Law Offices
STEPHEN N. GELL
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April 4, 2002

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

RECEIVED
D.C. OFFICE OF ZONING
2002 APR -4 PM 2:19

Re: Case No. 16810, 1324 27th Street, N.W.

Dear Mr. Griffis:

Enclosed is an application for a variance for an addition at the rear of 1324 27th Street, N.W. Regrettably it was not submitted with the plans and accompanying letter of March 26, the time set by the Board. I did not realize my mistake until I saw the transcript on April 3, 2002. I would be grateful if the Board would waive the lateness of this submission.

I truly regret any inconvenience this may have caused. However, I believe the omission was harmless error for the following reasons:

1. The new application was identical to the previous application with one exception. We determined that the variances covered all the changes requested and the additional request for a special exception was superfluous.

2. The test for a special exception is included in the three tests for a variance.

3. On March 26 we submitted plans which clearly show the nature of the addition we are seeking to have the Board approve.

4. The notice published in the Register and sent to property owners was correct in every detail.

For these reasons, our mistake should not have created a burden for the parties.

Please call if there are any questions.

BZA
Case No. 16810
Exhibit No. 70

Board of Zoning Adjustment
District of Columbia
CASE NO.16810
EXHIBIT NO.70

Yours very truly,



Stephen N. Gell

Enclosure
cc: Lori Trautwine
Christian Zapatka, Arch.
Dr. Joiner
Robert Giese, Esq.
Tom Birch (ANC 2B)

BZA Form 2
(Revised 7/17/95)

Docket No. _____

BEFORE THE BOARD OF ZONING ADJUSTMENT
FOR THE DISTRICT OF COLUMBIA

APPLICATION

NOTE: See reverse side of this form for filing instructions, filing fees and information required by the Board

DO NOT MAIL DO NOT MAIL

TO THE BOARD OF ZONING ADJUSTMENT

Pursuant to Sections 401, 403, 404, 406, 2001.3 of the Zoning Regulations of the District of Columbia, an application is hereby made for the following action: Variances from regulations governing lot dimensions, lot occupancy, rear yard and court as well as additions to non-conforming structures, which is provided for by Section(s) 3103 of the Zoning Regulations.

Premises affected are located at 1324 27th St. N.W. (street address),

Lot(s) 818, Square(s) 1236,

in the District of Columbia, in Zoning District R-3.

Present use of Property: Single family residential.

Proposed use of Property: Same.

Owner of Property: Lori Trautwine.

Address of Owner: 1324 27th St NW.

State briefly the bases for action sought:

Please refer to our Second Amended Prehearing Statement of Feb. 12, 2002 as modified by our submission of March 26 and this Application and attachments.

Date: April 3, 2002 Signature: Stephen N Gell (Applicant)*

*The owner of the property for which application is made or his/her authorized agent may file an application. In the event an authorized agent files an application on behalf of the owner, the notice of application shall be accompanied by a letter signed by the owner authorizing the agent to act on his behalf in this appeal.

TO BE NOTIFIED OF HEARING AND DECISION:

Name: STEPHEN N. GELL

Address: 5th Fl 1101 30th St. NW, WDC

Zip Code 20007 Phone No. 202-625-8311

ANY APPLICATION THAT IS NOT COMPLETED IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THIS FORM WILL NOT BE ACCEPTED.

Form 1 - BZA Certification - Sid[illegible] (Revised 03/07/00)

ZONING SELF-CERTIFICATION FORM

Date	Project Address(es)			
April 4, 2002	1324 27th ST. N.W.			
Square	**Lot(s)**	**Zone District(s)**	**ANC(s)/Single Member District(s)**	**Case No.**
1236	818	R-3	2E07	16810

CERTIFICATION

The undersigned agent hereby certifies that the following zoning relief is required from the Board of Zoning Adjustment in this matter pursuant to:

☐	Use Variance DCMR 11 §3103	☑	Area Variance DCMR 11 §3103	☐	Special Exception DCMR 11 §3104	

which is provided for by DCMR Title 11 Section No(s).:

Pursuant to 11 DCMR §3113.2, the undersigned agent certifies that:

(1) the agent is duly licensed to practice law or architecture in the District of Columbia;
(2) the agent is currently in good standing and otherwise entitled to practice law or architecture in the District of Columbia;
(3) the applicant is entitled to apply for the variance or special exception sought for the reasons stated in the application.

The undersigned agent and owner acknowledge that they are assuming the risk that the owner may require additional or different zoning relief from that which is self-certified in order to obtain, for the above-referenced project, any building permit, certificate of occupancy, or other administrative determination based upon the Zoning Regulations and Map. Any approval of the application by the Board of Zoning Adjustment does not constitute a Board finding that the relief sought is the relief required to obtain such permit, certification, or determination.

The undersigned agent and owner further acknowledge that any person aggrieved by the issuance of any permit, certificate, or determination for which the requested zoning relief as a prerequisite may appeal that permit, certificate, or determination on the grounds that additional or different zoning relief is required.

The undersigned agent and owner hereby hold the District of Columbia Office of Zoning and Department of Consumer and Regulatory Affairs harmless from any liability for failure of the undersigned to seek complete and proper zoning relief from the Board of Zoning Adjustment.

The undersigned owner hereby authorizes the undersigned agent to act on the owner's behalf in this matter.

Owner's Signature	Owner's Name (Please Print)
Lori Trautwine	LORI TRAUTWINE
Agents Signature	**Agent's Name (Please Print)**
Stephen Gell	STEPHEN N. GELL, ESQ

D.C. Bar No. | **or** | **Architect Registration No.**

OFFICE OF ZONING DETERMINATION

(DCMR Title 11 §3113.2)

Based upon review of the application and self-certification, this application is

☐	Accepted for filing.
☐	Referred to the Office of the Zoning Administrator, Department of Consumer and Regulatory Affairs, for determination of proper zoning relief required.
☐	Rejected for failure to comply with the provisions of ☐ DCMR Title 11 §3113.2; or ☐ DCMR Title 11 Zoning Regulations. Explanation _____

Signature | **Date**

Side 2

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

1. All self-certification applications shall be made on BZA Certification Form 1. All certification forms must be completely filled out (front **and** back) and be typewritten or legibly printed. All information shall be furnished by the applicant. If additional space is necessary, use separate sheets of paper to complete this form.

2. Complete one self-certification form per each application filed. Present this form with the BZA Form 2 application to the Office of Zoning, 441 4th Street, N.W., Suite 210, Washington, D.C. 20001.

ITEM	EXISTING	REQUIRED	ALLOWED	PROVIDED	VARIANCE Deviation/Percent
Lot Area	520 SF	2,000 SF		520 SF	74%
Lot Width	10'9"	20'		10'9"	46%
Lot Occupancy	53%		60%	74.8%	25%
Floor Area Ratio (FAR)	—	—	—	—	—
Parking Spaces	—	—	—	—	—
Loading Berths	—	—	—	—	—
Front Yard	—	—	—	—	—
Rear Yard	23'	20'		12'3"	38.75%
Side Yard	—	—	—	—	—
Court, Open					
Court, Closed					

HEIGHT:

Side 2

INSTRUCTIONS

Any request for self-certification that is not completed in accordance with the following instructions shall not be accepted.

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Loading Berths	—	—	—	—	—
Front Yard	—	—	—	—	—
Rear Yard	23'	20'		12'3"	38.75%
Side Yard	—	—	—	—	—
Court, Open					
Court, Closed					

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April 4, 2002

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, DC 20001

Re: BZA Case No. 16810, 1324 27th Street, N.W.

Dear Mr. Griffis:

I have reviewed Mr. Robert Giese's Statement in Opposition to the Request for Variance in the subject case dated April 3, 2002. The purpose of this letter is to refute, point by point the more significant charges in his statement.

There is no survey and no commitment to the placement of the addition.

A survey plat was submitted with the original application which shows that the property is 10'9" by 48' 4". Both the drawings we have submitted and the statements made at hearing were clear that we intend to build the addition along the South property line after obtaining a survey from a licensed surveyor on the list of 11 surveyors accepted by the Office of the DC Surveyor. Since Mr. Giese's family has owned the property since 1944, he is presumed to know where his property line is. Moreover, the Board does not routinely request a survey in variance cases. Presumably, it has not wanted to be in the position of judging the merits of one survey against another. This is a matter that is left to the construction phase of development and neighbors who may question the placement of the structure have other means at their disposal to assure compliance with the law. Finally, a survey would be nothing more than an opportunity for Mr. Giese to engage in further delaying tactics. He would, no doubt, challenge the survey, obtain a restraining order until the correctness of the survey were determined by a court of law and then, if the BZA approves the addition, challenge the result in

court. No doubt he believes that Ms. Trautwine will give up long before he has finished with her.

Applicant has not submitted a final application

On March 26 we submitted plans which clearly show the nature of the addition we are seeking to have the Board approve. Inadvertently, the application form also requested by the Board was not submitted until April 4 and we have apologized for the tardiness. We noted the following:

1. The new application was identical to the previous application with one exception. We determined that the variances covered all the changes requested and the additional request for a special exception was superfluous.

2. There was no harm done to the opposition. The test for a special exception is included in the three tests for a variance.

3. The notice published in the Register and sent to property owners was correct in every detail.

At most, our omission was harmless error. Mr. Giese was not prevented from determining the effect of the addition shown on the plans on his property and cannot claim that a technical breach contributed to his confusion.

Applicant has submitted several plans in order to muddy the waters and wear down the opposition

Admittedly we have submitted a variety of plans. It was not because we changed our mind as to what we wanted or needed. Rather it was because of the opposition of the neighbors and the desire to accommodate their concerns. Changes were also made to satisfy the sometimes conflicting demands of the OGB and ANC 2E. The current plan is a scaled back version of the original plan, a full-width, 10 foot long addition which included a basement.

The property was assessed at $350,000 and doesn't need the addition

The best indication of the value of property is a recent sale. Ms. Trautwine purchased her property in an arms length transaction for $240,000. She has appealed the exorbitant assessment and expects a substantial reduction. Moreover, the assessment was made prior to the Assessment Office's awareness of the substantial work that must be done to preserve the structure. Obviously she will have to disclose the defects to any subsequent purchaser which will reduce the marketability of the

house. Finally, the process of obtaining zoning approval and a building permit is likely to take a few more months. Mortgage rates are rising and there is indication that the real estate bubble may deflate even more quickly than it inflated. A letter from a mortgage broker is ample proof that she needs to add value to the house to finance the preservation work.

Construction of the planned addition will damage the walls and foundations of neighboring property

Ms. Trautwine has fully accepted her responsibility for any potential damage to neighboring property. However, such damage is not likely. Construction is carried out all over the city without damage to neighboring houses even as old as these. Contractors have sophisticated construction techniques which involve stabilizing and underpinning adjacent walls. Moreover, construction techniques are not questions ordinarily considered by the BZA. This matter is left to the Permits Office of the District which imposes numerous building requirements to address these very concerns.

Dr. Joiner asked to speak to a contractor to satisfy himself about the techniques to be used and we complied. Mr. Giese has not asked for the same. Moreover, it is too early to know which contractor Ms. Trautwine will use for the construction. We cannot guarantee a particular choice since many factors enter into the selection, including availability at the time. Moreover, do either of the neighbors wish to specify a particular technique and then bear the responsibility if it proves ineffective?

On March 18, in a three page letter to Mr. Giese, and in the context of settlement discussions, we proposed twelve measures we were willing to take to assuage his concerns. Rather than taking this opportunity to open a dialogue, Mr. Giese simply replied that we were "stonewalling". Our offers included the following:

1. Reduce the size of the addition.

2. Eliminate the basement and excavate only for footings.

3. Obtain a letter from a licensed geophysical and structural engineer certifying that the proposed construction techniques would preserve the integrity of the Giese property.

4. Obtain a qualified survey.

5. Provide appropriate coverings to keep water out of any gap that may be left between the Trautwine addition and the Giese addition. (We have more recently offered to eliminate the 9-inch gap by extending the current party wall. Since part of this is on his property, his consent would be required.)

6. Divert rainwater falling on the Trautwine roof away from the Giese house.

7. Provide drainage through the Trautwine property to the front of the house in accordance with DC regulations to divert ground water away from the Giese house.

8. Confine outside construction to 7 a.m. to 6 p.m. on weekdays; 9 a.m. to 5 p.m. on Saturdays.

9. Remove trash and excavation debris from the rear yard through the front of the house.

10. Document the condition of Mrs. Giese's property prior to excavation and construction and accord the Gieses an opportunity to review and comment on the report.

11. Indemnify the Gieses against personal injury and property damage.

12. Maintain personal injury and property damage insurance coverage in the amount of One Million Dollars ($1,000,000) per person and Three Million Dollars ($3,000,000) per incident, naming the Gieses as additional insured.

Air movement will be hindered. A brick wall will heat up and make the Giese garden into an oven.

Mr. Giese has not produced any expert opinion to back up his assumptions that air will not travel around an adjacent building, especially one which adjoins his own projection. It is hard to see that the conditions would be any different. As for the brick wall, it will be on the other side of an air-conditioned building. Finally, as Mr. Giese well knows, Washington back yards are hot in the summer and there is little that can be done about it.

Drainage will be impeded

Planning to assure proper drainage is part of the permits process. We have assumed the responsibility for assuring that water falling on our property will drain through the property to the street.

Windows will reduce privacy in the Giese back yard

It is a feature of urban living that neighbors can sometimes peer into each other's back yards if they care to. Moreover, the Giese back yard is not protected from the gaze of his neighbors even now.

Roof water runoff will damage the Giese addition

We have told Mr. Giese that, with his approval and cooperation, if there is a 9-inch gap, we will provide a cover that will assure roof water runoff will seep through to destroy his adjacent wall.

It is unclear where the fireplace chimney flue will be placed

The fireplace shown in the plans is in the main part of the house, not in the addition. At that spot, there is an existing chimney previously used for a coal stove. It can be retrofitted to serve a wood burning fireplace.

Reconstruction of the side and back walls is not necessary

A structural engineer has advised that the walls are in danger of collapse. Effective measures must be taken if the property is to be preserved. If this can be done through reinforcement rather than replacement, we will choose the less expensive option.

I thank the Board for this opportunity to respond to Mr. Giese. If it serves to streamline the proceedings it will have served a useful purpose.

Yours very truly,

Stephen N. Gell

Enclosure
cc: Lori Trautwine
Dr. Gordon Joiner
Robert Giese, Esq.
Tom Birch (ANC 2B)