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

Building and Land Regulation Administration
Office of the Administrator

D.C. BOARD OF ZONING
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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.

BZA
Case No. 17079
Exhibit No. 7

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 7

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