GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17079 of Mark Lee Phillips pursuant to 11 DCMR § 3104.1 for a special exception to increase the number of sleeping rooms in a bed and breakfast (home occupation) from two (2) to four (4) or six (6) under subsection 203.8 and the provisions governing special exceptions within the Capitol Hill Overlay District under subsection 1202.1, in the CAP/R-4 District at premises 417 A Street, S.E. (Square 818, Lot 27).

HEARING DATE: December 2, 2003
DECISION DATES: January 6, 2004 and February 3, 2004

DECISION AND ORDER

This application was submitted on September 5, 2003 by Mark Lee Phillips ("Applicant"), the owner of the property that is the subject of the application. The application, as revised, requested a special exception to increase the number of sleeping rooms from two to four in an existing home occupation bed and breakfast facility at 417 A Street, S.E. (Square 818, Lot 27). Following a public hearing on December 2, 2003 and a public meeting on January 6, 2004, the Board granted the special exception by a vote of 4-0-1.

PRELIMINARY MATTERS:

Notice of Application and Hearing. By memoranda dated September 10, 2003, the Office of Zoning mailed notice of the application to the Office of Planning ("OP"), the Department of Transportation ("DDOT"), the Councilmember for Ward Six, Advisory Neighborhood Commission ("ANC") 6B, Single Member District/ANC 6B02, and the Architect of the Capitol. In accordance with 11 DCMR § 3113.13, the Office of Zoning mailed letters or memoranda dated September 25, 2003 to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property, providing notice of the hearing. Notice of the hearing was also published in the D.C. Register on October 3, 2003 (50 DCR 8174).

Requests for Party Status. ANC 6B was automatically a party in this proceeding. The Board granted party status in opposition to the application to a group of residents living on A Street or 5th Street near the subject property: Christopher Anders and Aaron Schuham; Eugene Berry; Jacqueline Eiting; and William Martin.

Applicant's Case. The Applicant presented testimony from witnesses including the owner of the subject property, who described the subject property and the existing two-room bed and breakfast home occupation; an architect and planner; and the president of a reservation service for bed-and-breakfast operations. The Applicant argued that no zoning relief was necessary, on the ground that six sleeping rooms are permitted as a matter of right in a dwelling that is a historic landmark or located in a historic district and certified by the State Historic Preservation

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Officer as contributing to the character of that historic district. The Applicant also testified that the application satisfied the requirements of the requested special exception.

Government Reports. By memorandum dated November 21, 2003, the Office of Planning declined to recommend approval of the application, citing concerns about noise, traffic, and parking that had not yet been fully addressed by the Applicant. In a supplemental report dated November 26, 2003, OP indicated no further objection to approval of the application, based on a determination by the Department of Transportation ("DDOT") that the proposed increase to four sleeping rooms would not adversely impact parking in the neighborhood.

ANC Report. By letter dated November 12, 2003, ANC 6B indicated that, at a regularly scheduled and properly noticed meeting on November 5, 2003, with a quorum present, the ANC voted 7-1-1 to oppose the application. The ANC expressed concern that the proposed expansion in the number of sleeping rooms would be potentially disruptive with respect to parking, because the Applicant would not provide any off-street parking for guests.

Party in Opposition. The party in opposition to the application objected to the proposed expansion of the bed and breakfast due to concerns about adverse impacts on the surrounding residential neighborhood, including noise, a lack of adequate parking, and traffic congestion.

Persons in Opposition. The Board received approximately 12 letters from persons in opposition to the application. The letters, written primarily by residents living in close proximity to the subject property, generally cited potential adverse impacts attendant to the requested special exception, including the additional demand for scarce parking spaces, increased traffic, and harm to the residential character of the neighborhood as a result of the expansion of a commercial entity. The Capitol Hill Restoration Society, by letter dated November 14, 2003, indicated that its zoning committee had voted unanimously to oppose the application, although the committee would support an increase to four sleeping rooms if the Applicant provided two off-street parking spaces in close proximity to the subject property.

FINDINGS OF FACT

1. The subject property is located at 417 A Street, S.E. (Square 818, Lot 27), at the corner of 5th and A Streets, S.E. in the Capitol Hill neighborhood of Ward Six. The site is improved with a brick rowhouse, built in 1890, that is 36 feet high and contains 3,382 square feet of livable area.

2. The subject property is located in the Capitol Hill Historic District, and the residence has been certified as contributing to the historic district.

3. The rowhouse was used as a rooming house during several periods, including from 1966 until 1990, when the Applicant acquired the subject property and renovated the building for use as a single-family dwelling.

4. The Applicant currently uses the property as a residence. Since November 2002, the Applicant has operated a home occupation bed and breakfast ("B&B") with two sleeping rooms at the subject property, pursuant to a home occupation permit issued June 3, 2002 (HOP 34896).

5. The residence has a total of five sleeping room on three floors and an English basement, with one bathroom per sleeping room.

6. The Applicant proposes to increase the number of sleeping rooms in the bed and breakfast home occupation from two to four. The dwelling currently has a total of four rooms devoted to B&B use, but no more than two sleeping rooms are occupied by guests at any one time. Two of the sleeping rooms can accommodate two guests, while the other two rooms can each accommodate three guests.

7. The only meal served at the Applicant's B&B is a continental breakfast, which is served only to overnight guests. The residence has one main kitchen and a kitchenette; there are no cooking facilities in any of the sleeping rooms.

8. Check-in times for the B&B facility are 3:00 p.m. to 8:00 p.m. Guests are generally not accepted after 10:00 p.m.

9. No signs are posted on the building.

10. No sales are conducted at the subject property.

11. Pursuant to 11 DCMR § 2100.5, the subject property – as a building certified as contributing to the character of a historic district – is not required to provide additional parking spaces.

12. The Board credits the Applicant's testimony that most guests of the B&B operation arrive by taxi or on foot from a Metrorail station.

13. The Board also credits the Applicant's testimony that the proposed B&B operation at the subject property will comply with applicable requirements of 11 DCMR § 203.4.

    (a) The home occupation B&B, after expansion to four sleeping rooms, will remain secondary to the use of the dwelling unit as the Applicant's primary residence.

    (b) The B&B operation does not require storage of materials or finished products.

    (c) The B&B operation has no employees or persons engaged in the home occupation who are not residents of the dwelling unit.

    (d) The Applicant has maintained the residential character and appearance of the dwelling unit.

(e) The Applicant has not undertaken interior structural alterations that would hinder use of the premises as exclusively residential, but instead renovated the dwelling unit for single-family use after its prior use as a rooming house.

(f) The B&B use is not operated outside the structure, and does not maintain any outside storage. The area outside the dwelling is landscaped as a garden.

(g) The B&B operation does not create visual or audible electrical interference in television or radio receivers or cause fluctuations in line voltage outside the subject property. Nor does the B&B home occupation produce noxious odors, vibrations, glare, or fumes detectable outside the subject home.

(h) The expanded B&B operation will not produce noise exceeding the level normally associated with the category of dwelling or the immediate neighborhood.

(i) No more than two vehicles will be used in the practice of the B&B home occupation, and vehicular trips to the premises by visitors, customers, and delivery persons will not exceed eight trips daily on a regular and continuing basis.

(j) The B&B operation, expanded to four sleeping rooms, will not have more than eight customers on the premises in any one-hour period, assuming a maximum of double occupancy of each of the sleeping rooms.

14. The subject property is zoned CAP/R-4. The Capitol Interest (CAP) overlay district was established to promote and protect the U.S. Capitol precinct and adjacent areas through land use controls as well as limits on height and bulk. 11 DCMR § 1200. Uses permitted as a special exception in the R-4 district are generally permitted in the CAP/R-4 district with Board approval. 11 DCMR § 1201.3(a).

15. By letter dated November 17, 2003, the Architect of the Capitol indicated that the application would create no adverse effect on the Capitol Complex or master plan referred to in 11 DCMR § 1200.1.

CONCLUSIONS OF LAW

The Applicant seeks a special exception pursuant to 11 DCMR § 3104.1 to increase the number of sleeping rooms in a bed and breakfast home occupation from two to four in the CAP/R-4 zone under §§ 203 and 1202.1. The Applicant also argued that no special exception was required on the ground that 11 DCMR § 203.8(c)(1) permits six sleeping rooms as a matter of right in a home occupation bed and breakfast in a dwelling that is a historic landmark or located in a historic district and certified as contributing to the character of the historic district. Based on the findings of fact and for the reasons discussed below, the Board concludes that a special exception

is required to increase the number of sleeping rooms in the Applicant's home occupation B&B, and that the Applicant has met the burden of proof for a special exception to expand the bed and breakfast operation from two to four sleeping rooms.

The maximum number of sleeping rooms permitted as a matter of right in a home occupation bed and breakfast is two. 11 DCMR § 203.8(c). A dwelling owner may be permitted to increase the number of sleeping rooms to four with Board approval as a special exception pursuant to 11 DCMR § 203.10(b). *See* 11 DCMR § 203.8(c)(1). In the case of "a dwelling that is an historic landmark, or that is located in a historic district and certified by the State Historic Preservation Officer as contributing to the character of that historic district," the dwelling owner may be permitted to increase the number of sleeping rooms to six with Board approval as a special exception pursuant to 11 DCMR § 203.10(b). *Id. See, e.g.,* the Board's orders in Application No. 16823 (February 9, 2004) and Application No. 16793 (January 24, 2002). Thus, a home occupation bed and breakfast operated on the subject property is permitted two sleeping rooms as a matter of right, and up to six if approved by the Board as a special exception pursuant to 11 DCMR §§ 203.10(b) and 3104. In this case, the Applicant seeks special exception approval for four sleeping rooms.

The Board is authorized to grant special exceptions where, in the Board's judgment, a special exception would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps. 11 DCMR § 3104. With respect to an application to increase the number of sleeping rooms in a bed and breakfast home occupation, the requested special exception must also comply with the general purpose and intent of § 203 of the Zoning Regulations. 11 DCMR §§ 203.8(c)(1) and 203.10(b).

Based on its findings of fact derived from substantial evidence in the record, the Board concludes that the Applicant has demonstrated that the expanded B&B home occupation at the subject property will comply with the applicable requirements of 11 DCMR § 203. The requested special exception is consistent with the purpose and intent of the home occupation regulations; that is, to allow a home occupation, including a bed and breakfast operation, as an accessory use to a residential use when compatible with the neighborhood, and to protect residential areas from adverse effects of activities associated with home occupations while permitting residents of the community the opportunity to use the home as a workplace and source of livelihood. 11 DCMR § 203.1.

The Board was not persuaded by ANC 6B or by the party in opposition that expansion of the existing bed and breakfast home occupation to four sleeping rooms would create adverse impacts on neighboring property. The ANC expressed concern about the effect of the expanded B&B operation on parking, but the Board does not find that the addition of two sleeping rooms would adversely affect the supply of parking in the neighborhood, particularly since a large proportion of guests will arrive at the subject property by taxi or public transportation or on foot. The Board credits DDOT's conclusion that the requested special exception would not adversely affect parking in the neighborhood of the subject property.

Similarly, the Board was not persuaded by the party in opposition that noise created by the expanded bed and breakfast operation would have adverse impacts on neighboring property. The adverse noise impacts claimed by the party in opposition would not be greater than noise impacts normally associated with the residential uses permitted as a matter of right in the neighborhood surrounding the subject property.

The Board also concludes that the requested special exception is consistent with the requirements for a special exception in the Capitol Interest overlay pursuant to 11 DCMR § 1202.1. The requested special exception does not entail any change to the height or bulk of the building on the subject property, but will expand an existing home occupation that will maintain the residential use and character of the building. The Board credits the conclusion of the Architect of the Capitol that the requested special exception would create no adverse effect on the Capitol Complex.

The Board has accorded ANC 6B the "great weight" to which it is entitled. In so doing, the Board fully credited the unique vantage point held by the ANC with respect to the impact of the proposed B&B expansion on the ANC's constituents. However, ANC 6B did not offer persuasive advice that would cause the Board to find that the proposed bed and breakfast home occupation with four sleeping rooms is contrary to the Zoning Regulations and would adversely affect the use of neighboring property. The Board has also accorded great weight to the recommendation of the Office of Planning, which indicated no objection to approval of the application.

For the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to the application for a special exception to increase the number of sleeping rooms in a bed and breakfast home occupation from two to four in the CAP/R-4 district pursuant to 11 DCMR §§ 203.8, 1202.1, and 3104. Accordingly, it is therefore **ORDERED** that the application is **GRANTED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and David A. Zaidain to grant the application; Anthony J. Hood, not present, not voting)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 19 2004

PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (ACT) THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS ALSO PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS ALSO PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR THE DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER. RSN

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BZA APPLICATION NO. 17079

As Director of the Office of Zoning, I hereby certify and attest that on APR 19 2004 a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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