

AGENDA ITEM SUMMARY

November 20, 2018

City Council

STAFF

Ted Shepard, Chief Planner
Brad Yatabe, Legal

SUBJECT

Second Reading of Ordinance No. 132, 2018, Deciding Whether to Approve the Addition of a Permitted Use for 200 East Swallow to Allow Professional Office as a Use, APU 180001.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on November 6, 2018, recommends that the Planning and Zoning Board to approve, with conditions, the request for an Addition of Permitted Use (APU) for a Professional Office at 200 East Swallow Road, located in the Low Density Residential (R-L) zone district, and being made in conjunction with Minor Amendment MA180050. The APU would allow 100% of the house to be used for a professional office versus 50% which is allowed under the Home Occupation License. Approval of this item as part of the consent agenda represents approval of the requested APU pursuant by ordinance. If this item is pulled from the consent agenda and Council votes to deny the APU, staff will present an ordinance to deny the APU at the next regular Council meeting.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

ATTACHMENTS

1. First Reading Agenda Item Summary, November 6, 2018 (w/o attachments) (PDF)
2. Memo Regarding APU Process (PDF)
3. Ordinance No. 132, 2018 (PDF)

AGENDA ITEM SUMMARY

City Council

November 6, 2018

STAFF

Ted Shepard, Chief Planner
Brad Yatabe, Legal

SUBJECT

Public Hearing and First Reading of Ordinance No. 132, 2018, Deciding Whether to Approve the Addition of a Permitted Use for 200 East Swallow to Allow Professional Office as a Use, APU 180001.

EXECUTIVE SUMMARY

The purpose of this item is to consider the recommendation of the Planning and Zoning Board to approve, with conditions, the request for an Addition of Permitted Use (APU) for a Professional Office at 200 East Swallow Road, located in the Low Density Residential (R-L) zone district, and being made in conjunction with Minor Amendment MA180050. The APU would allow 100% of the house to be used for a professional office versus 50% which is allowed under the Home Occupation License. Approval of this item as part of the consent agenda represents approval of the requested APU pursuant by ordinance. If this item is pulled from the consent agenda and Council votes to deny the APU, staff will present an ordinance to deny the APU at the next regular Council meeting.

STAFF RECOMMENDATION

Staff recommends approval of the 200 East Swallow Road Professional Office Addition of Permitted Use, subject to six conditions.

BACKGROUND / DISCUSSION

This is a request to allow a Professional Office as a legal land use within the existing house at 200 East Swallow Road. The request is to use 100% of the house for a Professional Office versus the 50% which is allowed under the Home Occupation License. Professional Office is defined as: "an office for professionals such as physicians, dentists, lawyers, architects, engineers, artists, musicians, designers, teachers, accountants or others who through training are qualified to perform services of a professional nature and where no storage or sale of merchandise exists." The house is 2,782 square feet and located on a lot that is 9,821 square feet and part of Thunderbird Estates.

As an Addition of Permitted Use, the underlying zoning would remain Low Density Residential (R-L) but only Professional Office would be added as an allowable land use, and no other uses, over and above the permitted uses in the R-L. Currently, 50% of the house is being used as a Home Occupation. The applicant has held the two required neighborhood information meetings.

Compliance with APU Criteria

In order to grant an APU, the proposal must meet a set of criteria outlined in Section 1.3.4(C)(1) of the Land Use Code. The project complies with these criteria as follows:

A. Section 1.3.4(C)(1)(a) - Such use is appropriate in the zone district to which it is added.

It is important to emphasize that while Professional Office is not a permitted primary use in the R-L, it is a specifically permitted use subject to the restrictions pertaining to Home Occupations per Section 3.8.3 of the Land Use Code.

Since Professional Office is an allowable use as a Home Occupation, it is informative to compare and contrast the relative similarities and differences between a Professional Office allowed as a Home Occupation and that which would be allowed as an Addition of a Permitted Use.

Section 3.8.3 of the Land Use Code states:

“A home occupation shall be allowed as a permitted accessory use, provided that all of the following conditions are met:”

(1) Such use shall be conducted entirely within a dwelling and carried on by the inhabitants of the dwelling with not more than one (1) additional employee or co-worker. The hours of operation during which clients, customers, employees or co-workers are allowed to come to the home in connection with the business activity are limited to between 8:00 a.m. and 6:00 p.m. Monday through Saturday.

The APU would be comparable in that the use would be conducted entirely within the dwelling. But, in contrast, the APU would be allowed to be conducted by non-inhabitants of the dwelling with more than one additional employee.

The APU would be comparable, based on the recommended condition of approval, to match the limitation on the allowable days and hours of operation.

(2) Such use shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not change the character thereof.

The APU, by definition, would be in contrast in that the Professional Office would be the primary use. But, in comparison, the APU would not change the overall residential character of the dwelling primarily due to the prohibition on structural additions.

(3) The total area used for such purposes shall not exceed one-half (½) the floor area of the user's dwelling unit.

The APU, in contrast, would occupy 100% of the floor area of the dwelling.

(4) There shall be no exterior advertising other than identification of the home occupation.

The APU, would be comparable, based on the recommended condition of approval, to match the maximum signage as allowed for a Home Occupation.

(5) There shall be only incidental sale of stocks, supplies or products conducted on the premises.

The APU, would be comparable, based on the recommended condition of approval, to be similarly restricted with regard to sales being incidental only.

(6) There shall be no exterior storage on the premises of material or equipment used as a part of the home occupation.

The APU, would be comparable, based on the recommended condition of approval, to be similarly restricted with regard to exterior storage of material or equipment.

(7) There shall be no offensive noise, vibration, smoke, dust, odors, heat or glare noticeable at or beyond the property line.

The APU, would be comparable, based on the requirement to comply with Section 1.3.4(C)(1)(d).

(8) A home occupation shall provide additional off-street parking area adequate to accommodate all needs created by the home occupation.

The APU would be comparable since there are six off-street parking spaces in the driveway (not including the three-car garage).

(9) In particular, a home occupation may include, but is not limited to, the following, provided that all requirements contained herein are met: (a) art studio; (b) dressmaking or millinery work; (c) professional office; (d) office for insurance or real estate sales; (e) teaching;

The APU would comply since it is a request specifically for a Professional Office.

(10) A home occupation shall not be interpreted to include the following: (a) animal hospital; (b) long-term care facility; (c) restaurant; (d) bed & breakfast; (e) group home; (f) adult-oriented use; (g) vehicle repair, servicing, detailing or towing if vehicles are: 1. dispatched from the premises, or 2. are brought to the premises, or 3. are parked or stored on the premises or on an adjacent street. (h) medical marijuana businesses ("MMBs"), as defined in Section 15-452 of the City Code; (i) retail marijuana establishment as defined in Section 15-603 of the City Code; (j) short term primary rentals and short term non-primary rentals.

The APU would comply in that it would not allow for any of these non-permitted uses.

In summary, as can be seen by the compare and contrast analysis, and based on the recommended conditions of approval, the only areas of contrast between a Professional Office as a Home Occupation and as an Addition of Permitted Use are:

- The APU would be allowed to be conducted by non-inhabitants of the dwelling with more than one additional employee.
- The Professional Office would be the primary use.
- The APU would occupy 100% of the floor area of the dwelling.

In terms of the Professional Office being appropriate in the R-L zone, the property is a corner lot and is at the most southwest point of the neighborhood and across the street from the C-G zone to the west and southwest, and the M-M-N zone to the south. Being a corner lot, the west side of the property faces Remington Street. With the off-street parking spaces located along Remington Street, the block face along Swallow remains undisturbed. Any new traffic associated with a professional office, therefore, would be on the commercial-facing side of the property. The applicant has indicated there will be no structural additions to the house and the hours of operation will be limited to normal business hours. These restrictions will be documented as recommended conditions of approval.

The scale of the request is to increase the square footage of the non-residential aspect from 50% to 100% of the dwelling or from 1,391 square feet to 2,782 square feet. With the location being at the corner of two collector streets, and being one block from S. College Avenue, and one block from the Foothills Mall, a full-house conversion to professional office would continue to blend in with the neighborhood.

The applicant indicates that a variety of Home Occupations have been licensed at this address over the last 35 years. As noted, these include pet grooming for 25 years as well as massage therapy, internet

sales, and health care transportation services. City zoning records indicate these uses operated without complaint.

Staff concludes that a professional office, located within a 2,782 square foot existing house, at this location, would be compatible with the surrounding neighborhood and appropriate within the R-L zone, subject to the recommended conditions of approval. These conditions call for no structural additions and reflect the limitations associated with a Home Occupation and address the days and times of business activity, signage, incidental sales and exterior storage.

B. Section 1.3.4 (C)(1)(b) - Such use conforms to the basic characteristics of the zone district and the other permitted uses in the zone district to which it is added.

Per section 4.4(A) of the Land Use Code, the purpose of the R-L zone is, "...for predominately single-family residential areas located throughout the City which were existing at the time of adoption of this Code."

The R-L zone precedes the adoption of City Plan and the Land Use Code in 1997. It was held over as a zone district for existing neighborhoods for the primary purpose of being exempt from being rezoned into any of the new zones created under City Plan. As such, the R-L zone represents the status quo and is not envisioned to be rezoned to L-M-N, Low Density Mixed-Use Neighborhood or M-M-N, Medium Density Mixed-Use Neighborhood without the benefit of a major policy shift such as the adoption of a Subarea Plan or City Plan revision.

The request for an APU is specifically not a rezoning. For 200 E. Swallow, the underlying R-L zone will remain in place and, as proposed, only Professional Office would be allowed within the house. The basic characteristic of the R-L zone is an established neighborhood of existing single family detached homes. With the proposed APU, this basic characteristic does not change. In fact, the recommended conditions of approval would render the APU to be as close to complying with the Home Occupation standards as feasible. Further, the APU would also be conditioned to preclude any structural additions. Staff concludes, therefore, that the APU conforms to the basic characteristics of the R-L zone.

C. Section 1.3.4(C)(1)(c) - The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.

The proposed use, confined to the inside of the existing house, performs in such a way as to preserve the residential character of the property. The parking would continue to be located along the side of the property, facing the C-G zone, thus preserving the character of the block face along E. Swallow Road. All existing, mature landscaping would remain. Since an office use is conducted entirely indoors, there would be no outside impacts associated with the proposed conversion. Staff concludes, therefore, that the location, size and design of the Professional Office would be compatible with and have minimal negative impact on the use of nearby properties.

D. Section 1.3.4(C)(1)(d) - Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the zone district to which it is added

Other permitted uses in the R-L include:

- Places of worship or assembly;
- Group Homes;
- Public and private schools for elementary, intermediate and high school education; and
- Child care centers.

Professional Offices do not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the R-L zone district.

E. Section 1.3.4(C)(1)(e) - Such use will not change the predominant character of the surrounding area

As mentioned, the predominant character of the surrounding area is that of an established, residential neighborhood to the north and east but commercial to the west and a mix of residential and a shopping mall to the south.

In the general area, there are a number of residential structures that have been partially or fully converted to non-residential land uses that could be viewed as comparable to the APU request for 200 E. Swallow Road:

Address	Use
2224 S. College	Tailor/Alterations
2212 S. College	Natural Path Healing
2200 S. College	Chiropractor
2504 S. College	Salon
2536 S. College	Salon
116 E. Drake	Cleaning Service
123 E. Drake	Dog Grooming and Salon
121 E. Swallow	Mixed-Use (commercial and residential above)
200 E. Swallow	Heart and Soul Paratransit
3100 S. Remington	Hearing Clinic
217 E. Swallow	Poudre School District - Life Skills Training School
301 E. Swallow	Tailor/Alterations
601 E. Swallow	Spinal and Fitness Clinic

As can be seen, the area includes a variety of existing businesses that operate out of residential structures. Adding Professional Office to 200 E. Swallow Road will not change the predominant character of the area. Staff concludes, therefore, that a Professional Office at 200 E. Swallow Road would not change the predominant character of the surrounding area.

F. Section 1.3.4(C)(1)(f) - Such use is compatible with the other listed permitted uses in the zone district to which it is added

As can be seen by the examples listed on the previous section, a professional office in an established R-L neighborhood is compatible with the residential character but only if the office is contained within a residential structure such as 200 E. Swallow Road and conditioned to comply with the Home Occupation standards to the extent reasonably feasible. Staff concludes, therefore, that a Professional Office at 200 E. Swallow Road would be compatible with the other listed permitted uses in the R-L zone.

G. Section 1.3.4(C)(1)(g) - Such use, if located within or adjacent to an existing residential neighborhood, shall be subject to two (2) neighborhood meetings, unless the Director determines, from information derived from the conceptual review process, that the development proposal would not have any significant neighborhood impacts. The first neighborhood meeting must take place prior to the submittal of an application. The second neighborhood meeting must take place after the submittal of an application and after the application has completed the first round of staff review

Staff conducted two neighborhood meetings for this proposal. The first neighborhood meeting occurred

on June 20, 2018 prior to submittal of a development application. Staff convened a second neighborhood meeting on August 9, 2018, after the first round of staff review.

H. Section 1.3.4(C)(1)(h) - Such use is not a medical marijuana business as defined in Section 15-452 of the City Code or a retail marijuana establishment as defined in Section 15-603 of the City Code

The proposed use a Professional Office, not a medical marijuana business.

CITY FINANCIAL IMPACTS

There no City financial impacts associated with this request.

BOARD / COMMISSION RECOMMENDATION

On September 20, 2018, the Planning and Zoning Board voted 7-0 to recommend that Council approve, with six conditions, the request for 200 E. Swallow Road Professional Office APU. Staff recommends approval with five conditions as follows:

- A. The APU is conditioned on City Council approving the request per Section 1.3.4(G) of the Land Use Code.
- B. The APU is conditioned such that there must not be any structural additions to the house.
- C. The APU is conditioned such that the business activity is limited to between 8:00 a.m. and 6:00 p.m. Monday through Saturday.
- D. The APU is conditioned such that the maximum signage is equal to that allowed for a Home Occupation.
- E. The APU is conditioned such that with regard to retail sales, there shall be only incidental sale of stocks, supplies or products in association with the Professional Office.
- F. The APU is conditioned such that there must be no exterior storage on the premises of material or equipment used as part of the Professional Office.

PUBLIC OUTREACH

Per Land Use Code Section 1.3.4(C)(1)(g), all projects subject to an APU in or adjacent to a residential neighborhood shall be subject to two neighborhood meetings. One of the meetings must be held before submittal of a formal development application with the City and one must be held after the first round of staff review. As noted, the applicant held the first neighborhood meeting on June 20, 2018 at Christ United Methodist Church. After this meeting, the applicant submitted their development application with the City on July 3, 2018. After the first round of review, the applicant held the second neighborhood meeting on August 9, 2018. A variety of concerns were raised but have been adequately addressed by the recommended conditions of approval.

ATTACHMENTS

- 1. Vicinity Map(PDF)
- 2. Aerial Map (PDF)
- 3. Applicant Narrative (PDF)
- 4. First Neighborhood Meeting Summary (PDF)
- 5. Second Neighborhood Meeting Summary (PDF)
- 6. Site Photos (PDF)

Planning, Development & Transportation Services

Community Development & Neighborhood Services
 281 North College Avenue
 P.O. Box 580
 Fort Collins, CO 80522.0580

970.416.2740
 970.224.6134- fax
 fcgov.com



MEMORANDUM

DATE: November 14, 2018

TO: Mayor Troxell and City Councilmembers

THRU: Darin Atteberry, City Manager
 Jeff Mihelich, Deputy City Manager
 Laurie Kadrich, Director of PDT

FROM: Ted Shepard, Chief Planner

RE: **Response to Councilmember Question – 200 E. Swallow Road,
 Request for Additional of Permitted Use, Ordinance No. 132, 2018**

The purpose of this memo is to follow up on a Councilmember question from Consent Calendar Follow-Up at the November 6, 2018 City Council hearing regarding the First Reading of Ordinance 132, 2018 titled:

"Public Hearing and First Reading of Ordinance No. 132, 2018, Deciding Whether to Approve the Addition of Permitted Use for 200 East Swallow to Allow Professional Office as a Use, APU 180001"

The question has to do with the extent of public outreach associated with a request for an Addition of Permitted Use (APU) for a Professional Office particularly for requests in the eight residential zone districts where City Council is the final authority.

In response, please note the following:

- Property was posted with a "Development Under Review" sign on June 6, 2018 and will remain posted until after Second Reading November 20, 2018. This sign is highly visible from both E. Swallow Road and Remington Street;
- First neighborhood meeting – June 20, 2018 – prior to submittal:
 - Letters mailed to 187 property owners two weeks prior to meeting
 - Notice posted on website and weekly email newsletter, "This Week in Development Review" (965 subscribers);

- Second neighborhood meeting – August 9, 2018 – after one round of City review:
 - Letters mailed to 187 property owners two weeks prior to meeting
 - Notice posted on website and weekly email newsletter, “This Week in Development Review;”

- Planning and Zoning Board hearing – September 20, 2018:
 - Letters mailed to 187 property owners two weeks prior to hearing
 - Published notice in the *Coloradoan* newspaper two weeks prior to hearing
 - Notice posted on website and weekly email newsletter, “This Week in Development Review;”

- Post Planning and Zoning Board hearing – the action of the P & Z Board was posted on the website and weekly email newsletter, “This week in Development Review;”

- Prior to the City Council meeting of November 6, 2018, the pending action by City Council was posted on the website and the weekly email newsletter “This Week in Development Review;”

- City Council First Reading – November 6, 2018:
 - Letters mailed to 187 property owners two weeks prior to hearing
 - Published notice in the *Coloradoan* newspaper two weeks prior to hearing.

The mailing notification area extended no less than 800 feet from the entire perimeter boundary of the subject property, excluding streets, and included most of Thunderbird Estates neighborhood.

Please note that for APU's that are located within or adjacent to an existing residential neighborhood, two neighborhood information meetings are required versus one for all other projects reviewed by the Planning and Zoning Board.

The request proved to be non-controversial. There was no opposition at the Planning and Zoning Board hearing which resulted in the item being placed on the City Council Consent Calendar.

Regarding requests in the eight residential zone districts where City Council is the final authority, as noted above, the Council hearing on First Reading on November 6, 2018 was preceded by the property being continually posted with a yellow sign, a fourth mailing to the 187 surrounding property owners and one additional published notice in the newspaper.

ORDINANCE NO. 132, 2018
OF THE COUNCIL OF THE CITY OF FORT COLLINS,
APPROVING THE ADDITION OF A PERMITTED
USE FOR 200 EAST SWALLOW TO ALLOW
PROFESSIONAL OFFICE AS A USE, APU 180001

WHEREAS, Addition of Permitted Use 180001 (“APU180001”) proposes the addition of professional office as an allowed use for the parcel located at 200 E Swallow Road, parcel number 9725225019, (the “Property”) located in the Low Density Residential zone district (“R-L zone”); and

WHEREAS, professional office is not a permitted use in the R-L zone; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(g), and in satisfaction of such requirement, two neighborhood meetings were held regarding the APU with the first meeting held prior to the submittal of the development application on June 20, 2018, and the second meeting held after submittal of the development application and completion of the first round of staff review on August 9, 2018; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(1)(h), and in satisfaction of such requirement, the proposed use is not a medical marijuana business as defined in City Code Section 15-452 or a retail marijuana establishment as defined in City Code Section 15-603; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3)(c), and in satisfaction of such requirement, professional office is not specifically listed as a prohibited use in the R-L zone; and

WHEREAS, pursuant to LUC Section 1.3.4(C)(3), the Planning and Zoning Board (“P&Z”) shall make a recommendation to Council regarding the APU and at its September 20, 2018, regular meeting, P&Z held a hearing on the APU and recommended to Council by a vote of 7 to 0 that Council approve the APU with conditions as further described below; and

WHEREAS, LUC Section 1.3.4(C)(3) sets forth the criteria, as further described below, that must be satisfied for Council to approve the APU.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That the Council, after considering the P&Z recommendation, hereby approves the requested APU to add professional office as a use specifically limited to the Parcel located in the R-L zone.

Section 3. That the Council imposes the following condition or conditions of approval:

- (1) No structural additions may be made to the existing house on the Property.
- (2) Business activity on the Property is limited to between the hours of 8:00 a.m. and 6:00 p.m., Monday through Saturday.
- (3) The maximum signage allowed on the Property is limited to that allowed for a Home Occupation.
- (4) Retail sales on the Property shall be limited to the incidental sale of stocks, supplies, or products in association with the professional office.
- (5) No exterior storage of material or equipment associated with the professional office shall be allowed on the Property

Section 4. That the Council, based on the evidence and information provided to the Council in this matter makes the following findings of fact and conclusions of law:

(1) The APU, when subject to the conditions set forth above, satisfies the criteria set forth in LUC Section 1.3.4(C)(1) as follows:

- (a) Such use is appropriate in the R-L zone.
- (b) Such use conforms to the basic characteristics of the R-L zone and the other permitted uses in the R-L zone.
- (c) The location, size and design of such use is compatible with and has minimal negative impact on the use of nearby properties.
- (d) Such use does not create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences or any more traffic hazards, traffic generation or attraction, adverse environmental impacts, adverse impacts on public or quasi-public facilities, utilities or services, adverse effect on public health, safety, morals or aesthetics, or other adverse impacts of development, than the amount normally resulting from the other permitted uses listed in the R-L zone.
- (e) Such use will not change the predominant character of the surrounding area.
- (f) Such use is compatible with the other listed permitted uses in the R-L zone.
- (g) The LUC requirement for two neighborhood meetings regarding the APU was fulfilled with the first meeting held prior to the submittal of the development application on June 20, 2018, and the second meeting held after submittal of the development application and completion of the first round of staff review on August 9, 2018.

- (h) Such use is not a medical marijuana business as defined in City Code Section 15-452 or a retail marijuana establishment as defined in City Code Section 15-603.
- (2) The APU is not detrimental to the public good;
- (3) The APU complies with the applicable requirements and criteria contained in LUC Section 3.5.1; and
- (4) The APU is not specifically listed as a "prohibited use" in the R-L zone.

Section 5. Unless otherwise specified as a condition of approval of the APU, any changes to the use or to its location, size, and design, in a manner that changes the predominant character of or increases the negative impact upon the surrounding area, will require the approval of a new addition of permitted use under the LUC.

Introduced, considered favorably on first reading, and ordered published this 6th day of November, A.D. 2018, and to be presented for final passage on the 20th day of November, A.D. 2018.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 20th day of November, A.D. 2018.

Mayor

ATTEST:

City Clerk