

Government of the District of Columbia

ZONING COMMISSION



ZONING COMMISSION ORDER NO. 557

Case No. 86-29

(Home Occupations Text Amendment)

March 10, 1988

The Zoning Commission for the District of Columbia initiated Case No. 86-29 in order to consider overall revision of the provisions of the Zoning Regulations (Title 11, District of Columbia Municipal Regulations) which regulate home occupations. The Office of Planning reported to the Commission that the Zoning Administrator had expressed the view that revisions were necessary because of the significant expansion in the number and variety of home occupations. The initial report of the Office of Planning in this case stated the following general issues:

1. Limited usefulness of the current regulations;
2. Provisions for a reasonable degree of economic opportunity;
3. Convenience and other non-economic benefits of working at home;
4. Potential diversion of housing stock to non-residential use;
5. Impact of non-residential activity on residential neighborhoods; and
6. Administrative practicality.

Pursuant to notice, the Commission conducted public hearings on April 20, 23, and 27, and May 7, 1987.

The public hearings and written submissions of interested persons and groups confirmed the general issues as identified by the Office of Planning. It is clear from the record that the opportunity to work at home has become of great importance to persons in a variety of occupations, including for example: music teachers, therapists, bed and breakfast operators, artists, writers, consultants, dentists, and physicians. The issues raised by these persons and community groups are discussed below.

One commonly expressed concern was that the proposed changes would preclude certain types of operation or practice which are either prevalent in a particular occupation,

or are reasonable and beneficial. Examples cited include: sharing a practice with a non-resident, including a relative; the sale of an established practice; the performance of on-site laboratory work; the need to provide for assistance during a period of disability; and the benefits of consultation.

Some practitioners downplayed the parking or traffic impact of their practice, and asserted that the proposed limits on visitors and vehicles were not practical.

Advisory Neighborhood Commissions and neighborhood associations urged that the amendments not be too permissive, and even opposed any changes, citing enforcement burdens and negative impacts on housing stock, residential neighborhoods, and marginal commercial districts in need of rehabilitation.

The final matter-of-right rules reflect consideration of and response to the main issues raised during the hearings, in that: (1) the floor area limitation has been clarified, and set at 25 percent of the floor area of the dwelling; (2) one non-resident employee will be allowed; (3) the equipment limitation is written in terms of external impact; (4) the limitation on use of vehicles is simply set as two; (5) the number of vehicular trips to the business is set at "eight daily on regular and continuing basis," to allow some daily and seasonal flexibility; (6) the number of clients or customers allowed in any one hour has been increased from six to eight, in response to comments on the proposed rules; (7) the "telephone sales" provision is clarified; (8) payment is allowed for a service which creates a product; and (9) a requirement to maintain the residential character and appearance of the dwelling and lot is substituted for prohibition on alteration of the appearance of the home.

The Commission has determined to continue to allow physicians and dentists to establish home offices under standards which are less restrictive than those which apply to other home practitioners. The Commission is persuaded that physicians and dentists offer services of special practical benefit in residential areas, and that the value of and need for these services justify greater flexibility for these professions. The Commission recognizes that certain other practitioners provide care and treatment which is similar to that which is provided by certain physicians, that is, psychiatrists. However, even as limited by the constraints of home offices, physicians as a class, and to at least a limited extent as individuals, are able to offer a greater range of health care than are other practitioners. Application of the same standards to other practitioners would substantially increase the number of home offices in

residential zones, without a corresponding increase in the potential range of care.

The amended rules also make it clear that the term "physician" is limited to one who practices medicine. The rule is thus intended to permit the more flexible standard to apply only to that group of practitioners who, taken as a whole, provide the comprehensive service which consists of the practice of medicine.

Bed and Breakfast facilities will be explicitly authorized and regulated. The final rules respond to concerns which were expressed about the advertised proposal to limit the frequency and length of rentals. The rules will limit matter-of-right Bed and Breakfast facilities to a scale of operations which is clearly an accessory use in the residence of the operator.

The Commission believes that the special exception provisions offer a reasonable degree of flexibility to those practitioners who would seek greater flexibility than is allowed under the matter-of-right controls. To the extent that the special exception process will require additional time and cost, that is reasonable for a process which serves to establish reasonable limits in special circumstances.

The Commission has determined that it is not reasonable to undertake in this rulemaking action to reinforce or duplicate the provisions of the federal Fair Labor Standards Act. That Act and the Zoning Regulations each stand alone, and these amendments will not operate to permit activity which the federal Act prohibits. D.C. Code Sec. 5-428 (1981) explicitly provides that no provision of the Zoning Regulations may operate to allow activity which any other statute or regulation proscribes.

The Commission received a number of comments from Advisory Neighborhood Commissions (ANCs). They are discussed in the paragraphs which follow.

ANC 2B submitted a report adopting the testimony of Single District Commissioner David A. Maxwell. The adopted rules effectively respond to ANC 2B's concerns as follows: (1) The rules continue to allow physicians and dentists to practice at home, as accessory uses; (2) residence of the practitioner is required, and residential use is required as the dominant use of the home; (3) the parking provisions of Title 11 will protect against the diversion of required off-street parking; (4) bed and breakfast facilities are not allowed in multiple dwellings; (5) transient accommodations other than bed and breakfast facilities will be addressed in Z.C. Case No. 87-31; (6) the rules generally afford appropriate protection to residents of multiple dwellings; and (7) vehicular and other customer traffic is limited.

ANC 4A submitted a report stating its issues and concerns. The final rules respond to those issues and concerns as follows: (1) The definition of home occupation is not intended to serve as a limiting standard of operation, as those standards are comprehensively set forth in the entirety of sections 202 and 203; (2) the permitted percentage of floor area has been reduced; (3) the vehicle limitation is applicable to all classes of vehicles; (4) the limits on visitors and vehicle trips are not applicable to the residential use of the home, but to the home occupation; such limits are reasonable and necessary as applied to home occupations; enforcement problems in this particular area are probably unavoidable, but such problems do not eliminate the need to set limits; (5) home sales may prove difficult to regulate, but the Commission believes that there should be limits; (6) a small sign does not unreasonably detract from the residential character of a dwelling; (7) home catering is not allowed; (8) the operations standards provide reasonable protection from the potential impact of a mail order business; (9) again, a degree of enforcement difficulty does not reasonably suggest that reasonable accessory uses should not be allowed, particularly those as beneficial as the practice of medicine or dentistry; and (10) the limits on bed and breakfast facilities, together with ordinary policing, should prevent bed and breakfast facilities from serving as covers for illicit visitations.

ANCs 1C and 1E also submitted comments. Those comments did not comply with 11 DCMR 3011.7, which requires an ANC written report to set forth information about the process by which the ANC developed its issues and concerns. In particular, neither of these ANCs reported that it gave proper notice of its public meeting, the number of ANC members who constitute a quorum, or the number who were present at the ANC meeting. Therefore these comments will not be accorded a specific "great weight" evaluation, but the Commission has considered the comments in its deliberations and in its general discussion in this Order.

As revised from the advertised rules, the adopted rules provide a reasonable degree of flexibility for practitioners of home occupations, while protecting residential areas from the impact of commercial and professional activity. Those who chose to work at home will not be overly restricted, but they will be more restricted than they would be if they practiced the same occupation as a principal use in a commercial or other non-residential zone. The primary use of dwellings in residential zones must be residential, and that use must be protected.

The Commission is persuaded that it should continue to permit child development homes as accessory uses subject to the current standards, rather than include such homes within

the category of home occupation. The final rulemaking reflects this change from the proposed rulemaking.

The Commission has also deleted proposed sub-section 202.5, which would have explicitly permitted work at home in connection with a principal away-from-home occupation. The Commission has concluded that such an explicit provision is not needed, because taking work home from the job is an ordinary and reasonable part of the mundane activity which takes place in homes. As such, it does not rise to the level of an accessory use of the home. Rather, it is part of the primary use.

The Commission will retain jurisdiction in this case, so that after the rules have been in effect for one year, it will be able to consider changes based upon experience. The Commission requests the Department of Consumer and Regulatory Affairs to report to the Commission about any technical or other problems in the administration of the amended rules.

The proposed action of the Zoning Commission to amend the Zoning Regulations was referred to the National Capital Planning Commission (NCPC), under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated January 11, 1988, found that the proposed amendment would not adversely affect the Federal Establishment or other Federal interests in the National Capital, and would not be inconsistent with the Comprehensive Plan for the National Capital.

The Zoning Commission believes that the proposed amendments to the Zoning Regulations are in the best interest of the District of Columbia, are consistent with the intent and purpose of the Zoning Regulations and Zoning Act, and are not inconsistent with the Comprehensive Plan for the National Capital.

The Commission has determined that the changes from the notice of proposed rulemaking are minimal and insubstantial, and do not require further notice of proposed rulemaking.

In consideration of the reasons set forth herein, the Zoning Commission hereby orders APPROVAL of amendments to the Zoning Regulations regarding home occupations. The specific amendments to DCMR Title 11 (the Zoning Regulations) are as follows:

1. Delete existing section 202, and substitute in lieu thereof the following:

202 ACCESSORY USES (R-1)

202.1 The uses set forth in sub-sections 202.2

through 202.9 of this section shall be permitted as accessory uses in an R-1 district, incidental to the uses permitted in this chapter, provided that the particular requirements for each use are met.

202.2 The use of an office by a physician or dentist shall be permitted, if the following requirements are met:

- (a) The physician or dentist shall reside on the premises;
- (b) No goods, chattel, wares, or merchandise shall be created commercially, exchanged, or sold in the office;
- (c) Exclusive of domestics, not more than two (2) persons who do not reside on the premises may be employed. No person so employed shall be a physician or dentist; and
- (d) Only one (1) sign, not over one square foot (1 ft.²) in area, and either affixed to the dwelling or freestanding, shall be used. The sign, if illuminated, shall be white and nonflashing.

202.3 For purposes of sub-section 202.2, the term physician shall include only a person who practices medicine.

202.4 A child development home shall be permitted as an accessory use in an R-1 District incidental to the uses permitted in this chapter, if the following requirements are met:

- (a) The dwelling unit in which the use is located shall be the principal residence of the caregiver;
- (b) There is used no more than one (1) sign or display, which shall not exceed one hundred forty-four square inches (144 in.²) in area;
- (c) No stock in trade is kept nor any commodity sold upon the premises;
- (d) No person is employed other than a member of the caregiver's immediate family residing on the premises; and

(e) No mechanical equipment is used except such as is permissible for purely domestic or household purposes.

202.5 A maximum of two (2) roomers or boarders, who shall room or board in the main building, shall be permitted.

202.6 A parking space shall be permitted, subject to the special requirements for parking spaces set forth in chapter 21 of this title.

202.7 Except as is provided in this sub-section, and in sub-section 203.6 of this title, no sale of products shall be permitted at a dwelling unit. During a twelve-month period, one sale in the nature of a yard sale, garage sale, or home sales party may be held at a dwelling unit.

202.8 A home occupation shall be permitted, as provided in and subject to section 203; and

202.9 Other accessory uses customarily incidental to the uses permitted in R-1 districts under the provisions of this section, including mechanical amusement machines that are accessory to uses specified in section 210, shall be permitted, subject to the provisions of section 2501.

2. Redesignate existing sections 203 through 220 as sections 204 through 221.

3. Insert a new section 203 to read as follows:

203 HOME OCCUPATION (R-1)

203.1 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.

203.2 For purposes of this section, a home occupation 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.

203.3 Home occupations shall be approved by the issuance of a Home Occupation Permit, as provided for in this sub-section:

- (a) No person shall practice a home occupation without a Home Occupation Permit;
- (b) A Home Occupation Permit may be issued without a public hearing if the requirements of this sub-section are met, or may be granted as a special exception by the Board of Zoning Adjustment pursuant to sub-section 203.10;
- (c) A Home Occupation Permit may be granted only to a designated person or group of persons who reside at a residential address; and
- (d) No Home Occupation Permit may be transferred from one person to another, or from one address to another.

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-sections 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 line 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) of 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.

203.6 Sales shall be permitted, subject to the following conditions:

- (a) A practitioner may make sales by telephone;
- (b) A practitioner may perform and be paid for a service, even if the service results in the creation of a product;
- (c) During a twelve-month period, as many as five sales in the nature of yard sales, garage sales, or home sales parties may be held at a dwelling; and
- (d) During a twelve-month period, a person with a home occupation permit may hold six or more sales in the nature of yard sales, garage sales, or home sale parties at a dwelling, if approved by

the Board of Zoning Adjustment as a special exception pursuant to sub-section 203.10 of this section.

203.7 The following uses shall be allowed as home occupations, provided that the conditions specified in sub-sections 203.4 through 203.6 are met at the time of the establishment of the home occupation, and maintained on a continuing basis. The uses listed below are to be interpreted to include other similar uses in each category:

- (a) Tutoring of not more than five (5) students at any one time;
- (b) Dressmaking, sewing, and tailoring;
- (c) Painting, sculpturing, writing, composing, photography, or other fine arts occupations practiced by an individual in a home studio, provided that no more than sixty (60%) percent of the floor area of the dwelling unit may be devoted to the studio;
- (d) Home crafts, such as model-making, rug weaving, and lapidary work;
- (e) Telephone answering service and sales by telephone;
- (f) Computer programming;
- (g) Typing or word processing service;
- (h) Mail order business;
- (i) Cosmetologist, hair stylist, or barber;
- (j) Home office of a scientist, clergyman, inventor, academician, licensed health care professional other than one provided for in paragraph (k) of this sub-section, or other professional person;
- (k) Home office of a physician or dentist, provided that the physician or dentist may not also establish an accessory use pursuant to section 202 of this title; and
- (l) Home office of a business person, sales

person, or manufacturer's representative, provided that the dwelling is not used as a gathering point for workers who are on the way to another work site.

203.8 An owner of a dwelling may operate a Bed and —
Breakfast facility, offering rooms and
breakfast to guests on a daily basis, provid-
ed that the following requirements shall be
met:

- (a) The use shall not be permitted in a multiple dwelling;
 - (b) Breakfast is the only meal served, and is served only to overnight guests;
 - (c) The maximum number of sleeping rooms shall be two (2), except as follows:
 - (1) Pursuant to paragraph 203.10(b) of this section, the maximum number of sleeping rooms may be increased to four (4); or, in a dwelling which is an historic landmark, or which is located in an historic district and is certified by the State Historic Preservation Officer as contributing to the character of that historic district, the number of sleeping rooms may be increased to six (6); and
 - (2) The number of sleeping rooms permitted as a matter of right or by special exception as set forth in this paragraph shall be reduced by one (1) for each person who rooms or boards in the dwelling pursuant to sub-section 202.5 of this title;
 - (d) The floor area limitation set forth in sub-section 203.4(b) shall not apply to this use;
 - (e) In addition to the required parking for the dwelling unit, one (1) parking space shall be provided for each two sleeping rooms devoted to guest use;
 - (f) No cooking facilities shall be permitted in any of the rented rooms;
-

(g) The dwelling shall be owned and occupied as the principal residence of the operator(s); and

(h) Except as provided in paragraph (d) of this sub-section, the Bed and Breakfast facility shall comply with the provisions of sub-sections 203.4 through 203.6 of this section.

203.9 Except insofar as they are explicitly permitted by sub-sections 203.6 through 203.8 of this section, the following uses are prohibited as home occupations:

(a) Any retail service or other use specified in sub-sections 701.1, 701.4, 721.2, 721.3, 741.2, 741.3, 751.2(b), and 801.6; and

(b) Any use prohibited in sub-section 902.1.

203.10 A home occupation which is not permitted or prohibited in this section may be permitted as a special exception by the Board of Zoning Adjustment, provided that the following requirements shall be met:

(a) The proposed use and conditions related thereto shall be consistent with the purposes set forth in subsection 203.1, and shall generally comply with the requirements of sub-sections 203.4 through 203.8, subject to specific findings and conditions of the Board in each case;

(b) An applicant for a home occupation which is permitted by sub-sections 203.6 through 203.8 may request the Board to modify no more than two (2) of the conditions enumerated in sub-sections 203.4 through 203.8, provided that the general purposes and intent of this section are complied with;

(c) In no case shall more than two (2) persons who are not residents of the subject home be permitted as employees of the home occupation, and those persons shall not be co-practitioners of the profession;

- (d) Any request to modify more than two (2) of the requirements found in sub-sections 203.4 through 203.8 shall be deemed a request for a variance. However, a person with a demonstrated physical handicap may be permitted special consideration by the Board, and a request for more than two (2) modifications of the Home Occupation requirements shall be considered in this instance as a special exception governed by this sub-section; and
- (e) In considering any request for approval under this sub-section, 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 general purpose and intent of this section.

203.11 If the Zoning Administrator determines that an application for a Home Occupation Permit appears to meet the conditions of sub-sections 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.

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 occupantions.

4. Add to sub-section 199.9 the following definition of "Home Sales Party":

Home sales party - a gathering which is held at a dwelling of any kind for the purpose of selling or distributing goods or services.

5. Delete the definition of "Home occupation" from sub-section 199.9.

Vote of the Zoning Commission taken at the public meeting on September 21, 1987: 5-0 (George M. White, Maybelle Taylor Bennett, Patricia N. Mathews, Lindsley Williams, and John G. Parsons to approve proposed amendments to the Zoning Regulations.

This order was adopted by the Commission at the special public meeting on March 10, 1988, by a vote of 3-0 (Lindsley Williams, Maybelle Taylor Bennett, and John G. Parsons to adopt; George M. White and Patricia N. Mathews, not present, not voting).

In accordance with 11 DCMR section 3028, this order is final and will take effect upon publication in the D.C. Register, that is, on 16 SEP 1988.


MAYBELLE TAYLOR BENNETT
Chairperson
Zoning Commission


EDWARD L. CURRY
Executive Director
Zoning Secretariat