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Cara L. Cookson
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Katherine B. Kramer
James T. DeWeese
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November 14, 2013

VIA EMAIL & HAND DELIVERY

Ken Lerner, Project Manager
Development Review Board
City of Burlington
Department of Planning and Zoning
149 Church Street City Hall
Burlington, VT 05401

Re: #14-0407HO - Adam Buchwald, 292 South Prospect Street, Burlington – Application to Modify DRB Home Occupation Approval dated September 13, 2012 by doubling space used, allowing use of standard woodworking machinery, allowing customers to come to premises, and allowing eight (8) parking spaces

Dear Mr. Lerner:

On behalf of my client, Barbara Headrick, this is directed to you because you are list as project manager on the Notice of Hearing with respect to the above matter. I am also copying David White, Director of Planning & Zoning and Austin Hart, Chair of the DRB by email.

I would appreciate your distributing the enclosed nine (9) copies to the DRB members in advance of the hearing.

Please email a copy of any staff report when distributed to the DRB. Thank you.

Sincerely yours,

Mark L. Sperry
MLS:lab
cc: Barbara Headrick
Austin Hart, Chair, DRB
David White, Director, Planning & Zoning
Adam Buchwald

611022.1

REPLY TO: Burlington Office • WEBSITE: www.langrock.com • EMAIL: attorneys@langrock.com

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A Limited Liability Partnership Including a Professional Corporation

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Re: #14-0407HO - Adam Buchwald, 292 South Prospect Street, Burlington – Application to Modify DRB Home Occupation Approval dated September 13, 2012 by doubling space used, allowing use of standard woodworking machinery, allowing customers to come to premises, and allowing eight (8) parking spaces

Dear DRB Members:

I represent Barbara Headrick, who lives at 282 South Prospect Street, and is an adjoining property owner to Mr. Buchwald. Her house is approximately 35 feet from Mr. Buchwald's garage, where his operation is conducted.

Kindly enter my appearance in the above matter for Ms. Headrick.

In advance of the upcoming November 19, 2013 hearing, I would like to submit the following for the DRB's consideration:

The guiding requirement for home occupations in Burlington's Comprehensive Development ordinance (CDO) is Section 5.4.6 which requires that a home occupation must be; "so located and conducted that the average neighbor, under normal circumstances, <u>would not</u> otherwise be aware of its existence." (emphasis supplied).

This means NO evidence of its existence, not "a little" or "minimal" or "occasional" evidence of its existence.

Another guiding requirement is that in the RL Zone, where Mr. Buchwald's property is located, Machine/Woodworking Shops are not an allowed use. See CDO Appendix A, Use Table, p.3. A "Machine/Woodworking Shop" is defined in the CDO as a shop of less than 10,000 square feet

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where lathes, presses, grinders, shapers and other wood – and - -metal working machines are used …" (emphasis supplied)

If a use constitutes a Machine/Woodworking shop prohibited in the RL Zone, it cannot be allowed under the guise of being a "home occupation." Plainly it would not be a use "customary in a residential zone if the CDO prohibits it in that zone."

It is my client's position that:

(1) Doubling the space Mr. Buchwald uses, changing to "standard woodworking machinery," allowing customers to come to the premises, and allowing eight (8) parking spaces, will result in his operation being "so conducted that the average neighbor [my client], under normal circumstances," will "be aware of its existence," in violation of CDO 5.4.6," and

(2) With the proposed change to allow "standard woodworking machinery" in the expanded space, Mr. Buchwald's use would cross the line from a home occupation to a Machine/Woodworking Shop, which the CDO prohibits in the RL Zone. See Finding 10 of the DRB September 13, 2012 Approval: the applicant "will use 10 volt tools normally found in a residential workshop." Use of "standard woodworking machinery" is something else, goes far beyond anything contemplated by the DRB approval, and would turn this operation from a home occupation to a commercial use not customary in this residential zone.

My client, as she will tell you at the hearing, is in a position to know the impacts of the expanded operation, because the modifications Mr. Buchwald seeks currently exist and have already been implemented, right next to her house, without DRB approval.

By way of background, on September 13, 2012, the DRB issued home occupation approval to Mr. Buchwald for crafting and repair of musical instruments..

Among the Conditions of Approval in Part IV were:

(i) "Subject to all the requirements of Section 5.4.6 (emphasis supplied)

(ii) "Standard conditions 1-15." These included:

(3) approval of use of half the garage only, and use of a single table saw and other power tools. (i.e. one 110 volt table saw and other 110 volt tools only)

(5) no exterior evidence of the conduct of the home occupation …"

(6) no increase in traffic flow or parking, and no clients or customers will come to the property.

(7) no sounds [or] noise … which is discernible from any adjacent dwelling unit.

The proposed modifications are:

(1) to use the whole garage for the business,

(2) unlimited use of "standard woodworking machinery," that is, <u>any</u> woodworking machinery, not just 110 volt tools found in a residential workshop.

(3) that customers would come to the premises,

(4) that eight new parking spaces would be provided.

These are substantial changes in the operation that would double its size and result in exterior evidence of its existence.

Additionally CDO 5.4.6 provides:

(1) There can be a "no exterior evidence of the conduct of a home occupation," with exceptions not relevant here.

This means NO evidence of its existence, not "a little" or "minimal" or "occasional" evidence of its existence.

(2) The home occupation cannot increase vehicular traffic flow <u>or parking</u> by more than one additional vehicle at a time for customers or deliveries (emphasis supplied)

(3) The home occupation cannot create sounds or noise discernible from any adjacent dwelling unit.

This means NO discernible sounds or noise, not "a little" or "minimal" or "occasional" sounds or noise.

After Mr. Buchwald opened his shop following the September 2012 DRB approval, the following have occurred:

(1) There has been a continual violation of the condition approving only half of the garage as a workshop in that the entire garage has been used for the operation, See photographs attached, showing entire garage used.[1] This started as early as December 2, 2012 (see photo date). My client can easily hear the power machinery and tools from inside her house, even with windows down, at this now existing doubled use of the

[1] All photographs of the interior of Mr Buchwald's building are from his website.

garage. She will tell you she hears them most days, the duration ranging from 1 – 8 hours per day.

(2) There has been a continual violation of the condition prohibiting an increase in vehicular traffic or parking by more than one additional vehicle at a time and that no clients or customers will come to the property. See photographs attached showing at least 3 visitor cars in parked in his driveway. Mr. Buchwald admits that "clients are now coming." See application Questionnaire, #7. Not only can my client hear the machinery and tools, she is also aware of the existence of this parking and these customers coming and going all day long.

(3) Since the DRB approval issued, there has been a continual violation of the condition that there would not be any noise or sounds discernible from any adjacent dwelling unit. At the doubled and full use of the garage, as set forth in (1) above, my client can hear the power machinery and tools from inside her house.

(4) There has been a continual violation of the condition that woodworking tools would consist of a single table saw and smaller tools. See photographs attached of not only the table saw, but a cabinet saw, and of large volumes of wood.

Mr. Buchwald's application is an "after the fact" attempt to legitimize violations of the September 13, 2012 DRB approval that already exist. However, the application should be denied for the following reasons.

(1) CDO 5.4.6 (the home occupation must be "so located and conducted that the average neighbor, under normal circumstances, <u>would not</u> otherwise be aware of its existence."), and CDO 5..4.6(b) (There can be a <u>"no exterior evidence</u> of the conduct of a home occupation,") will both be violated by (i) The discernible noise from the operation that my client can and will hear inside her house, (ii) the existence of eight (8) parking spaces and the attendant vehicles visible from her property, and (iii) The comings and goings of the customers coming to the premises.

(2) As the additional woodworking machinery and large volume of wood materials on hand demonstrate, approval of the application would result in this operation crossing over the line and becoming a prohibited Machine/Woodworking Shop, which belongs in zones that allow this use, but not residential zones

(3) Regarding the proposed eight (8) car parking lot, (i) the attached photos show that there is not enough room for eight cars, and even if eight cars could be stacked in two side by side rows in the driveway, there is no room for the cars not nearest the street to move in and out without the constant juggling of cars, (ii) the 8 car parking lot would violate CDO 8.1.14, requiring all parking facilities to be designed so that each vehicle can proceed to and from the parking space provided for it <u>"without the moving of any other vehicle"</u> (emphasis supplied), and (iii) <u>the 8 car parking lot will be outrageously visible to my client and everyone else in the neighborhood, and will irrevocably alter the character of this neighborhood.</u>.

My client understands that the 2012 DRB approval allows the operation as approved under conditions then laid down by the DRB, in half the garage only. However, she objects to this modification application, which would only exacerbate the noise from the operation as approved and its visibility and effect on her property, and convert it from the approved home occupation to a commercial operation prohibited in the RL Zone.

She also fully expects the City will take the necessary actions to require Mr. Buchwald to comply with the conditions of the 2012 DRB approval.

Sincerely yours,

Mark L. Sperry
MLS:lab
cc: Barbara Headrick
Austin Hart, Chair, DRB
David White, Director, Planning & Zoning
Adam Buchwald

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Circle Strings
July 25

Hoarding problem?

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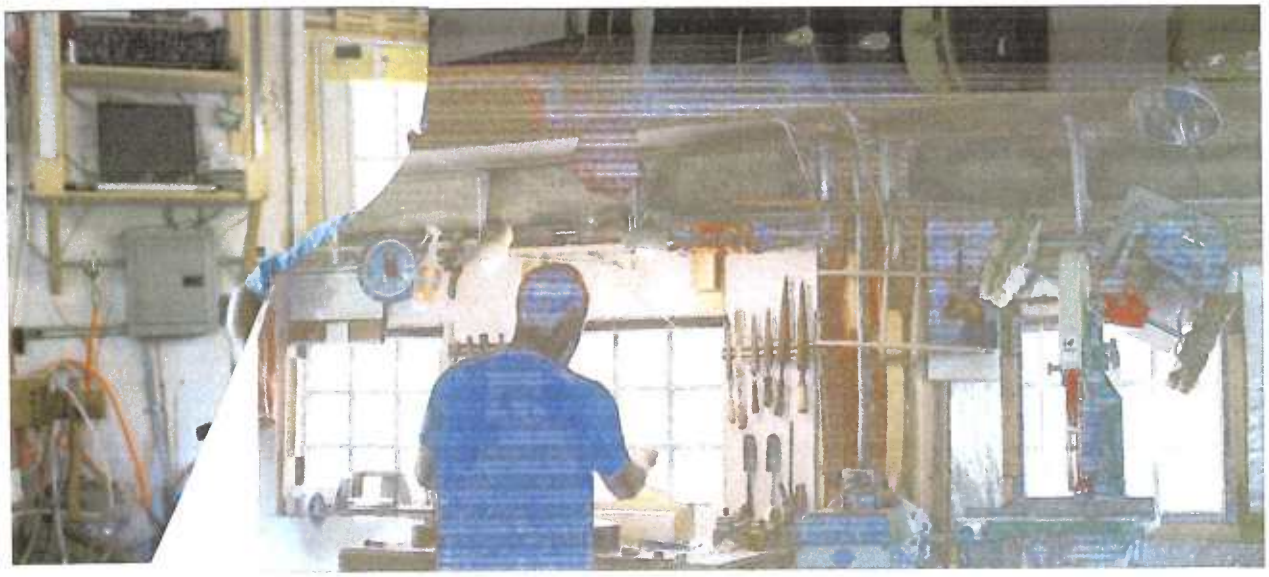
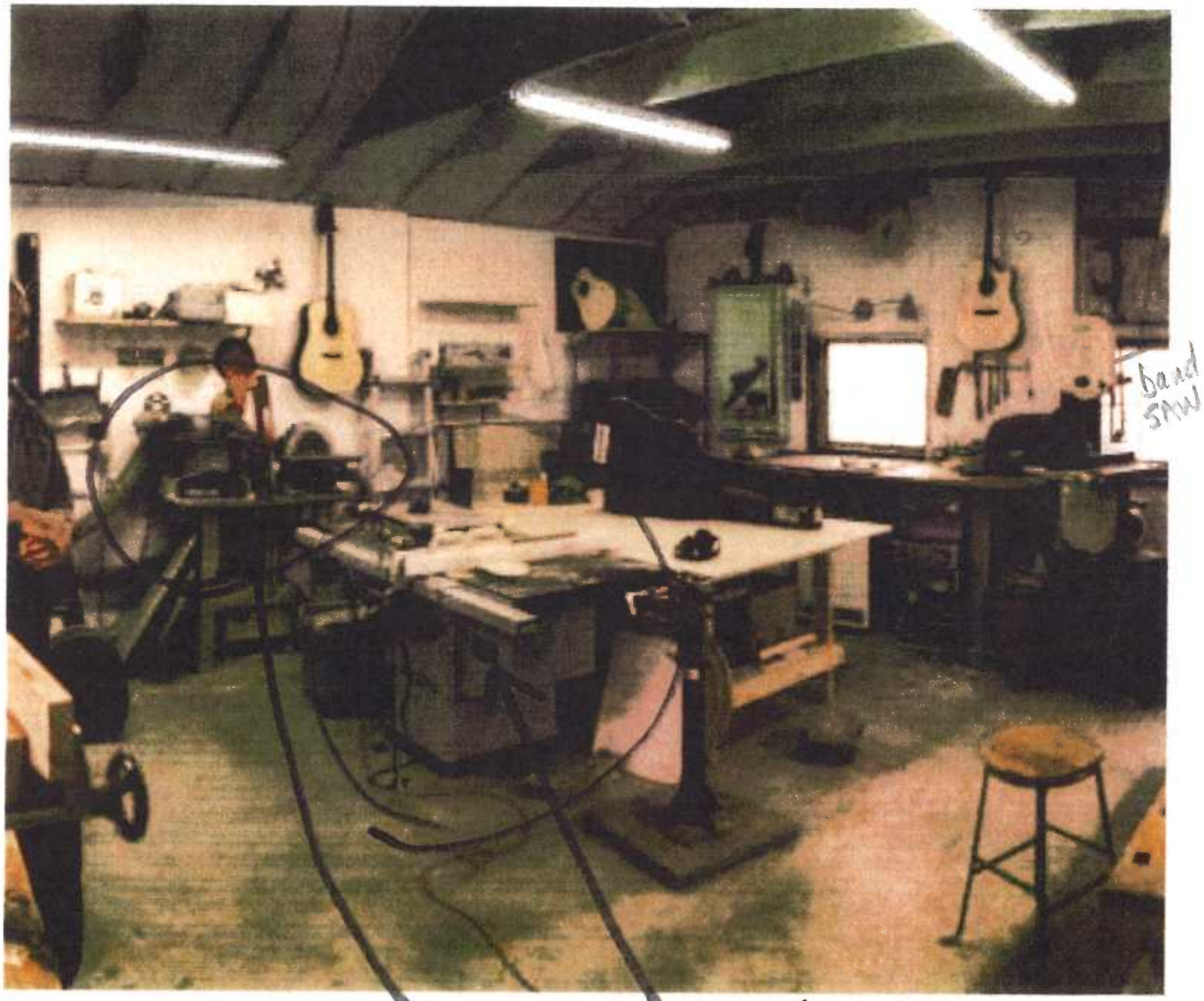
25 10

Circle Strings

Circle Strings



Gotta love the iPhone 5



Woodworking Machinery

282 S Prospect St, Burlington, VT 05401

Adjacent Neighbor's home

Commercial woodwarking Shop