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**DATE:** May 3, 2023

**TO:** Planning Commission Chair and Commissioners

**FROM:** Jessica Jagoe, Community Development Director

**SUBJECT: Planning Case #22-025 – Public Hearing Required**  
**Applicant:** Kerri Seemann  
**Property Address:** 1947 County Road D West  
**Request:** Zoning Code Amendment and Conditional Use Permit

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**Requested Action**

Kerri Seemann (“Applicant”) has submitted an application for a Conditional Use Permit to allow a Class II Accessory Home Occupation at 1947 County Road D West (“Subject Property”). The Applicant is proposing to operate a landscaping nursery as an accessory home occupation on the Subject Property. A home occupation is allowed in residential zoning districts, but a Conditional Use Permit is required as a Class II Accessory Home Occupation when there is an employee not residing in the residence or the delivery of products. A zoning code amendment to Chapter 13 – Zoning Code of Arden Hills City Code is required for this application to strike language that conditions a home occupation to be conducted entirely within the dwelling and that there shall be no exterior evidence of the home occupation. The Applicant is proposing ordinance language be added to allow for a home occupation to be conducted either within a detached accessory structure or exterior of a building.

**Background**

**1. Existing Site Conditions:**

1947 County Road D West (“Subject Property”) is zoned R-2, Single & Two Family Residential District, and is designated for Low Density Residential Uses in the 2040 Comprehensive Land Use Plan. The Subject Property is developed with a single-family residential dwelling and detached garage as well as a second detached accessory shed. All surrounding parcels are also zoned R-2, Single & Two Family Residential District, and designated for Low Density Residential Uses in the 2040 Comprehensive Land Use Plan.

## 2. Site Data

<b>2040 Future Land Use Plan:</b>	LDR – Low Density Residential
<b>Existing Land Use:</b>	Single Family Dwelling and Accessory Detached Structures
<b>Zoning:</b>	R-2 Single and Two Family Residential District
<b>Lot Size:</b>	0.45 acres

*Aerial of Subject Property*



### **Proposed Use:**

The Applicant submitted a Conditional Use Permit application to allow a Class II Accessory Home Occupation on the Subject Property for the operation of a landscaping nursery. The company's business activities would specialize in the growing of native plants from germination to retail sales. All retail sales of plants will be conducted online. By appointment only, customers will pick up their merchandise that will be stored outside adjacent to the house. The Applicant indicates this may be up to one customer per day. Generally, the Applicant would be the only employee, but occasionally during the spring/summer season, it is proposed that the

accessory home occupation would have one employee that does not reside in the residence to assist in the business activity. The Applicant has stated that off-street parking of two to three vehicles can be accommodated on the existing driveway. Additionally, there would be the occasional delivery anticipated to be up to three per year that is attributed to the home occupation. No advertisement shall be placed on the property.

At its January 17, 2023 meeting, the City Council considered a request for a Concept Plan Review for the proposed home occupation and text amendment. At this meeting, there was a Council consensus on a home occupation being an opportunity for residents to start a small scale business. The Council expressed a willingness to consider text amendment language that may remove certain barriers. There were general comments during the meeting that CUP's running with the property as well as what other types of home occupations may result from an ordinance amendment or with an approved CUP how does that pertain to subsequent owner(s).

### **Approvals:**

#### **1. Conditional Use Permit**

A Conditional Use Permit is required for Class II Accessory Home Occupations. A home occupation is allowed in residential zoning districts as an accessory use, but it becomes a Class II Home Occupation when there is an employee that does not reside in the residence and/or the delivery of products associated with the business activity. City Code Section 1355.04 Subd. 3 of the Arden Hills Zoning Code lists the criteria for evaluating a Conditional Use Permit. The Planning Commission and City Council should consider the effect of the proposed use upon the health, safety, convenience and general welfare of the owners and occupants of the surrounding land and the community, in general, including but not limited to the following factors:

1. Existing and anticipated traffic and parking conditions;
2. Noise, glare, odors, vibration, smoke, dust, air pollution, heat, liquid or solid waste, and other nuisance characteristics;
3. Drainage;
4. Population density;
5. Visual and land use compatibility with uses and structures on surrounding land;
6. Adjoining land values;
7. Park dedications where applicable;
8. Orderly development of the neighborhood and the City within the general purpose and intent of the Zoning Code and the Comprehensive Development Plan for the City.

Under state law, a conditional use is a use that is generally allowed in a designated district upon the applicant demonstrating that the standards and criteria stated in the ordinance will be satisfied. Conversely, if the applicant is unable to show that the ordinance standards are met, the application can be denied, but because the use is listed as permitted, the City's discretion is more limited in these matters than in a comprehensive plan or rezoning application.

### **Plan Evaluation**

#### **1. Chapter 13, Zoning Code Review**

*Section 1325 – General Regulations, 1325.02 Accessory Uses, Subd. 3 Home Occupations*

A. Home occupations are allowed as either accessory uses or conditional uses depending on the characteristics of the operation. All home occupations shall comply with the following conditions:

1. *It shall not result in traffic, parking, noise, light, fumes and odors to such an extent that it is noticeable that the property is being used for non-residential purposes.*

**The Applicant has indicated the proposed home occupation will not result in increased traffic or a need for additional parking. Any retail sales are stated to be conducted online and customers would pick up their plants by appointment only. The Applicant states that the existing driveway will provide enough space for customers to park when selecting and picking up plants. There is space in the driveway for two – three cars to park, and the Applicant expects no more than one patron per day. This activity started as a hobby for personal purposes and has grown to the proposed home occupation as a result of customers asking her to sell the native plants. It is not anticipated that the proposed business will produce any noise, light, fumes, or odors to the extent that it is noticeable that the property is being used for commercial purposes.**

2. *It shall be conducted entirely within the dwelling.*

**The proposed home occupation does not comply with this condition and is part of the text amendment request included as part of this application. Due to the nature of the business as a native plant supplier, most business-related activities will take place outside where the plants are to be grown. The plants would be grown on up to 15 – ten-foot wooden benches with molded plastic bench tops that would be arranged in the rear yard depending on sun/shade needs. There would be about 20 square feet of the detached garage used to store growing supplies as well as a 20 square foot area adjacent to the dwelling/garage that would be for order assembly and customer pickup.**

**According to the Applicant, the amount of space to be used inside the home is limited to computer use—approximately 1% of the total floor area. The Applicant has noted that she already discussed the addition of garden areas with neighboring property owners to the north and west, as they will be most impacted by the changes. According to the Applicant, both neighbors expressed support.**

3. *There is no exterior evidence of the home occupation.*

**The proposed home occupation does not comply with this condition and is part of the text amendment request included as part of this application. Since the business involves growing plants, the business activity would be conducted not within the dwelling, but primarily in the yard with some storage of supplies in the garage. Although the Applicant is already growing many plants for personal use and the current garden is already noticeable from the street, the Applicant is proposing to grow more. The Applicant intends to add wooden benches with molded plastic bench tops, to get the plants off the ground, approximately at knee-height. These would go in parts of the yard that are close to water access and where they would cause the least damage to**

existing lawn and flower beds. The Applicant is not proposing any external advertising on the property noting that there is a business being operated on the property. Photos of the exterior dwelling are included as an attachment.

4. *It does not require any special entrances to the dwelling.*

**The proposed home occupation will not require any additional entrances to the dwelling. No structural changes to the property will be required.**

B. Class II Conditional Accessory Home Occupations. Home occupations may be allowed by Conditional Use Permit as regulated in Section 1355.04 Subd 3.C.1 if they meet the conditions stipulated above for all Home Occupations and the following conditions:

1. *The primary business activity shall be conducted by an occupant of the residence;*  
**The Applicant is an owner and taxpayer of the Subject Property and the owner of the proposed home occupation—Prior Plants.**
2. *One person not residing in the residence may be employed to assist in the business activity;*  
**The company is a small scale operation and currently does not employ any persons not residing in the residence. The Applicant states in her narrative that there is a possibility that a maximum of one other employee, not residing in the residence, would be needed during the spring/summer (busy season). Therefore, planning staff has included this as part of the CUP request for the proposed Class II Home Occupation.**
3. *It does not occupy more than thirty-three (33) percent of the floor area of the dwelling;*  
**Activities related to the proposed home occupation will primarily take place in the rear and side yards of the Subject Property. The Applicant notes the space used within the home for business-related purposes will be limited to computer use. The Applicant expects to use the computer for ordering and communication. The Applicant will use nearby desk space for record keeping and short term seed storage. The total floor area of the home is 1,321 square feet. The Applicant proposes using 13 square feet (1% of floor area) for business purposes.**
4. *It has a limited number of patrons visiting the premises;*  
**The Applicant has stated that business will be conducted on an appointment-only basis. Using this method, the Applicant expects to limit the number of patrons visiting the proposed home occupation to no more than one patron per day.**
5. *Off-street parking for no more than two (2) additional vehicles other than those required by the occupants shall be permitted. On-street parking shall not be used to satisfy required parking; and,*  
**The proposed home occupation will not result in the need for any off-street parking. The Applicant states that the business would not result in traffic that is inconsistent with a residential neighborhood due to the limited number of patrons. Business sales would take place online and orders would be picked up by appointment only. The existing driveway can accommodate two - three parked vehicles, and the Applicant expects no more than one patron per day.**

6. *It requires delivery of products to the premises no more than once per day.*  
**The proposed home occupation is a small-scale business. The Applicant expects only three deliveries per year by FedEx or UPS. The deliveries will include cases of pots, packs of seeds, and other gardening-related items.**

C. Class II Conditional Accessory Home Occupations. Applications for a Class II Home Occupation as stipulated by Section 1355.04 Subd 3.C.2 shall be accompanied by the following information:

1. A photograph of the residence. ***Included in submission***
2. A floor plan indicating the floor area to be used by the home occupation along with a tabulation of the total floor area and the floor area to be used for the home occupation.  
***Included in submission***
3. A statement describing the home occupation and the compliance with the required conditions. ***Included in submission***
4. A copy of the state or county license or permit if such a license or permit is required by the state or county for the proposed home occupation. ***The proposed business does not require a state or county license or permit. This requirement is not applicable.***

## **2. Sign Code – Chapter 12**

This approval does not include signs. Staff recommends adding a condition that prohibits signage as part of the approval.

### **Zoning Code Text Amendments**

According to the Applicant, the proposed ordinance amendments will remove obstacles to some home occupations/businesses that cannot easily be conducted within the dwelling, such as woodworking, ceramics, or market gardening. Her narrative provided an example of restrictive language for the Planning Commission to consider that would establish certain prohibited uses to reduce the risk of potential problems that could arise with allowing business activity outside of the home.

Currently, the city code requires all home occupations to be conducted entirely within the dwelling and have no exterior evidence of the home occupation. In a review of home occupations ordinances for several adjacent communities, staff found there were a handful that allowed the business activity to be conducted in a detached accessory building, but found no examples that allowed for exterior evidence. Staff has prepared text amendments based on the Applicant's narrative as well as a few other text amendment considerations for Section 1325.02, Subd. 3 - Home Occupations.

#### **Applicant's Narrative:**

- 1) Amend Section 1325.02, Subd. 3. A to read:
  - Class I Home Occupations shall be conducted entirely within the dwelling.
    - Administrative Approval

- Class II Home Occupations may be conducted within a detached accessory structure or exterior of a building.
  - Conditional Use Permit
- 2) Amend Section 1325.02, Subd. 3.C, Class II Home Occupation to read:
  - It does not occupy more than 33% of the floor area of the dwelling or accessory building.
- 3) Amend Section 1325.02, Subd. 3.A to move Item #3 “There is no exterior evidence of the home occupation.” specific to Class I Home Occupations.
- 4) Amend Section 1325.02, Subd. 3.C to add “The home occupation and the conduct thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment, and value of other residential property in the neighborhood.”

Additional Code Amendments to consider:

- 1) Amend Section 1325.02, Home Occupations
  - a. Add language under Class II Home Occupations to define parameters to the percentage of outdoor activity allowed, location (i.e. rear yard only, screened from roadway, adjacent to dwelling, etc.), or requirements for screening.

*Draft optional language for Planning Commission consideration:*

- The accessory home occupation includes a supplemental exterior display or storage of products and/or materials area that will be located behind the front building line of the dwelling and does not exceed a total of 1,500 square feet.
  - A screening plan is required for a Class II Accessory Home Occupation that includes an exterior display area or storage of products and/or materials. Acceptable forms of screening are a six (6) foot tall solid wood, composite, or vinyl fence or vegetation that shall consist of plantings that shall provide for a year round screening and installed at a minimum of six (6) feet tall. Screening shall be installed around the perimeter of the home occupation display/storage area or encompasses a portion of the property to achieve adequate screening. Fencing shall be subject to the regulations in Section 1325.05, Subd. 4.D.
  - The area exterior of the dwelling or detached accessory building identified on the approved CUP site plan may not be utilized for outdoor sales of products.
- b. Create 1325.02, Subd. C.3 that adds language to specify the types of home occupations strictly prohibited.

*Draft optional language for Planning Commission consideration:*

D. Prohibited Uses. The following Accessory Home Occupations are prohibited without limitation: motor vehicle service, recreational vehicle service, small engine repair, or manufacturing.

**Additional Review**

N/A

### **Suggested Findings of Fact**

Staff offers the following findings of fact for consideration:

1. The Subject Property located at 1947 County Road D is zoned R-2, Single and Two Family Residential District and is designated for Low Density Residential uses on the 2040 Comprehensive Plan.
2. A home occupation is allowed in residential zoning districts, but a Conditional Use Permit is required when there is an employee that does not reside in the residence and/or the delivery of products.
3. The Applicant is the sole owner and operator of Prior Plants, a business related to growing Minnesota native plants.
4. All company retail activity is conducted exclusively online.
5. By appointment only, customers will be visiting the Subject Property to pick-up their orders from a designated area as shown on the site plan submitted by the Applicant.
6. The company may have one employee that does not reside in the residence assist in the business activity.
7. The company requires the occasional delivery of items attributed to the business activity.
8. The company is a small scale operation and is solely owned and operated by the Applicant, Kerri Seemann.

#### *Text Amendment Findings:*

1. Kerri Seemann, The Applicant, is proposing amendments to the language of Chapter 13 – Zoning Code of the City Code for Home Occupations.
2. Currently, Section 1325.02 does not allow for an accessory home occupation to be conducted outside of the dwelling or have exterior evidence.
3. The Applicant is proposing the City amend the zoning code to add language to allow an accessory home occupation to be conducted either in a detached accessory building or outside of a building.
4. The proposed amendments continues to support a home occupation as an accessory use in residential zoning districts by establishing standards that enforces and protects the character of the residential neighborhood with exterior size restrictions and screening buffers.
5. Amendments to the Zoning Code regulations require a public hearing prior to action by the City Council.
6. If the zoning amendments were approved, an Applicant would be required to apply for a Class II Accessory Home Occupation Permit.

### **Options and Motion Language**

Staff has provided the following options and motion language for this case. The Planning Commission should consider providing additional findings of fact as part of the motion to support their recommendation for approval or denial.



1. Recommend Approval with Conditions: Motion to recommend *approval* of Planning Case 22-025 for a Conditional Use Permit to allow a Class II Accessory Home Occupation at 1947 County Road D and Zoning Code Amendments to Section 1325.02, Subd. 3 – Accessory Uses based on the findings of fact and submitted plans, as amended in the conditions in the May 3, 2023, Report to the Planning Commission:
  - a) The Applicant shall conducted the home occupation in accordance with the narrative and site plans submitted. Any significant changes to these plans, as determined by the Community Development Director, shall require review and approval as a Conditional Use Permit Amendment by the Planning Commission and City Council.
  - b) There shall be no more than one employee that does not reside in the residence employed to assist in the business activity.
  - c) Delivery of products will be limited, but in no instance shall it be more than once per day.
  - d) No exterior signage shall be permitted.
  - e) There shall be no more than one patron per day by appointment only visiting the premise to pick up their order.
  - f) All home occupation retail sales must be exclusively conducted online.
  - g) The Applicant must apply annually and obtain an Accessory Home Occupation Permit from the City.
  - h) A screening plan shall be provided to the City for approval by the Community Development Director prior to issuance of an Accessory Home Occupation Permit.
  - i) A Zoning Permit would be required for the installation of any new fencing.
  - j) The exterior business activity shall be limited to the Applicant’s description and site plans as submitted. All exterior evidence of the home occupations shall not exceed 1,500 square feet of the Subject Property.
2. Recommend Approval without Conditions: Motion to recommend *approval* of Planning Case 22-025 for a Conditional Use Permit to allow a Class II Accessory Home Occupation at 1947 County Road D and Zoning Code Amendments to Section 1325.02, Subd. 3 – Accessory Uses based on the findings of fact and submitted plans in the May 3, 2023, Report to the Planning Commission.
3. Recommend Denial: Motion to recommend *denial* of Planning Case 22-025 for a Conditional Use Permit to allow a Class II Accessory Home Occupation at 1947 County Road D and Zoning Code Amendments to Section 1325.02, Subd. 3 – Accessory Uses based on the following findings of fact: *the Planning Commission should identify findings to deny should specifically reference the reasons for denial and why those reasons cannot be mitigated.*
4. Table: Motion to *table* Planning Case 22-025 for a Conditional Use Permit to allow a Class II Accessory Home Occupation at 1947 County Road D and Zoning Code Amendment to Section 1325.02, Subd. 3 – Accessory Uses for the following reasons: *the Planning Commission should identify a specific reason and/or information request should be included with a motion to table.*

### **Notice and Public Comments**

Notice was published in the *Pioneer Press* on April 20, 2023. Notice was prepared by the City and mailed to property owners within 1000 feet of the subject property. As of April 27, 2023, staff has received one public comment in opposition to the application due to the exterior evidence of the home occupation.

### **Deadline for Agency Actions**

The City of Arden Hills received the completed application for this request on April 3, 2023. Pursuant to Minnesota State Statute, the City must act on this request by June 2, 2023 (60 days), unless the City provides the petitioner with written reasons for an additional 60 day review period. The City may, with the consent of the applicant, extend the review period beyond the initial 120 days.

### **Attachments**

- A. Land Use Application
- B. Location Map
- C. Applicant CUP Narrative
- D. Applicant Text Amendment Narrative
- E. Site Plans
- F. Draft Home Occupation Ordinance Amendments