Application No. 16823 of Humberto Gonzalez pursuant to 11 DCMR 3103, seeks approval for a variance under Subsection 203.8 to exceed the maximum number of rooms [Paragraph 203.8(c)] and to allow for additional staff [Paragraph 203.4(d)] and to have more than 8 clients or customers on the premises in any one hour period [Paragraph 203.4(m)] in a D/R-5-D District at the premises 1720 16th Street, NW (Square 178, Lot 800).

Findings of Fact

The subject property Square 178, Lot 800, the Toutorsky Mansion, is a freestanding house built on three lots on the northwest corner of 16th Street and Riggs Place and contains approximately 13,500 square feet of usable interior space. It was a single family home from its construction in 1893 and a rooming house from 1990 to 2001. When it was listed for sale in 2001 it was on the market for 1297 days.

Mr. Gonzales, the applicant, is a real estate agent specializing in the sale and renovation of condominiums. Mr. Gonzalez purchased the Toutorsky Mansion in February 2001 with the primary intention of preserving the remarkably intact historic character of the property and returning it to a single family home. When it became apparent that the house was far too large to maintain only as a single family residence, the applicant decided to establish a bed and breakfast as a home occupation. Since the property is zoned R-5-D and it is certified as contributing to the Dupont Circle Historic District, six guest rooms are permitted as a matter-of-right. The Applicant obtained a valid Certificate

BZA
Case No. 16823
Exhibit No. 107

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EXHIBIT NO.107

of Occupancy authorizing the use of the property as a six-room bed and breakfast. However, due to very large amount of space in the structure and the enormous cost of renovation and ongoing maintenance, the Applicant filed to increase the number of guest rooms.

The applicant proceeded to file an application with the BZA requesting two modifications of the bed and breakfast regulations, as permitted under Subsection 203.10(b). He requested that the number of rooms be increased to 11 and that the number of employees be increased to a total of 7 employees with no more than 4 onsite at one time. The application was later amended to decrease the number of guestrooms to 10 and to eliminate the overall cap on employees and, instead, to the increase in employees over the matter or right standard was deemed necessary by the Applicant to successfully run a B&B of the large physical size of the subject property. The staff consists of an assistant manager and a housekeeping staff. The applicant testified that no four staff members be permitted on-site at one time to provide for limited shift change overlap. Most of the time, however, only two staff persons will be on site.

The applicant testified that the proposed B&B complies with the applicable sections of the home occupation regulations under 11 DCMR 203.4 to 203.6. He stated that the house will be principally used as his residence; the B&B use is secondary and that maintaining the residential character of the house is essential and integral to the success

of the bed and breakfast. He further testified that the level of noise associated with the B&B will not exceed the normal levels associated with a residential use. He stated that the house is not a multiple dwelling; that it is owner-occupied and used as the owner's principal residence; that breakfast will be the only meal served to overnight guests; that cooking facilities will not be available to guests.

The Applicant further testified that the residential character and appearance of the dwelling will be preserved and no interior structural alteration will be done that would make it difficult to return the premises to an exclusively residential use.

No more than two vehicles will be used in the home occupation and vehicular trips to the premises by visitors, customers and delivery persons will not exceed 8 trips daily on a regular and continuing basis. The house is certified to contribute to the Dupont Circle Historic District and is a registered National Landmark and thus there are no parking requirements for the property under the waiver granted.

The applicant prepared a Transportation Management Plan for the operation of the B&B. The Transportation Management Plan is designed to completely eliminate any and all need for street parking by overnight guests, event guest, events vendors and employees.

The need for parking for overnight guests is limited. On average only 25% of the guests are expected to drive to the site and therefore to need parking. Expected average

occupancy is between 60 and 70% once the B&B is fully functional, which means that only one or two guests a day will need parking.

Further, B&B web site will contain information, maps and instruction on arrival and parking. It will state clearly that there is no street parking for overnight guests or event guests available and that all parking will be done at a nearby commercial parking garage with which Applicant will have a contract for parking. When guest reservations are taken, similar information will be provided and parking arrangements confirmed.

Cars belonging to overnight guests of the B&B will be valet parked at the aforementioned commercial garage. When the reservation is taken the staff will point out that it is advantageous to have their vehicles at this secure location.

All event guests will also be advised that there is no parking at the Toutorsky Mansion. There will be no valet parkers on site, who will then park cars. All event guests will be given advance instructions to go directly to Atlantic Valet to park their cars. The instructions will emphasize that they are not to come to the Mansion and drop anyone off or to park on the street, but to go directly to the garage. They will then be shuttled to the Mansion for the event and shuttled back to Atlantic Valet.

The B&B will primarily rely on preferred event vendors who will be familiar with the

site. They will all be given a list of requirements that they will need to abide by in order to work at the B&B Mansion. These requirements will include but not be limited to unloading and parking. Vendors typically arrive two hours prior to an event in order to unload and set up before guests begin arriving. They will be limited to the use of vans that will fit in the garage. After unloading, such vans will part at the designated off-site commercial parking garage. All vendor employees will be encouraged to take public transportation. If they must drive, they will be required to park at the offsite commercial garage.

All B&B employees, who use public transportation, will be given Metrocheck. All employees, who drive will be required to park at the designated off-site garage at the Applicant's expense.

Ms. West, assistant manager, of the Toutorsky Mansion, testified that B&B's are known for their peace and quiet. The 22 inch interior walls and the 30 inch exterior walls will insure minimal noise transfer from room to room or to the outside. She further testified that B&B's guests demand a high the standard for quiet both inside and outside the B&B. The measure of quiet is to satisfy guests sleeping within the house. Ms. West emphasized that events and event guests will also need to hold to this same standard. She testified that the B&B will be self-regulating because of the nature of the business with a minimal impacts on the neighborhood.

The Applicant demonstrated that the request for 4 additional guestrooms over matter-of-right standards is both necessary and reasonable given the large size of the subject property. A typical single-lot structure in the area of 16th Street has street frontage of 22-24 feet, four levels and contains between 4,000 to 5,000 square feet of interior space. The subject property, which traverses three lots, has a frontage of 68 feet and approximately 13,500 square feet of interior space. Equivalent density would permit the subject property to have 18 guest rooms. The application seeks only 10 rooms. The Applicant also compared the size of the subject property with nearby B&B including the Swann House located at 1808 New Hampshire Avenue, N.W., which contains 6,085 square feet and was granted a special exception by the BZA for 9 guestrooms.

The Office of Planning submitted a report dated January 15th, (exhibit # 22) with an update on May 21st (exhibit #50). The report cites the Comprehensive Plan and the purpose of the Dupont Circle Overlay District in relationship to the requested variance.

The Office of Planning recommended approval of application conditioned on a favorable recommendation from the Historic Preservation Review Board and suitable assurances regarding operation of the Bed and Breakfast regarding parking and special events, preferably in the form of a written agreement with the neighborhood.

Citing sections 805.1, 805.6, 805.8 and 805.13, of the Comprehensive Plan, the OP report states, the Comprehensive Plan goals can be met by allowing a variance for a bed and breakfast in this historic structure by allowing preservation and restoration of a historic interior that might not otherwise be preserved, thereby maintaining continued productive use of the historic building. The proposed development meets the applicable purposes of the Overlay district by preserving the existing historic structure. The applicant proposes to preserve much of the interior and restore deteriorated parts of the structure. The applicant will preserve the existing gardens, walls and fences that have added to the character of this historic structure. In testimony, at August 6th hearing, the OP Staff testified that Mr. McGettigan had conducted a site inspection and that the Office of Planning recommending approval of the application even absent, a provision to preserve the interior. He stated that breaking the unit into condominium units would not only be detrimental to the interior, but also to the exterior and that in terms of parking and demands on public services, noise, and other external impacts, he considered the proposed bed and breakfast use to be less intense than alternative matter of right uses.

In a letter dated November 6, 2002, Stephen Callcott, Preservation Planner, DC Historic Preservation Office ("HPO") stated: the HPO believes that the interior of the subject property is an architecturally significant space worthy of preservation.

At the public hearing, Mr. Callcott further testified as to architectural significance of the subject property. He testified that it is clearly more architecturally elaborate, unique and

rare compared to most contributing buildings within the historic district. When asked to compare the impact of the building interior, if converted to a condominium versus the applicant's proposed use, he stated, that B&B, is a better preservation solution than subdiving the spaces because it not only preserves the features of the individual rooms but permits the sequences of the spaces to continue to be read and experienced in their entirety and without separation between them.

The District Department of Transportation submitted a report endorsing the Applicant's Transportation Management Plan and stating that it has no objection to the variances. A representative of DDOT also testified at the public hearing. The representative expressed some reservations about the impact of a valet parking arrangement for events, and expressing a preference for a shuttle arrangement.

The Applicant clarified that all event guests will be given advance information instructing them to go directly to the offsite commercial garage to park wherefrom they will be transported by shuttles to the B&B.

ANC-2B voted to oppose the application in the absence of a voluntary agreement. However, at the public hearing the ANC representative expressed support of the proposed conditions with the addition of a limitation of B&B expansion in the immediate vicinity and with the assurance that the applicant would not seek a liquor license. The Applicant responded that it has no intention to do either and has no objection to adding these two

conditions.

The Dupont Circle Citizens Association ("DCCA") submitted a letter indicating that it opposes the variance. The letter further indicates that the DCCA could support the variance if the BZA required a list of conditions that meets the concerns of the Dupont Circle neighborhood. Finally, the letter states that the DCCA is pleased with the Applicant's efforts to preserve the interior and exterior of the subject property.

A number of neighbors requested and received status as parties in opposition to the application. Their testimony addressed potential adverse impacts associated with a B&B use and expressed a preference that the property be converted to condominiums.

Conclusions of Law

A Bed and Breakfast ("B&B") is permitted as an accessory use to a residential use in an R-5-D District. The subject property is a contributing structure to the 16th Street historic district; therefore, DCMR Title 11, 203.8(c), permits six (6) bedrooms to be used as sleeping rooms in the Bed and Breakfast as a matter of right. Section 203.4 – 203.6 provides standards for B&B's including a limitation on the number of employees (ie. no more than 2 in addition to the B&B owner who must reside on the premises). Section 203.10(b) permits the Board to grant special exception to permit a modification to no more than two of the requirements of 203.4 through 203.6 are to be modified. Under 11 DCMR 203.10(d), a request to modify more than two of the requirements found in 11 DCMR 203.4 through 203.8 shall be deemed a request for a variance rather than a special

exception.

Variances do not always neatly fit into the "use" or "area" variance definition and the difference between the two is sometimes merely one of degree. Wolf v. District of Columbia Board of Zoning Adjustment, 397 A.2d 936, 941 (D.C. 1979). On balance, however, the Board concludes that the proposed variancee – which is merely an enlargement of a matter-of-right use (a six room B&B) or a special exception use (a six room B&B which deviates in two respects from the applicable standards for B&Bs set forth in § 203.10(d), Zoning Regulations) – is an area variance.

The Board believes that the proposed variance is similar in a number of respects to the variance reviewed by the DC Court of Appeals in Monaco v. District of Columbia Board of Zoning Adjustment, 461 A.2d 1049 (D.C. 1983). This case involved a variance request to permit a nonprofit office use in a residential zone district under § 217 which permits nonprofit uses in historic structures which contain at least 10,000 square feet of space. The variance was required because the building at issue was "far less" than the 10,000 square feet required. The BZA determined and (was upheld in Court) that an area variance was required reasoning that the requested variance was not a typical use variance application which an individual would seek to permit a non-conforming use in a particular zone district. The BZA reasoned that only an area variance was required because to find otherwise would frustrate the central intent and purpose of the regulation, that is the "efficient use of large historic residential structures to avoid their deterioration into empty shells." The Court also concluded that if the central purpose of the regulation

is to be fulfilled, flexibility as to the size of the eligible residences must be maintained.

Similarly, a central purpose of § 203.8(C)(1) which permits six-guestrooms in historic B&Bs (as opposed to four for non-historic B&Bs) is to provide increased revenues which can support the restoration and retention of large historic structures like the subject property. In the instant case, the proposed variance permits an efficient use of an exceptionally large historic mansion. The requested flexibility as to the number of permitted rooms, employees and guests is warranted in view of the public policy objectives served thereby.

In considering this case, the Board must determine if by reason of some extraordinary or exceptional situation or condition of this property the strict application of zoning regulations would result in an undue hardship.

First, the subject property clearly meets the unique and exceptional standard. The building is universally identified as a highly significant historic structure within the Sixteenth Street Historic District. Most importantly, as documented by the professional staff of the D.C. Historic Preservation Office, the interior of the subject building is one of the finest in the City and "remarkably intact." It is primarily the exceptional quality of the building interior that gives rise to the variance in this case.

The Applicant, as well as the City's Office of Planning and the Historic Preservation

staff, are desirous of restoring and preserving the building interiors. A strict application of the Zoning Regulations in this case which limits the matter of right use of the subject property to single or multifamily residential uses would result in an undue hardship, rendering it extremely unlikely that many of the interior spaces and features could be preserved and protected in accordance with their original intended uses. The formal entranceway, dining room, parlor and salon spaces which were typical of grand residences of this era, as well as the ornate central staircase and landing would not likely be preserved if the Zoning Regulations were strictly applied to the subject property. It is a well-accepted fact that historic mansions of this size do not typically make economic single family residences. Further, a conversion to multifamily use would necessitate a carving up and blocking off of many of the aforementioned gracious entertainment spaces in order to create new individual residential units. If this were to happen, the building would no longer read as a single grand residence in keeping with its original historic intent.

Irrespective of the unique historic character of the interior of the subject property, given the large size of the house (*i.e.* over 13,000 square feet) use of the subject property for a six room B&B would result in an uneconomic, underutilization of the building. Further, certain zoning restrictions attendant to such a use would make it extremely difficult to maintain a viable B&B use.

Restrictions on the maximum number of nonresident employees to two and a limitation of

no more than eight clients or customers on the premises in any one hour period (§ 203.4(m)) would make it extremely difficult to operate even a six guestroom operation. First of all, with double occupancy rooms, it would be nearly impossible to regulate the limitation on the number of clients in any one hour period. Secondly, the limitation on the number of employees (only two permitted) would be insufficient to operate a six room B&B of the size of the subject property. As demonstrated by the Applicant, on advice from an experienced B&B manager, that a total of four on-site employees will be required at certain times of the day to accommodate shift overlaps, and thereby operating the proposed 10-room B&B on a 24-hour, 7 day a week basis. It is unlikely that by eliminating four of the proposed ten guestrooms, the Applicant could reduce his employee requirements by over 75 percent.

Finally, the third prong of the variance test is also met in this Application. This prong provides that the variance can be granted without substantial detriment to the public good and without impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. With the adequate conditions, addressing the frequency, size, and hours of events, parking arrangements, use of the courtyard, trash pick-up, etc., the proposed B&B can be operated without significant impacts on neighboring uses. Further, as indicated by the Applicant at the last hearing, alternative single-family and multi-family residential uses, which would not be subject to such conditions, may be expected to produce more detrimental parking, noise and other impacts as compared to the proposed B&B, which will be subject to zoning restrictions.

Finally, the public good is clearly served by the restoration of the highly significant interiors of the subject building. This objective is also consistent with the intent and purposes of the Zoning Regulations. The retention and preservation of large historic mansions is a key objective of several zoning provisions which permit otherwise prohibited uses in residential zone districts. These provisions include the subject regulation which permits six room bed and breakfast establishments in historic structures and § 217 which permits nonprofit uses in 10,000 square foot historic structures as discussed above. Further, the Dupont Circle Overlay District, which is also applicable to the subject property, specifically includes, as one of its purposes, "the protection of the integrity of contributing buildings" in the various historic districts located within the overlay zone (§ 1501.4(b)).

ANC-2B views on this application are entitled to great weight. While the Board agrees that it would be preferable to have a voluntary agreement with adjacent neighbors as to some of the operational aspects of the B&B, the parties have not been able to reach such an agreement. In lieu, thereof the Board imposes the following conditions on the property:

Occupancy

The Bed and Breakfast will have a maximum of 10 guestrooms.

No more than four non-resident employees of the Bed and Breakfast will work onsite at any one time.

Events

Guests of the Bed and Breakfast may host up to 24 events (i.e., parties, meetings, weddings receptions and the like), annually. Weekday events (Monday through Friday can take place between the hours of 8:30 a.m. and 9:30 p.m. Weekend events (Saturday, Sunday and Holidays) can take place between the hours of 11 a.m. and 10:30 p.m. There will be no consecutive weekend events.

With the exception of events, the only meal that can be served on the premises of the Bed and Breakfast will be breakfast.

No more than 110 guests will be permitted to attend any single event.

Tables and chairs for the events will be stored on the premises.

Appropriate security will be provided for all events.

Courtyard Use

With the exception of wedding ceremonies, no events will be scheduled in the courtyard.

No breakfast buffet service will be set up in the courtyard.

Signs will be permanently posted in the courtyard requesting that guests respect the neighbors' peace and quiet.

Lighting

Lighting in the rear of the premises will be directed away from neighboring windows.

Parking and Traffic

Parking and traffic will be handled consistent with the DDOT approved Transportation Management Plan.

Trash

Trash will be kept in securely covered receptacles and stored in a brick enclosed area adjacent to the alley. Trash pickup will be scheduled a minimum of three times per week. All reasonable steps will be taken to prevent vermin.

Caterers for events will be responsible for removal of all event-related trash after the event.

Historic Preservation

The Applicant shall donate an easement to an appropriate historic organization which will provide for the preservation of the significant historic features of the first floor, the main stairway and second floor landing of the subject property. In the alternative, the Applicant cans place a restrictive covenant on the property which accomplishes the same objectives.