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January 13, 2005

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

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Re: BZA Case No. 17204
2512 I Street, N.W. (Square 17, Lot 35)

RESPONSE TO SUBMISSIONS

Dear Mr. Griffis:

This will address points raised in submissions in the subject case on January 7, 2005, from Paul Falon, Esq., a party in the case, and Mrs. Maria Tyler, representing ANC 2A.

In our memorandum of January 7 we agreed with opponents that, in addition to meeting the tests of §223.1, the proposed third floor, which is matter of right in an R-3 district, also had to fit in with the "low scale harmony of rhythmic townhouses," as provided in §1521.3. We reasoned that it met this test since there were three-story houses adjacent and nearby, as well as 4 and 5 story buildings in the neighborhood. We thought this to be a reasonable interpretation of the Foggy Bottom Overlay District regulations of §1521, *et seq.* We conceded that FBOD added criteria which had to be considered in applying §223.1.

We were mistaken. We no longer believe this accommodation to FBOD to be necessary. Mr. Falon's Supplemental Statement in Partial Opposition, dated January 7, 2005, encouraged us to look again at the Foggy Bottom Overlay District regulations and ZC Order No. 714 of 1992. It became clear that in adopting FBOD the Zoning Commission never intended the BZA to apply the language quoted by Mr. Falon to

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applications for variances and special exceptions. He cites the phrase "low scale harmony of rhythmic townhouses" as a yardstick against which the BZA is presumably to measure proposed development and expansion. In his view, such language was intended to restrict all townhouses to two stories unless they happened to have been built before 1992.

The FBOD does nothing of the sort. The phrase quoted above is not found in the General Provisions section of 1522, or in the Specific Provisions section of 1523, but in §1521.3, a section whose only purpose is to justify the down zoning from R-5 to R-3. It does not prescribe. It describes. It simply lists the elements of the Foggy Bottom Historic District which it desires to preserve by the imposition of R-3:

> The purposes of the Foggy Bottom Overlay District are the following: to require a scale of development consistent with (1) the Comprehensive Plan which provides that the land use map for the Foggy Bottom Historic District be amended from the present "medium" category to the "moderate" category and (2) 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, ... to preserve areas planned as open backyards and alleyways that provide the only access to historic alley dwellings, and to protect light, air, and the privacy that they provide; .... *et seq.*

The ambiance which FBOD was intended to preserve was a mix of two and three story houses. It is in the Special Provisions of §1523 that direction is given on how that ambiance is to be preserved, *i.e.,* by limiting new construction, alteration, etc., to R-3 standards, which permit three-story buildings.

§1522, which provides that where FBOD is more restrictive it should govern, is nothing more than boilerplate language found in many of the overlay zones having nothing to do with "low scale harmony" or "rhythmic townhouses." See §§1542.3, 1552.2, 1562.2, etc.

Mr. Falon's assumption that the drafters of FBOD preferred two-story houses is unsupported by the facts. Nowhere does the FBOD order state a preference for two stories. In fact, the Zoning Commission Order 714 quotes the OP report that states:

> In summary, the R-3 zone is very close to the existing scale and uses in the neighborhood ... Page 4

Mr. Falon questions why the ZC adopted the FBOD when R-3 zoning would have accomplished the same thing. The reason is stated several times in the Order. In their comments to the Zoning Commission, various respondents, including ANC 2A and OP stated that the reason for adopting the overlay zone was to "grandfather in" existing uses and to eliminate planned unit developments.

In fact, ANC 2A's preferred approach was to adopt R-3 zoning without an overlay and let normal regulations and historic preservation rules deal with non-conforming structures. It accepted an overlay zone reluctantly as the third formulation in the order of preference. ANC 2A's submission was quoted by the Zoning Commission in Order No. 714, as follows:

> However, if your Commission were concerned about the problem of nonconformity, our ANC would accept R-3 zoning with an overlay which would make conforming the nonconforming structures and legal uses existing at the time of the rezoning. Page 3
>
> Similarly OP did not recommend an overlay;
>
> This approach of R-3 zoning with an overlay also is not the preferred option of the Office of Planning (OP), as stated on page 5 of its 17 October 1991 memorandum. Page 3

By making existing buildings "conforming", they will be treated differently in the event of destruction. A non-conforming building cannot be rebuilt to its former size if it is destroyed more than 75 per cent, whereas, a "conforming" structure may be rebuilt to the same dimensions. The Zoning Commission goes on to acknowledge that,

At no time did the Zoning Commission, ANC 2A, OP, or anyone else opine that the overlay district was intended to preserve 2-story houses.

ANC 2A's focus on the rear yard of the Donnell's residence is misplaced. It should be remembered that the current carport practically covers the back yard and has a higher silhouette than the proposed garage which will replace it. There is no back yard now and, whether or not relief is denied, there will be no back yard in the future.

Finally, the question of whether the garage is a structure or building is moot. "Building area", as defined in §199, does not include "portions of a building that do not extend above the level of the main floor of the main building, if placed so as not to obstruct light and ventilation of the main building or of buildings on adjoining property." Even if the garage is considered a building, the roof of the garage is below the level of the main floor, so, under the ANC's interpretation, it does not count in lot occupancy.

Yours very truly,



Stephen N. Gell