

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 18366 of Clifford S. Reese, pursuant to 11 DCMR § 3104.1, for a special exception under § 203.4(b) to establish a home occupation (one barber chair in the basement) in a one-family dwelling in the R-5-A District at premises 5831 Colorado Avenue, N.W. (Square 2937, Lot 837).

HEARING DATE: June 26, 2012
DECISION DATE: June 26, 2012

ORDER DISMISSING APPLICATION
BECAUSE NO RELIEF IS NEEDED

This application was submitted February 27, 2012 by Clifford S. Reese, the owner of the property that is the subject of the application (“Applicant”). The application was filed pursuant to 11 DCMR § 3104.1 for a special exception under § 203.4(b) to establish a home occupation (one barber chair in the basement) in a one-family dwelling in the R-5-A District at 5831 Colorado Avenue, N.W. (Square 2937, Lot 837). Following a public hearing, the Board voted 5-0-0 on June 26, 2012 to dismiss the application because no relief was necessary under the Zoning Regulations.

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated February 29, 2012, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); the District Department of Transportation; the Councilmember for Ward 4; Advisory Neighborhood Commission (“ANC”) 4C, the ANC for the area within which the subject property is located; and the single-member district ANC 4C01.

A public hearing was scheduled for June 26, 2012. Pursuant to 11 DCMR § 3113.13, the Office of Zoning on March 30, 2011 mailed notice of the hearing to the Applicant, the owners of property within 200 feet of the subject property, and ANC 4C. Notice was published in the *D.C. Register* on March 30, 2012 (59 DCR 2454) and on April 20, 2012 (59 DCR 3119).

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Requests for Party Status. In addition to the Applicant, ANC 4C was automatically a party in this proceeding. There were no additional requests for party status.

Applicant's Case. The Applicant provided written testimony and photographs describing his proposal to establish a home occupation entailing use of "a small portion of ... [the] basement [in his residence] as a small barbershop/hair salon." The Applicant asserted that his proposal was in compliance with the relevant Zoning Regulations, including 11 DCMR § 203.4(b).

Government Reports. By report dated June 19, 2012, OP recommended approval of the application, because it satisfied all requirements for a home occupation set forth in § 203. OP noted its interpretation of "the regulation as allowing by right a home occupation which addresses specific conditions," and indicated that it "is not clear why this proposal requires special exception approval," although OP "was not able to clarify this with the Zoning Administrator." (Exhibit 26.)

By memorandum dated March 27, 2012, the District Department of Transportation indicated "no objections to the special exception sought by the applicant." (Exhibit 16.)

ANC Report. At a public meeting on March 14, 2012 with a quorum present, ANC 4C voted unanimously to support the application, stating that the requested zoning relief would not affect parking in the area due to a driveway adjacent to the Applicant's dwelling. (Exhibit 15.)

Persons in Support or Opposition. The Board received two letters from neighbors of the Applicant indicating their support for the application. No persons submitted letters or testified in opposition to the application.

FINDINGS OF FACT

The Subject Property and Surrounding Area

1. The subject property is a slightly irregular rectangular parcel located on the east side of Colorado Avenue, N.W., near its intersection with Missouri Avenue (Square 2937, Lot 837). The parcel has an area of 3,329 square feet.
2. The property is improved with a two-story, one-family, semi-detached dwelling with a basement. The basement is accessible from the rear yard of the property through a separate entrance on the southern façade of the dwelling.
3. A driveway, 9.9 feet wide, is located along the northern property line, providing vehicular access to the property from both Colorado Avenue and from a public alley, 16 feet wide, that abuts the subject property at the rear.

4. Properties in the vicinity of the subject property along Colorado Avenue are also zoned R-5-A and are developed primarily with row, semi-detached, and detached one-family dwellings. Properties that abut the public alley at the rear of the subject property, which have frontage along Georgia Avenue, are located in a C-3-A District and are generally developed with two-story commercial buildings.
5. No other home-based businesses are located on properties neighboring the subject property.

The Applicant's Proposal

6. The Applicant proposes to establish a barber chair as a home occupation in the basement level of his residence. The Applicant will continue to reside in the dwelling.
7. The portion of the basement that will be devoted to the barber chair will have an area of approximately 200 square feet, comprising 11% of the total floor area of the Applicant's dwelling.
8. The Applicant's proposed home occupation "will consist of a single styling chair where [he] will function as the sole barber/stylist." The equipment used at the home occupation "will consist of standard barbershop/hair salon equipment such as hair clippers, hair dryers, styling irons and various hair care products." The Applicant indicated that all materials and products used by the business will be stored within the area of the home occupation and will not be detectable from outside that area.
9. The barber chair will be the only home occupation on the premises. Customers will utilize the basement entrance to the dwelling. The Applicant anticipated having a maximum of two customers at a time, and stated that the number of customers "will not exceed the requirements of section 203.4(m) of the zoning regulations," which specifies that the "practitioner [of a home occupation] shall have no more than eight (8) clients or customers on the premises in any one (1) hour period." Customers will be permitted to park in the driveway.
10. The Applicant does not intend to make any structural alterations or exterior modifications to the dwelling that would conflict with its residential character, and will not display any signage related to the home occupation on the exterior of the house or on the lot.
11. A referral letter from the Office of the Zoning Administrator, dated January 26, 2012, was submitted with the application. The letter states that the Applicant's application for a home occupation permit "to use the subject premises for a 'One chair barber in the basement' is disapproved due to the need for Board of Zoning Adjustment approval." The letter indicates that the Applicant must "obtain a special exception under the provisions of DCMR Title 11, § 203.4(b) to establish [his] use in the R-5-A zone." (Exhibit 4.)

Harmony with Zoning

12. The subject property is zoned R-5-A. The R-5 Districts are general Residence districts designed to permit flexibility of design by permitting all types of urban residential development that conform to height, density, and area requirements. (11 DCMR § 350.1.) In the R-5-A District, only a low height and density are permitted. (11 DCMR § 350.2.)
13. Uses allowed as a home occupation include “cosmetologist, hair stylist, or barber.” (11 DCMR § 203.7(i))

CONCLUSIONS OF LAW AND OPINION

The Applicant seeks a special exception under § 203 to allow a home occupation (a barber chair) in a one-family semi-detached dwelling located in the R-5-A District at 5831 Colorado Avenue, N.W. (Square 2937, Lot 834). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2001), to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Pursuant to § 203, a home occupation may be established as an accessory use to a residential use, provided that the home occupation is compatible with the residential neighborhood where it is located.¹ (11 DCMR § 203.1.) Each person practicing a home occupation must obtain a Home Occupation Permit, which may be issued without a public hearing if the relevant requirements are met. (11 DCMR § 203.3(b).) The practitioner of a home occupation must comply with requirements set forth in §§ 203.4 through 203.6 of the Zoning Regulations. Those requirements address permitted signs and sales that may be associated with home occupations as well as general provisions consistent with the intent of the Zoning Regulations “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.” (11 DCMR § 203.1.)

Based on the findings of fact, the Board concludes that the application satisfies all relevant requirements set forth in §§ 203.4, 203.5 and 203.6, noting that most, if not all, of the requirements of §§ 203.5 and 203.6 are not germane to the Applicant’s specific proposed home occupation. The letter of referral from the Office of the Zoning Administrator cited a need for relief from § 203.4(b), which limits the area devoted to a home occupation to the larger of 250 square feet or 25% of the floor area of a dwelling, excluding basement or any accessory structure. The Applicant indicated that his planned home occupation will occupy approximately

¹ The Zoning Regulations define a “home occupation” as “a business, profession, or other economic activity conducted full-time or part-time in a dwelling unit that serves as the principal residence of the practitioner of the home occupation.” (11 DCMR § 203.2.)

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200 square feet, or 11% of the floor area of his dwelling, obviating the need for relief from § 203.4(b). The Board does not interpret the exclusion of a basement from the computation of occupancy as precluding a basement from serving as the location of a home occupation. Accordingly, the Board finds that the application was incorrectly filed at the direction of the Zoning Administrator, and that the application should be dismissed since no zoning relief is necessary to establish the home occupation proposed by the Applicant.

The Board is required to give “great weight” to the issues and concerns raised by the affected ANC. Section 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2001)). In this case, ANC 4C voted to support the application, noting that parking would not be adversely affected.

For the reasons stated above, and having given great weight to the recommendations of OP and to the issues and concerns of ANC 4C, the Board concludes that the application was incorrectly filed for a home occupation that does not require zoning relief. Accordingly, it is hereby **ORDERED** that the application is **DISMISSED**.

VOTE: 5-0-0 (Lloyd J. Jordan, Anthony J. Hood, Nicole C. Sorg, Rashida Y.V. MacMurray, and Jeffrey L. Hinkle voting to Dismiss)

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

A majority of the Board members approved the issuance of this Order.

ATTESTED BY: _____



SARA A. BARDIN
Director, Office of Zoning

FINAL DATE OF ORDER: July 10, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.