

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment



Application No. 17711 of Yaulanda D. Powell, pursuant to 11 DCMR §§ 3104 and 1202.1, for a special exception to operate a bed and breakfast facility (6 guest sleeping rooms) *and to permit a maximum of 14 guests on the premises in a one hour period*¹ under § 203.8(c) and § 203.10(b), in the CAP/R-4 District at premises 612 3rd Street, S.E. (Square 795, Lot 57).

HEARING DATE: January 29, 2008
DECISION DATE: January 29, 2008

DECISION AND ORDER

This application was submitted on August 1, 2007 by Yaulanda D. Powell (“Applicant”), the owner of the property that is the subject of this application (“subject property”). Applicant has been operating a bed and breakfast (B&B) establishment with two guest sleeping rooms at the subject property since 2004, and filed this request with the Board to increase the number of guest sleeping rooms to six.

The Board held a hearing on the application on January 29, 2008. At the close of the hearing, the Board voted, 4-0-1, to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 6, 2007, the Office of Zoning (“OZ”) provided notice of the filing of the application to the D.C. Office of Planning (“OP”), the D.C. Historic Preservation Office (“HPO”), the D.C. Department of Transportation, the Office of the Architect of the Capitol, Advisory Neighborhood Commission (“ANC”) 6B, the ANC within which the subject property is located, the Single Member District member for 6B03, and the Councilmember for Ward 6. Pursuant to 11 DCMR § 3113.13, the Office of Zoning published notice of the hearing date in the *D.C. Register*, and mailed such notice to the Applicant, ANC 6B, and all owners of property within 200 feet of the subject property.

Requests for Party Status. ANC 6B was automatically a party to the case. There were no requests for party status.

¹ The Board allowed the Applicant to amend the application at the hearing to add the relief in italics from § 203.4(m) that limits the number of clients or customers on the premises to 8 in a one hour period.

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Applicant's Case. The Applicant represented herself at the hearing and testified as to how her application met the necessary zoning requirements.

Government Reports. OP filed a report with the Board dated January 22, 2008 in which it addressed each of the many provisions which had to be met by the application and determined that they were all met, or could be modified pursuant to § 203.10(b). Therefore, OP recommended approval of the application.

The HPO provided the Applicant with a certification that the building on the subject property contributes to the character of the Capitol Hill Historic District.

ANC Report. ANC 6B filed a report with the Board dated January 11, 2008, stating that at a regularly scheduled and properly noticed meeting, with a quorum present, the ANC had voted 8-0-1 to oppose the application. The ANC opined that an increase to six guest sleeping rooms would be incompatible with the residential neighborhood in which the subject property is located. The ANC report also stated that the neighbors oppose the increase.

Persons in Support or Opposition. The Board received six letters in support of the application, including one from a next-door neighbor, two from the only other two owners of residences on the same block, and two from residents of G Street, whose properties abut the subject property. The Board also received a letter in support of the application from the Capitol Hill Restoration Society.

No letters of opposition were received by the Board, but two neighbors testified in opposition at the hearing. Their primary concerns were with increased parking problems and the possible incompatibility of the expanded B&B use with the neighborhood.

FINDINGS OF FACT

1. The subject property is located at 612 3rd Street, S.E., on Square 795, Lot 57, in an R-4 zone district and within the Capitol Hill Interest Overlay District and the Capitol Hill Historic District.
2. Immediately to the north of the property is a 3-story condominium building, and to the south and east are 2- and 3-story row dwellings. Across 3rd Street to the west is Garfield Park, an open green space.
3. The property has an area of 4,493 square feet and is improved with a 2-story row dwelling.
4. In 2002, the Applicant constructed a rear 3-story addition to the row dwelling, which was attached to the original part of the row dwelling by a second-story pedestrian bridge, creating one building for zoning purposes.
5. The Historic Preservation Review Board approved the rear addition in 2002.

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6. The Applicant owns, and resides in, the row dwelling on the property.
7. On April 27, 2004, Home Occupancy Permit No. 74004 was issued to the Applicant to allow the establishment of the "Coach House on Garfield Park:" bed and breakfast use on the property. Pursuant to § 203.8, the matter-of-right use was limited to two bedrooms located in the original contributing dwelling.
8. In the past, Applicant has rented the rooms in the original front part of the house.
9. The dwelling, including the addition, has a total of seven sleeping rooms, two of which are currently used as guest sleeping rooms in the B&B operation. One of the sleeping rooms is currently used by the Applicant and her spouse and another is currently used by the Applicant's son.
10. The Applicant intends, in the future, to use one sleeping room for herself and her spouse, and to use the other six for the guests of the B&B.
11. Although the Applicant proposes to increase the number of guest sleeping rooms in use from two to six, the B&B use will remain secondary to the use of the dwelling as the Applicant's residence.
12. Each sleeping room has a private bathroom.
13. The only meal served to guests is breakfast.
14. There are no cooking facilities in the guest sleeping rooms.
15. There is an open area behind the dwelling with space for two to three parking spaces, which is accessed through a public alley leading to 4th Street.
16. The dwelling provides one parking space for the residential use, but is not required to provide additional off-street parking spaces because it has been certified by the HPO as contributing to the character of the historic district, and its gross floor area is not being increased. 11 DCMR § 2120.3.
17. Approximately 75% of the Applicant's guests arrive by taxi or metro and do not require the use of parking spaces.
18. For those guests that do require parking spaces, the Applicant obtains temporary residential parking stickers. During the 12 months of 2007, the Applicant obtained 27 such stickers.
19. Street parking is available in the neighborhood, but is tight during a 2 and 1/2-hour period on weekday evenings when a local gym is most heavily used.
20. The property is approximately a 10-minute walk from the nearest metro station.

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21. A 12 inch by 12 inch, non-illuminated sign is posted at the top of the steps on the entrance gate.
22. All employees of the B&B are residents of the dwelling.
23. Daily vehicle trips by visitors, customers, and delivery people will not exceed eight per day.
24. No interior structural alterations or exterior changes are proposed and the Applicant will maintain the residential character and appearance of the dwelling and the lot.
25. No operations or storage will occur outside the dwelling.
26. No electrical equipment causing electrical interference or fluctuations in line voltage will be used in the expanded operation of the B&B.
27. No activities resulting from the expanded operations of the B&B will result in noxious odors, vibrations, glare, or fumes.
28. Only outside lighting and/or sound equipment consistent with a single-family dwelling will be used at the property.
29. No children are accepted as guests; therefore, all the guests are adults.
30. Most guests will be off-site during the day and will use the B&B guest sleeping rooms only in the evening and for sleeping.
31. Check-in for the B&B occurs between 3:00 and 8:00 p.m., and guests are generally not accepted after 10:00 p.m.
32. No sales are conducted at the property.
33. Since the inception of the B&B use, the Applicant has not received any complaints from the neighbors.

CONCLUSIONS OF LAW

The Board is authorized to grant a special exception where, in its judgment, the special exception will be “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.” 11 DCMR § 3104.1. In addition, certain special exceptions require compliance with provisions specific to the special exception.

In this case, the Applicant is required to meet the provisions governing home occupations, in general, set forth in § 203.1, and the specific requirements applicable to a B&B set forth in §

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203.8, which, at subparagraph (h), mandates compliance with the requirements of §§ 203.4 through 203.6. An Applicant for a home occupation permit regulated by §§ 203.6 through 203.8 may request the Board to modify up to two of the conditions enumerated in §§ 203.4 through 203.8. *See* 203.10(b).

The Applicant requests that the Board allow modification of subparagraph 203.8(c)(1) to permit six sleeping rooms, as opposed to two, and modification of subparagraph 203.4(m) to permit a maximum number of 14 guests on the premises in any one hour period, as opposed to eight.

The Board may permit Applicant's modification requests by special exception provided "the general purposes and intent of [subparagraph 203.10] are complied with." *See* § 203.10 (b). Section 203.10(a) references the purposes of this section as set forth in § 203.1. Section 203.1 states that "[t]he purpose of the home occupation provisions shall be to allow home occupations as accessory uses to residential uses; provided that they are compatible with the residential neighborhood in which they are located." This provision echoes the general special exception tests that such use be compatible with the present and proposed development of the neighborhood (11 DCMR § 1202.1(a)), and that it be in harmony with the general purpose and intent of the Zoning Regulations and Maps and not tend to adversely affect neighboring property. 11 DCMR § 3104.1.

The Board finds that the B&B use has been in operation since 2004 with no negative impact on the neighborhood. Its expansion may have some minimal impact on the neighborhood because the number of guests will increase, but that increase will be marginal. The increased number of guests may result in greater foot traffic and perhaps, some increased vehicle traffic, but the Board concludes that such increases will not rise to the level of incompatibility with or adverse effect on the neighborhood. Likewise the small increase in the number of guests permitted in a one hour period from eight to fourteen will serve to accommodate visitors of the B & B's guests for only a short period of time, and accordingly, should not have an adverse impact on the neighborhood with respect to noise, parking, or traffic.

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by the Office of Planning. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive. In its report, OP carefully laid out all the provisions that needed to be met by the application, and found them all to be met. It recommended approval of the application and did not recommend any conditions. The OP expressed concern at the hearing that the Applicant not be allowed to rent any part of the dwelling if six of the rooms were to be authorized for use as part of the B & B, as Applicant had done in the past when only two rooms were devoted to B & B use. The Applicant responded that she had no intention of renting any part of the house in the future and

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sought only to run a B & B on the property². The Board agrees with OP's recommendation and clarifies in this order that this authorization for use as a B & B with six sleeping rooms precludes any other rental of rooms or accessory apartment use on the premises.

ANC 6B opposed the application. The ANC's letter states that, in the opinion of the ANC, an expansion to six guest sleeping rooms is incompatible with the residential neighborhood in which the B&B is located. The letter also states that the neighbors are "strongly in opposition" to the application.

As to the ANC's opinion respecting incompatibility, the Board disagrees. The Applicant has met all the requirements of the Zoning Regulations. The B&B has been operating since 2004 and has established a good "track record" for responsible operations, causing no adverse effects on the neighborhood. The Board does not foresee that a moderate expansion of those operations will cause adverse effects or result in incompatibility with the neighborhood.

The ANC also contends that the neighbors "strongly" oppose the application, but there is mixed evidence of both neighborhood support and neighborhood opposition in the record. Indeed, some of the closest neighbors, who would most likely be affected by the granting of this application, filed letters in support. The Board, therefore, is not persuaded by the ANC's claim of "strong" opposition.

The Zoning Regulations strictly regulate a residential B&B operation, providing the neighborhood with protections against adverse impacts. If an application for special exception meets all the necessary regulations, such protections will be in place, and, the application should be granted. *See, First Baptist Church of Washington v. D.C. Board of Zoning Adjustment*, 432 A.2d 695, 698 (D.C. 1981). ("If the applicant meets its burden, the Board ordinarily must grant the application.")

Based on the above, the Board concludes that the application meets the zoning regulations governing home occupations in the R-1 District set forth § 203 and that the B&B, with the modifications of two of the home occupation requirements, to permit six sleeping rooms and up to 14 guests on the premises in any one hour period, will be compatible with the neighborhood and in harmony with the purpose and intent of the Zoning Regulations, and will not adversely affect the neighborhood.

For all the reasons stated above, the Board concludes that the Applicant has satisfied the burden of proof with respect to an application for a special exception pursuant to §§ 3104 and 1202.1 and § 203 of the Zoning Regulations. Accordingly, the application is **GRANTED; and it is hereby ORDERED that:**

² The Board notes that § 202.10(h) prohibits the addition of an accessory apartment where a home occupation is already on the premises.

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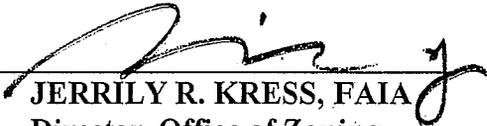
1. The Applicant may expand the number of sleeping rooms used as part of the B& B from two to six;
2. A maximum of 14 guests may be on the premises in a one hour period; and
3. Authorization of the property for use as a B&B precludes any other rental of rooms or accessory apartment use on the premises.

VOTE: 4-0-1 (Ruthanne G. Miller, Marc D. Loud, Mary Oates-Walker, and Shane Dettman to grant; No Zoning Commission member present or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT.

Each concurring Board member has approved the issuance of this order.

ATTESTED BY:


JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: MAY 15 2008

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE §§ 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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As Director of the Office of Zoning, I hereby certify and attest that on **MAY 15, 2008**, 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 who appeared and participated in the public hearing concerning the matter and to each public agency listed below:

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ATTESTED BY:



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TWR