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DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

In re: Application No. 17392 of Babak Movahedi, for a Use Variance from 11 DCMR § 203.10(c) and a Special Exception from 11 DCMR § 203.4(b) in the DC/R-5-B District at premises 1700 Q Street, N.W. (Square 156, Lot 264).

STATEMENT OF OBJECTORS DAVID MALLOF, JOHN EVANS, ALAIRE RIEFFEL, MICHAEL TRISTER, NANCY CAMPBELL & RALPH JOHANSON IN OPPOSITION

Babak Movahedi seeks a use variance from DCMR § 11-203.10(c) (limiting home occupations to two non-resident employees) and a special exception from DCMR § 11-203.4(b) (limiting home occupations to 25% of the home's floor area) in order to legitimize an illegal home occupation that he has been operating in violation of these provisions for several years. Not only is his application barred by the "self-created hardship" doctrine, but in an effort to circumvent the obstacle posed by this doctrine, Mr. Movahedi has concocted the incredible argument that his 115 year old home – which has been used as a residence since 1890 and in which he remains willing to live – is somehow "unsuitable for residential use." Application at 2. This internally contradictory argument is just as unpersuasive as it sounds. Moreover, the relief Mr. Movahedi seeks would severely threaten the residential character of his neighborhood, which the District of Columbia Comprehensive Plan and zoning regulations are designed to preserve. The application should be denied.

I. BACKGROUND

A. Mr. Movahedi's Residence and Neighborhood

Mr. Movahedi is a Commissioner on Advisory Neighborhood Commission 2B, a real estate lawyer with a J.D. and LLM from Georgetown University Law Center and a MBA from George Washington University, and a 22 year resident of the District of Columbia. See The Common Denominator, D.C. Voters' Guide to the Nov. 2, 2004 General Election at 2

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17392
EXHIBIT NO. 32

Board of Zoning Adjustment
District of Columbia
CASE NO. 17392
EXHIBIT NO. 32A1

(attached hereto as Exhibit 1). At the time he purchased his residence at 1700 Q Street, N.W. – which is among the most desirable in the District of Columbia – in 2002 for $1.2 million, he plainly was familiar with the Dupont Circle neighborhood and its conditions, as well as the zoning regulations that limit the permissible uses of his property.

Mr. Movahedi's residence is a spacious, recently renovated, four floor single-family home located in the heart of one of the District's most exclusive areas. It is a home to which most residents of this city can only aspire. This home – like those of Objectors[1] – is located in a R-5-B general residence zoning district, see generally DCMR § 11-350.1, in a neighborhood that delicately balances residential and commercial uses. While the narrow 17th Street corridor between P and R Streets is zoned C-2-B for medium-high density commercial use, it is surrounded by districts like Mr. Movahedi's that are zoned for exclusive residential use and that consist largely of grand, turn of the century homes. The residents of these districts are deeply passionate about their neighborhood and its unique charm. Any increase in the prevalence of commercial uses in this area has the potential to tip the balance of the neighborhood away from these residential uses, which substantially account for its character. Not only would this severely detract from the quality of life experienced by Mr. Movahedi's neighbors, but it would directly undermine the purposes of the Dupont Circle Overlay District, the Dupont Circle Historic District and the Dupont Circle Special Treatment Area, in which his home is located. See infra.

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[1] "Objectors" are David Mallof, John Evans, Alaire Rieffel, Michael Trister, Nancy Campbell and Ralph Johanson, each of whom owns and lives in a residence on the same block as Mr. Movahedi's home.

B. The Requirements for a Home Occupation in a R-5-B Zone

As a resident of a R-5-B zoning district, Mr. Movahedi is entitled to operate a "home occupation" as an accessory use to his residence, consistent with numerous limits set forth in DCMR § 11-203. This section limits home occupations to, inter alia, one non-resident employee. Id. § 11-203.4(d). If an applicant wants to employ more than two non-residents in a home occupation, as Mr. Movahedi does, he is required to demonstrate his entitlement to a use variance. Id. § 11-203.10(c).[2] In addition, home occupations may not use "more than the larger of two hundred fifty square feet (250 ft^2) or twenty-five percent (25%) of the floor area of the dwelling, excluding basement or any accessory structure." Id. § 11-203.4(b).[3]

In this case, Mr. Movahedi blatantly has violated these regulations by operating Dupont Title & Settlements LLC ("Dupont Title") out of his home for the past several years without the use variance or the special exception he now concedes are required to carry on this business. Indeed, Dupont Title's website lists nine employees, see www.duponttitle.com/main.html (last visited Nov. 4, 2005) (attached hereto as Exhibit 2), which grossly violates the "one non-resident employee" limit of DCMR § 11-203.4(d).[4] Although it provides contact information for only seven of these individuals (including Mr. Movahedi himself), this website lists each of these employees as working at 1700 Q Street. See id. Mr.

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[2] To clarify, residents of R-5-B districts are entitled to employ one non-resident in a home occupation upon obtaining a home occupation permit. See DCMR § 11-203.4(c). A second employee can be added by special exception. To employ more than two non-residents, however, a use variance is required. See DCMR § 11-203.10(c).

[3] For a complete list of the requirements that home occupations must meet, see DCMR §§ 11-203.1-203.10.

[4] In fact, Mr. Movahedi has been cited by the Department of Consumer and Regulatory Affairs for violating of his home occupation permit. Upon information and belief, this violation was based on his employing more than one non-resident at Dupont Title.

Movahedi confirms that his business cannot operate without five non-resident employees, Application at 3, which further establishes that he has violated this provision since Dupont Title's inception. Mr. Movahedi also concedes that he is currently violating the requirement that no more than 25% of his residence's floor area be dedicated to a home occupation, see DCMR § 11-203.4(b), saying that "the portion of the business area which exceeds the permitted 25 per cent . . . is the dining room of the residence which is used occasionally for business purposes." Application at 2 (emphasis added). And Mr. Movahedi's counsel further conceded at a November 9, 2005 meeting of Advisory Neighborhood Commission 2B that more than 1000 square feet of the residence currently is devoted to Dupont Title's operations.

Despite knowingly and openly disregarding these zoning regulations, Mr. Movahedi persisted in his illegal conduct until the Zoning Administrator became aware of his violations. Only now, having been forced by the zoning authorities to cease operating his business in blatant disregard of District of Columbia law, does Mr. Movahedi seek a use variance from DCMR § 11-203.10(c) to permit Dupont Title to employ up to five non-residents.[5] See Department of Consumer and Regulatory Affairs Order (postponing enforcement proceeding pending a decision on Mr. Movahedi's variance application) (attached hereto as Exhibit 3). Ironically, to comply with the terms of this proposed variance, Mr. Movahedi would actually have to decrease his staff. In addition, he seeks a special exception from section 11-203.04(b)'s floor area requirement. Instead of the larger of 250 square feet or 25% of the home's floor area, Mr. Movahedi proposes that he be allowed to devote no more than 33% (or approximately 1000 square feet) of his home to his business. Id. To comply with this special exception as well, Mr. Movahedi would have to scale back Dupont Title's operations.

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[5] The existing limit is one non-resident employee, see DCMR § 11-203.04(d), and Mr. Movahedi will be forced to comply with this limitation if his use variance application is denied.

Mr. Movahedi's application is fatally flawed in numerous fundamental respects and should be denied.

II. THE APPLICATION FOR A USE VARIANCE SHOULD BE DENIED.

On its face, Mr. Movahedi's application for a use variance[6] is self-defeating. Not only does he concede that his home is suitable for residential purposes – he proposes to live in two-thirds of it – which categorically precludes him from obtaining a use variance, but his application unquestionably is barred by the "self-created hardship" doctrine. Mr. Movahedi knew of the regulations from which he seeks relief when he began illegally operating Dupont Title, and any hardship that he might experience without a variance would result entirely from being forced to move this business. Moreover, as Advisory Neighborhood Commission 2B found in unanimously recommending that the his use variance application be denied, Mr. Movahedi makes nothing approaching the necessary showings that his house is exceptionally situated, that he would face "exceptional and undue hardship" in the absence of a variance, and that his variance would not impair the intent, purpose, or integrity of the zoning plan for his property. D.C. Code § 6-641.07(g)(3); DCMR § 11-3101.2. The ANC's finding is entitled to "great weight" in the Board's consideration of Mr. Movahedi's application. See D.C. Code § 1-309.10(d)(3)(A).

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[6] Mr. Movahedi agreed at the November 9, 2005 meeting of ANC 2B that he is seeking a use variance from section 11-203.10(c). His argument that there is an "extraordinary or exceptional situation or condition" concerning the property that imposes an undue hardship tracks the use variance standard. Application at 2. Indeed, the Board has concluded that variances from DCMR § 11-203 are use variances because they "introduce a use into the zone district under conditions other than those allowed as a matter of right or required for special exception approval, and the proposed use of the subject property could potentially alter the character of the zone district." In re: Application of Gonzalez (attached hereto as Exhibit 4) at 11.

A. The Standards Governing Use Variances

Pursuant to D.C. Code § 6-641.07(g)(3) and DCMR § 11-3103.2, the Board has the power to grant a use variance – which runs with the subject property – under the narrowest of circumstances.[7] Indeed, the District of Columbia Court of Appeals has gleaned from these provisions three strict criteria that a landowner must satisfy to obtain a use variance: "(1) unique physical aspect or other extraordinary or exceptional situation or condition of a specific piece of property; (2) undue hardship; and (3) no harm to the public or to the zone plan." Monaco v. BZA, 407 A.2d 1091, 1096 (D.C. 1979).[8] As the Court of Appeals has explained, these showings are extremely demanding: "the burden of proof is greater for a use variance than for an area variance. A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. In short, it must be shown that strict application of the Zoning Regulations would preclude the use

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[7] D.C. Code § 6-641.07(g)(3), which is repeated in DCMR § 11-3103.2, provides:

> Where, by reason of exceptional narrowness, shallowness, or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this subchapter would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of such property, to authorize, upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map. (emphasis added).

The legislature obviously went to great lengths in drafting this statute to ensure that use variances are unavailable except in the most egregious circumstances.

[8] Because the first and second factors are so closely related, they often are considered together (as they are in Mr. Movahedi's application). Accordingly, Objectors will address them together.

of the property for any purpose to which it may reasonably be adapted." Silverstone v. BZA, 396 A.2d 992, 993 (D.C. 1979) (quotations omitted) (emphasis added); see also Palmer v. BZA, 287 A.2d 535, 542 (D.C. 1972) ("[T]he hardship envisioned by the statute must be great. A use variance cannot be granted unless a situation arises where reasonable use cannot be made of the property in a manner consistent with the Zoning Regulations. An inability to put property to a more profitable use or loss of economic advantage is not sufficient to constitute hardship. It must be shown that the regulations preclude the use of the property in question for any purpose for which it is reasonably adapted, i.e., can the premises be put to any conforming use with a fair and reasonable return arising out of the ownership thereof?") (quotation omitted) (emphasis added). Moreover, "in the context of use variances, an inability to put property to a more profitable use . . . is not sufficient to constitute hardship." Tyler v. BZA, 606 A.2d 1362, 1367 n.7 (D.C. 1992) (quotation omitted).

B. Mr. Movahedi Has Not Identified Any Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition Creating "Undue and Exceptional Hardship."

1. Mr. Movahedi Has Not Established That His Residence Cannot Be Put to a Conforming Use.

Mr. Movahedi expressly concedes in his variance application that he remains willing to live in two-thirds of his allegedly uninhabitable home. Application at 3. This admission, standing alone, categorically requires the denial of his application (and, in reality, makes this an exceptionally easy case). See Silverstone, 396 A.2d at 993; Palmer, 287 A.2d at 542. Mr. Movahedi further concedes that his home has been used as a residence since 1890 (and was used for this exclusive purpose when he paid approximately $1.2 million for it in 2002). Application at 1. This admission likewise establishes that Mr. Movahedi's house unquestionably

is fit for its zoned purpose. Indeed, if Mr. Movahedi's home is uninhabitable, then virtually no residence in the District would be suitable for residential use.

In the face of these admissions, Mr. Movahedi has concocted the astonishing and wholly frivolous argument based on the physical attributes of his 115 year old residence that this building is somehow "unsuitable for residential use." Application at 2. Mr. Movahedi bases this claim on his house's alleged (1) long, narrow design; (2) absence of rear access and rear views; (3) limited light; and (4) proximity to noise on 17th Street. These incredible assertions are easily rejected.

The design of Mr. Movahedi's house is standard for his neighborhood. It is not significantly (if at all) longer or narrower than his neighbors' homes. And more fundamentally, Mr. Movahedi does not specify how a long, narrow house is unsuited to be a house at all. Some of Mr. Movahedi's neighbors similarly lack rear access, and many (if not all) have more limited views and less light than Mr. Movahedi; Mr. Movahedi's house has over 25 windows, the majority of which face Q Street (not 17th Street), onto which his front door opens. And again, Mr. Movahedi does not elaborate on his conclusory suggestion that these conditions make his home "unsuitable for residential use." Application at 2. Mr. Movahedi's final allegation – i.e., that his house is proximate to the noise on 17th Street, and that because his bedroom is in the front of the house he cannot obtain any relief from this noise – is equally unpersuasive. Scores of residences in the neighborhood, both on 17th Street and streets that intersect it, are equally proximate to the noise on 17th Street.[9] Not only has no other owner during the last 115 years found that the bedroom's location rendered the home uninhabitable, and not only did Mr. Movahedi buy the house in 2002 (for $1.2 million) with full knowledge of the noise on 17th

[9] For example, residences line the west side of 17th Street between P and Q Streets, and there are several apartment buildings along both sides of 17th Street between Q and R Streets.

Street (and the location of the master bedroom), but all of the buildings on the 1700 block of Q Street were designed by the same noted architect, T.F. Schneider, with the master bedroom in the front of the house. Mr. Movahedi's arguments are patently insufficient to warrant a use variance.

2. The "Self-Created Hardship" Doctrine Bars Mr. Movahedi's Use Variance Application.

Even setting aside Mr. Movahedi's failure to show that his home is unsuitable for residential use – which requires the denial of his variance request as a matter of law – Mr. Movahedi's application is also barred by the "self-created hardship" doctrine. For the past several years, Mr. Movahedi has knowingly disregarded the "one non-resident employee" limit from which he now seeks a use variance. Indeed, upon information and belief, he was already actively engaged in his title and settlement business when he moved into the home, which strongly suggests that he intended to violate this limit even before he bought the residence. The "self-created hardship" doctrine takes aim at cases precisely like this one.

This doctrine holds simply that "[i]f the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have themselves been caused or created by the property owner, . . . the essential basis of a variance – that is, that the hardship be caused solely through the manner of operation of the ordinance upon the particular property – is lacking. In such a case, a variance may not be granted." Foxhall Comm. Citizens Ass'n v. BZA, 524 A.2d 759, 761 (D.C. 1987) (quoting 3 A. Rathkopf and D. Rathkopf, The Law of Zoning & Planning § 39-01 (4th ed. 1986)) (other citations omitted). The Foxhall court explained that "[t]he self-created hardship rule applies, for example, to owners who purchase property with actual or constructive knowledge of zoning restrictions from which they intend to seek administrative relief." Id.

In Dwyer v. BZA, for example, two lawyers purchased a property at 20th and R Streets, N.W. which was located in the same R-5-B residential zone as Mr. Movahedi's house. 320 A.2d 306, 306 (D.C. 1974). Although this property previously had been used as a medical office, it was not zoned for such a commercial use, and when the owners were informed that their activities violated the zoning regulations they applied for a use variance, "[r]epresenting that extreme hardship would result if the owners were required to use the property for its zoned purpose." Id. at 307. The Court of Appeals rejected this argument out of hand, holding that "'[h]ardship, if any, has not resulted from the location, situation or condition of the property, but solely from [the lawyers'] appropriation of it for commercial purposes without first having obtained the necessary change in zoning. To countenance such a procedure and standard for the procurement of a variance is to encourage the destruction of planned zoning in the District of Columbia.'" Id. at 308 (quoting Clouser v. David, 309 F.2d 233, 234 (D.C. Cir. 1962)). The court concluded that it was "too clear for further discussion that there was a rational basis for the Board's conclusion that [the lawyers] failed to make the required showing of hardship to warrant a variance." Id.

Similarly, in Bernstein, the petitioners owned an apartment house that included a space that was illegally dedicated to a commercial use. 376 A.2d at 818. The owners sought a use variance based on the alleged hardship involved in remodeling the space for the residential use for which it was zoned. Id. at 819. Although the Court of Appeals recognized that the space had been used commercially for 20 years, it nonetheless affirmed the BZA's rejection of the variance request, reasoning that "any hardship which results from converting the unit from an illegal back to a legal use was self-imposed. Moreover, it is well established that a mere desire to use property in a given manner, or in a manner designed to return a greater profit, does not

constitute a showing of an undue hardship that will support the granting of a use variance." Id. at 820 (citations omitted).

The Board confirmed these principles in In re: Application of Gonzalez (Decision and Order attached hereto as Exhibit 4). In that case, the applicant sought a variance to establish a bed and breakfast barely a block from Mr. Movahedi's residence. In denying the application, the Board observed that the applicant had "purchase[d the] property with actual or constructive knowledge of zoning restrictions from which [he] intend[ed] to seek administrative relief." Id. at 15 (citing Foxhall, 524 A.2d at 761) (other citations omitted). Accordingly, the Board concluded that the variance request was barred by the self-created hardship doctrine.

It is difficult to imagine a case in which these principles apply more squarely or forcefully than this one. Mr. Movahedi plainly knew (or at least had constructive knowledge) when he purchased his house in 2002 of DCMR § 11-203.10(c), from which he now seeks a use variance. Nonetheless, he openly disregarded this provision in operating a title and settlement business employing approximately eight people and using more than the maximum amount of floor area. Mr. Movahedi seeks a variance not because there is too much noise on 17th Street (or for any of the other purported reasons for his application), but rather because he does not want to discontinue his illegal business in his residence. This is a classic case of self-created hardship, and it bars Mr. Movahedi from obtaining a use variance.

C. Mr. Movahedi's Proposed Variance Would Directly Impair the Intent, Purpose, and Integrity of the Zoning Plan for His Property.

Even if Mr. Movahedi had established that his home was unfit for residential use and that the denial of his variance would create an "exceptional and undue hardship" – which he plainly has not – he still could not obtain the variance unless he established that it would not pose a "substantial detriment to the public good" or "substantially impair[] the intent, purpose, and

integrity of the zone plan as embodied in the zoning regulations and map." D.C. Code § 6-641.07(g)(3), DCMR § 11-3101.2; Monaco, 407 A.2d at 1096. Mr. Movahedi cannot possibly make these showings because his application would directly undermine the residential character of his neighborhood, which the District of Columbia zoning regulations and Comprehensive Plan are designed to preserve.[10]

Mr. Movahedi's home lies within the Dupont Circle Overlay District, see DCMR § 11-1501, and the Dupont Circle Special Treatment Area, see Comprehensive Plan § 1131, and is a contributing building in the Dupont Circle Historic District. Section 1501.4 provides that the purposes of the Dupont Circle Overlay District are to "[p]rotect the integrity of 'contributing buildings' [like Mr. Movahedi's], as that term is defined by the Historic landmark and Historic District Protection Act of 1978," to "[e]nhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development," and to "[e]nsure compatibility with the Comprehensive Plan." DCMR § 11-1501.4(b), (c) and (d) (emphasis added).

The Comprehensive Plan, in turn, establishes the Dupont Circle Special Treatment Area (which is geographically coextensive with the Dupont Circle Overlay District),

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[10] We understand that Mr. Movahedi may argue, based on a map created by the District of Columbia Office of Planning, that his home lies in a "mixed use" area and that his proposed home business therefore is consonant with the purposes set forth in the Comprehensive Plan. This assertion is meritless for at least three reasons. First, even if his home was in a mixed use area, the Comprehensive Plan expressly lists as one of its purposes "[e]ncourag[ing] the retention and expansion of residential uses in mixed use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary." Comprehensive Plan § 1104.1(g) (emphasis added). Second, in any event, the map on which Mr. Movahedi may rely has no legal effect. By contrast, the zoning regulations governing home occupations in a R-5-B zone are legally binding, and squarely preclude the relief Mr. Movahedi seeks. Third, from a practical perspective, Mr. Movahedi is arguing that the Office of Planning wants to turn his gorgeous home, turret and all, into a business. This assertion is so preposterous as to warrant no further comment.

explaining that the purposes of this Area are to "[e]nhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development" and to "[e]nsure compatibility of the development with the Comprehensive Plan." Comprehensive Plan § 1131.2(d) and (e).

The Plan similarly lists various objectives for residential neighborhoods, including protecting these areas from "disruptive uses" and "prevent[ing] concentrations of nonresidential uses in residential neighborhoods." Comprehensive Plan § 1102.1(e) and (f). Other residential neighborhood objectives set forth in the Plan include (1) "[c]onserv[ing] and maintain[ing] the District's sound, established neighborhoods through the strict application and enforcement of housing, building, and zoning codes and the maintenance of the general level of existing residential uses"; (2) "[e]ncourag[ing] the retention and expansion of residential uses in mixed use neighborhoods to help maintain the residential character of these areas, through modification of land use and related regulations when necessary"; (3) "[p]rotect[ing] low and moderate density residential neighborhoods that are also designated for commercial uses from uses that are incompatible with residential neighborhoods"; and (4) "[c]ontrol[ling] the external negative impact of new non-residential uses that are permitted in residential areas." Id. § 1104.1(b), (g), (j) and (k).

It cannot seriously be argued that expanding the number of non-resident employees permitted in Mr. Movahedi's home occupation – who would work alongside however many residents Mr. Movahedi chooses to employ at Dupont Title – from one, see DCMR § 11-203.4(d), to five, see Application at 1, would be consistent with these goals. Quite the contrary, because there is nothing unique about Mr. Movahedi's property warranting a use variance, there would be no principled basis for rejecting a similar request from any of his neighbors. Indeed,

because the type of commercial use sought by Mr. Movahedi would dramatically increase the resale value of his home, a decision granting the variance he seeks would create powerful economic incentives for his neighbors to seek similar accommodations. And even worse, given that use variances run with the property, see National Black Child Development Inst., Inc. v. BZA, 483 A.2d 687, 691 (D.C. 1984), not only would these ill effects of the variance sought by Mr. Movahedi be felt in perpetuity, but there would be no way to ensure that the future owners of his home (and of his neighbors' homes, should they be granted variances as well) would not establish even more disruptive businesses. It is precisely because of this possibility that "[w]ith the possible exception of 'spot zoning,' nothing can contribute more to the general breakdown of the zoning system in any municipality than the indiscriminate practice of granting variances." E.C. Yokley, Zoning Law & Practice § 21-1, at 262.

The purpose of the home occupation regulations is to balance a neighborhood's residential character with an owner's ability to conduct a small, home-based business. See DCMR § 203.1. Mr. Movahedi, by contrast, wants to conduct real estate closings with untold numbers of parties, real estate agents and attorneys, together with five non-resident employees (which, of course, excludes him and any other person(s) who reside(s) in the "very large" house). Application at 1. This use would directly threaten the residential character of the neighborhood that he and Objectors share, and would undermine the purposes of the Dupont Circle Overlay District, the Dupont Circle Special Treatment Area, and the Comprehensive Plan. For these reasons as well, the application for a variance should be denied.

III. MR. MOVAHEDI'S APPLICATION FOR A SPECIAL EXCEPTION SHOULD BE DENIED.

Given that Mr. Movahedi is not entitled to a use variance from DCMR § 11-203.10(c), his only remaining request is for a special exception from the 25%/250 ft^2 floor area limit set forth in section 11-203.4(b). This request is no more meritorious than his variance application.

Special exceptions from the home occupation regulations may be granted only where the deviation is minor in scope and is "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property." DCMR § 11-3104.1. In addition, DCMR § 11-203.10 further limits the circumstances under which special exceptions from these regulations can be granted: First, the exception must be consistent with the purposes set forth in section 203.01, which permits home occupations that are accessory to residential uses "provided that they are compatible with the residential neighborhood in which they are located. The intent is 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 under specific regulatory conditions." DCMR § 11-203.1. Second, no special exception may be granted that permits more than 2 non-residents of the home to work as employees of the home occupation (this is why Mr. Movahedi seeks a use variance to employ five non-residents). See id. § 203.10(c). Finally, an applicant cannot seek exceptions from more than two conditions set forth in sections 11-203.4-203.8. Id. § 11-203.10(b). "A request to modify more than two (2) of [those requirements] shall be deemed a request for a [use] variance." Id. § 11-203.10(d).

A. The Self-Created Hardship Doctrine Bars Mr. Movahedi From Obtaining a Special Exception.

Like Mr. Movahedi's use variance application, his request for a special exception is barred by the self-created hardship doctrine. To ratify Mr. Movahedi's knowing, blatant disregard of the floor area limits imposed by section 11-203.4(b) by granting him a special exception from that requirement (in other words, to exempt Mr. Movahedi from the law instead of calling him to account for violating it) would run directly counter to the fundamental underpinnings of the self-created hardship doctrine. See Dwyer, 320 A.2d at 308. Such a result would send a completely unacceptable message to other property owners that compliance with the zoning regulations is optional, that those rules can be freely violated, and that if and when the violator is caught, the only consequence is that he will be exempted from those regulations. This of course, is not the law. The zoning regulations are real, and the decision to disregard them has consequences, one of which is that the violator cannot then ask the Board to ratify his conduct by excepting him from the rule(s) he has violated. See Lang v. BZA, 407 A.2d 1058, 1061 (D.C. 1979) ("[A]ny interpretation of the regulations which expands the prerogatives of nonconforming users is undesirable. Surely, an interpretation of the zoning regulations which confers a benefit from the violation of the regulations is equally as undesirable."); Bernstein, 376 A.2d at 819 (rejecting request to "carve[] out a special exception, so as to legalize a use which is now and has been since its inception an illegal use"). For this reason, the self-created hardship doctrine prevents Mr. Movahedi from obtaining relief from the regulations that he has willfully disregarded for his own financial gain.

B. The Special Exception Sought by Mr. Movahedi Would Not be in Harmony With the Zoning Regulations.

Just as increasing the number of non-resident employees would threaten the residential character of his neighborhood, Mr. Movahedi's request to ratify his current use of more than the maximum floor area allowed under the home occupancy rules – and thereby heighten the commercial character of his residence – is directly contrary to the purposes underlying the Dupont Circle Overlay District, the Dupont Circle Special Treatment Area, and the Comprehensive Plan. See DCMR § 11-1501.4; Comprehensive Plan §§ 1102.1, 1104.1, 1131.2. Each of these provisions is designed to strictly protect the residential character of these special districts – especially as concerns "contributing buildings" in the Dupont Circle Historic District (like Mr. Movahedi's home), see DCMR § 11-1501.4(b) – and to guard against the commercialization of residential neighborhoods.

Mr. Movahedi's application runs directly counter to these objectives. Because his residence is so large, Mr. Movahedi is entitled to devote approximately 750 square feet above the basement level to his business without a special exception. DCMR § 11-203.4(b). This amount of space would be more than adequate for any home occupation within the contemplation of the zoning regulations (owners with smaller homes would not be permitted to dedicate nearly this amount of space to a home occupation). See id. No commercial use that would find that amount of space to be inadequate – and that instead requires (at a minimum) a 50' by 20' area to operate – can fairly be considered "in harmony" with the neighborhood's residential character, or the purposes expressed in the foregoing provisions.

For the same reason, Mr. Movahedi's special exception request is inconsistent with section 11-203.1, which similarly requires home occupations to be "compatible with the residential neighborhood in which they are located." There is nothing compatible about (1)

increasing the floor area dedicated to a home business in order to accommodate numerous employees and untold numbers of visitors; and (2) the residential purposes underlying a "contributing building" located in the foregoing protected and historic districts. See Gage v. BZA, 738 A.2d 1219, 1221 (D.C. 1999) (affirming denial of special exceptions to health professionals seeking to open offices in residential complex based on finding that "the only existing legitimate use of the structure would be for residential purposes").

C. Mr. Movahedi Actually Requires More than Two Special Exceptions in Order to Operate His Home Occupation, and Consequently Cannot Obtain Any Special Exception.

Mr. Movahedi is limited to two special exceptions. See DCMR § 11-203.10(d) ("Any request to modify more than two (2) of the requirements found in §§ 203.4 through 203.8 shall be deemed a request for a variance."). Although Mr. Movahedi purports to seek only one such exception, this is merely an attempt to circumvent the "2 exception" limitation because, in reality, his business will require relief from more than two rules set forth in section 11-203.4.

First, Mr. Movahedi obviously requires a modification of the requirement posed by DCMR § 11-203.4(d) that no more than one non-resident may be employed by a home occupation. Although he casts this as a use variance from section 11-203.10(c) (as he must given that he wants more than 2 non-resident employees), he still intends to violate section 11-203.4(d) and must obtain relief from this regulation.

Second, Mr. Movahedi likely requires relief from DCMR § 11-203.4(a), which provides that "[a] home occupation shall be clearly secondary to the use of a dwelling unit for residential purposes." Here, Mr. Movahedi wants to use his home primarily for commercial purposes during business hours, with upwards of five employees and untold numbers of guests,

with only a 2:1 non-business to business floor area ratio. Such an extensive commercial use requires a modification of section 11-203.4(a).

Mr. Movahedi has not sought relief from these provisions. Had he done so, of course, he would have been required to seek a variance, not a special exception. See DCMR § 11-203.10(d). The Board may take notice of his need for these additional exceptions, see In re: Application of Gonzalez at 11, however, and should deny Mr. Movahedi's application for a special exception from section 11-203.4(b) on this basis as well.

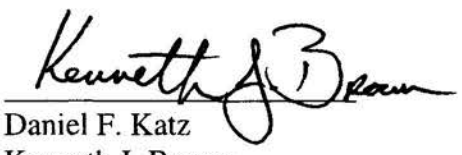
CONCLUSION

It is hard to imagine conduct more unbecoming a public official than that exhibited by Mr. Movahedi here. Mr. Movahedi did not even wait until he took office to start violating D.C. law by illegally operating a business out of his home. He was violating the law both during his election campaign and after accepting a position on ANC 2B. To make matters even worse, Mr. Movahedi is a licensed attorney who swore to be bound by a Code of Ethics that most certainly does not sanction the duplicitous and wholly illegal conduct in which he has engaged over a sustained period. And perhaps most disturbing, Mr. Movahedi never voluntarily came forward to request a variance – he sought one only after being caught red-handed.

The Board should flatly deny Mr. Movahedi's application for a use variance from DCMR § 11-203.10(c) and for a special exception from DCMR § 11-203.4(b). His application is defective on its face because he admits that he will indeed live in his "uninhabitable" residence. His application must fail because the only "hardship," if any, is self-created. And Mr. Movahedi's application must be denied because the variance sought would obliterate the carefully constructed zoning and land use plan in Dupont Circle.

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By: 

Daniel F. Katz
Kenneth J. Brown
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000
(202) 434-5029 (telecopy)

Attorneys for Objectors David Mallof, John Evans, Alaire Rieffel, Michael Trister, Nancy Campbell and Ralph Johanson

November 15, 2005

CERTIFICATE OF SERVICE

I, Kenneth J. Brown, hereby certify that, on this 15th day of November, 2005, I caused the foregoing Statement of Objectors in Opposition to be served by first-class mail on the following counsel and individuals:

Stephen N. Gell, Esq.
1101 30th Street, N.W.
Fifth Floor
Washington, DC 20007
(202) 625-8311
(703) 522-5503 (facsimile)
Counsel for Applicant Babak Movahedi

Commissioner Darren Bowie, Chair
Advisory Neighborhood Commission 2B
9 Dupont Circle
Washington, DC 20036

Joel Lawson
Office of Planning
801 N. Capital Street, N.E., Suite 4000
Washington, D.C. 20002



Kenneth J. Brown

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D.C. Voters' Guide

to the Nov. 2, 2004, General Election

Candidates for
Advisory Neighborhood Commission 2B

(*) asterisk indicates a contested race on ballot

(All candidates were asked to respond to a written questionnaire)

SMD 2B01 Robert P. Halligan

SMD 2B02 Karyn-Siobhan Robinson

SMD 2B03 Bob Meehan

SMD 2B04 Darren A. Bowie

- Address: 1529 Q Street NW, No. 4
- E-mail address: dabowie@msn.com
- Age: 36
- D.C. resident: 5 ½ years
- Education: B.A. with high honors, College of William and Mary; J.D., University of Pennsylvania Law School
- Current occupation/employer: Assistant director, Division of Financial Practices, Federal Trade Commission
- Other significant experience: ANC 2B04 commissioner, January 2003-present; chair, ANC 2B, March 2004-present; vice president, Dupont Circle Citizens Association, October 2000-January 2003; co-chair, Dupont Circle House Tour, 2001-2002; volunteer, Whitman Walker Clinic Legal Services Department; member, DC Bar, Antitrust and Consumer Law Section

What are the most important issues facing your neighborhood in the next two years and how do you plan to address them?

Residents of Dupont Circle are very fortunate to live in a diverse, vibrant neighborhood. I want to work with my neighbors to keep our neighborhood such a terrific place to live, and to make it even better. On the ANC, I will continue to focus on the following issues:

- Public safety—I support increased police foot patrols and will work with the Metropolitan Police Department to keep our streets safe.
- Environment—I want to work to increase the planting of new trees and the replacement of

diseased and dead trees, to keep our neighborhood beautiful and green. I also want to increase enforcement of recent trash regulations to combat the scourge of rats.
- Economic development—I support the existing diverse businesses on 17th Street and throughout Dupont Circle, and believe it is important that the ANC work with the business community.
- Parking—I support continued implementation of the recommendations of the Dupont Circle Parking Task Force, which identified 91 new curbside parking spaces in our neighborhood.

SMD 2B05 Mark L. Bjorge

SMD 2B06 Myron Silverstein

- Address: 1301 20th Street NW
- E-mail address: mike.silverstein@dupontcircleanc.net
- Age: 56
- D.C. resident: 24 years
- Current occupation/ employer: News editor, writer

What are the most important issues facing your neighborhood in the next two years and how do you plan to address them?

Balancing the needs of businesses, especially restaurants, bars and clubs with the demands of residents for peace, order, quiet and public safety. It is a constant balancing act that requires good faith efforts of all. And it's not getting easier, with nearly 500 new apartment and condo conversions already underway in my single member district. We treasure our vibrant nightlife and choice of restaurants and entertainment, but a good night's sleep is also important. There will be conflicts. We must be good neighbors and find workable solutions.

***SMD 2B07 Babak Movahedi**

- Address: 1700 Q Street NW
- E-mail address: anc2b7@aol.com
- Age: 44
- D. C. resident: 21 years
- Education: MBA, George Washington University; JD, LLM, Georgetown University Law Center
- Current occupation/employer: Small business owner
- Other significant experience: Kerry-Edwards National Trustee; Attorney of the Year, Whitman-Walker Clinic

What are the most important issues facing your neighborhood in the next two years and how do you plan to address them?

Public safety and an improved quality of life are the two most important issues facing the residents and local businesses of ANC2B7. Recent high profile crimes threaten to take away the security that we expect in our community. I plan to work for the next two years with the D.C. Metropolitan Police Department to find ways to decrease crime and to increase the response time when crime occurs. I will advocate for increased neighborhood foot and bike patrols on our streets. Finally, I will urge community members to report all incidents in order to compile the most accurate crime statistics possible.

Parking, trash, and noise are also prolonged concerns that warrant neighborhood attention. Over the next two years, I will work hand in hand with residents and local businesses to achieve the improvements that

our community ought to have. I will advocate for timely road repairs and improve lighting on our streets.

As a resident and local business owner, I know that we deserve only the best from our neighborhood. As your commissioner, I will ensure that we get it.

***SMD 2B07 Gerald Allan Schwinn**

- Address: 1743 Church Street NW
- E-mail address: gerald.schwinn@DupontCircleANC.net
- Age: 66
- D.C. resident: 39 years, since 1965
- Education: BA, Union College, Schenectady, N.Y.; MAT in English, Indiana University; MLS, The Catholic University of America
- Current occupation/employer: Museum guard, The Phillips Collection
- Other significant experience: Peace Corps, Nigeria; 26 years as an international energy consultant; active in local political campaigns and community organizations
- Married (Linda Posell)
- Children/Grandchildren: One son, two granddaughters

What are the most important issues facing your neighborhood in the next two years and how do you plan to address them?

The country and city face many critical issues - a misguided war, inadequate health care, $$ for a new stadium, poor quality schools. Few of these issues come before an Advisory Neighborhood Commission. But ANCs are an important way for neighbors to monitor and influence City actions that will impact the quality of life in their neighborhood.

In and near the Dupont Circle ANC (2B), there is always the need to assure that residents are listened to when new commercial developments are proposed. There is concern to maintain and improve the only large open park space in the area - Stead Playground. There is the historic character of the neighborhood to preserve, and the ANC participates in the meetings of the Dupont Circle Conservancy. The ANC public safety committee, in cooperation with the Dupont Circle Citizens Association, works closely with the 3rd District and its officers to monitor crime.

A continuing challenge is to hear from neighbors and to urge them to communicate their concerns to the ANC and City officials. To know about problems and concerns is necessary to seek solutions. As a current and hopefully re-elected ANC commissioner, I urge my neighbors to call me – 202-256-6881 – or to send me an e-mail – gerald.schwinn@DupontCircleANC.net – to share their concerns.

SMD 2B08 Peter L. Klempay

SMD 2B09 Ramon Estrada

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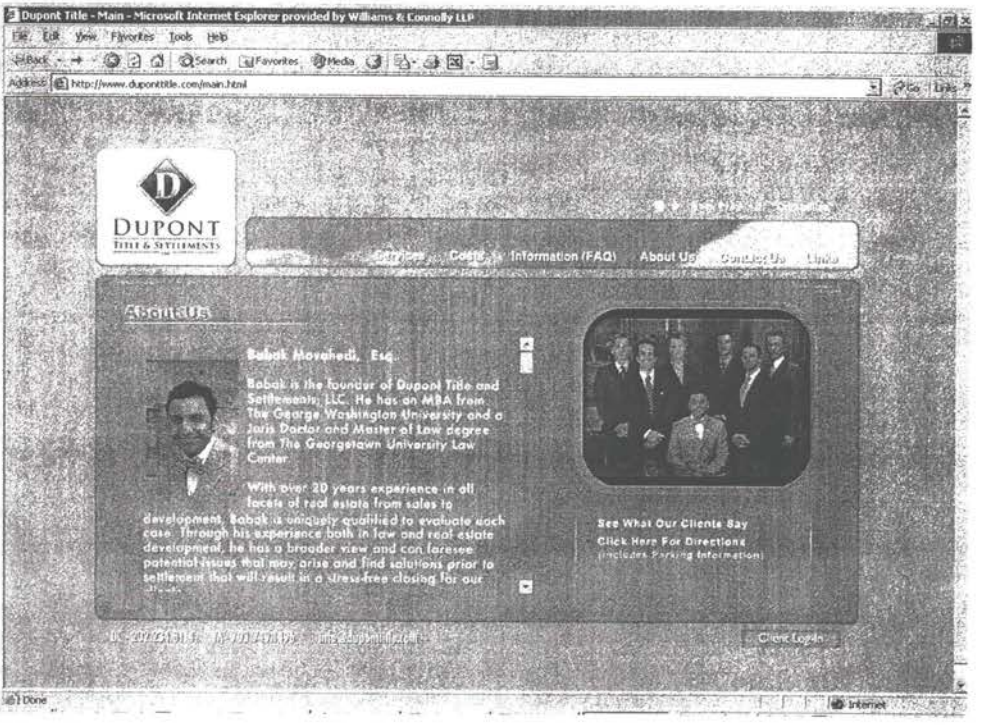
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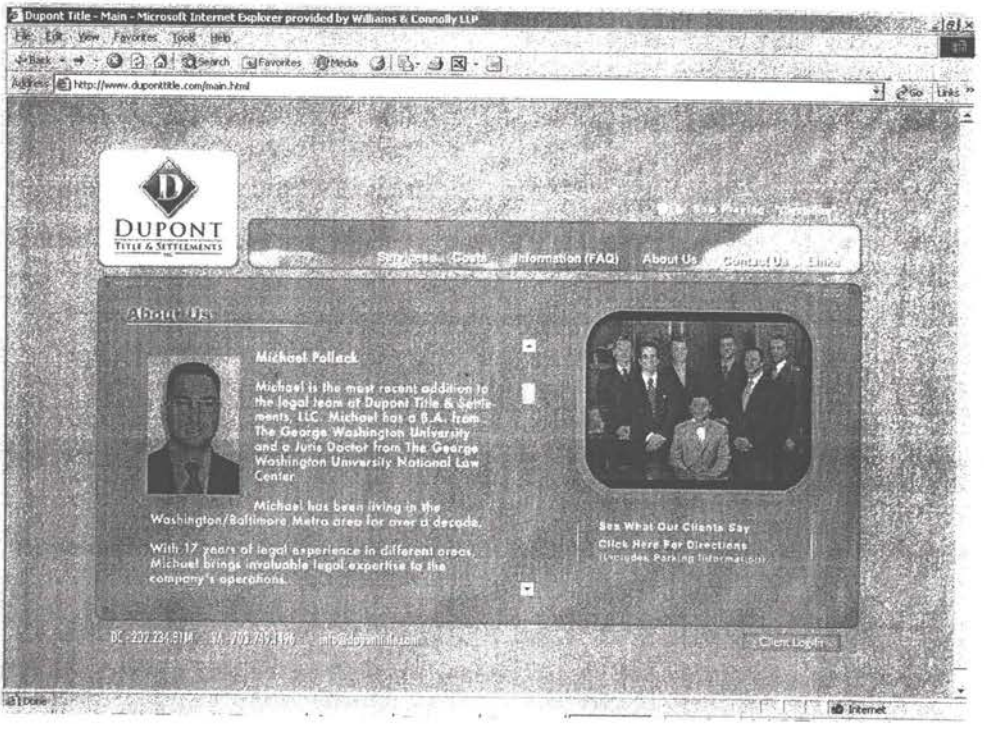
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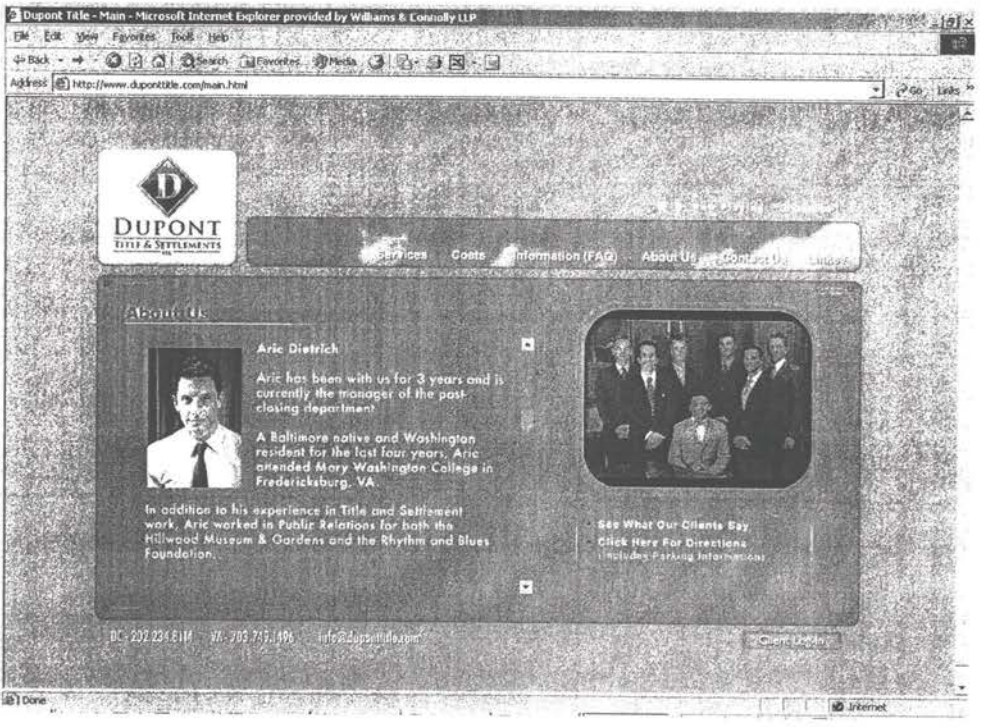
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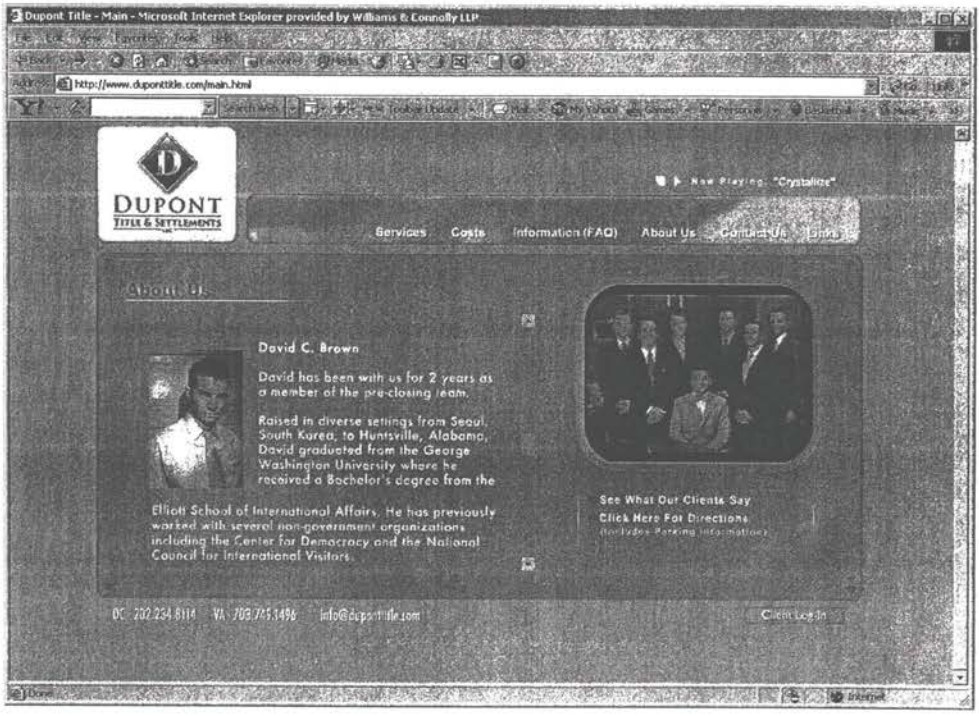

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Dupont Title & Settlements, LLC provides comprehensive residential and commercial real property title and settlement services in District of Columbia, Virginia, and Maryland. We are agents of Fidelity National, First American, and United General title insurance companies, three of the largest in the nation.
Call or e-mail us today and a member of our knowledge staff members will be glad to answer any questions you may have.
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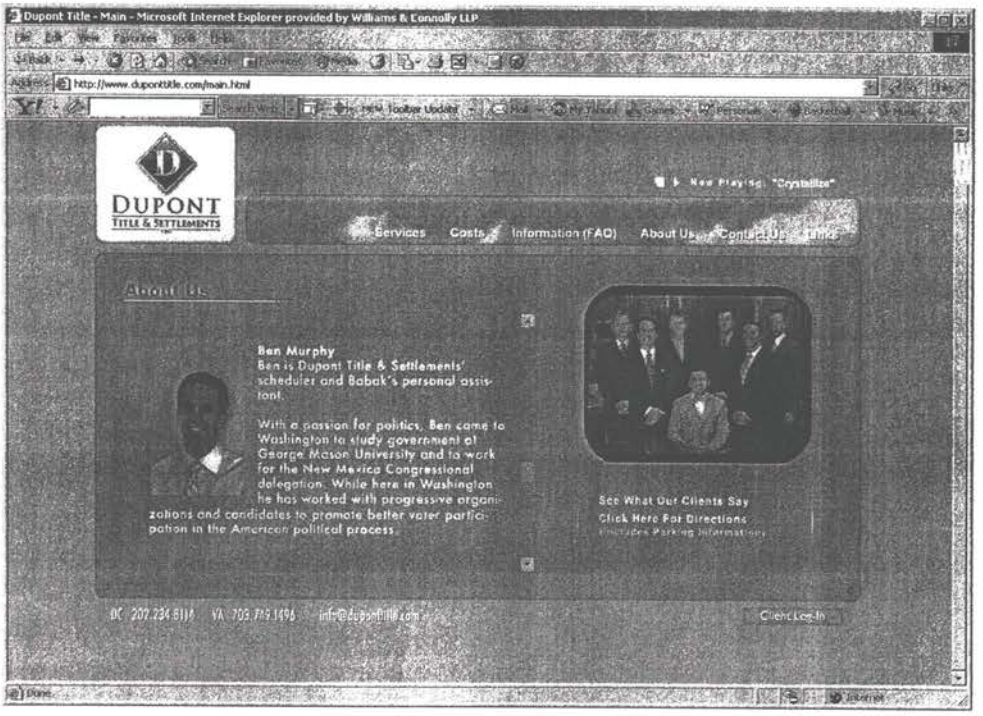

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Babak Movahedi, Esq.
Babak is the founder of Dupont Title and Settlements, LLC. He has an MBA from The George Washington University and a Juris Doctor and Master of Law degree from The Georgetown University Law Center.
With over 20 years experience in all facets of real estate from sales to development, Babak is uniquely qualified to evaluate each case. Through his experience both in law and real estate development, he has a broader view and can foresee potential issues that may arise and find solutions prior to settlement that will result in a stress-free closing for our
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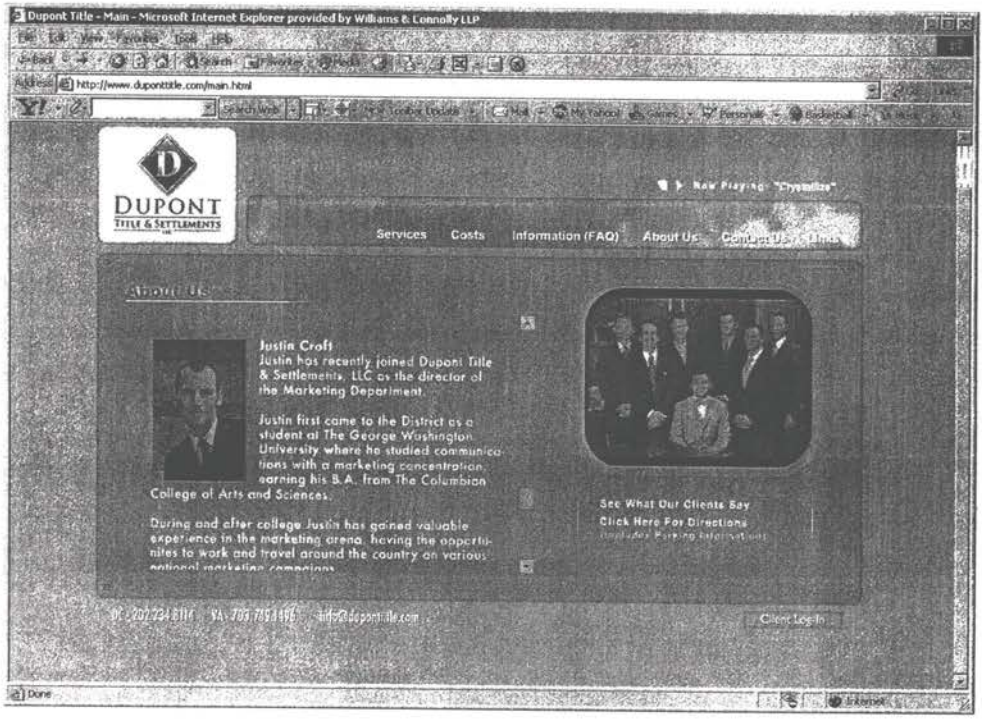

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Michael Pollack
Michael is the most recent addition to the legal team at Dupont Title & Settlements, LLC. Michael has a B.A. from The George Washington University and a Juris Doctor from The George Washington University National Law Center.
Michael has been living in the Washington/Baltimore Metro area for over a decade.
With 17 years of legal experience in different areas, Michael brings invaluable legal expertise to the company's operations.
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About Us
Aric Dietrich
Aric has been with us for 3 years and is currently the manager of the post-closing department.
A Baltimore native and Washington resident for the last four years, Aric attended Mary Washington College in Fredericksburg, VA.
In addition to his experience in Title and Settlement work, Aric worked in Public Relations for both the Hillwood Museum & Gardens and the Rhythm and Blues Foundation.
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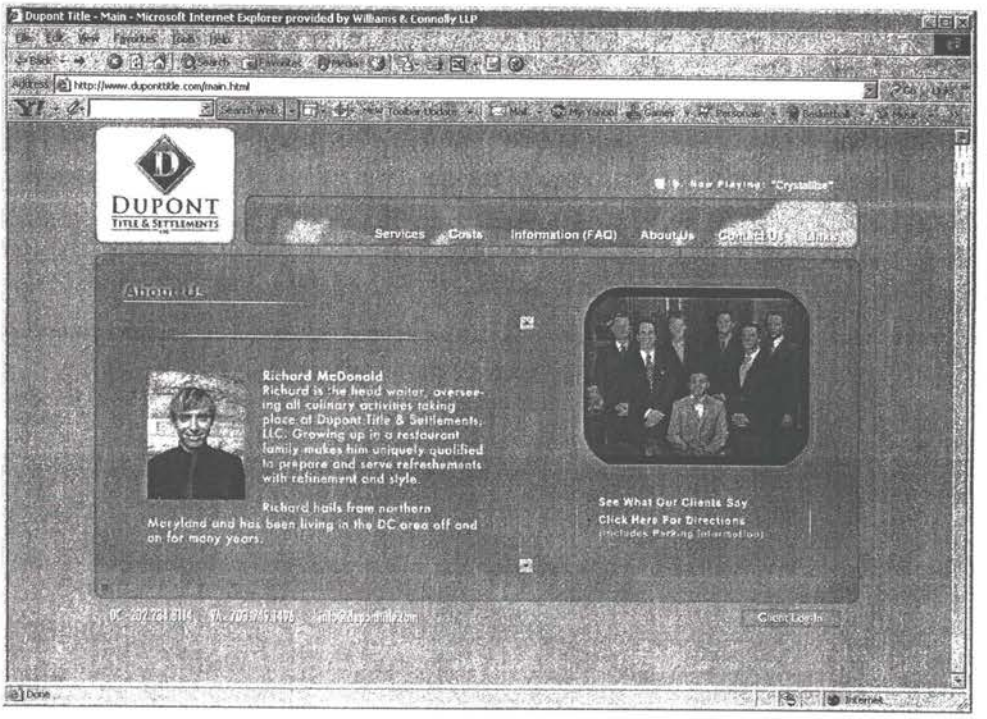

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Jeff Darrah
Jeff has been with us for 2 years and is currently a settlement agent and Operations Manager. A Northern Virginia native, Jeff graduated from the University of Virginia in Charlottesville and earned a Bachelor's degree from the Woodrow Wilson School of Foreign Affairs.
Prior to joining the Dupont Title & Settlements team, Jeff worked as a Logistics Officer for the Defense Department working on both domestic and overseas projects.
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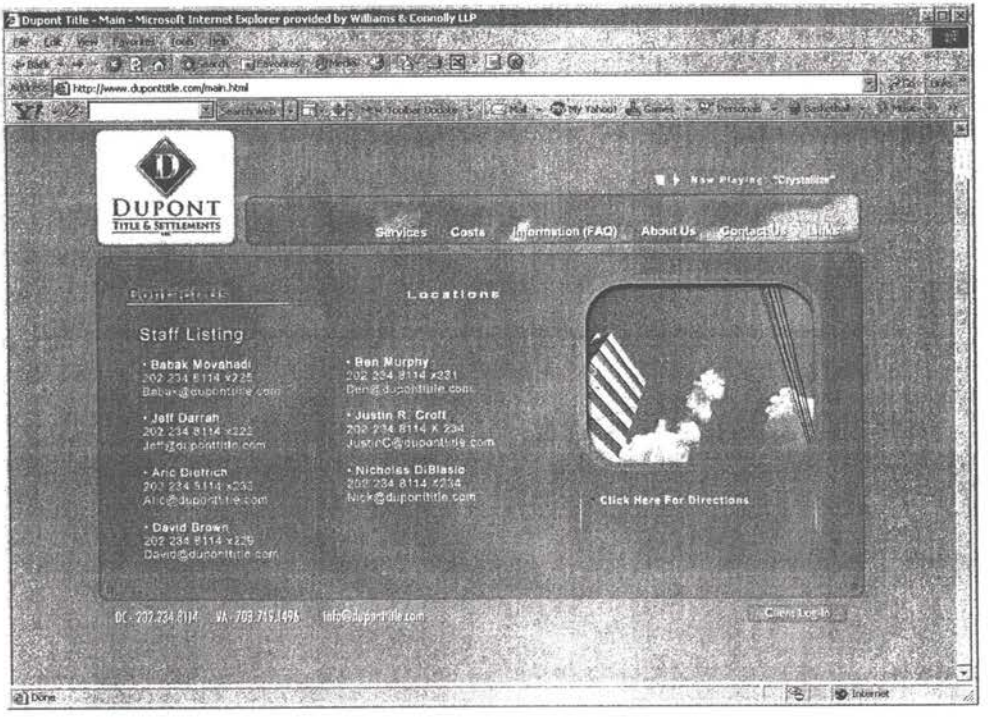

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David C. Brown
David has been with us for 2 years as a member of the pre-closing team.
Raised in diverse settings from Seoul, South Korea, to Huntsville, Alabama, David graduated from the George Washington University where he received a Bachelor's degree from the Elliott School of International Affairs. He has previously worked with several non-government organizations including the Center for Democracy and the National Council for International Visitors.
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Ben Murphy
Ben is Dupont Title & Settlements' scheduler and Babak's personal assistant.
With a passion for politics, Ben came to Washington to study government at George Mason University and to work for the New Mexico Congressional delegation. While here in Washington he has worked with progressive organizations and candidates to promote better voter participation in the American political process.
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Justin Croft
Justin has recently joined Dupont Title & Settlements, LLC as the director of the Marketing Department.
Justin first came to the District as a student at The George Washington University where he studied communications with a marketing concentration, earning his B.A. from The Columbian College of Arts and Sciences.
During and after college Justin has gained valuable experience in the marketing arena, having the opportunities to work and travel around the country on various national marketing campaigns.
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Nick DiBlasio
Nick just recently joined Dupont Title & Settlements, LLC as the newest member to the marketing department. As marketing coordinator, Nick works closely with the other members of the Dupont Title & Settlements team to develop and maintain the company's marketing initiatives.
Getting his start in the Army, Nick has been living and working in many of the major cities in the Mid-Atlantic region. His experience in sales and marketing for several major U.S. companies makes Nick an invaluable member of the Dupont Title & Settlements team.
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Richard McDonald
Richard is the head waiter, overseeing all culinary activities taking place at Dupont Title & Settlements, LLC. Growing up in a restaurant family makes him uniquely qualified to prepare and serve refreshments with refinement and style.
Richard hails from northern Maryland and has been living in the DC area off and on for many years.
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DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. DUPONT TITLE AND SETTLEMENT, LLC AND BABAK MOVAHEDI Respondents	Case No.: CR-I-05-N100165

TRANSMITTAL OF ORDER

Attached is a copy of the Order regarding Continuance in this matter as signed by the presiding Administrative Judge on September 15, 2005. The hearing is continued *sine die*.

Certificate of Service:

By U.S. Mail (Postage Paid):

Dupont Title and Settlement, LLC
1700 Q Street, NW
Washington, DC 20009

I hereby certify that on 9/15, 2005 this document was caused to be served upon the parties listed on this page at the addresses listed and by the means stated.

Clerk / Deputy Clerk

By Inter-Agency Mail:

James Aldridge
Department of Consumer and Regulatory Affairs
941 North Capitol Street NE
Washington, DC 20002

Julie Lee, Esq., General Counsel
Department of Consumer and Regulatory Affairs
941 North Capitol Street NE, Suite 9400
Washington, DC 20002

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DCRA Petitioner, v. DUPONT TITLE AND SETTLEMENT, LLC AND BABAK MOVAHEDI Respondent,	Case No.: CR-I-05-N100165

MOTION FOR POSTPONEMENT

1. In response to a Motion for postponement filed July 5, 2005, the Office of Administrative Adjudication granted a postponement until 2:00 p.m. Thursday, September 15 in the case of DCRA v. Dupont Title and Settlement, LLC, Notice of Infraction No. N100165.

2. Respondents hereby request a further postponement of the trial in this case until the final decision and order in BZA Case No. 17392 which was filed on June 30, 2005. In that application Respondents requested the BZA to grant a variance to permit the use of 1700 Q Street, N.W., as an office for his title business. We believe the tests for a variance have been met and there is a reasonable liklihood that the BZA will grant the appplication.

3. Since a BZA decision favorable to Mr. Movahedi will resolve the matter of the use of the premises as an office, it would appear that holding the hearing at this time would be an unnecessary waste of resources.

   a. A favorable BZA action would allow Mr. Movahedi not to contest the citation, since the expense of putting on a case in opposition would be far greater than the current fine.

   b. The Office of Administrative Hearings may be spared the time and expense of a lengthy hearing and would be able to streamline its decision process.

Granted.
Claudia Barber
Administrative Law Judge

4

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

★ ★ ★

Application No. 16823 of Humberto Gonzalez, pursuant to 11 DCMR § 3103.2 for a variance from the use provisions to allow a home occupation bed and breakfast with 10 sleeping rooms and four full-time equivalent employees under section 203 in the DCOD/R-5-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).

HEARING DATES: January 29, 2002; March 19, 2002; June 4, 2002; June 18, 2002; August 6, 2002; October 29, 2002; and November 12, 2002

DECISION DATES: January 7, 2003 and February 3, 2004

DECISION AND ORDER

This application was originally submitted November 19, 2001 by Humberto Gonzalez, the owner of the property that is the subject of the application ("Applicant"). A revised application was submitted April 10, 2002. Following a public hearing, the Board voted 3-2-0 on January 7, 2003 to deny the application.

PRELIMINARY MATTERS

Application. The application, as finally revised, requests a variance from the use provisions under section 203 to allow a bed and breakfast (home occupation) with 10 guest rooms and six full-time and two part-time employees, with a maximum of 24 social events per year hosted by guests and incidental to the bed and breakfast operation, in the DC/R-1-D District at premises 1720 16th Street, N.W. (Square 178, Lot 800).

Notice of Application and Notice of Hearing. By memoranda dated November 29, 2001, the Office of Zoning sent notice of the application to the Office of Planning, the Councilmember for Ward 2, Advisory Neighborhood Commission ("ANC") 2B, and the commissioner for single member district ANC 2B04.

A public hearing on the application was scheduled for January 29, 2002. Pursuant to 11 DCMR § 3113.13, the Office of Zoning, on December 13, 2001, mailed notice of the hearing to the Applicant, ANC 2B, and the owners of all property within 200 feet of the subject property. Hearing sessions were held on January 29, March 19, June 4, June 18, August 6, October 29, and November 12, 2002.

Requests for Party Status. ANC 2B was automatically a party in this proceeding. The Board granted party status to (i) the Dupont Circle Citizens Association; (ii) the

Residential Action Coalition; (iii) Anne Alvarez and Louis Santucci, Barbara and Frazer Hilder, P. Kenneth and Leslie M. Jadin, and Janessa and Adrian Robinson, a group of residents of the 1600 block of S Street, N.W. represented by Ken Jadin; and (iv) Laurie Emrich, Margot Polivy, Max Salas and Vickie Bruff-Salas, Russell Stevenson, Mark Siminoff, and Lisa Kaplan, a group of residents of the 1600 block of Riggs Place, N.W. represented by Margot Polivy. A request for party status by Lucinda Eng-Garcia, the Applicant's designer and architect, was denied.

Applicant's Case. The Applicant seeks a variance to allow a bed and breakfast (home occupation) with 10 guest rooms and six full-time and two part-time employees, with a maximum of 24 social events annually hosted by guests of the bed and breakfast. The Applicant asserted that a six-room bed and breakfast would be allowed on the subject property as a matter of right, and that guest-sponsored social events are permitted as a matter of right as an accessory use to a bed and breakfast. The Applicant offered to conduct the bed and breakfast operation subject to a traffic management plan and to specified conditions regulating, among other things, the number, frequency, and timing of special events.

Government Reports. Through testimony at the public hearing and by reports dated January 15, 2002 and May 21, 2002, the Office of Planning ("OP") recommended approval of the application, conditioned on "a favorable recommendation from the Historic Preservation Review Board and suitable assurances regarding operation of the Bed and Breakfast regarding parking and special events, preferably in the form of a written agreement with the neighborhood." Through testimony at the public hearing and by reports dated September 26, November 12, and November 20, 2002, the District of Columbia Department of Transportation ("DDOT") endorsed the Applicant's proposed transportation management plan and indicated no objection to the proposed bed and breakfast use.

ANC Report. With a quorum present at a duly called public meeting held January 16, 2002, ANC 2B unanimously voted to oppose the application and to seek to negotiate an agreement with the Applicant to address issues of neighborhood concern, particularly with respect to special events potentially conducted at the subject property. The ANC indicated its support for efforts to renovate the subject property but recognized concerns about the impact of a large bed and breakfast on the residential neighborhood. ANC 2B reiterated its unanimous opposition to the application at its public meeting held May 8, 2002 with a quorum present.

Parties in Opposition to the Application. The Dupont Circle Citizens Association expressed support for the Applicant's efforts to preserve the interior and exterior of the subject property, but opposed the requested variance absent conditions addressing the "vital issues" of liquor licenses, expansion, and enforcement, mediation, and liaison with the community. Other parties in opposition asserted that the planned bed and breakfast would have an adverse impact on traffic and parking in the neighborhood, particularly as

a result of special events hosted at the subject property. The parties in opposition also argued that the Applicant had not adequately demonstrated hardship because preservation of the interior of the building could be accomplished through other uses of the building.

FINDINGS OF FACT

The Subject Property

1. The subject property is located at 1720 16th Street, N.W. (Square 178, Lot 800) in the Dupont Circle neighborhood of Ward 2.

2. The subject property is improved with a building constructed in 1892-1893 as a single-family detached residence with approximately 12,000 square feet of living space, a courtyard, and a two-car garage. The five-story, 18-room residence was built in a mixture of Victorian, Spanish Mission, and Dutch Colonial styles.

3. The area surrounding the subject property is developed primarily with rowhouses as well as some larger apartment buildings. The Scottish Rite Masonic Temple is across 16th Street from the subject property.

4. The Applicant has a home occupation permit at the subject property authorizing operation of a bed and breakfast with six rooms and one employee. The property is currently undergoing renovation and is not presently a residence or operating as a bed and breakfast.

5. The subject property is located in the 16th Street Historic District and has been designated a contributing building to the historic district. The interior of the building is largely intact and would not be altered by the Applicant's planned renovations. The Applicant indicated an intent to seek a federal historic rehabilitation tax credit for the property, which would require, among other things, maintenance of the interior renovations for five years. The Historic Preservation Office of the Office of Planning indicated its belief that the interior of the subject property is "an architecturally significant space worthy of preservation."

6. Previous uses of the property include single-family residence (1893-1923), embassy/consulate (1924-1938), office (1942-1946), residence and music school (1947-1988), and rooming house with 13 occupants (1991-2001). The music school, with approximately 35 students and six instructors, was operated by Basil and Maria Toutorsky, who also lived in the house.

7. The Applicant purchased the property after it had been on the market for approximately three and a half years. The Applicant testified that he sought to preserve the property, including its interiors, and his sole means to do so was as a bed and breakfast because the property is too large and costly to maintain as a

single-family residence.

8. The parties in opposition testified that the immediate neighborhood contains other large former mansions that have been successfully converted to multiple dwellings, and that conversion of the subject property to apartments would be consistent with zoning and would advance several goals of the Comprehensive Plan. The opponents challenged the Applicant's assertion that the renovations necessary for the planned bed and breakfast use would actually preserve all the significant interior features of the subject property as well as his contention that the planned bed and breakfast use was the sole means to preserve the interior.

Proposed Use

9. The Applicant plans to use a portion of the building (approximately 1,800 square feet) as his principal residence and to operate the remainder as a bed and breakfast with 10 guest rooms, with a maximum of two guests per room.

10. The proposed bed and breakfast would permit registered guests to host a maximum of 24 events (such as parties, meetings, weddings, and receptions) per year. Attendance at each event would be limited to 110 people. An event conducted on a weekday (Monday through Friday) would begin no earlier than 8:30 a.m. and end no later than 9:30 p.m. Events conducted on a weekend (Saturday or Sunday) would take place between 11:00 a.m. and 10:30 p.m.; events would not be conducted on consecutive weekends. Tables and chairs for events would be stored on the premises.

11. All events would be held indoors except for wedding ceremonies, which could be held in the outdoor courtyard. No amplified music or food service would be provided in the courtyard.

12. The Applicant did not intend to obtain a liquor license for the bed and breakfast. However, liquor might be served at the events pursuant to a caterer's liquor license.

13. The proposed bed and breakfast would have six full-time and two part-time employees. No more than four non-resident employees would be on the subject property at any given time.

14. Trash generated by the bed and breakfast use would be stored in securely covered receptacles stored in a brick, enclosed area adjacent to the alley. The Applicant stated that trash pickup would be scheduled at least three times per week, and reasonable steps would be taken to prevent vermin.

15. Laundry for the bed and breakfast would be done on-site.

16. The Applicant testified that the proposed bed and breakfast use would not create objectionable noise impacts on surrounding residential properties in the neighborhood primarily because a successful bed and breakfast business depends on preserving peace and quiet for its guests.

17. ANC 2B opposed the application despite its support for efforts to renovate and improve the subject property, citing neighborhood concerns about the impact of a large bed and breakfast on the peace, order, and quiet accorded to a residential neighborhood, particularly with respect to special events potentially conducted at the subject property.

Traffic and Parking

18. The subject property is located at the northwest corner of the intersection of 16th Street, a principal arterial, and Riggs Place, a local street. In addition to its two street frontages, the subject property is bounded by a 13-foot public alley on the west. Both 16th Street and Riggs Place are subject to residential parking restrictions from 7:00 a.m. to 8:30 p.m., Monday through Friday.

19. No additional parking is required at the subject property, as a building located in a historic district that is certified as contributing to the character of the historic district. 11 DCMR § 2100.5.

20. Because of a Metrobus stop adjacent to the subject property, the 16th Street frontage provides limited space for standing, stopping, and parking. Loading and unloading is prohibited in that space.

21. The Applicant proposed a transportation management plan, including a parking program, applicable to the regular daily bed and breakfast business as well as to special events. Pursuant to the plan, prospective guests would be advised of transportation options including Metrorail, Metrobus, taxis, trains, and shuttle buses available from the various airports to destinations in the District. Employees of the bed and breakfast operation would be given farecard vouchers to encourage use of public transportation.

22. Routine deliveries to the subject property would be made through the garage, with a driveway off Riggs Place. According to DDOT, no negative impacts due to deliveries were anticipated because most service deliveries to the proposed bed and breakfast use could likely be handled by vans within the garage at the subject property.

23. One off-street parking space in the garage on the subject property would be made available at all times for guests and deliveries to the bed and breakfast operation.