100 Fifth Street, SE
Washington, D.C. 20003
December 31, 2003

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

Re: BZA Case #17079, Mark Phillips

Dear Chairperson Griffis:

I would first like to thank Gwen Davis for locating the file for BZA Case #17079 on Tuesday December 30, 2003, which had fortunately been merely misfiled. Ms. Davis and the rest of the staff were cordial and helpful during my visit, and also verified that my December 21, 2003, letter (attached hereto without attachments) to you had been received and, although it had not yet been filed, would be added to the record for this case.

I know the Board's decision on this case is scheduled for January 6, 2004, and the deadline for opposition party filings of record was December 22, 2003, however, I believe there is no deadline on truth, and feel compelled to correct some gross falsehoods presented as facts by Mr. Phillips in his Prehearing Statement dated November 18, 2003, which I am sorry to say I had not seen before Tuesday. Whether pre-meditated or merely sloppy representation, it is troubling for many reasons, and seems to be of an invidious nature, which the applicant has heretofore previously and unfairly imputed to the Zoning Administrator on a number of occasions.

(1) Mr. Phillips' Prehearing Statement (page 17 of Exhibit Number 50) falsely states: "*Similarly, the owner of 100 5th Street owns two (2) cars and rents his English basement apartment to a tenant who owns a car, generating a regular and continual demand for three (3) parking spaces. Additionally, over the summer, the renter had a guest with a car during the entire duration of the summer, creating a demand for four (4) on street parking spaces on a daily basis.*"

My partner and I have lived at this address three months short of ten years. During the entire time we have owned only one car, and to be perfectly unequivocal about this, we have not leased or otherwise possessed any other vehicles which would require additional parking. Over the summer in question, we had no tenant, guest or occupant in our home other than the two of us, and our two dogs. The student we currently have living in our house, does not own, lease or otherwise possess a car. The intern we had before May 2003, also had no car.

(2) On page 18, Mr. Phillips states that one of the owners of 107 5th Street "*works at home as a consultant and has an assistant visit the premises at least once a week.*" Ms. Eiting works for a New Jersey company, travels a great deal, and has (as probably just about every home on the hill), a "home office" from which she can use a computer, a desk and a phone, to conduct her

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personal business, and work (as most of us do on occasion) from home when it suits her. She is not, however, conducting a "home business" in the sense Mr. Phillips implies, and while she may have a personal assistant one day a week, she rents a parking space for her.

(3) Page 3, states: "*From the time of his purchase of the Property in May 1990 until June 2002, the Property was used as the residence of the Applicant, his two (2) children-aged five (5) and nine (9) at the time of the purchase and his domestic partner, Keith Wilkinson. In 2002, the children having grown and gone on to college, the Applicant and Mr. Wilkinson decided, in addition to maintaining the Property as their primary residence, to operate a bed and breakfast from the Property, as there were four (4) sleeping rooms not in use.*" Mr. Phillips wants you to believe that he and his partner raised his children in the house and that they are now empty-nesters—a fantasy Mr. Phillips repackaged at the public hearing. Mr. Phillips children never lived on Capitol Hill. They were not "raised here." They visited one weekend, sometimes two weekends a month. They were raised by their mother and step-father in the suburbs of Maryland. Likewise, Mr. Wilkinson did not live in this property between May 1990 and June 2002. (While his residence status is unclear, he has lived in the subject property only since 2001.)

(4) On page 4, Mr. Phillips implies that his subsequent reduction in his special exception request from six (6) to four (4) rooms was made "*in response to the neighbor's concerns and in direct response to comments from the Capitol Hill Restoration Society and the Office of Planning.*" According to Mr. Phillips testimony on December 2, 2003, they only have four rooms other than their own to let. This tactical let's-split-the-difference approach further shows, an invidious pattern of self-interest and lack of adherence to the facts.

(5) On pages 10 and 16, Mr. Phillips indicates he "*is willing to limit any future parking passes to business travelers.*" Residential parking permits are legitimately for residential guests only, and Mr. Phillips cannot negotiate or otherwise agree to limit what he does not in actuality have a right to in the first instance. Likewise, superfluous statements such as "the Applicant is investigating the availability of off-street parking in the neighborhood" at this stage, and with the history of this business, is disingenuous at best—just as the false statements on pages 15 and 21: "*The proposed increase in availability of sleeping rooms will not adversely affect the surrounding neighborhood, as the applicant does not expect an increase in the occupancy rate.*" AND
"*the operation of the B & B with two (2) sleeping rooms has only created a need for a parking space on three (3) occasions during the past year.*"

Thank you for your attention to this matter.

Sincerely,

Encl: December 22, 2003 ltr.

Cc: Jerrily Kress, Denzil Noble, Esther Bushman, J.Eiting, C. Anders, M. Shea, S. Harris

100 Fifth Street, SE
Washington, D.C. 20003
December 21, 2003

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

Re: BZA Case #17079, Mark Phillips

Dear Chairperson Griffis:

We expected after discussion with the Office of Zoning staff following the public hearing on December 2, 2003, that the transcript would be available for review before the deadline for submission of additional documents of record in opposition to Mr. Mark Phillip's request for a special exception. By the close of business Friday, and at the time I write this letter, the transcript is not available. Because opposition party comments are due Monday, I would like to address at least some of the inaccurate, misleading and false statements in the record, as well as reiterate a few points that bear repeating due to the importance of the decision you are about to render.

Mr. Phillips has tried to paint a picture for you of someone who has "raised his children" in the neighborhood; "only obtained three parking permits," followed all the rules, tried to fit unobtrusively into the neighbor, has never rented more than two rooms at one time, and was unaware of neighborhood concerns about his operation. Mr. Phillips' children were in fact "raised" by his ex-wife in Gaithersburg, Maryland, and other than averaging a weekend visit once a month (sometimes two), the children never lived on Capitol Hill in his house. Mr. Phillips' contends he received only 3 parking permits the entire time he has run his current B & B, but it is unclear how many his partner, Keith Wilkinson, who is responsible for the day-to-day operations of the establishment, has obtained since the B & B began operation. (On information and belief, the following permits have been obtained by one or the other of the two proprietors: Z6-002746, Z6-003357, Z6-052735, Z6-042980, Z6-049300, Z-023292, Z6-000623. Additional parking permits were obtained by others for guests of the B & B, e.g., Z6-023490, and further prove the adverse impact to the neighborhood of additional parking because to the B & B.) Mr. Phillips has not followed the rules for visitor residential parking permits. On information and belief, Mr. Phillips has also not followed the rules and let more than two rooms at a time.

According to an article in the *The Hill* published May 22, 2002, Mr. Wilkinson stated, "We are offering only four rooms, each with private bath and historically decorated and furnished with real antiques." The article, written by Duncan Spencer, touts the "thousands of dollars in inside and outside restoration, plus state-of-the-art communications and Internet services, will open as a showplace executive inn...aiming at an exclusive clientele of professionals..." Hardly your quaint B & B, and of course, advertising "daily cocktail hour" and

"afternoon tea" further separated it from the neighborhood B & B fitting in unnoticed in a residential neighborhood.

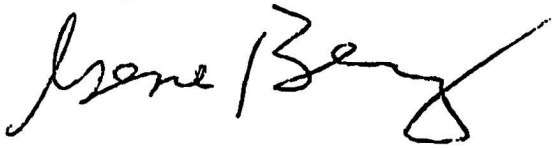
Mr. Nettler, Mr. Phillips' attorney, also made a point of providing you with a copy of the HOP of other B & B's, e.g., Maison Orleans. I would like to point out that this B & B, which is licensed for and provides only 3 rooms, also **provides off-street parking for guests.** Likewise, other B & B's, such as Doolittle House on East Capitol, also **provide off-street parking.**

Mr. Phillips' "expert" witness stated that she knew that Mr. Phillips never rented more than two rooms at a time. I believe Mr. Phillips is a subscriber for her "The Inn Keeper" reservation services, but Mr. Phillips also used other means of renting rooms, which would make it problematic for her to know unequivocally that Mr. Phillips rented only two rooms at a time the entire time he has operated his business. (In addition to the attached MSN website, and 4 examples of an unknown number of **ebay** auctions for rooms, which I have attached, there were and are other advertised venues, and methods of accepting reservations.)

As I mentioned above, I wanted to review the transcript before submitting this letter. Just from memory I offer the following additional comments: Mr. Netter is incorrectly informed as to the number of HOP licenses in the immediate neighborhood; on the 400 block of A Street, only one residence has off-street parking, which further proves the adverse impact on the neighbors of any additional cars parked on the street as a result of an increase in the number of rooms if you allow this request for a special exception; one board member asked the astute question "why would you advertise four rooms if you could only rent two," to which Mr. Phillips pushed the limits of common sense with his incredulous comment that it allowed someone who might want a more feminine room to choose that; finally the adverse impact on the next door neighbors who share a common wall from the day in and day out noise of 4 rental rooms with up to 10 people in addition to the two proprietors living in the house is self-evident.

In summary, we feel the adverse impact on the neighbors if this special exception is granted has been proven by the information in the record, and by the common sense of the Board. We ask that you 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. In making your decision we also ask you to consider the unanimous neighborhood opposition to the granting of this special exception voiced in individual letters and two separate petitions, as well as Ward 6 Councilmember Sharon Ambrose's opposition to this special exception. 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, and negative effect on property values and quality of life. We ask that you consider the entire record and do the right thing.

Sincerely,



GENE BERRY

FACSIMILE TRANSMITTAL SHEET

TO	FROM
Geoffrey Griffis	Gene Berry
COMPANY	DATE
Board of Zoning Adjustment	1/2/2004
FAX NUMBER	TOTAL NO. OF PAGES INCLUDING COVER
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RE	YOUR REFERENCE NUMBER
Mark Phillips Request for Special Exception	417 A Street, SE

X URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS

Please review the attached information and add to the record for BZA Case #17079 as an exhibit.

[CLICK HERE AND TYPE RETURN ADDRESS]