

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15312 of Anna M. Stinger, pursuant to 11 DCMR 3108.1, for a special exception under Section 203 and 203.11 for a home occupation as an office of a home improvement company in an R-1-B District at premises 4021 Lane Place, N.E., (Square 5073, Lot 15).

HEARING DATE: June 13, 1990
DECISION DATE: July 11, 1990

FINDINGS OF FACT:

1. The subject site is located on the south side of Lane Place, N.E. in Square 5073. Boundaries of the square are Lane Place to the north, Lee Street to the south and west and 42nd Street to the east. The property is known as premises 4021 Lane Place, N.E. and is located in an R-1-B District.

2. The subject lot is triangular in shape and abuts a 16-foot wide through-alley to the west. A one-story detached dwelling unit is located on the 5,728 square foot lot. The house contains a basement, however there are no garages or accessory structures on the premises.

3. The property is located in the Eastland Gardens neighborhood a low-density residential area in the R-1-B District. The land uses found in the neighborhood are residential (detached single-family homes), institutional (Kenilworth/Parkside Recreation Center, Kenilworth Elementary School) and open space (Anacostia Park, Kenilworth Aquatic Gardens). The neighborhood is an established, stable, residential area.

4. The applicant proposes to establish as a home occupation, the office portion of the family home improvement business, the BERKCO Home Improvement Corporation. One of the rooms, measuring approximately 10 feet by 12 feet (10' x 12'), will be used as an office. It will contain a business phone.

5. Home occupations are permitted under Section 203 of the Zoning Regulations provided that certain conditions are met. The subject application was referred to the Board of Zoning Adjustment by the Zoning Administrator pursuant to Sub-section 203.11. This provision reads as follows:

203.11 If the Zoning Administrator determines that an application for a Home Occupation Permit appears to meet the conditions of Sub-section 203.4 through 203.8, but to be inconsistent with the general purpose and intent of this section, the Zoning

Administrator may certify the application to be decided as an appeal by the applicant to the Board of Zoning Adjustment.

6. Sub-section 203.12 provides the following guidance to the Zoning Administrator:

203.12 In making the determination pursuant to Sub-section 203.11, the Zoning Administrator may consider in particular, but shall in no way be limited to consideration of, the cumulative impact of one or more home occupations.

The Zoning Administrator's letter dated March 8, 1990 did not identify any other home occupation within the area of the site and did not indicate that the cumulative impact of one or more home occupations was a basis for his denial.

7. A home occupation, as defined in Sub-section 203.2, is a business, profession, or other economic activity conducted full-time or part-time in a dwelling unit which serves as the principal residence of the practitioner of the home occupation.

8. Sub-section 203.1 states that the purpose of the home occupation provisions is to allow home occupations as accessory uses to residential uses, provided that they are compatible with the residential 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 specific regulatory conditions.

9. Sub-section 203.4 through 203.8 set forth the conditions for home occupations. The applicable provisions are included below:

203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a home occupation is practiced, shall comply with the requirements of Sub-section 203.5 and 203.6 of this section, and with the following conditions and requirements:

(a) A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes;

(b) Except as provided in paragraphs 203.7(c) and 203.8(d) of this title, no more than the larger of 250 square feet or 25 percent of the floor area of the dwelling, excluding basement or any accessory structure, shall be utilized in the home occupation;

- (c) The practitioner shall store all materials or finished products within the floor area which is designated in paragraph (b) of this Sub-section, or in a basement or accessory structure;
- (d) No more than one person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;
- (e) The dwelling unit owner and the practitioner shall maintain the residential character and appearance of the dwelling unit and lot;
- (f) No interior structural alteration shall be permitted if it would make it difficult to return the premises to use which is exclusively residential;
- (g) Neither the practitioner nor any other person shall conduct or allow any operations outside a structure, nor maintain or allow any storage or other unsightly condition outside a structure;
- (h) Neither the practitioner nor any other person shall use any equipment or process which creates visual or audible electrical interference in television or radio receivers outside the subject home, or which causes fluctuations in live voltage outside the subject home;
- (i) The use shall produce no noxious odors, vibrations, glare, or fumes which are detectable to normal sensory perception outside the subject home;
- (j) The use shall not produce a level of noise which exceeds the level which is normally associated with the category of dwelling or the immediate neighborhood;
- (k) No more than two (2) vehicles may be used in the practice of the home occupation;
- (l) Vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight trips daily on a regular and continuing basis;

- (m) The practitioner shall have no more than eight clients or customers on the premises in any one hour period; and
- (n) If more than one home occupation is practiced in a dwelling unit, the cumulative impact of all such home occupations, considered as a whole, shall not exceed any of the standards set forth in paragraphs (a) through (m) of this sub-section.

203.5 A sign on a dwelling or building in which a home occupation is practiced shall be permitted, subject to the following conditions:

- (a) Pursuant to the provisions of paragraphs (b) through (g) or this sub-section, a person may display one exterior sign on a dwelling or other building in which a home occupation is practiced;
- (b) The sign shall not exceed 144 square inches in area;
- (c) The sign shall be flush-mounted;
- (d) The sign shall not be illuminated;
- (e) The sign may state only the name of the practitioner and the type of home occupation;
- (f) The practitioner shall not display more than one sign outside a dwelling or building; and
- (g) The practitioner shall not display any sign which does not meet the requirements of paragraphs (b) through (e) of this sub-section.

10. Sub-section 203.6, regulating sales businesses, is not applicable to the subject application.

11. Sub-section 203.7 (1) allows for the home office of a business person, provided that the dwelling is not used as a gathering point for workers who are on the way to another work site.

12. Sub-section 203.8, regulating Bed and Breakfast facilities is inapplicable.

13. The applicant presented documentary and testimonial

evidence for consideration by the Board. The information presented addressed the conditions set forth in the Zoning Regulations.

14. The applicant's family wishes to establish a home improvement business. According to the Department of Consumer and Regulatory Affairs, before the necessary paperwork can be completed, the business must have a base. The applicant proposes to establish the business base at her residence - 4021 Lane Place, N.E. The applicant's two sons reside with her. These brothers are employees of the business. The third employee lives in Laurel, Maryland.

15. The home base will consist of an office in one room of the home. There will be a telephone and a minimal amount of activity from this room. There has also been created in the basement, a closet for storing small tools such as hammers, electric saws, drills, paint brushes, scrappers, ladders, screwdrivers, nails, tape measures, etc. - tools normally kept in a home. Large, bulky items such as lumber, sheets of drywall, rolls of insulation, etc. would not be kept on the premises.

16. The business will operate in the following manner: A meeting is scheduled at the home of the client. The brothers who will do the work take notes on what the client wishes to have done. They measure and record specifications. One brother draws up an estimate for the client's approval. Upon approval a date is set to begin work. All materials and supplies are ordered and delivered directly to the renovation site. During the renovation period, the tools that are not left at the client's home are stored in the car. These would be the small household tools described above. The brothers will dress at the subject premises and leave together in one car to go to the renovation site. The other employee will drive from Laurel, Maryland directly to the client's home. Any supplies or materials remaining upon completion of the project belong to the client and are left at the client's home if he or she so desires. Otherwise a subcontractor will be responsible for disposing of the leftover materials. Customer billing, payroll, accounting, follow-up correspondence and phone inquiries will be handled by Brooks' Compu-Service, located at 829 Oglethorpe Street, N.E.

17. The applicant indicated that establishment of this home base will involve no interior or exterior structural alterations. There will be no signs, no additional vehicles, no customers on the premises, and no increase in traffic. Conditions in the neighborhood will not be altered in any manner.

18. In addition to the above stated facts, the Board finds that the proposed home occupation is clearly secondary to the residential use of the premises. The room to be utilized in the home occupation does not exceed the area limitations set forth in

the Zoning Regulations. Tools will be stored in the basement. No large supplies will be retained at the premises. The home occupation will not employ more than one person who is not a resident of the dwelling unit. The residential character and appearance of the dwelling unit and lot will be maintained. No operations will be conducted outside the structure. Nor will any storage or other unsightly condition exist outside the structure. The operations will not create an interference with television or radio receivers or cause fluctuations in line voltage outside the subject home. The use will not produce noxious odors, vibrations, glare or fumes. The use will not produce a level of noise unusual for dwellings. No more than two vehicles will be used in the practice of this home occupation. Visitor trips to the premises by visitors, customers and delivery persons are not expected. Only one home occupation will be practiced at the site. The Board finds that the applicant is willing to comply fully with the requirements of the Zoning Regulations.

19. The Office of Planning (OP), by report dated June 8, 1990 and through testimony at the hearing, expressed opposition to the application and recommended that the request be denied. OP noted that the subject dwelling was constructed in 1952 and contains 2,692 square feet of area. The applicant has occupied the premises since 1965. OP indicated that the proposed home improvement business would perform home repairs, including carpentry, masonry and various kinds of handiwork. OP notes that the premises will be used as an office and that only small tools will be kept on site. OP also notes the proposed operations of the business. However, in OP's opinion, the applicant's proposal would be disruptive to the Eastland Gardens neighborhood. In OP's view, the disruption would be brought about by increased vehicular trips to the premises; the unavailability of on-site storage space for construction materials, supplies and tools; and the possible use of the residence as a gathering point for workers who are on their way to a work site.

20. The Office of Planning stated that a home improvement company is not the type of business that is suited to be classified or approved as a home occupation. It typically requires the use of commercial vehicles to transport tools, equipment and supplies to and from various work sites. Additionally, tools, equipment and surplus supplies would necessarily require space for storage, as would the commercial vehicles. A single-family detached dwelling with no accessory buildings that is located in a quiet, attractive, residential neighborhood is not conducive as the office/base for a home improvement company. Any growth of a home improvement company necessarily means an increase in the number of vehicles and equipment and supplies. The proposed location cannot physically handle the space requirements of the operations nor is it suited for the type of operation proposed.

21. In the opinion of the Office of Planning, the applicant's

proposal is inconsistent with the characteristics of a residential neighborhood, violating a key element of Section 203 which requires compatibility between the business and the residential neighborhood. Consequently, in OP's view, the proposed request would not be in harmony with the general purpose and intent of the R-1-B District and the use of neighboring property would be adversely affected.

22. Responding to the concerns of the Office of Planning the applicant testified that the activity to occur at the site is less than that which is permitted in the Zoning Regulations. The applicant stated that no bulky supplies would be stored on the premises either before or after the work is done. The employee who produces the estimation has extensive experience and is very accurate. Therefore, under normal circumstances, no supplies will remain. If, however, materials are left, they will be retained by the client or disposed of by a sub-contractor.

Finally, the applicant indicated that if the business should expand, it will be moved from the Lane Place home base. The business will operate within the guidelines of what is allowed.

23. The Board disagrees with the opinion of the Office of Planning and finds that the proposed use will not be disruptive to the residential character of the neighborhood.

24. The Department of Public Works (DPW), by memorandum dated June 5, 1990, expressed no objection to the application. DPW stated that from a transportation perspective, the subject request will have a negligible impact on neighborhood streets in the area.

25. Advisory Neighborhood Commission (ANC) 7A, by letter dated June 4, 1990, expressed opposition to the subject application. The ANC stated that the majority of the residents wish to have Eastland Gardens remain a strictly R-1-B residential community. The ANC voted in concurrence with this view. A denial of the application is, therefore, recommended.

26. Responding to the position of the ANC, the Board finds that the Zoning Regulations permit certain home occupations in residential districts; that specific conditions must be met to protect the residential character of the neighborhood; that the application meets the conditions delineated; and that to grant a special exception for the proposed use will not change the zoning classification for this residentially zoned district. The principle use of the property will remain as residential and the home occupation will be incidental.

27. The Eastland Gardens Civic Association, by letter dated May 2, 1990, and through testimony at the hearing, also expressed opposition to the subject application. The Association opposes the

proposal because, in the view of the neighborhood residents, the neighborhood would be changed to an undesirable commercial zone district; granting the special exception will set a precedent for more commercial establishments to enter the neighborhood in the future; and a home improvement business will have equipment located in the yard.

28. Responding to the Association the Board notes that each request for relief is decided on its own merits, that the subject application does not set the precedent for relief in future cases. The remaining concerns expressed by the Association have been addressed in previous findings.

29. No one testified in support of the application.

30. A neighbor residing at 4014 Lane Place testified in opposition to the application. He stated that his property is located across the street from the subject property. He further stated that commercial vehicles have been seen coming to the site but that this does not occur often. He also testified that those at the subject site block the alley. He was, however, unable to determine that this occurred because of the operation of the home improvement business.

31. A petition containing sixteen signatures was submitted in support of the application.

32. One letter of opposition was submitted into the record.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a special exception to establish a home occupation in an R-1-B District. The granting of such a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of Section 203 regulating home occupations.

The Board concludes that the Zoning Regulations permit home occupations in residential districts if certain conditions are met. In determining whether these conditions have been met, the Board must base its decision on the evidence in the record. Based on the evidence of record, the Board concludes that the application meets all of the applicable conditions of Section 203 of the Zoning Regulations. No substantive evidence was presented to support the position that the project, as actually proposed, would fail to meet the delineated conditions and consequently create an adverse impact on the neighborhood. The Board is of the opinion that the

applicant, and those associated with this home occupation, will comply fully with the conditions governing the operation.

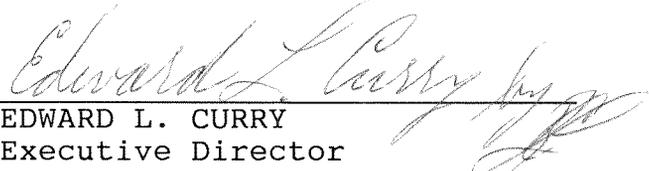
It is therefore the opinion of the Board that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Maps and that neighboring properties will not be adversely affected.

The Board has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:

1. The home occupation shall comply with all of the provisions of Sub-sections 203.4 and 203.5.
2. There shall be no commercial vehicles related to the home improvement company parked at the subject site.
3. There shall be no materials used for the home improvement business stored on the subject site.

VOTE: 3-1 (Carrie L. Thornhill, Paula L. Jewell and William F. McIntosh to grant; Charles R. Norris opposed to the motion).

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

ATTESTED BY: 
EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: FEB 22 1991

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHT 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

BZA APPLICATION NO. 15312
PAGE 10

D.C. LAW 2-38, AS AMENDED, 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 SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15312Order/TWR/BHS

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15312

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mailed to all parties, and 53 27 1991 and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and to is listed below:

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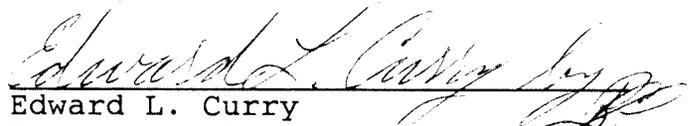
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Edward L. Curry
Executive Director

DATE: FEB 22 1991

ATTES.4/BHS