

Department of Planning and Zoning

149 Church Street

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MEMORANDUM

To: Development Review Board
From: Mary O'Neil, AICP, Principal Planner
Date: April 18, 2017
RE: ZP17-0822HO; 300 Main Street #2

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: ZP17-0822HO

Location: 300 Main Street, Unit 2

Zone: RH **Ward:** 8E

Parking District: Neighborhood

Date application accepted: February 27, 2017

Applicant/ Owner: Adam Grundt, PhD

Request: Establish a Psychotherapy office as a home occupation.

Background: (all 300 Main Street)

- (Unit 6) Non-Applicability of Zoning Permit Requirements 17-0609NA; change out air conditioning unit. November 2016.
- Zoning Permit 93-489 / COA092-009C; revisions to previously approved site/landscaping plan with construction of a six car garage at the rear of the 8-unit residential site. June 1993.
- Zoning Permit 93-010; construction of a 16' x 24' brick patio on the rear of single family home, with installation of stockage style and chain link fencing to secure rear yard. Includes replacing glass windows in front porch for seasonal use. Columns and skirt remain unchanged. July 1992.
- Zoning Permit 92-284 / COA 092-009B; as built changes to restoration of seven-unit residential building to include rear decks and installation of four skylights. April 1992.
- Zoning Permit 92-228 / COA 092-009A; amend original approval for fenestration changes to second story of seven-unit residential building. Dormer to be handled as separate application. February 1992.
- Zoning Permit 92-082-COA 092-009; renovation and restoration to existing structures (2) with improvements to parking area for a total of eight residential units. August 1991.

- Zoning Permit 91-210; six-month extension from December 27, 1990 pending completion of listed conditions of approval. (Community Care Home, 46 beds + 2 units for an interim basis, then to a maximum of 51 rooms (COA 88 0046B, dated 1.12.89.) December 1990. [Notation on Certificate of Occupancy that **project was never completed.**]
- Zoning Permit 89-505 / COA 88-046C; amend approval; change use from Community Care Home to 19 condominiums. Denied August 1989.
- Zoning Permit 89-030; COA 88-046B; misc. changes to previously approved COA 88-046A to include additional dormers, relocation of main entrance, fencing, relocation of condo unit, addition of independent living suite. From 40 beds + 1 unit to 46 beds + 2 units for an interim basis, then to a maximum of 51 beds. Approved January 1989.
- Zoning Permit 87-1019 / COA 88-046A; demolish existing 5 apartment building and single family house and construct 40-bedroom community care home + 1 condominium unit. Revision of previously approved COA 88-046; additional coverage = 230 sf building + 770 porch. Approved July 1988.
- Zoning Permit 87-908; COA 88-046; demolish existing 5 apartment house and single house and construct nine new condominium dwelling units with covered and open parking. Approved May 1988. [Required approval by Board of Alderman.]
- Request for Appearance Burlington Zoning Board of Adjustment, variance for rear yard, from 48' required to 10 typical of neighborhood. See COA 87-211. February 1988. Request denied March 1988.

Overview: Known as the Captain Lyon House, the site has 2 structures with 8 (condo) units. The applicant seeks a Home Occupation approval for a psychotherapy practice. He proposes to be the lone occupant and practitioner.

Recommendation: Consent approval, per 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 (as adopted by City Council 8.10.2015)

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 a since room for the purposes of a 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;*

This is a residential use within a residential zoning district. The limited use of a portion of a residential unit is anticipated to have no impact on the character of the area.

From the Municipal Development Plan:

- *Promote and support locally owned and controlled small businesses including home occupations appropriate to the character of the neighborhood.* [MDP, Economic Development Plan, P. VI-2.] **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 noise, odor, dust, heat or vibrations from the proposed use. **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 along a public transit route. No adverse impacts, unreasonable demand of services or dearth of transportation modes are identified. **Affirmative finding.**

And

5. *The utilization of renewable energy resources;*

The activity proposed 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.* **Section 2.7.8, Withhold Permit** will require that the administrative officer deny all zoning permits or certificates of occupancy for any property with an uncorrected zoning violation or with expired zoning permits without a final certificate of occupancy. Instead of withholding or denying a zoning permit, the administrative officer may grant such permit subject to the condition that the uncorrected zoning violation is corrected or the expired zoning permit is closed out with a final certificate of occupancy. Such action shall take place fore the issuance of a final certificate of occupancy on the new permit. The applicant is encouraged to ascertain whether there are any open permits issued for the property since July 13, 1989 and seek certificates of occupancy. **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 application proposes practice hours Monday-Friday between 9:00 am and 7:00 pm. Patient appointments will not be scheduled so as to overlap. 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;*

Application materials define the occupant as the single employee. The proposed home occupation will be staffed by the applicant alone. **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 submission materials define a single 15' x 11' room dedicated to the home occupation, or 26% of the total area of the dwelling unit. **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 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);*

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;*

The applicant has proposed no overlap in client visits. Two off-street parking spaces are allocated in the rear to his residential unit, one of which will be available to clients. **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;*

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.**

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. Hours of operation are Monday-Friday 9:00 am to 7:00 pm.
3. 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.
4. No exterior signage is included with this approval.
5. 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.
6. The applicant is encouraged to ascertain whether there are any violations or open permits issued for the property since July 13, 1989 and resolve or seek certificates of occupancy.
7. Standard Permit Conditions 1-15.

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