Before the
BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

APPLICATION OF	)	BZA Application No. 16823
HUMBERTO GONZALEZ	)	Decision date: January 7, 2003
	)	ANC 2B

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PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
OF S STREET AND RIGGS PLACE RESIDENTS

Preliminary Matters

This proceeding involves Application No 16823 of Humberto Gonzalez pursuant to 11 DCMR 3103.2 for a use variance from the use provisions to allow for expansion of a Bed & Breakfast from 6 sleeping rooms to 10 sleeping rooms, to allow for more than four employees and to allow for events under section 203. The subject property is located at 1720 16th Street, N.W., Square 178, Lot 800. The site is improved by a four story house known as the Toutorsky Mansion. The Toutorsky Mansion has been certified by the toric Preservation Review Board as contributing to the historic character of the 16th Street Historic District. As such, the exterior of the building (property) is regulated by the D.C. preservation law. However, the preservation of the building's interiors is not protected by any D.C. regulation.

Notice Of Application and Notices Of Public Hearing

The Office of Zoning mailed to the pertinent parties on April 16, 2002, providing notice of the application and hearing.

BZA
Case No. 16823
Exhibit No. 106

Board of Zoning Adjustment
District of Columbia
CASE NO.16823
EXHIBIT NO.106

Requests for Party Status

ANC2B was granted party status. Party status was also granted to the Dupont Circle Citizens Association, The Residential Action Coalition, and groups of S Street residents and Riggs place residents joined as a single party. The Riggs and S Street neighbors all reside within 200 feet of the applicant's property.

Applicant's Case

The applicant, Humberto Gonzalez, presented his case. The nature of the variance requested evolved over the course of the hearing. It would appear that the final request is for a use variance to allow the expansion of the Bed & Breakfast from a 6 sleeping room to a 10 sleeping room B&B. The applicant also seeks a variance from the limitation on the number of non-resident employees from one to four on the premises at any one time. Mr. Gonzalez did not specify any relief sought from other requirements set out in 203.4 and 203.8; however, in his testimony it became obvious that he would need to obtain a variance from some of those conditions as well. Finally, the applicant seeks approval to hold events such as business meetings, fund-raising parties and weddings at the subject property. The applicant presented testimony on his proposed plans for running the Bed & Breakfast, his parking plan and a description of the kinds of events he would like to hold at the mansion. Mr. Gonzalez stated that a use variance was required for the proposed use.

While the applicant did not specify the grounds upon which his use variance was sought, his counsel stated that the variance should be granted because of the size of the

building and because the interior woodwork would be preserved if the property were utilized as a Bed & Breakfast. The applicant presented pictures of the interior but offered no expert testimony on the significance of the interior. He did claim that the only way the "historic integrity" of the interior could be preserved was through his stewardship.

Mr. Gonzalez presented conflicting and incomplete testimony on a number of issues. For example, his transportation plan included a letter describing how valet parking would work. However, when confronted with testimony by the DOTT expert about the difficulty of valet parking, the applicant claimed the letter was merely an example without relevance to his request for variance. Notwithstanding this disclaimer, however, the applicant's own proposed conditions for Bed & Breakfast variance, dated August 6, 2002, specifically states that valet parking would be part of his parking plan. This is just one example of numerous changes in the applicant's case which made it difficult to assess the impact of the request on the neighborhood and the "public good". This left it up to the Board and the opponents to try to decipher what was real, what conjecture and what actual falsehood as far as many aspects of the proposal were concerned.

Government Reports

The D.C. Office of Planning reports dated January 15 and May 21, 2002 found that the applicant's proposal required waiver of {{ 203.4(a), (d), (g), (l), and (m). OP recommended grant of a variance provided there was a favorable approval of the Historic Preservation Review Board

and "suitable assurances" re parking and special events, "preferably" with the neighbors.

The Department of Transportation, by report and testimony dated November 12, 2002, while recommending approval, did have concerns with some of the aspects of the transportation plan, including parking and turn around space in the garage area, and termed the management of the event parking plan "problematic".

ANC Report

The ANC2B indicated that at a public meeting held on January 16, 2002, the ANC unanimously passed a resolution opposing the applicant's request.

Persons in opposition to the Application

Ken Jadin, representing the S Street residents, Margot Polivy, representing the Riggs Place residents, Gill Hill, representing the Dupont Circle Association, Harriett Hubbard, representing the Residential Action Coalition and Vickie Salas, representing herself and her husband all spoke in opposition to the applicant's request.

In summary, their opposition was based on a number of factors: They asserted that the applicant changed his information numerous times, making it difficult if not impossible to respond. They introduced evidence from an expert witness that the preservation of the interior could be accomplished through other uses of the building, including but not limited to condominium conversion, arguing that a hardship had not been adequately demonstrated. They opposed the use of the site for events, citing traffic,

noise, and quality of life issues. They introduced testimony which showed that the proposed transportation plan was full of errors and that any reliance on the garage area for discharging people or parking vans and trucks would illegally block the sidewalk, rendering useless the whole transportation plan, which relies on the use of that space for its success. They also introduced testimony that they had worked with Mr. Gonzalez in good faith but that the applicant was unwilling to accept a neighborhood agreement and that he repudiated every proposal within days or hours of verbally stating his acceptance of it. They introduced testimony that he had preliminarily agreed to six separate agreements and then refused to sign any of them.

Closing of the Record

The record was closed at the conclusion of the hearing on November 12, 2002, with the exception of follow up information submitted by the DOT and the parties' Proposed Findings of Fact and Conclusions of Law, which were due on December 16, 2002.

FINDINGS OF FACT

1. The subject property is zoned R-5-D and the surrounding properties on Riggs Place and S Street are zoned R-5-B.

2. The property was granted a permit to operate as a B&B with one non-resident employee provided the provisions of { 203.4 were observed.

3. The property is presently under renovation and has never operated as a B&B.

4. Operation of a Bed & Breakfast is permitted in the R-5-D district as a home occupation and an accessory use, provided such home occupation meets the requirements set forth in 11 DCMR {{ 203.4, 203.8 and 203.10. The findings of fact relevant to each of those sections are set forth below:

Section 203.4(a): "A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes."

5. The subject property is approximately 13,000 square feet, not including the fourth floor attic area.

6. Humberto Gonzalez intends to make the subject property his primary residence and to occupy approximately 1800 square feet, mainly on the fourth floor, by converting attic space.

7. When he first applied for a variance for a B&B operation, Gonzalez stated that he "bought [the] house to turn it into a Bed & Breakfast" and that the house was purchased with a commercial loan based upon a business plan for a B&B. BZA Exh. 7.

8. Mr. Gonzalez's mortgage loans are conditioned upon his B&B business plan being effectuated. Moreover, his second mortgage from the SBA is conditioned upon approval of his request to offer at least 10 B&B rooms. (Tr. 194).

9. Mr. Gonzalez stated his intention to apply for federal historic property tax credit for work to be done on the building's interior. Such tax credits are available only to commercial or income producing properties.

Section 203.4(d): "No more than one person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation."

10. In his first BZA application, Mr. Gonzalez stated that the B&B operation would employ 14 people including himself: 1 manager; 6 assistant managers; 5 cleaning staff; 1 cook; and 1 security/bag handler. (BZA Exh. 3).

11. Mr. Gonzalez's employee proposal went through numerous revisions, including his April 2002 revised zoning application, in which he did not provide the number of people who would be employed in the B&B but instead said "6 [people would be onsite] at any one time. . . ." (BZA Exh. 44).

12. The final proposal submitted on Mr. Gonzalez's behalf stated that "4 non resident employees of the B&B will be onsite at any one time." (Submission of Cynthia Giordano, October 9, 2002, page 4). Mr. Gonzalez placed the number of employees (people) at 7, excluding weekends.

13. The Gonzalez proposals regarding people employed or engaged in the B&B operation did not include people "engaged" in event preparation and execution, including waiters, bartenders, caterers, valet parkers, van drivers, musicians, etc.

Section 203.4(g) prohibits "any operation outside a structure."

14. The applicant will permit B&B guests to use the courtyard behind the house and to consume food and beverages there.

15. The applicant proposes to permit guests at all events of up to 110 people to use the courtyard.

16. The applicant will use the courtyard for wedding ceremonies and permit the playing of unamplified music.

17. The applicant proposes to construct a stairway from the first floor to the courtyard. Presently access to the courtyard is from the basement.

18. The rears of the neighboring houses on S Street and Riggs Place overlook the Toutorsky courtyard and are within 40 feet of the courtyard. The photographs submitted in the Record show the proximity of neighboring backyards, decks and balconies to the property's courtyard.

Section 203.4(i) requires that "the use shall produce no noxious odors . . . or fumes which are detectable to normal sensory perception outside the subject home."

19. The applicant's transportation plan proposes that guest arrivals and departures for the B&B and events be on Riggs Place.

20. Guest arrivals and departures by private automobiles, taxis or vans ferrying people from the parking facilities will result in vehicular noise and fumes that do not presently exist on Riggs Place.

21. The applicant is not planning to install a commercial kitchen or exhaust system. The opponents' expert, Robert Schwartz, testified that inasmuch as the events contemplated involve catered meals for up to 110 people, both would be required. Such ventilation could be anticipated to produce a discernible level of odor, the extent of which is presently unknown.

Section 203.4(j) precludes use that produces noise "which exceeds the level which is normally associated with the category of dwelling or the immediate neighborhood."

22. Both the category of dwelling and the immediate neighborhood are residential in nature.

23. The adjacent buildings located on 16th Street are apartment houses and the buildings on Riggs Place and S Street are single family row houses.

24. It is Mr. Gonzalez's intention to rent the subject property for events such as parties, weddings and business meetings and functions to be held during the day and evening and during the week and weekends between the hours of 8:30 a.m. and 9:30 p.m. weekdays and 11:00 a.m. and 10:30 p.m. on weekends. Two additional hours before and after the event are allocated for set up and clean up activities by the caterers.

25. Caterers would deliver food and beverages for the events by van and deliveries would be made on Riggs Place. The DDOT recommends use of backup horns on delivery vehicles because of the awkwardness of the garage delivery area.

26. Guests being transported to events by van would arrive and depart from Riggs Place.

Section 203.4(k): "No more than two vehicles may be used in the practice of the home occupation:

27. Mr. Gonzalez will use his automobile for the B&B and will park it in the two car garage (carriage house) on the premises.

28. Vans carrying B&B guests to and from the parking facility will be used throughout the day.

Transportation Plan

29. Riggs Place is a quiet one block long residential street with a 50 foot right of way and a curb to curb width of 30 feet.

30. Sixteenth Street in front of the Toutorsky Mansion has a lane of curb parking and a bus stop and one moving lane of traffic in each direction. Therefore, it is unsafe and illegal for passengers to disembark from private vehicles on 16th Street.

31. Vehicular access to the applicant's property is limited and difficult. Access from the rear alley into a 7'5" wide by 7'5" high garage door is limited by the narrowness of the alley (13 feet on the applicant's submitted survey (Attachment B, Exh. 83) and the brick wall of the building to the west. Access from Riggs Place is through an 8'9" wide opening in a 7'6" high brick wall at the property line into the same L shaped garage. The Riggs Place garage door is 19 feet from the street curb and 9'3" from the public sidewalk at the property line.

32. The brick wall obstructs a driver's view to both the east and the west when exiting the garage, thus presenting a serious public safety hazard to pedestrians and vehicular traffic.

33. Vehicular functions inherent to the operation of a B&B (customer arrivals and departures, loading and unloading baggage, deliveries, etc.), cannot be readily accommodated off-street on the applicant's property.

34. Photographs of the Swann House B&B, a nearby 9 room B&B with a large driveway and two parking spaces, which the applicant claims is comparable, shows five cars parked in front, with one even parked over the sidewalk.

35. Applicant's "Transportation Plan" requires all vehicular transfers/activities (customer arrivals and departures, all deliveries, shuttle vans from Atlantic Garage, the owner's car, and even wedding limousines) to sue the driveway and garage off Riggs Place, placing a cumbersome burden on an oddly configured, limited access former carriage house.

36. Photos show that an average sized car pulled up to the Riggs Place garage door completely blocks the sidewalk.

37. Applicant claims that he will be able to time the arrival of all B&B related vehicles so that the garage door will be opened and vehicles can pull into the garage so as not to block the sidewalk.

38. Failure of management to have the garage cleared and the door open leaves arriving drivers with unacceptable and illegal options: continue to block the sidewalk, double park and disrupt traffic on Riggs Place, park in the alley and block access to residents' private property, and/or honk horn in any case. All options would cause serious adverse effects for neighbors and other motorists.

39. According to DDOT, about 60 private parking spaces to the south, and 30 private parking spaces to the north are accessed via the alleys off Riggs Place.

40. According to DDOT, there are 19 residential parking permit spaces on the south side of the 1600 block of Riggs Place and 23 on the north side.

Section 203.4(e): "Vehicular trips to the premises by visitors, customers and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis."

41. Up to 20 B&B guests will be arriving or departing by vehicle-- private car, taxi or van-- on a daily basis.

42. B&B deliveries will take place on a daily basis-- e.g., breakfast pastry, food and laundry.

43. Support personnel and customers for the B&B will arrive by vehicle on a daily and continuing basis-- e.g., employees, guests during their stay and maintenance workers.

44. Events will be held on a continuing basis and virtually everything connected with those events will arrive and depart by vehicle, including caterers, musicians, flowers, alcoholic beverages, wait staff and parking attendants.

Section 203.4(m) requires that there be "no more than eight (8) clients or customers on the premises in any one hour period."

45. The B&B operation could have as many as 110 guests and dozens of waiters, bartenders, food preparers, parking valets and musicians on the premises at any one time.

Section 203.8 provides that an owner of a dwelling may operate a Bed & Breakfast facility provided, inter alia, that, "(b)

breakfast is the only meal served and it is served only to overnight guests."

46. Mr. Gonzalez proposes to rent the premises for events at which breakfasts, lunches and dinners are served. In those instances, meals will be catered. The guests at these events are not limited to overnight guests at the B&B.

Alternate Uses for the Property

47. Opponents submitted into the Record photographs of comparable large mansions in the immediate neighborhood that have been successfully converted to multiple dwellings. The mansion at 1740 New Hampshire Avenue is 14,000 square feet in floor area, and now contains 14 condominium units with a proposed tax assessment for the year 2002 of $2,496,740. The mansion at 1741 New Hampshire Avenue is over 10,000 square feet in floor area and now contains 8 condominium units with a proposed tax assessment for the year 2002 of $2,107,620.

48. Robert Schwartz, FAIA, an architect experienced in adaptive reuse, testified as an expert witness on behalf of the neighbors in opposition. According to Mr. Schwartz, it is definitely feasible to convert the Toutorsky Mansion to multiple dwelling use, either rental or condominium. Such use is consistent with the existing zoning for the property and advances several goals of the Comprehensive Plan. (Sections 102.2, 300.2p, 1102.i, 1104.1r.)

49. The applicant testified that converting the Toutorsky Mansion to condominiums would be more profitable than his proposed use.

50. Mr. Schwartz further testified that the Toutorsky Mansion could be converted to multiple dwelling units in numerous ways with up to 10 units; that renovation to rental units could be eligible for federal tax credits; that the impact on significant interior features would be similar for conversion to either multiple dwelling use or the proposed B&B use; and that the plans submitted by the applicant do not indicate the true extent of changes that would have to be made to accommodate the proposed B&B use, including the fact that a place of public assembly for 100 people requires, by Code, accessible public toilets, not now shown on the first floor plans, and the need for a commercial kitchen, likewise not now planned, with larger equipment and appropriate ventilation an exhaust systems

CONCLUSIONS OF LAW

1. Bed & Breakfasts are permitted in residential areas under the house occupation provisions of 11 DCMR §§ 203.4, 203.8 and 203.10 and the restrictions set forth therein. The BZA is authorized (D.C. Code § 5-424(g)(2)) to waive those provisions by grant of a special exception provided "an applicant for a home occupation . . . may request the Board to modify no more than two (2) of the conditions enumerated in §§ 203.4 through 203.8." 11 DCMR § 203.10(b). "Any request to modify more than two (2) of the requirements found in §§ 203.4 through 203.8 shall be deemed a request for a variance." 11 DCMR § 203.10(d).

2. The BZA is authorized by D.C. Code § 5-424(g)(2)(1981), to grant a variance from the strict application of the zoning regulations "where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of

exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code ((5.413 to 5.432 (1981) would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property . . . so as to relieve the difficulties or hardship; Provided that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map." Where a variance is sought or required, the burden of proof is on the applicant.

3. In the case of Humberto Gonzalez, his proposed B&B operation would require waiver of at least six conditions set forth in ((203.4 and 203.8.[1]

4. The first condition that the proposed operation would violate is (203.4(a). The home occupation proposed was clearly the primary purpose for purchasing the subject property and remains its primary intended use. Mr. Gonzalez proposes to use less than 15% of the interior square footage (1800 of more than 13,000 square feet) as his residence. The primacy and centrality of the B&B operation to the use of the property is further evidenced by the fact that grant of both the mortgage used to purchase the building and the second trust was based upon the business plan for the B&B submitted by the owner. Finally, while the applicant had expressed a desire to seek an historic landmark status for the interior, he abandoned the effort because his lenders would not agree. (Tr. 11/12/02, page 134).

[1] The impact of the events proposed in addition to the basic B&B operation is discussed separately in paragraphs -, below.

These circumstances, taken together, demonstrate that the primary use of the building would be a commercial one and the residential use would be, at best, secondary, reversing the mandatory priorities of Section 203.4(a).

5. A second condition with which the applicant would not comply is the limitation to one non-resident employee specified in § 204.4(d). Mr. Gonzalez has variously proposed anywhere from 7 to 14 non-resident employees. While the applicant has sought to minimize the extent of his noncompliance with this condition by speaking in terms of the number of employees on site at any one time, such an analysis is inconsistent with the regulation, which speaks in terms of "person", not full time equivalencies (which could mean three separate individuals during a 24 hour day). Since the regulation's intent is to minimize comings and goings and the resultant impact on the neighborhood, the use of a full time equivalency standard would undermine the purpose of the condition.

6. Third, the applicant's proposed B&B operation would violate §203.4(g), which prohibits operations outside the structure. Mr. Gonzalez says he will permit his B&B guests to use the courtyard outside the structure and to bring their breakfasts outside should they choose. The applicant's intent to encourage use of the courtyard is evidenced by his constructing an entry to the courtyard from a first floor public room when access is now confined to the basement.

7. Fourth, the applicant's operation would violate is §203.4(k)'s limitation to two vehicles in the practice of the home occupation. Mr. Gonzalez proposes to use his car and to have vans bringing B&B guests back and forth throughout the day.

The fact that the vans belong to the parking entity does not change the fact that he will arrange for the use of these vehicles for B&B operations.

8. The fifth violated condition, § 203.4(l), limits vehicular trips by visitors, customers and delivery people to 8 per day on a regular and continuing basis. Since the proposed B&B would have space for 20 guests per day, even assuming each guest only left and returned once per day, guests alone would account for 40 trips when the B&B was fully occupied, thus far exceeding the maximum even before considering the additional trips of delivery people, visitors, and repair and maintenance people that could reasonably be anticipated.

9. The sixth violated condition is § 203.4(m), which limits to eight the allowable number of customers or clients on the premises in any one hour period. This provision would be violated simply by the number of guests the applicant seeks to accommodate.

10. The foregoing analysis focused on the projected noncompliance with conditions relating only to the B&B operation; however, § 203.4(n) provides that when more than one home occupation is practiced in a dwelling unit, the cumulative impact of all of the home occupations must be considered. Thus, before considering the question of variance, the impact of the events proposed to be held must be considered.

11. The applicant argues, citing the Swann House decision (BZA Case No. 16333, aff'd, Dupont Circle Citizens Association v. D.C. Board of Zoning Adjustments, 749 A.2d 1258 (2000)), that events are an accessory use to a B&B and are thus permissible as

of right if the B&B use is approved. In whatever manner events are characterized as a result of the Swann House decision, however, nothing in that case requires that their impact be ignored as Mr. Gonzalez effectively contends.

12. If events" are considered accessory to the B&B use, the impact of those events must be considered in determining whether the requested increase in the number of B&B rooms can be granted. If, on the other hand, "events" are considered as separate from the B&B request, the impact of both home occupations would have to be aggregated under { 203.4(n), but it would then be possible to consider the grant of a variance for the B&B separate from consideration of the events.

13. For purposes of evaluating the persuasiveness of the applicant's variance showing, the distinction between "events" as an accessory use to the accessory use of a residence as a B&B or "events" as a separate and additional home occupation is significant only in terms of the relief granted or denied.

14. As proposed, events of 110 guests would require that several individuals be "engaged" in setting up and cleaning up the event, waiting on guests, parking cars or transporting guests in vans from parking facilities and providing other related services. Those people must be considered as "engaged" in the home occupation for purposes of { 203.4(d). To hold otherwise would simply encourage people engaging in home occupations to circumvent the rule by hiring independent contractors to hire staff rather than directly employing their own staff.

15. Second, the events would not comply with the prohibition of { 203.4(g) on conducting operations outside the

structure. Guests will be permitted in the courtyard during events and wedding ceremonies with music will be conducted outside the structure.

16. Given the nature of the events the applicant proposes (some 110 guests starting early in the morning and ending late in the evening), it is reasonable to conclude that an unusual level of noise will be imposed on this quiet residential neighborhood, in contravention of the { 203.4(j) limitation to the level of noise which is "normally associated with the category of dwelling or the immediate neighborhood." Just the arrival and departure of 110 people would cause unusual noise and in this case they would be ferried to and from their cars by vans, further exacerbating the sounds of human arrival and departure. Moreover, most of this activity would take place on Riggs Place, which is a narrow one block long street of single family homes and limited parking capacity. Because it is not a through traffic street, the 1600 block of Riggs Place is a more than usually quiet and private residential street. The fact that Mr. Gonzalez has offered to limit events to 24 per year does not in any way mitigate the impact of the events which are held. Moreover, the use of the property's courtyard for events would severely impair the use of the neighbors' back yards, overhanging decks and balconies.

17. The two vehicle limitation of { 203.4(k) would be violated during events by the number of vehicles used to cater the event and to transport employees and guests.

18. Similarly, the events themselves, because they would exceed eight attendees, would be in facial violation of {203.4(m).

19. It is apparent from the foregoing that this application, unlike the matter considered in the Swann House decision, supra, cannot be considered as a special exception but must, as provided in § 203.10(d), meet the higher standard of a variance, applicable in all cases where more than two of the requirements of §§ 203.4 through 203.8 require modification. Moreover, in Swann House only small social functions were contemplated, whereas here large functions, including business functions, are proposed.

20. This is a case in which the organized neighborhood entities have been unanimous in their opposition. Although the ANC, the Dupont Citizens Association, the Residential Action Coalition and the S Street and Riggs Place neighbors first tried to negotiate an agreement with the applicant, they ultimately concluded that a 10 room B&B with events of up to 110 people could not operate without adversely impacting the neighborhood.[2]

21. From the nature and extent of the waivers required and the kind of events contemplated, it is clear that the applicant proposes a serious business operation, with the central purpose of the property being, as Shaugh West, the Assistant Manager designate, described it, the "hospitality business." The incremental incursion of businesses into residential zones, particularly in the Dupont Circle area, has represented a serious threat to the retention of historic residential areas. This application represents the first such effort in the vicinity of Riggs Place.

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[2] D.C. Code § 1-261(d) (1999) requires the BZA give "great weight" to the ANC recommendation. See also *Kopff v. D.C. Alcoholic Beverage Control Board*, 381 A. 2d. 1372, 1384 (D.C. 1977).

The Applicant Has Failed To Satisfy His Burden In Support Of A Use Variance.

22. The applicant's case for a variance relies entirely upon an assertion that the property is unique in its historic significance and that only if he is able to maintain the interior of the property as a B&B, as proposed, will its "historic integrity" be preserved. The legal standard for variance requires satisfaction of a three pronged showing of:

1) uniqueness of the property as a result of size, shape, topography or other extraordinary or exceptional situation or condition of the property;

2) exceptional practical difficulties or undue hardship which would result to the owner as a result of strict application of the zoning regulations; and

3) a situation in which relief can be granted without substantial detriment to the public or impairment to the intent, purpose or integrity of the zone plan.

23. The applicant has failed to carry his burden on any of the required elements. First, no showing of uniqueness has been made. Indeed, both the applicant and Robert Schwartz, an architect experienced in adaptive reuse, agree that the subject property is convertible to residential condominiums. Mr. Schwartz expressed his belief that the historic features of the building interior could be preserved if a condominium conversion were undertaken. Mr. Gonzalez conceded that condominium conversion is feasible and that there are buyers available.

24. Second, the applicant specifically eschewed financial as the basis for variance, but rather relied on his assertion that the historic integrity of the house would be compromised but for his stewardship. (Tr. 6/18/02, page 242). No proposal for designation of the interior of the property was submitted to the D.C. Historic Preservation Review Board. During the hearing, Commissioner Mitten requested that the applicant make a substantive showing that the interior of the building would actually be offered for designation as an historic landmark. To that end, he was asked to ascertain the willingness of his lenders to agree to the designation. Subsequently, Mr. Gonzalez's counsel informed the Board that the lenders would not agree to permit historic designation of the interior.

25. Mr. Gonzalez's willingness to apply for federal tax credit for historic preservation would provide no assurance of continued preservation of the interior because the restrictions related to that program are limited to five years. Moreover, the applicant failed to demonstrate that his renovation would qualify for the federal tax credit and no application has been made.

26. In sum, Mr. Gonzalez failed to demonstrate that there is any hardship requiring zoning relief. At best, we have a situation in which the existing zoning regulations make it difficult for the owner to use the property in the manner he desires. Such a difficulty does not support a variance where, as here, the owner could use or improve the property in other ways which would be compatible with zoning restrictions. Druade v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. 1987).

27. In seeking to meet the third prong of the variance standard, the applicant claims that preservation of the interior of the building would benefit the public good without substantial impairment of the zone plan. This argument loses all vitality because the applicant's lenders will not agree to historic designation of the building's interior and there is no evidence to support the contention that preservation cannot be achieved by a use contemplated under the zone plan.

28. The goals and purposes of the Comprehensive Plan and the Zoning Regulations are to promote the public good. Major components of both are aimed at promoting and protecting residential uses in the city. The applicant's proposed use of his property ignores or directly conflicts with significant goals of the Comprehensive Plan and is a clear indication that the granting of a variance would result in substantial detriment to the public good, particularly to the policy objective of Section 1104.1(r), to "Control the conversion of residential housing to guest houses, bed and breakfast establishments, clinics, and other non-residential or transient uses."

29. Likewise, the applicant's proposed use violates the expression of public good found in the goals of the Dupont Circle Overlay District. The primacy of the business use of his property in his proposal does not enhance the residential character of the area, nor maintain existing residential uses and control the scale, location, and density of commercial development. Mr. Gonzalez's use is not compatible with the Comprehensive Plan and the operation of the B&B as described would impede the free circulation of vehicles through public streets and alleys.

30. If a variance is granted in this case, the relief requested would also substantially impair the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map. The extent and specificity of the Home Occupation Section (§ 203), and the Bed & Breakfast facilities in particular (§ 203.8), denotes zoning's concern about such uses in residential zones. Failure to comply with the stated regulatory conditions is a clear indication that proposed uses are incompatible with residential uses and generate adverse impacts on the surrounding neighborhood. The applicant's proposed operations do not comply with the Home Occupancy provisions in the broadest sense or with the specific regulations. (See discussions of non-compliance with 203.4 and 203.8 elsewhere.)

31. The applicant's arguments for a variance would impair the intent, purpose and integrity of the zoning regulations by substituting historic preservation concerns for those of zoning. While historic preservation goals are laudatory, they should not be allowed to supplant the important and extensive zoning regulation of home occupations in residential zones-- nor is such an action, while implicit in the applicant's request for relief, within this Board's purview. In any event, as already shown, the applicant's proposal is by no means the only or even necessarily the best way to preserve the historic integrity of the Toutorsky Mansion.

32. The neighbors have demonstrated that introduction of the applicant's planned B&B would have a substantial detrimental impact upon the immediate neighborhood by increasing noise and vehicular and foot traffic; altering and endangering the character of the neighborhood; detrimentally affecting the quality of life in the neighborhood; and impairing the use of adjacent properties. Moreover, such activity would create serious pedestrian safety hazards. Under such circumstances, denial of the

requested variance would serve the interests of justice and the purpose of the zone plan. Silverstone v. BZA, 372 A.2d 1286, 1291 (D.C. 1977).

Respectfully submitted,

Margot Polivy
Louis Santucci
Ken Jadin
For the
Riggs Place & S Street
Neighbors

16 December 2002