

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: November 1, 2022
RE: ZP-22-540; 217 Starr Farm 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.

Zone: RL Ward: 4N

Owner/Applicant: Kennet Dall

Request: Establishment of a home occupation business (small scale indoor cannabis cultivation).

Applicable Regulations:

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

Background Information:

The applicant is seeking approval to establish a home occupation for commercial cultivation of cannabis for sale to retailers. No onsite sales will take place. The home occupation will take place within the existing basement and will not entail any exterior building or site changes. The applicant has obtained a state license for tier 1 indoor cultivation. While this zoning application is reviewed under the home occupation standards of the CDO, the State of Vermont administers regulations specifically for commercial cannabis operations.

Previous zoning actions for this property:

- 6/19/08, Approval for a 2nd story addition – relinquished

Recommendation: Conditional use 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 proposed home occupation will likely entail additional demands on municipal water and sewer serving the property. The applicant has obtained a capacity letter from the Dept. of Public Works as required. **(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 neighborhood is characterized primarily by single family homes. Starr Farm Park is located across the street. The proposed home occupation is contained entirely within the residence, and no clients will come to the premises. 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, dust, heat, and vibrations greater than typically generated by other permitted uses in the same zoning district;*

Odor associated with the cannabis cultivation will be mitigated with carbon filters in the ventilation system. Upkeep of the filtration will be important to minimize potential odor impacts. **(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 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)**

5. *The utilization of renewable energy resources;*

The proposal will not prohibit the use of alternative or renewable energy resources at the subject property or neighboring ones. **(Affirmative finding)**

and

6. *Any standards or factors set forth in existing City bylaws and city and state ordinances.* As noted above, the applicant has obtained a tier 1 cultivation license from the state. Additional local trades permits may be required as well. **(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;*
As noted previously, the ventilation system for the grow operation will include carbon filters to mitigate potential odor impacts. **(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.*
Given the nature of the proposed business, it will operate continuously. As no employees or clients will come to the property, and given that it is entirely enclosed within the home, 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 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.
(Affirmative finding)

Article 4: Maps & Districts

Sec. 4.4.5, Residential Districts:

(a) Purpose

(1) Residential Low Density (RL)

The property is located in the RL zone. This zone is intended primarily for low density residential development in the form of single detached dwellings and duplexes. Presently, the detached single family home is consistent with this intent. Insofar as home occupations are expressly enabled by statute and the CDO and that this one will be largely 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 and is addressed in these findings. **(Affirmative finding)**

Article 5: Citywide General Regulations

Sec. 5.2.3, Lot Coverage Requirements

See Sec. 4.4.5 (b).

Sec. 5.2.4, Buildable Area Calculation

See Sec. 4.4.5 (b).

Sec. 5.2.5, Setbacks

See Sec. 4.4.5 (b).

Sec. 5.2.6, Building Height Limits

See Sec. 4.4.5 (b).

Sec. 5.2.7, Density and Intensity of Development Calculations

See Sec. 4.4.5 (b).

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 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)*

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 grow operation will be located within the basement, which is 800 sf. Of the total basement area, the applicant notes that up to 300 sf will be used for growing, drying, and storing the cannabis. An upstairs computer and phone will be associated with the home occupation (~ 20 sf). 320 sf is ~ 11% of the home's GFA. There is mention of possibly using some space in the garage for storage. If such space is used, it needs to be specified and fall within the 750 sf limitation. (Affirmative finding as conditioned)

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 construction is proposed. As noted before, local trades permits (i.e. such as electrical) may be required for operation of the proposed home business. **(Affirmative finding as conditioned)**

4. *There shall be no outside storage of any kind related to the home occupation;*
None 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);*
None are 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;*
As noted in Article 3 above, no customers or employees will come to the property. The resident will be the sole employee. 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. Odor from the grow operation will be mitigated with carbon filters in the ventilation system. **(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 is fully enclosed within the home and shows no evidence of its presence. Lacking any outward commercial presence, 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;*
Occasional deliveries by UPS and the like may occur. Regular deliveries are not part of the application. **(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.

Only the cannabis grown onsite will be sold to retailers. As noted above, there will be no onsite retail sales. **(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)**

Sec. 5.5.1, Nuisance Regulations

See Sec. 3.5.6 (a) 3.

II. Conditions of Approval

1. **Prior to release of the zoning permit**, any garage space associated with the home occupation shall be identified on the application plans and shall remain within the 750 sf total limit, subject to staff review and approval.
2. 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.
3. The home occupation shall be conducted solely by resident occupant. The proposal does not include additional, non-resident employees.
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. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day.
7. 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.
8. 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.
9. Standard Permit Conditions 1-15.