

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Appeal No. 16336 of Gerald Cassidy on behalf of Jack Milton Fields, pursuant to 11 DCMR 3105 and 3200.2 from the administrative decision of Gladys Hicks, Acting Zoning Administrator, Department of Consumer and Regulatory Affairs, made on December 16, 1997, that the application for a home occupation permit is denied to conduct a Consulting/Strategic Planning business in a CAP/R-4 District at premises 434 New Jersey Avenue, SE (Square 694, Lot 811).

HEARING DATE: May 20, 1998
DECISION DATE: May 20, 1998 (Bench Decision)

DISMISSAL ORDER

This case involves property located at 434 New Jersey Avenue, S.E. It is a lot developed with a residential structure and it is located in a CAP/R-4 District. Appellant, Gerald Cassidy, is the owner of the property, and appellant, Jack Milton Fields, is the contract purchaser of the property.

On two occasions, the appellants' representative applied for a home occupation permit to operate a "Government Affairs Consulting and Strategic Planning" business at the subject premises. In the first permit application, the appellant requested to have one employee for the business. This permit was approved. Subsequently, the appellant submitted another permit application requesting three employees for the business. This second permit application was reviewed by the Zoning Administrator and denied.

Each of the two permit applications warranted different results at the level of review by the Zoning Administrator. The application that refers to one employee would not have needed relief from the Board of Zoning Adjustment (BZA), since that number of employees would have been allowed under Subsection 203.10(c). The permit application that referenced three employees would have needed BZA relief. However the application that referenced one employee was the copy that was submitted to the BZA along with the appeal form. This created confusion.

By memorandum dated December 16, 1997, the Zoning Administrator's office denied the permit and advised the certificate of occupancy applicant that he could appeal the decision within 14 days before the Board of Zoning Adjustment (BZA) as a special exception. On February 26, 1998, Appeal No. 16336 was filed in the Office of Zoning on BZA Form 1, the Appeals form. The hearing in the appeal was scheduled for May 20, 1998.

At the public hearing of May 20, 1998, the appellants' representative testified that the case is very confusing because of a number of factors. The main issue in dispute is whether the case should have been filed as an appeal or as a special exception application.

The first area of confusion was the memorandum from the Zoning Administrator's office which refers to both an appeal of the Zoning Administrator's decision and special exception relief in the same document. After indicating that the permit application has been reviewed and denied, the Zoning Administrator's memorandum correctly cites Subsection 203.11 and accurately quotes this subsection. The memorandum informs the permit applicant that the proposed business exceeds the scope of the regulations regarding Home Occupations because of the response to question #17 on the application. This is the question that relates to the number of employees (other than the applicant) who would be working at the site. However, the final paragraph on page one of the memorandum is most inaccurate. It states:

This decision of the Zoning Administrator may be *appealed* directly to the BZA by requesting a "*special exception*", which would allow the proposed business activity to be conducted if approved. Such an *appeal* must be made directly to BZA by the applicant or his/her legal representative on a Board of Zoning Adjustment *Form 2*, which may be obtained from BZA, 441 - 4th Street, NW. Your *appeal* must be filed within fourteen (14) calendar days form [sic] the date of this letter.

The Zoning Administrator's memorandums form the basis for relief for applications that are filed with the BZA. The areas of confusion in this memorandum have been italicized. Given what was written in the Zoning Administrator's memorandum, the appellant was unsure about exactly how to proceed.

When the appellant's representative went to the Office of Zoning to pursue the matter she was informed by the Office of Zoning staff that the case should be filed as an appeal, not a special exception application. These instructions were followed and the appeal was filed.

Along with the Appeal Form, the appellants submitted a list of property owners located within 200 feet of the property to be used in for sending out public hearing notices. This list is only required in applications, not appeals. The hearing notice posters (orange signs) were posted on the property, and the affidavit of posting shows that the posters describe the case as "*An appeal for a special exception to operate a home occupation for a consulting business*". Under the Zoning Regulations, such a case does not exist.

To further add to the inconsistencies, the appellants' pre-hearing statement, submitted on May 6, 1998, is entitled "Statement of the Applicant" (as opposed to "Appellant"), and addresses the special exception relief under Subsections 3108.1, the standard for special exception relief, and 203.10, the special exception provision for home occupations.

The record contains a number of letters from owners of property near the site asking that the case appear as a special exception application so that the 200-foot property owners may receive notice from the Board.

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BZA APPLICATION NO. 16336

As Interim Director of the Office of Zoning, I hereby certify and attest that on ~~_____~~ JUN 23 1998 a copy of the order entered on that date in this matter before the Board of Zoning Adjustment was mailed first class postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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Attested By:

Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

DATE: JUN 23 1998