

General Information

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Message :

I have a 100-year-old one-car garage that I use for my home office when I need some peace and quiet when working on my laptop. I just learned that this is in violation of zoning laws. Doesn't make much sense to me. In all candor, as a member of the "creative class" that can live and work wherever I choose, it's got me thinking about leaving Madison for cities with more flexible home/work arrangements.

From: Tucker, Matthew

Sent: Tuesday, March 30, 2010 5:14 PM

Subject: Clarification of use of an Accessory Structure in support of a home-based business

Folks- We have received several feedback comments about this issue, and it appears that it is being misunderstood. The issue here has to do with the use of a detached accessory structure for purposes of support of a home-based business. The use of the detached garage, shed, workshop, or other accessory building, used in support of a home-based business, is not allowed per the City's current Zoning Code.

The current rules would not prohibit the use of a detached accessory building as a work shop, artist studio, or other recreational space. This seems to be the point of confusion here.

Here are all of the regulations for home occupations as found in the current Zoning Code, with the relevant subsection **underlined and in bold typeset**:

Sec. 28.04(26) Home Occupations.

(a) **Statement of Purpose.** This subsection is established to permit limited work to be carried on in a residence, while protecting the integrity and residential character of neighborhoods.

(b) A home occupation may be a permitted or conditional use in a residence district as set forth in the residence district requirement if it meets all of the following conditions:

1. That the occupation is conducted within a dwelling and not in an accessory building;

2. That the occupation is clearly incidental and secondary to the principal use of the dwelling for dwelling purposes;

3. That only members of the immediate family residing on the premises may be employed, unless authorized by the Plan Commission as a conditional use;

4. That no stock-in-trade is kept or commodities sold, other than those made on the premises, unless authorized by the Plan Commission as a conditional use;

5. That samples may be kept but not sold on the premises;

6. That no mechanical equipment is used except such as may be used for purely domestic or household purposes, unless authorized by the Plan Commission as a conditional use;

7. That such occupation shall not require internal or external alterations, or involve construction features not customary in a dwelling, except for such alterations or construction necessary for a home occupation of an individual with a disability who is incapable of employment outside the home by reason of significant physical or mental disability as verified by a signed physician statement verifying the disability;

8. That not more than twenty-five percent (25%) of the floor area of one story of the dwelling is devoted to such home occupation;

9. That the entrance to the space devoted to such occupation is from within the building;
10. That there is no evidence, other than the identification sign referred to in 11 below that will indicate from the exterior that the building is being utilized in part for any purpose other than that of a dwelling; and
11. That there is used no sign which is attached to the building, other than a 2" identification sign permitted under Secs. 31.14 and 31.15(4); which sign shall not be illuminated and shall not be more than two (2) square feet in area.
12. Paragraphs 4, 5, 8, and 9 do not apply to the home occupation of an individual with a disability who is incapable of employment outside the home by reason of significant physical or mental disability as verified by a signed physician statement verifying the disability.

As part of the Zoning code rewrite, provisions are included in the draft that would allow limited use of a detached accessory building in support of a home-based business as a Conditional Use. Here are the home occupation provisions as found in the draft Zoning Code, with the relevant subsection **underlined and in bold typeset**:

(1) Home occupation.

This subsection is established to permit work to be carried on in a residence, by an occupant of that residence, while protecting the integrity and residential character of neighborhoods.

- (a) A home occupation may include small offices, service establishments or homecrafts which are typically considered accessory to a dwelling unit.
- (b) A home occupation shall not involve on-site wholesaling, manufacturing or assembly, a limousine, towing or cartage business or auto service or repair for any vehicles other than those registered to residents of the property.
- (c) The occupation must be conducted within a dwelling and not in an accessory building, unless authorized by the plan commission as a conditional use.**
- (d) The occupation must be clearly incidental and secondary to the principal use of the dwelling for dwelling purposes.
- (e) Only members of the immediate family residing on the premises or occupants of the dwelling may be employed, unless authorized by the Plan Commission as a conditional use.
- (f) No mechanical equipment shall be used except that which is used for purely domestic or household purposes, unless authorized by the plan commission as a conditional use;
- (g) No products shall be kept or commodities sold, other than those made on the premises, unless authorized by the plan commission as a conditional use;
- (h) Samples may be kept but not sold on the premises;
- (i) No more than twenty-five percent (25%) of the floor area of one story of the dwelling may devoted to such home occupation;
- (j) The entrance to the space devoted to the home occupation must be from within the building.
- (k) No structural alterations or enlargements shall be made to the dwelling for the primary purpose of conducting the home occupation.
- (l) The only exterior indication of the home occupation shall be a non-illuminated nameplate a maximum of two (2) square feet in area.

(m) Exception: A home occupation of an individual with a disability who is incapable of employment outside the home by reason of significant physical or mental disability, as verified by a signed physician statement verifying the disability, is exempt from the requirements of subparagraphs (g) through (k).

So, the draft ordinance would allow an individual to ask for Conditional Use approval to use the detached accessory building in support of a home occupation, which is not allowed in the current code.

This issue did come up when the Madison Arts Commission was reviewing the draft ordinance on referral, specifically where the Commission recommended the ordinance include provisions to allow art production (as part of a home-based business) to be conducted in a detached accessory building.

This ordinance is still in draft form. The City's Plan Commission has not completed their review of them (and the many other aspects of the draft ordinance) but will, and will then forward a recommendation on to the City Council, with the rest of the ordinance. New ordinance language would become effective upon final adoption by the Common Council of the zoning text and zoning map, which likely will not be until late fall-early winter 2010.

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