GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

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Application No. 17079-A 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
RECONSIDERATION DATES:	July 6, 2004 and September 14, 2004

ORDER DENYING RECONSIDERATION

The application was submitted September 5, 2003 by Mark Lee Phillips ("Applicant"), the owner of the subject property. The application 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. An order was issued April 19, 2004.

Parties in this proceeding are the Applicant, Advisory Neighborhood Commission ("ANC") 6B, and 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.

By letter dated April 29, 2004 and submitted May 3, 2004, Eugene Berry requested reconsideration of the Board's decision and rescission of its order. The motion argued that the applicant did not satisfy the burden of proof with respect to the application, and that the Board had failed to give great weight to ANC 6B's opposition to the application or to the opposition of the Capitol Hill Restoration Society, persons living in the contiguous neighborhood, or the Ward 6 Councilmember.

At a public meeting on July 6, 2004, the Board considered the letter, but declined to act on the motion because it had not been served on the other parties, as required by 11 DCMR § 3126.3. By letter dated July 9, 2004, the Office of Zoning informed Eugene Berry that the Board could not act on the motion until Mr. Berry provided proof of its service on the parties and the parties had an opportunity to respond to the motion.

By letter dated July 15, 2004, Mr. Berry certified that the motion was hand-delivered to the owner and proprietor of the bed-and-breakfast facility, mailed to the Applicant's attorney, and delivered to Chris Anders, Aaron Schuham, William Martin, and Jacqueline Eiting.

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The Applicant submitted a response in opposition to the motion on July 23, 2004. The Applicant argued that the motion was untimely because Mr. Berry failed to serve the motion on the parties within 10 days of the issuance of the final order; rather, the motion was served almost three months later on most of the parties. The Applicant noted that Mr. Berry failed to serve one of the parties, ANC 6B. The Applicant also argued that the motion offered no new evidence, as required by 11 DCMR § 3126.6; that the Board had fulfilled its obligations regarding the ANC's concerns; and that the Applicant had met the burden of proof for the requested relief.

At a public meeting on September 14, 2004, the Board denied the motion for reconsideration for failure to serve all the parties, as required by 11 DCMR § 3126.3.

Decision and Order

The letter requesting reconsideration was initially submitted within the 10-day deadline specified in the Zoning Regulations. However, the motion had not been served on the parties. After being afforded another opportunity to serve the motion appropriately, Mr. Berry resubmitted the motion without having served one party, the ANC.

Parties to a proceeding before the Board are required to participate in accordance with the Board's Rules of Practice and Procedure set forth in chapter 31 of the Zoning Regulations. Section 3126 sets forth the requirements for any party seeking reconsideration or rehearing of an order of the Board. Pursuant to § 3126.3, "Any motion for reconsideration shall be served upon all other parties. . . ." Section 3111 sets forth the appropriate methods and proof of service. The Board declines to waive its rules again to grant another opportunity for Mr. Berry to serve the motion on the remaining unserved party, ANC 6B, particularly in light of the passage of time since the issuance of the final written order in this proceeding.

Accordingly, it is therefore **ORDERED** that the motion for reconsideration is **DENIED**.

VOTE: **4-0-1** (Geoffrey H. Griffis, Ruthanne G. Miller, Curtis L. Etherly, Jr., and David A. Zaidain (by absentee vote) to deny the motion; 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 Kress
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: DEC 15 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
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BZA APPLICATION NO. 17079-A

As Director of the Office of Zoning, I hereby certify and attest that on DEC 15 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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rsn

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning