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Zoning and Land Use Planning

PATRICIA E. SALKIN*

Zoning for Home Occupations: Modernizing Zoning Codes to Accommodate Growth in Home-Based Businesses

I. Introduction

According to the U.S. Census report for the year 2000, over four million people work from home, a total of 3.3% of the nation's population.¹ That number can rise between 18.8 million to 20.3 million depending on how one defines working from home.² The Small Business Administration reported that in 2000, nearly 20,000 entrepreneurs grossed more than \$1 million operating from a home-based environment.³ Labeled by some as an "explosion of homebased busi-

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¹U.S. Census, Available at: <http://www.census.gov/population/cen2000/phc-t35/tab01-1.pdf> (last accessed May 1, 2006). This number was derived from the question "How did you usually get to work last week?", with respondents having the option to choose "Worked at home." It therefore excludes people who might hold two jobs or work from home only 2 days a week. See generally, U.S. Census, <http://www.census.gov/population/www/socdemo/workathome.html> (last accessed May 1, 2006).

²See, Home Based Business Facts, Data & Statistics, Available at: <http://www.nbbta.org/homebiz.htm> (site visited April 2006); See generally, U.S. Census <http://www.census.gov/population/www/socdemo/workathome.html> (last accessed May 1, 2006).

nesses,”⁴ a number of organizations are calling upon local officials to reassess their antiquated zoning laws to address this trend.⁵ Zoning codes have traditionally been designed to separate incompatible land uses, leading to the establishment of separate zoning districts for businesses and for residential areas. However, with the growth in home-based businesses and home occupations, municipalities must be more creative in balancing the public health, safety, and welfare in residential districts and the pressures necessitating the accommodation of appropriate home-based businesses.

The policy of zoning for increased home occupations is touted by environmental and energy conservation advocates as a positive step towards reducing daily commuter traffic,

energy consumption, and air pollution.⁶ One strategy advocated by the American Planning Association to reduce the dependence on fossil fuels is to promote land use actions that allow for home-based occupations that will translate into a reduced number of commuters.⁷ On the American Planning Association’s website, one planner comments: Twenty-five years ago, planners and zoning regulations focused on segregating uses in different zones. With the advent of computers, decentralization of the workplace, work-at-home environments, footloose industry leaving the country, and the abandonment of employees to fend for themselves for retirement planning and health care protection, individuals and families are faced with doing everything from

³*Id.*

⁴Christopher L. Hansen, “Special Report: Homebased Zoning” (February 2000). Available at: http://www.entrepreneur.com/Magazines/MA_SegArticle/0,1539,285818—1-,00.html (site visited April 2006).

⁵*See, e.g.,* San Joaquin Valley, Air Pollution Control District, Available at: <http://www.valleyair.org/sta/staidx.htm> (last accessed May 1, 2006).

⁶Amanda Siek, “Smart Cities: A Detailed Look at Land Use Planning Techniques that are Aimed at Promoting Both Energy and Environmental Conservation,” 7 Alb. L. Envtl. Outlook J. 45 (2002).

⁷American Planning Association, Policy Guide on Planning for Sustainability (April 2000). Available at: <http://www.planning.org/policyguides/sustainability.htm> (site visited April 2006).

home — multi-tasking and being self-reliant.⁸

One of the leading smart growth and land use advocates observed that since telecommuting and home offices are becoming a way of life, local zoning codes should reflect, rather than deny, that reality.⁹ In a recent law review article, Professor Nicolle Stelle Garnett urged local officials to tackle the home-based business dilemma.¹⁰ She explained that working from home can help parents better balance work and family, that it can enable low-income individuals to achieve economic self-sufficiency, and that it could help to alleviate social and environmental problems resulting from sprawl.¹¹ These sentiments are echoed in the Town of Lloyd Comprehensive Plan, which explains:

Home occupations can provide numerous benefits for both home-based workers and the Town. Home-based businesses provide useful services and encourage business growth by eliminating the initial need for some small businesses to rent commercial space, an important factor to someone who is just starting a new venture. Working at home also saves commuting and childcare costs and reduces traffic congestion. Home occupations can also provide many people who might be unable to work outside the home (including single parents, the elderly and the disabled) an opportunity to earn a living. And by creating activity in residential neighborhoods that might otherwise be deserted during the day, home occupations help to reduce crime.¹²

Professor Garnett points out that many people are already engaged in home occupations despite the fact that in many cases these uses are in violation of zoning codes.¹³ While she acknowledges that in some situations individuals may not be aware of restrictive zoning

⁸James Finger, American Planning Association, Ask the Author (July 2005). Available at: <http://www.planning.org/zoningpractice/askauthor/05/askauthor0705.htm> (site visited April 2006).

⁹Stuart Meck, FAICP, “Bringing Smart Growth to Your Community,” The Commissioner (Summer 2000). Available at: <http://www.planning.org/thecommissioner/19952003/summer00.htm> (site visited April 2006).

¹⁰Nicole Stelle Garnett, “On Castles and Commerce: Zoning Law and the Home-Business Dilemma,” 42 Wm. & Mary L. Rev. 1191 (1998).

¹¹*Id.* at 1198.

¹²Town of Lloyd, Comprehensive Plan, Chapter 8, Economic Development. Available at: http://www.townoflloyd.com/pdf/CP_DGEIS8.pdf (site visited April 2006).

¹³Garnett, *supra* note 10, at 1228.

laws, she suspects that many simply believe that they can avoid detection by zoning authorities by simply circumscribing their activities.¹⁴ However, the prospect of unhappy neighbors running to the local zoning enforcement officer to complain puts home-based business operators at constant risk for civil and/or criminal sanctions and for the possibility of having to cease operations immediately where it is determined they are in violation of the local zoning law.¹⁵ Professor Garnett concludes that the “widespread defiance of zoning laws itself suggests that the rules governing home businesses may be candidates for reform.”¹⁶

This column offers readers ideas and examples of ways to modernize local zoning laws to balance the growing demand by residents to engage in legitimate home-based businesses while protecting community

character and the health, safety, and welfare of neighbors in residential zoning districts.

II. Defining “Home Occupation”

The definition of “home occupation” is not contained in state building codes but rather is a product of local zoning laws and ordinances.¹⁷ Municipalities define home occupations in slightly different ways. For example, in Cochise, Arizona, a home occupation is defined as “an activity carried on by the occupant of a dwelling as a secondary use, including personal and professional services . . .”, subject to certain limitations.¹⁸ Similarly, the City of Albany, New York, defines the term as “[a] business, profession, occupation or trade conducted by the occupant of a dwelling unit or accessory structure and which is incidental and secondary to the use of

¹⁴*Id.*

¹⁵*Id.* at 1228-9.

¹⁶*Id.* at 1229.

¹⁷See for example, <http://www.dos.state.ny.us/code/faq.htm> (site visited April 2006).

¹⁸County of Cochise, Arizona, “Home Occupations,” Available at <http://www.co.cochise.az.us/P&Z/homeoccupations.htm> (site visited April 2006). Such limitations include, *inter alia* floor area requirements, storage prohibitions, sign limitations. *Id.*

the dwelling unit.”¹⁹ Other definitions include “the secondary use of a person’s residence for a business activity carried on for profit”²⁰ or “any gainful occupation engaged in by an occupant of a dwelling unit.”²¹ The zoning ordinance in the Town of Old Saybrook, Connecticut, simply provides that a home occupation consists of an activity conducted for gain.²² The zoning code sets forth a number of standards and requirements, discussed below, that must be satisfied prior to the receipt of a permit for a home occupation.

III. Types of Home Occupations

While the number and variety of home occupations has increased over the years, it is fair to conclude that local zoning has not kept pace with this expansion. For example, the Home Based Business Council

lists roughly 200 potential home occupations that include advertising, art instruction, credit checking, auditing, fashion consulting, dating service, medical billing, travel consulting, market research services, tutoring, manicurist, message therapy, and telephone answering service.²³ Since code enforcement officers and building inspectors must strictly enforce zoning, and they do not possess the discretion to determine whether one type of home occupation, not specifically listed in a zoning ordinance, should be permitted. For example, in one situation, the zoning enforcement authority for the City of New Rochelle, New York, determined that a resident could not maintain a home-based management consulting business because it was not permitted under the zoning in effect at the time, which provided that the only home oc-

¹⁹City of Albany Zoning Ordinance, Chapter 375. Available at: http://www.e-codes.generalcode.com/codebook_frameset.asp?t=ws&cb=0934_A (site visited April 2006).

²⁰City of Torrance Zoning Ordinance. Available at <http://www.ci.torrance.ca.us/1695.htm> (site visited April 2006).

²¹See, City of Boise Planning and Development Services. Available at: <http://www.cityofboise.org/pds> (site visited April 2006).

²²Town of Old Saybrook, CT Zoning Ordinance, Article 1 § 303-8(F), Additional standards. Available at: http://www.e-codes.generalcode.com/codebook_frameset.asp?t=ws&cb=1816_A (site visited April 2006).

²³HBBC List of Home Occupations, available at: http://www.medusaonline.com/hbbc/home_occupations.htm (site visited April 2006).

cupations allowed were offices of architects, artists, and teachers or a “similar professional person.”²⁴ In that case, a number of neighbors complained about the use, alleging that it resulted in increased traffic and excessive parking.²⁵ As a result, it is best to regulate home occupations based not on the type of business, but rather on other factors such as percent of floor area dedicated to business use, number of employees, number of parking spaces, and other criteria discussed more fully below.

What constitutes a home occupation differs from jurisdiction to jurisdiction, and allowable home occupations may vary depending upon the character of the community. For example, in one Wyoming municipality, a meat processing operation was qualified as a home occupation.²⁶ Operating child daycare programs in one’s home may also be con-

sidered a home occupation.²⁷ The Town of Alfred, Maine, has identified the following four types of home occupations in its zoning ordinance:

1. Office in the home – A home occupation which consists primarily of an office. Also in this category are home crafts which have no sales on-site, no parking of commercial vehicles on-site, and no more than three client contacts in the home per week. This does not include home occupations which consist of on-site manufacturing, warehousing, sales, parking of commercial vehicles, or client contact in the home. This does not include those home occupations which employ any one who is not related by blood or marriage to the business owner, or who does not reside on the premises.

2. Home Crafts – A home occupation which consists of creating or manufacturing of an item, including, but not limited to, dressmaking, knitting, the manufacture of crafts, woodworking, drawing, painting, and sculpting. This does not include those home occupations which employ more than one person who is not related by blood or marriage to the business owner,

²⁴Mary McAleer Vizard, “Home Businesses Run Afoul of Zoning,” New York Times, April 26, 1992. Available at: <http://query.nytimes.com/gst/fullpage.html?res=9E0CE2D6163AF935A15757C0A964958260> (site visited April 2006).

²⁵*Id.*

²⁶*See*, Yalowizer v. Town of Ranchester, 2001 WL 1012206 (10th Cir. 2001).

²⁷*See*, Susan Marie Connor, “Zoning and Matters of Age — Tots, Teens, and Seniors,” 19-FEB Prob. & Propr. 61 (January/February 2005) (The author notes that for purposes of providing child care, zoning ordinances may view it as an accessory use.)

or who does not reside on the premises. No more than three client contacts in the home per week are permitted.

3. In-Home Sales and Service – A home occupation which does not meet the definition of “office in the Home,” or “home crafts,” but which does not include those home occupations which employ more than one person who is not related by blood or marriage to the business owner, or who does not reside on the premises.

4. Home-Based Business – Any home occupation which employs more than one person who is not related by blood or marriage to the business owner, or who does not reside on the premises.²⁸

Some municipalities choose to list the types of business uses that do not qualify for home occupation status in the jurisdiction. For example, the ordinance for the City of Deephaven, Minnesota, provides that the following are prohibited home occupations: service, repair or painting of any motorized vehicle, including but not limited to motor vehicles, trailers, boats, personal watercraft, recreation vehicles and snowmobiles; dispatch centers where persons come to a site

and are dispatched to other locations; medical or dental clinics; rental businesses; contracting, excavating, welding or machine shops; commercial kennels and veterinary clinics; tow truck services; the sale, lease, trade or other transfer of firearms or ammunition; sale or use of hazardous materials in excess of consumer quantities which are packaged for consumption by individual households for personal care or household use; and any other use of residential property deemed to be detrimental or inconsistent with the residential character of the neighborhood.²⁹

IV. Methods of Regulating Home Occupations

While zoning ordinances may allow as-of-right a limited number of home occupations in specific districts, this approach is not likely to most appropriately balance quality of life considerations for all district residents. There may be some home occupations where neighbors would have no idea

²⁸Town of Alfred, Maine Zoning Ordinance, Article 2 § 160-14, Definitions. Available at: http://www.e-codes.generalcode.com/codebook_frameset.asp?t=ws&cb=1317_A (site visited April 2006).

²⁹See City of Deephaven, Minnesota Zoning Ordinance, § 1306, Home Occupations. Available at: <http://www.cityofdeephaven.org/Home%20Occupations.htm> (site visited April 2006).

that business is being conducted within the residence. Other uses may attract cars and delivery trucks and could involve signage on the otherwise residential property that could be a source of legitimate neighborhood concern. Other municipalities may deal with home occupations by considering requests on a case-by-case basis through the zoning variance process. The granting of use variances for home occupations is probably most often not a valid application of the use variance, and applicants may not meet statutory and common law tests for this type of relief. It is preferable, where municipalities are inclined to allow home-based business uses to do so either as of right, or better yet, through special use permit review or through performance standards, both of which are discussed below.

A. Special Use Permits – Standards and Requirements

While some uses are allowed as-of-right, meaning that so long as all specified setback, height, and bulk limitations are met, the applicant will be

granted the requested permit, uses allowed by special use permit (sometimes referred to as special exception) are those uses that are determined to generally be compatible with other uses in the district, but to make certain, an additional layer of criteria for review by the applicable board is added. Review discretion in these cases is limited to the criteria set forth in the zoning ordinance. This is one effective way of reviewing permit applications for home occupations.

In Ames, Iowa, the special use permit application lists the regulations and asks that the applicant explain in writing how the proposed home occupation use meets those standards.³⁰ Doing so educates applicants, arguably promoting greater compliance.

Some municipalities separate home occupations by categories, whereby one category requires special use permit review, but another does not.³¹ For example, the Town of Princetown, New York, designates minor and major home

³⁰See City of Ames, Iowa, Special Home Occupation: Special Use Permit Application Packet. Available at: <http://www.city.ames.ia.us/housingweb/P&Z%20Applications/Special%20Home%20Occupation.PDF> (site visited May 2006).

³¹See Outlook: An Overview of Planning Issues in Herkimer and Oneida Counties, October 1998. Available at: <http://www.oneidacounty.org/oneidacty/gov/dept/planning/98HomeOccup.pdf> (site visited May 2006).

occupations.³² It appears from the list (doctors, artists, lawyers, plumbers, and instructors of dance, music, or art) that minor occupations attract small amounts of traffic while major occupations attract greater numbers of people at one time. “Major” home occupations, such as repair shops, doctor’s offices that see patients, and hair salons,³³ may be more likely to create a nuisance or alter the residential appearance of the neighborhood. Focusing on these differences, the town established different standards of review for each category.³⁴

B. Performance Standards

Developing performance standards as a method of regulating home occupations is the most prudent way to effectively manage the surge in home-based businesses. There are a variety of standards that can be employed to accomplish the goals of individual municipalities.

1. Regulating the Size of the Home Occupation

Zoning ordinances may provide for the maximum allowable floor area in a home that may be used for a home occupation. This is one way to ensure that the residence is used primarily as a dwelling and not as a business. For example, the ordinance in the Borough of Kane, Pennsylvania, provides that a home occupation shall not utilize more than 25% of the gross floor area of the dwelling unit.³⁵ The City of Papillion’s approach is more specific, providing that “[f]or all residential and agricultural zoning districts, a maximum percent floor area of 30% of the dwelling may be devoted to the home occupation, inclusive of any detached accessory buildings used for the home occupation.”³⁶ The City of Albany restricts the size of the use to a maximum of 500 square feet regardless of the size of the

³²*Id.*

³³*Id.*

³⁴*Id.*

³⁵Borough of Kane, Pennsylvania Zoning Ordinance, Article § 250-5, Definitions and word usage. Available at: http://www.e-codes.generalcode.com/codebook_frameset.asp?t=ws&cb=1911_A (site visited April 2006).

³⁶City of Papillion, Maine Zoning Ordinance, Article IV § 205-45, Accessory uses. Available at: http://www.e-codes.generalcode.com/codebook_frameset.asp?ep=fs&t=ws&cb=1746_A (site visited April 2006).

dwelling,³⁷ and the Town of Old Saybrook restricts the home occupation to one (1) floor of the dwelling unit and provides that therein, not more than 25% of such floor may be used for this purpose.³⁸

2. Regulating the Number of Home Occupations Per Dwelling Unit

It is possible that with more than one working-age person occupying a dwelling, there could be multiple business uses occurring within the building. Some municipalities have proactively approached this situation by restricting the number of home occupations per dwelling unit. For example, the City of Albany limits the number of home occupations per dwelling unit to one, so long as such use is clearly incidental and secondary to the use of the dwelling unit for residential purposes.³⁹

3. Restricting the Number of Employees On Site

Traffic and parking are two major neighborhood concerns regarding home occupations.

One technique to help with traffic reduction is to restrict the number of on-site employees that may work in one home-based business. Municipalities should be careful to determine whether the maximum number of employees is inclusive of all dwelling residents, only non-resident employees, or some combination thereof. For example, the Borough of Kane provides that no more than three non-residents shall be employed at a home-based business.⁴⁰ The City of Papillion more specifically addresses full-time and part-time employees and requires that parking be provided for these employees. The ordinance provides, in part that "[t]he home occupation shall employ no more than one full-time or part-time employee on site other than the residents of the dwelling unit, provided that one off-street parking space is made available and used by that non-resident employee."⁴¹

4. Parking

³⁷City of Albany, New York Zoning Ordinance, Chapter 375-106, Home occupations, *supra* note 19.

³⁸Town of Old Saybrook Zoning Ordinance, Article 1 § 303-8(F), *supra* note 22.

³⁹City of Albany Zoning Ordinance, Chapter § 375-106, Home occupations, *supra* note 19.

⁴⁰Borough of Kane Zoning Ordinance, Article § 250-5, *supra* note 35.

⁴¹City of Papillion Zoning Ordinance, Article IV § 205-45, *supra* note 36.

Zoning ordinances may provide that for home occupations to exist, a certain number of off-street parking spaces must be available for use by either employees or patrons. The Borough of Kane ordinance requires that “a sufficient number of paved off-street parking spaces shall be provided as deemed necessary by the Zoning Hearing Board.”⁴² The Town of Alfred requires that there be sufficient off-street parking available within 100 feet of the premises for customers’ use without creating any traffic or safety hazards.⁴³ It may be a better idea to be more specific in the ordinance by providing for an actual number of required spaces, although this number may vary based upon the type of use.

5. Traffic Generation

Another principal concern with home occupations is the amount of traffic that will be generated in a residential neighborhood as a direct result of the use. Some zoning ordinances address the issue of traffic generation by providing a maximum number of vehicle trips that may be generated dur-

ing the course of an average day when the premises are open for business. For example, no more than five or ten cars may be driven to the home occupation for either employees or for clients. The City of Papillion provides specific criteria tied to trip generation. For example, the ordinance states that home-based businesses may generate no more than the greater of 30 vehicle trips per day or 5% of the average daily traffic volume of the adjacent street. Peak hour traffic generation may not exceed 16 vehicle trips, and deliveries or service by commercial vehicles or trucks over 10 tons gross empty weight are prohibited for any home-based business located on a local street.⁴⁴

6. Signs

Signage related to home occupations can be a major issue in residential districts. Municipalities may regulate the use of signs for home occupations without violating the First Amendment. For example, in *City of Rochester Hills v. Schultz*,⁴⁵ the Michigan Supreme Court upheld a ban on home occupation signs. Ban-

⁴²Borough of Kane Zoning Ordinance, Article § 250-5, *supra* note 35.

⁴³Town of Alfred Zoning Ordinance, Article 2 § 160-115, Home occupations, *supra* note 28.

⁴⁴City of Papillion Zoning Ordinance, Article IV § 205-45, *supra* note 36.

⁴⁵*City of Rochester Hills v. Schultz*, 459 Mich. 486, 592 N.W.2d 69 (1999).

ning signs for home occupations is not uncommon, as businesses would typically not advertise on the front lawns of homes in residential areas. The zoning ordinance of the City of Papillion provides that “[s]ignage designating the home occupation shall be prohibited,”⁴⁶ and the City of Hillsboro’s ordinance states that “[n]o exterior signs, or window signs, shall be permitted that identify the property as a business location.”⁴⁷ The zoning ordinance of the Village of Olympia Fields, Illinois, provides in part that “[t]here shall be no exterior display, no exterior sign except as allowed by the sign regulations for the district in which such home occupation is located”⁴⁸

Municipalities may choose to regulate signs related to home occupations based upon the size of the sign to ensure that it is scaled appropriately to best fit in with the character of the community. For example,

the zoning ordinance for the Borough of Kane provides in part that “[t]here shall be no exterior display or no sign larger than two feet by three feet (unlit), exterior storage of materials must be enclosed (covered) and no other exterior indication of the home occupation.”⁴⁹ In addition, localities may regulate the number of signs advertising the home occupation on each lot zoned for such use. For example, the zoning ordinance for the City of Albany provides that residents “shall not display or create outside the building any evidence of the home occupation, except that one unanimated, nonilluminated flat or window sign having an area of not more than two square feet shall be permitted on each street front of the zone lot on which the building is situated.”⁵⁰ The Town of Alfred combines these two approaches to sign regulation and provides that “[h]ome occupa-

⁴⁶City of Papillion, Maine Zoning Ordinance, Article IV § 205-45, *supra* note 36.

⁴⁷City of Hillsboro, Oregon Home Occupation Permits. Available at: http://www.ci.hillsboro.or.us/Planning_Department/HomeOccupationPermits.aspx (site visited April 2006).

⁴⁸*Hawthorne v. Village of Olympia Fields*, 204 Ill. 2d 243, 790 N.E.2d 832, 274 Ill. Dec. 59 (2003), citing Olympia Fields Municipal Code § 22-3 (Ord. No. 17 as revised May 11, 1981).

⁴⁹Borough of Kane Zoning Ordinance, Article § 250-5, *supra* note 35.

⁵⁰City of Albany Zoning Ordinance, Chapter § 375-106, Home occupations, *supra* note 19.

tion signs relating only to goods or services available on premises, which may be surface mounted or freestanding but may not exceed three square feet in surface area and the top edge six feet in height. Only one home occupation sign is permitted per premises. Any home occupation sign displayed inside a window is considered a sign and is counted in the sign area allowed for home occupations.”⁵¹

7. Other Requirements

While the discussion above focuses on the major issues involved with the regulation of home-based businesses, municipalities may find it desirable to adopt additional requirements to protect the character of the residential neighborhood. For example, some ordinances limit the type of alterations that may be made to the residential building that is housing the home occupation. The City of Albany prohibits alteration of the prin-

cipal residential building where such changes alter the character and appearance of the dwelling.⁵² The City of Papillion prohibits any change in the exterior appearance of the building or premises housing the home occupation.⁵³ The Town of Old Saybrook simply requires that there be no evidence outside the dwelling, except permitted signs and required off-street parking, that the dwelling contains a home occupation.⁵⁴

Still other zoning regulations prohibit the outdoor storage of equipment or materials used in the home occupation⁵⁵ or restrict the number of commercial vehicles that may be associated with a home-based business use. For example, the City of Albany zoning ordinance provides that not more than one commercial vehicle shall be permitted in connection with any home occupation and such vehicle shall be stored

⁵¹Town of Alfred Zoning Ordinance, Article 2 § 160-92, Signs, *supra* note 28.

⁵²City of Albany Zoning Ordinance, Chapter § 375-106, Home Occupations, *supra* note 19.

⁵³City of Papillion Zoning Ordinance, Article IV § 205-45, *supra* note 36.

⁵⁴Town of Old Saybrook Zoning Ordinance, Article 1 § 303-8(F), *supra* note 22.

⁵⁵City of Albany Zoning Ordinance, Chapter § 375-106, Home Occupations, *supra* note 19.

in an enclosed garage.⁵⁶ The City of Papillion zoning ordinance prohibits the outdoor storage of materials or equipment used in the home occupation other than motor vehicles used by the owner to conduct the occupation, and it prohibits the parking or storage of heavy commercial vehicles in connection with the home occupation.⁵⁷ The City of Albany also restricts “mechanical, electrical or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare or other nuisance outside the residential or accessory structure.”⁵⁸ The Town of Papillion limits such equipment supporting the home occupation to only self-contained equipment within the structure and normally used for office, domestic or household purposes.⁵⁹

Quality of life remains an overarching theme in the regulation of home occupations. For example, the zoning ordi-

nance of the Town of Alfred provides that home occupations may not adversely affect any natural resource or environmentally sensitive area, such as a wetland, aquifer, watercourse, water body, etc.⁶⁰ To address quality of life concerns, the City of Papillion provides that “[n]o noise, odors, bright lights, electronic interference, storage or other external effects attributable to the home occupation shall be noticeable from any adjacent property or public right-of-way. No home occupation shall discharge into any sewer, drainageway or the ground any material which is radioactive, poisonous, detrimental to normal sewer plant operation or corrosive to sewer pipes and installations.”⁶¹ The ordinance in the Town of Old Saybrook states that “[t]he home occupation and the conduct thereof shall not impair the residential character of the premises nor impair the reasonable use, enjoyment and value

⁵⁶*Id.*

⁵⁷City of Papillion Zoning Ordinance, Article IV § 205-45, *supra* note 36.

⁵⁸City of Albany Zoning Ordinance, Chapter § 375-106, Home occupations, *supra* note 19.

⁵⁹City of Papillion, Zoning Ordinance, Article IV § 205-45, *supra* note 36.

⁶⁰Town of Alfred Zoning Ordinance, Article 2 § 160-115, Home occupations, *supra* note 28.

⁶¹City of Papillion Zoning Ordinance, Article IV § 205-45, *supra* note 36.

of other residential property in the neighborhood.’’⁶²

C. Termination of Home Occupations

Municipalities may provide for the eventuality of the termination of a permitted home occupation. This approach can help to ensure that where a specific type of home occupation was permitted, should the occupant desire to change the use to another business, that change would undergo similar review to ensure compatibility with the neighborhood. In some cases, the municipality may desire to ensure that the occupant understand that the allowed home occupation, once permitted, is unique to the applicant only, and that should the dwelling be sold with or without the home-based business, a new owner would need to apply for permission to operate the previous or a new home-based business. For example, the zoning ordinance of the Town of Old Saybrook provides that the application for the home occupation permit must be signed by the person or persons proposing to conduct the home occupation use, that it shall be accompanied by a

detailed description of the proposed use, and that each certificate of zoning compliance allowing the use will automatically terminate when the applicant no longer resides in the dwelling unit.⁶³

What follows is an example of performance criteria for the regulation of home occupations as contained in the zoning ordinance for the City of Deephaven:

1. No home occupation shall produce light glare, noise, odor or vibration that will in any way have an objectionable effect upon adjacent or nearby property.
2. No equipment shall be used in the home occupation, which will create electrical interference to surrounding properties.
3. Any home occupation shall be clearly incidental and secondary to the residential use of the premises, should not change the residential character thereof, and shall result in no incompatibility or disturbance to the surrounding residential uses.
4. No home occupation shall require internal or external alterations or involve construction features not customarily found in dwellings except where required to comply with local and state fire and police recommendations.

⁶²Town of Old Saybrook Zoning Ordinance, Article 1 § 303-8(F), *supra* note 22.

⁶³Town of Old Saybrook Zoning Ordinance, Article 1 § 303-8(F), *supra* note 22.

5. There shall be no exterior storage of equipment or materials used in the home occupation, except personal automobiles used in the home occupation may be parked on the site.

6. All vehicle parking required for conduct of the home occupation shall be off-street. Parking/storage of all commercial or non-passenger vehicles used in the home occupation shall be within a fully enclosed building.

7. The home occupation shall meet all applicable fire and building codes.

8. No home occupation activity of a non-residential character shall be discernable from any private or public street. There shall be no exterior display or exterior signs or interior display or interior signs related to the home occupation, which are visible from outside the dwelling.

9. No equipment, machinery or materials other than of a type normally found in or compatible with a dwelling unit shall be allowed.

10. Shipments and delivery of products, merchandise or supplies shall be limited to the hours of 8:00 AM and 6:00 PM and shall regularly occur only in single rear axle straight trucks or smaller vehicles used to serve residential areas.

11. All home occupations shall comply with the provisions of the City Nuisance Ordinance.

12. No home occupation shall be conducted between the hours of

6:00 PM and 7:00 AM unless said occupation is contained entirely within the principal building, excluding attached garage space, and will not include any on-street parking facilities.

13. No retail sales and delivery of products or merchandise to the public shall occur on the premises except when incidental to the services provided.

14. Not over twenty-five (25) percent of any structure shall be used for a home occupation.

15. Product sales associated with private social events (i.e., "Tupperware parties") shall be exempted from this section provided they occur no more than four (4) times per year at any given residence.⁶⁴

The City of Burlington, Vermont, requires the following criteria to be met for any home occupation:

a. A home occupation shall be conducted solely by resident occupants plus no more than one additional full-time equivalent employee in RL and WRL districts and no more than two (2) full-time equivalent employees in other districts. The home occupation shall be conducted entirely within an existing dwelling unit and/or one enclosed accessory structure;

b. No more than thirty-five percent (35%) of the floor area of said residence, including accessory structures, up to a maximum of seven hundred fifty (750) square feet,

⁶⁴City of Deephaven Zoning Ordinance, § 1306, *supra* note 29.

whichever is less, shall be used for such purpose;

c. No home occupation shall require alterations, construction or equipment that would change the fire rating of the structure or the fire district in which the structure is located;

d. There shall be no outside storage of any kind related to the home occupation;

e. There shall be no exterior evidence of the conduct of a home occupation except for:

1. Occasional garage/lawn/yard type sales (up to twice a year not to exceed two (2) days each); and

2. One non-illuminated attached parallel sign that shall not exceed two (2) square feet. No other signs shall be permitted.

f. No home occupation may increase vehicular traffic flow or parking by more than one additional vehicle at a time for customers or deliveries. All parking shall be located off-street and shall maintain the required front yard setback per Article 5;

g. No home occupation shall create sounds, noise, dust, vibration, smell, smoke, heat, humidity, glare, radiation, electrical interference, fire hazard or any other hazard, nuisance or unsightliness which is discernible from any adjacent dwelling unit;

h. The home occupation shall be clearly incidental and secondary to

the use of the dwelling for residential purposes and shall not change the character thereof or adversely affect the uses permitted in the residential district of which it is a part.

i. Delivery of products and materials related to the home occupation by vehicles other than automobiles shall occur no more than once per day;

j. With the exception of one delivery per day, as specified in subparagraph (9), no more than one (1) commercial vehicle shall be allowed on the premises at any one time; and

k. There shall be no sale of goods except for goods fabricated on the premises as part of an approved home occupation.⁶⁵

V. State Legislation

Initially introduced in 2000, a bill in the New Jersey Legislature, entitled the “Family Home Occupation Act”, proposes to classify certain home occupations as accessory uses needing no use variances in residential zones and authorize municipalities to limit or exclude certain warehousing, manufacturing, or retailing ac-

⁶⁵City of Burlington Zoning Ordinance, Article 12, Home Occupations. <http://www.ci.burlington.vt.us/planning/zoning/znordinance/article12.html> (site visited April 2006).

tivities from the definition of home occupation.⁶⁶

The Home Based Business Council has published a model ordinance based on the New Jersey law.⁶⁷ The model act, also posted on HUD's Regulatory Barriers Clearinghouse as a model solution to support affordable housing,⁶⁸ is reprinted below.

Title: Family Home Occupation Ordinance⁶⁹

SYNOPSIS

"Family Home Occupations;" classifies certain home-occupations as permitted accessory uses needing no use variances in all residential zones within the _____; sets forth guidelines to limit or exclude certain warehousing, manufacturing or retailing activities.

Explanatory Statement:

WHEREAS, Corporate restructuring and the rise of tele-

communications has led to an explosion of individuals working out of their homes. And, according to a national survey, as many as 40 million people work at least part time at home, with about 8,000 home occupations of this nature starting daily throughout the nation and an indeterminate number in _____, and

WHEREAS, Changes in our economy and technological development have facilitated the development of family home occupations. According to the New Jersey Partnership for Work at Home, over 90% of such businesses do not create the traffic, pollution, noise or safety problems of other industries. A new approach to zoning is needed to encourage families, build communities, and safeguard neighborhoods, while retaining the residential character of neighborhoods, and

⁶⁶A. 1193 (NJ 2000). Available at: http://www.njleg.state.nj.us/2000/Bills/a1500/1193_i1.htm (site visited April 2006). This bill has not yet been enacted, although it has been reintroduced.

⁶⁷See, The Home Based Business Council, Inc., Home Based Business Zoning. Available at: <http://www.medusaonline.com/hbbc/zoning.htm> (site visited April 2006).

⁶⁸See, Regulatory Barriers Clearing House. Available at: <http://www.huduser.org/rbc/search/rbcdetails.asp?DocId=1274> (site visited April 2006).

⁶⁹The Home Based Business Council, Inc., The HBBC Recommended Model Ordinance Available at: <http://www.medusaonline.com/hbbc/ordinance.htm> (site visited April 2006).

WHEREAS, it is impossible to measure the numbers of families within the community that are working at home unobtrusively and virtually undetectable, providing secondary or primary income with no detrimental impact upon the residential character of the neighborhood, and

WHEREAS, the presence of these undetectable home occupations has a positive impact upon the family,

- providing a parent or adult guardian at home,
- safeguarding the community by having neighbors at home during the daytime when empty houses are potential targets for criminal activities,
- providing an untapped pool of volunteers when needed,
- reducing commutation and preserving air quality, and

WHEREAS, the purpose and intent of planning is to enhance the quality of life for all citizens, and

WHEREAS, as long as home occupations do not create a disturbance to their neighbors the land use planning powers of municipal government do not extend into the home but control impacts of land use upon neighbors and the surrounding community,

NOW, THEREFORE BE IT RESOLVED, This ordinance

establishes guidelines for _____ to follow in the treatment of family home occupations, in order to carefully balance the interests of family home occupations with the needs of the residential areas in which they operate.

For the purposes of this ordinance

“Family home occupation” means any activity operated for pecuniary gain in, or directed from, a residential dwelling or unit by one or more family members residing within that dwelling or unit.

I. A family home occupation shall be an accessory use, not requiring a use variance provided that:

- a. the activity is compatible with the residential use of the property and surrounding residential uses;
- b. the activity employs no more than _____ employees other than family members residing in the dwelling or unit;
- c. the volume of invitees or guests who visit the residential dwelling or unit is not in excess of _____ per day or what is otherwise customary for residential use in the neighborhood;
- d. there is no outside appearance of a family home occupation including, but not limited to, parking, signs or lights; or as is set forth in _____ ordinance;
- e. the volume of deliveries or truck and other vehicular traffic is not in

excess of ____ per day or, what is normally associated with residential use in the neighborhood;

f. the activity uses no equipment or processes that create noise, vibration, glare, fumes, odors or electrical or electronic interference, including interference with radio or television reception, detectable by any neighbors;

g. the activity does not generate any solid waste or sewage discharge, in volume or type, which is not normally associated with residential use in the neighborhood; and

h. the activity does not involve any illegal activity.

II. In the case of a dwelling unit which is part of a common interest ownership community, which is a community in which at least some of the property is owned in common by all of the residents, the provisions of this section shall not be deemed to supersede any deed restriction, covenant, agreement, master deed, by-laws or other documents which prohibit a family home occupation within a dwelling unit.

III. Any standards established pursuant to this section shall apply to all residences within the district.

IV. At any time, and for due cause, based upon the needs of the community, _____, may establish by ordinance

limitations for, or prohibit entirely, any family home occupations, including but not limited to those involving manufacturing, warehousing, retailing or providing services, which it deems would be incompatible with the residential zones in which they are located. The types of activities or services prohibited or limited shall be set forth in detail in the ordinance.

V. The provisions of this ordinance shall not be construed as limiting in any manner the powers of _____ to protect the health, safety and welfare of its residents, including the investigation and elimination of nuisances.

VI. Conclusion

Municipalities are increasingly becoming aware of the demands to legitimize home occupation uses in previously residential-only zoning districts. Flexible zoning techniques, including special use permits and performance standards as methods of regulating home-based business uses offer opportunities for creativity in the design of regulations that will respond to the unique demands of the character of the community in various residential zoning districts.