CAPITOL HILL RESTORATION SOCIETY
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May 12, 1999

OFFICE OF ZONING
DISTRICT OF COLUMBIA

Ms. Sheri M. Pruitt-Williams, Interim Director
Board of Zoning Adjustment
Suite 210
441 Fourth Street, NW
Washington, DC 20001

BZA # 16404
PREMISES: 434 New Jersey Avenue, SE
SQ 694, LOT 811
HEARING DATES: December 16, 1998 and April 21, 1999
ZONING: R-4

Dear Ms. Pruitt-Williams:

The Capitol Hill Restoration Society, appellant in this matter, submits the following proposed findings of fact and conclusions of law which we believe the Board should consider in preparing the order for this appeal:

SUMMARY OF THE PROCEEDINGS:

The Capitol Hill Restoration Society (CHRS) filed an appeal on September 14, 1998 from a decision of the Acting Zoning Administrator on February 5, 1998 to issue a Home Occupation Permit to Jack Milton Fields (Intervenor) for the premises at 434 New Jersey Avenue, S.E. The appeal was predicated on facts developed at a July 22, 1998 hearing on an application by Mr. Fields for a special exception to allow a home occupation employing three nonresident employees (BZA 16370). We believe that the facts developed at that hearing demonstrate that 434 New Jersey Avenue, S.E. is not Mr. Fields' principal residence, a condition precedent to granting a home occupation permit.

Counsel for Mr. Fields presented preliminary motions to strike from the record any material not before the Zoning Administrator on February 5, 1998 when the Home Occupation Permit was issued. The Board moved to strike all such facts, thus excluding facts presented to the Board on July 22 in BZA 16370. Tr. (16 December 1998) 35.

Counsel for Mr. Fields also moved to dismiss the appeal as untimely because it was asserted that CHRS was aware of the February 5, 1998 permit as early as April 1998. CHRS took the position that until the July 22 hearing in BZA 16370, there was no factual basis for an appeal. The Board agreed and voted to move forward with the hearing. Tr. (16 December 1998) 44-45.

Members of the Board raised issues regarding responses on the Application for Home Occupation Permit that resulted in issuance of Home Occupation Permit 98-0271. Tr. (16 December 1998) 57-73. Questions were raised about inconsistency in answers given, and how a contract purchaser should respond to questions dealing with use of the premises as applicant's residence.

BZA
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Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.22

FINDINGS OF FACT:

1. A Home Occupation Permit (98-0271) was issued on February 5, 1998 to Jack Milton Fields, D/B/A Twenty-First Century Group, Inc. for a Government Affairs/Strategic Planning Consultancy at 434 New Jersey Avenue, S.E.

2. There is no information in the record to show that Mr. Fields was a resident at 434 New Jersey Avenue when the Home Occupation Permit was issued on February 5, 1998.

3. The application for Home Occupation Permit 98-0271, filed in January 1998 by Mr. Fields, contains inconsistent responses:

   a. 434 New Jersey Avenue, SE was described as an "Owner Occupied Single Family Dwelling," indicating that Mr. Fields owned and occupied the premises. (Response to question 4.)

   b. The owner of the property is Gerald Cassidy, not Mr. Fields. (Response to question 5.)

4. Applicant did not respond to that portion of question 4 of the Application for Home Occupation Permit which asks whether applicant is Owner, Tenant, or Other.

5. The clerk who received the completed Application for Home Occupation Permit was informed verbally that the applicant was a contract purchaser of the premises. Testimony of Ellen McCarthy, Tr. (21 April, 1999) 148, 163, and 175.

6. A representative of the Zoning Administrator testified that the Zoning Division does not issue Home Occupation permits to contract purchasers:

> "If the person is ... going to use our action as a basis for making a decision whether to purchase, then we would give them verbal. <u>We would not give them an official document allowing them to operate from a home when we have information that they do not reside there</u>. I plan to buy or I plan to move does not make it their residence. Once you have moved, come back and see us." (Emphasis added) Testimony of Edgar G. Nunley, Tr. (16 December 1998) 67.

CONCLUSIONS OF LAW AND DECISION:

1. Subsection 203.3(c) of the Zoning Regulations provides that a Home Occupation Permit may be granted only to a person who resides at the residential address for which the permit is issued.

2. It is the practice of the Zoning Division to issue Home Occupation Permits only if applicants are resident in the premises for which a permit is sought.

3. The Home Occupation Permit issued on February 5, 1998 was issued in error because the applicant was not a resident of the premises at that time.

4. The appropriate remedy is to revoke Home Occupation Permit 98-0271, issued February 5, 1998. Beins v. Board of Zoning Adjustment, 572 A.2d 122, 129. This action will not preclude Mr. Fields from applying for a new home occupation permit, but the Zoning Administrator will be able to consider given the facts excluded by motion in this appeal.

ACCORDINGLY, IT IS ORDERED that the Appellant's appeal is hereby GRANTED and the decision of the Zoning Administrator is reversed.

Sincerely,

Lyle R. Schauer
Chair, Zoning Committee

CERTIFICATE OF SERVICE

BZA APPLICATION NO. 16404

I hereby certify that on May 12, 1999 a copy of proposed findings of fact and conclusions of law was served **by FAX and first class mail, postage prepaid:**

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Lyle R. Schauer
Chair, Zoning Committee