May 31, 2001

Board of Zoning Adjustment
Government of the District of Columbia
441 4th Street, Suite 210-S
Washington, D. C. 20001

Dear Members of the Board of Zoning Adjustment:

Enclosed is a revision of the brief I submitted to the Board dated May 21. I have since discovered that the former submission was inaccurate in minor ways and request that you replace that submission with this revision. I have set out my objections to Application Number 16709 submitted by Mr. And Mrs. William Brannon. I hope that you will agree with me that the variances they seek to an already nonconforming structure cannot be accommodated without greatly restricting use value of my property at 305 3rd Street, S. E.. I have been granted party status and look forward to the Hearing set for June 12, 2001; and I thank the Board for giving me the opportunity to explain my objections both in writing and in person.

Sincerely yours,

Douglas C Dacy

Douglas C. Dacy

301 Windy Hill Road
Kyle, Texas 78640

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Case No. 16709
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16709
EXHIBIT NO.28

May 31, 2001

Board of Zoning Adjustment
Government of the District of Columbia
441 4th Street, N.W., Suite 210-S
Washington, D. C. 20001

Dear Board Members:

This letter is a response to a notice I have received pertaining to a public hearing on Tuesday, June 12, 2001. Specifically my comments pertain to an application presented by Mr. and Mrs. William Brannon, Application Number 16709. I am strongly opposed to the variances requested in the application. I plan to attend the hearing and have previously been granted party status as my property will be affected greatly by the variances requested.

Mr. and Mrs. William Brannon have requested variances from side yard requirements under section 405, rear yard requirements under section 404, lot occupancy requirements under section 403, and subsection 2001.3 to allow an addition to a nonconforming structure in CAP/R-4 District at premise 301 3rd Street, S.E. (Square 763, Lot 834).

In stating my objections, for simplicity I shall refer to the structure under concern at 301 3rd Street, S.E. as the "duplex" and to Mr. and Mrs. Brannon as "the Brannons".

My name is Douglas Dacy. I own the row dwelling (by zoning definition) at 305 3rd Street immediately south of the Brannons' property. Actually, this townhouse is semi-detached at the north end of the row in the 300 block of 3rd Street. Currently there is a space of fifteen feet between my north wall and the backside of the duplex. In my opinion no other property owner in the neighborhood will be affected as much as me if the variances requested by the Brannons are granted. I am opposed to granting the variances for reasons given below. I start with the reasons why the proposed variances will affect my property. There follow brief remarks on the relevant zoning regulations, the case for "practical difficulty," and my opinion on how granting the variances will affect neighborhood appearance. I conclude with some background material that I think is relevant, even if it has no legal standing.

Zoning regulations are in place for good reasons. They protect the integrity of a neighborhood as well as the rights of individuals living there. My interpretation of the District's Zoning Regulations is based on subsection 3103.2. In general, I understand that variances should be granted only if there is some overwhelming reason to grant them. Expressions such as *undue hardship* and *peculiar and practical difficulties* might be overcome providing that they do not impair the "intent, purpose and integrity of the zone plan." Subsection 101.1 defines the purpose of zoning regulations. I note specifically the

emphasis placed on *adequate light and air* and *protection of property*. In this brief I argue that there are no *peculiar and practical difficulties* that were not known to the Brannons. when they purchased the duplex property and that granting them relief from these self-imposed "difficulties" cannot be achieved without substantial damage to my property.

Effect on my property

The property most affected by the proposed changes is my townhouse at 305 3rd Street. Although I have not lived in this house since 1982, I care a lot about it and have taken an active role in its management since then. First, I shall give six specific reasons why the variances requested by the Brannons will adversely affect my property. Subsequently, I give a general reason that in some way combines the specific reasons.

1. A nice but small patio is located in the back of my house. I cultivated flowers and very much enjoyed the environment back there. My renters have expressed their attachment to the patio. Between my patio and the duplex property there is a privacy fence about six feet tall. Looking in that direction from my patio there is open space on the other side of the fence and a four-foot passageway to C Street. The open space is a major asset for two reasons. (a) One does not have the impression while sitting in the patio that she or he is entirely closed in. (b) The open space and passageway mentioned above assures that there will be a breeze (if there is any breeze at all) in the patio. Now imagine the same patio with a twenty-two foot brick wall jammed up against the privacy fence. There will be no open space on the north side of the patio and much less breeze. What happens to the amenity value of sitting or working in the patio? Can anyone really claim that it would be more pleasant sitting there looking at a twenty-two foot brick wall which blocks the view and increases the heat as the sun's rays are reflected from the wall? Aside from amenity value, there is no doubt that placing a brick wall where none existed before will reduce the property value of my house. Will I be able to attract renters who really value this amenity without reducing the rent? I don't think so.

2. A huge amenity value of my de facto semi-detached townhouse is that it has windows on three sides. That amenity is one of the reasons I bought the house in 1969 instead of others I was shown. It is nice sometimes during the spring and fall seasons to separate your drapes and open a window to let more light and air from the outside come into your living room. The plan proposed by the Brannons would block out mid and late afternoon light and eliminate the potential for air that now can enter the house through two and possibly three of the five windows on the north side of my house. Anyone who appreciates outside light and an airy environment surely must consider the physical obstruction planned as a serious loss. Certainly, I do. Who would not consider it a loss?

3. Loss of some light and air is not the only problem. If the Brannons' plan is permitted, the east-side wall to their proposed bedroom with two windows will be only four feet from the north-side window in my living room. With drapes open in my living room and their curtains open for morning sun, my neighbors will be able to look into a portion of my living room (and, possibly, my hallway) and my renters surely could look

into their bedroom. Are my renters to keep their drapes closed all the time to protect their privacy and thereby give up **all** light coming into the living room window in my house? Can anyone question that such a condition severely reduces the amenity value of such a desirable townhouse?

4. For most of the year the prevailing winds are from the south. In rainy weather the rain comes down at an angle from the south. With a twenty-two foot brick wall (the back side of the proposed addition) most of the water that would go into the open space that exists at present would beat on the wall and fall in my patio. For the one or two times in a year when the rainfall is very heavy, the probability of flooding in the patio certainly increases. This creates a problem because there is only one step up to a back door of my house. I do not wish to exaggerate. Flooding will not occur every time it rains; but I must worry even about events for which there is only a small probability. Who else will worry about them if I don't?

The above four real and potential problems certainly will reduce the amenity and use value of my property.

5. The twenty-two foot brick wall creates another potential problem in a heavy rainstorm. If my patio is flooded so will the patio behind the house at 307 3rd Street. From experience I know that my former neighbors, Jerry Friedman and Bill Ayres who lived next door to me, were troubled on occasion by water seeping into their basement. Although Mr. Wiglaiz, the present owner, has taken some measures to reduce this problem, there is no certainty that it would be eliminated in a big rainstorm. The proposed structure would increase the probability of damage to my neighbor's house as well as mine. Am I to be responsible for such a mishap if I don't increase the size of my drain in the patio?

6. After checking with my insurance company, My agent, Mrs. Paula Weaver, has informed me that my insurance rate would increase if my house were no longer situated at the end of a row, open at the north side. The reason is that fire spreads more easily when houses are attached. The Brannons' plan calls for attaching their new addition to my house. Here we must think of another small probability event. If fire were to spread from the corner house to my house, it places in jeopardy other houses as well as mine. Since I do not play the lottery, should I be forced to play it in this case?

What damage should I bear to my property to accommodate what the Brannons must prove is a hardship or a *peculiar and practical difficulty*?

A summary of the relevant zoning regulations for this case

The Brannons want to convert the duplex into a single-family house. If that were all they wanted, there would be no problem. The external addition creates the problem. Does it constitute a "practical difficulty" as defined by zoning regulations if the Brannons

are not permitted to increase the size of the house? As I understand the Zoning Regulations a one-family detached dwelling must comply with side yard and a rear yard regulations. There is also a regulation governing the percentage of lot occupancy. The size of the Brannon's lot is 1712 square feet, the present foot print of the duplex is 918 square feet and the "percentage of lot occupancy" (ratio) is 53.6%. For some reason, probably because the duplex is a two-family dwelling, the maximum ratio allowable is 60%, the allowable ratio for a row house or a "flat." They wish to increase the foot print to 1278 square feet for a ratio of 74.7%; and that would be a significant violation of the Zoning Regulations. Also, as I understand their plan, the Brannons are requesting variances for side and back yard regulations as well as for percentage of lot occupancy. As you know, the Regulations specify minimal distances of 20 feet for rear yard and 8 feet for side yard measures. The duplex is already nonconforming with respect to rear and side yard measures. Now, the Brannons would like to completely abolish these requirements. Of course, we know that the Brannons want to abolish these requirements so that they can claim row dwelling status rather than one-family detached dwelling status. Approving these variances has major implications for my property. *In that event, the Brannon's house would become the end of the row and my house would lose the amenity and economic value that accrues to the end of the row. My house would be attached on two sides rather than on one side.* The Board is not hearing a request for only minor violations of regulations, rather you are hearing an appeal for an enormous favor at the expense of the house next door.

Is there a peculiar or practical difficulty?

The Brannons lived on Capital Hill before they purchased the property. It is fairly certain that they knew that the property was nonconforming when they recently bought it. Even so, they seem to be claiming some kind of "exceptional practical difficulty" or "exceptional and undue hardship." Their implied definition of "hardship" is, indeed, self-serving and remarkable. In my opinion, the hardship that they see has been created in their own minds and does not exist due to any peculiarities of the lot as prescribed in subsection 3103.2 of Zoning Regulations.

Neighborhood effect

I have been told that the Historic Preservation Review Board has "approved" the Brannons' plan. It is a mystery to me how an organization with "preservation" in its title would approve a plan that makes something different out of an old structure rather preserving it in its original form. I would like to express my opinion on how I think that the Brannons' plan will affect the neighborhood

As you walk south from Pennsylvania Avenue and approach the 300 block on 3rd Street (as I have done hundreds of times) you will be struck by, perhaps, the most attractive structure in the block. It is a small two-story structure on the corner of 3rd and C streets built, I think, in 1880. The address is 301 3rd Street, S.E., the duplex for which the variances have been requested. It must take a huge stretch of imagination to think that

altering this lovely structure would improve the neighborhood in any sense. And it would even take a larger stretch of imagination to think that the specific alterations requested would improve the neighborhood. Now, from the corner of 3rd and C streets walk west on C Street while looking over your left shoulder, and try to imagine how cramming in another small building in a very limited space will improve the neighborhood. It won't. It will destroy the quaintness of this unique corner and reduce the esthetic value of the corner to the neighborhood. It is hard for me to understand how reducing the already limited "open space" in a neighborhood can be considered an improvement. It is also hard to see how the proposed porch to be built on District property, and one out of character with the neighborhood, will improve the view that I have described.

Some background information

I lived on Capitol Hill for twelve years. I thought that I had one of the best houses there. It is no exaggeration to state that the flowers I maintained in the small front yard were the envy of the neighborhood. I loved Capitol Hill and was a reverse commuter: I lived on the Hill and worked in Arlington. I have kept an intense interest in the property since moving out. In fact, I retained Mrs. Weaver as my agent, among other reasons, because she lived right down the block and could observe my property day by day. I understand how some neighbors will simply regard me as an absentee landlord not worthy of consideration. I am sure that you know that the Advisory Neighborhood Commission (ANC) voted on May 8 to support the Brannon's proposal. I am equally sure that *you do not know* that I was *not* invited to the meeting, had no chance to send a representative and, indeed, had no knowledge of the meeting until I was informed of the vote. Regardless of the way in which this matter has been handled by the ANC, I am must protect my property; and I can assure the ANC and the District of Columbia of my intention to maintain my property in good repair even though I now live away. I sincerely thank the Board of Zoning Adjustment for notifying me of this hearing and giving me a chance to be heard. It seems clear that the law of the District of Columbia does not distinguish between absentee and present landlords.

I hope that the Board will agree with me that the burden of proof lies with the applicant and that he has not demonstrated exceptional and undue hardship *that can be removed without affecting adversely the use of my property next door*. It is my contention that my property will be adversely affected by the variances they seek, and I am strongly opposed to those variances.

Sincerely yours,

Douglas C Dacy

Douglas C. Dacy