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December 26, 1997

'97 DEC 29 P2:24
DISTRICT OF COLUMBIA
OFFICE OF ZONING

Ms, Tracy Rose
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 220
Washington, D.C. 20001

RE: **BZA Application 16260**

Dear Ms. Rose,

Attached for filing in this matter are an original and five copies of my clients' opposition in this matter.

Please let me know if your office needs any additional documentation or information in its consideration of this application.

Thank you.

Very truly yours,

Brian Paul Jenny

cc: Mr. David M. Furchgott

BZA
CASE No. 16260
EXHIBIT No. 40

12/29/97

Board of Zoning Adjustment
District of Columbia
CASE NO.16260
EXHIBIT NO.40

December 26, 1997

District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Suite 220
Washington, D.C. 20001

'97 DEC 29 P2:24
OFFICE OF ZONING
DISTRICT OF COLUMBIA

RE: **BZA Application 16260**

Dear Chairperson Hinton and Members of the Board,

We have reviewed the documents Mr. Furchgott and Ms. Fleischmann submitted to the Board December 15, 1997 pursuant to their request to reopen the record in this matter. The applicants say these documents show a revised plan that accommodates our concerns; and they say these documents show our unwillingness to engage them in "meaningful dialogue."

We disagree that the applicants' documents are accurate, or even relevant. They contain no new information in support of their duty to show through substantial evidence how complying with the Zoning Regulations will cause them undue hardship.

These papers and Mr. Furchgott and Ms. Fleischmann's previous filings fail to meet the legal standard required for the granting of a variance. We therefore remain opposed to this application, and we ask the Board to deny it on its merits.

We ask the Board to deny the application for the additional reason that it is opposed on the record by Advisory Neighborhood Commission 3-C, and by our neighbors, Mr. Costell and Ms. Swiss, pursuant to a letter to this Board from their attorney, Richard N. Nettler, Esq. The opinion of the ANC is entitled to "great weight" in BZA proceedings, and the opposition of the other parties shows this dispute cannot properly be characterized as a neighbor-versus-neighbor matter, as the applicants have sought to characterize it.

Additionally, we ask the Board to consider the opposition of other neighbors, whose letters are attached hereto. (See Exhibit A.) These parties either have not previously received notice of the scope of the applicants' plans; or they seek to comment on the new plan which now is the subject of the reopened record.

12/29/97

In specific response to the applicants' December 15 documents, we note as follows.

1. **The Revised Plan.** The applicants say they have made a major revision to their plan to accommodate our concerns, which on the other hand they say were "spurious" to begin with.

The applicants' statement are inaccurate. The applicants' December 15 documents show they propose to build the same structure that they proposed to us off-the-record in September. (See Exhibit B.) The applicants have not previously made this proposal public for review and comment by other parties, but that fact does not make this proposal a new or revised plan that would accommodate our objections.

The applicants say also their architect "dismissed" our concerns respecting the flow of air and light, and vistas. Unfortunately, the applicants' word choice is accurate: their architect dismissed our concerns, but she did not disprove them. The only "issue" the applicants' architect sought to address was that of *direct* sunlight into our dormers. That matter is beside the point, as the zone plan is intended to protect *ambient* light and air flows.

Otherwise, the architect made comparisons and drew analogies that were simply wrong.

Specifically, she said the applicants' project would approximate the project at 3243 Klingle Road in its size and in its effects on neighboring structures; and she stated there were no known problems with the flow of air and light and vistas caused by that structure.

In fact, there is decided litigation that directly affects our properties, and that directly contradicts the architect's statements respecting the effects of 3243 Klingle Road on neighboring structures. Costell v. Ince, Civil Action 97CA1829. There, the Court ruled as a matter of law that the structure at 3243 Klingle adversely affects the flow of air and light to neighboring structures. (See Exhibit C.)

The applicants' proposed structure is more intrusive than the structure at 3243 Klingle Road. The applicants' proposed structure exceeds the envelope of the applicants' property by changing the roofline from a mansard roof to a peaked roof, and by raising it from four to six feet above existing rooflines, including the roofline of adjacent structures. The applicants' proposal will create a structure in the back of their house that will be visible from the front of their house.

The applicants' structure will affect us in a more significant and more adverse manner than the 3243 Klingle Road structure affects its neighbors, and statements from the applicants and their architect that these effects are inconsequential are both wrong and contrary to decided law.

2. **"Meaningful Dialogue."** The applicants allege that we were not interested in engaging them in "meaningful dialogue" to reach an agreement on this matter. The applicants' statements on this point are not true.

Our attorney advised Mr. Furchgott that if it was essential for the repair of his roof, we could consent to design alternatives that involved *de minimus* extensions to the roofline or to the baseline of his existing dormer. On that basis, Mr. Furchgott asked for and received permission to present his proposals directly to us, instead of to our legal representative

Instead of presenting alternatives that would involve roof repair, however, Mr. Furchgott showed us the design he diagramed in Exhibit B. Since then, Mr. Furchgott has refused categorically to discuss any other alternatives to his plans for major construction, and he has threatened us that he will rebuild a new, larger wall to surround his third floor roof if he does not receive the variance necessary to add on to that roof.

Both Mr. Furchgott and Ms. Fleischmann have written to the ANC and to this Board with false allegations that we have presented misleading testimony under oath, and false allegations that our attorney introduced into evidence cropped photographs in support of our misleading testimony. Mr. Furchgott has made insistent demands that we meet with him at his direction and on his condition, he has disregarded our wishes that he contact us *only* through our lawyer, and he has created a false and self-serving "chronology of exchanges" to justify his statements.

Under these circumstances, and given our status as elderly citizens, we feel we have met and surpassed any obligations we may have had to discuss these matters with the applicants by asking them .

We therefore ask the Board to consider the source and context of the applicants' remarks, and weigh their relevance and credibility accordingly.

3. **The Request for the Zoning Variance.** The applicants have testified and their architect has admitted that they inspected their property and all related property records prior to purchase in 1991 (Testimony at Public Hearing, September 17, 1997, Transcript, page 32, follow-up question, Board Member Reed, at page 32 ; Letter from architect Marlene Walli Shade, October 15, 1997); that they purchased their property primarily because of its view (Transcript, page 32); and that they purchased it with the intention of making major structural improvements, including the enlargement of residential living space beyond the existing three full stories (Letter, October 15). The applicants' plans for their property conflicted in 1991, as they do now, with all applicable zoning standards and with the restrictive covenant that embraces their residence, our residence, and our entire neighborhood.[1]

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[1] The applicants have sought to limit discussion of the restrictive covenant in the context of this variance application. (See Transcript, page 44, statement by Mr. Furchgott.)

In juxtaposition to these facts, the applicants have solicited neighborhood support for their application by arguing that structural enlargement of residential space is essential to needed roof repair. Their variance application is predicated on that argument.

The applicants have sought to avoid any inquiry that asks why they cannot conduct adequate roof repairs in a manner that does not require the granting of a zoning variance (See question posed by Chairperson Susan Morgan Hinton, Transcript, pages 30, 31). By doing so they have confirmed their plans are primarily for the expansion of their property for the creation of residential living space.

The addition of residential living space is a matter of convenience and is not a matter of exceptional difficulty or undue hardship within the meaning of the District of Columbia Code or Zoning Regulations.

The granting of this application for a variance will impair the intent, purpose and integrity of the zone plan as a matter of law, and we respectfully ask the Board to deny the application.

Respectfully submitted,

Karen Hansen-Turton

Karen Hansen-Turton

Jack S. Turton

Jack S. Turton

Brian Paul Jenny

Brian Paul Jenny
Counsel for Mr. and Mrs. Turton
5335 Wisconsin Avenue, N.W.
Suite 440
Washington, D.C. 20015-2030

We concur the enforcement of the covenant is outside the scope of the Board's statutory jurisdiction. Nonetheless, all residences within the applicants' neighborhood were built to similar design standards and on similar lots pursuant to that covenant. Further, the applicants have argued by analogy (and incorrectly) that their proposed addition is benign to the same extent as are other residences that have been made the subject of recent litigation interpreting the covenant.

For the purposes of this matter, however, we submit that the terms of the covenant show that all residences affected by it are so similar in design and lot size as to preclude any finding of uniqueness within the meaning of the rules respecting zone variance applications.

CERTIFICATE OF SERVICE

I hereby certify that I mailed copies of the foregoing letter, with all attachments, to the parties listed below this December 29, 1997, by prepaid first class postage.

Richard B. Nettler, Esq.
Robins, Kaplan, Miller & Ciresi, L.L.P.
1801 K Street, N.W.
Suite 1200
Washington, D.C. 20006--1301

Mrs. Herman Warner Williams, Jr.
3226 Woodley Road, N.W.
Washington, D.C. 20008

Mr. Jeffery and Ms. Peggy Hunker
3220 Klingle Road, N.W.
Washington, D.C. 20008

Dr. Gordon D. Cates
(3227 Klingle Road, N.W.)
c/o Princeton University
Department of Physics/Joseph Henry Laboratories
Jadwin Hall
P.O. Box 708
Princeton, New Jersey 08544

Mr. David M. Furchgott
Ms. Fetnah Fleischmann
3223 Klingle Road, N.W.
Washington, D.C. 20008

Brian Paul Jenny
Counsel for Mr. & Mrs. J. Turton

SUPPLEMENTAL CERTIFICATE OF SERVICE

I hereby certify that I mailed copies of the foregoing letter, with all attachments, to the parties listed below this December 29, 1997, by prepaid first class postage. This mailing supplements the mailing certified by the attachment.

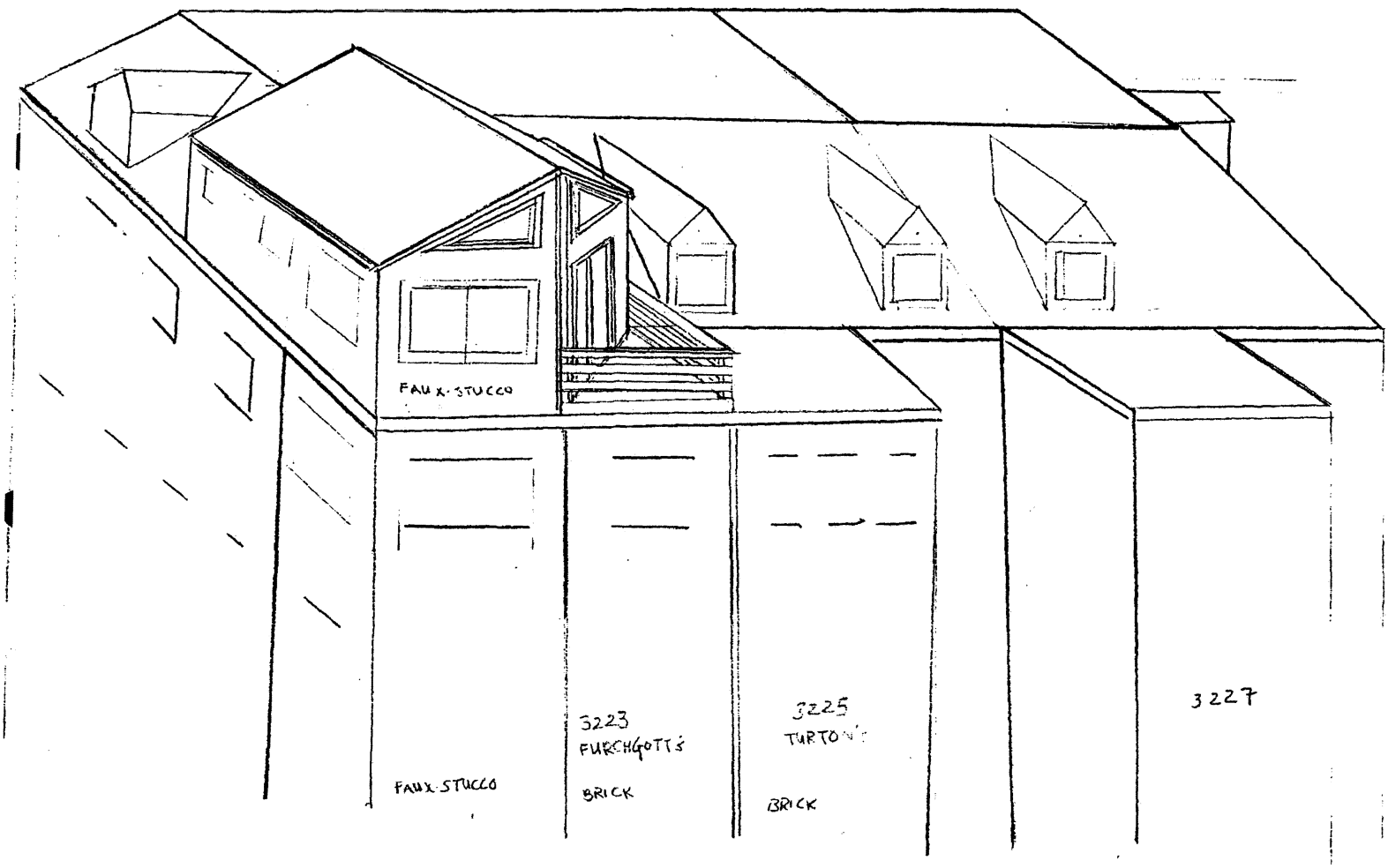
Advisory Neighborhood Commission 3-C
2737 Devonshire Place, N.W.
Washington, D.C. 20008

Brian Paul Jenny
Counsel for Mr. & Mrs. J. Turton

BEDROOM
DORMER "CUT" AT
ANGLE TO ALLOW NORTHEAST
VIEW FROM TURTON'S WINDOW ATTIC DORMER
RETAIN PARTIAL DECK (1/4TH ORIGINAL)

D.

Rough Perspective
9/26/97



Opposition to BZA Application 16260

Exhibit B

Plan Alternative Presented by David M. Furchgott in September 1997