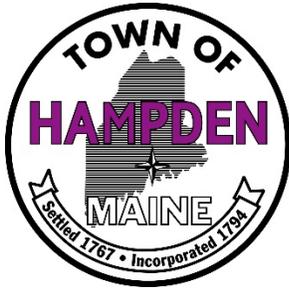


Town of Hampden  
Planning Board Ordinance Committee  
Monday February 6, 2017, 6:00 pm  
Municipal Building Conference Room  
**Agenda**

1. Minutes of August 3, 2016 and January 17, 2017 meetings
2. Zoning Ordinance Amendment – Home Occupations
3. Adjournment



Town of Hampden  
Planning Board Ordinance Committee  
Wednesday August 3, 2016, 6:30 pm  
Municipal Building Conference Room  
**Minutes**

In Attendance: Ordinance Committee (OC) Chair Mike Avery, Peter Weatherbee (OC), Joan Reilly (OC), Jim Davitt (PB), Angus Jennings (Town Manager), Myles Block (Code Enforcement Officer), and Karen Cullen (Town Planner; arrived at 6:48).

The meeting was called to order at 6:30 pm.

Since new Town Planner Karen Cullen was attending the Planning & Development Committee meeting, the items on the agenda were taken out of order.

1. Shoreland Zoning – P. Weatherbee asked if the changes being proposed were all for the purpose of bringing the zoning into compliance with state statute; M. Block replied yes.
2. Discussion of process for amendments to zoning and Shoreland zoning; the OC felt the current 45 day limit on Planning Board (PB) recommendations to the Town Council (TC) in sections 1.5.2.1 and 1.5.2.2.c is too short and should be lengthened to 60 days.
3. Discussion of broader objectives of the Planning Board (PB) and OC in regards to zoning amendments. K. Cullen said that normally a planning board has a really good sense of a community's goals and vision which are set forth in the town's comprehensive plan. That puts the board in a good position to initiate regulatory amendments to advance the town vision. With a town council form of government you can have constantly changing regulations, which can create conflicts and inconsistencies within the document if amendments are not carefully reviewed in context with the rest of the ordinance. It can also make it more difficult for the public to understand what the regulations are since they change so often.

The OC noted that in the past they have been reactive to amendments put forth by the TC and their Planning & Development Committee, but they see the benefits of being proactive. It was noted the ordinance provides for amendments to be initiated by either the PB or the TC (or the

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public). The OC feels that the TC should be setting policy and the PB and OC should be dealing with the nuts and bolts of drafting the zoning amendments.

#### 4. Zoning Amendment: Accessory Apartments in the Residential A district

The main points of the discussion were:

- The purpose of the district is to have single family residences, not two-family or multi-family.
- If we allow accessory apartments, it's critical that they be limited to occupancy by family members.
- The concept is good, but it will be impossible to enforce it so when no longer occupied by a family member it is not rented on the open market – once a dwelling unit is created, regardless of the limits on it such as size, location, etc., it is very unlikely that it'll go away.
- If we allow them, it should be by conditional use permit with performance standards such as occupancy by a family member, must not have a second entrance from the outside (so it doesn't look like a duplex).
- It might make more sense to modify the existing "two family conversion" provisions than to add an accessory apartment provision, as there is a fair bit of overlap between them.
- Parking for the extra unit must be provided on the parcel with the house.
- May be potential, once MUBEC is changed, to allow mobile "tiny houses" (or some variation suitable for elderly people) to be used as temporary accessory apartments.

Consensus of OC is for K. Cullen to redraft this as a combination of the existing two family conversion and the accessory apartment provisions.

#### 5. Zoning amendment: Off-premises signage.

A. Jennings gave an overview of the purpose of this amendment and the issues that led up to it. K. Cullen presented a new draft of the amendment. Discussion points included:

- The goal is to promote the park and amenities in the Waterfront 1 district, noting that the businesses are amenities.
- If there was only a single sign panel and the two businesses had small placards "embedded" within it, then the argument that we are promoting the Waterfront District rather than an individual business would be stronger.
- OC agreed to modify the draft amendment by eliminating item c (size of panel for municipal use portion of sign).

Motion by P. Weatherbee with second by J. Reilly to report the amendment regarding Off-premises Signage as modified tonight to the Planning Board with a recommendation "ought to pass"; motion carried 4/0/0.

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6. Zoning Amendment: Building Permit threshold.

M. Block explained the reason for this amendment is to bring the Zoning Ordinance into consistency with the Maine Uniform Building & Energy Code (MUBEC). A. Jennings noted that the Town Assessor has expressed concern that making this change could impact the Town's ability to ensure the assessment data is up to date and accurate. It was noted that the change will primarily affect small sheds and outbuildings which should have minimal impact on the assessed value of a property.

Motion by P. Weatherbee with second by J. Davitt to report the amendment regarding Building Permit thresholds as submitted to the Planning Board with a recommendation "ought to pass"; motion carried 4/0/0.

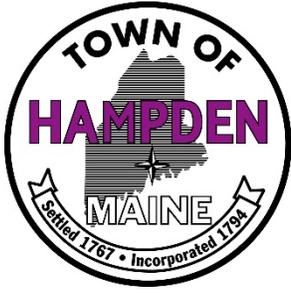
7. Amendment to Shoreland Zoning Ordinance: general amendments to bring into consistency with ME DEP model ordinance.

K. Cullen noted that there are many areas within the draft distributed that look like there are changes, when in fact there aren't. Apparently this was a glitch from previous staff; Karen will be cleaning it up prior to the PB meeting. M. Block explained that Hampden's ordinance is not up to date with the ME DEP model ordinance and we have been advised to amend ours to be consistent. Many of the changes relate to the expansion or replacement of existing structures within the Shoreland area; this replaces the 30% limitation. Tree removal provisions are also being changed. M. Block said the Fowler Road area is where the majority of nonconforming structures are located. A question was asked regarding enforcement of the provisions; the answer is the Code Enforcement Officer and ME DEP, and enforcement is primarily complaint based. He noted that there are only three DEP staff responsible for covering the entire state.

Motion by P. Weatherbee with second by J. Davitt to report the amendments to the Shoreland Zoning Ordinance as submitted to the Planning Board with a recommendation "ought to pass"; motion carried 4/0/0.

K. Cullen will email OC members with suggestions for the next meeting; it was noted that it is not necessary to provide pizza. Karen noted that members should feel free to bring something to eat if they have not had a chance to get dinner before coming to the meeting.

Motion by J. Davitt with second by M. Avery to adjourn the meeting at 9:02 pm.



Town of Hampden  
Planning Board Ordinance Committee  
Tuesday January 17, 2017, 6:30 pm  
Municipal Building Conference Room

## Minutes

In Attendance:

Planning Board

Michael Avery\*  
Eugene Weldon\*  
Joan Reilly\*  
Kelley Wiltbank

Staff & Others

Karen Cullen, AICP, Town Planner

\* on Ordinance Committee

Chairman Avery called the meeting to order at 6:43 pm.

1. Zoning Ordinance Amendment – Home Occupations

Planner Cullen gave a brief synopsis of where this amendment originated: the P&D Committee had been working with previous staff to revise the home occupation provisions in the zoning ordinance, and they wanted to move this amendment forward. Once she had reviewed the drafts in progress she felt we could do better and introduced the idea of the three tier system. P&D agreed with the concept and Planner Cullen drafted the initial version of what (now version three) is before the Ordinance Committee (OC) tonight.

Planner Cullen then explained the reasoning for the three tiers: with changes in technology there are more people working from their homes, most of whom are “invisible” – nobody knows they are working in their house. That group makes up the lower end of the scale, the home businesses. On the other end of the scale, there is often a need to accommodate contractors who run their business from their house and need to store equipment or materials on site; these are the home based contractors. The customary home occupation category covers everyone else. These three different categories have different potential impacts on the neighborhood and thus the proposed regulations have different requirements for each. The OC agreed with this concept.

The committee reviewed the draft and had the following comments/concerns/modifications:

- 4.10.4.7: switch around so the permit runs with the owner and the Planning Board (PB) has the option to set a condition which makes it run with the land.
- 4.10.5: change “special permit” to “conditional use permit”

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- 4.10.5.4: discussion regarding signage for home businesses; decision to strike the language “other than a sign in conformance with §4.8, Signs”
- 4.10.6.2: to be consistent with the existing language in the ordinance, change “not more than two non resident people” to “not more than one non-resident person” (shall be employed...)
- 4.10.6.4: to be consistent with the existing language in the ordinance, change “twenty (20) auto trips” to “ten (10) auto trips”
- 4.10.6.5: change “four parking spaces” to “three parking spaces”
- 4.10.7.1: add to the end “or any non-residential district with a minimum lot size of at least 20,000 square feet.”
- 4.10.9.1: change to read “... alter a Planning Board approved Use of Residence for Business Purposes, the Code Enforcement Officer shall require that the owner of the business seek a new permit form the Planning Board. In order ... the approved business the Code Enforcement... at which the Use of Residence for Business Purposes was approved.” (Changes the terminology from “Home Occupation” to appropriate terminology reflective of the new tier system.)
- Extensive discussion whether to allow any business use of homes in the Residential A district; since current zoning allows it, the committee agreed to allow it (home businesses and customary home occupations) in the new language.
- Extensive discussion about signage in the Residential A district; it was noted that there seems to be a conflict in the current ordinance between §4.8.3.6 which allows a home occupation sign not exceeding four square feet without a permit and §4.8.6 which seems to disallow such signs in the Residential A district. In the end the OC decided to not allow any signs for any home business, regardless of which district it is located in (§4.10.5.4).

Throughout the discussions it was noted that numerous other sections of the zoning ordinance will need to be amended to be consistent with this new language. Since Planner Cullen had not begun that process since she needed to wait to see what the language was going to be, the OC decided to table the discussion and referral to the Planning Board until after the full package (the edits made tonight plus the necessary edits to other sections of the ordinance) is reviewed by the OC. Planner Cullen will prepare that package and will notify the OC to set another meeting date.

2. Status of other amendments: Planner Cullen handed out a memo she had submitted to the P&D Committee that gives a brief status of each of the amendments under consideration in recent months.

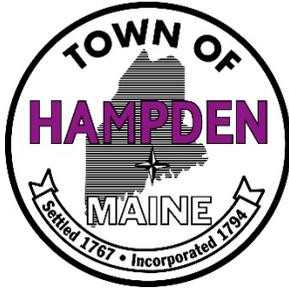
The meeting was adjourned at 9:04 pm.

*Respectfully submitted by Karen Cullen, Town Planner*

Materials reviewed at the meeting:

- Draft language for home occupations, version 3
- Memo from Planner Cullen to the P&D Committee regarding amendment status

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Town of Hampden  
Land & Building Services

## Memorandum

To: Planning Board Ordinance Committee  
From: Karen M. Cullen, AICP, Town Planner *KMC*  
Date: January 26, 2017  
RE: Amendments to Zoning Ordinance regarding Use of a Residence for Business Purposes

The following is the fourth version of the draft language for section 4.10, along with related amendments to other sections of the Zoning Ordinance (on the last page). Edits from the third version are shown in underline/strike-through format.

Proposed language; this REPLACES the current language of §4.10 in its entirety:

- 4.10 Use of Residence for Business Purposes. There are three categories of businesses (including professions and trades) that may be conducted in or at a residence (dwelling) as an accessory use: a home business, a customary home occupation, and a home based contractor.
- 4.10.1 Home Business — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and does not involve more than occasional business vehicular traffic to the property. Examples include but are not limited to artists, desktop publishers, software developers, craftsmen, contractors who only operate an office at the home, and people who work at home and conduct business by mail or electronic communication (including employees who telecommute). Home businesses are subject to the provisions of §4.10.4 and §4.10.5 below.
- 4.10.2 Customary Home Occupation — A business, profession, or trade which is conducted by a resident of the premises entirely within the residence or an accessory building, and involves an increase in traffic for clients, customers, patients, associates, or employees. Examples include but are not limited to lawyers, accountants, beauticians, professional consultants (such as mental health, design, and real estate), and small retail businesses not exceeding 300 square feet GFA. Customary Home Occupations are subject to the provisions of sections 4.10.4 and 4.10.6 below.
- 4.10.3 Home Based Contractor — A business which is conducted by a resident of the premises accessory to a residential use, but not entirely enclosed within the residence or one or more accessory buildings. Examples include but are not limited to building, plumbing, electrical, cabinetry, landscaping, and other similar contractors who perform their work off-site but use the residence as a base of operations including an office and small scale storage of equipment and materials. This category is meant to serve the needs of small businesses with limited space needs, with the expectation that once the business has grown to a larger size it will be moved to a more appropriate location in a commercial or industrial district. Home Based Contractors are subject to the provisions of sections 4.10.4 and 4.10.7 below.
- 4.10.4 General Requirements.
- 4.10.4.1 The activity must be operated by residents of the dwelling unit.
- 4.10.4.2 The activity must be clearly incidental and secondary to the primary use of the premises as a residence.
- 4.10.4.3 There shall be no window displays or other features not normally associated with residential use.
- 4.10.4.4 If carried on within the principal residential structure, the activity shall not occupy more than thirty (30%) percent of the floor area. If carried on within an accessory structure the total floor area dedicated to the business use shall not exceed fifty (50%) percent of the total finished floor area of the principal residential structure.

- 4.10.4.5 The activity shall not cause sound, noise, odors, dust, gas, fumes, smoke, light or other dangerous emissions discernable or detectable from beyond the property line of the subject property, beyond that which is normally associated with residential use. In addition, no business activity shall be allowed which creates a fire hazard to the premises or neighboring premises or which creates electrical interference such that it causes visual or audible interference in any radio or television receivers off the premises. The applicant shall demonstrate that the proposed business activity will not interfere with the peaceful use and enjoyment of residential properties located in the area of the proposed use.
- 4.10.4.6 No commercial vehicles in excess of 34,000 pounds gross vehicle weight (GVW) shall be used for the delivery of products, foods, or materials to and from the premises.
- 4.10.4.7 A permit shall be granted to the business or property owner ~~(i.e. it shall “run with the land”)~~; however the permit granting authority shall have the option to set a condition ~~restricting~~ allowing the permit to be granted to the property (i.e. “run with the land”) ~~the applicant or landowner when the permit granting authority finds that the continuation of the use after the transfer of property ownership, and without further permitting, will comply with the requirements in Sec. 4.10.4 of this ordinance in certain cases when appropriate.~~
- 4.10.4.8 Approved permits shall be recorded at the Penobscot County Registry of Deeds within 30 days of issuance or prior to any related building permit being issued.
- 4.10.5 Home businesses are permitted in all zoning districts without need for a ~~special~~ conditional use permit, but must conform to the following provisions in addition to those listed in section 4.10.4 above:
- 4.10.5.1 The business must be conducted entirely within the residence or an accessory building.
- 4.10.5.2 The activity must not change the character of the premises or surrounding neighborhood.
- 4.10.5.3 No non-resident employees are permitted on site.
- 4.10.5.4 There shall be no exterior display of products, no exterior storage of materials or equipment used solely for the business, no exterior parking of business vehicles or equipment, and no other variation from the residential character of the premises other than a sign in conformance with §4.8, Signs. This section shall not prohibit the exterior parking of personal vehicles or equipment (not used for the business).
- 4.10.5.5 The business shall not generate traffic that is inconsistent with the traffic associated with a residential use, either in quantity or type.
- 4.10.6 Customary Home Occupations are permitted in all zoning districts by conditional use permit, if in compliance with the following provisions in addition to those listed in section 4.10.4 above:

- 4.10.6.1 The business must be conducted entirely within the residence or an accessory building.
- 4.10.6.2 Not more than ~~two~~one non-resident ~~people~~person shall be employed in the business at the site.
- 4.10.6.3 There shall be no exterior display of products, no exterior storage of materials or equipment used solely for the business, no exterior parking of business vehicles or equipment, and no other variation from the residential character of the premises other than a sign in conformance with §4.8, Signs. This section shall not prohibit the exterior parking of personal vehicles or equipment (not used for the business).
- 4.10.6.4 No home occupation shall be approved or allowed to operate if it generates more than ~~twenty~~ten (2010) auto trips by customer/clients in any one day.
- 4.10.6.5 The business shall not necessitate more than ~~four~~three parking spaces for clients, customers, patients, non-resident employees, or other business related demands. Required parking must be accommodated off-street, and new parking areas must be screened from the view of abutters and from public ways (streets or pedestrian ways) utilizing vegetation, fencing, and/or topography. To the extent practical, parking areas should be located at the side or rear of the residence or accessory buildings.
- 4.10.6.6 No commercial vehicles in excess of 34,000 pounds gross vehicle weight (GVW) shall be used for the delivery of products, foods, or materials to and from the premises.
- 4.10.7 Home Based Contractors are permitted by conditional use permit, if in compliance with the following provisions in addition to those listed in section 4.10.4 above:
- 4.10.7.1 The parcel on which the business is operated is within one of the following districts: Rural, Rural Business, Business, Business B, Commercial Service, Interchange, or Industrial ~~district~~.
- 4.10.7.2 The parcel must be a minimum of two acres in size.
- 4.10.7.3 Not more than eight vehicles associated with the business (maximum of four construction equipment such as loader/backhoe, skidder, etc.) shall be parked at the site at any given time, including employee vehicles and construction vehicles, but excluding personal vehicles not typically used for the operation of the business.
- 4.10.7.4 The activities related to the business may be conducted in part outdoors, but all such activities, equipment, and storage shall be substantially and permanently screened from the view of abutters and from public ways by buffers such as vegetation, fences, and/or topography.
- 4.10.7.5 No more than 25% of the parcel, exclusive of areas covered by buildings, shall be used for business activities, including outdoor storage or parking.
- 4.10.7.6 The total square footage of buildings used for storage or garaging of vehicles or equipment associated with the business shall be no greater than 2,000 square feet.

This shall not be construed to mean that a greater number of vehicles may be parked at the site than is permitted above.

- 4.10.7.7 The Planning Board shall take into consideration the road network serving the proposed business location in regard to safety of the residents of the vicinity and the types of vehicles to be used by the business, including delivery trucks, and the projected number of trips to and from the site each day.

#### 4.10.8 Application Procedure

- 4.10.8.1 Applicants for a Home Business shall submit a request to the Land & Building Services office on the form provided, for review by the Code Enforcement Officer. If the he/she determines that the proposed business meets the criteria of this category, then he/she shall sign the form stating that the proposed home business does not require approval under sections 4.10.6 or 4.10.7 (i.e. a conditional use permit is not required).
- 4.10.8.2 Applicants for a Customary Home Occupation or a Home Based Contractor shall submit an application for a conditional use permit to the Land & Building Services office. A sketch plan as described in section 4.1 shall be submitted along with the application form.
- 4.10.8.3 Applicants shall demonstrate that they have adequate right, title and interest in a property in order to apply for a Home Business, Customary Home Occupation, or Home Based Contractor.
- 4.10.8.4 Conditions Necessary for Approval of Customary Home Occupation or Home Based Contractor. If in the judgment of the Planning Board additional improvements or safeguards are necessary in order to make a proposed business safe, sanitary or less intrusive in a neighborhood the Board may place conditions on the approval that further limit the operation of the business, provide for screening or buffer yards, or improve traffic safety.

#### 4.10.9 Previously Approved Home Occupations

- 4.10.9.1 If additions or alterations have been constructed or are proposed for construction to residences or accessory buildings, which in the opinion of the Code Enforcement Officer significantly alter a Planning Board approved ~~Home Occupation~~ Use of a Residence for Business Purposes, the Code Enforcement Officer shall require that the owner of the ~~home occupation~~ business seek a new permit from the Planning Board. In order to determine if the alterations or additions alter the approved ~~Home Occupation~~ business the Code Enforcement Officer shall review the municipal documents on file including the minutes of the Board meeting at which the ~~Home Occupation~~ Use of a Residence for Business Purposes was approved.

[end]

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The following changes were made from version 1:

- Moved truck size limitation to just home businesses and customary home occupations (i.e. doesn't apply to home based contractors).
- Increased allowable truck size to 34,000 lbs GVW (two axle weight limit in Maine and on interstate highways).
- Deleted sign provisions as they are in section 4.8 (same as what was in 4.10; don't want to repeat it).
- Changed language on traffic generation to be consistent with residential use (not single family residence).
- Changed language so permit runs with the land but allows permit granting authority (CEO or PB) to include a condition that limits it to the applicant (or property owner).
- Moved language regarding changing character of the neighborhood to home businesses and customary home occupation sections (i.e. doesn't apply to home based contractors).
- Deleted language from §4.10.9.1 (see below) that we couldn't figure out regarding CEO not issuing a building permit for additions when done after a home occupation permit was approved. After discussing with Myles Block, the decision was made to delete it since the CEO cannot refuse to issue a building permit for such additions based on the premise that its for the home occupation since it is to a residential property. The property owner could simply state it is not for the business. The CEO can, however, advise the applicant to seek a modification to the home occupation permit if he's got reasonable evidence that the addition is for the business and not residential use.
  - "The Code Enforcement Officer shall not issue a building permit or certificate of compliance for such additions or alterations that have not received Planning Board Home Occupation permit approval unless the applicant surrender the home occupation permit and or conditional use/site plan home occupation use approval in writing."

The following changes were made from version 2:

- Added §4.10.4.8 to require that permits be recorded at the registry of deeds.
- Deleted §4.10.9.2 regarding discontinuation and abandonment of legacy home occupations.

The changes from version 3 are noted in underline and strikethrough in the version 4 draft.

*Note: a redlined version of §4.10, current ordinance, will be created once the language of the new section is finalized.*

**Amendments to other sections of the zoning ordinance related to use of residence for business purposes:**

**§3.4.2, permitted uses in Business District**

**§3.5.2, permitted uses in Rural Business District**

**§3.6.2, permitted uses in Interchange district**

**§3.7.3, permitted uses in Residential A district**

**§3.8.3, permitted uses in Residential B district**

**§3.9.2, permitted uses in Rural District**

**3.13.2, permitted uses in Business B district**

**3.14.3, permitted uses in Village Commercial District**

For each of the above, delete “home occupation (subject to Article 4.10)” from the section. The use of a residence for business purposes is an accessory use and should not be included in a list of primary uses. The proposed language in §4.10 is clear as to which types are allowed in which districts.

**§4.1.9.1, Site Plan Review, Site Sketches**

Change the title of the illustration: Site Sketch of John Q. Public Customary Home Occupation (For Illustration Purposes Only)

**§4.2.3.9, under Standards Governing Conditional Use Permits**

The proposed use, if a ~~home occupation~~ Use of a Residence for Business Purposes, shall meet the standards contained in Article 4.10 of this Ordinance. (Amended: 10-17-88)

**§4.8.1, Off-Premises Signs**

Off-Premises Signs - No off-premises signs shall be erected or maintained in the Town of Hampden except in conformity with 23 MRSA section. 1901-1925 the Maine Traveler Information Services Law. Off-premises official business directional signs may be located in the Town of Hampden in such locations and in such a manner as allowed under 23 MRSA sections 1901-1925 and under the rules and regulations of the State of Maine Department of Transportation. Provided, however, that off-premises official business directional signs for ~~home occupations~~ Use of a Residence for Business Purposes are prohibited. Authorization for official business directional signs shall be obtained from the Code Enforcement Officer. (Amended 01/21/03) (Amended 2-4-16)

**§4.8.3.6, under Permitted Signs Not Requiring a Permit**

Customary Home Occupation or Home Based Contractor sign - In place of the sign allowed in Article 4.8.3.3. above, approved customary home Occupations or home based contractors may display a single sign, not over four (4) sq. ft. in area, relating to the ~~home occupation~~business.

**§4.8.3.7, under Permitted Signs Not Requiring a Permit**

For sale signs - In addition to the sign allowed in Article 4.8.3.3. above, residential users may display a single temporary sign, not over four (4) sq. ft. in area, relating to goods or services for sale on the premises, if such sale does not constitute either a business, a customary home occupation, a home based contractor, or a yard sale. Examples of sales falling under this provision are the sale of a used vehicle, the sale of a used appliance, or other occasional sales.

**§4.8.6.6, under Signs in Residential Districts (adding a new paragraph)**

Signs for customary home occupations or home based contractors are permitted under §4.8.3.6.

**§7.2, Definitions**

*Commercial Use:* The use of lands, buildings, or structures, other than "~~home occupations~~Use of a Residence for Business Purposes", as defined, the intent and result of which activity is the production of income from the buying or selling of goods and/or services, exclusive of rental of residential buildings and/or dwelling units.

~~Home occupation~~Use of a Residence for Business Purposes: The subordinate use of a dwelling unit or structure accessory to a dwelling unit for gainful employment involving the manufacture, provision or sale of goods and/or services. There are three categories of such use, which are defined in §4.10 of this ordinance: home business, customary home occupation, and home based contractor.