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January 13, 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 statement in response to the applicants' letter dated January 7, 2005.

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. 58

Board of Zoning Adjustment
District of Columbia
CASE NO. 17204
EXHIBIT NO. 58

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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

Statement Of Paul H. Falon In Response To Applicants' Letter Dated January 7, 2005

I am submitting this statement to respond to certain points raised in the applicants' letter to the Board dated January 7, 2005 ("Applicants' January 7 Letter"), in support of their proposal to add a third story and roof deck to the dwelling at 2512 I Street, N.W. I continue to oppose both additions.

The Height Limit Imposed by the FBOD. The applicants believe that the Foggy Bottom Overlay District ("FBOD") does not establish a more restrictive height limitation for buildings within the Foggy Bottom Historic District ("FBHD") than the three-story limit of the R-3 zone, and they claim I have presented no evidence that it does.

To the contrary, the evidence is right there in the regulatory language of the FBOD and the Zoning Commission's statement of intention in adopting it. Section 1521, creating the FBOD, contains three references to the "low scale" of the historically-contributing residential structures in the FBHD. It identifies specific points in time, 1986 and 1987 (when the FBHD was designated and included in the National Register of Historic Places) and, implicitly, 1992 (when the FBOD was mapped to coincide with the FBHD), when the height of those structures was readily ascertainable. And it states that "strong protection is needed to *retain* the historic district's low-scale residential character," 11 DCMR 1521.1 (emphasis added) – in particular, that the scale of development in the FBHD should be consistent with "[t]he characteristics of 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) (emphasis added).

The vast majority of historically-contributing structures in the FBHD, from which the "low-scale" character of the neighborhood derives, were two stories tall in 1986, when the area was designated a historic district, as well as in 1992, when the FBOD was created. If every owner of a two-story building in the FBHD were permitted to add a third story, the neighborhood would take on a different scale than it had when the historic district was designated. But the FBOD was created to "retain" the low scale of the historic district as it existed at the time, not to authorize changes to it, whether wholesale or accretive.

Thus, given the Zoning Commission's stated intention of "*stabilizing* the *existing* character of the community," Zoning Commission Order No. 714, 39 DCR 2843, 2849 (Apr. 17, 1992) (emphasis added), Chapter 15 of the D.C. Zoning Regulations must be read to require preservation of the height of the townhouses in the FBHD, whether two stories or three, at the time when the FBOD was created.

Harmony on the 2500 Block of I Street, N.W. In the applicants' view, the FBOD merely imposes "additional tests of harmony and low scale development," Applicants' January 7 Letter, at 2, and the scale with which their proposed third-story addition must harmonize is that of the two, three-story townhouses immediately to their west, at 2514 and 2516 I Street. *Id.* That is a myopic perspective. Theirs is one of a continuous row of nine historically-contributing townhouses set back from and above the street level, and except for 2514 and 2516, all of the other buildings in the row are two stories. The third stories at 2514 and 2516, which, despite being set back from the front of the buildings, are plainly visible from across the street, already strike a discordant note in this row. Adding a third story at 2512 would further diminish its "low-scale harmony," contrary to the Zoning Commission's intention in creating the FBOD.[1, 2]

The Scale of Development in the Area. The applicants also appear to argue that their proposed third-story addition would harmonize, and not be out of scale, with the mix of buildings generally in Lots 25 and 26. *See* Applicants' January 7 Letter, at 2. As I explained in my Supplemental Statement dated January 7, 2005, the high-rise apartment building to the rear of the applicants' house (in Lot 25) and the non-conforming houses across the street (in Lot 26) are just the kinds of oversize structures the FBOD was intended to prevent in the future; they have no place in any evaluation of whether a third-story addition to a historically-contributing house will harmonize or be in scale with other buildings in the neighborhood.

The applicants' reliance on BZA Case No. 17154 is misplaced. There, the Board approved construction of a new three-story building at the rear of 935 26th Street, N.W., in Lot 26, around the corner from the intersection of I and 26th Streets and more than halfway up the block towards K Street – that is, at quite a distance from the applicants' house. The subject property was surrounded by a four-story apartment house, an eight-story apartment house, two three-story non-contributing 1960s row dwellings, and a four-story, non-contributing 1970s row dwelling. *See* BZA Case No. 17154 ¶ 1, at 3 (attached as Exhibit A to the Applicants' January 7 Letter). In approving the application for multiple variances, the Board noted that "*the Property's distance from any of the lower, historic buildings in the area*, and the proximity of three and four-story non-contributing structures suggests that the [three-story] height of the proposed building is not incompatible with the character of the historic district." *Id.* ¶ 13, at 4 (citing HPRB report) (emphasis added).

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[1] Even the third-story addition to 2530 I Street, N.W., to which the applicants cite, *see* Applicants' January 7 Letter, at 2, rises no higher than the roofs of the two-story houses in the row from 2512 to 2528, because the first story of that house is at street level.

[2] The applicants have produced no evidence of any communications they have had with the staff of the Historic Preservation Review Board ("HPRB") regarding the size, location, or acceptability of their proposed third floor and roof deck. They did not call Mr. Dennee as a witness, nor did they introduce any written recommendations Mr. Dennee may have made. Thus, they have failed to meet their burden of proof with respect to the existence of any such recommendations, contrary to the requirements of Section 3119, and the Board should disregard all references thereto. Moreover, recommendations by a staff member do not represent an official position taken by the HPRB, and they have no precedential value for, or binding effect on, the BZA.

The applicants' house is in the middle of thirteen low-scale historic buildings extending from 2506 to 2532 I Street. The scale of development that may have been approved for new construction at properties surrounded by much larger, non-conforming structures is not the scale of development that should apply to their proposed third-story addition.

Substantial Visual Intrusion. A third story at 2512 I Street would run afoul of one of the standards for additions to one-family dwellings contained in Section 223 (should the Board consider that provision to be applicable). When "viewed from the street, alley, and other public way," it would "substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage[.]" 11 DCMR 223.2(c). This regulatory standard implies consideration of two components: the size of the addition and its visibility. The greater the one component, the lesser the other component has to be for the combination to result in a substantial visual intrusion.

A third story built on top of a two-story dwelling is, necessarily, a substantial addition, increasing the building's elevation by 50 percent. As I have demonstrated, the proposed third-story addition at 2512 I Street would "do violence to," or "substantially negatively impact" – to use the applicants' own measures, *see* Applicants' January 7 Letter, at 3 – the predominantly two-story scale and pattern of historically-contributing townhouses extending from 2512 to 2528 I Street. Plus, when viewed from the sidewalk in front of the vacant lot immediately adjacent to the property, and from the wider angle of sight across the street, the height of the addition on top of the building would be visible in its entirety. The combination results in a substantial visual intrusion proscribed by Section 223.

The applicants' reliance on BZA Case No. 17007 is also misplaced. There, a *two-story* addition to an end unit of a row of *two-story* townhouses was approved, on the basis that it did not intrude on or negatively impact the pattern of houses on the street. The applicants' proposed third-story addition, presenting a different set of facts, would render their home *less* consistent "with the character, scale, and pattern of houses along the subject street frontage" than it currently is. *See* Case No. 17007, at 4 (Attached as Exhibit B to the Applicants' January 7 Letter).

The Roof Deck. The FBOD was created, in addition to the other purposes discussed herein, to "enhance the residential character of the area by maintaining existing residential uses." 11 DCMR 1521.3(c). So far as I am aware, no historically-contributing townhouse in the FBHD has a roof deck. The unique residential character of this area arises from elements other than the mere use of the houses as residences. One such element is the absence of roof decks on historic structures. The applicants' boast that "any house with the space can have one," Applicants' January 7 Letter, at 3, illustrates, at a minimum, their lack of familiarity with what it means to live in a historic district.

The Board's Prior Practice. In the transcript of the Board's discussion of Case No. 17087 (attached as Exhibit C to the Applicants' January 7 Letter), Chairman Griffis observed: "I don't think this Board is afraid or should be afraid of reanalyzing its recent or even past decisions or actions. I think it shows some great strength that the Board can do that." Exh. C, at 20 (upon the Board's own motion, reconsidering previously-issued final order to change, and approve, the application for relief).

To the extent that any of the Board's recent or past decisions or actions suggest, or can be construed to suggest, that the owner of a two-story, historically-contributing building in the FBHD can, as a matter of right, add a third-story addition, I respectfully request the Board to

reanalyze its position on the issue. For the reasons set forth in my submissions and testimony in this case, I believe that, to avoid rendering them superfluous, the provisions of Section 1521 of the FBOD must be interpreted to require townhouses in the FBHD to remain at the height they had when the FBOD was established. I urge the Board to deny that portion of the revised application proposing the addition of a third story and roof deck.

Respectfully submitted,



January 13, 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 13, 2005