

ORDINANCE AMENDMENT

**Business Garden Proposal:
Modify the Zoning Ordinance Sections
10-3-24, 10-3-84, and Add Article BB.
Business Gardens
&
Modify Title 16. Offenses Section 16-6-58**



City of Harrisonburg, Virginia

DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT

STAFF REPORT
February 13, 2013

ZONING ORDINANCE AMENDMENT

Modify Sections 10-3-24 and 10-3-84 and Add Article BB. and Amend Section 16-6-58

Staff is proposing to modify the Zoning Ordinance Sections 10-3-24 and 10-3-84 and to add Article BB. Business Gardens, which would include multiple sections regulating horticulture-related businesses on residential property. Other than a minor addition to the proposed regulations, the amendments described herein are the same as those previewed by Planning Commission during their regular meeting in January.

The first change necessary within Section 10-3-24 Definitions includes adding and defining “business garden;” the proposed terminology for the horticulture-related business practice. In brief, the definition includes being classified as a home occupation and that only individuals residing on the property may operate the business. Among other defining details, the definition also contains a reference to a proposed new governing article for further regulations and requirements. Section 10-3-24 would be further modified by amending the existing “home occupation” definition by adding text that would allow business gardens to operate outside of a main or accessory building. As currently defined and regulated, all other home occupations must take place wholly within a main building or accessory building.

As mentioned above, the proposed business garden definition refers the reader to “see Article BB. Business Gardens for operating regulations.” The new article contains six new sections titled: Purpose, General Use Regulations and Requirements, Area and Yard Restrictions, Accessory Structures, Storage and Screening, and Abandonment.

The General Use Regulations and Requirements section mandates residents to apply for a home occupation permit prior to operating a business garden. This section also requires the residential character of all parcels involved to be maintained, that compost can only be used to support onsite operations and that onsite transactions, advertising signage, and apiculture and other animal husbandry are prohibited. Furthermore, all business gardens must be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. A statement is included clearly specifying that business gardens would be subject to the tall grass and weeds ordinance.

The Area and Yard Restrictions section specifies that individuals residing on the property may use as much as 50 percent of the total area of the parcel involved including the total area of all adjoining parcels under the same ownership. Cultivation in accessory structures such as hoophouses, green houses, cold frames, and related structures and areas used for exterior activities such as storage, compost and disposal areas must be included in the allowable area. On the other hand, activities on or within principal buildings including covered and uncovered

porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area. With regard to setback regulations, business garden operations must be setback at least five feet from all property lines unless the operations are enclosed with a wall or fence of at least three feet in height, which does not have to be opaque.

The proposed area and yard restrictions will affect properties differently based upon the characteristics of the parcels involved. For example, it would be possible to have business garden operations in every yard area of a property if such areas are fenced and the parcel is improved with a dwelling that occupies 50 percent or more of the lot area. Conversely, individuals residing on parcels improved with dwellings that consume much less than 50 percent of a parcel's lot area would still have what some consider a traditional yard. For consistency and to be able to equitably implement the 50 percent rule, once a property has an established business garden, staff would calculate all garden areas, whether for personal or business garden use, toward the parcel's allowable 50 percent business garden space.

The Accessory Structures section mandates that all accessory structures associated with business gardens would be governed by Section 10-3-114; the section of the Zoning Ordinance that provides the standard regulations for accessory buildings. Since last month, the Building Official has confirmed with Planning staff that building permits and sub-trade permits would not be required for work associated with business gardens because the State prohibits localities from requiring permits for farm buildings and structures. The Virginia Construction Code considers many activities within the definition of farm buildings and structures, and as proposed, buildings associated with business gardens would be included. With this in mind, staff has proposed an additional subsection within Accessory Structures that would simply require all structures to be securely affixed to the ground. Although there will be no inspection of these structures, it is hoped the regulation will be a reminder to those using these structures to secure them.

The Storage and Screening section specifies that equipment, materials, and compost and disposal areas shall be inside a principal or accessory building or screened from general public view and adjoining properties. For all intents and purposes, the screens referred to in this section shall be opaque and the areas shall not be generally seen by the public and shall not be seen from the ground level of adjacent properties.

The last section of the business garden regulations addresses abandonment of such areas and stipulates that if business gardens cease permanent operation, then the areas must be cleared, all structures removed, and the area re-vegetated in no less than 30 days or no less than 90 days if an extension is granted by the Zoning Administrator.

To be inclusive of all areas in the City where individuals can reside by-right, staff is also proposing to amend Section 10-3-84 Uses Permitted By-Right of the B-1, Central Business District by adding "home occupations" as a use permitted by-right. It may seem odd to add home occupations to a zoning district that allows many other businesses by-right, but because individuals can live in the B-1 district, and because business gardens would be defined as a home occupation, this amendment is necessary to allow those residents the ability to operate a business garden. If an individual or entity wanted to operate something like a business garden but wanted to be able to operate like other business in the B-1 district such as having on-site transactions, advertising signage, and employing individuals that do not reside on the parcel, then they would be desiring to operate something that is not currently defined or allowed by the Zoning

Ordinance. As advised by Planning Commission in January, staff will soon be investigating allowing farming/horticulture-type businesses in the B-1, B-2, and M-1 zoning districts.

Staff supports approving the proposed amendments to Section 10-3-24 and 10-3-84 and in creating Article BB. Business Gardens in the Zoning Ordinance.

Along with the Zoning Ordinance amendments, staff is also proposing to modify the City Code Title 16 Offenses, specifically Section 16-6-58 Weeds, etc. on Lots, commonly known as the tall grass and weeds ordinance. This modification would work in unison with the proposed business garden regulations to clarify that business gardens would be subject to the tall grass and weeds ordinance. Unlike amendments to the Zoning Ordinance, no public hearing is required by Planning Commission to amend Section 16-6-58. However, the Commission should offer a recommendation to City Council regarding this proposed modification.

Staff also supports the necessary changes to the tall grass and weeds ordinance Section 16-6-58 Weeds, etc. on Lots.

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 adding and modifying the definitions as shown:

Business Garden: A home occupation, where areas of a parcel are managed and maintained by individuals residing on the same parcel or adjoining parcels under the same ownership, used to cultivate fruits, vegetables, herbs, or flowers for sale purposes. This definition does not include cultivation only for personal consumption or use. (See Article BB. Business Gardens for operating regulations.)

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, other than business gardens as defined, 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

ORDINANCE AMENDING AND RE-ENACTING SECTION
10-3-84

OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

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

That Section 10-3-84 Uses Permitted By-Right of the B-1, Central Business District shall be amended by adding subsection (13) as shown:

(13) Home Occupations.

The remainder of Section 10-3-84 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

ORDINANCE AMENDING AND RE-ENACTING SECTION
TITLE 10 CHAPTER 3
OF THE
CODE OF ORDINANCES
CITY OF HARRISONBURG, VIRGINIA

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

That Article BB. Business Gardens be added as a new article as shown:

Article BB. Business Gardens.

Sec. 10-3-189. – Purpose.

The regulations set forth in this article are to regulate Business Gardens as defined in Section 10-3-24. Definitions.

Sec. 10-3-190. General Use Regulations and Requirements.

- (1) Individuals operating business gardens shall apply for a home occupation permit.
- (2) The residential character of all parcels involved shall be maintained.
- (3) All transactions shall occur off-site.
- (4) No on-site advertising is permitted.
- (5) Apiculture or other animal husbandry is prohibited.
- (6) Areas shall be maintained in a healthy growing condition, free of refuse, debris, overgrown weeds, and dead or spent plant materials. Such areas are subject to Section 16-6-58 Weeds, etc. on Lots.
- (7) Compost shall be used only to support onsite operations.

Sec. 10-3-191. – Area and Yard Restrictions.

- (1) Land used for business gardens shall be no larger than fifty (50) percent of the area of the parcel involved including areas of multiple, adjacent parcels under the same ownership. Cultivation in accessory structures such as hoophouses, green houses, cold frames, etc., and areas used for exterior activities such as storage, compost and disposal areas shall be included in the allowable area. Activities on or within principal buildings including covered and uncovered porches and decks, enclosed accessory storage structures, upon rooftops, and vertical growth areas are exclusive of the allowable area.

- (2) All areas used for business gardens shall maintain at least a five (5) foot separation from all property lines unless such areas are enclosed with a wall or fence of at least three (3) feet in height.

Sec. 10-3-192. – Accessory Structures.

- (1) Accessory structures shall be governed by Section 10-3-114 Accessory Buildings of this chapter.
(2) All structures shall be securely affixed to the ground.

Sec. 10-3-193. – Storage and Screening.

Storage of equipment, materials, and compost and disposal areas shall be inside a principal or accessory structure or screened from general public view and adjoining properties.

Sec. 10-3-194. – Abandonment.

Business gardens which have ceased permanent operation or been abandoned shall be cleared, all structures removed and the area re-vegetated no more than thirty (30) days after the date of discontinued operations unless otherwise specified by the Zoning Administrator not to exceed ninety (90) days.

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

MAYOR

ATTESTE:

CLERK OF THE COUNCIL

ORDINANCE AMENDING AND RE-ENACTING SECTION

16-6-58

OF THE

CODE OF ORDINANCES

CITY OF HARRISONBURG, VIRGINIA

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

That Section 16-6-58 Weeds, Etc., on Lots be modified by amending subsection (a) as shown:

- (a) Between April first and November first of each year, every owner of real estate situate in the city shall, at his sole expense, cause to be cut therefrom all grass, weeds and foreign growth, with the following exceptions:
- (1) Farm land, not including business gardens, on which crops are being grown or land used to pasture livestock.
 - (2) Acreage not farmed or pastured but which is not subdivided and of which no subdivision plat has been recorded. However, on such unused acreage, the owner shall mow a strip twenty-five (25) feet wide adjacent to any street or adjoining property on which a residence is located.
 - (3) Subdivided and recorded residential lots fronting undeveloped public street right-of-ways.

The remainder of Section 16-6-58 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