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April 13, 1999

Ms. Sheri M. Pruitt-Williams
Interim Director
Room 210 South
441 4th Street, NW
Washington, D.C. 20001

Re: BZA Application No. 16443 (Area Variance for 2964 Newark St., NW)

Dear Ms. Pruitt-Williams:

For the reasons stated in the attached memorandum on behalf of Roger Selfe, the adjacent property owner who lives at 2968 Newark St., NW, we oppose the application for an area variance for the residence located at 2964 Newark St., NW.

By way of summary, the application does not even cite the standards necessary to obtain an area variance, much less meet them. Further, the application arises as the result of an unlawful extension of an existing offstreet front yard parking pad to accommodate persons other than the owner, who (Mr. Kraus) is handicapped. Finally, the variance sought is not in the public interest since it invades Mr. Selfe's privacy and seeks to perpetuate an overcrowded situation which this Board has rejected in the past in a similar case.

For these reasons, as more specifically set forth in the attached memorandum, the area variance sought should be denied.

Sincerely,

Richard L. Aguglia

Richard L. Aguglia

cc: James L. Montgomery, Esq.
2744 Brandywine St., NW
Washington, DC 20008

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BZA
CASE No. 16443
EXHIBIT No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16443
EXHIBIT NO.28

MEMORANDUM IN OPPOSITION TO THE APPLICATION FOR AN AREA VARIANCE AT 2964 NEWARK ST., NW WASHINGTON, D.C.

BACKGROUND

Many of the residences on Newark St., N.W. were built prior to 1958, when the District of Columbia zoning regulations came into effect. 2964 Newark St., N.W., the single family residence of applicant Rainer Kraus for which the area variance has been requested, is listed as Square 2082, Lot 29, built in 1941, according to Experian's 1998 District of Columbia Assessment Directory. Mr. Selfe (who opposes the variance) lives at 2968 Newark St., N.W., Square 2082, Lot 28, which was also built in 1941 according to Experian's. Mr. Selfe has lived at this home, a single family dwelling, since 1990. Both residences are located in the Cleveland Park Historical District (District of Columbia Inventory of Historic Sites Map).

The D.C. Zoning Regulations, then and now, permit a parking space as a matter of right in an open area of a lot within a rear yard or within a side yard, but not within a front yard, with one exception not relevant to this case. 11 DCMR § 2116.2 (1995 ed.) and Section 7205.12 (eff. May 12, 1958).

In 1975, Mr. Kraus obtained an area variance to construct a parking pad for 1 vehicle in the front yard of his home. See Exhibit 1 (BZA order) and Exhibit 2 (permit to construct 1-9' wide driveway). The application was unopposed. The pad was built.

In 1993, Mr. Kraus doubled the size of the original parking pad (the "First Extension"). This was done without obtaining a BZA variance or construction permit, or the approval of the staff to the Historic Preservation Review Board ("HPRB"). The First Extension is approximately 10' from Mr. Selfe's living room window. (See attached photos). The entrance to Mr. Selfe's house faces the illegally extended parking pad, and the side of his house faces the street, without

an entrance way. Mr. Selfe reported the infraction to D.C. officials and a citation was issued by DCRA to Mr. Kraus.

Rather than cease and desist, Mr. Kraus permitted a third vehicle to be parked on the grass immediately adjacent to the illegal First Extension. DCRA issued a second citation to Mr. Kraus.

Sometime in August or September of 1996, Mr. Kraus began construction of yet another extension of the parking pad (the "Second Extension"). The purpose of the Second Extension was to brick over the grass area where the third vehicle had been parking. This Second Extension was commenced again without any of the three required approvals, BZA, HPRB or DCRA. A construction permit was secured from DCRA after the fact, which DCRA apparently determined was based upon an application for "sidewalk" construction, not another parking pad. Moreover, no BZA approval had been obtained (which failure has precipitated the instant application we oppose).

On September 25, 1998, DCRA issued a Notice to Discontinue Use to Mr. Kraus (See Exhibit 3). The notice indicated that the 1993 First Extension was illegally constructed without a permit and should be removed and restored to ground ASAP. The notice also indicated that the 1996 Second Extension permit was issued for construction of a walkway, not for parking additional vehicles.

DCRA issued a notice of infraction to Mr. Kraus on December 4, 1998, for "construction without permit carpads" and a fine of $500. See Exhibit 4. Also enclosed is an affidavit from a DCRA employee noting that Mr. Kraus could apply for a special handicap parking space on the street in front of his home for his van, specially dedicated to him. See Exhibit 5. We endorse and support this proposal and will assist Mr. Kraus in obtaining same. As a factual matter, we note that Mr. Kraus' handicap van is parked continuously in the street anyway and is rarely

moved. This will "free up" one legal parking pad (the "1975" pad) for medical personnel who may be treating Mr. Kraus or guests.

As indicated in the DCRA affidavit, two of the other cars parked on the pads belonged to a female guest and a company registered in Maryland. We submit that these cars are used by persons unrelated to Mr. Kraus who also reside in Mr. Kraus' home. These persons do not suffer from any physical disability or handicap. As indicated in our photos (Exhibit 6), as many as 3 cars are parked on the pads at one time, significantly obscuring Mr. Selfe's view from the entrance of his home.

Mr. Kraus has appealed the 1998 citation from DCRA and a decision from an administrative law judge is pending.

THE TEST TO OBTAIN AN AREA VARIANCE

The application in this case for an area variance is supported by a memorandum based on "medical need." However, the application sets forth none of the standards needed to obtain an area variance, not to mention how they have been met. In sum, the memo states that Mr. Kraus needs the extended parking space "[b]ecause of his chronic and critical [medical] condition and the unavailability of street parking. . ." (paragraph 9). The memo fails to state: (1) why the one BZA 1975 approved parking pad is insufficient for Mr. Kraus' needs, given that his handicap van is almost continuously parked on the street; (2) why there have been up to 3 cars/truck parked on the illegally extended pads which are not used by him; or (3) why a specially designated on street handicap space exclusively for his use is insufficient for his medical needs.

To reiterate, it is our position that a special handicap space exclusively for his use on the street and one legal parking pad on site for nurses/guests is sufficient to accommodate his medical needs. This position was also taken by the SMD for this area, Ruth Ann Miller, at the

ANC 3C hearing on this case. (The ANC itself officially took no position on this application). The two extensions sought are unwarranted and an intrusion on his neighbors' privacy, especially that of Mr. Selfe's, and present a crowded parking lot appearance antithetical to an historic neighborhood.

The Board has the authority to approve the location of open parking spaces anywhere on the lot upon which the building is located, under certain circumstances set forth in § 2116.6, except in the case of a 1-family dwelling. 11 DCMR § 2116.5. Hence, it is our primary position that the Board has no specific authority to grant an area variance for an open parking space on the front yard of Mrs. Kraus' lot, since it is improved with a single family dwelling. Assuming the Board has the general authority to extend the 1975 approved parking pad site, the provisions of Section 3107.2 of the zoning regulations would govern.[1] This section has been interpreted by the courts to empower the Board to grant an area variance where it finds 3 conditions present:

1. The property is unique because of its size, shape, or topography;
2. The owner would encounter practical difficulties if the zoning regulations were strictly applied; and
3. The variance would not cause substantial detriment to the public good and would not substantially impair the intent, purpose and integrity of the zoning plan.

Roumel v. D.C. BZA, 417 A.2d 405 (D.C. 1980). The application herein, based solely on medical need, does not indicate that any of these three tests have been met. If Mr. Kraus obtains

[1] In further support of our position that the Board has no authority to grant the variance requested, we note that the tests for a variance under Section 3107 and Section 2116 are essentially the same. If the Board proceeds under § 3107.2, then the exception for single family residences in Section 2116 is rendered meaningless. This objection was never raised in 1975 when the Board granted the original variance because the application was unopposed.

a specially designated handicap space on the street for his use, there can be no showing of practical difficulty. In addition, the First and Second Extensions substantially impair the privacy and light and air rights of Mr. Selfe when occupied by the cars and trucks as shown in our photo exhibits. This is the same type of overcrowding situation that the Board was confronted with in Roumel. The Board rejected the application for area variance in that case, and the D.C. Court of Appeals upheld that rejection.

Finally, the applicant has already obtained a BZA variance for one parking pad onsite in his front yard. The present application has the effect of asking for a triple or 300% variance which is unwarranted by the facts stated herein.

Conclusion

For the reasons set forth herein, the application in this case for an area variance should be denied.

Respectfully submitted,

HUNTON & WILLIAMS

By: Richard L. Aguglia
Richard L. Aguglia