



Oakley City Planning Commission Staff Report

Non-Conformity Certificate Business

Applicant: David Kitchen, Rocky Mountain K9

To: Oakley City Planning Commission
From: Stephanie Woolstenhulme, City Planner
Date of Meeting: March 1, 2023
Type of Item: Non-Conforming Business Review, Possible Action
Process: Administrative Review

RECOMMENDATION: Staff recommends that the Planning Commission re-review the history and scope of work for Rocky Mountain K9 to approve or deny Non-Conforming Certificate according to the findings of fact, conclusions of law and any condition set forth by the Commission.

PROJECT DESCRIPTION

Project Name: Rocky Mountain K9 non-conforming business review
Applicant(s): David Kitchen
Property Owner(s): David Kitchen
Location: 650 W. 4200 N.
Parcel Number(s): OT-98-2
Size: 1.9 acres
Zone District: RR1
Adjacent Land Uses: Residential/Agricultural
Existing Uses: Residential/Business
Public Hearing: Public notice was not given.

PROPOSAL:

The applicant wishes to obtain non-conformity certificate for business, Rocky Mountain K9.

FINDINGS OF FACT

1. Located at approximately 650 W. 4200 N. Residential lot containing an existing single-family residence and accessory garage.
2. Property is RR-1 zoning – 1 development right per acre.
3. Previous RR-2 zoning prior to map change.
4. Business is operated out of residential home as home occupation.

5. Current Land use code 13-4-19 indicates that “Kennels, animal boarding and care” are not a permitted use in RR1. Permitted with Conditional Use Permit in RR2. Not currently permitted as home occupation because code 13-9-3(B)(7) on home occupations requires compliance with code 13-4-19 for home occupations “that correspond to or resemble” the listed uses (Kennels).
6. Previous code as relevant: Attachment A below, home occupations.
7. 8/31/2022 Planning Commission approved a temporary, 6-month nonconformity certificate in order to allow business to continue while full review of history, code, and business operations was being prepared. Commission directed certificate to be reviewed and final determination made after 6 months.
8. 10+ complaints submitted to City Planner from adjacent neighbor via email, phone and Facebook. Complainant referred repeatedly to Summit County Animal Control and Summit County Law Enforcement.
9. Summit County Animal Control issued verbal warning for barking dogs approximately 11/4/2022. Given 10 days to rectify. Decibel reader installed.

BACKGROUND

Applicant purchased property in 2/2020. Business receipts showing active dog training/boarding business in 2019. Current code at that time could have deemed this business a home occupation (see Attachment A) as boarding/kennels were not an allowable use in residential zone. 5/2021 Oakley City adopted a zoning map that changed parcel from RR-2 to RR-1. 8/2022 applicant desired an Oakley Business License. No previous license required or issued for business at this location due to code of home occupations. Kennels/Boarding not currently permitted on the property because property is now in RR-1 per 13-4-19. Nonconformity Certificate required to continue a previously legal use. Planning Commission discussed in meeting on 8/31/2022 and approved nonconformity certificate for 6 months to then be reviewed.

NONCOMFORMITY DECLARED SCOPE OF WORK

Rocky Mountain k9 may continue to operate within the scope of work described by applicant below. *Italics were clarifications offered to Planning Commission on August 31, 2022.*

At 650 W 4200 N Oakley UT, Rocky Mountain k9 has been operating a small dog training business that focuses on private lessons, and board and train, where dogs live with me for extended periods of time while we train *from 1-30 days*.

As we have evolved, the dogs spend maybe 1 night at a time while we coordinate dogs to go and live with their trainers at different locations.

The Property is currently used for a holding location, and a pick-up and drop-off location. *At any given point of time, no more than 10 dogs will be on property. Applicant will obtain and keep current a kennel permit from Summit County Animal Control per Summit County Code 5-1-21 and 5-1-22.*

We occasionally have clients out to the property to do private lessons that only last 1 hr.

Dogs live in our home and are kenneled inside from 7pm-7am if they are staying with us for a night or two while waiting to be delivered to their trainer.

We have a strict no bark policy due to the training nature and routinely utilize bark collars, in the onset of barking we are correcting that behavior so it does not persist. *If no property owner/trainer is on property, dogs will be placed in the house.*

During the day, we have a small dog run under our horse shelter that we let dogs potty and play in while they wait transport to their final location.

Dogs do not have access to public roads or adjacent properties. Dogs will often "go walking" with trainer and/or owners on public roads which they will do in compliance to "leash laws" of Summit County Animal Control law.

We currently dispose of dog waste in closed and sealed containers and have it hauled off by Republic Trash serves weekly. Smell is controlled by sealing dog waste off when disposed of, and we spray the current potty area down daily with Kennelsol which is an enzyme blocker that kills all smell and protects from common dog illnesses.

Accessory building is occasionally used for employee use.

Rocky Mountain k9 does business under umbrella of Ramstein Investments Inc.

SUGGESTED QUESTIONS TO BE ADDRESSED

1. Rocky Mountain k9 indicates business "evolved." Nonconformity requires business to remain within scope of original, legal use. How has business evolved since it began? Is it possible to return to original type of business?
2. How many dogs are outside at one time? Would it be functional to restrict number of dogs simultaneously outside to number allowed for a normal residence?

POSSIBLE CONDITIONS OF APPROVAL

1. As previous home occupation code in place at the time business was begun required businesses to only operate within the home, and as nonconformity

certificate references the legal operations of this business, allow Rocky Mountain k9 to continue to do business within the walls of the home only.

2. Allow Rocky Mountain k9 to continue to operate within the scope of business as described by applicant.
3. Because Summit County Animal Control laws (noise and kennel licensure) were in place at time business began, Commission may require Rocky Mountain k9 to operate at all times in conformance with County Animal Control laws, in addition to other conditions.

ATTACHMENT A: PREVIOUS OAKLEY CITY CODE

10.05 RR-Zone (Rural Residential)

- A. **Objectives and Characteristics of the Zone** – The RR-Rural Residential Zone is designed to provide for single-family residential development located on large, spacious and uncrowded lots and facilities designed to serve the residents of the zone. In order to accomplish the objectives and purposes of this Ordinance and to stabilize and protect the essential characteristics of this zone, the following regulations shall apply in the RR-Rural Residential Zone:
- B. **Permitted Uses** – The following buildings, structures and uses of land shall be permitted in the RR Zone upon compliance with requirements as set forth in this Ordinance.
1. One family dwellings and accessory buildings
 2. Greenhouses for private use only
 3. Private swimming pools
 4. Home Occupations and Premises Occupations, subject to conditions set forth in this Ordinance
 5. Public parks
 6. Agricultural related uses (excluding horses and livestock)
 7. Signs in accordance with Chapter 9 of this Ordinance
 8. Fences, walls and hedges, which do not exceed six (6) feet in height, provided that such do not extend higher than 3 feet in height within the required front yard setback.
 9. Schools and churches
 10. Temporary buildings and yards for the storage of construction materials and equipment incidental and necessary to construction of uses otherwise permitted in the zone. A permit, therefore, shall be valid for not more than one (1) year and shall not be renewable for more than two successive periods at the same location.
 11. Household pets
- C. **Conditional Uses**
1. Public utility buildings and facilities

2. Accessory Apartments limited to 1,000 sq. ft. in size, the main dwelling unit must be owner occupied, and all other requirements of this Ordinance must be met. (See section 7.23)
3. Rest Homes
4. Day-Care Nurseries

7.15 **Home Occupations/Premise Occupations**

A. **Purpose.** The purposes of this section are to:

1. Encourage major business activities to be conducted in appropriate commercial zones.
2. Allow for home occupations that are compatible with the neighborhoods in which they are located as an accessory use.
3. To safeguard peace, quiet, and domestic tranquility within all residential neighborhoods within the City, and to protect residents from excessive noise, excessive traffic, nuisance, fire hazard and other possible adverse effects of commercial uses being conducted in residential areas.
4. Provide a means to terminate home occupations if disruption of a residential neighborhood occurs.
5. To establish a class of businesses that is permitted in the home to engage in the business of child care, and other group child activities.

B. **Home/Premise Occupations License.** A home occupation shall be conducted within the City of Oakley only in zone districts where allowed by this Code and in compliance with the following provisions unless it has been determined to be a nonconforming use pursuant to this code. A license to conduct a home occupation shall be issued by the City Clerk. In order to be issued a license, a home occupation must receive a recommendation for approval from the City Planner pursuant to the following provisions or as a nonconforming use.

C. **Standards for Approval of all Home/Premise Occupations Licenses.**

The following standards shall be complied with in the operation of all home occupations at all times:

1. The home/premise occupation shall be an accessory use which is clearly secondary and incidental to the primary use of the dwelling unit for residential purposes.
2. The home/premise occupation shall not physically change or alter the external residential appearance of the principal or accessory structures. Interior alterations for the purpose of accommodating the home occupation are prohibited if such alteration eliminates either the kitchen, dining area, bathrooms, living room or all of the bedrooms.
3. The home/premise occupation shall not involve the use of any yard space for storage or display of supplies, inventory or equipment when such use is in conjunction with the sale or production of goods or services.
4. There shall be complete conformity with fire, building, plumbing, electrical and all other City, county, state and federal codes.
5. The home/premise occupation shall not cause a demand for municipal, community or utility services that are substantially in excess of those usually and customarily provided for residential uses.
6. The home/premise occupation shall not be associated with or produce odor, smoke, dust, heat, fumes, light, glare, color, materials, construction, lightening, sounds, noises or vibrations or other nuisances, including interferences with radio and television reception or other adverse effects associated with its use as a business that may be discernable beyond the premises or unreasonably disturb the peace and quiet of the neighborhood.
7. No process can be used which is hazardous to public health, safety, or welfare.
8. The home/premise occupation shall not interfere or disrupt the peace, quiet and domestic tranquility of the neighborhood by creating excessive noise, excessive traffic, nuisance, fire hazard, safety hazard or other adverse effects of commercial uses.
9. Inspection during reasonable hours by City officials may occur as necessary to assure compliance with these regulations.
10. All vehicles, including customer, client or business-related visitor vehicles must be provided off street parking at the location wherein the home occupation is

being conducted.

D. Qualifications.

1. No more than one (1) person, living outside of the home, working a maximum of twenty (20) hours per week shall be engaged, volunteer or be employed on the premises.
2. Visitors, customers, vehicular traffic shall not exceed that normally and reasonably occurring for a residence in the neighborhood where the home occupation is located and shall be conducted so that the average neighbor will not be significantly impacted by its existence. In no case shall the home occupation exceed three (3) vehicular customers, and/or visits per hour, or eight (8) per day, nor deliveries or pickups exceed more than two (2) per day.
3.
 - A. The home occupation shall not generate or exceed eight (8) children at one time, associated with group child activities (e.g. dance schools, preschool, music classes, other care or instruction of children). This number shall include the licensee's own children if they are under six (6) years of age and are under the care of the licensee at the time the home occupation is conducted. This restriction shall not apply to those non-income producing child care activities (such as baby sitting cooperatives, baby sitting exchanges and informal instructional activities for preschool aged children) conducted within private residences.
 - B. All child care facilities shall be permitted to provide outdoor play time as required by Federal, State, County or local laws governing such business activity.
4. The home/premise occupation may include the sale of commodities, however, direct sales from display shelves is not permitted at the dwelling.
5. Vehicles or equipment may not be used primarily for the purposes of advertising the home/premise occupation at the site. Vehicles or equipment displaying such advertising should not be visible from the public right-of-way.
6. The receipt or delivery of merchandise, goods, or supplies for use in a home occupation shall be limited to vehicles with a gross vehicle weight rating (GVWR) of fifteen thousand (15,000) pounds or less.
7. The home/premise occupation may utilize one unanimated, non-illuminated flat sign, for each street upon which the dwelling fronts. The sign must be placed either in a window or on the exterior wall of the dwelling and may not have an area greater than six square feet.
8. No visitors in conjunction with the home/premise occupation (clients, patrons, students, pupils etc.) shall be permitted between the hours of 10:00 p.m. and 6:00 a.m.
9. The home occupation shall be carried on wholly within the principal building. The premise occupation may occur in an accessory building which is clearly subordinate to the dwelling.
10. No more than twenty-five percent (25%) of the total main floor area or upper living levels of the dwelling unit, nor, in the alternative more than fifty percent (50%) of the

total floor area of any basement of the dwelling unit shall be utilized for the home occupation. No more than the equivalent of fifty percent (50%) of the total floor area of the main dwelling may be used exclusively in an accessory structure for a premise occupation.

E. **Conditional Use Permit Required.**

Certain types of occupations which have substantial impacts upon the residential character of the area when carried on in residential districts must be reviewed to determine if the use is appropriate and to impose requirements and conditions necessary for the protection of adjacent properties and the public health, safety and welfare.

1. The following uses are appropriate in a dwelling only if they are determined to be compatible with the neighborhood and with the public health, safety and general welfare and if conditions specific to that activity are developed after full Conditional Use review by the Planning Commission and compliance with section 7.15(c) Standards, applicable Ordinance provisions and the additional regulations set forth hereafter.
 - A. Any child day care home occupation that is expected to generate or exceed eight (8) children at any one time.
 - i. A maximum of sixteen (16) children is permitted at any one time.
 - ii. This number shall include the licensee's and any employees' children if they are under six (6) years of age and are under the care of the licensee at the time the home occupation is conducted.
 - iii. This restriction shall not apply to those non-income producing child care activities (such as baby sitting cooperatives, baby sitting exchanges and informal instructional activities for preschool-aged children) conducted within private residences.
 - B. Any home/premise occupation that is expected to generate or exceed eight (8) children associated with group child activities (e.g. dance schools, preschool, music classes, other care or instruction of children) at any one time other than child day care.
 - i. A maximum of twelve students/children generating separate vehicle trips is permitted at any one time.
 - ii. A maximum twenty-four (24) students/children generating separate vehicle trips is permitted per day.
 - iii. Additional students/children who do not generate separate vehicle trips may be permitted to a maximum of 12 students/children at any one time and two (2) sessions per day. Additional students/children will be permitted only if the total number of students/children generating separate vehicle trips does not exceed 24 per day.

iv. The total number shall include the licensee's and any employees' children if they are under six (6) years of age and are under the care of the licensee at the time the home occupation is conducted.

v. This restriction shall not apply to those non-income producing child care activities (such as baby sitting cooperatives, baby sitting exchanges and informal instructional activities for preschool aged children) conducted within private residences.

- C. Repair shops including welding, carpentry (use of three or more pieces of woodworking power equipment), sheet metal work, furniture manufacturing, upholstery and other such manufacturing.
 - D. Any home/premise occupation using explosives or hazardous chemicals.
 - E. Any home/premise occupation which will generate in excess of three (3) vehicular customers or visitors per hour or eight (8) per day. A maximum of twelve (12) vehicular business associated visitors per day may be allowed under a conditional use permit.
 - F. Any home/premise occupation proposing to employ or employing a person working more than twenty (20) hours per week or more than one employee (i.e. persons other than residents of the dwelling unit who are engaged, volunteer, or are employed on the premises of the home occupation). A maximum of one additional employee may be allowed under a conditional use permit.
 - G. Any home/premise occupation which proposes to use or uses commercial-use vehicles in excess of one (1) ton.
 - H. Any home/premise occupation involving or proposing to involve food or drink preparation, storage or catering. Such a home occupation will be considered for a conditional use permit only when it is authorized by the appropriate State or County department or agency.
 - I. Any home/premise occupation which proposes or conducts business between the hours of 10:00 pm and 6:00 am.
 - J. Any home/premise occupation that is referred to the Planning Commission by the City Planner for purposes of holding a meeting for public comment and Planning Commission recommendation.
2. In addition to the Conditions established by the Planning Commission at the time of its review, all Conditional Use Home/Premise Occupations must comply with the following:
- A. The provisions of this code, concerning public hearing requirements.
 - B. Standards of Approval for all Home Occupations Licenses.
 - C. All home occupations licensed under this section require an approved Conditional Use Permit and Home Occupation license prior to commencing business.

- D. The Planning Commission may establish additional conditions for the home/premise occupation use to mitigate its effects on the area or for the general health, safety and welfare.