



**Board of Zoning Appeals Meeting
November 19, 2024**

CASE NUMBER:	V-24-0012
PROPERTY LOCATION:	220 Poplar View Court, Johns Creek, GA 30097
CURRENT ZONING:	R-4 (Single-Family Dwelling District) Conditional
PARCEL SIZE:	0.2755 Acres
PROPERTY OWNER:	Akili Bivins
VARIANCE REQUEST:	Appeal of Community Development Director’s decision to deny the request for a home occupation business license
STAFF RECOMMENDATION:	Affirm the Director’s Decision to Deny the Request for a Home Occupation Business License

Request

The Applicant, Mr. Akili Bivins, is appealing the Community Development Director’s decision to deny the request for a home occupation to establish a “base of operation” for a mobile food service unit at the property located at 220 Poplar View Court, on the grounds that the Director’s interpretation of the ordinance was incorrect.

Background

The Applicant, Mr. Akili Bivins, met with several Community Development staff members in person and over the phone, seeking permission to establish a “lemonade stand” business and create social media content at his home. All communication with department staff leading up to the initial in-person meeting with the Community Development Director (hereinafter referred to as “Director”) was conducted verbally. The Director met with the Applicant on or about August 2, 2024, and the Applicant shared his proposed business, however, each discussion related to the business seemed to evolve and lacked clarification of all the components associated with the proposed business. Due to the Applicant’s misalignment of information, the Director requested for the Applicant put in writing the full scope of the proposed business and all related aspects of their commercial endeavor. On August 6th and 7th, the Applicant provided two emails explaining the business concept and submitted photos of the mobile food service unit (cargo trailer), proposed floor plan for interior alterations of a portion of the existing house to create a commercial-grade kitchen, general contractor’s proposal, and the Georgia Department of Public Health (DPH) rules for a mobile food service unit.

After reviewing all submitted documents and conferring with City staff who had previously met and communicated with the Applicant, and meeting again in person with the Applicant on August 19, 2024, the Director determined that the Applicant’s proposed business would not comply with the City’s home occupation requirements. The Director denied the Applicant’s request for a home occupation in writing via email correspondence on August 23, 2024.

Community Development

On October 1, 2024, the Applicant filed an appeal of the decision of the Community Development Director to the Board of Zoning Appeals on the grounds that the Applicant is aggrieved by the decision and that the Director's interpretation for denying the request for a home occupation was incorrect.

Applicable Code Requirements

The relevant code sections of the City's Zoning Ordinance and Georgia Department of Public Health (GA DPH) Food Service rules and regulations and Interpretation Manual with respect to this case are cited below:

Appendix A – Zoning Ordinance, Article IV. – General Provisions (**Exhibit 1**)

Section 4.12. – Home Occupation.

A home occupation is permitted as an accessory use of a dwelling unit in any zoning district and its operation and employees are limited to members of the resident family only. The following are limitations on home occupations:

- A. The smaller of 25% or 750 square feet of the gross floor area of a dwelling unit may be used for activities devoted to the home occupation.
- B. Accessory buildings and structures may not be used for the home occupation.
- C. There shall be no signs identifying the home occupation, nor shall there be any storage, display or activity associated with the home occupation visible outside the structure.
- D. Said uses are excluded: auto repair, maintenance or similar operations, auto sales, restaurants, keeping of animals, funeral homes, retail or wholesale shops, motel type establishments, taxi services, or any other occupation found incompatible with the intent of this ordinance.
- E. Resident participants in a home occupation must have the appropriate occupational licensing, including business licenses.
- F. No Home Occupation shall generate traffic, sound, smell, vibration, light, or dust that is offensive.
- G. No more than two clients or patrons are allowed on the premises at the same time in conjunction with the home occupation (except for persons in care at a Family Day Care Homes, where no more than six clients are allowed).
- H. Vehicles kept on site in association with the home occupation shall be used by residents only.
- I. The transporting of goods by truck is prohibited. Incoming vehicles related to the home occupation shall be parked off-street within the confines of the residential driveway or other on-site permitted parking.
- J. Home occupations must exclude the use of instruments, machinery or equipment that emit sounds (i.e. musical instruments, sewing machines, saws, drills) that are detectable beyond the unit.
- P. No home occupation shall be operated so as to create or cause a nuisance.

Georgia Department of Public Health (DPH) Food Service Rules and Regulations (**Exhibit 2**)

511-6-1-.01 Definitions.

“**Base of operation**” means a fixed location with a food service permit from which a mobile food service unit, extended food service unit, “pop-up” food service operation, or catering food service establishment operates. Mobile food service units operating in conjunction with a restaurant shall obtain a separate base of operation

permit in addition to the restaurant's fixed food service permit. A restaurant's fixed food service permit shall not serve as the base of operation permit for the mobile food service unit.

“Mobile food service unit” means an independent trailer, motor driven or manually propelled pushcart, food truck, watercraft, movable portable structure, vehicle vendor or any other similar conveyance which is not connected to a permanent water supply or sewer disposal system and from which food is offered for sale or service.

511-6-1-.02 Provisions.

(2) **Mobile Food Service Unit.** A food service permit will be issued to a mobile food service establishment in the county of origin where the base of operation is located. A separate “Mobile Food Service Unit Permit” will be issued for each mobile food service unit in the county of origin.

(a) Mobile food service units shall not operate as separate and independent entities apart from the authority of the active managerial control of the permit holder for its base of operation.

511-6-1-.08 Special Food Service Operations, (1) Mobile Food Service Units and Extended Food Service Units., (f) Operation.

1. A mobile food service unit shall operate from its permitted base of operation and report daily or more often if needed to such location to service their unit for supplies, fresh water, cleaning, waste water disposal, and any other and servicing operations.
2. An extended food service unit shall operate as an extension of its permitted base of operation.
3. An extended food service unit shall be serviced daily from the base of operation.
4. The base of operation or fixed food service establishment used as a base of operation for mobile food units and extended food service units shall be constructed and operated in conjunction with the mobile food service unit or extended food service unit under the active managerial control of a single permit holder to be in compliance with the requirements of this Chapter.
5. Toilet facilities must be available for employee's use and, as applicable, consumer use along the route of food vending locations as per requirements found in DPH Rule 511-6-1-.06(2)(h). In addition, and to the satisfaction of the Health Authority, the permit holder must maintain and provide a list of toilet facilities available to the unit food vending locations.
6. When not in use, mobile food service units shall be properly stored at the base of operation or other location approved by the Health Authority.

Georgia Department of Public Health (DPH) Interpretation Manual for Food Service (**Exhibit 3**)

Mobile Food Service Unit (page 27)

DPH Rule 511-6-1-.02(2) of the Chapter provides guidance to the EHS to view mobile food service operations, which is comprised of the fixed base of operation with mobile unit(s), as one mobile food service establishment. The mobile unit(s) simply operates as an extension of and under the managerial authority of the permit holder of its permitted base of operation.

Neither the mobile food service unit nor the mobile food service base of operation can operate independently of one another; therefore, if either of the two ceases to exist then both permits are invalidated. The food service permit type “Base of Operation” must be issued to the base of operation before any mobile food service unit permit can be issued within the county in which the mobile food service unit is to operate.

Initial Permitting of the Mobile Food Service Establishment in the County of Origin (page 28)

A Mobile Foodservice Establishment (MFSE) must first obtain permits for a Base of Operation and the Mobile Food Unit(s) in the county of origin within the State of Georgia. An application for a Base of Operation and an application for the Mobile Food Unit(s) will be submitted to the Health Authority in the county of origin with applicable fees along with:

1. Menu
2. At least 2 photographs of the unit: one of the OUTSIDE and one of the INSIDE
3. Detailed drawing (as close to-scale as possible) with all equipment clearly labeled
4. Manufacturer's specification sheets for all equipment (cooking, cold holding, hot holding, freshwater & wastewater tanks, generator, etc.)
5. A list of all county locations MFSE intends to operate outside the county of origin
6. Original, notarized "Verification of Residency" with a copy of the supporting secure and verifiable document attached
7. Proof of compliance with all other applicable agencies (e.g. zoning, fire, etc.)
8. Mobile Food Unit Location Form
9. *Copy of Toilet Use Agreement Form
10. *Copy of Property Use Agreement Form

Operation (page 223-224)

In order for a mobile food service or an extended food service operation to be in compliance with the Chapter, the following must be adhered to by the operation:

Mobile food service units and extended food service units must co-exist with a base of operation or a fixed food service establishment used as its base of operation. Each mobile food service unit must report back to its base of operation or fixed food service establishment used as its base of operation at least once a day or more often if needed for all resupplying, cleaning and servicing of the unit or units. If this symbiotic relationship does not exist, then the mobile food service operation is not in compliance with the Chapter.

Mobile food service units must be stored at the base of operation when not in operation. The exception would be if the local Health Authority agreed to allow the unit or units to be stored elsewhere, such as the operator's residence. In this case, the permit applicant must enter into a written agreement concerning this arrangement with the local Health Authority.

Mobile Food Service Units and Catering Operations (page 226-227)

A mobile food service unit is essentially a restaurant on wheels. Rather than being in a fixed location where customers visit the establishment, the restaurant goes to different locations to sell food to customers. Because this type of food service establishment can travel from place to place vending food to the public, the local Health Authority needs to have pre-existing knowledge of where it will be to conduct required, unannounced inspections the same as if it was a fixed food service establishment. This is why a mobile food service unit shall have authorization to operate within each county the unit operates. Occasionally, a consumer may want to hire a permitted mobile food truck to cater a private event. Since a fixed food service establishment can cater if it has the appropriate means to do so, a mobile food service establishment can do the same if it has the appropriate space and equipment to do so. The mobile food service establishment must be able to provide proof of a contractual agreement to provide catering services with a consumer at their private event if requested to do so by the Health Authority. This will ensure that the mobile food service establishment is not operating illegally in a county at an unapproved location. Additionally, the mobile food service operator will be required to keep a calendar of their catered events on file for at least 6 months to be made available to the Health Authority upon request.

Analysis

All requests for new businesses in the City are given careful consideration and reviewed with diligence to ensure that the business conforms to the City's Zoning Ordinance and applicable zoning conditions. The Applicant was asked to provide in writing the full scope of business operations and the information was provided to the Director via email correspondence on August 6th (**Exhibit 4**) and 7th (**Exhibit 5**). The two emails mentioned the Applicant's desire to establish a business involving filming digital content, publishing children's coloring books and workbooks, and creating digital classes to inspire kids to turn ideas into businesses. The Applicant's email from August 7th also stated "[w]e are "only" mixing lemonade" and "it became apparent from your perspective, our story [about the business] seemed to evolve. This is because what we are doing is indeed complex and layered. It was impossible to convey what we are doing verbatim on the spot."

A key component related to the proposed business – a food truck – as shared by the Applicant to staff in previous conversations was not addressed in the emails provided to the Director. In response to the lack of information regarding the "food truck," the Director responded to the Applicant's email on August 8, 2024, with additional questions, specially asking for the "relationship of the food truck to [the] business venture" (**Exhibit 6**). The Applicant responded on August 9, 2024, (**Exhibit 7**) with contradictory information stating that "this venture is less about physically making and selling lemonade and much more about teaching [our kids], at an early age, to use their creativity and imagination to leverage the Digital Era and Information Age," but goes on to further state that the "mobile unit serves as an extension of our base of operation..." and the mobile unit "in addition to being a functional business, [it] doubles as a studio for creating content." Lastly, the Applicant states in their email that "[t]he lemonade will not be produced on-site at the base of operation," however, "the only preparing required at the base of operations is rinsing and cutting the fresh basil..." and "...the disposal of grey water." Due to the piecemealing of information provided over three emails, the Director scheduled an in-person meeting for August 19, 2024, with the Applicant and City staff (Alan Guerra and Sal Gaeta), to allow Mr. Bivins an opportunity to provide comprehensive details of the proposed business, all its related components, and any other relevant information to justify the proposed business qualifies as a home occupation.

At the in-person meeting on August 19th, the Director shared that the primary concern related to the business qualifying as a home occupation was not associated with the publishing of children's books or recording of digital content, but that of the component of the business related to the mobile food service unit (lemonade trailer). For the Applicant to be compliant with the requirements of the Georgia Department of Public Health's (DPH) rules for a mobile food service unit, he is required to establish a "base of operation" at his place of residence. And although DPH regulates for public health of food service, the City of Johns Creek regulates zoning – governing how real property can and cannot be used, more particularly, regulating home occupations as an accessory to the primary use of a residential dwelling. The acknowledgement of DPH having no jurisdiction over zoning is supported by their permitting requirement for the Applicant to provide proof of compliance with all other applicable agencies (i.e. zoning, fire, etc.).

The subject property at 220 Poplar View Court is currently zoned R-4, a single-family residential zoning district. The primary use of the property is limited to residential use. The City has a provision in the Zoning Ordinance allowing for a commercial use that is accessory, customary or incidental to the primary use of the property and structure as a residential dwelling, also referred to as a "Home Occupation." A Home Occupation must comply with specific performance limitations as provided in Section 4.12. of the City's Zoning Ordinance. In the Director's email to the Applicant, denying the request for a home occupation, on August 23, 2024 (**Exhibit 8**), cited two limitations required of a Home Occupation that the proposed business would not comply with.

- 1) Home Occupation Limitation, Section 4.12.C. states – “There shall be no signs identifying the home occupation, **nor shall there be any storage, display or activity associated with the home occupation visible outside the structure.**”

All activity associated with a Home Occupation must occur inside the residence and have no visibility of the business activity external of the home. The storage and use of the mobile food service unit (a cargo trailer) on the property would violate this limitation as the unit is associated with the business. The City argues that a mobile food service unit is not a vehicle but a trailer. Although there is no definition of a trailer in the Zoning Ordinance, Section 3.1. states that words not defined in the Zoning Ordinance “shall be construed to have the meaning given by The Latest Illustrated Book of Development Definitions and, if not defined therein, by the Merriam-Webster’s Collegiate Dictionary...” Based on The Latest Illustrated Book of Development, a “Trailer” is defined as “a structure standing on wheels, towed or hauled by another vehicle, and used for short-term human occupancy, carrying of materials, goods, or objects, or as a temporary office” (**Exhibit 9**), which describes the Applicant’s mobile food service unit, a cargo trailer (**Exhibit 10**).

The City also argues that a mobile food service unit is not intended to be stored at a residence. The DPH Interpretation Manual states that mobile food service units “must be stored at the base of operation when not in operation,” however, an exception is required to store the unit elsewhere, “such as the operator’s residence.” This language would imply that the assumed location of a base of operation is typically related to commercial property and not a residence; hence the need for approval of an exception from the local Health Authority to allow for the unit to be stored elsewhere, such as on residential property.

- 2) Home Occupation Limitation, Section 4.12.D. states – “Said uses are excluded: auto repair, maintenance or similar operations, auto sales, restaurants, keeping of animals, funeral homes, retail or wholesale shops, motel type establishments, taxi services, **or any other occupation found incompatible with the intent of this ordinance.**”

This section of the ordinance identifies examples of commercial uses that are intensive in nature, do not function as an accessory to residential use, and operates externally to the residence. As the Applicant mentioned in their email from August 7, 2024, his proposed business is “complex and layered” and that is because it involves many different components, including the mobile food service unit (lemonade trailer). The need for a “base of operation” is derived from a DPH requirement for the Applicant to operate a mobile food service unit. Without a base of operation, the Applicant would be unable to operate the lemonade trailer as the DPH Interpretation Manual states that “[n]either the mobile food service unit nor the mobile food service base of operation can operate independently of one another...” DPH requires mobile food service units to report back to its base of operation “at least once a day or more often if needed for all resupplying, cleaning and servicing of the unit or units.” The symbiotic relationship of the base of operation and mobile unit detracts from the business being a minor/accessory use of the home to instead function as a primary hub/location with greater commercial intensity than that is intended for a home occupation and could adversely impact the residential character of the neighborhood.

The director stated in his denial email to the Applicant on August 23, 2024, that “with a commercial kitchen setup...the proposed business maintains the potential to scale up production, which would be found to be incompatible with the intent of the Zoning Ordinance...” There is legitimacy to this concern as the permit obtained from DPH would allow the business the ability to scale up production and/or expand product offerings beyond drinks. The DPH Interpretation Manual states that a “mobile food service unit is essentially a restaurant on wheels” and can travel from place-to-place vending food/drinks to the public and cater for events “if [the mobile food service unit] has the appropriate space and equipment to do so.”

Lastly, the City has not allowed similar businesses such as a catering establishment or a food truck operator to conduct operations from their residence as a home occupation. The intensive commercial functions of going in and out of the property, utilizing a residence as the main business hub for a commercial operation, requiring potential interior modifications of a home to install commercial grade equipment and appliances, and having a mobile unit functioning outside of the residence as an extension of the business cannot be supported as a home occupation.

The prominent commercial use of a mobile food service unit and the requirement to establish a base of operation cannot be overlooked as be considered as significant component of the Applicant's proposed business. Based on the factors outlined above, the Director has determined that a business with a functioning mobile food service unit does not qualify as a home occupation and such a use should be relegated to operating from a commercially zoned property where external business activity is not limited.

Recommendation

Staff recommends the Board of Zoning Appeals affirm the Community Development Director's decision to deny the request for a home occupation business license based on his correct interpretation and application of the code as presented.

Exhibits

1. Zoning Ordinance
2. Georgia Department of Public Health (DPH) Food Service Rules and Regulations
3. Georgia Department of Public Health (DPH) Interpretation Manual for Food Service
4. Email from Applicant dated August 6, 2024
5. Email from Applicant dated August 7, 2024
6. Director's email to Applicant dated August 8, 2024
7. Email from Applicant dated August 9, 2024
8. Home Occupation Denial Email from Director dated August 23, 2024
9. Definition of Trailer from The Latest Illustrated Book of Development
10. Mobile food service unit (lemonade trailer) photos provided by the Applicant
11. All email correspondence of record between Director and Applicant