

Department of Permitting and Inspections

Zoning Division

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: January 18, 2021
RE: ZP 21-798; 28 Crowley 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 Number: ZP21-798

Zone: RM **Ward:** 3C

Date application accepted: November 23, 2021

Applicant/ Owner: Maria Carvalho Sandoval / Andrew Jaszewski

Request: Home occupation for massage therapy

Background:

- **Zoning Permit 18-0274CA;** demolish and replace existing single car garage. October, 2017. Garage demolished, new garage not built. Two time extensions were approved; the last expiring October 3, 2021. **This permit has now expired.**
- **Non-applicability of Zoning Permit Requirements 14-0703NA;** interior work. January 2014.

Overview: The applicant seeks approval of a home occupation / massage therapy for 1-5 clients per week. As clients will be coming to the residence, Conditional use review is required.

Recommended motion: Conditional Use approval, per the following findings and conditions:

I. Findings

Article 2: Administrative Mechanisms

Section 2.7.8 Withhold Permit

Per this standard, the applicant is required to remedy all violations and close out all zoning permits issued after July 13, 1989 prior to issuance of a Certificate of Occupancy for this permit. See attached list for guidance on open permits/violations. **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 utilization of an existing room within a dwelling unit for the purpose of a massage therapy practice will have no impact on existing or planned public utilities, facilities or services in the city. **Affirmative finding.**

2. *The character of the area affected as defined by the purpose or purposes of the zoning district(s) 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. No building modifications are proposed. The limited use of a portion of the residential unit for the home occupation are anticipated to have no impact on the character of the area. From the Municipal Development Plan:

- *Land Use, Number 5.8. Promote local-owned small businesses, entrepreneurs, home occupations. P. 110, 2019 PlanBTV: Burlington's Comprehensive Plan.*

Affirmative finding.

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

There will be no perceptible noise, odor, dust, heat or vibrations associated with the proposed home occupation. **Affirmative finding.**

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 location is within a residential zoning district, connected within an established network of streets, sidewalks and bicycle paths of the city, and adjacent to a public transit route. No adverse impacts, unreasonable demand of services or scarcity of transportation modes are identified. **Affirmative finding.**

5. *The utilization of renewable energy resources;*

The proposal will not prohibit the use of alternative or renewable energy resources. **Affirmative finding.**

and

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.* None identified. It is the applicant's obligation to secure any additional permits (from state or federal offices) as required. **Affirmative finding as conditioned.**

(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;*
No requirements for screening are identified. **Affirmative finding.**
2. *Time limits for construction.*
No construction is proposed. Not applicable.
3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
The applicant asserts that 1-2 clients will come to the house by appointment (no drop ins), with no more than 5 clients per week. Proposed hours are 11-6 M-Saturday. As very modest residential home occupation with limited client appointments, the proposal does not suggest unreasonable traffic, parking congestion, or neighborhood nuisance. **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 standards 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; however, the DRB may add conditions at their discretion.

Article 5: Citywide General 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 Art. 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 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;

Application materials define the occupant as the single employee. The proposed home occupation will be staffed by the applicant alone. **Affirmative finding as conditioned.**

2. *No more than thirty-five per cent (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 Assessor's property listing has a finished area assessment of 1,454sf. The applicant proposes one treatment room of 143 sf, or 9.8%. **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 building alterations are proposed. **Affirmative finding.**

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

None 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);*

None proposed. **Affirmative finding.**

and

- B. *One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.*

The applicant proposes a sign meeting this prescriptive standard. **Affirmative finding as conditioned.**

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;*

The application proposes 1 client at a time, and not more than two in a day. Parking will be isolated to the existing driveway, which is sufficient to accommodate both the required parking for the single family home and one client vehicle. Stacked parking is acceptable for Single family residences per 8.1.14 (c), however the home occupation practitioner will be on-site and may arrange for vehicle movement if necessary.

The previous permit to replace the single car garage has expired, and will require a new zoning permit to restore or modify that request. This application is conditioned upon owner application to formalize the final site plan via new application for garage replacement. **Affirmative finding as conditioned.**

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;*

No defined nuisances are anticipated from the proposed home occupation. **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 should present no exterior evidence of its presence and is not anticipated to change the character of the dwelling unit or the residential district within which it is located. **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;*

No deliveries are proposed. **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 commercial vehicles are associated with the proposed home occupation. **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.*

There is no sale of goods proposed with the home occupation. **Affirmative finding.**

(c) Exclusions:

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

The home occupation does not involve commercial stables, kennels, veterinary clinics or similar. **Affirmative finding.**

(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.**

Article 8: Parking

There is no specified minimum parking requirement for a home occupation in **Table 8.1.8-1**, however Section 5.4.6 (b) 6. limits parking:

No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries.

Table 8.1.11-1 Parking and Dimensional Requirements

The approved 2017 site plan confirmed a driveway approximately 59' long, leading to a single car garage. Table 8.1.11-1, as revised, required 18' length for a parallel standard parking space. (16' for a compact vehicle.) Two spaces are required for the existing single family home. The driveway alone can accommodate three stacked spaces, without employment of the garage space. The prior permit, however, has expired with only partial completion (the garage has been demolished.) This permit will be conditioned upon the re-application for garage alterations or site revisions to accurately memorialize the site plan.

The applicant shall schedule her therapies so not more than one client is on site at a time.

Affirmative finding as conditioned.

Section 8.1.14, Stacked and Tandem Parking Restrictions

(c) Stacked parking shall be allowed for single-family detached dwelling units and Accessory Dwelling Units with no requirement for an attendant to be present. Affirmative finding.

II. Conditions of Approval

1. Zoning Permit 18-0274CA has expired without completion and without securing a Certificate of Occupancy. The property owner shall reapply and complete the project, formalizing the site plan prior to issuance of a Certificate of Occupancy for this home occupation permit. Failure to accommodate three parking spaces on site shall negate this approval.
2. The applicant shall schedule massage therapy appointments so not more than one client is on site at a time.
3. All standards identified under Section 5.4.6 (b), (c) and (d) remain in effect.
4. Standard Permit Conditions 1-15.

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