

WEST HAVEN APPEAL AUTHORITY
MINUTES OF THE HEARING AND DECISION OF THE HEARING OFFICER
KYLE NYLAND APPLICATION TO AMEND
CONDITIONS RELATED TO A HOME OCCUPATION
AT 4402 WEST 4425 SOUTH, WEST HAVEN
JUNE 8, 2020

This matter came before Craig M. Call, Hearing Officer and Appeal Authority for the City of West Haven at a hearing conducted entirely via email exchange, held between Monday, May 18, 2020 and Friday, June 5, 2020.

In April of 2020 Kyle Nyland filed an application to amend the conditions imposed on a home occupation utilizing an accessory building which was originally approved October 11, 2019. Mr. Nyland requested that he be allowed to set fixed business hours and to amend the condition limiting the number of cars stored on the premises at one time to three.

The application, inaccurately labeled as an amendment to a conditional use permit, was heard by the Planning Commission on May 13, 2020, where the request to amend was denied. The Planning Commission provided no findings of fact or conclusions of law to support its decision.

Mr. Nyland appealed the denial of his request, claiming that the denial was arbitrary. The hearing officer initiated the required hearing by suggesting to the City and Mr. Nyland that, in light of the restrictions on public assemblies related to the current Corona Virus epidemic, the hearing process be conducted entirely via email exchange. The City and Mr. Nyland agreed.

Public notice was provided by the City Recorder along with the hearing officer's email address. A number of comments from individuals interested in the issues were received. The entire exchange is a part of the record of this decision, including the following documents which were included as attachments to the email communications:

1. Application for Amendment to Conditional Use Permit, filed April 16, 2020. This copy of the application also includes a copy of the approved conditional use permit from 2019 as well as a site plan associated with that permit.
2. West Haven Planning Commission Meeting Minutes for April 10, 2019.
3. West Haven Planning Commission Meeting Minutes for May 13, 2020.
4. West Haven Planning Commission Meeting Minutes for May 14, 2014.
5. West Haven Planning Commission Meeting Minutes for September 25, 2019.
6. West Haven Planning Commission Meeting Minutes for October 23, 2019.
7. Written statement of Kyle Nyland setting forth theories of relief, not dated, but received May 22, 2020.
8. Sixteen photographs provided by a neighbor.
9. Four photographs of other properties provided by Mr. Nyland.
10. Decision of the hearing officer dated January 20, 2020.

During the hearing process, comments were received from Jan Zogmaister, Val and Marilyn Brown, Bradley and Maureen Naples, Tracy Probert, D. Church, Phillip and Debbie Smith, and Melanie Elm.

Each has been reviewed by the hearing officer. The City has recommended that the amendment request should be denied.

STANDARD OF REVIEW

This matter is heard “de novo” which allows discussion beyond the record of the prior decision by the Planning Commission. According to the West Haven Ordinances at 21-1-7: DECISION ON APPEAL: In exercising the above mentioned powers, such Hearing Officer may, in conformity with this ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as should be made, and shall have all the powers of the officer from whom the appeal is taken.

ANALYSIS

After Mr. Nyland’s home occupation was approved under the guise of a conditional use permit in October of 2019, a neighbor appealed that approval to the hearing officer. The appeal was heard and decided on January 20, 2020. It was determined at the time that the approval received by Mr. Nyland was not a conditional use permit, since his use is not allowed in the A-1 zone as a conditional use. Instead, as the decision in that appeal explains, he received approval to conduct a home occupation in an accessory building on his property, subject to conditions as allowed by the West Haven Ordinances at Chapter 64.06 (3).

Chapter 64, Home Occupation, provides that: In order to guarantee that the Home Occupation, once authorized, will not become a nuisance to the neighbors, the Planning Commission or the City Council may impose other reasonable conditions initially and also subsequently to protect the public health, safety, peace, and welfare, of the residents of the surrounding residential or agricultural area.

Despite this ruling in January which was not appealed to the District Court and therefore is binding on the parties. Mr. Nyland filed an application in April of this year to amend the home occupation approval. He did this by asking for an amendment to a conditional use permit. There is no conditional use permit. Since no party to the current issue has questioned the form of the issue as it was presented to the Planning Commission, the request for an amendment will be considered here as an application to amend the conditions attached to a home occupation in an accessory building and not as an amendment to a conditional use permit.

As to the first issue, the approval of the home occupation by the West Haven Planning Commission included the following conditions, as also noted on a copy of the original “conditional use” form filed by the city after the approval and provided as an attachment to the application:

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.

These conditions were reaffirmed and included in the January 20, 2020 decision of the hearing officer. As stated by the Utah Courts over the years and quoted in the previous decision in this matter,

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).

There is no condition prohibiting the setting of business hours in the listed conditions. While the applicant stated that he did not intend to have “business hours” the approval stated that he may have “hours of operation” until 9 p.m. His use of the property is limited by the language finally approved, not the language in the application.

The decision here is that his request to amend the approval is unnecessary. There is nothing to amend because there was no prohibition of business hours in the approval. By definition a “home occupation” is a business. “Hours of operation” for a home occupation are therefore “hours of business operation” or “business hours”. The words are interchangeable.

Mr. Nyland may set business hours as he wishes to, but they may not extend past 9 p.m. It is not clear how this makes any difference because he also stated in the application that there would be no walk-in traffic. If all business is either personal or by appointment only, and not for walk-in traffic, then his stating business hours would appear to have no effect on the use of the premises. In order to clarify this, I am therefore revising the conditions by adding a condition that there is to be no walk-in traffic for this home occupation. This is consistent with what Mr. Nyland stated in the original application.

As to the second request, the restriction is for the number of “cars stored” and not for cars parked. While Mr. Nyland has provided photographs of many cars at other locations, he has not differentiated as to whether the cars in the photos are “stored” or “parked”. This is a home occupation. A home occupation is not the same as a conditional business use and suggests a level of intensity lower than a full-blown business use, whether permitted or conditional.

The condition imposed in the original permit and reaffirmed on January 20 conforms to Mr. Nyland’s original request because the site plan he provided showed three stored cars. Mr. Nyland has not provided adequate evidence to demonstrate that the restriction is unreasonable. The response from his neighbors to this appeal provides their perspective that the number of cars on the premises is among the negative aspects of an auto repair home occupation that should be addressed with reasonable conditions.

The examples Mr. Nyland cites in the minutes of past city meetings appear to reference two conditional uses, which are not relevant here, as this is not a conditional use – it’s a home occupation. In the two home occupation examples he provides, the applicants are limited to a total number of four cars on the premises, not just three stored cars. The restrictions imposed on others for four cars in or out of the shop are more restrictive than the condition Mr. Nyland wishes to amend, since Mr. Nyland’s limitation is only to stored cars outside his shop and not to total cars on the premises including stored cars inside his shop. His restriction is, in fact, lighter than the other examples he cites. It is Mr. Nyland who benefitted from any inconsistency in the City’s imposition of conditions, not the other home occupations. When

considering his use as a home occupation, it is reasonable to refuse to increase the limit on the number of cars stored outside to three in a residential neighborhood.

As to the legal authority to limit the number of stored cars to three, the issue is not timely. The time to challenge the condition was when it was imposed in 2019 after that number was suggested by Mr. Nyland in his site plan. Since it was not challenged, it remains in force and is not subject to appeal.

Mr. Nyland has not provided any evidence that the number he originally suggested is now unreasonable as a means of promoting the general welfare. The limitations on parking and storage of vehicles for business purposes on residential property are common land use regulations, well-accepted and often used to promote the general welfare in a manner consistent with the purposes of land use regulations as outlined in Utah Code Ann. § 10-9a-102. Mr. Nyland states in his Appeal Letter “There is enough improved parking area on my property to park 20-30 cars without blocking the roadway, egress, ingress, or fire access.” If the alternative to a limitation on the number of cars stored outside is 20 or 30 cars, then the comments received from those in the community would support the conclusion that the general welfare is advanced by a limitation on stored cars.

DECISION

Mr. Nyland may set business hours to include times before 9 p.m. The home occupation is revised to include five conditions:

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.
5. There will be no walk-in customers.

Dated this 8th day of June, 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.