MEMORANDUM

TO: Geoffrey Griffis, Board of Zoning Adjustment Chairman
Anne M. Renshaw, Board of Zoning Adjustment Vice-Chair
Curtis Etherly, Jr., Board of Zoning Adjustment Member
David Zaidian, Board of Zoning Adjustment Member
Rotating Zoning Commission Member
Daphne and Andrew Trotter

FROM: David P. Frankel, Esquire

DATE: March ~~18~~ 12, 2003

RE: *Board of Zoning Adjustment Case Number 16992*
Application for a Special Exception for an Accessory Apartment
at 4336 Garrison Street, N.W. (Square 1655, Lot 0016, R-2 District)

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As a supplement to the record in this matter and pursuant to Title 11 D.C.M.R. §§ 3119.3, 3119.5, David P. and Jana Frankel (the "Frankels") hereby respectfully submit this brief memorandum and offer into evidence the accompanying two photographs in order to assist the Board of Zoning Adjustment ("BZA") as it considers any concerns or objections raised by Daphne and Andrew Trotter (the "Trotters"), who live at 5015 44th Street, N.W., Washington, D.C. 20016. As the Frankels understand it, the Trotters are concerned about the Frankels' application for a special exception for a basement accessory apartment, in part, because they believe it somehow detracts from the view from their property or may otherwise disrupt their lives. The two attached photographs accurately depict the spacial relationship between the Frankels' property and the Trotters' property.[1]

Photograph Number One was taken from 44th Street, N.W. looking due east. The garage in the front right portion of the photograph is the Trotters' garage. The addition to the Frankels' house is visible in the center of the photograph. It is beige in color. This photograph shows how the Frankel's addition, with its below grade proposed accessory apartment, barely (if it does at all) crosses an imaginary line that could be extended from the Trotters' northernmost property line through the Frankels' property. In other words, the Frankels' addition is mostly or entirely out of the direct sight line of the Trotters' property. Of course, the proposed accessory apartment will be even more concealed because it is below grade. Most importantly, if the BZA were to reject the Frankels' application for a special exception for an accessory apartment, this would not improve the Trotters' view in the slightest because the entrance to the basement area has already been constructed pursuant to a valid building permit (Number B445928).

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[1] These two photographs were taken on March 2, 2003, with a 50 mm lens (and 35 mm film), which most accurately replicates distance as seen by the naked eye. In other words, no wide-angle lens or lens designed to make objects appear further away (or closer) was utilized.

BZA
Case No. 16992
Exhibit No. 37

Board of Zoning Adjustment
District of Columbia
CASE NO. 16992
EXHIBIT NO. 37

Photograph Number Two was taken from the eastern portion of the Frankels' property, from the rear patio area looking due west towards 44th Street, N.W. The red brick house that dominates this photograph is the rear of the Trotters' house and the green chain link fence represents the property line between the Trotters' and Frankels' properties. Like Photograph Number One, this photograph also shows how the Frankels' addition does not traverse an imaginary property line from the Trotters' property through the Frankels' property. In addition, it depicts the distance from the rear of the Trotters' house to the Frankels' house. This photograph demonstrates that the Trotters have far more available space in their backyard for installing landscaping to screen the proposed accessory apartment than do the Frankels in their sideyard. The Frankels will need to maintain a decent width pathway along their sideyard in order to maintain access to their backyard for lawn mowing and other tasks, thereby limiting their ability to install screening landscaping.

As the Trotters seek a decision from the BZA to regulate the landscaping around the Frankels' proposed accessory apartment, they might also wish to consider screening the entrance to their own basement, which contained an illegal accessory apartment with a separate uninspected kitchen installed by the previous owner well before the Trotters moved into their house in December 1999. Neither the Frankels nor any other neighbors ever complained about this previous rental of that unlawful accessory apartment to unrelated tenants – even after there was a fire in that basement kitchen while the Trotters were living in the house.[2]

The Frankels respectfully submit that the BZA should resist the Trotters' request that the BZA regulate the type, quality or quantity of landscaping or lighting the Frankels will ultimately install in their sideyard. Landscaping and lighting are not among the eight criteria set forth in the 11 D.C.M.R. § 202.10. If the BZA were to decide to involve itself in this issue, it may well end up arbitrating potential disputes about such non-germane matters as the type and quality of landscaping chosen, its height and thickness, its cost, whether it is seasonal, whether roots may damage existing structures, etc. These are matters best left for the Frankels and the Trotters to work out among themselves, as the Frankels have offered to do several times – once the project has been complete and the Frankels have had a chance to return to and live in their renovated home and develop a landscaping plan with the help of a professional.

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[2] To be clear, the Frankels are not asserting that the Trotters have ever rented out that unlawful accessory apartment to tenants – only the previous owner did that. Rather, the Frankels simply wish to point out that several houses in the immediate vicinity of these two properties contain unlawful accessory apartments. The Frankels believe it is not fair to be singled out for burdensome, non-germane regulatory action merely because they will abide by all zoning, building, safety and health regulations.

The Frankels respectfully request that the Board of Zoning Adjustment (1) include this memorandum as part of the record of Case No. 16992 and admit the two accompanying photographs as record evidence; and (2) take these matters into account when it considers this case.

Respectfully submitted,

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Enclosures

PHOTOGRAPH NUMBER ONE



PHOTOGRAPH NUMBER TWO

