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D.C. Board of Zoning Adjustment
441 4th Street, N.W.
Suite 210
Washington, D.C. 2001

Re: BZA Application No. 16696
Statement of Nathan W. Gross, AICP in Opposition

Dear Members of the Board:

This is the written version of testimony that I will present, in summary form, at the public hearing. This testimony is in opposition, on behalf of abutting and nearby homeowners and other residents at 1317, 1319, 1321, and 1323 33rd Street, N.W. and at 1352 O Street, N.W. These persons have also requested status as a party in opposition in a letter submitted June 21, 2001. One of the individuals, Dr. Ruth Carter, also requested party status in a letter of April 5, 2001, in which numerous substantive areas of adverse effects on her property were identified.

To secure approval of an area variance, the Applicant must provide proof of a practical difficulty inherent in the property itself that prevents normal use and development of the property under existing zoning.

The second and third requirements are that the relief can be granted without substantial detriment to the public good and can be granted without substantially impairing the intent, purpose and integrity of the zone plan.

I. EXCEPTIONAL AND UNIQUE CONDITIONS, PRACTICAL DIFFICULTY

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Exhibit No. 68

Regular Lot Conditions. Subsection 3104, authorizing the Board to grant variances, states some examples of practical difficulties: "exceptional narrowness, shallowness or shape of a specific piece of property . . . or . . . exceptional topographical conditions or other [exceptional conditions]." The subject lot is **wider than the typical lot** and minimum required width of lot in an R-3 district and larger in square footage than the typical lot or the required minimum lot size in R-3. It is not shallow, but **relatively deep**,

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being 150 feet in length in its north-south dimension. It is **approximately level** and is **rectangular** in shape. Applicant has emphasized the existing, **relatively low lot occupancy** of the property, in effect, indicating **ample room for expansion of the house**. Applicant has also emphasized in his statement dated June 25, 2001, that the lot is "different" from the typical R-3 property and is an "anomaly."

Being different, however, is not at all the same as being limited by an exceptional condition or limitation inherent in the property, as required by the variance test in the Zoning Regulations. Indeed, the large size and absence of typical constraints as summarized above, show that the property owner has substantial flexibility under the R-3 provisions to construct an addition to the main dwelling, if additional habitable space is desired.

Specific Alleged Exceptional Conditions. The Applicant indicates the presence of "historic" Boxwood plants, trees and other landscaping that would impede a normal rear addition to the house. By referring to the boxwoods as being "directly" behind the principal building, Applicant leads one to believe the plants and the historic garden itself would need to be destroyed to build a normal, rear addition to the house. From observation from adjacent homes of clients, my observation is that there exists a brick patio on level ground immediately to the rear of the house to a depth of approximately 16 to 18 feet and occupying all or nearly all of an area equal to the width of the house. One moderate-sized tree grows through the brick patio. Proceeding beyond the patio towards the rear (south) of the lot is a quite level lawn planted in grass. There may well be plantings along fences at the sides of the properties, not all of which were visible to me, but there appears to be no need for extensive removal of landscaping to create a normal addition as allowed in zoning.

In common sense terms, homeowners planning an addition must frequently make choices between saving certain trees or other plants and building the addition or redesigning it to minimize landscape damage or relocation of plantings. *In our opinion, the existing patio and other plants near the main dwelling do not constitute an exceptional condition or practical difficulty as intended by the Zoning Regulations.*

Archeological Site and Granite Wall. Applicant also states that the rear of the property includes "an archeological site that is a root cellar, cistern or the remains of a slave tunnel," as well as a solid granite wall "beneath the surface of the property." It is stated that these physical features, as well as a lack of access for "earthmovers," creates

an exceptional condition limiting the property. Applicant, however, has provided no finding by an archeologist or historian that the root cellar or cistern structure is in fact a former slave tunnel and therefore entitled to official protection under D.C. or federal historic preservation laws and acts. Similarly, no evidence or statement from an architect or engineer has been submitted to the record of this case indicating that the root cellar or underground granite wall is a significant impediment to construction of an addition, or that earthmoving equipment would be required to construct an addition to a wood-frame house.

In summary, the Applicant has not proven the existence of exceptional conditions or practical difficulties required under zoning for the granting of an area variance.

II. SUBSTANTIAL ADVERSE EFFECTS AND IMPAIRMENT OF THE INTENT AND INTEGRITY OF THE ZONE PLAN

We have the following testimony on tests two and three indicating why approval of the variance would impose substantial adverse effects on neighboring properties and why the variance, if approved, would impair the intent and integrity of the zone plan.

The proposed use and second-story addition, even without a height variance, is allowed in and is more appropriate for properties in the R-1 zones that for properties in more intensive zone districts. Subsection 2500.5 of the "Miscellaneous Zoning Requirements" in Chapter 25 of the Zoning Regulations limits the use of a "second story used for sleeping or living quarters of domestic employees of the family occupying the main building" to the R-1-A and R-1-B districts. The intent of the Zoning Regulations to limit this special provision to the lowest density residential district is especially clear in the text of the Zoning Regulations in effect prior to codification in DCMR format, as found in §7601.3 of the "Miscellaneous Provisions." *(See Exhibit A attached.)* The fact that this provision (§7601.3) is within the free-standing Miscellaneous Provisions rather than in the R-1 use provisions of the Zoning Regulations, together with the explicit wording of the text ("except in an R-1-A or R-1-B district") make clear that this use was not intended to carry over to the R-2 or R-3 zones.

There is a city planning logic to restricting this use to R-1-A and R-1-B, based on the area standards of these zones:

- Relatively large lot sizes, at 7,500 and 5,000 square feet, respectively;

- Low lot occupancy, at 40% compared to 60% in R-3 and other more intensive zone districts;
- Side yard requirement of 8 feet, whereas no side yard restriction applies in R-3;
- A rear yard requirement of 25 feet, versus 20 feet in R-3; and
- A minimum lot width requirement of 75 feet in R-1-A and 50 feet in R-1-B, versus 20 or 30 feet in R-3.

These requirements have the general effect of removing a second story of a garage farther from abutting homes – in typical development patterns – in R-1 zones than would be the case in the much more congested R-3 and R-4 zones. Thus, human habitation on a second floor in the interior of a city block would normally have less potential adverse effects on privacy, light and air available to neighboring properties and residents than in more dense zones.

The difference in minimum lot width is especially relevant. The required lot width of 50 feet in R-1-B is substantially larger than the 20- to 40-foot lot widths required in R-3.[1] This greater lot width, together with the limitation on accessory buildings to no more than 30 percent of a required rear yard, means that a second-story addition to an accessory garage is likely to be less obtrusive on neighbors in the R-1 than in the R-3 and other more intensive zones. ***It is critically important that in the R-1 zones, the great majority of lots will be conforming in physical dimensions. Therefore, the other lots and houses on a given square will provide further separation from the enlarged garage with human habitation on the second floor. By contrast, a single lot of over 5,000 square feet that abuts and is near to other lots in a much more congested, typical R-3 setting with smaller lots, is likely to have significant adverse effects. Granting of this would run contrary to the intent of the Zoning Regulations of restricting the proposed use and enlargement to the R-1 zones.***

Applicant's lot would be a nonconforming lot if it were zoned R-1-B in that it is only 36 feet wide, rather than the required 50 feet. It would be nonconforming as to lot width, and any type of addition would require a variance. The narrowness of the lot (less than required for a detached dwelling in R-3), together with the large footprint of the

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[1] A 20-foot width for a row dwelling is the most common situation, as against 30 feet for a semi-detached dwelling or 40 feet for a detached dwelling.

garage, have the effect of placing the proposed addition unusually and unacceptably close to neighboring properties.

The existing garage is nonconforming to a very great extent from the requirement of Subsection 2500.3 that an accessory building may occupy no more than 30% of a required rear yard – 20 feet in the R-3 district. From scaled measurement on maps, the garage appears to be approximately 30 feet in width along the alley and approximately 18-20 feet in its north-south dimensions. As can be seen on the attached photocopy of the map of Square 1230 from the *Sanborn Building and Property Atlas*, the garage clearly occupies much more than 30 percent of the required rear yard, and indeed, occupies a very high percentage of the rear yard. *(See Exhibit B.)* The garage was apparently constructed prior to adoption of the current zoning regulations in 1958 and is accordingly allowed to continue as a nonconforming structure. However, nonconforming structures are subject to special restrictions, as provided in the Zoning Regulations in Chapter 20, "Nonconforming Uses and Structures." Section 2001 provides rules for "Nonconforming Structures Devoted to Conforming Uses." Subsection 2001.3 further provides (in pertinent part):

> 2001.3 Enlargements or additions may be made to the structure; Provided, that the following requirements shall be met:
>
> (c) *The addition or enlargement itself shall not increase* ***or extend*** *any existing, nonconforming aspect of the structure, and shall not create any new nonconformity of structure and addition combined.* (Emphasis added.)

The proposed second story addition in this Application would constitute a vertical extension of the nonconforming occupancy of the required rear yard pursuant to Subsection 2500.3, cited above. The obvious and well-founded land use rationale for this provision is to prevent an exacerbation of adverse effects on neighboring properties and residents, who may already be adversely affected by the nonconforming structure.

The logic of lot occupancy regulations in general is to avoid overbuilding of lots and related undue encroachment on the light, air, privacy and enjoyment of neighboring properties. A vertical addition to a structure that exceeds permitted lot occupancy is a violation of Paragraph 2001.3(c). The proposed violation of this requirement adversely

affects neighboring properties, including those of my clients. It should be noted that leaves on trees currently provide a degree of visual screening for neighbors. However, for approximately five months from late fall through mid-spring the proposed oversized addition will be much more visible from a greater number of properties than at present.

The subject accessory garage is already quite large, extending virtually the entire width of the lot. One of my client's homes, that of Dr. Ruth Carter at 1317 33rd Street, N.W., abuts rear portion of Applicant's lot, where the garage is situated, as shown on the attached *Sanborn* map. A conforming garage, occupying only 30 percent of the rear yard area would be much smaller in footprint than the existing garage and would be more removed from Dr. Carter's small rear yard. In particular, her rear deck is only 12 feet from her rear property line and only another four feet from the west wall of the existing garage that would be extended vertically. The proposed second story addition will clearly impair Dr. Carter's light, air, privacy and views from her property and deck especially. This is clearly depicted in the attached photograph taken from Dr. Carter's deck. *(See Exhibit C.)* She and other affected neighbors are entitled to the uniform enforcement of the Zoning Regulations so that she is not adversely affected by this proposed addition. The portable screening (by potted, slender columnartrees) simply creates a greater visual restriction rather than an enhancement of the setting for both 1317 and 1319 33rd Street, N.W.

On the photograph, the Board should also note the presence of other low existing garages along the subject alley, whose owners might be encouraged to apply for comparable variances if the instant application is approved. The result could be excessive building height and bulk on the alley, with additional adverse effects on various residents.

CONCLUSION

In conclusion, we recommend denial of the requested variance or variances. It is clear that no exceptional or extraordinary condition of the property exists that creates a practical difficulty for the owner. The requested variances derive not from the property itself, but from personal desires or needs of the applicant. Moreover, the variance, if approved, would be contrary to the intent, purpose and integrity of the zone plan and would adversely affect the use and enjoyment of neighboring properties.

Sincerely,

Nathan W. Gross, AICP

To be served on parties at the public hearing.

ARTICLE 76

MISCELLANEOUS PROVISIONS

SECTION 7601 - ACCESSORY USES AND ACCESSORY BUILDINGS

7601.1 Any accessory use or accessory building shall be located on the same lot with the use or building to which it is accessory, except that required accessory parking space may be permitted on another lot where specifically permitted under other provisions of these regulations.

7601.2 An accessory building shall be located only in a rear yard, except that an accessory private garage may be located in a side yard under the special regulations of Section 7401. Not over 30 per cent of the area of a required rear yard on any lot shall be occupied by an accessory building or buildings.

7601.3 An accessory building in any district shall not exceed one story or 15 feet in height except in an R-1-A or R-1-B District an accessory private garage may have a second story used for sleeping or living quarters of domestic employees of the family occupying the main building. Any such two-story accessory building shall not exceed 20 feet in height and shall not be located within the required rear yard. Any such two-story accessory building shall also be set back from all side lot lines for a distance equal to the minimum width of a required side yard in the district in which located.

7601.31 The height of an accessory building permitted in Sub-section 7601.3 shall be measured from the finished grade at the middle of the side of the accessory building which faces the main building to the highest point of the roof of the building.

7601.4 An accessory building or structure shall not be erected on any lot prior to the time of construction of the main building to which it is accessory.

7601.5 An accessory building shall not obstruct light and ventilation required by other regulations.

7601.6 Provisions applicable to accessory mechanical amusement machines.

7601.61 Where a person seeks to offer or provide more than three mechanical amusement machines as an accessory use, such person shall first provide a dimensioned drawing, drawn to scale and certified as to accuracy by the owner of the business. The drawings should show the floor area of the entire establishment including the area to be devoted to the use of the mechanical amusement

EXHIBIT B

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1. Applicant's Property, with subject garage shown cross-hatched

2. Dr. Ruth Carter's home at 1317 33rd Street, N.W.

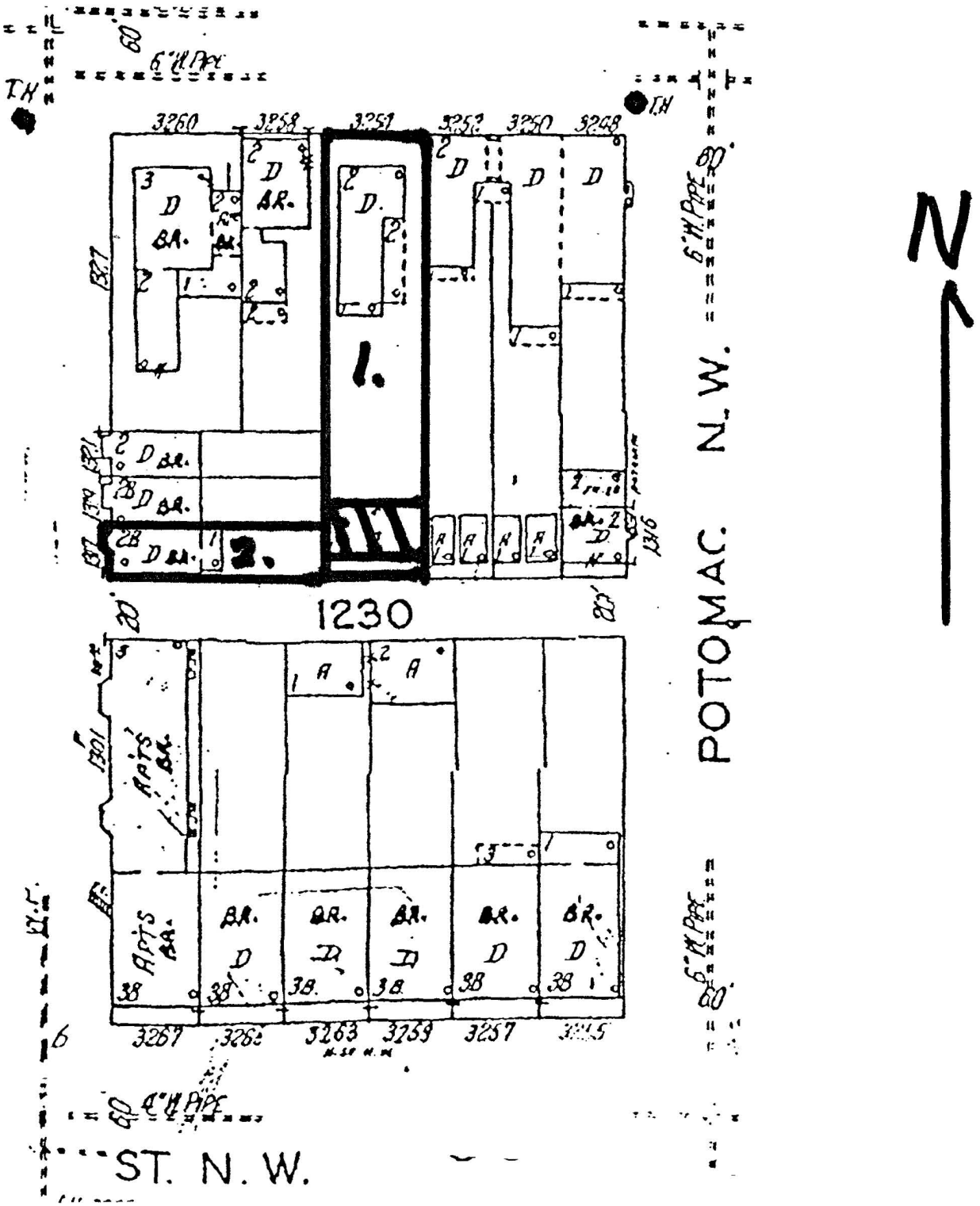




EXHIBIT C