Testimony & proposed text of Committee of 100 & Citizens Planning Coalition

CPC, C of 100: 86-29

DEFINITIONS

Accomodation, transient - a structure or building other than a private club, single-family or two family-dwelling, apartment house, boarding house, rooming house, and tenement house, units within which are used for transient guests from time to time and for the guests of which units the landlord thereof is subject to the sales tax imposed by the "District of Columbia Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977". Such accomodations may include, but not be limited to: bed and breakfast accomodations, guest houses, guest quarters, hotels, inns, motels and tourist homes.

Bed and Breakfast accomodation - a transient accomodation offering sleeping rooms and continental breakfast to guests.

(Note--in the Zoning Regulations, it is appropriate to add "transient accomodations" as an allowable use at the point where hotels and inns are first allowed. A bed and breakfast in such zones will not require the conditions established for such a use as an accessory use in the residential zones.)

Apartment - One (1) or more habitable rooms, with kitchen and bathroom facilities exclusively for the use of and under the control and possession of the occupants [of those rooms.] thereof, in which the occupants have, in law, an estate in real property.

(Note--language to make this clearly residential.)

Apartment, Bachelor - One or more habitable rooms, with bathroom facilities exclusively for the use of and under the control and possession of the occupants [of those rooms] thereof, in which the occupants have, in law, an estate in real property. Such apartments shall be located in a building containing three (3) or more apartments, provided that in the building no kitchen facilities or privileges are available to or used by the occupants of said bachelor apartments.

Apartment house - Any building or part [of a building] thereof in which there are three (3) or more apartments or three (3) or more apartments and one (1) or more bachelor apartments, in which the occupants have, in law, an estate in real property. An apartment shall not be a transient accomodation.

Boarding house - A building or part of a building [(other than a motel, hotel,] transient accomodation or private club[)], where, for compensation, meals or lodging and meals are provided for three (3) or more [guests on a weekly or monthly basis.] occupants whose units are reserved exclusively for their use, control, and possession, and in which the occupants have, in law, an estate in real property.

Dwelling (etc.) -

BZA
Case No. 17079
Exhibit No. 18

2003 SEP 15 D.C. REGISTRY

27 April 1987

ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 143

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 18

(Note: necessary to rework dwelling definitions for clarity and for dealing with transient issue.)

Hotel -

(Note: After "habitable rooms or suites", add: ", subject to the 'District of Columbia Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977', which ". Delete "who rent the rooms or suites on a daily basis". Add "boarding house, rooming house, tenement house" to list of exclusions.)

Inn - a building or part of a building in which habitable rooms or suites are reserved exclusively for transient guests [who rent the rooms or suites on a daily basis.] for whom the landlord thereof is subject to the sales tax imposed by the "District of Columbia Hotel Occupancy and Surtax on Corporations and Unincorporated Business Tax Act of 1977". Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term "inn" shall not be interpreted to include motel, hotel, private club, boarding house, rooming house, tenement house, or apartment house.

(Note: addition of sales tax standard as substitute for "on a daily basis". Note addition of "rooming house", "boarding house", and "tenement house" to last sentence.)

Home occupation - a gainful occupation conducted within a home by residents of the home as an accessory use to the residential use in zones other than industrial.

(Note: There is a problem in the existing regulations regarding the definitions of dwelling and its various manifestations in that there is no generic term which encompasses all of the various types of residences. Similarly, home is not defined nor is residence. Some additional reworking of the dwelling definitions may be appropriate in the future. Note also that much of the detail in the old definition is struck as it relates to "requirements" in the accessory use section of the text and will appear in that section.)

Rooming house - a building or part of a building, other than a [motel, hotel,] transient accomodation or private club, that provides sleeping accommodations for three (3) or more [persons] occupants who are not members of the immediate family of the operator or manager, [, and when the accomodations are not under the exclusive control of the occupants.] and in which the occupants thereof have exclusive control and possession of their sleeping accomodations and, in law, an estate in real property.

(Note: Problems with the definition and the use. As to the use, might be appropriate to grant it as a special exception or to consider its deletion. As a definition, need to clarify rights and alternatives as use.)

Tenement - One (1) or more habitable rooms in an apartment house, [under the exclusive control of the occupant thereof] which are exclusively for the use of, and under the control and possession of the occupants thereof, in which the occupants have, in law, an estate in real property.

Tenement house - A building or part of a building containing three (3) or more tenements, or any building or part of a building containing any combination of three (3) or more tenements or apartments[.], which are exclusively for the use of, and under the control and possession of the occupants thereof, in which the occupants have, in law, an estate in real property.

(Note: exclusively residential.)

Zoning Regulations - Original definitions

Apartment - one (1) or more habitable rooms with kitchen and bathroom facilities exclusively for the use of and under the control of the occupants of those rooms.

Apartment, bachelor - one (1) or more habitable rooms with bathroom facilities exclusively for the use of and under the control of the occupants of those rooms in a building containing three (3) or more apartments; Provided, that in the building no kitchen facilities or privileges shall be available to or used by the occupants of the bachelor apartment.

Apartment house - any building or part of a building in which there are three (3) or more apartments, or three (3) or more apartments and one (1) or more bachelor apartments.

Boarding house - a building or part of a building (other than a motel, hotel, or private club) where, for compensation, meals or lodging and meals are provided for three (3) or more guests on a weekly or monthly basis.

Dwelling - a building designed or used for human habitation. When used without a qualifying term, it shall mean a one-family dwelling.

Dwelling, multiple - a building containing three (3) or more dwelling units or rooming units, or any combination of these units totaling three (3) or more.

Dwelling, one-family - a dwelling used exclusively as a residence for one (1) family.

Dwelling, one-family detached - a one-family dwelling, completely separated from all other buildings and having two (2) side yards.

Dwelling, one-family semi-detached - a one-family dwelling, the wall on one (1) side of which is either a party wall, or lot line wall, having one (1) side yard.

Dwelling, row - a one-family dwelling having no side yards.

Dwelling, two-family - a dwelling used exclusively as a residence for two (2) families living independently of each other. A two-family dwelling is a flat.

Dwelling unit - one (1) or more habitable rooms forming a single unit that is used for living and sleeping purposes, which may or may not contain cooking facilities. The term dwelling unit shall include a dwelling, apartment, bachelor apartment, or tenement, but shall not include a rooming unit.

Hotel - a building or part of a building in which not less than thirty (30) habitable rooms or suites are reserved exclusively for transient guests who rent the rooms or suites on a daily basis and where meals, prepared in a kitchen or on the premises by the management or a concessionaire of the management may be eaten in a dining room accommodating simultaneously not less than thirty (30) persons. The dining room shall be internally accessible from the lobby.

The term "hotel" shall not be interpreted to include apartment house or private club. It shall, however, include establishments defined as motel in this title prior to May 16, 1980. All areas within a hotel shall be included in one (1) of the following categories:

(a) **Commercial adjuncts** - retail and service establishments customarily incidental and subordinate to hotel use, such as restaurant, dining room, cocktail lounge, coffee shop, dry cleaning, laundry, pressing or tailoring establishment, florist shop, barber shop, beauty parlor, cigar or newstand, and other similar uses;

(b) **Exhibit space** - floor area within a hotel primarily designed for the display and storage of exhibits for conferences, trade fairs, and similar group events;

(c) **Function room** - a room within a hotel used primarily to accommodate gatherings of hotel guests and visitors, such as meetings, banquets, and other group events;

(d) **Guest room areas** - floor area within a hotel devoted to guest rooms or suites, including individual bathrooms, entrance foyers, corridors, elevators, stairs, floor pantries, and other space directly supportive of guest rooms. The main lobby, front desk, and hotel administrative offices are also included in guest room areas for purposes of pro-rating floor area between residential and non-residential uses in applicable zones; and

(e) **Service areas** - floor area within a hotel devoted to mechanical services and storage supportive of the hotel as a total entity, including boiler room, mechanical platforms, electrical, switchboard, workshops, and maintenance areas, storage areas, employee facilities (locker rooms, canteen, engineer's office), and similar uses.

Inn - a building or part of a building in which habitable rooms or suites are reserved exclusively for transient guests who rent those rooms or suites on a daily basis. Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term "inn" shall not be interpreted to include motel, hotel, private club, or apartment house.

Home occupation - an occupation in connection with which there is used no more than one (1) sign or display which does not exceed one hundred forty-four square inches (144 $in.^2$) in area; no stock in trade is kept nor any commodity sold upon the premises; no person employed other than a member of the immediate family residing on the premises; and no mechanical equipment used except such as is permissible for purely domestic or household purposes.

Rooming house - a building or part of a building, other than a motel, hotel, or private club, that provides sleeping accommodations for three (3) or more persons who are not members of the immediate family of the operator or manager, and when the accommodations are not under the exclusive control of the occupants.

Rooming unit - one (1) or more habitable rooms forming a single, habitable unit used or intended to be used for living or sleeping purposes; but not for the preparation or eating of meals. The term rooming unit shall not include a tenement or a bachelor apartment.

Tenement - One (1) or more habitable rooms in an apartment house, under the exclusive control of the occupant thereof.

Tenement house - a building or part of a building containing three (3) or more tenements, or any building or part of a building containing any combination of three (3) or more tenements and apartments.

445.1 In addition to the specific exemptions provided in the Act (D.C. Code, §47-2005), gross receipts from the types of sales set forth in this section shall be exempt from the tax imposed by the Act.

445.2 For the purposes of sales to the District or Federal governments under D.C. Code, §47-2005(1), vendors may treat as nontaxable the receipts from, and shall be relieved from the duty of collecting their reimbursement for tax on, sales to the United States and to the District of Columbia on any purchase order made by any authorized purchasing officer or by contract in which either the United States or the District of Columbia or any instrumentality of either Government is a party.

445.3 Sales of publications of the United States and District governments and any instrumentality of either government are exempt from the tax.

446 HOTEL ROOMS, LODGINGS, AND OTHER ACCOMODATIONS

446.1 For the purposes of the Act [D.C. Code, §47-2001(n)(1)(C)], a "transient" is a person who has the right to occupy any room or rooms, lodgings or accommodations for a period of ninety (90) days or less during any one continuous stay as described in the following subsections:

(a) A person who is visiting for a few days; or

(b) A person who comes to the District to perform some special service, as distinguished from permanent employment.

446.2 Local employees and local officials of the Federal and District governments, members of Congress and their staffs, and regular employees of business organizations engaging in business in the District or the Washington Metropolitan Area, are examples of persons who are not transients, and the tax should not be collected with respect to charges made for rooms used by these persons.

446.3 Whether a person pays room charges at a daily rate rather than a weekly or monthly rate is not controlling in determining whether that person is a transient within the meaning of the Sales Tax Act and this section. The daily rate is merely prima facie evidence that the person paying at the daily rate is a transient.

446.4 The test used to determine whether a person is a transient should be whether the person using the room is in the District for a more or less permanent purpose, such as the persons set forth in §446.2, or is using the room in connection with a purpose of special nature ordinarily attributed to one who intends to leave the District immediately upon completion of that special purpose.

446.5 Gross receipts from the sale of stationary, soap, and toilet tissue, used or consumed in the guest rooms of any hotel, inn, tourist camp, tourist cabin or any other place in which rooms, lodgings, or accommodations are furnished to transients for a consideration are subject to the tax.

OP Proposal

203 HOME OCCUPATIONS (R-1)

203.1 The purpose of the home occupation provisions is to permit home occupations as accessory uses, provided that they are compatible with the neighborhood in which they are located. The intent is to protect residential areas from adverse effects of activities associated with home occupations while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood under restrictive conditions. A home occupation is any gainful occupation or profession engaged in by an occupant of a dwelling unit which meets the requirements of this section.

203.2 A home occupation must comply with all of the codes and ordinances of the District of Columbia, and the following general conditions and requirements:

(a) A home occupation shall be incidental to the use of a dwelling unit for residential purposes. No more than forty (40%) percent of the floor area of the dwelling unit may be used in connection with a home occupation, including any space used for storage of materials and products. The floor area of a dwelling unit, in this case, shall include the floor area of all heated and ventilated and thereby habitable rooms and areas within the dwelling unit, including basements and habitable attic space. No more than 300 square feet of an accessory building may be utilized and shall be counted, if utilized, in the base floor area and the maximum percentage of floor area permitted.

TEXT: ZC 86-29 (CPC, C of 100)

202

1. Leave current 202 heading in existing regulations unchanged: ACCESSORY USES (R-1)". (Delete OP's 203.1) Concur with OP and 202.1, 202.2, 202.3, and portions of 202.4.

202.1 (variation of OP's 203.2)

2. Add a new section 202.1 to read as follows:

202.1 Home occupations, incidental and subordinate to the use of home for residential purposes, shall be permitted, provided that following requirements are met at the outset and on a continuing basis:

(NOTE: addition of "at the outset and on a continuing basis" from later point in the text. No need for purpose section.)

(a) Up to 33 1/3% of the habitable floor area of the dwel unit may be used in connection with the home occupati Habitable areas, for purposes of this provision, are defined as those which are adequately heated and ventilated and shall include all such areas of the dwelling unit and the upper levels of a garage or house on the same lot. If closets, attics, basements cellars, and upper levels of garages or carriage hous are used solely for storage and not for business acti or business activity as well as storage, they shall n counted in the floor area calculations.

(NOTE: We believe that 33 1/3% is preferable, making the accessory use clearly subordinate. At the same time, however, some flexibility can be gained by simply allo normal storage areas to be used for storage of goods without counting this space against the allowable 33 1 In apartment houses, home business operators may be al to use storage space in basements of their buildings i necessary for the home business and agreeable under re agreement with the owner or condo or coop association. Note also that there is no intention to prevent a home business from using any space in the home for the acti of the business--as long as it is habitable and exclud parking space. Additional definitional issues: "dwel unit", "habitable areas", "floor area".)

OP Proposal

(b) No persons other than a resident of the dwelling unit shall be engaged or employed in the home occupation, and the number of residents employed at the subject home shall not exceed two (2).

(c) No alteration of the residential appearance of the subject home shall occur, including creation of a separate entrance to the dwelling or utilization of an existing entrance exclusively for the business.

(d) There shall be no outside operations, outside storage, or display of materials or products.

(b) No persons other than a resident or residents of the home shall be engaged or employed in the home occupation except as otherwise specified. A person with one or more demonstrated physical handicaps may employ one addition. employee who is not a resident of the home if that employee is necessary for the handicapped person to conduct his or her home occupation by virtue of the handicap or handicaps.

(NOTE: no limit on the number of residents to be employed--could well be a family operation (or a group living together as a family). The handicapped provision has been moved from section 203.6 of OP text to this section. "Except as otherwise specified" is necessary, as will be seen for item (c) of a later subsection. Language on handicapped person needs to be clarified to determine what is the test or evidence to be used in determining a handicap.)

(c) No alteration of the residential appearance of the subject home shall occur, including creation of a separate entrance to the home; no accoutrements of the business shall be visible through windows, including lights of a non-residential character; and no structural modificatio to the inside of the home shall be made which would rend it difficult to return it to a solely residential use in the future.

(NOTE: necessary to prevent business operations from being visible from the outside. Necessary to prevent structural alterations which would so modify the home that it would be difficult to utilize it residentially in the future and therefore enhance the property's chances for a variance.)

(d) All business operations shall be confined to the interior of the home, with no storage or display of materials or products on the exterior.

(NOTE: redrafting clarification.)

OP Proposal

(e) The home occupation shall not displace nor impede the use of required parking spaces, including any business storage in required garage parking areas.

(f) No mechanical equipment is to be utilized, except that which is necessarily, customarily, or ordinarily used for household or leisure purposes. No equipment or process shall be used which creates visual or audible electrical interference in radio or television receivers outside the subject home, or causes fluctuations in line voltage outside the subject home.

(g) The use shall produce no noise, obnoxious odors, vibrations, glare, nor fumes detectable to normal sensory perception outside the subject home.

(h) Not more than two (2) vehicles, and no commercially licensed vehicle shall be utilized in the business.

(e) The home occupation shall not displace nor impede the us of existing or required parking spaces, including any business activity or storage in required garage parking areas and shall provide additional parking spaces as otherwise specified.

(NOTE: Big problem with areas of the city which lack adequate parking spaces and which also have grandfathering. Must preserve parking spaces and garages for parking.)

(f) No equipment or process shall be used which creates visu or audible electrical interference in radio or televisio receivers outside the subject home, or causes fluctuatio in line voltage outside the subject home.

(NOTE: first sentence unnecessary.)

(g) The use shall produce no noise, obnoxious odors, vibrations, glare, nor fumes detetable to normal sen[redacted]y perception outside the subject home, nor shall it re[redacted]r dangerous highly flammable chemicals and materials.

(NOTE: protection needed from hazards.)

(h) Not more than (1) vehicle shall be utilized exclusively for home occupation purposes, no commercial decoration o advertising on the vehicle shall be allowed, and one (1) off-street parking space shall be provided in addition t existing and required parking if a vehicle is necessary for the conduct of the business. The business vehicle shall be no larger than a station wagon and not be a pan truck.

(NOTE: clarification of limits and additional consideration about appearance. Need to add parking space if extra vehicle to be used in the business. Considerable discussion about "commercial" vehicles--needs additional clarification and amplification so that small-scale vans and mini-trucks without printing or advertising on sides can be used.)

OP Proposal

(i) Visitors, customers, or deliveries shall not exceed that normally and reasonably occurring for a residence; in any case not more than five (5) business visitors per day and not more than two (2) deliveries of products or materials per week shall be permitted.

(j) No sale of products, other than telephone sales, shall be permitted at the subject home, except that two (2) sale parties for the purpose of soliciting orders or sales may be held annually; each event at the subject home not to exceed twenty (20) persons.

(k) The exterior of the subject home may have only one (1) non-illuminated, flush-mounted sign, not exceeding 144 square inches in area and indicating only the name of the occupant and the type of occupation.

(l) An applicant for a home occupation shall obtain an occupational license if required by District of Columbia Code.

(i) Not more than five (5) business visitors per day and not more than (2) pickups and (2) deliveries of products per week shall be permitted, unless otherwise specified.

(NOTE: First sentence does not logically relate to second sentence and is unenforceable.)

(j) No sale of products, other than sales by telephone, shall be permitted at the subject home, except that two (2) sales parties for the purpose of soliciting orders or sales may be held annually; each event at the subject home not to exceed twenty (20) persons.

(NOTE: language clarification.)

(k) The exterior of the subject home may have only one (1) non-illuminated, flush-mounted sign, not exceeding 6 inches by 12 inches in area and indicating only the name of the natural person or perons conducting the business, and no sign shall be permitted in the interior of the home which is visible through windows.

(NOTE: restrictive nature of signing important in residential zones.)

Delete OP's (l) because is part of next provision (m)

(l)

(NOTE: need to develop good trash standard after further examination. A very important issue.)

OP Proposal

203.3 A home occupation is permitted only by means of a Home Occupation Permit or as a special exception approved by the Board of Zoning Adjustment. A Home Occupation Permit is a permit issued for a home occupation without a public hearing. Both types of permit granted by these provisions are granted to a designated person or persons residing at a residential address. No such permit is transferable from person to person or from address to address.

(m) Certain home occupations shall be deemed unsuitable as home occupations in a two-family or multiple dwelling which does not have separate entrances for each of its dwelling units opening to the outside. The following uses shall not be allowed as home occupations in such two-family or multi-unit buildings: catering; those arts and crafts using noise or dust generating equipment or noxious chemicals; music teaching; tutoring; child development home, bed and breakfast accomodations, those occupations which involve sales and services requiring visitors and pickup and delivery. In such buildings, home occupation offices, if they involve visitors, clients, or patients, shall not be allowed in residential zones.

(NOTE: need to protect two-family or multiple dwellings which do not have separate entrances. Note also that a prohibition standard (of the sort that predcludes residences as a use in industrial zones) should be added at the appropriate point after the residential zones for those apartment houses in the so-called mixed use zones which would preclude offices above the second floor level. The Zoning Commission should consider returning to the pre-1978 standards for controlling uses mixed-use apartment houses.)

202.2 (variation of OP's 203.3)

(next page)

OP Proposal

3. Add a section 202. 2 as a substitute for OP's 203.3.

202.2 An applicant for a home occupation certificate of occupancy shall present evidence that the proposed use will be in compliance with all codes and ordinances of the District of Columbia, including requirements to obtain occupational, business or other licenses. The applicant shall present evidence of approval by a condominium association or cooperative association, where applicable. If a tenant proposes to have a home occupation, the applicant shall be the landlord, who shall present a signed lease granting the tenant the right to have the proposed home occupation use. The applicant shall specify the type of home occupation, the precise areas of the home to be utilized for business activity and storage, and any interior modifications to the home which is contemplated. Certificates of occupancy shall be necessary for those occupations listed in Section 202.3.

(NOTE: It is preferable to amend the Zoning Regulations to provide that certain accessory uses--not just home occupations--require an occupany permit. On the other hand, it seems ludicrous to us to require a writer to get a certificate of occupancy for a home occupation (assuming he can live with the basic standards). If there are zoning violations, they should be enforced through zoning. "Mechanical amusement machines" is accessory use for certain commercial districts and are allowed subject to certain space requirements. Licensing authorities sometimes license more machines than the zoning would allow. In addition, how do you send cases to the BZA to grant permits? BZA grants zoning rights (c.o.'s). The c.o. must go to the building and its owner. We see no reason why the c.o. can't expire if the use granted by it--with any requirements attached--expires, or if the applicant does not live up to the terms of the certificate of occupany. The language is appropriate here as part of the "requirements" section rather than as a separate section.)

OP Proposal

203.4 The following uses shall be allowed as home occupations, provided that the conditions specified in Subsection 203.2 are met at the establishment of the home occupation and on a continuing basis, as authorized by a Home Occupation Permit:

(a) Tutoring of not more than three (3) students at any one time, except that tutoring of music students shall be limited to one (1) at a time, without amplification of instruments, and solely within the subject home.

(b) Child Development Home.

(c) A maximum of two (2) roomers or boarders in the subject home.

(d) Dressmaking, sewing and tailoring.

(e) Painting, sculpturing, writing, composing, or other fine arts occupations practiced by individuals in home studios, with the allowance that up to sixty (60%) percent of the floor area of the dwelling unit may be devoted to the studio.

202.3 (variation of OP's 203.4)

202.3 The following permitted uses are subject to the requirements and conditions in subsection 202.2 and are allowed in single family dwellings and two family dwellings with separate entrances. Additionally, they are subject to the requirement in subsection 202.1 except as otherwise specified in this subsection.

(Note: We do not list home occupations which do not have special requirements in the following section and see no reason for them to have c.o.'s.)

(a) Tutoring of not more than three (3) students at any one time, except that tutoring of music students shall be limited to two (2) at a time, without amplification of instruments except the organ. No more than ten (10) students shall be seen in any one day.

(NOTE: Allows for "duet" teaching and for amplification of an organ but not other instruments. Prevents excess numbers of students on any one day. Prevents use in residential areas of multiple dwellings.)

(b) A maximum of two (2) roomers or boarders.

(NOTE: We believe that the whole issue of rooming houses should be taken up in the case on residential uses.)

(c) Caterer, provided that the operation does not entail more than one delivery of food supplies to the house per day and one delivery of food products to clients per day.

(NOTE: We are uncertain how to write this standard. Catering requires food licensing and certain physical things to be done to the kitchen. This item needs further study.)

(f) Home crafts, such as model-making, rug weaving, lapidary work, and cabinet making.

(g) Home cooking and preserving.

(h) Caterer, provided that no more than two (2) meals per week, serving no more than twenty (20) persons each, shall be prepared at the subject home and shall be served elsewhere.

(i) Telephone answering service and telephone sales.

(j) Computer programming.

(k) Typing or word processing service.

(l) Mail order business, provided that no retail sales shall occur at the subject home.

(m) Home office of a professional person, scientist, clergyman, inventor, or academician, provided that consultations with clients, colleagues, employees, students or other affected persons shall not occur at the subject home.

(n) Office of a salesman, including real estate agent, or manufacturer's representative, provided that no customers visit the subject home and the only business transactions occurring at the subject home are by telephone.

(o) Office of a physician or dentist, with the allowance that one (1) person not residing at the subject home may be employed so long as that person is not a physician or dentist.

(d) Owner occupied office of a physician or dentist, with the allowance that two persons not living on the premises and who are not a physician or dentist may be employed. There shall be no limit on the number of patients seen by the physician or dentist, although there shall be no more than five patients scheduled to be in the office at any given time. Group sessions shall not be conducted more than five times a week, with no more than two to be held after 6:30 p.m. If group sessions are a usual accoutrement to the practice, two additional off-street parking spaces shall be required in addition to existing and required spaces. There shall be no more than one physician's office or one dentist's office in a residential zone within 600 feet of the home.

(NOTE: This affords physicians what they have now, although there is a limited effort to control numbers of patients in groups, to provide for parking for greater intensification of use, and because this home occupation is granted the greatest leeway in standards, to require spacing to make up for the intensity of usage. Prevents use in residential areas of multiple dwellings. Assures that this intensive use is owner occupied to prevent conversion of residential space to a more lucrative rental.)

(e) Licensed health care professionals other than a physician or a dentist, with no more than ten (10) patients per day. In addition, up to five (5) group sessions shall be allowed per week, only two of which may be held after 6:30 p.m. If group sessions are a usual accoutrement to the practice, two additional off-street parking spaces shall be required in addition to existing and required spaces. In multiple dwellings, this use shall be confined to the basement or ground level.

OP Proposal

(p) **Bed and Breakfast facility, offering rooms and breakfast to guests on a daily basis, provided that the following requirements shall be met:**

(1) **Breakfast is the only meal served and is served only to overnight guests;**

(2) **The maximum number of sleeping rooms in the facility is two (2), except that by special exception pursuant to Subsection 203.6(b), the number of sleeping rooms may be increased to four(4);**

(3) **One (1) parking space, in addition to the required parking for the dwelling unit, shall be provided for each sleeping room devoted to guest use;**

(4) **No cooking facilities shall be permitted in any of the rented rooms; and**

(5) **The rooms shall be rented out less than 100 nights in a 12-month period, and no stay shall exceed fourteen (14) days.**

(f) Bed and Breakfast accomodation, in dwellings other than multiple dwellings, provided that the following requirements shall be met: (1) continental breakfast is the only meal served, and it is served only to overnight guests; (2) the maximum number of sleeping rooms in the facility is two and the maximum number of guests is fou (3) one (1) parking space, in addition to the required parking for the dwelling unit, shall be required for each of the two sleeping rooms; (4) no cooking facilities shall be permitted in any of the rented rooms; (5) the rooms shall be rented out less than 100 nights in a 12-month period; (6) there shall be no other bed and breakfast facility in a residential zone within 600 feet of the home, and (7) the bed and breakfast accomodation shall be owner-occupied.

(NOTE: Delete "on a daily basis". It should be obvious that the method of payment is not what makes a facility transient. The Zoning Commission made a decision in the hotel case of 1980 not to allow "inns"--of which the b. & b. newcomer is a variation--in residential zones. The Commission should not be in a position of contradicting this decision, which would clearly be the case if it agrees to anything larger than a one or two bedroom facility, and even that possibility is somewhat questionable. There are other problems. Most homes--that is one and two family homes--have no more than 6 bedroo maximum, and most have less, whether rowhouses, detached houses, or duplexes. A greater intensification of use would mean the lessening of the home as a home and a serious enfringement on the space requirement in these proposed regulations of 33 1/3% (planning report versus the published advertisement). Bed and breakfasts are unsuitable for multi-family dwellings. Finally, this use means lots of comings and goings, tourbuses, parking problems, and sometimes late night noise. There are those, therefore, who argue that it should be granted only through a special exception. The owner-occupied standard is important.)

((NOTE: Two problems. The first is "Child Development Home", which most people feel should be by special exception (and in our opinion a special exception but this would be difficut since accessory uses are not granted this way). The second: "cabinet making" appears to be first allowed in the industrial zones (801.6 (j). No industrial use should be allowed as a use in a residential zone.))

OP Proposal

203.5 The following uses are considered inherently unsuited to be practiced as home occupations and are accordingly prohibited:

(a) Any retail service or other use specified in Subsections 701.1, 701.4, 721.2, 721.3, 741.2, 741.3, 751.2(b), and 801.6; and

(b) Any use prohibited in Subsection 902.1.

203.6 Home occupations not specifically permitted or prohibited in this section may be permitted as special exceptions by the Board of Zoning Adjustment, provided that the following requirements shall be met:

(a) The proposed use and conditions related to its operation and the subject home shall comply with the requirements of Subsection 203.2;

(b) An applicant for a home occupation which is specifically permitted by Subsection 203.3 may request of the Board a modification of no more than two (2) of the conditions enumerated in Subsection 203.2, provided that the intent of the Home Occupation provisions is complied with. In no case shall more than one (1) person who is not a resident of the subject home be permitted as an employee of the home occupation, and that person shall not be a co-practitioner of the profession;

(c) Any request to modify more than two (2) of the requirements found in Subsection 203.2 shall be deemed a request for a use variance. However, persons with demonstrated physical handicaps may be permitted special consideration by the Board, and requests for more than two (2) modifications of the Home Occupation requirements in this instance shall be considered as special exceptions governed by this Subsection; and

(d) In considering requests for approval under this Subsection, the Board may impose conditions relating to operating conditions of the home occupation, parking, screening, or other requirements as it shall deem necessary to protect adjacent and nearby properties consistent with the purposes of the Home Occupation provisions.

202.4 (OP's 203.5)

4. Leave as is, but add comma between "retail" and "service"

202.4 (OP's 203.6)

5. Delete.