

## Department of Permitting and Inspections

Zoning Division

645 Pine Street

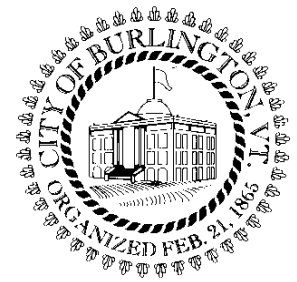
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## MEMORANDUM

To: Development Review Board  
From: Mary O'Neil, AICP, Principal Planner  
Date: May 2, 2023  
RE: ZP-23-141; 80 Archibald Street

**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.**

**File:** 23-141

**Location:** 80 Archibald Street

**Zone:** RM **Ward:** 2C

**Parking District:** Neighborhood

**Date application accepted:** March 31, 2023

**Applicant/ Owner:** Martha Ahmed / Ishmael Ahmed

**Request:** Establish Cannabis home occupation

### **Background:**

- **Zoning Permit 08-610CA;** replace eleven windows with new aluminum clad wooden windows. No change in dimensions. April 2008.
- **Zoning Permit 85-416;** enclose existing porch. Materials to match existing horizontal siding. Windows – screen/storm combination. September 1985.

### **Overview:**

The applicant proposes to utilize 54 sf. in the basement to cultivate, dry and package Cannabis flower. As this proposed home occupation is not among the identified uses eligible for administrative review, Conditional Use review by the DRB is required.

While this zoning application is reviewed under the home occupation standards of the Comprehensive Development Ordinance, the State of Vermont administers regulations specifically for commercial cannabis operations. The applicant is in the process of submitting an application to the State Cannabis Control Board, the Local Cannabis Control Commission, and had preliminary review by the Water Resources Division.

**Recommended motion: Conditional Use approval with conditions,** per the following Findings and Conditions:

### **I. Findings**

### **Article 2: Administrative Mechanisms**

### **Section 2.7.8 Withhold Permit**

*The administrative officer is authorized to deny all zoning permits or certificates of occupancy for any property with an uncorrected zoning violation (i.e. notice of zoning violation and/or municipal complaint ticket has been issued and is not under appeal.) The administrative officer is also authorized to deny all zoning permits for any property with an expired zoning permit without a final certificate of occupancy.*

*Instead of withholding or denying a zoning permit, the administrative officer may grant such permit subject to the condition that the uncorrected zoning violation is corrected or the expired zoning permit is closed out with a final certificate of occupancy. Such actions shall take place before the issuance of a final certificate of occupancy on the new permit.*

There remains an open Zoning permit (ZP08-112 (OG) / 08-610CA) that requires a Certificate of Occupancy, the applicant must close out this permit prior to issuance of a CO for this request.

**Affirmative finding as conditioned.**

### **Article 3: Applications, Permits and Project Reviews**

#### **Section 3.5.6 Review Criteria**

##### ***(a) Conditional Use Review Standards***

*Approval shall be granted only if the DRB, after public notice and public hearing, determines that the proposed conditional use and associated development shall not result in an undue adverse effect on each of the following general standards:*

- 1. Existing or planned public utilities, facilities or services are capable of supporting the proposed use in addition to the existing uses in the area;*

The proposed home occupation will likely entail additional demands on municipal water and sewer serving the property. The applicant has commenced review by the Water Resources Division; a letter of capacity will be a condition of approval. **Affirmative finding as conditioned.**

- 2. The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal development plan;*

The proposed home occupation is accessory to a residential use within a residential zoning district. The neighborhood is characterized by a range of residential (single family, duplex, triplex, apartments) and mixed use structures. The home occupation is proposed entirely within the structure, and occupying 54 sf. in the basement. No clients will come to the premises, and only the resident will be engaged in its activity. The applicant has indicated that no venting is proposed. The home occupation is not anticipated to have any perceptible impacts on the character of the area. From the Comprehensive Plan:

- Explore and expand approaches to promote and support locally-owned and controlled small businesses, including home occupations and social entrepreneurs, that serve both city-wide needs and surrounding neighborhoods. [planBTV: Comprehensive Plan, P. 48, 5.8] **Affirmative finding.***

- 3. The proposed use will not have nuisance impacts from noise, odor, dusty, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

From Burlington's Building official:

The only area that may or may not be a factor is smell depending on if venting to the outside or not. Permits and inspections will confirm that the space meets the VT Fire & Building Safety Code requirements for this use specific to NFPA 101 The Life Safety Code and the 2018 NFPA 1 The Fire Code, Chapter 34, Cannabis Cultivation and Manufacturing. Once they receive their CO, the VT CCB will have purview of their rules governing the operation.

From the Fire Marshal:

Fire hazard- yes there is a potential for this depending on how the grow operation is conducted along with chemical hazards.

Smell, heat, humidity along with glare from grow lights are also possible. As a single family home smell would most likely be the only concern to neighbors.

Noise from fans is possible- again depending on how the grow operation is conducted.

The applicant has responded that no ventilation is included. The Building official will determine requirements for compliance with VT Fire and Building Safety Code, including electrical and ventilation for the specific use. **Affirmative finding as conditioned.**

- 4. The transportation system is capable of supporting the proposed use in addition to the existing uses in the area. Evaluation factors include street designations and capacity; level of service and other performance measures; access to arterial roadways; connectivity; transit availability; parking and access; impacts on pedestrian, bicycle and transit circulation; safety for all modes; and adequate transportation demand management strategies;*

The applicant lives at the property and will be the sole employee. No clients will come to the premises. As a result, no additional traffic impacts associated with the home occupation are anticipated. **Affirmative finding.**

*and*

- 5. The utilization of renewable energy resources;*

Nothing within the application will preclude the use of wind, solar, geothermal, or other renewable energy resource. **Affirmative finding.**

*and*

- 6. Any standards or factors set forth in existing City bylaws and city and state ordinances.*

Cannabis cultivation is subject to licensing from the State of Vermont and review by Burlington's Cannabis Control Commission. Additional local trades' permits may be warranted as well. **Affirmative finding as conditioned.**

***(b) Major Impact Standards***

Not applicable.

***(c) Conditions of Approval***

*In addition to imposing conditions of approval necessary to satisfy the General Standards specified in (a) or (b) above, the DRB may also impose additional conditions of approval relative to any of the following:*

1. *Mitigation measures, including but not limited to screening, landscaping, where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area;*  
There are no identified impacts. No exterior venting is proposed. **Affirmative finding.**
2. *Time limits for construction.*  
No construction is proposed. The home occupation will utilize grow lights and fans. If any electrical or plumbing improvements are necessary for the operation, appropriate trades permits will be required. See above comments from the Building official and Fire Marshal. **Affirmative finding as conditioned.**
3. *Hours of operation and/or construction to reduce the impacts on surrounding properties.*  
As a home occupation is proposed to occur entirely within the existing residence by the resident, hours of operation may remain continuous. As no employees or clients will come to the property, and the activity is entirely within the residence, specific limitations on hours of operation are not necessary. **Affirmative finding.**
4. *That any future enlargement or alteration of the use return for review to the DRB to permit the specifying of new conditions;*  
Any request for enlargement or alteration of the home occupation will be reviewed under the regulations in effect at the time of application. **Affirmative finding.**  
  
*and*
5. *Such additional reasonable performance standards, conditions and safeguards, as it may deem necessary to implement the purposes of this chapter and the zoning regulations.*  
None are identified. Any additional conditions are at the discretion of the DRB.

#### **Article 4: Maps and Districts**

##### **Section 4.4.5 Residential Districts**

###### ***(a) Purpose***

3. *The Residential Medium Density (RM) district is intended primarily for medium density residential development in the form of single-family detached dwellings and attached multi-family apartments.*

The property is located within the RM zone. Presently, the single family home is consistent with this intent. Insofar as home occupations are expressly enabled by statute and the CDO and that as proposed this one will be imperceptible from the outside, it can be found consistent with the intent of this district. **Affirmative finding.**

***(b) Dimensional Standards and Density***

No dimensional standards or density will be affected by this application. Not applicable.

***(c) Permitted and Conditional Uses***

The proposed home occupation is subject to conditional use review. See Section 3.5.6, above.

**Affirmative finding.**

**Article 5: Citywide General Regulations**

***Part 4: Special Use Regulations***

***Section 5.4.6 Home Occupations***

*Pursuant to the requirements of 24 VSA 4412 (4), it is the intent of these regulations to provide for the use of a minor portion of a dwelling unit for a home occupation and to ensure compatibility with other permitted uses and with the residential character of the neighborhood. Such a home occupation must clearly be secondary or incidental to the principal residential use, and so located and conducted that the average neighbor, under normal circumstances, would not otherwise be aware of its existence.*

***(b) Conditional Use Review***

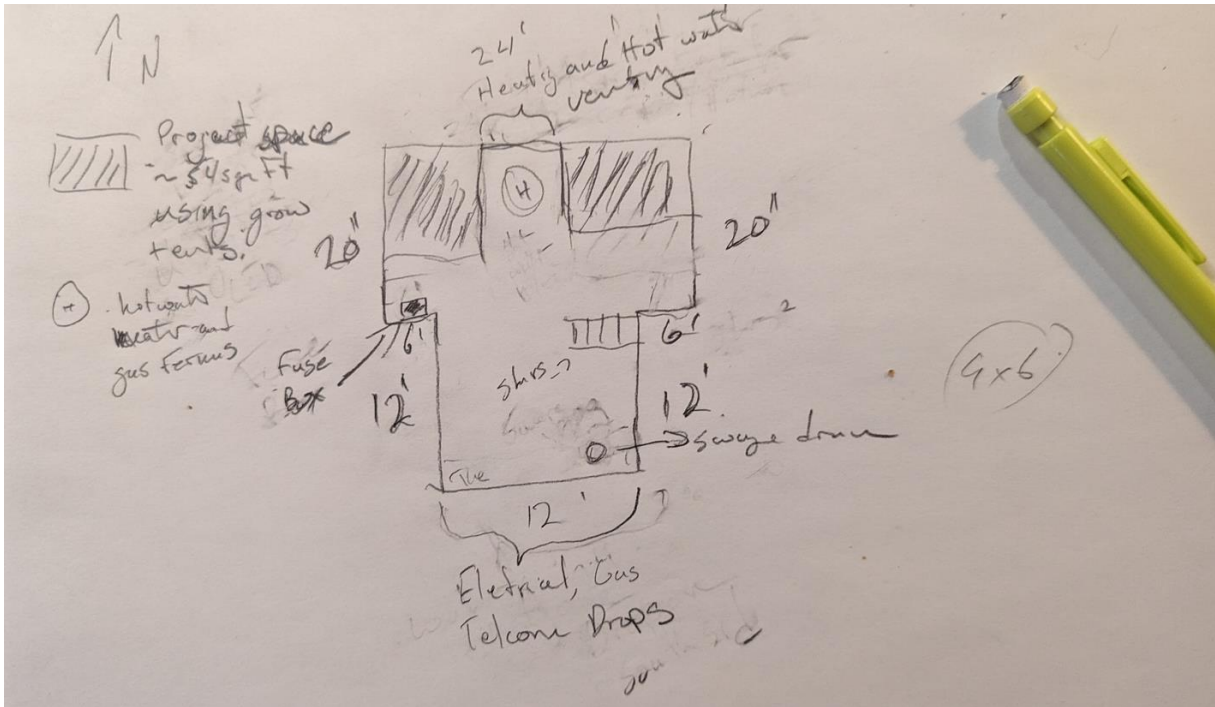
*All home occupations not otherwise eligible for administrative approval above shall require review and approval by the DRB pursuant to the requirements of Article 3, Part 5. In addition to the conditional use criteria, the following criteria must be met for any home occupation:*

- 1. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL districts, and no more than 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 entirely by the resident of the property, who will be the sole employee. **Affirmative finding.***

- 2. No more than 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;*

*The proposed area of the home occupation is 54 sf; < 35% of the floor area of the structure. **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;

The application proposes the use of tenting, LED lights and fans on timers. As noted by the Building Official, Permits and inspections will confirm that the space meets the VT Fire & Building Safety Code requirements for this use specific to NFPA 101 The Life Safety Code and the 2018 NFPA 1 The Fire Code, Chapter 34, Cannabis Cultivation and Manufacturing. **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:
  - A. Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and
  - B. One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.

There will be exterior evidence of the home occupation; no signs are proposed. **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;

As noted, no exterior employees will be engaged, and no customers or clients will come to the property. The resident is the sole employee of the home occupation. No additional traffic or parking demand is anticipated. **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;*

As noted previously, local trades permits may be necessary for the interior grow operation per applicable codes. No exterior ventilation is proposed. **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.*

As proposed, the home occupation will be fully enclosed within the existing structure, and have no evidence of its presence. No change to the residential character of the district is anticipated. **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;*

The home occupation questionnaire indicates no trucks or deliveries will be associated with the use. **Affirmative finding.**

10. *With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time;*

No trucks or deliveries will be associated with the home occupation. No commercial vehicles are proposed. **Affirmative finding.**

*and*

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

Cannabis flower produced on site will be sold to licensed retailers, other growers, and manufacturer in compliance with state approval. No retail sales will occur at the residence. **Affirmative finding.**

**(c) Exclusions:**

*Home occupations shall not include commercial stables or kennels, veterinary clinics, or similar establishments.*

The proposed home occupation does not fall within the exclusions noted above.  
Not applicable.

**(d)Revocation:**

*Approval of a home occupation may be revoked by the DRB in accordance with the following provisions:*

1. *Noncompliance. Upon receipt of notification or evidence of noncompliance with conditions of approval or evidence of error or misrepresentation, the DRB may schedule a public hearing to consider the revocation or modification of approval for a home occupation;*
2. *Notice. The administrative officer shall duly warn such public hearing and give notice to the applicant, abutters, and other interested parties;*
3. *Public Hearing. The DRB shall hold a public hearing to hear cause as to why the approval of the home occupation should not be revoked. The DRB shall render its decision in accordance with the conditional use time limitations set forth in Article 3, Part 5; and*
4. *Errors. The burden of providing complete and accurate information shall be the sole responsibility of the applicant. Any error or misrepresentation may result in voiding or modification of the approval for a home occupation.*

The standards of revocation of a home occupation are provided to the applicant for informational purposes. Noncompliance with the conditions of the approval or errors in information may result in revocation of the home occupation approval. **Affirmative finding as conditioned.**

**Section 5.5.1 Nuisance Regulations**

See Sec. 3.5.6 (a) 3. above.

**II. Conditions of Approval**

1. A letter of adequate water and sewer capacity issued by the Water Resources Division, if determined to be necessary, shall be provided **prior to release of the zoning permit.**
2. Cannabis cultivation is subject to licensing from the State of Vermont and approval by Burlington's Cannabis Control Commission. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Permitting and Inspections, as well as other permit(s) as may be required, and shall meet all energy efficiency codes as required.
3. Any expansion of the home occupation or alteration or construction to conduct the home occupation shall require the applicant to return to the DRB for review under the standards in effect at that time.
4. The home occupation shall be conducted solely by resident occupant. The proposal does not include additional, non-resident employees.
5. There shall be no outside storage of any kind related to the home occupation.
6. No exterior signage is included with this approval.



7. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day.
8. Noncompliance with the conditions of the approval or errors in information may result in revocation of the home occupation approval.
9. Standard Permit Conditions 1-15.

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