



TOWNSHIP OF WEST ORANGE

66 MAIN STREET, WEST ORANGE, N.J. 07052

Department of Planning and Development

SUSAN McCARTNEY
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TO: Zoning Board Members

FROM: Paul Grygiel, AICP, PP, Township Planner

DATE: January 3, 2023

RE: **ZB-23-12/Washington**
Block: 41.01; Lot: 123; Zone: R-6
4 Harvard Terrace
Application for use variance to permit home occupation in an accessory building

INTRODUCTION/LAND USE

The applicants are proposing to operate a child day care center and early learning center in an accessory building on their property. As a home occupation is a permitted accessory use in "a legal owner-occupied one-family residence," but not in an accessory building, a use variance is required.

The subject property is located on the east side of Harvard Terrace near its intersection with Orange Heights Avenue. The lot is developed with a single-family home, with two accessory buildings located in the rear yard. Photos of the subject property are attached.

The subject property is located in an area primarily developed with single-family residences.

SUBMISSIONS

<u>ITEM</u>	<u>SIGNED BY</u>	<u>DATE/REVISION</u>
Application form and attachments	Aja Washington	9/30/23



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Property survey
Professional planning report

David J. Von Steenburg
George Wheatle Williams
and Steven Martini

10/31/22
12/6/23

VARIANCES REQUIRED

<i>“d(1)” Variance</i>		
SECTION/REQUIREMENT	PERMITTED /REQUIRED	PROPOSED
25-9.9 Home Occupations	Permitted in an owner-occupied one family residence	Proposed in an accessory building

DISCUSSION/RECOMMENDATIONS

The subject property is located in the R-6 zone, which permits one-family detached dwellings and other uses as principal uses. (The application form incorrectly lists the property as being located in the R-1 zone. Its correct zoning designation is R-6.) This and the Township’s other residential zones permit a “home occupation” as a permitted accessory use, which is subject to additional standards.

The Land Use Regulations Ordinance’s definition for this use in Section 25-4 is as follows:

HOME OCCUPATION shall mean any lawful activity not otherwise prohibited by this chapter performed in a legal owner-occupied one-family residence, including without limitation, consulting, telemarketing, dressmaking, manicuring, craft making or drafting. Home cooking for commercial purposes is not permitted.

The supplemental provisions applicable to this use are as follows:

§ 25-9.9 Home Occupations.

No home occupation may be conducted in a legal owner-occupied one family residence unless the following conditions are met:

- a. A simplified site plan indicating the location of the use on the premises within the principal structure and written description of the occupation to be conducted shall be submitted to the Building Department and Zoning Official. A Certificate of Continued Occupancy, Certificate of Occupancy, or Certificate of Habitability shall be required for home occupations.
- b. The proposed activity shall comply with the following:



1. Only one such activity shall be permitted on the premises within the principal structure; and such use must not be incompatible with or disturb the adjacent residential neighborhood.
 2. The activity shall be conducted solely by a person or persons, and members of his/her immediate family, all of whom shall be residing fulltime and permanently on the premises, and by no other person or persons living off the premises.
 3. Not more than 12.5% or 1/8 of the floor area of the principal structure shall be used for such activity.
 4. No display or advertising of products or services shall be visible from outside of the principal structure in which the activity takes place.
 5. No outside storage any way related to the activity shall be visible from outside of the principal structure in which the activity takes place.
 6. No pick-up or delivery of materials to or from the premises in which the activity takes place shall be made, except by private passenger vehicle, licensed package delivery service, or US Postal Service.
 7. The activity, including deliveries as described in Subsection 6, shall be conducted only between the hours of 8:00 a.m. and 8:00 p.m.
 8. The activity shall not give rise of the need for on-street parking which shall interfere with the residential parking on the street adjacent to the principal structure in which the activity is permitted.
- c. The following activities related to home occupations are prohibited:
1. Any activity which creates noise, smells or sights, which are ascertainable outside of the principal structure in which the activity takes place;
 2. Any activity which causes interference with electrical or electronic equipment off the premises in which the activity takes place;
 3. A retail or wholesale salesroom(s) or showroom(s);
 4. Any activity which involves the use or storage of hazardous materials as defined by law.

The applicant should provide testimony regarding the specifics of the proposed use to determine compliance with the above standards and any other relevant requirements. At a minimum, information should be provided regarding the number and age of children proposed to attend the facility, the size and layout of the accessory building, and what State or other licensing requirements need to be met for this use.



The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70d(1) enables a board of adjustment to grant a variance to permit “a use or principal structure in a district restricted against such use or principal structure.” An applicant for a “d” variance must comply with the requirements of the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70d. A “d” variance may be granted only “in particular cases for special reasons,” which for a “d(1)” variance generally relates to the particular suitability of a site to accommodate the proposed use.

For the requested variance, the applicant must also address the “negative criteria,” and affirmatively demonstrate that the variances can be granted “without substantial detriment to the public good” and “without substantial impairment to the intent and purpose of the zone plan and zoning ordinance” of the municipality.

The applicant has provided a planning report outlining how its authors believe the above criteria are met. The planning report states the proposed use is currently operating in the basement of the dwelling on the subject property.

It is noted that the planning report incorrectly lists “retail store” as a permitted principal use in the R-6 zone and erroneously indicates the subject property is located on the east side of Eagle Rock Avenue.





Location of accessory structure (viewed from Orange Heights Avenue to north)