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January 7, 2005

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

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

Dear Mr. Griffis:

I am hereby filing with the Board an original and 20 copies of my supplemental statement in partial opposition to the 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, for the ANC-2A.

Respectfully,

Paul H. Falon

Paul H. Falon

enclosures

BZA
Case No. 17204
Exhibit No. 54

Board of Zoning Adjustment
District of Columbia
CASE NO. 17204
EXHIBIT NO. 54

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BOARD OF ZONING ADJUSTMENT
OF THE DISTRIC OF COLUMBIA

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

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

At the request of the Board, I am submitting this supplemental statement to address certain issues raised during the November 30, 2004 hearing on this matter. For the reasons set forth below, in addition to those in my original statement dated November 23, 2004 ("November 23 Statement") and my testimony at the hearing, I oppose the addition of a third story and roof deck to the dwelling at 2512 I Street, N.W.

1. The Provisions Of The Foggy Bottom Overlay District Establish The Height Restriction Applicable to 2512 I Street, N.W.

When the Zoning Commission rezoned the Foggy Bottom Historic District ("FBHD") to R-3 and created the Foggy Bottom Overlay District ("FBOD") in 1992, it did so with the intention of "stabilizing the existing character of the community." Zoning Commission Order No. 714, 39 DCR 2843, 2849 (Apr. 17, 1992). The vast majority of historic townhouses in the FBHD, which give the neighborhood its character, are, and were in 1992, two-story houses, in some cases with ground floors or basements below grade.

The language of Chapter 15 of the D.C. Municipal Regulations, which creates the FBOD, expresses the Commission's intention: "strong protection is needed to retain the historic district's low-scale residential character[.]" 11 DCMR 1521.1. Accordingly, Chapter 15 provides that the FBOD requires 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," *id.* 1521.3(a)(2), and that the FBOD serves 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 and floor area ratio inappropriate to the area." *Id.* 1521.3(b).

These references to the historic district's "low scale" plainly refer to the vertical scale of the historic townhouses that existed in 1992, and the FBOD was intended to keep that scale the way it was, *i.e.*, to "stabilize" it. Thus, to give them meaning, the provisions of Sections 1521.1 and 1521.3(a)(2) and (b) must be read to require preservation of the height of existing two-story dwellings. (Owners of three-story townhouses, of course, cannot not build additional stories,

either.) Had the Commission intended to confer on property owners in the FBHD the absolute right to increase the height of their two-story townhouses to three stories, it simply could have rezoned the district to R-3, without more. By creating the FBOD simultaneously with rezoning the district to R-3, however, the Commission qualified the height, area, and density regulations generally applicable to R-3 districts – including the three-story maximum height limit in 11 DCMR 400 – with the more restrictive requirements set forth in Section 1521.

Pursuant to Section 1522.3, the more restrictive provisions of the FBOD prevail over conflicting provisions in the underlying zoning. For this reason, it was unnecessary to state, in Section 1523.1, that no addition to a building in the FBOD shall be permitted unless in conformance with the requirements of the underlying R-3 district "as modified by Chapter 15"; such modification occurs automatically, by operation of law. It would make no sense at all for Chapter 15 to establish a series of special zoning requirements for the FBOD but to permit any addition to a building in the district to ignore them.

The height limit applicable to the historic townhouse at 2512 I Street, N.W. is not the three-story maximum height permitted elsewhere in the R-3 zone but the height of the building in 1992 when the FBOD imposed more restrictive limits. That limit is two stories.

2. A Special Exception From This Height Restriction Is Not Permitted.

Section 223 of the D.C. Municipal Regulations, adopted in 1998, authorizes the Board to grant a special exception for an addition to a one-family dwelling that does not comply with all of the applicable area requirements of Sections 401 (minimum lot dimensions), 403 (maximum percentage of lot occupancy), 404 (minimum rear yard requirements), 405 (minimum side yard requirements), 406 (minimum court dimensions), and 2001.3 (additions to non-conforming structures), provided that the lot occupancy of the dwelling does not exceed 70% in the R-3 district (with other percentages applicable to other residential districts).

Section 223 does not refer to Section 400 (maximum height of buildings), and the Zoning Commission has clarified that "§ 223 *only* applies to relief from specified area restrictions applicable to an addition to a building that is a one-family dwelling[.]" Zoning Commission Notice of Final Rulemaking and Order No. 946, 48 DCR 8979, 8980 (Sept. 28, 2001) (adopting amendment extending Section 223 relief to additions to non-conforming structures) (emphasis added). Thus, Section 223 does not permit special exception relief for a proposed addition – to a dwelling located anywhere in Washington – that does not comply with the applicable height restriction. In the case of the townhouse at 2512 I Street, N.W., Section 223 does not permit special exception relief from the two-story height restriction imposed by the FBOD.[1]

At the November 30 hearing, the Board expressed the view that Section 223 should be administered as a "living and breathing" document. Insofar as Section 223 does apply to proposed additions to one-family dwellings, authority exists to provide relief from the area restrictions identified in the regulation, based on the merits of each application when measured against the "general special exception requirements of § 3104.1 and [the] additional zoning

[1] To the extent that any testimony I gave at the November 30 hearing in response to questions from the Board about the applicability of Section 223 to this matter is inconsistent with the foregoing, which reflects my subsequent research and analysis, the statements herein supersede the testimony. Since I do not object to a *two-story* addition extending to the rear of the adjacent dwelling at 2514 I Street, N.W., or to the addition of an enclosed garage extending to the rear of the property line, I express no opinion as to how, or whether, Section 223 applies to those components of the revised application under consideration by the Board.

controls to protect neighboring properties and neighborhood character" specified in Sections 223. Zoning Commission Notice of Final Rulemaking and Order No. 946, 48 DCR at 8979-8980. The Board's authority to provide special exception relief, however, is not unlimited and does not extend to zoning restrictions, such as limits on building height, excluded from the regulation.

3. The Proposal To Add A Third Story And Roof Deck Should Be Denied.

Even assuming that Section 223 does apply to the proposed addition of a third story and roof deck to the townhouse at 2512 I Street, N.W., the proposal does not comply with the general special exception requirements of Section 3104.1 or the additional zoning controls in Section 223, as explained in detail in my November 23 Statement. To those arguments I would add the following, based on testimony at the November 30 hearing.

The Houses Across The Street And Behind The Property. The applicants' expert witness testified that the houses across the street from 2512 I Street, N.W., include several with four and five stories, and that a high-rise hotel stands across the alley at the rear of the property, so that the proposed third-story addition would not be out of scale with the neighborhood. The houses to which she refers, however, at 2519 and 2521 I Street (actually six stories) and 2531 I Street (four stories), and the high-rise apartment building (not a hotel[2]) at 800 25th Street, are the very kinds of disproportionately tall buildings that the R-3 rezoning and FBOD were intended to prevent, going forward. Their presence on and behind the 2500 block of I Street only serves to emphasize the need to adhere to the strict vertical height limit imposed by the FBOD.

The Houses To The West. Counsel for the applicants testified that the two houses immediately to the west of 2512 I Street, N.W., at 2514 and 2516, have three stories, that those third stories are not "going away," and that the applicants' house would "look funny" without a third story, so they should be permitted to add one.[3] In fact, those two neighboring houses are the only ones in the row of nine historic townhouses, extending from 2512 to 2528 I Street and set back from and above the street level, with third stories. The predominant vertical scale of this row, which, as a continuous, historically-significant unit, properly serves as the frame of reference for the Board's consideration, is two stories, not three. If the applicants were permitted to add a third story just because their two immediate neighbors have one, then every other neighbor farther down the row could make the same argument and thus transform the vertical scale of the neighborhood that the FBOD was intended to stabilize.

The Vacant Lot To The East. Counsel for the applicants testified, based on pure speculation, that if a dwelling were constructed on the vacant lot at 2510 I Street, N.W., immediately to the east of 2512, it would be a three-story house and, as such, would block the applicants' third story from view. He also testified, however, that the Board must look at the neighborhood as it now exists. As it now exists, 2512 I Street is a house at the end of a row of predominantly two-story townhouses, next to a vacant lot. For the moment, and at least for the foreseeable future, a third-story addition would be visible in its entirety to anyone standing on the sidewalk in front of the lot or across the street. Thus, "when viewed from the street, alley, and other public way," a third story – comprising a 50 percent increase in the building's side

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[2] A high-rise hotel does stand in the next block, at 824 New Hampshire Ave., N.W.

[3] Counsel also testified that the house to the east, at 2508 I Street, has three stories, but on cross-examination, the applicants' expert conceded that the third story was a basement partially below grade. At no point does the roofline of that house rise above the roofs of the three neighboring townhouses to its east, at 2502-2506 I Street (including mine at 2504).

elevation – would "substantially visibly intrude upon the character, scale and pattern of houses along the subject street frontage," contrary to the zoning control specified in 11 DCMR 223.2(c).

The Roof Deck. Even a neighbor who supported the other components of the revised application testified in opposition to the addition of a roof deck. To address a question posed by the Board, objections to the addition of a roof deck in the FBHD are related to zoning, among other reasons, because the Board is responsible for ensuring that additions to one-family dwellings will not unduly compromise the "privacy of use and enjoyment of neighboring properties." 11 DCMR 223.2(b). Anyone – and that includes me and many others in the FBHD – who has been kept awake at the night by noise generated by their neighbors knows that the few roof decks which do exist in the neighborhood, in non-conforming buildings such as the three-unit apartment house at 830 25th Street (at the corner of I Street, two lots away from my house at 2504 I Street) instill a sense of isolation in the occupants and make them unaware or even careless of the fact that the sounds they create carry long distances and disturb other people. The applicants' expert testified that they could live without the roof deck. In the interest of safeguarding the private use and enjoyment of neighboring properties, I would urge the Board to prohibit it.

For the foregoing reasons, I reiterate my opposition to the addition of a third story and a roof deck to the townhouse at 2512 I Street, N.W. and request the Board to deny the corresponding portions of the revised application in this case.

Respectfully submitted,

Paul A. Tolan

January 7, 2005

Certificate of Service

I hereby certify that an original and 20 copies of this Supplemental 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)
1101 30th Street, N.W.
Fifth Floor
Washington, DC 20007

Maria Tyler (by hand delivery)
949 25th Street, N.W.
Washington, DC 20037



January 7, 2005