

Department of Permitting & Inspections

Zoning Division
645 Pine Street
Burlington, VT 05401
Telephone:(802) 865-7188

*William Ward, Director
Scott Gustin, AICP, CFM, Principal Planner
Mary O'Neil, AICP, Principal Planner
Ryan Morrison, Associate Planner
Joseph Cava, Permit Technician
Ted Miles, Zoning Specialist
Vacant, Permitting & Inspections Administrator*



MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: December 20, 2022
RE: ZP-22-590; 162 Cumberland Road

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: ZP-22-590

Location: 162 Cumberland Road

Zone: RL-W **Ward:** 4N

Applicants/ Owners: Jonathan & Kristen McBride

Request: Establish home occupation (musical lessons & instrument repair) within a refurbished tool shed.

Background:

- **Zoning Permit 91-250;** construct new house and attached garage. Approved March 1991.
- **Zoning Permit 97-182;** construct rear addition. Approved October 1996.
- **Zoning Permit 04-149;** remove rear deck, build 2-story addition. Approved September 2003.
- **Zoning Permit 15-0413CA;** construct 2 decks, install shed, and replace brick entry. Approved October 2014.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 5 (Citywide General Regulations), Article 8 (Parking)

Overview: The applicant seeks approval to conduct a home occupation (musical instruction and instrument repair) within a refurbished shed in the rear yard. The shed will be converted to habitable space. The owner/applicant resides on the property and will operate the home occupation.

The shed will remain in its current location and will be refurbished with new windows and a door. The existing siding and roofing will remain as-is. New interior framed walls will be installed, and heating/cooling will be achieved with a mini-split system.

Recommendation: Consent approval, as per, and subject to, the following findings and conditions:

I. Findings

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 shed as a home occupation studio 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. The home occupation is not anticipated to have any 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, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

According to the applicant, the refurbished shed will have 10-12 inches of insulation, meaning noise impacts will be considerably minor, if any at all. Additionally, there will be no perceptible odor, dust, heat or vibrations associated with the 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 near the Burlington Greenway Bike Path. No adverse impacts, unreasonable demand of services or dearth 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.*

Work on the shed will have to commence within one-year from the date of permit approval. The applicant will have an additional two years to complete the work. Two 1-year permit extensions are possible if needed. **Affirmative finding.**

3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*

The applicant states that the home occupation will be appointment based, and that there will be no more than one client at the property at a time. Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday. **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;*

The applicant is a resident of the property and will be the sole employee of the business.

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 floor area of the residence, garage and shed totals 4,576 sf. 35% of that is 1,601 sf. The applicant proposes to only use the 196 sf shed for the home occupation, which is well below the 750 sf limit for a home occupation. **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 alterations, construction, or equipment is proposed that would change the structure's fire rating. There are a few things that would change the fire rating, one of which being if it were to be used as sleeping space. Sleeping space is not proposed, nor allowed, as part of this permit. **Affirmative finding as conditioned.**

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);*

Not 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.*

No exterior signage is 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;*

Scheduling is on an appointment basis. The applicant notes that there will be no more than one customer/client at a time. This section requires that home occupation parking be limited to one additional vehicle at a time for customers or deliveries, and that parking for the home occupation be off-street. The existing driveway/garage combo allows for 2 side-by-side rows of tandem parking (4 spaces) that will satisfy the requirement for one off-street parking space for customers/clients, as well as three spaces for personal use. **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 will present no exterior evidence of its presence, and it 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 such 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

Table 8.1.8-1 Minimum Off Street Parking Requirements

The property is located in the Neighborhood Parking District, where single family residences require two parking spaces. The home occupation triggers an additional space requirement. As noted above, the driveway/garage combination accommodates four parking spaces. **Affirmative finding.**

II. Conditions of Approval:

1. 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.
2. The home occupation shall be conducted solely by resident occupants. The proposal does not include additional, non-resident employees.
3. The shed is not permitted for sleeping purposes.
4. There shall be no outside storage of any kind related to the home occupation.
5. No exterior signage is included with this approval.
6. One off-street parking space shall be provided for clients. There shall be no overlap in client scheduling so as to require more than one parking space at a time.
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. Standard construction hours are 7:00 AM to 5:30 PM, Monday – Friday. Saturday construction hours may be allowed upon request to the Development Review Board. No work on Sunday.
9. The Applicant/Property Owner is responsible for obtaining all necessary Zoning Permits and Building Permits through the Department of Public Works as well as other permit(s) as may be required, and shall meet all energy efficiency codes as required.
10. Any noncompliance with the conditions of this approval or errors in information shall be the burden of the applicant and may be subject to revocation per Section 5.4.6 (d), above.
11. Standard Permit Conditions 1-15.