July 29, 2003
Case #17044, 2005 Columbia Rd., N.W.
Square 2536, Lot 150

TESTIMONY OF ANN HUGHES HARGROVE
BEFORE THE BOARD OF ZONING ADJUSTMENT
ON BEHALF OF THE
KALORAMA CITIZENS ASSOCIATION

Chairman Griffis and Board Members:

The Kalorama Citizens Association, at its meeting of June 26th, voted unanimously to oppose this variance, based on a presentation of the resolution attached hereto (Exhibit 2).

ZONING AND LAND USE BACKGROUND

Predominantly residential area with a variety of residential uses: The block is one of a number of blocks in the Kalorama Triangle in Northwest Washington zoned residentially, and it is part of the Kalorama Triangle Historic District. Its blockface was changed from R-5-C to R-5-D in a questionable decision by the Zoning Commission when it decided through a text amendment to create a revised R-5-C category, thereby adding an R-5-E category and two years later, without benefit of a related map case, changing all mapped R-5-C to R-5-D as a continuation of the same case. Any such mapped change should have been done in conjunction with land use analyses. In any event, the same rules apply for both as to the treatment of transient accommodations. The premises are zoned R-5-D, and the rowhouse is approximately 20 feet wide and 46 feet deep. The house has 4 stories above a basement level, with no alley egress from the rear, or on-premises parking. All trash and deliveries will have to be to the front of the house.

The buildings that surround the premises are residentially used, except for two chanceries, one at each end of the block. The building on one side was recently restored as a single-family house, and two doors down is the residence of an owner who has a gallery on the first floor. All the buildings on this blockface along Columbia Road are rowhouses and semi-detached houses and detached houses. Two large condo apartment houses, one at Connecticut Avenue and Wyoming Avenue, and the other directly behind this property, complete the block picture. The Wyoming Avenue apartment house was a PUD, and to be eligible for its height, required an entrance two doors down from the subject premises on Columbia Road. The blocks surrounding the house are all residentially zoned and used. The buildings across the street on Columbia Road are condo apartment houses, once threatened with demolition by a possible Hilton Hotel expansion. See exhibit 1 for a sampling of a variety of residential uses within the area.

BZA
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Exhibit No. 36

Board of Zoning Adjustment
District of Columbia
CASE NO. 17044
EXHIBIT NO. 36

Two zoning cases directly applicable to this case: Two zoning cases from the 1980's changed the regulations having to do with transient accommodations: the so-called hotel case of 1980 and the home occupations case of 1988, which dealt with transient accommodation uses in residential zones. The general effect of both was to: (1) preclude new hotels and inns from locating in residential zones while at the same time restricting expansion of existing hotels and inns in such zones, and (2) provide that so-called "bed and breakfast" transient accommodations would be restricted in *all* residential zones by requirements that they be limited by the number of rooms and by owner occupancy as a home occupation. In addition to fulfilling other standards, the "bed and breakfast" operations are required to have a home occupation certificate. While rooming houses were to remain as an allowable use in certain residential zones, they nonetheless were precluded from having residents who stay for less than one month and were not allowed to be a hotel, motel, inn, bed and breakfast, private club, tourist home, guesthouse, or other transient accommodation.

The Zoning Commission order on home occupations (Order # 557) asserts that *"The rules will limit matter-of-right Bed and Breakfast facilities to a scale of operations which is clearly an accessory use in the residence of the operator"*. **The net effects of these two cases are an important for the "public good": (1) there is less likelihood of conversions of residences—single family homes, rooming houses, and apartment houses--to completely transient accommodation businesses; (2) there is less likelihood of a concentration of transient business operations in a single block or area; and (3) the basic principle is upheld that large-scale commercial operations in residential zones are unsuitable by definition.**

THE APPLICANT'S PROPOSAL

The Applicant's Case, as reflected in the application: The applicant has proposed a variance from the use provisions to permit an "Inn/Tourist Home (15 units)".

1. Applicant (Form 120, item 4c.): *"The existing building has a mixed use consisting of rooming house and rooms for transient students. The proposed intended use will be as an Inn."*

Response:

(1 There is no certificate of occupancy that would or did authorize such a mixed-use status by the former owner for this property, and an "inn" is not an allowable use in residential zones as anything other than under the home occupations provision of the regulations. The mixed use would not be lawful, since the home occupation regulations forbid such occupations in multiple unit buildings (a building with 3 or more dwelling units or rooming units, or any combination of these units totaling three (3) or more).

(2 There are no zoning grandfather rights for this property. See additional discussion below.

(3) A rooming house, according to its definition, cannot be a hotel, motel, inn, bed and breakfast, private club, tourist home, guesthouse or other transient accommodation and provides accommodations on a monthly or longer basis.

2. Applicant (Form 120, item 4d.): *"The proposed use is an Inn which is consistent with the lodging aspects of residential use", and continuing, "The proposed use will be in accordance with the current percentage of lot occupancy, FAR and height limitation".*

Response:

(1. In the hotel case, the decision stated that only in the non-residential, non-industrial zones, could "sleeping rooms" be counted as residential for purposes of FAR requirements. This was an explicit decision related to encouraging transient accommodations in areas other than residential areas and to denying any claims that transient rooms could be treated as residential rooms in residential zones.

(2. All the sleeping rooms in a residentially zoned residence must be counted as residential FAR unless a limited number of them are part of a home occupation bed and breakfast, which is an accessory use in a residential zone, in which event they would be counted in the total residential FAR of the residential building or structure. There are no "split" FAR specifications in residential zones.

3. Applicant (Form 120, item 4d*): "Allowing this use would not adversely affect the use of neighboring property because the parking would not be affected because the proposed tenants will use public transportation, the additional traffic impact will be very limited, no additional noise or environmental issues will exist, the transient tenants will not disturb or interact with the tenants in the neighboring flats and apartment buildings."*

Response:

(1. This is entirely a matter of conjecture on the applicant's part. Certainly there is no guarantee that guests will not arrive by car, and in any event, the nature of the inn's operation over time with various ownerships and market conditions may well change. .

(2. The potential for additional disturbance is a real one, as is the parking issue in the following sense: the main floor living room is described as a "conference room" by the applicants and could be a center for meetings or for outside paid functions which could bring large infusions of persons and guests, thus contributing to parking problems and traffic problems with taxis. Also, taxis arriving in the middle of the night or honking horns in the early morning can create a major disturbance in a residential neighborhood, as can visitors coming and going at all hours, beyond what is reasonably expectable by residents. Since Swann House Bed and Breakfast, for example, has cars parked along its driveway in front of the house, one can surmise that guests at this proposed inn may well take spaces on the street.

(3. Similarly, deliveries, customer arrivals and departures, and trash removal will all have to be done from the front inasmuch as there is no alley entrance for deliveries or parking and no parking on premises. There is no delivery driveway associated with the premises.

4. Applicant (C*): "This property was licensed as a Rooming House since before 1976 it was also granted an Exemption for Transient Guests by the Rental Administrator", and "Mr. Bird, the previous owner was paying Hotel taxes and operating as an Inn (Columbia Guesthouse) for many years until he suddenly passed away in April of 2002."*

Response:

(1 **There are no grandfather rights accruing in a case where a property is operating outside the bounds of its certificate of occupancy, and the home occupations case decision dates from September 16, 1988**. The previous owner's last certificate of occupancy was for an 8-unit rooming house. (In January of 2000, the DCRA issued a business license to the previous owner for a 15-unit rooming house with no revised certificate of occupancy in evidence).

(2. **While D.C. codes should all be evenhandedly applied, taking into account their relationship to zoning, they are not.** No right to circumvent the Zoning Regulations arises by virtue of paying a hotel tax or getting a rental accommodations office exemption for transients. Similarly, the fact that the Metropolitan Regional Information Systems, Inc. classified the land use as commercial with the property used as an inn is irrelevant. It has no legal standing, and the form on which this information is portrayed has a disclaimer for its accuracy.

(3. **Since the applicant has now obtained a certificate of occupancy as a rooming house for eight residents, an allowable use in an R5D zone, no question can arise of any supposed grandfather rights to a non-conforming use.** The question of such grandfather rights is superceded and rendered moot by a new certificate of occupancy for a conforming use.

5. Applicant (C*): "We, as the new owners, renewed the existing Certificate of Occupancy as a Rooming house however, we were not allowed to continue with the special exemption granted to the previous owner to have transient guests and was told to apply for an Inn C of O."*

Response: No such exemption from zoning requirements was ever granted, and there is no provision in zoning that allows one to continue an unlawful use.

6. Applicant(C): *"The reason we purchased this property is because we were told that we could be grandfathered in and would be allowed to continue doing the Inn business. We do not want a rooming house business because we could not survive financially with such an expensive property"* and *"Our intention is to continue to run the 15 room Inn/Tourist House business at this location."*

Response:

(1) **If the applicants were told what they assert at the time of their decision to purchase this property, they were clearly misinformed, and the misunderstanding is highly regrettable.** Any buyer who proposes a business use in a residential zone should read the Zoning Regulations and check with the zoning authorities as to the legitimacy of the proposed use. It is unfortunate that the applicant relied on misinformation, but this does not change the situation as to the applicability of the zoning requirements.

(2) **The applicant has the option, if a rooming house operation cannot cover the cost of the mortgage and renovation, to market and sell the property for residential use, of which there are a variety of choices in the R-5-D zone. Additionally, it is possible that someone interested in merely supplementing income from a dwelling would find that a 6-room bed and breakfast would be desirable.**

7. Applicant (D): *"We purchased this property on 3/7/03 with the purpose of continuing the existing Inn/Guesthouse business that was being run by the previous owner since before 1976. However, when we applied for the Business license, the Rent Administrator did not allow us to have the same Exemption granted to the previous owner, which allowed him to have Transient Guests and therefore run as an Inn/Guesthouse (he was known as Columbia Guesthouse). He was licensed as a Rooming house with the special exemption to run as an Inn."*

Response: The applicant has continued to make the erroneous assumption that the previous owner had some sort of special exemption from the Zoning Regulations. He did not, and even if he had, it would not apply now, since the applicant now has a certificate of occupancy for a rooming house, a lawful use under zoning.

8. Applicant (D): *"We are now in the process of remodeling this 15 room guesthouse with the sole intention of running the Inn/Tourist House business."*

Response:

(1. **Inasmuch as the applicant has stated that it is not economically feasible to operate the house as an 8-room rooming house, and inasmuch as the variance request may be denied, it would seem inadvisable to proceed with a renovation that may adversely affect the house's marketability as a residence with or without one or more apartments.**

(2. **Partitions inappropriately placed in the rooms upstairs, especially on the second floor, and illustrated in the plans (some placed by the previous owner) divide the house into cubicles and obscure the facade bay window treatment, and should be removed if the house is put up for sale. The multiple baths being put into the house detract from its spatial usage as a dwelling and represent a very substantial expense. (These renovations, while unsuited to single family use or single-family use with an apartment or two are also unsuited to conversion of the building to apartments.)**

(3. **While the applicant is not seeking authorization to operate a bed and breakfast, two points should be mentioned:**

First. one requirement in the home occupation regulations (203.4(f)) is that *"No interior structural alteration shall be permitted if it would make it difficult to return the premises to use which is exclusively residential"*. We believe that the renovations underway are making the building suitable for a crowded inn use but not for any defined residential use (assuming, as they have said, that a rooming house is not financially feasible). It is contrary to the spirit of the regulations to renovate the house for a purpose which may be precluded under zoning and which would limit its future marketability for residential purposes.

Second, the renovations underway are not compatible with a primary use by the owner as his/her residence, for the bulk of the square footage is being devoted to sleeping rooms and ancillary areas and guest bathrooms. The present owner family is at least three persons: a husband, wife, and child. This would suggest space for two bedrooms for themselves in addition to other needs, including the kitchen and bath. If they were to live there they would be doing so in less than 20% of the space in the house by utilizing a single room and bath in the basement plus a shared laundry and a small kitchen upstairs on the main floor. The house has a full basement level and full four stories above it. This would clearly in violation of the requirement for the business to be

an accessory use to the primary use as a residence under the home occupations standard. (Note that the drawings supplied to the record have been reduced, and the scale is therefore not accurate. The house, excluding the front stoop, is estimated to be about 20 feet wide by about 46 feet deep.)

9. Applicant (D): *"We will not have an adverse impact on the neighborhood because the business had been there already for almost 30 years" and "We require reservations and are a no smoking, no drinking and no pets guesthouse".*

Response:

(1. There is no doubt that the previous operation caused many problems for the neighbors, but that does not suggest that there will be none with the new operation, even if its operations are substantially improved.

(2. A memorandum of understanding between parties and the applicant would not be sufficient to gain support for an operation that would be contrary to the zoning, and its agreements would be difficult to enforce and place an undue burden on neighbors. New prospective owners might well not wish to abide by it, and these owners may change their minds about the nature of their operations as time goes on.

10. Applicant (D): *"This property is not suitable as a residence and it would be financially impossible for us to keep it without the Inn the business."*

Response: There is no evidence offered by the applicant that the property cannot be used as a residence, in compliance with the Zoning Regulations. The neighborhood is full of similar properties that have been made into single family homes, homes with less that 5 apartments, apartment dwellings—rental and condo—all with or without parking. (See discussion below and Exhibit 1 for a sampling of such residential uses in the area.)

SUMMARY CONCLUSION:

The applicant has failed to fulfill the burden of proof for the standards required of a use variance: that the property has exceptional physical conditions (narrowness, shallowness, shape, exceptional topographical conditions) or other extraordinary or exceptional situation or condition, so as to justify consideration by the board of a variance because of possible hardship engendered through the strict application of the regulations. Additionally, the Board must find 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 an Map. (D.C. Code, Section 5-424(g)(3))

First, the applicant has submitted absolutely no evidence that the property is somehow physically deficient so as to prevent its use for residential purposes. There is no possible finding based on the evidence of this case that the property cannot be used for one of several available lawful available residential uses in a residential area where rowhouse residential usage predominates and is in high demand. For example, the house next door that was purchased a couple of years ago for a higher purchase price than this

one (it is slightly larger with a small side yard), was in very bad condition and is currently having its renovation completed as a single family house. Other houses, such as the sample offered as an attachment to this testimony, illustrate a variety of residential uses in the immediate area for rowhouses with or without off-street parking: single family homes, and apartments, including condos, in various configurations.

Secondly, there is no hardship imposed by the zoning itself, only a self-imposed hardship arising from the desire for a use that is not allowed by the regulations. The hardship is caused by a speculative venture dependent on a use variance for a use not allowed by the regulations in residential zones. And the applicant has options available for use of the property: it could be sold immediately, or it could be rehabilitated into a single family or multiple household residence or as condos for future sale. (The applicant has indicated that a rooming house will not be sufficient income, so this option would be unrealistic.) What is clear is that, in accordance with Druade v. D.C. Board of Zoning Adjustment, 527 A.2d 1242, 1255 (D.C. 1987), the property can be utilized and improved for uses that would be compatible with its zoning. These would be alternatives to the use for which the variance has been sought.

Third, the "no detriment to the public good" test cannot be met. The "public good" involved in the present case is embodied in the Zoning Regulations in their restrictions against commercialization of residential zones for transient businesses. The Comprehensive Plan (Section 1104.1(r)) states *"Control the conversion of residential housing to guest houses, bed and breakfast establishments, clinics and other residential uses"* as a policy directive. The appropriateness of this policy is reflected further in Section 1102.1(e): *"To protect residential neighborhoods from disruptive uses"*; (1104.1(a): *"Promote the conservation, enhancement and revitalization of the residential neighborhoods of the District for housing and neighborhood-related uses"*, as well as a similarly worded policy in the Ward 1 section of the Plan (Section1230.1(a): *"To promote the conservation, enhancement, and revitalization of Ward 1's residential neighborhoods for housing and neighborhood uses"*. Another Ward 1 objective is *"...to protect residential neighborhoods from disruptive uses, and to protect against]concentrations of non-residential uses in the ward's residential neighborhoods"* (Section 1229.1(a). **All of these policies relate directly to the regulations adopted by the Zoning Commission. To grant this variance would undermine these policies with substantial detriment to the public good, and move in a direction that would be incompatible with the Comprehensive Plan and the policies affirmed in the hotel case and bed and breakfast text cases. Similarly, the granting of such a commercial use would adversely affect the residential character of the area, degrading the quality of life amenities of nearby properties and destabilizing residential integrity.**

A FINAL NOTE:THE SPECIAL EXCEPTION PROVISIONS OF THE HOME OCCUPATION REGULATIONS AND STANDARDS EMBODIED IN THE

HOME OCCUPATIONS CASE THAT WOULD BE CLEARLY MOOT IF A VARIANCE WERE GRANTED IN THIS CASE

This case is properly advertised as a variance case and is ineligible for hearing and review as a special exception under the bed and breakfast regulations. Nor has any application for such a special exception been made—the applicant seeks a variance for use as an inn, not a bed and breakfast. It is worth noting, however, that had such application been made, the requirements for such a special exception clearly could not be met.

The bed and breakfast regulations allow such a use as an owner occupied home occupation, subject to certain restrictions. Under 11 DCMR, Section 303.4, 203.8 and 203.10, Bed and Breakfasts are allowed as a home occupation subject to the provisions contained therein. The BZA can waive two of those provisions as a special exception provided *that "an applicant for a home occupation...may request the Board to modify no more than two (2) of the conditions enumerated in Section 203.4 through 203.8"*, 11 DCMR, section 203.10(b). The regulations continue: *"Any request to modify more than two (2) of the requirements found in Section 203.4 through 203.8 shall be deemed a request for a variance."* (11 DCMR, Section 203.10(d)). Furthermore *"The proposed use and conditions related thereto shall be consistent with the purposes set forth in subsection 203.1...."* (203.10(a)), and subsection 203.1 stipulates*: "The purpose of the home occupation provisions is to allow home occupations as accessory uses to residential uses...."*

There are at least five requirements for a bed and breakfast home occupation that could not be met (exceeding the two allowed) for purposes of determining special exception eligibility. **At the same time, these protective standards would not have to be met if the variance were granted, thus enhancing the deleterious effects on the residential area.**

. They are as follows:

1. Section 203.4(a) states that "A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes. According to the owners at an ANC meeting, if they live on premises, the space they propose to occupy (the upstairs kitchen and part of the basement) is less than 25 % of the house. By subdividing rooms into small cubicles, the house would accommodate a large number of transient guests.

2. Section 203.4(l) limits the vehicular trips to the premises by visitors, customers and delivery person to 8 trips daily on a regular and continuing basis. With 15 rooms, the number of guests could well double or more, with 30 guests arriving and departing each day by taxi, car, van or even tour bus. Additionally, there will be employees or the owners arriving and departing, along with possible deliveries. If there are events held at the house, there will be additional support persons arriving connected with the event as well as the attendees themselves. (The front room on the entry floor, normally a living room, is labeled a "conference room".)

3. Section 203.4(m) requires that there be "no more than eight (8) clients or customers on the premises in any one hour period. Obviously, with 15 rooms and the prospect of customers for them, visitors to them, and possible events, this standard would be exceeded.

4. Section 203.8(c) stipulates that the maximum number of sleeping rooms in a residentially zoned bed and breakfast shall be 6 in a historic district. The proposed use would exceed this number substantially and would create a virtually completely commercial operation at this location.

5. Section 203.8(g) states that the dwelling shall be owned and occupied as the principal residence of the operator(s). This is the fundamental requirement of a home occupation and will not be required if a variance is granted for an "inn".

EXHIBIT 1: SAMPLING OF VARIED RESIDENTIAL USES WITHIN SEVERAL BLOCKS OF 2005 COLUMBIA ROAD

These pictures illustrate varied housing types, including single family houses and multi-family buildings with and without parking.



1901-03-05 Kalorama Road, 2300 19th Street, N.W., apartment conversions



2011-13-15 Columbia Road, apartment conversions



2007 Columbia Road, single family



1836 Belmont Road, apartment conversion



1938 Biltmore St., apartment conversion (no parking)



2210 20th Street,N.W., single family



2308-10-12 19th Street, N.W., apartment conversions or single fmily



2200 20th Street,N.W., single family

Exhibit 2

KALORAMA CITIZENS ASSOCIATION RESOLUTION OPPOSING USE VARIANCE
BZA CASE NUMBER 17044: 2005 Columbia Road, N.W., Square 2536, Lot 150

WHEREAS, the Zoning Commission on May 16, 1980, established new rules for location and expansion of hotels in the R-5-B, C, D (and E) Districts, which allow hotels as a matter of right if they existed in these districts at the time of the zoning order, and subject to conditions, including the preclusion of certain expansion (see Z.C. regulations 350.4(d));

WHEREAS, as part of the clarification of terms associated with the regulations adopted in 1980 regarding hotels, the Definitions section of the Zoning Regulations provide that an inn can be interpreted to be a "bed and breakfast", "hostel" or "tourist home", but may not be a "hotel", "motel", "private club", "rooming house", "boarding house", "tenement house", or "apartment house";

WHEREAS, the Zoning Commission on September 16, 1988, established new rules regarding home occupations as an accessory use, one such home occupation being a "bed and breakfast" facility operated by a resident owner, subject to certain additional conditions (see section 2031012);

WHEREAS, "inns" or so-called "tourist homes" are allowed in the residential zones enumerated above only as home occupations, and rooming houses are not allowed to be such facilities;

WHEREAS, these bed and breakfast home occupations limit the number of sleeping rooms to 6 in a historic district in a contributing building and impose other requirements, with the use secondary to the primary use as a residence and can't be located in a multi-unit building;

WHEREAS, 2005 Columbia Road, N.W. is a rowhouse located in the R-5-D zoning district, which is also part of the Kalorama Triangle Historic District and is therefore subject to the above regulations;

WHEREAS, the application by Claudio and Lucia Rosan seeks a variance from the use provisions under section 350.4 to establish and Inn/Tourist Hoe of 15 units at the 2005 Columbia Road premises;

WHEREAS, ANC 1-C and the Kalorama Citizens Association were strongly associated with, and supportive of the regulations adopted by the Zoning Commission regarding the hotel and home occupation text cases in order to retain residential integrity in residential districts, prevent conversion of residences to non-residential uses in residential zones, and encourage owner-resident operated bed and breakfasts;

WHEREAS, the approval of a variance, as reflected in the Zoning Act (D.C. Official Code Section 6-641.07(g)(3)(K2001) must be in accordance with the following standard:

"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 Sections 5-413 to 5-432 would result in peculiar and exceptional practical difficulties in or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application 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",
and such standards cannot be met by this application;

WHEREAS, the expansion of this use into a predominantly business operation as a variance which could continue across ownerships makes a further assault on the integrity and "public good" of these regulations,

NOW THEREFORE BE IT RESOLVED THAT THE KALORAMA CITIZENS ASSOCIATION OPPOSES THE GRANTING OF THIS VARIANCE.
June 20, 2003