

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15582 of James V. Green, pursuant to 11 DCMR 3108.1, for a special exception under Subsection 203.11 to establish the office of a home improvement business as a home occupation in an R-2 District at premises 5001 13th Street, N.E. (Square 3983, Lot 29).

HEARING DATE: December 11, 1991
DECISION DATE: January 8, 1992

ORDER

SUMMARY OF EVIDENCE:

1. The property which is the subject of this application is located at 5001 13th Street, N.E. (Square 3983, Lot 29).

2. The subject site is located on the northeast corner of the intersection of 13th and Emerson Streets N.E. It consists of one lot of record totaling approximately 1,770 square feet in land area. The site is improved with a two-story, semi-detached residential dwelling of brick construction. In addition, the subject site abuts a 16-foot wide public alley to the rear.

3. The area surrounding the subject site is primarily residential, consisting of semi-detached and row dwellings on narrow lots. The District line is located one block to the north across Fort Drive Park. Sargent Road N.E. is situated two blocks to the west of the site. North Michigan Park is located directly across Emerson Street from the site.

4. The subject site is located in an R-2 District. The R-2 District permits matter of right development of single-family detached and semi-detached dwelling units with a minimum lot area of 3,000 square feet, a minimum lot width of 30 feet, a maximum lot occupancy of 40 percent, and a maximum height of three stories/40 feet.

5. The applicant stated that he is the president of Total Structural and Grounds Maintenance, Inc., a home improvement business. The applicant proposes to use the middle bedroom on the second floor of his residence for a home office. This bedroom measures 8 feet by 8 feet or 64 square feet. The applicant stated that he will maintain customer records, type correspondence and make use of a home personal computer. He stated that he is the only person who will use the home office for the business. He testified that he does not plan to post any signs to advertise his

business cards. Many of his customers are referred to him by others. Periodically a potential customer will come to his home to express an interest in having work done. However, customers do not generally come to his house. They are handled over the phone or meetings are held at the customer's residence.

The applicant stated that when he orders materials they are sent directly to the job site, not to his residence. His orders consist of only enough materials to complete the job. Therefore, there are seldom materials left upon completion of the work. If there are excess materials, they will be left with the customer, given away or discarded. Leftover materials will not be stored at the subject site. The applicant testified that the storage shed in his rear yard is used to store personal belongings and will not be used to store materials associated with the home improvement business. The applicant stated that his lot is well-kept and he intends to keep it that way.

The applicant stated that his workers will not gather at his home. Instead, they will go directly to the work site. The applicant testified that he leases one work vehicle which is kept by one of his employees. He will not keep the vehicle at the subject site.

The applicant maintains that his property will retain its residential appearance and that the office use will not have an adverse effect on the neighborhood. He stated that he will comply with whatever requirements apply to his application.

6. The Office of Planning (OP), by report dated December 3, 1991, and through testimony at the hearing, recommended conditional support. OP noted that the applicant must meet the requirements of 11 DCMR 203.

OP pointed out that the entire dwelling contains approximately 2,200 square feet of floor space. Accordingly, the proposed office would constitute only 2.9 percent of the subject dwelling's total floor area. Therefore, this proposal complies with the floor area limitation set forth in subsection 203.4(b) of 11 DCMR. All documents for the business will be kept within the confines of the office space.

OP stated that all business will be conducted by telephone and no customers will visit the premises. The excess building materials from various sites where the applicant performs home improvement work will not be stored on the subject property but will be disposed of at a proper location elsewhere.

OP pointed out that no exterior or interior structural changes would be made to the residence to accommodate the office.

Based on the information provided by the applicant, OP is of the view that the overall operation of the business office would not cause any electrical interference in the neighborhood nor would it produce noxious odors, vibrations, glare, fumes or noise. Because of the low intensity and the nature of the activity the Office of Planning believes that adverse impacts on the neighborhood in terms of traffic, parking, or other objectionable condition would be minimal or nonexistent.

The Office of Planning is of the opinion that the proposal fully complies with the applicable provisions of Section 203 of 11 DCMR. Accordingly, the proposed home occupation would not have an adverse impact on adjacent properties or the neighborhood in general, and would not substantially impair the intent, purpose, and integrity of the R-2 District regulations. Therefore, OP recommended approval on the condition that the applicant will continue to meet the applicable provisions of 11 DCMR 203 for the duration of the proposed home office use.

7. No other governmental agencies submitted reports relative to the subject application.

8. Advisory Neighborhood Commission (ANC) 5A submitted a letter dated December 4, 1991, and presented testimony at the hearing. The ANC stated that at the ANC meeting, the neighbors in attendance were unanimously in opposition to the application. The ANC stated that the residents were particularly concerned that the proposed activity would have a detrimental impact on their residential community. The residents expressed a concern that the application would store flammable or other building materials in the structure in his rear yard.

The ANC believes that the type of business proposed is unsuitable for a home occupation because it encourages unsightly operations and storage. The ANC pointed out that the Zoning Regulations permit up to eight trips by customers per day. Therefore, additional truck traffic can be anticipated. The ANC noted that parking is already strained at times and any additional traffic, particularly truck traffic, should be discouraged.

The ANC stated that at times noise is a problem in the neighborhood. Furthermore, because this house is semi-detached, noise from use of the telephone in the office may be disruptive to the adjoining property owner because use of the phone for business purposes will be excessive.

The ANC representative who testified at the hearing stated that he has seen debris, plywood and a ladder beside the subject structure, making the property unsightly. He also stated that the applicant has stored wheelbarrels, shovels and other materials in the shed on his lot. He stated that there is a head start program

in the recreation center across the street and the trucks that travel through the area will create a hazardous condition for the children. For all of these reasons, the ANC opposes the application.

9. None of the area residents testified in support of the application.

10. Seven residents testified in opposition to the application. In addition to the issues raised by the ANC, they expressed the following concerns:

- A. The proposed use will set a precedent for allowing other commercial businesses in the neighborhood.
- B. The proposed use will increase property taxes and lower property values, making it more difficult to attract buyers.
- C. The applicant keeps a pick-up truck in front of his house. This truck is filled with dirt and equipped with a ladder.
- D. The applicant may not discard excess materials as he says he will.
- E. The applicant may expand his business and cause more detriment to the area.
- F. There is no way to monitor the applicant's activities.

FINDINGS OF FACT:

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

1. The applicant will use the spare bedroom as an office for administrative purposes only. This use will not interfere with the quiet enjoyment of the residential neighborhood.

2. The use of the telephone by the applicant will not be so excessive or noisy so as to disturb nearby property owners.

3. The computer to be used will not interfere with television or radio receivers outside of the subject home.

4. The applicant will not have materials delivered to the subject site nor will he store leftover materials at the subject site.

5. The applicant currently stores personal belongings in or near his shed located in the rear yard.

6. The applicant will not maintain company vehicles at the site.

7. The company employees will not gather at the subject site. Therefore, no heavy trucks or equipment will be brought to the site.

8. Only the applicant will use the subject premises as proposed.

Due to the lack of reliable and probative evidence, the Board makes no findings with regard to the following:

1. The effect that the proposed use will have on property values and taxes on property in the area.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing 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-2 District. The granting of such a special exception requires a showing of substantial evidence that the use will be in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The applicant must also meet the requirements of 11 DCMR 203 regulating home occupations.

The Board concludes that the applicant has met this burden of proof. The Board concludes that the subject premises will be used only as an office for handling administrative matters not as a site for construction to take place. The Board concludes that the application meets all of the relevant provisions of Section 203 of the Zoning Regulations. The Board is therefore of the opinion that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and that it will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

The Board concludes that the written report of ANC 5A, dated December 4, 1991, failed to meet the requirements of 11 DCMR 3307.1, and therefore it is not entitled to "great weight" pursuant to 11 DCMR 3307.2.

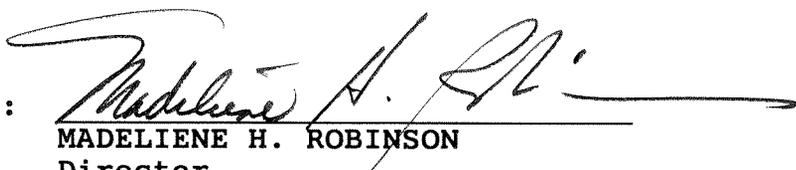
In light of the foregoing, the Board orders that the application is hereby **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Approval shall be for a period of FIVE YEARS.
2. There shall be no on-site storage of materials on the exterior of the premises.
3. There shall be no sign advertising the home occupation on the subject premises.

VOTE: 3-1 (Charles R. Norris, Sheri M. Pruitt and Paula L. Jewell to grant; Lloyd D. Smith opposed to the motion by proxy; Carrie L. Thornhill not voting, not having heard the case).

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

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: MAY 26 1993

PURSUANT TO D.C. CODE SEC. 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 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, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.