

Zoning Ordinance Amendment – Home Occupation Horticulture Exception

Chairman Jones read the agenda item and asked staff to review.

Mr. Fletcher said 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.

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked the applicants if they would like to speak.

Daniel Warren and Samuel Frere introduced themselves and said they reside at 438 Collicello Street. We would like to thank everyone who has worked with us on this and for allowing us to speak tonight.

Mr. Warren said we would like to start out by stating the definition of horticulture. Horticulture is an activity which involves the cultivation of fruits, vegetables, flowers, and ornamental plants. Ornamental plants could be considered grass; I would like to touch on that in a bit. By definition horticulture exists in a diverse amount of places; it exists anywhere there is a maintained green space. A resident in an R-1 or R-2 zoning district is allowed to practice horticulture throughout their property, as long as they are not selling the products of that horticulture practice. If a person had a landscaping business and they were to go to an R-1 or R-2 zoned property to mow the lawn, they could charge the R-1/R-2 owner a fee for mowing the lawn. That fee could entail the upkeep of an ornamental plant. If the homeowner desires to sell the products they must obtain a business license and home occupation permit.

Mr. Frere said the catch to obtaining a business license is that you must obtain a home occupation permit if you are operating your business from a residential area. The big problem is that horticulture is not defined as an allowed use for a home occupation. The definition for home occupation clearly excludes any horticultural use because the only permitted uses are those limited to inside the structure or an accessory structure. Therefore, any home occupation you have must be clearly confined to inside a structure.

Horticulture uses are already allowed throughout the City. Anyone can perform a horticultural use on their property as long as they abide by the standards for “residential character” of the neighborhood. We actually have a clear standard of what a violation of residential character is within the tall grass and weed ordinance for the City. So conformance to residential character is already maintained by the tall grass and weed ordinance. If you are performing a horticultural use outside of your home and it is in violation of the tall grass and weed ordinance; then that ordinance is your regulating body.

We were looking into the language of the tall grass and weed ordinance, because it is super important to our issue. The language states that between April 1st and November 1st every owner must, at their own expense, cut and maintain grass and foreign growth from their property with certain exceptions. We were informed that within the Comprehensive Plan that agricultural uses were not allowed; however, clearly in the code it says the exceptions to the tall grass and weed regulations are for farm land on which crops are grown or which pastures livestock – agricultural uses. We believe the growing of grass and the use of farmland are both horticultural uses. What we want to point out is that the exceptions within the tall grass and weed ordinance are clearly for farmland on which crops are being grown or pasture of livestock.

Mr. Frere continued, why does the tall grass and weed ordinance matter and why are we trying to make this point that there is actually a farming or horticultural code already existing within the tall grass and weed exceptions? Because it does imply that farm uses are allowed within the City, which is kind of contradictory to the Comprehensive Plan. We also want to clarify that horticultural use and agricultural use are not defined within the City Code. When looking for the definitions within City Code you would not find them; you would just find that they are not an allowed use within any district.

If I were to grow a garden over my entire property and maintain that garden, I would not be in violation of the tall grass and weed ordinance and I could do that forever, as long as it is maintained. But, if I wanted to do that as an occupational use and sell my product, I would not be allowed to do so.

The home occupation states that the occupation must be carried on within the main building or an accessory building. The proposed exception inserts the language “unless associated with horticulture” at the end of this sentence. We do not see that this is vague; there already exists a regulation within the tall grass and weeds ordinance to regulate any violations of aesthetic or upkeep character.

Horticulture is going on within every green space within the City. Everyone who takes care of their lawn, has a garden, or tends to plants, is performing a horticultural use. In order to maintain residential character, a horticulture business would have to comply with all regulations that are defined within the Comprehensive Plan and Zoning Ordinance. With existing regulations no visual differentiation would be allowed between a progressive garden friendly home and a horticulture business. With a home occupation permit you are not suppose to know that a business is going on at that site; but, once you step outside of the home and plants are growing everywhere, it may look as if a business is going on. You may be growing food to sell at the Farmers Market or a CSA; but, you could also be growing plants throughout the yard for home consumption. We just want to highlight that if you were performing a horticultural use as a home business it would not be anything different visually and in character. It would not be any different than a progressive gardening home. Because of the laws of the home occupation there would be no issue with parking or signs, they are not allowed; the difference would be we are cultivating a garden outside, but a lot of people do that.

Mr. Frere said some of the final notes we want to highlight are that regulations change over time and the way this happens is through amendments. As we develop new ideas there is often a need to modify regulations in the form of amendments. Sometimes you may have a use that no one disagrees with what-so-ever; but, because there is no allowance within the code for such a use it is not considered an allowed use. We are only asking for a clarification within the code to define the word horticulture. The

word horticulture is inclusive to the growing of plants, which is going on everywhere; but, it does not associate itself with other agricultural uses, such as livestock.

Mr. Warren said I had a conversation with a local chef at a restaurant today and he said to me “you guys could just do this and not comply with the code and it would be fine, no one would ever know about it.” We have heard this several times recently; but, we would like to create a pathway where it could be done legally and no one would have to have concerns. Thank you for your time this evening.

Mrs. Fitzgerald asked if they would talk a bit about their petition.

Mr. Frere replied certainly. We went around the past several days and canvassed city residents, some small businesses and restaurants. We told people about the proposed amendment to the home occupation permit and asked them to sign if they felt the amendment was worthwhile.

Mrs. Fitzgerald said your intent was to collect signatures not only in your neighborhood, but more generally City wide.

Mr. Frere replied yes. Our initial intention was to show that our neighborhood did not have any problem with the horticulture business; but, we also wanted to show that there is very little resistance to this throughout the City. It seems silly to us because horticultural uses are happening on any property within the City, unless you are trying to sell the produce that you are growing. There is no way to differentiate between someone growing food for home consumption or growing food for a business purpose.

Mr. Way said where in the tall grass and weeds ordinance does it say that this type of use is regulated? Where it talks about “farmed land?” Is that land that is farmed or land that is designated as farm?

Mr. Fletcher said it should be understood that this is exempted out because there are non-conforming farming practices within the City.

Mr. Chenault said I think it is important for everyone to understand that the farm use is singled out because it is a remnant of the annexation process within the City and it is intended to apply to grandfathered uses of farms that came into the City and not for any other purpose. I hope this helps you to understand why that is in the code. I would like to ask a question as well. Did you all go to every neighborhood in the City?

Mr. Frere said I spent a day and a half on a bicycle going through neighborhoods and knocking on doors, attempting to speak to as many people as possible, given the time constraints. I did not make it through all of the City; but, I think with more time we could have gotten a lot more signatures. Just to clarify, we are not really debating whether the farm land on which crops are being grown is an exemption. If our use is not an exception, we would still have to comply with the tall grass and weed ordinance.

Mr. Jones said should you be allowed to continue with this as a home occupation, there would be no on-site sales on Collicello Street?

Mr. Frere said we could make sales by delivery to individual homes; but, due to the nature of the home occupation permit we could not make sales on our property.

Mr. Way asked what is the acreage of your property at Collicello Street.

Mr. Frere replied one-tenth of an acre.

Mr. Way said what is the largest piece of machinery or equipment you have at the property?

Mr. Frere replied a grubbing hoe.

Mr. Fletcher said probably the hoop house, which is considered an accessory structure.

Chairman Jones asked if there were any further questions for Mr. Frere and Mr. Warren. Hearing none, he asked if there was anyone wishing to speak in favor of the amendment.

Mr. Justin Van Kleeck said he lives in Harrisonburg (632 Roosevelt Street) and is the assistant manager for the Harrisonburg Farmers Market and on the steering committee for the Harrisonburg-Rockingham Green Network and the Staunton Food Policy Task Force. I am doing a lot with local foods and trying to think about increasing access for our local residents to fresh and healthy food. One of the things that I think is very important is getting more people the ability to grow their own food and have access to locally grown food. As mentioned earlier there is a nationwide and worldwide trend to increase the amount of urban space that is used for agriculture. Urban areas take up about six percent of the earth's surface, which is not a lot; but, if all those were used to grow food in some way it would solve many of the problems of hunger and food access issues.

I think that the horticulture amendment to the home occupation permit would be helpful. By definition it would keep businesses outside of the visibility of the residential neighborhood; but would allow for growing some vegetables or flowers in your yard without having a line of machinery throughout your yard. The benefits of allowing people to grow food on their property far outweigh any kind of potential perceived blight on residential character of the neighborhood.

The problem is that the tall grass and weed ordinance is so general that it can be enforced on people trying to grow food on their property; not that people growing food could potentially violate the tall grass and weed ordinance. There are people throughout the Country being persecuted for growing food in their front yard. As a person growing food on my own property and with plans to use as much of the property for growing as I can, it makes me very uncomfortable that the tall grass and weed ordinance is so broad that I could be in violation. I would rather see the exception made in the home occupation permit with the understanding that these exceptions, even though they are outside, are not a blight on the residential character.

Mrs. Fitzgerald said in the packet of information you provided us this evening are there examples of how other communities have gone about regulating this?

Mr. Van Kleeck replied yes, please follow the links I have provided for Seattle and Baltimore, these are Cities that not only allow for urban agriculture, but they allow for on-site sales as well.

Mrs. Fitzgerald said I would imagine that the path that some localities took to get to this have many zigs and zags; that things have been tried and did not work out so well.

Mr. Van Kleeck said those sites are not just to the codes for those localities, but also to some journalism about the process of getting to this point.

Mr. Chenault said would you consider it reasonable if the local government were to say we embrace urban agriculture, we do not necessarily think this definition process is the way to work it, but feel we could come up with some type of ordinance that would allow an orderly process of it. Are you opposed to starting a dialogue on this in order to come up with an ordinance on this?

Mr. Van Kleeck said I would be very happy with an ordinance that was very clear about promoting urban horticulture. I have already had some dialogue with some Council members and City staff and I am happy to do that along with the folks from Collicello Gardens. My concern is that not passing this exception tonight will end the dialogue.

Mr. Chenault said I do not think that would happen, because I do not think we have a history of doing things that way. However, if it did, or if we fail you in any way, you can always come back to this.

Mr. Van Kleeck said I would like to say that I like the exception within the home occupation because that allows someone to get a license and move through some of the roadblocks. Otherwise, they are completely illegal.

Dr. Dilts said the size of the lot at Collicello Gardens is very small so the visual impact is very small; but, there are some properties within the City limits that are quite large are you extending this horticulture piece to those properties as well?

Mr. Van Kleeck said yes. If someone had large flower beds throughout their property there would not be complaints about that. All of the plants that would be grown for food may not be as pretty, but they are not ugly, they are still plants.

Dr. Dilts said is there a matter of scale in terms of making something a business or not a business and taking care of the plants. Does scale need to be looked at for this?

Mr. Van Kleeck replied that would depend, as stated before, if I wanted to do this for my own personal use and not a business I could legally do so. If I were operating a business I would want to keep my garden and plants healthy, I would not want to show or sell blighted plants.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Matt Trost said he resides at 485 Collicello Street and wanted to mention that we may want to consider horticulture for the intent of bringing produce to market and not just horticulture in a vague or general manner. As far as increasing traffic on streets, most City lots are small and would not increase traffic. There are residences within the City that are not operating as a CSA and have much more traffic than what we see at Collicello Gardens. The difference between my vegetable garden and a CSA is I am feeding myself and my family, whereas the CSA is doing that and helping to feed other families as well. I would see that as a valuable contribution to any neighborhood.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Andrew Jenner said he resides at 613 Collicello Street and I would like to make three quick points. There is a lot of discussion about how this may diminish residential character or a concern that it may have a negative impact. I believe there are three reasons why this may enhance the neighborhood character – this is somewhat the opposite of the “broken window” theory of neighborhoods. You have someone investing so much into a property, especially one they do not even own, it is inspiring and it makes you feel good about your neighborhood. Also, knowing your neighbors is important to a neighborhood and because of the happenings at Collicello Gardens I have gotten to know my neighbors through the CSA. I get to know my neighbors better when I am outside doing things in my yard and this is a great example. So anything we do to encourage people to be outside and interacting with their neighbors enhances a neighborhood. Lastly, I have a home occupation from my house on Collicello Street, I am one of those invisible businesses, and I think safety is an important benefit with this. It is unintended, but it is a side benefit of the home occupation; I am pretty much at home all the time and when there are people working from their homes it is good for a neighborhood. You could consider it free community policing. I support this home occupation amendment and I feel that this is generally a good thing. I would encourage you to support this because it enhances the character of my neighborhood and I believe it would in many neighborhoods.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Tom Benevento, 910 Collicello Street, said I do not have much to add to what has already been said. I do appreciate the work that staff has done and the dialogue that is going on; I have worked with you in the past on some of these issues. I do want to emphasize that we have been focused a lot on the visual part of this and the concern for blight; but this kind of potential ordinance would enhance the

neighborhood in many other ways. The idea of working outside in gardens is very powerful for a person; it really increases their health and their lifestyle. Safety as well, the more people you have working outside in gardens is going to make your neighborhood much safer. Enhancing the City at large by growing local food and having good quality food at hand is really a benefit. So I hope we can look beyond the question of visual concerns and think about these other components that are also important.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Eliza Hoover, 335 Hill Street, said I do have a perspective that I want to add to encourage this type of business within the City. As you all know I live in an area that has a lot of lower income residents and obesity is a huge problem in this country, particularly in low income. If we could get a CSA in northeast Harrisonburg and people who do not have a lot of income could see these beautiful vegetables growing, I think it could make a huge difference in the eating habits of people in a lower income area. I just wanted to bring that point to your attention.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Valerie Ramsey, 506 Collicello Street, said the reason I moved to the neighborhood is because I was babysitting at several of the different homes along Collicello Street and Virginia Avenue in this area and every time I would walk past this property I would notice the gardens. After meeting the residents and talking about what they were doing it made me feel really good about the neighborhood. I noticed too, that other neighbors were following them by starting to garden at their homes. This is part of the reason why we ended up renting a home on Collicello Street.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Panayotis Giannakouros, 98 Emery Street, said he would like to point out a couple of pieces of logic that have been used in this argument. The first is in a 2006 Daily News Record article describing the City clearing an apparently abandoned section of property of weeds that included poison ivy, the City took a stand by stating they were not interested in regulating aesthetics. Mr. Fletcher reaffirmed that tonight in his opening remarks. With that in mind, the mention of tall grass and weeds in connection with this item provides no specific reason as to why the use is undesirable. With regard to questions that have been raised about how a municipality could make a weed ordinance compatible with desired uses, I feel Mr. Van Kleeck mentioned several municipalities that have done so. We have Cities neighboring us that do not have problematic tall grass and weed ordinances. The adjacent City of Bridgewater has a very specific code that applies only to abandoned property. The City of Charlottesville has an even more comprehensive ordinance that takes into account setback and other considerations based upon the degree to which there is consensus among neighboring houses. I would like to point out that doing horticulture in a person's lawn takes a lot of work. We have had the experience of remediating a lawn that had been a rental for a long time and removing nearly half the surface cover which consisted of a variety of noxious plants. In the process of doing that remediation, there were times when it did not look like an ordinary yard, but I think come next spring neighbors will be surprised in the transformation of the property. Finally, if this is the way to achieve positive goals, I think that giving the City's support to people who are trying to do something positive, will maintain the momentum and the activity on the people's side with the Council.

Chairman Jones asked if there was anyone else wishing to speak in favor of the amendment.

Hearing none, he asked if there was anyone wishing to speak in opposition to the amendment.

Anthony Bopp said he lives on Sharon Street in Harrisonburg and is opposed to the proposal for the following reasons. I get nervous when I hear about trends and this has been referred to as a trend. It was fifteen years ago when there was a trend about composting that kind of hit the City and I

welcome anybody to come to my back yard and see two unused compost piles that my neighbors have abandoned. One of the things that concerns me about gardening for businesses is I am sure there will be intensive composting and it is all fine while it is working. However, once it stops it does not smell too nice. Secondly, there has been a lot of discussion about the weed ordinance and staff can tell you that there is a property in my neighborhood on South Avenue and Central Avenue that, thank goodness, we have a weed ordinance for. Maybe there is a better way to take care of weeds, but at least we have the ordinance and periodically the City can get it mowed for us. Fifty to sixty percent of the folks in my neighborhood garden and I am pro gardening. The part that I have an objection to is the business side of it. I think the idea that we have zoning in place so that we can have residential and commercial and industrial in different parts of the City works. There is a feeling of quiet that you get in a residential area that does not have businesses. I think the reason we limit businesses to inside the house is a privacy issue; once you start taking business outside I feel it changes the complexion of the area. Some say it changes it for the better, I am not sure; but I would rather live in an area where there is not businesses in that area. Maybe the long term way to solve this is to have a zoning classification for R-1 residential that is pristine and business free and one for the residential district where you can also do business such as this if you wish. Many of the things that are being done at this garden I am in favor of, until the point that it becomes a business.

Chairman Jones asked if there was anyone else wishing to speak in opposition of the amendment. Hearing none, he closed the public hearing and asked the Planning Commission for discussion.

Mr. Way said with the question of the vague definition of horticulture; rather than saying horticulture why not spell-out the definition of it, which is the growing of fruits, vegetables, flowers, or ornamental plants. Then you avoid the problem of landscape businesses and that sort of thing, it keeps things rather specific. You could even put in there not for sale on premises to make it more specific.

Mr. Fletcher said it is a starting point. Some of what has been discussed and many of the points that folks have made tonight we have talked about internally. Regardless of the definition, it is still a problem of always being a question of what type of equipment can be used, what are you growing and what is the intensity of that?

Mrs. Turner said even with what is suggested as a definition, it might get rid of some of the concerns about a landscape business, but it still could be a landscaping business where someone is growing flowers or shrubs for sale. With that is going to come a certain amount of equipment that is going to be stored on site, probably other materials stored on site that are not compatible with a neighborhood.

Mr. Way said I understand. The other problem staff brought up regards the tall grass and weed ordinance. It strikes me there are some gaps, vagueness and problems with the tall grass and weed ordinance. Could something be added under subsection A, about the growing of fruits, vegetables, flowers, and ornamental plants; would it make sense to put in another exception within this subsection?

Mr. Fletcher said there is no reason why you could not put something in like that.

Mrs. Turner said are you saying it would exempt people who have horticultural uses from being told they were in violation of the tall grass and weed ordinance?

Mr. Way replied yes; if they are growing fruits, vegetables, flowers and ornamental plants, but not for sale on premises. It would be an extra exemption. Another thing I am thinking regards the home occupation permit where it states that the primary intent of the home occupation permit is that no one should know through visual observation that the property is being used for anything other

than residential use. There is one discussion we had which is the distinction between home occupations and using this as a special use as a way to regulate. In the R-1 zoning you are allowed to have a 200-foot public safety cell tower or a golf course; what are the potential impacts of those versus a vegetable garden. Can a special use permit be a way to get at this?

Mr. Fletcher said yes, it is absolutely something to be considered. If that is a direction you would like us to go we can certainly do so.

Mr. Way said is there a problem with a special use that you would not get the same restrictions as you do with the home occupation.

Mr. Fletcher said you could make those conditions of the special use. Staff did talk about that. We have discussed much of what we have heard tonight. I very much appreciate Mr. Van Kleeck sending us the links and information. We are aware of much of this. We have brought this issue up to make certain we were headed in the right direction for everyone. I do not think we can sit here tonight and figure this all out. If this is headed in the direction of a special use permit, staff can do that; we can get a definition, guidelines, and more.

Mrs. Fitzgerald said is this not a question of scale. At the Collicello Street site you are not working with a lot of ground and so it makes sense to produce the way you are. But, if you are talking about five acres, then you are not talking about what they are doing at Collicello Street; with five acres you are talking about equipment, noise, and working all different times of the day. The visual thing in that case is not just front yard versus back yard; it is big versus what they are doing. It looks like a farm if you are talking about an area of five acres.

Mr. Fletcher said we are not just discussing the Collicello Street site. We are not saying that farming is bad; we just need to define what we want.

Mrs. Fitzgerald asked what does the definition of residential character mean for us.

Mr. Way said I am very supportive of this in principle, I think from a future, urban standpoint it is fantastic; we just need to find a way through this legal framework.

Chairman Jones said through part of the discussion one of the issues that came up was how we approached something similar to this previously. The Council ruled a two acre minimum on chickens with that particular regulation. The discussion of five acres just came up because of the visual aspect, but do we have any R-1 or R-2 parcels that large?

Mr. Fletcher said we do, they are few and far between, but they are out there.

Chairman Jones agreed and said however; most of those parcels are on outlying areas. When I travel out to those areas I see mostly pasture fields as it is. In the context of what I am hearing with this request I am thinking of just those areas most densely populated within the heart of the City and I cannot think of any parcels that large.

Mrs. Turner said we do not have many that are that large, but we do have a lot of people in residential neighborhoods who own a vacant lot next to them and we already have concerns when someone does something with their vacant lot. So I imagine that if someone were to cover the entire vacant lot with some type of crops growing, we would probably get some people who were not pleased with that. They may question things like amounts of fertilizer being applied, tilling, or noise going on.

Mr. Chenault said when I was growing up there was a three quarter acre parcel at the intersection of Gay and Liberty Street that was used for gardening, it was there through the 1960's. We can learn from history to see what can be done and sometimes people tend to ignore that. There was a

communal garden along Roosevelt Street near Ohio Avenue where about twenty neighbors farmed communally and distributed their produce to their friends and each other. So it has been done here in the past, so why is it an issue now and not then. I think the reason is that generations have passed and we got into the convenience generation; now we are kind of moving back into a more sustainable mode. This is somewhat of a new thing for a lot of people. I just think that this is something we can deal with. Zoning is a concept that is designed to protect not only you, by the absence of it, but your neighbor as well, because of it. It is a flux, a balancing act, and like it or not aesthetics is a legitimate zoning concept. What we need to do is balance what you want to do with our community as a whole and what their aims are. I think this absence of a definition is not the way to do this. The way to do this is to adopt an ordinance that works for as many people as possible and we can work diligently to work as quickly as possible. Some things that I think need to be considered are the interest of adjoining landowners, protecting adjoining landowners if protection is needed, runoff, and wildlife. In my neighborhood people who try to garden deal with deer on a regular basis.

I would like to see us move forward on this cooperatively and try to develop an ordinance that will allow this to happen, while protecting everyone. I believe there is a way to make it co-exist. I do not think what we have before us tonight is an answer that is in the best interest of the entire City.

Mr. Way said could we take care of all concerns through a special use.

Mr. Da'Mes added perhaps we should make a differential for scale. I cannot imagine imposing a "pricey SUP" for a parcel this size; however, there are other parcels at a different scale that would warrant a SUP. Then we would be able to put certain restrictions on different situations. Therefore, if we do a SUP, scale matters, appearance matters, back yard versus front yard and so forth.

Mr. Chenault said I believe the size analogy is well taken; on most residential lots it may not matter, but if you are doing two, three, or even four acres, your scale brings about different issues for adjoining property owners. That is where the SUP could come in to play.

Mr. Way said I believe the issue of definition is very important as well and I again advocate for spelling out exactly what it is.

Mr. Fletcher said in an effort to move us along, it sounds like Planning Commission has a consensus that you do not like the way it is presented here. If Planning Commission so wishes we can table this and come back to you at a later date with something more along the lines of what we have heard here tonight.

Mr. Chenault said I would like to try and set-up some meetings to try and get this dialogue started.

Mr. Way said when could we get some type of firm proposal from staff.

Mr. Fletcher said we could prepare something to bring to discuss further or to put out for public discussion and then bring it back here for a public hearing the following month.

Mr. Way said I was thinking we should provide a deadline.

Mrs. Fitzgerald agreed and said if for no other reason there is the actual issue of a planting and growing season for these folks. If we are going to go forward with something relatively soon, then we need to be sensitive as to when we get this decided by.

Mr. Chenault said can we at least see where we stand with this in January?

Mrs. Fitzgerald asked if this should be a work session.

Mr. Fletcher said it can be, but you would need to give us some time to get that ready. We have a relatively complicated month in January, plus with holiday schedules of staff; I think February would be the earliest we could have something ready for discussion.

Mr. Way said what should we expect from you in February?

Mr. Fletcher replied some type of proposal that would be put out for public discussion how this could be regulated or allowed. We honestly have looked at the SUP approach.

Mrs. Turner asked if Planning Commission was looking for the public hearing proposal to come in February or just some language for discussion.

Mrs. Fitzgerald said I am just sensitive to the fact that if we are going to allow this soon, we are in December now and February may be too late, for the planting and the growing.

Mr. Fletcher said do not forget, they can plant. This just deals with the business aspect of the use.

Mr. Chenault said can we schedule a work session for the first week in February.

Mr. Fletcher said we could if that is Planning Commission's desire. The first Wednesday of the month would be February 6th; our regular meeting would be on the 13th. The work session could be held next door in the classroom, it would be open to the public; but, we would not necessarily take public comment.

Mrs. Fitzgerald said would it make more sense to schedule a work session during the January meeting so we can see how far along everybody is after the holiday season.

There was a consensus among Planning Commission that this is what should be done.

Mrs. Fitzgerald moved to remove this particular issue from discussion at this time.

Dr. Dilts seconded the motion.

Chairman Jones called for a voice vote on the motion. All voted in favor (6-0) of the motion.