

## Department of Planning and Zoning

149 Church Street, City Hall

Burlington, VT 05401

[www.burlingtonvt.gov/pz](http://www.burlingtonvt.gov/pz)

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### Memorandum

**TO:** Development Review Board  
**FROM:** Ken Lerner  
**DATE:** November 19, 2013  
**RE:** 14-0407HO; 292 SOUTH PROSPECT ST

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**=Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.**

Zone: RL Ward: 6

Owner/Applicant: Adam Buchwald

**Request:** Modification to approved home occupation for crafting and repair of musical instruments to use all of garage and have customers visit the property.

**Applicable Regulations:** Article 3 (Applications and Reviews), Article 5 (Citywide General Regulations), Article 8 (Parking)

#### **Background Information:**

The applicant is seeking to modify a home occupation for the use of a workshop in an existing garage (approved under ZP # 13-0061CA). The changes are to allow for clients to come to the premises and to expand the workshop to the entire garage.

**Recommendation:** Approval of Modified Home Occupation as per, and subject to, the following findings and conditions:

#### **I. Findings**

*Article 3: Applications and Reviews*

*Part 5, Conditional Use & Major Impact Review, Sec. 3.5.6 Review Criteria*

*The application and supporting documentation submitted for proposed development involving Conditional Use and/or Major Impact Review, including the plans contained therein, shall indicate how the proposed use and associated development will comply with the review criteria specified below:*

*(1) The capacity of existing or planned community facilities;*

The proposed home occupation being contained within an existing accessory structure will entail little, if any, additional impacts on community facilities currently serving the residence.

**(Affirmative finding)**

The programs and services of the City of Burlington are accessible to people with disabilities. For accessibility information call 865-7188 (for TTY users 865-7142).

*(2) The character of the area affected;*

The subject dwelling unit is a single family home on a corner lot located on the eastern side of South Prospect at its intersection with Henderson Terrace. This is within a residential zoned (low density-RL) zone. The area contains single family residences, duplexes and institutional uses. The proposed home occupation is low key in nature and will result in no adverse impacts on the character of the area. **(Affirmative finding)**

*(3) Traffic on roads and highways in the vicinity;*

Clients may come to the premises, however, no more than with one vehicle at any time. Only other traffic would be an occasional delivery truck to deliver supplies to the premises. **(Affirmative finding as conditioned)**

*(4) Bylaws then in effect;*

The home occupation as conditioned complies with all applicable zoning bylaws. The applicant is advised to consult with the Office of the Assessor with regard to the Business Personal Property requirements. **(Affirmative finding as conditioned)**

*(5) Utilization of renewable energy resources;*

No information has been provided with respect to the use of alternative energies. However, the proposed home occupation will not unreasonably deter the actual or potential use of renewable energies by the subject or neighboring properties. **(Affirmative finding)**

*(6) Cumulative impacts of the proposed use;*

The proposed home occupation will result in a minimal increase in traffic that is up to 20 visits per month, and with limited scheduling of visits would not have any discernible impacts on the neighborhood. **(Affirmative finding as conditioned)**

*(7) Functional family;*

This criterion does not apply to the subject permit request. **(Not applicable)**

*(8) Vehicular access points;*

The home is accessed by an existing driveway. No changes to it are proposed or needed. **(Affirmative finding)**

*(9) Signs;*

No exterior signs are proposed. **(Not applicable)**

*(10) Mitigation measures;*

The proposed home occupation will not generate any noxious effects such as noise, glare, or emissions. The applicant uses 110 volt tools normally found in a residential workshop. There are no outside changes to the existing garage that would affect the character of the surrounding area. **(Affirmative finding)**

*(11) Time limits for construction;*

The only construction proposed is the interior expansion and conversion of a portion of an existing structure into a workshop. **(Affirmative finding as conditioned)**

*(12) Hours of operation and construction;*

The use is conducted within an enclosed insulated space with very few clients coming to the premises. As a result, hours of operation are not noted. **(Affirmative finding as conditioned)**

*(13) Future enlargement or alterations;*

Any future enlargement or alterations of the home occupation will require additional permit review per the regulations in effect at that time. **(Affirmative finding as conditioned)**

*(14) Performance standards;*

The proposed use does not affect any items considered under performance standards such as nuisances, outdoor lighting, or erosion control. **(Not applicable)**

*(15) Conditions and safeguards;*

Although minimal, conditions of approval are included in effort to address potential undue adverse impacts to the surrounding area. **(Affirmative finding)**

**Article 5: Citywide General Regulations**

**Part 4: Special Use Regulations**

**Sec. 5.4.6, Home Occupations**

*1. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL and WRL districts and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure.*

The home occupation will be conducted by the one resident occupant. The home occupation will take place entirely within an existing accessory (garage) structure. **(Affirmative finding)**

*2. No more than thirty-five percent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet, whichever is less, shall be used for such purpose.*

This proposal will expand the home occupation from half of the existing garage to the entire garage. This square footage used is (17' X 20') = 340 Sq. ft.; not including the garage the existing dwelling is 3,795 sq. ft. Thereby, at 8.9% of dwelling it is well below the 35%/750 Sq. ft. maximum allowed. **(Affirmative finding)**

*3. No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located.*

No site changes are included in this proposal. ZP # 13-0090HO was approved for use of half of the garage for the home occupation. The current request will expand that use to the entire garage. The home occupation will involve the use of equipment as per that approval. No equipment that results in a change to the fire rating was or is allowed. Any materials that may create a fire or

related hazard must be reported in order to insure that the fire rating of the structure does not change.

As proposed the Building Official at the Department of Public Works indicated that there were no problems with the proposal including no life safety issues. **(Affirmative finding as conditioned)**

*4. There shall be no outside storage of any kind related to the home occupation.*

No outside storage is proposed. **(Affirmative finding)**

*5. There shall be no exterior evidence of the conduct of a home occupation except for: Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.*

No garage/lawn/yard type sales are included in this proposal. No outdoor signs are proposed either. **(Affirmative finding)**

*6. No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback per Article 5.*

The present request changes the original in that clientele will now come to the property. In order to insure that no more than one vehicle at a time is present the permit needs to be conditioned so that the clients coming to the premises are by appointment only and with sufficient time between appointments so there is no overlap. The only other traffic would be normal FedEx, UPS or US Postal Service deliveries that commonly are found in residential neighborhoods. **(Affirmative finding)**

*7. No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit.*

The home occupation as proposed and conducted in an insulated enclosed workshop will not generate any nuisance or unsightliness discernible from the exterior. **(Affirmative finding)**

*8. The home occupation shall be clearly incidental and secondary to the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.*

The home occupation as proposed to be conducted in a residential scale workshop that is clearly secondary and incidental to the primary residential use of the property. **(Affirmative finding)**

*9. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day.*

Occasional deliveries of supplies to the property will take place less than once per day.  
**(Affirmative finding)**

*10. With the exception of one delivery per day, as specified in subparagraph (9), no more than one commercial vehicle shall be allowed on the premises at any one time; and*

As noted above, the only commercial vehicles associated with the proposed home occupation are occasional delivery vehicles. **(Affirmative finding)**

*11. There shall be no sale of goods except for goods fabricated on the premises as part of an approved home occupation.*

Only the products and services offered onsite will be sold to clients. **(Affirmative finding)**

***Sec. 8.1.14 Stacked and Tandem Parking Restrictions***

- (a) *Tandem Parking may be allowed for single family detached dwelling units, accessory apartments, duplex dwelling units, and dedicated employee-only parking signed as such. In no case shall more than 4 parking spaces (2 pairs) in total be provided in tandem on any one lot.*

The existing residence requires two parking spaces plus an additional space for the home occupation client coming to the premises for a total of three spaces. The loss of a parking space in the garage would not preclude the parking of four vehicles in tandem in the driveway in front of the workshop. **(Affirmative finding)**

**II. Conditions of Approval**

**Project Permit Conditions:**

1. This home occupation is subject to all of the requirements of Sec. 5.4.6, *Home Occupations*, of the Comprehensive Development Ordinance.
2. In order to insure that no more than one vehicle at a time is present clients coming to the premises shall be by appointment only and with sufficient time between appointments so there is no overlap.
3. The applicant is advised to consult with the Office of the Assessor with regards to the Business Personal Property requirements.
4. No additional equipment or materials that results in a change to the fire rating shall be allowed.

**Standard Permit Conditions:**

1. Other City, State or Federal Permits. The owner is solely responsible for obtaining all other required City, state and federal approvals. Failure to do so may invalidate this Zoning Permit and result in enforcement actions.

Note: All projects receiving a Zoning Permit also require a Construction Permit or written confirmation that a Construction Permit is not required from Department of Public Works-Inspection Services Division (DPW-ISD). All construction permits must be closed out by way of approved inspections by DPW-ISD before issuance of a Unified Certificate of Occupancy (UCO) by the Code Enforcement Office as per Condition 3, below.

2. Time Limits. This zoning permit shall become invalid unless work or action authorized by the permit is commenced by December 13, 2012. The owner shall complete the approved project and obtain a UCO (combined Zoning and Building certificates of occupancy, still applicable even if a zoning or building permit was not required) by December 13, 2013, or be subject to enforcement actions.

These time limits are binding upon the owner unless one of the following apply: a) longer or shorter time limits are specifically imposed by a condition of approval; or b) the time limits are tolled by additional state or federal permitting for the project or by an appeal; or c) an extension of time has been granted. An extension of time must be requested in writing PRIOR to the expiration of the permit. If the owner has enacted the permit and it lapses, the owner may be responsible to obtain a new zoning permit, if required, which shall be subject to the current Comprehensive Development Ordinance (CDO).

3. Unified Certificate of Occupancy (UCO): It shall be unlawful to use or occupy (or allow the use or occupancy of) any land or structure or part thereof which has been created, changed, converted, or wholly or partly altered or enlarged in its use or structure without a UCO.

If the project is partially completed, meets "prior to issuance of a UCO" conditions of approval, meets all health and safety standards, and all municipal fees for the project are paid, a Temporary Zoning CO may be requested and issued. Upon completion of the project, applicant shall request and obtain a Final UCO from the Code Enforcement Office (located at 645 Pine Street). Additional information on how to request and obtain this UCO is available at this office. Failure to obtain a certificate of occupancy places the property in violation of the CDO and is subject to enforcement.

In addition, Failure to obtain a UCO within the time limits above is subject to "after the fact" fees ranging from \$75 - \$1500 (in addition to the UCO fee).

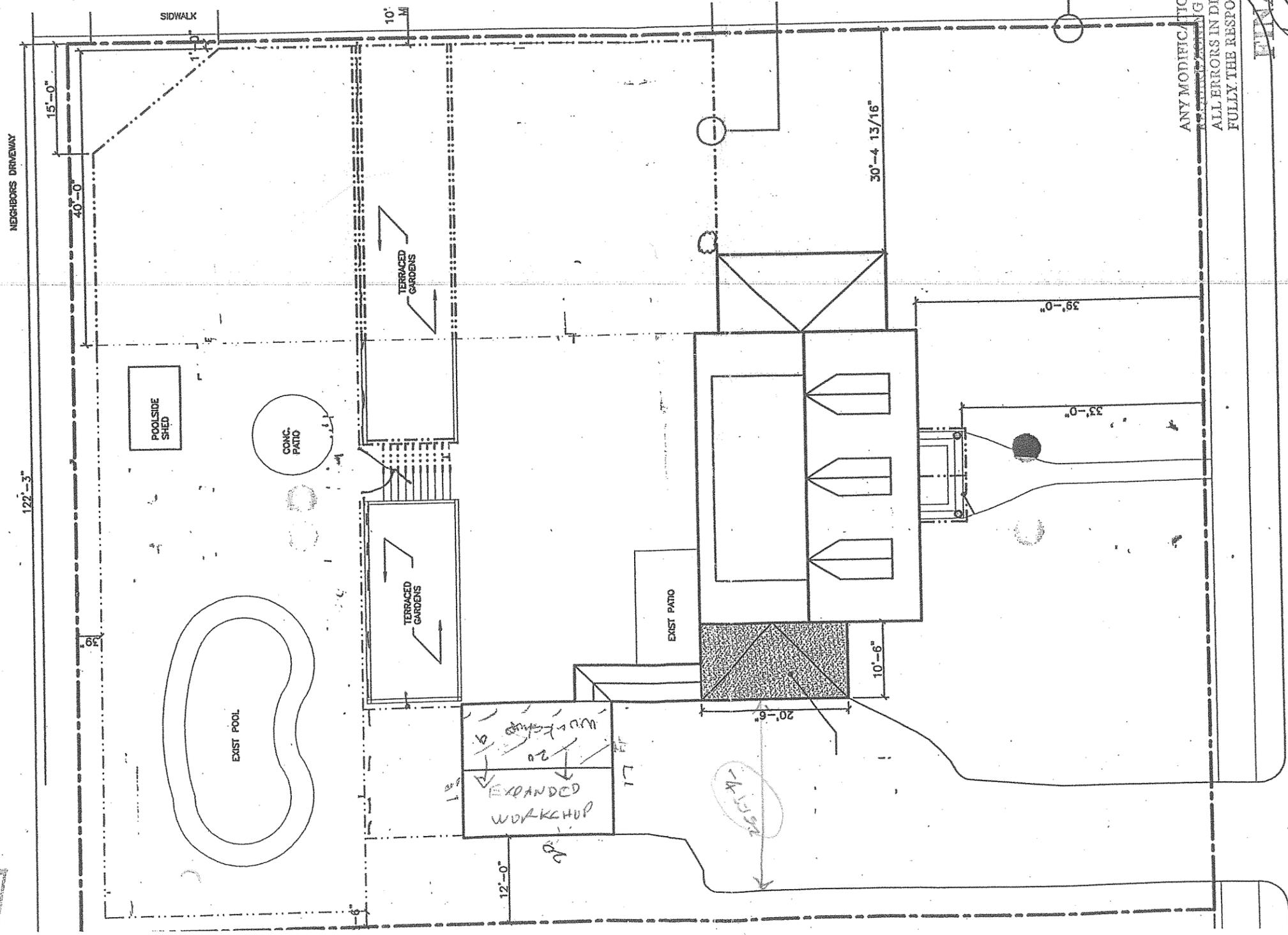
4. **Project Modifications.** The project shall be completed as shown on the plans, which have been stamped "approved" and dated by the administrative officer. The project shall not deviate from the approved plans or conditions of approval without prior written approval from the administrative officer.
5. **Property Inspection.** By acceptance of this permit, the owner authorizes City Officials and/or their authorized representatives, access to the subject property for the purpose of observing work in progress, inspecting and/or measuring the property or improvements until such time the project has been issued a Final UCO.
6. **Completion and Maintenance of Improvements and Landscaping.** Owner or successor in interest is responsible for completing all improvements shown on approved plans. By acceptance of this permit, Owner agrees to maintain all improvements in a satisfactory condition. Any landscaping installed according to the approved plan which becomes diseased or dies shall be replaced by similar species and size no later than the first available planting season.
7. **Off-Site Drainage.** Issuance of this permit does not authorize the discharge of stormwater runoff or other surface drainage from the subject premises onto adjoining property or properties including but not limited to the public Right of Way.
8. **Errors.** The owner is solely responsible for the accuracy of all information contained in the Zoning Permit application. Any errors contained therein may invalidate the Zoning Permit and may result in enforcement action by the City.
9. **Transfer of Ownership.** All zoning permits run with the land. In the event of a transfer of ownership, partial or whole, of the subject premises, the transferee shall become permittee and subject to compliance with the terms and conditions of this permit.
10. **Violations/Penalties.** A violation of any of the conditions of this permit or of any provision of the CDO may result in enforcement actions, including but not limited to a penalty of up to one hundred dollars (\$100) per day, municipal tickets, and/or additional permitting fees.
11. **Incorporation and Reference of All Plans Presented.** This approval incorporates by reference all plans and drawings presented and all verbal representations by the applicant on the subject application to the extent that they are not in conflict with other stated conditions or regulations.
12. **For Properties Involved in Boundary Disputes.** Boundary disputes are not within the jurisdiction of the administrative officer or the Development Review Board. When an application is submitted and the boundary of the subject property is called into question, the boundary will be determined based upon the best evidence available, for instance a survey or other official document. If a permit is issued and contrary evidence is presented to the City

after the fact, such as a survey or Superior Court ruling with respect to the boundary lines, the permit may be amended or revoked by the City.

If the permit is amended or revoked, owner shall bear all costs to remedy the situation, including removal of the structure(s) if necessary, that is if the structure(s) is/are unable to meet the requirements of the CDO and receive an amended permit in light of the actual boundary line.

13. **Damage to City Property.** The Owner is responsible for any damage to the City of Burlington's property, including but not limited to its right-of-way, sewer/water lines, etcetera, that occurs during the site improvements authorized by this permit. If damage occurs, the Owner shall restore the property to a condition equal to or better than the condition of the property prior to such damage.
14. **City Rights-of-Way and Ownership.** Permit approval does NOT authorize any work to be undertaken within the public ROW. Any work in the ROW can only occur with prior authorization by DPW and City Council, as required. Any work or improvements that are taken within the City's right of way does not diminish the City's ownership or authority regarding said right of way.
15. **Liquor License Required.** An approval of any use that includes the sale of alcoholic beverages is contingent upon the receipt of a liquor license from the City of Burlington or the State of Vermont, whichever is applicable.

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JUL 18 2012  
DEPARTMENT OF  
PLANNING & ZONING



ANY MODIFICATION  
ALL ERRORS IN DRAWING  
FULLY THE RESPONSIBILITY OF THE ARCHITECT

SIGNED  
[Signature]

SOUTH PROSPECT ST.



Department of Planning and Zoning

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OCT 02 2013

DEPARTMENT OF PLANNING & ZONING

Home Occupation Application Questionnaire

Use this checklist for all applications for a home occupation - See Sec. 5.4.6 of the Zoning Ordinance. This questionnaire is provided to summarize details and is required to accompany a zoning permit application form and required fee (for either administrative approval or conditional use review).

Please note:

- 1. The specific requirements for home occupations can be found in Section 5.4.6 of the Comprehensive Development Ordinance which is available in its entirety on our website at www.ci.burlington.vt.us/planning
2. A 'Business Personal Property Registration Form' may be required to be submitted to the Assessors Office. This form is available at www.ci.burlington.vt.us/assessor/businesses

Name of Business Proposed: Circle Strings LLC

Type of Business Proposed: Musical Instrument Repair & Construction

Provide a detailed description of the proposed Home Occupation such as: activities involved; materials and equipment used; quantities of materials and equipment stored on-site; methods of operation; hours of operation. This may be done on a separate piece of paper and attached.

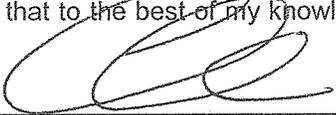
Please respond to the following:

- 1. How many persons will be involved or employed in the conduct of the proposed Home Occupation: Residents of premises: 1 Others: Total Number:
2. What type of product will be produced, serviced, or repaired in the conduct of your Home Occupation? (For example: repair of clocks or watches, making jewelry, etc.). Explain: Feetkl Instruments Repair Guitar Maker
3. Describe any alterations to the home or premises that might be required to facilitate your Home Occupation: USE 2nd HALF of garage for business HALF has been approved, needs other half.
4. Describe what rooms will be used in the conduct of the Home Occupation and how these rooms will be used. (For example: garage will be used to store supplies; or den will contain desk and file cabinets, etc.). Indicate the gross floor area(s) that will be used in the conduct of the Home Occupation. Indicate the total gross floor areas of your house and include any accessory structure(s) to be used for the Home Occupation, (Ex. Garage). Garage
5. Describe the mechanical and/or electrical equipment that will be necessary to conduct your business activity: standard woodworking machinery
6. Describe how, where and in what amounts the material, supplies and/or equipment related to your Home Occupation will be displayed or stored: guitar making supplies

PLEASE TURN OVER

7. Will people come to your home to obtain any product or utilize any service connected with the proposed Home Occupation activity? Yes  No   
 If yes, please explain in detail:  
Clients are now coming ~~to the house~~ about 20 a month.
8. Are any signs necessary or proposed relative to the Home Occupation? Yes  No  Some weeks there are none. By Apartment only!  
 If yes, you are required to file for a Sign Permit. An application form can be obtained at the Planning and Zoning Department or on our website.
9. If trucks or other equipment will be used in your Home Occupation, where will they be parked or stored?  
No
10. Will the Home Occupation involve the use of commercial vehicles for delivery of materials to or from the premises? Yes  No   
 If yes, please explain:  
UPS / FedEx / USPS
11. How many parking spaces will be provided for the home occupation? 8  
 Where will they be located? Indicate parking spaces on a site plan of this property as part of your application submission.  
Driveway
12. Is your proposed Home Occupation in conformance with the conditions, covenants and restrictions pertaining to your property? Yes  No   
 We suggest checking your deed for conditions, covenants and restrictions.

I have read and understand 'Sec 5.4.6 Home Occupations' under the City of Burlington Comprehensive Development Ordinance and believe that to the best of my knowledge my proposed Home Occupation would not violate any portion of said Ordinance:

Applicant's Signature: 

Date: 10/2/13

Property Owner's Signature: 

Date: 10/2/13