BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

BZA No. 16370

The Capitol Hill Restoration Society submits the following Proposed Findings of Fact and Conclusions of Law:

Proposed Findings of Fact:

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OFFICE OF ZONING
DISTRICT OF COLUMBIA

1. The subject site is at 434 New Jersey Avenue, SE (Square 694, Lot 811).

2. The site is improved by a brick townhouse containing 4 floors with 3,096 gross square feet of floor area.

3. The site is zoned CAP/R-4. The R-4 District permits a home occupation in a dwelling if the dwelling unit is the principal residence of the and if the practitioner obtains a Home Occupation Permit.

4. Applicant applied for and received a Home Occupation Permit (Permit No. 98-0271, issued 2-5-98), which was issued without a public hearing in accordance with Sec. 203.3(b). This permit is for a "Government Affairs/Strategic Planning Consultancy," but allows only one nonresident employee.

5. Applicant, however, desires to employ three nonresident employees. An application for a Home Occupation Permit allowing three nonresident employees was rejected on December 16, 1997 by the Zoning Administrator.

6. Applicant then filed an appeal from the decision of the Zoning Administrator and hearing was set for June 10. By preliminary motion on that date, consideration was postponed so that an application could be advertised as a special exception pursuant to Sec. 203.10.

7. The applicant stated that he considers himself a resident of Texas (Tr. p. 21), that he pays income taxes in Texas and not the District of Columbia (Tr. p. 62), and that he is registered to vote in Texas and has a Texas driver's license (Tr. p. 66).

8. The applicant testified that he would reside and work at 434 New Jersey Avenue, SE when Congress is in session (Tr. p. 21) but that his employees would use the office full time, i.e., whether Congress in in session or not (Tr. p. 70).

9. The Capitol Hill Restoration Society by written submission and by testimony raised the following objections to granting of this application:

a. The proposed use will exacerbate the pressure for commercial use on the 400 block of New Jersey Avenue, SE.

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b. Granting of special exceptions for home occupations beyond what is permitted as a matter of right is a question of balance and the Board should be guided by three standards set forth in the regulations:

(1) Special exceptions for more than two nonresident employees may not be granted; that is clearly stated in Sec. 203.10(c).

(2) The home occupation should be at the principal residence of the practitioner and testimony by the applicant indicates that 434 New Jersey Avenue, SE is not his principal residence. (Sec. 203.2)

(3) The home occupation must be clearly secondary to the residential use. (Subsection 203.4(a)). Mr. Field's testimony indicates that 434 New Jersey Avenue, SE will be a part-time residence and a full-time office.

Proposed Conclusions of Law:

When considering a special exception for a home occupation beyond the conditions specified for matter of right uses, the interests of a practitioner to use the home as a workplace and source of livelihood must be balanced against the need to protect residential areas from the adverse effects of activities associated the home occupation. (Sec. 203.1)

However, the regulations contain specific requirements that must be met before the Board need consider the problem of balancing the interests of a practitioner and residents. This applicant fails to meet two essential requirements:

(1) Section 203.2 provides that one may conduct a home occupation only in his "principal residence." Applicant's testimony clearly shows that his principal residence is in Texas, not on New Jersey Avenue, SE. One whose principal residence is in another jurisdiction may never conduct a home occupation in a secondary residence in the District of Columbia. To allow a resident of another jurisdiction to practice a home occupation in a secondary residence would unfairly discriminate against District of Columbia domiciliaries who, of course, can never conduct a home occupation in a secondary residence in the District of Columbia.

(2) Section 203.4(a) requires that any "home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes." According to applicant's testimony, the subject premises are proposed to be a part-time residence and a full-time business. The residential purposes are clearly secondary to the proposed home occupation. Applicant's proposal

would violate the regulations, regardless of the number of non-residents he would employ.

Having concluded that the applicant failed to demonstrate that the dwelling unit concerned is his principal residence and further having concluded that the applicant failed to demonstrate that the home occupation was clearly secondary to use of the dwelling for residential purposes, it is unnecessary to consider opponents' contention that the Board's authority to modify the number of nonresident employees is limited by subsection 203.10(c): "In no case shall more than two (2) persons who are not residents of the subject home be permitted as employees of the home occupation."

In light of the foregoing. the Board ORDERS that the application is hereby DENIED.

CERTIFICATE OF SERVICE

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I hereby certify that on August 21, 1998 a copy of proposed findings of fact and conclusions of law was served on the parties listed below by the means indicated.

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