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February 6, 2004

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By Facsimile

Mr. Geoffrey Griffis, Chair
Board of Zoning Adjustment
441 4th Street, NW
Suite 210 South
Washington, D.C. 20001

Re: Intervenor's Opposition to Request for Postponement
Appeal No. 17054

Dear Mr. Griffis and Members of the Board:

On behalf of Brian Logan, the owner of the property located at 3101 Chain Bridge Road, N.W. (Lot 30, Square 1427)(the "Subject Property"), enclosed as requested by the Board is a copy of the statement of Armando Lourenco, Owner's zoning expert, presented in opposition to the appeal at the February 3, 2004 hearing.

Sincerely,

John T. Epting

Ashleigh D. Horne

cc: Brian Logan
Armando Lourenco

BZA
Case No. 17054
Exhibit No. 48

Board of Zoning Adjustment
District of Columbia
CASE NO. 17054
EXHIBIT NO. 48

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing was sent by first class mail this 6th day of February, 2004 to:

Benjamin G. Chew, Esq.
Andrew Zimmitti, Esq.
Patton Boggs, LLP
2550 M Street, N.W.
Washington, DC 20037

Alma Gates
ANC 3D-05
4911 Ashby Street, N.W.
Washington, DC 20007

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John T. Epting

Document #: 1378641 v.1

ShawPittman LLP

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February 6, 2004

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441 4th Street, NW
Suite 210 South
Washington, D.C. 20001

Re: Intervenor's Opposition to Request for Postponement
Appeal No. 17054

Dear Mr. Griffis and Members of the Board:

On behalf of Brian Logan, the owner of the property located at 3101 Chain Bridge Road, N.W. (Lot 30, Square 1327)(the "Subject Property"), enclosed as requested by the Board is a copy of the statement of Armando Lourenco, Owner's zoning expert, presented in opposition to the appeal at the February 3, 2004 hearing.

Sincerely,

John T. Epting

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cc: Brian Logan
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Document #: 1378641 v.1

Statement of Armando Lourenco
in 3101 Chain Bridge Road Appeal
BZA Case Nr. 17054
February 3, 2004

Chairman Griffis, Members of the Board, Good Afternoon. Thank you for the opportunity to address this Board on the matter of the two permits being appealed.

As you know, I was the BLRA Administrator for a period of over two years and the Acting Zoning Administrator for a portion of that period. As such, I supervised directly the Zoning plans review functions of the Zoning Division for over one year, and I had indirect oversight for another year thereafter.

The permits under appeal before the Board are Building Permit B451476, a permit to construct a private outdoor in-ground pool – the "Pool Permit," and Building Permit B452193, -- the "Revision Permit" – a revision permit to amend certain project features previously approved under another permit to build a new single family dwelling and other ancillary improvements at 3101 Chain Bridge Road, NW.

This project is located in a R-1-A zoning district, further subject to a special overlay district, the Chain Bridge Road/University Terrace Overlay District (CBUT).

The Appellants are contesting these two permits invoking violations of the Zoning Regulations that allegedly would taint the approval of the permits. Several of the arguments used by the Appellants – such as those related to the removal of trees – are not properly before the Board since they relate to issues that are not part of the permits under appeal. This Board ruled earlier that the appeal of the main building permit B448548 was untimely, therefore I shall not address them.

Some of Appellants's other arguments, however, may be relevant to the permits under appeal. Among those, specifically, Appellants allege that:

a. The driveway would not meet the 14 ft width requirement of §2117.8.
b. The impervious surface of the lot would be greater than the 50% requirement of §1567.2.
c. "Drive courts" to the rear of the main structure would not have impervious surfaces as required for driveways by §2117.4 and §2117.10.
d. The proposed pervious driveway at the front of the main building would violate §2117.4 and would not meet the criteria for "pervious", thereby failing to meet the requirements of §1567.2.
e. The stairways connecting the upper Drive Court to the lower Drive Court, behind the main building, would encroach into the required side yard and violate §405.9 since they failed to meet the exemptions of §2503.4.
f. The pool would encroach into the 25 ft rear yard required by §404.1 since it would fail to meet the exemptions of §2503.2.

1. The pool does not encroach into the rear yard.

The last of Appellant's arguments, item f, is the only one that would affect the "Pool Permit." It should be noted that the "Pool Permit" does not change the previously approved placement of the structures on the lot. In fact, the plat used for the "Pool Permit" is the same plat that had been approved with the main building permit, which is not under appeal. Both plats show that the rear wall of the pool defines the rearmost line of the structures on the lot. The rear yard is therefore, by definition, the portion of the lot behind the rear wall of the pool (a.k.a. the "rear building line").

The rear lot line is skewed in relation to the side lot lines and to the rear pool wall. Therefore, by definition, the depth of the rear yard is the mean distance between the rear building line and the rear lot line. Both plats show this distance to be 25.3 ft, therefore in compliance with §404.1.

The pool has an appended overflow tank that is not more than 4 ft above ground, which encroaches into the rear yard. This is an appropriate encroachment, specifically allowed by §2503.2.

Consequently, the Appellant's argument relating to encroachment of the pool into the rear yard is baseless. Since no other Zoning aspects of the pool permit are being appealed, the appeal should be denied.

[Let me address at this point the issue of the lack of definition of "pervious" in the Zoning

Regulations. I do not even recall how this issue came up because §1567.2 specifies a maximum *"impervious surface coverage"* it does not refer the term "pervious." And both *"impervious surface"* and *"impervious surface coverage"* are terms defined in the regulations. In order for a surface to be considered "impervious" it has to meet two criteria: (a) impede the percolation of water into the subsoil and (b) impede plant growth. I guess if I had to determine what a "pervious" surface is – the negative of a conjunction being an alternative between two negatives – it would be an area that allows the percolation of water into the subsoil, or an area that does not impede plant growth. But the definition of "pervious" is not necessary because the requirement is stated in terms of *"impervious surface coverage."*]

2. The driveway meets the requirements of §2117.8.

The Zoning Regulations require the owner of a one-family dwelling to provide one off-street parking space, pursuant to §2101.1. Furthermore, §2116.2 allows this off-street requirement to be met in one of three ways. The Applicant has the option of meeting the requirement on an open area of the lot, within the side yard, as allowed by §2116.2(b)(2), which is what the Applicant did. There are no other required parking spaces in the lot.

The section cited by the Appellant, §2117.8, establishes standards that apply to (and I quote) *"A driveway which provides access to required parking spaces."* (end of quote) Furthermore, it specifically specifies in §2117.8(b) that (and I quote) *"A driveway serving a one-family dwelling (...) shall not be less than seven feet (7 ft) in width."* (end of quote) Seven feet wide is the requirement for the driveway that connects the public right of way with the required parking space on the side yard. The revised plat filed with the "Revision Permit" shows a 7 ft driveway leading to a 9ft wide parking space on a 11.3 ft wide side yard and that meets the Zoning Regulations.

Based on the actual text of the regulations, the invoked 14 ft width requirement of §2117.8(c)(2) applies only to certain driveways serving (and I quote) *"any use other than a one-family dwelling."* (end of quote) Consequently, the Appellant's argument for a 14-ft driveway width requirement is inapplicable and should be dismissed.

3. The revised plans show an impervious surface coverage under 50% that meets §1567.2.

The revisions to the structures and surfaces to the rear of the main building, prompted – it appears – by the Zoning Division of DCRA, resulted in the rearrangement of the landscaping of those spaces, the elimination of paved areas and steps on grade, and the creation of a new pervious ramp leading to a pervious drive court adjacent to the garage building. I reviewed the computations prepared by the architect and I believe his finding that the impervious surface coverage is 10 SF short of the maximum allowed is based on conservative assumptions: for example the access driveway from the public right-of-way to the required parking space is only required to be 7 ft wide and is shown as a much wider pie-shaped area.

Consequently, the Appellant's argument on this point is not based on fact and should be dismissed.

4. The drive courts are not required to be impervious.

The provisions of §2117.4 and §2117.10 do not apply to these courts because they are not designated parking spaces nor access drives thereto. The use of pervious surfaces to the extent depicted on the architect's "Zoning Calculations" dated 1/14/04 (Appendix H), is therefore acceptable.

5. The front driveway is not required to be impervious, other than for the portion of the driveway that gives access to the required parking space.

The provisions of §2117.4 apply only to the driveway that provides access to the required parking space. The rest of the front drive is therefore properly of pervious surface, to the extent depicted on the architect's "Zoning Calculations" dated 1/14/04. Consequently, this argument is not applicable and no consequences to the compliance with §1567.2 derive therefrom.

6. The stairways in question are built on grade or were removed from the plans with the "Revision Permit"

On the south side yard there are only two structures: a retaining wall for an exterior access to a lower level of the house (and retaining walls are specifically allowed to encroach into required yards under §2503.3); and a set of steps and a landing leading to the rear court. This last structure, because it follows the steep grade, ends up being less than 4 ft above grade. I discussed this feature with the architect who confirmed that it would be less than 4 ft above grade at all points. In any case, the "Revision Permit" did not affect the south side yard.

On the north side yard, the Appellant's argument is now a moot point. Some of the stairways connecting the upper Drive Court to the lower Drive Court, behind the main building, were deleted in the "Revision Permit."

Within the 8 ft-wide required side yard, there is now a 7 ft wide grassy ramp, on grade, the retaining wall that supports it (allowed per §2503.3) and part of a set of steps that are also built on grade and are not at any point more than 4 ft above grade (allowed per §2503.2).

Any steps that remained after the "Revision Permit" are either not in the side yard, or are built on grade, or are less than 4 ft above grade. Therefore there is no structure left in the side yard other than allowed encroachments into the required side yard, i.e., there is no violation of §405.9.

[On a final note, I want to address the matter of the parking space inside the new garage. I may have touched on it before but I want to clarify it further: the only required parking space in this project is on the side yard; the space inside the garage is not a required parking space; it is not an open parking space either it is covered. Therefore, there is no requirement to provide an access driveway to it built as an impervious surface: §2117.4 does not apply because the space is not a required space; and §2117.10 does not apply because it is not an open space.]

In Conclusion, in my opinion the arguments of the Appellants have no grounds on the Zoning Regulations. Consequently, I respectfully urge you to deny the appeals before the Board.

Document #: 1378579 v.1

ShawPittman LLP

DATE: February 6, 2004 ~~February 6, 2004~~

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