

STAFF REPORT



SUBJECT: Case No.: CP2021-001

Applicant Justin Willis is requesting a Conditional Use Permit, pursuant to Section 154.05.03.C(1), for a Home Occupation as defined in Section 154.03, for property located at 1422 Prairie Wind, Parcel R31592, of GOLF COUNTY ESTATES ADDITION, BLOCK 4, LOT 5, of the City of Stephenville, Erath County, Texas.

DEPARTMENT: Development Services

STAFF CONTACT: Steve Killen

RECOMMENDATION:

The Planning and Zoning Commission convened on June 16, 2021, and by a vote of 6/1, recommended the City Council approve the Conditional Use Permit request.

BACKGROUND:

The applicant was recently contacted by the Alcohol, Tobacco and Firearms (ATF) Division of the Federal Government. Agent Dee Robinson requested assistance from the City of Stephenville and upon an on-site inspection at the consent of the applicant, Agent Robinson suspended Mr. Willis' license for the following:

1. Per Agent Robinson, any transaction involving firearm transfers must occur at the locale listed on the licensee's application and;
2. The licensee must comply with all local ordinances and regulations

The Zoning Code, Section 154.03, defines home occupation and lists criteria for compliance. The generation of traffic to the neighborhood and inventory for sale are the criteria that have resulted in the application for a Conditional Use in order to be compliant with ATF regulations.

CURRENT ZONING:

R-1 – Single Family

FUTURE LAND USE:

Single Family

ZONING

Sec. 154.05.3. Single-family residential district (R-1) (7,500 ft²).

5.3.A Description. This residential district provides for a generally lesser density city neighborhood development. The primary land use allows for single-family dwelling development appropriate to a city-style neighborhood. Other uses within this district shall contribute to the nature of the neighborhood. Development within this district is intended to be separate from and protected from the encroachment of land activities that do not contribute to the esthetic and functional well being of the intended district environment.

5.3.B Permitted Uses.

- (1) Single-family detached dwelling, limited to occupancy by a family having no more than three individuals who are unrelated by blood, legal adoption, marriage or conservatorship. The owner and any agent of the owner shall be legally responsible for directly or indirectly allowing, permitting, causing or failing to prohibit residential use of a dwelling in this district by more than three unrelated individuals;
- (2) Accessory buildings;
- (3) Churches, temple, mosques and related facilities;
- (4) Community home;
- (5) Park or playground; and
- (6) SISD school—public.

5.3.C Conditional Uses.

- (1) Home occupation;

HOME OCCUPATION

Sec. 154.03 - Definitions.

Home occupation. An occupation carried on in a dwelling unit, or in an accessory building to a dwelling unit, by a resident of the premises, which occupation is clearly incidental and secondary to the use of the premises zoned for residential purposes. A *home occupation* must comply with all the following specific criteria:

- (1) Home occupations shall be allowed without the necessity of a conditional use permit, if such uses relate solely to the use of home areas as further detailed herein by the resident of the premises, and such use does not create on-street parking, significant neighborhood traffic, or other disruption to the residential character of the property.
- (2) The occupation shall produce no alterations or change in the character appearance of the principal building from that of a dwelling and no signage or advertisement of the home occupation or property address is allowed in the yellow pages advertisements in a telephone directory nor via electronic media, or classified advertisements of the property where the home occupation is being conducted.
- (3) The occupation shall not require or provide for the employment of more than one additional person other than members of the household in which the home occupation occurs.
- (4) Not more than two business-related vehicles shall be present at one time, and the proprietor shall provide adequate, paved off-street parking for such vehicles and customer vehicles on the property where the use is located.
- (5) Such use shall be incidental and secondary to the use of the premises for residential purposes and shall not utilize an area exceeding 20% of combined gross floor area of the dwelling units and accessory building used for the home occupation and no outdoor/exterior storage (related to the home occupation) will be allowed.
- (6) The occupation shall not violate any other rules or regulations in the Code of Ordinances.
- (7) The occupation shall not offer a ready inventory of any commodity for sale on the premises.

FACTORS TO CONSIDER:

Sec. 154.20.3. Planning and zoning commission—Conditional use permit.

20.3.A Definition. A conditional use permit is defined in Section 154.03. The terms "Conditional Use Permit" and "Special Use Permit" may be used interchangeably.

20.3.B Effective Date. A Conditional Use Permit shall be deemed effective upon the date approved by the City Council.

20.3.C Termination of Conditional Use Permit. A Conditional Use Permit shall terminate and become null and void as follows:

- (1) Failure to Commence the Use: Upon a finding by the City Manager that the conditional use for which the Conditional Use Permit was issued has not commenced within 180 calendar days after the effective date of the Conditional Use Permit or the date set forth in the Conditional Use Permit, whichever is applicable. For purposes of this paragraph, the use shall be deemed to have commenced:
 - a. If no new construction or renovation of an existing building is required, when actual use for the purposes described in the permit commences; or
 - b. If new construction or renovation of an existing building is required before the use can commence, when a completed application for a building permit, all required construction drawings, and the applicable permit fees have been delivered to the City Building Inspections Department;
- (2) Failure to Commence Actual Use Within Two Years of New Construction or Renovation: If new construction or renovation of an existing building is required before the use can commence, upon a finding by the City Manager that actual use of the property has not commenced within two (2) years after the effective date of the Conditional Use Permit or the date set forth in the permit, whichever is applicable;
- (3) Cessation of Use Not Related to Destruction of Property: After commencement of the actual use of the property for the purpose set forth in the permit, upon a finding by the City Manager that actual use of the property for the purpose for which the Conditional Use Permit was approved:
 - a. Has not occurred for a period of 180 consecutive days after the commencement of the actual use for which the Conditional Use Permit was approved; and
 - b. That the conditional use ceased for reasons other than destruction of buildings due to fire, flood, or windstorm;
- (4) Cessation of Use Related to Destruction of Property: After commencement of the actual use of the property for the purpose set forth in the permit, upon a finding by the City Manager that actual use of the property for the purpose for which the Conditional Use Permit was approved has not occurred for a period of two consecutive years after the date of destruction by fire, flood, or windstorm of the buildings in which the use was occurring;

Upon a finding of the City Manager that the use of the property has not been or is not in compliance with the provisions of the permit, the City Manager shall send written notice that the permit will be terminated fifteen (15) days from the date of the receipt of the notice, said notice to be sent by certified mail, return receipt requested to the owner of the property at the last known address indicated on the property rolls of the Erath County Appraisal District, a copy of which notice shall also be placed on the property. Said notification shall contain a summary of the findings by the City Manager citing the provisions of the permit or City Code which have been violated.

20.3. D Appeals.

- (1) Appeal of Termination for Non-Compliance: The owner of the property may file a written appeal of the City Manager's decision with the City Council by delivering to the City Secretary a summary of the property owner's basis for appeal not later than ten (10) calendar days from receipt of the City Manager's notice. The appeal shall be heard at the next regular City Council meeting which occurs on or after the tenth calendar day following the receipt of the notice of appeal. The appeal to the City Council shall be conducted in accordance with procedures adopted by the City Council.

On appeal, the City Council may:
 - a. Uphold the decision of the City Manager and terminate the permit;
 - b. Uphold the decision of the City Manager, but grant additional time for compliance, after which date the permit shall terminate if the City Council determines that compliance has not been achieved during the additional time; or
 - c. Overrule the decision of the City Manager. The decision of the City Council shall be final.
- (2) Failure to File an Appeal: If the owner of the property fails to file an appeal as set forth in Section 1, above, on the fifteenth day following delivery of written notice to the owner of the property for which a Conditional Use

Permit is issued that the City Manager has determined that violates the provisions of the permit, the conditional use permit will be terminated.

(Ord. No. 2018-O-28 , 8-7-2018)

ALTERNATIVES

- 1) Accept the recommendation from the Planning and Zoning Commission and approve the Conditional Use Permit request.
- 2) Over-rule the recommendation of the Planning and Zoning Commission and deny the Conditional Use Permit request.