

Department of Permitting & Inspections

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MEMORANDUM

To: Development Review Board
From: Ryan Morrison, Associate Planner
Date: December 15, 2020
RE: ZP21-0226HO (AP); 132 North Champlain 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: ZP21-0226HO Appeal
Location: 132 North Champlain Street
Zone: RM **Ward:** 3C
Date appeal accepted: October 23, 2020
Date of administrative decision: October 8, 2020
Date of application: August 26, 2020
Appellant / Owner: Israel Smith & Kendra Barber / Penny Thompson
Applicant: Larry Paap
Request: Appeal of Administrative Approval for a home occupation permit. The home occupation is for a home office for Protech Painting.

Background:

- **Zoning Permit 21-0226HO;** home occupation for Protech Painting home office. Approved October 8, 2020. (Subject of this appeal.)
- **Zoning Permit 20-0568CA;** two scaffolds for racks to store wood and conversion of a porch to habitable space. Denied December 17, 2019.
- **Zoning Permit 20-0327CA;** asphalt to metal roof replacement. Approved October 2, 2019.
- **Zoning Permit 20-0158CA;** replacement windows. Approved October 16, 2019.
- **Zoning Permit 19-0380CA;** replace vinyl siding with fiber cement board siding; rearrange windows and one door. Approved November 14, 2018.
- **Zoning Permit 04-108;** remove existing garage, leaving slab, construct shed on slab. Approved September 8, 2003.

Overview:

Zoning Permit 21-0226HO, to permit a home occupation for a home office for Protech Painting, was administratively approved on October 8, 2020. The application was submitted in response to an enforcement warning letter dated July 6, 2020 for an unpermitted contractor's storage yard and the installation of an unpermitted shed. The home occupation permit was issued based on conditions to bring the property into compliance (i.e. to remove all exterior evidence of a business), and the interior office nature of the business, as the applicant presented. On October 23, 2020, the appellant filed a timely appeal within the 15-day appeal period.

Recommendation: Uphold zoning permit approval based on the following findings.

I. Findings

Timeline:

- **July 6, 2020** – Zoning enforcement letter sent for unpermitted contractor’s storage yard and shed.
- **August 26, 2020** – Application ZP21-0226HO submitted
- **August 31, 2020** – Application ZP21-0226HO deemed complete.
- **October 8, 2020** – Decision of Approval for ZP21-0226HO.
- **October 23, 2020** – Appeal of administrative approval submitted.

Conditions of Approval – ZP21-0226HO:

1. This home occupation permit is to address ongoing zoning enforcement for unpermitted outdoor storage of contractor’s materials and nonconforming sheds. All conditions of this permit AND the zoning enforcement actions shall be addressed in full by December 31, 2020. Failure to obtain a Certificate of Occupancy for this home occupation permit by December 31, 2020 will result in revocation of this permit and additional enforcement action.
2. Per **Section 2.7.8, Withhold Permit**, all violations must be cured and zoning permits issued after July 13, 1989 closed out (issued a Certificate of Occupancy) prior to issuance of a Final Certificate of Occupancy for this permit. See attached permit list. Upon expiration of this new zoning permit, no additional zoning permits may be issued until it, and all prior zoning permits, have been closed out with final certificate(s) of occupancy. It is recommended that certificates of occupancy for the old zoning permits be sought prior to seeking a certificate of occupancy for the new zoning permit.
3. This home occupation is approved strictly as a home office. There shall be no non-resident employees coming to or from the premises in the conduct of the business, and there shall be no outdoor storage of materials related to the business.
4. The shed that was relocated off the pad of the previously existing garage shall be moved off the lawn and back onto the pad as previously permitted. The other unpermitted shed located on the lawn shall be removed entirely from the property as it increases non-conforming lot coverage. The remainder of the garage pad is reserved for parking.
5. All areas devoted to the home occupation shall be limited to 25% of the area of the dwelling unit. This includes within the dwelling unit itself and accessory structures.
6. No clients or customers shall come to the premises.
7. There shall be no vehicles associated with the home occupation except:
 - (i) A personal vehicle with no commercial identification can be used; and
 - (ii) An occasional delivery vehicle such as a Postal Service, UPS, or FedEx truck, but excluding semi trailers or 18 wheel vehicles;

- (iii) Deliveries or pick-ups shall occur no more than an average of one (1) time per day between the hours of 8 am and 6 pm.
8. No goods are located on site except for samples or designs produced on site and no such samples or other materials associated with the home occupation may be stored outside of an enclosed structure.
 9. All employees shall be residents of the home where the home occupation is conducted. No outside employees are allowed on the premises – this includes employees coming to the property to load/unload materials and/or equipment for the home occupation.
 10. No signs are allowed.
 11. If the home occupation ceases operation at this property (i.e. is conducted elsewhere) for a period of more than 12 months, then the home occupation permit shall cease to be in effect and a new permit shall be obtained prior to resuming a home occupation onsite.

These conditions were based off the requirements of Sec. 5.4.6 Home Occupations; (a) – Administrative Approval (attached).

The appellant has provided a detailed statement addressing why the approval should be overturned. See attached letter dated October 23, 2020.

Appellant’s Arguments and City Responses:

Appellant’s request for relief are *italics*, the City responses are not.

The relief we are requesting is:

1. *The denial of the permit for a home occupancy for “Pro-Tech Contracting”, or “Pro-Tech Painting”, or any similar business at this property; and immediate enforcement action addressing violations related to the incremental conversion of a residential rear yard into a Contractor’s Yard; or*
2. *If the Board finds that the permit for this home office is necessary for the activities it allows and may remain as approved, then we request that both the conditions of approval, and the zoning enforcement action addressing violations related to the incremental conversion of a residential rear yard into a Contractor’s Yard be enforced immediately and without delay.*
3. *In any event, in order to provide for proper enforcement of the conditions of approval, we ask the Board to require two scaled site plans that accurately depict conditions at this property: one depicting existing conditions and one depicting proposed compliant conditions.*

Property records indicate that the first complaint(s) regarding an active contractor’s yard came to the City in August, 2019. Within the next few months, there were a few more complaints filed with the City regarding the contractor’s yard, ongoing business activities, and unpermitted sheds. In response to this, code enforcement sent an enforcement warning letter to the property owner (Penny Thompson), and had been in touch with Larry Paap (business owner) to bring compliance

to the property. In addition to removing related and unpermitted outdoor storage of business materials, Mr. Paap was directed to obtain a home occupation permit. On August 26, 2020, a home occupation application was submitted to the Department of Permitting and Inspections (ZP21-0226HO).

The application (attached) referenced the following points for the proposed home occupation:

- a) 2 persons, Larry Paap and his wife, reside on the premises and will be involved in the home occupation.
- b) Work and materials will involve 'paperwork' and 'ladder storage'
- c) No alterations will be made to the home or premises in order to conduct the home occupation.
- d) 1 bedroom will be used for the conduct of the home occupation.
- e) Materials/supplies for the home occupation will include '20 pieces of scaffolding' and '10 ladders'.
- f) People will come to the property to 'pick up ladder(s) and return during the season.
- g) No trucks or other equipment used for the home occupation will be parked/stored at the site.
- h) Commercial vehicles will be used for 'receiving and picking up ladders'.
- i) Parking for the home occupation will locate on the street only.

A few of the above points clearly would be noncompliant with the standards of an administrative home occupation permit – specifically; b (exterior ladder storage), e (exterior storage of materials), f, h, and i.

The approval of the home occupation permit set very specific conditions to achieve 2 goals; 1) to bring the property into compliance, and 2) to allow for a business that met the standards of an administrative level home occupation. Condition 1 set a specific deadline/permit expiration date of December 31, 2020 for all conditions of approval to be met, and for a Certificate of Occupancy to be issued – a 69 day time frame (starting after the appeal period ends). Failure to do so will result in permit revocation and additional enforcement action. However, the appeal filed halts the release of the permit. Given the public hearing date of December 15, 2020, the standard 30-day appeal period from a DRB decision on the appeal wouldn't end until mid-January 2020. As a result, staff would recommend extending the December 31, 2020 deadline identified under Condition 1 to a new deadline of 60-days from the date of the DRB decision.

It is important to note that one of the first steps in enforcement action is to provide a property owner with a warning that offers a window of opportunity to bring any such violation into compliance. Such a remedy usually means that either the violations are abated, and/or a zoning permit is issued to permit a non-permitted use/structure. In this case, the applicant submitted an application to permit the home occupation at the property. After discussions with the applicant, ZP21-0226HO was approved (October 8, 2020) with clear conditions to bring the property into compliance. The approval was granted based on conformance, or potential conformance, with the home occupation standards of Sec. 5.4.6 (a) Administrative Approval. The December 31, 2020 deadline gives the applicant an opportunity to bring the property into strict conformance with the home occupation standards and conditions of the permit. Failure to do so will result in revocation of the permit and additional enforcement action.

The Home Occupation Application Questionnaire form filed by the applicant contains material misrepresentations of the scope and scale of the home occupation. We believe these misrepresentations are intentional and in bad faith. It is important to note that even these misrepresentations, intended to minimize the intensity of the use, were noted on this Questionnaire as “not permitted” by the Zoning Administrator. A reasonable action at that point would have been to deny the permit, but instead the Administrator chose to apply conditions of approval whereby a home occupation permit for a general contracting business could be considered acceptable under the criteria for administrative approval.

The manner in which the home occupation permit was approved provides the applicant time to comply with the conditions of approval. Specific aspects of the applicant’s questionnaire were highlighted, brought to the applicant’s attention, and noted that they were not permissible. Not only did the applicant verbally agree that these aspects could not be allowed, he did not appeal the condition-laden zoning permit – which suggests that he will make the necessary efforts to achieve compliance. This is a very common practice for the City to provide time for an applicant to achieve compliance. And again, if compliance is not achieved by December 31, 2020, the permit will be revoked, and additional enforcement action will commence.

The documented pattern of use since approval indicates that the applicant has no intention of abiding by the conditions of approval. The purpose of this application is now an attempt to delay the inevitable or even to hold out for the distinct possibility, given the history in this case, that the City may lack the motivation or resources to bring effective enforcement action in a timely manner, if at all.

No additional enforcement action occurred because the permit was issued, and the applicant was in the allotted time to bring the property into compliance.

Additionally, the appellant touches upon the following in his appeal:

- *The actual business name and range of work provided*
- *The quantity of area devoted to the business*
- *An inaccurate site plan*
- *The area devoted to the business within the dwelling unit*
- *The four required off-street parking spaces per previous zoning permit*
- *Whether the applicant actually understands the conditions of approval*
- *Store items in the yard*
- *Employees coming and going from the property*

From a zoning perspective, the business name is irrelevant to the home occupation, but would be of importance in registering the business with the City (business license, tax purposes, etc.). The conditions of the permit lay out clear instructions on how to bring the home occupation into compliance. These include, among other things, the prohibition of exterior storage of materials used for the business, the maximum area that can be devoted to the home occupation, addressing the unpermitted/relocated sheds and on-site parking, and non-resident employees coming and going from the property. The applicant did not appeal the permit, which would create the

assumption that the conditions and timelines were understood. Whether or not the permit is closed out by December 31, 2020 remains to be seen. If it is not, the permit will be revoked and additional and stricter enforcement action will commence.

Summary

The home occupation permit was approved based on conditions that are intended to bring compliance to the property within a reasonable time frame, and to provide the applicant with specific requirements to continue the business in an acceptable way into the future. There are several items that the applicant must address by December 31, 2020. Failure to do so will result in revocation of the permit, and additional enforcement action. However, as noted above, due to this appeal pausing release of the zoning permit, the window to bring the property into compliance has essentially disappeared. Staff will recommend that that deadline be extended.

A reversal of the administrative approval would contradict what staff has allowed for a multitude of zoning/home occupation permits – conditions that achieve and maintain compliance.

II. Recommended Motion:

Uphold the administrative approval of zoning application 21-0226HO and extend the deadline identified under Condition 1 to 60 days from the date of the DRB decision.