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'98 JUL -8 P3:44
OFFICE OF ZONING
DISTRICT OF COLUMBIA

July 8, 1998

BY HAND

Ms. Shelia Cross Reid
Chairperson
Board of Zoning Adjustment
441 Fourth Street, N.W., Room 201
Washington, D.C. 20001

Re: BZA Application No. 16370

Dear Ms. Reid and members of the Board of Zoning Adjustment:

I have enclosed for your consideration the prehearing statement of the applicant in the above-referenced matter I appreciate your consideration.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler

BZA
CASE No. 16370
EXHIBIT No. 19

Board of Zoning Adjustment
District of Columbia
CASE NO.16370
EXHIBIT NO.19

The house is located in an area zoned CAP / R-4 (see the map in Exhibit B). We submit that it meets the criteria for the specific special exception which is being sought.

II.

Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 D.C.M.R. 3108.1.

III.

Project Description

The premises, 434 New Jersey Avenue, S.E., is a four story townhouse. Mr. Fields uses one floor as his office - the third floor - and the remainder of the space as his residence. He has taken steps to make certain that the home occupation use of the property is consistent with the existing character of the neighborhood. There is no interior or exterior modifications of the property . He has leased two off-street parking spaces nearby. The use of the space meets all the requirements for a home occupation permit except the number of employees permitted.

As is clear in the map provided in Exhibit C, the house is located in an area with decidedly mixed character, thus maintenance of the property as a residential use, albeit with a limited home occupation, is important. One and one half blocks north of the site are the Cannon and the Rayburn House Office Buildings. At the north end of the block, across C Street, is a parking lot, the entrance to the Capitol South Metro station and a Congressional office annex. Across the street one can see the National Democratic Club. At the south end of the block is a three story office building for Beneficial Insurance Company. Across E Street is a power station on the west side and a Congressional annex on the east side.

On the next block to the east is an entire row of commercial buildings, many with restaurants or retail on the ground floor, and office space above.

IV.

The Project Meets the Criteria for a Special Exception

Section 3108.1 permits the Board to grant special exceptions, pursuant to the following:

> Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions, as provided in this title where, in the judgement of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title...

In short, the Board is empowered to grant a special exception where it finds

(1) The proposed use is in harmony with the Zone Plan and Zone Maps;
(2) The proposed use is not likely to adversely affect the use of neighboring property

However, the Board's discretion in reviewing an application for a special exception is limited to a determination of whether the Applicant has complied with requirements of the section. If the Applicant meets this burden, the Board ordinarily must grant the application. First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment, 432 A.2d 695, 698 (D.C. 1981).

The applicant has the burden of demonstrating that its proposal addresses the issues reflected in § 203.10 and that "the use, height, bulk, and design are in harmony with existing uses and structures on neighboring property," ample parking space is provided and that "the use will not create dangerous or other objectionable traffic conditions." Levy v. Board of Zoning Adjustment, 570 A.2d 739, 742 (D.C. 1990) (quoting 11 D.C.M.R. § 3108.1). See Rose Lees Hardy Home and School

Association v. District of Columbia Board of Zoning Adjustment, 324 A.2d 701, 706 (D.C. 1974). However, "the applicant is not charged with considering every option that any party in opposition might conceptualize." Don't Tear it Down, Inc. V. District of Columbia Dept. of Hous. And Community Dev., 428 A.2d 369, 379 (D.C. 1981).

Zoning Considerations. In order to assess whether this case should be granted a special exception, it is useful to review the purpose of the home occupation permit. Section 203.1 of the Zoning Regulations explains:

> The purpose of the home occupation provisions shall be to allow home occupations as accessory uses to residential uses; Provided, that they are compatible with the residential neighborhood in which they are located. The intent is to protect residential areas from adverse effects of activities associated with home occupations, while permitting residents of the community to use the home as a workplace and source of livelihood under specific regulatory conditions.

The regulations focus quite appropriately upon permitting only home occupations which are fully compatible with residential neighborhoods. That is certainly the case with Mr. Field's consulting business.

As is indicated above, the Zoning Administrator, in issuing an occupancy permit to Mr. Fields, has already concluded that the use complies with every requirement for a home occupation: the home occupation is secondary to the use of the dwelling unit for his residential purposes; the exterior residential character has been maintained; there have been no interior or exterior modifications, no more than eight vehicle trips per day will be made; no noxious fumes will be generated or materials stored outside; no noise will be generated outside the dwelling; no vehicles will be used in the practice of the home occupation; no more than eight (8) clients or customers will be on the premises within any one hour time period; and no sales will be held. The only exception is that he wishes to

employ three individuals, two more than is permitted under the regulations, and to allow those individuals to pick up messages and occasionally meet with Mr. Field's clients and/or Mr. Field's on the premises..

Criteria for Special Exceptions. As for the criteria for a special exception, 11 D.C.M.R. § 203.10 states:

> A home occupation which is not permitted or prohibited in this section may be permitted as a special exception by the Board of Zoning Adjustment; Provided, that the following requirements shall be met:
>
> (a) The proposed use and related conditions shall be consistent with the purposes set forth in §203.1 and shall generally comply with the requirements of §§203.4 through 203.8, subject to specific findings and conditions of the Board in each case;
>
> (b) An applicant for a home occupation which is permitted by §§203.6 through 203.8 may request the Board to modify no more than two (2) of the conditions enumerated in §§203.4 through 203.8; Provided, that the general purposes and intent of this section are complied with;

The regulations incorporated the limitation on the number of individuals permitted to work on the premises presumably as a surrogate measure to ensure that the home occupation remains consistent with the residential character of the neighborhood. In the case of this type of use, however, the two additional personnel will not alter neighborhood character at all. The applicant is permitted as a matter of right to have the home occupation on the site, and, as already stated, has a home occupation permit which allows one employee in addition to the owner of the residence, Mr. Field. The additional employees will not be visible from the exterior, and will be engaged in duties primarily outside of the office.

In order to assess the appropriateness of this use, it is important to consider the current zoning, which is CAP/R-4. Matter of right uses in an R-4 zone could include: hospital or clinic,

private club, lodge, fraternity house or museum. It is quite clear that a home consulting business, even with two extra employees, would not have an effect on the character of the neighborhood at all commensurate with any of these permitted uses.

In addition, it is important to remember the purposes of the Capital Interest District according to the Zoning Regulations: "to promote and protect the public health, safety and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction." (§1200.1) The proposed use is one which serves the Capitol, while minimizing the number of vehicle trips, since virtually all trips to and from the Capitol precinct will be on foot.

While ignoring the fact that a home occupation permit has already been provided to Mr. Fields for his office use at the premises, in its opposition to this application, the Capitol Hill Restoration Society ("CHRS") contends that the use, and not the number of persons employed, would not be consistent with the Capitol Interest District, citing a paragraph of the "Master Plan for Future Development of Capitol Grounds and Related Areas."[1] That paragraph, which applies to the area of New Jersey Avenue between D and F Streets, which is a different block of Florida Avenue than the subject site, actually supports our application since it states "that the houses on the west side of the

---

[1] CHRS also argues that the special exception should be denied because the house is not being used as Mr. Fields' principal residence and because the relief sought is more properly the subject of an area variance and not a special exception. Neither contention has merit. With regard to the principal residence, it is not properly before the Board and not relevant to the special exception being sought. Since Mr. Fields has a home occupancy permit that issue has been resolved in his favor. In any event, the premises are being used as Mr. Fields' principal residence since it is the residence in which he spends most of his time. The fact that Mr. Fields maintained a residence in Texas when he was a Congressman does not undermine the present characterization of his residential use of these premises. With regard to the area variance issue, that issue is also not one which is properly before the Board since the Zoning Administrator's determination was not appealed by CHRS. However, CHRS's position is not consistent with the Zoning Regulations and this Board's application of the regulations. Mr. Fields is not seeking to modify more than two of the requirements found in §§ 203.4-203.8.

street may be preserved, even though they may be adapted to office use." Thus, the Master Plan anticipates the use of these residences for office use.

V.

The Proposed Home Occupation Use Does Not Impair the Integrity of the Zoning Map

The neighborhood is designated "moderate density residential" on the Generalized Land Use Map. The Zoning Regulations state that:

> The R-4 district is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two (2) or more families.

Thus, the R-4 district is less restrictive, and substantially more dense than R-1 zones, which are designated "to protect quiet residential areas". However, home occupations are permitted even in R-1 zones. The Regulations consider home occupations which adhere to the intent of the regulations as compatible in any residence district. The limited density of use which is proposed in this case with two additional staff people over what is permitted as a matter of right with the necessary registration, is clearly consistent with the zone plan in this respect.

In addition, as noted above, matter of right uses in an R-4 district include child development centers, sanitariums, hospitals or clinics, private clubs, fraternity or sorority houses, lodges or museums. It is quite evident that these types of uses could have a deleterious impact on residential character which is not even remotely comparable to the addition of two employees to a permitted home occupation. Thus, the increased density of use will not impair the integrity of the zone plan.

VI.

The Home Occupation Use As Contemplated Will Not Adversely Affect the Neighborhood

Here, we are dealing with special exceptions contemplated by the Zoning Regulations, see Stewart, supra, 305 A.2d at 518, and the Board's function on these facts is simply to determine whether a reasonable accommodation has been made between the applicant and the neighbors, which does not interfere with the legitimate interests of the latter. Glenbrook, supra, 605 A.2d at 32 citing Cornell University, supra, 68 N.Y.2d at 589, 503 N.E.2d at 511, 510 N.Y.S.2d at 861. The Zoning Regulations require only that the applicant demonstrate that it is not *likely* that the proposed intensity of use will make the matter-of-right home occupation use objectionable to neighboring properties.

In its opposition, CHRS, again ignoring the fact that a home occupation permit has already been granted, argues that use of the house as a home occupation will "exacerbate the commercial pressure on the 400 block of New Jersey Avenue", citing another dwelling which is used as a "party house" and alleging that prices will be pushed upward by the potential for home occupation use. However, with regard to "party houses", the Board is well aware from its other cases the use of residences for numerous evening events is a n urban problem not at all limited to home occupation issues. In addition, it is clear that such price pressure, if it exists, would be related to matter of right home occupation use as well; CHRS does not isolate these "price pressures" as being related solely to the additional two employees which are the subject of this hearing. CHRS also objects to the leasing of two off-street parking spaces by the applicant, which was done to minimize any adverse impact from the additional employees on the supply of on-street parking spaces. The submission by CHRS states that it questions the legality of the owner of the property which is not before the Board of leasing spaces to Mr. Fields, but clearly that is an issue not germane to the application before the

Board; if such a use is determined to be illegal, the applicant is willing to lease space elsewhere. More importantly, however, CHRS has not demonstrated that the addition of two cars to the area will have any impact on traffic or parking or that the leasing of two spaces is related to the two extra employees. Indeed, the number is simply too insignificant.

VII.

Exhibits In Support of The Application

Exhibit A	Letter from Zoning Administrator
Exhibit B	Zoning Map
Exhibit C	Map of Neighborhood Surrounding 434 N.J. Avenue, S.E.
Exhibit D:	Home Occupancy Permit

VIII.

Witnesses

A. The Honorable Jack M. Fields, contract purchaser

B. Ellen McCarthy, urban planner

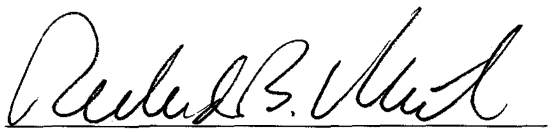
IX.

Conclusion

For the above reasons, the applicant respectfully requests that the Board grant the relief sought.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler

1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
(202) 775-0725

QUALIFICATIONS OF EXPERT WITNESSES
TESTIMONY OF PLANNER

Ellen M. McCarthy

I. Introduction
   A. Qualifications
   B. Summary

II. Lack of Adverse Impact on the Integrity of the Zone Map

III. Lack of Adverse Impact on the Neighboring Property

   A. Minimal visual impact
   B. Minimal traffic impact

STATEMENT OF QUALIFICATIONS

Ellen M. McCarthy
Director of Planning and Land Use Services
Robins, Kaplan, Miller & Ciresi L.L.P.

Master of City Planning, 1974
Harvard University
Bachelor of Arts, 1972
University of Maryland

Ms. McCarthy has over 24 years of experience in land use and transportation planning. She was formerly the Executive Director of the D.C. Downtown Partnership, and served as a zoning consultant for D.C. cases before the Zoning Commission and the Board of Zoning Adjustment for 8 years in independent practice, before joining Robins, Kaplan, Miller & Ciresi.

She also served as president of the local chapter of the American Planning Association, and on the Board of Directors of the Washington Area Community Investment Fund and the D.C. Preservation League. She currently serves as the Vice-Chair of the Board of Trustees of the Committee of 100 on the Federal City and Co-Chair of its Planning and Zoning Committee.



Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

DEC 16 1997

Mr. Jack Milton Fields
434 New Jersey Avenue, SE
Washington, DC 20002

Re: Home Occupation Permit Application (11/24/97)

Dear Mr. Fields:

Your application for a Home Occupation Permit to conduct a **Consulting/Strategic Planning** business from your home, submitted on November 24, 1997, has been reviewed by the Zoning Division's Acting Administrator.

The application has been denied, as prescribed by *District of Columbia Municipal Regulations* (DCMR) Title 11, the DC Zoning Regulations, Chapter 2, Section 203, Sub-Section 203.11 which states the following:

> "If the Zoning Administrator determines that an application for a Home Occupation Permit appears to meet the conditions of subsection 203.4 through 203.8, but to be inconsistent with the general purpose and intent of this section, the Zoning Administrator may certify the application to be decided as an appeal by the applicant to the District of Columbia Board of Zoning Adjustment (BZA)"

Specifically, in question #17 of your application, your proposed business exceeds the scope of the regulations regarding Home Occupations.

This decision of the Zoning Administrator may be appealed directly to the BZA by requesting a "special exception", which would allow the proposed business activity to be conducted if approved. Such an appeal must be made directly to BZA by the applicant or his/her legal representative on a Board of Zoning Adjustment Form 2, which may be obtained from BZA, 441 - 4th Street, NW. Your appeal must be filed within fourteen (14) calendar days form the date of this letter.

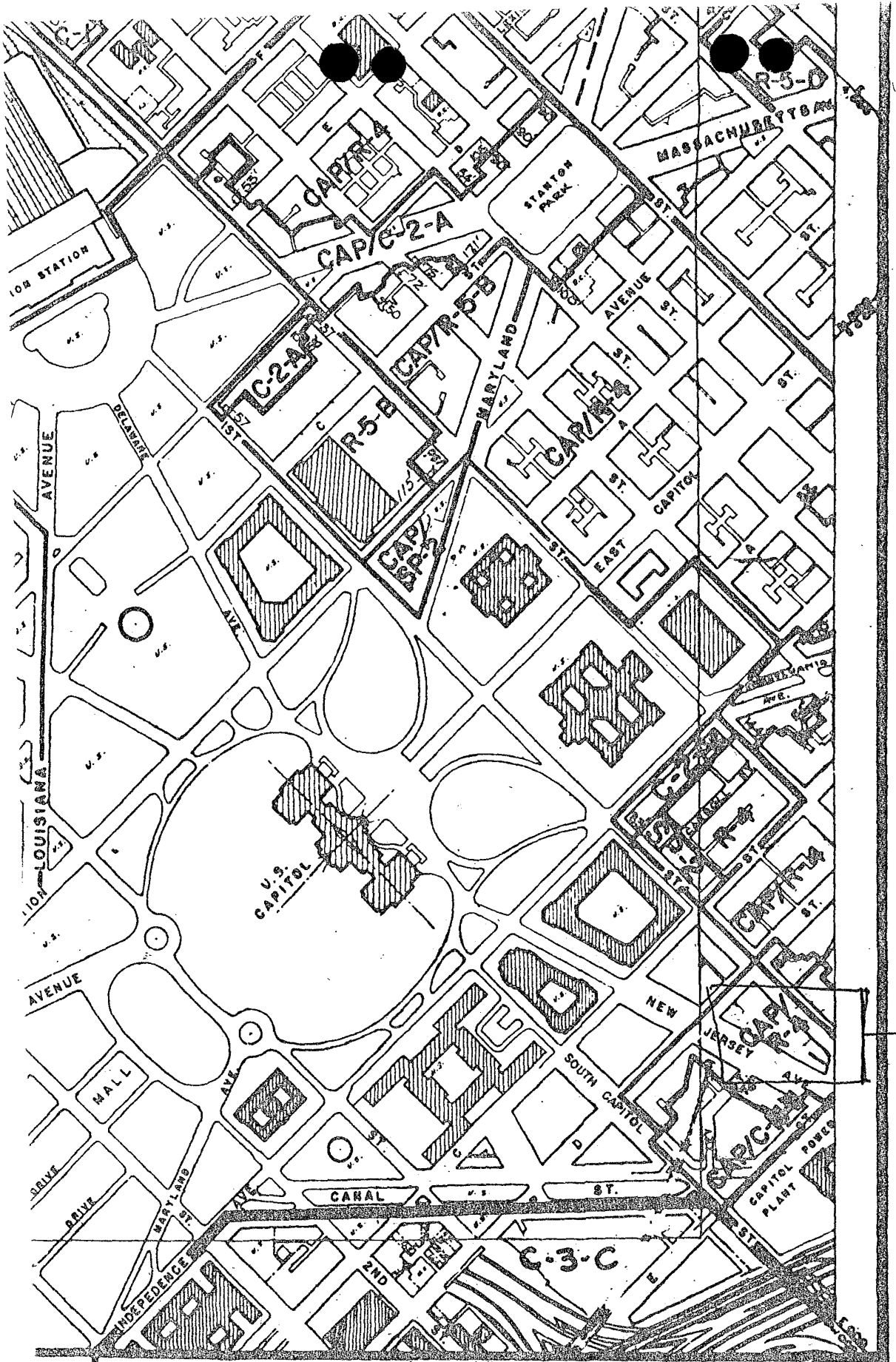
If you have any questions regarding the appeal process, call the BZA at 727-6311 between the hours of 8:30am and 4:00pm, Monday through Friday.

Sincerely,

Gladys Hicks
Acting Zoning Administrator



Exhibit B

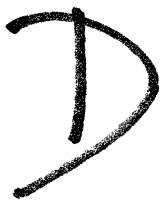


THIS MAP CONFORMS TO THE DECISIONS OF THE DISTRICT OF COLUMBIA ZONING COMMISSION, CORRECTED TO APRIL 1, 1996

C

MARYLAND AVENUE
Gen. Ulysses S. Grant
James A. Garfield Mem.
U.S. BOTANICAL GARDENS
THE CAPIT
EAST CAPITAL STREET
Reform Luth. Ch.
FOLGER LIBRARY
Thomas Jefferson Bldg.
LIBRARY of CONGRESS
LIBRARY ANNEX
Hubert Humphrey Bldg.
DEPT. of HEALTH & HUMAN WELFARE
Sam Rayburn Bldg.
HOUSE OFFICE BUILDING
Longworth Bldg.
HOUSE OFFICE BLDG.
Cannon Bldg.
HOUSE OFF. BLDG.
James Madison Bldg.
LIBRARY of CONGRESS
St. Patrick's R.C. Ch.
1st STREET
2nd STREET
3rd STREET
EAST CAPITAL STREET
CANAL STREET
CENTRAL ARTERY SB
CENTRAL ARTERY NB
SOUTH CAPITOL STREET
NEW JERSEY AVENUE
Capitol South
D STREET
E STREET
F STREET
FOLGER SQUARE
GARFIELD PARK
Naval Democratic Club
U.S. CURRENCY BLDG.
U.S. GOVT. HEATING
Capital Park Apts.
SOUTHWEST FREEWAY
434 N.J. Avenue

Exhibit C



Government of the District of Columbia

BLRA 64 (Rev. 2/97)

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
Zoning Division
614 H Street, N. W., Room 333
Washington, D.C. 20001

HOME OCCUPATION PERMIT

HOME OCCUPATION BUSINESS: Government Affairs/Strategic Planning Consultancy No. 98-0271

ISSUED TO: DATE ISSUED: 2-5-98 EXPIRATION DATE: None

Name: FIELDS, Jack Milton

D/B/A/: TWENTY - FIRST CENTURY GROUP, Inc.

Address: 434 New Jersey Avenue, SE - Washington, DC 20002

SPECIAL USAGE: ☐ VARIANCE GRANTED: ☐

SPECIAL CONDITION(S): One (1) Employee - Office Use Only

THIS PERMIT SHALL BE CONSPICUOUSLY POSTED ON THE ABOVE PREMISE AT ALL TIMES. IT IS VALID INDEFINITELY, UNLESS AN expiration date is stated ONLY for the purpose(s) indicated above, and is not TRANSFERABLE to another person or premises under ANY conditions. ANY CHANGE in type of business, ownership of business, or part of the premises used thereof, will render this PERMIT VOID and a NEW PERMIT must be obtained.

Designee: Gladys Hicks, Acting Zoning Administrator
DIRECTOR W. David Watts

Issuance Fee $ 25.00 Credit: **HOF 5/2200**

White - Applicant Canary - Finance & Revenue Pink - DCRA Goldenrod - Office 97-0469-PM5