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April 3, 2002

Geoffrey H. Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, NW
Washington, D.C. 20001

Re: Lot 818, Square1236, 1324 27th Street, NW--- BZA Case NO. 16810

Dear Mr. Griffis,

Please find attached a response to the applicant's submission of March 26, 2002 in the above described case.

Thank you for your consideration of this matter. If you have any questions or require further information, I can be reached at the above number.

Sincerely,

Robert B. Giese

Cc: (by fax)
Vernon Johnson
ANC 2E
Stephen Gell

BZA
Case No. 16810
Exhibit No. 68

Board of Zoning Adjustment
District of Columbia
CASE NO.16810
EXHIBIT NO.68

4/2/03 Statement in Opposition to the Request for Variance Case Number 16810

I am writing on behalf of Virginia B. Giese and in response to Mr. Gell's filing of March 26, 2002. To refresh your memory, Mrs. Giese owns 1322 27th Street NW which is located directly south of and shares a wall with 1324 27th Street NW, the subject property. Widowed in 1956, Mrs. Giese has leased the property on her own for almost 50 years.

The house at 1322 27th Street NW is a brick row house the same size as that at 1324 27th Street NW, but with a small wood structure on the rear that contains a galley kitchen on the first floor and a bathroom on the second floor. The footprint of the wood structure was in place when Mrs.Giese and her husband purchased the property in 1944.

1322 27th Street NW is one of seven row houses constructed in 1900. Since that time no structure has been constructed behind any of the seven houses except at 1322 27th Street NW and, as stated, the footprint of that small wood structure was in place prior to 1944.

<u>The applicant's misuse of process in this matter calls for dismissal.</u>

Not taking heed to the strong direction of this Board at the last hearing, the applicant's attorney has once again presented a filing that fails for vagueness. We still do not know what application is being reviewed or for that matter whether a special exception or variance is being sought. There is no survey and no commitment to placement of the addition. The applicant's attorney has even watered down the admonition of this Board that a survey be done by a DC licensed surveyor, to someone "accepted" by the Surveyor of the District of Columbia. It is time for this Board to dismiss this application with prejudice.

The applicant's counsel, a seasoned practitioner before this Board, has 5 defective applications for this addition in the record, none of which has been adopted or perfected for the current submission as directed by this Board. It seriously prejudices my client to have to respond in what is essentially a guessing game. This is not lost on opposing counsel. It further hampers the important work of this Board in having no direction in preparation for hearing. There is a reason that Sect. 3113.8 of this Board's rules mandates that the applicant file all relevant materials with the Board, 14 days prior to hearing.

By constantly muddying the waters, the applicant's counsel has dragged this project on for months and months in an attempt to wear down the opposition and obtain unwarranted, undeserved relief. The latest filing only perpetuates this unacceptable

situation. The applicant wants special land use treatment potentially worth hundreds of thousands of dollars in added value to her property. The opponents, consisting of her neighbors and the Citizen's Association of Georgetown, seek only to pursue the simple enjoyment of their property or to pursue public interest preservation goals. The ANC 2E has met five times on this, the Old Georgetown Board approximately four times and the BZA, three. The applicant has withdrawn consideration of the project from the OGB at least 4 times. Interested parties were not consistently informed or given notice of ANC hearings.

Regarding the BZA in particular:

ROUND 1 - the applicant filed plans for the January 2, 2002 hearing that called for an 11'6" wide addition on a 10'9" lot. New plans were presented at the hearing, but never reviewed because applicant's attorney had sought a special exception when legally a variance was required. The carryover to the February 26, 2002 was to allow the applicant time to regroup from her mistaken earlier filing and properly apply for the necessary variance.

ROUND 2 - the applicant never filed a proper application for the variances, as usual presented never before revealed plans at the hearing February 26, and refused to commit to an exact placement of the addition. Applicant was allowed to regroup a second time, strongly encouraged to obtain a survey to determine placement of the project, and asked to put an application before the Board that would clear the confusion and finally comply with the Board's rules. A new hearing was called for March 12, 2002 for this purpose.

ROUND 3 - just prior to the March 12 hearing, Applicant filed two new BZA2 forms, with one marked at the top "Alternative Proposal". The record at this point contained five defective applications. Each of the 2 new BZA2 forms lacked any specificity as to whether a special exception or a variance was being sought and neither was accompanied by either an explanatory cover letter or for that matter, necessary attachments attendant to such applications. Applicant followed pattern and appeared at the hearing with never before revealed new plans, no commitment as to placement of the project, no survey, and no indication of what application was to be considered. When applicant's counsel requested that two applications be considered and additionally multiple forms of relief, and refused to pick an application and plea for relief, this patient Board allowed applicant to regroup for an extraordinary third time. Accompanying this generous opportunity for a fourth hearing, however, was the strong direction that this time a specific application, with a final plan, with a specific plea, with a survey conducted by a DC licensed surveyor ("not some guy in a pickup truck") should be presented. A new hearing was scheduled for April 9th, with the applicant to submit all necessary materials by March 26.

ROUND 4 - the March 26 filing lets us down once again. We are left with no idea of what application is being considered, no survey by a DC licensed surveyor, and no commitment as to where the addition will be placed. This is something like the famous quote on optimism – "In a room full of manure, there must be a pony somewhere." This Board has politely asked the applicant for months to show us the pony. The applicant's attorney has not done so. The Applicant was duly warned at the last hearing, the Board has been more than patient, and the opponents have been more than inconvenienced by this endless procedural road. In fairness to all parties, this matter must now be dismissed.

The applicant does not deserve either variance or special exception relief.

In the event that this matter is not dismissed for the above mentioned reasons, whether the applicant is seeking a variance or a special exception, the relief sought by the owner of 1324 27thStreet NW must be denied. The owner has not met the burden of proving the demanding standards required for this Board to grant the exceptional relief of a variance or even the lesser relief of the special exception. Any hardship claimed by the applicant in this matter is either illusory or if existent at all, self induced. Furthermore, ANC 2E rejected this latest proposal on 4/2/02, on the basis of harm to neighboring properties.

Nothing in the record demonstrates that the "extraordinary or exceptional condition" test for a variance has been met for this project. For a variance to be granted, the reason for the variance must be specific to the property, not the general condition of the neighborhood. The subject property is a small house on a small lot, which has a sideline that lies perpendicular to the rear yards of other houses. Add to that, it is an old house with exterior brick walls that require repair and a combination develops that is not unusual for Georgetown. Even Mr. Gell recognizes that small houses are endemic to the neighborhood. In his filing to this Board dated 12/19/01 he states, "Like many parts of Georgetown, this immediate neighborhood suffers from undersized houses." The solution to a general problem is legislation and not relief meted out by a non-legislative body through variance.

Nothing in the record demonstrates that application of the zoning laws will be unduly burdensome for the owner. Three doors down from the one bedroom subject property is another one bedroom house at 1316 27th Street NW of the exact same size and configuration, 562 square feet. That property was reconditioned and has a D.C. assessed value of $364,000, representing the value of that property on 1/1/02. The applicant purchased her property for $240,000. Granting a variance in the instant case and thereby gaining the second bedroom for the subject property will set a precedent that any one bedroom house in Washington may, as a matter of right, receive the necessary variance or variances to attain that second bedroom. As demonstrated by the

property three doors down, the applicant has the option without variance to create a very livable and, judging by the D.C. assessed value of the other home, desirable house in the East Village of Georgetown. No substantive economic data on repair of the rear wall or for that matter any other economic impediment to pursuing this alternative has been introduced into the record. The applicant's property was recently assessed by the D.C. government at $350,000, $110,000 more than she paid for it. Although not dispositive, it should also be taken into account that since the applicant filed at the Old Georgetown Board before even purchasing the home, the applicant was well aware that zoning relief would be necessary to pursue the applicant's aggressive plans.

The requested variances should be denied because of harm that the proposed project would cause to the property at 1322 27th Street NW. Once again it should be noted that ANC 2E rejected this latest proposal due to harm to neighboring properties. Mrs. Giese has numerous concerns about the physical affects of the owner's planned addition, which have not been satisfactorily addressed. They are the following:

1. Demolition - the rear wall of the applicant's property, which is attached to 1322 27th Street is intended to be razed by the applicant without the permission of Mrs. Giese or any indication of how the shared wall or Mrs. Giese's brick rear wall that is flush with the applicant's present rear wall, will be affected by the razing and new construction.

2. Wall Damage - the addition will create a 9" gap between the wood structure on the property of 1322 27th Street and the southern masonry wall of the addition, which will prevent any repair or maintenance of the wood wall and accelerate deterioration of the wood from trapped moisture.

3. Foundation Damage - The applicant proposes constructing a stone wall within inches of or perhaps even on the foundation at 1322 27th Street that extends out from beneath the rear wood structure. There has been no indication of precautions that will be taken to protect that foundation from the wall construction or the excavation around the foundation represented in the plans.

4. Air - The addition will inhibit the flow of ground air, which only occurs through the court created by the perpendicular Dumbarton Street rear yards to the north. The rear yards of the 27th Street homes are otherwise enclosed by a combination 12 foot wall and fence to the west, N Street homes and a church to the south, and wall to wall 27th Street homes to the east.

5. More air - The north side of Mrs. Giese's garden, which consists of a wood fence, receives significant sun because of its southern exposure. The

other two sides are a brick wall to the west and the back of the wood structure to the east. Within this enclosed area there is little opportunity for movement of air. The plan provides for a brick wall to be placed along the north side where the wood fence now sits. If the brick wall is put in place, during the late spring, summer, and early fall months, the sun heating up the wall and the reduction of breathability between the properties will turn Mrs. Giese's garden into an oven. One might note that all the fences along this row of houses on 27& Street NW are wood and breathable, just for this reason.

6. Drainage - Drainage in the garden of 1322 27th Street NW runs from west to east (back to front) with drains located on the southeast corner of the garden. No drains exist on the north side where the 9-inch gap will be. Under the plans submitted, water will run into that 9-inch gap with nowhere to go. Any settling of the garden at 1322 27th Street NW from excavation will only magnify the problem.

7. Privacy - The plans submitted for the addition show the second floor back as being comprised mainly of one large window that will look down right into the garden at 1322 27th Street NW. This small garden, which as presently situated is uniquely private for such a congested area of Georgetown, will lose that quality of privacy and thereby diminish its use and enjoyment if the proposed plan is constructed.

8. Roof water runoff - The plans for the addition do not provide any protection of 1322 27th Street NW against roof water runoff from the addition at 1324 27th Street NW. This will exacerbate the 9-inch gap problem and if the water were to flow over to the roof of 1322 27th Street NW that will further laden an already overburdened wastewater release system.

9. New chimney or flue - The plans submitted include a fireplace in 1324 27th Street NW. There is no flue available for such a fireplace in the chimney located between the houses. It is unclear where such a flue would be located and, depending upon the location, what harm might occur from its installation.

10. Historic Preservation - 1324 27th Street NW is a contributing structure to the Georgetown Historic District. There has been no showing that the rear and side wall are too unsound economically to save nor has the Old Georgetown Board determined that it would consent to removal of both of these walls.

As stated above, this application fails to meet the standards for variance relief or a special exception. There is nothing exceptional about this piece of property or topography that justifies relief. Any difficulties with this proposal are self created and any hardship is self-imposed.