



February 16, 2017

## TECHNICAL STAFF REPORT

*Planning Board Meeting of March 2, 2017*

**Case No./Petitioner:** ZRA-174 - Mary Kay Sigaty, Councilperson

**Request:** Amend Section 103.0 of the Zoning Regulations to add a new definition for Cottage Food Business and Section 128.0.C to add Cottage Food Business as a permitted Accessory Use Home Occupation.

### I. BACKGROUND

In 2012 the state of Maryland modified the Cottage Food Business Law to allow a residential kitchen to be used for a home based bakery or home food processing company<sup>1</sup>. Prior to this, food entrepreneurs were required to process their goods in a commercial kitchen or establish a “brick-and-mortar” enterprise. Cottage Food Businesses are regulated by the Maryland Department of Health and Mental Hygiene (DHMH) under COMAR 10.15.03.27. COMAR defines a cottage food businesses as one that: a) produces or packages cottage food products in a residential kitchen and b) has annual revenues from the sale of cottage food products not exceeding \$25,000. Further, a cottage food product is defined as a non-potentially hazardous food that is offered for sale only at farmers’ markets or public events. Internet and interstate sales are prohibited.

A Cottage Food Business, as defined in COMAR, is not specifically identified as a land use in the Howard County Zoning Regulations (HCZR). The most similar land use category in HCZR is Catering. However, the operational characteristics and requirements for these two uses are distinct. Cottage Food Businesses do not require a state license and are allowed to utilize a residential kitchen, as compared to catering, which requires a state license and a commercial kitchen. Furthermore, Cottage Food Business vendors are limited to specific products, may only sell products at farmers’ markets or public events, and are limited in annual sales. Catering businesses are not subject to these restrictions.

During 2013 Comprehensive Zoning, Catering was eliminated from the list of permitted Accessory Use Home Occupations and was added as a Conditional Use Home Occupation in response to a change in the definition of single-family dwellings, which imposed a new limit of one kitchen per dwelling. This change conflicted with the intent of the 2012 Cottage Food Business Law to eliminate impediments to home based food businesses. ZRA-174 proposes to eliminate the conflict with the Cottage Food Business Law by creating a land use category, Cottage Food Businesses, permitted as an Accessory Use Home Occupation.

### II. DESCRIPTION AND EVALUATION OF PROPOSAL

This section contains DPZ’s technical evaluation of ZRA-174. The Petitioner’s proposed amendment text is attached to this Technical Staff Report as Exhibit A, Petitioner’s Proposed Text.

<sup>1</sup> Source: University of Maryland Extension Service; Maryland Rural Enterprise Development Center.

### **Section 103.0 Definitions**

#### **Section 103.0 - Create a definition for Cottage Food Business**

DPZ recommends approval of the amendment with revisions

The proposed amendment creates a new definition:

**Cottage Food Business:** A business that produces or packages non-hazardous food products in a residential kitchen and offers these products for sale only at a farmers' market or public event.

This definition is consistent with the relevant land use provisions of the Cottage Food Business Law and COMAR 10.15.03.27. DPZ proposes adding a reference to COMAR 10.15.03 for the definition of non-hazardous food, since this term is not defined in the HCZR.

### **Section 128.0: Supplementary Zoning District Regulations**

#### **Section 128.0.C.1 – Add Cottage Food Businesses to the list of permitted Home Occupations**

DPZ recommends approval of the amendment

HCZR permit certain Home Occupations as accessory uses in residential dwellings in all residential zoning districts and in residential land use areas of multi-use districts subject to 12 criteria (see Exhibit A). Section 128.0.C.1 allows the accessory use of a residential property for business purposes, which are incidental and secondary to the residential use. The businesses must be operated by individuals residing in the home and are limited to 33% of the dwelling. Additionally, there are limitations on retail sales, employees, customers, deliveries, and exterior alterations to the building. Examples include home offices, internet sales, photography, and repair services.

The proposed amendment adds a new category, Cottage Food Business, to the list of permitted Accessory Use Home Occupations. The proposed use is consistent with the Home Occupation definition, since it will be operated in a residential kitchen, does not allow retail sales from the home, and is limited by the volume of sales.

The proposed amendment aligns with the purpose of the Cottage Food Business Law to eliminate impediments to home based food businesses. Furthermore, it promotes economic development by encouraging micro-enterprise and eliminates significant startup costs associated with “brick and mortar” facilities. Finally, it helps supply goods for and supports the local farmers market industry.

### **III. GENERAL PLAN**

ZRA-174 is in harmony with the following *PlanHoward 2030* General Plan policy:

#### **Policy 6.4**

“Ensure that the County continues to capture future job and business growth opportunities.”

**Implementing Action a.** “Economic Development. Partner with the Economic Development Authority to develop County policies and programs to implement the County’s Strategic Plan for Economic Development.”

**Implementing Action b.** "Zoning Regulations. Update zoning and other regulations to address the evolving commercial and industrial markets and development trends."

ZRA-174 promotes growth of the local food production industry through a home based business option that will expand opportunities for entrepreneurs by eliminating upfront investment in equipment and overhead expenses. Additionally, the proposed amendments update HCZR to address the needs of the Cottage Food Business market by creating a new land use category and allowing operation of the business within the owner's residence.

**IV. AGENCY COMMENTS**

The Department of Recreation and Parks, and the Bureau of Environmental Health had no comments on ZRA-174.

**V. RECOMMENDATION**

**APPROVAL WITH REVISIONS.**

For the reasons noted above, the Department of Planning and Zoning recommends APPROVAL WITH REVISIONS of ZRA-174 as shown in Exhibit B, DPZ's Proposed Text.

Approved by:

  
Valdis Lazdins, Director 2-10-17  
Date

**NOTE: The file on this case is available for review by appointment at the Public Service Counter in the Department of Planning and Zoning.**

**EXHIBIT A - PETITIONER'S PROPOSED TEXT**

(CAPITALS indicate text to be added; [[brackets indicate text to be deleted]].)

**SECTION 103.0 – DEFINITIONS**

**COTTAGE FOOD BUSINESS**: A BUSINESS THAT PRODUCES OR PACKAGES NON-HAZARDOUS FOOD PRODUCTS IN A RESIDENTIAL KITCHEN AND OFFERS THESE PRODUCTS FOR SALE ONLY AT A FARMERS' MARKET OR PUBLIC EVENT.

**SECTION 128.0. - SUPPLEMENTARY ZONING DISTRICT REGULATIONS**

C. Home Businesses

1. Home Occupations

Home occupations which meet the following requirements are permitted accessory uses in all residential zoning districts and in residential land use areas of the multi-use districts. If more than one home occupation is located within a residence or on a residential lot, the requirements given below apply to the cumulative total of all home occupations.

- a. The total area devoted to home occupations shall not exceed 33% of the gross floor area of the dwelling.
- b. The home occupation shall be located entirely within a dwelling, an existing accessory building, or both.
- c. The home occupation shall not alter the residential appearance and character of the dwelling, accessory building or the lot.
- d. There shall be no exterior evidence, other than a permitted sign, to indicate that the lot is being used for any purpose other than that of a dwelling. Exterior evidence shall include outdoor display or storage, noise, dust, vibration, glare, fumes, odors or extensive parking area.
- e. The unrestricted sale or rental of commodities may not take place on the lot.

Allowed sales related activities include: processing orders by mail, telephone or computer; receiving and mailing merchandise (subject to the limitation on truck deliveries); storage of catalogues, samples, previously ordered merchandise and inventory; office functions such as telephone, computer, and record keeping. In addition, occasional, small volume sales associated with home parties held for the purposes of the display and sale of goods such as cookware, fashion accessories, skin care products, etc. may occur on the site no more than once a month.

- f. A home occupation shall be principally conducted by persons residing in the dwelling. In addition, the following number of nonresident employees and clients may be present on the lot in connection with the home occupation:

- (1) On a lot 20,000 square feet or larger, no more than three nonresident employees or clients shall be permitted at the same time.
  - (2) On a lot smaller than 20,000 square feet which is improved by a single-family detached dwelling, no more than two nonresident employees or clients shall be permitted at the same time.
  - (3) Within a single-family attached or apartment dwelling, no more than two nonresident employees or clients shall be permitted at the same time. The nonresident employees shall work only between 9:00 a.m. and 5:00 p.m. Monday through Friday.
- g. No business-related deliveries by trucks with more than two axles shall be permitted. Parcel post and other similar delivery trucks are permitted.
- h. Home occupations may include the uses listed below. All repair and refinishing items must be picked up from and delivered to customers.
- (1) Art or hand craft studios involving the small scale production of non-edible commodities for off-site sales.
  - (2) COTTAGE FOOD BUSINESSES.
    - [[2]]3 Business services including record transcription, clerical and computer services.
    - [[3]]4 Direct sale product distribution (e.g., Amway, Avon, Tupperware, etc.).
    - [[4]]5 Internet, mail-order or telephone sales.
    - [[5]]6 Dressmaker, seamstress, or tailor.
    - [[6]]7 Repair services for products including, but not limited to: computer hardware, clocks, jewelry, cameras, guns, bicycles, small electronics, musical instruments and tools which can be transported in a standard passenger vehicle.
    - [[7]]8 Individual or group instruction of up to 6 students at one time in an academic or non-academic subject.
    - [[8]]9 Business or professional offices including administrative offices associated with an offsite business.
    - [[9]]10 Furniture refinishing of items which can be transported in a standard passenger vehicle.
    - [[10]]11 In the RC and RR Districts only, lawn mower, scooter and small engine repair on lots of five acres or larger.
- i. Uses which require a Conditional Use in any residential zoning district are prohibited as accessory home occupations.
- j. On an ALPP purchased or dedicated easement property, the following additional criteria are required:
- (1) The use shall not interfere with the farming operations or limit future farming production.
  - (2) Any new building or building addition associated with the use, including any outdoor storage and parking area shall count towards the cumulative use cap of 2% of the easement.

- k. Certain home occupations which do not comply with the requirements of this section may be permitted as a Conditional Use, subject to the provisions of Section 131.0.N.29 and other applicable regulations.
- l. For home occupations which require Department of Planning and Zoning approval of a federal, state or local permit or license, a home occupation confirmation must be approved by the Department of Planning and Zoning based on the requirements of this section. The confirmation request shall include a plot plan showing the location and dimensions of structures, parking areas and driveways and a floor plan showing the dimensions and boundaries of the home occupation.

**EXHIBIT B - DPZ'S PROPOSED TEXT**

**Note:** Exhibit B addresses only DPZ's proposed changes to Petitioner's proposed text. The remainder of the text in Exhibit A is existing text to be retained.

(CAPITALS indicate text to be added; double underlining indicates DPZ's text proposed to be added to Petitioner's proposed text.)

**SECTION 103.0 – DEFINITIONS**

COTTAGE FOOD BUSINESS: A BUSINESS THAT PRODUCES OR PACKAGES NON-HAZARDOUS FOOD PRODUCTS, AS DEFINED IN COMAR 10.15.03 AS AMENDED, IN A RESIDENTIAL KITCHEN AND OFFERS THESE PRODUCTS FOR SALE ONLY AT A FARMERS' MARKET OR PUBLIC EVENT.

**SECTION 128.0.: SUPPLEMENTARY ZONING DISTRICT REGULATIONS**

C. Home Businesses

1. Home Occupations

h. Home occupations may include the uses listed below. All repair and refinishing items must be picked up from and delivered to customers.

- (1) Art or hand craft studios involving the small scale production of non-edible commodities for off-site sales.
- (2) COTTAGE FOOD BUSINESSES

