



PLANNER'S OPINION

To: Planning and Zoning Commission
Re: PO/R and Home Based Occupations
Date: May 6, 2020

The recent applications for a text amendment and a zone change at 50 Main Street from R-1, Lakeside and Village Residential to PO/R, Professional Office/ Residential has created angst among neighbors in the Main Street area and stirred a conversation about what is the proper zoning for Main Street. Main Street, as you know, is a mix of single family homes, and large homes that have been converted to multiple apartments. There is a varying degree of upkeep of these properties, with some being very well maintained, and others that are, quite frankly, in need of rehabilitation.

It has been and continues to be my opinion that through the planning and zoning process, the Town can do more to encourage a better use of its unique and historic Main Street to create an incentive that would encourage rehabilitation of properties. The use of the PO/R zone along Main Street seems to be a logical step toward this end. It would allow all of the single family uses to continue as-of-right. In addition, it would allow property owners to convert the ground floor of their properties to professional offices, which would allow for higher rental incomes, more in line with commercial pricing, or simply allow a resident to run a small business on the ground floor of their home. In addition to the potential financial and aesthetic benefits, it would also help to drive traffic, and business, toward the Village Center from Route 66. The PO/R zone includes requirements that retain the residential character and aesthetic of the property, which would serve to protect the historic and residential look and feel of the neighborhood.

The above notwithstanding, there was a showing of neighboring property owners and other interested residents at the March Public Hearing who voiced their opinion and opposition to the idea. The number was fairly small and the main concern seemed to be around the potential for a sign to be installed along Main Street at a residential property. While there was concerns raised relating to traffic, stormwater runoff and potential icing, and strangers in the area, the message was clear; the interested residents were concerned about having a large sign installed at this property displaying the name of the proposed real estate office.

In our research after the hearing, the Staff discovered that Section 7.2 of the Zoning Regulations, that which regulates signs, does not include provisions for signs within the PO/R zone, although the PO/R zone clearly indicates that signs in accordance with Section 7.2 are allowed in the zone. With this knowledge, it is my opinion that the Commission should amend the regulations to include guidance for signage in the PO/R zone. The language should consider the nature and purpose of the PO/R zone and limit the size and impact of signage within the zone. I have included proposed language to consider.

Regardless of the need to update the signage regulation, the reaction from neighbors puts the Commission at a crossroads. Do we consider the extension of the PO/R Zone onto Main Street, or consider alternatives? An extension of the PO/R zone would be specific to those properties which are included, forcing anyone who wants to run a small business out of their home into one of these properties. While the PO/R Zone is a great tool, it is limited to a narrow area and not accessible for residents, or prospective residents who do not own property within it.

It is my opinion that the Commission should consider the creation and adoption of a home based occupation permit. Currently, there are no provision in the regulations for someone who wants to operate

a home based business, and as such, the Town of East Hampton has lost roughly a dozen potential residents and businesses during my tenure. Home based occupations are a common occurrence in zoning regulations not only across the State, but also across the Country. A PAS report was issued by the APA in 1953 (attached) discussing the importance of creating home based occupation permits and reviewing the various ways in which these uses are being regulated across the country. Although there are many facets of this PAS report that are no longer relevant or would need amending due to the intervening years of case law and best practices, the basic principles discussed hold true today.

The Town of East Hampton allowed Home Based Occupations as a Special Permit use until the regulation re-write in 1990. Why this portion of the regulation was removed is somewhat of a mystery, but it has resulted in a hodge-podge of legal non-conforming home based businesses which exist without a current legal framework in addition to a number of individuals carrying out businesses on their properties without zoning approval. Although these businesses don't run afoul of the Zoning Regulations per se, we have heard from numerous residents who would prefer to have a legal framework within the regulations which would allow them to operate openly without fear of being cited with a violation.

It is my opinion that this does not create an additional enforcement burden on the staff. Residents and prospective business owners who are willing to go through the process of obtaining a Special Permit are not generally the types of folks who want to operate outside of the rules. There will always be a segment of the population that will test the limits, but it is likely that we are already aware of who these folks are. Our surrounding communities are taking advantage of this type of regulation and reaping the benefits. These home based businesses are typically of the type that do not add additional traffic generation to our streets, do not require additional services beyond those which are associated with residences, and add valuable personal property tax income to the town coffers. These businesses also supplement the already healthy list of services that the Town of East Hampton can offer to its residents.

Regulations can and often are crafted in such a way that limits their impact to neighboring property owners and the residential character of the surrounding neighborhood. Typically, the size of signage, the visibility of the business from the street, and the number of employees is limited. Often, appropriate businesses are those that are either sole proprietorships or have one employee. Some examples of regulations limit employees to immediate family members that already live on the property. Others allow a limited number of employees that live off the property.

It is my opinion that a two-tiered system would work best for East Hampton. The first tier would be as-of-right operations within the residential zones that would not require any permits. There are a large number of existing home based businesses that have no impact to neighboring property owners. These would be sole proprietors with no employees working within their home that do not engage with any customers, do not have a sign or any other physical evidence from the street, and do not have any other evidence from the outside of a business. Examples would be copy editors, graphic designers, sales people, etc.

The second tier would be businesses that are more obvious to neighbors and would be Subject to a Special Permit. Businesses that might fall into this category include contractors and print shops that operate out of their homes, realtors, accountants, photographers, and the like. This would allow the Town to create a registry and tax these businesses appropriately and fairly. In general, these businesses would have little impact to the surrounding neighborhood, but would include some physical evidence of their existence that must be regulated in order to adhere to the general residential character of the neighborhood.

Included with this letter are some examples of Home Occupation regulations from other towns for your consideration.

★ planning advisory service

AMERICAN SOCIETY OF PLANNING OFFICIALS

1313 EAST 60th STREET — CHICAGO 37, ILLINOIS

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ZONING REGULATION OF HOME OCCUPATIONS*

When the battle for use zoning was won in 1926 (Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 47 S. Ct. 114), there still remained a number of secondary points to be settled. One of the most vexing of these secondary matters concerned established uses whose nature was contrary to the principal uses permitted in residential districts.

Although the lawmakers could have declared all of these various contrary uses to be nonconforming and subject to eventual elimination either by amortization or "natural death," they chose instead to divide them into two main groups and to treat them differently with respect to continuation. The basis for distinction was whether the inconsistent use was principal or secondary. If it was found to be principal - for example, a grocery store or a filling station - it was declared to be a legal, pre-existing nonconforming use. Subject to variations in state laws, the particular nonconforming use could be continued for a period of time. However, other grocery stores and filling stations could not be built in the district where the pre-existing nonconforming uses were permitted to remain.

If, on the other hand, the established but apparently inconsistent use was found to be incidental or accessory to the main residential or other principal use - for example, a medical practice or a dressmaking establishment - it was handled quite differently in the zoning ordinance. Not only was it permitted to remain in that district, but also other like accessory uses could at any time thereafter be commenced.

Both of these legal devices for handling inconsistent uses recognized the community as it existed at the time when the zoning ordinance was first drawn. The device of the nonconforming use recognized the substantial investment an individual might have in his grocery store or filling station. The device of

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the customary home occupation recognized custom. Specifically, it recognized particular customs prevailing in certain districts. It recognized that certain occupations - with the acceptance of the community and in accordance with unwritten law - had been found in incidental association with the use of the house as a dwelling.

With the home occupation, the chief problem has been to maintain the integrity of the residential district and at the same time to allow and regulate in equitable fashion the customarily accepted non-residential types of activity. For this reason it has been generally agreed that an enterprise must satisfy certain criteria in order to qualify as a permitted home occupation: it must be customary; it must be incidental to the principal use of the premises as a residence; and it must not be a business.

I. THE BASIS FOR REGULATION

A. Must Be Customary. Traditional acceptance is usually considered fundamental to a definition of home occupations. In general, those occupations which customarily have been given approval when conducted in the home are the professions, chiefly doctors and lawyers, and certain feminine occupations such as dressmaking and sewing. However, there are also likely to be, in any given city, other occupations customarily conducted in the home but which are not customary in another city. Decisions on what is to be considered as customary must necessarily be made in the light of local conditions. For this reason it is undesirable for one community to accept without careful consideration the definition of home occupation drawn up in another community. For example, in northern Minnesota certain hand operations involved in the manufacture of men's shirts are carried out in the home, the housewives taking the finished work to the factory at intervals and returning with a supply of unfinished goods to be worked on. This is certainly a customary home occupation in these communities, regardless of what it would be elsewhere. Any zoning ordinance for a city in the area should be drawn so as to allow this occupation.

B. Must Be Incidental. Of even greater importance is the requirement that the occupation be clearly incidental to the use of the premises as a residence. Obviously, a residential district is established in a zoned community to protect and encourage the use of the land in that district for residential purposes. To be permissible, any other use must prove that its existence in the district will not be contrary to the spirit and intent of the ordinance. One aspect of this proof is the demonstration that the non-residential use is not the primary use of the property, but is merely incidental to the residence. Some persons may find it desirable or necessary to carry on an occupation in the home, either as a supplement to a regular occupation or because the home is the most practical

place in which to operate. This practice has been recognized and is generally allowed so long as the occupation does not become a large scale enterprise - one that would be harmful to the residential character of the neighborhood and would violate the purpose of zoning.

The clarification of this "incidental" aspect has been accomplished through a variety of provisions in ordinances designed to place limits on the size of any operation being conducted as a home occupation. Most of the specific factors regulated in the ordinances, as discussed in Part II below, are ones which relate directly to the size of the operation. Their strict limitation is an attempt to assure that the permitted home occupations maintain the "incidental" characteristic.

C. Must Not Be a Business. A third aspect of the definition of home occupations is that they are not businesses.* Businesses are nearly always prohibited in residence districts. Many ordinances, in addition, make a distinction between two principal types of permitted home occupations, "customary home occupations" and the "professions."

There are three general reasons for the development of this distinction. Custom, of course, has played a considerable part. Certain occupations have, as Bassett says, "from time immemorial" been carried on in the home. These are the professions, such as medicine, law, art, and the domestic crafts such as millinery, dressmaking, laundering. The writers of ordinances have found no reason to change this pre-existing condition, and the courts have generally upheld this practice.

In the second place certain intangible social factors have been influential, particularly in determining the position of the professions. That is, the professions as a whole traditionally enjoy high prestige. The professional man or woman has considerably more education than most persons. The professions deal largely with personal services using knowledge and skills not readily understandable. The income of the professional person tends to be higher than average. For reasons which are not speculated on here, such characteristics as these have been looked up to. The professional office seems to be a desirable neighbor, much more so than the grocery store, machine shop or filling station. Consequently, professions are permitted occupations in most residential areas.

*C. A. Rathkopf, The Law of Zoning and Planning. New York: The Grosby Press, 1949 (second edition), pp. 58-63. E. M. Bassett, Zoning: The Laws, Administration, and Court Decisions During The First Twenty Years. New York: The Russell Sage Foundation, 1940. pp. 100-102. E. C. Yokley, Zoning Law and Practice. Charlottesville, Virginia: The Michie Company, 1948, pp. 86-87. Legal cases illustrating various aspects of this point are presented in Part IV following.

Finally, the overt physical characteristics of these three classes of occupations - businesses, professions, and the other "customary home occupations" - are a basis for discriminating among them. Commercial or industrial businesses possess more commonly and to greater degree those characteristics that make them undesirable in residence districts: vehicular and pedestrian traffic, noise, dirt, smoke, odor. These are the characteristics which lead to their exclusion from residential districts through zoning. However, it is not clear that overt physical characteristics are always significant reasons for discriminating between the "professions" and the "customary home occupations." And it is not certain that some businesses are more objectionable in these terms than some professions.

In this report, unless otherwise indicated, the term "home occupation" is used to include any incidental economic enterprise permitted in residential areas, including professions and domestic crafts.

II. CONTENT OF THE REGULATIONS

The major portion of this report is based on a survey of a carefully selected sample of zoning ordinances representative of the United States and Canada. Included in the sample are ordinances of types commonly found, some of which are unusually well constructed, and some of which are merely unusual. While this should not be considered to be either a random or representative sample in the statistical meanings of those terms, it is believed that the ordinances analyzed here provide a reasonably complete picture of home occupation regulations in the zoning ordinances of these countries. In references to specific ordinances the date given is that of the most recent version available.

In all, eleven points of regulation were found. No single ordinance employs all of them, and in spite of some general similarities, variety in approach to the problem is characteristic. These eleven points of regulation are:

- | | |
|------------------------------------|------------------------|
| A) Occupations permitted | F) Employment |
| B) Differential regulation by zone | G) Accessory buildings |
| C) Transitional zoning | H) Sale of goods |
| D) Area occupied | I) Display |
| E) Equipment used | J) General regulations |
| | K) Permits |

A. Occupations Permitted. About one-third of the ordinances do not name any occupations as being permitted or prohibited; in these cases reliance is placed on the effectiveness of the other specifications in the regulations, discussed below.

Those ordinances which specify (for purposes of illustration) some occupations as being permitted or prohibited, exhibit a wide area of agreement. The "professions" are allowed in nearly all cases, though not always in every residential district. Sometimes there is a provision that a principal office be maintained elsewhere for the general practice of the profession. The listings of occupations considered to be "professions" vary in inclusiveness, but most frequently list architects, artists, authors or writers, clergymen, dentists, engineers, lawyers, musicians, physicians, surgeons, teachers. Lynwood, California (1951), for example, specifically excludes, among other occupations, "doctors' offices (medical, dental, osteopathic, chiropractic)."

Among the permitted home occupations other than professions, there is general agreement on dressmaking and millinery, home cooking and preserving, and similar domestic crafts.

However, in view of the importance of custom in the definition of home occupations, it is not surprising that there are also differences among ordinances on whether certain occupations are to be permitted or prohibited. The following table illustrates this area of disagreement. The listing is not exhaustive; only some of the more interesting examples of disagreement are included.

<u>Occupation</u>	<u>Specifically Permitted in:</u>	<u>Specifically Prohibited in:</u>
Barber Shop	Geneseo, Illinois Des Moines, Iowa (R-3, R-4); Alfred, New York	Mesa, Arizona; South Pasadena, California; Des Moines, Iowa (R-1, R-2); St. Louis, Missouri; Greenville, South Carolina; Chicago Heights, Illinois; Kalamazoo, Michigan; Princeton, New Jersey; Alcoa, Tennessee; Jackson, Mississippi; Colorado Springs, Colorado; Niagara Falls, New York; Cortland, New York.
Beauty Parlor	Des Moines, Iowa (R-3, R-4) Oakland, California	Des Moines, Iowa (R-1, R-2); Greenville, South Carolina; Chicago Heights, Illinois; Alcoa, Tennessee; Kalamazoo, Michigan; South Pasadena, California; Mesa, Arizona; Niagara Falls, New York; Cortland, New York; Jackson, Mississippi; Colorado Springs, Colorado; St. Louis, Missouri; Princeton, New

<u>Occupation</u>	<u>Specifically Permitted in:</u>	<u>Specifically Prohibited in:</u>
Cosmetologist	Sacramento County, California.	South Pasadena, California.
Dance School, Studio	Sacramento County, California.	Kalamazoo, Michigan; Chicago Heights, Illinois.
Hairdresser	Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.	South Pasadena, California.
Manicuring	Dover, N. H.; Painesville, Ohio; Augusta County, Va.; Charlottesville, Va.	South Pasadena, California.
Music teaching	Oakland, California; Alfred, New York.	St. Louis, Missouri; Kalamazoo, Michigan.
Real Estate Broker Agency	Albion, Michigan; Sacramento County, California; Pima County, Arizona; Niagara Falls, N. Y.	St. Louis, Missouri; Mesa, Arizona; Princeton, New Jersey; Chicago Heights, Illinois; Kalamazoo, Michigan.

Some of the listings of permitted and prohibited occupations are quite unusual, which may be explained in terms of unusual existing conditions. For example, Fulton County, Georgia (1946), and Marietta, Georgia (1951) forbid

clairvoyance, fortune telling, experimentation that involves the use of chemicals or matter or energy that may create or cause to be created noises, noxious odors, or hazards that will endanger the health, safety or welfare of the community.

And Geneseo, Illinois (1948) permits

repairing furniture, sharpening lawn mowers, doing carpentering work, repairing radios, headquarters for plumbing, furnace or painting work, weaving, dressmaking, baking, or otherwise preparing food, preparing remedies, selling or taking orders for merchandise, selling produce raised on the premises, barber shops or similar minor operations. Photography and such other home industries similar to those above enumerated as may be permitted by the Board of Appeals.

B. Differential Regulation By Zone. While most communities allow all home occupation in all residence districts, this is not always the case. Residential areas are not all alike, and zoning ordinances treat them differently with respect to such factors as lot size, setbacks, yard requirements, building heights, population densities. So with home occupations. To the extent that home occupations represent a more intensive use of the land, they may be considered more or less undesirable in different residential districts. Various ordinances permit home occupations in some, but not all, residence districts. Others establish distinctions among different types of home occupations, allowing some only in certain zones. Examples of refinements of this sort are presented in the following table. (For comparability, when referring to residence zones an abbreviation is used: the symbol "1,3-5/5," for example, means that the occupation in question is permitted in the first, third, fourth and fifth of the five residence districts of that community. In a number of cases "rural" or "agricultural" zones are included in the tabulation where there are provisions concerning home occupations in the regulations for those zones.)

<u>Ordinance</u>	<u>Provision</u>
Mesa, Arizona (1949)	In zones 1-3/3 professional offices are allowed, and in zones 2,3/3 other customary home occupations.
Los Angeles, California (1952).....	Allows "home occupations," offices of physicians, dentists, and ministers in zones 1-3/9. Customary incidental uses including non-principal home offices of physicians, dentists, and ministers are permitted in zones 5-9/9. In these same zones "home occupations" and the principal offices (conducted in the dwelling) of physicians and dentists are permitted as transitional uses adjacent to commercial or industrial zones.
Sacramento County, California (1950)..	Limits the conduct of "home occupations" to zones 4-7/7. In zones 6,7/7 professional offices are also allowed as home occupations.
Colorado Springs, Colorado (1951).....	In zones 1,4-6/7 there are permitted "customary home occupations" and offices of resident professionals. The same occupations, plus beauty shops conducted in residences are permitted in zones 1,5,6/7. In zone 7/7 only "customary home occupations" and beauty operators are permitted.

Ordinance

Provision

Enfield, Connecticut (1948).....	In both of its two residence districts there are permitted offices of professional residents, including surgery, library or laboratory. No other type of home occupation is mentioned in the ordinance.
Des Moines, Iowa (1953).....	In zones 1-4/4 professional offices in the home are permitted. "Customary home occupations" are permitted in 2-4/4. In zones 3,4/4 beauty and barber shops are permitted as home occupations.
Lexington & Fayette County, Kentucky.. (Proposed 1953)	Offices of resident professional persons and "customary incidental home occupations" are permitted in zone 1/6. In zones 2-6/6 professionals are allowed, when authorized by the Board of Adjustment. In zones 3-6/6 "customary incidental home occupations" are also allowed when authorized by the Board.
Baltimore County, Maryland (1948)....	In zones 1-4/4 "professional offices" and other "home occupations" are allowed. In addition, in zones 2-4/4 "tearooms" are permitted as home occupations.
Pittsfield, Massachusetts (1953).....	Professional offices are allowed in dwellings in all six zones, with "customary home occupations" also being allowed in zones 2-6/6.
Wayne, Michigan (1952).....	"Customary home occupations" are allowed in all five residence districts. Professional offices in dwellings are also permitted in zone 5/5.
Lucas County (townships), Ohio..... (Proposed 1948)	"Home occupations" and the non-principal home offices of physicians, surgeons, dentists, ministers, etc., are permitted in zones 1-5/5. The principal office, in his dwelling, of a physician, surgeon or dentist, is permitted in zones 2-5/5 as transitional uses on lots abutting commercial or industrial zones.

Differential regulation by residence zone is also expressed in other ways. As is noted occasionally, some of the other points of regulation are varied by residence district. By way of illustration, Florence, Alabama (1943) limits a home occupation to 25 per cent of the floor area of the dwelling in its "R-A" districts but allows the use of 50 per cent in the "R-B" districts. Anaheim, California (1951) allows the use of name plates which are 64 square inches in area in the first three residence districts, and 2 square feet in the last two zones. In Kalamazoo, Michigan (proposed 1952), a professional man with his office in his dwelling can employ two non-residents in the first residence district, three in the second, and four in the third.

Variations such as these are not commonly found, however. In the great majority of ordinances the restrictions placed on home occupations, as well as the specification of permitted occupations, remain the same throughout all the residential zones of the community.

C. Transitional Zoning. The ordinances of a few communities exhibit a further refinement, making certain home occupations transitional uses in some of the residence districts. This is illustrated by the following quotation from the zoning ordinance of Los Angeles, California (1952). In the residence zones "R1" One-Family through "R5" Multiple Dwelling, there are permitted

home occupations, or principal offices of physicians or dentists, as transitional uses, on lots having a side lot line adjoining a lot in a commercial or industrial zone, provided that:

- (a) The lot on which the transitional use is located does not extend more than 65 feet from the boundary of the less restricted zone which it adjoins;

.....

- (c) The home occupation or principal office of a physician or dentist is conducted in conjunction with the use of a dwelling unit as a home by the occupant thereof and the residential character of the exterior of the dwelling is not changed.

Similar provisions are found in the ordinances of some other places. Long Beach, California (1951) is somewhat more explicit on one point, in requiring that the professional office be "...located in the residence used as the private dwelling place of such professional person." And Palm Springs, California (proposed 1953) elaborates on the necessity of maintaining the residential character of the premises and requires that "the parking of automobiles caused by such use does not unduly interfere with the public use of adjoining streets or alleys."

The strip devoted to these transitional uses is of different depth in different ordinances. In Long Beach and in San Fernando, California (1952), the transitional use may not extend more than fifty feet from the boundary of the less restricted zone. This limit is 100 feet in Richmond, California (1949) and in the townships of Lucas County, Ohio (proposed 1948). In Palm Springs the lot on which the transitional use is conducted cannot extend more than 100 feet from the less restricted zone.

D. Area. Slightly fewer than one-half of the ordinances examined contain provisions which specifically limit the amount of space in the home which can be devoted to a home occupation. These regulations are designed to insure in some measure that the occupation be truly incidental to the residential use of the dwelling.

Two forms of regulation are found: those which limit the occupation to a definite amount of space, and, much more frequently, those with the limitation stated as some percentage of the floor area. The absolute limitations range from 100 square feet to 400 square feet. The proportional limitations are based on either total floor area or the area of one floor. They range from 15 per cent to 50 per cent of the total floor area of the dwelling, and from 25 per cent to 100 per cent of the area of one floor (with 25 per cent and 50 per cent being the most commonly used figures).

Some unusual varieties exist. For example, Des Moines, Iowa (1953) allows, for home occupation use, 50 per cent of the area of one floor in the single-family districts and only 25 per cent of the area of one floor in the less restricted residential districts. Albion, Michigan (1950), Kalamazoo, Michigan (Proposed 1952), Menominee, Michigan (1946), and Hickory, North Carolina (1952), require that there be no special space "designed or arranged" for the conduct of a home occupation. Sacramento County, California (1950), limits home occupations to one room in the dwelling.

E. Equipment. The use of mechanical equipment is an obvious source of possible disturbance to neighboring residences, and for that reason is regulated in some fashion in most of the ordinances studied. Four types of regulation are found.

1) No mechanical equipment allowed:

Jackson, Mississippi (1950)
Providence, Rhode Island (1952)
Alcoa, Tennessee (1952)

2) Only normal domestic or household equipment allowed:

Anaheim, California (1951)
Sacramento County, California (1950)
Oak Park, Illinois (1947)
Des Moines, Iowa (1953)
Waterloo, Iowa (no date)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953)
Montgomery County, Maryland (1950)
Grand Rapids, Michigan (1951)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
St. Louis, Missouri (1950)
Princeton, New Jersey (1951)
Cleveland, Ohio (1948)
Greenville, South Carolina (1953)
Appleton, Wisconsin (Proposed 1951)

(Hamilton, Ontario (1950), uses this type of regulation, and in addition allows equipment for "medical, dental or other professional purposes." This would permit a considerable increase in the scope of the permitted operations.)

3) Equipment permitted which does not emit dust, noise, odor, etc., or is in any other way detrimental to the community:

Lynwood, California (1951)
Montabello, California (1950?)

4) Specific power limitations placed on permitted equipment:

Inglewood, California (1951) - Only electric motors allowed; maximum total power, 1/2 H. P.
South Pasadena, California (1951) - Only electric motors allowed; maximum total power, 3 H. P.; maximum power per motor, 1 H. P.
Kalamazoo, Michigan (Proposed 1952) - Type of motor not specified; maximum power per motor, 3/4 H. P.
Kansas City, Missouri (1951) - Type of motor not specified; maximum total power, 1 H. P.; maximum power per motor, 1/4 H. P.

These power limitations are set forth without a stated requirement that the equipment be of common domestic or household types.

F. Employment. The operator of a successful home occupation will occasionally be tempted to increase the efficiency and profit of the enterprise by hiring a secretary or assistant, or two or three. Over one-half of the ordinances studied forbid the employment of any person other than a member of the immediate family residing on the premises. Sacramento County, California (1950) even limits employment to two resident occupants of the dwelling. The function of such limitations is to prevent the occupation from growing to the point that it is no longer properly incidental in character and hence becoming a threat to the residential nature of the neighborhood.

In contrast, some communities have been less restrictive. In these localities there apparently is the feeling that a limited amount of employment of persons not members of the family will not prejudice the incidental character of the occupation. These cases are exceptional.

1) One employee:

Mesa, Arizona (1949)
Pima County, Arizona (1952)
Oakland, California (1952) (Allowed only for "dentist, physician, chiropractor and osteopath")
Waterloo, Iowa (no date)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953)
Grand Rapids, Michigan (1951)
Royal Oak, Michigan (1951)
Dover, New Hampshire (1948)
Cleveland, Ohio (1948)
Providence, Rhode Island (1952) (For "professional office" only)
Alcoa, Tennessee (1952)

2) Two employees:

Kalamazoo, Michigan (Proposed 1952) (For "professional offices" only, in first residence district; three employees in second residence district; four employees in third residence district.)
Salt Lake County, Utah (1951)
Bristol, Virginia (1952)
Eau Claire, Wisconsin (1952)

G. Accessory Buildings. It is typical to require that a home occupation be conducted entirely within the main building used as the dwelling. This, again, acts to insure that the size of the operation will not become too large. It also may be intended to reduce the chances of the occupation becoming annoying or harmful to the neighbors and detrimental to the residential character of the area. Most of the ordinances studied allowed no use of accessory buildings. However, a few did:

Pima County, Arizona (1952) - detached home workshop of not more than 200 square feet in area
Geneseo, Illinois (1948)
Hempstead, New York (1945)
New York, New York (Proposed 1950)
Lima, Ohio (1948)
Bristol, Virginia (1952) - accessory building, with written approval of the Board of Zoning Appeals

H. Sale of Goods. The zoning ordinance of Marietta, Georgia (1951), states that "...home occupation shall include in general personal services such as are furnished by a physician, dentist, musician, artist, or seamstress..." This emphasis on personal services is at least implicitly characteristic of most of the ordinances. One-third of the ordinances examined explicitly require that "no stock in trade be kept or commodities sold" on the premises. A similar number are not specific on the point, but are so worded that the prohibition seems to be implied. The intention is clear. If no goods are kept or sold on the premises there is less likelihood that the occupation will develop many of the characteristics of a retail store, and as such become undesirable in a residential area.

A new communities have apparently found such regulations to be too limiting. Perhaps some of the home occupations customary in these communities would be eliminated if all sale of goods on the premises were to be prohibited. As a result, several ordinances permit the sale of articles "produced by members of the immediate family residing on the premises."

Geneseo, Illinois (1948)
Lexington & Fayette County, Kentucky (Proposed 1953)
Albion, Michigan (1950)
Kalamazoo, Michigan (Proposed 1952)
Wayne, Michigan (1952)
Charlotte, North Carolina (1951)
Hickory, North Carolina (1952)
Salt Lake County, Utah (1952)
Ogden City, Utah (1951)

I. Display. One characteristic of an occupation in a residential area to which frequent objection is raised is that of accompanying advertising display. Display can take two general forms: display of goods, and signs. Display of goods is generally prohibited. Where signs are permitted, the ordinances contain various specific limitations on their use. These provisions are designed to restrict sign visibility and to limit its use to information rather than advertising. This intention is accomplished by restricting the size, lighting, location, and content of the signs.

Among the ordinances which prohibit signs in connection with home occupations are those of the following communities:

Azusa, California (1949)
Inglewood, California (1951)
South Pasadena, California (1951) - prohibited for "Home Occupations"; allowed for "Professional Offices."
Waterloo, Iowa (no date)
Kalamazoo, Michigan (Proposed 1952)
Wayne, Michigan (1952)
St. Louis, Missouri (1950)
Lucas County (Townships), Ohio (Proposed 1951)
Painesville, Ohio (1951) - prohibited for "Home Occupations"; allowed for "Professional Uses."

Regulation of permitted signs is illustrated by the following restrictions:

1) Maximum Size

One-half square foot:

New Orleans, Louisiana (Proposed 1952)
Jackson, Mississippi (1950)
Hempstead, New York (1945)

One square foot:

Anchorage, Alaska (1952)
Oakland, California (1952)
South Pasadena, California (1951)
Bensenville, Illinois (1950)
Chicago Heights, Illinois (1950)
Oak Park, Illinois (1947)
Des Moines, Iowa (1953)
Lexington & Fayette County, Kentucky (Proposed 1953 - in "S-1" and "R-1" districts, for professional office in dwelling.
Menominee, Michigan (1946)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
New York, New York (Proposed 1950)
Charlotte, North Carolina (1951)
Greenville, South Carolina (1953)
Augusta County, Virginia (1949)
Eau Claire, Wisconsin (1952)

One and one-half square feet:

Denver, Colorado (1948)
Lexington & Fayette County, Kentucky (Proposed 1953) - for
"home occupations" in "R-1" zone; in "R-2" also for pro-
fessional offices.
Princeton, New Jersey (1951)
Providence, Rhode Island (1951)

Two square feet:

Florence, Alabama (1943)
Sacramento County, California (1950)
Colorado Springs, Colorado (1951)
Clearwater Florida (1952)
Clinton, Iowa (1949)
Waverly, Iowa (1952)
Baltimore County, Maryland (1948)
Montgomery County, Maryland (1950)
Hamilton, Ontario (1950)
Henderson, Tennessee (Proposed, no date)
Salt Lake County, Utah (1952)
Bristol, Virginia (1952)
Tacoma, Washington (1945)
Appleton, Wisconsin (Proposed 1951)

Over two square feet, and other:

Lexington & Fayette County, Kentucky (Proposed 1953) - 3
square feet if lighted; 6 square feet if unlighted; in "R-3" and
"R-4" for "lawful accessory uses."
Albion, Michigan (1950) - 3 square feet
Royal Oak, Michigan - 3 square feet
Kansas City, Missouri (1951) - 80 square inches; in R-1, only
for doctors and dentists; in R-2 through R-5, also for other
home occupations.
Dover, New Hampshire (1948) - 4 square feet
Alfred, New York (1948) - 3 square feet
Painesville, Ohio (1951) - "small"

2) Lighting

Unlighted:

Denver, Colorado (1948)
Bensenville, Illinois (1950)
Waverly, Iowa (1952)

Lexington & Fayette County, Kentucky (Proposed 1953) - except
in "R-3" and "R-4"
Montgomery County, Maryland (1950)
Muskegon, Michigan (1952)
St. Clair Shores, Michigan (1951)
Kansas City, Missouri (1951)
Alfred, New York (1948)
Hamilton, Ontario (1950)
Henderson, Tennessee (Proposed, no date)
Appleton, Wisconsin (Proposed 1951)
Eau Claire, Wisconsin (1952)

Indirect lighting:

Des Moines, Iowa (1953)
Salt Lake County, Utah (1952)

Other or unspecified lighting:

Sacramento County, California (1950)
South Pasadena, California (1951)
Lexington & Fayette County, Kentucky (Proposed 1953) - "non-
flashing" lights in "R-3" and "R-4"
Providence, Rhode Island (1951)

3) Location

On the dwelling:

South Pasadena, California (1951)
Denver, Colorado (1948)
St. Clair Shores, Michigan (1951)
Charlotte, North Carolina (1951)
Eau Claire, Wisconsin (1952)

Flat against the wall of the dwelling:

Sacramento County, California (1950)
Des Moines, Iowa (1953)
Lexington & Fayette County, Kentucky (Proposed 1953)
Muskegon, Michigan (1952)
Hamilton, Ontario (1950)
Charlottesville, Virginia (1949)

4) Content

Name of professional occupant:

Denver, Colorado (1948)

Name and occupation of the occupant:

Montebello, California (1950?)
Palm Springs, California (Proposed 1953)
Waverly, Iowa (1952)
Lexington & Fayette County, Kentucky (Proposed 1953)
Muskegon, Michigan (1952)
Hempstead, New York (1945)
Seattle, Washington (1947)
Tacoma, Washington (1945)
Appleton, Wisconsin (Proposed 1951)
Eau Claire, Wisconsin (1952)

Name, occupation and office hours of the occupant:

South Pasadena, California (1951)

J. General Regulations. A number of ordinances contain provisions of a general nature, designed to protect the residential areas against any undesirable uses which might otherwise occur. The wording is usually similar to the ordinance of Inglewood, California (1951) which states that "no home occupations shall be permitted when the same is objectionable due to dust, smoke, odor, or other causes." Among the communities having such a provision are: Pima County, Arizona (1952); Lynwood, California (1951); South Pasadena, California (1951); Colorado Springs, Colorado (1951); Marietta, Georgia (1951); Waverly, Iowa (1952); Waterloo, Iowa (no date); Albion, Michigan (1950); Lima, Ohio, (1948). It is not stated what criteria are to be used in measuring the degree of objectionability of the dust, etc.

Another general provision favored by some localities is written with the apparent intention of assuring the incidental nature of the occupation. Any enterprise with extensive or unusual physical requirements would be hampered by application of the clause: "such home occupation shall not require internal or external alterations, or involve construction features not customary in dwellings." This, or similar wording, appears in the ordinance of Waverly, Iowa (1952); Lexington & Fayette County, Kentucky (Proposed 1953); Grand Rapids, Michigan (1951); Muskegon, Michigan (1952); Lima, Ohio (1948); Appleton, Wisconsin (1951).

K. Permits. Finally, the establishment of a home occupation in some places is further regulated by the requirement that a permit first be obtained. This has the effect of placing each case before some body authorized to issue the permit (usually the board of zoning appeals). The result is that it is the judgment of the reviewing body and not the wording of the ordinance itself which will determine in many cases the occupations that will be allowed. Ordinances requiring prior approval in this manner include:

<u>City</u>	<u>Body Issuing Permit</u>	<u>Home Occupations Requiring Permit</u>
Lynwood, Calif.(1951)	1	Unspecified; presumably all
Sacramento County, Calif. (1950)	Planning Comm.	All
Geneseo, Ill. (1948)	Board of Appeals	Photography and "others"
Waterloo, Iowa (no date)	City Council ²	All
Waverly, Iowa (1952)	City Council ²	All
Lexington & Fayette County, Ky.(Proposed 1953)	Board of Adjustment	"Professions" ³ , "customary home occupations" ⁴
Wayne, Mich. (1952)	Board of Appeals	All ⁵
Eau Claire, Wis.(1952)	Board of Appeals	"Professional uses"

1. "Licensing procedure shall be set forth by...the City Council."
2. "...after a report has been submitted by the...Zoning Commission,"
3. In S-1 suburban and other districts.
4. In R-1 one-family and other districts.
5. In one-family districts.

III. LEGAL DECISIONS ON HOME OCCUPATIONS

For convenience in reference, the following list of cases dealing with home occupations has been prepared. The cases are arranged alphabetically by name of the occupation involved. Cases previously reported in the Newsletter and in ZONING DIGEST are also cited by volume and page number of those publications.

ACCOUNTANT - exclusion upheld

Kort v. City of Los Angeles, District Court of Appeals, Second District, California June and August 1942, 127 P. 2d. 66. (9 NL 35)

BARBERSHOP - NOT a home occupation

Ryan v. Warrensburg, 117 S.W. 2d 303.

BEAUTY SHOP - NOT a home occupation

Dobres v. Schwartzman et al., Court of Appeals of Maryland, June 16, 1948, 59 A. 2d 684. (14 NL 99)

Board of Adjustment of City of San Antonio et al., v. Levinson, Court of Civil Appeals of Texas, San Antonio, November 7, 1951. Rehearing Denied December 5, 1951, 244 S.W. 2d 281. (4 ZD 73)

DANCING SCHOOL - permitted

Delpriore v. Ball et al., Supreme Court, Appellate Division, January 7, 1953, 118 N.Y.S. 2d 53. (5 ZD 89)

- NOT a home occupation

State ex rel. Kaegel v. Holekamp et al., St. Louis Court of Appeals, June 1941, 151 S.W. 2d 685. (7 NL 107)

DENTAL OFFICE - exclusion upheld

Connor v. City of University Park et al., Court of Appeals of Texas, June 8, 1940, 142 S.W. 2d 706. (7 NL 7)

DENTAL OFFICE FOR RENT ADDED TO PHYSICIAN'S OFFICE -

permit held illegal

Heady v. Zoning Board of Appeals for Town of Milford et al., Supreme Court of Errors of Connecticut, February 3, 1953, 94 A. 2d 789. (5 ZD 123)

DRESSMAKER - persons not members of the family cannot be employed

Lemp v. Township of Millburn, Supreme Court of New Jersey, November 1942, 129 N.J.L. 221, 28 A. 2d 767. (9 NL 27)

INSURANCE BROKER - agent - prohibited

Otis v. Evans, 259 Appellate Division 957, 20 N.Y.S. 2d 426.

Recht et al., v. Graves et al., etc., 257 Appellate Division 889, 12 N.Y.S. 2d 158, leave to app. den., 281 N.Y. 885, 22 N.E. 2d 427.

LAWYER - permitted; SIGN- exclusion upheld

Town of Lexington v. Govenar, Supreme Court of Massachusetts, July 1936, 3 N.E. 2d 19. (2 NL 78)

NURSING HOME - exclusion upheld

Building Commissioner of Brookline v. McManus, 263 Mass. 270, 160 N.E. 887.

PHYSICIAN--AUTHOR - permitted (authoring not a business)

City of Beverly Hills v. Brady, Supreme Court of California, in Bank, March 10, 1950, 215 P. 2d 460. (2 ZD 70)

PHYSICIAN'S OFFICE - permitted (physician's office not a business)

Red Acres Imp. Club, Inc., et al., v. Burkhalter et al., Supreme Court of Tennessee, July 27, 1951, 241 S.W. 2d 921. (4 ZD 7)

- exclusion upheld

City of Harlingen v. Feener, Court of Civil Appeals of Texas, July 1941, 153 S.W. 2d 671. (8 NL 17)

PROFESSIONAL OFFICE - exclusion upheld

Town of Lexington v. Govenar, Supreme Court of Massachusetts, July 1936, 3 N.E. 2d 19. (2 NL 78)

REAL ESTATE BROKER - NOT a home occupation

Pennock v. Fuller, 2 N.W. 176.

Jones v. Robertson, 180 P. 2d 929 .

F. Martin Cummer et al., v. the Board of Adjustment of the Borough of Narberth, Court of Common Pleas, Montgomery County, Pennsylvania, April term 1946, No. 19. (13 NL 79)

Village of Riverside v. Kuhne, Appellate Court of Illinois. First District. November 16, 1948, 82 N.E. 2d 500. (1 ZD 14)

RESTAURANT - NOT a home occupation

King County et al., v. Lunn et al., Supreme Court of Washington, December 16, 1948, 200 P. 2d 981. (1 ZD 38)

SALE OF FISH AND BAIT - NOT a home occupation

Maurer et al., v. Snyder et ux., Court of Appeals of Maryland, April 2, 1952, 87 A. 2d 612. (4 ZD 127)

UNDERTAKING ESTABLISHMENT OR FUNERAL DIRECTOR -

- exclusion upheld, or funeral director NOT a home occupation

City of Springfield et al., v. Vancil et al., 398 Ill. 575, 76 N.E. 2d 471.

Ahern v. Nudelman, 374 Ill. 237, 29 N.E. 2d 268.

O'Reilly v. Erlanger, 108 Appellate Division 318, 95 N.Y.S. 760.

McCord v. E. Bond and Condon Co., 175 Ga. 667, 165 S.W. 500.

Building Commissioner of Brookline v. McManus, 263 Mass. 270, 160 N.E. 887.

Phillips v. Board of Appeals, 257 Mass. 446, 175 N.E. 479.

Ullrich v. State, 186 Maryland 353, 46 A. 2d 637, 165 A.L.R. 1107.

Momier v. McAllister, Inc., Supreme Court of South Carolina, September 1943, 27 S.E. 2d 504. (10 NL 27)

IV. CONCLUSIONS

The customary home occupation has remained something of an anomaly in zoning law and practice. Starting out as legislative sanction of custom, its scope has in many instances been extended to a point where it is difficult to distinguish between a customary home occupation and a business in the ordinary meaning of the term. Court cases on customary home occupations have revolved mainly on the point of identification - that is, can the particular activity under consideration be construed to fall within the ordinance definition of home occupation. This process of identification may concern a new use such as an undertaking establishment, or it may concern the extension of a permitted occupation (such as the practice of medicine, for example) into a wider area of activity.

Bassett, writing in 1936, was able to comment on how remarkably well the general regulations specifying the criteria of custom, subordination, and non-business had worked out with the help of the courts, and how there seemed to be no demand for more specific rules. However, the representative zoning provisions analyzed here seem to indicate that we have arrived at a different stage in the regulation of home occupations. The refined specifications on area occupied, equipment used, persons employed, and extent of display are a development far removed from the originally simple permission of an occupation customarily incident to the use of the premises as a dwelling.

In turn, these specifications complicate the issue. If they are necessary not only to ensure compliance with the criteria of custom, subordination, and non-business, but also to prevent harm, inconvenience, or discomfort to the main residential use, then another basis for regulation has been introduced. And if this line of thinking is pursued very far, we will before long arrive at the conclusion that if one kind of occupation is permitted - in part because it is not harmful - then why not a different but equally harmless occupation,

We seem, therefore, to have reached a fork in the road. One way leads down the classical path of custom and incidentalness. The other departs from custom, retains incidentalness, and takes on specification (and perhaps even performance) criteria. For each community, a decision on the path to be followed rests on its answer to a constant, fundamental question: what is the proper use of land in a residential district? Shall it be wholly and exclusively residential, or shall non-residential uses compatible with dwellings be permitted? If non-residential uses are permitted, what basis for their authorization shall be used? Shall any use (including even manufacturing perhaps) be permitted so long as it is not in any way harmful to a residential environment, and so long as it is in harmony with the comprehensive plan, or shall non-residential uses be limited to those that are functionally related to dwellings and which need the same kind of environment, such as churches, schools, and hospitals?

Although it is true that most communities determine principles of use-segregation when the zoning ordinance is written up and adopted, it is equally true that in zoning law as in other law, the process of amendment and interpretation can and often does modify basic intentions. The basic zoning ordinance is especially vulnerable to mutation in the area of variances and special exceptions. Nonconforming uses and customary home occupations are less obvious but equally susceptible areas where the basic purposes of the zoning ordinance may be compromised unless the primary zoning plan is kept consciously in mind.

In deciding on customary home occupations, then, a city should ask itself just what it wants to achieve for its residential districts and just how the different points of regulating home occupations will affect that desired environment. Having decided upon the kind of environments desired in residential districts, a community may then follow one of two possible courses with respect to home occupations:

A. Retention of the Three Bases For Regulation, i.e., Custom, Incidentalness, and a Non-business Nature. This course will tend to simplify the administration of the ordinance and will probably not fail to gain judicial support in the event of litigation. In this event, custom is the primary basis, and if the occupation is found to be not customary, the other criteria of incidentalness and non-business would have no relevance. Custom by definition means a long-established practice. Home occupations which have developed (illegally) after the zoning ordinance is adopted in any particular locality would, therefore, not qualify as customary home occupations. A policy strictly adhering to the criterion of custom could not recognize "custom in the making" - a logically inconsistent notion so far as customary home occupations are concerned.

Persons who favor what may be termed the technological approach to zoning may deplore the inconsistencies of a policy which permits one occupation because it has been long established and prohibits another occupation no less objectionable because it has not been long established. Although this argument has obvious merit, it does not strike at the fundamental basis of the body of law surrounding home occupations. It does not, in other words, have anything to do with the role of usage and custom and the legal sanction given to it by the zoning ordinance and the support granted by judicial decisions. Abandonment of the force of custom in the matter of home occupations changes the whole conception of home occupations. However, because of tendencies in this direction, some of the possible advantages of relying upon objective standards in the choice of home occupations will be discussed in the following section.

B. Classification of Home Occupations on the Basis of Objective Standards.

A characteristic of modern zoning ordinances is the increasing use of objective standards to replace the vague notations of earlier ordinances. Courts have encouraged this by the negative act of striking down many zoning provisions for having insufficient standards to guide the action of the building commissioner or board of adjustment.

Thus far, standards for home occupations have been relatively simple. From experience planners have learned that a successful home occupation can get out of hand. A doctor's office becomes a clinic, the seamstress has a dress factory, the auto tinker a commercial garage. The need for better accommodations and more space should eventually force the expanding operation into more suitable quarters, but in the meantime it is severely damaging the neighborhood. The answer has been to limit outside employees, space used, displays, equipment and structural alterations.

It is doubtful if it will ever be practical to establish the more elaborate, and more objective, performance standard control of home occupations that is now being written into industrial district regulations. Experience indicates that for most aspects of annoyance, home occupations cannot be differentiated from residences. They generate no more noise, odor, dust, smoke or glare than the ordinary residence. Home occupations offend (where they do offend) principally because of traffic generation, aesthetics, or for psychological reasons. These are the factors still most remote from completely objective measurements and control. Standards such as those used in the Des Moines ordinance will probably continue to be used.

Finally, it should be pointed out that it is possible to prohibit specific home occupations from certain residence districts, even though their presence in the city is sanctioned by custom. Some accessory uses, such as stables or the keeping of poultry, have been shown clearly to be nuisances, despite their long-standing presence as adjuncts to residences. Prohibition through zoning control, however, does not require that the use be demonstrably a nuisance. Therefore, we have decisions upholding the prohibition of the equally venerable physician's office.

In the end, we must come to see that the control of home occupations is strictly an individual problem in each city. But it is also a problem that will probably not be solved once and for all in any growing city. It will require re-examination from time to time, just as other problems in land use regulation require re-examination.

- G. The Accessory Apartment shall have its own independent sleeping, cooking and sanitary facilities and shall comply with all other applicable building, housing and health codes.
- H. The entire Building to be converted shall comply with all current applicable, state, local, health, building and housing codes after conversion and shall maintain the exterior appearance and architectural style (roof line, roof pitch, building materials, colors, window style, and spacing, etc.) of the principal residence. Accessory Apartments created through conversion or Addition shall have a common wall with the living quarters of the principal residence and main access through the principal residence. This may be accomplished via the incorporation of one entrance to both the principal residence and Accessory Apartment to reflect the single-family architectural style.
- I. Accessory Apartments shall not be considered as “units” for the purpose of calculating the maximum residential Density.

8.4 SWIMMING POOLS

Swimming pools and associated decks and other appurtenances are permitted as Accessory Uses on residential Lots provided they are not closer than fifteen (15) feet from any property line.

8.5 HOME BUSINESS USE

- 1. The use of a residence for personal business purposes is permitted as-of-right provided that:
 - A. No business is conducted on Premises except by mail, telephone or computer;
 - B. No people other than residents of the Dwelling Unit are employed on the Premises;
 - C. No external evidence of the business is visible;
 - D. No business or directional signs are erected;
 - E. No pedestrian or vehicular traffic other than that normally generated by a residence is generated; and
 - F. The business is registered with Town Clerk.

8.6 HOME OCCUPATION

- 1. A Home Occupation requires a permit from the Zoning Enforcement Officer and must meet the following criteria:
 - A. It is clearly secondary to the use of the Dwelling Unit for residential purposes, is conducted entirely within an enclosed structure, and does not change the residential character of the Dwelling or neighborhood in any visible manner.

- B. There shall be no external evidence of the Home Occupation other than permitted Signs. It shall not create objectionable noise, dust, odors, vibrations, illumination, pollution, interference with communication reception or transmissions in the vicinity, change the traffic or drainage characteristics of the property, or create any conditions that are perceptibly different at the property line from those that may reasonably be expected from the residential use.
 - C. Not more than one (1) person not residing on the Premises shall be employed on the Premises.
 - D. The Home Occupation is to be conducted within a Single-Family Dwelling or accessory structure and shall occupy no more than twenty-five percent (25%) of the Floor Area of the Dwelling (exclusive of garage, attic and the basement). All materials and/or equipment associated with the Home Occupation shall be contained or otherwise stored within the total Floor Area designated for the Home Occupation. No additional accessory structures shall be permitted for any use, including storage, that is associated with the Home Occupation.
 - E. There is to be no outside storage or display of supplies, materials, equipment or machinery related to the Home Occupation use. No hazardous or toxic materials are to be stored on the site and there is to be no bulk storage of fuel or materials.
 - F. All client, patron and employee vehicle parking shall be accommodated off-street, and be suitably screened from the Street and adjoining properties.
 - G. Only one (1) commercial vehicle, not to exceed 10,000 pounds gross vehicle weight, may be used in connection with the Home Occupation. Such commercial vehicle shall be garaged or otherwise screened and hidden from view from the Street and adjacent properties.
 - H. There shall be no Retail Sales on the Premises.
 - I. The hours of operation of any Home Occupation use may be limited by the Zoning Enforcement Officer during the approval process to minimize adverse impacts on the neighborhood or as modified after Zoning Permit issuance if it is determined that there are impacts to the neighborhood that were not anticipated at the time of initial application.
2. Home Occupation Permit Submission Requirements
- A. Any application for Home Occupation shall be submitted to the Zoning Enforcement Officer for review. If approved by the Zoning Enforcement Officer, a Home Occupation is granted to the applicant specifically and not the property. In the event that a Home Occupation permit holder moves, a new Zoning Permit must be secured prior to the Parcel being used for Home Occupation.

- B. An application for Home Occupation shall include:
1. A Class 1 Site Plan that includes:
 - a. Property boundaries and topography;
 - b. Location of all existing and proposed structures;
 - c. Location of well and septic system;
 - d. Existing and proposed Driveway/parking areas;
 - e. Existing and proposed on-site buffering/screening;
 - f. The location and size of any proposed signage per Section 11 of these Regulations;
 - g. Any other information required by the Zoning Enforcement Officer as it relates to the proposed permit application.
 2. A detailed statement of use addressing the criteria listed in Section 8.6.1 and fully describing the proposed Home Occupation use, number of employees, hours of operation, estimated number of patrons (daily, weekly) and mitigation measures to be employed in minimize potential neighborhood impacts.
 3. Floor Plans (with dimensions) of the Dwelling Unit and any accessory structure to be used for the Home Occupation, with the area of the Home Occupation indicated.
 4. If the applicant is not the owner of the property, the submission of a letter from the property owner is required giving permission for the applicant to apply for the proposed Home Occupation use.
- C. The Home Occupation permit is valid only to and for the person and property issued and is void upon discontinuance of the Home Occupation use or upon sale of the property.
- D. A Home Occupation certificate of zoning compliance shall be filed on the land records by the applicant.
- E. The Zoning Enforcement Officer shall report all decisions relating to Home Occupation to the Commission within thirty (30) days of the decision.

8.7 USE OF MOBILE HOME OR RECREATIONAL VEHICLE DURING CONSTRUCTION OF A SINGLE-FAMILY DWELLING

1. The use of a Mobile Home (MH)/Recreational Vehicle (RV) as a temporary residence during the construction of a permanent Single-Family Dwelling may be permitted by Zoning Permit

I. Home Occupations

1. **Low Impact Home Occupations:** In order to support telecommuting, and to legitimize a growing population of home occupations, the Commission finds that minor home office operations used to support a home occupation, or to provide telecommuting opportunities, and which are otherwise unnoticeable from adjacent properties, is permitted by right in any residential zone provided the following criteria are met:
 - a. The office is situated in a principal single family dwelling unit and shall occupy no more than 10% of the total living area of the dwelling unit, including storage areas for goods and materials. No home occupation, or storage related thereto is permitted in accessory structures.
 - b. Only those residing in the dwelling may engage in the home office use.
 - c. No clients, customers, or outside employees may visit, receive services or work from the premises in which the home office is located.
 - d. No business shall be conducted from the premises except by phone, computer, facsimile machine, email or standard mail.
 - e. The premises must maintain the appearance of a residential dwelling at all times.
 - f. Goods, materials or supplies of any kind related to the home office may be delivered to or from the premises by passenger automobile and delivery vehicles such as a UPS or Federal Express van, but not by tractor trailer.
 - g. No goods, materials or supplies of any kind related to the home office may be stored outside of the premises containing the home office.
 - h. Home offices that exceed the requirements of this section may be permitted as medium impact home occupations by special exception under section 1.04.H. 2.
 - i. One sign may be installed in accordance with Section 4.03 of these regulations.
2. **Moderate Impact Home Occupations:** Moderate impact home occupations may reduce commuting traffic and improve economic conditions as well provide an effective incubator for small business. Recognizing that they may also have potential for negative impacts on surrounding residential properties, regulatory oversight is indicated. Moderate home occupations exceeding the requirements of Section 1.04.H.1 may be permitted in single family residential dwellings in zones R, R-10, R-11, R-12, R-15, R-20 and R-40 by special exception in accordance with Section 7.02 of these regulations, provided the following criteria are met:
 - a. The home occupation is situated in a principal single family dwelling unit and shall occupy no more than 20% of the total living area of the dwelling unit. No home occupations are permitted in accessory structures.
 - b. In addition to those residing in the dwelling, not more than one outside employee may engage in the home occupation.
 - c. No sale of items shall be permitted from the premises; this provision does not apply to items sold by catalog and shipped from an alternate address directly to the consumer.
 - d. The premises must maintain the appearance of a residential dwelling at all times.
 - e. No display of articles in connection with the home occupation shall be visible from outside of the premises at any time.
 - f. No goods, materials or supplies of any kind related to the home occupation may be stored outside of the premises at any time.
 - g. The applicant for special exception shall present a site plan, including sufficient information for the Commission to make a determination that such use will have adequate parking for the intended use.
3. Because the granting of a Special Exception is tied to the property, and not the applicant, the Commission shall use the highest discretion in granting an approval under this section.

Section 1.04

- a. The Commission may apply reasonable conditions to a special exception approval to avoid adverse impacts to neighboring properties, including, but not limited to:
 1. Hours of operation.
 2. Days of operation.
 3. Buffer and screening requirements.
 4. The manner in which the items related to the Moderate Impact Home Occupation may be delivered to and from the premises.
 5. Site plan revisions deemed necessary to accommodate the proposed use.
 - b. One sign may be installed in accordance with Section 4.05 of these regulations.
4. Home occupations, including those listed below, exceed the requirements of this section and are not permitted:
- a. Contractor's business of any kind except a home office as permitted in Section 1.04.H. 1.
 - b. Classes, school or instruction where greater than one student at a time will be instructed.
 - c. Retail use of any kind.
 - d. Any equipment, process or instruction which can be reasonably determined to create noise, vibration, glare, fumes, odors or electrical interference discernible from the property line of the home occupation.
 - e. For any uses not mentioned, the Commission may make a determination on a case by case basis.
5. Failure to comply with the conditions of approval shall subject the Special Exception to revocation by the Commission after due process.

23.8 Home Businesses

A. Home Occupations without a permit. A home occupation may be carried on in residential premises without a zoning permit if:

1. The business is carried on only by residents of the dwelling;
2. There is no exterior evidence of the business including signs or vehicles;
3. The business shall not involve substantial deliveries of products or materials to the dwelling;
4. No visitors or customers appear on site;
5. No waste products are disposed on site, except sanitary waste incidental to residential use; and
6. There is no structural modification to the building.

B. Home Occupations with a permit

A home occupation may be carried on in a residential premise after obtaining a permit from the Planning and Zoning Commission subject to the following:

1. The occupation must be carried on by a resident of the premises and not more than one (1) non-resident employee on the premises and must be clearly secondary to residential use. If the resident is not the owner of the property, the application shall be co-signed by the owner.
2. The total floor area utilized by the home occupation shall not exceed 25% of the total feet area devoted to residential use or 500 square feet in area whichever is less; i.e., if the space devoted to residential use equals 1,000 square feet then 250 square feet of the 1,000 square feet may be used for the home occupation. The site plan submitted by the applicant shall provide a dimension drawing of the floor area of all buildings to be used for the home occupation.
3. There shall be no external evidence of the operation of the home occupation except for parking when deemed necessary by the Commission and a single non-illuminated sign. The necessary parking shall not exceed two extra parking places. The single sign shall not exceed two (2) square feet in area.

4. The home occupation shall not create objectionable appearance, noise, smell, smoke, illumination, vibrations, radio or television interference or any other objectionable condition which might have deleterious effects on the neighborhood.
5. In reviewing applications for home occupations, the Commission shall consider the potential hazards produced by increased traffic generation and the potential effects of such uses on the residential character of the area and property values.
6. Parking of commercial vehicles related to the home occupation shall be made in accordance with the applicable provisions of Section 21 as they apply to the zone where the home occupation is located.
7. The application for a home occupation shall include proof that notification has been given to all owner of properties within 200 feet of the lot lines of the subject lot.
8. The permit shall be valid only for the applicant(s) and is not transferable. The site of the permit shall be visited not less than every two years by the Zoning Enforcement Officer to check for conformity with these regulations and any conditions of the permit.
9. The permit may be limited by the Commission as to hours of operation and/or duration of permit or with such other restrictions or conditions for termination as the Commission may feel necessary to protect the public health, safety, convenience, or property values.
10. Any permitted home occupation is subject to revocation if any condition of the permit is violated. The Zoning Enforcement Officer shall give a written warning upon discovery of the first such violation. Fifteen calendar days shall be allowed for correction of the violation. Any further violation(s) shall be reported to the Commission for action. The permit holder shall be asked to appear before the Commission and if it is found that there is a violation of any condition of the permit, the Commission may revoke said permit. Each successive day, after the fifteen days allowed for correction, shall be considered a separate violation for the purpose of this section.

11. If the permit is revoked for cause, no new application for that site shall be accepted until 12 months have passed from the date of such revocation.

C. Any permitted home occupation use shall terminate:

1. By order of the commission issued upon application therefore by the original resident applicant or by the owner of the property concerned;
2. If the use authorized thereby shall not have actually existed (without regard to any intent to abandon or resume) for a period of one year from the date of cessation or from the effective date of the grant of such permit, whichever is later;
3. If the use authorized thereby is abandoned;
4. Upon the happening of any event or the expiration of any period of time prescribed by the terms of such permit;
5. If the original applicant(s) of the home occupation no longer lives on the property.

D. The authorization of a permitted home occupation use shall not terminate if the pertinent use ceases by reason of fire or other casualty, provided that:

1. Notice of intent to resume or restore such use is filed with the Zoning Enforcement Officer within six months after cessation;
2. Such resumption or restoration is made and completed within two years after cessation.

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shall be posted. The revised bond shall be submitted within 60 days of the date of the renewed permit. Failure to post the revised bond will render the permit void.

- b. The performance bond shall be released when the site is in conformance with the approved plans and is stabilized and planted to the satisfaction of the Commission, the Town Engineer and Zoning Enforcement Officer. The Commission may authorize bond releases or bond reductions at one of its meetings based on the recommendation of the Town Engineer and in accordance with Section 11.2.2.E. If the applicant fails to construct or restore the site in accordance with the approved Site Plan, the Commission may consider the calling of the bond upon recommendation of the Town Engineer
 - c. The performance bond for site reclamation shall include, among other items deemed integral to the plan and/or stabilization of the site, the costs for stripping and stockpiling of topsoil, grading of slopes, seeding and mulching of all disturbed areas, screen planting and other landscaping shown on the Reclamation Plan.
3. Maintenance Bonds for Quarry/Mining Operations: Prior to the final release of the site reclamation performance bond, the applicant shall post a maintenance bond for all improvements. This bond shall be submitted in the form allowed pursuant to Section 11.2.2.B in the amount of 20% of the total cost of the such improvements and shall be held for one year from the date upon such improvements have been completed to the reasonable satisfaction of the commission or its agents. If the applicant fails to maintain the improvements to the satisfaction of the Town Engineer during such time, the Commission may consider the calling of the bond upon recommendation of the Town Engineer.
 4. Site Restoration Bond for any earthwork Special Permit associated with a Site Plan/Subdivision: Prior to commencement of activity under an initial permit, the applicant shall post a bond for site restoration with the Planning Department in the form allowed pursuant to Section 11.2.2.B or the Subdivision Regulations, as appropriate, and in the amount determined by the Town Engineer as is sufficient to guarantee conformity with the provisions of the approved permit and Section 11.2.

Section 9.6 Home Occupations and Home Offices

9.6.1 Definitions

- A. For the purposes of this Section, Home Occupations shall include, but are not limited to the following:
 1. The preparation and sale of the products of arts and crafts actually prepared on the subject premises, such as sewing, painting, wood carving, cabinet making, ceramics, writing, sculpture, ornamental glass and metal working;
 2. The workshops of craftsmen such as plumbers, electricians, carpenters, house painters, paperhangers, and electronics, computer, and radio and television repairmen;

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3. The offices of doctors, dentists, architects, accountants, engineers, psychotherapists, real estate and insurance agents, and other recognized professionals; and
4. A home based office for businesses and services rendered electronically or at locations other than the premise.

9.6.2 Applications

- A. Home Occupations with not more than 1 non-resident employee and generating less than 5 visits from the public per week are permitted through issuance of a zoning permit
- B. Home Occupations employing 2 non-resident employees and/or generating more than 5 visits from the public per week are permitted through issuance of a Special Permit.

9.6.3 Standards

- A. A Home Occupation may be operated in a dwelling providing it conforms to all of the following standards:
 1. The dwelling must maintain the residential character of the area and there shall be no external evidence of the home occupation.
 2. Any proposed Home Occupation generating more than 20 visits shall require a Special Permit, in addition to that required in paragraph 9.6.3.A. In acting upon this Special Permit, the Commission shall determine that the additional traffic will not present a safety hazard or be detrimental to the neighborhood.
 3. On site commercial vehicles shall be limited to 1 truck and 1 trailer.
 4. A Home Occupation is restricted to not more than 30% of the floor area of the dwelling in which it is located. The principal use of the dwelling must remain residential.
 5. Inventory for the Home Occupation must be located within a building.
 6. The Home Occupation shall comply with the Performance Standards contained in Section 3.8 Environmental and Performance Standards of these Regulations.
 7. Automobile repair, retail sales, and storage/warehousing are specifically prohibited as a Home Occupation use.

Section 9.7 Home Animal Agriculture**9.7.1 Definitions**

- A. For the purposes of this section, animals shall be classified and defined as follows:
 1. Small Animal: A chicken, excluding roosters, a duck, goose, turkey, or a rabbit, as well as similar animals as determined by the Zoning Enforcement Officer.
 2. Medium Animal: A goat, swine and pigs, sheep, llama, or emus, as well as similar animals as determined by the Zoning Enforcement Officer.
 3. Large Animal: A cow, (dairy or beef), mule, or donkey, as well as similar animals as determined by the Zoning Enforcement Officer.

Section 2.G

RESIDENCE DISTRICTS & USES

USE-RELATED PROVISIONS

2.G.3 HOME-BASED BUSINESSES

2.G.3.1 PURPOSE

It is the purpose of this Section of the Regulations to establish minimum standards for certain home-based businesses so as to preserve the public's health, safety and welfare. These Regulations are further intended to provide economic opportunities to residents of the Town in such a manner that will not negatively impact traffic circulation, Town infrastructure, the natural environment, and the existing character of surrounding land uses.

2.G.3.2 STANDARDS

1. All such uses subject to this Section of the Regulations shall be carried on entirely within the dwelling unit or within a completely enclosed permitted accessory building on the same lot as the dwelling unit except that the Commission may permit certain appropriate activities (such as classes or nature walks and discussions) to occur outside where it is deemed to be compatible to the site and the neighborhood.
2. All such uses subject to this Section of the Regulations shall be carried on by the inhabitants of such dwelling unit and shall involve the employment on the premises only of any member of the immediate family residing in such dwelling unit plus one person, full or part time, not residing in such dwelling unit.
3. All such uses shall be clearly incidental and secondary to the use of such dwelling unit and lot for residential purposes.
4. The use shall not change the residential character of such dwelling unit and lot, nor shall it generate traffic substantially in excess of that normally generated by a residential dwelling unit in the neighborhood.
5. There shall be no storage of any materials or products on the premises outside of the dwelling unit or the permitted accessory building in which the use is located.
6. No offensive emissions from the property including noise, vibration, smoke, dust, odors, heat, or glare shall be produced; no health or safety hazard shall be created; no interference with any communications medium including radio or television reception in the neighborhood shall be produced.
7. Any sign associated with the use shall be approved by the Commission and shall be limited to one professional identification sign per dwelling unit, such sign not to exceed two (2) square feet in area.
8. Parking adequate to meet the needs of the use, as specified in Section 5.C, shall be provided.
9. There shall be no use of utilities or community facilities beyond that normal to the use of the property for residential purposes as determined by the Town Sanitarian, in non-public sewered areas.

2.G.3.3 PERMIT

1. A permit granted under this Section shall be valid for a period of two (2) years unless renewed as provided herein.
2. The Zoning Enforcement Officer is hereby authorized to renew a permit for additional periods of two (2) years each, provided the requirements and intent of this Section have been continually met. The Director of Planning may refer any application to the Commission for review.
3. A permit under this Section shall not be renewed by the Zoning Enforcement Officer and an outstanding permit may be revoked by the Commission if the use no longer complies with the requirements of this Section.
4. In the event of non-renewal, or revocation, a new application may be made to the Director of Planning or the Commission as required by these Regulations.

2.G.3.4 PROHIBITED USES

Notwithstanding any other provision of these Regulations, home based businesses shall not be construed to include in purpose or intent restaurants or other eating and drinking places, automotive repairs, small engine repair, or any form of retail sales except those involving goods assembled on the premises, hand-crafted items produced on the premises, or as specifically approved by the Commission.