

**POLK COUNTY
DEVELOPMENT REVIEW COMMITTEE
STAFF REPORT**

DRC Date: October 26, 2023	Level of Review: 4
PC Date: December 6, 2023	Type: LDC Text Amendment
BoCC January 9, 2024	Case Numbers: LDCT-2023-18
Date: January 23, 2024	Case Name: Livestock and Fowl in Residential Neighborhoods
Applicant: Polk BoCC	Case Planner: Aleya Inglima, Planner II

Request:	This is a County-initiated request to amend Section 222 of the Land Development Code to clarify the County’s code on non-commercial farm buildings and structures and allow variances to setback distances.
Location:	n/a
Property Owner:	n/a
Parcel Size (Number):	n/a
Development Area:	n/a
Nearest Municipality:	n/a
DRC Recommendation:	Approval
Planning Commission Vote:	5-0 Approval

Among the changes to LDC:

- Changing General Farming to Non-Commercial Farming in Section 222.A
- Allowing relaxation of the standards set forth in this section by the Land Use Hearing Officer for non-commercial farming in Section 222.A
- Changes to Chapter 9, Section 930 – Variances & Special Exceptions

Summary:

This is a County-initiated request to amend Land Development Code Section 222 to clarify the County’s code on non-commercial farm buildings and structures and allow variances to setback distances. Staff recommends approval of this text amendment, as this change in process will allow applicants the opportunity to request a variance to non-commercial farm building setbacks and resolves Code Enforcement conflicts in Section 222.

Findings of Fact

1. *LDCT-2023-18 is a County-initiated request to amend Land Development Code Section 222 to clarify the county's code on non-commercial farm buildings and structures and allow variances to setback distances.*

2. *LDC Section 930 - Variances & Special Exceptions states,*

“A. Land Use Hearing Officer (Revised 02/05/19 - Ord. No. 19-008)

The Land Use Hearing Officer may grant a variance or special exception from the strict application of this Code, if the following procedures are followed and findings made. Variances to the Green Swamp protection standards in Chapter 5 and all Use Tables in Chapters 2 and 4 are prohibited.”

3. *LDC Section 931 - Criteria for Granting Variances states,*

“A. Factors to Consider (Revised 02/05/19 - Ord. No. 19-008; 5/20/09 - Ord. 09-023)

In order to authorize any variance from the terms of these Land Development Regulations, except variances to Section 303 Communication Towers, the Land Use Hearing Officer shall consider the following factors:

- 1. The findings in the Land Development Director or his/her designee's staff report;*
- 2. Whether granting the variance will be in accordance with the general intent and purpose of this Code, and that the variance will not be injurious to the area involved or otherwise detrimental to the public welfare;*
- 3. Whether special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the applicable land use district;*
- 4. Whether provided the special conditions and circumstances present in the request do not result from the actions of the applicant;*
- 5. Whether granting the requested variance will not confer on the applicant any special privilege that is denied by the provisions of this Code and will constitute unnecessary and undue hardship on the applicant;*
- 6. Whether the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure;*
- 7. Whether that in no case shall a variance be granted which will result in a change of land use that would not be permitted in the applicable land use designation;*
- 8. Whether that in no case shall a variance be granted which would result in creation of any residual lot or parcel which does not meet the requirements of this Code; and*
- 9. Whether that the granting of the variance does not circumvent a condition of the intent of a condition placed on a development by the Planning Commission or the BoCC.”*

10. *Florida State Statue 193.461 - Agricultural lands; classification and assessment; mandated eradication or quarantine program; natural disasters.*

11. *LDC Chapter 10 – Definitions states,*

“AGRICULTURAL ACTIVITY: The use of land for the purpose of growing crops, plants, trees, or other agricultural or forestry products; aquaculture and raising livestock, as defined in F.S. § 193.461.”

12. *Florida Statue 193.461 states; “The term “bona fide agricultural purposes” means good faith commercial agricultural use of the land.*

1. *In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:*

a. *The length of time the land has been so used.*

b. *Whether the use has been continuous.*

c. *The purchase price paid.*

d. *Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.*

e. *Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.*

f. *Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.*

g. *Such other factors as may become applicable.”*

13. *LDC Section 222 – Agricultural states,*

“A. General Farming (Revised 1/10/12; Ord. 12-001)

Nothing herein shall prevent the use of any land for agricultural purposes, or the construction and use of buildings or structures incidental to that purpose. No conditional use permit or certificate shall be required for any new agricultural building or structure provided, however, no structure for the sheltering or feeding of animals (such as barns, stables, coups, aviaries, troughs or feeders) shall be permitted to be built within 50 feet of a property boundary except within the A/RR, A/RRX, PM and CORE Future Land Use Map districts.

B. Non-residential Farm Buildings (Revised 1/6/2010; Ord. 10-002; 09/02/09; Ord. 09-054):

Non-residential farming related buildings are not required to meet the standards of the Florida Building Code except as required by F.S. ch. 553.73.

C. Farm Worker Housing (Revised 09/02/09; Ord. 09-054):

Nothing in this Code shall prohibit the use of a single-family, duplex, or multifamily unit from housing farm workers in the same manner as a family defined within Chapter 10 of this Code.

D. Farming, General and Animal Grazing (Revised 1/10/12; Ord. 12-001; 6/28/11; Ord. 11-008)

Nothing herein shall prevent the use of any land for farming, general and animal grazing for bona fide agricultural purposes, or the good faith commercial agricultural use of land, as defined in F.S. § 193.461. This shall be allowed in all land use classifications.

E. Livestock and Fowl in Residential Neighborhoods (Revised 2/5/19 Ord. 19-008; 12/15/15; Ord. 15-080; 1/10/12; Ord. 12-001)

This section is intended to address the balance between quality of life for residents and responsible animal husbandry in residential neighborhoods. Code enforcement action of this subsection (222 E.) may be initiated only by complaint from and owner of residential property within 250 feet of the property on which livestock or fowl are contained. The following provision apply to only residential properties less than ½ acre (21,780 square feet) in size and do not apply to any property within the A/RR, A/RRX, PM and CORE Future Land Use Map districts. These provisions do not apply to the good faith commercial agricultural use of land (bona fide agricultural purposes), as defined in F.S. § 193.461.

- 1. Livestock shall be contained within fenced areas.*
- 2. Fowl and Swine shall be kept in pens or fenced areas at least 50 feet from neighboring residential property lines.*
- 3. The storage of animal waste shall be located at least 50 feet from neighboring residential property lines.*
- 4. Show animals and educational projects shall be exempted from the requirements for pens in Section 222 E.2, provided the manure setback requirement in Section 222 E.3, can be met.*
- 5. Relaxation of the standards set forth in this section may be approved by the Land Use Hearing Officer through the process provided in Section 930 of this Code.*

F. Agritourism

Recreational camping, as defined by this Code, may be located on land classified as agricultural land under F.S. § 193.461, and is use for an agritourism activity as defined by F.S. § 570.86. Recreational camping on such land shall not exceed five recreational vehicles or tents. Parking areas for recreational vehicles may contain RV connections for visiting patrons or participants of the agritourism activity. Stays by visiting patrons or participants shall not exceed 3 days and the cumulative stays by visiting patrons and participants shall not exceed 180 days in a one year time period. Recreational vehicles shall only be used by visiting patrons or participants of the agritourism activity. Simple buildings or other structures shall not be used for stays by visiting patrons or participants of the agritourism activity.

G. Cottage Industries (Added 05/19/2015; Ord. 15-29)

Cottage industries in accordance with the definition in Chapter 10 are permitted as accessory uses to a bona fide agricultural property in the A/RR, RS, and RL-1 districts, outside of the Green Swamp Area of Critical State Concern, and under the following conditions:

- 1. Structures used for light manufacturing, agricultural processing and storage of the goods produced are:
 - a. No greater than an FAR of 0.025 cumulatively of the contiguous agricultural property or properties;*
 - b. No single structure is greater than 15,000 square feet under roof; and*
 - c. The total square footage all structures used in production is less than 40,000 square feet cumulatively;**
- 2. All production is conducted within enclosed structures;*
- 3. Structures used for manufacturing, processing and storage of the goods produced are at least 200 feet from offsite residential structures;*
- 4. All storage of finished goods is kept within enclosed structures or containers;*
- 5. There is no slaughtering of animals permitted onsite;*
- 6. Onsite retail sales may be approved by the Planning Commission through a Level 3 Review with consideration given to the extent of the retail activity, infrastructure available to support it, and compatibility with surrounding uses;*
- 7. Events and activities to promote the products produced onsite may be approved in accordance with Section 229, Agritourism; and,*
- 8. Production and sale of alcohol beverages shall be in accordance with the provisions in F.S. ch. 224 in addition to the Florida Statutes and Florida Administrative Code.*

9. *Mail order sales and wholesale distribution of products produced onsite is permitted.*

Cottage Industries allows for greater production than the Cottage Food Operations pursuant to the Florida Statutes (Section 500.80 at the time this amendment was adopted). Therefore, state, and local food and beverage laws will apply. Cottage Food Operations as defined in section 500.03, Florida Statutes, as may be amended, are permitted in all districts as an accessory use to an existing dwelling unit regardless of district regulations.”

Development Review Committee Recommendation:

The Land Development Division, based on the Findings of Fact, finds that the proposed text change request is **CONSISTENT** with the Polk County Land Development Code and the Polk County Comprehensive Plan. Staff recommends **APPROVAL** of LDCT-2023-18.

Analysis:

Currently, there is conflicting information in Section 222 that effects Code Enforcement. The Variance hearing process is established in Polk County to allow property owners to request reduced setbacks for structures when there is no other form of relief. The County cannot regulate general farming due to State Statue 604.50. Section 222.A states that sheltering or feeding of animals (such as barns, stables, coups, aviaries, troughs or feeders) shall be permitted to be built within 50 feet of a property boundary except within the A/RR, A/RRX, PM and CORE Future Land Use Map districts. Non-commercial farm buildings can now request a variance if there is a hardship. LDC Section 931 establishes the criteria in which must take place for Land Use Hearing Officer hearings. Current code creates a conflict when applying different parts of this section.

Limits of the Proposed Ordinance

Section 222.A states that sheltering or feeding of animals (such as barns, stables, coups, aviaries, troughs or feeders) shall be permitted to be built within 50 feet of a property boundary except within the A/RR, A/RRX, PM and CORE Future Land Use Map districts. Many lots may not allow this due to size. Section 222.E states the following provision apply to only residential properties less than ½ acre (21,780 square feet) in size and do not apply to any property within the A/RR, A/RRX, PM and CORE Future Land Use Map districts. This has caused many Code Enforcement cases with no relief of allowing a variance. The proposed ordinance amends LDC Section 222. It clarifies the code and involves adding variances to non-commercial farm buildings. This amendment has no bearing on land uses, land use districts, or any aspect of the LDC aside from the procedures outlines in this section.

Consistency with the Comprehensive Plan

This change has no bearing on the Comprehensive Plan. No part of the subject amendment will violate a property owner’s private property rights. This amendment will provide landowners and the public more options in the Land Development process.

Comments from Other Agencies: None

Draft Ordinance: Under separate attachment

APPLICABILITY AND CRITERIA FOR WAIVERS

What is the hardship if the Waiver is not approved?

The hardship that would arise if the waiver is not approved involves financial strain, diminishing the area's natural ambiance, and impeding our ability to maintain the intended unique rural character. Additionally, the requirement for a paved road could lead to unnecessary costs and ecological disruption, which would hinder the balanced development of our subdivision.

Is this the minimum relief for the reasonable use of the land?

The proposed gravel road aligns with the principle of minimum relief for the reasonable use of the land, as it addresses transportation needs, preserves community character, and avoids unnecessary financial burden while ensuring public safety.

Will the Waiver be injurious to the area involved or detrimental to the public welfare?

No, granting the waiver will not be injurious to the area involved or detrimental to public welfare. Instead, it will contribute to maintaining the community's character, reducing financial burden, and fostering an environmentally conscious approach to road infrastructure, all of which align with the well-being and interests of both the area and the future residents of this small private subdivision.

Will the Waiver create future maintenance obligations for the County?

No. The proposed road is private and will be carefully maintained by the proposed subdivision's HOA.

Will the Waiver result in setting a precedent for a similar waiver request in the area?

While the grant of this waiver acknowledges the unique circumstances of our subdivision, it is not expected to establish a precedent for similar requests in the area. The decision to grant the waiver is contingent upon the specific characteristics and intent of this application; any future requests would be evaluated on their individual merits, ensuring that each case is treated independently and within its own context.

Have all other avenues of relief been exhausted?

Yes, all alternative avenues of relief have been explored. The option of a gravel road, as proposed in this waiver application, has been carefully considered after evaluating various alternatives. It has been determined that a gravel road best meets the needs of this project while addressing concerns related to financial feasibility, ecological impact, and the preservation of the rural atmosphere.

Applicant Justification