Attachment for BZA Form 1: Appeal involving 434 New Jersey Avenue, SE

This is an appeal from the decision of the Acting Zoning Administrator to issue a Home Occupation Permit (No. 98-0271, copy attached) to Jack Milton Fields, DBA Twenty-First Century Group, at 434 New Jersey Avenue, SE.

The issue in this appeal is whether 434 New Jersey Avenue was Mr. Fields' principal residence.

On May 21, 1998 Mr. Fields filed an application for a special exception to employ three nonresident employees, that is, two employees above the limit of one allowed by Permit No. 98-0271. A hearing was held on this application (BZA No. 16370) on July 22, 1998. At that hearing, Mr. Fields testified that he is a resident of Texas, that he is registered to vote in Texas, that he holds a Texas driver's license, and that he does not pay income taxes in the District of Columbia. (A copy of pages 21, 62, and 66 from the transcript of the July 22 hearing are attached.) We believe that these facts conclusively demonstrate that 434 New Jersey Avenue, SE is not Mr. Fields' principal residence and that the home occupation is not clearly secondary to residential use of the premises.

It is our contention that all of these facts also were true when the Acting Zoning Administrator issued Home Occupation Permit (No. 98-0271). This leads to one of two possibilities:

a) The Acting Zoning Administrator knew of these facts when she issued Permit No. 98-0271, in which case we believe she erred in interpretation of the terms "principal residence" (Sec. 203.2), and "secondary to the use of a dwelling unit for residential purposes (Subsec. 203.4(a)).

b) The Acting Zoning Administrator was not apprised of these facts at the time, and had she been apprised, she would have denied the application for a home occupation permit because this is not Mr. Fields' principal residence nor is the home occupation use clearly secondary to residential purposes.

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DISTRICT OF COLUMBIA
OFFICE OF ZONING

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Board of Zoning Adjustment
District of Columbia
CASE NO.16404
EXHIBIT NO.3