ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1307
TEL: 202-775-0725 FAX: 202-223-8
www.rkmc.com

RICHARD B. NETTLER
JEANNINE RUSTAD ZIGNER
(202) 775-0725

November 18, 2003

2003 NOV 18 PM 4:32

BY HAND
Mr. Geoffrey Griffis
Chairperson
Board of Zoning Adjustment
441 4th Street, NW, Room 210
Washington, DC 20001

Re: BZA Application No. 17079 of Mark Lee Phillips.
417 A Street, S.E.
Our File No. 092229.00000

Dear Mr. Griffis:

On behalf of our client, Mark Lee Phillips, enclosed you will find the original and twenty (20) copies of the Prehearing Statement for the above-referenced matter. Also enclosed is twenty-one (21) copies of the resume of Nathan Gross.

Thank you for your attention to this matter.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

Richard B. Nettler
Jeannine Rustad Zigner

Enclosures (as stated)
cc: Mark Lee Phillips (by hand; w/encl.)
Travis Parker, Office of Planning (by hand; w/encl.)
ANC 6B (w/encl.)
Capitol Hill Restoration Society (w/encl.)

Word 45651543.1

BZA
Case No. 17079
Exhibit No. 50

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 50A1

ARNOLD & PORTER

Nathan W. Gross, AICP

Zoning and Land Use Specialist
555 Twelfth Street, N.W.
Washington, D.C. 20004-1206
202-942-5956, Fax 942-5999
Nathan_Gross@aporter.com

Nathan W. Gross, AICP, is a city planner and zoning and land use consultant at Arnold & Porter, where he has worked since 1997. In 26 years of prior service with the D.C. Office of Planning, he was responsible for all area rezonings and text amendments and supervised the staff that analyzed and testified on all Zoning Commission and Board of Zoning Adjustment cases. He was author and principal advocate for adoption of the Downtown Development District and 12 other overlay zones. He initiated a wide range of area rezonings affecting subway station areas, residential, commercial and industrial areas. He also researched and devised new use regulations affecting transferable development rights, new commercial and residential zones, the Hotel-Residential incentive zone, artist studios, antennas, child care centers, home occupations, fast food restaurants and others.

At Arnold & Porter he has advised and represented clients in a wide variety of zoning and historic preservation matters in Downtown and various neighborhoods. His Downtown work includes analysis of the development potential of numerous sites in Downtown, prosecution of zoning cases in the Downtown Development District. In addition he has advised on and helped process numerous transferable development rights and combined lot development transactions from apartment buildings, historic buildings, and arts projects such as the new Shakespeare Theater.

Representative Regulatory Cases Since 1998

915 E Street, N.W. – Apartment building. Zoning and historic preservation.
Syphax School – Affordable housing. Zoning and historic preservation.
Temperance Row – Affordable housing. Zoning and historic preservation.
D.C. Unified Communications Center – Zoning, Fine Arts Commission, historic preservation, National Capitol Planning Commission
New East Capitol PUD – Hope VI redevelopment. Zoning.
Fort Dupont PUD – Hope VI redevelopment. Zoning.
Senior Building at North Capitol – Zoning.
Yale Laundry mixed use – Zoning, historic preservation.
Downtown Development District – Combined Lot Development and TDR Certifications, development analysis and advice.
Georgetown and George Washington Universities – Campus plan project approvals.
Crummel School – Historic preservation.
Human Rights Campaign Headquarters – Zoning.
Second Baptist Church – Alley closing, historic preservation, transferable development rights.
St. Luke's Church – Zoning.
The Wilson – Apartment building. Zoning.
1700 Kalorama – Conversion to apartments. Zoning.
1836 Columbia Road – Apartments. Zoning.
St. Elizabeths Hospital – New hospital. Zoning, historic preservation.
FNMA – Assessment of relocation/consolidation sites.
Southwest Waterfront – Zoning and redevelopment advice.

Gage School – Conversion to apartments.

Professional Affiliations

American Institute of Certified Planners (AICP)
American Planning Association
Urban Land Institute
Lambda Alpha International
D.C. Preservation League
Committee of 100 on the Federal City
Mayor's Blue Ribbon Committee on the Arts, 1987-88
Downtown Partnership-Task Forces on Arts District, Shopping District, 1988-90

Awards

American Planning Association - Downtown Development District, 1991
1989 Government Worker of the Year - Logan Circle Community Association
Mixed Use - Arts Overlay Zone, 14th and U Street Corridors
American Institute of Planners - Metrorail Station Area Plans, 1976

Education

Harvard University Graduate School of Design
Master in City and Regional Planning, 1971
Michigan State University
M.A.. Political Science, 1965
Beloit College
B.A., Government, French, 1961

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of: **Mark Lee Phillips**

BZA Application No.: 17079
Hearing Date: December 1, 2003

STATEMENT OF THE APPLICANT

I.
Introduction

This is an application brought by Mark Lee Phillips (the "Applicant"), the owner of the property located at 417 A Street, S.E., Square 818, Lot 27 (the "Property"), pursuant to 11 D.C.M.R. § 3104, for a special exception from section 203.8(c)(1) of the zoning regulations to allow an increase in the number of sleeping rooms from two (2) to four (4). The Applicant submits that it meets the criteria for the requested relief.

II.
Jurisdiction of the Board

The Board has jurisdiction to grant the relief requested pursuant to 11 D.C.M.R. §§ 3104.1.

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D.C.

III.
Background Information

A. The Property and Surrounding Neighborhood.

1. The Property.

The Property is located in the Capitol Hill Historic District and is improved with a building that has been certified as contributing to the historic district. (See Exhibit 5.) The Applicant currently uses the Property as his residence and has a home occupation permit to operate a bed and breakfast ("B&B") with two (2) sleeping rooms. (See Exhibit 3.) The Applicant had 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.)

a. The History of the Property.

The subject Property was purchased by John W. Bayne, M.D. in the 1890s. Dr. Bayne developed the Property, as well as additional properties throughout the District, on speculation. The current improvements, as commissioned by Dr. Bayne, were designed by architect Thomas Franklin Schneider and built by Samuel Jenness Prescott, one of Washington's best-known builders. (See Exhibit 13.) The building was constructed in 1890. It is a three story, plus English basement structure with a round tower and slate mansard roof, both of which strengthen the building's role as an anchor for its corner site. The building contains 3,382 square feet of livable area and is thirty-six feet (36') tall from the sidewalk.

The building retains much of its original fabric with few alterations having been made to the exterior. The interior, on the other hand, has undergone several renovations, including renovations to adapt it as a rooming house (estimated to have been made in 1954)(Exhibit 14), and then back to its current use as a single-family home.

After its construction, the Property has a long history as a rooming house. The Property was not used as a single-family dwelling. Indeed, Dr. Bayne and his family never lived in the Property. Rather, in 1896, members of the bishop's staff of the *Pro Cathedra* for the Washington Diocese of the Episcopal Church moved into the Property. (Exhibit 13). After Dr. Bayne's death in 1905, his

wife, Mae Ashby Bayne, retained the house until 1920 and continued its use as rental property throughout her time as its sole owner. During this time, it is believed that the tenants, which included widows, "took in" one or more roomers because of the size of the house and the need for extra money.

Harry J. and Florence Virginia Thomas Hodges purchased the Property on June 8, 1920, and the Hodges used the Property as their residence. From at least 1948 until her death in 1965, Ms. Hodges ran a rooming house at the Property. The Property was purchased by Ellis C. and Vannie Stewart in 1966. Upon information and belief, as supported by the fact that the building contained four (4) kitchens upon the Applicant's purchase of the Property in 1990, the house was used as a rooming house from 1966 until 1990.

b. The Applicant's Use and Ownership of the Property.

The Applicant purchased the Property in the May 1990 and is only the fourth owner of the Property. When the Applicant purchased the Property, it had four (4) kitchens, evidencing its long use as a rooming house. The Applicant undertook to renovate the Property to use as his residence. From the time of his purchase of the Property in May 1990 until June 2002, the Property was used as the residence of the Applicant, his two (2) children – aged five (5) and nine(9) at the time of the purchase -- and his domestic partner, Keith Wilkinson. In 2002, the children having grown and gone on to college, the Applicant and Mr. Wilkinson decided, in addition to maintaining the Property as their primary residence, to operate a bed and breakfast from the Property, as there were four (4) sleeping rooms not in use.

Renovations to the Property have included reducing the kitchens to one fully functional

kitchen. On the main level, there is also a small kitchenette, which includes a coffee maker, dishwasher, oven and refrigerator. Two bathrooms have been added, so that there is one bathroom per sleeping room.

3. The Zoning and Surrounding Neighborhood.

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).

The immediate surrounding neighborhood is predominantly improved with row-dwelling single family homes and flats. Additionally, there two apartment buildings in the unit block of 5th Street, S.E. and two apartment buildings in the 400 block of A Street. The Property is one (1) block from Independence Avenue and two (2) blocks from Pennsylvania Avenue and the many restaurants, bars and retail shops along those streets.

C. The Proposed Increase in Sleeping Rooms.

By this application, the Applicant is seeking to increase the number of sleeping rooms from two (2) to four (4). This is a reduction to the previous increase set forth in the initial filing, which sought to increase the number of sleeping rooms to six (6). This reduction was made in response to the neighbors' concerns and in direct response to comments from the Capitol Hill Restoration Society and the Office of Planning.

IV.

The Proposed Increase is Permitted as a Matter of Right

Contrary to the decision of the Zoning Administrator that 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:

Section 203.8(c)(1) states that:

> (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)*;

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.

On its face, the regulation provides that, in a certified contributing building, up to six (6) sleeping rooms are permitted as a matter of right in a historic building. The special exception to increase to four (4) sleeping rooms is only necessary with non-historic properties. The Zoning

Administrator, in denying the Applicant's home occupation permit for six (6) sleeping rooms, asserted that the use of the word "may" in referring to the increase of six (6) sleeping rooms in historic structures inferred that approval was needed from the Board. (Exhibit 1.) However, the use of the word "may" only infers that an owner is not required to increase the number of sleeping rooms in a bed and breakfast in a historic structure to six (6), but may elect to do so if he wishes. This plain reading is supported by the legislative history of section 203.8.

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). Additionally, the Zoning Administrator denied the home occupation permit on the misunderstanding that the Property was an apartment building. 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.

V.

Special Exception Considerations

A. Criteria for Special Exceptions.

As for the criteria for a special exception, 11 D.C.M.R. § 3104.1 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

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

1. Criteria Pursuant to Section 203.8.

The following is an outline of the specific criteria for a special exception pursuant to section 203.8 with an explanation as to how the Applicant complies with each of the requirements:

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

The subject property is a single-family home. In fact, upon his purchase of the Property, the Applicant converted the Property from a flat that had bee used as a rooming house for many years, into a single-family home.[1]

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

Continental breakfast is the only meal served and it is only served 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 may be 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(1) for each person who rooms or boards in the dwelling pursuant to §202.5;

Currently, there are four (4) sleeping rooms available, of which only two (2) are occupied at any given time. As set forth, in the preceding section, it is the Applicant's contention that an increase to either four (4) or six (6) sleeping rooms is permitted as a matter of right pursuant to this provision. The Property is a contributing building to the Capitol Hill Historic District. (Exhibit 5). Finally, there are no boarders in the dwelling and, therefore, subsection (2) is inapplicable.

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

No discussion needed.

(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.

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[1] In this respect, this case is much like the Swann case (BZA Application No. 16333, Exhibit 7). In the Swann case, the structure in question had previously been used as a multiple family dwelling. However, upon the innkeeper's purchase of the property, they converted it into a single-family dwelling.

As a certified contributing building and as confirmed by the Zoning Administrator, the parking requirements are waived for the Property. (See Exhibit 5.) During its first year of operation, the Applicant obtained only three (3) guest parking passes from the police department and, to his knowledge, no guests parked illegally in the streets. To alleviate concerns of the community regarding the affect of the bed and breakfast operation on surrounding on-street parking, and given the fact that fifty-five percent (55%) of his guests are visiting friends and relatives on the Hill, the Applicant is willing to limit any future parking passes to business travelers and require that any guests visiting friends and/or family make parking arrangements with such friends and family. Additionally, the Applicant is investigating the availability of off-street parking in the neighborhood.

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

As previously stated, when the Applicant purchased the Property, there were four (4) kitchens in the Property, consistent with the building's use as a rooming house for many years. The Applicant has subsequently reduced the number of kitchens to one main kitchen with a kitchenette on the main floor. There are no cooking facilities in any of the available sleeping rooms.

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

The Applicant has used the Property as his primary residence since the Applicant's purchase of the Property in the 1990. It was not until the Applicant's children had grown and gone to college did he obtain a home occupation permit and begin to operate a bed and breakfast at the Property.

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

See following analysis.

203.4 A practitioner of a home occupation, and any owner of a dwelling unit in which a

home occupation is practiced, shall comply with the requirements of §§ 203.5 and 203.6, and with the following conditions and requirements:

(a) A home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes;

During the first year of operation, the Property had approximately a sixty percent (60%) vacancy rate. Clearly, given this high rate, the primary purpose of the dwelling is as the residence of the Applicant. To be certain, the Applicant has fulltime employment outside of the Property.

(b) Except as provided in §§ 203.7(c) and 203.8(d), no more than the larger of two hundred fifty square feet (250 ft.2) or twenty-five percent (25%) of the floor area of the dwelling, excluding basement or any accessory structure, shall be utilized in the home occupation;

Not applicable.

(c) The practitioner shall store all materials or finished products within the floor area that is designated in paragraph (b) of this subsection, or in a basement or accessory structure;

As a bed and breakfast, there are no materials or products produced at the Property.

(d) No more than one (1) person who is not a resident of the dwelling unit shall be engaged or employed in the home occupation;

At the present time, there are no outside employees at the Property.

(e) The dwelling unit owner and the practitioner shall maintain the residential character and appearance of the dwelling unit and lot;

As illustrated in the pictures submitted with this application, the Property maintains its residential character. (Exhibit 10.) In fact, the Applicant has returned the Property back to a single family residence, as opposed to its prior use as a rooming house. As there are no signs on the Property, there is no outside evidence that the Property is used as a bed and breakfast. Finally, by letter dated October 10, 2002, the Zoning Administrator acknowledged that the Applicant complied with this provision. (Exhibit 12.)

(f) No interior structural alteration shall be permitted if it would make it difficult to return the premises to use that is exclusively residential;

Again, the improvements made by the Applicant since his purchase of the Property have returned the Property to residential, single-family use. By letter dated October 10, 2002, the Zoning Administrator acknowledged that the Applicant complied with this provision. (Exhibit 12.)

(g) Neither the practitioner nor any other person shall conduct or allow any operations outside a structure, nor maintain or allow any storage or other unsightly condition outside a structure;

As a bed and breakfast, no activity takes place outside the dwelling and there is no storage outside the dwelling. The Applicant maintains the outside gardens with impeccable taste. (See Exhibit 10.)

(h) Neither the practitioner nor any other person shall use any equipment or process that creates visual or audible electrical interference in television or radio receivers outside the subject home, or that causes fluctuations in line voltage outside the subject home;

Again, there is no special equipment used in the operation of a bed and breakfast that would not ordinarily be used in a residence. As such, the Applicant complies with this provision.

(i) The use shall produce no noxious odors, vibrations, glare, or fumes that are detectable to normal sensory perception outside the subject home;

Same as above.

(j) The use shall not produce a level of noise that exceeds the level normally associated with the category of dwelling or the immediate neighborhood;

As discussed in greater detail below, the use of the Property as a bed and breakfast is less intrusive than matter-of-right uses permitted in the R-4 zone district such as a fraternity, sorority or dormitory or private club. In fact, given the level of vacancy, the use of the Property as a bed and breakfast produces less noise than would a typical family of four (4) or more. Given the size of the

house, it would be possible to use the house as a "group house" or rooming house for 5 to 10 individuals, or for a very large family. Clearly, these uses would produce more noise, a greater number of visitors and a greater demand on parking, than the proposed use.

(k) No more than two (2) vehicles may be used in the practice of the home occupation;

Unlike many of their neighbors, the Applicant and his partner have only one car.

(l) Vehicular trips to the premises by visitors, customers, and delivery persons shall not exceed eight (8) trips daily on a regular and continuing basis;

Most guests arrive by taxi cab and then take advantage of public transportation during their stay. Thus, assuming all rooms were to be rented on the same day, the use would produce only four (4) vehicular trips. However, such amount of trips would not occur on a regular or daily basis. If the Applicant were to hire outside assistance for cleaning, there would be the potential for one vehicular trip on a regular and continuing basis. However, it is likely that such employee would use public transportation.

(m) The practitioner shall have no more than eight (8) clients or customers on the premises in any one (1) hour period; and

With four (4) sleeping rooms currently available, assuming double occupancy, the maximum number of guests would be eight (8).

(n) If more than one (1) home occupation is practiced in a dwelling unit, the cumulative impact of all such home occupations, considered as a whole, shall not exceed any of the standards set forth in paragraphs (a) through (m) of this subsection.

There are no additional home occupation permits for the Property.

203.5 A sign on a dwelling or building in which a home occupation is practiced shall be permitted, subject to the following conditions:

(a) A person may display one (1) exterior sign on a dwelling or other building in which a home occupation is practiced;

(b) The sign shall not exceed one hundred forty-four square inches (144 in.2) in

area;

(c) The sign shall be flush-mounted;

(d) The sign shall not be illuminated;

(e) The sign may state only the name of the practitioner and the type of home occupation;

(f) The practitioner shall not display more than one (1) sign outside a dwelling or building; and

(g) The practitioner shall not display any sign that does not meet the requirements of paragraphs (b) through (e) of this subsection.

There are no signs on the Property.

203.6 Sales shall be permitted, subject to the following conditions:

(a) A practitioner may make sales by telephone;

(b) A practitioner may perform and be paid for a service, even if the service results in the creation of a product;

(c) During a twelve-month (12-month) period, as many as five (5) sales in the nature of yard sales, garage sales, or home sales parties may be held at a dwelling; and

(d) During a twelve-month (12-month) period, a person with a home occupation permit may hold six (6) or more sales in the nature of yard sales, garage sales, or home sale parties at a dwelling, if approved by the Board of Zoning Adjustment pursuant to § 203.10.

There are no sales at the Property.

B. The Special Exceptions Will Be in Harmony with the General Purpose and Intent of the Zone Plan and Maps and The Relief Will Not Adversely Affect the Neighborhood.

1. Use of the Property as a Bed and Breakfast with up to Six (6) Sleeping Rooms is in Harmony with the General Purpose and Intent of the Zone Plan and Maps.

As set forth above, section 203.8 not only contemplates the use of a contributing building as a bed and breakfast with up to six (6) sleeping rooms, such use is as a matter of right. However, even as a special exception, such use is in harmony with the general purpose and intent of the zone plan and maps. Given that the proposed increase in sleeping rooms does not detract from the residential nature and use of the Property and the surrounding neighborhood, such increase is in harmony with

the zone plan and maps. Moreover, as explained below, this use is less intrusive than other matter of right uses.

As in *Swann* (BZA Application No. 16333 (seeking an increase from six rooms to nine), Exhibit 7), the increase of sleeping rooms from two (2) to four (4) is "appropriate for the size and historic nature of the house and is consistent with its residential character and the surrounding historic district." (Exhibit 7, Findings of Fact #3.) The Property is improved with a large single-family dwelling, containing five (5) sleeping rooms. Another similarity to *Swann*, and presumably the operation of any bed and breakfast, is that maintaining the residential character of the dwelling is integral to the success of the B&B.

2. The Proposed Increase Will Not Adversely Affect the Surrounding Neighborhood.

The proposed increase in availability of sleeping rooms will not adversely affect the surrounding neighborhood, as the applicant does not expect an increase in the occupancy rate. Moreover, the proposed use is less intrusive by way of noise and parking demands than that which would be generated by many matter-of-right uses for the Property. Finally, as to parking, there is no causal connection between the availability of on-street parking in the neighborhood and the operation of the bed and breakfast. Increasing the number of sleeping rooms by two (2) will have no significant impact (*i.e.* adverse impact) on the availability of parking.

The demands on parking resulting from the proposed increase cannot be looked at in isolation. The test is not whether there will be any impact but, rather, is whether there will be any *adverse* impact. As illustrated below, the minimal demand on parking generated by the proposed increase will not adversely affect the surrounding neighborhood. To the contrary, demands on the

limited available parking are generated by a combination of the Applicant's neighbors having multiple vehicle – as many as two (2) to three (3) per household and overflow parking from patrons of the nearby bars and restaurants. To the extent that the increase of two (2) sleeping rooms will generate additional demands on parking, the Applicant is investigating nearby off-street parking facilities with the hope of providing one (1) off-street parking space. Additionally, the Applicant is willing to limit any parking passes obtained from the police to business guests and require guests that are visiting friends and/or relatives in the area (which guests comprise fifty-five percent (55%) of the Applicant's clientele) make parking arrangements with such friends or relatives.

In reviewing whether the proposed increase will have any adverse impact on the surrounding neighborhood, it is useful to keep in mind matter of right uses in the R-4 district, which, pursuant to section 330.5 of the zoning regulations, include:

(b) Flat;

(c) The conversion of a building or other structure existing before May 12, 1958, to an apartment house as limited by §§ 350.4(c) and 401.3;

(d) Child/elderly development center; provided, that the center shall be limited to no more than sixteen (16) individuals;

(f) Hospital, sanitarium, or clinic for humans;

(g) Private club, lodge, fraternity house, sorority house, or dormitory, except when the use is a service customarily carried on as a business;

(h) Museum; and

(i) Community-based residential facility; provided that, notwithstanding any provision in this title to the contrary, the Zoning Administrator has determined that such community-based residential facility, that otherwise complies with the zoning requirements of this title that are of general and uniform applicability to all matter-of-right uses in an R-4 District, is intended to be operated as housing for persons with handicaps. For purposes of this

> subsection, a "handicap" means, with respect to a person, a physical or mental impairment that substantially limits one or more of such person's major life activities, or a record of having, or being regarded as having, such an impairment, but such item does not include current, illegal use of, or addiction to, a controlled substance.

Additionally, a boarding house would be permitted as a matter of right pursuant to 11 D.C.M.R. § 330.6. When the impact on parking and noise is viewed in relation to these matter of right uses, it is clear that the impact from the bed and breakfast is minimal and less than that which would result from these matter of right uses.

The primary concerns of the neighbors have been that of parking and noise, each of which is addressed in turn below.

b. Parking.

As noted above, the Property has been granted a waiver from the parking requirements. However, in response to concerns over parking, the Applicant intends on providing one (1) off-street parking space. The neighbors have attempted to place the blame for the parking situation in the neighborhood on the current operation of the bed and breakfast. However, these claims are without merit and are nothing more than a red-herring. In fact, the Applicant's use of the Property generates less traffic and less demand on parking than the many of his neighbors, notably, the neighbors who have been most active in opposing the instant application.

For example, the neighbors at 25 5th Street use their property as a flat. The owners have two (2) cars and their renter has a car. There is no off-street parking for 25 5th Street and, as such, 25 5th Street generates a regular and continual demand for three (3) parking spaces.

Similarly, the owner of 100 5th Street owns two (2) cars and rents out his English basement

apartment to a tenant who owns a car, generating a regular and continual demand for three (3) parking spaces. Additionally, over the summer, the renter had a guest with a car during the entire duration of the summer, creating a demand for four (4) on street parking spaces on a daily basis.

The owners of 107 5th Street also have two (2) cars. Additionally, one of the owners works at home as a consultant and has an assistant visit the premises at least once a week.

As indicated above, there are two apartment buildings within one block of the Property. One of the tenants of the apartment building on 5th Street in the block north of the Property has three (3) motorcycles.

Fifty-five percent (55%) of the clientele of the Applicant stay with him while visiting friends and/or family in the surrounding neighborhood. To the extent they park on the streets during such visits, they would require parking even if they stayed with their friends and/or family and, therefore, their use of local parking cannot be attributed to the bed and breakfast. That is, even if the bed and breakfast did not exist, those guests would still be parking in the neighborhood. The existence of the bed and breakfast merely alleviates provides these clients with a comfortable, quiet place to stay while visiting.

In addition, the Applicant has only obtained three (3) temporary parking passes from the police department during his first year in operation of the bed and breakfast. Assuming this number doubled with the two (2) additional sleeping rooms, six (6) temporary parking passes in a year's time is consistent with the residential character of the neighborhood and typical of what one would expect from a single-family use.

Quite simply, the neighbor's cannot establish a causal relationship between the parking

situation in the neighborhood and the operation of the bed and breakfast. To the contrary, any difficulties with parking are a result of the neighbors having multiple cars, as demonstrated above, or other outside factors. For example, at the ANC meeting, the neighbors cited as evidence of the parking problems in the neighborhood the fact that the patrons of nearby restaurant and bars often park within the residential section surrounding the B&B. Because of this overflow parking, the neighbors stated that any increase in parking needs generated by the B&B will affect them. By the neighbors' own admission, it is not the B&B that is creating a hardship in parking, but a combination of their own use, as well patrons of nearby business.

In contrast to these demands, the majority of the guests at the Property arrive by taxi cab and, as such, do not generate any demand for on-street parking. In fact, during the first year of operation, the Applicant obtained only three (3) guest parking passes from the police. To his knowledge, no guests have parked on the streets without such a pass. Although neighbors have alleged that the Applicant has obtained as many as twenty (20) parking passes, such claims are without merit. In fact, the police records only indicate that two (2) passes were obtained by the Applicant. However, the police records did not include a pass that was obtained in September.

b. Noise.

The Applicant's immediate neighbor raised issues of noise at the ANC meeting. However, the complaints raised by the neighbor are, at best, questionable.

The neighbor complained of noise generated while the Applicant was renovating his Property. However, such condition was temporary, and the Applicant does not foresee the need for further renovations any time soon. Moreover, out of respect for the residential character of the

neighborhood and the fact that the Property is a row dwelling, the Applicant required that the workers arrive at the Property no earlier than 7 am, with work starting sometime thereafter.

The neighbor also complained of noise from plumbing, which is located on the party wall. However, the noise generated by the B&B use, even as proposed by this application, is less than that would be generated by a large family and is considerably less than that would be generated by a group home, rooming house, dormitory, fraternity, sorority or private club or other matter-of-right uses. Likewise, the number of guests coming and going is considerably less than that which would be generated by any one of those uses.

One must also look at the proposed increase in light of the type of patron that uses a bed and breakfast. Typically, guests of a bed and breakfast are seeking quiet and intimate lodging, rather than a large, impersonal hotel. As such, they tend to be respectful and quiet themselves. This has proven to be the case with the guests at the Property. So as to avoid excess noise, guests are given their own keys to the Property so that they may come and go without need to ring the doorbell. Although it is true that occasionally guests will arrive late in the evening, the same would hold true for any household with guests or family arriving from out of town. This is not a regular occurrence so as to rise to the level of "adverse impact".

With regard to any noises which are heard through the party walls, the noises generated by the use of the bed and breakfast are far less than what would be expected with a family of four (4) or other matter of right uses. And, not only may the adjoining neighbors hear footsteps or plumbing noises, the Applicant and guests of the Property hear noises from the adjoining neighbors. In fact, the immediate neighbor's child is often heard crying through party walls. This is a part of living in a

row dwelling and any noise generated by the bed and breakfast is not out of character with the residential nature of the neighborhood.

The absurdity of the neighbor's complaints is illustrated by the fact that he has complained that, on occasion when he has been outside on his front porch, people have stopped and asked him for suggestions for restaurants and/or directions. Even assuming such people were guests of the Property, it is hard to imagine how the occasional passerby asking a friendly question can adversely affect one's quality of life.

Finally, in judging whether the proposed increase has any adverse impact on the surrounding neighborhood, it is important to note who the bed and breakfast is serving. This Property is truly a neighborhood amenity, as fifty-five (55%) of the guests at the Property over the past year were visiting relatives on the Hill. (*See e.g.* BZA App. No. 16333, Exhibit 7, where only twenty percent (20%) of guests were visiting families in the neighborhood.) Many of these guests were there on the advent of the birth of a grandchild. Given the limited space available for guests in the homes of the children, they opted to stay at the Property. The neighbors would have the Board believe that these guests are adversely affecting parking in the neighborhood, as well as the residential nature of the neighborhood. To the contrary, regardless of whether these guests stayed at the Property or with the relatives they were visiting, they would create the same demand on parking. Moreover, as stated above, the operation of the B&B with two (2) sleeping rooms has only created a need for a parking space on three (3) occasions during the past year. As for the residential character of the neighborhood, what could be more characteristic of a residential neighborhood than a grandparent visiting his or her new grandchild?

The neighbors have raised many other false claims in attempts to disparage the Applicant and his request for an increase in sleeping rooms. For example, the neighbors have alleged that the Applicant has advertised four (4) sleeping rooms in violation of his current home occupation permit. However, what the neighbors fail to realize is that, while there are four (4) sleeping rooms available, only two (2) are rented at any given time. In fact, the Applicant has had to turn several prospective guests away because he had already booked two (2) rooms for the period sought by that guest. It is this infrequent occurrence that led the Applicant to seek the increase in sleeping rooms.

The Property is not used for any conferences or meetings in connection with its use as a bed and breakfast. The bed and breakfast serves the surrounding community by offering rooms for guests of its neighbors. It is impeccably maintained and, by all appearances, one cannot tell that it is anything other than a private residence. Given that the majority of guests arrive at the B&B by taxi

cab,[2] coupled with the fact that only three (3) parking passes were required for the two (2) sleeping rooms, it is clear that the proposed increase will have a minimal affect on parking in the neighborhood. In short, there is no current adverse impact resulting from the operation of the B&B and there will be no adverse impact from the proposed increase in sleeping rooms.

VI.
Witnesses

1. The Applicant
2. Nathan Gross – Mr. Gross, who will be offered as an expert on Zoning, was with the Office of Planning and worked on the language for section 203.8. Mr. Gross will testify that the final version of that section was amended so as to allow, as a matter of right, up to six (6) sleeping rooms in a bed and breakfast located in a historic building. Mr. Gross will testify as to the changes made to the provision and the reasons behind those changes.
3. Jacqueline Reed. Ms. Reed was 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. She will testify regarding the bed and breakfast community's lobby to amend the proposed legislation to allow up six (6) sleeping rooms in a bed and breakfast located in a historic building.

[2] The immediate neighbor has complained of taxi cabs coming in the morning hours to pick up guests at the Property and honking their horns. However, as the Applicant travels on a regular basis (on average, one to two times per month), it is quite possible that such cabs are there to pick up the Applicant, and not the guests. Regardless, when taxi cabs are called for either the owner or the guests, it is requested that they do not honk their horn. Unfortunately, the Applicant cannot control the actions of the drivers. Furthermore, such noises are normally associated with a residential neighborhood, and such occurrences are, indeed rare. As such, they do not rise to the level of creating an adverse impact.

VII.
Exhibits In Support of the Application

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 and letter from DCRA confirming parking waiver
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
11. Certificate of occupancies for surrounding properties
12. October 31, 2002 letter from the Zoning Administrator
13. History of the Property
14. Property information

VIII.
Conclusion

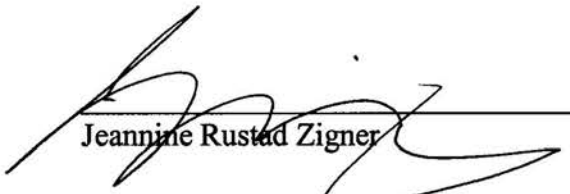
For the above reasons, the Applicant respectfully requests that the Board grant the relief sought. Given the lack of adverse impact on the surrounding area, the Applicant requests a bench decision, if the Board feels such a decision is justified.

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Richard B. Nettler



Jeannine Rustad Zigner

1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006
(202) 775-0725

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



Building and Land Regulation Administration
Office of the Administrator

March 19. 2003

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi LLP
1801 K Street, N.W., Suite 1200
Washington DC 20006

Ref: 417 A Street, S.E.

Dear Mr. Nettler:

Mr. Mark Phillips, your client, has applied for a revision to his Home Occupancy Permit (HOP) to authorize five sleeping rooms in his bed and breakfast located at 417 A Street, S.E. His current HOP allows a maximum of two sleeping rooms. Mr. Phillips has requested that his application be approved as a matter of right, rather than be submitted to the Board of Zoning Adjustment (BZA) for a special exception.

You will recall that in a letter dated October 10, 2002, to you from Denzil Noble, Deputy Administrator, you were advised that pursuant to the Zoning Regulations at 12 DCMR § 203.8(c)(1), any increase above the maximum of two rooms must be approved by the BZA, even if the facility is located in an historic district. (Mr. Phillips was also so advised in a separate letter to him.)

In response to Mr. Noble's letter, you wrote him on October 16, 2002, to register your disagreement with his interpretation of that regulation. You argued that §203.8(c)(1) should be read to allow six sleeping rooms as a matter of right, asserting that BLRA had consistently taken the position that BZA approval was only required for properties that were not historic. To support your argument, you cited the BZA decision on the Swann House Bed and Breakfast (Application No. 16333 of Richard T. Ross, April 15, 1998), and noted that that decision had been affirmed by the D.C. Court of Appeals in *Dupont Circle Citizens Assoc. v. D.C. Board of Zoning Adjustment*, 749 A.2d 1258 (2000).

The *Swann House* decision does not support your contention. In that case, DCRA had in January 1998 advised the owners that the home occupation permit (HOP) under which the bed and breakfast (B&B) had been operating had been issued in error and that it was necessary for the owners to apply for a new permit. They thereupon applied for authorization to operate (actually, to *continue* to operate) a six-room B&B in their owner-occupied single family house, located in an historic district.

The then-Acting Zoning Administrator denied the application for two reasons, one being that the B&B exceeded the maximum number—two—of permitted guest rooms. The owners were advised that they could apply to the BZA for a special exception. They accordingly filed an application for a special exception with the BZA, seeking authorization to operate their B&B with nine guest rooms—which was an increase over the six rooms they had already been operating. After an April 15, 1998, hearing, the BZA granted the special exception. On appeal by a citizens' association, the D.C. Court of Appeals affirmed the BZA decision.

It is true that in its findings of fact the BZA made the statement that "six guest rooms are permitted as a matter-of-right by virtue of the historic certification." That was not, however, the decision in the case. The application before the BZA was for authorization for *nine* guest rooms--an increase from the six rooms the owners had already been operating. Whether authorization for *six* rooms was a matter of right or whether it required BZA approval was not in issue. The District of Columbia Court of Appeals affirmed the actual decision of the BZA to allow nine rooms, but whether authorization for six rooms was a matter of right or required BZA approval was, similarly, not an issue for the court.

Indeed, in a subsequent BZA case, Application No. 16793 of Anexora Skvirsky (heard January 8, 2002), an applicant sought a special exception to operate exactly six sleeping rooms in a bed and breakfast in an historic district, citing the §203.8 requirement for BZA approval. At the conclusion of the hearing, the BZA approved the application and granted a special exception for the operation of six guest rooms.

Section 203.8(c)(1) states that the number of sleeping rooms "may be increased" to six in an historic district, indicating that some *action* must be taken to authorize the use of six rooms, just as the previous clause states that "the number of sleeping rooms may be increased to four" by the BZA for a B&B in a non-historic district. An action to increase the number to six therefore must be taken by the BZA. If, in fact, six rooms were permitted in an historic district as a matter of right, and BZA approval was not required, then the limitation would have been stated more directly as "the maximum number of sleeping rooms shall be six."

Our interpretation of §203.8 of the Zoning Regulations continues to be that BZA approval is required for the use of more than two sleeping rooms in a bed and breakfast home occupation. Please advise your client accordingly.

Sincerely,

Robert W. Kelly
Zoning Administrator

cc: Denzil Noble
Acting Administrator, BLRA

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Zoning Administrator

★ ★ ★

March 24, 2003

223-8604

Richard Nettler

Mark Lee Phillips
417 A Street, SE
Washington, DC 20003

Re: BZA Referral / 417 A Street, SE
Lot 27 in Square 818
Washington, DC

Dear Mr. Phillips:

Your Home Occupation Permit (HOP) Application # 50397, filed to increase the number of sleeping rooms in you bread and breakfast facility and with a waiver for additional off street parking has been denied due to the need for Board of Zoning Adjustment (BZA) approval.

Specific Reason(s) for Denial: DCMR Title 11, Sections 2100.5 (Parking) and 203.8 (Number of Rooms).

The BZA has authority to grant your Special Exception under the authority of DCMR Title 11, Section 3104.1. This letter must be presented to the BZA, Room 210, 441 – 4th Street, NW when filing for your request for a Special Exception to increase the number of rooms and waive the off street parking requirement for your facility.

Should you have questions, contact me at 442-4576.

Sincerely,

Robert W. Kelly
Zoning Administrator

cc: Grant Moy, Esq.

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HOP

HOME OCCUPATION PERMIT

PERMIT NO.
HOP 34896

DATE : 6/3/02

ISSUED DATE: Jun 3 2002	**BZA NO.**	**EXPIRATION DATE:** NONE
ADDRESS OF HOME OCCUPATION: 417 A ST SE		**PREMISES OCCUPIED BY:** OWNER PHILLIPS, MARK LEE
NAME OF RESIDENT: PHILLIPS, MARK LEE	**BUSINESS STRUCTURE:** MPKW ENTERPRISES, LLC Limited liability Corporation	**PRCLID :** 0818 (square) -0000- 0027 (lot) **WARD :** 6 **ZONE :** R4
TYPE OF BUSINESS: BED & BREAKFAST		**NAME OF BUSINESS:** FOURSE TENTEEN
CONDITION OF PERMIT: ONE EMPLOYEE/OFFICE USE ONLY		**PERMITTED USE:** HOP NO. HOP/02-1234 **BUSINESS HRS:**

This permit shall be conspicuously posted on the above premises at all times. Any change in the use as stated and for purposes indicated above, and is not transferable to another person or premises. Any change in the use, ownership of business, or part of the premises used thereof, will render this permit void and a new permit must be obtained.

FEE
APPL: $25.00
PMT: $25.00

David A. Clark
DIRECTOR

PERMIT CLERK: EDWARD REEVES / TERRY A. JONES

Department of Consumer & Regulatory Affairs
DCRA

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GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
Zoning Division

$25.00 Application Fee
Non-Refundable

$25.00 Permit Fee

APPLICATION FOR HOME OCCUPATION PERMIT

1. Applicant=s Name
   PHILLIPS (Last) MARK (First) LEE (Middle)

2. Social Security Number 214-70-0646

3. Residence Address 417 A ST SE WASH DC 20003 (Zip Code)

   Is the above address your principal place of abode • (Yes) • No

4. Applicant is the • (Owner) • Tenant • Other

   Premises indicated in question #3 is:

   (•) Owner Occupied Single Family Dwelling
   • Condominium/Cooperative Dwelling
   • Flat (two family dwelling)
   • Rented Apartment House Dwelling
   • Rooming House Dwelling (one room)

5. If applicant is other than the owner of premises in **question #3** above, does the owner of the property agree with its use in the proposed home based business? • Yes • No If AYes@, complete items below and submit a letter of authorization from the owner:

   Owner=s Name _____

   Owner=s Address _____

   Owner=s Telephone # _____

OFFICIAL USE ONLY

Review by: _____ HOP # 02-1239

Application Status: (• approved) • declined • pending Date: _____

Application Date: Treasurer: Receipt #:

6. Number and relationship of persons residing with you:

Spouse _____ Parent _____ Children _____ Siblings _____ In-Laws _____ Other 1 DOMESTIC PARTNER

7. Are you physically handicapped? • Yes • (No) (If "Yes" complete the item below)
Does the nature of your handicap require special equipment to assist you in rendering the proposed business service(s)? If so, please describe the equipment
_____
_____.

8. This application is for (check the appropriate box below):

- Sole Proprietorship
- Partnership**
- Limited Partnership
- Corporation*
- (•) Limited Liability Company
- Licensed Professional***

*** Attach to this application a copy of your Articles of Incorporation, Listing of Corporate Officers, and Letter of Good Standing (obtainable from the Corporations Division on the 1st floor in this building).**

**** Indicate partner's Name:** ~~KEITH R WILKINSON~~ mlp **in each form of business ownership listed above, *APPLICANT'S RESIDENCE* must be official premise for activities of proposed business enterprise**

***** Attach a photocopy of your license to practice your professions in the District of Columbia. Examples of Professions requiring Professional Licensure: e.g. Attorney, MD, DDS, CPA, RN, Funeral Director, Real Estate Sales, Architects.**

9. Describe the proposed business you intend to operate:
HOME OCCUPIED BED AND BREAKFAST

10. Are you presently operating a business in your residence? • Yes (• No)

11. The DC Zoning Regulations allow for a maximum of 25% of the available square footage of your home to be used in the operation of your proposed business. What is the total square footage of your residence? _____sq. ft. What percentage of the available square feet in your residence will be used in the operation of your proposed business? _____%

12. Where on the premises will materials (if any) used in the proposed business be stored?
_____.

13. What equipment will be used in the operation of your proposed business? (ex. typewriter, personal computer, fax machine, file cabinet, etc.)

14. Will the operation of your proposed business require any architectural or structural modifications to your residence? • Yes (• No) (If AYes@, briefly describe modifications):

15. Will the operation of your proposed business require any interior modifications to your residence?
(If so, please check where appropriate):

• Electrical • Plumbing • Structural (• None)

16. The DC Zoning Regulation do not allow for employment of more than **ONE** employee in home based business. **(EXCLUDING FAMILY MEMBERS)** How many persons will be employed in your proposed business?
NONE.

17. Indicate your relationship to those to be employed: a. • Spouse b. • children c. • relatives
d. • Others. Do any of these persons reside with you? • Yes • No
(If AYes@, indicate which persons reside with you by circling the above letters {a, b, c, or d}).

18. Will you be operating a **Bed & Breakfast** business? • (Yes) • No; If AYes@, indicate number of sleeping rooms available for overnight guests FOUR rooms. How many meals will be served per day? ONE. TWO MEALS-3-OR

19. How do you propose to notify the public of the goods or services available from your home based business?
MARKETING AND ADVERTISING.

20. Will there be a sign posted on the proposed business premise? • (Yes) • No If AYes@, describe the placement of the sign, its size and the identifying information to be placed on sign:
Size 12x12
Information FOUR SEVENTEN A VICTORIAN TOWNHOUSE

21. Will the proposed business result in the creation of a product? If AYes@ briefly describe the product:
NO

22. Will chemical compounds be used in the operation of your proposed business?
• Yes • (No)

23. Indicate the proposed hours of operation of your business? N/A to _____
(M-F)
• (Weekends Only) • (Evenings Only)

24. How many clients will be served on the premise within a one hour period? N/A

25. How many vehicles will be used in the operation of your proposed business? N/A

26. What type of parking will be provided for clients/visitors/employees of the proposed business? HISTORIC DISTRICT

(No Parking Provided) • Off Street Parking with _____ parking spaces on Street Parking

ATTESTATION AND CERTIFICATION

I certify that the information provided on this application for a Home Occupation Permit is true to the best of my knowledge and belief. I further certify that I understand that any information provided on this application, pertaining to the business that I propose to conduct which is found to be false, will result in this application or resulting permit being voided.

Name of proposed business (as it is to appear on your Home Occupation Permit)

FOUR SEVENTEEN

MARK PHILLIPS
Applicant=s Printed Name

Mark Phillips
Applicant=s Signature

Daytime Telephone Number 202-543-1481

To the Applicant: A FALSE STATEMENT ON THIS CERTIFICATION REQUIRES THE DEPARTMENT PROCEED IMMEDIATELY TO REVOKE THE LICENSE OR PERMIT FOR WHICH YOU ARE NOW APPLYING AND FINE YOU A MINIMUM OF $1,000.00. THIS CERTIFICATION IS REQUIRED BY THE *"CLEAN HANDS BEFORE RECEIVING A LICENSE OR PERMIT ACT OF 1996"* EFFECTIVE MAY 11, 1996, DC LAW 11-118, DC CODE 47-2681 ET SEQ.

CERTIFICATION

I, MARK PHILLIPS (print name), certify that as of 5-8-02 (date), I do not owe more than $100.00 to the District of Columbia government as a result of:

1. Fines, penalties or interest assessed permanent to the Litter Control Administration Action of 1985, effective March 25, 1986 (DC Law 6-100; DC Code 6-2901 et seq.)

2. Fines, penalties or interest assessed permanent to the Illegal Dumping Enforcement Act of 1994, effective March 20, 1994 (DC Law 10-117; DC Code 6-2911 et seq.)

3. Fines, penalties or interest assessed permanent to the Department of Consumer and Regulatory Affairs Civil Infraction Act of 1985, effective October 5, 1986 (DC Law 6-42; DC Code 6-2701 et seq.)

4. Past Due District of Columbia Taxes

I understand that if I knowingly falsify this Certification, the Department will move to revoke the permit for which I am applying, and to fine me $1,000.00. I further understand that the Department may conduct an investigation to ascertain the validity of this certification.

I understand that this certification is now required as documentation to accompany my application for a license or permit, and that by completing the Certification, I am not guaranteed approval of this application for same.

Mark Phillips
Signature of Applicant

Owner
Title of Applicant

OFFICIAL USE ONLY

_____

Approved: Pursuant to DCMR Title II, Zoning Chapter 2, Accessory Uses (R-1) and 203 Home Occupation (R-1) the Zoning Administrator has determined that the Applicant has met all the

conditions necessary for the issuance of a Home Occupation Permit, based on the information in this application and the administrative review process.

Approved Date

5/28

Denied: Pursuant to DCMR Title II, Zoning Chapter 2, Section 202 Accessory Uses and 203 Home Occupation, the Zoning Administrator has determined that while the Applicant appears to have met the conditions necessary for a Home Occupation Permit, the proposed business is inconsistent with the general purpose and intent of the zoning regulations for the following reason(s):

Denied Date

Pending: Additional information from applicant required (*see next page)

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Clean Hands Before Receiving a License or Permit Act of 1996 Certification Form

Please read this form carefully and completely before signing. Any false information provided requires that the Department of Consumer and Regulatory affairs proceed immediately to revoke the license or permit for which you are now applying, and fine you one thousand dollars ($1,000.00). This Certification Form is required to be completed and submitted with any application for licensure or permit under the Clean Hands Before Receiving License or Permit Act of 1996, effective May 11, 1996 (D.C. Law 11-118, D.C. Code Subsection 47-2861 et seq.).

I, MARK PHILLIPS, as CORPORATE OFFICER
Owner/partner/corporate officer

_____ -using business tax number _____

as of this date, 6.3.02 does not owe more than one hundred dollars ($100.00) to the District of Columbia government as a result of:

1. Fines, penalties or interest assessed pursuant to the litter Control Administration Act of 1995, effective March 25, 1986 (D.C. Law 6-100 Subsection 602904 et seq.);
2. Fines, penalties or interest assessed pursuant to the Illegal Dumping Enforcement Act of 1994, effective May 20, 1994 (D.C. Law 10-117; D.C. Code Subsection 6-2911 et seq.);
3. Fines, penalties or interest assessed pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1986 (D.C. Law 6042, D.C. Code Subsection 6-2701 et seq.); or
4. Past due taxes.

I understand that if I knowingly provide false information on this Certification Form, the Department of Consumer and Regulatory Affairs will move to revoke the license or permit for which I am applying and fine me one thousand dollars ($1,000.00). I further understand that the Department of Consumer and Regulatory Affairs may conduct an investigation to ascertain the veracity of the information contained in this Certification Form.

I understand that this Certification Form is now required as part of my application for a license or permit, and that by completing it, I am not guaranteed that my license or permit will be approved.

Mark Phillips, President — 6.3.02

Signature and Title — Date

cc: Office of Tax and Revenue

For Tax Assistance Call (202) 727-4829

Date: June 03, 2002

Department of Consumer and Regulatory Affairs
Business Regulation Administration Corporate Division
Corporation Abstract Print Out

Corporation Detail

File No: **L11095** Inc Date: **04/10/2002** Type Code: **DLC** Country: **UNITED STATES**

State: **DC** Status: **AC** Status Date: Fee: **100.00** Bundle No: **D-143**

Name: **MPKW ENTERPRISES, LLC**

Agent: **C T Corporation System**

Address: **1025 Vermont Ave., N.W.** Zip Code: **20005** Zip 4:

Stock: Dollar Value:

Retire Date: Retired Box: Liber No: Folio No:

Perpetual: **Y** Duration: Goodstandings:

Special Note:

Miscellaneous:

Reports:

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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Building and Land Regulation Administration
Office of the Administrator

September 15, 2003

Ms. Jeannine Rustad Zigner
Robins, Kaplan, Miller & Ciresi L.L.P.
1801 K Street, N.W. – Suite 1200
Washington, D.C. 20006

RE: 417 A Street, S.E.

Dear Ms. Zigner:

This is in response to your e-mail dated September 2, 2003 requesting written clarification on Item 3 of my October 31, 2002 letter which states:

> ***"You are correct in stating that additional parking requirements for the bed and breakfast were waived by the Historic Preservation Division of the Office of Planning (June 4, 2002)."***

This statement is consistent with the Zoning Regulations, DCMR Title 11, Section 2100.5 which states: "No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district that is certified by the State Historic Preservation Officer as contributing to the character of that historic district.

If the Board of Zoning Adjustment approves the proposed increase number of sleeping rooms, a new Home Occupation Permit (HOP) application will be required reflecting the increased number. Along with the new HOP application the Department of Consumer and Regulatory Affairs will require an updated certification from the Historic Preservation Division.

If you need additional information, please e-mail me at denzil.noble@d[illegible].gov.

Sincerely,

Denzil L. Noble
Administrator

cc: David Clarke
Theresa Lewis
Ester Bushman

District of Columbia

Department of Consumer and Regulatory Affairs

Building and Land Regulation Administration

Permit Service Center
941 North Capitol Street, N.W., Suite 2100
Washington, D.C. 20002
(202) 442-4470
(202) 442-4862

Name Jeannine R. Zigner

Organization

Fax 202 223 8604

Phone 202 736 2718



From Lennox Douglas

Date 9-2-03

Subject Waiver approval by HPRB:

Pages _____ (including cover sheet)

Comments:

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

APPLICATION TO CERTIFY A HISTORIC BUILDING FOR D.C. ZONING REGULATIONS OR CONSTRUCTION CODES

I hereby request certification that the following property is a historic landmark or a building or structure contributing to the character of a historic district in the D.C. Inventory of Historic Sites, for the purpose of D.C. Zoning Regulations or the D.C. Construction Code. A photograph of the front of the building is attached.

Address: 417 A STREET SE, WASHINGTON, DC 20003

Square: 0818 Lot: 0027

PURPOSE OF REQUEST:

✓ Waiver of Additional Off-Street Parking Spaces (Section 2100.5)

_____ Waiver of Additional Off-Street Loading Spaces (Section 2200.5)

✓ Increase in Number of Sleeping Rooms in a Bed-and-Breakfast Facility (Section 203.8)

_____ Non-Mandatory Compliance with Code Provisions (BOCA Section 3406.1)

_____ Alternative Compliance Provisions for Existing Buildings (Chapter 34, DC Construction Code Supplement of 1999)

MARIE L. PHILLIPS — Applicant
202 543 1481 — Telephone

417 A STREET SE, WASHINGTON, DC 20003 — Address

Marie L. Phillips — Signature
1.21.03 — Date

HISTORIC PRESERVATION DIVISION USE ONLY
I hereby certify that this property is either a historic landmark or a building or structure contributing to the character of a historic district listed in the D.C. Inventory of Historic Sites.

S. Carter — State Historic Preservation Officer
6/14/2002 — Date

6

D.C.-44
APRIL 1980

Memorandum ● Government of the District of Columbia

TO: The File

Department, Agency, Office: Zoning Secretariat

FROM: Cecil B. Tucker
Secretary/Z.C.

Date: January 14, 1987

SUBJECT: Disposition of Case No. 86-24

On January 13, 1987, at its regular monthly meeting, the Zoning Commission for the District of Columbia determined that it would incorporate the issues in Case No. 86-24 (Text Amendment - Bed & Breakfast) into the record of Case No. 86-29 (Text Amendment - Home Occupation). Case No. 86-24 is therefore closed.

file86-24/EB12

ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 8

PHOTOS-#12

D.C.-44
APRIL 1980

Memorandum ● Government of the District of Columbia

TO: D.C. Zoning Commission

Department, Agency, Office: Planning

FROM: Fred L. Greene, Director
Office of Planning

Date: FEB 24 1987

SUBJECT: Bed and Breakfast Text for Advertising

Attached is a revised draft of the proposed text for Home Occupations, incorporating bed and breakfast establishments as a permitted home occupation subject to specified restrictions. This text is found in Paragraph 3101.53(p). Minor changes are also suggested, and are shown, to Paragraphs 3101.51(a, g) and 3101.53(e).

Attachment

1987 FEB 25 AM 9:49
ZONING SECRETARIAT
DISTRICT OF COLUMBIA

ZONING COMMISSION
CASE No. 86-29
EXHIBIT No. 10

3101.5 Home Occupations

3101.51 The purpose of the home occupation provisions is to permit home occupations as accessory uses, provided that they are compatible with the neighborhood in which they are located. The intent is to protect residential areas from adverse effects of activities associated with home occupations while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood under restrictive conditions. A home occupation is any gainful occupation or profession engaged in by an occupant of a dwelling unit which meets the following conditions and requirements:

a. A home occupation shall be incidental to the use of a dwelling unit for residential purposes. No more than 40% of the floor area of the dwelling unit may be used in connection with a home occupation, including any space used for storage of materials and products. Floor area of a dwelling unit, in this case, shall include the floor area of all heated and ventilated and thereby habitable rooms and areas within the dwelling unit, including basements and habitable attic space. No more than 300 s.f. of an accessory building may be utilized and shall be counted, if utilized, in the base floor area and the maximum percentage of floor area permitted.

b. No person other than a resident of the dwelling unit shall be engaged nor employed in the home occupation, and the number of residents employed on premises shall not exceed two.

c. No alteration of the residential appearance of the premises shall occur, including creation of a separate entrance to the dwelling or utilization of an existing entrance exclusively for the business.

d. There shall be no outside operations, storage, nor display of materials nor products.

e. The home occupation shall not displace nor impede use of required parking spaces, including any business storage in required garage parking areas.

f. No mechanical equipment is to be utilized except that which is necessarily, customarily, or ordinarily used for household or leisure purposes. No equipment nor process shall be used which creates visual or audible electrical interference in radio or television receivers off the premises or causes fluctuations in line voltage off the premises.

g. The use shall produce no noise, obnoxious odors, vibrations, glare, nor fumes detectable to normal sensory perception outside the structure.

h. Not more than two vehicles, and no commercially licensed vehicle, shall be utilized in the business.

i. Visitors, customers, or deliveries shall not exceed that normally and reasonably occurring for a residence; in any case not more than five business visitors per day and not more than two deliveries of products nor materials per week.

j. No sale of products (other than telephone sales) shall occur on the premises, except that two sale parties for the purpose of soliciting orders or sales may be held annually, each event not to exceed twenty persons on the premises.

k. The exterior of the premises may have only one, non-illuminated, flush-mounted sign, not exceeding 144 square inches in area and indicating only the name of the occupant and the type of occupation.

l. An applicant for a home occupation shall obtain an occupational license if required by District of Columbia Code.

3101.52 A home occupation is permitted only by means of a Home Occupation Permit or as a special exception approved by the Board of Zoning Adjustment. A Home Occupation Permit is a permit issued for a home occupation without a public hearing. Both types of permit granted by these provisions are granted to a designated person or persons residing at a residential address. No such permit is transferable from person to person nor from address to address.

3101.53 The following uses shall be allowed home occupations, provided that the conditions specified in Paragraph 3101.51 are met at the establishment of the home occupation and on a continuing basis, as authorized by a Home Occupation Permit.

a. Tutoring of not more than three students at any one time, except that tutoring of music students shall be limited to one at a time, without amplification of instruments, and solely within the main building.

b. Child Development Home.

c. A maximum of two roomers or boarders in the main building.

d. Dressmaking, sewing and tailoring.

e. Painting, sculpturing, writing, composing, or other fine arts occupations practiced by individuals in home studios, with the allowance that up to 60% of the floor area of the dwelling unit may be devoted to the studio.

f. Home crafts, such as model-making, rug weaving, lapidary work, and cabinet making.

g. Home cooking and preserving.

h. Caterer, provided that no more than two meals per week, serving no more than 20 persons each, shall be prepared on the premises and shall be served elsewhere.

i. Telephone answering service and telephone sales.

j. Computer programming.

k. Typing or word processing service.

l. Mail order business, provided that no retail sales occur on the site.

m. Home office of a professional person, scientist, clergyman, inventor, or academician, provided that consultations with clients, colleagues, employees, students or other affected persons do not occur on the premises.

n. Office of a salesman (including real estate agent) or manufacturer's representative, provided that no customers visit the premises and the only business transactions occurring on the premises are by telephone.

o. Office of a physician or dentist, with the allowance that one person not residing on the premises may be employed so long as that person is not a physician nor dentist.

p. Bed and Breakfast facility, offering rooms and breakfast to guests on a daily basis, provided that:

- Breakfast is the only meal served and is served only to overnight guests.

- The maximum number of sleeping rooms in the facility is two, except that by special exception pursuant to Paragraph 3101.55(b), the number of sleeping rooms may be increased to four.

- One parking space in addition to the required parking for the dwelling unit shall be provided for every two sleeping rooms.

- No cooking facilities shall be permitted in any of the rented rooms.

- The rooms shall be rented out less than 100 nights in a 12-month period, and no stay shall exceed 14 days.

3101.54 The following uses are considered inherently unsuited to be practiced as home occupations and are accordingly prohibited:

a. Any retail service or other use specified in Paragraphs 5101.32, 5101.33, 5102.32, 5102.33, 5103.32, 5103.33, 5104.32 and 6101.35; and

b. Any use prohibited in Subsection 4402.4.

3101.55 Home occupations not specifically permitted or prohibited above may be permitted as special exceptions by the Board of Zoning Adjustment, subject to the following:

a. The proposed use and conditions related to its operation and the premises shall comply with the requirements of Paragraph 3101.51.

b. An applicant for a home occupation which is specifically permitted by Paragraph 3101.52 may request of the Board a modification of no more than two of the conditions enumerated in Paragraph 3101.51 provided that the intent of the Home Occupation provisions is complied with. In no case shall more than one person who is not a resident of the premises be permitted as an employee of the home occupation, and that person shall not be a co-practitioner of the profession.

c. Any request to modify more than two of the requirements found in Paragraph 3101.51 shall be deemed a request for a use variance. However, persons with demonstrated physical handicaps may be permitted special consideration by the Board, and requests for more than two modifications of the Home Occupation requirements in this instance shall be considered as special exceptions governed by this Paragraph.

d. In considering requests for approval under this Paragraph, the Board may impose conditions relating to operating conditions of the home occupation, parking, screening, or other requirements as it shall deem necessary to protect adjacent and nearby properties consistent with the purposes of the Home Occupation provisions.

D.C. 144
APRIL 1980

Memorandum ● Government of the District of Columbia

1986 NOV 28 PM 1:18

ZONING SECRETARIAT
DISTRICT OF COLUMBIA

TO: D.C. Zoning Commission Department, Agency, Office: Planning

FROM: Fred L. Greene, Director
Office of Planning Date: NOV 26 1986

SUBJECT: Zoning Commission Case No. 86-24, Bed and Breakfast Text Amendment, Preliminary Report

At its regular monthly meeting on November 3, 1986, the Zoning Commission initiated a case to address bed and breakfast text amendments. The Commission requested that the Office of Planning (OP) provide a report regarding bed and breakfast (B and B) facilities for the December 8, 1986 meeting.

This report is in response to the Commission's inquiry of OP on the following issues:

1. Status report of the actions of the Rental Accommodations Office and the Zoning Administrator regarding bed and breakfast facilities;

2. Potential of a stringent parking requirement approach to control bed and breakfast facilities;

3. An opinion as to whether the issue of bed and breakfast facilities should be removed from the broader review of residential uses; and

4. Objective planning data on bed and breakfast facilities that would evidence whether or not there is an emergency.

Summary Recommendation and Discussion

The Office of Planning (OP) recommends that the Zoning Commission consider the issue of bed and breakfast in advance of scheduled review of the broader issue of examining the residential use provisions of the Zoning Regulations.

EXHIBIT B

CASE No. 86-24
EXHIBIT No. 17

The OP has determined through its preliminary review of the issues which prompted this application that amendments to the Zoning Regulations are needed. Specifically, as is discussed further in this report, there have been several confirmed cases where housing accommodations (apartment houses, rooming and boarding houses) have been illegally converted to lodging facilities catering to transient guests and calling themselves bed and breakfast establishments. Moreover the Zoning Regulations are unclear as to the intended regulation of an industry defined as B and B.

Analysis

The OP in its review of this application found several reasons to question whether the Zoning Regulations adequately and accurately address the operational characteristics of a bed and breakfast as opposed to an inn (by definition) or other transient lodging accommodations.

Technically a bed and breakfast (B and B) is not defined or specifically regulated in the Zoning Regulations. In search of a definition for a B and B, the OP contacted the American Bed and Breakfast Association and the Bed and Breakfast League, Inc. (Materials from the American Planning Association also being sent.)

The American B and B Association defines this use as follows:

A. The use is called a Bed and Breakfast "home stay".

B. The use is a home occupation.

1. The use is conducted in a private home with three or fewer guest rooms.

2. The use is rented out less than 60 nights in a 12-month period.

3. It is the owner's personal residence and is used as his primary residence.

4. No signs are displayed on the property.

5. The dwelling is occupied by the owner at all times.

6. The only meal served to guests is breakfast.

7. It is not a full-time business to be sold to a new owner, but is a source of supplemental income.

8. There are no drop-in guests. All guests are by reservations, made in advance.

9. Only one family or party is accommodated at one time.

10. Guest stays are limited to less than 30 days. The Association indicates that its research shows the average stay is two days.

The Association expressed its support of a change in the Zoning Regulations that would differentiate between a B and B home stay and commercial lodging.

The Bed and Breakfast League, Inc. is a service organization providing reservation information for travelers wishing to stay at bed and breakfasts in Washington, D.C. and suburbs. The league advised OP that it represents 35 owner/resident operators in Maryland and the District.

All of these facilities are private single-family homes with owner occupancy. The majority of the B and B's that it represents have only one guest room. A few have two or three guest rooms. The League noted that none of the B and B's represented conversions from multi-family buildings, noting further that traditionally in Europe B and B's have operated for 400 to 500 years.

An important characteristic of a B and B in the League's opinion is that they are private single-family homes where the owner resides on the premises. The B and B offers overnight accommodations on an occasional basis and breakfast is included in the cost.

The Office of Planning would note that we have proposed text amendments to update our home occupation provisions. If B and B's were permitted without loss of residential units (home occupation only) and with restrictions similar to those above especially on number of bedrooms and number of nightly visits per year, OP would consider them compatible uses. However, this should be done only as a companion policy that prevents B and B's from utilizing rooming house, boarding house or apartment house Certificates of Occupancy. Larger B and B's in residential zones result in loss of residential units and potential adverse effects on nearby residences.

OP has read the letters submitted to the Zoning Commission as to the operational impacts being imposed on residential areas from the conversion of apartment houses, rooming and boarding housing to alleged B and B's without the proper Certificates of Occupancy and in violation of the Rental Accommodations Act. OP has compiled a list of these properties and has discussed this matter with the Zoning Administrator and the Office of Rental Accommodations in regard to said allegations.

D.C. Office of Rental Accommodations

The D.C. Office of Rental Accommodations (ORA) legal advisor informed the Office of Planning that the addresses listed below are being investigated for possible violation of the Rental Housing Act. These properties are allegedly operating as bed and breakfast facilities (defined as transient uses by ORA) or other transient housing use without the proper Certificate of Occupancy, and/or in contradiction to what they are registered as (apartment, rooming house, boarding house or other non-transient housing accommodation) with ORA. ORA advised OP that they have identified several addresses that are in clear violation of the Rental Housing Act which prohibits the conversion of rental housing to transient use if the rental housing existing on or before May 20, 1980. ORA expects that its investigation will be completed in mid-December at which time a decision will be made on litigation proceedings against properties in violation of the Rental Housing Act. A copy of the Rental Housing Act (Chapter 38) is attached to this report.

800 4th Street, N.W.
1121 New Hampshire Avenue, N.W.
4000 Massachusetts Avenue, N.W.
4200 Massachusetts Avenue, N.W.
1824 Riggs Place, N.W.
4115 Wisconsin Avenue, N.W.
2700 Cathedral Avenue, N.W.
1829 Kalorama Road, N.W.
1620 T Street, N.W.
1736 1744, 1746, 1747, 1748 and 1777 Lanier Place, N.W.
1831, 1852 1854 and 1859 Mintwood Place, N.W.

The following addresses have been identified by neighborhood groups and others as being operated illegally as bed and breakfast facilities. The addresses followed by an asterisk are presently being investigated by the D.C. Department of Consumer and Regulatory Affairs, Rental Accommodation Office for possible violation of the Rental Housing Act.

2700 Cathedral Avenue, N.W. (also known as: 2850 27th Street, N.W.)*
2612 Cathedral Avenue, N.W.
1744, 1746, 1747, 1748, 1777 Lanier Place, N.W.*
1829 Kalorama Road, N.W.*
1854 Kalorama Road, N.W.*
1620 T Street, N.W.*
1831, 1852, 1854 and 1859 Mintwood Place, N.W.*

Zoning Administrator

The Office of Planning has discussed the bed and breakfast issue with the Zoning Administrator. The Zoning Administrator expressed his opinion that a bed and breakfast is in many ways similar to an inn by the zoning definition and as such consideration should be given to including them in the definition for inn. The predominante distinction is the smaller size of the bed and breakfast. Both, however, cater to a transient clientele, and as such create a higher parking demand than residences.

The Zoning Administrator suggested that many of the illegal conversions from nontransient housing accommodation to a bed and breakfast (transient) occur because the Zoning Regulations do not strictly prohibit transient occupancy in the definitions of apartment house, boarding house, rooming house, and possibly other housing accommodations which lend themselves to conversion. The Administrator noted that his office is working with the Office of Rental Accommodations in the investigation of alleged illegal conversion to bed and breakfast facilities.

The following establishments are listed in the District Yellow pages under the heading of bed and breakfast. It should be noted that none of these establishments are recognized by the B and B industry as meeting its definition of a B and B.

1. Kalorama Guest House (22 rooms) 667-6369
   1854 Mintwood Place, N.W.
   Square 2550, Lot 153 (R-5-B) circa 1910

2. Meg's International Guest 387-9623
   1315 Euclid Street, N.W.
   Square 2861, Lot 25 (R-4) circa 1895

3. Pineapple Gate Garden 342-1182
   3046 N Street, N.W.
   Square 1209, Lot 854 (R-3) circa 1887

4. Bed and Breakfast Accommodations, Inc. 363-8909
3222 Davenport Street, N.W.
Square 2037, Lot 21 (R-1-A) circa 1955

Reservation service for travelers wishing to stay in bed and breakfast.

5. Castletone Inn 483-4706
1918 17th Street, N.W.
Square 151, Lot 196 (R-5-B) circa 1900

Existing Zoning Regulations

The closest thing to a provision that could apply to a B and B under the Zoning Regulations would be Paragraph 3101.54 "Home Occupation" and vaguely Paragraph 3101.53 which allows a single family dwelling in the R-1-A District to have "a maximum of two roomers or boarders in the main building" as a matter-of-right.

As noted above the Zoning Regulations do not refer to the number of rooms, but to the maximum number of people.

The parking requirement is not increased beyond the one per dwelling unit provision for the principal residence.

Existing Zoning Definitions

Section 1201 of the Zoning Regulations defines the following terms as follows:

> "Boarding House: A building or part thereof other than a motel, hotel or private club where, for compensation, meals, or lodging and meals are provided for three or more guests on a weekly or monthly basis".
>
> "Rooming House: A building or part thereof, other than a motel, hotel, or private club, which provides sleeping accommodations for three or more persons who are not members of the immediate family of the operator or manager, and such accommodations are not under the exclusive control of the occupants thereof".
>
> "Rooming Unit: One or more habitable rooms forming a single habitable unit used or intended to be used for living or sleeping purposes, but not for the preparation of meals. The term rooming unit shall not include a tenement or bachelor apartment".

"Hotel: A building or part thereof in which not less than 30 habitable rooms or suites are reserved exclusively for transient guests who rent such rooms or suites on a daily basis and where meals, prepared in a kitchen or on the premises by the management or a concessionaire of the management may be eaten in a dining room accommodating simultaneously not less than thirty persons. Such dining room shall be internally accessible from the lobby. The term hotel shall not be interpreted to include apartment house or private club. It shall, however, include establishments defined as motel in these Regulations prior to May 16, 1980".

"Inn: A building or part thereof wherein habitable rooms or suites are reserved exclusively for transient guests who rent such rooms or suites on a daily basis. Guest rooms or suites may include kitchens, but central dining other than continental breakfast for guests is not allowed. Commercial adjuncts, function rooms, and exhibit space as permitted in hotels are not allowed. The term inn shall not be interpreted to include motel, hotel, private club or apartment house".

"Apartment house: Any building or part thereof in which there are three or more apartments or three or more apartments and one or more bachelor apartments".

Recommendation

As to the issue of whether an emergency exists pertaining to the establishment of B and B's, OP is of the opinion that the number of allegedly illegal conversions of rental housing to commercial transient lodging facilities is a serious situation, but not an emergency because of the substance of the Rental Housing Act and the enforcement actions now being undertaken by ORA. Loss of low and moderate income housing and the increased parking demand on the City's public streets are serious issues which need to be addressed by amendments to the Zoning Regulations.

A. The Commission is recommended to consider a definition of transiency and/or related amendments which would prohibit transient occupancy of apartment houses, boarding houses and rooming houses. This is a complex issue. OP will review previous suggested definitions from Case 79-1 (Hotels).

B. Consider adding B and B to the home occupations list of permitted uses with strict controls based on the standards of the Bed and Breakfast League, Inc.

C. Consider adding Bed and Breakfast as a defined term as a means of permitting it with suitable controls (parking, etc.) in zones which allow transient uses (SP as Special Exception, C-1 and subsequent zones as of right).

Report Prepared by:
OP/PS
RN:em:mas

NUMBER OF BEDROOMS

ZONING	1	2	3	4	5	6
R-1	5	8	2	-	-	-
R-2	5	2	1	-	-	-
R-3	5	1	-	1	-	-
R-4	11	3	2	1	2	-
R-5	11	5	2	2	2	1
C	3	1	-	-	-	-
UR	2	-	-	-	-	-
TOTAL	42	20	7	4	4	1

EXHIBIT C