



DOÑA ANA COUNTY

Department of Planning and Development
Intra-Departmental Memorandum

To: ETA Authority Members	Date: February 9, 2012
From: Janine Divyak, AICP, Chief Planner <i>Divyak</i>	
Subject: Public Hearing on the Intent to Adopt the Proposed Amendment to the ETZ Ordinance No. 88-02	

On December 14, 2011 the Extra-territorial Zoning Authority granted authorization to publish title and general summary of Amendment No. 2012-001 to the ETZ Ordinance No. 88-02 (see Exhibit A) for a public hearing scheduled on February 15, 2012. During this time, staff has sought public input of the amendment by posting it on the website and in the Las Cruces Sun-News and sending it to various organizations, agencies and departments for review. Additionally, Jess Williams sent out a press release and mentions the amendment at every opportunity available to him.

Staff has received two sets of written comments from the general public, one from the Vice-President of the Talavera Homeowner's Association, Douglas Hoffman (see Exhibit B), and the other from ETZ Commissioner Bob Hearn. Both of these comments are summarized below:

Douglas Hoffman is concerned about the lack of control of on-street parking and traffic. He suggests that on-street parking for home occupations should not be permitted and adding additional traffic (clients, delivery trucks) to already poorly maintained roads will damage them, along with culverts and underground utilities. Mr. Hoffman is concerned about parking for up to five employees working in the home occupation; in addition to the 'uncontrolled' retail vending that may occur. He states that there is no discussion on hours of operation and that signage should not be permitted as this will change the residential nature of the neighborhood.

Bob Hearn reviewed the ETA proposal and noted that it was different than the original one the ETZ recommended for approval. The ETZ's ideas were still intact although some of the wording had changed and he didn't agree with increasing the number of employees working at a home based business to five. He states that by allowing up to five employees is clearly incompatible with all other direction in the ordinance relating to traffic control, parking, and noise. He also said that he is not comfortable with the number of children (6) that can be in Day/Child Care as they will have several employees along with the kids while maintaining the residential nature of the neighborhood. He believes that allowing home-based businesses is right and important, but if they are not controlled properly with good laws that are well enforced, they can be extremely detrimental to an otherwise great neighborhood.

The original document that Mr. Hearn is referring to was reviewed by the ETA and certain sections were rewritten by the Legal Department to make more clear and enforceable. The number of employees associated with the home occupation was also increased to five to reflect a change in the International Building Code (IBC) that allows provision for live/work units that are in compliance with Section 419 of the IBC (see Exhibit C). 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 setting 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.

Generally, the types of activities related to a home occupation permit are service oriented, although the 'Home Artisan Business' provisions will permit retail sales. Retail sales from the home artisan business are specific to a particular product, such as cabinet/furniture making, arts and crafts, sewing, writing and pickling. These types of business are typically 'cottage industries' that are generally small scale in nature. Staff suggests limiting the type of products sold at the home to custom or special orders or possibly with the addition of providing a limited supply of showroom products to be available by pre-orders only.

Additionally, attached (Exhibit D) are comments received from the internal reviewing departments such as Building Services, Engineering, Advance Planning and the City of Las Cruces for your review and consideration.



DOÑA ANA COUNTY

Department of Planning and Development
Intra-Departmental Memorandum

To: Interested Parties and Reviewing Agencies	Date: January 17, 2012
From: Janine Divyak, AICP, Chief Planner <i>Divyak</i>	
Subject: Amendment 2012-001: Home Occupation Permits and other ETZ Zoning Amendments	

The Extra-territorial Zoning Authority is considering amending a portion of the Extra-territorial Zoning Ordinance, No. 88-02, to include home occupation permits and other ETZ zoning amendments, at a public hearing on February 15, 2011 at 5:30 pm in the Commission Chambers of the Government Center. A summary of the proposed amendment to the ETZ Ordinance, see attached, is as follows:

- 1) The definitions in Section 1.6, such as area (differentiating between gross and net), flag lot, vineyard and wine tasting room are included. The definitions of block, child care center, day care center and use have been modified.
- 2) Child care or day care centers with seven or more children in a residential zoning district may be approved by a Special Use Permit (SUP).
- 3) Industrial zoning is currently required for wineries and/or wine tasting rooms, but may be approved in residential land use classifications and EC1 (Neighborhood Commercial) by SUPs, providing the grapes are grown or processed on site and the property is assessed by the County Assessor as agricultural land.
- 4) Clarification of Section 3.1 that a SUP for accessory dwellings follows the procedures of Section 7.2 of the Ordinance.
- 5) Event Center added to the list of permitted uses by a SUP in the EC2 (Community Commercial) zoning classification (see Section 3.1.k.4).
- 6) The existing Home Occupation Section 3.4 has been deleted and revised to establish detailed guidelines and procedures for specific types of home-based businesses and activities that the public may engage in, such as Professional Offices and Services, Instructional Services, Home Artisans, Small Item Repair and Day Care/Child Care uses. These businesses may be permitted in a residential dwelling, providing compliance with the specific regulations of this section and all applicable codes and ordinances are followed.
- 7) The side and rear yard setback requirements have been reduced from 10' to 5' for accessory buildings not exceeding 600 square feet in size. Accessory structures shall not exceed the height of the primary structure, not to exceed 25' and shall not project beyond the primary dwelling unit or the front yard setbacks for lots less than one-half acre.

Please address all questions, comments or concerns to Janine Divyak, janined@doaanacounty.org or phone 575-525-6130 on or before **February 8, 2012**.

**Amendment No. 2012-001 to Las Cruces Extra-Territorial Zoning
Ordinance No. 88-02, as previously amended:
Home Occupation and other ETZ Amendments**

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 of the ETZ; 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. EI1 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.

A.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 therefore. 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

Miguel G. Silva, Chair (Aye/Nay)

Karen G. Pérez, Vice-Chair (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

R101.2

Scope, Live/Work Units

CHANGE TYPE: Addition

CHANGE SUMMARY: A new exception to the scope of the IRC references the *International Building Code* (IBC) for provisions on *live/work units*, a mix of residential and non-residential uses. The intent of this change is to permit live/work units in one- and two-family dwellings and townhouses constructed under the IRC, provided such units comply with the specific requirements in Section 419 of the IBC. —

2009 CODE: R101.2 Scope. The provisions of the *International Residential Code for One- and Two-family Dwellings* shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height with a separate means of egress and their accessory structures.

Exception: Live/work units complying with the requirements of Section 419 of the *International Building Code* shall be permitted to be built as one- and two-family dwellings or townhouses. Fire suppression required by Section 419.5 of the *International Building Code* when constructed under the *International Residential Code for One- and Two-family Dwellings* shall conform to Section 903.3.1.3 of the *International Building Code*.

CHANGE SIGNIFICANCE: A *live/work unit* is defined in the IBC as a dwelling unit or sleeping unit in which a significant portion of the space includes a nonresidential use that is operated by the tenant. The added language in the IRC recognizes live/work units constructed as one- and two-family dwellings and townhouses, but sends the user to IBC Section 419 for the specific limitations and requirements that apply to both the dwelling portion and the work portion of the unit. As such, live/work units are limited to the following:

- A maximum combined area of 3,000 square feet including the residential space and the work space in the live/work unit



- A nonresidential area not greater than 50 percent of the live/work unit area
- Nonresidential functions on the main floor only
- At any one time, a maximum of five workers who do not reside in the dwelling
- Storage area not greater than 10 percent of the nonresidential space

The IBC provisions for structural loading, means of egress, accessibility for persons with disabilities, fire alarm systems, and fire sprinkler systems apply to live/work units. For live/work units in one- and two-family dwellings and townhouses constructed under the IRC, an NFPA 13-D sprinkler system is permitted to satisfy the fire suppression requirements.

The live/work unit concept permits both residential and commercial functions within a dwelling unit without fire-resistance-rated separations between the uses or stair enclosures. This concept of design and construction allows a public service business with employees working within a residence and allows the public to enter the work area of the unit to acquire service. Beauty salons, coffee shops, and chiropractor's offices are examples of commercial establishments in a live/work unit. A home office that comprises no more than 10 percent of the dwelling unit does not create a live/work unit under the IBC definition. For example, a small home office for an architect or consultant would not be subject to the requirements of Section 419 of the IBC.

Janine Divyak

From: Cathy Jimenez
Sent: Thursday, January 19, 2012 2:41 PM
To: Janine Divyak
Subject: RE: Amendment to the ETZ Zoning Ordinance

Janine,

Live/work units

Exception: Dwelling or sleeping units that include an office that is less than 10 percent of the area of the dwelling unit shall not be classified as a live/work unit.

Limitations: The following shall apply to all live/work areas

1. The live/work unit is permitted to be a maximum of 3000 square feet.
2. The nonresidential area is permitted to be a maximum 50 percent of the area of each live/work unit.
3. The nonresidential area function shall be limited to the first or main floor only of the live/work unit; and
4. A maximum of five nonresidential workers or employees are allowed to occupy the nonresidential area at any one time.

I think this is what you wanted.

Cathy

Cathy Y. Jimenez
Chief Building Official
Building Services
Dona Ana County
cathyj@donaanacounty.org
575-525-6100 (office)
575-644-2162 (cell)
575-525-6131 (fax)

From: Janine Divyak
Sent: Wednesday, January 18, 2012 4:25 PM
To: Robert Armijo; Rene Molina; Dave Medeiros; Vincent Banegas; Cathy Jimenez
Subject: Amendment to the ETZ Zoning Ordinance

Attached please find the proposed amendment to the ETZ Zoning Ordinance, as well as an executive summary of the amendment. The Extra-territorial Zoning Authority will be hold a public hearing on February 15, 2012 at 5:30 pm to consider adopting this amendment. Please review and let me know if you have any comments or concerns, I shall need your response/written comments no later than February 8, so that they may be included in the ETA Agenda packets.'

Thank you for your participation in this matter,
Janine

Janine Divyak

From: Rene Molina
Sent: Thursday, January 19, 2012 2:53 PM
To: Janine Divyak
Subject: RE: Amendment to the ETZ Zoning Ordinance

It all appears to be reasonable.

Rene

From: Janine Divyak
Sent: Wednesday, January 18, 2012 4:25 PM
To: Robert Armijo; Rene Molina; Dave Medeiros; Vincent Banegas; Cathy Jimenez
Subject: Amendment to the ETZ Zoning Ordinance

Attached please find the proposed amendment to the ETZ Zoning Ordinance, as well as an executive summary of the amendment. The Extra-territorial Zoning Authority will be hold a public hearing on February 15, 2012 at 5:30 pm to consider adopting this amendment. Please review and let me know if you have any comments or concerns, I shall need your response/written comments no later than February 8, so that they may be included in the ETA Agenda packets.'

Thank you for your participation in this matter,
Janine

From: Daniel Hortert
 Sent: Friday, January 27, 2012 9:42 AM
 To: Janine Divyak
 Subject: ETZ Zoning Amendment Suggestions.docx
 Attachments: ETZ Zoning Amendment Suggestions.docx

Some suggestions for the ETZ Zone change.:

Flag Lot Definitions

lot, flag A lot not fronting or abutting a public roadway and where access to the public roadway is limited to a narrow private right-of-way. (*Schaumburg, Ill.*)

A large lot not meeting minimum lot frontage requirements and where access to a public or private street is provided by means of a long, narrow driveway between abutting lots. (*Clarkdale, Ariz.*)

A lot so shaped and designed that the main building site area is set back from the street on which it fronts and includes an access strip connecting the main building site with the frontage street. (*North Liberty, Iowa*)

A lot that has access to a public right-of-way by means of a narrow strip of land. (*Sandy, Ore.*)

A lot having only its access strip fronting on a private or public street. (*Santa Rosa, Calif.*)

A lot not fronting on or abutting a public road and where access to the public road is by a narrow, private right-of-way. (*Bondurant, Iowa*)

A lot or parcel which includes a private driveway as part thereof. (*MultnomahCounty, Ore.*)

Do we really want 5 employees in addition to the occupant for Home Occupations? Typically it is one (maybe two) in addition to the occupant.

Is this necessary?

3. Accessory buildings larger than (~~four~~) six hundred (400 600) square feet or taller than fifteen (15) feet shall meet all minimum setback requirements. *This seems somewhat redundant to item #2.*

Janine Divyak

City of Las Cruces

From: Vincent Banegas [vbanegas@las-cruces.org]
Sent: Monday, December 12, 2011 1:59 PM
To: Janine Divyak
Cc: David Weir; Cheryl Rodriguez; Robert Kyle
Subject: RE: Amendment to the ETZ Ordinance No. 88-02

Janine regarding flag lots, from the subdivision perspective, City staff will make them aware of it when a proposal shows the configuration, but ultimately the one lot service will be policed by DAC. Also, make sure the child care/day care standards are consistent with the State cause I know they have set definitions and numbers associated with said definitions. Finally, on the Home Occ section, you identify body/tattoo piercing as a prohibited Home occ., but should you just say personal services which includes that and massages and similar services you don't mention, but perhaps intended. Just suggestions.