



DOÑA ANA COUNTY

Department of Planning and Development
Intra-Departmental Memorandum

To: ETA Authority Members	Date: March 13, 2012
From: Janine Divyak, AICP, Chief Planner <i>J. Divyak</i>	
Subject: Proposed Amendment 2012-001 to the ETZ Ordinance No. 88-02	

On February 12, 2012 the Extra-territorial Zoning Authority held a public hearing to consider the adoption of Amendment No. 2012-001 to the ETZ Ordinance No. 88-02 (see Exhibit A), which the ETZC reviewed and recommended approval of a *similar* version in September 2011. The original document that the ETZC reviewed was amended by the ETA and specific sections were rewritten by the Legal Department to make it more clear and enforceable. The number of employees associated with the home occupation was increased from one to five to reflect a change in the International Building Code (IBC) that allows provisions for live/work units, which are in compliance with the IBC. Additionally, Day/Child Care is regulated by the State of New Mexico, Child and Licensing Bureau, which allows up to 12 children to be in a residential dwelling providing the States' provisions are followed. The proposed amendment will allow up to six children in the home occupation; seven or more will require an application for an SUP.

The ETA is requesting further input and review from the ETZC specifically relating to the comments received from the public hearing version of the Amendment. Staff has received numerous sets of written comments from the general public, see Exhibit B, but the general consensus for the home occupation section is summarized below:

- 1) On- and off-street parking should be limited to off-street only.
- 2) An increase in traffic in the residential neighborhood.
- 3) The impact on unimproved dirt roads.
- 4) The number of employees being increased to 5.
- 5) No hours of operation established.
- 6) Signage will change the residential nature of the neighborhood.
- 7) Six children along with employees for a day care center will increase traffic and change the residential nature of the neighborhood.
- 8) Uncontrolled retail sales/vending out of the home.

Additionally, Douglas Hoffman, president of the Talavera Homeowner's Association sent additional comments, Exhibit C, basically suggesting what is currently in place should remain, with the exception of rewording Section 3.4.D and deleting 3.4K, which requires an annual business registration for the home occupation.

Further, Mr. Hoffman is not supportive of reducing the 10' side and rear yard setbacks to 5' for accessory buildings 600 square feet or less in size, and suggests deleting this amendment in Section 7.1.

Amendment No. 2012-001 to Las Cruces Extra-Territorial Zoning Ordinance No. 88-02, as previously amended,

WHEREAS, the Amended Joint City/County Extra-Territorial Zoning and Subdivision Agreement ("JPA") was entered into between the City of Las Cruces and Doña Ana County on February 3, 1997; and,

WHEREAS, based on public input and staff review from the City of Las Cruces and Doña Ana County, the Extra-Territorial Zoning Commission (ETZ) held a public hearing and recommended the adoption of this amendment as required by said JPA, Section IV.A, "All proposed amendments of the Extra-Territorial Zoning Ordinance shall be made to the Commission. The Commission shall then make a recommendation to the Authority"; and,

WHEREAS, the Amendment follows the notice requirements of the ETZ Ordinance 2.1.G and New Mexico State Statute 3-21-14(B) &(D), NMSA 1978 and includes a clarification and expansion of some definitions, uses, home occupation permits, and accessory buildings in residential districts; and,

NOW, THEREFORE, the Extra-territorial Zoning Authority hereby approves and adopts the following amendments to the Las Cruces Extra-Territorial Zoning Ordinance No. 88-02, as previously amended, by adding the language indicated by underlining and deleting the language indicated by ~~strikethrough~~, with instructions in *italics*.

Section 1.6.A *Add the following new definitions*

26. AREA, GROSS—The total horizontal area within a lot or parcel of land before public streets, easements, or other areas to be dedicated or reserved for public use such as stormwater detention and retention facilities and irrigation canals and facilities are deducted from such lot or parcel.

27. AREA, NET—The total horizontal area of a lot or parcel, excluding all public streets or alleys, easements, or other publicly reserved or dedicated improvements such as stormwater detention and retention facilities and irrigation canals and facilities.

Section 1.6.B *Delete the last sentence*

6. BLOCK—Land surrounded on all sides by streets or other transportation or utility rights-of-way, or by physical barriers such as bodies of water or public open spaces. ~~Property bounded on one (1) side by a street, railroad, right-of-way, waterway, unsubdivided areas or other definite boundaries.~~

Section 1.6.C *Change the following number of children from 6 to 7 and require a SUP*

2. CHILD CARE CENTER-- A commercial or public-sponsored establishment for the day or night care of more than ~~six (6)~~ seven (7) individuals under the age of eighteen (18) years, not to include a halfway house as defined under Section 1.6.H of this Article.

Section 1.6.D *Change the following number of children from 5 to 7 and require a SUP*

1. DAY CARE CENTER—Any child care arrangement that provides day care on a regular basis for more than four (4) hours per day for more than ~~five (5)~~ seven (7) children of preschool age.

Section 1.6.F *Add the following new definition*

6. FLAG LOT--The width of a front lot line serving as the driveway shall be a minimum of twenty five feet (25') and shall not exceed one hundred fifty feet (150') in length without an approved turnaround, unless approved by the Fire Marshal, and shall access only one (1) lot.

Section 1.6 U *Add the last sentence to the item.*

1. Use—The activity or function that actually takes place or is intended to take place on a lot. If a use is similar in size, scope and intensity for a specific zoning land use classification and is not on the list of permitted uses, uses with conditions or a Special Use Permit, the Director may administratively classify that use for that particular land use classification providing the appropriate procedures are followed for that land use..

Section 1.6.V DEFINITIONS 'V' *Add the following new definition*

3. VINEYARD—An agricultural use of land for the commercial cultivation of grapes for winemaking, table grapes, raisins and non-alcoholic grape juice.

Section 1.6.W DEFINITIONS 'W' *Add the following new definition*

13. WINE TASTING ROOM—A facility that is located on the same property in which wine products are grown or processed and may be tasted and sold on the premise, provided that the property is assessed by the County Assessor's Office as agricultural land.

Article III. ZONING DISTRICTS AND SPECIAL USE PERMITS *SUP's required for 7 or more children and add wineries and/or wine tasting rooms*

3.1.A.1.d ER1M SPECIAL USE PERMITS

- 7. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 14. Wineries and/or wine tasting rooms

3.1.C.1.d ER3M SPECIAL USE PERMITS

- 6. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.C.3.d ER3H SPECIAL USE PERMITS

- 4. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.D.1.d ER3/4M SPECIAL USE PERMITS

- 5. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.E.1.d ER4M SPECIAL USE PERMITS

- 5. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 13. Wineries and/or wine tasting rooms

3.1.F.1.d ER5M SPECIAL USE PERMITS

- 5. Day care center or child care center for ~~five (5)~~ seven (7) or more children
- 11. Wineries and/or wine tasting rooms

3.1.G.1.d ER6 SPECIAL USE PERMITS

4. Day care center or child care center for ~~five (5)~~ seven (7) or more children

11. Wineries and/or wine tasting rooms

3.1.G.2.d ER6M SPECIAL USE PERMITS

4. Day care center or child care center for ~~five (5)~~ seven (7) or more children

11. Wineries and/or wine tasting rooms

3.1.I.1.d ER7 SPECIAL USE PERMITS

4. Day care center or child care center for ~~five (5)~~ seven (7) or more children

3.1.J.3.c EC1 SPECIAL USE PERMITS

11. Wineries and/or wine tasting rooms

3.1.M.4. E11 SPECIAL USE PERMITS

8. Wineries and/or wine tasting rooms

Section 3.1 GENERAL DISTRICTS: PURPOSES AND USES

SPECIAL USE DEFINED *Add last sentence*

A special use is a use which is of an unusual or unique character and which may be offensive or incompatible in some cases within a zoning district. A special use requires review and approval by the ETZ Commission to determine impacts of the use on the surrounding area. Special Use Permits for accessory dwellings shall follow Article 7, Section 7.2 of this Ordinance.

3.1.K.4 EC2 SPECIAL USE PERMITS *Add the following use to item 12:*

3. All uses requiring a Special Use Permit under Section 3.1.J.3.c of this Ordinance	13. Drive-in theaters
4. Airport and heliports	14. Major facilities for generation of energy
5. Animal hospitals and clinics	15. Nursing or convalescent homes
6. Auditorium or assembly halls	16. Racetracks
7. Bus passenger terminals	17. Recreational vehicle parks
8. Cemeteries and crematoriums	18. Recycling purchase centers
9. Commercial kennels	19. Skating rink: roller or ice skating
10. Commercial parking garages	20. Stadiums or athletic fields: baseball, football, soccer, track or similar sports
11. Convention or exhibition halls	21. Mobile home units for security guards on temporary basis during construction period only
12. Dance halls or event centers	

Section 3.4 HOME OCCUPATION PERMITS *Delete original language and replace with new language.*

A home occupation is permitted in a residential district subject to the following criteria:

- ~~3.4.A~~ — No person, other than members of the family residing on the premises, shall be engaged in such home occupation.
- ~~3.4.B~~ — The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes and not more than twenty-five (25) percent of the floor area, not to exceed five hundred (500) square feet, shall be used in the conduct of the home occupation.
- ~~3.4.C~~ — There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation, and there shall be no open storage of business-related equipment or supplies.
- ~~3.4.D~~ — There shall be no commodities sold at the residence in connection with such home occupation. Flammable products are prohibited.
- ~~3.4.E~~ — No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood.
- ~~3.4.F~~ — No equipment or process shall be used in such home occupation which creates noise, vibration, glare, fumes, odors or electrical interference detectable in adjacent areas and no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
- ~~3.4.G~~ — Signs shall not be permitted to advertise the business or its products.
- ~~3.4.H~~ — Storage in connection with any home occupation shall be totally enclosed within the home. Storage shall not exceed ten (10) percent of the floor area and shall not exceed two hundred (200) square feet.
- ~~3.4.I~~ — No personal physical service in connection with such home occupation requiring the client to come to the residence shall occur within or at the residence.
- ~~3.4.J~~ — No home occupation shall be conducted in any accessory building.
- ~~3.4.K~~ — All home occupations shall be required to obtain an annual business license from the county clerk.

- A. The purpose of a home occupation permit is to allow limited commercial endeavors involving the manufacturing, purchase, sale, lease, or exchange of goods, and/or the provision of services, within a residential dwelling, or accessory building associated with a residential dwelling, in circumstances where the home occupation is secondary and incidental to the primary residential use of the residential dwelling, or accessory building associated with a residential dwelling, provided the home occupation does not alter the exterior of the property or materially affect the residential nature of the neighborhood. For purposes of this section, the term "residential dwelling" shall include any accessory building associated with a residential dwelling.
- B. It is a violation of this ordinance for any person or entity having legal or equitable ownership, or physical custody of, or control over, a residential dwelling, to operate, or to allow the operation of, a home occupation within such residential dwelling, regardless of zoning district, without first obtaining a home occupation permit in compliance with the requirements of this ordinance. In addition to the home occupation permit itself, the applicant for such permit must obtain a business registration in compliance with the Business Registration Fee provisions of Doña Ana County Code Chapter 154 and must comply with all other codes and ordinances, including, but not limited to, those relating to parking, landscaping, drainage and building requirements.

- C. A home occupation may be permitted in any residential dwelling, subject to the following requirements and limitations:
1. No more than five (5) people, in excess of the permanent occupants residing on the premises, shall be engaged, whether paid or not, in the home occupation. Additional people may be engaged in the home occupation only upon approval of a Special Use Permit, as provided for in Section 3.3.B.
 2. The home occupation use of a residential dwelling or accessory building associated with the residential dwelling must be clearly incidental and subordinate to the primary residential use of the property, except for day care or child care services.
 3. Any storage associated with the home occupation shall be completely enclosed within the residential dwelling, and such storage shall not exceed 600 square feet in area.
 4. As a result of the home occupation, there must be no change in the outside appearance of the residential dwelling, or the premises, except as to signage described in the paragraph below, and there must be no other evidence of the conduct of a home occupation visible to the public.
 5. Only one sign, one square foot in size, non-illuminated, free standing or mounted flush against the residential dwelling, shall be permitted which refers to the home occupation.
 6. No equipment, material, or process shall be used in a home occupation that creates noise, glare, vibration, dust, fumes, odor or electrical interference detectable at the property line, or creates visual or audible interference with any radio, television receiver or computer on or near the premises, or that exceeds that which is normally found in a residential area.
 7. There shall be no hazardous, explosive, highly flammable, combustible, corrosive, radioactive or other restricted materials used or stored on the premises of a home occupation beyond the amount normally kept at a residential dwelling for residential use. The use or storage of all such materials must comply with the Doña Ana County Fire Code.
 8. The utility use associated with the home occupation must comply with the public utility rules and regulations applicable to residential dwellings.
 9. Home occupation parking requirements:
 - a. On-street parking for customers or clients in connection with a home occupation shall be permitted only if the residential nature of the neighborhood remains unaffected.
 - b. No more than two customer or client vehicles shall be parked at or near a home occupation at any one time, except for instructional service, day care or child care services.
 - c. Vehicles larger than one ton in carrying capacity that are used in connection with a home occupation shall be stored or parked in a structure or other enclosure out of public view. Semi-trailer trucks, cabs

and trailers with weight limitations shall not be used or stored in conjunction with a home occupation.

d. A home occupation shall not cause the elimination of any off-street parking required by law for the occupants of the dwelling unit.

D. Home occupation permits may be approved for the following activity categories: Professional Office, Professional Service, Instructional Service, Home Artisan Business, Small Item Repair Service, and Day Care/ Child Care Service.

1. Professional Office includes offices for accountants, appraisers, architects, attorneys, contractors, engineers, financial planners, insurance agents, consulting services, real estate sales and similar office uses.
2. Professional Service includes home occupations involving computer programming and internet/website development, bed and breakfast establishments, beautician/hairdresser/barber services, direct distribution (Amway, Avon, Tupperware, etc.), maid services, mail order, massage therapy, ironing, pet grooming, telephone/fax answering, word processing and similar service uses. Beauticians/hairdressers/barbers and massage therapists licensed by the State of New Mexico shall be limited to one customer station per residential property for the home occupation.
3. Instructional Service includes educational tutoring, music instruction and similar instructional services. A maximum of five students may be at the dwelling at any one time.
4. Home Artisan Business shall include artist studios, cabinet making, dress making, engraving, furniture making, hobby crafting, jewelry making, sewing, tailoring, writing studios, small scale pickling/canning activity and similar uses.
5. Small Item Repair Service includes bicycle, computer, television, vacuum cleaner, locksmith, watch, tool, shoe and similar repair services.
6. Day Care/Child Care Service must be in compliance with state licensing regulations. Any Day Care/Child Care Service home occupation involving more than six children being at the residential dwelling at the same time shall be allowed only upon approval of a Special Use Permit, as provided for in Section 3.3 B.

E. The following activities shall be prohibited as home occupations: adult bookstores/video stores, adult amusement establishments, health and exercise facilities, motor vehicle repair services, tattoo/body piercing parlors, auto or truck repair, motorcycle repair, lawn mower repair, large appliance repair, internal combustion engine repair, and similar activities.

F. An activity not specifically enumerated under the activity categories listed above may be permitted by the Doña Ana County Community Development Director or designee if the applicant for a home occupation permit can establish that the proposed activity is reasonably similar in size, scope, use, and intensity as an enumerated home occupation activity.

G. Home Occupation Permit Approval.

1. Application. Application for a home occupation permit must be submitted to the Doña Ana County Community Development Department on an official form developed for that purpose along with payment of any application fee as established by resolution of the Extra-territorial Zoning Authority. The proposed home occupation activity shall be reviewed for compliance with all applicable statutes, ordinances, and regulations.
2. Review and scope. As part of the review and approval process, the applicant for a home occupation permit shall provide a site plan, which at a minimum shall consist of a scaled drawing showing lot line dimensions, the location, dimensions and setbacks of all structures, driveway access, parking areas, and proposed signage. In addition, the County may require an applicant for a home occupation permit to submit additional documentation describing in detail the equipment, materials, or processes to be used in connection with the home occupation, and to allow inspection of the premises proposed for home occupation in order to determine compliance with all applicable statutes, ordinances, and regulations. Applications for home occupation permits that do not meet the requirements of this section or the requirements of all other applicable statutes, ordinances or regulations shall be denied.
3. Business Registration. A home occupation permit, although approved, shall not be effective until the applicant obtains a Tax Identification Number from the State of New Mexico and a Doña Ana County business registration approved by the Doña Ana County Community Development Department.
4. Renewal. The business registration associated with a home occupation permit must be renewed on an annual basis on an official form developed by the Doña Ana County Clerk's Office for that purpose. A home occupation permit need not be renewed unless there is a material change in the home occupation activity, or its location, or there is a material increase in the permitted activity's size, scope, or intensity from that originally permitted.
5. Expiration. The home occupation permit shall remain in effect until such time as the home occupation activity is no longer in operation as originally approved, the annual business registration is not renewed or approved, or it is determined that a violation of the home occupation provisions of this ordinance or the provisions any other applicable statute, ordinance, or regulation has occurred, and the home occupation permit or business registration is revoked.

H. Revocation of home occupation permit; enforcement.

1. A home occupation permit may be revoked for the violation of, or noncompliance with, the provisions of this ordinance, or any other statute, ordinance, or regulation relevant to the home occupation activity. In addition, a home occupation permit may be revoked upon:
 - a. A non-permitted material change in home occupation activity, or a change in location, or a material increase in the permitted activity's size, scope, or intensity from that originally permitted.
 - b. A failure by the applicant to maintain a valid business registration or other license required for the home occupation.

- c. A failure by the applicant to allow reasonable inspection of the approved premises at reasonable times for the purpose of determining compliance with the home occupation provisions of this ordinance.
 - d. The submission of false or materially misleading information on a home occupation permit application.
2. Any home occupation permit shall, upon revocation, become null and void, and any use of the property approved under such home occupation permit shall immediately cease.
3. Home occupation inspections. As a condition of approval of a home occupation permit, an applicant shall be deemed to consent to reasonable inspection of the approved premises at reasonable times by County officials, including Community Development staff, law enforcement, and codes enforcement officers, for the purpose of determining compliance with the provisions of this ordinance.
4. Prior to revoking a home occupation permit or taking other enforcement action for a violation of the home occupation provisions of this ordinance, the County shall notify the applicant listed on the home occupation permit of such violation by certified mail, to the address listed on the home occupation permit application. Enforcement action may include, but is not limited to, revocation of a home occupation permit and prosecution in Magistrate or District Court. The notification shall include:
 - a. A specific description of the violation.
 - b. The specific actions to be taken by the applicant that are necessary to correct the violation.
 - c. A demand that the violation be corrected within a specific period of time not to exceed 30 calendar days from the date of the notice. The demand may specify a reasonable period of time less than 30 calendar days for violations having a material adverse impact upon public health or safety.
 - d. A description of further action the County may take if the violation is not corrected within the specified time period.
5. If the violation is not corrected within the time period stated in the demand notice, the County shall send notice of the revocation of the home occupation permit by certified mail, return receipt requested, to the address provided on the home occupation permit application, at least five (5) calendar days prior to the effective date of the revocation and the initiation of any other enforcement action, including, but not limited to, prosecution in court.
6. Any person aggrieved by the revocation of a home occupation permit may, within ten (10) business days from the effective date of the revocation, appeal to the Extra-territorial Zoning Commission by filing with the County Planning Director written notice stating the nature of the appeal and the specific reasons therefor. The Extra-territorial Zoning Commission shall hold a quasi judicial public hearing to receive evidence on the appeal, and by majority vote

of the total membership of the Commission, may reverse or affirm (in whole or in part), or may modify, the revocation of the home occupation permit.

7. The notice, demand, and revocation procedures set forth above, shall not be required when home occupation activities are being conducted without a home occupation permit in violation of this ordinance. Such violations may be enforced as any other violation of this ordinance may be enforced.

Section 7.1 ACCESSORY BUILDINGS *Reduce rear and side yard setbacks and increase building size to meet setback requirements, and add "or front yard setback" to item No. 5.*

7.1.A HEIGHT AND SETBACK REQUIREMENTS FOR ALL RESIDENTIAL DISTRICTS

1. A minimum distance of ten (10) feet, measured eave to eave, from the primary structure.
2. A minimum distance of ~~ten (10)~~ five (5) feet from side and rear property lines for any accessory building of six hundred (600) square feet or less gross floor area.
3. Accessory buildings larger than ~~four~~ six hundred (~~400~~ 600) square feet or taller than fifteen (15) feet shall meet all minimum setback requirements
4. A maximum height up to the height of the primary structure, not to exceed of twenty five (25') feet. ~~shall be allowed.~~
5. No accessory building shall project beyond the front of the primary dwelling unit or front yard setback for all lots that are one-half (1/2) acre or less, except as herein provided.

Passed, Approved, and Adopted on the ____ day of _____ by:

THE EXTRA-TERRITORIAL ZONING AUTHORITY

Karen G. Pérez, Chairwoman (Aye/Nay)

Miguel G. Silva, Vice-Chairman (Aye/Nay)

Nathan P. Small, Member (Aye/Nay)

Scott A. Krahling, Member (Aye/Nay)

Leticia Benavidez, Member (Aye/Nay)

ATTEST:

Lynn J. Ellins
County Clerk

Janine Divyak

From: Douglas Hoffman [douglas.hoffman1@gmail.com]
Sent: Friday, February 03, 2012 5:20 PM
To: Janine Divyak
Cc: Karen Perez
Subject: ETZ home occupations change

Regarding proposed changes in ETZ zoning for home occupations, here are my issues (so far):

Lack of control of on-street parking and traffic: There are many roads accessing homes in neighborhoods both rich and poor that are well below safety standards, often narrow and poorly maintained if they are maintained at all. These roads are barely passable under the best of conditions. Any ordinance change that permits, much less encourages on-street parking is an immediate safety hazard and can obstruct access to homes. Any on-street parking for home occupations can not be permitted at all. It would be a significant change to the neighborhood.

Adding additional traffic to these roads both serves to create potential access issues to homes but also directly leads to maintenance issues for which there are no current solutions. Increased traffic by delivery trucks of different capacities and sizes, all of which is permitted and will occur, will damage roads, culverts and underground utilities under roads and create obstructions to traffic. Will the business generating the excess traffic and road damage be obligated to repair the road? To what standards? On what timeline and on whose authority?

Possibility of 5 (!) workers from off-site coming to work at home occupation. And where do they park?
5 students per session at home instruction businesses (equals 40 extra RTs per day).

Uncontrolled retail vending out of residences is an unconscionable idea.

It seems that you can't add a storage building or accessory structure for your business, as this would change the external appearance of the property. I suspect people will build themselves "home garages" and then suddenly convert them to workshops the next day.

No signage should be permitted. Explain to me how a commercial sign does not "affect the residential character of [a] neighborhood".

How will this be enforced, keeping in mind the abysmal record of the County in enforcing current codes and ordinances?

There is no discussion of traffic impacts, nor discussion of hours of operation.

The real question is, what is driving this enormous and undesired change in the ordinance? How will this serve the larger community?

Douglas W. hoffman

3/3/12

From: Bob Hearn [mailto:hearnrh@gmail.com]
Sent: Friday, February 03, 2012 3:11 PM
To: Janine Divyak
Subject: RE: Home Occupation stuff

Janine

I note that this amendment is different than the one the ETZ recommended for approval, but the ideas are still intact although some of the wording has changed and I don't agree with increasing the number of employees to five.

I would like to add that I am not comfortable with the number of children that can be in Day Care or Child Care being consistent with maintaining the residential nature of a neighborhood.

And that allowing up to five employees is clearly incompatible with all other direction in the ordinance to control traffic, parking, and noise.

That's further reason that I disagree with the Child and Day Care numbers. Those establishments will have several employees along with the kids.

Allowing home-based business is right and important, but if it is not controlled properly with good laws which are well enforced, it can be extremely detrimental to an otherwise great neighborhood.

I feel strongly that the law should be drawn to err on the side of restriction, then possibly relax if experience indicates.

You can put that all in

Thanks/ Bob

Janine Divyak

From: Mark Benson [mark.h.benson@gmail.com]
Sent: Tuesday, February 14, 2012 9:19 AM
To: Janine Divyak
Subject: ETZ Public Hearing

Janine, I will be unable to attend tomorrow night's meeting, but I did want to express some of the concerns I have with the proposals. I live at 5057 Lost Padre Mine Rd and am a resident of the Talavera community. As you no doubt know, most of us live on dirt roads. We are at the mercy of neighbors who happen to own graders and we actually pay our fellow neighbors to keep these fragile dirt roads reasonably navigable. Many of our neighbors choose not to pitch in financially, so what little maintenance our roads get is basically a labor of love from fellow residents who happen to live here and own grading equipment. I myself have received notes from the post office that if my part of the road isn't graded better, I will no longer be able to receive my mail from my mailbox and will instead have to pick up my mail from the post office!

While it might make sense for those in the city limits who have the benefit of paved roads, I think many of these proposals are way off the mark for our community. I don't believe these proposals take into account the impact this will have on our very fragile dirt roads. I also seriously doubt the many new people that this ordinance will attract will pay any attention to the 10 MPH speed limit signs if they happen to own a big truck or SUV. Our mail lady who wants to stop my mail certainly doesn't! I also have concerns with allowing parking along the road. While this is certainly something acceptable if a homeowner has a big party or one time event, it will be a huge issue if this is going on 9 to 5 five days a week. Many of our roads are extremely narrow. Not only will this impede traffic flow, there are also certain portions of our dirt roads that are barely passable and having traffic on one side of the road could cause damage to those of us who own conventional sedans. I also believe it will negatively impact the rural, natural character of our community which is why most of us choose to live here in the first place.

Just a few thoughts. Please take my concerns into account at tomorrow's meeting. I really regret not being able to make it, but I've got a prior commitment I must keep. Feel free to reply if you have any questions, or you can call my cell at 571-0075 if you'd like to speak with me. Thanks!

Janine Divyak

From: Henry Magallanez [hmaga@ebid-nm.org]
Sent: Wednesday, February 15, 2012 1:27 PM
To: Janine Divyak

Dear Ms Divyak

In response to the Amendments of January 17 2012, I have the following comments:

It is requested that zoning be based on the gross acres of the tract and not net. There has been times where the zone can change, It occurs when a split is done and land is requested by county and or city for road improvements and or any type of easement is imposed. For an example, If someone has a 4 acre tract and the land is zoned for 2 acres, then one would assume that one can have 2 tracts However, If additional easement or Right-of Ways are requested then the lots are non-compliant in that they will have less than 2 acres of land. Thus it would require a zone change to a lesser zone density.

Janine Divyak

From: Tom [tom.hob@sbcglobal.net]
Sent: Tuesday, February 14, 2012 10:34 AM
To: Janine Divyak
Subject: ETZ Rules Affecting Talavera Area

This is for Karen Perez.

In as much as Talavera is almost exclusively a residential area; we should do everything in our power to retain that setting, lest we depreciate the value of our homes and neighborhood.

You said the primary reason for extending the ETZ concept to the County, is to "Grandfather" the existing small businesses that are being run in some of the homes.

My suggestion is to be up front about this whole process and say that, i.e., Let's grandfather the current home businesses, as of a specific date, with some spelled out guidelines. Have them register with the County Commissioner's office. And that takes care of the existing businesses. They don't need approval, just register; and, provide important information about them in the process. Design a really neat registration form to do that.

Then make the guidelines for 'new' businesses more restrictive than those in the City; do that by using the current ones in Talavera as an example. Furthermore, require them to submit an approval request to the County Commissioners office. Otherwise, there is no way we can keep track of who is doing what.

Tom Hobby
4977 Homestead Ct
Las Cruces, NM 88011
521-1974

PS I cannot attend the meeting Wednesday as I have surgery scheduled that day and will be in the hospital for a couple of days afterwards.

_____ Information from ESET NOD32 Antivirus, version of virus signature database 6883 (20120214)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

Janine Divyak

From: billlynn@zianet.com
Sent: Tuesday, February 14, 2012 2:07 PM
To: Janine Divyak
Cc: janet@sunspotenergy.com
Subject: Home Occupation Permits in the ETZ

To whom this may concern:

I have strong concerns as to the wording that outlines what is considered a "home occupation" in Section 3.4 Home Occupation Permits, D , item 4. By listing "hobby crafting" as an activity that requires a permit ---- makes it illegal for anyone to knit, weave, crochet, needlepoint, embroider, quilt, garden, string up some beads, paint a gourd or frankly any other activity but sleep or eat without a "home occupation permit" in ones own home, that even includes cooking. Especially when one does have a "resale number" so that they can sell items once or twice year at charity events or have items in a consignment shop to rid themselves of extra stuff created because their "hobby" has run amuck. These "hobby craft" activities are not done to make a living, but done to make life worth living, they do not generate "customer activity" in the home nor do they generate any noise, excessive use of resources such as electricity nor water, nor do they requires the storage of large amounts of raw material (though I have known several quilters who do have several rooms devoted to cloth storage) but joking aside, the wording in this area just about makes it illegal for any one to do anything in their home that is considered a hobby without a "home occupation permit". The wording in this area is so wrong that it could be twisted to make reading a book in the home and then selling it to a used book store a "home occupation" which requires a "home occupation permit"! Consideration should be given to changing the language of this provision to reflect only those activities that are true businesses and are not "not for profit hobbies".

Respectfully Submitted by,

C.L. Unangst
4020 Red Yucca Court
L.C., N.M. 88011
billlynn@zianet.com

2/15/12

Janine Divyak

Subject: FW: ETZ Review for Talavera Area Tonite

Janine,
I hope that my comments arrive in your in-box in time to be included in tonight's review meeting.
My apologies for chiming in late.....
Thanks much,
Wayne Savage
4931 Chippewa Trail
LC, 88011
575-520-6373

Home Occupations

A home occupation, in my opinion, allows an *individual* to work out of their home. Note that I am an individual that often works out of the home. I do not receive clients / customers, and do not sell any product out of the home. My wife, Teresa will, at times, teach a violin lesson or two in our home.

When living in Las Cruces, I objected to the City code that allowed outside individuals to come into a home and be employed there. I object to that here in Talavera, as well. Given that our current zoning is ER2, I think that it should be a priority to retain a "residential" appearance and flavor. Having up to five employees park at a neighbor's home daily / regularly strays far from that ideal.

- Disagree with allowing "home occupations" employing people in excess of permanent occupants.
 - o Issues: Parking, traffic
- Disagree with allowance for on-street parking under any conditions
- Disagree that home occupation permit should be required for an individual providing solo consulting services
 - o Requirements for permit application / approval are excessive for someone doing solo work in a home office

Home Occupations vs Retail Businesses

Allowing a winery or wine tasting facility to operate in a residential area, or to allow sales of other product associated with a business, takes the concern to a next higher level. Customer traffic and parking to support retail business in our residential community will seriously detract

- Object to wineries and/or wine tasting rooms as an SUP-approved land use in ER2
- Disagree with sales of products / services from the residential dwelling
 - o Customer traffic, parking
- Disagree with allowance of on-street parking in Talavera residential ER2 under any conditions

Janine Divyak

From: Douglas Hoffman [douglas.hoffman1@gmail.com]
Sent: Tuesday, February 21, 2012 10:12 AM
To: Janine Divyak
Subject: Re: Public Hearing Version Black Font

Janine,

I've learned a great deal about using Track Changes in Word, none of which I wanted to know. The easiest way to get a document that the community wants is to do the following:

Begin with everything new up to Sec 3.4., except Sec 1.6C and D (and Art III) so that a child or day care facility requires a SUP and is limited to 7. Is that compatible with state law?

Delete new Sec. 3.4 and 7.1 and retain old Sec 3.4.

Sec 3.4A. Start "No more than one person, other than..."

Sec 3.4D. Start 2nd sentence "Hazardous or flammable..."

Delete Sec 3.4K. The old 3.4 allows activities that do not require a permit or business registration (although I am of course interested in hearing the benefits of registration of home businesses). Uses that require a SUP will have permits.

Regarding changes in setbacks etc (Sec 7.1), I have to ask "Why?". I do recognise that we have lots of pre-existing structures that you run into that are at zero setback and you want to simplify things in that regard, but honestly a 5-foot setback in any zone but the smallest lot sizes creates more problems than it solves and in any zone is a potential fire safety issue.

That is the entire revision that we could support, and I can promise you that the ETA will know that. I'm sorry I couldn't save you the trouble, but I just couldn't get the tracked changes to go away myself.

Thank you for your help with moving this forward. I know you are in the middle of some competing perspectives, and I appreciate that.

Douglas

On Thu, Feb 16, 2012 at 8:15 AM, Janine Divyak <janined@donaanacounty.org> wrote:

Here you go, let me know if you need anything else.

Thanks for your input and assistance in this matter.