HOME OCCUPATIONS

By Guillermo Vivas
Economic and Community Development Director
Highland Park Borough, NJ
October 15, 2001

Over the last decade, more than in any other time before, home occupations have evolved to such an extent that they have caused the need to reexamine land use definitions and regulations. Prior generations adamantly opposed the intrusion by any type of commercial uses into the sanctity of their residential neighborhoods. To this day, code enforcement officers receive anonymous calls reporting that someone is running an alleged "illegal business" out of their home. It has been my personal experience that the majority of these claims turn out to be groundless.

One such example would be a repairman (as in the case of a plumber), with a telephone answering machine at home where he receives service request calls. He has a van to transport his tools. He advertises in the local newspapers and in the phone book yellow pages. There is no sign at this house. Rarely, if ever, does a customer come there. Instead, he does all his work at the customers' house. He may have a few parts in the garage but, by and large, he goes to the supply store and only buys what he needs for the job. Is this an illegal business?

The advent of the age of computers, telecommunications and electronic communications have generated new types of occupations that do not fit the molds of old definitions. Historically, zoning and land use regulations limited home occupations mostly to licensed professionals and artisans. Now, young mothers work through electronic mail and the Internet while their children are at school.

As of the writing of this article, there is pending legislation that, if made into law, would amend the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D) by providing specific state-wide regulations governing home occupations. There appear to be different schools of thought regarding the proposed regulations. It is important to bear in mind at this point that they are still subject to change. However, it is appropriate to list the concerns of the New Jersey League of Municipalities, who is actively opposing the "Home Based Business Bill" as introduced and amended.

- As drafted, the bill overrides any inconsistent local ordinance, but then allows a municipality to adopt a later ordinance that could be the same as the original. Under the MLUL provisions for "pre-existing, non-conforming
uses\(^1\), the temporary nullification of an ordinance that prohibits a certain use and subsequent re-adoption at a later date, could be considered to create a hiatus that would classify the use as "pre-existing, non-conforming use", thus creating an automatic legal protection for what had previously not been permitted.

- Similar to the above, in municipalities having ordinances stating that if a specific use is not permitted, then it is prohibited, the proposed legislation would create an interim period, before the municipality may adopt an ordinance restricting or prohibiting those uses, during which all home businesses or home occupations would be permitted. Some authorities claim that during that period, home occupations could gain the benefit of pre-existing non-conforming use status.

- Additionally, the League objects to the language in the proposed legislation that would limit the number if invitees or guests. This could be construed to restrict social gatherings in a residential zone.

The New Jersey League of Municipalities continues to maintain that these issues should be treated at the local level and that broad sweeping laws will not limit home occupations to unobtrusive uses and threaten the peace and quiet of residential neighborhoods. They have proposed a model ordinance that they urge municipalities to adopt (with leeway to modify the prototype to make it appropriate to the individual municipality).

I have seen many different forms of regulations, some extremely restrictive. Yet, the most important aspect of regulating home occupations should be the preservation of the residential character of the neighborhood. This can be accomplished in a variety of ways:

- By establishing criteria to determine that the commercial use is incidental and subordinate to the primary residential use.
- By limiting (or prohibiting) the number of employees who are not members of the immediate family.
- By restricting the size of signs or prohibiting them.
- By limiting the percentage of the total square footage of the building or, limiting the number of rooms that may be used for the business.
- By prohibiting changes to the exterior of the building and property that would alter the residential appearance and use.
- By prohibiting exterior display, storage, or use of material or equipment not associated with the residential use.
- By limiting the types of delivery trucks to those that normally make deliveries to residential areas.

---

1 Personal peeve: Stay away from the term "grandfathered". It personally gives me the creeps. Have you ever heard of a use or structure that was "grandmothered"?