

DOCKET ITEM #4
Zoning Text Amendment #2022-00008
Zoning Practical Updates #5

Issue: (A) Initiation of a text amendment and (B) public hearing and consideration of a text amendment to the zoning ordinance to amend various sections of Article II to correct technical errors, to clarify open space and floor area regulations as related to accessory structures and to define principal building; to amend section 7-103 to allow certain accessory structures forward of a front building wall for non-residential lots; to amend sections 7-301 and 12-213 to clarify language related to home occupation limitations; to amend section 7-902 to clarify language related to zone transition setbacks; to amend section 11-1302 to specify what is authorized by special exception approval and to amend section 12-102 to correct a technical error related to residential reuse.	Planning Commission Hearing:	June 7, 2022
	City Council Hearing:	June 18, 2022
Staff: Tony LaColla, AICP, Division Chief – Land Use Christina Zechman Brown, Deputy City Attorney Mary Christesen, Zoning Manager Sam Shelby, Urban Planner		

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I. Issue

The existing Zoning Ordinance dates to 1992. City Council has approved numerous changes to various sections of the Zoning Ordinance over time. In applying the Zoning Ordinance, staff has identified errors and inconsistencies that warrant amendments. In addition, staff interpretations are often needed to provide clarity in the application of the Zoning Ordinance. These interpretations require codification within the Zoning Ordinance.

The purpose of the proposed zoning text amendments is to amend various sections of the City's Zoning Ordinance to correct errors, modernize and update regulations to accommodate changes in practices and codify on-going staff interpretations. The following is a summary list of the proposed zoning changes discussed in detail in this report with the specific text changes shown in Attachment 1.

(A) Technical errors

- Alphabetize and group similar terms together
- Reinsert limitation on number of special exceptions permitted per lot that was unintentionally deleted under previous amendments
- Reinsert resident home occupation requirement
- Correct cross-reference for noncomplying structures
- Delete abatement of noncomplying home occupation section

(B) Amend definitions

- Amend principal building definition
- Codify staff interpretation that pergolas meeting certain standards do not count as floor area or against minimum open space requirements
- Codify staff interpretation that fences, walls and trellises meeting certain standards do not count against minimum open space requirements

(C) Accessory Uses and Structures

- Allow accessory structures forward of a front building wall facing a primary front yard for certain non-residential uses
- Clarify home occupation limitations

(D) Zone Transition Setback

- Clarify that only commercial or industrial buildings must meet zone transition setbacks

II. Background

The current Zoning Ordinance has been amended over 200 times since it was adopted in 1992. Over the last 30 years, staff recommended, and City Council approved many zoning text amendments to keep the Zoning Ordinance current with present-day land use planning strategies and principles. Among these amendments include “practical updates,” which address unintended consequences, correct typographical errors, clarify meaning and codify staff interpretations. These practical updates do not include substantive changes to the Zoning Ordinance that would alter its intent or purpose.

Since September 2022, when City Council approved the last round of practical updates, staff has identified additional issues and recommends the following amendments to the Zoning Ordinance, in section III, below.

III. Discussion of Proposed Text Changes

(A) *Technical Errors*

Staff has identified typographical errors, unintentional omissions and opportunities to add clarity within the Zoning Ordinance. Staff proposes the following amendments.

- (1) *Alphabetize and group similar terms together.* Staff proposes reordering certain, similar terms in Article II – Definitions. For example, the Zoning Ordinance defines average pre-construction **grade**, average finished **grade** and curb **grade**. Because these terms are organized alphabetically, they are not grouped together in Article II. Staff recommends amending these terms so the noun (grade) is placed before the type of grade (average pre-construction, average finished or curb). For example, “average pre-construction grade” would be changed to “grade, average pre-construction”. Other terms related to structure, building and use would also be grouped together under this proposal.
- (2) *Reinsert limitation on number of special exceptions permitted per lot.* In previous text amendments, language was inadvertently removed which limited special exception approvals. This language limits a lot or dwelling to one approval for each of the listed special exceptions. For example, a dwelling could receive approval for a special exception for a front porch and another for an accessory dwelling unit. It may not, however, receive approval for two special exceptions for a front porch.
- (3) *Reinsert resident requirement for home occupations.* In previous text amendments, language was inadvertently removed which required operators of home occupations to be bona fide residents. Staff recommends the reinsertion of this requirement.
- (4) *Correct cross-reference for noncomplying structures.* Section 12-102(D) was inadvertently not updated when the King Street Retail Strategy was adopted and the KR zone established by City Council. Staff recommends amending this provision so that the correct zone, KR, is referenced.
- (5) *Delete abatement of noncomplying home occupation section.* In a previous text amendment, City Council allowed for a maximum of two, nonresident employees to report to a home-based business “home occupation.” At the time, staff inadvertently overlooked the deletion of section 12-213, which requires home occupations with nonresident employees to apply for special use permit approval. To make the Zoning Ordinance consistent, related to home occupation limitations, staff recommends deleting this section.

(B) *Amend definitions.* Staff determined that updates to definitions were necessary codify staff interpretations and increase language consistency:

- (1) *Amend “Principal or main building” definition.* The existing definition for this term includes the word “main” in its title, which is not repeated in its definition nor the definitions for principal structure or use. Staff recommends deleting the word “main.”
- (2) *Codify staff interpretations on the regulations of certain accessory structures.* Although the Zoning Ordinance does not specify this, staff has permitted pergolas, walls and fences meeting certain criteria to be excluded from open space calculations. Staff has also allowed these pergolas to be excluded from floor area calculations. Staff recommends amendments to the floor area and open space definitions. These amendments would specify that pergolas in accordance with Zoning Ordinance section 7-202(A)(5) shall be excluded from floor area. They would also specify that fences or

- walls do not reduce open space on a lot nor do pergolas or trellises in accordance with 7-202(A)(5).
- (C) *Accessory Uses and Structures.* Staff recommends the following amendments to remove unintended consequences related to accessory structures and to codify staff interpretations on home occupation limitations.
- (1) *Allow accessory structures forward of a front building wall for non-residential lots.* Section 7-103(A) prohibits accessory structures forward of a front building wall facing a primary front yard for all properties. This prohibits schools from having playgrounds, fences and other similar accessory structures located in otherwise reasonable locations. Staff recommends continuing to prohibit accessory buildings but to allow accessory structures forward of a front building wall facing a primary front yard for non-residential properties.
- (2) *Clarify home occupation limitations.* Section 7-301 establishes additional home occupation use limitations that apply to “contractor or service” businesses only. Staff recommends requiring all home occupations to comply with these use limitations. Staff also recommends deleting the prohibition of up to two on-site, nonresident employees for contractor or service businesses to make the home occupation limitations consistent for all home occupations.
- (D) *Zone Transition Setback.* Section 7-902(B) currently requires a residential building within a commercial zone to comply with the zone transition setback. Because the purpose of this provision is only to require commercial buildings to provide additional setbacks, staff recommends amending this provision. The amendment would continue to require commercial or industrial buildings to provide the zone transition setback but would exempt residential buildings. The CL, CC, CSL, CG, CD, CD-X, OC, OCM(50), OCM(100) and OCH zones all specify lot requirements and bulk/open space regulations with confusing language that has raised interpretation questions among staff, applicants and the public. Staff proposes amending this language to clarify these questions to ensure proper enforcement of these regulations. Staff’s proposed changes would clarify how lot requirements and bulk/open space regulations apply to mixed-use properties in these zones.

IV. Recommendation

Staff recommends that the text amendments contained in Attachment 1, be initiated and recommends approval of each of the attached Zoning Ordinance text changes.

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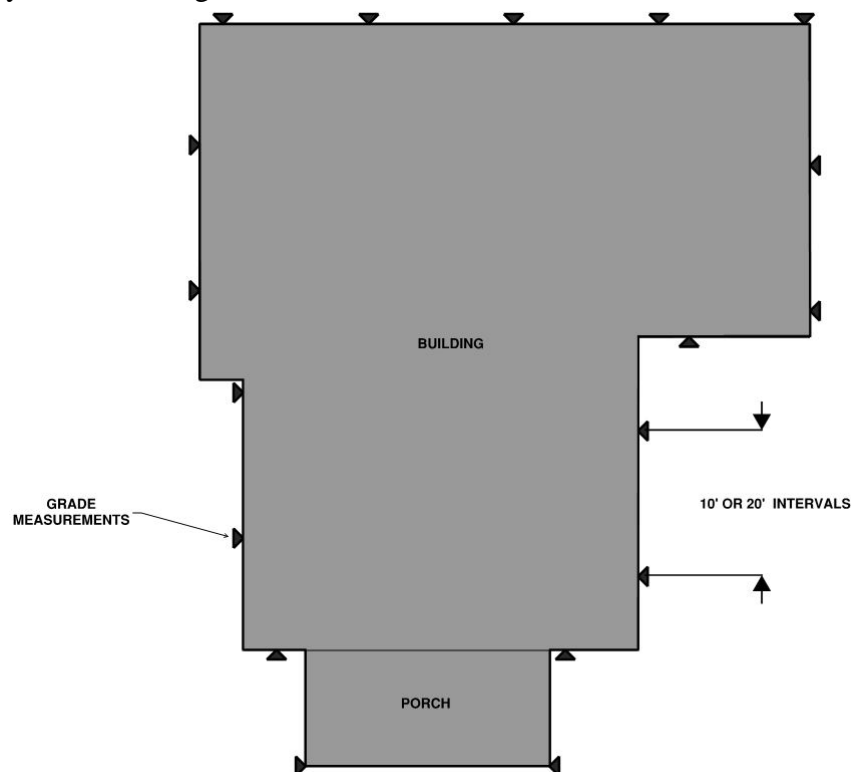
Attachment #1

2-104 – **Reserved.** Accessory use.

~~A use which is clearly subordinate to and serves a permitted principal use; and is subordinate in area, extent and purpose to the principal use served. An accessory use generally occupies less than 33 percent of the principal use gross floor area and does not change the character of the principal use.~~

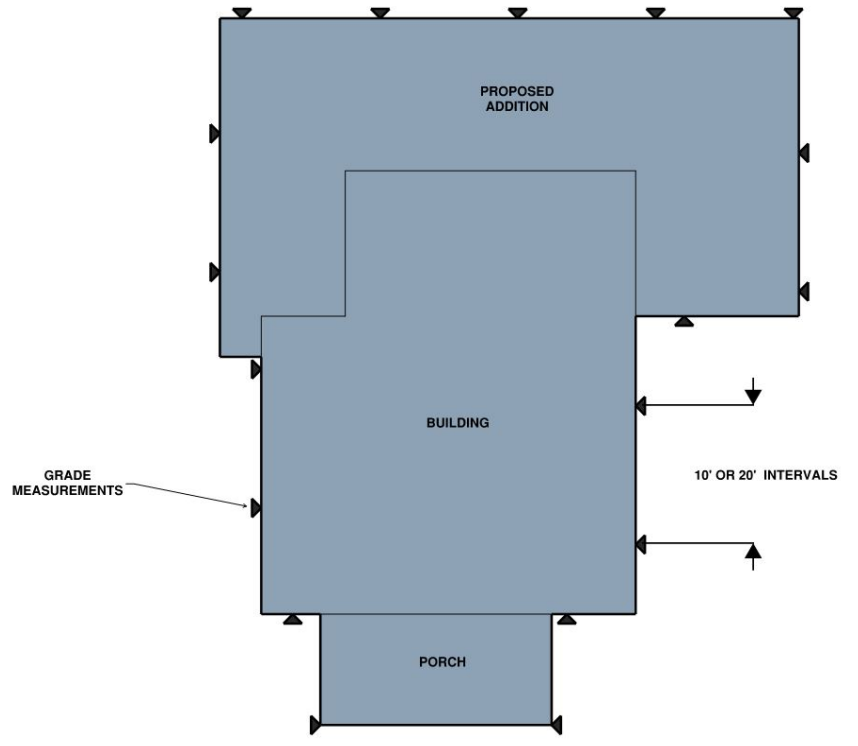
2-119 **Reserved.** Average finished grade.

~~The elevation obtained by averaging the finished ground surface elevation at intervals of ten feet at the perimeter of a single, two family or townhouse dwelling and intervals of 20 feet at the perimeter of any other building.~~



2-119.1 Average pre-construction grade.

~~The elevation obtained by averaging the ground surface elevation at intervals of ten feet at the perimeter of an existing or proposed single, two family or townhouse dwelling and intervals of 20 feet at the perimeter of any other building prior to construction. For accessory buildings less than 250 square feet, there shall be at least four ground surface elevations spaced at fixed intervals around the perimeter of an existing or proposed accessory building.~~



2-123.2 – Building, principal or main.

A building in which the principal use of the lot on which the building is located is conducted.

2-132 – Reserved Curb grade.

~~The elevation of the established curb in front of a building measured at the midpoint of the frontage of such building. Where no curb exists, the director of transportation and environmental services shall establish the curb grade for the existing or proposed street in accordance with the existing master street grading plans of the city.~~

2-145 Floor area.

- (A) For residential dwellings in the R-20, R-12, R-8, R-5, R-2-5, and single-family and two-family dwellings in the RA and RB zones (not including property located within the Old and Historic Alexandria and Parker-Gray Districts), the floor area of the building or buildings on a lot or tract of land (whether "main" or "accessory") is the sum of all gross horizontal areas under roof on a lot. These areas shall be measured from exterior faces of walls or any extended area under roof and are to be measured from the shared lot line in the case of party walls. Floor area with a ceiling height 15 feet or greater shall be counted twice. Floor area with a ceiling height 25 feet or greater shall be counted three times. This space shall be based on permanent construction whether or not provided with a finished floor or ceiling. Excluded from floor area shall be:

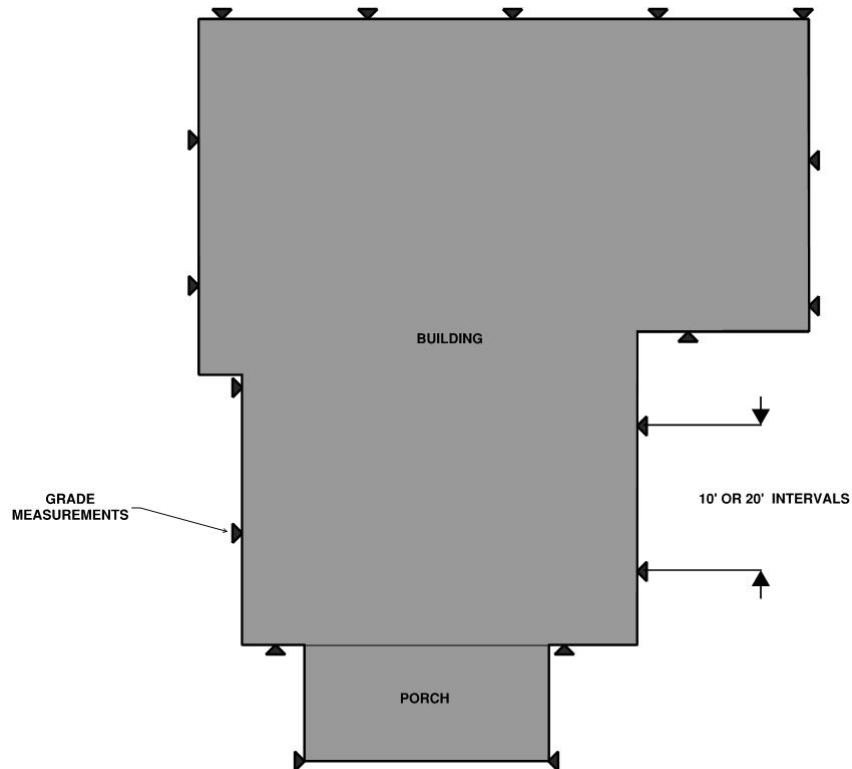
(13) Pergolas in accordance with 7-202(A)(5).

- (B) For properties except for those specified in subsection (A), above, the floor area of the building or buildings on a lot or tract or tract of land (whether "main" or "accessory") is the sum of all gross horizontal areas under roof on a lot. These areas shall be measured from the exterior faces of walls or any extended area under roof and are to be measured from the shared lot line in the case of party walls. This space shall be based on permanent construction whether or not provided with a finished floor or ceiling. Excluded from floor area shall be:

(16) Pergolas in accordance with 7-202(A)(5).

2-150.2 Grade, average finished.

The elevation obtained by averaging the finished ground surface elevation at intervals of ten feet at the perimeter of a single, two-family or townhouse dwelling and intervals of 20 feet at the perimeter of any other building.

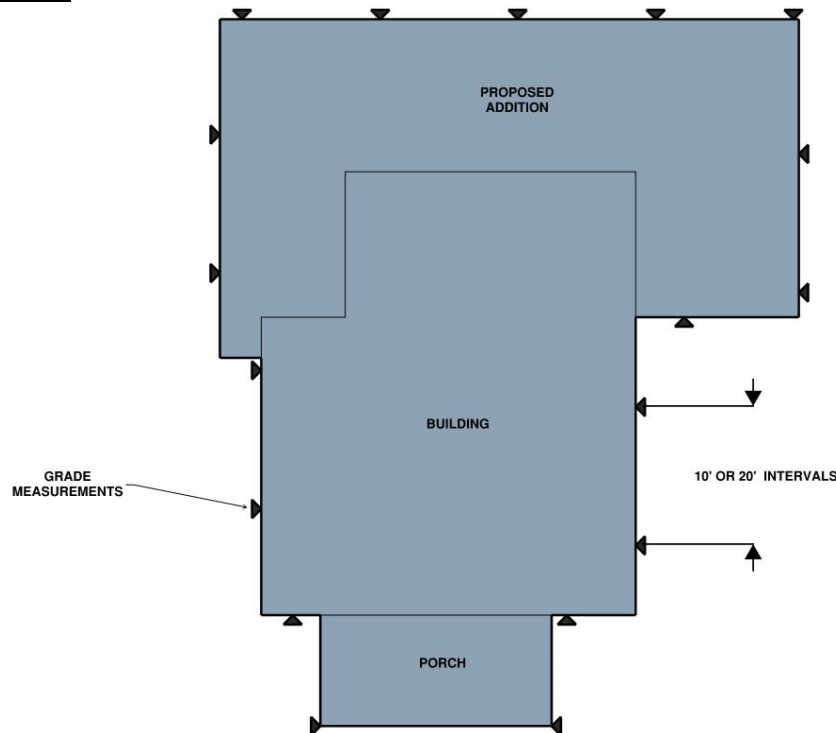


See average finished grade.

2-150.3 Grade, average pre-construction.

The elevation obtained by averaging the ground surface elevation at intervals of ten feet at the perimeter of an existing or proposed single, two-family or townhouse dwelling and intervals of 20 feet at the perimeter of any other building prior to construction. For accessory buildings less than 250 square feet, there shall be at least four ground surface

elevations spaced at fixed intervals around the perimeter of an existing or proposed accessory building.



See average pre-construction grade.

2-150.4 – Grade, curb

The elevation of the established curb in front of a building measured at the midpoint of the frontage of such building. Where no curb exists, the director of transportation and environmental services shall establish the curb grade for the existing or proposed street in accordance with the existing master street grading plans of the city.

2-180 Open and usable space. That portion of a lot at ground level which is:

(C) Unoccupied by principal or accessory structures except for fences, walls, or trellises and pergolas in accordance with 7-202(A)(5);

(D)(C) Unobstructed by other than recreational facilities; and

(E)(D) Not used in whole or in part as roads, alleys, emergency vehicle easement areas, driveways, maneuvering aisles or off-street parking or loading berths.

2-184 – **Reserved.** ~~Principal or main building.~~

~~A building or structure in which the principal use of the lot on which the building is located is conducted.~~

2-185 – **Reserved.** ~~Principal use.~~

~~The primary or main activity for which a lot is used as distinguished from an accessory use.~~

2-197.3 – Structure, principal ~~Reserved.~~

A structure which serves the principal use of the lot as distinguished from an accessory structure.

2-200.2 – Use, accessory.

A use which is clearly subordinate to and serves a permitted principal use; and is subordinate in area, extent and purpose to the principal use served. An accessory use generally occupies less than one-third of the gross floor area of the principal use and does not change the character of the principal use.

2-200.3 – Use, principal.

The primary activity for which a lot, structure or building is used, as distinguished from an accessory use.

Sec. 7-100 – Accessory buildings, uses and structures.

Accessory buildings, uses and structures shall be permitted, but only in connection with and incidental to a permitted principal building, use or structure and in compliance with the restrictions of this section 7-100.

7-103 Building, use and structure limitations.

The following limitations apply to accessory buildings, uses and structures:

- (A) **For residential uses only,** no accessory building, use or structure shall be located forward of a front building wall facing a primary front yard except as provided in sections 7-202(A) and 7-202(E). **For all other uses, no accessory building shall be located forward of a front building wall facing a primary front yard except as provided in section 7-202(A).**

Sec. 7-300 Home occupations.

Home occupations are permitted in residential dwellings subject to the following limitations.

7-301 Use limitations.

- (A) Up to two employees are permitted on site **provided that only those persons who are bona fide residents of the premises may obtain a business license to operate the home occupation pursuant to section 7-304.**

- ~~(M) For contractor or service business, in addition to the other requirements of this section 7-300, the following additional limitations apply:~~

- ~~(1) No employees, other than persons legally residing on the premises, shall report to work at a residential location other than a job site.~~

- ~~(2)~~ Not more than one commercial vehicle having a capacity not greater than one ton shall be parked on the property and then only in accordance with applicable regulations of this ordinance.

- ~~(N)(3)~~ No contracting equipment or materials shall be stored on the premises, except in a commercial vehicle used for transporting said equipment and materials between jobs, and no loading or unloading shall be done on or in the vicinity of the premises.

Sec. 7-900 Provisions applying at lines of zone change.

7-902 Setback requirements.

- (B) Front yards. ~~Where~~ **A commercial or industrial building property within** ~~in a commercial or industrial zone, is directly across a street from property in a residential zone, shall provide the minimum front yard~~ ~~the front yard setback shall be the front yard setback required of the residential zone.~~

***Sec. 11-1300 Special exception.

11-1302 Special exception established.

A lot developed with a single family, two family, or townhouse dwelling may be the subject of a special exception from the following zoning requirements pursuant to this section 11-1300:

- (A) Fences on corner lots **provided that nothing in this subsection shall be deemed to authorize the approval of more than one special exception per lot under the provisions of this subsection.**

- (B) Yard and setback requirements for enlargement of a dwelling, as follows:

- (3) Nothing in this subsection shall be deemed to authorize the extension or enlargement of a single family, two family or townhouse dwelling beyond the maximum height or floor area ratio permitted by the zone in which such dwelling is located nor to authorize the approval of more than one special exception per dwelling under the provisions of this subsection.**

12-102 Noncomplying structures.

Noncomplying structures shall be permitted to continue indefinitely and shall be considered legal structures, but subject to the following restrictions:

- (D) Residential reuse. A building which faces the unit through 1400 block of King Street and which is a noncomplying structure because it exceeds the floor area ratio of the **KRCD** zone, may be converted from nonresidential to same residential use, notwithstanding any requirement of the **KRCD** zone applicable to residential uses, provided that a special use permit is approved to allow such conversion.

12-213 – **Reserved.** ~~Abatement of certain home occupation uses.~~

- ~~(A) A home occupation accessory use, in connection with which there occurs any on-site participation, employment or use of labor from persons who are not bona fide, full time residents of the dwelling, shall be categorized as an illegal use under this ordinance and prior law, and all such participation, employment or use of labor shall cease within 30 days of any written order issued by the director pursuant to sections 11-204 or 11-206, and such use shall thereafter comply with the requirements of section 7-300 of this ordinance.~~
- ~~(B) Notwithstanding the provisions of subsection (A), a home occupation accessory use, otherwise subject to subsection (A), which existed on June 24, 1992, may apply for an abatement special use permit pursuant to this subsection, provided that application therefor is filed within 60 days of April 17, 1993. In addition to any other provisions of law:~~

- ~~(1) The applicant for such permit shall be a natural person who shall have been a bona fide, full time resident of the dwelling since June 24, 1992.~~
- ~~(2) The permit may be issued only to the named applicant as permittee, and shall not be alienable or transferable in any manner.~~
- ~~(3) The permit shall expire, and the home occupation shall cease or revert to compliance with section 7-300, within the time specified in the permit and, in any event, at the earlier of such specified time or such time as the permittee ceases to be a bona fide, full time resident of the dwelling. The uninterrupted absence of the permittee from the dwelling for a period of 60 days or longer shall create a rebuttable presumption that bona fide residence has ceased.~~
- ~~(4) In addition to any other conditions imposed, the following shall be required conditions of the permit:~~
 - ~~(a) No intensification of the use as it existed on June 24, 1992, and as described in the permit application shall be permitted at any time.~~
 - ~~(b) No advertising of the home occupation by television, radio or direct mail shall be permitted at any time.~~
 - ~~(c) To the extent that any other provision of this ordinance is inconsistent with the provisions of this section 12-213 or any special use permit granted hereunder, the provisions of this section or the terms and conditions of such special use permit shall be controlling.~~