

**TA #18-05**

Amend Articles 3.2.1, 9, and 12.2.1 to add “Agritourism Catering Facilities” as a use permitted with conditions in the Rural (R) Zoning District.

**PART 1: DESCRIPTION**

Text Amendment, TA #18-05, is a request by Gary and Icilda Nelson, to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance to permit “Agritourism Catering Facilities” as a use permitted with conditions in the Rural (R) Zoning Districts. (See Attachment A for application.)

**PART 2: BACKGROUND**

In 2012, the applicants of this text amendment (Nelsons) received a Home Occupation Permit from the Town of Huntersville to operate a catering business from their current residence. The Nelson’s business has grown, and they intend to utilize their property for a larger catering operation in conjunction with “agritourism” uses, which are defined as a collection of farm or rural-setting land uses permitted by State Statute (N.C.G.S. 153A-340(b)(2a)). The proposed text amendment will add a definition for “agritourism catering facility”, add “agritourism-related catering” to the uses permitted-with-conditions list in the Rural (R) zoning district and add a new conditional use Article 9.60 “Off-site catering services performed in an agritourism facility”. The proposed text amendment is as follows (see also Attachment B):

Add “Agritourism Catering Facility” with associated site specific standards in the Rural Zoning District, Section 3.2.1 of the Huntersville Zoning Ordinance.

1. Add the following definition of “Agritourism Catering Facility” to Section 12.2.1, General Definitions:

Agritourism Catering Facility. Buildings, improvements and facilities used in connection with an operation providing event-based food services for both (1) on-site agritourism facilities (whether indoors or outdoors) used for public or private events, including but not limited to weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting; and (2) subject to Section 9.60, off-site public and private events. Personal property and equipment utilized exclusively in providing on-site catering services to agritourism facilities shall be exempt from regulation in the extraterritorial zoning jurisdiction. In order to qualify under this definition, an Agritourism Catering Facility must be located on property designated and used for bona fide farm purposes as contemplated by N.C.G.S. § 153A-340(b).

2. Add the following use to Section 3.2.1 Rural District (R), paragraph A):

*[Note: the Applicant has requested that this use be listed as a Use Permitted with Conditions. Staff requests that this use be listed as a Use Permitted with a Special Use Permit]*

- Off-site Catering Services Performed in an Agritourism Catering Facility (9.60)

3. Add the following new Section 9.60 to Article 9, Conditions for Certain Uses:

*[Note: the Applicant has requested that this use be listed as a Use Permitted with Conditions. Staff requests that this use be listed as a Use Permitted with a Special Use Permit]*

9.60 Off-site Catering Services Performed in an Agritourism Catering Facility.

Off-site catering services in an Agritourism Catering Facility are permitted in the Rural Zoning District [applicant request: as a Use Permitted with Conditions if the following standards are met:] [Staff recommendation: subject to a Special Use Permit, according to the procedures of Article 11.4.10, if the evidence introduced at the Special Use Permit Hearing establishes that the following standards are met (as modified, if applicable):

1. The facility shall be located on a lot of at least twenty (20) acres in size.
2. A principal residence shall be located on site.
3. There shall be no more than twelve (12) employees present and performing activities for the off-site catering services at any time, excluding on-site resident family members of the facility owner employed in the catering operation. As used in this section 9.60, employees who are present and performing activities for both on-site and off-site catering services shall count towards the twelve (12) employee limit. The [zoning permit] [special use permit] shall specify the number of employees permitted at the facility at the same time.
4. That facility shall have adequate off-street parking for the permitted number of employees and for the vehicles used for off-site catering services. In order to accommodate employees, off-site catering vehicles and visiting clients of the catering operation, there shall be a minimum of 1.5 spaces for each permitted employee and off-site catering service vehicle. As used in this section 9.60, vehicles used for both on-site and off-site catering services are included and subject to these regulations. Such parking shall have a visually opaque buffer at least thirty-five feet in width along the adjacent boundary [Requested by applicant: or a structural screen such as a fence that is augmented with vegetation].
5. There shall be no outside storage or evidence of personal property, materials and equipment used for off-site catering services visible from adjoining residences or streets. As used in this section 9.60, personal property, materials and equipment used for both on-site and off-site catering services are included and subject to these regulations.
6. If any portion of the facility utilized by the off-site catering services is located within the on-site principal residence, such portion shall occupy no more than twenty-five percent (25%) of the total finished square footage of such principal residence. The total square footage of the facility used for off-site catering services may not exceed fifty (50%) of the total finished share footage of such principal residence. As used in this section 9.60, portions of the facility used for both on-site and off-site catering services are included and subject to these regulations.
7. The lot containing the facility shall have (i) a minimum of thirty feet (30') of frontage on a public road or (ii) a thirty foot (30') wide exclusive easement to a public road. [applicant requests that a shared exclusive easement, of a minimum of 40' in width, for use by no more than three adjoining properties at the time of the issuance of the [zoning][special use] permit.
8. Entrance drives, internal drives, parking and service areas may be gravel, crushed stone, or other suitable material approved by the Planning Director. These areas shall be well-maintained and kept free of potholes, weeds, etc. The initial fifty feet (50') of driveway from the public roadway connection shall be paved with concrete or asphalt.

9. [Applicant requests that if the Board rejects applicant’s suggested language in Items #4 or #7 (above) that the use is classified as a special use and the following language shall be added:] As each property is unique, the Town Board may modify the above standards based on particular topographical issues, or impacts (or lack thereof) on surrounding properties. .

Staff does not recommend the proposed text amendment, as it is not in keeping with the existing and permitted uses in the Rural zoning district. The intent of the Rural Zoning District is to “encourage the development of neighborhoods and rural compounds... Development typologies associated with the Rural district are farms, the single house, the conservation subdivision, the farmhouse cluster, and the residential neighborhood”. Therefore, a full-service catering operation is not seen as a compatible land use in this area. The additional traffic and commercial activity is not in keeping with the stated intent of the zoning district.

In addition, if this use is to be considered, it is recommended to be considered via the special use permit process, as there is a public hearing requirement for a special use permit that will solicit input from interested citizens and would permit the Town Board to “attach reasonable and appropriate conditions and safeguards to the location, nature and extent of the proposed use and its relation to surrounding property, for the purpose of ensuring that the conditions of permit approval will be complied with and any potentially injurious effect of the special use on adjoining properties, the character of the neighborhood, or the health, safety and general welfare of the community will be minimized”(Zo. Ord. Art. 11.4.10.f).

### **PART 3: RELEVANT HUNTERSVILLE 2030 COMMUNITY PLAN AND APPLICABLE LONG RANGE PLAN SECTIONS**

H-8: Development in the Transitional and Rural Areas – Maintain the development standards in the Transitional and Rural zones and consider adjustments if warranted by changes in the housing market.

Staff Comment: As there are approximately 40 parcels within the Town’s Rural zoning district that would qualify under this amendment, and the daily employee traffic and associated commercial-type activities associated with a catering operation are generally seen as potentially incompatible with the Rural zoning district, this amendment is not supported by the 2030 Comprehensive Plan. This amendment is not seen as a product of changes in the housing market, but rather a preference by an individual property owner to expand a business in an area designated for low-density, residential development.

### **PART 4: STAFF RECOMMENDATION**

The proposal to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance to permit agritourism-related catering as a use permitted with conditions in the Rural (R) Zoning District is NOT recommended by Staff as the use is not consistent with the stated intent of the Rural Zoning District (see Parts 2 & 3 above). However, if the use is to be permitted, staff would recommend a special use permit process is the appropriate method to review potential impacts of an agritourism catering facility.

### **PART 5: HUNTERSVILLE ORDINANCES ADVISORY BOARD**

On August 2, 2018, the Ordinances Advisory Board recommended approval of the attached proposed ordinance as a Special Use Permit, by 5-3 vote.

### **PART 6: PUBLIC HEARING**

A Public Hearing was held on September 4, 2018. No input was received from the general public. The Board of Commissioners asked numerous questions, regarding general regulations for bona fide farms, lot-access requirements and buffering regulations. Susan Irvin, representing the applicants, discussed three (3) issues they

wanted the Town Board to consider within the proposed Ordinance (which staff over-all, does not support). They were:

- A) Allowing as a use with conditions (as opposed to a Special Use Permit);
- B) Allowing flexibility on required buffers;
- C) Allowing a shared-access easement (as opposed to an exclusive easement).

#### **PART 7: PLANNING BOARD RECOMMENDATION**

On September 25, 2018, the Planning Board recommended Denial by 6-3 vote. The denial was based on the (text) amendment being inconsistent with the Comprehensive Plan and not being reasonable or in the public interest, as the amendment was too specific to the applicant's property and should not be applied to the entire Rural District.

#### **PART 8: ATTACHMENTS**

- Attachment A: Text Amendment Application.
- Attachment B: Proposed Ordinance Language.
- Attachment C: North Carolina General Statute 153A-340(b)(2a).

**PART 9: STATEMENT OF CONSISTENCY – TA #18-05**

Planning Department	Planning Board	Board of Commissioners
		<p><b>APPROVAL:</b> In considering the proposed amendment TA #18-05, to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance, the Town Board approval is based on the amendment being consistent with <b>(insert applicable plan reference)</b></p> <p>It is reasonable and in the public interest to amend the Zoning Ordinance because...<i>(Explain)</i></p>
<p><b>DENIAL:</b> In considering the proposed amendment TA #18-05, to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance, the Planning Staff recommends denial based on the amendment being <b>inconsistent</b>) with <b>Objective H-8 of the 2030 Comprehensive Plan.</b></p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because the proposed use is inconsistent with the stated intent of the Rural Zoning District and would potentially introduces incompatible commercial-related activity to the area.</p>	<p><b>DENIAL:</b> In considering the proposed amendment TA #18-05, to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance, the Planning Board recommends denial based on the amendment being <b>inconsistent</b> with <b>the Comprehensive Plan.</b></p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because the amendment was too specific to the applicant’s property and should not be applied to the entire Rural District.</p>	<p><b>DENIAL:</b> In considering the proposed amendment TA #18-05, to amend Articles 3.2.1, 9, and 12.2.1 of the Zoning Ordinance, the Town Board denial is based on the amendment being <b>(consistent OR inconsistent)</b> with <b>(insert applicable plan reference).</b></p> <p>It is not reasonable and in the public interest to amend the Zoning Ordinance because....<i>(Explain)</i></p>

**AN ORDINANCE TO AMEND ARTICLES 3.2.1, AND 12.2.1 AND ADD A NEW ARTICLE 9.60  
OF THE ZONING ORDINANCE**

Section 1. Be it ordained by the Board of Commissioners of the Town of Huntersville that Section 3.2.1 of **Zoning Ordinance** is hereby amended as follows:

Section 3.2.1.a) Permitted Uses – uses permitted with Conditions.

- Off-site Catering Services Performed in an Agritourism Catering Facility (9.60)

*[NOTE: Applicant requests this use be listed as a Use Permitted with Conditions]*

-OR-

Section 3.2.1.a) Permitted Uses – uses permitted with Special Use Permit.

- Off-site Catering Services Performed in an Agritourism Catering Facility (9.60)

*[NOTE: Staff recommends this use be listed as a Use Permitted with Special Use Permit]*

Section 2. Be it ordained by the Board of Commissioners of the Town of Huntersville that Section 12.2.1 of **Zoning Ordinance** is hereby amended as follows:

Agritourism Catering Facility. Buildings, improvements and facilities used in connection with an operation providing event-based food services for both (1) on-site agritourism facilities (whether indoors or outdoors) used for public or private events, including but not limited to weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting; and (2) subject to Section 9.60, off-site public and private events. Personal property and equipment utilized exclusively in providing on-site catering services to agritourism facilities shall be exempt from regulation in the extraterritorial zoning jurisdiction. In order to qualify under this definition, an Agritourism Catering Facility must be located on property designated and used for bona fide farm purposes as contemplated by N.C.G.S. § 153A-340(b).

Section 3. Be it ordained by the Board of Commissioners of the Town of Huntersville that a NEW Section 9.60 of **Zoning Ordinance** is hereby amended as follows:

Off-site catering services in an Agritourism Catering Facility are permitted in the Rural Zoning District [applicant request: as a Use Permitted with Conditions if the following standards are met:] [Staff recommendation: subject to a Special Use Permit, according to the procedures of Article 11.4.10, if the evidence introduced at the Special Use Permit Hearing establishes that the following standards are met (as modified, if applicable):

1. The facility shall be located on a lot of at least twenty (20) acres in size.
2. A principal residence shall be located on site.
3. There shall be no more than twelve (12) employees' present and performing activities for the off-site catering services at any time, excluding on-site resident family members of the facility owner employed in the catering operation. As used in this section 9.60, employees who are present and performing activities for both on-site and off-site catering services shall count towards the twelve (12) employee limit. The permit shall specify the number of employees permitted at the facility at the same time.
4. That facility shall have adequate off-street parking for the permitted number of employees and for the vehicles used for off-site catering services. In order to accommodate employees, off-site catering vehicles and visiting

TA 18-05: Agri-tourism-related catering.

clients of the catering operation, there shall be a minimum of 1.5 spaces for each permitted employee and off-site catering service vehicle. As used in this section 9.60, vehicles used for both on-site and off-site catering services are included and subject to these regulations. Such parking shall have a visually opaque buffer at least thirty-five feet in width along the adjacent boundary or a structural screen such as a fence that is augmented with vegetation.

*[NOTE: Applicant requests the option of “a structural screen such as a fence that is augmented with vegetation” is added.]*

-OR-

That facility shall have adequate off-street parking for the permitted number of employees and for the vehicles used for off-site catering services. In order to accommodate employees, off-site catering vehicles and visiting clients of the catering operation, there shall be a minimum of 1.5 spaces for each permitted employee and off-site catering service vehicle. As used in this section 9.60, vehicles used for both on-site and off-site catering services are included and subject to these regulations. Such parking shall have a visually opaque buffer at least thirty-five feet in width along the adjacent boundary.

*[NOTE: Staff recommends the structural screen option only if additional criteria are developed (i.e. must be opaque, etc...)]*

5. There shall be no outside storage or evidence of personal property, materials and equipment used for off-site catering services visible from adjoining residences or streets. As used in this section 9.60, personal property, materials and equipment used for both on-site and off-site catering services are included and subject to these regulations.
6. If any portion of the facility utilized by the off-site catering services is located within the on-site principal residence, such portion shall occupy no more than twenty-five percent (25%) of the total finished square footage of such principal residence. The total square footage of the facility used for off-site catering services may not exceed fifty (50%) of the total finished square footage of such principal residence. As used in this section 9.60, portions of the facility used for both on-site and off-site catering services are included and subject to these regulations.
7. The lot containing the facility shall have (i) a minimum of thirty feet (30') of frontage on a public road, (ii) a thirty foot (30') wide exclusive easement to a public road or (iii) a shared exclusive easement, of a minimum of 40' in width, for use by no more than three adjoining properties at the time of the issuance of a permit.

*[NOTE: Applicant requests option (iii), above]*

-OR-

The lot containing the facility shall have (i) a minimum of thirty feet (30') of frontage on a public road or (ii) a thirty foot (30') wide exclusive easement to a public road.

*[NOTE: Staff recommends only options (i) and (ii)]*

8. Entrance drives, internal drives, parking and service areas may be gravel, crushed stone, or other suitable material approved by the Planning Director. These areas shall be well-maintained and kept free of potholes, weeds, etc. The initial fifty feet (50') of driveway from the public roadway connection shall be paved with concrete or asphalt.

[Applicant requests that if the Board rejects applicant's suggested language in Items #4 or #7 (above) that the use is classified as a special use and the following language shall be added:] As each property is unique, the Town Board may modify the above standards based on particular topographical issues, or impacts (or lack thereof) on surrounding properties.

TA 18-05: Agri-tourism-related catering.

Section 4. That this ordinance shall become effective upon adoption.

**HUNTERSVILLE ORDINANCE ADVISORY BOARD:** Aug. 2, 2018 – Recommend Approval as Special Use Permit

**PUBLIC HEARING DATE:** Sept. 4, 2018

**PLANNING BOARD MEETING:** Sept. 25, 2018 – Recommend Denial (6-3).

**TOWN BOARD DECISION:** Final Action on October 1, 2018.

Part 3. Zoning.

**§ 153A-340. Grant of power.**

(a) For the purpose of promoting health, safety, morals, or the general welfare, a county may adopt zoning and development regulation ordinances. These ordinances may be adopted as part of a unified development ordinance or as a separate ordinance. A zoning ordinance may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The ordinance may provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

- (b) (1) These regulations may not affect property used for bona fide farm purposes; provided, however, that this subsection does not limit regulation under this Part with respect to the use of farm property for nonfarm purposes.
- (2) Except as provided in G.S. 106-743.4 for farms that are subject to a conservation agreement under G.S. 106-743.2, bona fide farm purposes include the production and activities relating or incidental to the production of crops, grains, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agriculture, as defined in G.S. 106-581.1. Activities incident to the farm include existing or new residences constructed to the applicable residential building code situated on the farm occupied by the owner, lessee, or operator of the farm and other buildings or structures sheltering or supporting the farm use and operation. For purposes of this subdivision, "when performed on the farm" in G.S. 106-581.1(6) shall include the farm within the jurisdiction of the county and any other farm owned or leased to or from others by the bona fide farm operator, no matter where located. For purposes of this subdivision, the production of a nonfarm product that the Department of Agriculture and Consumer Services recognizes as a "Goodness Grows in North Carolina" product that is produced on a farm subject to a conservation agreement under G.S. 106-743.2 is a bona fide farm purpose. For purposes of determining whether a property is being used for bona fide farm purposes, any of the following shall constitute sufficient evidence that the property is being used for bona fide farm purposes:
- a. A farm sales tax exemption certificate issued by the Department of Revenue.
  - b. A copy of the property tax listing showing that the property is eligible for participation in the present use value program pursuant to G.S. 105-277.3.
  - c. A copy of the farm owner's or operator's Schedule F from the owner's or operator's most recent federal income tax return.
  - d. A forest management plan.
  - e. Repealed by Session Laws 2017-108, s. 8(a), effective July 12, 2017.
- (2a) A building or structure that is used for agritourism is a bona fide farm purpose if the building or structure is located on a property that (i) is owned by a person who holds a qualifying farmer sales tax exemption certificate from the Department of Revenue pursuant to G.S. 105-164.13E(a) or (ii) is enrolled in the present-use value program pursuant to G.S. 105-277.3. Failure to maintain the requirements of this subsection for a period of three years after the date the building or structure was originally classified as a bona fide purpose pursuant to this subdivision shall subject the building or structure to applicable zoning and development regulation ordinances adopted by a county pursuant to subsection (a) of this section in effect on the date the property no longer meets the requirements of this subsection. For purposes of this section, "agritourism" means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, ranching, historic, cultural, harvest-your-own activities, or natural activities and attractions. A building or structure used for agritourism includes any building or structure used for public or private events, including, but not limited to, weddings, receptions, meetings, demonstrations of farm activities, meals, and other events that are taking place on the farm because of its farm or rural setting.