100 Fifth Street, SE
Washington, D.C. 20003
December 2, 2003

Board of Zoning Adjustment
441 Fourth Street, NW
Suite 220
Washington, D.C. 20001

Dear Ms. Kress, et.al.:

In response to Mr. Mark Phillips' application for a special exception before you now as BZA Case #17079 I request that the Board, in accordance with DCMR Title 11, Sections 3112.7, 3113.7 and 3115, give "great weight" to ANC 6B's overwhelming 7-1-1 decision to oppose the special exception requested by Mr. Phillips, as well as the unanimous decision of the Capitol Hill Restoration Society to oppose this special exception, and deny this application for a special exception to increase the number of rooms in his commercial establishment from two to either four or six.[a] In making your decision I also ask you to consider the unanimous neighborhood opposition to the granting of this special exception voiced in individual letters[b] and two separate petitions,[c] as well as Ward 6 Councilmember Sharon Ambrose's opposition to this special exception.[d] Finally, I ask that you reaffirm Zoning Administrator Robert Kelly's decisions dated March 19, 2003 (Attachment # 5) and March 24, 2003 (Attachment #6), which required special exceptions for both an increase in the number of rooms allowed under the current Home Occupation Permit and a waiver of the off street parking requirements under DCMR Title 11, Sections 203.8 (number of rooms) and 2100.5 (parking).[e]

A Matter of Right

---

[a] The report of the Planning and Zoning Committee ANC 6B is included as Attachment #1. The full ANC 6B recommendation is included as Attachment #2. Both unequivocally recommend that this special exception be denied because of the adverse impact on the neighborhood. The Capitol Hill Restoration Society Zoning Committee also voted unanimously on November 13, 2003 to oppose the special exception.

[b] You should have received directly by mail letters from neighbors. I have included one letter, which you have not received before today, as well as copies of individual letters given me by the authors, to make sure they are in today's record.

[c] 91 neighbors signed the first petition opposing the conversion of a single-family dwelling to a B&B (Attachment 4a). 146 neighbors have signed the petition opposing a special exception to increase from 2 to either 4 or 6 rooms (Attachment #4b).

[d] See Attachment #4c, Ward 6 Councilmember Ambrose's letter dated December 1, 2003, to the Board of Zoning Adjustment urging rejection of BZA Application #17079 for a special exception to increase the number of sleeping rooms. Councilmember Ambrose is Chair, Committee on Consumer and Regulatory Affairs, and agrees that the adverse impact on the neighborhood in this particular case is sufficient to deny BZA Application #17079, and feels further study of the zoning code in general for this and similar kinds of use in an historic district is warranted.

[e] Although BZA Application #17037 (Attachment #7), which was an appeal from Zoning Administrator Kelly's denial of the petitioner's application for a revised HOP #50397 (because the applicant had not obtained a special exception for an increase in the number of rooms as well as a waiver of parking), was withdrawn by petitioner's counsel on September 2, 2003, there is still much confusion among DC regulatory offices.

BZA
Case No. 17079
Exhibit No. 75
Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 75A1

The applicant has contended in prior filings with the Board of Zoning Adjustment (see Attachment #7) that he is entitled to rent 6 rooms as a matter of right, without obtaining a special exception for an increase from the two rooms HOP he now has, and that he should be likewise granted as a matter of right a waiver from the off street parking requirements. Mr. Phillips' attorneys seem to want to perpetuate the misinformation circulating in his favor and state that the "plain language" of Section 203.8 (c) (1) "allows, as a matter of right, a bed and breakfast with up to six sleeping rooms in a building certified as contributing to the historic district." On the contrary, the plain language of the regulation is ***"may be increased"***. Zoning Administrator Kelly correctly decided, when he rejected the applicant's revised HOP, that a Special Exception from the Board of Zoning Adjustment is required for both an increase in the number of rooms and to waive the parking requirements. Because the determination of this central issue is within the purview of the Board of Zoning Adjustment, a determination of this issue may preclude further confusion among DC regulatory offices, the Bar and the general public, that has been perpetuated by inconsistent principles and improper administration of zoning regulations. *Ad hoc* bad decisions made in the past or in isolated circumstances are not and should not be precedence used to perpetuate and compound the errors.

Special Exception Criteria: Section 3104.1 of the Zoning Regulations permits the Board to grant Special Exceptions under certain circumstances:

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.***

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

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

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

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

(1) Pursuant to Section 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, the number of sleeping rooms* ***may be*** *increased to six (6); and*

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

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

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

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

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

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

The zoning regulations clearly do not grant *as a matter of right* an automatic waiver of the parking requirements or an automatic increase in the number of rooms available to the applicant. Any increase in the number of rooms and a waiver of the parking requirements must be granted under a Special Exception. Similarly, there is some confusion and misinformation bantered about on just what "historic" status means.

Under the D.C. Zoning Regulations Section 203.8 cited above, historic buildings may be eligible for an increase in allowable number of sleeping rooms for a bed-and-breakfast facility operated as an accessory use in a residential area. Up to six rooms **may be allowed** in historic buildings, subject to other provisions of the regulations. To confirm eligibility for this zoning waiver, an owner must apply to the Historic Preservation Office for certification that the affected property is either a designated landmark or a building contributing to the character of a historic district. *After HPO certifies the property as historic,* **the Zoning Administrator determines the applicability of the waiver.**[f] This important point seems to be misunderstand by the applicant and his counsel. The certificate issued by the Historic Preservation Office, is merely a judgment by that office that a particular house or building "contributes to the character of a historic district." Of course, the entire neighborhood in question is a designated historic district, and some would argue that every building contributes to the character of the historic district.[g] The piece of paper the applicant assumes grants him a waiver of any parking requirements in the zoning regulations, is just that, a piece of paper. It does not grant the applicant an automatic, or matter of right waiver. The Zoning Administrator determines whether a waiver has been granted, and in this case, the Zoning Administrator determined that a Special Exception is required to waive the parking requirements for this particular establishment, notwithstanding certification by the Historic Preservation Office.[h] When pressed by the applicant's counsel in an email dated September 2, 2003, to confirm that a parking waiver had already been obtained and no other action on their part was required, DCRA confirmed to contrary that along with a new HOP application for the Department of Consumer and Regulatory Affairs, an updated certification from the Historic Preservation Division would be required.[i]

---

[f] See Attachment #8, Zoning and Construction Code Waivers Applicable to Historic Buildings, District of Columbia Historic Preservation Office.

[g] This particular Queen Anne-style home is not unique, but is, instead, typical of countless others on Capitol Hill, throughout Washington, and in many cities throughout the United States.

[h] It is troubling that the morning the applicant's attorney withdrew their appeal of the Zoning Administrator's decision that Special Exceptions were required for both an increase in the number of rooms, as well as a waiver of the parking, counsel withdrew consideration of BZA Case # 17037 (Attachment #9) before ANC 6B Planning and Zoning Committee stating that they would be applying for a special exception to increase the number of rooms, but would "negotiate with DCRA" the parking waiver.

[i] Letter from Denzil Noble, Administrator, DCRA, dated September 15, 2003, (Attachment #10) confirms that any increase in the number of rooms authorized by Special Exception of the BZA requires not only a revised Home Occupation Permit, but the Department of Consumer and Regulatory Affairs also requires an updated certificate from the Historic Preservation Office. The Zoning Administrator in turn determines whether a waiver is in fact granted. Mere certification by the Historic Preservation Office does not confer a waiver of the zoning regulations to the applicant.

Adverse effect on the neighborhood

The unanimous opposition of the neighborhood stems from a myriad of reasons and the Board of Zoning Adjustment has received letters from many neighbors. Copies of some of those letters are in Attachment #3 referred to above, and you should have received others for which I do not have copies. I will now outline my own reasons for opposing an increase in the number of rooms available to 417 A Street, SE.

Parking, of course is a major concern, and you will find that voiced in a number of the letters of opposition to this commercial venture. Parking, or the lack of parking spaces in the neighborhood, is more than just an issue of convenience. You will see in several letters that elderly neighbors, some of whom have lived on the block for over 40 years, are concerned about the distance they now find they have to park away from their homes. Likewise, husbands and fathers are concerned about the safety of their wives and children, returning home late at night and parking three, four or more blocks away from their homes. In the ten years I have lived here parking has gotten to be an issue, due to the success of business establishments on Pennsylvania Avenue and numerous other church, political, arts and other community activities. This has been compounded recently by this same B & B, which obtains unauthorized Visitor Residential Parking Permits for guests.[j] Similarly, the neighborhood is affected by the parking of guests of the B & B who do not obtain permits, as well as the parking of the additional visitors of the guests of the B & B. There have even been instances when a neighbor has gotten a Visitor Parking Permit for guests staying at the B & B.[k] Parking in the adjacent area is affected by more than merely the number of parking permits obtained by the individual owner. The adverse impact to the neighborhood will be compounded significantly by any increase to the number of rooms allowed at this site.

In addition to parking concerns, other adverse impacts of a commercial establishment in a purely residential neighborhood cannot be ignored. Furthermore, as in this case, it is a harbinger of more development to come and a watershed moment in the life of a neighborhood that has prided itself on the relations of its neighbors and the quality of life that result from neighbors living in the same homes for over 40 years, and celebrating the 20th anniversary of our block party as we did last summer. A Street, S.E. from the Adams Building of the Library of Congress to North Carolina Avenue, S.E. is completely residual but for one office that is open only during the day (the American Historical Society at 400 A Street, S.E.) Similarly, from 5th and East Capitol to

---

[j] On information and belief, there have been a number of unauthorized Visitor Parking permits issued to the guests of this B & B. According to the Department of Motor Vehicles website, permits are available for only "bona fide visitors" of an "eligible resident" who is a guest "for longer than a two-day period." While not unique to this particular B & B (The Bull Moose Inn at 5th and A, N.E, routinely obtains permits, i.e., Parking Permit #000690 dated 8/16/03 for NJ License #MRH-11A, a one night guest-although the permit may have been obtained as covering more than one night), the practice of obtaining Visitor Parking Permits for commercial guests is not the use intended by the municipal regulations. See http://dmv.dc.gov/serv/parking/Visitor.shtm . These abuses are being addressed in other appropriate forums.

[k] One resident (who has signed the enclosed petition opposing the Special Exception for this B & B) felt bad about getting a Visitor Residential Parking Permit for her father visiting from Tennessee (Permit #Z023490 Dated 10/16/03 –10/31/03) to stay at the B & B, but the B & B one block away that does have off-street parking was full.

5th and Pennsylvania Avenue, S.E., the entire street is residential. The expectations of homeowners who have purchased their homes in a residential neighborhood are completely and unequivocally altered by the intrusion of a commercial establishment with its concomitant inconvenience, burden to the city infrastructure,[l] and negative effect on property values and quality of life. By signing two separate petitions, you have heard a resounding and unanimous consensus of the neighbors in this regard.

For the adjacent neighbors of the B & B, there is the additional burden of commercial activity arriving late at night and leaving early in the morning, sometimes accompanied by the shouts and horns of harried taxi drivers. While all of us living in city town homes get used to hearing our neighbors through the walls, there's a big difference in one family in a home, and up to and possibly more than 12 adults other than the two owners of the business traipsing up and down stairs and using bathrooms and conversing at all hours of the day and night. Anyone who lives in a DC townhouse knows that double thick brick walls do not muffle even normal noise levels, let alone the additional noise resulting from 10, 12 or potentially even more commercial traffic day in and day out. And we all know, people who stay in hotels and B & B's often are not always the nice quiet neighbor they might otherwise be in their own neighborhood.

There is also an element of bad neighborliness and bad faith inherent in the way this whole conversion from a single-family residence into a commercial enterprise occurred. Many of the neighbors who signed the petition forwarded herewith feel such bad faith should not be rewarded, and should not be a pattern for others to use when attempting to circumvent zoning regulations. Furthermore, it leads us to believe that the owners of the B & B will not comply with zoning regulations, which are notoriously hard to enforce in the first instance. Since they first applied for a permit to renovate a single-family home[m] they continued to flout the regulations, advertising "expanded continental breakfast, daily cocktail hour & Afternoon Tea" (which is not allowed under any of the B & B regulations," and continued to advertise four rooms for rent even though their HOP limits them to two.[n] Other neighbors remember the owners playing cat and mouse with DCRA—the 3' by 8' sign that was draped across the house for nine days, taken down, and then put up on June 3, 2002. Many neighbors met with DCRA offices about this as

---

[l] A B & B is now treated more like a residence than the commercial entity it is. This is especially egregious when 4 or 6 rooms are let commercially, and the business piggybacks on city provided residential services such as trash, leaf and re-cycling pickup, et. al. Similarly, the extra wear and tear on city sewer and water lines is very clear to those of us in an historic district known for its collapsing original clay sewer lines and 100 year old water lines. While there may have been a time in the past when accommodations were made to save old homes, by allowing owners to support themselves by commercial use of large single-family, it is a different time. Historic homes demand a premium as single-family homes now. They will not suffer the neglect of the past. There is a big difference in a 2 room matter of right and 4 or 6 room matter of right, and the adverse impact on the neighborhood is geometric to the number of rooms allowed.

[m] Ms. Christy Whalen, Interior Solutions, Inc., on behalf of Mr. Phillips, applied for a construction permit March 5, 2002, to make "alterations & repairs" to a "single family dwelling" with an estimated cost of $30,000.00. Building permit #B443318 was issued on March 8, 2002. The top three floors of the town home was renovated top to bottom, including the addition of two entirely new luxurious bathrooms, renovating two others to the same standard, as well as a top-drawer kitchen. Shortly after this permit was granted, and after Mr. Phillips had removed the fire escape from the exterior of the building, he applied for a Home Occupation Permit to operate a Bed & Breakfast. See Attachment #11.

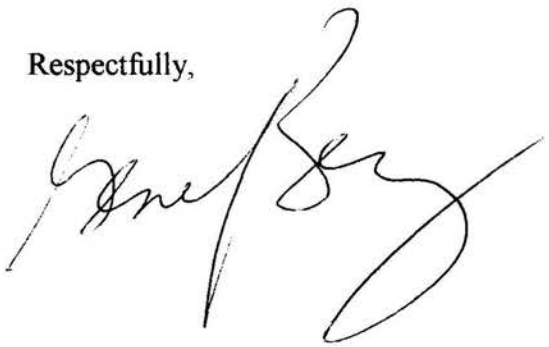
[n] Attachment #12 contains published brochures and web advertisements.

well as other issues throughout this process, and have repeatedly voiced concerns about this Bed & Breakfast.[o]

Conclusion

For the reasons stated herein and for reasons provided at both the ANC 6B Planning and Zoning Committee Meeting, and the full ANC 6B meeting, I ask you to consider the record before you, including the wishes of 146 neighbors, the opposition of Ward 6 Councilmember Ambrose, the unanimous support of the Capitol Hill Restoration Society, and accord ANC 6B's recommendation "great weight" in your denial of this Special Exception requested by Mr. Mark Phillips and Mr. Keith Wilkinson, dba MPKW Enterprises, LLC. My neighbors and I stand squarely against increasing the number of rooms to either four or six, and many feel that enforcement of the two-room limit now in place should be referred to DCRA for review and action. I also ask that you reaffirm the Zoning Administrator's decision that a special exception is required for a waiver of parking requirements under the zoning regulations of the District of Columbia, and that you also review whether the filing fee for this Special Exception application was, in fact, properly paid by the applicant and is, therefore, properly before the Board of Zoning for consideration.[p]

Respectfully,



[o] For more background see Attachment #13.

[p] A filing fee is generally paid at the time of filing an application and is not refundable, nor is it transferable to subsequent applications at the whim of the applicant. See Mr. Phillips' attorney's letter dated September 5, 2003 (Attachment #9), which implies that the fee for BZA Application #17079 was not properly paid. Once an application is filed, the fee associated with that filing attaches, and although there was apparently some negotiation with Rick Nero about the transfer of a filing fee paid for BZA Application #17037, that filing fee was not properly transferable to an altogether new and unrelated zoning application. BZA Application #17037 was an appeal of the Zoning Administrator's previous decision. BZA Application #17079 was a new application for your garden variety special exception.

ATTACHMENT #1

ANC 6B
Report of the Planning and Zoning Committee
Meeting of October 28, 2003

Present: Commissioners Mary Wright (chair), Julie Olson, Keith Smith, and Kenan Jarboe and Resident member Donna Scheeder.

Traffic calming study for K St. SE

Rachel MacCleery, DDOT, made a presentation to the Committee requesting support for a traffic calming study for K Street, SE between 11th and 16th Streets. The original request for this study came out of the Office of Planning's Strategic Neighborhood Action Plan (SNAP) and is supported by DDOT. While supportive of the study, the Committee raised questions about studies of other areas as well. Ms. MacCleery responded that a wider Capitol Hill traffic study was underway as well as an Anacostia River crossings study – both of which would address the other areas. The K Street study was meant to be a smaller, stand alone study that would compliment the other studies.

The Committee recommends that the ANC support the request for a K Street traffic calming study while also expressing its concern over the importance of studies of other traffic problem in the area.

BZA Case #17079 Special Exception: 417 A Street SE, Bed & Breakfast
(Hearing date: Dec. 2, 2003 1 pm)

The owners of 417 A Street, SE are seeking a special exception to increase the number of rooms for rent in their B&B establishment from the current two to six. This application has come about due to a decision by the Zoning Administrator that under the provisions of the Home Occupation permit process, a B&B with more than two rooms requires a special exception, even if the establishment is in a historic district.

At the Committee meeting of October 7, 2003, the applicant argued 1) that six rooms are allowed in an Historic District as a matter of right, 2) that they have obtained a waiver of the parking requirements from the Historic Preservation Office and 3) that the increased number of rooms will have no harm to the neighborhood and therefore qualifies for a special exception. Neighbors argued to the Committee in opposition to all of these point. At the request of the applicant who could not be present at the Oct 14 ANC meeting, the ANC agreed to postpone consideration of this item until the November meeting.

The Committee believes that the Zoning Administrator was correct in requiring a special exception to increase the number of rooms above the current two under the terms of a Home Occupation permit. The application has argued that the wording of the law

permits up to six rooms to be used for a B&B in a contributing building in a historic district. The Committee disagrees.

Section 203.8 (c) of the zoning regulations states:

> The maximum number of sleeping rooms shall be two (2), except as follows:
> (1) Pursuant to §203.10(1) of this section, the maximum number of sleeping rooms may be increased to four (4); or, in a dwelling which is an historic landmark, or which is located in an historic district and is 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);

We believe that this clause clearly states that the expansion from 2 to either 4 rooms normally or 6 rooms in a historic district is permitted but is not a matter of right. Importantly, the clause uses the word "may" not "shall." The applicant admits that an expansion from 2 to 4 rooms under normal circumstances, i.e. not in a historic district, would not be matter of right. Since the clause simultaneously speaks to the expansion to either 4 rooms in a non-historic district or 6 rooms in a historic district, it stands to reason that if the expansion to 4 rooms in a non-historic district needs a special exception, so too does the expansion to 6 rooms in a historic district.

The law clearly sets a ceiling of the size of a B&B operation that qualifies under the Home Occupation permit process and gives a bonus of 2 rooms to establishments in a historic district. It only give a bonus to the size of the establishment permitted under the Home Occupation permit; it does not give matter of right status to anything above 2 rooms.

The Committee is generally supportive of B&B establishments, recognizing that B&B's can contribute to the character of the neighborhood. However, the Committee is also aware of the disruption to the neighborhood that such establishments can cause, especially those with more than 2 rooms. For this reason the Committee strongly supports the provision in the law that requires a special exception for more than 2 rooms.

One of the potentially most disruptive elements of a B&B with more than 2 rooms concerns parking. Parking is already at a premium in the neighborhood and the introduction of a business establishment that takes away street parking during the evening hours can only exacerbate the problem. The Committee notes that most (but not all) of the B&Bs in the area with more than 2 rooms provide off-street parking for their guests. The Committee believes that such a requirement for off-street parking is important in minimizing the impacts on the neighborhood.

Thus, the Committee is very disturbed to learn that the applicant believes that they have obtained a waiver of the parking requirements from DCRA. We understand that some of the neighbors are disputing whether such a waiver was in fact granted and will make that argument before the Board of Zoning Adjustment. While the Committee takes no position on whether a waiver should or, in fact, has been granted, the issue of parking

remains key to this application. If the applicant is not required to provide off-street parking, the issue of the disruption to the neighborhood becomes even more acute. In normal circumstances, the expansion to more than 2 rooms, the impact on the neighborhood would be judged by the amount additional comings and goings of the guests. Under these circumstances, however, where no additional parking is available, the expansion of the B&B operation from 2 to 4 or 6 rooms would have a serious detrimental impact on the neighborhood.

Therefore the Committee recommends that the ANC oppose the granting of this special exception.

Historic Landmark Application: Providence Baptist Church, 15th Street SE

At the Committee meeting of October 7, 2003 the developers who recently purchased the church presented their plans to tear down the building and replace it with townhouses. On behalf of and at the request of the neighborhood, CHRS has filed an application for landmark status for the original part of the building. Since that time, the developer has meet with the neighbors to discuss the issue further and has come to an agreement, which Commissioner Smith will present to the ANC.

Request for left turn signal, 17th Street to Potomac Avenue SE

Commissioner Smith requested a left turn signal light for traffic traveling north on 17th Street turning left on to Potomac Ave. westbound. Currently, this intersection has a no-left turn sign. However, recent traffic changes have made a left turn at this intersection necessary. Specifically, at the ANC's request the 1600 block of H Street was made one-way going east to prevent traffic coming up 17th Street from Barney Circle from cutting through that neighborhood to reach Kentucky Ave. A left turn at Potomac Ave would allow traffic a way of heading west to Kentucky. Specifically, a left-turn signal is needed to allow traffic to safely make the turn.

The Committee recommends that the ANC support the request for a left turn signal light at 17th and Potomac Ave, SE.

Public Space: Café Recess, 209 Penn. Ave. SE

The owners of Café Recess are requesting support for their public space application for a sidewalk café. The café would consist of four (4) tables and eight seats – two tables on either side of the main entrance. The tables would not block any entrances to the building and would be taken away when the establishment closes at 6 pm.

The Committee recommends that the ANC support the public space application for a sidewalk café at 209 Penn Ave., SE.

Pay phone: 404 1st Street, SE

The owner of the payphone at Congressional Liquors at 404 1st Street, SE is seeking the renewal of the permits for this phone. The phone is located in front of the store next to the enclosed sidewalk café of Tortilla Coast. While the owner was unable to attend the Committee meeting, he did discuss the issue with Commissioner Jarboe by telephone. The Committee notes that this is the only payphone in the immediate area and that there have been no reported problems associated with this payphone.

The Committee recommends that the ANC support the renewal of the permits for the payphone at 404 1st Street, SE.

Pay phone: 1430 Pennsylvanian Ave., SE

As neither the applicant for the permits for a payphone at 1430 Pennsylvanian Ave., SE., nor the ANC Commissioner for that area were able to attend to Committee meeting, the Committee refers this matter back to the full ANC without recommendation.

Construction issues at 210 D Street, SE

The Committee heard from neighbors about construction problems at the development at 210 D Street, SE. The Committee will investigate the complaints. This issue will be before the Committee and the ANC next month in the form of an appeal of the Zoning Administrator's decision to grant building permits. The zoning issues will be address at that time.

ATTACHMENT #2

ANC 6B
Capitol Hill / Southeast

Advisory Neighborhood Commission 6B
921 Pennsylvania Avenue SE
Washington, DC 20003

November 12, 2003

Board of Zoning Adjustment
DC Office of Zoning
441 4th Street, NW
Suite 210 South
Washington, DC 20001

Re: BZA Case #17079
Application of Mark Lee Phillips

Dear Board Members:

At its regularly scheduled and properly noticed meeting on November 5, 2003, ANC 6B voted 7-1-1 (6 being a quorum for the conduct of business) to oppose the application for a special exception by Mark Lee Phillips to increase the number of sleeping rooms in a bed and breakfast under a home occupation permit (BZA Case #17079).

The applicant argued before the ANC that 1) six rooms are allowed in an Historic District as a matter of right, 2) they have obtained a waiver of the parking requirements from the Historic Preservation Office and 3) the increased number of rooms will have no harm to the neighborhood and therefore qualifies for a special exception. The neighbors of this building argued to the ANC in opposition to all of these point.

On the first point, the ANC believes that the Zoning Administrator was correct in requiring a special exception to increase the number of rooms above the current two under the terms of a Home Occupation permit. The law clearly sets a ceiling of the size of a B&B operation that qualifies under the Home Occupation permit process and gives a bonus to establishments in a historic district. It only give this bonus under the special exception process; it does not give matter of right status to anything above 2 rooms.

More importantly, since the case before the Board is whether to grant a special exception and not an appeal of the Zoning Administrator's decision, any argument by the applicant

concerning matter-of-right is moot. The question before the Board concerns only the special exception test.

The ANC is generally supportive of B&B establishments, recognizing that B&B's can contribute to the character of the neighborhood. However, we are also aware of the disruption to the neighborhood that such establishments can cause, especially those with more than 2 rooms. This is the reason that the ANC strongly supports the provision in the law that requires a special exception for more than 2 rooms.

One of the potentially most disruptive elements of a B&B with more than 2 rooms concerns parking. Parking is already at a premium in the neighborhood and the introduction of a business establishment that takes away street parking during the evening hours can only exacerbate the problem. We note that most (but not all) of the B&Bs in the area with more than 2 rooms provide off-street parking for their guests. We believe that such a requirement for off-street parking is important in minimizing the impacts on the neighborhood.

Thus, the ANC was very disturbed to learn that the applicant believes that they have obtained a waiver of the parking requirements from DCRA. We understand that some of the neighbors are disputing whether such a waiver was in fact granted and will make that argument before the Board of Zoning Adjustment. While the ANC takes no position on whether a waiver should or, in fact, has been granted, the issue of parking remains key to this application. If the applicant is not required to provide off-street parking, the issue of the disruption to the neighborhood becomes even more acute. In normal circumstances, the expansion to more than 2 rooms, the impact on the neighborhood would be judged by the amount additional comings and goings of the guests. Under these circumstances, however, where no additional parking is available, the expansion of the B&B operation from 2 to 4 or 6 rooms would have a serious detrimental impact on the neighborhood.

We believe that the application does not meet the test for a special exception as outline in §3104.1, specifically the clause which requires that a special exception will not tend to affect adversely the use of neighboring property. Therefore, ANC 6B opposes the granting of this special exception based on the negative impact on the neighborhood.

Finally, Commissioners Julie Olson, Mary Wright, and/or Kenan Jarboe are authorized to present the ANC 6B report to the Zoning Commission.

Very truly yours,

Will Hill
Vice-Chairperson

ATTACHMENT #3

506 A Street, SE
Washington, DC 20003
October 23, 2003

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 4th Street, N.W.
Suite 210-S
Washington, DC 20001

RE: BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfast

Dear Ms. Kress:

My wife and are concerned about the proposed special exception requested by the owners of the subject property. The parking situation in our neighborhood now frequently requires us to park far away from our residence, and there have been times when the closest legal parking space has been several blocks away. We have had to weigh the consequences of risking a ticket to park nearer our home or park much farther away, sometimes very late at night. Safety is a big concern of mine as a husband, son (my mother also lives with us), and as a father of two young children. Just today I heard that there was an attempted robbery at gunpoint in the 700 block of East Capitol last evening at approximately 7:00 p.m. I find it very troubling that a special exception is being requested that will undoubtedly change the character of a neighborhood that is now completely residential, and drastically affect the quality of life and the safety of my family and my neighbors. I am opposed to the granting of any special exception to increase the number of rooms from 2, and any waiver of parking requirements. I ask you to deny it. Thank you for your consideration.

Respectfully,

Larry Hodgson

cc: Mary Wright, Member 6B02
Chairperson, Planning and Zoning Committee
ANC 6B

502 A St SE
Washington, DC 20003
October 15, 2003

Jerrily R. Kress, FAIA, Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

RE: BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfast

Dear Jerrily Kress:

We are concerned about the potential adverse impact on neighborhood parking should the B & B located at 417 A Street, SE be allowed to increase the number of rooms to let from 2 to 4 or 6. Already it is very difficult, if not impossible, to find parking near our homes on 5th or A St SE. With no free spaces available on our block, we park several blocks away and walk home, often in the dark. This poses a danger to our safety. It also compounds the shortage of parking for the surrounding blocks.

It is reasonable for our neighbors to run a B & B, if they so wish, but it should be limited to 2 rooms. In this way, the impact on the neighborhood will be such that we can make the necessary adjustments and still maintain the good relationships we all value.

Respectfully,

Geoff & Jane Rinard

Cc: Mary Wright, Member 6B02
Chairperson, Planning and Zoning Committee
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003

1O 7 Fifth Street, SE
Washington, DC 20003

October 6, 2003

Jerrily R. Kress, FAIA, Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

RE: BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfas

Dear Jerrily Kress:

I am writing to you about BZA Application No. 17079, which requests a special exception to Section 203.8 of the municipal regulations to increase the number of rooms in the B & B located at 417 A Street, SE, from 2 to 4 or 6. Zoning Administrator, Robert Kelly, previously denied an application to revise the Home Occupation Permit to permit more than 2rooms, and stated that the applicant was also required to request a special exception to waive the parking requirements of Section 2100.5 of the regulations. I am writing to ask you to deny a special exception to Section 203.8 for any increase in the number of rooms, and to re-affirm The Zoning Administrator's decision that a special exception to waive the parking requirements of Section 2100.5 would also be required by the property.

While this process creates a formidable paper trail and has the appearance of preserving the integrity of existing neighbor status, it is clearly not functioning properly when the owners of said property clearly misrepresented their intent and cost of renovation in a formal application. At no time did the owners approach any neighbor and engage them in a dialogue or process that would solicit their input. In fact , the whole renovation and announcement of a new B&B was veiled with misinformation. In addition the new neighborhood resident, recently having arrived from England, was never introduced even though he is the purported manager of the facility !

Parking around 5th and A is often impossible with the closeness of Hill eateries and other recently transitioned establishments running fundraisers and hosting cocktail parties. Allowing further disintegration of the neighborhood by pushing folks further from their homes seems unreasonable. Increasing the number of rooms would result in additional parking problems for us and my neighbors, some of whom are elderly and cannot walk the 3, 4 or 5 blocks required to find parking on some

evenings. Parking is a number one concern of homeowners and allocating existing parking space to another B&B would decrease the value of the neighborhood homes.

The public hearing has now been scheduled for December 2, 2003. I request that you consider this matter and deny the special exception. I know that I am not alone in feeling that a grant of this special exception would seriously affect not only the parking, but the quality of life in our neighborhood.

Thank you for your attention to this matter.

Jackie Eiting & Richard Weimer
107 5th Street Southeast

Cc:
Mary Wright, Member 6B02
Chairperson, Planning and Zoning Committee ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003

Dear Jerrily Kress: October 6, 2003

Please excuse the informality of this note, but I take the proverbial pen to paper to bring to your attention the BZA Application (No. 17079, Lot 27, Sq. 818) at 417 A street, SE, a bed and breakfast.

It is my understanding that you and others have received numerous correspondences re the zoning applications for the B&B. As I live down the street I have a vested interest. In fact, if you look at the history of this B&B there have been violations of ordinances from the very beginning (eg having a large sign out front announcing the soon to be B&B) to the present special exemption for additional rooms. Along the way, there have been problems where more than two rooms have been made available for use, parking permits beyond what is allowed, etc. And now this.

As you well know, this is a very residential neighborhood and is the attraction to all of us living here, from singles to families with children to the elderly. And it is that ambiance that I am sure makes it attractive to a B&B. Unfortunately they are taking a good thing and pushing it beyond what the neighborhood can support from parking spaces to character of the neighborhood. And what has me writing, is that there is a constant push by the B&B for more. They started out knowing the rules and it was my understanding that two rooms would be it. Now four. And the above mentioned issues above, besides all the ones that I am not familiar with.

With that said, we have the B&B, but lets keep it as to what they agreed to when they changed the single family house to a B&B--a two unit B&B, preserving our neighborhood and even some of our parking.

Sincerely,

Sheldon Harris
500 Independence Ave., SE
Washington, DC 20003

C O P Y

Washington, D.C.
November 15, 2003

Jerrily R. Kress, FAIA
Director, Office of Zoning
441 Fourth Street, NW
Suite 210-S
Washington, D.C. 20001

RE: **BZA Application No. 17079 (Lot 27, Square 818)**
417 A Street, SE - Bed and Breakfast

Dear Ms. Kress:

As nearby neighbors of the subject property, we are concerned about the special exception requested by its owners. We feel it will contribute to further exacerbate chronic parking problems in our neighborhood. As persons who are often out late at night, we are regularly frustrated by an inability to get anywhere close to our home upon our return, giving us safety concerns. Additional bed-and-breakfast units in this building or the granting of parking waivers to its guests can only make such parking difficulties worse.

We also are troubled by what might be called "commercial creep" in our neighborhood. With skyrocketing prices in this area has come a temptation by some owners to turn their homes into commercial entities, changing the special residential nature which attracted us to this very block in the first place more than 30 years ago. Single-family houses have been turned into entertainment entities with no actual residents, and more are expected. We already have two bed-and-breakfasts in our immediate neighborhood, one just two blocks north of the petitioners. We don't need additional units for transients.

We are thus opposed to the request for a special exception for the above property to expand its capacity. We have lived with the current arrangement, but we ask you to deny any further changes in its nature. We thank you for your consideration in this matter.

Sincerely,

Michael and Judith Canning
21 5th Street, S.E.
Washington, D.C. 20003-1119

October 2, 2003

Jerrily R. Kress, FAIA
Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: Advisory Neighborhood Commission 6B
Application No. 17079
Application of Mark Lee Phillips

Dear Jerrily Kress:

Mark Lee Phillips is requesting a special exception to increase the number of sleeping rooms in a bed and breakfast from two to four or six. As a neighbor of Mr. Phillips living at 111 5th Street, SE, **I am seriously opposed to your granting this special exception**. My primary reason for this is the additional burden on parking in our neighborhood. There are already insufficient parking spaces for residents. In many instances, my wife and I are parking several blocks away from our home, a burden when dealing with groceries or other packages, not to mention the safety concerns when my wife arrives home later in the evening.

There is little doubt that current visitors to the bed and breakfast occupy parking spaces during their stay. Adding additional rooms could mean that there would be as many as eight automobiles for a single resident home in an already crowded residential zone. There is absolutely no reason to grant the exception since the owners were well aware of the rules and regulations before they decided to transform a residential property into a for-profit business.

There are many residents, many older who need close-in parking, that share my thoughts; and I hope you will consider seriously their views, expressed in their letters or as signatures on the neighborhood petition. Please keep in mind that our 5th Street neighborhood has many homes, and many of these, such as the one next to me, are rental properties where as many as six automobiles per property are competing for parking. The neighborhood simply cannot withstand the impact from the special exception. Again, I urge you to not grant the Phillips' exception and help us maintain the neighborhood as a family-oriented and friendly environment.

Sincerely,

Robert A. Seward@

Robert (Skip) A. Seward II
111 5th Street SE
Washington DC 20003

SYLVIA HOLTON
517 A STREET SE
WASHINGTON, D.C. 20003
Tel.: 202/547-8052; FAX: 202/547-0364; E-mail: swholton2@cs.com
6 October 2003

Jerrily R. Kress, FAIA Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

RE BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfast

Dear Jerrily Kress:

I am writing to ask that you deny a special exception to Section 203.8 for an increase in the number of rooms (from 2 to 4 or 6) and to reaffirm the Zoning Administrator's decision that a special exception to waive the parking requirements of Section 2100.5 would also be required by the proposed guest house at 417 A Street.

I have lived at my present address on A Street SE since 1969. The street 34 years ago, and until 417 was renovated as a B&B last year, was residential, a lovely and desirable neighborhood close to the Capitol. I was appalled to learn that 417 was given permission to become a commercial property within this unique neighborhood without any consultation with the neighbors. Now, as I understand it, they are permitted to rent 2 rooms, although they have renovated 6 rooms and plan to rent all 6 if they can gain permission..

I also understand that 417 has applied for the right to obtain parking permits for their guests. And of course they own a car themselves, so that would mean potentially 7 cars associated with one address. The parking situation in the neighborhood is tremendously difficult as it is. To increase the problem because of commercial development by one property owner seems exceedingly unjust. All of the neighbors will be affected by special favors given to one homeowner. There are times now when I must park several blocks from my home after dark because of the pressure of parking. But to tolerate the situation because of the commercial development of a single property owner in the neighborhood will create considerable resentment among the neighbors.

Because the proposed changes (increase in number of rentable rooms and ability to

obtain parking permits for guests) will have such a negative impact on the neighborhood, I request that you deny the applications submitted by 417 A Street SE.

Thank you very much for your consideration.

Sincerely yours,

Sylvia Holton

Mark Kantor
513 A Street, S.E.
Washington, D.C. 20003
Tel. 202-544-4953
Fax. 603-697-8959
mkantor@attglobal.net

October 6, 2003

Jerrily R. Kress, Director
Board of Zoning Adjustment
441 4th St., NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfast

Dear Ms. Kress:

BZA Application No. 17079 seeks a special exception to increase the number of rooms in the Bed & Breakfast located at 417 A Street, SE, from 2 to 4 or 6 rooms. I request that the Application be denied. I do so for two reasons. First, parking is already a serious problem for residents in this neighborhood, and the addition of two-to-four more cars every night will overload an already difficult situation. Second, this is not an appropriate neighborhood for additional commercial ventures. Apart from along East Capitol Street, there are almost no commercial businesses in the area, and there are none of which I am aware on A Street, S.E. for many, many blocks. I encourage you to not grant a special exception and begin the process of altering the character of the neighborhood.

I am sensitive that neighbors need to work hard at getting along, and I am troubled that this issue has caused so many bad feelings between the owners of 417 A Street and others. I do not think there is any way to go back in time, however, and prevent the issue from arising, and I therefore request that you follow existing law and practice, and deny the request for a special exception.

Very truly yours,

Mark Kantor

Mark Kantor

cc: Ms. Mary Wright, Chairperson, ANC 6B Planning and Zoning Committee

100 Fifth Street, SE
Washington, DC 20003
October 6, 2003

Jerrily R. Kress, FAIA, Director
Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

RE: BZA Application No. 17079 (Lot 27, Square 818)
417 A Street, SE, Bed & Breakfast

Dear Jerrily Kress:

I am writing to you about BZA Application No. 17079, which requests a special exception to Section 203.8 of the municipal regulations to increase the number of rooms in the B & B located at 417 A Street, SE, from 2 to 4 or 6. Zoning Administrator, Robert Kelly, previously denied an application to revise the Home Occupation Permit to permit more than 2 rooms, and stated that the applicant was also required to request a special exception to waive the parking requirements of Section 2100.5 of the regulations. I am writing to ask you to deny a special exception to Section 203.8 for any increase in the number of rooms, and to re-affirm the Zoning Administrator's decision that a special exception to waive the parking requirements of Section 2100.5 would also be required by the property.

Parking in our neighborhood is often nearly impossible find for the residents now, and I know that current commercial guests of the B & B already occupy parking spaces during their stay. Increasing the number of rooms would result in additional parking problems for me and my neighbors, some of whom are elderly and cannot walk the 3, 4 or 5 blocks required to find parking on some evenings.

Secondly, this neighborhood is a very stable close-knit residential neighborhood. This is a primary reason that I, and many others, have chosen to make this neighborhood our home, and is what makes it such a desirable place to live. We recently celebrated our 20th annual block party. The commercial traffic we have seen since the B & B opened is not the kind we would like to see increased, which would be the result if you grant a special exception. We feel the increased traffic and density will tend to encourage more commercial encroachment, altering the residential fabric and make-up of the neighborhood, and negatively affecting the quality of life for those of us who make this our home. Many of us feel altering the residential uses in the neighborhood can only have a negative impact on property values.

The public hearing has now been scheduled for December 2, 2003. I request that you consider this matter and deny the special exception. I know that I am not alone in feeling that a grant of this special exception would seriously affect not only the parking, but also the neighborhood itself, one I dearly love and would hate to see changed for the worse. Thank you for your attention to this matter.

Respectfully,

Jeff Campbell

Cc: Mary Wright, Member 6B02
Chairperson, Planning and Zoning Committee
ANC 6B
921 Pennsylvania Avenue, SE
Washington, DC 20003

ATTACHMENT #4a

IN RE: PROPOSED CONVERSION OF
417 A STREET, SE
WASHINGTON, D.C. 20003
FROM A SINGLE-FAMILY HOME
TO A BED AND BREAKFAST OR
OTHER LODGING FACILITY
FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
	107 5th ST SE
	107 5th ST SE
	410 A St S.E.
	25 5th ST, S.E.
	410 A ST SE
	25 FIFTH ST SE.

IN RE: PROPOSED CONVERSION OF 417 A STREET, SE, WASHINGTON, D.C. 20003 FROM A SINGLE-FAMILY HOME TO A BED AND BREAKFAST OR OTHER LODGING FACILITY FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
[illegible]	327 A St S.E. D.C. 20003
Susan J Rejsson	323 A St SE DC 20003
Kathryn Powers	325 A St SE DC 20003
Peter G. Powers	325 A St. SE DC 20003
[illegible]	414 A St. SE DC 20003
M.J. Kotler	1341 E Capitol St. SE. 20003
Cynthia Tiches Foster	#4 5th ST. SE.

IN RE: PROPOSED CONVERSION OF 417 A STREET, SE, WASHINGTON, D.C. 20003 FROM A SINGLE-FAMILY HOME TO A BED AND BREAKFAST OR OTHER LODGING FACILITY FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
Sheridan Harvey	1106 6th ST SE
RICHARD P. KEAGAN	1440 K ST, SE WDC
William Driscoll	122 - 5th St, SE WDC 20003
Patricia Tuffe Driscoll	122 5th St. SE WDC 20003
Marquis D. Lyles	1341 E. Capitol St. SE. WDC 20003
Gene Berry	100 Fifth St. SE
Jeff Campbell	100 5th St. SE WDC
Sue E Bamfoot	615 Maryland Ave NE
David B Bamfoot	615 Maryland Ave NE
Margaret Brown	502 INDOR. AVE, SE
[illegible]	61 Constitution Ave NE
Todd D Parmer	17 5th St SE WDC 20003
Laurie Rhoades	616 S. Carolina Ave SE WDC 20003
KARYN L. FAIR	319 So CAROLINA AV #1 SE 20003
Janet Thompson	413A St. SE 20003
Leinta Cooper	507 A St SE 20003
	509 A St SE 20003
Frances Tomerson	509 A St., SE 20003

IN RE: PROPOSED CONVERSION OF 417 A STREET, SE, WASHINGTON, D.C. 20003 FROM A SINGLE-FAMILY HOME TO A BED AND BREAKFAST OR OTHER LODGING FACILITY FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
Linda Killian	604 Independence Ave, SE
[illegible]	502 A ST SE
BRAD HALEY [illegible]	511 A St. SE
MAY NADDAF	515 A St. SE
Terry Nipp	515 A St., SE
Lynne N. Schlimm	100 4th St SE
Louis Inge	411 A St, S.E.
Harold Engle	411 A Street, SE
Susan Lee	405 A St. SE
Jeff More	412 A ST. SE
~~PABLO~~ CHAVEZ	23 FIFTH STREET
[illegible]	23 FIFTH STREET
[illegible]	9 Fifth St, SE
[illegible]	10 4th St. SE
[illegible]	10 4th St. SE
Floyd Brown	154 North Carolina SE
[illegible]	[illegible]
[illegible]	9 Fifth St SE
Aaron Schuham	415 A St, SE
Christin Anders	415 A St, SE

REBECCA

IN RE: PROPOSED CONVERSION OF 417 A STREET, SE, WASHINGTON, D.C. 20003 FROM A SINGLE-FAMILY HOME TO A BED AND BREAKFAST OR OTHER LODGING FACILITY FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
Judith Canning	21 5th St. SE
Mike Canning	21 5th Street, S.E.
Carry Hodgson	506 A ST SE
M B. Jerbalt	120 - 5TH St., SE
Alan Zy	84 MD VE
[illegible]	403 CONSTITUTION AVE
Stl. R	112 Fifth St SE
Miles Lacky	118 5th St., SE
Valerie Truitt Valerie Truitt	124 5th St. SE
John M. Allen	422 Independence Ave., S.E.
Helen A Berman	317 A Street SE
Joel Berman	317 A St SE
James Hardin	1210 C St. SE
Clarence M. Zeno	406 A St., SE
Joan S. Keenan	115 Sixth St. SE
Danielle Tynemann	418 A SE
Stephen C Rogers	503 A St SE
Carol A Rogers	503 A St SE
[illegible]	425 6th St SE
Lorraine S Berlin	628 A St SE

IN RE: PROPOSED CONVERSION OF 417 A STREET, SE, WASHINGTON, D.C. 20003 FROM A SINGLE-FAMILY HOME TO A BED AND BREAKFAST OR OTHER LODGING FACILITY FOR TRANSIENTS

We, the undersigned, wish to make known for the record and to be used in proceedings, inquiries or hearings before the District of Columbia Board of Zoning Adjustment, the Advisory Neighborhood Commission, the Committee on Consumer and Regulatory Affairs, or any other licensing, zoning, administrative or legal body considering this matter, that we oppose the proposed conversion of a single family residence at 417 A Street, SE, to a bed and breakfast or other lodging facility for transients.

Name	Address
Sheldon Harris	508 Independence Ave SE
Mary Jo Christian	504 Independence Ave SE
Joel Trum	124-5 St SE
TRACEY BARTON	519 INDEPENDENCE AVE
Thomas Barton	519 Independence Ave. SE
Katherine McCook	112 5th St. SE
Sandra Clark	516 A St, SE
Helen Cymrot	514 A St SE
Todd Fedor Cymrot	514 A St. SE
Lynann H. Derrick	114 5th St SE
Richard J. Samson	112 5TH St S.E.
Lydia Samson	618 A Street, SE, #2
[illegible]	518 A St SE
Laverame Stewart	513 A St., SE
Mark Tuttle	513 A St., S.E.
[illegible]	505 A St SE
Kevin Miller	505 A St SE
[illegible]	504 A St, S.E.
Betty J Clary	504 A St S.E.
[illegible]	502 A St SE

ATTACHMENT #4b

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
JACQUELINE H. EITING, Independent City	107 5th ST SE WDC
RICHARD WEIMER	107 5th ST SE WDC
Gene Berry	100 Fifth St. SE WDC
Jeff Campbell	100 Fifth St SE. WDC
	25 5th St, S.E. WDC
Richard T. Lawson	112 5th St. SE WDC
Ashleigh M Kolb	1125th St SE WDC
Aaron D Schuham	415A St SE WDC
Christopher Anders	415 A. St SE WDC
Harold E. Engle	411 A St, SE WDC
Louise H Engle	411 A St SE WDC
SHELDON HARRIS	500 Independence Ave SE
JOEL TRICITT	124 - 5th ST SE
Lynana Derrick	114 5th St SE
Gloria Root	114 5th SE (Upstairs)
William DeSales, Jr	17 5th Street SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Amanda Goldman	20 5th St. SE
Ben Gordon	20 5th St. SE.
Patricia Taffe Marcoll	122 Fifth St. SE
William J. Marcoll	122 Fifth St, SE
Linda Gillum	604 Independence Ave, SE
Muriel Martin-Weir	601 Independence Ave SE
Thomas Mahaffey	649 C ST SE
James Weir	601 Independence Ave, SE
Philip W. Mueller	315 A Street, SE
Valerie Truett	124 5th St. SE.
Jan D. Thorpe	116 5th St SE
Cyp Dalton	#4 3rd ST. S.E.
Lane Rand	502 A St SE
Inez Tetta	418 Independence Ave SE
Margaret McCoy	28 2nd St SE
Karen D Rose	410 1/2 5th St SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~)
417 A Street, SE 17079
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
adam martinelli	120 B 5th ST. SE WDC 20003
[signature]	410 A ST SE DC 20003
Mary Ellen Cyganty	410 A St S.E. D.C. 20003
Beverly Goble	185th St SE 20003
[signature]	414 "A" St. NE. 20003
[signature]	413 A St SE 20003
Ashley Foulk Ashley Foulk	416 A St SE #2 20003
[signature] Jonathan Yardley	100 FIFTH ST, NE 20002
Cynthia Cromwell Cynthia Cromwell	25 FIFTH ST, SE 20003
[signature]	121 5th St SE 20003
Kerry Kean Allen	505 A St SE 20003
STEVEN BEAN / [signature]	1128 Fifth St. SE 20003
REUBEN McCORMACK [signature]	414 ST SE, DC 20003
[signature]	648 Ind. Ave SE
[signature]	502 A ST SE
[signature]	618 A S.E.

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms, his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Todd D Corm Todd D Corm	17 5th St SE
Deb Sand	518 A St SE
TA Anderson	632 A St SE
Morton G. Toole (MORTON G. TOOLE)	18 5th St SE
Henry R. Wiecowski	~~405 A St SE~~
Rebecca B Chavez	23 Fifth St. SE
Ralph F Cy	23 Fifth Street, SE
Karyn L Fair KARYN L. Fair	319 So Carolina Ave SE #1
Robert A. Seward	111 5th St. SE
Deanne Seward	111 5th St. SE
Thea Austen / Thea Austen	418 A St. SE
Frances Jamerson	509 A St, SE
	509 A St, SE
Janice Clancy	510 A St. SE
Kim S. Johnson	75th Street, SE
W L MARTIN	409 A St SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Helen Aymard	514 A St SE
Todd [illegible] Grant	514 A St SE
Sylvia Helton	517 A St SE
William S. Peterson	517 A St SE
[illegible]	[illegible]
[illegible]	113 5th St SE
[illegible]	113 5th ST SE
John W. Allen	422 Independence
Sonya Clark	516 A St SE
[illegible]	516 A St SE
Isabelle Watkins	508 A St SE
Stacy [illegible]	526 A St, SE
[illegible]	506 A St SE
Judith Canning	21 5th St. SE
Michael Canning	21 5th St., S.E.
[illegible]	4116 A St SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. 17037)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003
17079

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
M.J. Kotler	1341 E. Capitol St. SE #302
Ann Richard	124 5th St. SE, NC
Steve Butler	233 Kentucky Ave SE
Ann Johnson	115 7th Ave SE
[illegible]	115 " " "
Dick Rooney	OWNER 114-5th SE
Barbara Jeffers	231 9th St. SE
Donald P. Jeffers	231 9th St. SE
Courtney Akers	116 5th St SE
[illegible] Ben Dilor	116 5th St SE
Harriet Bogan	503 A St SE
Stephen C Bogan	503 A St SE
Betty J Clary	504 A St SE
[illegible]	504 A St SE
[illegible]	235 9th St NE
Brinton A Cooper	507 A St SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Adele + Clyford Alexander	512 A St S.E.
Louise Rhoad	616 S. Carolina SE #1
Lorraine S Berlin	420 A St. SE
Kenneth C Yee	A 4th Street, S.E.
Pam Yuen	19 4th St. SE.
Holly Hefter	506 Indep. Ave. SE
Peter G. Powers	325 A St. S.E.
James Hardin	1210 C St. SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Don D Mosher, MD	404 A Street, S.E.
Robert Hynes / Robert Hynes	206 5th St SE
MELISSA HYNES / Melissa Hynes	206 5th St SE
Mary Jo Christian / Mary Jo Christian	504 Independence Ave SE
ROBIN MOODY / Robin Moody	505 INDEPENDENCE AVE SE
Tamara Stock / Tamara Stock	505 INDEPENDENCE Ave SE
LIZ SCHROEDER / LIZ Schroeder	616 C Street SE
LYNNE SCHLIMM / Lynne Schlimm	100 4th St SE
Mary Rudolph / MARY RUDOLPH	516 Seward Sq. SE
William Mann / William Mann	500 A Street SE
Jane Blazer / Jane Blazer	314 E. Cap. St
Cie D Wa	625 Ellen Wilson Pl SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
~~duplicate~~ ~~Gene Berry~~ ~~Gene Berry~~	~~100 Fifth St SE~~
JOHN PULL	330 FIFTH ST SE
HARRY MARTIN	330 5th St. SE
Lawranne Stewart LAWRANNE STEWART	513 A ST., SE
Mark Kantor	513 A St., S.E.
M.B Tewalt MARY B. TEWALT	120 5TH ST., SE
John Day	121 5th St SE
EDWARD	114 5th St SE
Robert Loftus Robert Loftus	117 5th St SE
Linda Loftus Linda Loftus	117 5th St SE
Maureen Shea Maureen Shea	505 A St. SE
Thomas B. Haley	511 A St. SE
TERRY NIPP	515 A St. SE
MAY NAMDAF	515 A St. SE
Miles Lackey	518 5th St. SE
TED MADISON Ted Madison	613 INDEPENDENCE SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Carol O. Taylor	407 A St., SE
Kirk Taylor	407 A ST SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. ~~17037~~ 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Helen Quick / Helen E Quick	412 A SE
Jeff More / Jeff More	412 A SE

TO: Planning and Zoning Committee, ANC 6B
921 Pennsylvania Avenue, SE, Washington, DC 20003

IN RE: BZA Referral by DCRA
HOP Application # 50397 (BZA Application No. 17079)
417 A Street, SE
Lot 27 in Square 818
Washington, DC 20003

We, the undersigned neighbors of the B & B in question, petition the Planning and Zoning Committee, ANC 6B, to oppose Mr. Mark Phillips' application for a permit to increase from 2 to 4 or 6 rooms his commercial renting of rooms, and make known this opposition to ANC 6B, the District of Columbia Board of Zoning Adjustment, the Committee on Consumer and Regulatory Affairs, and any other licensing, zoning, administrative or legal body considering this matter.

Name/Signature	Address
Jeff Herinckx	102 4th St SE
Vicki Breman	317 A STREET SE
Susan Ryerson	323 A St SE
Edmund F. Hainlmaier	10 Fourth St, S.E.
Robert S. Cooper	507 A St. S.E.
~~[illegible]~~	~~#4 5th ST SE~~
Thomas Vines	446 5th St SE
[illegible]	#4 5th St SE
[illegible] Sheehan	416 Indep. SE
[illegible]	416 Independence St
Mary Ann Sroufe	129 6th St. S.E.
TRACEY BARTON / Tracey Barton	519 INDEPENDENCE AVE SE

Attachment#4c

December 1, 2003

Board of Zoning Adjustment
441 Fourth Street, NW - Suite 210 South
Washington, D.C. 20001

Re: BZA Case #17079, Application of Mark Lee Phillips.

Dear Board Members:

Since last year, I have received many complaints from the majority of neighbors of the Bed and Breakfast at 417 A Street, SE, about the proposal first to build and then to expand this Bed and Breakfast, that is owned and operated by Mark Lee Phillips. The complaints ranged over a large number of topics, including concerns about the appropriateness and truthfulness of the applicant in obtaining the building and home occupation permits, the lack of parking spaces and Mr. Phillip's claim of receiving a waiver from DCRA for off-street parking with an inappropriate reliance on parking permits from MPD, and the noise and disturbance of neighbors due to the increase of late evening and early morning traffic - but what it all boils down to is a seriously adverse impact on the neighborhood to which the neighbors have strongly objected.

Now, Mr. Phillips would seek a special exception from the BZA to increase the number of sleeping rooms under his home occupation permit. The neighbors
oppose this; the ANC in which the Bed and Breakfast sits opposes this; and I would like to add my voice in opposition to expanding this Bed and Breakfast in particular and this kind of use in an historic district. While B&B's can contribute to the character of a residential neighborhood, they also can cause disruption in the neighborhood, particularly when they expand beyond 2 rooms and do not provide adequate parking and safeguards for neighbors from noise and other disturbances, as here. This is a topic I believe the District needs to revisit in the zoning code as well.

I would like the record of this matter to reflect that I oppose the grant of a special exception in this case to increase the number of sleeping rooms under this home occupation permit and urge the BZA's rejection of this application. Thank you for your consideration of this matter.

Sincerely,

Councilmember Sharon Ambrose, Ward 6
Chair, Committee on Consumer and Regulatory Affairs

ATTACHMENT #5

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

ATTACHMENT #6

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

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.

ATTACHMENT #7

D.C. - 46
APRIL 1980

Memorandum ● Government of the District of Columbia

TO: Advisory Neighborhood Commission 6B

Department, Agency, Office: BZA

FROM: Jerrily R. Kress, FAIA RSK
Director

Date: AUG 0 5 2003

SUBJECT: BZA Application No. 17037

In accordance with DCMR 3112.7 and 3113.7, you are hereby advised that the above-numbered application, which falls within the boundaries of your Advisory Neighborhood Commission, was filed with the BZA on May 16, 2003. **A copy of the above-numbered application form is attached for your information and use. This is not a notice of public hearing on the application. You will receive notice of the hearing by mail and through the D.C. Register approximately forty (40) days in advance of the hearing. In accordance with 11 DCMR 3115, the written report of an ANC shall contain certain information specified in that section. A copy of Section 3115 is on the reverse side. If you have any questions, please contact the Office of Zoning at (202) 727-6311.**

APPROXIMATE HEARING DATE: M/D - Nov. 03

Office of Advisory Neighborhood Commission
c/o Gottlieb Simon
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Form 125 – Exhibit 1
(Revised 03/15/02)

Case No. 17037

BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA

APPEAL

Notice: See other side of appeal form for instructions

Pursuant to Section(s) §3100 and §3101 of the Zoning Regulations of the District of Columbia, an appeal is hereby taken from the administrative decision of: Robert Kelly, Zoning Administrator (Name of administrative officer and title)

made on: March19 & 24, 2003 (Date of decision) to the effect that: Section 203.8 of the zoning regulations requires a special exception to increase the number of sleeping in rooms in a B&B in the Capital Hill historic district from two to six (March 19, 2003) and a special exception from the parking requirements of 2100.5 of the zoning regulations is required to increase the number of sleeping from two to six (March 24, 2003).

Address(es) of Affected Premises	Square(s)	Lot(s)	Zoning Districts
417 A Street, S.E.	818	27	CAP/R-4

Description of Property: Private residence and home occupation permit for B&B with two (2) sleeping rooms.

Proposed use of Property: Private residence and home occupation permit for B&B with six (6) sleeping rooms.

Owner of Property: Mark Lee Phillips Telephone No.:

Address of Owner: 417 A Street, S.E.

Name, address and telephone number of tenants, if any:

BZA
Case No. 17037
Exhibit No. 2

RECEIVED D.C. OFFICE OF ZONING 2003 MAY 16 PM 2:20

Name, address and telephone number of appellant, if other than owner: Mark Lee Phillips, 417 A Street, S.E. Washington, D.C. 20003; 202-543-1481

State specifically, manner in which appellant is aggrieved by the administrative decision, the allegations of error in the administrative decision, and the relevant sections of the Zoning Regulations (use reverse or make detailed explanation).

Please see attached piece of 8 ½ x 11 to respond and attach it to the Form 125 Appeal.

Date: May 16, 2003 Signature: (Applicant)

* If appeal is filed by agent of the Appellant, Form 125 Appeal shall be accompanied by a letter signed by the appellant authorizing the agent to act on his behalf in this appeal.

To be notified of hearing and decision:
(Appellant or Authorized Agent)*

Name:	Richard B. Nettler, Esq. & Jeannine Rustad Zigner, Esq. - Robins, Kaplan, Miller & Ciresi LLP				
Address:	1801 K Street, N.W., Suite 1200, Washington, D.C. 20006				
Phone No.:	202-736-2720/2718	Fax No.:	202-223-8604	E-Mail:	rbnettler@rkmc.com; jrzigner@rkmc.com

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED

INSTRUCTIONS

Any notice of application for action provided in the District of Columbia Zoning Regulations (11 DCMR Zoning) that is not completed in accordance with the following instructions shall not be accepted. ***Do not mail this form to the Board of Zoning Adjustment.***

1. All applications shall be made on Form 125. All appeal forms must be completely filled out and be typewritten or printed. All information shall be furnished by the appellant. If additional space is necessary, use separate sheets of 8½" x 11" paper to complete the form (drawings and plans may be no larger than 11"x17").

2. Present this form and supporting documents, in person, to the Office of Zoning at 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

3. At the time of filing an appeal before the Board of Zoning Adjustment, the Appellant shall pay a filing fee of $800.00 in accordance with the Board of Zoning Adjustment Schedule of Fees (11 DCMR 3180), except as provided in §3180.3 and §3180.4.

4. ***REQUIRED information to be submitted when making an application submission, includes one (1) original and twenty (20) copies of the following (except for labels of which (1) original and (1) copy is required):***

   A. All Appellants are required to submit in specific detail each and every exception they have to the administrative decision. Details should state the allegations of error in the administrative decision – "why it was an error" and reference the relevant Sections of the Title 11 DCMR Zoning Regulations and/or Map. It shall be typewritten or printed and attached to Form 125 Appeal.

   B. A detailed statement at the time of filing explaining how the appellant intends on proving their case.

   C. In the case of an area variance, a plat drawn to scale and certified by a DC licensed survey engineer or D.C. Surveyor's Office showing boundaries and dimensions of the existing and proposed buildings and accessory buildings. Also required are, if any, architectural plans and elevations in sufficient detail to clearly illustrate any proposed building to be erected or altered, proposed landscaping/screens and building materials as they relate to the specifics of the appeal. Submittal of plat and plans shall not exceed 11? x 17? in size. (See Form 130 – Plat, Plan and Elevation Specifications for the required information on these drawings.)

Note: **All Appellants are required at the time of filing to serve all parties; including, as appropriate, the Appellee, the Owner of the property, the Lessee, and the Advisory Neighborhood Commission. Also please note, in an appeal only parties can testify or submit information into the record; however, parties may solicit pertinent information from affected persons to include in their submissions into the record.**

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 202-223-8oC
www.rkmc.com

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

May 20, 2002

RECEIVED
D.C. OFFICE OF ZONING
2003 MAY 16 PM 3:20

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

Re: Appeal of Mark Lee Phillips -- Square 818, Lot 27; 417 A Street, S.E.
Our File No. 092229 00000

Dear Mr. Griffis:

On behalf of our client, Mark Lee Phillips, we are hereby submitting an appeal of the Zoning Administrator's decisions dated March 19 and 24, 2003. Accordingly, enclosed you will find the original application, with supporting documents, and twenty (20) copies. Included in the original package is a list of neighbors within 200 feet of the property, along with one set of mailing labels to the neighbors. Lastly, we have also enclosed a check in the amount of $800.00 for the filing fee for the this appeal.

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: Mr. Mark Lee Phillips (by hand; w/encl.)
Office of Planning (by hand; w/encl.)
Zoning Administrator (by hand, w/encl.)
ANC 6B (921 Pennsylvania Avenue, SE, Washington, DC 20003)(w/encl.)
ANC 6B02 (Mary Wright 649 C Street, SE #401, Washington, DC 20003)(w/encl.)

Word 45645005.1

BZA
Case No. 17037
Exhibit No. 1

STATEMENT IN SUPPORT OF APPEAL OF THE ZONING ADMINISTRATOR'S LETTERS DATED MARCH 19 AND 24, 2003 REGARDING 417 A STREET, S.E.; SQUARE 818, LOT 27

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

The Property. The subject property is located at 417 A Street, S.E., Square 818, Lot 27 (the "Property"). The Property is located in the Capital Hill Historic District and is improved with a building that has been certified as contributing to the historic district. The appellant currently uses the Property as his residence and has a home occupation permit to operate a bed and breakfast with two (2) sleeping rooms. The appellant has applied for a permit to increase the number of sleeping rooms from two (2) to four (4) or six (6), as permitted by section 203.8(c)(1) of the zoning regulations.

Exceptions to Administrative Decisions. By this application, the owner appeals from the Zoning Administrator's decision, as set forth in the Zoning Administrator's March 19 and 24, 2003 letters (attached as Exhibits 1 & 2, respectively), denying the increase in the number of sleeping rooms as a matter of right:

- Zoning Administrator's Letter Dated March 19, 2003: In this letter, the Zoning Administrator incorrectly determined that -- despite the plain language of section 203.8(c)(1) of the zoning regulations, its past practice, decisions of this Board and of the Court of Appeals -- a special exception was required to increase the number of sleeping rooms from two (2) to either four (4) or six (6). Contrary to this decision of the Zoning Administrator, section 203.8(c)(1) allows, as a matter of right, a bed and breakfast with up to six sleeping rooms in a building certified as contributing to the historic district.

- Zoning Administrator's Letter Dated March 24, 2003: This letter denied the home occupation permit to increase the number of sleeping rooms based on the Zoning Administrator's erroneous decisions that (1) a special exception was required from the Board of Zoning Adjustment ("BZA") to receive a parking waiver pursuant to 2100.5 of the zoning regulations; and (2) a special exception was needed from section 203.8(c)(1) of the zoning regulations.

With regard to the parking waiver, section 2100.5 of the zoning regulations clearly states that:

> No additional parking spaces shall be required for a historic landmark or a building or structure located in a historic district which is certified *by the State Historic Preservation Officer* as contributing to the character of that historic district.

BZA
Case No. 17037
Exhibit No. 3

11 D.C.M.R. § 2100.5. Since the appellant was not seeking to either increase the density of the building on the site or construct a new building, no relief from the BZA is required for the parking waiver, as the Historic Preservation Division of the Office of Planning has provided the necessary certification in accordance with section 2100.5 of the zoning regulations.

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

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

Consistent with the foregoing, the DCRA began approving of applications to increase the number of sleeping rooms in a B&B in a historic building to six (6) without requiring any special exception approval. *See e.g.* Application and Approval for the Mansion on O Street (attached hereto as Exhibit 3). 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 as Exhibit 4), the applicant sought authorization to operate a six-room B&B in a single family house. The Acting Zoning Administrator denied the application because, in her opinion, the B&B, which had been certified as a contributing building to the Dupont Circle Historic District, exceeded the maximum number of permitted guest rooms (which she says was limited to two). When the matter came before this Board, the applicant challenged the decision of the Acting Zoning Administrator and also sought to increase the number of guest rooms to nine (9). With regard to the Acting Zoning Administrator's decision, this Board found that there are no parking requirements for the property and "six guest rooms are permitted as a matter-of-right by virtue of the historic certification" received since the building contributes to an historic district. This decision of the Board was affirmed in *Dupont Circle Citizens Association v District of Columbia Board of Zoning Adjustment*, 749 A.2d 1258, 1267 n. 3 (D.C. 2000)(attached hereto as Exhibit 5).

Notwithstanding the foregoing, the Zoning Administrator denied appellant's application and claims that a special exception is needed for both a parking waiver and the use of the subject building for either four or six guest rooms.

The appellant will prove its case relying on (1) the plain language of the zoning regulations; (2) the legislative history of section 203.8(c)(1); (3) case law; and (4) the certification pursuant to 2100.5 of the zoning regulations.

CONCLUSION

For the reasons stated herein and for the reasons provided at the hearing, the March 19 and 24, 2003 decisions of the Zoning Administrator should be overturned and a home occupation permit issued increasing the number of sleeping rooms at the bed and breakfast at the Property from two (2) to six (6).

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

Respectfully submitted,

ROBINS, KAPLAN, MILLER & CIRESI, LLP

By: _____

Richard B. Nettler
Jeannine Rustad Zigner

EXHIBIT LIST

1. March 19, 2003 letter from the Zoning Administrator

2. March 24, 2003 letter from the Zoning Administrator

3. Application and Approval for Home Occupation Permit for the Mansion on Q Street

4. BZA Application No. 16333 of Richard T. Ross

5. *Dupont Circle Citizens Association v. D.C. Board of Zoning Adjustment*, 749 A.2d 1258 (D.C. 2000)

6. Survey of the Property