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Memorandum ● Government of the District of Columbia

TO: D.C. Zoning Commission

Department, Agency, Office: Planning

FROM: Fred L. Greene, Director
Office of Planning

Date: APR 16 1987

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ZONING SECRETARIAT,
DISTRICT OF COLUMBIA

SUBJECT: Zoning Commission Case No. 86-29 -- Home Occupation Provisions

Introduction

When Office of Planning staff first contacted the Zoning Administrator to discuss the issue of artists' studios as home occupations, Mr. Fahey's response was that the Home Occupation provisions badly needed a complete updating and improvements as to both regulations and enforcement. He indicated that the number of home occupations has been expanding significantly and that recently the number of home occupation applicants has actually exceeded the number of applications for Certificates of Occupancy (C of O). Since a C of O is not required for home occupations, a letter form is used to permit the use.

The purpose of this zoning text amendment is to adopt updated and improved controls over home occupations.

The planning literature on home occupations, examples of which are attached to this report following the recommended text, suggests that our problems are common: The number of home occupations is growing rapidly due in part to technological advances such as the computer and the word processor; there is widespread violation, primarily out of blissful ignorance that regulations exist; and the existing ordinance is short and vague, lending itself to multiple interpretations, compounded by the time-honored phrase, "customarily incidental and subordinate to the principal use..." (emphasis added).

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ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 27

BZA
Case No. 17079
Exhibit No. 15

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 15

What is customary will vary from time to time and place to place. This presents a quandary for the city in terms of equitable issuance of permits and enforcement, and for residents pursuing or proposing to pursue a home occupation. Should the resident run the risk of applying for a permit when it is extremely difficult to determine in advance whether the request will be approved or denied?

The author of one study of home occupations, William Toner,* recounts that he researched and wrote the study at home in Chicago. He decided to call City Hall to find out if his work at home was legal and was advised that it was not. He then observed that Saul Bellow's work was no doubt equally illegal.

Existing Regulations

The District of Columbia Home Occupation provisions consist primarily of two definitions plus Subsection 3101.5. The latter contains the accessory use provisions of the R-1 District which then carries through successive zone districts in the cumulative reference system. Subsection 3101.5 (199 DCMR 11), a copy of which is Attachment A to this report, permits a series of "accessory uses incidental to uses" permitted in R-1 Districts. Accessory use is defined in the Regulations as follows:

> "Use, accessory: A use customarily incidental and subordinate to the principal use and located on the same lot therewith".

Returning to 3101.5 (199 DCMR 11), home occupation, also a defined term, is listed as one of the specifically permitted accessory uses in 3101.54 (202 DCMR 11), together with tutoring, physician or dentist, two roomers or boarders, parking space and child development home.

Home occupation is defined as follows:

> "Home Occupation: An occupation in connection with which there is used no more than one sign or display

*Planning for Home Occupations, Planning Advisory Service, William Toner, American Society of Planning Officials, Chicago, 1976.

> which does not exceed 144 square inches in area; no stock in trade is kept nor any commodity sold upon the premises; no person (is) employed other than a member of the immediate family residing on the premises; and, no mechanical equipment (is) used except such as is permissible for purely domestic or household purposes".

Note that the home occupation is an accessory use permitted as a matter of right. That is, the Zoning Administrator determines whether the standards have been met. Also note that the standards for home occupation are incorporated in the definition rather than in the Regulations. Section 202 DCMR 11 includes other accessory uses which are not subject to the home occupation definition and which have their own standards, e.g., tutoring, physician. Child development home is a hybrid. Relatively few standards govern a potentially wide variety of home occupation uses.

Opportunities and Constraints

The following discussion of opportunities and constraints is intended to raise most of the basic regulatory issues in the case and serve as a background to the intent of the proposed new regulations themselves.

Opportunities

Economic Opportunity. "As the economy continues to evolve from manufacturing to accumulating and exchanging information and services, a trend accelerated by the continuing advances in computer technology and telecommunications networks, the impact will increasingly be felt outside factories and office buildings -- in local municipalities. Additional workers, enabled by technology to work at home, will undoubtedly choose to do so for the obvious reasons that working at home saves commuting costs, eliminates office rental, increases overall convenience, permits mothers with young children the opportunity to work while raising their own children, and so forth".*

*"Performance Standards for Home Occupations", American Planning Association, Frederick H. Allen, III, Chicago, January 1984.

Historically, a wide variety of individuals have worked at home establishing small part-time or full-time businesses. Some of these evolve out of hobbies, e.g., home crafts. Some are artists, composers, writers, musicians, and so on. For the vast majority of such artists, earnings are very low, so that working at home saves expenses on rent and commuting. Home cooking, dressmaking/tailoring, telephone sales, mail order business and individual tutoring or musical instruction are other typical and "customary" home occupations.

It is emphasized here that a reasonable ability to establish an accessory workplace in the home represents economic opportunity and expanded life choices for individuals. Indeed home occupations may well be an important source of small business development at the very early stages and an important economic support for the arts. Obviously, when a hobby which has become a home business begins to "take off" it is time for the individual to move it to a commercial location. (The standards proposed herein are intended to make that move a necessity.) Other occupations are inherently unsuited to home occupation because of the nature of the processes, customer traffic, etc., that is involved. Many of these are specifically prohibited, as discussed later.

In summary, a wide variety of limited scale occupations and businesses can be conducted at home and represent opportunity. How to set the limits is the key to the case.

Convenience. The quote contained in the preceding section indicates some of the more important convenience and life style advantages for individuals pursuing home occupations: flexibility of work and leisure hours, taking care of children while working at home, saving the expense and time involved in commuting, and the financial savings as to rental of a workplace and costs of commuting. The convenience is very important to many handicapped persons who work at home, and a special provision is made in the proposed text. It is noted here that this is perfectly appropriate in this type of zoning, unlike any other, in that the permit goes to the individual in the property and does not run with the property. The elderly and retired may be similarly advantaged by being able to earn some income at home.

Public Interest. The public interest on the opportunity side of the equation, lies primarily in the economic and personal opportunities discussed above, plus some others.

Economically, it should be noted that small businesses in the take-off phase are sometimes credited with business or technical innovations and with a relatively great increase - from a small base -- in number of employees. The latter would occur after the move to a commercial or industrial district, but the incubator phase at home is important. If the individual had to attempt to buy or rent commercial space from the beginning, the business or profession might never have begun.

Public safety in neighborhoods or apartment buildings would likely be enhanced to a degree by having a number of people at home during normal working hours and providing "eyes on the street" in the sense of deterring crime or being able to telephone the police to report crime. Finally, some savings in traffic congestion from people working at home no doubt occurs. This public benefit should not be overstated, however, because the total numbers involved may not be significant in terms of total traffic flows and because some of them would have been using and supporting public transit. The absence of a commute is probably more of a personal and business economic advantage than a generalized public benefit.

Constraints

Potential Loss of Housing. Occupations pursued in residential areas must be strictly regulated so that dwelling units are not lost from the housing stock. The proposed regulations are intended to be quite strict in this regard, including a maximum size limit on the home occupation, no use of non-domestic equipment or machinery, no separate entrance and no nonresidential exterior alterations. The concept of the occupation as an accessory use to the principal, residential use is of course the only basis for permitting a variety of home occupations.

Adverse External Effects. Control over adverse effects is the most important counterpoint to the small-scale economic opportunity represented by home occupations. It is essential that neighborhood character, including the residential character of the premises as well as nuisance effects on neighbors be strictly controlled. We believe the proposed controls are very strict indeed. We have accepted the general concept outlined in the Frederick H. Allen article, i.e., that a broader range of home occupations should be permitted but that regulation should be by "standards instead of definitions." (Allen, p.2) After

reviewing a variety of other ordinances and reports, our view is that the essence of a home occupation is an individual producing a good or service on the premises in an unobtrusive way, but not to sell it there nor engage in processes nor other activities out of keeping with the residential character of the area.

Deliveries of productive inputs and outputs must be small in scale and few in number, so that actual sales occur elsewhere than on the subject premises. Transmission of the service may also be by telephone. Most importantly, we have proposed strict standards on customer or client visits and commuting to the home in which the occupation is practiced. The prohibition against retail trade and services found in the proposed text, together with the restrictions on customer visits and the limit on employees are intended to accomplish this. A variety of other performance standards are largely self-explanatory.

Administrative Mechanisms. Home occupation ordinances are inherently difficult to administer. We propose two important mechanisms to address this.

First, we are not proposing a pure performance standard approach. The latter would either require a large number of special exception hearings or a wide latitude of discretion by the Zoning Administrator. We are not saying, any occupation is all right if you meet the performance standards. This would force the Zoning Administrator to make many discretionary judgments as to what occupations are permitted. We have incorporated a specific list of occupations which are normally capable of being practiced acceptably as home occupations. These still must meet the performance standards, but potential applicants do not need to remain in ignorance prior to discussions with city officials, and the Zoning Administrator's task is also clarified.

There is also a list of prohibited occupations, specifically the permitted retail and service uses in the Commercial zone (referenced without the cumulative use clause in each zone), plus the uses prohibited in the Waterfront District, which also incorporate the uses prohibited in the industrial zones. The point is that neither the public, the Zoning Administrator nor the Board would be involved in determining or considering these uses as home occupations. A reading of the specific uses enumerated in the Paragraphs referenced in proposed Paragraph 203.5 makes it readily apparent that

these uses should not be home occupations and that the Board of Zoning Adjustment should not have to conduct hearings on a case by case basis to make individual determinations.

Any proposed home occupation which is neither permitted nor prohibited may be permitted by the Board as a special exception, pursuant to the performance standards.

A second administrative mechanism that we propose is a Home Occupation Permit. This would technically be internal to the Department of Consumer and Regulatory Affairs (DCRA) but the Zoning Regulations would refer to it by name. The Zoning Administrator and OP agree that a Certificate of Occupancy is an excessively complicated and costly process (for the city as well as the applicant) for home occupations. However, a much stronger enforcement tool than a simple letter or abbreviated form is needed. The concept that we will be working with DCRA on is a form which incorporates the performance standards and other relevant parts of the Zoning text as adopted. An applicant would fill out pertinent factual information as to how his or her business complies with each standard (or is inapplicable). At the end of the form, the applicant would certify the truth of the information, his or her intent to remain in compliance with the performance standards, and agree to cease the home occupation if a violation is reported and is verified by zoning enforcement. In the case of home occupations approved by the BZA, the BZA Order would be the enforcement mechanism.

Competition with Commercial Districts. An objection often raised with home occupations is that they may detract from demand for land and buildings in commercial districts. OP believes that the proposed regulations ensure that only small-scale occupations may occur, and that any diminishing of economic demand for locations in commercial/industrial districts is minimal in that many of the persons involved either pursue the work at home or not at all. Some home offices are adjuncts to full-scale offices elsewhere. This is permitted so long as the performance standards are met. Finally, to the extent that some home occupations succeed and grow to the point of being relocated to a commercial zone district, they may well offset any loss of demand represented by home occupations generally.

Office of Physician or Dentist. The advertised text incorporates these uses within the home occupation provisions, whereas at present, they are independent

accessory uses (See 202.2 DCMR 11). The general restrictions of the home occupation definition do not apply. The proposal to include doctors and dentists offices within home occupations was primarily one of administrative simplicity, i.e., that suitable controls protecting neighborhood character and tranquility should be the same for all home occupations. Such an approach is used in some other jurisdictions. However, we failed to recognize the impact of the general performance standard prohibiting specialized or nonhousehold equipment in its effect on doctors and dentists. This was not intended, and can be corrected either by making a specific allowance in 203.4(o) -- as has been done already regarding the one outside employee -- or by leaving this use as a general accessory use.

As to the one employee, this is a proposed reduction from the present allowance of two. We anticipate specific testimony from practitioners that will help establish a reasonable outside limit, which we do believe is necessary. Some jurisdictions take the view that doctors and dentists should be regulated with the same restrictions as other home occupations. On the other hand, some court cases in other jurisdictions have held that a distinction favoring doctors and dentists may be upheld on the grounds that such neighborhood offices provide localized emergency medical care. The Office of Planning believes that a reasonable distribution and availability of medical offices -- within the home of the practitioner -- is a valuable service to neighborhoods and would recommend that the specialized equipment and separate outside entrance be allowed.

Bed and Breakfast Establishments (B and B's). The advertised text is intended to permit relatively small Bed and Breakfasts with conditions to limit impacts of this transient use on neighbors. The specific proposed regulation is at 203.4(p), conditions (1) through (5). Condition one permits breakfast only and only to guests staying overnight so as to prevent meal preparation from developing to commercial scale with specialized restaurant equipment and possibly raising the possibility of licensing. OP is not in favor of restaurant licensing for B and B's, but will consult further with DCRA licensing authorities on this matter. In our preliminary view, this would be an undue administrative burden for the government and the operators. At small scale and one meal per day only, questions of sanitary conditions, health liability, etc., can best be left to the private sector.

Condition two proposes a matter-of-right maximum of two sleeping rooms for guest occupancy, and with BZA approval up to four sleeping rooms. This limitation reflects our belief that a small guest facility can be compatible in a residential neighborhood. With a larger operation we believe a BZA hearing taking the specific circumstances of the property and proposed operating conditions into account would be desirable.

The guest rooms limit should be considered in combination with condition five, which would restrict room nights rented to less than 100 in a 12-month period. This amounts to approximately weekend use year round, but with no restriction preventing the 100 days from being more concentrated in the peak visitor seasons. In our opinion an essentially weekend operation, which is quite common, is quite different from a transient facility with turnover of guests on any or most nights of the week. Our intent is that the more intensive facilities should be subject to BZA review, with conditions attached if approved, so that the use and operation can definitely be determined to be compatible in the immediate setting. The 100 days proposal has been informally criticized as being difficult to enforce. It should be remembered that it would be largely enforced by complaint -- not on an on-going basis for all establishments -- and that the distinction likely to be needed in a complaint situation would not be 100 nights per year versus 102 nights per year, but 100 versus 200. The latter is potentially quite a different impact if neighbors live across a party wall or otherwise in close proximity, or if the neighborhood has congested on-street parking, etc. OP is not rigidly wedded to this particular formula, but in achieving reasonable control to guard against nuisance situations which could become immune to corrective action. A matter-of-right use, once established, can legally remain for an indefinite time period. If the Zoning Commission decides to adopt the two guest room limit, this might well provide adequate control. We note from information provided to us recently from representatives of the B and B reservation services that of 99 existing establishments surveyed, 83 (or 84%) have either one or two guest rooms. Thus, the great majority are small facilities and would be matter-of-right under the advertised text. Larger ones could reasonably be expected to go to the BZA for adequate review and controls. The BZA apparently would not be inundated with applications. The same data summary, a copy of which is attached, indicates that approximately 76% of 92 B and B's responding rent less than 100 nights per year.

OP believes the parking standard advertised is excessive. Our preliminary recommendation to the Commission was one

space per two guest rooms. However, we would reserve a formal recommendation until after hearing more detailed testimony about the operating characteristics of B and B's by the industry.

Recommendation

The proposed home occupation regulations are attached, together with additional planning literature on home occupations. The Office of Planning recommends adoption of the advertised text substantially as advertised, subject to modifications which we will suggest at the hearing or which the Zoning Commission may craft after the public hearing. At the public hearing, the Office of Planning will comment on other uses and on the advertised text, section by section.

Attachments:

Existing Regulations -- Definitions and R-1 Accessory Uses
Existing Home Occupation application form (DCRA)
"Performance Standards for Home Occupations"
Summary Information on Bed and Breakfast Establishments
Advertised Text
"Home Occupation Ordinances"

Report Prepared by:
PS/ZS
NWG:mas