TO: The Board of Zoning Adjustment (BZA)
FROM: Rosalind Blount, Charles and Valerie Douglas
SUBJECT: RECCOMENDED ACTION ON CASE NUMBER ~~17312~~ 17321
DATE: Monday, May 30, 2005

Our names are Rosalind Blount, Charles and Valerie Douglas. We own the homes listed below:

Rosalind Blount
1019 Taussig Place, N.E.
Washington DC 20017
Type: Single family detached
Property Located: To the immediate west of the subject property
Size: 1900 square feet
Garage: Yes
In compliance with Zoning Regulation: Yes

Charles and Valerie Douglas
1020 Taussig Place, N.E.
Washington DC 20017
Type: Semi detached
Location: Directly opposite the subject property
Size: Under 1,300 square feet
Garage: Yes
In compliance with Zoning Regulation: Yes

On May 17, 2005 we testified at the BZA hearing on Mr. Darcy E. Flynn's application (Case # 17321) to build a dwelling at Square 3690, Lot 117, Taussig Place N.E. 20017. We thank you for your ruling to postpone your decision in this matter to June 7, 2005 and to leave the case file open for our written remarks and those of the Advisory Neighborhood Commission-5A (ANC) that has jurisdiction over our neighborhood. On May 25, 2005, the ANC unanimous approved a resolution to recommend that the BZA deny Mr. Darcy E. Flynn's application (Case # 17321). We fully support the ANC recommendation.

In arriving at our position, we have reviewed the Zoning Regulations, with special emphasis on the sections on which the applicant has relied, namely Sections 201.1, 401, 403, 404, 405 and 3103.2 . The first paragraph of Section 101.1 of the Zoning Regulations reads:

> "In their interpretation and application, the provisions of this title shall be held to be the minimum requirements adopted for the promotion of the public health, safety, morals, convenience, and general welfare …."

BZA
Case No. 17321
Exhibit No. 29

Board of Zoning Adjustment
District of Columbia
CASE NO. 17321
EXHIBIT NO. 29

It appears to us that the central question is whether the public good, particularly the best interests of the immediate neighborhood, is served by the construction of a detached single family dwelling on a lot less than 56% smaller than the minimum required. We believe that the answer to this question can be found in Section 401.2.

> Section 401.2 Reads:
> Except as provided in Section 401.3, in the case of an unimproved lot in single ownership on November 1, 1957, that has a lot area or width of lot less than that specified in Section 401.3 for the district in which it is located and that does not adjoin another unimproved lot in the same ownership, a structure may be erected on the lot if both the lot area and width of at least eighty percent (80%) of the lot area and width of lot specified under Section 401.3; provided, that the structure shall comply with all the other provisions of this title.

Under Section 401.2, owners who qualify in all other respects are still required to have a lot area of 3,200 square feet (80% of 4,000). This well-defined threshold appears to us to provide clear guidance as to the lowest limit that should be used when considering making exceptions to minimum lot area. The applicant's property is only 2242.5 square feet.

The Hearing, the Original Application, and the Revised Submission

During the May 17, 2005 hearing, members of the BZA ask the applicant to submit, no later than May 23, 2005, revisions to his original application. The members identified specific areas of concern and made several constructive suggestions. Among these were the following: that the applicant work with the neighbors, that the applicant show hardship for each item for which he seeks relief, and that the applicant correct the numbers on the Zoning Self-Certification Form. We have carefully reviewed the applicant's revised submission and discovered the following:

- In paragraph two (2) the text reads: "The owner wishes to work with both the neighbors and the board ...." As of this writing, the applicant has made absolutely no attempt to contact us or the ANC. We obtained a copy of his "Revised Hearing Notice and Burden of Proof" document from the D.C. Office of Zoning.
- The BZA had asked the applicant to demonstrate hardship for each variance that he is requesting. However, there is no hardship shown in the revised submission. His only point is that he wishes to "construct a home that will conform to existing houses on the block and increase the overall value of the neighborhood." Yet, he provides no evidence in support of this claim, which he is required to do since the burden of proof is his. We strongly disagree with this claim and give our reasons later in this letter. In any case, in no way can his statement be construed as evidence of hardship.
- The applicant now seeks variances in four (4) areas: Percent of Lot Occupancy, Rear Setback, Side Setback, and Off-Street Parking. The variances requested in these areas are identical to those in the original application. However, we did notice an important discrepancy between the text of the document and the revised

Zoning Self-Certification Form. Under the Side Setback the text reads: "On the east side of the house a .5 ft. variance is requested. On the west side of the house, a 4.5 ft. variance is requested." This is the same as in the original application. However, the Zoning Self-Certification Form says exactly the reverse—see the table on page 2, row 'Side Yard', column 'PROVIDED BY PROPOSED CONSTRUCTION.' Here the values read: "7.5 W & 3.5 E."

- The applicant has corrected numbers on the Zoning Self-Certification Form that were identified as incorrect in his original filing. However, the applicant has made one new error (identified in the bullet above) and one major change. On the last row of the table on page 2, the number for Building Height has been increase from 24 feet in the original submission to 40+/- feet in the new submission. This is especially troubling in light of the fact that at the hearing, the applicant had responded to several questions from the BZA by suggesting that if he had to change his design plans in any meaningful way, he would experience great hardship. How then does he voluntarily wants to make such a key change to his design? Is he now considering building a three-level house with a basement? A separate question that arises is: How can he say on May 17 that a 24 foot high dwelling is compatible with the neighborhood and on May 23, less than a week later, say that a 40 foot high dwelling is compatible with the neighborhood?
- Using the applicants own numbers from his newly submitted Zoning Self-Certification Form (and in full compliance with the Zoning Regulations with respect to Percent of Lot Occupancy, Rear Setback, Side Setback, and Off-Street Parking) we arrive at a footprint of 23' X 32.5' (747.5 square feet). This means that a two level dwelling with a full basement would be 2,242.5 square feet; well in excess of most homes in the neighborhood.

Mr. John Moore, Development Review Specialist with the D.C. Office of Planning, testified at the May 17, 2005 hearing of Case # 17321. In his testimony he said that: he was surprised that the applicant's property was so small, that had spoken to the seller and learned that she owns an unimproved lot directly abutting the subject property, and that if the seller had sold this additional property to the applicant the combined area would probably satisfy the minimum area requirement.

The applicant testified that he planned to build a modular home. He claimed that this dwelling would result in an increase in neighboring property values and be compatible with dwellings in the neighborhood. Modular dwellings have traditionally been associated with low cost housing. There is no other modular dwelling in the neighborhood. The size of the proposed dwelling exceeds the Percentage of Lot Occupancy (40%, see Section 403) specified in the Zoning Regulations. The applicant is also requesting a Rear yard setback (see Section 404) variance and side yard setback (see Section 405) variances for both side yards. This is not the case with other dwellings in the neighborhood. We believe that a modular dwelling that is larger than most homes in the neighborhood and built on a substandard lot whose area is far below the minimum required, will be out of place in the neighborhood and have a negative impact on property values. In general, homeowners embrace change that enhances the value of their properties. In the case at hand, however, the vast majority of homeowners are opposed to

the project; and the ANC unanimous rejected the notion that the applicant's enterprise is a plus for the neighborhood.

In addition, to issues of property value and compatibility, we and others in the block, would be adversely impacted with respect to privacy, noise, light, air, and use.

Several homeowners have been told, by the applicant or his agent, that the applicant plans to build this dwelling for sale, he has no intention of living in the dwelling. In fact, the applicant acknowledged this at the public hearing. There is no hardship here and there is no desire to enhance the neighborhood. The applicant's motivation is money.

There are 45 entries in the Contact List filed with the application. Before the BZA May 17, 2005 hearing, the applicant or his agent repeatedly asked the homeowners to support their petitions. They even went so far as to contact homeowners who have rental properties in the neighborhood, but live outside it. They have submitted 14 petitions in support of his application. We have carefully analyzed and recorded all 14 petitions (see Attachment 1). Our findings are summarized below:

1. Of the 45 homeowners approached by the applicant or his agent, if we were to accept that all 14 petitions in support were legitimate (which is not the case as shown below), we would still have 31 homeowners who have refused to offer their support.
2. One signatory is the seller of the property and therefore irrelevant in accessing neighborhood support. However, we acknowledge that this homeowner does have a legal right to support the applicant's proposal.
3. One property is out of the area. Therefore, the petition that lists this property address is invalid. This reduces the number in support to 13.
4. In one case, two petitions have been submitted for a single address. Therefore, this should count as only one support petition. This reduces the number in support to 12.
5. In one case, an individual who is not the homeowner has signed the petition. Therefore, this is an invalid petition. This reduces the number in support to 11.
6. As of May 24, 2005, five (5) homeowners have rescinded their earlier support petitions. The new petitions requesting that the BZA deny the application were submitted along with the ANC recommendation to the BZA. In general, those who have withdrawn their support say that they were misinformed as to the applicant's plans. This reduces the number in support to six (6).
7. As of May 24, 2005, we have been unable to contact the remaining six (6) homeowners who had signed support petitions. However, we believe that had we been able to contact them and explain the details of the case, it is very likely that some of them would change their minds.

Discussion of Specific Variances

In this section we discuss at some length the four (4) variances sort by the applicant in his revised submission: namely

1. Percent of Lot Occupancy (see Section 403)
2. Rear Yards (see Section 404)

3. Side Yards (see Section 405)
4. Parking space (see Section 401.2)

The data on the dwellings on the block will show that these Zoning Regulations should be strictly applied.

The relevant data is given below:

Applicant's property location: Square 3690, Lot 117, Taussig Place N.E. 20017

The block contains two types of dwellings, detached and duplex.
The north side of the block has a 15-foot-wide alley running to its north.
The south side of the block has a 15-foot-wide alley running to its south.
Number of dwellings on South side: 8 (side of subject property)
Number of dwellings on North side: 9
Total number of dwellings on both sides: 17
Total number of detached dwellings on South side: 4
Total number of duplex dwellings on South side: 4 (in two physical structures)
Total number of detached dwellings on North side: 1
Total number of duplex dwellings on North side: 8 (in four physical structures)

Table of Selected Features of Dwellings		
FEATURE	NUMBER OF DWELLINGS WITH FEATURE	PERCENTAGE OF DWELLINGS IN BLOCK WITH FEATURE
Front Porch	3	17.65% of all dwellings
Back Porch	1	6% of all dwellings
Front Stoop	14	82% of all dwellings
Side Stoop	0	0% of all dwellings
South-Side Garages or Parking Pads	4	50% of all South-Side dwellings
North-Side Garages or Parking Pads	8	89% of all North-Side dwellings

Percentage of Occupancy, Rear and Side Yard Variance Requests

At the May 17, 2005 hearing, the principal reason given by the applicant in seeking relief from the Percentage of Occupancy (see Section 403), Rear Yard (see Section 404) and Side Yard (see Section 405) Zoning Regulations is that he has chosen to construct a modular home, "*smaller in size than most other dwellings on the subject block.*" His plans called for dwelling with a primary footprint 24' X 28'. In addition, the structure would have a 4' X 8' side entrance, a 6' X 24' front porch and a 6' X 24' rear porch. There are several issues with the self-imposed constraint:

1. The specific dwelling the applicant has proposed is simple incompatible with the lot and assumes that all the requested variances will be granted. The constraints of the lot should be used to determine the footprint of the dwelling.
2. Modular homes are available in a wide variety of footprints that meet the Zoning Regulations. In fact, there are modular-home builders that specialize in narrow homes, some with widths as narrow as 15 feet. The Minimum Lot Width (R) in an R-2 District (see Section 401) is 40 feet. Such a lot would allow for a dwelling no wider than 24 feet. The subject lot is 39 feet wide. Allowing for eight (8) foot side yards (see Section 405), the applicant should be required to build a home no wider than 23 feet; just a foot narrower than that of a property of minimum lot width.
3. The modular home drawings that the applicant has obtained and included in this application are readily available at little or no expense, and no purchase commitment. Consequently, were the applicant to select a more suitable design or approach, the earlier selection would have negligible financial consequences.
4. The selection of a modular home is an unnecessary limitation that the applicant has fashioned. The large majority of homes built in the Washington D.C. Metropolitan Area are built on site using conventional building methods. These methods typically allow for great flexibility with respect to design and use of building materials.
5. The applicants claim that the proposed dwelling will be "*smaller in size than most other dwellings on the subject block*" (see BZA Application No. 17321, in the middle of Page 4), is false. In fact, the primary footprint of the dwelling of the abutting neighbor on the west side is smaller in both width and depth at 22' X 27'.

The ANC-5A contends that the principal question here is: "Is it feasible to erect a structure that meets the Zoning Regulations with respect to Percentage of Occupancy (see Section 403), Rear Yard (see Section 404) and Side Yard (see Section 405) on this substandard lot?" The answer in our opinion is a resounding YES.

Parking Space Variance Request

Residents of the block use both alleys described above. The north and south alleys service garages and driveways belonging to the dwellings on their respective sides of the street. In addition, an old garage still stands on the subject property. This provides additional confirmation that access from the south alley to the property is available. It is noteworthy that 50% of all South-Side dwellings and 89% of all North-Side dwellings in block have Garages or Parking Pads.

This being the case, the applicants request for relief from the parking requirement, as specified in Section 2101.1 of the Zoning Regulations requiring one parking space for a single family dwelling, should be denied.

At the May 17, 2005 hearing, Mr. John Moore, Development Review Specialist with the D.C. Office of Planning, testified that there appeared to be adequate street parking on the Taussig Place block in question. However, he was quick to point out that he had arrived at his judgment about the parking situation at 10:00 am, at a time of day when most residents were away from their homes. The ANC-5A cannot over emphasize the extent to which the parking situation was distorted by the time at which the observation was made. Where we do not dispute that there is adequate street parking during the day when residents are out, at night, when residents have returned home, the situation is quite the reverse. At night, locating a parking spot is invariably a struggle.

Thank you for your time and effort in this matter.

Sincerely,

Rosalind Blount

Charles Douglas

Valerie Douglas

ATTACHMENT 1

ANALYSIS OF HOMEOWNERS WHOSE SUPPORT THE APPLICANT CLAIMS

Applicant's Property: Square: 3890, Lot 117

The applicant lists 45 home owners in his contact list.
There are several issues with the petitions submitted by the applicant in support of his application.
Please refer to the table below for a breakdown. The table contains the entire list of persons who have signed the applicants petition. In addition to the name of the signitaury, each row contains an ADDRESS and COMMENT.

NO.	NAME	ADDRESS	COMMENT
1	Julius Alston	1006 Taylor Street	Rescinded
2	Julia A Myers	1018 Taussig Place	Rescinded, Julia A Myers and William R. Myers are
3	William R. Myers	1018 Taussig Place	husband and wife.
4	Helen White	1032 Taussig Place	Recinded
5	Marvin Lytle	1030 Taussig Place	Recinded
6	Blanca Medina	1007 Taussig Place	Recinded
7	Walter Johnson	1017 Taussig Place	Not Contacted
8	Margie Barksdale	1000 Taussig Place	Not Contacted
9	Aleascia Staunton	1047 Taussig Place	Not Contacted
10	Pamela C. Wooten	1021 Upshur Street	Outside area
11	Barbara Uhler	4206 12th Street	Not Contacted
12	Mildred Musgrove	1010 Taylor Street	Not Contacted
13	Troy Thompson	4200 12th Street	Not Contacted
14	Christi Stewart-Brown	1041 Taussig Place	Homeowner who sold substandard lot to applicant.