

CASE NO. 17337
EXHIBIT NO. 124

Arent Fox

2012 MAY 18 PM 4:25

May 18, 2010

BY HAND AND ELECTRONIC MAIL

Meredith Moldenhauer, Chair
Board of Zoning Adjustment
441 Fourth Street N.W., Suite 210 South
Washington D.C. 20001

Kinley R. Bray

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Reference Number
029598.00001

Re: Application of N Street Follies
BZA Case No. 17337
Party Opponent's Response to Applicant's Revised Plans dated May 6, 2010

Dear Chairperson Moldenhauer and Members of the Board:

At the conclusion of the Board's hearing in the above-referenced case, the Board held the record open for the limited purpose of receiving certain filings from the Applicant and Party Opponent requested by the Board, including a set of revised plans as requested by the Applicant, which were due to the Board no later than May 6, 2010. The Board also left the record open for a response to those revised plans from Party Opponent Tabard Inn. On behalf of the Tabard Inn, we hereby file this response to the Applicant's Revised Plans.

The Applicant's revised plans appear to be *de minimis* in nature, as claimed by the Applicant's counsel at the March 23, 2010 hearing. That said, however, the testimony presented by the Tabard's experts with respect to the shadows created by the proposed addition remain unchanged. In fact, as stated on the record and as demonstrated by the three-dimensional rendering of the proposed addition prepared by the Tabard's experts upon receipt of the Applicant's revised plans (see attached), Tabard has concluded that the proposed addition will deprive the Tabard and its outdoor garden and dining area of 40% of the duration of available sunlight on the sunniest day of the year.

The shadows currently cast on the Tabard's garden by the existing buildings on the subject property do not appear until 6:30 p.m. on June 21, therefore the Tabard's garden is awash with natural sunlight between the hours of 11:30 a.m. and 6:30 p.m., for a total of 7 hours. The Applicant's proposed development, if approved, would place the Tabard's garden and outdoor dining area in shadow beginning at 3:15, a reduction of nearly three hours of sunlight, or more than 40%. The Tabard's bar is open throughout this period and patrons of the bar are welcome to (and frequently do) take their drinks to the outdoor patio to enjoy them. In addition, as was heard extensively on the record at the hearing, the majority of weddings and special events occurring at the Tabard take place in the garden at 4pm. If the Applicant's proposed

GENBUS/738925.1

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development is approved by this Board, the available sunlight at 4pm will be significantly diminished, and the garden space on the Tabard's property will be far less appealing for such uses. This is clearly an adverse impact to surrounding property and in direct violation of the requirement of 11 DCMR § 512.3 that the height, bulk, and design of the hotel or in proposed shall be in harmony with existing uses and structures on neighboring property.

Moreover, the revised plans show new windows being punched through the party wall along the shared property boundary. This will result in reduced privacy to the Tabard's existing hotel guest rooms and users of the outdoor garden and patio. Notwithstanding the fact that the Tabard will not consent to such an alteration of the party wall which it shares with N Street Follies, the windows proposed are not in harmony with the existing uses and structures on the Tabard Inn's property as required by 11 DCMR § 512.3.

Additionally, the revised plans show details which, although they do not change the massive scale of the proposed addition to the subject property, create additional concerns about the way in which the use will operate. For example, the plans now depict a bicycle parking area in the below-grade parking garage space which is accessible only through the mechanical lift designed for automobile use. It is not clear how the Applicant intends to provide access for those using bicycles into the storage space proposed. In any event, there is certainly no access provided from N Street. Anyone wishing to bike to the hotel would need to enter the building from the rear, through the alley, which, as the record in this case clearly demonstrates, is unsafe and heavily utilized by trucks, cars, and pedestrians alike. Adding bicycles to this mix would clearly add to the dangerous and objectionable traffic conditions existing in the alley, in violation of 11 DCMR § 512.10.

The revised plans continue to show the proposed development at a lot occupancy of 100%--not 87% as the Applicant claims in its self-certification. Although a significant portion of the property will be open to the sky and not under roof, the entire building area on the ground floor is developed, as shown on Plan 1 of the May 6, 2010 submission from the Applicant. The Tabard notes that the Applicant's plans now refer to this open area as a "garden" as opposed to the July 31, 2009 plans, which call it a "closed court," misleading this Board and the public as to the intent to appropriate all of the lot area for private use and to diminish the available light, air, and open space within the square. To the extent that the area is a garden, since it will be available only to users of the hotel, and will not be visible from any point on N Street or the interior of Square 158. This is contrary to the purposes and intent of the Zoning Regulations, and therefore does not meet the requirements of 11 DCMR § 3104.1.

The purposes and intent of the Zoning Regulations and Zone Maps include the purposes of the Dupont Circle Overlay laid out in 11 DCMR §1504:

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1504.1 The purpose of the DC Overlay District is to:

- (a) Require a scale of development consistent with the nature and character of the Dupont Circle area in height and bulk; and to **ensure a general compatibility in the scale of new buildings with older, low scale buildings** by restricting the maximum permitted height and floor area ratio of new buildings to the underlying zone;*
- (b) **Protect the integrity of “contributing buildings”** as that term is defined in the Historic Landmark and Historic District Protection Act of 1978...in the various historic districts within the Overlay District; to require compatibility of development with purposes of D.C. Law 2-144; and to **preclude demolitions or partial demolitions** that would lead to an increase in height and **floor area ratio** in appropriate to the area*
- (c) 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) Ensure compatibility of development with the Comprehensive Plan;*
- (e) **Preserve areas planned as open gardens and backyards and protect the light, air, and privacy that they provide;***
- (f) Enhance the streetscape by maintaining the public space in front of buildings as landscaped green spaces and limited curb cuts on Connecticut Avenue; and*
- (g) Encourage greater use of public transportation and the free circulation of vehicles through public streets and alleys.*

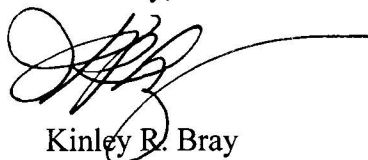
(emphasis added).

The Application in general, as demonstrated by the revised plans, does nothing to ensure that the proposed use will be in harmony with the purposes and intent of the Dupont Circle Overlay or the Zoning Regulations at large. To the contrary, the Application proposes a building which is grossly out of scale with the existing, low scale buildings surrounding it; threatens the integrity of contributing buildings within the Dupont Circle Historic District; eliminates the possibility of restoration of the historic Graylin garden; and significantly diminishes the available light, air, and privacy to surrounding properties.

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The Tabard reiterates its strenuous objection to the subject application, and urges the Board to deny the relief requested, as the Applicant has failed to meet its burden of proof for the requested special exception.

Sincerely,



Kinley R. Bray

Enclosure

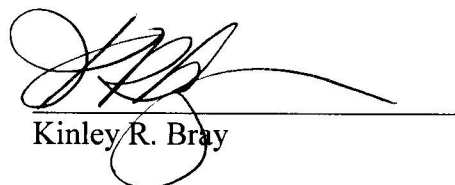
Cc: Jeremiah Cohen (via e-mail)
Ellen McCarthy (by hand)
Emily Eig (via e-mail)
Robert Schwartz (via e-mail)
Arlova Jackson, OP (via U.S. Mail)
Joel Lawson, OP (via U.S. Mail)
Jennifer Steingasser, OP (via U.S. Mail)
George Keys, Jr., Esq. (via U.S. Mail)
Advisory Neighborhood Commission 2B (via U.S. Mail)

CERTIFICATE OF SERVICE

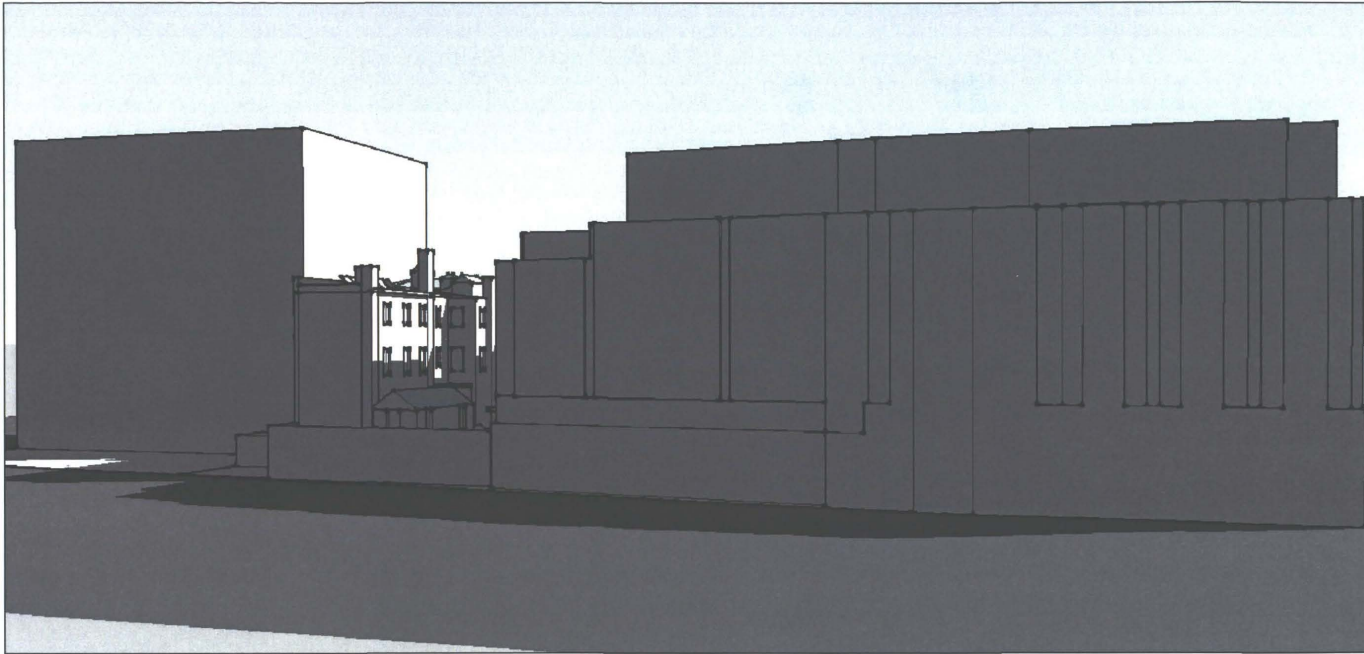
I HEREBY CERTIFY that on this 18th day of May, 2010, a copy of the foregoing was mailed, first class, postage pre-paid to the following persons:

George Keys, Jr.
Jordan & Keys, PLLC
1400 16th Street NW, Suite 710
Washington D.C. 20036-2217

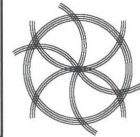
Jennifer Steingasser, Joel Lawson & Arlova Jackson
Office of Planning
1100 4th Street S.W. Suite 650-E
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Kinley R. Bray



APPLICANT'S PROPOSED ADDITION – VIEW FROM ALLEY



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1739 N St. NW
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DATE:	4-19-10 5-11-10 5-17-10	A1
TITLE:	OPPOSITION TO BZA APPLICATION 17337	



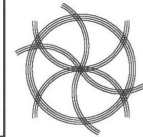
VIEW FROM ALLEY – EXISTING

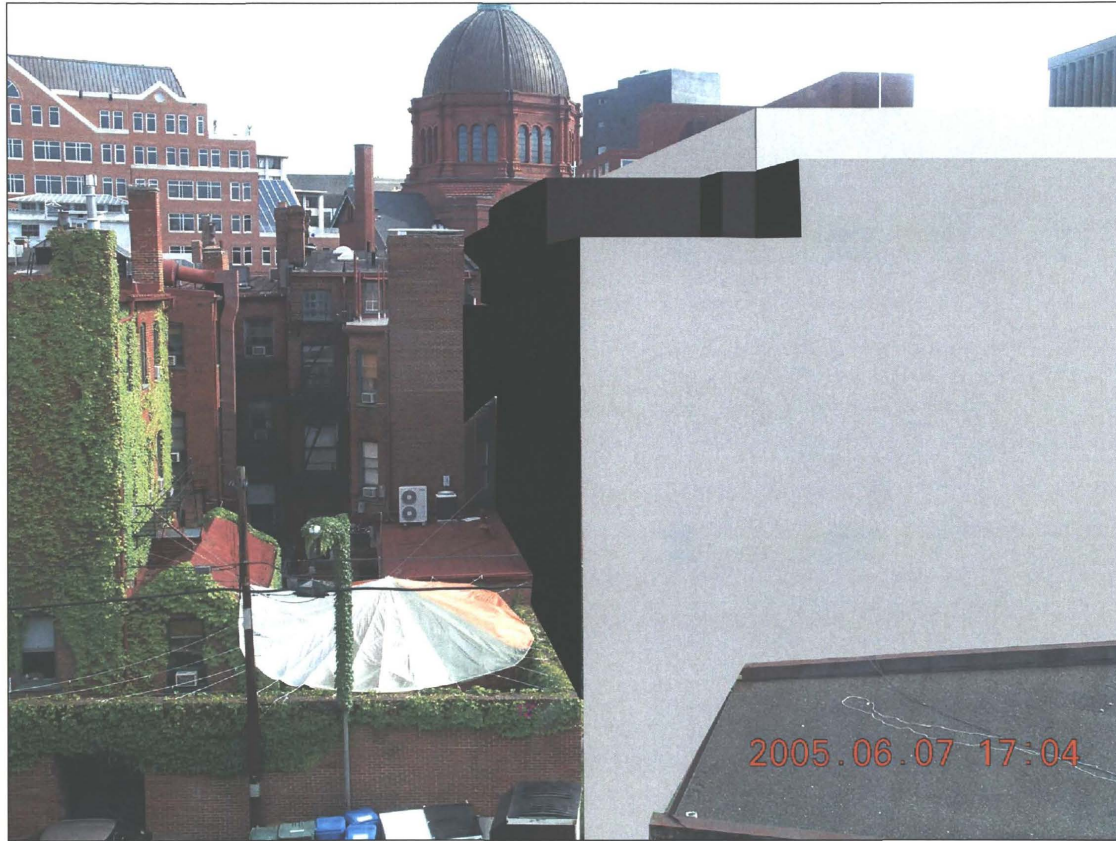
DATE:	4-19-10 5-11-10 5-17-10	A2
TITLE:	OPPOSITION TO BZA APPLICATION 17337	

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VIEW FROM ALLEY – APPLICANT’S PROPOSED ADDITION

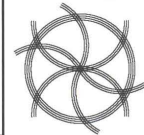
(massing study provided by Schwarz and Peoples Architects)

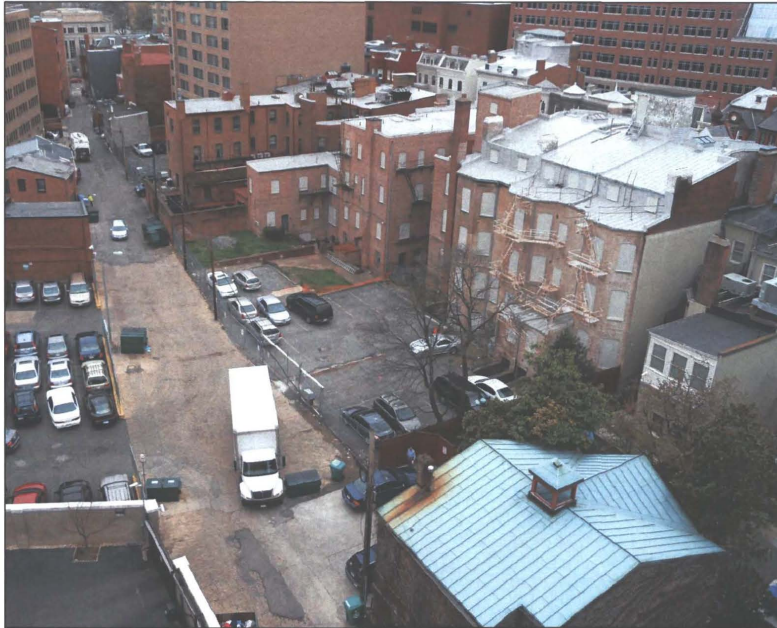
DATE: 4-19-10 5-11-10 5-17-10	A3
TITLE: OPPOSITION TO BZA APPLICATION 17337	

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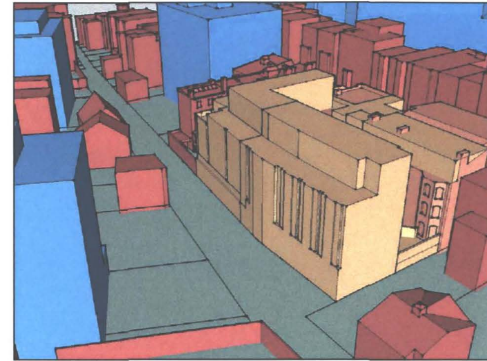


Stan Andrulis, N St. Follies Architect (reflecting on the historic district) March 23, 2010, BZA transcript pg. 144:

"So, how does all of this affect the design of the rear elevation? I should go here as well. There are a number of carriage houses on the block, all kinds of different doors. Several of the properties have walled gardens. It is a difficult task to design a large building that relates to historic buildings that are admittedly smaller scale.

Many of them are smaller scale. You can do it directly by aping their scale, by aping their geometry, or you can do it in a more abstract way and so we have tried to do it in a more abstract way."

VIEW OF SUBJECT PROPERTIES FROM THE WEST



APPLICANT'S PROPOSED ADDITION



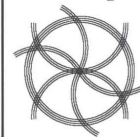
ALTERNATE ADDITION PROPOSED BY THE
TABARD INN

DATE:	4-19-10	5-11-10	5-17-10
A4			
TITLE: OPPOSITION TO BZA APPLICATION 17337			

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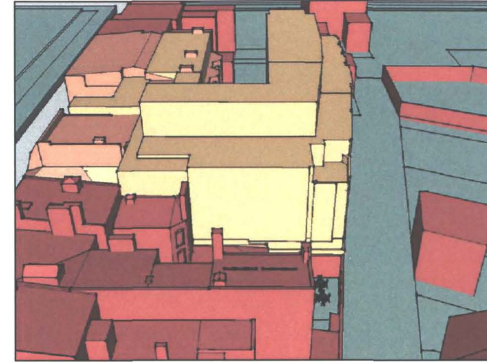




While presenting the plan to the Dupont Conservancy, Andrulis' described the property closest to the Tabard as the "perfect location" for the elevator core and that when asked why they don't move the elevator core towards the West, he answered "because we don't want to".

We believe it would be a debacle of historic proportion that, after 88 years of successfully operating a historic hotel on N Street without an elevator, approximately fifty percent of the sunlight reaching the historic Tabard patio, garden, courtyard, and over a dozen hotel rooms would be sacrificed to make way for another hotel's elevator core.

VIEW OF SUBJECT PROPERTIES FROM THE EAST



APPLICANT'S PROPOSED ADDITION



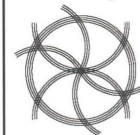
ALTERNATE ADDITION PROPOSED BY THE
TABARD INN

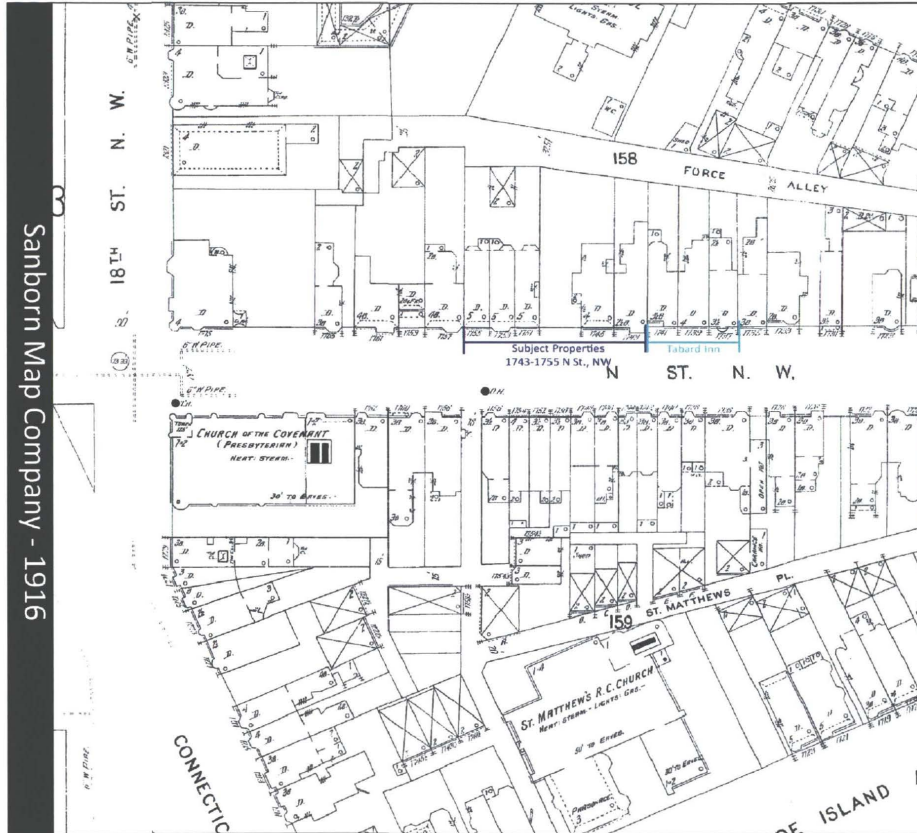
DATE:	4-19-10	A5
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	5-17-10	
TITLE:	OPPOSITION TO BZA APPLICATION 17337	

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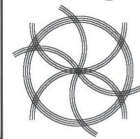
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SQUARES 158 AND 159 – HISTORIC PLATS

(plats courtesy of EHT Tracerles, Inc.)



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DATE:	4-19-10
	5-11-10
	5-17-10
TITLE:	OPPOSITION TO BZA APPLICATION 17337

A6



SQUARES 158 AND 159 - HISTORIC PLATS

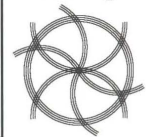
(plats courtesy of EHT Traceries, Inc.)

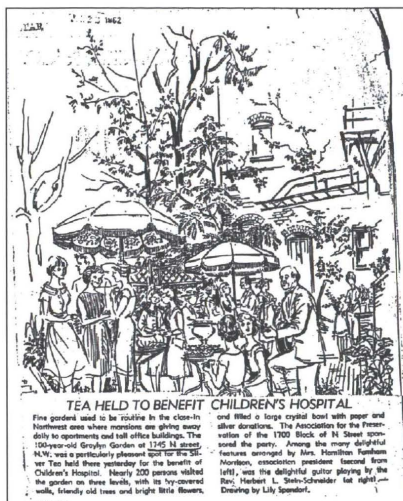
DATE:	4-19-10
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	5-17-10
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A SKETCH OF THE OLD GRALYN GARDEN



THE GRAND STAIRCASE AT 1745. THE RIGHT STAIRCASE LEADS TO THE HISTORIC LOUNGE AREA.



VIEW FROM ALLEY ACROSS N ST. TO THE T.F. SCHNEIDER TURRET

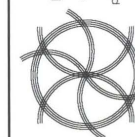
ADDITIONAL CHARACTER-DEFINING FEATURES THAT ARE IN JEOPARDY

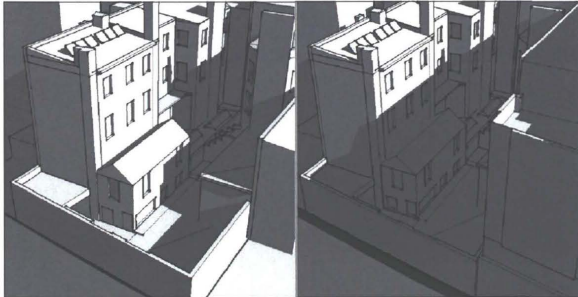
DATE	4-19-10	A8
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	5-17-10	
TITLE: OPPOSITION TO BZA APPLICATION 17337		

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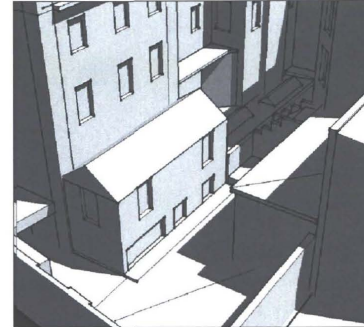
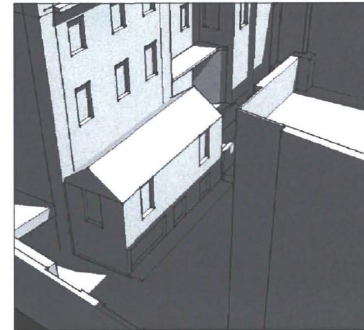
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JUNE 20, 2008 5:35 PM

The Tabard Inn dining room was built in 1924 and has been in continuous operation since. The historic windows pictured on the left were originally designed to collect natural sunlight for the Tabard dining room. The natural "historic light" streaming through these windows makes this dining room intimate, warm and special.



JUNE 20, 2010 3:15 PM

These windows are the lowermost row of windows in the 3-D model views. The proposed hotel would completely block all direct sunlight and a substantial amount of this natural ambient light by 3:15 pm on the sunniest day of the year. This represents about fifty percent of the sunlight now shining on and into our historic dining room windows, historic patio, and courtyard area.

SHADOW STUDY – DINING ROOM

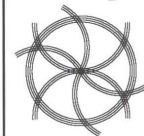
3D-model views show a comparison between existing conditions and the applicant's proposed addition.

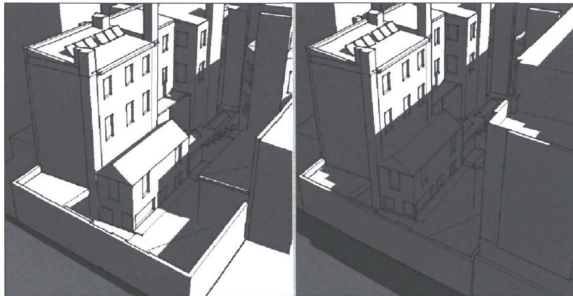
DATE:	4-19-10	A9
	5-11-10	
	5-17-10	
TITLE:	OPPOSITION TO BZA APPLICATION 17337	

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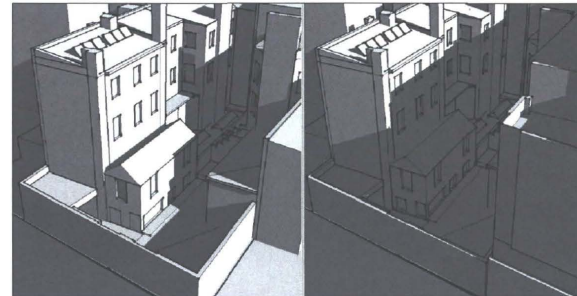
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JUNE 7, 2005 5:04 PM

Contrary to the applicant's interpretation of his own shadow study, as you can see here, the Tabard patio is still getting plenty of sunlight at this late hour, some of this sunlight is still hitting the patio itself, but most of the sunlight is directly hitting our parachute which then creates a dispersed and dappled light effect on our historic patio.



JUNE 20, 2008 5:59 PM

The legendary landscape architect, Lawrence Halprin described our patio as an open air room. If this proposed hotel is built as designed, this "open air" room will be in complete shadow at this time.

SHADOW STUDY – PATIO AND PARACHUTE

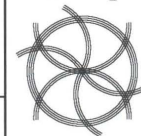
3D-model views show a comparison between existing conditions and the applicant's proposed addition.

DATE:	4-19-10	A10	TITLE: OPPOSITION TO BZA APPLICATION 17337
	5-11-10		
	5-17-10		

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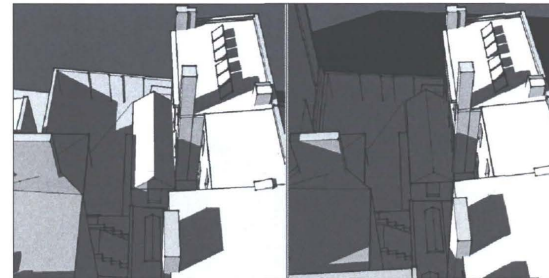




The Tabard has been hosting 4pm Weddings for 35 years. From the last week of March through late September, the Tabard makes available its historic patio and garden for wedding ceremonies nearly every weekend. This historic wedding venue is beloved by many. The monumental design of this proposed hotel would ensure that it would be impossible to offer a sunny 4pm wedding on our historic patio ever again.

SHADOW STUDY – AFTERNOON WEDDING

3D-model views show a comparison between existing conditions and the applicant's proposed addition.



SEPTEMBER 20, 2009 4:30 PM

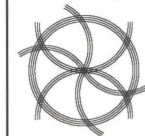
Notice how the parachute is capturing direct sunlight and dispersing that light over the patio. The proposed structure blocks this effect entirely. The proposed massing for the Follies hotel would clearly substantially diminish the historic character and charm of our historic patio and dining room.

DATE:	4-19-10	A11
	5-11-10	
	5-17-10	
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MARCH 27, 2010 4PM WEDDING, FIRST WEDDING OF THE SEASON

DATE: 4-19-10 5-11-10 5-17-10	A12
TITLE: OPPOSITION TO BZA APPLICATION 17337	

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