May 17, 2005

TO: The Board of Zoning Adjustment
REFERENCE: Public Hearing, May 17, 2005, Ward Five,
Application 17321 ANC-5A

FROM: Roy Abreu
(202) 693-4324 (Work)
(202) 841-6802 (Mobile)

My remarks have been broken out into several areas: A serious omission by the applicant, a set of computational errors, a discussion on the VARIANCE Section of the Zoning Regulation, and my conclusion.

Applicant Omitted ANC 5A Notification Requirement

The application has not been presented to the Advisory Neighborhood Commission 5A. Consequently, the ANC has had no opportunity to review the application and obtain Neighborhood input.

This is peculiar for more reasons that one:

1. If we look at the Planning Board memo to this Board, under the COMMUNITY COMMENTS section we learn that as of April25, 2005 (about three weeks ago) the application had not been presented to the ANC and the applicant notified of this omission.
2. The applicant through his agent has found the time to repeatedly petition the community to sign a document in support of his petition.

The reason this is so troubling is that the ANC, particularly in communities that lack the resources to protect their rights independently, is the primary mechanism by which the rights of less affluent communities are protected. The people we are talking about here are as deserving of having their rights protected as those who live in the highest reaches of North-West Washington.

Errors in Zoning Self-Certification Form – Form 135 –Side 2

Please note the following errors in the applicant's numbers and computations (note that these errors also appear in the table on Page 2 of the application):

- Under Lot Occupancy (which is the lot area that will be covered by the building), the applicant has specified 960 sq. ft. (24*(28+6+6)), 42.8% of the lot size. However, this ignores the Stoop, which is 4X8, 32 sq. ft. structure on a concrete footing. The total coverage including the Stoop is 992 sq. ft., a variance of 44.24% of the lot size.
- Under Read Yard, the minimum requirement is 20 feet and the applicant's form say 18.5 feet—1.5 feet less than the requirement. However, the 6X24 back porch has not been factored into the calculation. When this is done, the rear yard number becomes 12.5 feet—7.5 feet or 37.5% less than the code stipulation

BZA
Case No. 17321
Exhibit No. 25

Board of Zoning Adjustment
District of Columbia
CASE NO. 17321
EXHIBIT NO. 25

- Under Side Yard, the number is deceptive in that it does not convey the fact that the setback on the west is 3.5 feet when the requirement is 8 feet. This is more that 56% less that required.

Section 3103.2 under 3103 VARIANCES

Note that with respect to reasons for granting variances:

- The text refers specifically to the 'narrowness', 'shallowness', and 'shape' of the property at the time the regulations were originally adopted. **Note that there is no mention made about property size being an acceptable reason.**
- The text also refers to exceptional topographical condition or other extraordinary or exceptional situation and condition of a piece of property. **Note that here again there is no mention made about property size being an acceptable reason.**
- Finally, the text specifically says that the relief can be granted **provided that it will not** impair the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. This final point **that the special exception must be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps** is at the heart of the matter at hand.

  The numbers speak for themselves and raise the following questions:

  - How can a lot size which is less than 56% of the minimum for an R-2 District be in harmony with the general purpose and intent of the Zoning Regulations?
  - How can a side yard setback, which is more than 56% closer to the neighbor's property line, only 3.5 feet when the requirement is 8 feet, be in harmony with the general purpose and intent of the Zoning Regulations?
  - How can an application for a variance which asked for special treatment not simply in one area, but with respect to lot dimension, lot size, lot occupancy, side yard setback, rear yard setback, and parking space, be in harmony with the general purpose and intent of the Zoning Regulations?

Conclusion

In summary, what the applicant is asking you to do is ignore the code, look the other way, ignore the higher purpose for which the code was formulated and the citizens it was designed to protect; and rule in favor of someone who very recently, knowingly purchased a substandard property and now makes the claim of undue hardship.

I appeal to you to do what is right.