

# Planning And Development

## Community Design: Zoning For Home Occupations

**Home Occupation:** An occupation or business activity which results in a product or service for financial gain and is conducted in whole or part in the dwelling unit or accessory building and is clearly an accessory or incidental use and subordinate to the residential use of the dwelling unit.\*

\*Zoning Law of the Town of Washington, Dutchess County New York, 1990

Home occupations can provide numerous benefits for both home workers and the community. When governed by well crafted zoning regulations, they can do so with no downside for the surrounding neighborhood.

Home occupations provide useful services for our communities. They also encourage business growth by eliminating the need for some small businesses to rent commercial space, a factor which could make all the difference to someone who is just starting out. Working at home can save commuting and child care costs, and can give those who might be unable to work outside of the home, including single parents, the elderly and the disabled, an opportunity to earn a living.

Allowing people to work in their homes can cut down on traffic congestion and the need for parking in commercial areas, and can help to ease the strain on public transportation. It also creates activity in residential neighborhoods that might otherwise be deserted during the day, which can be a deterrent to crime and a benefit to children who may be home alone after school.

Most people agree that home occupations are a good thing as long as they don't create any disturbances, such as noise, odors, or parking problems, in their neighborhoods. But not all businesses are appropriate in residential areas. That is where zoning comes into play. A good zoning law which includes performance standards (criteria the activity must meet) is important because it protects the rights of home-based workers while preserving the residential quality of the neighborhood. Currently, all Dutchess County municipalities' zoning laws address home occupations. However, provisions range anywhere from a single paragraph definition to a full listing of supplementary regulations and performance standards.

### Defining Home Occupations

A concise definition of a home occupation should be included in a zoning law. The definition will determine if an activity falls into the category of a home occupation, and will therefore be subject to compliance with the associated regulations. A definition should not include performance standards; those should be listed as supplementary regulations in the body of the zoning law. Nor should it impose unnecessary or ambiguous restrictions on home occupations which might encourage a legal challenge of the law. The following excerpts from two local zoning laws are examples of language which could be problematic.

**One local ordinance's home occupation definition begins with:**

***'An accessory use of a character customarily conducted entirely within a dwelling...'***

Because the objective of earning income is not mentioned, this definition could be interpreted to include any number of accessory customary uses for a dwelling, such as hobbies or club/group meetings. Since many of these are not occupations at all, they should not be subject to home occupation regulations.

The second problem is that not all occupations will be conducted entirely within the dwelling. A hair cutter might make house calls in addition to working in the home, or a lawyer who has a home office may have to go to court occasionally. While these activities should be considered home occupations, the above definition might exempt them from this category. The home workers might therefore contend that they are not subject to home occupation regulations or permits.

Another way to help to lessen disputes and legal challenges is to avoid using ambiguous words whenever possible. Words such as 'customary' and 'professional' are commonly found in home occupation definitions. However, their use could be considered discriminatory, and their interpretations are subjective and can change over time.

**The following is from another local law's definition of a home occupation:**

***"The office of a physician, surgeon, dentist, architect, professional engineer, attorney or other professional person ... shall be deemed to be 'home occupations'."***

Not only is it debatable which occupations are carried out by professionals, but this definition does not deem any nonprofessional occupations to be home occupations. It is therefore unclear whether non-professional home based businesses are permitted, or if they would be subject to the same home occupation regulations.

A local law which allows only "professionals" to conduct home occupations discriminates against nonprofessional workers without valid reason, since many non-professional occupations such as sewing and telemarketing can be virtually undetectable from outside the home. In addition, it may encourage nonprofessionals interested in working out of the home to either do so secretly, challenge the law, move, or abandon the idea altogether.

An example of a good home occupation definition is cited in the box on page one. It is concise and does not include any unnecessary restrictions. This zoning law does include performance standards for home occupations, located in the body of the law.

### **Performance Standards Provide Guidance**

A concise definition is an important part of a good zoning law, but it is only the beginning. A law which lists home occupations only as a definition or as a permitted accessory use is vague and subject to interpretation, and therefore more likely to be challenged. A law should include performance standards to provide clear guidance to both zoning officials and those interested in conducting a home-based business. Performance standards also help to control the possible negative effects of home occupations by limiting the scale and impacts of the activity.

Some of the most common disturbances created by home occupations are excessive traffic, on-street parking, overnight parking of commercial vehicles, noise, and outdoor storage of materials used for the business. By placing limitations on certain aspects of the home occupation, any negative effects can be prevented. For example, restricting or prohibiting retail sales and limiting the number of employees can help to control the size of the home occupation and the amount of traffic it generates. Restrictions on allowable signage, outdoor storage of materials and overnight parking of commercial vehicles can reduce the visual impact on the neighborhood.

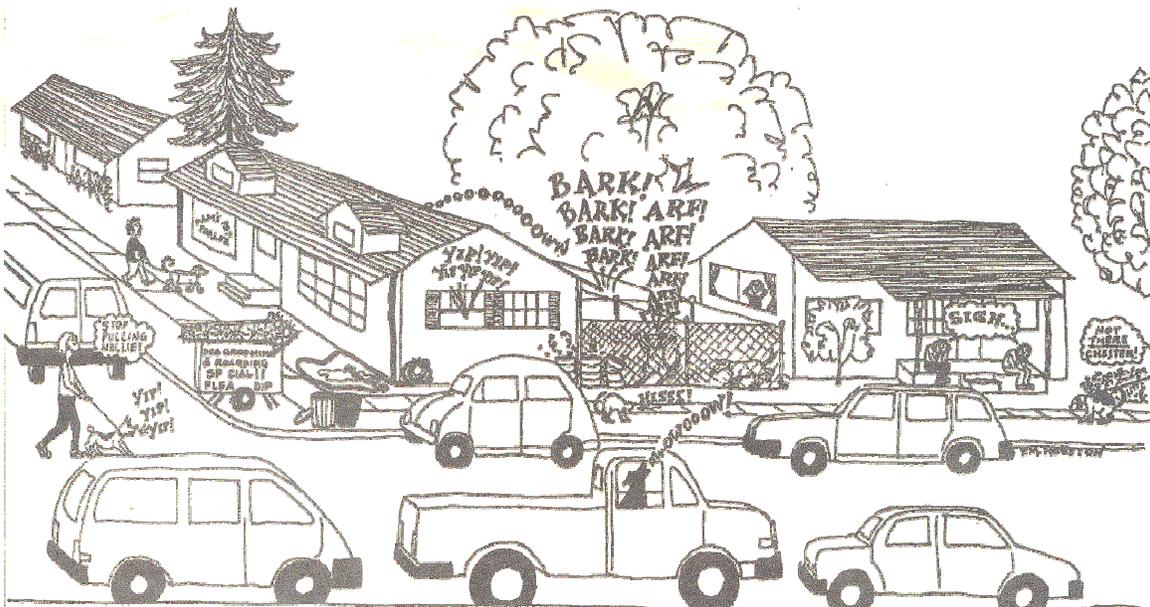
Requiring the home occupation to remain subordinate to the residential use of the dwelling is another effective way to limit the activity's impact on the neighborhood. A common method used

to accomplish this is to limit the total amount of square footage used for the occupation within the home. Standards generally limit the activity to a maximum of between 25 and 30 percent of the total gross floor area of the home.

Zoning laws can restrict overnight parking of commercial vehicles on residential property.

A performance standard prohibiting the use of accessory structures, such as garages or barns, for operation of the home occupation is sometimes used to discourage occupations which are likely to be noisy or otherwise disruptive to the neighborhood. Common examples of such occupations are auto repair and welding. Doors left wide open during business operation can create eyesores or excessive noise, and often lead to business activities spilling out into the driveway or yard as well. On the other hand, many accessory uses, such as craft and artist studios can work well in accessory structures without negative consequences. Restricting certain high impact occupations and the use of yards is often preferred to prohibiting the use of accessory structures.

Currently, only two municipalities in Dutchess County expressly prohibit the use of accessory structures for home occupations.



**Performance standards can prevent situations like this by prohibiting excessive noise, odors, traffic and other nuisances that are unwelcome in residential neighborhoods.**

The following selected performance standards from the Village of Pawling Zoning Code (1995) are a few examples of the types of home occupation regulations that should be included in a typical ordinance:

- **A home occupation must be incidental to the use of a dwelling unit for residential purposes.**
- **No more than twenty-five percent (25%) of the total floor area of the dwelling unit maybe used in connection with a home occupation.**

- **The person or persons who own and occupy the dwelling, and up to two (2) additional persons, shall be employed in the home occupation. Off street parking shall be provided for each additional employed person and shall conform to all applicable regulations.**
- **There shall be no outside evidence of the home occupation, except that one unanimated, unilluminated, flat or window sign having an area of not more than two (2) square feet shall be permitted on the street front of the lot on which the building is located, subject to all applicable regulations.**
- **There shall be no exterior storage of materials to be used in conjunction with a home occupation.**
- **The sale of produce and consumer goods shall be prohibited except for the sale of products or goods produced or fabricated on the premises as a result of the home occupation.**
- **No alteration of the residential appearance of the premises to accommodate the home occupation is allowed.**
- **In no case shall a home occupation be open to the public at times earlier than 7:00 a.m. nor later than 9:00 p.m.**
- **No offensive noise, vibration, smoke, dust, odors, heat or glare shall be produced.**

### **Residency Requirements**

Almost all zoning laws in Dutchess County require that a home occupation be conducted by a resident of the dwelling unit. Some laws go even further by limiting home occupations to owner-occupants. Requiring the home-worker to reside in the dwelling helps to insure that the primary use of the property remains residential, and prohibits the proprietor from moving out and allowing the business to take over the entire dwelling. This requirement also helps to prevent disturbances and eyesores, since someone who lives in the neighborhood is more likely to be concerned about the effects of their home occupation on the neighborhood than someone who only works there. The owner-occupancy requirement makes it even more unlikely that the home occupation would become a nuisance to the neighborhood. Currently, only five Dutchess County municipalities have this owner occupancy requirement.

### **To Permit or Not to Permit?**

Some laws require a special permit to conduct a home occupation, while others do not. Requiring a special permit offers some advantages. It gives the planning or zoning boards the opportunity to review the home occupation to ensure compliance with local regulations. At the same time, it makes the applicant aware of what the regulations are. It also gives an indication of how many home occupations are being conducted in the community. The downside is that the review process requires more time, which could be a problem for municipalities that are already understaffed. Currently, eight of Dutchess County's 30 municipalities require a special permit to conduct a home occupation.

Another option is to divide home occupations into two classes: those that do not require a permit (Class 1) and those that do (Class 11). Class I home occupations should be those least likely to detract from the residential quality of the neighborhood, such as telecommuting or tutoring, and should be clearly defined. All other home occupations would be considered Class 11, and would be subject to review during the permit process. A public hearing may or may not be required

before the granting of a permit. If it is not required, the procedure can be very quick, saving additional staff time. The procedure for obtaining a permit should be included in the law and clearly explained on the application forms.

**Conclusion**

A variety of home occupations should be encouraged to promote economic vitality and diversity in our communities. This can be done drafting zoning laws which focus on controlling any negative impacts of these occupations, and do not arbitrarily prohibit certain types of occupations.

**The following table shows a comparison of some local zoning laws for home occupations:**

<b>Municipality</b>	<b>Max. # of Employees</b>	<b>Max. Sq. Footage</b>	<b>Max. Signage</b>	<b>Retail Sales</b>	<b>Outside Storage</b>
T/Beekman	owner-occupants + 2	30% GFA	2sq. ft.	limited	prohibited
T/Pleasant Valley	occupant family members + 1	not addressed	6sq. ft.	prohibited	prohibited
T/Poughkeepsie	occupants + 2	25% GFA	2sq. ft.	limited	prohibited
T/Red Hook	occupants + 1	500 sq. ft. or 25% GFA (whichever is less)	4sq. ft.	limited	permitted in some cases
V/Fishkill	occupants + 2	not addressed	one (1) name plate	not addressed	prohibited
V/Pawling	owner-occupants + 1	25% GFA unless in accessory structure	2sq. ft.	limited	prohibited

**GFA: Gross Floor Area**