**FETNEH ASKARI FLEISCHMANN ❖ DAVID M. FURCHGOTT**
3223 KLINGLE ROAD N.W., WASHINGTON, D.C. 20008

**TO:** Ms. Susan Morgan Hinton, Chairperson,
& Members of the D.C. Board of Zoning Adjustment

**DATE:** December 15, 1997

**FROM:** David M. Furchgott & Fetneh A. Fleischmann, homeowners 3223 Klingle Road N.W.

**RE:** Requested Additional Materials (BZA Application # **16260**)

---

'97 DEC 16 AM 7:27

OFFICE OF ZONING
DISTRICT OF COLUMBIA

Dear Chairperson. Hinton and members of the Board of Zoning Adjustment:

Thank you for deferring a decision on our application and for re-opening the record, affording us an opportunity to file this revised plan and to attempt to reach an agreement with our neighbors, the Turtons.

**First, the revision of our plan:** The attached architectural drawings define the major revision to our former plan that we feel we can make and still meet most of our original goals. ***This alternative proposal fully accommodates the Turtons articulated concerns by cutting off one quarter of our planned addition nearest their home.***

The Turtons alleged that our originally submitted plan would effect their view, the flow of air and light on their third floor attic dormers, and would possibly cause drainage problems from rain or snow. These were spurious claims to which no substance was added in their subsequent submissions. Each of those issues was addressed clearly and dismissed by our architect in both our previous plans and her attachment to our submission of November 5th.

Nonetheless, we now offer this compromise plan. **This revision addresses all issues which the Turtons originally raised**, without concern as to whether or not those issues raised by them are based on fact. **In this new design, we will sacrifice about 25% of the additional interior useable space that we had hoped to gain** through this aspect of our renovation. **It provides the Turtons with almost the same immediately abutting features to their property that have existed between the two houses for the past thirty years.** (Our wall near their property line will remain the same size as it presently exists, and a portion of a deck with surrounding fence will be replaced as it was until we began roof repairs last year.) **These accommodations and this new design will be more costly for us.** To our advantage, it will allow us a bit more of a northwesterly view from our bedroom than the former plan; this was a portion of a view that we were previously willing to forgo.

The three new architectural drawings are: Attachment A - a revised floor plan for the third floor of our house; Attachment B - a revised rear (north) elevation; and Attachment C - a west elevation, shown as a "cut-away" at the point of juncture between the Turtons townhouse and our own. All other materials, stand as presented to the BZA on September 17th and on November 5th, *and should be considered cumulatively* as our final submission.

The structural engineer we have contracted for advice informs us that there are no additional "loads", and that the previously designed structural reinforcements can be modified to this new design. He will certify those designs following BZA approval (OZ staff was of the opinion that this was not necessary for this submission, as the BZA did not request further certified engineering drawings in response to the issues raised).

**Secondly, the Turtons were apparently not interested in engaging in meaningful dialogue with us about the proposal.** We offered to get together with them for a presentation and discussion, after our preliminary drawings were complete, but they responded that they only wanted the information and were not willing to enter into discussion about the issues that they had raised. In response to our November 18th invitation for direct discussion with the Turtons regarding their concerns, their attorney responded belatedly on December 2nd that the Turtons "are not making themselves available for [us] to reiterate [our] arguments and allegations..." (see letters, Attachments D).

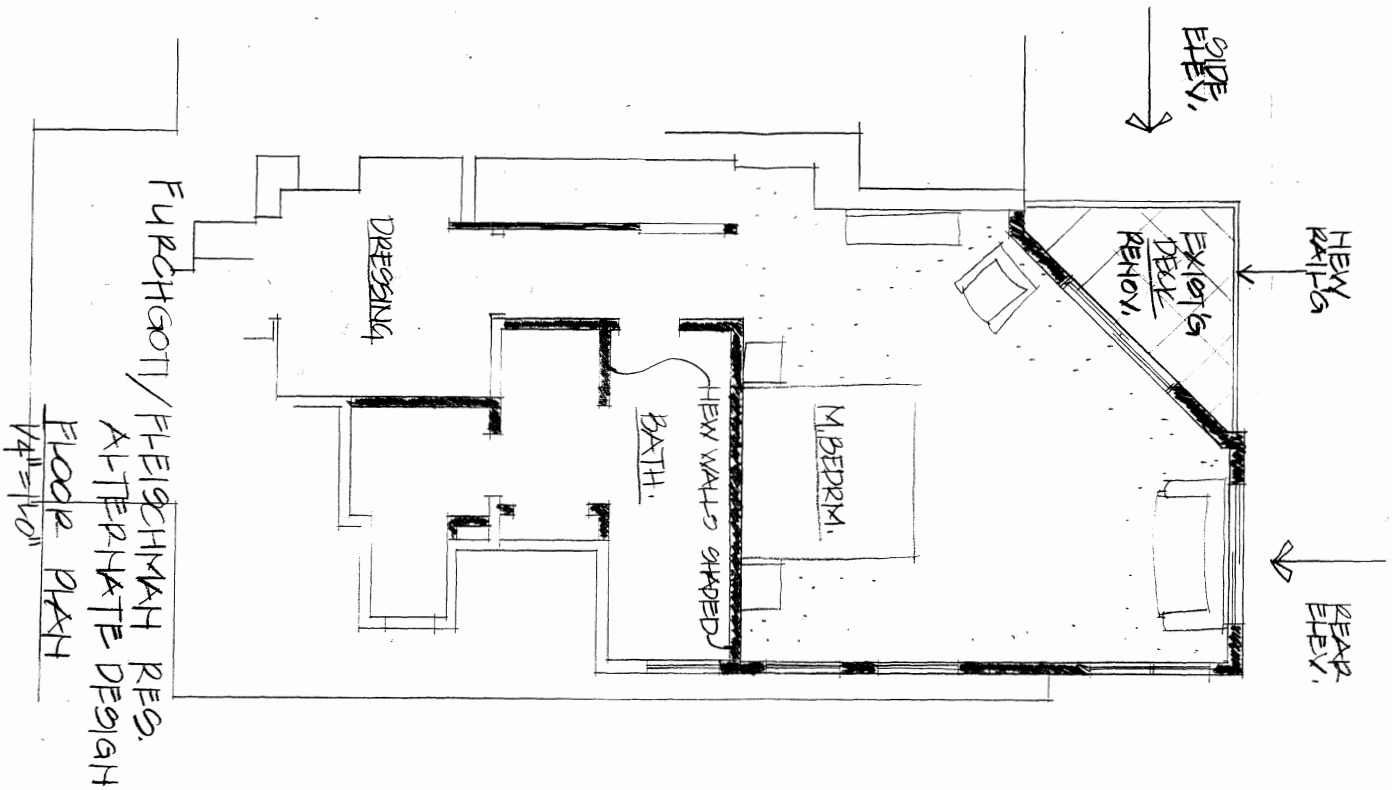
**We request that the BZA approve this modification to our request for a zoning variance (BZA Application #16260), and that this be done as a bench decision, if such is possible at this point. Thank you.**

David M. Furchgott

Fetneh Askari Fleischmann

BZA
CASE No. 16260 and
EXHIBIT No. 39

Board of Zoning Adjustment
District of Columbia
CASE NO.16260
EXHIBIT NO.39

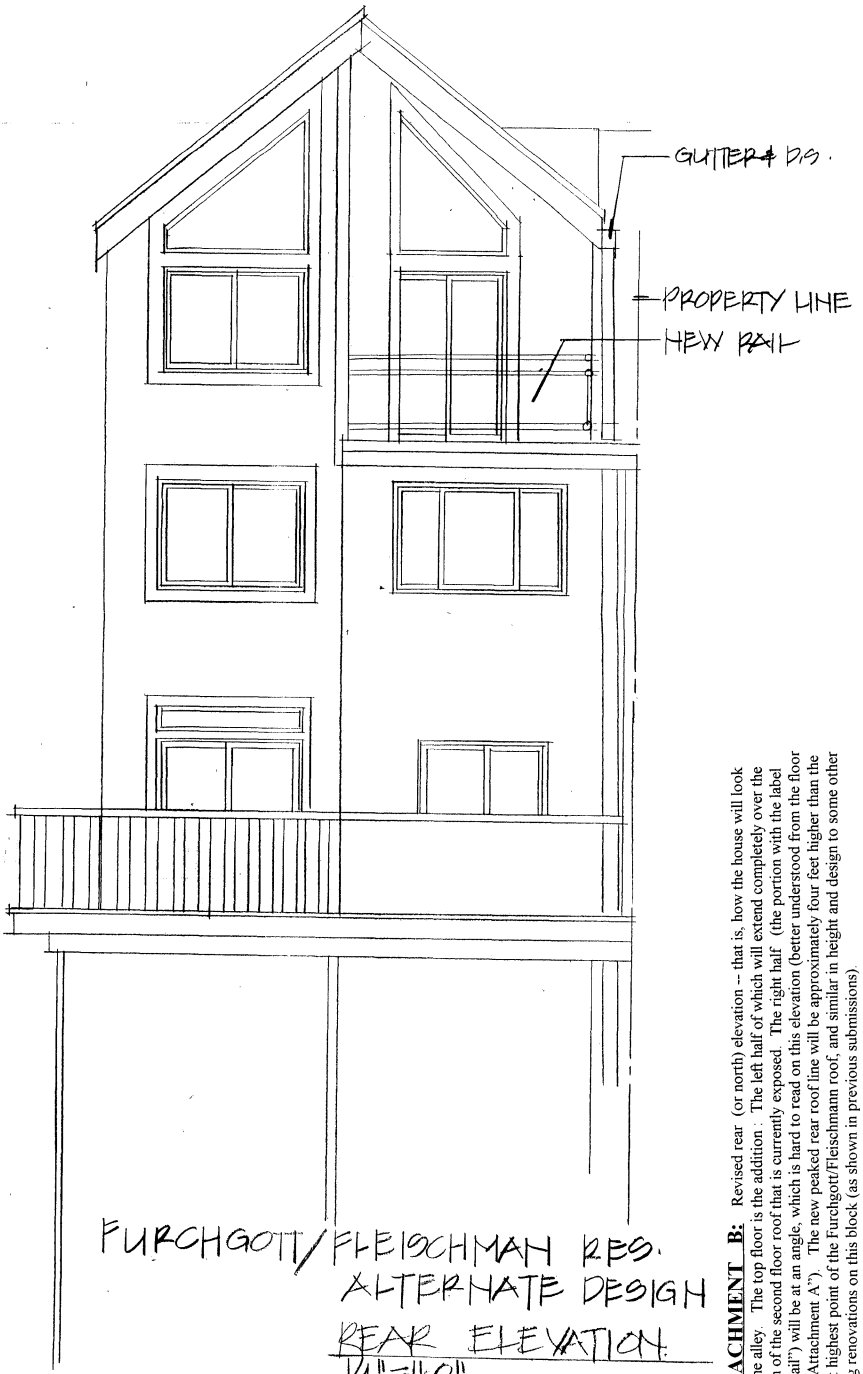



**ATTACHMENT A:** Revised floor plan for the third floor of the Furchgott/Fleischmann house. The "addition" is the last approximately 10 feet at the north end of this floor, which has been a roof deck of the rear end of the 2nd floor for the last 30 years. Instead of covering the entire previous deck area with the bedroom extension, a diagonal section (1/4 of the area) is not being built up. That should allow an unquestionably unobstructed view, light, and air from third floor of the neighboring townhome on the west side, should the Turtons (or subsequent owners) decide to develop their attic.

**ORIENTATION:** **West** (adjacent to Turtons property)

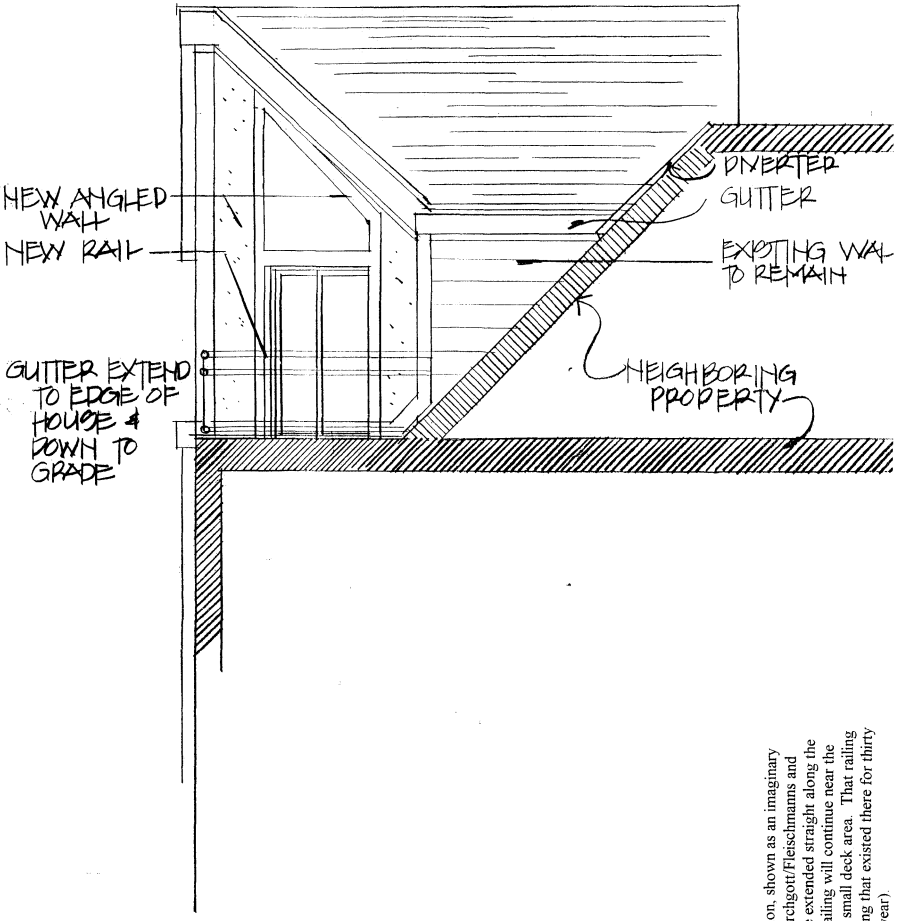
**South** (toward Klingle street) + **North** (toward the alley)

**East**




FURCHGOTT/FLEISCHMAN RES.
ALTERNATE DESIGN
REAR ELEVATION
1/4" = 1'-0"

**ATTACHMENT B:** Revised rear (or north) elevation -- that is, how the house will look from the alley. The top floor is the addition. The left half of which will extend completely over the portion of the second floor roof that is currently exposed. The right half (the portion with the label "new rail") will be at an angle, which is hard to read on this elevation (better understood from the floor plan "Attachment A"). The new peaked rear roof line will be approximately four feet higher than the current highest point of the Furchgott/Fleischmann roof, and similar in height and design to some other existing renovations on this block (as shown in previous submissions).




**ATTACHMENT C:** A west elevation, shown as an imaginary "cut-away" at the property line between the Furchgott/Fleischmanns and Turtons homes. The "existing wall" will not be extended straight along the property line, as was previously proposed. A railing will continue near the property line, defining the boundary of the new small deck area. That railing will be in the same location as the previous railing that existed there for thirty years (prior to its removal for roof repairs last year).

FURCHGOTT/FLEISCHMAN RES.
ALTERNATE DESIGN
SIDE ELEVATION
1/4" = 1'-0"

**ATTACHMENT D**: **A further chronology of exchanges with the Turtons & their attorney, documenting attempts by the Furchgott/Fleischmanns to reach an agreement:**

- November 5: BZA defers its decision and re-opens the record with letters notifying to all concerned parties on November 7. This provides an opportunity to revise the plan and to attempt to reach an agreement with other parties to the application.

- November 18: We invite the Turtons to meet with us at our home during the week of December 8th, when the revised plans are due to be completed by the architect, for the specific purpose of discussion of the issues and trying to reach an agreement as stated by the BZA.

- December 2: The Turtons' attorney responds that they are willing to view the plans early, but are not interested in discussion about the issues ( "my clients are not making themselves available for you to reiterate your arguments and allegations").
  They also demanded the plans two days before the meeting for review, and demanded that "[our] latest proposal is accurate and final", negating the intention of the proposed meeting as an opportunity for discussion and possible change as a result of further compromise.
  Finally their attorney demanded that we stop using verifiable means of communicating with them.

- December 7: We responded by fax to the Turtons (through their attorney) saying that the sole purpose in making this material available to the Turtons prior to the required submission date of December 16th, is for the purpose of creating a dialogue and exploring an agreement.
  Additionally (since the Turtons' attorney had alleged that we had made false statements regarding this situation in the past), we stated that "We do think it would be useful to record the meeting, if you agree."

- December 8: Having no response by the evening that Turtons wanted the advance copies of the plans, we called them (as we said we would in our fax of the previous day) to ensure that they were receiving the plans for discussion as offered. They responded that they wanted the advance material unconditionally, and that we should call their attorney at his office for further clarification.
  We then called Turtons' attorney who responded with allegations that we had misrepresented both our intentions and the facts, and he further claimed that we had harassed the Turtons.
  Mrs. Turton subsequently called to say that their attorney had misstated at least one of his allegations (his untruthful claim that we had harassed them by calling them at midnight).

- December 9: We received a vituperative correspondence (by fax dated December 8th) from the Turtons attorney.

- December 10: We received another accusative letter from the Turtons attorney alleging that we have been bothering and threatening the Turtons. ***The entire history of our communication with the Turtons over the past half year is specifically chronicled in detail in our submission to the BZA of October 14th, in a follow-up packet sent to the BZA on November 19th, and above. Aside from rare cordial greetings on the street, neither of us have had (nor have attempted to have) any other contact with the Turtons during this time.***

FETNEH ASKARI FLEISCHMANN ❖ DAVID M. FURCHGOTT
3223 KLINGLE ROAD N.W., WASHINGTON, D.C. 20008

Jack and Karen Turton
3225 Klingle Road, N.W.
Washington, D.C. 20008

November 18, 1997

Dear Mr. and Mrs. Turton,

At the last hearing of the BZA on November 5th, we were allowed to pursue investigation of a modified version of our plans originally submitted for our proposed repair/renovation/addition. That proposed modification takes into consideration issues which you have raised. This alternative is currently being drafted by an architect and reviewed by a structural engineer. The modified plan with structural review should be ready in about two weeks (early December). We are obliged by the BZA to make our final presentation to the BZA by December 16th.

We would like to invite you to our home to review and comment on this alternate proposal, with hope that it eliminates the concerns that you have expressed to us thus far regarding air, view, light, rain and snow drainage. We would be glad to meet with you in the second week of December: Monday, Tuesday, Wednesday, or Thursday (December 8th, 9th, 10th, or 11th). Our preferred time would be in the early evening, but we can consider other alternatives that you might suggest as necessary. We will ask the architect to be present, if you like, but cannot guarantee her availability. If you prefer to bring your attorney with you, we would like to be notified of this in advance with your response to this invitation, so that we can engage an attorney as well, if we so chose.

The purpose of this meeting will be to present the plans and to try to come to some reasonable conclusion of points of difference and points of compromise with you at that time, so that possible further modifications might be considered, if necessary, in time for our submission deadline to the BZA (again, this is due December 16th).

It is our understanding from attending the BZA meeting on November 5th, that we are only obliged to present these plans to you by or on December 16th. We are offering to do this as soon as the plans are ready, the week before, so that you can air you concerns directly and so that we can discuss these directly with you -- and perhaps find further ways toward common ground. This effort (going to further expense, providing this information earlier than requested, and inviting direct dialogue) is a sincere, good faith attempt to re-initiate direct communication with you. We hope that you will join us in that same spirit.

As both our business schedules are quite full at the moment, we hope to hear from you as soon as possible (even the four recommended dates will require us to do some scheduling adjustments).

Sincerely,

David M. Furchgott and Fetneh Askari Fleischmann

CC: ANC
BZA
B. P. Jenny

BRIAN PAUL JENNY
ATTORNEY AT LAW
SUITE 440
5335 WISCONSIN AVE., N.W.
WASHINGTON, D.C. 20015-2030
(202) 362-2165
FAX: (703) 771-9078

December 2, 1997

Mr. David M. Furchgott
3223 Klingle Road, N.W.
Washington, D.C. 20008

RE: BZA Application 16260

Dear Mr. Furchgott,

I have met with Mr. and Mrs. Turton and reviewed with them your various letters.

My clients want meaningful participation in the ANC and BZA proceedings, and want to review any documents you have prepared for your newest proposal. They will meet with you December 10 at 7:00, in accordance with your invitation, if you first provide them a diagram of your plan, and any written comments you want them to consider. They also want your verification that your latest proposal is accurate and final, and they want a copy of it that they can share with me and any other interested parties. They will want your written proposal no later than 2 days before your meeting.

My clients are not making themselves available for you to reiterate your arguments and allegations, and they are not asking you to spend time or money to prepare anything other than an accurate representation of your project. My clients are not asking either to meet with your architect or any other professionals employed by you. If, on the other hand, the BZA or the ANC suggests additional proceedings, my clients will expect you to have your plans and your planners available for on-the-record examination.

Finally, please stop sending my clients registered or certified mail, as Mr. and Mrs. Turton consider this to be yet another effort at intimidation.

You have my FAX numbers to send a reply.

Very truly yours,

Brian Paul Jenny

DC FAX: 202-244-8257

FETNEH ASKARI FLEISCHMANN ❖ DAVID M. FURCHGOTT
3223 KLINGLE ROAD N.W., WASHINGTON, D.C. 20008

---

*Facsimile sent to the offices of Brian Paul Jenny (both 202-244-8257 and 703-771-9078).*
*Mr. Jenny, please forward this to your clients, as you indicated you would in your letter of December 2nd. Please also acknowledge receipt of this fax by return fax to my office (202-333-0758) on Monday if possible. Thank you.*

---

Jack and Karen Turton
3225 Klingle Road, N.W.
Washington, D.C. 20008

December 7, 1997

Dear Mr. and Mrs. Turton,

We received Brian P. Jenny's letter of December 2nd sent on your behalf. We understand that you are willing to meet with us at 7:00 PM, this Wednesday evening, to discuss our renovation plans.

Mr. Jenny's letter said that you are not interested in making yourselves "available for (me) to reiterate (my) arguments and allegations." This is a meeting which we have offered *solely for the purpose of finding common ground.* It requires us all (both you and us) to go over points of difference in order to better understand each others' point of view and to see if the concessions that we are proposing adequately address the concerns that you've raised to date. We offer this meeting for discussion, again fully in the spirit of our original offer last July, and in the direction subsequently suggested by both the ANC and the BZA. If you solely wish to be informed of our plans and do not wish to discuss them directly with us, then you can wait until the date of required submission the following week and respond in that manner.

Given the above understanding (i.e. that you are willing to express your concerns and differences, and will also be willing to listen to ours; and that you are coming to meet with us to seek a mutual solution as suggested by the BZA and ANC), then we can proceed as planned:

We have spoken to our architect, and she expects to have the new drawings completed late this evening (Sunday night). We will meet with her and review them tomorrow (that is, Monday evening). If we are assured that you are planning to meet on Wednesday in the spirit noted above, then we will make a copy set for you following our Monday evening meeting with the architect and we will deliver them directly to your home that evening, in order to meet your demand of having the material "2 days before" our meeting with you. We will call prior to bringing these over to your house, if we have not received other instructions from you or your attorney to the contrary.

As previously stated, the purpose of this meeting will be to present you with a possible compromise plan based upon your previously expressed concerns, and for the four of us to discuss and to take into further consideration our mutual interests. We cannot guarantee that this "latest proposal is accurate and final" since we are proposing a serious concession both in design and in area (25% reduction) and we have limited need to pursue this concession unless it is on the basis of good faith negotiations with you. Conversely, as a result of our discussion with you on Wednesday evening, should we find other things that you might reasonably request, that we can (and are willing and able to) accommodate within our means -- then we will try to adjust those needs into the plan before our submission date to the BZA next week. Guaranteeing these as final, at this time, would negate the intention of this early meeting.

We understand that you do not intend to bring anyone with you for the meeting at our home, and we likewise intend to have no one else present. We do think that it would be useful to record the meeting, if you agree.

By final note, as regards Mr. Jenny's comment about the intimidation of certified mail: I believe that Mr. Jenny sent his first letter to us by certified mail, and we subsequently have sent at least one of each subsequent correspondence in that manner. We have been told that we should have record of delivery to either you or your attorney. It certainly is not "another effort at intimidation" --- but it does seem unnecessarily silly for next door neighbors to have to communicate that way. I hope that we are on our way toward regaining mutual trust.

Sincerely,

David M. Furchgott and Fetneh Askari Fleischmann

CC: ANC
BZA
Brian P. Jenny

BRIAN PAUL JENNY
ATTORNEY AT LAW
SUITE 440
5335 WISCONSIN AVE., N.W.
WASHINGTON, D.C. 20015-2030
(202) 362-2165 FAX (703) 771-9078

December 8, 1997

Mr. David M. Furchgott
3223 Klingle Road, N.W
Washington, D.C. 20008

RE: BZA Application 16260, My Clients Mr. and Mrs. Turton
Your December 8, 1997 FAX Transmittal

Dear Mr. Furchgott,

I have reviewed your December 8 letter with my clients in the context of your invitation to meet and also in the context of your November 18 and November 1 letters to the ANC and to the BZA (copies attached).

As a result, I am referring you back to my October 5 letter (copy attached), and directing that you send all communications to my clients through my office. I will meet with you or your representative any time and any place and for any productive purpose related to this matter. My clients, however, find it unacceptable that you continue to couple your requests for their time and attention (and entreaties respecting trust and neighborliness) with unwarranted allegations directed against them, and now with the suggestion that their conversations with you need to be recorded.

Mr and Mrs. Turton are 81 and 63 years old, respectively, and Mrs. Turton does not speak English as her first language. Despite or because of their ages and the language barrier, you have made insistent and unwarranted demands on my clients for their time and attention, even after I explained to you that my clients find your calls, letters, and visits to them to be disruptive.

Nonetheless, my clients had been receptive to your November 18 letter (copy attached), because they wanted to know, finally, what it is that you are proposing. But your December 8 FAX sets conditions for review of your plans, and states that you want to "record" the meeting.

Mr. and Mrs. Turton have tolerated quite enough of your conduct, and will tolerate it no more. They have an absolute legal entitlement to know your proposal, and to have it subjected to the public notice and comment process. They do not understand why the BZA has not yet seen fit to deny your application on its merits, and they regret having to spend their own time and money to seek enforcement of the zoning code in this matter, but they will do what they must to protect themselves.

You therefore can send or not send your "plan" as you wish.

I have advised you on previous occasions that my clients oppose your variance application because it has no merit, and because it affects them directly and adversely. They object to your letters to the ANC and to the BZA, because you make false allegations respecting their opposition to your application; and they object to your insistence that they meet with you at your convenience to negotiate a settlement because you have proposed no alternatives to your original plan.

This seems to be where we stand, still.

Very truly yours,

Brian Paul Jenny

BRIAN PAUL JENNY
ATTORNEY AT LAW
SUITE 440
5335 WISCONSIN AVE., N.W.
WASHINGTON, D.C. 20015-2030
(202) 362-2165
FAX. (703) 771-9078

December 10, 1997

Mr. David M. Furchgott
3223 Klingle Road, N.W.
Washington, D.C. 20008

RE: BZA Application 16260

Dear Mr. Furchgott:

This is in further response to your 8:30 telephone call to my clients the evening of December 8, and to your follow-up telephone call to me later that evening.

As I have told you, my clients have been offended and intimidated by your personal remarks to and about them, and they have asked that I handle all communications from you to them. There are no exceptions to this request, and most emphatically, there are no exceptions that justify your placement of calls to my clients in the evening hours.

Please leave Mr. and Mrs. Turton entirely alone.

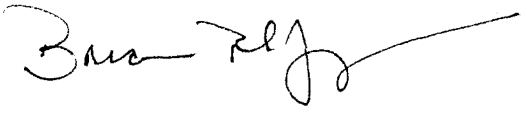
If you want productive communications with my clients, please understand that neither they nor I have a duty to adjust our schedules to suit yours, and we will not do so. We will not accept calls outside of normal business hours, and we will not accommodate your demands for time and attention unless they are reasonable within the context of this matter. Thus far this has not been the case.

You have based your entire argument in this matter on the false proposition that my clients have refused to enter into good faith negotiations with you. Your proposition is false because you have withdrawn every "proposal" that you have presented, because your communications have been untimely, and because you have coupled your demands with threats made outside of the record.

My recollection is that in Texas these sorts of negotiations are considered an invitation to shake hands with a cactus: thanks, but please tell your mediator my clients decline her invitation.

If you want to discuss this matter, I will meet with you or your attorney, wearing gloves.

Very truly yours,



# Certificate of Service

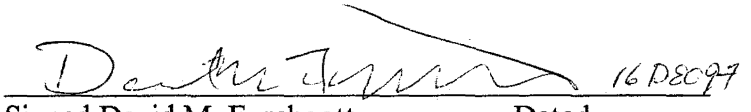
I, David M. Furchgott, hereby certify that a copy of the attached documents were mailed first class on December 16th to:

Brian Paul Jenny
5335 Wisconsin Ave., N.W.
Washington, D.C. 20015

Jack and Karen Turton
3225 Klingle Rd., N.W.
Washington, D.C. 20008

ANC-3
2737 Devonshire Pl., N.W.
Washington, D.C. 20008

Five copies for the BZA were hand delivered




Signed David M. Furchgott Dated