GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

**Application No. 16370-A of Gerald Cassidy on behalf of Jack Milton Fields,** pursuant to 11 DCMR § 3104.1 for a special exception under subsection 203.10 to allow an additional two employees in a home occupation at 434 New Jersey, S.E. (Square 694, Lot 811).

**HEARING DATE:** July 22, 1998
**DECISION DATES:** September 2, 1998, July 1, 2003, August 5, 2003

## DECISION AND ORDER

Gerald Cassidy, (hereinafter "Applicant"), the applicant in this case, was the owner of the subject property at the time of the filing of the application. He filed this application on behalf of Jack Milton Fields, (hereinafter "Fields"), the then contract purchaser of the property.[1] On February 5, 1998, the Acting Zoning Administrator, of the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"), granted Fields a home occupation permit for a consulting business on the subject property, with only one employee in addition to the resident. An application for a home occupation permit for two additional employees was rejected by the Zoning Administrator, with instructions that the request would have to be considered by the Board of Zoning Adjustment ("Board") as a special exception. Therefore, the Applicant filed this application with the Board on May 21, 1998, to allow for use of the property by two employees of Fields, who are not residents of the property, in addition to the one non-resident employee already permitted in the home occupation at 434 New Jersey Avenue, S.E.

On July 22, 1998, the Board held a public hearing on the application. The date for a public decision meeting was set for September 2, 1998, at which meeting the Board voted 3-0-2 to grant the special exception application.

Issuance of this order was stayed, however, because on September 14, 1998, the Capitol Hill Restoration Society ("CHRS") filed a motion to stay and an appeal of the decision of the Acting Zoning Administrator to issue Mr. Fields a home occupation permit for 434 New Jersey Avenue, S.E. The appellant claimed that 434 New Jersey Avenue, S.E. was not Mr. Fields' principal residence at the time the permit was issued and that therefore it was improperly issued. The issuance of this order was stayed pending the outcome of Board of Zoning Adjustment Appeal No. 16404, which was denied by the Board on June 2, 1999.

Following the denial of the appeal, the Applicant/Mr. Fields moved that the stay be lifted. On May 21, 2003, the Office of Zoning ("OZ") served copies of the motion, by first class mail, on the parties to the proceeding. No objections were received. At its regularly scheduled public meeting held on July 1, 2003, the Board voted 5-0-0 to lift the stay previously on the issuance of

[1] At the time of the filing of this application, Mr. Fields was the contract-purchaser of the subject property. At the date of this order, however, Mr. Fields is the owner of the property.



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this order. However, since a majority of the current Board did not personally hear and vote on this case, this order was sent out for exceptions prior to issuance, pursuant to D.C. Official Code § 2-509(d) (2001). Under this procedure, on July 1, 2003, this order was sent to all parties, who were afforded until July 14, 2003, to file exceptions to it with OZ. No exceptions were received and therefore, on August 5, 2003, at a regularly scheduled public meeting, the Board voted 5-0-0 to approve this order for issuance.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. The District of Columbia Office of Zoning ("OZ") properly notified the District of Columbia Office of Planning ("OP"), Advisory Neighborhood Commission ("ANC") 6B, as well as the ANC member for the appropriate Single Member District, of the filing of the application. Pursuant to 11 DCMR § 3113.13, the OZ published notice of the hearing on the application in the District of Columbia Register and mailed notices to the ANC, the Applicant, and to all owners of property within 200 feet of the subject property, advising them of the date of the hearing. Further, pursuant to 11 DCMR § 3113.15, the Applicant posted notice of the application on the subject property in plain view of the public.

Applicant's Case. At the hearing, Mr. Fields testified on behalf of the application. He testifeid that he has lived in the Capitol Hill area for 17 years. He further testified that he intends to reside on the subject property and operate from it a consulting business focusing primarily on telecommunications issues. He indicated that no external or internal structural modifications will be made to the property to accommodate this office use, and that no sign will be affixed to the property, but since the property was largely vacant for the last 3 years, necessary repairs would be done. Such repairs will include fixing water damage, repainting the exterior, removing dead trees and cleaning the nearby alley. Lastly, Mr. Fields spoke to some of the neighbors' concerns. He stated that he and his current employee have leased off-street parking spaces and that he has already leased off-street parking spaces for the two new employees. He testified that ninety percent of client meetings will not be held on the property and that most of the time his employees, except for one receptionist, will be either on Capitol Hill or at client's offices. He also testified that he will hold occasional afternoon coffees for 3 or 4 people, but no larger events.

Government Reports. There were no government reports submitted to the Board.

ANC Report. ANC 6B, automatically a party to this proceeding, voted to oppose the granting of the special exception application. The ANC listed three main objections. It opined that allowing an expanded consulting operation would produce traffic problems. The ANC Planning and Zoning Committee report cited increased Fedex and messenger deliveries, trucks, and what it felt was the likelihood that the property would be used as a lobbying and fund-raising venue, leading to more traffic and double parking. The ANC also indicated that there was little or no way of ensuring that the 25% floor area limitation mandated by § 203.4(b) would be adhered to.

Parties and Persons in Support. There were no parties in support of the application, but seven neighbors either submitted letters or signed a petition supporting the application.

Parties and Persons in Opposition. The Capitol Hill Restoration Society ("CHRS") appeared as a party in opposition to the application. The CHRS opposed the application on two grounds: (1) that Mr. Fields was not entitled to a home occupation permit because this is not his principal residence and thus the office use is not secondary to a residential use; and (2) Mr. Fields needs a variance for the relief requested. The CHRS has abandoned this second argument, as reflected in its proposed findings of fact.

Two neighbors appeared in opposition to the application, and other neighbors submitted letters in opposition. The major concern was that an office use was inappropriate to the residential character of the neighborhood. A specific concern was also broached regarding a desire to avoid excess foot traffic in the alley, leading from the off-street parking spaces. The most serious concern expressed by the neighborhood was the use of the subject property as a venue for frequent large fundraisers which would bring a great deal of traffic, parking demand and noise into the neighborhood in the early evening hours.

Hearing. The public hearing on the application was held and completed on July 22, 1998.

Decision Meeting. At the decision meeting on the application on September 2, 1998, the Board voted 3-0-2 to grant the application, subject to the conditions enumerated below. After the denial of Appeal No. 16404, the lifting of the stay on the issuance of this order, and the running of the period in which exceptions to it could be filed, during which no exceptions were received, the Board voted 5-0-0 at the decision meeting on July 1, 2003, to issue this order.

**FINDINGS OF FACT**

1. The subject property is located at 434 New Jersey Avenue, S.E. (Square 694, Lot 811). It is located between D and E Streets, S.E. The property is located in a CAP/R-4 zone district.

2. The property is developed with a four-story residential semi-detached townhouse structure. The townhouse is attached on the south side only, with a driveway belonging to the townhouse to the north on the other side.

3. The property is now owned by former Congressman Jack Milton Fields, who, at the time the application was filed, was the contract-purchaser of the property.

4. The property is in a neighborhood of mixed residential, commercial and institutional uses, with the Capitol Building and two office buildings for the House of Representatives immediately north of the site. The Capitol Power Plant and a Congressional Annex lie immediately to the south, with a block of office and retail buildings to the east along First Street. The 400 block of New Jersey Avenue, where the property is located, however, is residential in character, except for a three-story office building at the corner of New Jersey and E Streets, which is grandfathered from a previous commercial use.

5. On February 5, 1998, DCRA granted Mr. Fields a home occupation permit to run a consulting business from the site. The permit allowed one non-resident employee in addition to the resident, Mr. Fields.

6. Mr. Fields has another residence in Texas, but his consulting business is located here, the subject property is his place of residence a majority of the year and he has no other local residence. Therefore, the subject property is Mr. Fields' principal residence and will be used primarily as such, and secondarily for consulting office use.

7. Under § 203.10 of the Zoning Regulations, Mr. Fields is seeking special exception permission from the Board to add two non-resident employees to his home occupation. These two employees are true employees, not co-practitioners.

8. There will be no external or internal structural modifications made to the subject property to accommodate the office use. Necessary repairs, however, resulting from the fact that the property has been largely vacant for the last three years, will be done, including fixing water damage, repainting the exterior, removing dead trees and cleaning the nearby alley.

9. No sign will be affixed to the exterior of the premise and further, Mr. Fields will maintain the residential character and appearance of the premise and lot.

10. The home occupation use will not occupy more than 25% of the floor area of the townhouse. It will occupy one floor of the dwelling, on the third level, making the office use not visible from the street.

11. Other than a receptionist, hired to perform secretarial and receptionist duties, Mr. Fields and his employees will be off-site a majority of the time, possibly on Capitol Hill or at clients' offices. No more than one employee will be employed to perform such secretarial and receptionist duties.

12. Mr. Fields may host occasional afternoon coffees for three or four people, but no large events.

13. The home occupation use will receive express mail deliveries two to three times a week.

14. Mr. Fields and his current employee have off-site leased off-street parking spaces. Two off-site, off-street parking spaces to accommodate the proposed two new employees, have already been leased.

15. The proposed two new employees will not cause any significant traffic problems or congestion.

16. No finished products will be produced as a result of the proposed home occupation. Any files or other related materials will remain in the area designated for the home occupation.

17. Neither Mr. Fields nor any other person will use any equipment or process which will create visual or audible electrical interference in television or radio receivers outside the

subject property, or which will cause fluctuations in line voltage outside the subject property.

18. The proposed home occupation will not produce any noxious odors, vibrations, glare, or fumes which are detectable to normal sensory perception outside the subject premise. Additionally, the proposed use will not produce a level of noise which exceeds the level normally associated with the category of dwelling or with the immediate neighborhood.

19. The proposed home occupation use will not be a retail service or other use as specified in §§ 701.1, 701.4, 721.2, 721.3, 741.2, 741.3, 751.2(b), 801.7, or 902.1, nor will it be a use prohibited in § 902.1, and thus it is not disallowed by § 203.9 of the Zoning Regulations.

**CONCLUSIONS OF LAW**

Generally, the Board is authorized to grant a special exception where, in its judgment, the special exception will "be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property." 11 DCMR § 3104.1, D.C. Official Code § 6-641.07(g)(2) (2001). Each special exception permitted must also meet the conditions enumerated in the particular section pertaining to it. In this case, the Applicant/Mr. Fields must meet not only the requirements of § 3104.2 (codified as § 3108.1 at the time of the filing of the application), but also the requirements of § 203.10, which in turn requires substantial compliance with §§203.4 through 203.8. Further, they must demonstrate that the proposed home occupation and related conditions shall be consistent with the purposes set forth in § 203.1.

Under § 203.10(b) of the Zoning Regulations, the Board may approve a special exception for a home occupation which modifies no more than two of the requirements for a home occupation set forth in §§ 203.4 through 203.8. Section 203.4(d) requires that no more than one person who is not a resident of the dwelling unit may be employed in the home occupation, though it places no restriction on the number of residents who may be so employed. The Board concludes that the proposed use, a strategic planning and consulting firm, is consistent with the purposes set forth in § 203.1. The Board further concludes that the use meets all the zoning requirements set forth in § 203.10, except the restriction on the number of non-resident employees established in § 203.4(d).

Based on the record, the Board concludes that the proposed home occupation use is compatible with the residential neighborhood in which it is located and that, as conditioned by this order, it will not have an adverse impact on traffic or parking in the area. Indeed, the Board has recognized the use of residences for a consulting business in a residential district with less density than that of the subject site. *See Application No. 15925* (March 23, 1994). The Board also concludes, however, that, pursuant to § 203.10(b), one modification is necessary (of subsection 203.4(d)), to permit Mr. Fields to employ two additional non-residents, even though it is expected that the two additional employees will not be working on the premise the majority of the time. Such a modification will not be inconsistent with the general purposes or intent of § 203.10.

With regard to the contention that the subject property is not the principal residence of Mr. Fields, the Board, based on the record and Finding of Fact No. 6, concludes that the subject property is Mr. Fields' principal residence. The Zoning Regulations do not require that the residence be the place in which the applicant is domiciled, which is the location in which an individual pays income taxes. Rather, the regulations look to which location is the principal residence, namely, where the individual resides most of the time. Here, the residence is the only one utilized by Mr. Fields in this area, and it is utilized a majority of the week of every month of every year.

The Board concludes that, pursuant to § 3104.1, the special exception for the proposed home occupation use can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map, and that, as conditioned by this order, it will not tend to affect adversely the use of neighboring properties in accordance with the Zoning Regulations and Map.

The Board has accorded ANC 6B the great weight to which it is entitled, pursuant to D.C. Official Code § 1-309.10(d) (2001). The Board has considered the ANC's objections, specifically parking and traffic impacts, potential use of the premise for large gatherings or events, and concern that the 25% floor area limitation be adhered to. All of these concerns have been adequately addressed in the record. Moreover, the ANC failed to specify how much of a traffic problem would be caused by the addition of two employees. The Board therefore finds the ANC's recommendation unpersuasive when weighed against the evidence in the record and the applicable legal principles.

Based on the record before the Board and for the reasons stated above, the Board concludes that the Applicant/Mr. Fields has satisfied the burden of proof with respect to the application for a special exception under subsection 203.10 to allow two additional employees in a home occupation at 434 New Jersey Avenue, S.E. It is therefore **ORDERED** that the application be **GRANTED**, subject to the following conditions:

1. At least two off-street parking spaces shall be provided for employees of the home occupation use.

2. The residential character and appearance of the residence and lot shall be maintained.

3. No interior structural alterations shall be permitted if it would make it difficult to return the premise to use which is exclusively residential.

4. No operations outside the structure shall be conducted or allowed, and no storage or other unsightly condition shall be maintained or allowed outside the structure.

5. No equipment or process shall be used which creates visual or audible electrical interference in television or radio receivers outside the subject residence, or which causes fluctuations in line voltage outside the subject residence.

6. The use shall produce no noxious odors, vibrations, glare, or fumes which are detectable to normal sensory perception outside the subject residence.

7. The use shall not produce a level of noise which exceeds the level which is normally associated with the category of dwelling or the immediate neighborhood.

8. Vehicular trips to the premise by visitors, customers, and delivery persons, if any, shall not exceed eight (8) trips daily on a regular and continuing basis.

9. There shall be no more that eight (8) clients or customers on the premise in any one (1) hour period.

10. No additional employees shall be employed without first obtaining relief from the Board of Zoning Adjustment.

**VOTE** (September 2, 1998): **3-0-2** (Sheila Cross Reid, Betty King and John G. Parsons to grant; the third mayoral appointee and National Capitol Planning Commission designee not present, not voting.)

**VOTE** (August 5, 2003): **5-0-0** (Geoffrey H. Griffis, Curtis L. Etherly, Jr., Ruthanne G. Miller, David A. Zaidain approving the issuance of the order, John G. Parsons approving same by proxy).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
Each concurring Board member has approved the issuance of this order.

**ATTESTED BY:**
**JERRILY R. KRESS, FAIA**
**Director, Office of Zoning**

**FINAL DATE OF ORDER:** AUG 15 2003

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

PURSUANT TO 11 DCMR 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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**BZA APPLICATION NO. 16370-A**

As Director of the Office of Zoning, I hereby certify and attest that on AUG 15 2003 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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rsn

**ATTESTED BY:** _____
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**Director, Office of Zoning**