMEND Section 10.5 as follows: NOTICE OF HEARINGS/DECISIONS
Hearing Notice: Notice of quasi-judicial hearings shall be mailed to the person or entity whose appeal, application, or request is subject to the hearing, to the owner of the property that is subject of the hearing if the owner did not initiate the hearing, to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing, and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the County may rely on the tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the County shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

Decision Notice: The decision of the Board may be delivered by certified mail return receipt to the aggrieved party either by personal service or by registered mail return receipt requested. The board is authorized to impose reasonable and appropriate conditions upon decisions/permits that are issued.

15) AMEND Section 10.6 as follows: ~~The Chairperson of the Board or any member temporarily acting as Chairperson and the clerk to the board are authorized to shall~~ administer oaths to witnesses in any matter coming before the Board.

16) AMEND Section 10.7 as follows: APPEALS TO THE BOARD OF ADJUSTMENTS
The board shall hear and decide appeals decisions of administrative officials charged with enforcement of the zoning ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to the following:

A. Appeal Eligibility: Any person who has standing under G.S. 160A-393(d) aggrieved, by the decision of the Board of Adjustments, or may appeal a decision to the board of adjustment. make an appeal. An appeal is taken by filing a notice of appeal with the county clerk. The notice of appeal shall state the grounds for the appeal.

1. The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the

decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

2. The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. Notice of appeals shall be made within the time prescribed by the Board of Adjustment, not to exceed thirty (30) days, by general rule, by filing with the officer from whom the appeal is taken and with the Board a notice of appeal, specifying the grounds thereof.
 3. The official Zoning Administrator who made the decision from whom the appeal is taken shall forthwith transmit to the Board all documents and exhibits papers constituting the record upon from which such action appealed from was taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is subject of the appeal if the appellant is not the owner.
- B. Effect of Appeal: An appeal of a notice of violation or other enforcement order stays enforcement all proceeding in furtherance of the action appealed from, unless the officer who made the decision from whom the appeal is taken certifies to the Board, after notice of appeal has been filed with him, that because of facts stated in an affidavit, the certificate a stay would, in the officer's opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 15 days after such request is filed.
- C. Effect of Certification: If certification occurs in accordance with Section 10.7 (B), Effect of Appeal, proceeding may not be stayed except by a restraining order, which may be granted by a court of competent jurisdiction. Notice of the restraining order shall be given in writing to the officer from whom the appeal is taken.
- C. Notice of Hearing: The Board shall fix a reasonable time for hearing the appeal, not to exceed thirty (30) days, give due notice of the appeal to the parties, and decide the appeal within a reasonable time. The Board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination or interpretation appealed from, and shall make any order, requirement, decision, determination or interpretation that in the Board's opinion ought to be made under the circumstances. In addition, the Administrator may post a sign on any property for which a Conditional Use Permit has been requested. The sign shall state the date, time, and a phone number to call for information on the Conditional Use Permit, and shall be posted at least three (3) days prior to the public hearing date.
- D. Action of Board: The Board of Adjustment, by a vote of at least six (6) of its seven (7) members, may reverse any order, requirement, decision, or determination of the Administrator, or may decide in favor of the applicant a matter upon which the Board is required to pass under the ordinance, or may grant a variance from the provisions of the ordinance.
- E. The Board may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination or interpretation appealed from, and shall make

~~any order, requirement, decision, determination or interpretation that in the Board's opinion ought to be made under the circumstances.~~

- F. ~~Each decision of the Board of Adjustment is subject to review by the Vance County Superior Court. Any appeal to the Superior Court shall be taken within thirty (30) days after the decision of the Board of Adjustment is filed in the Office of the Administrator, or after a written copy of the decision is delivered to the appellant by registered mail, return receipt requested, whichever is later.~~

17) AMEND Section 10.8 B 1 as follows: Procedure: The board shall

1. Fix a reasonable time for holding a ~~public~~ quasi-judicial hearing on the variance request; [...]

18) AMEND Section 10.8 C 1, 2 & 3 as follows:

1. There are ~~practical difficulties or unnecessary hardships~~ (as defined under Section 8.1 of this Ordinance) that would result from the strict enforcement of this Ordinance. The Board may reach this conclusion if it finds that:
 - a. ~~If the applicant complies with the provisions of this Ordinance, then he or she can make no reasonable use of his property; The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.~~
 - b. ~~The hardship of which the applicant complains results from unique circumstances related to the applicant's property; The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.~~
 - c. ~~The hardship relates to the applicant's property, rather than personal circumstances; The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.~~
 - d. ~~The hardship is not the result of the applicant's own actions. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.~~
2. ~~The variance is in harmony with the general purpose and intent of this Ordinance and preserves the spirit of this Ordinance.~~
3. ~~The granting of the variance assures the public safety and welfare.~~

19) AMEND Section 12 Definitions as follow:

Home Occupation. Any occupation or profession carried on entirely within a dwelling or accessory building on the same lot by one or more occupants thereof, providing the following (No Retail Sales on permanent display permitted): [...]

Agriculture. The practice of cultivating the soil, producing crops, and raising livestock; such as but not limited to dairying, pasturage, viticulture, horticulture, hydroponics, floriculture, aquaculture, truck farming, orchards, forestry, and animal and poultry husbandry. However, the operation of any accessory uses shall be secondary to that of the normal agricultural activities. See definition of Bona Fide Farm for complete listing of activities included within the definition of Agriculture.

Bona Fide Farm. For purposes of this ordinance, the terms “agriculture”, “agricultural”, and “farming” refer to all of the following:

1. The cultivation of soil for production and harvesting of crops, including but not limited to fruits, vegetables, sod, flowers and ornamental plants.
2. The planting and production of trees and timber.
3. Dairying and the raising, management, care, and training of livestock, including horses, bees, poultry, and other animals for individual and public use, consumption, and marketing.
4. Aquaculture as defined in N.C.G.S. 106-758.
5. The operation, management, conservation, improvement, and maintenance of a farm and the structures and buildings on the farm, including building and structure repair, replacement, expansion, and construction incident to the farming operation.
6. When performed on the farm, "agriculture", "agricultural", and "farming" also include the marketing and selling of agricultural products, agritourism, the storage and use of materials for agricultural purposes, packing, treating, processing, sorting, storage, and other activities performed to add value to crops, livestock, and agricultural items produced on the farm, and similar activities incident to the operation of a farm.
7. A public or private grain warehouse or warehouse operation where grain is held 10 days or longer and includes, but is not limited to, all buildings, elevators, equipment, and warehouses consisting of one or more warehouse sections and considered a single delivery point with the capability to receive, load out, weigh, dry, and store grain.

For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes: ~~as defined by the United States Department of Agriculture (USDA): any operation that sells at least one thousand dollars (\$1,000.00) average annual income (over a three year period from the date of application as a farm in the Vance County Tax Office) of agricultural commodities or that would have sold that amount of produce under normal circumstances, with a land area of ten (10) acres. Additionally the classification of a farm per the Vance County Tax Office (Use Value Assessment and Taxation of Agricultural, Horticultural, and Forestland G.S 105-277.2 and 105-277.3) shall apply under this Section (documents/applications with complete definitions for tax purposes are available in the Vance County Tax Office):~~

1. A farm sales tax exemption certificate issued by the Department of Revenue.
2. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
3. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
4. A forest management plan.
5. A Farm Identification Number issued by the United States Department of Agriculture Farm Service Agency.

~~☐ Agricultural Land — Land that is part of a farm unit that is actively engaged in the commercial production or growing of crops, plants, or animals under a sound management program.~~

~~☐ Forestland — Land that is part of a forest unit that is actively engaged in the commercial growing of trees under a sound management program.~~

~~☒ Horticultural Land—Land that is part of a horticultural unit that is actively engaged in the commercial production or growing of fruits or vegetables or nursery or floral products under a sound management program.~~

This Ordinance does not impose nor exercise any controls over croplands, timberlands, pasturelands, orchards, idle (land that is currently not cultivated or that is fallow-currently unplanted for crops) or other farmlands. Nor does it exercise control over any farmhouse, barn, poultry house, or other farm buildings, including tenant or other houses for persons working on said farms, as long as such houses shall be in the same ownership as the farm and located on the farm. Residences for non-farm use or occupancy and other non-farm uses shall be subject to the provisions of this Ordinance.

~~NOTE: Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products, grazing/raising of livestock and fowl, aquaculture, sod production, orchards, nurseries, land in government easement/conservation programs, and other products cultivated as part of a recognized commercial enterprise. Farming activities shall also be considered to mean the raising of crops, fruit, produce (row crops, fruit orchards, tree farms, commercial greenhouses) or the raising of livestock (example: chicken houses, swine enclosure, dairy barn, cattle or sheep grazing, hydroponic farming), inclusive of all related activities. Agri-tourism (see definition in this section) shall be included within this definition of a Bona Fide Farm.~~

20) AMEND the Table of Permitted Uses by permitting Cemetery (Church, Family) as a Permitted Use within the (OI) Office Institutional zoning designation.

21) AMEND the Table of Permitted Uses by permitting Manufacturing as a Conditional Use within the (HC) Highway Commercial zoning designation.

B. The above amendments are effective upon adoption of this ordinance.

Adopted this ____th day of **October**, 2014.

ATTEST:

Deborah F. Brown, Chairperson
Vance County Board of Commissioners

Kelly H. Grissom
Clerk to the Board