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May 3, 2002

RECEIVED
D.C. OFFICE OF ZONING
2002 MAY 13 AM 2:36

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:

As requested by the Board at the April 16 hearing on the subject case, enclosed are draft findings of fact and conclusions of law for adoption by the Board at its May 21, 2002, meeting.

Also enclosed is a letter from the Commission of Fine Arts dated April 19, 2002, approving the proposed construction. I include it even though the record is closed because the Board did express some interest in whether there would be a final approval by that body.

Thank you for providing us with a full and fair hearing. If there are any questions, please do not hesitate to ask following my return to the area on May 16.

Yours very truly,

Stephen N. Gell

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

BZA
Case No. 16810
Exhibit No. 85

Board of Zoning Adjustment
District of Columbia
CASE NO.16810
EXHIBIT NO.85

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 16810 of Lori Trautwine, pursuant to Section 3103 for a variance from the requirements of Section 401 (lot dimensions), Section 403 (lot occupancy), Section 404 (rear yard), Section 406 (courts) and 2001.3 (expansion of a non-conforming structure), of the Zoning Regulations of the District of Columbia for the construction of a two-story rear addition in the R-3 District at premises 1324 27th Street, N.W. (Square 1236, Lot 818).

Hearing Dates January 2, February 26, March 12, April 9 and April 16, 2002
Decision Dates

DECISION AND ORDER

Lori Trautwine, the owner of Lot 818 in Square 1236 with a street address of 1324 27th Street, N.W., is seeking zoning relief from the Board of Zoning Adjustment in order to build a 10'3" by 8'9" addition at the rear of the premises. The addition will be adjacent to the south line of the property and two feet from the north line of the property. Ms. Trautwine was represented by Stephen N. Gell, Esq. After public hearing the Board **APPROVED** the application for the reasons stated herein.

PRELIMINARY AND PROCEDURAL MATTERS

Application. Mr. Christian Zapatka, architect, filed the original application with the Board on October 26, 2001, seeking a variance from the requirements of Section 401 (lot dimensions), Section 403 (lot occupancy), Section 404 (rear yard), Section 406 (courts), and 2001.3 (expansion of a non-conforming structure). The application was accompanied by a letter from the Zoning Administrator dated October 19, 2001. Ex. 6.However subsequent amendments to the project were accompanied by a self certification signed by Mr. Stephen Gell, Esq., attorney for Ms. Trautwine.

Mr. Zapatka was accepted as an expert in architectural design and Mr. Surinder Singh was accepted as an expert in structural engineering (Jan. 2, 2002, page 101).

Requests for party status

Mrs. Virginia Giese, absentee owner of 1322 27th Street, N.W. represented by Robert Giese, Esq., and Dr. and Mrs. Gordon B. Joiner, owner of 2704 Dumbarton Street, N.W. were given party status. No one else requested party status.

Zoning Administrator's reports

Michael Johnson, Zoning Administrator, issued a letter on October 19, 2001, denying a permit. Ex. 6 A revised application submitted on April 4, 2002, was accompanied by a self-certification form signed by Mr. Gell. Ex.70

Office of Planning (OP) Reports

Through its report dated April 2, 2002, and through the testimony of David McGettigan, the DC Office of Planning recommended approval of the application.

ANC Reports

Advisory Neighborhood Commission 2E filed two letters with the Board. The first, dated February 14, 2002, approved a 12 foot two-story L-shaped addition which extended 3 feet from the main house for a full width and continued an additional 9 feet, set back 3 feet from the North property line. The plans approved by the ANC called for a basement under the addition with stairs leading down from ground level in the 3-foot set-back area. The ANC further called for the elimination of windows on the North side and stipulated that the "affected property owners at 2704 Dumbarton Street and 1322 27th Street receive adequate and timely notice of the commencement of the various stages of work throughout the duration of the project." Ex. 46

The second letter from ANC 2E, dated April 5, 2002, advised the Board that on April 2, 2002, the ANC rejected the plan for a "ten-foot, four-inch extension and a set back of two feet on the north property line because of adverse affect on the adjoining neighbors." Ex. 71 This action was confined to the specific plan before the ANC and did not abrogate or supersede the earlier approval.

Old Georgetown Board

The Old Georgetown Board, at its April 4, 2002 meeting, gave preliminary approval to the plans for the addition which call for "a 10'3" addition set back 2 feet, no basement, no windows on the North side, reconstruction of the front stoop, a 7 foot brick garden wall at the rear." It also recommended further study of the Trautwine and neighbor's wall structural condition and treatment of the possible 9 inch gap. Ex.74 p.2. At earlier meetings the Board had expressed a preference for a full width addition extending some 8'9". Ex. _____(Testimony of Christian Zapatka). In a formal action on April 19, 2002, the Commission of Fine Arts adopted the recommendation for approval of concept design. (letter attached)

Applicant's Presentation

Testimony was presented by the applicant and her architect, Christian Zapatka.

Parties and Persons in Opposition to the Application

Dr. Joiner, owner of 2704 Dumbarton Street whose rear wall is adjacent to the North property line of the subject property, testified for himself and his wife that the proposed addition would have serious adverse effects on the use and enjoyment of his property terming them "catastrophic". He was concerned about the loss of air flow and of light during parts of the day, potential injury to his rear fence and rear yard from the excavation and construction work, the likelihood that the construction contractor would

have to trespass on his property to do the construction, that his property would be appropriated as a staging area for the construction, that he and his wife would be in fear for their personal safety, given the proximity of workmen to his house, drainage of water onto his property, the loss of privacy, and a feeling of claustrophobia due to the size of the addition. Ex. 79 (Joiner testimony, April 16, 2002.)

Mr. Giese, whose mother owns 1322 27th Street, alleged that the construction of an addition next to his addition would have considerable negative effects. He cites potential damage to the structural integrity of his house, the collection of water and vermin if there is a gap left by the wall on the property line, drainage from the Applicant's property onto his property, water cascading from the new roof onto his roof and the loss of light and air currents. He complained on several occasions that he did not know where the addition was going to be placed and, therefore could not say how the addition would affect him.

Dr. Joiner and Mr. Giese both contended that the addition "will substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage." Ex. 79. They contended that the applicant bought the property knowing the problems and any alleged practical difficulty was self-inflicted.

Citizens Association of Georgetown

Barbara, Zartman, Chair of the Zoning Committee of CAG testified that CAG had recommended rejection because the "small properties reflect an important part of our history". (Zartman testimony, April 9, 2002, p. 352). She said that small houses were successful residences, many joining to make larger houses.(id) She further said that CAG opposed demolition of parts of the house, that the property is not unique, and that the applicant is attempting to take advantage of a self-imposed hardship.

Findings of Fact

1. The property that is the subject of this application is located at 1324 27th Street, N. W., (Square 1236, Lot 808), on the West side of 27th Street. It is in an R-3 Zone District and in the Georgetown Historic District. The square is bounded by Dumbarton Street to the North, 27th Street to the East, 28th Street to the West and N Street to the South.
2. There is no alley abutting the subject property. However, there is an unbuildable lot at the rear on the West. (Testimony of David McGettigan on April 9 p. 418-9 and Ex. 72.)
3. The existing use of the property is for a one-family row dwelling with a footprint of 279 square feet, and 558 square feet of gross floor area. With the addition, the total square footage will be 738 square feet. Ex. 67. The interior footprint of the addition will be 9.6 feet by 7.3 feet, assuming an 8 or 9 inch thickness of the walls. (Zapatka testimony, April 9, 2002, p. 303) Applicant said that the house is too small for one person and she hopes to have a family someday. (Trautwine testimony April 9, 2002)

4. The dwelling is the end unit of seven that were built in 1880. (Zapatka testimony, Jan 2, 2002, p.106).
5. The rectangular lot is 10'9" by 48'4" or 520 square feet, which is less than one-third the 1,800 square foot minimum prescribed in §401.3 for a one-family row dwelling in an R-3 district. Ex. 67.
6. The width of 10 feet 9 inches is about half the 18 foot minimum required for a semi-detached house in the R-3 District §401.3 Ex. 67.
7. The rear yard has a depth of 22'6". The addition will extend the rear of the house thus leaving a 12'3" rear yard. Ex.67.
8. The existing lot occupancy is 53 per cent. That is less than the 60% lot occupancy permitted in the R-3 District. However, with the 10'3" by 8'9" addition, the lot occupancy will be approximately 74.8 per cent. Ex.70.
9. On the North side of the house is a series of rear yards beginning at 27th Street and extending well beyond the rear line of the property. Dr. Joiner's rear yard measures approximately 15'9".
10. A letter from a structural engineer, accepted as an expert witness, revealed that there is masonry cracking of the front wall. The right exterior wall of the house, showing stress cracks, has bowed out from plumb position and has buckled. The rear wall also shows signs of settlement and cracking. The structural integrity of the exterior walls is questionable. The house should not be occupied until structural repairs are carried out for safety reasons. The side and rear walls may have to be rebuilt to restore their structural integrity. Ex. 49 (testimony from Mr. Zapatka, the architect, Feb. 26, 2002, p.219, April 9, 2002, p. 382-3). None of this weakness was disclosed by a professional inspection Ms. Trautwine secured before purchasing the property. (Trautwine testimony April 9, 2002. P. 396)
11. A letter from Mr. Jeffries, a mortgage banker, dated March 12, 2002, Ex. 59, as well as testimony from Ms. Trautwine, reveal that the property is 95 per cent mortgaged and additional funding cannot be obtained unless there is an increase in the value of the property. While it is likely that the addition will provide sufficient value to make the needed improvements, the market is too undependable to assure that general real estate appreciation will generate the approximately $50,000 that may be needed to replace or stabilize the walls. (Zapatka testimony Feb. 26, 2002, p.219). Also Zapatka testimony of April 9 p. 385). By offering $240,000 for the property on the last day of the hearing, Mr. Giese established that the property is worth no more than $240,000 despite attempts, by introducing recent property assessments, to prove the property is worth more. (Giese testimony, April 16, 2002, pp. 27 and 41.)
12. The cost of replacing the rear and side walls is approximately $50,000. (testimony of Lori Trautwine on April 9 p. 400). (Zapatka testimony of April 9 p. 403)
13. The original purchase price was $240,000 and the house was mortgaged for 95 per cent of its value at the time. (Trautwine testimony, February 26, p___, April 9 p. 406)
14. OP states that that the lot is exceptionally narrow and shallow. OP further states that only a handful of properties in the Georgetown Historic District are this small and only 19 of the 1900 rowhouse lots in the Historic District in R-3 zones are below 520 square feet. Ex. 69 (McGettigan testimony of April 9, 2002 p. 424) Moreover, historic district controls would prevent the applicant from increasing

the size of the house by adding a story. (McGettigan testimony, April 9, 2002, p. 431)

15. Assessment records for 2002 show that this property, while not the only property of its size, has the lowest value of any improved lot on Square 1236. Ex. 80. A review of the square footage of gross building area for all the properties in the square reveals that nearly every property on the square with a lot as small as the subject property has found a way to increase the living area of the dwelling. The Baist map shows that of the seven houses in the 27th Street row, built at the same time, and having the same lot area as the subject property, four have combined into two double houses. Exs. 72, 80. (Giese testimony, April 9, 2002, p. 437) A fifth house, the Giese house, added a two-story addition, all in order to expand the living space for the resident family. Finally, the offer by Mr. Giese to buy the Trautwine house indicates his belief that the combination would be far more marketable than either one by itself.

The Proposed addition to the house

16. The two-story addition would extend 10'3" into the rear yard. The Addition would be removed 2 feet from the North property line, be faced with brick, and have no windows on the North side. There would be no basement.
17. The addition would house a bedroom and bathroom on the second floor and a kitchen on the first floor.
18. The addition would extend westward as far as the Giese addition leaving the 1 ½ foot chimney on the Giese addition visible from the North.
19. The addition would increase the lot occupancy to approximately 74.8 per cent, intrude on the required rear yard some 7'9", and create a court two feet in width.

Neighborhood Impact

20. Both Mr. Giese and Dr. Joiner expressed concern that the addition will reduce the air flow reaching their rear yards. OP advised, and we agree, that the proposed addition is unlikely to have an affect on air flow. (McGettigan testimony April 9, 2002, p. 428.) There is no evidence that the partial narrowing the area will in any way prevent air from accessing the rear yard of either the Joiner or the Giese property, there being substantial space for air to come in at 27th Street and follow a path West and South. Nor was any evidence presented that indicates air will be any more stagnant with the addition than without it.
21. Dr. Joiner submitted photographs purporting to show that the amount of light reaching his rear yard would be reduced by the addition. We agree with OP that his rear yard may experience some shadowing at some parts of the day but that is not likely to be significant. (Testimony of David McGettigan, Office of Planning April 9, 2002 p. 415, pictures taken by Mr. Zapatka, Ex. 83). Pictures taken by Mr. Zapatka showed that the sun is higher in the summer and hits the patio for a good part of the day, even before the large shade tree adjacent to the Trautwine house was removed. The shade tree was removed at the urging of the neighbors, including Dr. Joiner, (Zapatka testimony, February 26, 2002, p. 140), but the tree had provided shading similar to the proposed addition. (Zapatka testimony, April

9, 2002, pp. 325-7, pictures provided by Christian Zapatka at the February 26, 2002, hearing, and Exhibit 83.) Other pictures taken by Mr. Zapatka during the week prior to the last hearing showed that, even in April, there are parts of the day that light hits the patio of the house to the East of Dr. Joiner's which would otherwise be expected to be shaded by the Trautwine existing house. (Zapatka testimony, April 16, p 77). Moreover, in the winter months, when the loss of light would be most pronounced, the Joiners are less likely to be using their patio. Ex. 83 Moreover, there is already a two-story addition behind the Giese property which already has a substantial impact on the light available to the Joiner property, especially in the winter months when the sun is at its lowest. Ex.61 and Testimony of Christian Zapatka, January 2, p.___)

22. Dr. Joiner cites many other concerns about the "catastrophic" effect of the proposed addition on his property. Ex. 79 (Written testimony dated April 16, 2002, p. 2). He fears injury to his rear fence and rear yard from the excavation and construction work. He questions whether the contractor can build a brick wall on the north side using only the two foot setback area. He expresses the fear that his property would be appropriated as a staging area for the construction. He also cites concern for his and his wife's personal safety given the proximity of workmen to his house. These concerns are speculative at best and unreasonable. We see nothing in the nature of this work that makes the damages he cites inevitable, nor has he presented any evidence to justify such a claim. Moreover, to give these concerns credence would be a violation of public policy since, if they were allowed to prevent this alteration work, others could cite equal concerns at other projects and stop all construction and alteration work in the city. It is traditional for these kinds of concerns to be addressed outside the context of the zoning case. Nor are Dr. Joiner and his wife without protection or remedy since they are protected by trespass and tort laws.

23. Dr. Joiner expresses concern for drainage of water onto his property. The District has strict regulations on drainage designed to protect neighboring properties. Before a building permit is issued, the applicant must show drainage plans that will divert water to the public drainage system. Moreover, it would be unseemly for us to deny a project based on an unsupported assumption that the applicant will not follow the law.

24. Dr. Joiner alleges that the addition will "diminish greatly the privacy of use and enjoyment of our Property and our Property values." Ex. 79. There is no evidence that property values are in jeopardy or that privacy will be compromised. Indeed the applicants have eliminated the windows on the North side at some inconvenience in order to assure Dr. Joiner privacy in his house and rear yard.

25. Dr. Joiner and Mr. Giese both contend that the addition "will substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage." Ex. 79. First, the standard cited comes from Section 223.2 of the Zoning Regulations which are not applicable here. Moreover, we saw no evidence of a deleterious effect. This was also the conclusion drawn by OP (McGettigan testimony April 9, 2002, p. 456-7.) The photographs presented by Mr. Giese, Ex. 82, and the model introduced by Mr. Zapatka, Ex. 61, show that the addition, which is set back from the North wall of the existing house an

additional two feet, can barely be seen. Moreover, when executed in brick and meeting the design criteria of the Old Georgetown Board and the Historic Preservation Review Board, it is hard to imagine a negative effect on the historic character of the neighborhood.

26. Mr. Giese alleges that the construction of an addition next to his addition will damage the structural integrity of his house, permit the collection of water and vermin if there is a gap left by the wall on the property line, and allow water to cascade from the new roof onto his roof. We believe that these concerns can be allayed by the adoption of the construction procedures outlined in the conditions.

27. The addition would be adjacent to the Giese addition. There was testimony that the addition is likely to leave a gap between the Trautwine and Giese additions of as much as 9 inches. The existence of a gap between the applicant's addition and the Giese addition will not be known until after a survey is performed prior to construction and determination is reached about the safest way to proceed. However, if there is a gap, applicant has offered to provide a covering on the top and side of the structure which Mr. Zapatka has testified, from personal professional experience, will satisfactorily prevent damage to the walls from vermin or water. (Feb. 26, 2002 hearing at page 144) Alternatively, the applicant offered to extend the party wall onto the Giese Property to fill in the gap with their approval and cooperation. (Zapatka testimony, April 9, 2002 p. 305).

28. Mr. Giese complained several times that he did not know where the addition was going to be placed. (Giese testimony, April 16, 2002, p. 32.) On numerous occasions, applicant assured the Board that construction would only take place on her property after obtaining a qualified survey and that she would build within her property lines. (Trautwine testimony, April 9, 2002, p.) This Board does not require an applicant to submit a survey. Besides, Mr. Giese is presumed to know where his property line is. Moreover, if there is a trespass, as a lawyer Mr. Giese knows that he can avail himself of numerous legal protections and settling boundary disputes is not the province of this Board. We are entitled to presume that an applicant will take care not to injure neighboring property and stand responsible for any injury that might ensue. In any event, these kinds of effects are speculative and outside the scope of this inquiry. We conclude, therefore, that Mr. Giese had ample notification, within the context of a zoning inquiry, of how the addition would affect him and his property. Applicant's offers, which we include as conditions herein, satisfy this Board that issues of possible damage to neighboring property have been adequately addressed.

29. Mr. Giese also complained that the plans changed at various times during the proceedings making it difficult for him to know what he was objecting to. We do not share Mr. Giese's view that the changes were confusing. This is a very small addition in a very limited space. Moreover, all of the changes introduced are on the other side of the addition. The two exceptions were 1) reducing the length of the addition at Mr. Giese's insistence and (2) eliminating the excavation of the basement, also at his insistence. We note that applicant has said it would be willing to live with several different configurations but that the changes were made in each case to resolve a concern of either Mr. Giese, Dr. Joiner, the Old Georgetown Board or ANC 2E. Among the alterations made to satisfy these interests were the following: elimination of the basement with its substantial

excavation, elimination of the windows on the North side of the addition, providing a 2-foot recess from the North property line, using brick for the exterior cloak, and reduction of the length of the addition from 12 feet to 10 foot three inches, not to mention several conditions proffered by the applicant during the hearing and in the draft order.

30. Balanced against the above is our conclusion that improvement of this property will have the salutary effect of encouraging young families to buy homes in this neighborhood and maintain their properties.

Conclusions of Law and Opinion

The Board is authorized under §8 of the Zoning Act of 1938, approved June 20, 1938, (52 Stat.797, 799, as amended; D.C. Code §6-641.07(g)(3) (2001)), to grant variances from the strict application of the Zoning Regulations. Lori Trautwine is seeking area variances from the minimum lot dimensions, maximum percentage of lot occupancy, rear yard setback requirements, minimum court width, and restrictions on the expansion of a nonconforming structure under 11 DCMR §§ 401, 403, 404, 406 and 2001.3, in order to build a small addition to her house. The notice requirements of 11 DCMR § 3113 for the public hearing on the application have been met.

In order to obtain a variance under D.C. Code § 5-424(g)(3), an applicant must demonstrate to the District of Columbia Board of Zoning Adjustment (BZA) that: (1) the property is unique because of some physical aspect or "other extraordinary or exceptional situation or condition" inherent in the property; (2) strict application of the zoning regulations will cause undue hardship or practical difficulty to the applicant; and (3) granting the variance will do no harm to the public good or to the zone plan. Gilmartin vs. DCBZA, 579 A.2d 1164, 1167 (D.C. 1990); Capitol Hill Restoration Society vs. District of Columbia Bd. of Zoning Adjustment, 534 A.2d 939, 941 (D.C. 1987).

A. Unique Physical Aspect or Other Extraordinary or Exceptional Situation or Condition

It is fundamental "that the difficulties or hardship be due to unique circumstances particular to the applicant's property and not to the general conditions of the neighborhood." Gilmartin, 579 A.2d at 1168, citing Palmer v. Board of Zoning Adjustment, 287 A.2d 535, 539 (D.C. 1972). There is no requirement that the uniqueness inhere in the land at issue; the structure can also produce the "unique circumstances" as can extraneous events. Id.; citing Capitol Hill Restoration Society, 534 A.2nd at 942; Monaco v. DCBZA, 407 A.2d 1091(D.C. 1979). Moreover, uniqueness can arise from a confluence of factors rather than a single factor. Id.

District of Columbia courts have found unique physical aspects or extraordinary circumstances in a wide variety of situations. See Gilmartin, 579 A.2d at 1168 (unique confluence of the particular location of carriage house in relation to property boundaries and the two easements crossing the subject property make topography of the property unique and different from its neighbors); Monaco v. DCBZA, 407 A.2d at 1099 (private restrictive covenants may be considered in their own right as an extraordinary condition

of the property); Tyler v. DCBZA, 606 A.2d 1362, 1365 (D.C. 1992) (need to preserve historic buildings is exceptional circumstance); Draude .v DCBZA, 582 A.2d 949, 955 (property dedicated to public service of providing health care constitutes exceptional circumstance). Here the diminutive size of the house (the addition would only bring the gross floor area of the structure to 794 square feet), a lot that is one fourth the size of the minimum requirement, the historic preservation regulations making vertical expansion extremely unlikely if not impossible, the need for extensive repairs or replacement of two walls, discovered after the property was purchased, and the fact that nearly all the houses on the square have expanded their living space, are factors that individually could warrant a finding of uniqueness. Together they present a confluence of factors rendering such a finding inescapable.

B. Practical difficulty

The seminal case explaining the practical difficulties test in the District of Columbia is Palmer v. DCBZA. 287 A.2d 535 (D.C. 1972). In Palmer, the court held that the "practical difficulties" standard applies to area variances. Id. at 540-41. Palmer did not, however, establish a precise definition of practical difficulty. Subsequent case law holds that the applicant must show (1) that compliance with the area restriction would be unnecessarily burdensome...., A.L.W. Inc. v. District of Columbia Board of Zoning Adjustment, 338 A.2d 428, 431 (D.C. App. 1975); and (2) the practical difficulties are unique to the particular property. Barbour v. District of Columbia Board of Zoning Adjustment, 358 A.2d 326, 327 (D.C. 1976).

In both Barbour and 1700 Block, the practical difficulties were ones of increased cost and reduced enjoyment of the property. See Gilmartin 579 A.2d at 1170. In both cases, the court recognized the need propounded by the applicant. In 1700 Block, however, there was no feasible alternative that would have complied with the regulations whereas in Barbour, the Court upheld the denial of a variance because there were different designs that would have been in compliance with the regulations, albeit with a consequent loss in backyard size or interior space in the rest of the house. See Id. (citing, 1700 Block, 384 A.2d at 678 n.13). The Barbour court expressly compared the costs of enlarging the kitchen with and without a variance. Moreover, there was no showing that loss of backyard space or of space in other rooms of the house would work a serious disadvantage except a financial one. In the instant case, no amount of money will solve the problem of a dearth of living space. There are no alternatives to building a small addition at the rear. Had the Barbour Court faced such a situation, it would find for the applicant.

It is interesting that the opposition focuses on the Myrick case to show that Ms. Trautwine has not met her burden of showing practical difficulty. At first blush there would appear to be several parallels to the Trautwine case. They both involve narrow, single family houses in the Georgetown Historic District. Both applicants claimed the need for modifications and additions to their properties. Myrick v. DCBZA, 577 A.2d 757 (1973). However, the comparison quickly breaks down. The R-1-B Zone District where the Mauro property resides is far less dense than the R-3 District of the Trautwine property. Moreover, the Court noted as a significant feature of the case that the Mauros,

applicants in Myrick, had already combined two houses, that both houses already had two-story additions over 22 long, that the issue was cost and convenience, not absolute necessity, and that the Office of Planning had opposed the variance, saying "expansion into the rear yard may be desirable but [is] not as critical and compelling." The applicant here is reduced to 25 per cent of the lot space available to the Mauros and approximately 15 per cent of the living space.

The Office of Planning stated that there were exceptional practical difficulties arising out of the lot itself in that the rear yard requirement imposed on this size lot would take up twice the lot occupancy that would be used by a conforming lot and leave only a 312 square foot building footprint. Moreover, historic district controls make it unlikely that a third story could be placed on this two-story building. Ex. 69 p. 4. The Old Georgetown Board even turned down a basement under the existing house because of the potential damage to the structural integrity of this historic property. (Zapatka testimony, _____) Thus we agree that it would be difficult to make "reasonable single-family use of this property."

In her attempt to accommodate the Joiners' concern that the addition would be too close to their house, the applicant pulled the addition back two feet from the North property line. This created a court which brought the percentage of lot occupancy above the 70 per cent maximum. Had there been no pull back, the lot occupancy could have been kept to under 70 per cent thus necessitating only a special exception, rather than five variances.

Even without the evidence of a serious financial burden caused by the unexpected need to repair or replace the side and rear walls, there is sufficient evidence that the applicant would encounter extraordinary practical difficulties if the Zoning Regulations were strictly applied.

C. This was not a self-created practical difficulty

Dr. Joiner and Mr. Giese contend that the applicant bought the property knowing the size of the house thus rendering any claimed practical difficulty "self-created." To hold that the mere purchase of a property creates a self inflicted difficulty would lead to the ludicrous result of denying every owner a variance simply because he was a purchaser.

Moreover, the need to replace or make extensive repairs to the rear and side walls impose a financial burden that was not anticipated when she purchased the property. She cannot use the property without making the extensive renovations and these cannot be financed without adding value to the property. This is a classic case where economic concerns can and should be considered in assessing practical difficulty. Tyler v. DCBZA, 606 A2d, 1362, (1992).

Even if we were to find that this burden was self-imposed, the cases are clear that while a self imposed difficulty may be a bar to relief with a use variance, it is no bar to an area variance. 1700 Block of N Street, N.W. and Vicinity v. DCBZA, 384 A2d 674

(1978), Gilmartin v. DCBZA 579 A2d 1164, 1169. Citing A.L.W. v. DCBZA 338 A.2d 428, 431 and distinguishing Taylor.

We conclude that the practical difficulties encountered by the applicant are not "self-created." She did not create the circumstances which rendered the property incapable of reasonable use in accordance with the Zoning Regulations . Murray v. District of Columbia Bd. Of Zoning Adjustment, 572 A.2d 1055 (D.C. 1990)

D. No Harm to the Public Good or the Zone Plan

The law does not require a finding that there will be no harmful effect on any other property owner. While we do recognize there may be some loss of light in the case of Dr. Joiner, the effect does not appear to be significant. Moreover, we believe that strict compliance with the Zoning Regulations would be unnecessarily burdensome on the applicant.

ANC Report and Great Weight

On February 4, 2002, Advisory Neighborhood Commission 2E approved an addition at the rear of the Trautwine house, stating, in effect, that a 12 foot addition, three feet from the North property line would not have a significant negative impact on the neighboring property. A month later, on April 2, 2002, on review of a redesign which was prepared to satisfy the Old Georgetown Board, the ANC held that a 10'3" addition, two feet from the North property line **would** have a negative impact. This was true even though the later version eliminated or reduced several concerns Dr. Joiner and Mr. Giese had complained of: it was shorter, had no basement excavation, and no portion or it was built to full width.

Our obligation to the statute is to specifically address the concerns of the ANC, not necessarily to accept its views. Foggy Bottom Ass'n v. DCBZA DC App. No. 99-AA, 1105, Daily Washington Law Reporter, p. 373. "...the agency must articulate why the particular ANC itself, given its vantage point, does - or does not – offer persuasive advice under the circumstances.... " citing Kopff v. District of Columbia Alcoholic Beverage Control Board, 381 A.2d 1372, 1384 (D.C. 1977) "however, section 1-261(d) 'does not require special deference to the views of an ANC but rather, that an agency address its concerns with particularity. Committee for Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1194 (D.C. 1982).

We note that the ANC did not detail its concerns. It provided no more guidance than the short statement that its disapproval was based on the "adverse affect (sic) on the adjoining neighbors." We can guess that the ANC considered many of the same concerns noted and dealt with herein but we should not be held to a standard of "particularity" when the "particular" concerns are kept hidden from us.

Nevertheless, we state for the record that we do not consider the difference of one foot to be significant in the context of the facts of this case. One foot would be a negligible imposition on the neighbor whose house is nearly 16 feet away. However, the

loss of one foot will have a significant negative impact on the applicant's use and enjoyment of the addition because it will leave an interior width of only 6'1". We also do not see how a three foot setback would provide Dr. Joiner with significantly more sunlight than he would have with a two-foot setback considering the short time it takes for sunlight to travel one foot. Accordingly, we conclude that by accepting the ANC's earlier approval in favor of their later rejection we are not significantly depriving the ANC recommendation of the great weight it deserves.

Based on the findings of fact and having given great weight to the ANC and OP reports, the Board concludes that the proposed project meets the three-prong test for a variance. Applicant has demonstrated that there is a pressing need for additional living space and there is no other way to achieve it. Accordingly it is hereby **ORDERED** that the application is **GRANTED** for construction of an addition as shown on the plans filed with the Board on March 26, 2002, subject to the following conditions:

1. The addition will be built with a brick facing and no windows on the North side.
2. Dr. Joiner and Mr. Giese will receive adequate and timely notice of the commencement of the various stages of work throughout the duration of the project.
3. Except in emergencies, outside construction will be 7 a.m. to 5 p.m. on weekdays; 10 to 4 on Saturdays.
4. The applicant will obtain a survey by a qualified surveyor, licensed or accepted by the Surveyor of the District of Columbia to assure that construction will be wholly within her property lines.
5. If Mrs. Giese desires and gives necessary approval and cooperation, and the work can be done without substantial risk to either property, the applicant will agree to build the south wall of the addition adjacent to the north wall of the Giese addition in order to avoid leaving a gap between the two walls.
6. If the above is not practicable and a gap is left between the applicant's addition and the Giese addition, and Mrs. Giese provides necessary cooperation and approvals, applicant will provide appropriate coverings at the top and side to keep water and vermin out.
7. Applicant will take reasonable steps to divert rainwater falling on applicant's roof away from the Giese house.
8. Applicant will provide drainage through her property to the front of the house in accordance with DC regulations to divert ground water away from the Giese house.
9. Applicant will cause trash and excavation debris from the rear yard to be removed through the front of the house.
10. Applicant will 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 and Joiners as additional insured.

Submitted by Applicant

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

NATIONAL BUILDING MUSEUM
441 F STREET, N.W., SUITE 312
WASHINGTON, D.C. 20001-2728

202-504-2200
202 504 2195 FAX

19 April 2002

TO: Mayor's Agent for D.C. Law 2-144, Public Law 808, and Public Law 231, for those applications also subject to D.C. Law 2-144

The accompanying application is returned by the Commission of Fine Arts with recommendation as noted:

O.G. 02-140 HPA. 02-226	1324 27th Street, NW Lori Trautwine Residence	2-story rear addition - revised design - conceptual

LOT: 818 SQUARE: 1236

RECOMMENDATION: No objection to concept design for proposed 2-story rear addition as shown in supplemental drawings received and dated 27 March 2002, which indicate a 10'-3" addition with a two foot setback from North property line, alterations to front for a new brick stoop and a 7'-0" high brick garden wall at rear. File new submission of working drawings, including details and material samples, with permit application for review by the Commission when ready. Recommend further study of 9" gap between proposed addition and neighbor's structure and of structural condition of historic walls prior to next submission.

Frederick J. Lindstrom
Assistant Secretary