

Town of Milton

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Milton, DE 19968



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To: Mayor & Council
From: Robin Davis
Project Coordinator
Date: 06/30/14
Ref: Agenda Item

A request was made to place this item on the upcoming Town Council agenda for consideration. The Town Council voted to table discussion and vote on this item at its' March 13, 2014 meeting. The Planning & Zoning Commission has reviewed this item and prepared a proposed ordinance amendment and advisory report. The following is submitted for review:

Proposed ordinance amendment
Planning & Zoning Commission Advisory Report
Portion of February 26, 2014 Planning & Zoning Commission meeting pertaining to this item

Please feel free to contact me if there are any questions. Thank you.

ORDINANCE NO. 2014-_____

**AN ORDINANCE TO AMEND CHAPTER 220 OF THE TOWN CODE, ENTITLED
"ZONING," RELATING TO HOME OCCUPATIONS.**

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to provide for and preserve the health, peace, safety, cleanliness, ornament, good order and public welfare of the Town and its inhabitants; and

WHEREAS, the Charter of the Town of Milton vests power in the Town Council to zone or district the Town and make particular provisions for particular zones or districts with regard to building or building material, and generally to exercise all powers and authorities vested in the legislative body of cities and incorporated towns under and by virtue of Chapter 3, Title 22 of the Delaware Code; and

WHEREAS, the Town Council of the Town of Milton has previously found it necessary for the aforementioned purposes to enact a zoning ordinance, codified as Chapter 220 of the Town Code; and

WHEREAS, pursuant to Chapter 220, the Town Council of the Town of Milton may, from time to time, on its own motion or on petition or upon recommendation by the Planning and Zoning Commission, amend, supplement or change the boundaries of the districts or the zoning regulations after public notice and hearing; and

WHEREAS, the Town of Milton Planning and Zoning Commission held a duly noticed hearing on February 26, 2014 the Commission voted 5-0 to recommend approval in the Advisory Report received by Town Council; and

WHEREAS, The Town Council held a public hearing on _____, as scheduled by prior resolution, with proper notice by publication and my mailing as required by Town Code Section 220-101; and

WHEREAS, the Town of Milton ordinances and Town Code, at Section 220-6, currently define a "home occupation" and place additional restrictions on a home occupation at Section 220-51, with home occupations as a special permitted use in various zoning districts;

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of Milton, a majority thereof concurring, that the following revisions hereby by incorporated into Chapter 220 of the Town Code, entitled "Zoning."

Section 1. Amend Section 220-6 of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

220-6. Definitions.

HOME OCCUPATION

A. Any occupation, business, profession, enterprise or activity conducted entirely within either the dwelling or an enclosed accessory building, solely by one or more ~~members of a family on the premises~~residents of the dwelling unit, which is incidental and secondary to the use of the premises for dwelling, ~~provided that no commodity is stored or sold, except such as it is made on the premises, and there shall be no group instruction, assembly or activity and no outside storage or display material on the premises.~~ No more than 49% of the total floor area of the dwelling unit or 500 square feet, whichever is less, shall be used for such use. Within the above requirements, a home occupation includes but is not limited to the following:

- (1) Art or crafts studio.
- (2) The practice of cosmetology or barbering, limited to one chair.
- (3) Dressmaking, custom baking, day care or baby-sitting.
- (4) Professional office of a physician, dentist, lawyer, engineer, architect, accountant, draftsperson, cartographer, counselor, realtor, broker, clergy member, insurance agent, editor, publisher, journalist, psychologist, contract manager, construction contractor, landscape designer, surveyor, cleaning service provider, repair service provider for small items such as watches and computers, manufacturer's representative, travel agent, caterer or salesperson~~or salesman~~.
- (5) Private instruction limited to one or two pupils at a time.
- (6) Use of the address for licensing or receipt of mail related to the occupation, profession, enterprise or activity.

B. A home occupation, however, shall not ~~be interpreted to include~~ nursing homes, convalescent homes, rest homes, adult-care facilities, child-care facilities, businesses involved in the sale of any deadly weapon as defined in title 11, Chapter 2 of the Delaware Code, service/repair garages, kennels, stables, veterinary clinics or hospitals, clinics, funeral homes, undertaking establishments, bars, nightclubs, restaurants, tearooms, tourist homes, or similar establishments.

Section 2. Amend Section 220-51 of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

220-51. Home occupations.

~~Home~~ A. Permitted accessory use home occupation uses shall conform to the following standards which shall be minimum requirements:

- (1) The home occupation shall have only one customer, patron, or client on the premises at a time. The customer, patron or client visits shall be limited to the hours from 7:00 a.m. to 5:30 p.m. on weekdays, 8:00 a.m. to 3:00 p.m. on Saturdays, and no visits on Sundays.

- (2) For any home occupation that will involve on-premises customers, patrons, clients, or deliveries, the residence must meet the Town Code parking requirements and have one additional space.
- (3) No alteration shall be made in either the external structural form or the external appearance of either the dwelling or accessory building for purposes of any home occupation.
- (4) There shall be no signage.
- (5) No evidence of any home occupation shall be visible from off the lot where it is conducted, including an artist's artwork.
- (6) There shall be no displays of goods on the premises that are visible from a public street or adjacent properties.
- (7) Any vehicle used in conjunction with the occupation shall be in compliance with the provisions of Chapter 209 of this Code governing parking.
- (8) The occupation, business, profession, enterprise or activity is conducted entirely within either the dwelling or an enclosed accessory building. However, equipment or materials used in a home occupation may be stored in an enclosed accessory structure but then used in the dwelling.
- (9) All employees, independent contractors, workers and vendors of a home occupation shall be limited to permanent residents of the dwelling unit.
- (10) The operation of the home occupation, including equipment used therein, shall not create any noise, vibrations, heat, glare, electromechanical interference, dust, odors, or smoke discernible at any property line.
- (11) There shall be no use, storage, or creation of hazardous waste, including any highly flammable, poisonous, odorous or offensive-tasting material which would present a fire or chemical hazard or pollute the air or groundwater, such as gasoline, arsenic, phenol, etc.

B. Any home occupation that meets the definitional requirements of this Chapter but does not meet the requirements of Subsection A of this Section shall be a special permitted use.

~~A. No more than 25% of the total floor area of a dwelling unit or 500 square feet, whichever is less, shall be used for such use.~~

~~B. The use shall be carried on wholly within the enclosed walls of the dwelling unit or an accessory building.~~

~~C. No stock, merchandise, equipment or displays of any kind shall be visible from outside the dwelling unit or accessory building.~~

~~D. No external structural alternations which are not customary to a residential building shall be allowed.~~

~~E. The use shall not result in or cause vehicular traffic that will create a nuisance to abutting properties or be detrimental to the character of the neighborhood.~~

~~F. No article is sold or offered for sale except such as may be produced by members of the family residing on the premises. Any form of business, the primary function of which is the wholesale or retail sale of goods or articles at the premises, shall be deemed a commercial use and shall not be permitted as a home occupation.~~

~~G. Professional offices of a physician, dentist, lawyer, engineer, architect, surveyor or other like profession shall be subject to the following special conditions:~~

~~(1) The professional use is clearly incidental to the residential use of the dwelling and does not change its basic residential character.~~

~~(2) The occupation is practiced at home.~~

~~(3) There shall be no display of products visible from outside of the dwelling.~~

~~(4) There shall be no external alterations inconsistent with the residential character of the dwelling.~~

~~(5) There shall be no storage of materials or products outside of the dwelling unless completely housed.~~

~~H. No manufacturing, repairing or other mechanical work shall be performed outside of the dwelling. Such activity conducted inside the dwelling shall be conducted so that no noise, odor, glare, vibration, electromechanical interference or dust and smoke are perceptible beyond the property line.~~

Section 3. Amend Section 220-13(B) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

B. Permitted uses. Within the R-1 District, permitted principal, accessory and special uses shall be as specified in the following sections.

(1) Permitted principal uses.

(a) Agricultural uses.

(b) Detached single-family dwellings.

(c) Governmental uses.

(d) Public parks and noncommercial recreational uses.

(2) Permitted accessory uses, buildings and structures.

(a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district and on the same lot.

(b) Antennas, minor.

(c) Home occupations within Section 220-51A of this Chapter.

~~(d) Swimming pools.~~

(3) Special permitted uses. The following uses may be permitted in the R-1 Residential Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:

(a) Adult-care facilities.

(b) Bed-and-breakfasts.

(c) Cemeteries.

(d) Churches or places of worship.

(e) Funeral homes.

(f) Home occupations not within Section 220-51A of this Chapter.

(g) Libraries.

(h) Museums.

(i) Nonprofit membership clubs.

(j) Golf courses.

(k) Public or private schools.

(4) Public utilities or essential uses.

Section 4. Amend Section 220-14(B) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

B. Permitted uses. Within the R-2 District, permitted principal, accessory and special uses shall be as specified in the following sections.

(1) Permitted principal uses.

- (a) Detached single-family dwellings.
- (b) Semidetached single-family dwelling.
- (c) Governmental uses.
- (d) Public parks and noncommercial recreational uses.

(2) Permitted accessory uses, buildings and structures.

(a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district, and on the same lot.

- (b) Antennas, minor.
- (c) Home occupations within Section 220-51A of this Chapter.
- (d) Swimming pools.

(3) Special permitted uses. The following uses may be permitted in the R-2 Residential Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:

- (a) Bed-and-breakfasts.
- (b) Cemeteries.
- (c) Churches or places of worship.
- (d) Cluster housing.
- (e) Funeral homes.
- (f) Golf courses.
- (g) Home occupations not within Section 220-51A of this Chapter.
- (h) Libraries.
- (i) Museums.
- (j) Public utilities or essential uses.
- (k) Public and private schools.
- (l) Townhouses.

Section 5. Amend Section 220-15(B) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

B. Permitted uses. Within the R-3 District, permitted principal, special and accessory uses shall be as specified in the following sections.

(1) Permitted principal uses.

- (a) Detached single-family dwellings.
- (b) Governmental uses.
- (c) Multifamily dwellings.
- (d) Public parks and noncommercial recreational uses.
- (e) Semidetached single-family dwellings.
- (f) Townhouses.
- (g) Two-family dwellings.

(2) Permitted accessory uses, buildings and structures.

(a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district, and on the same lot.

(b) Antennas, minor.

(c) Home occupations within Section 220-51A of this Chapter.

(d) Swimming pools.

(3) Special permitted uses. The following uses may be permitted in the R-3 Residential Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:

(a) Adult-care facilities.

(b) Bed-and-breakfasts.

(c) Cemeteries.

(d) Churches or places of worship.

(e) Cluster housing.

(f) Day-care center.

(g) Golf courses.

(h) Home occupations not within Section 220-51A of this Chapter.

(i) Libraries.

(j) Museums.

(k) Nursery schools.

(l) Nursing and convalescent homes.

(m) Public or private schools.

(n) Public utilities or essential uses.

Section 6. Amend Section 220-16(B) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

B. Permitted uses. Within the T-C Town Center Use District, permitted principal, special and accessory uses shall be as specified in the following sections.

(1) Permitted principal uses.

(a) Antique and craft shops.

(b) Art galleries.

(c) Banks and financial institutions.

(d) Barber- and beauty shops.

(e) Colleges and institutions of higher education.

(f) Day-care centers.

(g) Detached single-family dwellings.

(h) Dry-cleaning businesses, dropoff and pickup service only.

(i) Dwelling units above first-floor businesses.

(j) General merchandise stores.

(k) General business offices.

(l) Governmental uses.

(m) Libraries.

(n) Museums.

(o) Newspaper and publishing facilities.

(p) Nonprofit membership clubs.

(q) Nursery schools.

- (r) Personal service establishments.
- (s) Photographic studios.
- (t) Professional offices.
- (u) Public or private schools.
- (v) Public parks and recreational uses.
- (w) Repair shops, nonvehicle.
- (x) Retail businesses and commercial uses of a convenience and pedestrian-oriented nature.
- (y) Theaters.
- (2) Permitted accessory uses.
 - (a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district, and on the same lot.
 - (b) Home occupations within Section 220-51A of this Chapter.
- (3) Special permitted uses. The following uses may be permitted in the T-C Town Center Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:
 - (a) Adult-care facilities.
 - (b) Amusement game centers.
 - (c) Antennas, minor.
 - (d) Bars and night clubs.
 - (e) Bed-and-breakfasts.
 - (f) Churches or places of worship.
 - (g) Convenience/mini-markets.
 - (h) Drive-in uses.
 - (i) Food stores.
 - (j) Funeral homes.
 - (k) Home occupations not within Section 220-51A of this Chapter.
 - (l) Hotels.
 - (m) Inns.
 - (n) Medical clinics.
 - (o) Parking lots, public and private.
 - (p) Parking structures.
 - (q) Public utilities or essential uses.
 - (r) Recreation areas, private.
 - (s) Research laboratories.
 - (t) Restaurants, standard and fast-food.
 - (u) Self-service laundries.
 - (v) Swimming pools.

Section 7. Amend Section 220-17(B)(2) and (3) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

- (2) Permitted accessory uses, buildings and structures.
 - (a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district, and on the same lot.

- (b) Antennas, minor.
- (c) Private parking lot.
- (d) Home occupations within Section 220-51A of this Chapter.
- (e) Swimming pools.

(3) Special permitted uses. The following uses may be permitted in the C-1 General Commercial Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:

- (a) Bars and nightclubs.
- (b) Bed-and-breakfasts.
- (c) Cemeteries.
- (d) Contractor yard.
- (e) Dwelling units above first-floor businesses.
- (f) Home occupation not within Section 220-51A of this Chapter
- (g) Garage service and repair uses.
- (h) Gasoline filling stations.
- (i) Gasoline/convenience/mini-markets.
- (j) Parking lots, public.
- (k) Parking structure.
- (l) Golf courses.
- (m) Mining and quarrying.
- (n) Public utilities or essential uses.
- (o) Retail businesses and commercial uses other than those listed above.
- (p) Self-service storage facilities.
- (q) Trucking terminal.

Section 8. Amend Section 220-18(B)(2) and (3) of the Town Code, with additions shown by underlining and deletions shown by strikethrough as follows:

- (2) Permitted accessory uses, buildings and structures.
 - (a) Accessory uses and structures customarily incident to any of the uses mentioned for this use district, and on the same lot.
 - (b) Antennas, minor.
 - (c) Home occupations within Section 220-51A of this Chapter.
 - (d) Swimming pools.

(3) Special permitted uses. The following uses may be permitted in the M-R Use District consistent with the provisions of this chapter and provided that a special use permit is approved by the Planning and Zoning Commission:

- (a) Antenna and towers.
- (b) Aquarium, commercial.
- (c) Antennas.
- (d) Bed-and-breakfasts.
- (e) Churches or places of worship.
- (f) Colleges and institutions.
- (g) Dwelling units above first-floor business.
- (h) Fabrication, maintenance and repair of watercraft.
- (i) Golf course.

- (j) Government uses.
- (k) Home occupation not within Section 220-51A of this Chapter-
- (l) Inns.
- (m) Hunting and Fishing supply sales.
- (n) Marine research facilities.
- (o) Marine fueling facilities.
- (p) Museums.
- (q) Public utilities or essential uses.

I, **MARION JONES**, Mayor of the Town of Milton, hereby certify that the foregoing is a true and correct copy of the Ordinance adopted by the Town Council of the Town of Milton at its meeting held on the ____ day of _____, 2014, following a duly noticed public hearing, at which a quorum was present and voting throughout and that the same is still in full force and effect.

MAYOR

SYNOPSIS

This Ordinance amends the Town Code's zoning to allow for certain home occupations as a permitted accessory use, rather than as a special permitted use. There are requirements within the definition of "home occupation" in Section 220-6. If, after meeting the definitional requirements, a home occupation fits the requirements of Section 220-51A, then the home occupation is a permitted accessory use. If the home occupation does not meet the additional requirements, then it remains subject to special permitted use approval.

THE TOWN OF MILTON PLANNING AND ZONING COMMISSION

IN RE:)
)
AN ORDINANCE TO AMEND)
CHAPTER 220 OF THE TOWN CODE,)
ENTITLED "ZONING," RELATING TO)
HOME OCCUPATIONS.)
)

ADVISORY REPORT

To: Mayor and Town Council
115 Federal St.
Milton, Delaware 19968
cc: Code Enforcement Officer

Pursuant to Milton Town Code Section 220-99, the Planning and Zoning Commission shall report in writing its recommendations on any proposed amendments of the regulations or districts under the Town Zoning Ordinance (codified as Town Code Chapter 220) to the Town Council and the Code Enforcement Officer.

I. ISSUES CONSIDERED

Improved definition of "home occupation"

Division into categories of automatically permitted accessory uses and special permitted uses

Inclusion of a list of uses not eligible for home occupations

II. RECOMMENDATION

For the reasons stated herein and on the record at a duly noticed meeting on February 26, 2014 the Commission voted 5-0 to recommend **APPROVAL** of the above-captioned proposed ordinance.

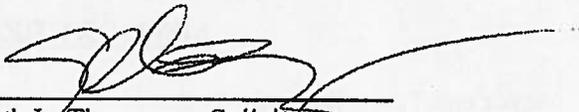
III. REASON(S) FOR RECOMMENDATION

The "automatically" permitted accessory uses do not interrupt the residential nature of the zone. This is important, since there will not be public and neighbor input.

For the non-"automatic," the ordinance retains the liberal ability to get a home occupation special permitted use, but preserves that process, including public and neighbor input.

The change to the special permitted use jurisdiction from Planning and Zoning to the Board of Adjustment fits with the more traditional role of Board of Adjustment.
As an additional recommendation, the Council should consider a tiered fee system, with certain home occupations having a lower fee, such as \$10, if the use is purely as pass-through use.

Respectfully Submitted,



Seth L. Thompson, Solicitor

**Planning and Zoning Commission
February 26, 2014 – 6:30 pm
Milton Library – 121 Union St**

**Transcribed by: Helene Rodgville
[Minutes are not verbatim]**

1. Call to order – Lynn Ekelund

2. Roll call of members

Virginia Weeks	Present
Linda Edelen	Present
Tim Nicholson	Present
Mark Quigley	Present
Lynn Ekelund	Present

3. Additions/Corrections to agenda

Lynn Ekelund: Are there any additions or corrections to the agenda? Hearing none, I have an agenda item memo from Robin Davis dated 2/19/14 stating that Item 6.b. of the agenda, ordinance to amend Chapter 174 of the Town Code relating to the residency restrictions of sex offenders has been postponed indefinitely. Is that correct, Seth?

Seth Thompson: That is. The issue is going to be taken up we understand by the State legislature, so they're potentially going to enact a Bill or at least introduce a Bill; we'll see if it passes that will presumably have an effect as to whether or not a town such as Milton can have these Ordinances that differ from the State Code, or if they are allowed to have them, if there are some restrictions put on towns at the State level. So it would really be premature to go forward at this point.

Unfortunately, we could be in the position where all the effort is essentially wasted, if the State Legislature says Towns can't have these, you just are left with the State Code or if they put on restrictions that anything we would suggest at this level and the Council would approve at it's level, could potentially have to be redone anyway, depending on what those restrictions are.

4. Approval of agenda

Lynn Ekelund: Okay, thank you. Hearing that, can I have a motion to amend the agenda to reflect the indefinite postponement of Item 6.b.

Linda Edelen: So moved.

Mark Quigley: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion is carried.

5. Approval of minutes – November 19, 2013 & January 15, 2014

Lynn Ekelund: Can I hear a motion to approve the November 19, 2013 minutes?

Mark Quigley: I move to approve.

Linda Edelen: Second.

Lynn Ekelund: All in favor say aye. Opposed. Motion is carried. Can I have a motion to approve the January 15, 2014 minutes?

Linda Edelen: I move to approve the minutes.

Tim Nicholson: Second.

Mark Quigley: It's okay.

f. Ordinance to amend Chapter 220 of the Town Code, entitled "Zoning" relating to Home Occupations

Lynn Ekelund: Last item.

Seth Thompson: I had circulated a draft. I really have to say in going through and reading the minutes, I thought that the Commission really thought through this with a great, great deal of foresight, but also real consideration for it. I received a couple of comments from Ginny afterwards, so I put them in and I received one comment from Robin, so I put them in that bold type again for you to consider. If you look at the one in front of you, Robin brought up the issue of people that use don't really occupy or use a home occupation to see anyone or do anything, other than they use it as a mailing address for their business. So I put in number 6 on page 2 there as part of the definition of home occupation and this is really just another one of the examples, use of the address for licensing or receipt of mail related to the occupation, profession, enterprise or activity. The intent there is if somebody has a business, but it's not something they do at their home. It's really a business where they go on-site and work with clients elsewhere, but they use their home as their business address, their business mailing address for licensing purposes or receiving mail. I don't know what the Commission thinks about that, but that would be one way we could spell that out.

Virginia Weeks: I think we discussed that. That would be like a realtor, who has his/her business and her brokerage in her home, but doesn't really receive anybody, doesn't do anything and uses it just where he/she keeps their businesses run out of Milton, or a construction guy; although he may not be building houses in Milton, he's running his business from Milton and from an address.

Seth Thompson: Right. Exactly.

Linda Edelen: Isn't this even less than that?

Seth Thompson: It really is even less. Again, it's one of the other examples of what would be included in a home occupation. The net affect, if you recall, we kind of set up a two-tiered system, where under both tiers you have to meet that definition of home occupation. Then if it's a home occupation where only one customer, patron or client comes at a time and there's no alteration, then it's that automatically permitted use. All those requirements under 220-51(a), then there would be that automatically permitted accessory use. If they don't fit within that, then they would still be a special Permitted Use. We're just adding this in as a definition of a home business. Somebody knows that if they're only receiving mail there, but they're not having more than one customer come to them, then they should be okay to file their business application with the Town and ask for a home occupation.

Tim Nicholson: I have a question regarding this. What if somebody has an LLC and they have property parked in there and that LLC's information is being sent to an address in Milton?

Seth Thompson: When you say property parked there...

Tim Nicholson: For protection purposes, asset protection; where the LLC is the owner of the property.

Seth Thompson: When it comes to an LLC, somebody might title the vehicle in the LLC's name. Obviously, people use that as a means of protecting assets. You're right. For the most part, it's probably to protect the home that those assets, in your example, are in? So that if

there's some sort of liability that it's just limited to the LLC property.

Tim Nicholson: So does that fall under this? How does that work?

Seth Thompson: We'd have to start with the definition, so I guess the initial question is, whether they're conducting an activity within the dwelling or an enclosed accessory building; it's incidental or secondary to the use of the building; that's related to an occupation, business, profession, enterprise or an activity. I think under your example, they're in essence, storing something there is what you're saying.

Tim Nicholson: Right. There's no actual activity.

Seth Thompson: Normally when somebody stores something, at some point, they then move it. Do you know what I mean? I'm having a difficult time envisioning a scenario where somebody has property that's in an LLC, but they're just keeping it in a house and they're not selling it, they're not using it for any other business purpose.

Tim Nicholson: Right. So it sounds like it would not be included in this.

Seth Thompson: Yeah, I think it's difficult to say they're engaged in a business activity, if they're purely just keeping it there.

Tim Nicholson: Right.

Seth Thompson: I'm trying to think of a business that would do that. Is there a business of... Linda, you looked like you had a question.

Linda Edelen: I don't know why I did that. Well it's a static thing, storing something, but it's related... I don't know.

Tim Nicholson: Storage, relative to paper. It's a mechanism that people use.

Seth Thompson: I guess I would view if it's just paper, if it's just information, it's akin to getting mail, right? Is that fair to say?

Tim Nicholson: Right.

Linda Edelen: Do you have an example of somebody who's doing that?

Tim Nicholson: Maybe the Mayor has her properties in an LLC, for an example.

Seth Thompson: Oh, you mean the house is titled to an LLC?

Tim Nicholson: Yes.

Seth Thompson: I'm sorry. I thought... The definition of the home occupation doesn't really depend on how the house is titled, it's really whether there's a use in addition to the use as a residence. It wouldn't hinge on... Because a lot of people put a home in trust, for instance, as they get older, but that wouldn't automatically equate to a home occupation. No, the ownership...

Tim Nicholson: So it would not fall within this?

Seth Thompson: It wouldn't really matter. Just like if it's some other occupant's, that's not an owner, but a friend or a relative that's living in the property and they're using that property for something that would qualify under our home occupation. That's going to trigger it as well, so it's not title dependent, if that makes sense.

Mark Quigley: Maybe just because the LLC, a Limited Liability Company, sounds like a company and if the mail is triggered that way and it's on the tax record... you know.

Seth Thompson: Right. I think it's important to just focus on the use of the property. How is that property being used? It doesn't matter if it's being used by the owner of the LLC. I'm trying to think of a scenario where that would come into play. Did we reference family members at one point? No, we removed that, because that did seem a little bit odd, so it says if the activity is conducted solely by one or more resident's of the dwelling unit. That, even further, emphasizes the fact that it's not an owner; the ownership doesn't matter. It's a very

practical... who's living there and how are they using that property, in addition to using it as a residence. Ginny had asked... her language was something about auto repair...

Virginia Weeks: Auto repair, machine repair, you know...

Mark Quigley: Garage repair service?

Seth Thompson: Right. So I used one of the defined uses from our Code. I put in service/repair garages. The machine... there wasn't anything that jumped out at me from your defined uses, as far as the machine works and it is difficult, because when we start talking about machines, I know at one point we discussed somebody repairing watches, because that's one of the items that we mentioned repair service providers for small items, such as watches and computers. Obviously a computer is a machine. I think the auto repairs... I understand you not wanting somebody to be...

Virginia Weeks: I don't see how it could be done inside a building; the building would have to be mammoth or secondly, they would be doing it on the outside and then storing everything inside.

Seth Thompson: We do allow them to use the enclosed accessory building.

Virginia Weeks: You're not going to run a car in an enclosed accessory building.

Tim Nicholson: Unless you want to die.

Linda Edelen: But a lawnmower or a snow blower, small machines.

Seth Thompson: That would fall under our small items.

Mark Quigley: Isn't that part of what we referenced from Lewes, their Code.

Seth Thompson: Let me take a look. I brought that. Lewes references repair services, watches, clocks, small appliances, computers, electronic devices and then, I think, as one of their items that you cannot have... I thought that they had put in there auto repair, but they didn't. Anyway, that was one of Ginny's suggestions, so I just put it in the draft Ordinance so that you could review it and see if you thought it made sense. I can give you the definition from your Zoning Code of what the service/repair garage is, as well. It's a building or premises used for the repair of motor vehicles, including painting, detailing, cleaning and the sale of related parts and accessories. A junkyard or auto salvage yard is not to be construed to mean or be the same as a garage. This is one of those examples, if somebody's working on their car in their own garage, I wouldn't think of that as a home occupation. I think it needs to be... because you're not going to fall under the occupation, business, profession, enterprise or activity and I don't want to tie it just to profit, but I assume that the Commission doesn't want the Code to be interpreted to apply to people doing work for themselves. I think the concern is more, doing it for a profit. Having those things happen on a consistent basis.

Tim Nicholson: Right.

Linda Edelen: So what are we doing with that language? It seemed like it was quite broad the way you read it.

Seth Thompson: To fix it, we're dealing with home occupations here.

Linda Edelen: I'm fine. I'm fine.

Virginia Weeks: The only other thing that I thought of and probably doesn't mean much, is if home occupations are on State streets, what are they going to have to do with approvals from the State.

Seth Thompson: It's one of those things that we don't have jurisdiction over it, so we can't really control. The only thing we can control is our zoning approval, but if the State comes along and says if you want to use that as some accessory, commercial use, you're going to

have to put in a parking lot or put in a DeIDOT entrance and that's what they're going to have to do.

Virginia Weeks: Is the Town going to require that if there's a change in use on a State street, that the person get permission from the State before they can do that, Robin? So if somebody wanted to be licensed to make wedding cakes in their home, they would have to go to the State and get permission if their house is on Union Street?

Robin Davis: Yes, that is correct.

Virginia Weeks: We need to make that abundantly clear to people.

Seth Thompson: Does the State offer waivers for people that aren't going to have customers visiting the property?

Robin Davis: I don't know that. I think so, but I don't know that. They might have a letter of no objection, but you still have to go before them and fill out some sort of paperwork.

Seth Thompson: But the bottom line is, we can't control it.

Robin Davis: Correct. We just require that some sort of paperwork from DeIDOT prior to issuing a business license. Yes.

Virginia Weeks: Okay, thank you.

Seth Thompson: Since we dealt with the ordinance changing things from Planning and Zoning to Board of Adjustment, that's the other change that you see in this draft.

Tim Nicholson: Right.

Lynn Ekelund: Do we have any more discussion on the ordinance to amend Chapter 220 of the Town Code, entitled "Zoning" relating to Home Occupations?

Tim Nicholson: You have my motion.

Linda Edelen: Second.

Lynn Ekelund: Roll call vote please:

Virginia Weeks	Yes
Linda Edelen	Yes
Tim Nicholson	Yes
Mark Quigley	Yes
Lynn Ekelund	Yes

Lynn Ekelund: Motion passes.

Seth Thompson: We need to go over the Advisory Report. As far as issues considered, I would say taking the broader view, the question was are there some home occupations that are appropriate as an automatically permitted accessory use and obviously, based on the ordinance, the answer has been yes, but then there are others that still should go through that special Permitted Use requirement.

Virginia Weeks: So we define the parameters of what would be acceptable.

Seth Thompson: Speaking of definitions, I suppose we also came up with a better definition of home occupation, so we started with that and then divided those home occupations into the automatically permitted accessory and then the special Permitted Use.

Lynn Ekelund: And I think we added a couple of occupations that we felt should not be home occupations at all.

Seth Thompson: That's right and that's actually an interesting... I thought that was a good addition that these certain uses are just not eligible to be considered home occupations.

Mark Quigley: What did we actually with the fee regarding that?

Seth Thompson: This is something that we can put as an additional recommendation. You guys did discuss, potentially, what tiering the fee. That wouldn't be in this. That would be in the Fee Schedule, but tiering the fee for certain home occupations that aren't intrusive as a cheaper fee vs. the ones that fall into the other category and require a little bit more examination. I don't know if you want to just note that as something that you would recommend to Council, that when they review the Fee Schedule...

Linda Edelen: We made that recommendation.

Seth Thompson: I think the problem is it's not an issue considered when it comes to the ordinance; but it is an additional item that we could note. Is that a fair summary of what you were thinking that certain home occupations should have a lower fee?

Mark Quigley: I remember, myself, I said the ones that are just pass-through basically have a fee of maybe only \$10 and the others will follow the normal Fee Schedule.

Linda Edelen: At least if the _____ are given some consideration.

Seth Thompson: Okay. Any other reasons for the recommendation? Obviously, this issue has been floating around for a period of time, since really I think the genesis was there was a list of people that have licenses for businesses, but aren't approved as home occupations or didn't want to go through the special Permitted Use process.

Virginia Weeks: That we tried to define the parameters of a home occupation that could be automatically permitted, but at the same time did not interrupt the residential identity of the zone or the district.

Lynn Ekelund: I think, at all times, at least I was cognizant and I know Ginny was cognizant of the fact that, it is a privilege to have an occupation, whether it's a home occupation or not, in a residential district and while we wanted to be as liberal as possible, we still wanted to make sure that the impact of any of the home occupations was not going to be detrimental to the residential nature of the neighborhood.

Virginia Weeks: And that if it is going to be a pass-through, it's not requiring that the resident's around it know that this is going to happen, therefore, that's why it has to be totally unobtrusive.

Seth Thompson: I think that's a very valid point that the special Permitted Use process, the neighbor's are going to get their say vs. if something is automatically permitted as an accessory use, there isn't going to be that hearing. I think that's a very valid point. Anything else?

Linda Edelen: I think you did a good job of meshing that. That was tough.

Seth Thompson: The home occupation? I didn't do it, you guys did it.

Linda Edelen: Well we did it, but you did it.

7. Adjournment

Lynn Ekelund: Can I hear a motion to adjourn?

Linda Edelen: Move to adjourn.

Tim Nicholson: Second.

Lynn Ekelund: All in favor say aye. Opposed. Meeting adjourned at 8:39 p.m.