Testimony of Ellen McCarthy
Re: Planning and Zoning Issues
BZA Case 17337 N Street Follies
April 28, 2009

Good afternoon, Mr. Chairman and Members of the Board,

My name is Ellen McCarthy. I am the Director of Planning and Land Use for the law firm of Arent Fox LLP, and I have over 35 years of experience in planning and zoning, including seven years as Deputy or Director at the DC Office of Planning. I am also one of the authors of the Dupont Circle Zoning Overlay.

The purpose of this testimony is to address the planning and zoning issues raised by this case, specifically why it does not meet the tests established in the Zoning Regulations for the granting of a special exception for hotel use in the DC/SP-1 zone.

Overview

The applicant minimizes the relief he is requesting. However, a special exception to operate a hotel on this site, because of quirks in the Zoning Regulations, has major impacts. As you know, in the SP-1 zone district, the maximum FAR for non-residential uses is 2.5 FAR, but because the rooms and support services can be counted as residential FAR, this project is able to achieve an FAR of approximately 4.0, 60% more density than it would otherwise be entitled to as a commercial development. However, as a residential project, entitled to 4 FAR, it would be permitted no more than 80% lot occupancy, and would probably occupy less, given the importance of light and views to non-transient residents. So the approval of a special exception for a hotel on this site will provide a substantially bigger and bulkier project than would otherwise be permitted, with the adverse impacts you have already heard.

We all know that §3104.1 of the Zoning Regulations obliges the applicant to show that their request is "in **harmony** with the general purpose and **intent** of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of **neighboring property** in accordance with the Zoning Regulations and Zoning Maps." 11 DCMR § 3104.1 (emphasis added). **In this case, it is absolutely crucial to understand the Zoning Commission's <u>intent</u> in promulgating the SP-1 regulations, mapping them on this particular block and creating and applying the Dupont Circle zoning overlay to this site.** In many instances, we have to divine the intent of the regs, based on some very brief purpose or preamble statements. In this case, there is an extensive record, that leaves little doubt what the intent of the applicable regulations is.

Intent of the Zoning Regulations

<u>Zoning Commission Order No. 235</u>

First, the underlying zoning. As the Regulations make clear, SP-1 is a special zone, crafted to protect lower-scale residential neighborhoods from encroachment by high-density commercial

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uses, by preserving a varied collection of uses and buildings. In the late 1970's, when the SP-1 was created, as now, there was a recognition that the healthy, fine-grained, historic neighborhoods which ringed the Central Business District needed particular vigilance to keep them from being eroded by the pressures of commercial development.

The SP-1 has a long history, which I will summarize. The original "Lewis Plan" which brought "modern" zoning to the District had proposed two special purpose zones, SP-1 and SP-2. ZC Order No. 235 notes, "The SP-1 District was designed to preserve such [mixed-use] areas essentially as they were." (p.9) Interestingly, the Plan proposed that SP-1 be mapped for both sides of N Street between 17th and 18th Streets, as well as west of the commercial zone on Connecticut Avenue between New Hampshire and Florida Avenues, and east of Connecticut Avenue between P and R Streets. So, even back in 1958, there was a recognition that this block of N Street was special, and deserved the same type of protections accorded to more residential neighborhoods north and west of Dupont Circle.

However, when the Zoning Regulations were adopted, the SP zones were compressed into one zone. By 1976, it became clear that the SP zone was not providing adequate protection to neighborhoods such as Dupont Circle that it had been designed to safeguard, and the Dupont Coalition introduced both map and text amendments. The Zoning Commission concluded that there was a need to return to the idea of two special purpose zones; SP-2 was more appropriate immediately adjacent to higher-density commercial or residential uses, with SP-1 reserved for lower-density areas. It explicitly determined that a purpose of the revisions to the SP zones was to "Encourage residential uses," by providing higher densities for residential uses than non-residential uses.(p. 20) Goal #4, "Protect adjoining neighborhoods, particularly the residential neighborhoods," stated:

> Since the SP District will contain uses which are not residential uses, the District has been designed to require that **those uses which are potentially harmful to residential uses must be reviewed by the Board of Zoning Adjustment before they may be permitted**. (pp. 20-21)

Also directly relevant to this case, Order 235 in that case adopted a fifth goal for the SP-1 District, "Preserve buildings and district of historic or architectural merit." (p. 21):

> The regulations have been designed to give the **greatest degree of protection to these historic districts, to require the Board of Zoning Adjustment to consider historic preservation as an influence on its decision** . . ." (p. 21)

The Order noted that "Other non-residential uses are permitted only with Board of Zoning Adjustment approval to insure the protection referred to above. Such uses include hotels...." (p. 24) Of direct bearing on the case before us, the Commission went on to elaborate:

> The Commission believes that **all of these uses, if not properly controlled, could have potential adverse impact on the SP Districts and adjoining residential areas**. The Commission notes that the SP District since its adoption has had as an essential component the requirement that many non-residential uses be approved by

> the Board of Zoning Adjustment. **That review has been extended to a few additional uses, including hotels** and colleges or university, **because of the Commission's perception that such uses could potentially affect residential uses needing protection, because such uses could occupy large areas which should be devoted to residential use, and because such uses tend to generate large amounts of traffic.** (pp. 24-25)

Interestingly enough, the Commission then stated, "The Commission notes that hotels have been limited to the FAR assigned to non-residential uses, based on extensive testimony in the record concerning the commercial aspects and impacts of hotels," (p. 27) and it declared that the maximum lot occupancy should be 80%, "to allow for maximum residential development consistent with the height and density permitted, but also to provide for adequate light, air and ventilation around residential buildings. Last, the Commission concluded that it believed that the "SP District must be afforded many of the same protections which now apply to residential districts, with additional provisions to allow for the transitional nature of the District."

ZC Order No. 282

In 1976, the Dupont Coalition, after a major downzoning that had affected the northern part of the Dupont Circle neighborhood, was looking to further tailor the zoning to the character of the area, and to deal with the competing pressures to preserve the neighborhood feel, while accommodating new development fostered by the opening of the Dupont Circle Metro station. The resulting Zoning Commission order, issued three years later, after considerable discussion, specifically rezoned the area we are discussing today:

> Rezone from SP-2 to SP-1 both sides of New Hampshire Avenue and 18th Street between R Street and south of Q Street; both sides of 18th Street south to P Street, extending to Dupont Circle; the west side of 18th Street from P Street to south of Massachusetts Avenue; **the square bounded by Massachusetts Avenue, 17th, N and 18th Streets; the south side of N Street and the north side of Rhode Island Avenue west of 17th Street**; the area bounded by Rhode Island Avenue, Massachusetts Avenue, 15th and 17th Streets , in order to **insure the continued mixture of embassy, chancery, residential and office uses, to reflect existing development, and to keep any new development to levels appropriate in scale to the existing development**.

Zoning Commission Order No. 314

The next year after promulgating the new SP Districts, the Commission turned its attention specifically to hotels, and to increasing concern over the conversion of residential buildings to hotels, which, of course, is the same issue we are faced with today. The Commission concluded in 1980, in Order No. 314, which was attached in its entirety to our Statement in Opposition, that hotels should be prohibited in all residential zones, but "permitted and encouraged in all mixed use, commercial and industrial areas of the city, **with the exception of the SP District** . . ." (p. 13)

Most importantly, the Zoning Commission then provided direct guidance about its intent with regard to hotels in SP Districts:

> 5. Insure compatibility of hotels in SP areas. **The SP District is a unique kind of zone in the District of Columbia.** While it is a mixed use district, no retail uses are permitted, and most non-residential uses are permitted only as special exceptions with the approval of the Board of Zoning Adjustment. While the Commission believes that many SP zoned areas may be appropriate for hotel development, **there are some situations in the SP District where hotels should not be permitted**. The Commission therefore believes that **special controls on hotel uses are appropriate in the SP District, to insure that any new or expanded hotels are compatible with their surroundings**, and **to help foster a mix of uses in the SP District**. (p. 13, emphasis added)

The Commission then imposed additional standards for the BZA to consider when reviewing whether or not a hotel should be permitted in an SP-1 District. Regarding the issue of conversions of apartment buildings to hotels, the Commission declined to impose specific restrictions on conversions themselves, determining that it was imposing limitations on hotels if they were not appropriate as a land use issue:

> The Commission determined **as an appropriate land use matter that new or expanded hotels should not be permitted under any circumstances in residential districts. Likewise, in the SP District, the Commission required all new or expanded hotels, whether by conversion or new construction, to receive approval from the BZA**. (p. 18)

The Dupont Circle Zoning Overlay, Order No. 705

After these important zoning cases, which adjusted the zoning to protect the unique character of Dupont Circle, a Task Force of residents, businesses, ANC Commissioners, preservationists and representatives from a wide variety of organizations active in the Dupont Circle neighborhood, chaired by Jack Evans, then the Chair of ANC2B, brought one last action before the Zoning Commission, to create an overlay which would provide specific protection against exceptions to the hard-fought zoning changes that had been achieved. The Overlay was prompted by projects such as the St. Matthew's PUD just to the south, the proposed redevelopment of the Riggs Bank land at Connecticut and the Circle, and the first attempt by this same applicant to put an out of scale building on this site. The Overlay established guidance regarding the specific features of the area that the previous zoning actions had sought to protect. Thus, not only do the Zoning Regulations give us excellent guidance on what kind of uses and scale are appropriate for SP zones, but, in addition, as Zoning Commission Order 705 makes clear in adopting the Dupont Circle Overlay, the Commission recognized the special character of Dupont Circle, which makes it such a jewel in the city. As part of the case, the Commission reviewed the entire history of progressive downzoning of the Dupont Circle area, which reinforced the Commission's concern with protecting the smaller, historic character of the neighborhood. The Commission concluded

that the zoning in place had arrived at the right mix of density and land use, but that the main threat to the character of Dupont Circle had been zoning actions which had permitted buildings with inappropriate scale and uses. The Commission recognized these as a serious threat, especially to items like the rhythm of buildings and spaces, rear yards, and residential character.

In its Preamble to the Overlay, the Commission provided very clear guidance, which is exactly on point for this case. Section 1501.1 of the Regulations is direct:

> **The Dupont Circle area is a unique resource to the city which must be preserved and enhanced. Strong protections are needed to retain its low scale, predominately residential character, independent small retail businesses, human scale streetscapes, and historic character, given the high-density development pressures caused by the proximity of the Central Employment Area and the Dupont Circle Metrorail Station.**

The purposes of the regulations, in §1504.1 include:

(b) **To protect the integrity of "contributing buildings**", as that term is defined by DC Law 2-144…**to preclude demolitions or partial demolitions which would lead to an increase in height and floor area ratio inappropriate to the area**;
(c) To **enhance the residential character of the area** by **maintaining existing residential uses and controlling the scale, location and density of commercial and residential development**;
(d) To ensure compatibility of development with the Comprehensive Plan;

Especially relevant to keep in mind for this case:

(e) To **preserve areas planned as open gardens and backyards** and to **protect light, air, and the privacy that they provide**;
(f) To enhance the streetscape by **maintaining the public space in front of buildings as landscaped green spaces** . . .;

Not only were PUD's made difficult, but restrictions were also placed on new curb cuts and drive-through accessory uses were prohibited, even for matter of right projects. Specific provisions were adopted that made it clear what the ZC intended for any exceptions to the matter of right zoning for the neighborhood. .

The Dupont Circle Zoning Overlay is directly relevant to the consideration of this request for special exception relief for the establishment of a hotel on this site. Section 3104.1 addresses the requirement that special exceptions must be in "harmony" with the general purpose and intent of the Zoning Regulations and the Zoning Map" and Section 512 that, "The height, bulk, and design of the hotel or inn shall be in harmony with existing uses and structures on neighboring property." Now, normally, we might be somewhat at sea about what the Regulations considered to be "in harmony" with the neighboring property, but in this case, we have the **specific** guidance of the Zoning Regulations – for the requested special exception to be in harmony with the neighboring property, the project must preserve backyards and open space; allow for privacy, light and air of that neighboring property; involve no partial demolition of contributing buildings; and maintain

existing scale. As you've seen from the testimony of the expert witnesses who preceded me, it meets NONE of those criteria.

The Proposed Project Does NOT Meet The General Special Exception Provisions Of 11 DCMR §3104.1 And The Specific Standards For The Special Exception Requirements Set Forth In 11 DCMR §512

With this review of the purpose and intent of the regulations that govern the application before us today in mind, now we will specifically review why the proposed project does not meet the relevant special exception provisions.

1. The Application is Not in Harmony with the Purpose and Intent of the Zoning Regulations and Zoning Map

Looking first at the purposes of the SP-1 zone district, we see that the zone is to "ensure that new development is compatible in use, scale, and design with the transitional function of this zone district." (11 DCMR §500.2), and it specifically identifies the purpose of preserving and protecting areas with a mixture of residential and other types of uses, including buildings of historic character. (11 DCMR §500.3)

Preservation of the Mix of Uses and Independent Businesses

Astonishingly, not only does this application further reduce the mix of uses, by permitting the conversion of the last major residential use on this entire block, and creating yet another hotel, but the bulk of the building and its placement immediately next to the Tabard Inn, with no setbacks other than a minor notch in the very rear of the building at the fifth floor level, will have a deleterious effect on the value and operations of the hotel, with its trademark garden, green roofs and natural light-filled rooms.

Historic Preservation

The SP-1 District, the Dupont Circle Overlay, and the Comprehensive Plan all address the importance of preserving and enhancing the historic character of the Dupont Circle neighborhood. The importance of maintaining bulk and scale complimentary to the historic buildings is stressed repeatedly. Because the applicant has not taken his plans to the Historic Preservation Review Board, it is not possible to know what the determination of the Board is with respect to the character of the proposed building, but the Statement of Opposition did mention that the last design was rejected by the Board.

Not only will the proposed building be counter to the goals of the Dupont Circle Overlay to "preserve areas planned as open gardens and backyards, and protect the light, air and privacy they provide,", but, it flouts policy goals set in the Comprehensive Plan. In addition to the Comprehensive Plan guidance from the Area Element and the Land Use Element about the importance of preserving these open spaces that was contained in the Tabard Inn's Statement in Opposition in this case, additional guidance is found in the Comp Plan's Historic Preservation Element. The proposed lay by and ramp treatment at the front of the hotel will be directly

inconsistent with the first Policy below, and the bulk of the proposed structure, and its filling of virtually 100% of the lot runs directly counter to the second policy:

> **Policy HP-2.5.4: Landscaped Yards in Public Space**
>
> Preserve the continuous and open greenquality of landscaped front and side yards in public space. Take special care at historic landmarks and in historic districts to protect this public environment from intrusions, whether from excessive paving, vehicular acc
> ess and parking, high walls and fencing, or undue disruption of the natural contours or bermed terraces.
>
> **Policy HP-2.5.6 Historic Open Space**
>
> . . . In historic districts, strive to maintain shared open space in the interior of blocks while balancing the need to accommodate reasonable expansion…

One of the most eloquent statements of the loss of historic character and view as a result of this project is made by the Applicant's own submission. The photo listed as "Context 4", photo C, shows a lovely view of the Cathedral which is currently available to those in the rear of the proposed project. The applicant proposes to enclose that open space, and, although there will be a fair amount of glass involved in the front of the building, the architectural plans indicate that this view will be lost forever.

Compatibility with the Comprehensive Plan

Once again, a stated goal of the Dupont Circle Overlay is to make sure that new developments are compatible with the Comprehensive Plan. This report, and the Comprehensive Plan citations in the Statement of Opposition make it evident that the proposed project is inconsistent with adopted Comp Plan goals for the Dupont Circle target area in the Near Northwest Element, the Historic Preservation Element, the Land Use Element, the Urban Design Element and the Parks and Open Space element. In particular, Policy LU-2.3.4 declares that the zoning regulations for the "transitional and buffer districts", including the SP-1 District, should "ensure that development is harmonious with its surrounding, achieves appropriate height and density transitions, and protects neighborhood character." (311.6) There is nothing "harmonious" about putting a 5 story modern box right up against the property line with a low-scale finely textured historic building, with a large open garden terrace.

Transportation

Because the traffic engineer and the DDOT report both make evident the shortcomings of the proposed project with regard to traffic, circulation, loading and pedestrian activity in the neighborhood, this report will not dwell on this area, other than to reinforce that the parking/loading scheme is impractical due to the narrow entrance to the alley and the number of users already depending upon it. Hotels are major generators of loading traffic. Trucks must deliver liquor (typically requiring a different truck for each major brand of spirits), in addition to

food, other beverages, fresh produce, seafood, cleaning supplies, linens, rental goods for special events. The Follies' plan for using valet parking means that each car must go to the front of the hotel, the valet travels around the block to navigate the very narrow opening of the alley, and then when the guest is ready to travel, the car must be brought around again, and then the visitor departs. In other words, two times as many trips.

In addition, the proposed lay by will be a serious compromise of the quality of the pedestrian experience and should be eliminated.

2. The Application Will Adversely Impact the Use of Neighboring Property in Accordance with the Zoning Regulations and the Zoning Maps

The Project Does Not Meet the Requirement of §512 to be in Harmony with Existing Uses and Structures on Neighboring Property

This proposed project builds over a historic garden at 1745 N Street which is adjacent to the garden and courtyard of the Tabard Inn and would block direct and ambient sunlight to the Tabard Inn patio, about 40% of Tabard Inn hotel rooms and the Tabard Inn dining rooms. This would adversely affect this 85- year old historic inn. The project would also block sunlight to small scale historic buildings on the South side of Massachusetts Avenue, and to the building to the west of the Follies. Therefore, with respect to the requirement that the proposed project be in harmony with the surrounding buildings, this is clearly not the case.

The necessity of protection of light and air is so important, it is stated in Section 101 of the Zoning Regulations as a basic purpose of zoning itself. The shadows that even the applicant admits will be cast on the Tabard are an unacceptable adverse impact. It is clear that the Tabard is a "neighboring property" as the Zoning Regulations define it. A hotel like the Tabard is particularly sensitive to light and air, first because the outdoor garden terrace is one of its most charming and well-known features, but second because a number of the guest rooms face north, and the loss of afternoon sunlight will impair the attractiveness and appeal of those rooms.

In particular, the application does NOT meet the standards articulated in §512 for the granting of a special exception to permit a hotel in a special purpose zone. First and foremost, as has been pointed out, the proposed structure does not meet the requirement that the height, bulk and design of the hotel must be in harmony with the existing uses and structures on neighboring property. The proposed project is five stories where the Tabard is no more than four, and it is almost twice as dense as the Tabard Inn. In fact, the proposed addition virtually doubles the density of the proposed project, from its current 2.2 FAR to approximately 4.0. In particular, however, its bulk, which is equivalent to the bulk of a 5.0 FAR structure, is totally out of harmony with the Tabard, and the neighbor on the other side, the Mid-East Research Institute. It is most certainly not in harmony with the residential carriage house that directly adjoins the proposed structure, to the immediate north. Because it is to the north of the proposed hotel, the carriage house and its residents will see a sizable reduction of light and air.

On a wider scale, the project is not in harmony with virtually all the other structures on the 1700 block of N Street, NW. Of the 40 addresses on the 1700 Block of N Street, 36 can be defined as low density and small scale on this relatively narrow, one way, 34-foot wide side-street. While there are a small number of high density buildings in the area around the 1700 Block of N Street, including the Topaz Hotel, these buildings were all built before the Dupont Circle Overlay was enacted, or are not in SP-1. Despite the existence of these buildings, the block is still considered to be historically intact and small scale. Virtually none of the neighboring properties fill out their lots. Most, like the Tabard and the Mid-East Research Institute, feature a rear open space that is either a garden, or provides space for parking and access.

The Project Does Not Meet the Requirement that Its Approval Result in a "Balance of Residential, Office and Hotel/Inn Uses"

There are two important questions with regard to the issue of balance. First of all, how do we define a "balance" of uses? We would argue that the intent of the Zoning Regs, as was clear from the cases discussed earlier, was that the SP-1 zone should safeguard the residential character of the area. Order 314 makes clear that it was envisioned that hotels should make a positive impact in terms of mix of uses, not turn the north side of the block into a virtual hotel zone:

> The Commission therefore believes that **special controls on hotel uses are appropriate in the SP District, to insure that any new or expanded hotels are compatible with their surroundings**, and **to help foster a mix of uses in the SP District**. (p. 13)

As this map indicates, there is very little residential use left in this area. How is this "balance"? There are already two hotels on this same block, one of them quite large, approximately 100 rooms in the Topaz, an amount that will be doubled by the proposed project, added to the 40 rooms in the Tabard. If these buildings are permitted to become a hotel, there are only a handful of small buildings on this side of the street that are anything but hotels, and they are all offices. The 1700 block of N Street had a strong residential component until N Street Follies purchased 1755 and 1749 N Street in 1988. Contrary to maintaining a balance of residential and other uses, N Street Follies engaged in a ten year battle to evict all of the residents of the historic Woodbine Apartments at 1755--49 N Street to make way for a high density project that was later rejected by the city and community. This proposed hotel does not result in a balance of uses in the SP District. In fact, it is an attempt to permanently suppress the residential component the developer originally got rid of so as to create his assemblage.

A second question is, what should we consider to be the area covered in the language of §512.5, "in the SP District in the vicinity of the hotel or inn." There are two possible answers to that. First, when the Zoning Regulations defined the sphere affected by a particular zoning case, they used the yardstick of a 200 foot radius of the proposed project. That is why all property owners within that area must be notified. In this case, a two hundred foot radius would include most of the subject square, and a portion of the square to the south. See attachment A. As such, the uses are displayed on the board showing all properties in that square, and it is clear that there is no balance of residential, office and hotel uses.

For the second answer regarding how to define vicinity, we can turn to BZA Case 17443, which dealt with a request by Allstate Hotel Partnership to obtain a special exception in the SP-2 District. In that case, as is clear from the attached sections from that order, the Board looked first to the composition of the Square, and then to the areas immediately adjacent to the square.

> Findings of Fact
>
> The Surrounding Area
> 4. The area surrounding the property contains a variety of land uses, including university, residential, and office uses. **There are no hotels in close proximity to the subject site.** (Exhibit 23)
>
> 5. **All properties within Square 122**, with the exception of the subject property, are properties of George Washington University. The University buildings have a mixture of materials, character and design (Exhibit 23,25).
>
> The Impact of the Proposed Development
> 18. The Board credits the testimony and report presented by OP. In particular, the Board adopts its findings that . . .:
> (b) The makeup of the area is currently skewed toward office and academic uses. **Hotel and residential uses are underrepresented on this square and neighboring squares**. The hotel will improve the balance of uses in the area.

Last, the Board in that case concluded in its Conclusions of Law, that there was a balance of uses, and, after relying on the Findings of Fact above, which dealt with "vicinity" as the square itself and the neighboring square:

> As stated above, there **are no other hotels in close proximity** to the site. Therefore, **the construction of a hotel will actually improve the balance of residential, office and hotel uses in the area**. (Findings of Fact 4,5, and 6).

As a last reason why we would define the "vicinity" as this square and part of the one to the south, is the nature of the area. N Street is a self-contained area, cut off by major arterials (Connecticut Avenue, Massachusetts Avenue, 17th Street and Rhode Island Avenue. If the idea of 512.5 was to protect the mixed-use character of the area in which the project will be located, the primary impact will be felt in Squares 158 and 159.

Even if we were to expand our view of the area, as you can see from Attachment B, within five blocks, there are five other hotels; this one would be the sixth. So, not only would this block then have three hotels, but there would be an average of more than one hotel per block. We maintain that there is no way this could be considered to be a balance of uses.

The Proposed Project Will Unduly Impact Parking and Traffic and Create Dangerous or Other

Objectionable Traffic Conditions

It is clear that there is no justification for the number of parking spaces the applicant is requesting, as both the Office of Planning and the Department of Transportation agree. However, even the basic level of required parking spaces, based on the traffic analysis prepared for the Tabard Inn, will be "unduly impacting parking or traffic on the surrounding streets" (§512.9) and will be creating "dangerous or other objectionable traffic conditions." (§512.10). Most telling, however, N Street Follies' own traffic analysis, conducted in 1991 by Robert L. Morris Inc. when the Follies planned to enter the parking garage from N Street, found that:

> The existing alley in the rear has varying widths, and its connection to the street system, at 17th Street, is through a 10-foot wide passageway that legally operates two-way but which can only handle traffic in one direction. For the subject development, with some vehicles approaching the offices while other vehicles are leaving the residences in the morning peak hour, and with the reverse movements in the evening peak hour, **use of the alley would have an adverse impact on traffic.** There would be occasions, for example, when a vehicle would enter the alley only to confront another vehicle headed toward it; in these circumstances, the one vehicle would have to back across the sidewalk onto 17th Street, with **hazards to both pedestrians and vehicles on 17th Street.**

This study was conducted in 1991. Thirteen years later, there are far more pedestrians and automobiles coming down 17th Street than ever before and these reverse movements of vehicles already occur on a daily and frequent basis. To add a 98 car parking garage and loading dock to service a new hotel would only exacerbate an already dangerous and objectionable traffic situation.

The Board Should Impose "Special Treatment" as Permitted in §512.4 to Protect Neighboring Property

As we have discussed, the Zoning Commission, when it changed hotels from a matter of right use in this zone to be permitted only by special exception, specifically proved that the Board should require changes in "design, building setbacks, screening . . .and other features as it deems necessary to protect neighboring property." It is imperative, if the Board decides to approve the special exception, that it impose a reduction in massing next to the Tabard and the structure to the west, stepping down to no more than three stories at the rear. If the Board really wishes to abide by the intent of the Zoning Regulations and be consistent with the Comprehensive Plan, it should limit the hotel to the current historic structures on the site.

The Application Does Not Indicate How the Project Meets the FAR Limitations on Non-Residential Space

With respect to §512.6, the limitation on commercial FAR in the hotel, there is no documentation as to how the hotel meets this requirement. If one looks at the first floor plan, there is a kitchen and two rooms labeled "lounge" plus other rooms with no explanation of use. It would appear that they are a restaurant/lounge/bar, known in the Regulations as a "commercial adjunct" and presumably included under "function rooms" with regard to the meaning of §512.6. If one adds

that space to the "meeting rooms" shown on the first and second floors, and the fact that the terrace seems designed to serve as a "function room", it would appear to be more than one entire floor's worth of space, or 20% of the building. Since there are no measurements on the revised plans that the applicant has submitted, it is impossible to tell.

The Office of Planning Report

The Office of Planning report is particularly troubling here. Instead of addressing the intent of the Zoning Regulations, which are clearer and more extensive for this neighborhood and this zone than virtually any other area, the OP report states blithely:

> Hotel uses are permitted in the SP-1 zone by special exception. The presence of such uses is *anticipated* within this zone, as evidenced by the specific criteria, outlined above, used to evaluate their impact on neighboring properties. In addition, the *project meets the bulk and height regulations found within the SP-1 zone* and *preserves* five contributing historic structures. *As such, the requested special exception is in harmony with the purpose and intent of the zoning regulations.* (emphasis added)

This paragraph pretty much sums up OP's reasoning for supporting this special exception. It is completely wrong-headed in so many respects:

1. By stating that hotel use is "anticipated" within this zone, as "evidenced by the specific criteria", OP essentially takes the position that the hotels must be OK, because otherwise there wouldn't be criteria regarding them, as opposed to the clear intent and history of the Zoning Regulations reviewed above – that hotels, because they were potentially adverse to the character of the SP-1 zone, were *only* to be permitted by special exception, so that the Board could review each one and determine whether it was, as Order 314 indicated, one of the **"situations in the SP District where hotels should not be permitted."** Further reinforcing the concern about possible adverse impacts of hotels, the Commission added eight conditions that must be met, in addition to the tests prescribed in §3104.1.
2. OP suggests that the criteria provided in 3104.1 and 512 were provided to "evaluate their impact on neighboring properties", instead of realizing that the criteria were specific tests which had to be met in order to "**ensure that the height, bulk, and design of the hotel or inn is in harmony with existing uses and structures on neighboring property."**
3. The report does not address either the bulk or the design of the hotel, as required. It merely states that the hotel is five stories "in keeping with the existing scale and design of the buildings on the site as well as other structures on the block;" in fact, the only 2 buildings on the entire north side of N Street that are more than 4 stories including one of the three buildings from the Follies and the 10 story Topaz. Most of the other buildings in that row are four stories, and some are only three.
4. In addition, the report, while noting that the proposed structure will occupy over 87% of the lot, tries to suggest that the "mass is broken up by a 2,400 square foot courtyard, which is enclosed by a glass curtain wall". First of all, the interior

courtyard is not visible to anyone but those occupying rooms in the hotel, so it does not "break up" the mass – it means that the practical effect of the bulk, to the "neighboring property" is 100% lot occupancy. In terms of the bulk of the hotel being in harmony with existing use and structures on neighboring property, no other building on the north side of the block occupies that much of the lot, and certainly not at five solid stories. The only exception is the Topaz Hotel, at 10 stories, but that was built before the institution of the Dupont Circle Historic District and the Overlay; surely OP is not suggesting that this should establish the character of the rest of the block. Even the Topaz, we would note, does not occupy 100% of its lot.

5. Because the atrium courtyard is not visible or even perceptible, except to those in the hotel or an aerial view, the effective bulk of the building to the "neighboring property" which the Zoning Regs are supposed to protect, is 5 FAR, 25% more than permitted in the zone.
6. The OP report states that the project "preserves five historic structures", neglecting the fact that, in addition to extensive demolition of exterior and interior walls, and addition of almost 100% additional bulk to the fine-grained historic structures, it appears that there will need to be virtually total demolition of the floors, which is classified by the DC Historic Preservation Act as substantial demolition. (We might add that there has been no mention of any plans by the developer to provide a project of "special merit", as it certainly does not appear that the project could meet the other tests for demolition under the Act.)
7. The report defers to the Historic Preservation Review Board the task of requiring the "special treatment in the way of design, building setbacks, screening, landscaping, sign controls, and other features it deems necessary to protect neighboring property", displaying a lack of familiarity with the Historic Preservation process, which is mostly focused on the preservation of the historic buildings themselves, generally disregards areas not visible from the public way and has no mandate to protect neighboring property from shadows and inappropriate bulk in the rear. **If this Board does not require design changes in the proposed project to reduce the adverse impact on the Tabard and the other neighbors, no other body will.**
8. The OP report states that "The project would add landscaping and streetscape improvements along N Street NW." In truth, the project will interfere with pedestrians, by cutting into the sidewalk to provide a lay by for cars unloading passengers and luggage and awaiting the valet, and taking further sidewalk space for a ramp to move that luggage up to the entrance.
9. The OP report does not address the difficulty of providing parking and loading for a 98 room hotel through an alley that is only 9'8" at its narrowest point, other than to recommend that the parking be reduced from the 98 spaces proposed.
10. Amazingly, the OP report concludes that even though the applicant will take an apartment building which was formerly residential and establish the third hotel in a very short block, where every other use is office, that this meets the requirement for a "balanced mix of uses"? In order to conclude that there is a balance of uses, the OP report expands to "7 or 8 squares", with no justification as to why it considers such a distance to be "the vicinity", and no map indicating where the squares are located.

Conclusion

So, in short, the applicant has purchased historic structures in an historic district and in a zone which is designed to be a buffer between the high-density, commercial district to the south and the low-scale residential neighborhood to the north. A sequence of downzonings was purposely adopted by the Zoning Commission to protect the unique, low-scale, largely residential character of the area, and then the Commission further emphasized the importance of protecting that character by adopting the Dupont Circle Overlay. The applicant is requesting zoning relief to convert what was formerly residential property into a hotel, despite the fact that it adversely affects the light, air and privacy of the neighboring property, eliminates the open space in the rear, violates the requirement for a balance of land uses in the vicinity of the property and creates a dangerous traffic situation with respect to establishing a large parking garage accessed off an alley with a 10 foot width at the opening. And then the applicant adds insult to injury by designing the project with its own internal garden space, which adds to the bulk of the building, reserving an open space for the private enjoyment of only the hotel's guests, while ruining the enjoyment of the existing open space for the Tabard and the other neighboring property off the alley.

For all of these reasons, the Board must reject the requested zoning relief. At the very least, if the Board does not reject the application entirely, it must exercise its option in §512.4, and provide for a substantial setback from the property line, and a stepping down of the height on both the east, west and north sides of the building, to preserve the light and air for the neighboring properties, and to make the project more in harmony with the scale and character of the neighboring properties.

Thank you.