Paul H. Falon
2504 I Street, N.W.
Washington, DC 20037
(202) 337-8281
falonpa@ffhsj.com

November 23, 2004

By Hand Delivery

Mr. Geoffrey H. Griffis
Chairman
Board of Zoning Adjustment
Of the District of Columbia
Room 210
441 4th Street, N.W.
Washington, DC 20001

D.C. ... 2004 NOV 23 P 2:25

Re: Application for Proposed Addition to 2512 I Street, N.W.
Square 17, Lot 35 (Donnell Application)

Dear Mr. Griffis:

I am hereby filing with the Board an original and 19 copies of my Statement In Partial Opposition To Revised Application for a proposed addition to 2512 I Street, N.W.

I have this day also served copies on Mr. Gell, counsel for the applicants, and Ms. Tyler, ANC-2A Commissioner.

Respectfully,

Paul H. Falon

Paul H. Falon

enclosures

BZA
Case No. 17204
Exhibit No. 46

Board of Zoning Adjustment
District of Columbia
CASE NO. 17204
EXHIBIT NO. 46

Paul H. Falon
2504 I Street, N.W.
Washington, DC 20037
(202) 337-8281
falonpa@ffhsj.com

BOARD OF ZONING ADJUSTMENT
OF THE DISTRIC OF COLUMBIA

In re: Application for Proposed Addition to 2512 I Street, N.W., Square 17, Lot 35 (Donnell Application) BZA Case No. 17204

Statement of Paul H. Falon
In Partial Opposition to Revised Application

Introduction

I am the owner of the property located at 2504 I Street, N.W. I object to the proposed addition of a third story and roof deck to the dwelling at 2512 I Street, N.W., which forms part of the owners' revised application in this case, filed and served on October 29, 2004.

I opposed the original application for a three-story addition to 2512 I Street, N.W., and was granted party status in this case, on the basis that such an addition, extending to the rear of the property line, would block the existing views of open space from the rear of my property to the west and southwest and would substitute a disproportionately large building that would deprive my property of light, contrary to the zoning requirements for the Foggy Bottom Overlay District set forth in, *inter alia*, 11 DCMR 1521.3(b) and (d).

Based upon my review of the revised application, and my communications with the owner of the property, I do not object to the following aspects of the revised application:

- The extension of the dwelling to the rear of the adjacent house at 2514 I Street, N.W. – provided, as the owner has assured me, that none of the existing trees located on the vacant lot to the east of the property are removed;
- The removal of the mature, deciduous tree at the rear of the property (not expressly addressed in the original or revised application, but a necessary consequence of the proposed addition);
- The removal of the existing carport above the parking space; and
- The enclosure of the parking space with a garage attached to the dwelling, with a deck on top of the garage.

Accordingly, I express no opinion as to certain of the issues presented by the revised application, including, for example:

- Whether the garage attached to the rear of the dwelling should be included in the calculation of lot occupancy;

- Whether 11 DCMR 1523.1 is relevant to the revised application;
- Whether the revised application requires a variance or, as the applicants contend, only a special exception; and
- Whether the applicants have met their burden of proof with respect to each of the foregoing, as required by 11 DCMR 3119.2.

As a resident of the Foggy Bottom Historic District, however, I object to the addition of a third story and roof deck to the dwelling, for the reasons outlined below.

Discussion

1. The Proposed Third-Story Addition Would Be Inconsistent With The "Low Scale Harmony" Of The Neighborhood's Townhouses, Which The Foggy Bottom Overlay District Was Created To Preserve.

As the D.C. Municipal Regulations acknowledge, the Foggy Bottom Historic District ("FBHD") was designated and included in the National Register of Historic Places, in 1986 and 1987, respectively, to protect its "low-scale residential character [and] its human scale streetscape[.]" 11 DCMR 1521.1.

Similarly, the Foggy Bottom Overlay District ("FBOD") was created in 1992, with the identical boundaries of the FBHD, for the following purposes, among others:

- To require a scale of development consistent with "[t]he characteristics of the low scale harmony of rhythmic townhouses of a purely residential neighborhood which formed the basis on which the area was designated a historic district[,]" 11 DCMR 1521.3(a)(2); and
- To protect the integrity of the historic district, its small scale and open spaces, ... and to preclude demolitions or partial demolitions which would lead to an increase in height ... inappropriate to the area." *Id.* 1521.3(b).

Both in 1986, when the FBHD was designated, and in 1992, when the FBOD was created, the vast majority of historic townhouses in Foggy Bottom had only two stories – or, if there was a third story, it was a ground floor or basement at least partially below grade, so that the roofline was at the same, or approximately the same, height as the adjacent townhouses. For this reason, the references in Chapter 15 of the Zoning Regulations, creating the FBOD, to "the low scale harmony of rhythmic townhouses" and the "small scale" of the historic district can only be understood to mean the predominantly two-story vertical scale of the buildings in existence at the time the FBHD was designated. To give effect to the intent of the FBOD, therefore, the regulations should be construed to favor preservation of existing two-story dwellings.

In particular, the three-story maximum building height permitted as a matter of right in R-3 residential districts generally should be deemed to conflict with, and thus to be superseded by, the more restrictive provisions of Chapter 15 requiring preservation of the "low scale" of the FBHD. *See* 11 DCMR 1522.2 ("*Except as specifically provided in 1522.3 and in other provisions of this chapter*, and [sic] all matter-of-right uses, buildings, and structures permitted in accordance with this chapter and the appropriate regulations of the underlying district with which the mapped Foggy Bottom Overlay District is combined, shall be permitted in the combined district." (Emphasis added.)); *id.* 1522.3 ("Where there is a conflict between this chapter and the underlying zoning, the more restrictive provisions of this title shall govern.").

As applied to the revised application under consideration by the Board, the addition of a third story to a building that had only two stories at the time the FBHD was designated "would lead to an increase in height . . . inappropriate to the area," *id.* 1521.3(b) – and inappropriate, specifically, to the scale of the continuous row of predominantly two-story townhouses from 2512 to 2528 I Street, N.W. It would also be inconsistent with the intent and integrity of the FBOD. Accordingly, that portion of the revised application should be denied.

2. The Proposed Third-Story Addition Fails To Comply With The Standards For Granting Special Exceptions.

Pursuant to 11 DCMR 3104.1, the Board is authorized to grant a special exception where, in the judgment of the Board, it complies with each of two independent standards:

- The special exception "will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps *and*"
- The special exception "will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps[.]" 11 DCMR 3104.1. (Emphasis added.)

In both cases, the standards are subject to certain special conditions specified in Section 3104.1, including those for additions to one-family dwellings set forth in 11 DCMR 223. 11 DCMR 3104.1

Assuming, as the appellants contend, that the entirety of their revised application requires only a special exception, the proposed addition of a third story fails to comply with the standards set forth in 11 DCMR 3104.1 and the conditions set forth in 11 DCMR 223.

As demonstrated in the previous section of this Statement, a third story added onto a dwelling in the FBHD that had just two stories at the time the historic district was designated would not be "in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps," as embodied in the FBOD. The proposal to add a third story should be denied for this reason alone.

In addition, and contrary to the applicants' representations in the revised application, the addition of a third story would "tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps" and the special conditions applicable to additions to one-family dwellings.

Most notably, the addition of a third story and street-facing roof deck would "visibly intrude upon the character, scale and pattern of houses along the subject street frontage," contrary to 11 DCMR 223.2(c).

First, a third story would be plainly visible when viewed from I Street at the adjacent vacant lot immediately to the east. *See* Exhibit A attached hereto. Far from "a modest increase in height," as the applicants describe it, a third story addition to the dwelling would increase the side elevation by 50 percent, a substantial amount, and every additional foot would be visible. Further, although the applicants claim, "it is not unreasonable to assume construction of a single family dwelling [on the vacant lot] in the future" – presumably, which would block some or all of the proposed addition from view – that is pure speculation unsupported by any evidence whatsoever. I have lived in Foggy Bottom or the West End continuously from 1983 to the present (except for a brief period from 1986 to 1988, when I lived in Dupont Circle), and the lot

at 2510 I Street has been vacant during that entire time. It is my understanding that the owner of the lot uses it as collateral for business transactions. Thus, it is just as reasonable to assume that the lot will remain vacant in the future, as it has been for at least the past 21 years; a third-story addition to 2512 I Street would be visible from the street for as long as it does.

Second, despite the applicants' submission of an architect's proposed site section (sheet 4), it is not certain that the roof of the third-story addition would be not visible when viewed from the north side of the 2500 block of I Street, even though it would be set back farther than the third-story additions at 2514 and 2516 I Street. A greater proportion of the third-story additions at those dwellings is visible from the north side of the street than the site section's sight line suggests. *See* Exhibit B attached hereto (photograph of 2512-2516 I Street taken from across the street). At a minimum, persons standing on the roof deck may well be visible from the sidewalk across I Street. *See* Exhibit C attached hereto. In either case, the proposed third-story addition and roof deck would visually intrude upon "the character, scale and pattern of houses along the subject street frontage," contrary to the special conditions applicable to additions to one-family dwellings set forth at 11 DCMR 223.2(c).

The addition of a street-facing roof deck itself would tend to have an adverse effect on the privacy of use and enjoyment of neighboring properties, contrary to the special conditions applicable to additions to one-family dwellings set forth at 11 DCMR 223.2(b). So far as I am aware, no third-story addition to a historic townhouse in the FBHD has included a street-facing roof deck. Whether facing front or back, roof decks invite the occupants to carry on conversations, play music, or create other noise that carries to adjacent properties and interferes with the residents' peaceful enjoyment of their own homes. The applicants cite to the Comprehensive Plan for the National Capital Area's goal of "protect[ing] residential neighborhoods from disruptive uses" when they tout the conversion of their house from a student rental to a family dwelling. Yet they fail to appreciate, or acknowledge, that incorporation of a roof deck in a third-story addition poses a real threat of "disruptive use" to their neighbors, regardless of who the dwelling's occupants are.

For these reasons, the proposed third-story addition also fails to comply with the second standard and corresponding special conditions for granting special exceptions, and that part of the revised application should be denied.

Conclusion

If every two-story townhouse in the FBHD were permitted to add a third story, the "low scale harmony of rhythmic townhouses . . . which formed the basis on which the area was designated a historic district[,]" 11 DCMR 1521.3(a)(2), would be altered irrevocably beyond recognition. That is precisely the scale of development that the FBOD was created to prevent.

A third-story addition to the house at 2512 I Street, N.W. is inconsistent with the intent and integrity of the FBOD and does not comply with either of the standards for approving special exceptions. Accordingly, I urge the Board to deny that portion of the revised application incorporating a third story and roof deck.

Respectfully submitted,

November 23, 2004

Paul H. Tolan

EXHIBIT A



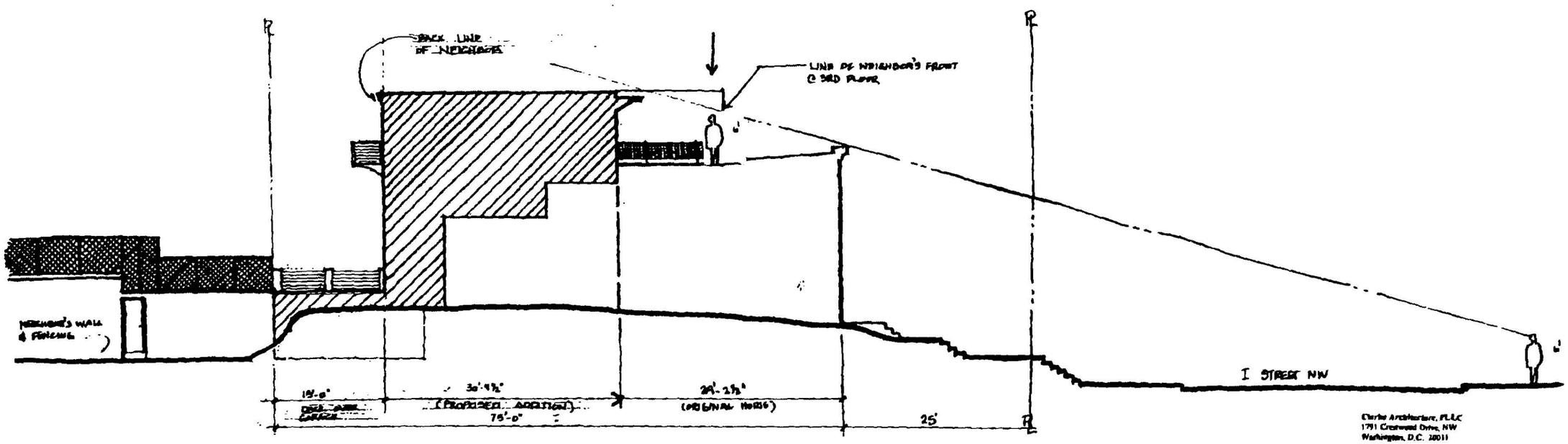
EXHIBIT B

2512 2514 2516





EXHIBIT C



PROPOSED SITE SECTION

1/8"=1'-0"

Clarke Architecture, PLLC
1791 Crestwood Drive, NW
Washington, D.C. 20011
202-722-4553

Donnell Residence
3512 Eye Street NW
Washington, DC 20037

Sheet 4

Date 9-14-04

Certificate of Service

I hereby certify that copies of this Statement were served by hand delivery on Mr. Geoffrey H. Griffis, Chairman, Board of Zoning Adjustment, and on:

Stephen N. Gell, Esq. (by e-mail and first-class mail)
1101 30th Street, N.W.
Fifth Floor
Washington, DC 20007

Maria Tyler (by hand delivery)
Commissioner ANC-2A03
949 25th Street, N.W.
Washington, DC 20037

November 23, 2004