

Minneapolis City Planning Department Report

Appeal of the Decision of the Zoning Administrator
BZZ-749

Date: September 25, 2002

Appellant: Mark Christopherson on behalf of Jim Eischens

Address of Property: 1065 25th Avenue Southeast

Date Application Deemed Complete: July 9, 2002

End of 60 Day Decision Period: September 7, 2002

End of 120 Day Decision Period: November 6, 2002

Applicant has Waived 60 Day Requirement: No

Contact Person and Phone: Mark Christopherson, (952) 896-3260

Planning Staff and Phone: Hilary Watson, (612) 673-2639

Ward: 1 **Neighborhood Organization:** Southeast Como Improvement Association

Existing Zoning: R1A

Proposed Use: Home Occupation

Appeal of the decision of the Zoning Administrator: Mark Christopherson, on behalf of Jim Eischens, has appealed the decision of the Zoning Administrator regarding a notice of violation that a home business operating at the subject property does not comply with the home occupation standards.

Update: This item was before the Board of Adjustment as its meeting held on September 11, 2002. The minutes from that meeting, additional handouts from the applicant and others at the meeting and additional information from the City Council Member's office are included in this report. Staff is still maintaining its position as expressed in the original staff report.

Background and Analysis: Jim Eischens owns the property at 1065 25th Avenue Southeast. Mr. Eischens claims that he lives on the premises and also operates a home business out of the house. The business that Mr. Eischens operates out of the home is a property rental office. According to city information, Mr. Eischens owns somewhere between 55 and 80 properties.

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It is unknown to the city how long Mr. Eischens has been operating a property rental office out of the home located at 1065 25th Avenue Southeast. However, complaints were first received in May of 2001. Since the initial complaint was received the city has been monitoring the property.

The City of Minneapolis allows property owners to operate home businesses out of their homes but are subject to specific standards as outlined in the Minneapolis Zoning Code. Upon inspection of the property, several violations of the home occupations ordinance were documented. Please see the letter of violations to Mr. Eischens from the Minneapolis Operations and Regulatory Services Department dated June 18, 2002 in the staff report. In the letter, 9 out of the 16 home occupation standards were noted to be in violation. The following are the specific standards that were cited:

- (1) The home occupation shall be an activity which is customarily associated with the use of a dwelling.
- (2) Only the residents of the dwelling unit, and not more than one (1) nonresident employee, shall be employed by or engaged in the conduct of the home occupation on the premises. For the purpose of this section, "nonresident employee" shall include an employee, business partner, independent contractor or other person affiliated with the home occupation who is not a resident of the dwelling unit, but who visits the site as part of the home occupation. Not more than one (1) nonresident employee shall be permitted per dwelling unit or two-family dwelling, regardless of the number of home occupations.
- (5) The home occupation shall be conducted only within an enclosed area of the dwelling. However, beginning in the R4 zoning district, in multiple-family dwellings of five (5) or more units the home occupation may be allowed within a specific area of the principal building designated for such home occupation by conditional use permit, as provided in Chapter 525, Administration and Enforcement. In addition to the conditional use standards, the planning commission shall consider, but not be limited to, the following factors:
 - a. Nature of the home occupation and its impacts of noise, light, odor, vibration and traffic.
 - b. Conformance with applicable zoning requirements, including but not limited to, yards, gross floor area, and specific development standards.
 - c. History of complaints related to the property.
- (6) Outdoor storage or display of materials, goods, supplies, or equipment related to the conduct of a home occupation shall be prohibited.
- (7) The required off-street parking area provided for the principal use shall not be reduced or made unusable by the home occupation.

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- (8) Signage shall be restricted to one non-illuminated, flat wall, identification sign not to exceed one (1) square foot in area. On a corner zoning lot, two (2) such signs, one facing each street, shall be allowed.
- (9) No equipment, machinery or materials other than of a type normally found in or compatible with a dwelling shall be allowed.
- (11) No home occupation shall be visible from any public right of way, except for allowed signage.
- (13) The home occupation shall not generate excessive customer or client traffic that is detrimental to the residential character of surrounding properties or the neighborhood. For purposes of this provision, more than five (5) customers or clients per day may be determined to be an excessive and detrimental level of traffic. This number shall apply per dwelling unit, regardless of the number of home occupations, except that in the case of two (2) family dwellings, the number shall apply to the two (2) family dwelling. The factors to be used for such a determination shall include but not be limited to:
 - a. The characteristics of the neighborhood, including land uses, lot sizes and lot widths.
 - b. Street type, width and traffic volumes.
 - c. The availability and location of off-street parking and the extent to which the home occupation contributes to on-street parking congestion.

Also in the staff report is information from the assessors' office, tax statements, phone book listings, lease agreements, letters from neighbors and photos of the site and other sites owned by Mr. Eischens.

The information that has been collected by city staff and submitted by adjacent neighbors leads staff to believe that Mr. Eischens does not live at the property and therefore cannot legally operate a home occupation out of the house. Please specifically see the tax statements and the information from Hennepin County. The fact that Mr. Eischens changed his homesteaded status from the house located at 2905 32nd Avenue Northeast in St. Anthony to the house located at 1065 25th Avenue Southeast in Minneapolis does not mean that Mr. Eischens lives at the property.

However, even if Mr. Eischens did live at the property in question, there are several violations of the home occupation standards apparent on the site that would lead staff to believe that the home occupation is in violation of the home occupation standards as listed in the Minneapolis Zoning Code.

These violations include outdoor storage or home maintenance equipment, 5-gallon water bottles and "For Rent" signs. Commercial vehicles are stored in the back yard of the

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home and are visible from the public street and the public alley. The renters of the home are not able to park in the required off-street parking area as the garage is full of home maintenance equipment and the off-street parking space is occupied by a commercial vehicle. According to information submitted by different neighbors the applicant shows rental videos to potential tenants in the backyard of the property. This not only violates the standard that requires that all operations of the home occupation occur within the home but it also violates the standard that prohibits sounds and noises generated by the home occupation from crossing the boundaries of the property. Also according to information submitted by different neighbors there are several people that come and go from the site on a daily basis, i.e. when dropping off their rent checks or looking at rental videos.

The appellant has filed an appeal pursuant to section 525.170 of the zoning code (see below).

525.170. Appeals of decisions of the zoning administrator. All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within twenty (20) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Based on inspections of the site, photos and information received from neighbors of the property, staff believes that the Zoning Administrator's determination is correct. It seems that although the Zoning Code recognizes that many different types of home occupations may be conducted in a neighborhood with little or no adverse effects that this specific home occupation is not one of them.

Recommendation of the City Planning Department:

The City Planning Department recommends that the Board of Adjustment adopt the findings above and **deny** the appeal of the decision of the Zoning Administrator subject to the following conditions:

1. All property rental office operations shall cease on the property.