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OFFICE OF ZONING
DISTRICT OF COLUMBIA

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To: Tracey Witten Rose
Acting Secretary
Board of Zoning Adjustment
Office of Zoning

Date: December 11, 1998

From: Alan H. Bergstein
Chief
Land Use and Public Works Section
Government Operations Division

Subject: Definition of "Principal Residence" for the purpose of obtaining Home Occupation Permits - BZA Appeal No. 16404

This is in response to your November 20, 1998 request for advice concerning "whether a person may be issued a home occupation permit when the subject property is not his principal residence." Section 203.2 of Title 11 of the District of Columbia Municipal Regulations defines a home occupation as a business, conducted in a dwelling unit which serves as the principal residence of the practitioner. If the dwelling place is not the person's principal residence, the person is ineligible for a home occupation permit. However, the term "principal residence" is subject to two interpretations. A dwelling may qualify as a "principal residence" under either or both interpretations. It is within the discretion of the Board of Zoning Adjustment ("Board") to determined which of these two interpretations should be given to the term.

This question arises out of the issuance of a home occupation permit to Jack Milton Fields, a former member of Congress who purchased a home on Capitol Hill. On February 5, 1998, Mr. Fields, doing business as Twenty First Century Group, Inc., was granted a home occupation permit to operate a business at 434 New Jersey Avenue, S.E., Washington, DC. Under that permit, Mr. Fields was authorized to have one employee at that location. On May 21, 1998, Mr. Fields filed an application for a

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special exemption to employ three persons at that address. The Capitol Hill Restoration Society ("CHRS") appealed the issuance of the home occupation permit arguing that the home at 434 New Jersey Avenue, S.E., was not Mr. Fields' principal residence as required by 11 DCMR § 203.2.[1] Upon review of the information which you forwarded to this Office, I conclude that Mr. Fields is ineligible for a home occupation permit if the dwelling is not his principal residence.

The requirement that a home occupation be operated out of the principal residence of the applicant is derived from the definition of the term in 11 DCMR § 203.4(a). "Home occupation" is defined as:

> a business, profession, or other economic activity conducted full-time or part-time in a dwelling unit which serves as the principal residence of the practitioner of the home occupation.

"Principal residence" is not defined in the regulations. When a term is not defined by statute or regulation, 11 DCMR § 199.2(g) provides that the word shall have the meaning given in Webster's Unabridged Dictionary.[2] The words are to be construed

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[1] CHRS also argued that the operation of the business was not secondary to the use of the dwelling unit for residential purposes as required by 11 DCMR § 203.4(a). This issue is being addressed only briefly at the end of this memorandum because this Office does not have enough information about the amount of time Mr. Field spends living in the District, and the amount of time the business is operated at that location to determine whether the operation of the business is secondary to the use of the premises for residential purposes as required by 11 DCMR § 203.4(a).

[2] We did not have access to the exact dictionary cited in 11 DCMR § 199.2(g). The definitions for "principal" and "residence" as cited in the Webster's Third New International Dictionary Unabridged (1967) are as follows:

> principal\ 1: most important, consequential or influential... 4: MAIN
>
> residence\2a (1) the place where one actually lives or has his home as distinguished from his technical domicile (2): a temporary or permanent dwelling place, abode, or habitation to which one intends to return as distinguished from a place of temporary

"according to their ordinary sense and with the meaning commonly attributed to them". Davis v. United States, 397 A.2d 951, 956 (D.C. 1979). Webster's New Collegiate Dictionary (1981) defines "principal" as "1. most important, consequential, or influential: chief." It defines "residence" as:

> 2 a (1) the place where one actually lives as distinguished from his domicile or a place a place of temporary sojourn; (2): DOMICILE 2a[3]

Reading the definition of "principal" along with the first definition of "residence", the principal residence could be interpreted as the place where one lives most of the time. This interpretation would not be at odds with the purpose of 11 DCMR § 203.2 which could be construed as a regulation aimed at assuring that the residence is used primarily for residential purposes and not for business. If the Board decides to interpret "principal residence" as the place where the person lives most of the time, there must be some evidence concerning the amount of time the person resides at the Capitol Hill address as compared to other residences.

On the other hand, the Board might look to the second definition of residence cited above from Webster's. There "residence" is defined as a domicile, i.e., a person's fixed, permanent, and principal home for legal purposes.[4] Black's Law

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> sojourn or transient visit (3): a domiciliary place of abode.

[3] The "2a" definition for "domicile" in Webster's is "a person's fixed, permanent, and principal home for legal purposes." Black's Law Dictionary 1193 (6th ed. 1990) defines "principal residence" as "[t]he residence...where the taxpayer resides most of the time."

[4] The term "principal residence" is synonymous with the term "principal place of abode" which was presumed to be synonymous with the term "domicile" in Bank-Fund Staff Federal Credit Union v. Cuellar, 639 A.2d 561 (D.C. 1994). In that case, the Court of Appeals quoted Alexander v. District of Columbia, 370 A.2d 1327, 1329 (D.C. 1977) which stated "to prove that persons who left their former dwelling places and have taken up residence in another state in order to accept work in the federal civil service are domiciled in their new location, the facts adduced must demonstrate that such persons have no fixed and definite

Dictionary sheds further light upon the definition of "domicile" by stating that it is:

> [a] person's legal home. That place where a man has his true, fixed, and permanent home and principal establishment, and to which whenever he is absent, he has the intention of returning .... The permanent residence of a person or the place to which he intends to return even though he may actually reside elsewhere. A person may have more than one residence but only one domicile. The legal domicile of a person is important since it, rather than the actual residence, often controls the jurisdiction of the taxing authorities and determines where a person may exercise the privilege of voting and other legal rights and privileges. The established, fixed, permanent, or ordinary dwelling place or place of residence of a person, as, distinguished from his temporary and transient, though actual, place of residence. It is his legal residence, as distinguished from a place to which business or pleasure may temporarily call him.

Id. 484-485.

Part of the Black's definition was cited in District of Columbia v. Murphy, 314 U.S. 441 (1941), which considered whether the District income tax was collectible from a person living in the District, but claiming to be domiciled elsewhere. The Court held that a person who comes to the District of Columbia as a government employee, does not automatically have his or her domicile changed to the District of Columbia -- the person must have abandoned the "domicile in the State of origin and elected to make his permanent home in the District." Id. at 450. See also, Bank-Fund Staff Federal Credit Union supra cited in note 3 (holding that a residential mortgage was not converted into a commercial mortgage or investment by the rental of the property to non-family members while the owner temporarily relocated to another country to perform a job assignment.) A change of domicile occurs only where there is "(1) physical presence, and (2) an intent to abandon the former domicile and remain [in the new one] for an indefinite period of time." (citation omitted) District of Columbia V. Woods, 465 A.2d 385 (D.C. 1983).

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intent to return and make their homes where they were formerly domiciled."

In his testimony, Mr Fields stated that: he votes in Texas; he only lives at the District address when Congress is in session; he is a resident of Texas; he pays income taxes in Texas; he has a Texas driver's license; and he is a domiciliary of Texas. In response to the question of whether 434 New Jersey Avenue, S.E., was his principal residence, Mr. Fields replied that it was his principal residence when he was in the District. Viewing this evidence, if the Board interprets "principal residence" to be synonymous with "domicile", the evidence does not support a finding that his principal residence is in the District. In that case, Mr. Field's home occupation permit should be revoked. If, however, the Board determines that "principal residence" means the place where Mr. Field lives most of the time, assuming he can prove that he resides in the District most of the time, the issuance of the permit would be in compliance with 11 DCMR § 203.2. Whatever definition the Board adopts will become binding precedent for future determinations concerning the meaning of the term.

If the Board determines that 434 New Jersey Avenue, S.E. is Mr. Field's principal residence, the Board should examine whether his operation of the business is secondary to his use of the premises for residential purpose in accordance with the requirement of 11 DCMR § 203.4. In making this determination, the Board should consider, among other things, the amount of time he resides at that location as compared to the amount of time business is conducted there. If he meets the requirements of sections 203.2 and 203.4(a), the Board may: (1) uphold the granting of the home occupation permit; and (2) lift the stay against the special exception that was entered granting his application to employ a total of four persons (including himself).

In conclusion, Section 203.2 requires that the property be the principal residence. An agency is bound to follow its own rules. See, Service v. Dulles, 354 U.S. 363, 388-89 (1957); and Macauley v. District of Columbia Taxicab Commission, 623 A.2d 1207, 1209 (D.C. 1993). Thus, if Mr. Fields' principal residence is in not 434 New Jersey Avenue, S.E., he may not operate a home occupation from that address because his operation of that business does not conform with the definition of "home occupation". If the Board determines that the District address is not Mr. Fields' principal residence, he is ineligible for a home occupation permit; and the Board must revoke it.

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