

WEST HAVEN APPEAL AUTHORITY
MINUTES OF THE HEARING AND DECISION OF THE HEARING OFFICER
MELANIE ELM APPEAL
HOME OCCUPATION AT 4402 WEST 4425 SOUTH, WEST HAVEN

This matter came before Craig M. Call, Hearing Officer and Appeal Authority for the City of West Haven at a hearing held on Tuesday, January 14, 2020. Melanie Elm appealed a decision by the Planning Commission on September 11, 2019 approving a home occupation for mechanic and auto sales for Kyle Nyland at 4402 West 4425 South in West Haven. Her written appeal was filed on September 29, 2019 and conveyed to the Hearing Officer on or about November 24, 2019.

On November 26, 2019, the hearing officer began an email exchange with Ms. Elm, Mr. Nyland, and the City staff. The entire exchange is a part of the record of this decision, as are the following documents provided before the hearing to all parties by electronic means:

1. Mr. Nyland's Conditional Use Permit Application, the fee for which was paid on July 23, 2019, along with attachments.
2. Email communications from David Reed, Fire Marshal, on September 5 and 9, 2019.
3. Business License Application from Kyle Nyland, dated September 4, 2019.
4. Six photos related to the premises which are the subject of the Nyland Applications – undated.
5. Minutes of the West Haven Planning Commission – August 14, 2019; August 28, 2019; and September 11, 2019.
6. Comments from citizens related to the Nyland Application – one undated; others dated August 12 and August 14, 2019
7. Administrative Hearing Officer Appeal Application by Ms. Elm dated September 19, 2019.
8. Statement provided by Ms. Elm prior to the hearing, dated January 7, 2020.

The record further includes an audio recording of the hearing.

The hearing on this matter convened at 3 p.m. on the afternoon of Tuesday, January 14, 2020. Attending were Melanie Elm, who brings this appeal; Kyle Nyland, the property owner and applicant for the home occupation; Sean Elm, spouse of Ms. Elm; Paige Nyland, spouse of Mr. Nyland; Bob James; Kenneth Bradshaw, West Haven City Attorney; Emily Green, West Haven City Recorder; and Rae Lindholm, West Haven City Planning Staff.

Ms. Elm outlined the substance of the appeal. She stated that the home occupation approved by the Planning Commission does not comply with the code and is not a conditional use allowed in the A-1 zone. She provided other argument and discussion related to her appeal which was preserved in the audio recording.

Mr. Nyland stated that the code does not specifically mention mechanic issues as prohibited and that the Planning Commission allowed a similar use previously as a home occupation, citing minutes of a meeting of the Planning Commission held on May 14, 2014. He also discussed other issues relating to the appeal.

Mr. Sean Elm explained reasons that he does not believe that a mechanic/auto sales use is compatible with residential uses in the area. Mr. Nyland outlined the conditions imposed on the use by the Planning Commission which address potential problems with the mechanic/auto sales use.

Mr. Bradshaw explained how the City enforces violations of the land use ordinances related to home occupations. Mr. James commented that the Elms had stated that they liked the Nyland shop building. Mr. Elm agreed and clarified that it was the use, not the building, that was a concern.

Mr. Bradshaw stated that some specific documents should be considered as part of the record of this appeal, all of which are listed above as part of the record.

ANALYSIS

It is true, as Ms. Elm has stated, that a home occupation is not allowed as a conditional use in the A-1 zone. A home occupation is, however, allowed as a permitted use. West Haven Zoning Ordinance, Chapter 5, Section 3 – 10. The Planning Commission’s role in this matter was to consider whether to allow the use of an accessory building (the Nyland “shed”) for a home occupation. West Haven Zoning Ordinance, Chapter 26, Section 3 – 3, which reads “The (home) occupation shall not use any space in an attached or unattached garage, accessory building, yard, or any space on the premises outside of the dwelling unless approved by the Planning Commission with the exception of garage sales.”

While the decision of the Planning Commission was styled as approving a “conditional use permit” the form of the decision is deemed not to defeat the substance of the decision. Since the City had previously approved auto related services as home occupations in the A-1 zone, it would have been obligated to interpret the ordinances in the instant case in a manner consistent with its previous decisions. *Uintah Mt. RTC LLC v. Duchesne County*, 2005 UT App 565, ¶ 25.

Absent substantial evidence or legal argument indicating that the use would not be allowed under the wording of the ordinance, the City was obligated to interpret the code to approve the home occupation:

Because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner.

Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 606 (Utah Ct. App. 1995). The substance of the decision here was to review the home occupation application and “approve” the involvement of an accessory building in the home occupation. This was clearly the intent of the Planning Commission. There is sufficient evidence in the record to support the approval of the home occupation under the City zoning and business licensing ordinances. The mischaracterization of the decision as a conditional use permit decision does not defeat its validity.

The decision of the Planning Commission to approve the home occupation is affirmed, subject to the conditions imposed by the Planning Commission and confirmed by Mr. Nyland at this hearing, to wit:

1. The applicant will work with the Fire Marshal and Building Inspector to get the building up to code.
2. The applicant is allowed to sell 60 cars a year, to have three cars stored outside at one time, and no car is to remain more than a month.
3. The applicant is to work with the shop doors closed.
4. Hours of operation are no later than 9 p.m.

Dated this 20th day of January, 2020.

/s/ Craig M Call

Craig M. Call, Hearing Officer and
West Haven City Appeal Authority

This decision may be appealed to the Second District Court within 30 days of the date that it was signed.