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

c/o St. Mary's Court 725 24th Street, NW Washington, DC 20037 (202) 659-0011

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

RE: BZA case No. 17204—ANC-2A's Response to Applicant's Submission of January 7th, 2005

Dear Mr. Griffis:

In his submission of January 7, 2005, Mr. Gell makes two major claims, in addition to his claims that Section 223.1 can be applied to a property in the FBOD and that "great weight" should not be given to the views of ANC-2A as expressed in its Resolution. The first is that a "third story is consistent with FBOD". The second is that a "roof deck is permitted".

With respect to how many stories are permitted in the FBOD, Mr. Gell does not appear to see any difference between (i) a contributing building, basically in its original external state, (ii) a contributing building that has been significantly added to or altered in its exterior appearance, (iii) a non contributing building constructed before the establishment of the FBHD/FBOD, and (iv) a new building constructed after the establishment of the FBHD/FBOD. Nor does he appear to understand the concept of "the low scale harmony of rhythmic townhouses" as they exist in the FBOD and are described in Section 1521.

There is no question that the FBOD does not contain a blanket prohibition of 3 story town houses. A small number of contributing three story houses exists in the FBOD. They were built that way and they still exist. They are however a small minority. Moreover, they do not disturb the rhythmic character that the FBOD is designed to protect. For example, the south side of the 2500 block of I Street from 2512 to the west still predominantly consists of contributing houses having a rhythmic uniform roof line. The fact that the basic zoning in the FBOD, being R-3,

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permits three stories does not mean that a third story can be added in a way that is not in character with this even roof line merely because there are three story houses elsewhere in the FBOD. The case of 2530 I Street which Mr. Gell refers to occurred prior to the establishment of the FBOD, and even the HPRB permitted a third story only on the condition that this third story did not rise above the roof line of the houses to the east.

Mr. Gell also refers to the fact that the BZA granted permission for the construction of a new three story house in an alley lot at the far northern end of Hughes Mews (BZA Case No. 17414). There are three significant points to be made with respect to this particular house. First, it has no connection with the contributing townhouses in the FBOD. It has high rise buildings adjacent to it to the east and north outside of the FBOD. Second, to the west is a modern non-contributing 4-story house and to the south are the non-contributing townhouses of Queen Anne's Lane. Third, there is no connection with the "small rhythmic town houses" that characterize the FBOD.

It is therefore not an addition that would fall under the provisions of Section 1523.1. In terms of its third story, it could be constructed as a matter of right, provided the Historic Preservation Review Board was willing to accept the design. It is relevant that, unlike the present case, the HPRB had already approved the design when the application was considered by the BZA . In any event, the basis on which the HPRB considers an addition to a contributing building is different from the way in which it considers a new building. Moreover, whatever action is taken by the HPRB has no bearing on the BZA's application of the FBOD, since the FBOD was adopted to give greater protection than provided under the existing zoning at the time and under the HPRB process.

Mr. Gell appears to claim that the design of the proposed addition to 2512 I Street, has been agreed to by the HPRB. His submission states that "Mr. Dinee(sic) recommended the 29 foot set back". There are two points to make about this statement. The first is that it is entirely hearsay. ANC-2A at its November 2004 public meeting asked Mr. Gell to provide written information from Mr. Dennee regarding the claim Mr. Gell made, but the latter has provided no verification. The second is that Mr. Dennee is a staff member of the Office of Historic Preservation Division of the Office of Planning. If he were eventually to make a recommendation on these lines to the HPRB there is no way to know whether the HPRB would accept its staff's recommendation until the HPRB has its public meeting. Sometimes it does but sometimes it does not. Given the history of the FBOD and the current status of the project, Mr. Gell cannot use the argument that the HPRD implicityly has approved the currently proposed addition.

In summary, the FBOD does not prohibit third stories in the FBOD, but it does require that they are consistent with "the low scale harmony of rhythmic townhouses" that is a characteristic of the FBOD.

Mr. Gell correctly states that there is no specific prohibition in the zoning regulations regarding roof decks. However, there is a question about whether it is consistent with the preservation aspect of Section 1521. Mr. Gell appears to relay again on hearsay evidence about comments made by Mr. Dennee of the HPRB staff. If this alleged view of Dr. Dennee had been in the form of a recommendation to the HPRB and accepted by the latter, then there would be nothing to discuss, but no such actions have in fact been consummated.

With respect to whether or not Section 223.1 can be used to approve the addition, Mr. Gell quotes the language of BZA Order No. 714, establishing the FBOD. The fact that the FBOD of Chapter 15 does not allow the application of Section 223.1 does not in fact "significantly alter the process available to property owners to obtain relief". In this case the process of obtaining relief is by way of the procedures in Chapter 3000 of 11DCMR.

Mr. Gell claims that "great weight" should not be given to the Resolution of ANC-2A in this case. ANC-2A has expressed to the BZA in writing and in oral evidence the timing problems the applicants themselves have created. At the BZA hearing of November 30, 2004, the BZA permitted ANC-2A to present its Resolution on January 7, 2005. Nothing was said by the BZA at the time this decision was made that the obligation to give "great weight" was in any way modified and ANC-2A expects the BZA to give the Resolution the "great weight" to which it is entitled, as required by law.

Sincerely,

Dorothy Miller

Dorothy Miller
Chairman, Advisory Neighborhood Commission 2A

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