**Robert B. Giese**
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Rec'd.
4.9.02

April 9, 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,

On April 4, 2002 Mr. Gell submitted a letter to this Board that cited and mischaracterized a letter concerning settlement dated March 18 that he had sent me. I find it unfortunate that he has decided to bring a matter concerning settlement before this Board. I am left with no choice but to submit the letter and my response, to set the record straight. The emptiness of Mr. Gell's letter is apparent on its face and for that reason requires no explanation.

Sincerely,

Robert B. Giese

Cc: Vernon Johnson
ANC 2E
Stephen Gell

BZA
Case No. 16810
Exhibit No. 76

Board of Zoning Adjustment
District of Columbia
CASE NO.16810
EXHIBIT NO.76

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March 20, 2002

Stephen N. Gell
1101 30th Street
Fifth Floor
Washington, D. C. 20007

By Fax

Dear Steve,

For several weeks, stretching into months now, I have asked you to respond to the concerns that my client has raised about the proposed addition at 1324 27th Street. Your letter of March 18 continues the non-responsive, non-productive route that you have taken since the beginning. As usual, no plan is presented and there is no clue as to exactly where the addition will be placed. In point #1 you ask for a length of 11' 4" when the Old Georgetown Board indicated no more than 8 feet. In point #2 you talk about excavation when once again the Old Georgetown Board indicated no excavation. The rest continues on as nonsensically as the first two points. I can only conclude from this letter that you have no interest in settling this matter and that you are simply creating paper to give the appearance of a settlement effort. It is your choice if you wish to stonewall, just please do not waste my time with letters like this. I await a response that addresses the concerns of my client in a realistic, specific manner.

Sincerely,

Robert B. Giese

Law Offices
STEPHEN N. GELL
A Professional Corporation

1101 30th St. N.W
Fifth Floor
Washington, D.C. 20007
Telephone: (202) 625-8311
Facsimile: (703) 522-5503

March 18, 2002

Robert B. Giese, Esq.
Suite 900
1101 Connecticut Ave, N.W.
Washington D.C. 20036

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

Dear Bob:

In response to your request for a proposed agreement, I have attempted to set forth the principal elements of an agreement for your reaction. As you know, the Old Georgetown Board has turned down our proposal for an l-shaped addition. We are now thinking of submitting a different design and will do so if we can have your support. We have attempted to take into account the matters raised by you in letters and testimony. If we can reach agreement on the principal points, we can prepare a formal agreement with boilerplate and other appropriate clauses. In exchange for Mrs. Giese's support at the BZA, OGB, CFA, HPRB and other relevant governmental agencies we would be willing to do the following:

**Construction**

1. The addition will be no more than 11 feet 4 inches in length.

2. There will be no basement. Excavation for the addition and preservation or replacement of the rear wall of 1324 27th Street will be no deeper than approximately 36 inches.

3. Ms. Trautwine will provide a letter from a licensed geophysical and structural engineer addressed to Mrs. Giese stating that the engineer has studied the plans and proposed construction techniques to be used for demolition and construction of Ms. Trautwine's house and they are of the opinion that the demolition and construction precautions to be taken by the contractors (which may include

sheeting, shoring and underpinning or other approved methods, as necessary) will preserve the integrity of Mrs. Giese's property and maintain them in at least the same condition they were in prior to the commencement of demolition and construction.

4. At no cost to Mrs. Giese, a survey by a qualified surveyor, licensed or accepted by the Surveyor of the District of Columbia, will be performed and the construction will be wholly within Ms. Trautwine's property lines. Mrs. Giese, or her representative, may review the survey prior to construction.

5. Mrs. Giese will permit Ms. Trautwine to have access to the rear of her property for inspection, construction, and maintenance purposes. She will permit use of the shared party wall for any necessary reinforcement. Moreover, she will permit use of her property for purposes of underpinning, shoring up, or otherwise perserving the integrity of the properties.

6. If a gap is left between the Trautwine addition and the Giese addition, on request, appropriate coverings will be constructed and maintained to prevent water leakage. In any event, rainwater falling on the Trautwine roof will be diverted away from the Giese house. Mrs. Giese will cooperate as necessary to facilitate the construction and maintenance contemplated herein, including, but not limited to, permitting construction workers access to those parts of her house necessary to perform the work contemplated in this project, including, but not limited to roof construction, water diversion, wall replacement, underpinning and structural connections, for purposes of facilitating construction of the project and preserving property.

7. Drainage plans will be prepared in accordance with DC regulations. Water will be diverted away from the Giese house and will flow under the Trautwine property to the front of the house.

8. Except in emergencies: outside construction will be confined to 7 a.m. to 6 p.m. on weekdays; 9 a.m. to 5 p.m. on Saturdays.

9. Trash and excavation debris will be removed from the rear yard through the front of the house.

**Condition Documentation**

10. Prior to the commencement of any demolition or construction of the house, an engineer or consultant for Ms. Trautwine shall, at the expense of Ms. Trautwine, document the condition of Mrs. Giese's property by taking photographs and other measurements of the condition of Mrs. Giese's property (the "property survey"). Mrs. Giese will allow reasonable access to all areas of her roperty for the purpose of enabling this documentation to take place. Ms. Trautwine shall, promptly following the inspection and documentation and prior to the commencement of

any demolition or construction work for the Project, provide without cost to Mrs. Giese, the property survey prepared by an engineer or consultant engaged by Ms. Trautwine documenting the condition of Mrs. Giese' property. Mrs. Giese will review the Survey and acknowledge the accuracy thereof in writing within ten business days of receipt of the survey. Mrs. Giese represents and warrants that to the best of her knowledge, information and belief, there are no defective conditions known to her but not apparent.

**Indemnification**

11. Ms. Trautwine hereby indemnifies and holds harmless Mrs. Giese as follows:

(a) from and against any and all damages arising from personal injury to Mrs. Giese, their respective agents or tenants on or about the property of Mrs. Giese ("Owner Indemnitee"); and

(b) from and against any and all property damage caused to any portion of the Indemnified Property in either case caused by Ms. Trautwine, her officers, employees, agents, contractors, consultants or workmen.

(c) In any instance in which indemnification is provided to Mrs. Giese, as above described, Ms. Trautwine shall, promptly after notification and inspection of the personal injury and/or damage sustained, provide full and complete compensation for personal injuries suffered to the full extent of the law of the District of Columbia then in effect and for property damage for which indemnification is provided herein or Ms. Trautwine may remediate such damage at her expense.

11. In any instance in which Mrs. Giese or her tenant has suffered personal injury or property damage for a loss covered by ____, and as a condition of indemnity hereunder, she shall provide written notice to Ms. Trautwine within 30 days of her or her tenant's awareness of such loss, damage or claim.

12. Ms. Trautwine shall maintain personal injury and property damage insurance coverage for the Indemnified Property in the amount of One Million Dollars ($1,000,000) per person and Three Million Dollars ($3,000,000) per incident, respectively, until 90 days after completion of construction. Each such insurance policy shall name Mrs. Giese as additional insured and shall provide that such policy shall not be cancelled or terminated without thirty (30) days' prior written notice to Mrs. Giese.

It is understood that these offers are made in the spirit of good faith negotiations. Please call with your response or to schedule a meeting as soon as possible. Thank you.

Yours very truly,

*Stephen N. Gell*

Stephen N. Gell

Agreed:

Mrs. Virginia B. Giese:_____Date_____ Witness:_____

Lori Trautwine:_____Date_____ Witness:_____

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April 9, 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,

I have only now had the opportunity to reply to Mr. Gell's "the dog ate my homework" letter of April 4, 2002. Once again he has dipped into his bag of faulty excuses - poor memory, lack of understanding of rules, difficulty with the process. It is hard to fathom that a practitioner, who I understand has practiced before this board for years and even at one point worked within the Corporation Counsel's office, could be so carelessly errant. The application is not only late but also defective and for these reasons should be rejected and this matter dismissed. It is not harmless error to intentionally prejudice your opponent when the Board has specifically directed an advocate otherwise.

Regarding the rest of the letter, Mr. Gell simply seeks to shift the burden of proof that is his and his alone. How can this Board make a determination on harm without knowing where the addition is to be placed. The applicant's initial response for not producing a survey was lack of time. Next was the expense. Now, it's the concern that someone might question it. An essential part of this equation, the survey, that would speed this process is absent. The real question is why? What is being hidden? The BZA2 form requires boundaries for a reason.

All of us who live in Washington, especially Georgetown were shocked and astounded by the huge assessment increases. The good news however is that these

assessments reflect real increase in value and we are all the richer. Again I emphasize that three doors down from the applicant's property is a remodeled home of the exact same size as applicant's present house, that is assessed at $364,000. The mortgage banker's letter basically says, like all mortgage company non-committal letters, bring the right appraisal and we'll loan you the money.

On specific harms, the applicant just does not get it. How can we have a useful discussion about harm until the applicant commits to where the walls will be placed and at the minimum what precautions will be taken in regard to my client's property. I do not find it productive to meet with contractors who are still interviewing for the job or to listen to generalities about the quality of contractor's in the world today. Mr. Gell's mischaracterization of his "settlement" letter is answered under separate cover. You should note that the structural engineer has not been brought back since he visited in October to determine what actually <u>needs</u> to be done as opposed to what <u>might</u> have to be done.

Thank you for your consideration of these points.

Sincerely,

Robert B. Giese

Cc: Vernon Johnson
ANC 2E
Stephen Gell