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APRIL 1980

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).

ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 5

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 50A2

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

Ex. 51 (cont'd)

District of Columbia Zoning Commission

NOTICE OF PUBLIC HEARING

TIME AND PLACE: Monday, April 20, 1987 @ 1:30 P.M., and, if necessary, continued on Thursday, April 23, 1987 @ 7:00 P.M. and Monday, April 27, 1987 @ 1:30 P.M., District Building, 1350 Pennsylvania Avenue, N.W., room 9, Washington, D.C. 20004.

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 86-29 (Zoning Commission, sponsor)

THIS CASE IS OF INTEREST TO ALL ADVISORY NEIGHBORHOOD COMMISSIONS

The Zoning Commission for the District of Columbia initiated action to consider proposed amendments to the District of Columbia Municipal Regulations (DCMR), Title 11, Zoning. The proposed amendments affect those provisions of the Zoning Regulations regarding the treatment and the regulation of "Home Occupations" and various accessory uses.

The Commission will consider the included proposal and/or any modification thereto. In that regard, the Commission will also consider, but not be limited to, testimony that addresses the number of different home occupations to be permitted at any one location, whether a "Bed and Breakfast" facility or any other home occupation should be required to be operated by an owner/occupant, what parking standards, if any, should be applied, the need to clarify the meaning of the term "home", and signage restrictions.

Subsequent to the publication of this notice, the Zoning Commission intends to publish a notice of proposed rulemaking and will solicit written comments thereto. The specific proposed amendments, as advertised for this public hearing, are as follows:

1. Delete Subsections 202.1 through 202.4(b).

2. Renumber existing Subsections 202.4(c) and 202.4(d) to become the new Subsections 202.1 and 202.2, respectively.

3. Renumber existing Section 203 to become the new Section 204.

4. Add a new Section 203 to read as follows:

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.

(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.

(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.

(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.

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.

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.

(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.

(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.

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.

Proposed amendments to the text of the Zoning Regulations of the District of Columbia, pursuant to the Zoning Act (Act of

June 20, 1938, 52 Stat. 797, as amended, Section 5-413 et seq., D.C. Code, 1981 Ed.).

The public hearing on this case will be conducted in accordance with the provisions of Section 3021 of the DCMR, Title 11, Zoning. Pursuant to that section, the Commission will impose time limitations on testimony presented to it at this public hearing.

All individuals, organizations or associations wishing to testify in this case should file their intention to testify in writing with the Executive Director of the Zoning Secretariat by April 10, 1987. Written statements, in lieu of a personal appearance or oral presentation, may be submitted for inclusion in the record.

Information should be forward to the Executive Director, Office of the Zoning Secretariat, Room 11, District Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. Please include the number of the particular case and your daytime telephone number. FOR FURTHER INFORMATION, YOU MAY CONTACT THE ZONING SECRETARIAT AT 727-6311.

GEORGE M. WHITE, JOHN G. PARSONS, LINDSLEY WILLIAMS, MAYBELLE T. BENNETT AND PATRICIA N. MATHEWS -------- ZONING COMMISSION OF THE DISTRICT OF COLUMBIA, BY EDWARD L. CURRY, ACTING EXECUTIVE DIRECTOR, ZONING SECRETARIAT.

zcnoph86-29/EB14

Respected members ofthe ZONING COMMISSION.

My name is David Maxwell and I represent ANC-2B.
Thank you for the opprotunity to appear before you in representing the views of my neighbors and my constituents inthis sensitive issue of Home O

The ANC wants to , first, recognize the importance of retaining health care Professionals in our neighborhoods. We agree that zoning regulations concerning Physicians and dentists should be left alone but moved to section 203.2. As long as they use the structure for their principal residence they should be exempt from 203.2(i).

Other measures that the ANC wishes to have addressed are as follows:

We need strong, specific wording to insure that "home occupations" are indeed operated by the owners or occupants who reside witthin the affected Property.

Garages should be counted as residential space. No garage Parking should be displaced as a result of "home occupations".

Definition for "accessory use" needs to be developed. it should include wording to the effect that it be just an accessory and not assume control of the affected Premises.

Definition for "transient accomodation" needs to be developed. These businesses, inarguably "inns" or "hotels", can currently camoflague themselves as "bed and breakfast" spots and invade our residential zones. They skirt the tax and revenue laws and they seriously destabilize and undermine the residential qualities of our neighborhoods.

Sect203.2(j), Pertaining to sale Parties for solocitation of orders, needs further development. A number of People living in residential apartments think that apartments should have seperate standards.

We want the Zoning Commission to recognize the need to have strong language against the use of flammables or combustibles in these "home occupations"

And, we want the Commission th take a strong view against any Practice which allows an inappropriate and unseemly flow of customers to develop.

With some of the above in mind the ANC wishes to submit the following definitions for inclusion into Sect 199.9

Accessory Use - incidental use of a structure which shall not occupy more than 33 1/3 % of the floor area.

Home Occupation - a home occupation is any gainful occupational or Profession engaged in by the occupant of a dwelling unit which is used as his/her Principal residence.

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ZONING COMMISSION

CASE No. 86-29

EXHIBIT No. 85A

Such home occupation must be compatible with the neighborhood and is an accessory to the unit. No stock in trade is kept nor any commodity sold upon the premises.

Principal Residence - where one is domiciled for more than 75% of any consecutive twelve month period.

This ANC has sought to streamline the proposed regulations affecting "home occupations" and I think that the Commission members can agree with that once they have had a chance to review our recommendations. Many specific "home occupations" have been deleted from our proposals in the interest of making it simpler to accomodate non-offensive home occupations as long as they meet the requirements set forth in our proposals.

Once again I wish to thank the Zoning Commission for the time to speak to this issue.

20 APR 1987
ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 85 B

4/20/87

ANC-2B TEXT RECOMMENDATIONS TO CASE NO. 86-29 (HOME OCCUPATIONS)

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.

(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).

ANC-2B Recommendation

203.1 UNCHANGED

203.2 UNCHANGED

203.2(a) A home occupation shall be incidental to the use of a dwelling unit for principal residential purposes. No more than thirty-three and one third (33 1/3%) 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. Nomore 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.

(NOTE:Garages should be counted as residential space. No garage parking should be displaced as a result of home occupations.)

203.2(b) No persons other than a resident of the dwelling unit shall be engaged or employed in the home occupation, except as otherwise specified. Persons with demonstrated physical handicaps may be permitted special consideration by the Board as provided by Subsection 203.6; and

OP Proposal

(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.

(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.

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.

(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

ANC-2B Recommendation

203.2(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 or structural alterations of the interior.

203.2(d) UNCHANGED

203.2(e) UNCHANGED

203.2(f) No equipment or process shall be used which creates visual or audible electrical interference in radio or television receivers outside the subject home, or cause fluctuations in line voltage outside the subject home.

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

203.2(h) Not more than two (2) vehicles.

203.2(i) Visitors or deliveries shall not exceed that normally and reasonably occuring 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 and, all retail sales are prohibited.

203.2(j) unchanged

(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.

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.

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.

ANC-2B Recommendation

203.2(k) The exterior of the subject home may have only one (1) non-illuminated, flush-mounted sign, not exceeding 72 square inches in area and indicating only the name of the Principal resident.

203.2(l) UNCHANGED

203.3 A home occupation is permitted only by means of a Certificate of Occupancy. C of O granted by these Provisions are granted to a designated Person or Persons residing at a residential address. No such Permit is transferrable from Person to Person or from address to address.

203.4 Delete with specific items either moved or deleted.

203.4(a) Delete

203.4 The ANC feels that Child Development Homes should be moved to 203.6 and restricted to no more than one (1) Per 600-foot radius.

203.4(c) Delete. Dealt with under transient accomodations.

203.4(d) Delete

203.4(e) The ANC recommends that this be handled under "Artists' Studios" rulemaking. As an accessory use it should be subject to the laws Pertaining too accessory uses. If it is not an accessory use it should be handled as an exception.

Of Proposal	ANC-2B Recommendation
(f) Home crafts, such as model-making, rug weaving, lapidary work, and cabinet making.	203.4(f) Delete. Move cabinetmaking to 203.6.
(g) Home cooking and preserving.	203.4(g) Delete
(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.	203.4(h) Delete
(i) Telephone answering service and telephone sales.	203.4(i) Delete
(j) Computer programming.	203.4(j) Delete
(k) Typing or word processing service.	203.4(k) Delete
(l) Mail order business, provided that no retail sales shall occur at the subject home.	203.4(l) Delete
(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.	203.4(m) Delete
(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.	203.4(n) Delete
(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.	203.4(o) ANC recommends that this paragraph be moved to sect 203.2 and be replaced by current regulations.

OP Proposal	ANC-2B Recommendation
(p) Bed and Breakfast facility, offering rooms and breakfast to guests on a daily basis, provided that the following requirements shall be met:	203.4(P) Move to 203.6 and modify AS FOLLOWS
(1) Breakfast is the only meal served and is served only to overnight guests;	203.4(P)(1) Continental 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);	203.6(e)(2) The maximum number of sleeping rooms in the facility is two (2) rooms housing up to four (4) persons;
(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;	203.4(P)(3) One (1) offstreet 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	203.4(P)(4) UNCHANGED
(5) The rooms shall be rented out less than 100 nights in a 12-month period, and no stay shall exceed fourteen (14) days.	203.4(P)(5) The ANC needs the Zoning Commission's guidance on the matter of the number of nights rented out in a 12-month period. 100 nights seems too few but 365 nights seems to be too many.
	203.4(P)(6) No more than one (1) "bed and breakfast" within 600 foot radius.
203.5 The following uses are considered inherently unsuited to be practiced as home occupations and are accordingly prohibited:	203.5 Unchanged
(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.	

OP Proposal

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.

ANC-2B Recommendation

203.6 Home occupations not specificaly prohibited in this section may be permitted as special exceptions by the Board of Zoning Adjustment, provided that the following requirements shall be met, including obtaining a Certificate of Occupancy;

203.6(a) unchanged

203.6(b) An applicant for a home occupation which is permitted 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;

203.6(c) Delete

203.6(d) unchanged

OP Proposal

ANC-2B Recommendation

ADDITIONAL ITEMS FOR THE ZONING COMMISSION TO CONSIDER IN FORMULATING THE NEW REGULATIONS

1. The ANC would like to see that "home occupations" are operated by the owners or occupants who use the affected property as their principal residence.

2. Garages should be counted as residential space. No garage parking should be displaced as a result of home occupations.

3. Definitions for "accessory use" and "principal residence" need to be developed.

4. The Zoning Commission can take this opportunity to define what a "transient accomodation" is. These businesses, inarguably "inns" or "hotels", can currently camoflague themselves as "bed and breakfast" spots and invade residential zones. They skirt the tax and revenue la and they seriously destabilize and undermine the residential qualitie of our neighborhoods.

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.) -

27 April 1987

ZONING COMMISSION
CASE No. 86-29

143

(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 - Use and 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 car house on the same lot. If closets, attics, basement 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 additional 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 modifications to the inside of the home shall be made which would render 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 sensor perception outside the subject home, nor shall it requ 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 an 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

3.4 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.

l) 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 four; (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 5 bedrooms 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.

7

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16333 of Richard T. Ross, as amended, pursuant to 11 DCMR 3108.1 for a special exception under Subsections 203.8 to operate a bed and breakfast as a home occupation in a multiple dwelling [Paragraph 203.8(a)], to exceed the maximum number of rooms [Paragraph 203.8(c)(1)], and to allow for additional staff [Paragraph 203.4(d)] in a D/R-5-B District at premises 1808 New Hampshire Avenue, N.W. (Square 152, Lot 175).

HEARING DATE: April 15, 1998
DECISION DATE: April 15, 1998 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located in the Dupont Circle neighborhood at 1808 New Hampshire Avenue, N.W. (Square 152, Lot 175). The lot is improved with a single family dwelling constructed in 1883, which contains almost 10,000 gross square feet of space. The house is located in the Dupont Circle Historic District and has been certified by the D.C. State Historic Preservation Officer as contributing to the character of the historic district.

2. The house is owned and occupied by the proprietors of a Bed and Breakfast. The property owners have operated the Swann House Bed and Breakfast (B&B) at the subject site since May 3, 1996, under Home Occupation Permit No. 96-571 issued by the D.C. Department of Consumer and Regulatory Affairs (DCRA).

3. In January 1998, upon inquiry by the property owners/applicants, DCRA stated that the home occupation permit under which the B&B had been operating was issued in error and that it was necessary for the applicants to apply for a new permit. The applicants re-applied on January 29, 1998, for authorization to operate a six-room B&B in their owner-occupied single family house. By letter dated February 3, 1998, the Acting Zoning Administrator of DCRA denied the application because the B&B exceeded the maximum number of permitted guest rooms (which is limited to two), and because a B&B is not permitted in a multiple dwelling. The applicants were instructed they could appeal this decision to the Board of Zoning Adjustment (BZA) by requesting a special exception to operate their bed and breakfast.

4. The applicants filed their application with the BZA on February 17, 1998, and requested two modifications of the bed and breakfast regulations, as permitted under Subsection 203.10(b). First, they requested to increase the number of permitted staff from one to two employees (203.4(d)). Second, they asked to increase the number of permitted guest rooms to nine (203.8(c)(1)). Because the applicants own and occupy the single-family house as their sole residence, Subsection 203.8(a) was not applicable; and no relief was necessary from the prohibition against bed and breakfasts in multiple dwellings. The house had previously been used as an apartment building. The use ceased and the building was returned to a single family residence after the applicants purchased the property in 1989.

5. The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to affected Advisory Neighborhood Commission (ANC) 1C, adjoining ANC 2B, and to owners of property within 200 feet of the site.

6. The applicants testified that with one exception, the proposed B&B complies with the bed and breakfast requirements under Subsection 203.8. They stated that the house is not used as a multiple dwelling; that breakfast is the only meal served, and served only to overnight guests; that the house is certified to contribute to the Dupont Circle Historic District, and thus there are no parking requirements for the property under the waiver granted; that cooking facilities are not available in guest rooms; and, that the dwelling is owner-occupied and used as the owners principle residence.

The applicants requested a modification to allow an increase in the permitted number of guest rooms from six to nine. Because the house is certified to contribute to the Dupont Circle Historic District, six guest rooms are permitted as a matter-of-right.

7. The applicants further testified that the proposed B&B complies with the applicable sections of the home occupation regulations under 11 DCMR 203.4 to 203.6. They stated that the house is principally used as their residence and the B&B use is secondary; that no finished products are produced by the B&B; that maintaining the residential character of the dwelling is integral to the success of the B&B; that no noxious odors, vibrations, or visual or electrical interference will be created by the B&B; that the level of noise associated with the B&B will not exceed the normal levels associated with the dwelling and immediate neighborhood; that no more than two vehicles will be used with the operation of the B&B; that a small non-illuminated brass sign will be affixed to the front of the house; and, that sales on the property shall consist of a fee charged for the rental of rooms. With respect to Subsection 203.4(d), which limits the number of staff to one employee, the applicants requested a modification in order to provide two full-time equivalent employees.

8. The applicants testified that the two requested modifications would not affect the intent or general purpose of the Zoning Regulations. The applicants noted that the large, historic house contains almost 10,000 square feet of space and already has nine rooms. The Zoning Regulations allow a maximum of six guest rooms for properties such as this

one that are certified to contribute to an historic district or that are historic landmarks. The applicants stated that increasing the number of guest rooms from six to nine would allow them to make effective use of the spacious dwelling consistent with its historic design. Because of the maintenance requirements for this historic house and a B&B operation, the applicants also stated that two full-time equivalent employees are necessary.

9. The applicants testified that registered guests of the B&B would be permitted to host social functions. For example, they stated that it is now customary for B&Bs to host small intimate weddings, where the wedding party and family members reserve all of the rooms for the occasion. B&Bs also provide business travelers an opportunity to entertain colleagues as they would in their own homes. Other out-of-town guests visiting relatives in the neighborhood find B&Bs the ideal location to stay in close proximity to family members. They also offer enough space in a home-like environment for geographically dispersed families to celebrate special occasions, such as birthdays, anniversaries, or other milestones. The applicants noted that 20 percent of their guests are referred by neighbors.

10. The applicants stated that social events are customarily incidental and subordinate to the B&B use and, as such, are permitted as an accessory use under the Zoning Regulations. The Regulations do not specifically address the issue of social events at bed and breakfasts. The applicants stated that such social functions are an ancillary service of a B&B and are no different from private social gatherings hosted by individual homeowners or events sponsored by other uses in less restrictive residential zones. Social events are routinely hosted by embassies, non-profit organizations, private clubs, sororities and fraternities, and house museums, although the Zoning Regulations do not address such events for these uses, either, other than the provisions related to accessory uses.

11. In response to questions posed by the Board, counsel for the applicants stated that the D.C. Court of Appeals upheld an interpretation by the Zoning Administrator that "the Zoning Regulations express no intent to prohibit any and all subordinate or occasional uses, even if outside the scope of the principal use...." *Ass'n for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment*, 384 A.2d 668, 673 (D.C. 1978). The court noted in that case that the Zoning Administrator determined that a secondary use could constitute as much as 20 percent of the overall use of the property and still be considered incidental under the Zoning Regulations.

12. In response to concerns raised by ANC 1C regarding parking problems generated by social events at the B&B and catering trucks blocking the alley behind the property, the applicants volunteered to impose the following controls and limitations on events:

- The number of events would not exceed an average of two per month, or 24 a year;

- All events would end by 11:00 p.m., and no caterers would be permitted to load or unload trucks after that time;

- No amplified or outdoor music would be permitted;

- All guests would be required to use a valet parking service, which would park cars in nearby garages, and not on neighborhood streets; and,

- No catering trucks would block the alley at the rear of the property and trucks would be moved immediately upon the request of a neighbor, even if loading and unloading activities are still in progress.

13. The applicants organized an open house for their neighbors to discuss the proposed operation of the B&B with conditions, and other concerns related to the B&B. They also met or talked with individual residents. As a result of those meetings and discussions, the applicants solicited over 135 signatures on a petition in support of the B&B, with the conditions noted above. Over 90 of the signatures were from residents in the immediate neighborhood. The abutting neighbors, those most directly affected by the B&B, either signed the petition or submitted letters to the record in favor of the application.

14. ANC 1C testified in support of the application. The ANC recommended approval of the application by a unanimous vote (6-0, 5 members constituting a quorum) at its April 1, 1998 meeting. The Board waived its seven-day filing requirement to accept the ANC's report into the record.

15. The Department of Public Works, by report dated April 13, 1998, stated that from a transportation standpoint, the Swann House Bed and Breakfast would not have an adverse traffic and parking impact on the local transportation system. The Department noted that the amount of traffic generated by the B&B is insignificant. The correspondence stated that DPW wholly supports the valet parking arrangement to minimize or eliminate any parking problems in the immediate neighborhood residential streets, and supports the proposal in general.

16. A neighbor at 1754 Swann Street, N.W. testified in support of the application and was granted party status by the Board. The neighbor stated that the expenses associated with maintaining such a large historic house are prohibitive and that the B&B use is the most appropriate one that will assure the continuation of its historic and residential appearance. The neighbor noted that the B&B use is less intensive than the previous apartments on the site. The neighbor also stated that she and her husband had not experienced any problems with trucks blocking the alley, parking, or any disruptions from social events at the subject property.

17. A neighbor at 1705 Swann Street, N.W., testified in support of the application. The nearby property owner stated that her house is located directly across the alley from the B&B to the rear, and as such, she would be directly affected by operations of the B&B.

The neighbor stated that she had no objections to social events at the B&B and urged approval of the application.

18. A full-time employee of the B&B testified in support of the application. The employee stated that the Swann House B&B is the exact type of small-scale facility that the city tries to encourage because of its ability to enrich the neighborhood, foster historic preservation goals, provide a service to neighbors and support local businesses.

19. There were several neighborhood residents and a representative of the Dupont Circle Citizens Association who were granted party status by the Board and who testified in opposition to the application. Persons testifying against the application stated that the social events sponsored by guests of the B&B were not an accessory use but rather were in direct contradiction to the home occupation regulations. They stated that social events at Swann House served meals other than continental breakfast, that the number of guests would exceed the maximum number of eight, that guests were permitted in the outside garden area and on exterior decks, and that noise generated by the parties was excessive, all in contravention to the restrictions set forth in Subsections 203.4 and 203.8 of the Zoning Regulations.

20. One of the neighbors testifying in opposition to the application stated that the B&B operations were commercial in nature and derogated the residential quality of the neighborhood. It was stated that the B&B created adverse impacts on the community through excessive noise and parking problems that could not be mitigated by the proposed conditions.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The applicants comply with the provisions of Subsection 203.8 of the Zoning Regulations, except for 203.8(c)(1) for which a modification is requested. The subject property is not used as a multiple dwelling; breakfast is the only meal served, and served only to overnight guests; the house is certified to contribute to the Dupont Circle Historic District and thus there are no parking requirements for the property under the waiver granted; six guest rooms are permitted as a matter-of-right by virtue of the historic certification; cooking facilities are not available in guest rooms; and the dwelling is owner-occupied and used as the principle residence.

2. The applicants further comply with the applicable provisions of the home occupation regulations under Subsections 203.4 through 203.6, except for section 203.4(d) for which a modification is requested. The house is principally used as the applicants' residence and the B&B use is secondary; no finished products are produced by the B&B; the residential character of the dwelling will be maintained; no noxious odors, vibrations, or visual or electrical interference will be created; the level of noise associated with the B&B will not exceed the normal levels associated with the dwelling and immediate neighborhood; no more than two vehicles would be used with the operation of the B&B;

a small non-illuminated brass sign will be affixed to the front of the house; and sales, on the property would consist of a fee charged for the rental of rooms.

3. The requested modification of Subsection 203.8(c)(1) to increase the number of guest rooms from six to nine is appropriate for the size and historic nature of the house and is consistent with its residential character and the surrounding historic district. The requested modification of Subsection 203.4(d) to allow two full-time equivalent employees is necessary to the successful operation of the bed and breakfast. The two modifications will not compromise the general purpose and intent of the Zoning Regulations and can be granted without any adverse impacts to the neighborhood.

4. The social events sponsored by registered guests of the bed and breakfast are customarily incidental and subordinate to the bed and breakfast use, and thus are permitted as an accessory use under the Zoning Regulations. The applicant has agreed to limit the number of events per year to 24, which constitutes less than 20 percent of the calendar year. Further, the conditions proposed by the applicants are an appropriate measure to ensure that the social events will have no adverse impact on the surrounding neighborhood.

5. The Board takes note of the position of Advisory Neighborhood Commission 1C. and in its decision the Board has accorded to the ANC the "great weight" consideration to which the Commission is entitled.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicants have met the burden of proof, pursuant to 11 DCMR 203.10(b) and 3108, that the modifications comply with the general purpose and intent of the home occupation regulations, and that requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board concludes that no adverse impacts will result from the increase in number of employees and guest rooms. It is therefore ORDERED that this application be GRANTED, SUBJECT to the following CONDITIONS:

1. Only registered guests of the bed and breakfast shall be permitted to host social events;

2. The number of social events shall not exceed 24 a year, with no more than five events in any one-month period;

3. No event shall begin before 9:00 a.m. and all events shall end by 11:00 p.m. Caterers shall not load or unload vehicles after 11:00 p.m.;

4. Outdoor music and amplified music is prohibited. An attendant of the bed and breakfast shall be on the premises at all times during social events to ensure that there are no disturbances to the neighborhood;

5. Guests of the bed and breakfast, including those attending social events, shall be required to use a valet parking service, which must park cars in nearby garages and not on the streets or in alleys; and,

6. The proprietors shall use their best efforts to ensure that the alley behind the property is not blocked at any time by anyone associated with the bed and breakfast.

THIS ORDER WAS ADOPTED, AS AMENDED, BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF MAY 6, 1998.

VOTE: 4-0 (Betty King, Maurice Foushee and Sheila Cross Reid to adopt; Jerrily Kress to adopt by absentee vote.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: MAY - 7 1998

Ord16333/BAB

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 of D.C. LAW 2-38. THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT, HOME OCCUPATION PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

BZA APPLICATION NO. 16333

As Interim Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on May 7, 1998 a copy of the order entered on that date in this matter was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning the matter, and who is listed below:

John T. Epting, Esq. (Attorney for the applicants)
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Washington, D.C. 20006

Richard and Mary Ross
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Washington, D.C. 20006

Todd Mosley, Chairman
Advisory Neighborhood Commission 1C
P.O. Box 21652
Washington, D.C. 20009

Lee Aikin
1754 Swann Street, N.W.
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Israel Stollman
1708 Swann Street, N.W.
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William Kummann
1713 S Street, N.W.
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Guido Fenzi
1824 16th Street, N.W.
Washington, D.C. 20009

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: MAY - 7 1998