

Planning Commission Staff Report

June 9, 2016

Item 2

Applicant: Tyson and Michelle Bell

Location: 1226 S Main Street

Prepared by: Brian Tucker

Public Hearing Item: No

Zone: A-2

ATTACHMENTS:

1. Findings for Decision.
2. Application Materials.
3. Korry Bird e-mail and letter.

REQUEST

Consideration of a request for a Home Occupation to operate a Montessori Preschool for up to 8 children, Monday-Friday in a 3-hour block in the Agricultural Residential (A-2) Zone.

BACKGROUND AND PROJECT DESCRIPTION

The property located at 1226 S Main Street is located in a rural residential area just north of the LDS Church on south Main Street. The applicant intends to provide Montessori Style preschool services for up to 8 children, ages 3-6, at a time. The preschool will be open 5 days per week and will include two sessions per day, about 3 hours long, from 9 am to noon and from 12:30 pm to 3:30 pm. The applicant is requesting a Home Occupation that would allow preschool activities.

EVALUATION

Law:

Home Occupations are governed by section 18.84.380 of the Mapleton Municipal Code. Home occupations are allowed so long as they constitute no more than a modest level of business within dwellings, conducted under conditions and levels of operation that do not adversely affect, undermine, or significantly depreciate the residential character of the area. Conditions may be imposed in order to mitigate specific, legitimate impacts to the neighborhood or to neighboring property. Section 18.84.380 does not label specific uses as being allowed as a home occupation, rather it suggests criterion that must be met in order to issue a home occupation permit. The following conditions and criteria apply to the proposed use:

1. The business must be conducted entirely within a completely enclosed structure on the property,
2. No more than 25% of the structure or 500 sf, whichever is less, may be used for the home occupation,
3. No more than one person who does not reside on the property may be engaged in the home occupation,
4. No more than 6 cars may be parked at the residence at any one time,
5. The home occupation must be secondary and incidental to the use of the dwelling as a residence,
6. The daycare must be licensed by the city and comply with city regulations,
7. The home occupation must be conducted by either a person who occupies the dwelling,
8. Background checks will be conducted on all inhabitants of the dwelling and employees, and
9. The home occupation shall operate in compliance with any applicable city or state requirements.

Public Comment:

As of June 6, 2016 the City has received one complaint/concern letter from Mr. Korry Bird. He addresses the property in terms of compliance with the Utah Administrative Code Rules for a “residentially certified child care” facility. While the health and safety aspects of the complaint/concern letter may be valid and may need to be addressed through conditions on the permit, according to Utah Administrative Code Rule R430-8-4 a three-hour long preschool is exempt from licensing. A copy of the e-mail and attached letter are included in this packet.

Compliance:

The home occupation is not subject to daycare regulations from the State of Utah but will be required to carry a Mapleton City Business License. The business can’t include the use of more than 500 sf, will include no more than one employee, pickup and drop off times can be staggered and carpooling used to keep parking and traffic in check. The home occupation will not include any exterior changes to the home that will change the residential character of the building.

A handful of preschool and preschool/daycare uses have been approved throughout the city. No issues with any of these existing preschools have been reported. Since these and any other potential issues can be mitigated by reasonable conditions it appears that the application is in compliance with the applicable standards.

RECOMMENDATION

Approve the application with the attached findings and conditions.

ALTERNATIVE ACTIONS

1. Approve the application with revised conditions.
2. Deny the application.
3. Continue the application with a request for changes/additional information.

CONDITIONS

1. The applicant shall obtain a business license prior to opening for business.
2. Drop offs and pick-ups shall be controlled by the license holder such that the preschool complies with the requirement that no more than 6 cars, including those owned by the property owner, may be parked at the home at any one time. The maximum number of children is limited by the maximum parking requirement.
3. Background checks for all employees and residents of the dwelling shall be maintained with Mapleton City.
4. With the exception of activities that are clearly incidental and secondary to the preschool use, the home occupation shall be conducted within the confines of the structure.
5. No signs shall be placed on the property without a sign permit.
6. Violations of the terms of this use permit or other ordinances of the City may constitute grounds for revocation of this permit and associated business license by the Planning Commission.
7. If the proposed use is abandoned for a period of six months or more, the use permit will become null and void.
8. Other conditions as circumstances may warrant based on legitimate concerns for health, safety and public welfare.

Standard Home Occupation Permit Findings

No.	Finding	
1.	The proposed use will not be in conflict with the City's General Plan.	✓
2.	The proposed use or combination of uses are listed as permitted or conditional uses in the applicable zoning district in which the project is located.	✓
3.	The proposed use will provide adequate ingress and egress to and from the proposed location	✓
4.	The home occupation will be conducted entirely within a completely enclosed structure on the property. Detached structures where a home occupation is being conducted must be located within fifteen feet (15') of the residential dwelling.	✓
5.	The home occupation shall occupy not more than the equivalent of twenty five percent (25%) of the living area of the dwelling or five hundred (500) square feet, whichever is less. This shall also apply to detached structures.	✓
6.	The activities of the home occupation shall be conducted by members of the residing family. Provided that not more than one person, not a member of the residing family, may be engaged in the home occupation.	✓
7.	Any sale of goods not produced as part of the home occupation shall constitute a clearly incidental part of the operation of the home occupation. There shall be no display of goods produced by the home occupation observable from outside the dwelling.	✓
8.	No commercial vehicles shall be stored at the premises except one delivery truck which shall not exceed ten thousand (10,000) GVW rated capacity.	✓
9.	Not more than six (6) cars (including those owned by the resident family) may be parked at the residence at any one time and such vehicles shall be parked within the driveway or in front of the residence. Clients of the home occupation shall not park or store vehicles at the premises overnight.	✓
10.	The home occupation shall be clearly incidental and secondary to the use of the dwelling for dwelling purposes and shall not have the effect of changing the character of the building or the attendant yard area from that of a dwelling.	✓
11.	Signs shall be limited to one nonilluminated identification nameplate not larger in area than four (4) square feet. Electric or electronic signs shall not be permitted. No on site advertising signs shall be permitted. The sign must be attached to the building where the home occupation is to take place.	✓
12.	The home occupation shall be registered with the license agency of the city and shall maintain a current business license in accordance with city regulations.	✓
13.	Entrance to the home occupation from outside shall be through the same entrance normally used by the residing family except when a separate entrance may be required by regulation of the state health department or other public agency. The garage door shall not be used to satisfy this requirement.	✓

14.	The activities of the home occupation shall not involve the use of hazardous materials or chemicals in amounts that will increase the hazard of fire, explosion or safety to the structure or occupants of the dwelling or adjacent dwellings.	✓
15.	The operation of the home occupation shall not produce any noise, smoke, glare, light, fumes, dust, electronic interference or similar condition which is readily discernible outside the dwelling.	✓
16.	The physical appearance, traffic, and other activities in connection with the home occupation will not be contrary to the intent of the zone in which the home occupation is located and will not depreciate surrounding property values or the quality of the area for residential purposes as determined by the city.	✓
17.	The home occupation shall be operated in compliance with any applicable city or state requirements.	✓
18.	The home occupation applicant must either be the bona fide owner of the home (as shown on the current Utah County tax assessment rolls) or if the applicant is renting or leasing the home, the homeowner must provide written permission allowing the applicant to conduct a business in the home. Said letter of permission must be signed and notarized by the homeowner.	✓
19.	The proposed use will not make excessive demands on the provision of public services, including water supply, sewer capacity, energy supply, communication facilities, police protection, and fire protection.	✓
20.	The proposed use will not be injurious to public health, safety or welfare.	✓
21.	Any special conditions included in the permit are consistent with MCC Chapter 18.84.380.	✓

From: Korry Bird <korrybird@msn.com>
Sent: Saturday, June 04, 2016 12:36 PM
To: Brian Tucker; Brian Wall PrintDPS
Subject: Response Montessori School
Attachments: Montessori School.pdf; ATT00001.htm

Mr. Tucker:

Please review my response to a Mapleton City letter I received dated May 26, 2016, regarding an application submitted to Mapleton City for the purpose of permitting a home-based Montessori Preschool business located at 1226 South Main St. Mapleton, UT. I believe there are significant and numerous reasons for careful consideration of the proposed Home Occupation license requested by Tyson and Michelle Bell. I have researched Utah State code found in section R430-50-4 through R430-50-21; I believe there to be significant violations present for the proposed location. I have concern for the safety and well-being of additional children allowed at the location, particularly on a for-profit basis; based upon personal observations over the past year regarding the supervision of children and the condition of the property, I believe an accident related to the health and welfare of a child is a high probability upon the subject property.

The subject property contains several and significant deficiencies for such permitting, and nearby property (1184 S. Main St.) contains certain risks to children specifically addressed by state requirements and well within stated action distances. Please review the attached letter, and please be advised I have sent a certified letter to both the City of Mapleton and to the Bell residence which outlines only a portion of state statutes and personal observances which have occurred over the past year; the certified letter is identical in content to the attachment. Recently, I had an opportunity to speak with Mr. Bell regarding the prospect of his in-home Montessori School; during our meeting, I stated my concern and gave him a copy of the first draft of the letter contained herein which lists several, but not all, of state regulations which govern licensing requirements for the childcare industry within the state of Utah. The copy contained herein was modified somewhat after speaking with Mr. Bell about his application on the evening of June 1, 2016. The portion modified was my assumption they had been operating their school from their home as children had been observed, over the course of several months, being dropped off and picked up, on a daily basis at 1226 South Main St. Mr. Bell informed me the children were unassociated with the Montessori School. I have sent Mr. Bell a certified letter which is identical to the content of the attached letter in this e-mail.

I don't know what legal relationship exists between a municipality and the Sate of Utah when it involves a city permitting a business which is in violation of state law. I suppose that is a question for the city attorney; for the benefit of all of those involved and affected, at very least, extreme caution should be exercised in this case because there are numerous violations which do represent a hazard to children.

I am not sure if I will be in town for the June 9 meeting where this matter is considered. Prior to the June 9 planning commission meeting, I request a copy of this e-mail, and my letter to the Bell's and Mapleton City (contained herein, and sent to Mapleton City offices via certified mail), be forwarded to planning commission members for their consideration. In the event of an accident involving a child or children upon the subject property should a permit be granted, I would like this e-mail to be retained in city records as a testament to what I have witnessed and my valid concerns. At the present time, there is clear liability and risk associated with a preschool permitted upon the subject property.

Sincerely,
Korry R. Bird

Saturday, June 4, 2016

To whom it may concern:

Korry R. And Diane Bird are neighbors who share a common boundary with the proposed in-home Montessori school. This letter is a response to a notification letter sent by Mapleton City officials, dated May 25, 2016, alerting nearby residents of an application submitted by Tyson & Michelle Bell requesting a permit to operate a for-profit school from their home at 1226 South Main St. Mapleton, UT.

Please review the following statutes which govern in-home commercial schooling of minor children within the State of Utah.

Utah State Rules Governing In-home Childcare—Licensing Requirements

The following rules apply to any licensed in-home child care facility within the State of Utah. I (Korry Bird) have included only such rules as I have reason to believe will be in violation of current state regulatory statutes. I have followed the section rules from the beginning of the section, and not in the order of the greatest risk to children.

R430-50-4 Indoor Environment

(4) The homes shall be ventilated by mechanical ventilation, or by windows that open and have screens.

****Most of the windows appear to be without screens. Children have been observed on the roof of the western-most roof over the root cellar. The children accessed the roof from an upstairs window on approximately May 15, 2016. And were observed on at least two prior occasions on the same roof.***

(5) For certificate holders who receive an initial certificate after 1 September 2008 there shall be at least 35 square feet of indoor play space for each child, **including the providers' related children who are ages four through twelve and not counted in the provider to child ratios.**

****In order to accommodate ten school children and the Bell's five children, state law requires a minimum of 525' of dedicated space.***

(6) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(7) **Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.**

R430-50-5. Cleaning and Maintenance.

- (1) The certificate holder shall ensure that a clean and sanitary environment is maintained.
- (2) The certificate holder shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

****There was an accumulation of bat feces in the attic which was present prior to the Bell's purchase of the home. It is not known if this situation has been adequately addressed. It would be wise to have a licensed professional inspect the house as it was built in approximately 1895, and may carry a threat to the health of children based upon years of neglect prior to the Bell's tenure as owners of the property.***

(3) The certificate holder shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

****Snow was not removed during most of the winter of 2015-16. Much debris potentially hazardous to children is scattered about the dwelling.***

R430-50-6. Outdoor Environment.

If there is an outdoor play area used by children in care, the following rules apply:

- (1) The outdoor play area shall be safely accessible to children.
- (3) The outdoor play area shall be enclosed with in a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:
 - (a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or
- (4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:
 - (a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

****Applicants are in violation of the fencing rule, which likely represents the greatest hazard to young children and and pets.***

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

****Applicants are in violation of the water hazard rule.***

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

****Applicants are in violation of the machinery rule.***

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

****Applicants are in violation, potentially harmful objects exist which are accessible to children.***

(6) When in use by children, the out door play area shall be free of animal excrement.

****Precautions, such as fencing for animals, is not adequate to protect children from animal droppings, etc.***

(7) If a fence or barrier is required in Subsections (3) or (4) above, or in Subsections 12(9)(c)(i) or 12(10)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

****Applicants are in violation of the fencing rule.***

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.

(11) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer. (13) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

****Children are often observed in the "Play Area" without adult supervision, and have at times, apparently been locked out of the house. Children are repeatedly observed in the carport area, unsupervised at length, climbing in and out and on top of a minivan. What fencing currently exists on the property is inadequate as a restraint, its value is decorative only, and the play area is not adequately fenced. State law requires 4' fencing around the play area and perimeters exposed to hazards and dangers to children.***

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

The most dangerous of all existing hazards are as follows:

- 1) *Lack of adequate fencing, rendering Mapleton Main St. an unacceptable risk.*
- 2) ****The boxelder trees on the property are very old, brittle and distressed due to age and lack of water; some are partially dead due to age, lack of water, neglect and a significant fire which was ignited on the property by a previous owner two years prior to the current occupants ownership of the property. The trees have never been trimmed during my 29-year tenure as an adjacent neighbor. The trees represent a significant hazard during windy conditions, etc. The largest trees are very old and represent a serious crush hazard.***
- 3) ***Children have access to a portion of the roof.***
- 4) ***Animals cannot be separated from the children's play area.***

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) The certificate holder shall ensure that out door play areas and outdoor play equipment are maintained to protect each child's safety.

****The playground equipment is not commercial-grade, and is typical of equipment purchased and intended for private use.***

R430-50-8. Administration.

- (1) The certificate holder is responsible for all aspects of the operation and management of the child care program.
- (2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.
- (3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.
- (4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.

****The current condition of the proposed school location does not meet the above criteria when considering the overall safety of students.***

R430-50-11. Supervision and Ratios.

***This section has been observed to be clearly in violation multiple time endangering the live(s) of the owner(s) own children. Children are left outside, at length, without supervision. On more than one occasion, children have been moved by neighbors out of the street or near the edge of the street. The children have followed their dogs across the road, or along side the road absent adult supervision.**

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both in doors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

****This has been observed not to be the case, nearly on a daily basis. The lack of supervision has been observed consistently and in the opinion of the author, has represented a clear danger to children as young as two-years-old on multiple occasions.***

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

(a) the certificate holder has prior written permission from the child's parent for the child's participation; and

(b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.

****It has been observed, and strongly believed, all of the above regulations are consistently violated; and violated in such an egregious fashion that children's safety is at risk.***

R430-50-12. Injury Prevention.

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

***The overall environment is not a safe situation for a private in-home schooling environment.**

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

R430-50-22. Animals.

(1) The certificate holder shall inform parents of the types of animals permitted on the premises.

(2) The certificate holder shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The certificate holder shall have documentation of the vaccinations.

(3) The certificate holder shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The certificate holder shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The certificate holder shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

KEY: child care facilities, residential certification

Date of Enactment or Last Substantive Amendment: March 30, 2016 Notice of

Continuation: May 29, 2013

Authorizing, and Implemented or Interpreted Law: 26-39

OPINION

Numerous violations of rules governing in-home commercial childcare/school should be carefully considered by Mapleton City authorities prior to issuing a city license for day care/schooling for the requested location. There are water hazards on the property of 1184 S. Main, with no fence currently between the properties, and adequate fencing does not exist restraining children from Mapleton Main St.

Based upon the degree which unsupervised children have been present in the past, I believe a clear danger is represented by allowing an additional ten children to be schooled upon the property. At very least, state regulations should

be considered and strictly implemented when permitting the school against hazards and minimum per child space requirements. I was informed by Mr. Bell on Wednesday June 1, 2016, ten students would be included from their school's Springville, UT, location which they intend to close. This would increase the total children in the in-home school environment to fifteen.

For several months during traditional public school months, additional children have been seen being dropped off and picked up on regular basis. Mr. Bell informed me these children were not a part of the Montessori School, but did not elaborate further.

Because of the condition of the proposed location for the Montessori School, there are clear and significant risks to children associated with the Bell's request to operate at the location 1226 S. Main St. Mapleton, UT. I believe it to be incumbent upon those who are involved with the permitting process to familiarize themselves with state regulatory measures enacted to protect children. I believe no permit should be issued until such time it can be absolutely demonstrated all regulations are met pertaining to the health and welfare of affected children.

Korry R. Bird