GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16333 of Richard T. Ross, as amended, pursuant to 11 DCMR 3108.1 for a special exception under Subsections 203.8 to operate a bed and breakfast as a home occupation in a multiple dwelling [Paragraph 203.8(a)], to exceed the maximum number of rooms [Paragraph 203.8(c)(1)], and to allow for additional staff [Paragraph 203.4(d)] in a D/R-5-B District at premises 1808 New Hampshire Avenue, N.W. (Square 152, Lot 175).

HEARING DATE: April 15, 1998
DECISION DATE: April 15, 1998 (Bench Decision)

ORDER

SUMMARY OF EVIDENCE:

1. The subject property is located in the Dupont Circle neighborhood at 1808 New Hampshire Avenue, N.W. (Square 152, Lot 175). The lot is improved with a single family dwelling constructed in 1883, which contains almost 10,000 gross square feet of space. The house is located in the Dupont Circle Historic District and has been certified by the D.C. State Historic Preservation Officer as contributing to the character of the historic district.

2. The house is owned and occupied by the proprietors of a Bed and Breakfast. The property owners have operated the Swann House Bed and Breakfast (B&B) at the subject site since May 3, 1996, under Home Occupation Permit No. 96-571 issued by the D.C. Department of Consumer and Regulatory Affairs (DCRA).

3. In January 1998, upon inquiry by the property owners/applicants, DCRA stated that the home occupation permit under which the B&B had been operating was issued in error and that it was necessary for the applicants to apply for a new permit. The applicants re-applied on January 29, 1998, for authorization to operate a six-room B&B in their owner-occupied single family house. By letter dated February 3, 1998, the Acting Zoning Administrator of DCRA denied the application because the B&B exceeded the maximum number of permitted guest rooms (which is limited to two), and because a B&B is not permitted in a multiple dwelling. The applicants were instructed they could appeal this decision to the Board of Zoning Adjustment (BZA) by requesting a special exception to operate their bed and breakfast.

BZA
Case No. 16823
Exhibit No. 58

Board of Zoning Adjustment
District of Columbia
CASE NO.16823
EXHIBIT NO.58

4. The applicants filed their application with the BZA on February 17, 1998, and requested two modifications of the bed and breakfast regulations, as permitted under Subsection 203.10(b). First, they requested to increase the number of permitted staff from one to two employees (203.4(d)). Second, they asked to increase the number of permitted guest rooms to nine (203.8(c)(1)). Because the applicants own and occupy the single-family house as their sole residence, Subsection 203.8(a) was not applicable; and no relief was necessary from the prohibition against bed and breakfasts in multiple dwellings. The house had previously been used as an apartment building. The use ceased and the building was returned to a single family residence after the applicants purchased the property in 1989.

5. The Board provided proper and timely notice of the public hearing on this application by publication in the D.C. Register, and by mail to affected Advisory Neighborhood Commission (ANC) 1C, adjoining ANC 2B, and to owners of property within 200 feet of the site.

6. The applicants testified that with one exception, the proposed B&B complies with the bed and breakfast requirements under Subsection 203.8. They stated that the house is not used as a multiple dwelling; that breakfast is the only meal served, and served only to overnight guests; that the house is certified to contribute to the Dupont Circle Historic District, and thus there are no parking requirements for the property under the waiver granted; that cooking facilities are not available in guest rooms; and, that the dwelling is owner-occupied and used as the owners principle residence.

The applicants requested a modification to allow an increase in the permitted number of guest rooms from six to nine. Because the house is certified to contribute to the Dupont Circle Historic District, six guest rooms are permitted as a matter-of-right.

7. The applicants further testified that the proposed B&B complies with the applicable sections of the home occupation regulations under 11 DCMR 203.4 to 203.6. They stated that the house is principally used as their residence and the B&B use is secondary; that no finished products are produced by the B&B; that maintaining the residential character of the dwelling is integral to the success of the B&B; that no noxious odors, vibrations, or visual or electrical interference will be created by the B&B; that the level of noise associated with the B&B will not exceed the normal levels associated with the dwelling and immediate neighborhood; that no more than two vehicles will be used with the operation of the B&B; that a small non-illuminated brass sign will be affixed to the front of the house; and, that sales on the property shall consist of a fee charged for the rental of rooms. With respect to Subsection 203.4(d), which limits the number of staff to one employee, the applicants requested a modification in order to provide two full-time equivalent employees.

8. The applicants testified that the two requested modifications would not affect the intent or general purpose of the Zoning Regulations. The applicants noted that the large, historic house contains almost 10,000 square feet of space and already has nine rooms. The Zoning Regulations allow a maximum of six guest rooms for properties such as this

one that are certified to contribute to an historic district or that are historic landmarks. The applicants stated that increasing the number of guest rooms from six to nine would allow them to make effective use of the spacious dwelling consistent with its historic design. Because of the maintenance requirements for this historic house and a B&B operation, the applicants also stated that two full-time equivalent employees are necessary.

9. The applicants testified that registered guests of the B&B would be permitted to host social functions. For example, they stated that it is now customary for B&Bs to host small intimate weddings, where the wedding party and family members reserve all of the rooms for the occasion. B&Bs also provide business travelers an opportunity to entertain colleagues as they would in their own homes. Other out-of-town guests visiting relatives in the neighborhood find B&Bs the ideal location to stay in close proximity to family members. They also offer enough space in a home-like environment for geographically dispersed families to celebrate special occasions, such as birthdays, anniversaries, or other milestones. The applicants noted that 20 percent of their guests are referred by neighbors.

10. The applicants stated that social events are customarily incidental and subordinate to the B&B use and, as such, are permitted as an accessory use under the Zoning Regulations. The Regulations do not specifically address the issue of social events at bed and breakfasts. The applicants stated that such social functions are an ancillary service of a B&B and are no different from private social gatherings hosted by individual homeowners or events sponsored by other uses in less restrictive residential zones. Social events are routinely hosted by embassies, non-profit organizations, private clubs, sororities and fraternities, and house museums, although the Zoning Regulations do not address such events for these uses, either, other than the provisions related to accessory uses.

11. In response to questions posed by the Board, counsel for the applicants stated that the D.C. Court of Appeals upheld an interpretation by the Zoning Administrator that "the Zoning Regulations express no intent to prohibit any and all subordinate or occasional uses, even if outside the scope of the principal use...." *Ass'n for Preservation of 1700 Block of N Street v. Board of Zoning Adjustment*, 384 A.2d 668, 673 (D.C. 1978). The court noted in that case that the Zoning Administrator determined that a secondary use could constitute as much as 20 percent of the overall use of the property and still be considered incidental under the Zoning Regulations.

12. In response to concerns raised by ANC 1C regarding parking problems generated by social events at the B&B and catering trucks blocking the alley behind the property, the applicants volunteered to impose the following controls and limitations on events:

- The number of events would not exceed an average of two per month, or 24 a year;

- All events would end by 11:00 p.m., and no caterers would be permitted to load or unload trucks after that time;

- No amplified or outdoor music would be permitted;

- All guests would be required to use a valet parking service, which would park cars in nearby garages, and not on neighborhood streets; and,

- No catering trucks would block the alley at the rear of the property and trucks would be moved immediately upon the request of a neighbor, even if loading and unloading activities are still in progress.

13. The applicants organized an open house for their neighbors to discuss the proposed operation of the B&B with conditions, and other concerns related to the B&B. They also met or talked with individual residents. As a result of those meetings and discussions, the applicants solicited over 135 signatures on a petition in support of the B&B, with the conditions noted above. Over 90 of the signatures were from residents in the immediate neighborhood. The abutting neighbors, those most directly affected by the B&B, either signed the petition or submitted letters to the record in favor of the application.

14. ANC 1C testified in support of the application. The ANC recommended approval of the application by a unanimous vote (6-0, 5 members constituting a quorum) at its April 1, 1998 meeting. The Board waived its seven-day filing requirement to accept the ANC's report into the record.

15. The Department of Public Works, by report dated April 13, 1998, stated that from a transportation standpoint, the Swann House Bed and Breakfast would not have an adverse traffic and parking impact on the local transportation system. The Department noted that the amount of traffic generated by the B&B is insignificant. The correspondence stated that DPW wholly supports the valet parking arrangement to minimize or eliminate any parking problems in the immediate neighborhood residential streets, and supports the proposal in general.

16. A neighbor at 1754 Swann Street, N.W. testified in support of the application and was granted party status by the Board. The neighbor stated that the expenses associated with maintaining such a large historic house are prohibitive and that the B&B use is the most appropriate one that will assure the continuation of its historic and residential appearance. The neighbor noted that the B&B use is less intensive than the previous apartments on the site. The neighbor also stated that she and her husband had not experienced any problems with trucks blocking the alley, parking, or any disruptions from social events at the subject property.

17. A neighbor at 1705 Swann Street, N.W., testified in support of the application. The nearby property owner stated that her house is located directly across the alley from the B&B to the rear, and as such, she would be directly affected by operations of the B&B.

The neighbor stated that she had no objections to social events at the B&B and urged approval of the application.

18. A full-time employee of the B&B testified in support of the application. The employee stated that the Swann House B&B is the exact type of small-scale facility that the city tries to encourage because of its ability to enrich the neighborhood, foster historic preservation goals, provide a service to neighbors and support local businesses.

19. There were several neighborhood residents and a representative of the Dupont Circle Citizens Association who were granted party status by the Board and who testified in opposition to the application. Persons testifying against the application stated that the social events sponsored by guests of the B&B were not an accessory use but rather were in direct contradiction to the home occupation regulations. They stated that social events at Swann House served meals other than continental breakfast, that the number of guests would exceed the maximum number of eight, that guests were permitted in the outside garden area and on exterior decks, and that noise generated by the parties was excessive, all in contravention to the restrictions set forth in Subsections 203.4 and 203.8 of the Zoning Regulations.

20. One of the neighbors testifying in opposition to the application stated that the B&B operations were commercial in nature and derogated the residential quality of the neighborhood. It was stated that the B&B created adverse impacts on the community through excessive noise and parking problems that could not be mitigated by the proposed conditions.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The applicants comply with the provisions of Subsection 203.8 of the Zoning Regulations, except for 203.8(c)(1) for which a modification is requested. The subject property is not used as a multiple dwelling; breakfast is the only meal served, and served only to overnight guests; the house is certified to contribute to the Dupont Circle Historic District and thus there are no parking requirements for the property under the waiver granted; six guest rooms are permitted as a matter-of-right by virtue of the historic certification; cooking facilities are not available in guest rooms; and the dwelling is owner-occupied and used as the principle residence.

2. The applicants further comply with the applicable provisions of the home occupation regulations under Subsections 203.4 through 203.6, except for section 203.4(d) for which a modification is requested. The house is principally used as the applicants' residence and the B&B use is secondary; no finished products are produced by the B&B; the residential character of the dwelling will be maintained; no noxious odors, vibrations, or visual or electrical interference will be created; the level of noise associated with the B&B will not exceed the normal levels associated with the dwelling and immediate neighborhood; no more than two vehicles would be used with the operation of the B&B;

a small non-illuminated brass sign will be affixed to the front of the house; and sales, on the property would consist of a fee charged for the rental of rooms.

3. The requested modification of Subsection 203.8(c)(1) to increase the number of guest rooms from six to nine is appropriate for the size and historic nature of the house and is consistent with its residential character and the surrounding historic district. The requested modification of Subsection 203.4(d) to allow two full-time equivalent employees is necessary to the successful operation of the bed and breakfast. The two modifications will not compromise the general purpose and intent of the Zoning Regulations and can be granted without any adverse impacts to the neighborhood.

4. The social events sponsored by registered guests of the bed and breakfast are customarily incidental and subordinate to the bed and breakfast use, and thus are permitted as an accessory use under the Zoning Regulations. The applicant has agreed to limit the number of events per year to 24, which constitutes less than 20 percent of the calendar year. Further, the conditions proposed by the applicants are an appropriate measure to ensure that the social events will have no adverse impact on the surrounding neighborhood.

5. The Board takes note of the position of Advisory Neighborhood Commission 1C, and in its decision the Board has accorded to the ANC the "great weight" consideration to which the Commission is entitled.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and evidence of record, the Board concludes that the applicants have met the burden of proof, pursuant to 11 DCMR 203.10(b) and 3108, that the modifications comply with the general purpose and intent of the home occupation regulations, and that requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board concludes that no adverse impacts will result from the increase in number of employees and guest rooms. It is therefore **ORDERED** that this application be **GRANTED, SUBJECT** to the following **CONDITIONS**:

1. Only registered guests of the bed and breakfast shall be permitted to host social events;

2. The number of social events shall not exceed 24 a year, with no more than five events in any one-month period;

3. No event shall begin before 9:00 a.m. and all events shall end by 11:00 p.m. Caterers shall not load or unload vehicles after 11:00 p.m.;

4. Outdoor music and amplified music is prohibited. An attendant of the bed and breakfast shall be on the premises at all times during social events to ensure that there are no disturbances to the neighborhood;

5. Guests of the bed and breakfast, including those attending social events, shall be required to use a valet parking service, which must park cars in nearby garages and not on the streets or in alleys; and,

6. The proprietors shall use their best efforts to ensure that the alley behind the property is not blocked at any time by anyone associated with the bed and breakfast.

THIS ORDER WAS ADOPTED, AS AMENDED, BY THE BOARD OF ZONING ADJUSTMENT AT ITS PUBLIC MEETING OF MAY 6, 1998.

VOTE: 4-0 (Betty King, Maurice Foushee and Sheila Cross Reid to adopt; Jerrily Kress to adopt by absentee vote.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Sheri M. Pruitt-Williams
SHERI M. PRUITT-WILLIAMS
Interim Director

FINAL DATE OF ORDER: MAY - 7 1998

Ord16333/BAB

PURSUANT TO D.C. CODE § 1-2531 (1987), SECTION 267 of D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF TWO YEARS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT, HOME OCCUPATION PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.