100 Fifth Street, SE
Washington, D.C. 20003
September 9, 2004

Jerrily R. Kress, Director
Office of Zoning and
Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
441 Fourth Street, NW
Washington, D.C. 20001

Re: Request for reconsideration of BZA Case #17079, Mark Lee Phillips

Dear Ms. Kress and Mr. Griffis:

Mark Phillips' attorney has submitted a letter in opposition of your scheduled reconsideration of BZA Case #17079. I would like the following added to the official record in this proceeding:

When I asked Rick Nero at the Board of Zoning Adjustment what was required of me to submit a motion for reconsideration, I was told I simply had to put my request in a letter to the Board of Zoning Adjustment. I complied with his instruction. There was no malevolent motive or intent to be imputed from that action. I dare say Chairperson Griffis might readily admit to confusion about the Zoning Regulations, since he is quoted on page 183 of the transcript for the original hearing in this matter as having said "I don't know what we require."

Mr. Phillips and Mr. Wilkinson continue to advertise on their website "**Street parking with arranged permit,**" in violation of Mr. Phillips' promise "to limit any future parking passes to business travelers." (Although Mr. Phillips never had the right to obtain visitor residential parking passes for commercial activity in the first instance, and therefore, has no right to bargain this point, see pages 10 and 16 in Mr. Phillips' written statement dated 12/1/03, which was received by the Office of Zoning November 18, 2003.) His continued advertisement of the availability of street parking with arranged permit also directly contravenes his unequivocal statement -- "**We do not advertise as having parking available.**" Which appears on page 3 of his written testimony submitted for the record and entered as Exhibit #71 for BZA Case No. 17079.

Mr. Phillips' attorney declares that Ms. Jaclyn Reed had nothing to gain from her testimony. On the contrary, Ms. Jaclyn Reed in her own sworn testimony confirmed that she handles bookings for Mr. Phillips and Mr. Wilkinson (see page 212 of the transcript). Contrary to Mr. Phillips' attorney's assertion that Ms. Reed "had nothing to gain" from her testimony, she had everything to gain from it, in at least the realm of the circumscribed fee-for-service arrangement with which she was engaged with Mr. Phillips and Mr. Wilkinson. In addition, Ms. Reed attested to facts (that no more than two rooms were booked at any one time that she could not positively know, since Mr. Phillips and Mr. Wilkinson had numerous websites on which they

BZA
Case No. 17079
Exhibit No. 90

Board of Zoning Adjustment
District of Columbia
CASE NO. 17079
EXHIBIT NO. 90

advertised their rooms, as well as numerous ebay auctions for their rooms going on simultaneously.

Mr. Phillips asserts that no new evidence was submitted, and therefore the Board of Zoning cannot reconsider their original order. On the contrary, new evidence concerning the submission of false information by the applicant is new evidence. Likewise, information about the Office of Planning reversal of their earlier opposition to the special exception based on their failure to address any concerns other than parking, as well as information that the Office of Planning did not even consult the Capitol Hill Planning Officer in their very own office was new evidence. (See page 144 of the hearing transcript in which Mr. Travis Parker of the Office of Planning answers "Correct," to Mr. Schuham's direct question "so what is reported here in the November 26 report doesn't disturb anything earlier with regard to any of the other issues raised by neighbors aside from parking.")

Furthermore, it is within the purview of the Board of Zoning to revoke permits and orders, under a variety of circumstances, and Mr. Phillips' attorney's contrary view is not binding on the Board of Zoning Adjustment. There have, in fact, been numerous cases recently involving the revocation of permits, i.e., after a third story was built on a house, other residential and office buildings, which were already under construction.

It is respectfully submitted that BZA Case #17079 is properly before the Board of Zoning for reconsideration. I ask that you consider the entire record, rescind this order, and deny the special exception.

Sincerely,

Gene Berry

Delivered by hand: Mark Phillips, Keith Wilkinson, Chris Anders, Aaron Schuham, William Martin, and Jacqueline Eiting

To:

Jerrily Kress, Director
Geoffrey Griffis, Chairman

RE: BZA Case # 17079

From: Gene Berry

202- 547-3503

Please add to file for reconsideration hearing 9/14/04

Thank