STATEMENT IN SUPPORT OF APPLICATION FOR A SPECIAL EXCEPTION PURSUANT TO SECTION 203.8 OF THE ZONING REGULATIONS TO ALLOW AN INCREASE IN SLEEPING ROOMS FROM TWO (2) TO FOUR (4) OR SIX (6) IN A BED AND BREAKFAST OPERATED AT 417 A STREET, S.E.; SQUARE 818, LOT 27

This Statement of Reasons is submitted on behalf of the applicant, Mark Lee Phillips, the owner of the subject property.

The Property and its Current and Proposed Uses. The subject property is located at 417 A Street, S.E., Square 818, Lot 27 (the "Property"). The Property is located in the Capital Hill Historic District and is improved with a building that has been certified as contributing to the historic district. (*See Exhibit* 5.) The appellant currently uses the Property as his residence and has a home occupation permit to operate a bed and breakfast with two (2) sleeping rooms. (*See Exhibit* 3.) The appellant has applied for a permit to increase the number of sleeping rooms from two (2) to four (4) or six (6), as permitted by section 203.8(c)(1) of the zoning regulations. (*See Exhibit* 4.) However, by letters dated March 19 and 24, 2003, the Zoning Administrator informed the applicant that his permit application was denied, as a special exception was required for the requested increase. (*See Exhibits* 1 & 2.)

Zoning. The Property is zoned CAP/R-4. The R-4 districts are designed to include those areas predominantly developed with row dwellings and include buildings converted from single-family to two-family dwellings. The CAP overlay is intended to limit height, bulk and uses in order to protect the U.S. Capitol and its surrounding residential neighborhoods. 11 D.C.M.R. §§ 1200.1 *et seq.* Any use allowed by special exception in the R-4 district is, likewise, permitted in the CAP/R-4 district. 11 D.C.M.R. § 1201.3(a).

Special Exception Criteria. Section 3104.1 of the Zoning Regulations permits the Board to grant special exceptions, pursuant to the following:

> Pursuant to authority contained in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, the Board is authorized to grant special exceptions, as provided in this title where, in the judgment of the Board, those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title…

In short, the Board is empowered to grant a special exception where it finds

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EXHIBIT NO. 3

(1) The proposed use is in harmony with the Zone Plan and Zone Maps;

(2) The proposed use is not likely to adversely affect the use of neighboring property.

The Board's discretion in reviewing an application for a special exception is limited to a determination of whether the Applicant has complied with requirements of the section. If the Applicant meets this burden, the Board ordinarily must grant the application. *First Baptist Church of Washington v. District of Columbia Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981); *Stewart v. District of Columbia Board of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973).

A special exception may be granted for a bed and breakfast under the following conditions:

(a) The use shall not be permitted in a multiple dwelling;

(b) Breakfast is the only meal served, and is served only to overnight guests;

(c) The maximum number of sleeping rooms shall be two (2), except:

(1) Pursuant to § 203.10(b), the maximum number of sleeping rooms maybe increased to four (4); or, *in a dwelling that is an historic landmark, or that is located in a historic district and certified by the State Historic Preservation Officer as contributing to the character of that historic district, the number of sleeping rooms may be increased to six (6)*; and

(2) The number of sleeping rooms permitted as a matter of right or by special exception as set forth in this paragraph shall be reduced by one Title 11 District of Columbia Municipal Regulations (1) for each person who rooms or boards in the dwelling pursuant to § 202.5;

(d) The floor area limitations set forth in § 203.4(b) shall not apply to this use;

(e) In addition to the required parking for the dwelling unit, one (1) parking space shall be provided for each two (2) sleeping rooms devoted to guest use;

(f) No cooking facilities shall be permitted in any of the rented rooms;

(g) The dwelling shall be owned and occupied as the principal residence of the operator(s); and

(h) Except as provided in paragraph (d), the Bed and Breakfast facility shall comply with §§ 203.4 through 203.6.

11 D.C.M.R. § 203.8 (emphasis added).

1. Contrary to the Letter of the Then-Zoning Administrator, the Increase is Allowed as a Matter of Right.

The applicant's first argument in support of his application is that, contrary to the decision of the Zoning Administrator, a special exception is required to increase the number of sleeping rooms to four (4) or six (6), such increase is allowed as a matter of right, as the Property has been certified by the Historic Preservation Division of the Office of Planning ("HPD") as contributing to the Capitol Hill Historic District. In support of this argument, the applicant provides the following:

The need for a special exception from 203.8(c)(1) turns the regulation on its head and betrays both an unfortunate refusal of the Zoning Administrator to read the clear language of the regulation, but also a refusal to consider both the prior position of the agency, the orders of this Board and the Court and the record before the Zoning Commission when it adopted the B&B regulations. Such blatant disregard for the law suggests an invidious reason for the action taken by the Zoning Administrator.

In 1986, the Office of Planning proposed the adoption of new regulations which would authorize home occupations and bed and breakfasts, as a matter of right, in residential districts. The initial regulations limited the number of rooms in a bed and breakfast to two (2). The matter was set down for a hearing by the Zoning Commission and the Office of Planning amended its proposed regulations to provide for an increase in the number of sleeping rooms in a B&B to four provided that special exception relief was obtained from the Board of Zoning Adjustment. Following four (4) days of hearings before the Zoning Commission in April and May 1987, during which the B&B community pressed for leniency with regard to B&Bs located in historic districts and recommended amendments to the proposed regulations, the Zoning Commission retained the special exception requirement for four (4) sleeping rooms for B&Bs except for B&Bs located in a historic landmark or in a building certified as contributing to a historic district. A special exception for B&Bs in historic districts was required only if the operator desired to increase the number of sleeping rooms beyond the six (6) permitted as a matter of right.

Consistent with the foregoing, the DCRA began approving of applications to increase the number of sleeping rooms in a B&B in a historic building to six (6) without requiring any special exception approval. *See e.g.* Application and Approval for the Mansion on O Street (attached hereto in *Exhibit* 7). Following the departure of the Zoning Administrator who participated in the Zoning Commission hearings on B&Bs, DCRA's approach became inconsistent.

In Application No.16333 of Richard T. Ross (attached hereto in *Exhibit* 7), the applicant sought authorization to operate a six-room B&B in a single family house. The Acting Zoning Administrator denied the application because, in her opinion, the B&B, which had been certified as a contributing building to the Dupont Circle Historic District, exceeded the maximum number of permitted guest rooms (which she says was limited to two). When the matter came before this Board, the applicant challenged the decision of the Acting Zoning Administrator and also sought to increase the number of guest rooms to nine (9). With regard to the Acting Zoning Administrator's decision, this Board found that there are no parking requirements for the property and "six guest rooms are permitted as a matter-of-right by virtue of the historic certification" received since the building contributes to an historic district. This decision of the Board was affirmed in *Dupont Circle Citizens Association v. District of Columbia Board of Zoning Adjustment*, 749 A.2d 1258, 1267 n. 3 (D.C. 2000)(attached hereto in *Exhibit* 7).

Notwithstanding the foregoing, the Zoning Administrator denied appellant's application and claimed that a special exception was needed for the use of the subject building for either four (4) or six (6) guest rooms.

The appellant will prove its case relying on (1) the plain language of the zoning regulations; (2) the legislative history of section 203.8(c)(1) (attached as *Exhibit* 6); (3) case law (attached as *Exhibit* 7); (4) the certification pursuant to 2100.5 of the zoning regulations; (5) application and approval for a Home Occupation Permit for the Mansion on O Street (attached as *Exhibit* 8); (6) testimony of Nathan Gross, then corporation counsel involved with the adoption of section 203.8; (7) testimony of Jacqueline Reed, involved in adoption of section 203.8 and owner and operator of the Aaron Shipman House Bed and Breakfast, a six sleeping room inn operating with a matter-of-right home occupation permit; and (8) such other evidence as deemed necessary and relevant as may be submitted with the applicant's prehearing statement or at the hearing in the matter.

2. The Applicant Meets the Criteria for the Requested Relief.

In the alternative, the applicant will testify that he meets each of the criteria set forth in section 203.8. As such, the requested relief will not adversely impact the neighborhood and the relief is in harmony with the zoning regulations. In addition to the testimony of the applicant, evidence will include those items listed in the preceding section.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that, upon receipt of all of the Applicant's proof and all other support of record for the special exceptions requested, such relief be granted.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP

By: _____
Richard B. Nettler
Jeannine Rustad Zigner

EXHIBIT LIST

1. March 19, 2003 letter from the Zoning Administrator
2. March 24, 2003 letter from the Zoning Administrator
3. Home Occupation Permit
4. Application to Increase the number of sleeping rooms
5. HPRB Certification
6. Legislative History of 203.8
7. Case law in support
8. Application and approval for a home occupancy permit for the Mansion on O Street
9. Survey of the Property
10. Photographs of the property