



DURHAM CITY-COUNTY PLANNING DEPARTMENT
Unified Development Ordinance (UDO)
Text Amendment Application



Applicant Information

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Proposed Amendment(s)

In the space below, provide details of the proposed amendment(s), including:

1. Current UDO Reference: (List Articles, Sections, and paragraphs affected);
2. Current and proposed text (with strike-out of deleted text and underline of proposed text), diagram, and/or illustration; OR detailed description of desired change; and
3. Justification for the amendment(s), including:
 - a. How the proposal is consistent with the *Comprehensive Plan* citing applicable goals, objectives, and/or policies;
 - b. How the proposal is reasonable and in the public interest; and
 - c. How the proposal may affect other portions of the UDO, as applicable.

See attached.

(attach additional sheets as needed)

Contact Information: For questions regarding text amendment applications, please contact Michael Stock, Senior Planner at 919-560-4137 ext.28227 or Michael.Stock@DurhamNC.gov.

Submit To: Durham City-County Planning Department, 101 City Hall Plaza, Durham, NC 27701.

Signature of Applicant (Required)

Signature of Applicant

5/8/15
Date

Tracking Information (Staff Only)

Assigned Case #: TC150005	Date Received: 5/8/15
Received By: Scott Whiteman	Fees Paid: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

I. **Current UDO Reference: (List Articles, Sections, and paragraphs affected)**

A text amendment to Paragraph 5.4.1 and 5.4.4 and other associated sections of the Unified Development Ordinance to update and revise standards for home based occupations in accessory structures.

II. Current and Proposed Text

Sec. 5.4 Accessory Uses and Structures

5.4.1 Accessory Structures

Accessory structures shall be subject to the following additional requirements:

- A. An accessory structure shall be clearly subordinate to the primary structure in aspects of size and purpose.
- B. Accessory structures shall be located as follows:
 1. Accessory structures associated with a single-family or duplex structure shall be located to the rear of the rear building line of the primary structure, with the following limitations and exceptions:
 - a. Except in the RU and RC Districts, the structure shall be no closer than five feet to the rear and side property lines.
 - b. Accessory structures in the RU and RC Districts shall be no closer than three feet to the side and rear property lines.
 - c. Accessory structures in the RR ~~and RS Districts~~ District can be located in front or to the side of the primary structure provided that:
 - (1) It is not located in the street or side yard; and
 - (2) It is on a lot at least two acres in size.
 2. Accessory structures in design districts shall be located to the rear of the rear building line of the primary structure(s) and shall be subject to the side and rear yard requirements of those districts.
 3. Accessory structures for all other development not indicated above shall be located to the side or rear of the primary structure, but not within side or rear yards. For developments with more than one primary structure, the primary structure located closest to the right-of-way shall be used to locate the accessory structure.
- C. Any accessory structures located less than five feet from the property line shall construct a wall meeting North Carolina Building Code Standards for fire obstruction on that side of the structure facing the property line.
- D. The height of an accessory structure in residential areas shall comply with the following standards:
 1. In RS Districts, the height shall not exceed 15 feet when the structure is within ten feet of the property line.
 2. In the RU and RC districts, the height of an accessory structure shall not exceed 25 feet when the structure is within five feet of the property line.
- E. Within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, an accessory structure shall not exceed 1,000 square feet in area and shall meet the following criteria:

1. Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
 2. Accessory structures shall not be temperature-controlled;
 3. Accessory structures shall be designed to have low flood damage potential;
 4. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
 5. Accessory structures shall be firmly anchored in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards;
 6. All service facilities such as electrical shall be installed in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards; and
 7. An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 8.4, Floodplain and Flood Damage Protection Standards.
- F. In addition to the requirements in paragraphs A, B, C, and E, accessory structures in Design Districts shall comply with the following standards:
1. The height of the structure shall not exceed 35 feet and shall not exceed the primary structure in height; and
 2. The structure shall be compatible with the primary structure in style, materials, roof form, and details.

5.4.4 Home Occupations

Home occupations shall be subject to the following regulations:

A. Generally

The following requirements shall apply to all home occupations:

1. No display of goods, products or services shall be visible off site.
2. Only handmade items, foodstuffs, and crafts made on the premises can be offered directly for sale. No goods, products or commodities bought or secured for the express purpose of resale shall be sold at retail or wholesale on the premises. Catalog and electronic business orders may be received for goods, products or commodities bought or secured for the express purpose of resale at retail and wholesale when the products are received and shipped from the premises to fulfill catalog or electronic business orders.

3. Traffic and parking associated with the use shall not be detrimental to the neighborhood or create congestion on the street where the home occupation is located.

4. Vehicles used primarily as passenger vehicles shall be permitted in connection with the home occupation. Only one commercially licensed vehicle shall be allowed, except in the RS-20 and RR districts, where up to two heavy equipment vehicles can be permitted. All heavy equipment vehicles associated with a home occupation permit shall be screened from view from adjoining properties and the public right of way.

5. No equipment or process shall be used in connection with the home occupation that creates noise, vibration, glare, fumes, odors, or electrical interference that is detectable off-site.

6. No hazardous materials can be manufactured, stored, processed or disposed of on the premises.

7. The home occupation shall be clearly incidental to the primary use as a residence. The total square footage devoted to the home occupation shall not exceed 30% of the floor area of the livable portion of the dwelling. Internal alterations or construction modifications not customary in dwellings and exterior modifications to the dwelling to accommodate the home occupation shall be prohibited except to meet the accessibility requirements of the Americans with Disabilities Act.

8. An accessory structure or an accessory dwelling can be used for all or a portion of the floor area of the home occupation but the combined total square footage devoted to the home occupation shall not exceed the limits described in paragraph A.7 above.

9. If a home occupation is located within an accessory structure or dwelling, the accessory structure or dwelling shall not be located closer to the front property line than the closest side of the primary dwelling to the front property line; nor closer to the side property line than the closest side of the dwelling to the side property line or 100 feet, whichever is a lesser distance, and not closer than 75 feet to the rear property line.

Commentary: Use of an accessory structure for a home occupation will require modification of the structure to meet the habitable space requirements of the Building Code. If outside employees are associated with the home occupation, modifications to an accessory structure or accessory dwelling may also be required to comply with the Americans with Disabilities Act.

B. Rural Home Occupations

The following requirements shall apply to all home occupations located on properties zoned Residential Rural District (RR) containing at least 10 contiguous acres in addition to the provisions of paragraph A above:

1. In addition to persons residing on the premises, up to three nonresident employees can be engaged in the home occupation.
- ~~2. The home occupation shall be clearly incidental to the primary use as a residence. The total square footage devoted to the home occupation shall not exceed 30% of the floor area of the livable portion of the dwelling.~~
- ~~3. If located within the primary residence, internal alterations or construction modifications not customary in dwellings shall be prohibited, except to meet the accessibility requirements of the Americans with Disabilities Act.~~
- ~~4. An accessory structure or an accessory dwelling can be used for all or a portion of the floor area of the home occupation but the combined total square footage devoted to the home occupation shall not exceed the limits described in paragraph B.2 above.~~
- ~~5. If a home occupation is located within an accessory structure or dwelling, the accessory structure or dwelling shall not be located closer to the front property line than the closest side of the primary dwelling to the front property line; nor closer to the side property line than the closest side of the dwelling to the side property line or 100 feet, whichever is a lesser distance, and not closer than 75 feet to the rear property line.~~

~~Commentary: Use of an accessory structure for a home occupation will require modification of the structure to meet the habitable space requirements of the Building Code. If outside employees are associated with the home occupation, modifications to an accessory structure or accessory dwelling may also be required to comply with the Americans with Disabilities Act.~~

6. The home occupation can include outdoor uses or activities. Any areas used for outdoor activities shall be at least 250 feet from any property line and also be closer to the principal dwelling on the site than to any dwelling on an adjoining site.
7. Any home occupations utilizing these provisions shall be required to cease operations if the parcel size is reduced to less than 10 acres.

C. Other Home Occupations

In all districts other than RR, or in RR-zoned properties less than ten acres, the following standards apply in addition to the standards of paragraph A above:

1. Only persons residing on the premises and up to one nonresident employee can be engaged in the home occupation.
2. ~~The home occupation shall be clearly incidental to the primary use as a residence. The total square footage devoted to the home occupation shall not exceed 30% of the floor area of the livable portion of the dwelling. Internal alterations or construction modifications not customary in dwellings and exterior modifications to the dwelling to accommodate the home occupation shall be prohibited except to meet the accessibility requirements of the Americans with Disabilities Act.~~
3. No outside storage use or activity (except parking and, for day care homes, required recreation areas) shall be associated with the home occupation. Areas within the dwelling or accessory structure may be used for storage associated with the home occupation, subject to the maximum square footage allowed by paragraph A.7 above.

D. Telecommuting

Telecommuting shall not be considered a home occupation.

III. Justification for the Amendment:

Bill Hewlett and Dave Packard could not have started Hewlett Packard in Durham. Walt Disney could not have built his first film studio in Durham. Why? Because Durham does not generally allow home occupations in accessory structures like detached garages. Apple's Steve Jobs and Steve Wozniak could have invented the Mac and Amazon's Jeff Bezos could have started selling books from their garages in Durham, but only because they are attached to their homes. **Current provisions of Durham's Unified Development Ordinance regulating home occupations prohibit the use of accessory structures for home occupations except on parcels zoned Rural Residential (RR) that are ten (10) acres or larger. This limitation prohibits outdoor pottery studios, garage workshops, and commercial use of storage sheds in nearly all parcels in Durham County. These obstacles to entrepreneurship don't make sense and can't be what Durham wants for its future. The proposed text amendment simply allows the use of accessory structures on parcels in all residential zones where minimum setbacks can be met.**

According to the US Census Report, over 9 million people – 6.6 percent of all workers – work exclusively from home. Half of home-based workers are self-employed. The percentage of workers working exclusively from home has increased nearly 50% since 1997. About one-fourth of home-based workers were in management, business, and financial occupations, and home-based work in computer, engineering, and science occupations has increased by 69 percent between 2000 and 2010. These figures demand that Durham update and revise its antiquated home occupation ordinance.

Simply allowing the use of accessory structures in home occupations is a tremendous step in the right direction. This update legalizes many home occupation uses already occurring and provides regulation as to the size, location and use of accessory structures used in new and expanded home occupations. Expanding the legality of home occupations allows for economic development with little to no demand for infrastructure, resources, or developable land. This preserves public funding, natural resources and open space. Expanding home occupations also allows for business initiation and expansion with limited capital investment, which is a common barrier to business startup experienced among women and minority communities. The attached proposed updates and revisions to Paragraph 5.4.1 and 5.4.4 and other associated sections of the UDO provide needed changes to the home occupation ordinance. This proposal and meets the requirements of the UDO as explained below.

1. **The Proposal is Consistent with the Comprehensive Plan because:**
 - a. It is smart growth. Expanding the capacity of home occupations by allowing the use of accessory structures on existing developed lots allows limited compatible development (a compliant accessory structure) while requiring no additional transportation and other public infrastructure and preserving land and resources for other uses. Because the UDO currently requires owners of home occupations to operate portions of their businesses off-site rather than in accessory structures, transportation infrastructure is needlessly taxed and artificial demand is made for the development of new office, commercial, or storage facilities. These demands

waste valuable public infrastructure and funds, and negatively impact natural resources and the availability of open space. Allowing greater use of already-developed residential lots for home occupation promotes the sustainable use of land; efficiently uses existing services rather than demanding new infrastructure; avoids scattered development; fits with existing transportation systems and decreases dependence on automobiles. These changes also encourage sustainable design in new construction, which supports appropriate home occupations and captures these public benefits. As such the proposed text amendment promotes the following goals, objectives, and policies of the Comprehensive Plan:

- i. Goal 2.3, Promote Sustainable Use of Land and Resources: Promote the sustainable use of land and resources to meet the needs of today without jeopardizing the ability to efficiently and effectively provide land and resources in the future.
- ii. Objective 2.3.1 Growth Management: Create policies and regulations to direct new development to areas that will support the efficient provision of public services and transportation networks, and protect environmentally sensitive lands.
- iii. Policy 2.3.1a. Contiguous Development. Support orderly development patterns that take advantage of existing urban services, and avoid, insofar as possible, patterns of leapfrog, noncontiguous, scattered development.
- iv. Objective 2.3.2 Infrastructure Capacity: Ensure the pace of urbanized growth does not exceed the ability to provide essential services.
- v. Goal 2.4, Align Land Use and Transportation: Promote the integration of land use, transportation and infrastructure planning to efficiently conserve resources and support economic growth.
- vi. Objective 2.4.1 Transit Oriented Development: Create land use policies that encourage development that is compatible with transit, pedestrian, and bicycle transportation, and decreases dependence on automobiles. Promote and support future transit opportunities.
- vii. Goal 4.2, Design Quality: Encourage quality at all levels of design. Design quality impacts the actual function, sustainability and appearance of a place as well as the perceptual feel of that place.
- viii. Objective 4.2.1. Design Features: Encourage high quality, well-designed developments that create desirable community spaces, use resources efficiently, maximize site amenities, and preserve important features.
- ix. Policy 4.2.1g. Sustainability: Through the Unified Development Ordinance, encourage development to incorporate best practices in sustainability features to ensure quality design.
- x. Goal 7.1, Natural Environment: Provide a high quality natural environment. Minimize undesirable effects from development on air quality, water quality, and natural resources. Protect and preserve floodplains, natural inventory sites, and open space.

- xi. Policy 7.1.2d. Low Impact Development: To reduce development impact on stream-water quality, the City Public Works and County Engineering Departments shall keep current on and encourage low-impact development (LID) design.
 - xii. Objective 7.1.4. Air Quality: Work to improve air quality to meet and exceed the National Ambient Air Quality Standard and to anticipate future air quality problems using measures with multiple benefits as much as possible.
 - xiii. Policy 7.1.4d. Alternative Transportation and Fuels for City and County Vehicles. Support alternative transportation in order to maintain air quality, preserve natural resources, reduce reliance on oil, and save money through lower fuel costs The City General Services Department and the County General Services Department shall implement a program for using non-gasoline “alternative fuels” in City and/or County vehicles.
 - xiv. Goal 7.2, Open Space: Provide ample open and green spaces for Durham residents and wildlife and protect important open spaces in Durham County from the impacts of development.
 - xv. Objective 7.2.1. Open Space Level of Service Standards: Establish and maintain appropriate level of service standards for open space in the City and County.
- b. It is compatible growth. As Durham, like other urbanizing communities, transitions toward pedestrian- and transit-friendly development patterns, pressures will increase for work spaces proximate to residential areas. These pressures bring non-residential uses into proximity of residential uses. In many ways this is a desired result; however, the current UDO encourages building single-purpose and ill-fitted retail, commercial, or light industrial developments near homes to meet this demand. The proposed text amendment provides relief from some of these pressures in appropriate circumstances, especially for office, commercial and storage uses, by absorbing this demand within the context and scale of existing residential development. Home occupations are the original “mixed-use” development. Because Sections 5.4.1 and 5.4.4 of the UDO already provides protection against negative impacts on surrounding property, the expansion of home occupations in accessory structures would allow office, commercial and storage uses in a way that fits the residential context and is scaled appropriately. These considerations are especially true in the context of established neighborhoods and infill projects. Absorbing “right-sized” non-residential uses as home occupations in accessory structures on existing residential lots is seamless and moots the need for transitions between exclusively residential and nonresidential use zones. Therefore, the proposed text amendment promotes the following goals, objectives, and policies of the Comprehensive Plan:
- i. Objective 2.3.4 Contextual Development: Develop standards for development that are appropriate to the context of the existing surrounding or desired development pattern.

- ii. Policy 2.3.4a. Infill Development Standards: Through the Unified Development Ordinance, encourage and promote compatible residential and nonresidential infill on vacant or underutilized property within developed portions of the community to reinforce the existing character. Include provisions for contextual design of both residential and nonresidential infill projects in the Urban and Compact Neighborhood Tiers. Encourage adaptive reuse of existing buildings in these tiers as well. (see Policy 4.3.2a, Infill Development Standards)
 - iii. Policy 2.3.4c. Transitions to Nonresidential Uses: Ensure the protection of established neighborhoods in areas beginning to transition to nonresidential uses by protecting their residential design and character in architectural details as well as the location of parking.
 - iv. Goal 4.3, Contextual Design: Encourage development that is designed to be conscious of and sensitive to its surroundings. Contextual design considers the setting as much as the project itself, is applicable in a variety of areas and situations, and should guide any development.
 - v. Objective 4.3.2. Compatible Infill: Preserve the character and integrity of existing viable neighborhoods by promoting compatible urban and suburban infill.
 - vi. Policy 4.3.2a. Infill Development Standards: Through the Unified Development Ordinance, encourage and promote compatible residential and non-residential infill on vacant or under-utilized property within developed portions of the community to reinforce the existing character. Include provisions for contextual design of both residential and nonresidential infill projects in the Urban and Compact Neighborhood Tiers. Encourage adaptive reuse of existing buildings. (see Policy 2.3.4d, Infill Development Standards).
- c. Is well-designed growth. Expanding the use of residential property for home occupations in accessory buildings introduces the home occupation use and structure location standards found in Section 5.4 of the UDO into more residential lots. This offers the opportunity for existing unpermitted home occupations to come into compliance and for new home occupations to be developed well. A number of protections for neighbors against negative impacts from the home occupation are included or maintained in the proposed text, including: (1) requirements that traffic and parking associated with the home occupation not be detrimental to the neighborhood or create congestion on the street where the home occupation is located; (2) prohibitions against the use of equipment and processes in connection with the home occupation that create noise, vibration, glare, fumes, odors, or electrical interference that is detectable off-site; and (3) prohibitions against most outside storage use or activity. Providing expanded opportunities to lawfully operate a home occupation, creates incentives for poorly kept home occupations to be cleaned up, and the home occupation permitting process facilitates enforcement

activities. This will benefit Durham's residential stock and neighborhood environments. The proposed text also improves the aesthetic quality of property used for home occupations. Allowing home occupations in accessory structures reduces pressures to alter or modify the dwelling to accommodate the home occupation, thereby preserving the residential character of the primary structure. The changes also encourage variety in the location, setback, and orientation of residential garages and garage-like accessory structures on appropriately-sized lots. This variety would provide visual appeal. By using existing parking, goals for parking efficiency and parking that is visually appealing, safe, and easy to use by both pedestrians and motorists will be met much better than by expansive impervious parking lots at off-site offices, commercial strips and storage facilities. For these reasons, the proposed text amendment promotes the following goals, objectives, and policies of the Comprehensive Plan:

- i. Goal 3.6, Housing Standards: Ensure safe, attractive and well-maintained residential environments, reduce the number of vacant dwellings, and eliminate substandard housing through enforcement of the Housing Code and neighborhood revitalization.
 - ii. Policy 3.6.1c. Neighborhood Environments: In addition to the Housing and Unsafe Building Codes, the City Department of Neighborhood Improvement Services shall continue to enforce City ordinances concerning accumulation of trash, junk, weeds and overgrowth, and junked and abandoned vehicles on properties in order to ensure the safety and well-being of residents.
 - iii. Goal 4.1, Community Design Guidance: Provide guidance in the design and development of the community to ensure a visually appealing, functional, and sustainable built environment.
 - iv. Objective 4.1.1. Design Guidelines and Standards: Develop guidelines and standards for the design of new development that promote quality design.
 - v. Objective 4.2.2. Attractive Residential Development: Encourage attractive and varied residential development throughout the community.
 - vi. Policy 4.2.2b. Garage Placement: Through the Unified Development Ordinance, continue to provide opportunities to vary the location, setback, and orientation of residential garages to avoid prominent and repetitious garage placement.
 - vii. Objective 4.2.4. Attractive and Efficient Parking: Encourage the design of attractive and efficient parking solutions, which are visually appealing, safe, and easy to use by both pedestrians and motorists.
 - viii. Policy 4.2.4b. Parking Requirements: Through the Unified Development Ordinance, redefine parking standards in all Tiers. Explore opportunities for shared parking.
- d. Is economically stimulating growth. According to the U.S. Census, between 1997 and 2010, the population working exclusively from home increased from 4.8 percent of all workers to 6.6 percent, an increase of about 3 million workers. In 2007 – the last

year data was published by the Census Bureau, more than half of women-owned businesses (58.2 percent) were home-based; 46.5 percent of minority-owned firms were home-based; and most veteran-owned (55.4 percent) businesses were home-based. According to the Small Business Administration, the major constraint limiting the growth, expansion, and wealth creation of small firms—especially women- and minority-owned businesses—is inadequate capital. Accordingly, reducing the capital investment needed to start a business by allowing the expanded use of a residence for a home occupation reduces the barrier to entry for many business owners, including women and minorities. Allowing the use of an accessory structure for a home-based business reduces capital costs associated with the acquisition of off-site office, commercial or storage facilities. In some contexts, the ability to operate a business as a home occupation, allows a primary care giver to run her or his business without incurring child care expenditures. By allowing more citizens to start businesses in their homes where appropriate, Durham will increase employment and reduce poverty. After these businesses incubate in a home occupation environment, they may mature enough to need additional employees and dedicated off-site offices or store fronts. Therefore, the proposed text amendment promotes the following goals, objectives, and policies of the Comprehensive Plan:

- i. Goal 6.1, Economic Development: Increase citizen access to high quality jobs and reduce poverty while increasing Durham's tax base.
- ii. Objective 6.1.1. Balanced Economic Growth: Encourage new business location and existing business expansion that are compatible with Durham's land use plans and policies.
- iii. Policy 6.1.1b. Neighborhood and Environmental Impact: In evaluating economic development proposals, the City and County shall consider the impacts on neighborhoods and environmental protection as well as job and tax base growth. Preference should be given in certain cases to projects that implement energy-efficient practices and recyclable building techniques.
- iv. Objective 6.1.2. Support Minority- and Women-Owned Business Enterprises: Increase support for minority- and women-owned businesses.
- v. Objective 6.1.5. Planning for Economic Development: Provide land use plans and development review processes that maintain a quality community, and sustain economic growth.

2. Reasonable and in the public interest because; and

- a. The proposed text amendment provides a reasonable expansion of the use of accessory structures for home occupations. The current provisions limit such use to parcels zoned Rural Residential (RR) that are ten (10) acres or larger. This zone limitation and large lot threshold appears arbitrary and excessive. Allowing the use

of accessory structures for home occupations on parcels in all residential zones, where minimum set back and placement requirements can be met, is more reasonable. The protections afforded to neighbors in the current home occupation provisions will remain unchanged.

- b. The current limitations on the use of accessory structures in most on home occupations also stifle small business development and entrepreneurship to the detriment to the citizens and economy of Durham. The proposed amendment encourages small businesses and entrepreneurship, which has a progressive impact on all members of the community.
- c. Expanding the capacity of existing developed residential parcels to accommodate appropriate small businesses also preserves the financial and natural resources of the community and encourages smart, well-designed growth.

3. **Will have minimal effects on other portions of the UDO because.**

The proposed text amendment includes minimum modifications to the Section 5.4 of the UDO and will have no effect on other portions of the UDO.