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Board of Zoning Adjustment
District of Columbia
CASE NO. 17260
EXHIBIT NO. 25A2

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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This transcript constitutes the minutes from the hearing held on Tuesday, July 20, 2004.

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The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C. 20001, pursuant to notice at 9:30 a.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS	Chairperson
RUTHANNE G. MILLER	Vice Chairperson
JOHN A. MANN, II	Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ANTHONY HOOD	Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY	Acting Secretary
BEVERLEY BAILEY	Zoning Specialist
JOHN NYARKU	Zoning Specialist

OFFICE OF PLANNING STAFF PRESENT:

MAXINE BROWN-ROBERTS	Office of Planning
ARTHUR JACKSON	Office of Planning
JOEL LAWSON	Office of Planning
DAVID MCGHETTIGAN	Office of Planning
TRAVIS PARKER	Office of Planning

D.C. OFFICE OF THE ATTORNEY GENERAL:

SHERRY GLAZER, ESQ.

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MR. DALEY-HARRIS: Okay.

CHAIRPERSON GRIFFIS: Excellent. Thank you very much. In that case, let's call the next and final case for the morning.

MS. BAILEY: Application No. 17194 of Monique Greenwood, pursuant to 11 DCMR section 3104.1, for a special exception to establish a bed and breakfast, that's a home occupation, for six sleeping rooms under subsection 203.8 or, in the alternative, pursuant to 11 DCMR section 3103.2, a variance from the use provisions to allow eight sleeping rooms in the Dupont Circle R-5-D District at premises 1708 16th Street, N.W., Square 178, Lot 74.

CHAIRPERSON GRIFFIS: Visual aids, we always looks forward to visual aids. Excellent. Thank you, Ms. Bailey. Whenever you're ready, Mr. Gross, you can introduce yourself and the rest.

COMMISSIONER HOOD: Mr. Chairman, I just need a clarification.

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER HOOD: Are we considering six and, in the alternative, eight? Is that what is being proposed, six sleeping rooms?

CHAIRPERSON GRIFFIS: Yes.

COMMISSIONER HOOD: Okay.

CHAIRPERSON GRIFFIS: And I think we all need clarification, which is part of what we'll get into fairly quickly.

COMMISSIONER HOOD: Right.

CHAIRPERSON GRIFFIS: In terms of several aspects.

COMMISSIONER HOOD: Okay.

CHAIRPERSON GRIFFIS: But there definitely is the discussion of going. What is the vehicle for going from six rooms to eight rooms, but I'm sure Mr. Gross is prepared to discuss that.

COMMISSIONER HOOD: Thank you. Wow, I see a couple of oprys we have already approved on the Board. Okay. Let's move forward.

MR. GROSS: Good morning, Mr. Chairman.

CHAIRPERSON GRIFFIS: Good morning.

MR. GROSS: I'm Nathan W. Gross, the City Planner at the Law Firm of Arnold and Porter. With me is Monique Greenwood, the property owner and applicant in this case, and also joining us at the table is the Chair of the ANC, Darren Bowie.

MR. BOWIE: Good morning, Mr. Chairman, Member of the Board, I'm Darren Bowie representing ANC-2B.

CHAIRPERSON GRIFFIS: Okay. Are you part

the six rooms and then for the additional two rooms, I retained Nate Gross to assist me with that process, and I went forward with securing the two room as a matter-of-right license, which I have been operating with since February.

It has been a tremendous financial hardship for us, because we did leave our jobs in New York. We sold our businesses there and we moved down here to do this and two rooms has not been able to really sustain us with the kind of mortgage and expenses that we have incurred to introduce this project.

CHAIRPERSON GRIFFIS: Good. Thank you for saying that. And you do have that in your written submission and believe me the Board fully understands and no matter what size of project or who is in front of us, we always expedite these things, because they all matter a great deal for every applicant that is before us. Otherwise, why would you put up with such a headache coming here.

MS. GREENWOOD: I know.

CHAIRPERSON GRIFFIS: A small joke. But nonetheless, I think it is interesting. I mean, there has been some complications in terms of bed and breakfast in the legislation and what the requirements

are. I think that's probably perhaps what you've gotten caught up with.

MS. GREENWOOD: Yes.

CHAIRPERSON GRIFFIS: I think when you get to this Board, this is the stop.

MS. GREENWOOD: Yes.

CHAIRPERSON GRIFFIS: I mean, you have had a lot of different opinions. It is all in this application.

MS. GREENWOOD: Yes.

CHAIRPERSON GRIFFIS: The Board has looked at all of those. We have actually done quite a good amount of research on our own in Executive Session in terms of going back into the history of recent cases that this Board has decided and also into the legislative history to get a full understanding of it.

MS. GREENWOOD: Yes.

CHAIRPERSON GRIFFIS: Obviously, we're saddled with the fact numerous times of how ambiguous the regulations are written, so it is not so easy often to get straight and definitiveness.

MS. GREENWOOD: Yes.

CHAIRPERSON GRIFFIS: But you will see, I think, in the expiration of our questions that we will hopefully get to a very decided position and hopefully

very quickly. Ms. Miller?

MS. GREENWOOD: May I just make one last comment on this?

CHAIRPERSON GRIFFIS: Sure.

MS. GREENWOOD: I'm aware as well as to history with B&Bs in the Washington, D.C. area. I know it has been a touchy situation. We successfully operated our bed and breakfast in New York for nine years, and we also have a summer bed and breakfast that we operate in Cape May.

CHAIRPERSON GRIFFIS: In Cape May.

MS. GREENWOOD: New Jersey. I have found things to be very different here in D.C. in terms of this willingness to embrace the B&B concept. But I will say this, the thing that distinguishes what we want to do from those that have come prior to us, Tutorsky Mansion, even the Swann House, which was approved, is that we do not intend to do any kind of events or social activities or large gatherings, nothing of the sort. We simply want to operate our guest rooms.

My husband wouldn't stand for it, if that was -- I had to beg him to do the B&B concept again, so there is no way he is going to have his privacy invaded any more by having large groups of people and

the statement itself, of course, addresses in detail, I hope, all the laundry list of special exception criteria. In the outline I handed out just today, I tried to just focus on certain key issues and in the interest of time, if you would like, I can just stand on what I submitted.

CHAIRPERSON GRIFFIS: Absolutely.

MR. GROSS: If you want to go into any more of it, I would be happy to answer questions or summarize parts of it. However, you want to proceed.

CHAIRPERSON GRIFFIS: I think we'll get through it. What I would like to do is get through the rest of the submission and also hear from Mr. McGhettigan who is here to present the Office of Planning which has quite a bit of information in it, and then we will return to anything, obviously, that you think we have not paid close enough attention to you to highlight for us. I think at this point, Board Members, for clarification for us it seems to me and I'll take quick comments on this, that we are looking at this as a special exception, the entire provision.

That, in fact, under the special exception, two of the provisions of the bed and breakfast or home occupation section could be waived. We've had the applicant enumerate which two

provisions they are looking at as to -- well, I guess, it is waived. What's the proper legal terminology?

VICE CHAIR MILLER: Modified, I believe, is the term.

CHAIRPERSON GRIFFIS: Modified. There it is. That's what we have. Okay.

MR. GROSS: Lawyers on the Board.

CHAIRPERSON GRIFFIS: That's right. That's right. So the two that would be modified. Of course, those modifications have been relayed to us. Most importantly, actually, they are both, you know, tied together in terms of the number of rooms and obviously then the number of people or persons that would be outside or in the second, I would think that we are looking at no relief would actually be required. That would mean based on the Certificate of Occupancy and the existing nonconforming use that was established at least as late as 1989 that was prior to the Zoning Regulations.

So with that clarification to keep in mind, why don't we turn to the Office of Planning to present their report?

MR. MCGHETTIGAN: Thank you, Mr. Chair.

CHAIRPERSON GRIFFIS: Indeed.

MR. MCGHETTIGAN: For the record, my name

is David McGhettigan from the Office of Planning. As you can tell from our lengthy report, this is a complex case. I tried to cover all the issues and I don't -- from the questions you have asked and the presentation testimony, I think everything in my report has been discussed in some form or other and would stand on the record and ask for any questions specifically about my report that you might have.

CHAIRPERSON GRIFFIS: Excellent. Thank you, Mr. McGhettigan. It is incredibly comprehensive, so we absolutely appreciate that. It obviously facilities all of our or part of our preparation in looking at the application. Is there any questions from the Board, at this time, for the Office of Planning? Yes, Ms. Miller?

VICE CHAIR MILLER: In the Office of Planning's report it appears that Office of Planning is coming to a different conclusion with respect to whether a variance is required and so I'm wondering if you want to elaborate on that?

MR. MCGHETTIGAN: Sure. We relied on the Gonzalez Bed and Breakfast referral from the Office of Zoning, which referred that case over as a use variance. The referral in this case refers it for a special exception for a six bedroom bed and breakfast

and does not address the eight rooms that was added by the applicant after the referral letter. So we do not -- absent anything else, we are just relying on the Zoning Administrator's previous referral letter in the previous case.

CHAIRPERSON GRIFFIS: So you haven't made an assessment and a judgment in terms of what type of relief is required? Is what you're saying?

MR. MCGHETTIGAN: Yes, that's correct.

CHAIRPERSON GRIFFIS: Okay. Follow-up? Paying attention to page 7, a small item, of course, but one of the provisions is that a percentage of the dwelling that can be used, square footage or total percentage, and you have indicated in your statement that the requirement for all home occupation regarding the percentage of dwelling units used for home might base this specific waiver for bed and breakfast uses. Just for clarification, where is it waived?

MR. MCGHETTIGAN: It is waived in 203.8.

CHAIRPERSON GRIFFIS: Okay. Which establishes the number of rooms allowed rather than taking it to a percentage or square footage.

MR. MCGHETTIGAN: Right, yes.

CHAIRPERSON GRIFFIS: Okay. Thank you. Ms. Miller?

exception. You know, frankly, undue clarity, we might as well proceed in that fashion and I think the Board is together on that knowing full well that the record is complete in order to deliberate on a special exception.

Then the reality is we hardly ever find that we have time in the morning sessions and so we might as well get our business done. So with that in mind, I'll hear if others have any differing opinions. I think we can open it up for any discussion or movements to action. Good. While they prepare, I think it is probably most expeditious for the Board to conduct this deliberation under a motion and I would approve or move approval of Application 17194 for a special exception to establish the bed and breakfast as a home occupation for eight bedrooms, sleeping rooms that is, under section 203.8, and this is for the premises of 1708 16th Street, N.W. I would ask for a second.

BOARD MEMBER MANN: Second.

CHAIRPERSON GRIFFIS: Thank you, Mr. Mann. The motion before us having been seconded, I'll open it up for discussion and deliberation and I will conclude that.

VICE CHAIR MILLER: Mr. Chairman, I would

just like to add a friendly amendment.

CHAIRPERSON GRIFFIS: Oh, yes.

VICE CHAIR MILLER: Or ask that you accept it as a friendly amendment of the additional special exception to allow more than eight clients on the premises in a one hour period, as set forth in 203.4.

CHAIRPERSON GRIFFIS: Excellent. I think it should be enumerated in the motion for sure. It certainly would be in the order. I think that is appropriate. I'm sorry, I should have also added, to the motion, I think it is appropriate to have the deliberation on the first two conditions offered by the ANC. Of course, they are agreed to by the applicant. There has been no disagreement in that aspect, and so I think we could include it for deliberation on the motion, and that is we can spend some time looking at the actual language of how we craft it for our own order, but it essentially is getting to the gist of the applicant would not allow the premises to be rented by an outsider or a third party for events, and that guests at the B&B would not be able to utilize the facility for large events outside of the nature of the bed and breakfast operation.

Mr. Mann, as the seconder, if that's

appropriate for you, are you in agreement with that?

BOARD MEMBER MANN: Well, I'm essentially in agreement. I have perhaps one minor comment regarding what you just said about Condition 2.

CHAIRPERSON GRIFFIS: Excellent.

BOARD MEMBER MANN: But that can wait a moment if you would like.

CHAIRPERSON GRIFFIS: No, go ahead. Let's jump right into it.

BOARD MEMBER MANN: Well, you just said something to the effect that guests would be precluded from holding large events or whatever, but I don't think that we need to stipulate the size of the event, because the guests are going to be prohibited from holding events of any size.

CHAIRPERSON GRIFFIS: Right. I did put a strange qualifier on that, didn't I? I didn't mean that to be the actual language. As I say, I think the Board will review the order prior to its going out for the exact wording in order to get the intent, the direct intent of the second condition and that's that the guests would be prohibited from utilizing for social events the premises. Ms. Miller?

VICE CHAIR MILLER: Yes, I think that's why we just have to work with the language just a

little bit, because, I mean, my understanding is that if the ANC didn't have a problem with guests having some kind of a small literary event, as long as it was under the auspices of the applicant. So I think we just want to work the language just a little bit. I think we heard the concerns of the ANC and can represent that.

CHAIRPERSON GRIFFIS: Okay. Very well. Other deliberation, discussion?

COMMISSIONER HOOD: Yes.

CHAIRPERSON GRIFFIS: Yes?

BOARD MEMBER MANN: I actually don't quite understand why we need to work the language at all when it makes it very clear that it is the guests that can't do these things. The ANC has no objection to the host doing whatever they want to do.

CHAIRPERSON GRIFFIS: Excellent. See there's the voice of clarity. We can just take it as written. Any objections?

COMMISSIONER HOOD: I just hope the transcript is handy five or six years from now, but I can go with that.

VICE CHAIR MILLER: Right.

CHAIRPERSON GRIFFIS: Good.

VICE CHAIR MILLER: I was just going to

say that I was with Mr. Hood on this when I read the first two. They were not clear to me and I think they need a little bit of refining, so that we don't have problems with people trying to enforce.

CHAIRPERSON GRIFFIS: Okay. We don't need to decide that now.

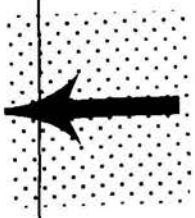
VICE CHAIR MILLER: Okay.

CHAIRPERSON GRIFFIS: Clearly, the motion before us has included the two conditions that have been agreed upon between the applicant and the ANC. Very well. Anything else?

VICE CHAIR MILLER: I just want to say that the basis for granting the special exception would be 203.10(b) which allows for two modifications to the conditions enumerated in 203.4 through 203.8, and the conditions that we are modifying fall within those provisions.

CHAIRPERSON GRIFFIS: Good. Thank you. And I think the record is very complete on this application in terms of not creating a sort of detrimental impact to the surrounding area and which is, of course, part of the special exception criteria. It is amazing the differences and it shows the different nature of bed and breakfasts, which goes to, I think, Mr. Gross' oral statement today that the

Board has the provision. In fact, we are asked, we are directed, we are obligated to look at each individual application on its own at the record that is created before us and we deliberate on that.



We have been through many different bed and breakfasts, each have, believe me, different types of hearings and different types of issues, some are very contentious and some are not and some are very complex and some are not. The point being that the individual aspect of this bed and breakfast clearly shows that it can come before as a special exception with the modification of those two sections. In addition to the requirements for the special exception, we, obviously, have the ANC in full support and the community in support, and it looks like the operation fits well within the block of which it is located.

Frankly, as one of the testimony that came in, there is excitement about continuing this as a bed and breakfast and excitement encouragement as to the upgrades that has taken place on the property. I think that the file is complete without having to restate absolutely all of the evidence that has been submitted regarding the special exception, so I'll let any other Board Members touch on aspects as they feel

need. Very well. If there is nothing further then on deliberation, we have a motion before us that has been seconded.

It has two conditions attendant to that, and I would ask for all those in favor to signify by saying aye.

ALL: Aye.

CHAIRPERSON GRIFFIS: And opposed? Abstaining? Very well. Wy don't we record the vote?

MS. BAILEY: Mr. Chairman, before recording the vote, just clarification for me because I just need to be absolutely clear.

CHAIRPERSON GRIFFIS: Good.

MS. BAILEY: This is special exception for six sleeping rooms, sir?

CHAIRPERSON GRIFFIS: Eight.

MS. BAILEY: Eight. Okay. Thank you. The Board has voted 4-0-1 to approve the application with two conditions and as modified and as stipulated by the Board. The motion was made by Mr. Griffis, seconded by Mr. Mann, Mrs. Miller and Mr. Hood are in agreement and Mr. Etherly is not present today. Summary order, Mr. Chairman?

CHAIRPERSON GRIFFIS: Yes, I don't see any reason why we couldn't waive our regulations and issue