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

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 736-1775

RECEIVED
D.C. OFFICE OF ZONING
2005 JAN -7 PM 2:41

January 7, 2005

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

RE: BZA Case No. 17204 -- ANC-2A Resolution Opposing the Application for an Addition (including Submission of Requested Material on Legal Issues, and Presentation of an ANC-2A Alternative)

Dear Mr. Griffis:

Following up on your instructions on the above case at the November 30, 2004 BZA hearing, we submit herewith ANC-2A Resolution #04-12B passed at ANC-2A's December 15, 2004 public monthly meeting in opposition to the application for an addition to 2512 I Street, N.W. The Resolution deals, *inter alia,* with the legal points raised at the above cited BZA hearing, based on advice provided to ANC-2A by its legal counsel on this case.. The Resolution also submits ANC2A's amended proposal which it would be willing to consider.

Sincerely,

Dorothy Miller

Dorothy Miller
Chairman, Advisory Neighborhood Commission 2A

Attachments
cc. Stephen Gell, Esq.
Paul Fallon, Esq.

BZA
Case No. 17204
Exhibit No. 55

Board of Zoning Adjustment
District of Columbia
CASE NO. 17204
EXHIBIT NO. 55

THE FOGGY BOTTOM AND WEST END ADVISORY NEIGHBORHOOD COMMISSION (ANC-2A) passed the following Resolution #04-12B

The above cited Resolution was passed by ANC-2A at its public monthly meeting on December 15, 2004, all six Commissioners being present, opposing the application before the Board of Zoning Adjustment (BZA Case #17204) for approval of an addition to 2512 I Street, N.W. situated in the Foggy Bottom Overlay District. The Resolution deals with the legal questions raised at the BZA hearing on November 30, 2004, special characteristics of the Foggy Bottom Overlay District, Sections 1521-24, of 11DCMR and their relevance to this case, the objections of ANC-2A to the application, and comments on an alternative it could consider.

1. WHEREAS, the owners of 2512 I Street, N.W. have applied for a special exception under Section 223.1 of 11DCMR to construct an addition to a historic house that would consist of: the elimination of the rear yard and building an enclosed garage that would occupy the entire rear yard, and the construction of a three story addition to the historically contributing house, that would include a deck on the roof of the original house; and

2. WHEREAS, the BZA held a hearing on the above application on November 30, 2004, at which time ANC-2A did not yet have a Resolution ready on this case; and

3. WHEREAS, the BZA left the record open until January 7, 2005 for the submission of written statements/material and requested all parties to supply briefs addressing certain issues relevant to this case; and

4. WHEREAS ANC-2A is a party to this case whose opinion must be given great weight ; and

Part I : LEGAL ASPECTS OF ZONING

5. WHEREAS, at its public monthly meeting on November 10, 2004 ANC-2A authorized the Commissioner for the Single Member District 2A03 who had been charged with this project, to obtain legal advice on the interpretation of the Zoning Regulations that apply to this case; and

6. WHEREAS, ANC-2A has received such advice and has considered both that advice and the basis upon which the Zoning Commission adopted the Foggy Bottom Overlay District (FBOD), pursuant to an application filed by this ANC; and

7. WHEREAS, ANC-2A believes that it is important that the decision of the BZA in Case No. 17204 be made with the fullest possible understanding of the legal aspects of this case, given that it may set a precedent for other additions in the FBOD; and

8. WHEREAS, based on the legal advice, ANC-2A has determined that an application for an addition to a property in the FBOD must comply with all the conditions of the FBOD and that if there is a conflict between the Overlay provisions and provisions elsewhere in the Zoning Regulations the provisions of the Overlay apply; and

9. WHEREAS, Section 223.1 does not, by its terms, override the more restrictive provisions of Section 1522.3; and

10. WHEREAS the provisions of Section 1523.1 state that any addition in the FBOD must meet the requirements of the underlying R-3 zoning, which include a rear yard of 20 feet, since 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 over and above whatever protections are afforded by the District of Columbia's Historic Preservation law (11DCMR Section 1521.3(d); and

11. WHEREAS, the applicants' application requests the complete elimination of the rear yard and therefore does not meet the underlying R-3 zoning; and

12. WHEREAS, a property outside the FBOD, zoned R-3, could be given a special exception under Section 223.1 for a rear yard less than the required 20 feet length, but such a special exception could not be given for properties within the FBOD absent a specific regulation adopted by the Zoning Commission, but would require an area variance; and

13. WHEREAS, a building is defined in the Zoning Regulations as a "structure having a roof supported by columns or walls for the shelter, support, or enclosure of persons, animals, or chattel", such as an automobile, and a private garage is either a building or structure depending on whether it has a roof; and

14. WHEREAS, the term structure is defined as anything constructed including a building, the use of which requires permanent location on the ground such as a flag pole, television tower and retaining walls, to the effect that, under section 2503, only structures that do not include a building and which are no more than four feet above grade may occupy the rear yard; and

15. WHEREAS, the garage on the applicants' property is defined, under the Zoning Regulations, as a building—and not a structure—having the effect of extending the building to the rear of the property, it is therefore included in lot occupancy; and the applicants' argument that because the garage is a structure not a building, and does not exceed four feet above grade, it should not be included in the calculation of the lot occupancy, is mistaken, and the total lot occupancy under the application would be 75 per cent.

16. WHEREAS, ANC-2A believes that there is a question as to whether the garage at the rear of 2512 I Street, which covers the back of the rear yard, meets the requirements of Section 2503, governing structures in required open spaces, thus, the garage, classified as a building, cannot occupy a rear yard under Section 2503.2 and would require an area variance in this matter; and

17. WHEREAS, variances are given under different provisions in the Zoning Regulations than are special exceptions and ANC-2A believes that the applicants' proposed addition would require at least one and possibly two variances, but certainly not a special exception under Section 223.1; and

PART II : ZONING, CHAPTER 15, SECTIONS 1521-24 AND PRESERVATION

18. WHEREAS, the Zoning Commission recognized in Chapter 15 that "The Foggy Bottom Historic District is a unique resource to the city which must be preserved and enhanced" and specifically states that "given the high density development pressures ... strong protection is needed to retain the Historic District's low-scale residential character, its human scale streetscape and its historic character." (Sect. 1521.1); and

19. WHEREAS, the Zoning Commission thus required "a scale of development consistent with the 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", as stated in Sect. 1521.3 (a) (2); and

20. WHEREAS, the scale of development sought to be protected by the FBOD is evidenced by the predominance of the modest 2-story houses which continue to be the outstanding characteristic of the Historic District and their even, or virtually even, roofline (see attached photographs); and

21. WHEREAS, the Zoning Commission's purpose in creating the FBOD imposes on property owners and the BZA a requirement to consider historic preservation criteria in addition to the purely spatial considerations that form the largest part of Title 11, as evidenced by the Zoning Commission's establishment of an Overlay in addition to the R-3 zoning ; and

22. WHEREAS, as a result of the Zoning Commission's rezoning of the Foggy Bottom Historic District, many dwellings in the FBOD do not have the automatic right to build to the maximum permitted under R-3 zoning but are subservient to the historic preservation purposes of the Foggy Bottom Overlay District of 11DCMR; and

23. WHEREAS, the fact that a large majority of the historic row houses in the FBOD are, unlike those in Georgetown or Capital Hill, modest small houses of only two stories, some with basements, but with open rear yards, dictates that any

proposed addition be examined by the BZA in the context of its potential harmony with the predominant historic component of the FBOD and not with the non-conforming structures/additions built prior to the establishment of the Historic District and the creation of the Overlay under the more permissive zoning and preservation considerations; the establishment of the Overlay was in fact aimed at preventing their proliferation; and

24. WHEREAS, the applicants' frequent claims that special consideration should be given to them because, among other things, they have spent a lot of money on renovation, have a family with a small child, and are replacing students, are inappropriate considerations and are, therefore, irrelevant, since most moves require spending money, sometimes large amounts; moreover, there has been a noticeable change in market conditions in the Foggy Bottom Overlay District, with many small, sometimes very small, houses being bought by resident/owners, rather than for investment for renting to out-of-town students, and frequently without any request for modifications; and

III. THE PROPOSED ADDITION TO 2512 I STREET AND AN ALTERNATIVE

25. Whereas ANC-2A opposes three aspects of the proposed addition:

- **Under the Overlay Provisions, a third story is not appropriate in this location, the more so since viewed from the alley, including the built in garage, the building has the clear appearance of a four story townhouse.**
- **The proposed roof terrace on the third floor level would be an anachronism, completely out of harmony with the historic houses in the Overlay District.**
- **The elimination of the rear yard is completely against the Overlay provision in Section 1521.3(d).**

26. WHEREAS, ANC-2A would be willing to consider an amended proposal which would meet legal requirements, would reduce the massing that currently doe not match the characteristics of the Foggy Bottom Overlay District (Sections 1521-24 of 11DCMR) and which would significantly increase the living area of the house. The amended proposal should include the following features:

(a) The application should be one for variances, not for a special exception.

(b) It should not include a third story.

(c) The massing at the rear of the property should be reduced in one of two ways: (i) placing the rear wall of the addition 20 feet from the rear property line rather than at 15 feet, as currently proposed, or (ii) If the rear wall of the addition is kept at its current position of 15 feet from the property line, then the proposed enclosed garage should be eliminated and replaced by an open rear yard of 15 feet with no structure or building on it.

27. BE IT RESOLVED THEREFORE that, based on the above, ANC-2A opposes a decision being made in Case No. 17204 on the basis of Section 223.1.

28. BE IT FURTHER RESOLVED that ANC-2A believes that:

(a) the elimination of the rear yard does not meet the requirements of Chapter 1523.1 and 1522.3;

(b) the proposed roof deck is completely inappropriate on grounds of the historical architectural characteristics in the Foggy Bottom Overlay District;

(c) the third story should not be permitted;

(d) the rear garage does not meet the requirements of Section 2503.

29. BE IT FURTHER RESOLVED that ANC-2A would be willing to consider an amended application as described above.

DATE: 12-15-04

SMD	AYE	NAY	ABSTAIN	ABSENT	MOVED	SECONDED
01 LEHRMAN			✓			
02 PRICE	✓					
03 TYLER	✓				✓	
04 LEWIS	✓					✓
05 MILLER	✓					
06 LONG		✓				

Dorothy Miller

CHAIRPERSON/~~SECRETARY~~

Attachments: photographs

drawing for alternative proposal

H. TORIC HOUSES IN FBOL



2400 BLOCK OF I Street - North side



2500 block of I Street - South side

HISTORIC HOUSES IN FBOD

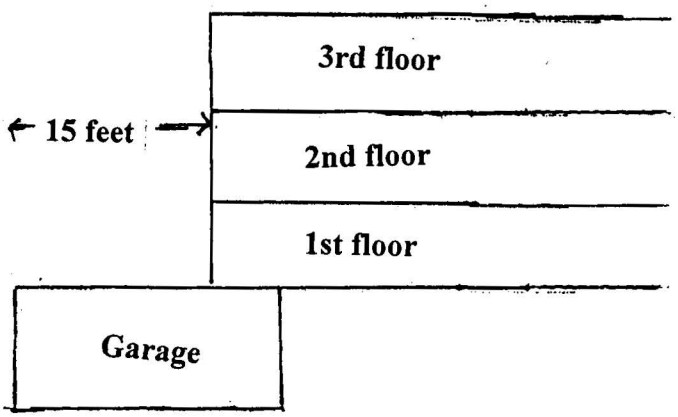


800 block of 25th Street - East side

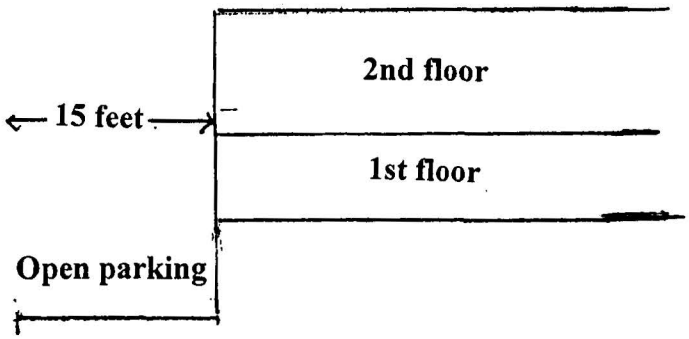


900 block of 25th Street - South side

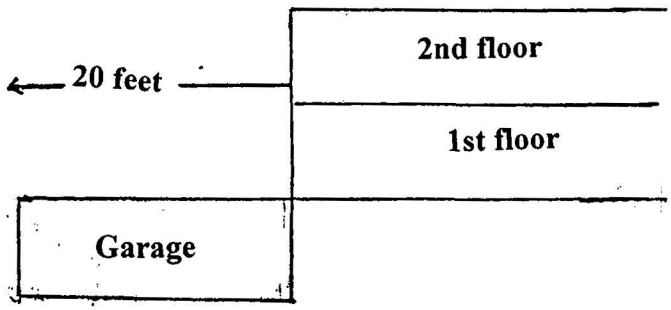
APPLICANTS' PROPOSAL AND ANC-2A'S ALTERNATIVES



Applicants' proposal



ANC-2A alternative I



ANC-2A alternative II