TESTIMONY OF DR. GORDON B. JOINER

BOARD OF ZONING ADJUSTMENT APPLICATION NO. 16810

April 16, 2002

I. Introduction

My name is Dr. Gordon B. Joiner, and I reside at 2704 Dumbarton Avenue, N.W., Washington, D.C. 20007. My wife, Aristy V. Joiner, and I have lived in our home for nearly 40 years. Our son, Peter Scott Joiner, grew up in the home. Our house backs directly onto the rear yard of the Applicant's Property at 1324 27th Street, N.W. Thus, our Property abuts directly the Trautwine Property.

The construction and renovation project for which the Applicant seeks as many as five separate variances, and several special exceptions, thus would be taking place, literally, right in our back yard. We are the property owners who would be single most affected by the construction and renovation project, if it were allowed to go forward.

We oppose this project because the Applicant cannot meet the criteria for approval of five separate variances under D.C. Code § 5-424(g)(3) (1981) and Section 3103.2 of the Zoning Regulations. To the extent that the Applicant is seeking any special exceptions, the Applicant cannot meet the criteria for approval of any special exceptions under Sections 223.2 and/or 3104.1 of the Zoning Regulations. Our counsel already filed a substantial Statement of Opposition to this project on February 19, 2002. We join in the arguments made by our counsel. Without restating what is in the Statement of Opposition, I want to take this opportunity to make some particular points about why this proposal cannot be approved by the BZA.

I very much regret the statements by the Applicant that Aristy and I have increased our demands or any implication that we have not tried in good faith to deal with this project. In fact, it was not until late last year – at least four months into the whole process – that the Applicant even tried to have a discussion with us. From our perspective, we have worked very hard to try and find a common ground where we would not oppose the project, even though the project, in any form, is going to diminish greatly the privacy of use and enjoyment of our Property and our Property values.

We feel that it is actually the Applicant who has constantly changed her demands and plans. We have now seen at least six different versions of this plan, ranging from full width extensions of various lengths, to underground additions, to additions of other shapes and sizes. Now, we are faced with an extension that is only somewhat less than full-width – a mere two feet from our Property line, not enough space to conduct the construction on the Trautwine Property. The project in its current form would require incursion onto our Property and the end result would be an extension not very different in impact upon us from a full-width extension. After seeing several prior versions of this

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project, we are now therefore back to a proposal that would involve construction right up to our Property line and that would truly have a catastrophic effect upon us.

ANC 2E has unanimously rejected every proposal for a full-width extension to the Trautwine Residence, recognizing the impact this would have on our Property. Most recently, on April 2, 2002, ANC 2E also rejected the current proposal and the zoning variances and special exceptions applied for, agreeing that a two foot setback simply results in too much of a negative impact upon our Property. The Applicant, however, has disregarded our concerns and the ANC's disapproval, and is moving forward. Perhaps it is notable that we are not the only neighbors with whom the Applicant has been unable to work.

In any case, we must continue to oppose this proposal. I want to focus on the specific impact that this proposal would have upon us. I have taken a few photographs to show just how small the area in question is. The Trautwine Property, no different from many other properties in Georgetown and in the District, is a very small lot with a very small historic dwelling. In fact, both the structure and the lot are the same as those on the other six lots on 27th Street, N.W. The only addition to any home on that street is the galley kitchen on the Giese Property that predated the current Zoning Regulations.

As you can see by looking at the photographs, we are in very close quarters already. With an imposing two-story addition built close up to our patio fence and Property line, light and air to our Property would be blocked. Moreover, the renovation/addition is not consistent with the historic character of the neighborhood or the other homes in the neighborhood. Also, the plan would involve substantial excavation, gutting of the entire structure, and renovation on the entire lot. There is no way that the effect of such a substantial project could be confined to the Trautwine Property.

In fact, at a meeting on February 4, 2002, a contractor retained by Ms. Trautwine to provide advice about the addition confirmed that the below-ground excavation being proposed at that time would likely cause our back patio wall to collapse. For this project, the excavation is now said to be more limited than the basement excavation proposed previously, but there would still have to be at least <u>some</u> excavation (at least three feet, the Applicant has said) to place footings for the addition, and additional excavation for grading, and that excavation would reach our Property line. We have no idea how Ms. Trautwine expects to deal with this. We must also ask this Board: are we required to submit to a construction that will destroy our wall? Do we have to let the construction personnel perform work in our back yard (which would be necessary, given the close quarters involved)? There is no rear alley behind the Trautwine Property – does this mean our Property must also be a staging area for the construction? Presumably, the Zoning Laws and Regulations exist to protect us against this kind of intrusion.

We think it is important to outline the process under which the Applicant has tried to gain approval for various different, and constantly changing, projects over the past

nine months. Apparently, even before she bought the Property on July 18, 2001, Ms. Trautwine knew that she would try to place a substantial addition to the Property at the rear. Although we have been consistently denied notice of the various plans almost throughout the entire process, we were fortunately able to learn about the plans and oppose them at almost every step of the process.

Regrettably, Ms. Trautwine 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 and us. She knowingly took 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 such an intrusion into the use and enjoyment of our Property, where we have lived for almost 40 years. We must respectfully ask the BZA to deny this Application.

II. Submission and Review By ANC 2E

My family appreciates the time and attention given by ANC 2E, especially those members who took a particular interest and made a site visit in July. We note that every time a full-width extension has been presented to ANC 2E, it has been rejected unanimously. When the Applicant proposed a mere two-foot setback on April 2, 2002, ANC 2E rejected that proposal, as well. ANC 2E has also opposed any zoning variances whenever the issue of zoning variances has been presented to it in the context of these various proposals.

At the public meeting on September 4, 2001, ANC 2E voted unanimously, by 8-0 vote, to oppose the proposal and all of the zoning modifications involved in it. The minutes of the meeting reflect the following decision:

> With regard to 1324 27th Street, Trautwine Residence:
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> 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.

This ruling showed unequivocally that ANC 2E unanimously recognized our valid concerns about the impact upon our Property and upon historic preservation concerns.

Our family believed that we had been protected by our ANC and that this would be the end of the matter.

Unfortunately, that has not been the case. The Applicant has continued to rework her proposal and to present new proposals over the past seven months.

In any case, the September 4, 2001 ruling clearly indicates the concerns that remain valid: the impact upon our Property and the impact upon the historic character and relationship of rear yards and residences in Georgetown. It also indicates the lack of approval for zoning variances required for the project. When the Applicant scaled back her plans to an 8-foot extension, ANC 2E continued its unanimous opposition to such a proposal at its meetings in December 2001 and February 2002.

Most recently, ANC 2E reviewed the project in the very form now before the BZA and rejected it, as well, recognizing that a setback of merely two feet still results in an unacceptable adverse impact to our Property. A major consideration was also that there would be no way to confine this construction to the Trautwine Property. Given that ANC 2E's opposition is entitled to great weight, this Application and the variances and special exceptions involved cannot be approved.

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

Every precedent is against approval of this Application, and there is no precedent for approval of this Application. The criteria for obtaining variances, including the significant requirement of uniqueness, cannot be met here. It is abundantly clear that there is nothing unique about this Property or the situation involved here. The prior statement filed by my counsel focuses extensively upon that issue and the related law. I want to focus here upon part of the third criterion for obtaining variance relief, the requirement that the variances "would not cause substantial detriment to the public good."

With respect to the impact upon us, our backyard would directly face and be overshadowed by the proposed two-story addition. The proposed addition would interfere substantially with the use and enjoyment of our home by blocking out sunlight to our Property and creating a claustrophobic condition by constructing a two-story wall almost directly on our property line and extending 10 feet, 3 inches back from the existing dwelling. The 10-foot, 3-inch long (8-feet, 9-inch wide) extension would be closer than required by the applicable sideyard setback requirements as communicated to me by the Office of Zoning. Equally important, the crowding and lack of sunlight and open air posed by the proposed addition would impact severely the market value of our home. There was previously a tree behind the Trautwine Residence. There can be no comparison between the seasonal shade created by the tree and the continual towering impact of the massive two story addition that is now being proposed.

It is also unclear that the setback will actually be two feet. This is because we do not know exactly where the 8-foot, 9-inch wide addition will start on the South side. The property lines have not been surveyed and without knowing exactly where the property line on the South side begins, the addition might well end up closer to our Property line than two feet. For example, if the South property line is one foot closer to the North than noted on the drawings, then the 8-foot, 9-inch wide addition would leave only one foot of space between the addition and our Property line. There is simply not enough space here to construct this addition without having a disastrous impact upon our Property and the privacy of use and enjoyment of our home.

This proposal is substantially the same as the proposals considered and rejected unanimously by ANC 2E in September, December, and February, and it is the same as the proposal rejected by ANC 2E in April. These plans will require several zoning variances, including a zoning variance of at least 4 feet from sideyard requirements, 10 feet from the rear yard requirements, and a lot occupancy variance to at least over 75% of the lot.

We presently have a patio at the rear, with a small garden. We use the patio frequently, and it is a pleasant and bucolic setting. With a two-story structure looming over it, the entire atmosphere on our patio will be transformed, and not for the better. We will be in an enclosed court, rather than an open-air patio. We will look out from the second floor of our home at an imposing two-story structure. The use, enjoyment, and privacy of our Property will be changed completely.

We are not aware of any other home in the neighborhood where such an extensive renovation and addition has been permitted. Even the small galley kitchen on the Giese Property to the South is much smaller than the addition proposed by the Applicant. The addition on the Giese Property 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 almost 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 – to make the project more economically profitable for the Applicant – was initially the only reason given for the removal. Notably, the Applicant made no claim whatsoever of instability of the rear wall in the presentation before the Old Georgetown Board on March 7, 2002.

The Applicant has claimed before the BZA, however, and without any specific engineering or structural analysis, as far as I 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.

Furthermore, the actual construction of the proposed addition would cause a prolonged disruption of our daily lives. The Trautwine Property allows access only at the front. There is no rear alley, even though the Office of Planning has erroneously stated that there is a rear alley. (In a site visit with Mr. McGettigan on April 5, 2002, he acknowledged that there is, in fact, no rear alley.) All construction would have to be channeled through the front of the house, on 27th Street, and there would be no way to confine a project of this size and scope to the Trautwine Property. Again, this was one of the concerns expressed by ANC 2E at the April 2, 2002 meeting.

The present plans would have to involve at least some excavation right up to our Property line. Digging will be required to lower the level of the existing rear yard by as much as five feet, in addition to footings for the extension. 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. As stated previously, the Applicant's contractor confirmed that the digging would at least cause our rear patio wall to collapse. We are still concerned that this is the case, even though a basement is not being added. Also, with the existing structure being gutted, we are not sure that this would not cause the other homes on 27th Street, N.W. to become unstable. Again, we have not seen any structural engineering analysis of these issues.

It appears that the utility equipment that was to be placed in the basement will now be located inside of the house. We would object strenuously to the placement of noisy and unsightly heat pump/air conditioning equipment in the rear yard.

Also, there is no indication how drainage will be accomplished for water accumulating in the backyard. Nor is there any indication how damage would be avoided to our rear wall or to our patio. Given the rains we have seen last year, the addition of an impervious roof area behind the existing house might create problems for the Applicant, the other neighbors, and ourselves.

Absent from the latest plans, as with all previous plans, is the inclusion of assurances that interference with our Property will be avoided during construction. As previously noted, the two-story rear addition, if constructed, will be built right up to or very near to the Property line. It will be impossible for this project not to cause damage and interference to our Property, and the Applicant's contractor has admitted that previous versions of this plan would cause damage. Also absent from the plans are the logistics of how the construction crew will be able to fit and use the personnel and equipment necessary to complete the project in the rear yard. It seems unrealistic to believe that the installation of an 8-foot, 9-inch wide addition abutting our Property line could be built without incursion onto and impact upon our Property.

Furthermore, the variances cannot be granted "without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations

and Map." Essentially, the Applicant is asking the BZA to legislate away the restrictions applicable to at least all of the lots on 27th Street, N.W., and any lots of similar size in the District. This is not a proper request to the BZA. We will end up with dwelling footprints much larger than the Zoning Regulations permit, and a neighborhood without gardens and yards. These changes would be radical.

Finally, the Trautwine Property is not unusable in its present form. For years, various people, including owners and renters, have used it as a residence. It currently is an attractive Property from an economic point of view, although perhaps not as economically valuable as the Applicant might wish to make it.

IV. The Plan Before the BZA Does Not Meet The Requirements For Approval of Special Exceptions

Several zoning variances are required for approval of this project. In addition, the Applicant may also require approval of two or more separate special exceptions under Sections 223 and 3104.1 of the Zoning Regulations. Thus, the Applicant has the burden of proof under Section 223.2 to show by substantial evidence that:

> The addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:
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> (a) The light and air available to neighboring properties shall not be unduly affected;
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> (b) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised;
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> (c) The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage; and
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> (d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways.

These requirements are in addition to the Section 3104.1 requirements that the Applicant show by substantial evidence that the special exceptions sought "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."

The Applicant cannot, as a matter of law, meet the required criteria for special exceptions. I do not repeat the concerns expressed in the prior section of this testimony, which outline the severe and negative impact upon our Property. For those same reasons, under Section 223.2, it is clear that the addition would "have a substantially adverse effect on the use or enjoyment" of our Property. More specifically, the addition would "unduly affect" the "light and air available"; it would "unduly compromise" the "privacy of use and enjoyment" of our Property; and it would "substantially visually intrude upon the character, scale, and pattern of houses" in the neighborhood. Under Section 3104.1, the addition would "tend to affect adversely the use of" our Property. The proposal is also not consistent with the other homes in the neighborhood.

V. Conclusion

We thank the Board for the opportunity to voice our concerns, and we respectfully ask that the Zoning Regulations not be ignored in this case to allow such a substantial negative impact to our Property interests.