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BY MESSENGER

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

Re: Application of Lori Trautwine – BZA Case No. 16810

Dear Board Members:

Introduction

We have previously entered our appearance in this matter on behalf of Dr. Gordon B. and Mrs. Aristy V. Joiner in connection with this Application. The Joiners have lived in their home on Dumbarton Street, N.W. for nearly 40 years. Their back patio and wall face onto the Trautwine Property, which is the subject of this Application. Thus, the Joiners would be directly and adversely affected by the Application.

BZA
Case No. 16810
Exhibit No. 45

For this reason, Dr. and Mrs. Joiner were granted party status in this matter at the hearing on January 2, 2002. On behalf of Dr. and Mrs. Joiner, and as further required at the hearing on January 2, 2002, we hereby outline Dr. and Mrs. Joiner's opposition to the proposal for five separate variances to allow a 12 foot long, two-story addition (with side windows and a below-ground stairwell) on the Trautwine Property.

The Application before the BZA that was filed on February 13, 2002 is at least the fourth different version that the Applicant has presented. The constantly changing and expanding Application – not because, as the Applicant claims, the Joiners' "demands [have] multiplied" – is a primary reason why Ms. Trautwine has been unable to arrive at a plan that the Joiners would agree not to oppose. The Joiners' legitimate interest is in preserving the privacy of use and enjoyment of the home where they have lived for almost 40 years. Although the Joiners have tried to reach an accommodation with Ms. Trautwine, and have made significant concessions to try and do that, the Joiners have been faced with multiplying and changing demands on the part of the Applicant. For example, the Applicant only recently decided that part of the Application

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Board of Zoning Adjustment
District of Columbia
CASE NO.16810
EXHIBIT NO.45

would involve side windows facing from the addition onto the Joiner Property – an intrusion that ANC 2E opposed specifically but which the Applicant continues to press.

Statement of Opposition

A. Factual Background

Dr. and Mrs. Joiner are longtime residents of 2704 Dumbarton Avenue, N.W., Washington, D.C. 20007. Their son, Peter Scott Joiner, grew up in the home. The Joiner Property backs directly onto the rear yard of the Trautwine Property. In addition, the topography is such that the Trautwine residence is on higher ground than the Joiner Property, which means that any addition would truly tower over the Joiner Property.

The construction and renovation project for which the applicant seeks the unprecedented total of five separate variances would be taking place, literally, right in the Joiners' back yard. The Joiners are the property owners who would be single most affected by the construction and renovation project, if it were allowed to go forward.

As filed originally, this Application sought special exceptions under Sections 223.2 and/or 3104.1 of the Zoning Regulations. At the hearing on January 2, 2002, it became clear that the project was more extensive and required a total of five separate variances in order to go forward: variances from (1) the minimum lot dimensions requirement under Section 401; (2) the lot occupancy requirements under Section 403; (3) the court requirements under Section 406; (4) the rear yard requirements under Section 404; and (5) the nonconforming structure requirements under subsection 2001.3. This is not a case where, as the Applicant suggests, an accommodation created for the Joiners created a court that required a variance – this Application requires five separate variances.

One of the issues that became clear at the prior hearing on January 2, 2002 was that the original Application far exceeded the lot occupancy requirements under Section 403, and the revised Application would even extend the addition almost another two feet. Because the Applicant is not providing the required five-foot sideyard, that five-foot sideyard counts as part of the "Building Area" under Section 199. This means that the "footprint" will far exceed the 70% maximum. This was always an issue, because no plan submitted by the Applicant has contained a sideyard anywhere close to five feet.

Regrettably, the Applicant bought this Property without appreciating the difficulty in placing a substantial addition at the rear, and the impact that it would have upon other adjacent property. As the original Application made clear, "It is unlikely that this small house would have been purchased [by the Applicant] if not for the probability of adding additional space." The Applicant therefore bought the Property knowingly taking the risk that an addition would not be possible, given the legal requirements involved. The fact that the risk has been resolved against

her is not a basis for allowing these variances and the associated intrusion into the use and enjoyment of the Joiner Property, where the Joiners have lived for almost 40 years.

B. Submission and Review By ANC 2E

The Applicant states that the Application is supported by ANC 2E. In fact, Ms. Trautwine suggests that, "ANC 2E and most of the neighbors concluded that the Variance and Special Exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." See Statement at 3.

No neighbors have so concluded and there is no evidence or statement from any neighbor supporting the project, much less making the conclusion alleged by Ms. Trautwine. Moreover, ANC 2E never made any such conclusion, either. At its most recent meeting on February 5, 2002, ANC 2E made no finding at all with respect to whether "the Variance and Special Exception will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps." Those issues were neither considered nor passed upon by ANC 2E. In addition, ANC 2E did not support the windows in the plan in the present version before this Board.

It is necessary to explain the long process by which ANC 2E has considered this Application. ANC 2E rejected this Application unanimously in September 2002, and then somehow changed its position over four months of lobbying from the Applicant and her Architect. Notably, however, ANC 2E did not approve the Application in its present form or in the context of the requirements for the five separate variances now sought.

The Joiners first learned of a plan to expand the Trautwine Residence late on the evening of Sunday, July 15, 2001. At that time, a neighbor passed them a note, enclosing a copy of the Agenda for the ANC 2E public meeting taking place on Tuesday, July 17, 2001 – a mere two days later.

On the Agenda, it was noted that one of the matters under consideration was to be a zoning and planning matter described as "1324 27th Street, Trautwine Residence (two story rear addition)." No further information was provided. Up to that point, neither the Applicant, nor her Architect, nor anyone else had given the Joiners any notice whatsoever about any plans for construction/renovation on the Trautwine Property. This lack of notice was even more glaring, given that the Applicant had already been before the Old Georgetown Board and obtained

"concept approval" for the project as it was designed at that point.[1] In the short time available, the Joiners rushed to retain counsel and oppose the proposal.

At the meeting on July 17, ANC 2E took no action and voted to table the proposal (for a full-width, ten foot extension) until its next public meeting in September, and to permit a site inspection in the interim by those members of ANC 2E interested in a site visit. On July 26, 2001, three of the eight ANC 2E Commissioners (Peter Pulsifer, Tom Birch, and Mark Ryan) appeared at the Joiner home for a site visit. All three were allowed full access to the home and to the patio behind the home. All three noted the substantial incursion that an addition on the Trautwine Property would create.

At the public meeting on September 4, 2001, ANC 2E thus voted unanimously, by 8-0 vote, to oppose the proposal and all of the zoning modifications involved in it. In fact, ANC 2E's ruling was quite clear:

> With regard to 1324 27th Street, Trautwine Residence:
>
> ANC 2E has reviewed plans for the project at 1324 27th Street, and the members of the Commission conducted a site visit on the property. ANC 2E appreciates the intentions of the property owners to rehabilitate this building. However, the plans presented for a rear addition extending beyond the permitted lot usage would create a significantly negative impact on the neighbors to the north whose rear garden fence would directly abut the proposed addition. In acknowledging the neighbors' concerns about the impact of the proposed changes due to the size of the rear addition, and in recognition of the value of preserving the historic character and relationship of rear yards and residences in Georgetown, ANC 2E is unable to support the proposed addition to the property at 1324 27th Street and opposes the requested variances.

In fact, the above ruling represents the only statement ever by ANC 2E concerning the variances requested for this proposal. The ruling is unequivocal that the variances were opposed.

On Wednesday, September 26, 2001, one of the ANC 2E Commissioners, Tom Birch, then informed the Joiners that a new proposal was to be put before ANC 2E on Tuesday, October 2, 2001 – six days later. The Joiners later obtained a copy of the proposal, which involved extensive digging and a large basement beneath the existing house and the proposed addition, and the Joiners opposed the proposal at the ANC 2E meeting. At the meeting, however, ANC 2E voted 5-1 (with two abstentions) to support the new proposal, without addressing how the

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[1] The OGB later denied approval for one of the later designs submitted by the Applicant. The project presently before the BZA has not as yet been submitted to the OGB, but is scheduled to be considered by the OGB on Thursday, March 7, 2002.

concerns expressed on September 4, 2001 had been addressed by the new proposal. Also, this proposal, as presented by the Applicants, involved no zoning variances or special exceptions.

The OGB then voted unanimously on Thursday, October 4, 2001 (at a meeting of which the Joiners were again not given notice by the Applicant) not to approve that proposal. With that action, and with the considerable cost that would have been in involved in the extensive digging and renovation required for this plan, the Applicant apparently "went back to the drawing board" again.

On November 20, 2001, ANC 2E notified the Joiners that yet another proposal would be submitted at the meeting set for Tuesday, December 4, 2001. That proposal involved an addition extending 8 feet to the rear of the Property and covering the full width of the lot. The Joiners again opposed the proposal, given that it was not much different from the 10-foot full width extension rejected by ANC 2E in September. This was the same proposal that was the subject of this BZA Application as it was filed originally (although the proposal was since modified).

At the ANC 2E meeting on December 4, 2001, the Applicant verbally revised her submission so that she was seeking approval of two separate designs. The first was the design involving an 8-foot extension. Second, the Applicant indicated verbally that she wanted approval for an alternative design, which would generally involve a full width 3 foot extension followed by a 9 foot extension set back 3 feet from the Joiner Property line (thus an "L shaped" extension similar to – although much larger than – the "I shaped" extension built in the 1940's on the Giese Property to the South). The total length of the extension as proposed was 12 feet.

The matter was given somewhat cursory consideration by ANC 2E at the end of a very lengthy meeting in December. ANC 2E voted unanimously to oppose the 8-foot extension, but to approve the "L shaped" extension, again without explaining how the issues of the impact upon the Joiner Property and historic preservation concerns had been addressed. No effort was made to distinguish the September 2001 ruling or explain how the concerns evinced by that ruling had been addressed. ANC 2E also did not address, discuss, debate, or decide upon any issues related to whether the Applicant should be granted special exceptions or whether the special exception criteria in Sections 223.2 and/or 3104.1 were satisfied in this case. The issue of variances was not brought before ANC 2E at that time.

Following the hearing before the BZA on January 2, 2002, the Applicant brought her proposal before ANC 2E again on February 5, 2002. At that meeting, ANC 2E announced that it was imposing a new 10-minute time limit on some of the matters before it, including this proposal. ANC 2E allowed slightly more time for debate on this proposal, but not a full opportunity for those in opposition to the proposal to make their concerns known.

ANC 2E then voted to reiterate its approval for an "L shaped" extension similar to the one proposed at the December meeting, but ANC 2E opposed any proposal with windows on the

side facing the Joiner Property. Moreover, ANC 2E voted to approve a below-ground stairwell although the dimensions of the stairwell were not disclosed. Also, Dr. Joiner pointed out that such a stairwell would cause the collapse of the Joiners' back patio wall – which a contractor hired by the Applicant admitted to Dr. and Mrs. Joiner at a meeting on February 4, 2002 – but ANC 2E ignored that issue. Chairman Pulsifer suggested, as the issue was being rushed through, that the BZA might impose "conditions" to protect the neighbors.

In any case, however, the only ANC 2E action that is properly entitled to great weight is the one taken on September 4, 2001. The BZA already ruled on January 2, 2002 that the December 4, 2001 action is not entitled to great weight. The February 5, 2002 action is also not entitled to great weight for at least three reasons: (1) ANC 2E gave no consideration to whether the alternative plan had addressed the concerns expressed by ANC 2E on September 4 – and the alternative plan did not, in fact, address those concerns; (2) the BZA had no actual plan before it to consider on February 5, 2002 – as one example, there were no details concerning the below-ground stairwell being constructed directly on the Joiner Property line, and there was no plan to deal with the inevitable collapse of the Joiners' back patio wall as a result of the Trautwine construction; and (3) ANC 2E did not debate, discuss, or decide any of the issues before the BZA on the requests for five separate variances. See Friendship Neighborhood Coalition v. District of Columbia Bd. of Zoning Adjustment, 403 A.2d 291 (D.C. 1979); Wheeler v. District of Columbia Bd. of Zoning Adjustment, 395 A.2d 85 (D.C. 1978); Application No. 16709 of Mr. and Mrs. William Brannon (Board of Zoning Adjustment, July 3, 2001, "In this case, the ANC's written report, while expressing support for the application, did not provide the Board with the reasons for its recommendation or specify any issues or concerns").

C. The Plan Before the BZA Does Not Meet The Requirements For Approval of Five Separate Variances

The Applicant seeks approval of their proposal, including five separate variances. This unprecedented request is subject to the standards set forth in D.C. Code § 5-424(g)(3) (1981) and 11 D.C. Mun. Regs. § 3103.2. Applying those standards, the BZA is authorized to grant variances only where, for each and every variance sought, three specific conditions are met:

(1) the property is unique because of its size, shape, or topography, or other extraordinary or exceptional conditions and situations;

(2) the owner would encounter practical difficulties or undue hardship if the Zoning Regulations were applied strictly; and

(3) the variances would not cause substantial detriment to the public good and may be granted without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

See D.C. Code § 5-424(g)(3) (1981), D.C. Code § 6-641.07(g)(3) (2001), and 11 D.C. Mun. Regs. § 3103.2; French v. District of Columbia Bd. of Zoning Adjustment, 658 A.2d 1023, 1035 (D.C. 1995) (all three elements must be shown by substantial evidence); Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939 (D.C. 1987) (reversing allowance of variance where elements were not shown, particularly insofar as property and practical difficulties alleged by applicant were not shown to be unique); Roumel v. District of Columbia Bd. of Zoning Adjustment, 417 A.2d 405, 408 (D.C. 1980) (affirming decision to deny variance based on concerns of "overcrowding" small lot and associated adverse impact on adjoining property).

A review of each of the three required elements shows that, in each and every case, the Applicant has failed to meet her burden.

1. The Property is Not Unique

Nothing about the Trautwine Property is unique. In fact, the lot dimensions are almost exactly the same as, and within inches of, the other six lots on 27th Street, N.W., and are similar to other small lots in Georgetown and in the District. See Myrick v. District of Columbia Bd. of Zoning Adjustment, 577 A.2d 757 (D.C. 1990) (reversing decision to grant variance to permit two story addition to rear of house on 32nd Street, N.W. in Georgetown, holding, inter alia, that twelve foot lot was not uniquely small given that "lots of approximately the same size exist only one block away"). Ms. Trautwine, however, urges four separate reasons why her Property is unique: (1) it borders on the North with rear yards of the houses on Dumbarton Street, N.W.; (2) the actual structure on the Trautwine Property is smaller than the houses on Dumbarton Street, N.W.; (3) with the addition, the Trautwine Property would have only 794 square feet of living space; and (4) the rear of the structure must be replaced.

In no respect do any of these arguments meet the criteria of uniqueness to permit these five variances. In fact, none of these arguments at all show that "the property is unique because of its size, shape, or topography, or other extraordinary or exceptional conditions and situations," the legal standard involved, so as to permit the two-story addition sought here. Ms. Trautwine cites no authority to support her arguments in this regard.

A copy of the official plat from the District of Columbia is attached hereto and made a part hereof as Exhibit "A." It demonstrates that the other six adjacent lots on 27th Street, N.W. are similar to the one at issue here. The fact that the lot and the house are small does not make this Property unique – there are numerous small lots and small homes in Georgetown and other parts of the District. See Myrick, supra. Moreover, the fact that the Trautwine residence is different from the homes on Dumbarton Street, N.W. does not make this Property "unique" – only different from the homes on Dumbarton Street, N.W., which is irrelevant to the statutory criteria for obtaining variance relief. It is also not unique that the Trautwine Property borders the Dumbarton Street, N.W. properties in a perpendicular fashion – the Zoning Regulations,

including the provisions applicable to sideyards and courts, address precisely this situation. Nor does the argument that the rear wall needs repair make this Property unique – there are many historic structures in the District that need maintenance and repair, and using that as a license to obtain five variances would render the Zoning Regulations meaningless.

The Court of Appeals pointed out the flaw in this kind of reasoning in Capitol Hill Restoration Society, supra. There, a property owner sought to subdivide a lot as part of an effort to renovate the property and create four two-bedroom apartment units. Approval of the project would have required at least four variances. See 534 A.2d at 940-941.

The BZA approved the variances, and on appeal, the issue was as follows:

> Petitioners contend that intervenor failed to present sufficient evidence of an exceptional or extraordinary condition inherent in the property which would satisfy the showing of uniqueness needed to justify a variance. We agree and conclude that the BZA's findings of fact on uniqueness do not support its conclusion that the property meets this threshold requirement. Accordingly, we reverse.

See id. at 940.

The Court of Appeals went on to explain the uniqueness requirement as follows:

> The threshold requirement to show that the property is unique with respect to the hardship or difficulty asserted as grounds for the variance means the property owner must present proof that "the circumstances which create the hardship *uniquely* affect the *petitioner's property* . . .." Taylor v. District of Columbia Bd. of Zoning Adjustment, 308 A.2d 230, 234 n. 6 (D.C. 1973) (emphasis in original). Where the circumstances which create the hardship or difficulty affect the entire neighborhood rather than merely a specific piece of property, the problem is properly addressed by seeking amendment of the regulations from the Zoning Commission. Id. If the BZA were to grant variances where the hardship or difficulty is not peculiar to a particular piece of property, similar requests could follow from property owners similarly situated, "which, as a matter of due process, would have to be granted." Id. The effect of such decisions by the BZA would be an amendment of the zoning regulations by that body, an action which the BZA is not empowered to take. Id.

Capitol Hill Restoration Society, supra, 534 A.2d at 941-942.

The Court of Appeals found that the property at issue, just like the Trautwine Property, was not faced with any unique condition. Id. The same result must apply here. The Trautwine

Property is not unique, because there are other lots on the same street with almost the exact same dimensions. The fact that those other lots sit next to each other, and are not bounded on one side by several perpendicular lots, does not make the Trautwine Property "unique." Nor is the Property faced with unique circumstances affecting only the Trautwine Property on the other grounds proffered by the Applicant.

Ms. Trautwine has not provided any legal support for her claim that she meets the uniqueness requirement. In contrast, there are numerous other BZA decisions rejecting similar arguments. See, e.g., Application No. 16564 of Jonathan B. Rickert (Board of Zoning Adjustment, April 5, 2000; request for an area variance to enlarge existing dwelling by constructing one-story approximately 170 square foot addition to the rear; BZA unanimously denied application despite no opposition, finding "that a practical difficulty does not exist at the site; that this proposal would impair the intent, purpose, and integrity of the Zoning Regulations and Map; and that it would cause adverse impacts on the neighborhood").

2. There Are No Practical Difficulties Or Undue Hardship

Nor does the Applicant meet the second requirement for obtaining five variances. The Applicant also argues that she should be entitled to the five variances because of the "small size of the lot and the living space needs of the average family." The applicant is one person and the sole owner of the Property. Similar concerns have been rejected in the past. See Application No. 16709 of Mr. and Mrs. William Brannon (Board of Zoning Adjustment, July 3, 2001; denying application for "variance relief to build a two-story addition to provide the extra living space they would like in order to start a family").

The Applicant argues that the rear wall of the house needs repair and that she will not deem it economically viable to pay for the repair unless she is also permitted to expand the dwelling. There are many historic structures in Georgetown and in the District. One person's subjective prediction as to what she repairs she may be willing to fund does not justify the relief sought on this Application. See Barbour v. District of Columbia Bd. of Zoning Adjustment, 358 A.2d 326 (D.C. 1976) (owner's personal preferences do not constitute unique property situation entitling owner to zoning variance). The fact that the use of the property is "more costly and difficult" without the variances is also insufficient basis for permitting variance relief. See Myrick, supra, 577 A.2d at 761.

In support of her claim that the second criteria for obtaining the five variances has been met here, Ms. Trautwine also cites to the matter of Edward J. and Patricia Yates, BZA Application No. 16697. Ms. Trautwine claims that the Yates matter is relevant to the BZA's consideration of this Application, primarily because, Ms. Trautwine states, historic structures are given latitude before the BZA because of difficulties in maintaining such structures. This argument is in conflict with the law. See Myrick, supra, 577 A.2d at 760 (fact that property is

located in a historic district "cannot satisfy an applicant's burden of proving that the hardship is peculiar to that property or structure").

In addition, Ms. Trautwine's reliance upon the Yates matter is misplaced. In that matter, Mr. and Mrs. Yates sought a special exception from applicable lot occupancy requirements and a variance from nonconforming structure requirements to construct a one-story addition to an R-4 District premises at 1631 Harvard Street, N.W., Washington, D.C. This Board granted the application, specifically finding that:

(1) the requested relief would be in harmony with the general purpose and intent of the Zoning Regulations and Map;

(2) the requested relief would not tend to affect adversely the use of neighboring property;

(3) the applicant had met the burden of proof under 11 DCMR §§ 3103.2 and 2001.3 that an exceptional or extraordinary situation or condition related to the property created a practical difficulty for the owner; and

(4) the requested relief could be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zoning plan.

Importantly, however, the Yates Application involved factual circumstances that do not exist here. First, this Board noted specifically that no person or entity appeared at the public hearing in opposition to the application and that, accordingly, a decision by the BZA to grant the application would not be adverse to any party. This is clearly not the case with respect to the Trautwine Application, where adjoining property owners on both sides of the Trautwine Residence sought, and have been granted, party status to oppose the application for the adverse impact the proposed rear addition poses to the use, enjoyment and well-being of their properties. Indeed, the two-story rear addition proposed in this proceeding, which would be built literally in the Joiners' back yard, would have a severe and detrimental effect upon the Joiner Property. Similar circumstances were not presented by the addition proposed in the Yates Application.

Moreover, the basis for the one-story addition proposed in the Yates Application, according to the file, was that the owner – handicapped and wheelchair bound – required a bedroom and bathroom on the main level. Ms. Trautwine cannot make out a similar plea of hardship or practical difficulty, particularly since it is clear that she bought the Property knowing its size and condition and took a risk that she would not be able to obtain the approvals and substantial zoning variances necessary to build an addition to the house.

The requirement for "peculiar and exceptional practical difficulties" required for variance relief are not met where the property can be used absent the variance. See Barbour, supra, 358 A.2d at 327. The Property is not unusable in its present form. For years, it has been used as a residence by various people, including owners and renters. Cf. Russell v. District of Columbia Bd. of Zoning Adjustment, 402 A.2d 1231, 1236 (D.C. 1979) (standard requires deprivation of all beneficial use of property). Here, there is no showing that the property cannot produce a reasonable profit in a permitted use. See Monaco v. District of Columbia Bd. of Zoning Adjustment, 407 A.2d 1091, 1100 (D.C. 1979). An inability to put the property to a more profitable use does not establish the hardship required to justify a variance. See Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535 (D.C. 1972).

Furthermore, it is well settled that a variance may not be granted, even to address a bona fide serious hardship to the owner, if the variance would have an adverse effect upon the surrounding neighborhood. See Clerics of St. Viator, Inc. v. District of Columbia Bd. of Zoning Adjustment, 320 A.2d 291, 294-295 (D.C. 1974) (also holding that variances protect a property owner from deprivation of all beneficial use of property).

3. The Five Variances Would Cause Substantial Detriment To The Public Good And Cannot Be Granted Without Substantially Impairing The Intent, Purpose, And Integrity Of The Zone Plan As Embodied In The Zoning Regulations and Map

The Applicant also cannot, as a matter of law, meet the third criterion required for obtaining variance relief. Most notably, the addition would have a substantially adverse effect on the use or enjoyment of the Joiner Property. More specifically, the addition would unduly affect the light and air available; it would unduly compromise the privacy of use and enjoyment of the Joiner Property; and it would substantially visually intrude upon the character, scale, and pattern of houses in the neighborhood. The proposal is also not consistent with the other homes in the neighborhood. See Roumel, supra, 417 A.2d at 408-409 (affirming BZA's refusal to grant variances based on, inter alia, adverse impact upon neighboring properties). A series of photographs that the Joiners will offer at the hearing are attached hereto and made a part hereof as Group Exhibit "B."

With respect to the impact upon the Joiners, their backyard would directly face and be overshadowed by the proposed two-story addition. The proposed two story, 12 foot, addition would interfere substantially with the use and enjoyment of the home where they have resided for almost forty years by blocking out sunlight to their Property and creating a claustrophobic condition by constructing a two-story wall, three feet of which would be directly on the Joiner property line. The rest of the addition (another 9 feet) would be just three feet back, closer than required by the applicable sideyard setback requirements. Intrusive windows would face from the addition directly onto the Joiner Property.

Equally important, the crowding and lack of sunlight and open air posed by the proposed addition would impact severely the market value of the Joiner Property. The roof of the Trautwine Addition would be 1' 10" higher than the roof of the Giese Property, further diminishing the sunlight to the Joiner Property and contributing to the overshadowing of the Joiner Property by the proposed addition. See Draude v. District of Columbia Bd. of Zoning Adjustment, 527 A.2d 1242, 1252 (D.C. 1987) (variance can be denied based on loss of light and air to adjacent properties).

The Joiners have legitimate privacy and other concerns with respect to the proposed addition. These concerns are valid. This Application could not even be approved as a special exception under Section 223.2 absent substantial evidence that, among other things: (a) the light and air available to neighboring properties shall not be unduly affected; and (b) the privacy of use and enjoyment of neighboring properties shall not be unduly compromised.

The Joiners presently have a patio at the rear, with a small garden. They use the patio frequently, and it is a pleasant and bucolic setting. With a two-story structure looming over it, and windows looking out from the structure down onto the Joiner Property, the entire atmosphere on the Joiners' patio will be transformed, and not for the better. They will be in an enclosed court, rather than an open-air patio. The use, enjoyment, and privacy of their Property will be changed completely.

There is no other home in the neighborhood where such an extensive renovation and addition has been permitted. Even the small galley kitchen on the Giese Residence to the South is much smaller than the addition proposed by the Applicant. The addition on the house to the South was constructed in the 1940's and was not subject to the same legal requirements as this proposal – so it cannot serve as any precedent for this proposal, in any event.

In addition, the Applicant would totally "gut" the existing historic structure and completely remove the rear wall and its historic fabric. At this time, the Applicant is claiming that the rear wall must be removed because it is unstable. Previously, however, the Applicant made no such claim. Their plans have always involved removing the rear wall, to give additional space to the addition. The need to remove the rear wall to allow more space and to make the renovation more economically attractive was initially the only reason given for the removal. Now that historic preservation concerns have been raised, however, the Applicant has claimed (without any specific engineering or structural analysis, as far as we know) that the rear wall is "structurally unsound." From a historic preservation perspective, this proposal is a radical destruction of the existing historic fabric and appearance, and replacement with something completely different from the other homes in the neighborhood.

The Old Georgetown Board and Commission of Fine Arts recommended against the second set of proposed plans for the Trautwine Residence on October 4, 2001 and October 19, 2001. The OGB expressed specifically its concern about historic implications of gutting the

entire inside of the current structure and removing the entire rear wall, and replacing it with a rear wall much different in appearance from the existing historic structure. Although it is not absolutely clear what renovation would be performed in the front of the structure, and the extent to which the renovation would encroach upon the public sidewalk, the OGB also expressed concerns in that respect which have not been addressed.

Furthermore, the actual construction of the proposed addition would cause a prolonged disruption of the daily lives of the Joiners and other neighbors. The Trautwine Property allows access only at the front. There is no rear alley. All construction would have to be channeled through the front of the house, on 27th Street, N.W., and there would be no way to confine a project of this size and scope to the Trautwine Property. Again, this was one reason why the OGB rejected one of the proposals submitted by the Applicant.

The present plans call for the construction of a basement "utility cellar" underneath the proposed rear addition. Obviously, this will involve substantial digging and excavation. Digging will also be required to lower the level of the existing rear yard. No analysis, however, has been provided, to our knowledge, as to how this will structurally affect the existing structure or the surrounding historic properties, including the various walls and buildings, whose structures, foundations, and underpinnings would no doubt be undermined.

On December 19, 2001, it was also revealed, for the first time, that the sole access to the "utility cellar" would be through a below-grade stairwell and stairway to be built directly adjacent to our Property line. This would mean substantial digging, excavation, and construction right on the Joiner Property line. Also, there is no indication how drainage will be accomplished for water accumulating in the stairwell. Nor is there any indication how damage would be avoided to the Joiners' rear wall or patio. Given the rains we have seen recently, this stairwell would create problems for the Applicant, the other neighbors, and the Joiners. Once again, similar concerns were expressed by the OGB to a prior proposal that involved the excavation and construction of a basement underneath the existing structure.

Moreover, the digging and excavation would, at the very least, undermine and destroy the Joiners' rear patio wall. A contractor retained by Ms. Trautwine admitted this at a meeting with the Joiners, and attended by the Applicant and her Architect, on February 4, 2002. The Application is silent on the plan, if any, to handle this situation. Suffice it to say that the Joiners are opposed to any construction project that would admittedly damage areas of their Property or result in an incursion on to their Property. No property owner is required to permit such trespass and destruction to accommodate a neighbor's construction plans.

Conclusion

For the foregoing reasons, Dr. and Mrs. Joiner respectfully request that the Board deny this application in its entirety.

Sincerely yours,

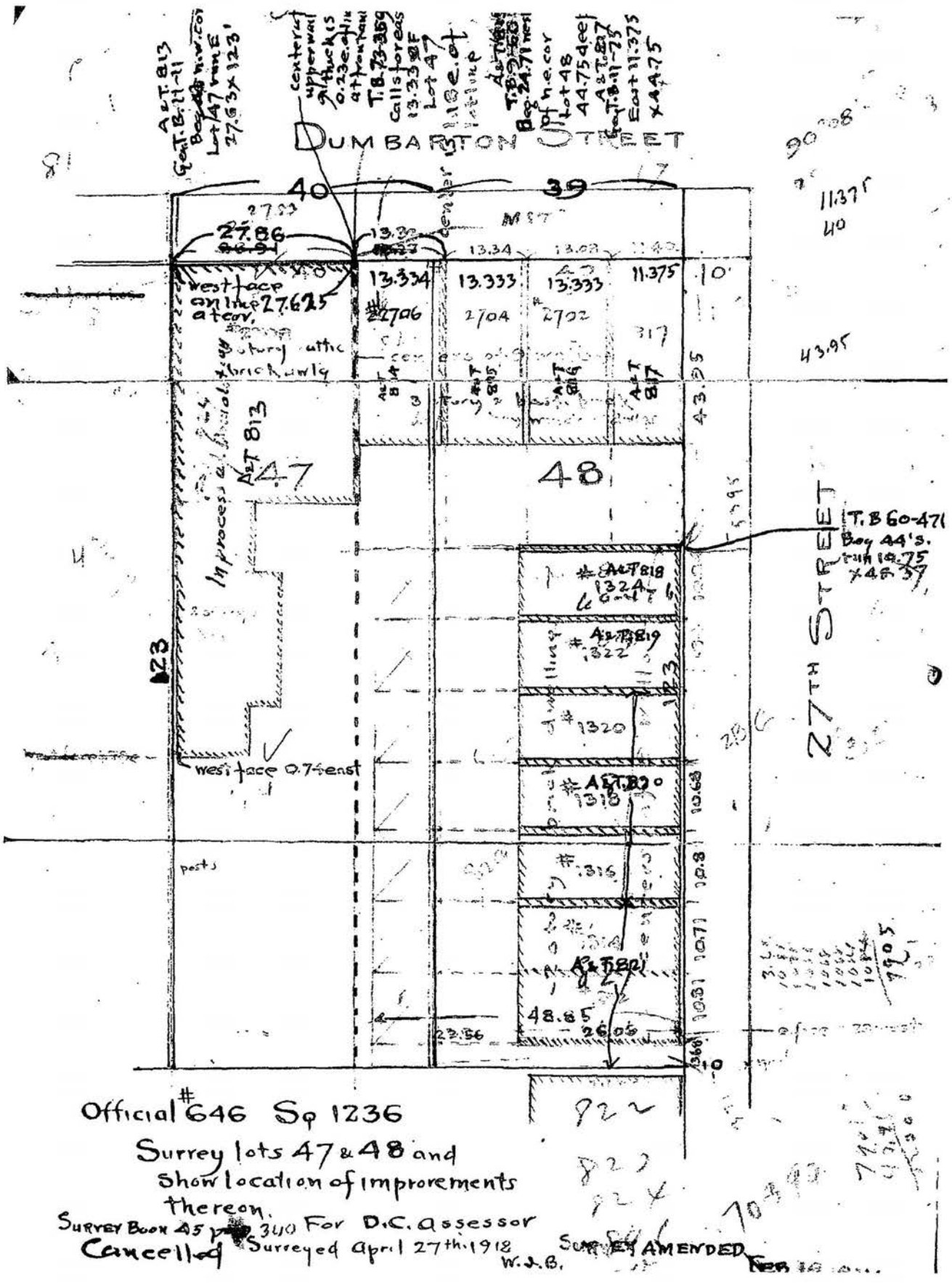
JACKSON & CAMPBELL, P.C.

Vernon W. Johnson, III

Enclosures as Stated

cc: Dr. and Mrs. Gordon B. Joiner (w/encls.)
Stephen N. Gell, Esquire (w/encls.)
Robert B. Giese, Esq. (w/encls.)
Office of Planning (w/encls.)

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DUMBARTON STREET
40
39
47
48
27TH STREET
A&T 813
Lot 47
13.333
13.334
11.375
43.95
2706
2704
2702
1320
1318
1316
1322
1324
48.85
26.06
23.56
10.68
10.71
10.31
10.8
10.0
T.B 60-471
Beg 44's.
run 19.75
x 48.37
west face on line 27.625 at cor.
west face 0.7 east
posts
In process of removal
Official # 646 Sq 1236
Surrey lots 47 & 48 and
show location of improvements
thereon.
For D.C. Assessor
Surveyed April 27th 1918
W.J.B.
Cancelled
SURVEY AMENDED



