



Staff Report

To: Development Review Board

From: Wendy Hysko, Staff Liaison for Local Cannabis Regulation

Date: December 15, 2022

Re: Appeal of Administrative decision regarding the denial of the issuance of Home Occupation permit

EXISTING CONDITIONS AND GENERAL INFORMATION:

Project Location: 5 Shawn's Way

Existing Land Use: Residential

Surrounding Land Use: Residential

Zoning District: Residential 1

Total Sq. Ft. of Dwelling Space (with garage): 2,600 sq.ft.

Total Sq. Ft. of proposed home occupation: 400 sq.ft.

Proposed Home Occupation % of Existing Dwelling Space: 15.3%

Appeal Description: Adrian Lanza (appellant), owner of 5 Shawn's Way is appealing the denial of a Home Occupation permit for indoor Tier 1 cannabis cultivation at 5 Shawn's Way. The home occupation permit application was submitted on November 3, 2022. The home occupation permit was denied on November 4, 2022 by Regina Mahony, Acting Zoning Administrator. The permit was denied because, in accordance with Section 620 of the Land Development Code regulations (as most recently adopted by the City Council on September 14, 2022 and effective October 5, 2022), cannabis cultivation is only allowed in the Planned Agriculture zoning district. 5 Shawns Way is located in the Residential 1 Zoning District. Cannabis cultivation is not allowed in the Residential 1 Zoning District. The appeal was filed on November 7, 2022.

Land Development Code Section 1702: Appeals of Staff Decisions

B. Notice of Appeal. Any interested person who believes that the Administrative Officer has committed an error in making a decision or taking an action may appeal such act or decision to the Board of Adjustment [*note: now the Development Review Board in accordance with the City Charter*] by filing a written Notice of Appeal with the Village Clerk within 15 calendar days of the subject action or decision. The Notice of Appeal must identify the decision or action appealed and state why such decision or action is erroneous.

Staff comment: The appeal was filed in a timely manner.

C. Action by the Zoning Board of Adjustment [*note: now the Development Review Board in accordance with the City Charter*]. The Board shall conduct a duly warned Public Hearing at which it will take testimony and receive evidence from the applicant, Staff and interested parties. The Board shall then consider all relevant evidence before it and shall render its decision and issue signed findings of fact and conclusions within forty-five (45) days of the Public Hearing. Failure to act within this time shall result in granting of the Appeal.

Staff comment: The December 15th public hearing has been duly warned.

D. Standards of Review. The Board shall review any appeal in accordance with the following:
1. Review is restricted to Staff decision appealed.

Staff comment: The appeal is limited to the denial of the home occupation permit.

2. Any interpretation shall fully consider the intent of the provision or sections of Code upon which the Appeal is based.

Staff comments: The Land Development Code was recently amended to establish where cannabis establishments shall be permitted within the City. The cannabis establishments are defined in Chapter 2, and the Land Use Table in Section 620 defines where each establishment is permitted. Cannabis cultivation is only permitted in the Planned Agriculture zoning district.

Also, in Land Development Code Section 201.C.38 the definition of cannabis manufacturing establishment Tier 1 states that this use must be a home occupancy business; and this is not included in the cannabis cultivator definition (Section 201.C.37).

Therefore the intent is clear, cannabis cultivation establishments are allowed in the City, but only in the Planned Agriculture zoning district.

3. Any interpretation shall fully consider the intent of all applicable provisions of the

Village Plan.

Staff comment: Goal 2 of the Land Use Chapter calls for maintenance of quality residential areas. The Land Development Code is consistent with this goal.

Summary of Staff Comments:

The home occupation permit was denied because, in accordance with Section 620 of the Land Development Code regulations (as most recently adopted by the City Council on September 14, 2022 and effective October 5, 2022), cannabis cultivation is only allowed in the Planned Agriculture zoning district. 5 Shawns Way is located in the Residential 1 Zoning District. Cannabis cultivation is not allowed in the Residential 1 Zoning District.

Recommendation:

Staff recommends the DRB deny the appeal as Section 620 of the Land Development Code does not permit cannabis cultivation in the Residential 1 Zoning District.