Foggy Bottom and West End
Advisory Neighborhood Commission (ANC-2A)

c/o St. Mary's Court 725 24th Street, N.W. Washington, D.C. 20037 (202) 736-1775

November 23, 2004

D.C. BOARD OF ZONING ADJUSTMENT
2004 NOV 23 PM 2:20

Mr. Geoffrey Griffis, Chairman
Board of Zoning Adjustment
Room 210
441 4th Street, N.W.
Washington, D.C. 20001

RE: 2512 I Street, N.W. : BZA Case No. 17204 -- Request for Postponement to Hear New Application

Dear Mr. Griffis:

We refer to Mr. Gell's letter of November 19, 2004 on the above subject. ANC-2A maintains that its request, as outlined in its letter of November 11, 2004, is reasonable and makes the following additional points:

- The applicants, represented by Mr. Gell, came to ANC's public monthly meeting on September 14, 2004 and, without advance discussion with ANC-2A, presented to the Commission a completely new proposal to that given earlier to the Board of Zoning Adjustment (BZA) and to ANC-2A. Mr. Gell gave ANC-2A a set of small scale plans, and made some oral statements to the effect that the new proposal had been approved by the staff of the Historic Preservation Review Board, but he provided no written statement of the justification nor a new draft application for the new plan. Moreover he asked that ANC-2A agree to have the BZA consider the new proposal at the Board's hearing later in September. ANC-2A quite properly objected to that approach and a postponement of the case became necessary in order to give the ANC adequate time to perform its duties, to study the new plan and act responsibly on the new application.

- Mr. Gell gave no more information to ANC-2A until October 29, 2004 when he submitted his new application to the BZA, which he was of course obliged to do. ANC-2A did not consider that this gave it adequate time to study the case, obtain legal advice and discuss the matter at its public monthly meeting on November 9, 2004 so as to prepare a reasoned resolution to present to the BZA. This concern is especially warranted in view of the numerous and serious misstatements which were made in the previous application and which were refuted in ANC-2A's lengthy

BZA
Case No. 17204
Exhibit No. 45

Board of Zoning Adjustment
District of Columbia
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Resolution #04-9A of September 14, 2004. A thorough verification of the present application is more than called for in order to assess whether the intent and purposes of the Zoning Regulations are met. At the November 10, 2004 public monthly ANC-2A meeting ANC-2A therefore told the applicants that, given that Mr. Gell's submission to the BZA and ANC-2A left ANC-2A only 9 working days to study the new application, and the need to obtain expert zoning counsel in this matter in order to fulfill ANC-2A's responsibilities and submit an informed position, ANC-2A would request a postponement of the scheduled BZA hearing date. ANC-2A would finalize its position at its December 15, 2004. The applicants did not voice any objections and appeared to accept this approach.

- Mr. Gell seems to be taking the position that ANC-2A should accept that the claims made in the latest application are accurate. In particular he claims that the only relevant section of the zoning regulations is Section 223.1 and that the Foggy Bottom Overlay provisions are irrelevant. ANC-2A cannot accept this view and it believes strongly that neither should the BZA.

- At its November public monthly meeting ANC-2A voted to obtain legal advice on this application. The advice we received is that Section 223.1 could not be applied to this site since the property is zoned FBOD/R-3. The Foggy Bottom Overlay was adopted to preserve open back yards and to protect light, air and privacy associated with the Foggy Bottom Historic District in addition to whatever protections are afforded by the District of Columbia's preservation law. See 11 DCMR Section 1521.3(d). Moreover, Section 1522.3 makes it clear that when there is a conflict between the FBOD and the underlying zoning, the more restrictive provisions of the FBOD apply. Under Section 1523.1 no addition shall be permitted to a structure unless the structure complies with underlying R-3 district. Thus Section 223.1 cannot be used to waive the provisions of the R-3 requirements for an addition since Section 223.1 cannot take precedence over the FBOD. As a more general provision of general applicability Section 223.1 cannot override the more specific provisions and requirements of the FBOD.

- Mr. Gell claims that " the added expense of protracted proceedings, the loss of construction time, and the inconvenience of living in a building that has been chopped into individual student living units", justifies his request to you. ANC-2A would ask you to note that of all requests made for additions to properties in the Foggy Bottom Overlay District, the present case is the only one where the applicant did not share and discuss in advance the draft proposals with the Commissioner of the ANC District in which the project is located. This approach by Mr. Gell imposed a considerable burden on the ANC to study and prepare a Resolution on an application, which the applicant then suddenly replaced with a new plan. While detailed approaches were made to a limited number but by no means all of the affected neighbors, Mr. Gell now seems to be taking the position, that having apparently made agreements with this limited number of supporters, the community, ANC-2A and the BZA should accept his view that it is a simple matter of approving a request for a special exception and that opponents can be ignored. ANC-2A notes that there

are many in the community who signed a petition objecting to the proposal and that only one person withdrew opposition (as already stated in Mr. Wiskup's letter to you of November 17, 2004). ANC-2A believes that the matter is more complex than Mr. Gell's letter implies, and that in the circumstances a very thorough examination of the zoning implications of this application is required.

- ANC-2A does not consider that Mr. Gell has been cooperative with ANC-2A. Any delays have been due to the applicants rather than to ANC-2A.

In the light of the above, ANC-2A opposes Mr. Gell's request and stands by its request that the BZA postpone its consideration of the new application.

In conclusion we wish to note that at ANC-2A's October monthly public meeting the Commission voted to appoint Commissioner Maria Tyler to represent ANC-2A before the BZA on this case (BZA Case No. 17204).

Should you have any questions, would you kindly contact Commissioner Tyler at (202) 337 7896. Thank you for your consideration.

Respectfully,

Dorothy Miller

Dorothy Miller, Chair
Advisory Neighborhood Commission 2A

cc. Stephen N. Gell, Esq.
Paul Falon, Esq.