

Department of Permitting & Inspections

Zoning Division
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MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: October 4, 2022
RE: ZP-22-512; 55-57 Howard 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: ZP-22-512

Location: 55-57 Howard Street

Zone: RL **Ward:** 5S

Applicant/ Owner: Montana Burns / Montana Burns & PJ McHenry

Request: Relocate previously approved home occupation (acupuncture office) from the 1st floor unit to the 2nd floor unit in the existing duplex.

Background:

- **Zoning Permit 17-1191HO;** establish a medical office (acupuncture) as a home occupation, interior remodeling. Approved June 29, 2017.
- **Zoning Permit 17-1280CA;** front porch replacement. Approved June 27, 2017.
- **Non-Applicability of Zoning Permit 12-0299NA;** Repair slate roof. Approved September 7, 2011.

Applicable Regulations:

Article 3 (Applications, Permits, and Project Reviews), Article 4 (Zoning Maps & Districts), Article 5 (Citywide General Regulations), Article 8 (Parking)

Overview: The applicant seeks approval to relocate the previously approved home occupation (acupuncture office) from the 1st floor unit to the 2nd floor unit in the existing duplex. The owners of the property, one of which being the applicant, reside on the property and currently occupy both units. No changes to the business operation, nor the structure itself, are proposed.

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 room within a dwelling unit for the purpose of an acupuncture 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. 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;*
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 near public transit along Pine Street, a block away. 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.*
No construction is proposed. **Not applicable.**
3. *Hours of operation and/or construction to reduce the impact on surrounding properties.*
The applicant states that the home occupation will maintain hours of 9:00 AM to 5:00 PM. The business will be closed on Saturdays and Sundays. The business operates strictly by appointments only. There are no open hours to the general public. For a small residential home occupation, the hours do 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;*

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 2nd floor unit is 699 sf. 35% of the 2nd floor totals 244.65 sf. The applicant proposes one treatment room totaling 106 sf, or 15%. **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. **Not applicable.**

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 may, at times, be up to 2 clients in the business at one time when the schedule is fully booked. This subsection prohibits more than 1 customer vehicle at a time at a home occupation, and as such, the business will be limited to this restriction. The property has utilized a driveway long enough to park four vehicles, albeit in one stacked row. The city is currently amending Article 8 *Parking*, part of which eliminates minimum parking requirements. While the amendment has not yet been finalized by the City Council, it has been publicly noticed and is in effect – meaning there are no minimum parking requirements for the existing duplex. 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 will satisfy the requirement for one off-street parking space for clients, as well as one additional space for the applicant/home occupation proprietor. **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 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 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 shift in location from one unit to the other within the duplex has no impact on the previously approved parking situation. ZP-17-1191HO approved the following parking situation:

The property currently has an 11' x 84' 4 ½" driveway. Parking spaces require a minimum depth of 18 ft. While 4 parking spaces may physically fit, limitations on stacked parking per Sec. 8.1.14, Stacked and Tandem Parking Restrictions, preclude recognition of more than 2 stacked spaces in this case (only valet parking arrangements may exceed the 2 stacked spaces). As a result, the City only recognizes the property as having 2 conforming parking spaces.

*With regard to the home occupation, there needs to be a 3rd parking space for customers during business hours. A precedent was set previously allowing stacked parking of up to 3 vehicles for a home occupation use based on the fact that the extra parking space was only needed during business hours, and the proprietor could act as a parking attendant. The same situation applies here, as the applicant has stated that she will act as a parking attendant for the property when the business is in operation. And naturally, the need for the extra space, as well as the need for a parking attendant, goes away after business hours. **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. There shall be no outside storage of any kind related to the home occupation.
4. No exterior signage is included with this approval.
5. One off-street parking space shall be provided for clients. There shall be no overlap in patient scheduling so as to require more than one parking space at a time.
6. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day.
7. Hours of the home occupation operation are as follows:
 - Monday thru Friday – 9:00 am to 5:00 pm
8. 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.
9. 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.
10. Standard Permit Conditions 1-15.