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June 18, 2001

BZA
Case No. 16717
Exhibit No. 23

VIA HAND DELIVERY

Ms. Sheila Cross Reid, Chairperson
District of Columbia Board of Zoning Adjustment
441 4th Street, N.W.
Room 210
Washington, D.C. 20001

Re: Application of Norman Pozez and Melinda Bieber
BZA Case No. 16717

Dear Ms. Reid:

Jerrold St. George and George J. Palladino herewith request that they be admitted as parties in opposition to the above-referenced application pursuant to 11 DCMR (Zoning) §3106.2, as amended.

Messrs. St. George and Palladino are the owners of a single-family residence at 2130 Bancroft Place, N.W. (Square 2532, Lots 802 and 805). Their home is adjacent to the property which is the subject of Application No. 16717. They desire to participate in this case as parties in opposition to the application because of the serious adverse impact the proposed construction at the property next door will have on the amount and quality of light and air available to their property and the resulting negative affect on their use and enjoyment of their home and its monetary value.

Party Status Should Be Granted

Jerrold St. George and George J. Palladino will be significantly, distinctively and uniquely affected if the Board should grant the zoning relief sought by the Applicants in this case. Their property abuts the subject property on the east. The Applicants propose to enclose an existing open terrace with brick-and-screen walls and a roof that includes a protruding skylight.[1] The terrace is

[1] The proposed structure would violate more than just the zoning laws; the partially-screen party walls would be in violation of the District of Columbia fire code, and the roof would extend

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located off the back of the third floor of the Applicants' house. The terrace is currently circumscribed by a 4.5-foot tall wooden wall. The proposed construction would increase the height of the terrace wall to approximately 10 feet. That additional height would obviously significantly reduce the amount and quality of sunlight available to the St. George-Palladino property and substantially impede the free flow of air to the rear of their home and their back yard.

Unlike all other homes on the street, the St. George-Palladino house occupies only about 50% of its lot. The balance of the lot consists of a meticulously landscaped courtyard behind the house and a deck atop their 2-car garage behind the courtyard. Because the houses on both sides of their property extend further back from Bancroft Place and are much taller than the St. George-Palladino house, those structures already border their courtyard and roof deck and obstruct the availability of light and air to those areas.[2] Additionally, because the houses are row houses, light and air is not accessible from the sides of the house. Thus, the currently open third-floor terrace area that the Applicants seek to enclose is a significant source of light and air for the St. George-Palladino property that would be eliminated if the Applicants are allowed to proceed as planned.

A sun study completed by Burns & Associates Architects of Alexandria, Virginia shows that between May 1 and July 1, the existing shadow area on the St. George-Palladino property would be increased by approximately 30% by the proposed adjacent addition. The sun study also indicates that in winter, the shadow area increase would be even greater: 40% or more.

The St. George-Palladino roof deck and courtyard are extensively and expensively landscaped and contribute substantially to the value and enjoyment of their property. The greenery in the courtyard and roof deck are dependent on the limited existing sunlight and air, which would be materially obstructed by the Applicants' proposed addition.

Besides harming the extraordinary plants and mature trees in the courtyard/roof deck area, the Pozez-Bieber terrace enclosure would adversely affect Mr. St. George's and Mr. Palladino's use and enjoyment of this area in addition to other areas of their home. The proposed addition would not

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over the St. George-Palladino property line, constituting an encroachment.

[2] The Applicants' house extends the full depth of its lot from Bancroft Place to the alley in the rear. The house to the east of the St. George-Palladino residence (2128 Bancroft Place) stops short of the alley. The owners of 2128 Bancroft Place, Hon. Raymond Garthoff and Mrs. Vera Garthoff, would also be adversely affected by the Pozez-Bieber addition in that sunlight available to their garden and the rooms at the back of their house would be blocked by the new construction. It is our understanding that they have also written to the Board requesting status as parties in opposition to the application.

merely cut down the amount of sunlight coming into their backyard, but would create a canyon-like effect that would greatly diminish the quality of use and the enjoyment of their backyard. The enlargement of the Pozez-Bieber structure would also significantly decrease the amount of light coming into the St. George-Palladino kitchen, living room, and master bedroom, which would adversely affect the use and enjoyment of these portions of their home as well.

The substantial detriment to the light, air, use and enjoyment of the St. George-Palladino property which would occur if the Pozez-Bieber addition is approved would undoubtedly adversely affect the property's market value; any prospective purchaser would surely take the loss of important amenities into account. For the foregoing reasons, Jerrold St. George and George J. Palladino submit that they will be more significantly, distinctively and uniquely affected by the proposed action than would members of the public generally and that, therefore, they should be permitted to participate in this case as parties in opposition to the Pozez-Bieber application.

The Board Should Deny the Application

The Applicants Fail the Test for Approval of a Special Exception.

The Applicants seek approval of a special exception to allow a nonconforming closed court for a single-family dwelling in an R-3 Zone District. *See* 11 DCMR §§ 223.1, 406, 3104.1. The District of Columbia Zoning Regulations authorize the Board to grant a special exception if the requested relief "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 in accordance with the Zoning Regulations and Zoning Maps . . .". 11 DCMR § 3104.1. The Applicants cannot meet their burden of showing that the proposed addition will not adversely affect neighboring property. For the reasons discussed above, the proposed addition would adversely affect the adjacent property owned by Mr. St. George and Mr. Palladino, as well as other neighborhood properties including the property owned by Hon. and Mrs. Garthoff at 2128 Bancroft Place, N.W.

The Applicants cannot Satisfy the Criteria for Approval of a Variance.

The Applicants also seek variances from strict application of the requirements of 11 DCMR §2001.3 (a), (b) and (c) to allow them to enlarge an existing nonconforming structure. An applicant for a variance must show that: (a) the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in that property; (b) strict application of the Zoning Regulations will cause "peculiar and exceptional practical difficulties" to the applicant; and (c) that the variance can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan. D.C. Code §5-424(g)(3)(1981); 11 DCMR §3103.2. *See also Gilmartin v. DC BZA*, 579 A.2d 1164, 1167 (D.C.

1990). It is difficult to conceive how the Applicants in this case will be able to present evidence sufficient to show that some unique aspect inherent in their property would constitute an exceptional practical difficulty for them unless the requested variances are granted.

The Applicants want to convert an open terrace into a screened-in porch.[3] While it may be desirable to them to have a screened in porch, it can hardly be characterized as a "practical difficulty" if they had to make do without it. They must demonstrate some substantial need or compelling reason why they should be able to build a structure larger than permitted by the Regulations. Because it is unlikely that the Applicants can offer anything more than a generalized desire to have a screened porch, denial of the variance cannot rise to the level a practical difficulty, and their request for a variance cannot be granted.

Moreover, the Applicants cannot prove that granting the variance would not impair the intent, purpose and integrity of the zone plan. One key attribute of the R-3 Zone District is to prevent overcrowding in a distinctly urban environment. The relatively low height and density limits were carefully fashioned to preserve as much light and air as possible in areas otherwise deemed appropriate for row dwellings. The Pozez-Bieber addition would clearly make an already undesirable situation much worse by enlarging a structure that already exceeds the maximum allowable lot occupancy (60%) by 28%. Such an enlargement of a materially nonconforming structure would vitiate the zone plan by sanctioning an increase in the size of an already imposing structure, further obstructing the already diminished amount of light and air for the neighboring properties.

Conclusion

For the foregoing reasons, Jerrold St. George and George J. Palladino request that they be permitted to participate in this case as parties in opposition to the Pozez-Bieber application. Furthermore, for the reasons outlined above, Messrs. St. George and Palladino submit that the application in Case No. 16717 must be denied.

The Applicants have requested that the hearing on their application, scheduled for July 3, 2001, be continued. Messrs. St. George and Palladino do not object to a postponement of the hearing. However, they will not be available on February 12, 2002, the new hearing date requested

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[3] The Applicants' house has two other outdoor terraces in addition to the terrace they desire to enclose.

by the Applicants. Accordingly, Messrs. St. George and Palladino would request that the hearing be rescheduled on another, mutually agreeable, date. Thank you for your consideration of this matter.

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