

Restricting Home Occupations

by Brett Weiss, Esq.

In today's society the relations between neighbors are increasingly governed by land use agreements, declarations of covenants, zoning regulations and the like. And neighbors these days are using the club of zoning regulations and restrictive covenants against home-based businesses.

Until recently, relatively few people other than doctors and child care providers, worked or ran a business from their homes. But with the technological tidal wave of the past few years enabling the development of new computer-based home businesses (such as small-scale desktop publishing) and the increased use of telecommuting — coupled with the recession — a growing number of people have begun working out of their homes.

Most zoning regulations still do not take into account the changed character of the type of work typically performed in the home — and it is not unusual to find ordinances that simply prohibit home occupations in some or all residential districts. Similarly, condominium association covenants often provide that the dwelling can only be used for residential purposes. Even those covenants which allow professional offices sometimes so stringently restrict this use as to make it impractical.

The primary purpose behind these use restrictions is to preserve the residential character of the community, a laudable goal and one few would quarrel with. This reflects a desire to minimize traffic along residential streets, avoid the noise normally associated with business operations, and ensure safety by keeping strangers out of residential neighborhoods. The question is how can these aims co-exist with the desire of a growing number of people to work out of their homes?

The answer is to craft zoning regulations and covenants that protect neighborhoods without stifling home businesses.

Montgomery County, Maryland, offers one example of how these interests can be balanced. The County has established several categories of "home occupations" with varying degrees of governmental involvement.

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- “No impact” home occupations are defined as those which have: no more than five vehicle visits per week; no non-resident employees; and are incidental to the residential use of the building. Such uses are not regulated and are permitted in all residential zones.

- “Registered” home occupations include all home occupations not meeting the “no impact” criteria, and in which: the owner lives in the home more than 60% of the year; no more than 1/3 of the home area is devoted to the business; the business generates no noise, vibration, glare, fumes odors or electrical interference detectable beyond the property line; no hazardous materials are used, stored or disposed of; no truck deliveries are needed (except for parcel services such as UPS); no more than one non-resident employee assists the business; a maximum of twenty visits per week and five per day by clients or customers are allowed. “Registered” home occupations require administrative approval, but do not need to go through a hearing process.

- “Major” home occupations must comply with the same requirements as “registered” home occupations, except that they may have up to two non-resident employees. There are also no numerical limits on client visits, though they must be by appointment only and there must be sufficient off-street parking available. Approval of “major” home occupations requires notice to abutting property owners and a hearing.

These requirements — though not perfect — reflect a reasonable approach to regulating home occupations based on their potential impact on the community.

Unfortunately, however, even if a community has adopted reasonable home occupation regulations, more onerous private restrictive covenants can still end up barring home occupations. While a community ordinarily cannot directly prevent private developments from prohibiting non-residential uses through restrictive covenants, planners can take the lead in informing developers of the need for home occupations, and encourage them to provide flexibility in any restrictive covenants.

Those who see the need for encouraging home occupations might also seek to enact state laws prohibiting the enforcement of restrictive covenants which preclude home-based businesses.

We need to encourage, not discourage, employment opportunities, wherever they may arise. In the coming decade, more and more of our neighbors will want to — or have to — work out of their homes. We must be ready to help them. ♦

Brett Weiss is an attorney in Montgomery County, Maryland, who has been involved in land use and zoning issues at the state and local levels. Brett has learned about restrictive covenants first-hand. Several months ago, after finding a house he and his wife wanted to buy in a new development, Brett discovered that the development's restrictive covenants would prevent his being able to operate a home-based professional office.