

BOARD OF ZONING ADJUSTMENT
DISTRICT OF COLUMBIA
JUNE 25 PM 3:52

**APPLICANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
IN BOARD OF ZONING ADJUSTMENT APPLICATION NO. 17337**

Application No. 17337 of N Street Follies LP pursuant to 11 DCMR § 3104.1 for special exception under § 512 to allow the construction of an addition to existing buildings to be used as a hotel in the DC/SP-1 Zoning District at premises 1743-1755 N Street, N.W. (Square 158, Lots 69, 835 and 836).

HEARING DATES: November 1, 2005, January 24, 2006, February 28, 2006, June 27, 2006, April 28, 2009, June 6, 2009, October 6, 2009, December 8, 2009 and March 16, 2010

DECISION DATE: June ___, 2010

DECISION AND ORDER

This application was submitted by N Street Follies LP (the "Applicant") the owner of the property that is the subject of this application ("subject property"). The self-certified application requested a special exception under § 512 to allow the construction of an addition to existing buildings to be used as a hotel in the DC/SP-1 Zoning District at premises 1743-1755 N Street, N.W. (Square 158, Lots 69, 835 and 836).

The Board held public hearings on November 1, 2005, January 24, 2006, February 28, 2006, June 27, 2006, April 28, 2009, June 6, 2009, October 6, 2009, December 8, 2009 and March 16, 2010. The Board's decision at the close of the June 27, 2006 hearing to dismiss the Application as moot was appealed by the Applicant to the D.C. Court of Appeals, which reversed the Board and remanded the application for further hearings. At the close of the hearings the Board set a decision date of June 8, 2010. At the decision meeting, the Board voted ___ - ___ to approve the application subject to certain conditions.

PUBLIC HEARINGS. Nine (9) public hearings on the application were held at which times testimony and evidence were provided by the Applicant and its expert witnesses, by the Office of Planning, and by the Tabard Inn, a party opponent, and its expert witnesses.

SUMMARY OF TESTIMONY

1. Applicant's Case. The Applicant's case was presented through the drawings, reports and testimony of the project architects, Stan Andrulis and Tony Janezich of AJA Architects and the traffic engineer, Osborne George, P.E. The Applicant's project was designed with the goal of achieving the preservation objectives of HPRB. To that end, the design preserves the existing building exteriors and minimizes the removal of interior walls, spaces and fixtures that contain historical significance. The new addition is removed from the historic structures by the introduction on an open air garden courtyard which allows the existing buildings to be seen both front and rear. The new addition has also been designed with enhanced set-backs at the roof and penthouse level that renders it invisible from N Street, thus preserving the scale and context of a street that contains so many contributing buildings. The rear facade of the building has been carefully designed to reflect the materials and the articulation of the rear of the other typical buildings on N Street. The

BOARD OF ZONING ADJUSTMENT

District of Columbia

CASE NO. 17337

EXHIBIT NO. 126

Board of Zoning Adjustment
District of Columbia
CASE NO. 17337
EXHIBIT NO. 126

existing gap between 1751 N Street and 1745 N Street will be retained, enclosed by a recessed transparent mullionless glass wall and roof and will become the entrance to the hotel with a glass canopy projecting from the glass wall.

The hotel will have a gross floor area of 79,896 square feet and contain 98 rooms and contain a limited amount of meeting rooms and conference space. The Floor Area Ratio for the project is 3.88, less than the 4.0 allowed under the Zoning Regulations. The building height will be 57.1 feet, which is comparable to the other buildings on N Street, N.W. The design includes a reduced penthouse which has been removed from the building's perimeters in an effort to eliminate any visual presence from N Street and to diminish impacts on adjacent structures. The architects have recessed the upper story of the addition in its northeast corner to improve light and air reaching the Tabard Inn, the property to the east.

The Applicant proposes to provide a loading dock fully within the building addition and a multi-level below grade parking garage with 96 parking spaces. Rather than the mechanical parking system first proposed (which is not currently recognized by the Zoning Regulations), the Applicant will connect the parking levels by elevators. At the public hearing, the Applicant agreed to reduce that number to 58 on three levels of parking: 12 on the first level and 23 on each of the next two levels. The width of the public alley widens to 26-43 feet behind the subject property, which ensures sufficient maneuvering room and turning radius for 30-foot trucks and delivery vehicles servicing the hotel. A valet attendant service will be employed to move all automobiles from the N Street entrance to the parking garage.

The architect presented the results of sun studies showing the impact of existing conditions and the proposed hotel throughout the year on adjacent properties. For much of the year there is no impact of the proposed hotel's shadow on the Tabard Inn. There is a discernable impact on the Tabard Inn in the mid-afternoon to early evening only during the summer months, when the addition will cast a growing shadow across the courtyard of the Tabard Inn and the west facing portions of that building beginning around 2:30 pm until about 6:00 pm on June 21, which is the date of peak impact. The architects noted that the period of shadow impact occurs after the lunch hour and during periods when the dining room of the Tabard Inn is closed. The Tabard Inn currently utilizes a suspended parachute to diffuse sunlight reaching the courtyard, particularly in mid-summer and Applicant's architects discussed ideas to mitigate the loss of diffused light by elevating the parachute canopy.

Osborne George, P.E. examined the subject property and the vicinity on several occasions from 2005 to 2009, conducted traffic measurement studies in order to observe traffic and safety conditions and submitted his conclusions in the form of a report and a supplemental report. The users of the public alley are exclusively people working in the buildings on N Street and Massachusetts Avenue in Square 158. This observation suggests that familiarity with the traffic conditions in the public alley contributes to the general safety of its usage. Mr. George opined that the situation of a one-way public alley serving the interior of a block is not an unusual condition in the downtown area. Mr. George noted that traffic using the public alley has diminished since 2005,

when he compiled data for his first report. The contribution of hotel-generated traffic does not represent a significant increase in vehicles using the alley, because he anticipates that most hotel patrons will arrive by means of public transportation or by taxi and that the hours at which hotel rooms turn-over (afternoon) are low traffic period for the alley and for adjacent public streets. He also conducted an interval analysis of traffic using the public alley which indicated that in and out automobile movements are widely spaced and that conflicts are infrequent. The average gap for inbound traffic during the morning rush hour was 66 seconds and the average gap for outbound movement during the evening rush hour was 136 seconds, which in his professional opinion were not dangerous traffic conditions. He also examined the potential for conflict between pedestrian traffic moving along the west side of 17th Street and vehicles entering or exiting the alley and noted that sight lines were in conformance with the traffic codes. Mr. George submitted evidence from the Metropolitan Police Department showing that in 2006, 2007 and 2008 there were few vehicle accidents reported for the vicinity of 17th Street & Massachusetts Avenue and 17th Street and N Street, which he took as empirical confirmation that no dangerous condition existed at the intersection of the public alley and 17th Street NW.

2. Government Reports.

Office of Planning. The Office of Planning (OP) submitted Memoranda, dated January 13, 2006 and September 28, 2009, both of which approved the versions of the project then under consideration. In both instances, OP performed an analysis of the requirements of §§ 512 and 3104.1 and concluded that the Applicant had met the burden of proof for zoning relief. OP expressed its concern that the Applicant's plans included too much off-street parking and that parking should be limited to that required by the Zoning Regulations. In testimony, OP representatives expressed OP's opinion that the requirements of the Dupont Circle Overlay District ("DC Overlay") did not apply to zoning relief applications (such as the instant application) that were not Planned Unit Developments. Such has been OP's interpretation of § 1501, et seq., since the adoption of the DC Overlay by the Zoning Commission in 1992. Thus, in OP's view, the only criteria (other than the general special exception standard in § 3104.1) which the Applicant is required to satisfy in this application is what is set forth in § 512.

OP Analysis. A summary of the OP analysis is set out briefly below:

512.3 The height, bulk and design of the hotel or inn shall be in harmony with existing uses and structures on neighboring property.

The Applicant's proposal maintains the five-story scale of the building facing N Street and the addition to the existing building will not be visible from the street. The historic buildings are separated from the new addition at ground level by a 2400-square foot courtyard enclosed on the west by a glass curtain wall.

513.4 To ensure that the height, bulk and design of the hotel or inn is in harmony with existing uses and structures on neighboring property, the Board may require special

treatment in the way of design, building setback, screening, landscaping, sign controls, and other features as it deems necessary to protect neighboring property.

The Applicant's proposal preserves the existing structures and is compatible in scale with the adjoining uses: the Tabard Inn and the offices of the International Union of UAW. Many of the issues under this sub-section will be directly addressed in the HPRB proceeding. OP recommends that the number of off-street parking spaces be restricted to the number required by the Zoning Regulations.

513.5 The approval of the hotel or inn shall result in a balanced mix of office, hotel and residential uses in the SP district in the vicinity of the hotel or inn.

OP surveyed the uses of property within the square in which the subject property is located and within the Sp-1 and SP-2 zones nearby and found a balance of office, residential, institutional, hotel and diplomatic uses. OP concluded from this analysis that the addition of a hotel on the subject property would not have a negative impact on the balance of uses.

512.6 The gross floor area devoted to function rooms and exhibit space shall not exceed fifteen percent (15%) of the gross floor area of the hotel.

Based upon the submitted plans for the hotel, OP found that less than five percent (5%) of the gross floor area of the hotel would be accounted for in function rooms and exhibit space.

512.7 The hotel or inn shall be located within thirteen hundred feet of the Central Employment Area or a Metrorail station.

The subject property is located within the Central Employment Area and is located within thirteen hundred feet of the Dupont Circle Metrorail Station. The location satisfies the requirements of § 512.8, as well.

512.9 The Board may require more or less off-street parking spaces and loading berths than required by chapters 21 and 22 of this title to accommodate the activities of the hotel or inn so as to avoid dangerous or other objectionable traffic conditions.

Under § 2120.3(a), the Applicant would be required in the case of a historical resource to provide parking only for an addition which exceeded fifty percent (50%) of the gross floor area of the historical resource, which the Applicant has calculated as 19 parking spaces. OP finds that the proposed 98 parking spaces are excessive given the capacity of the public alley and the close proximity of bus and rail connections and the choice of taxis for arrival by many hotel guests. OP recommends a reduction of the parking spaces.

512.10 The location and design of driveways, access roads, and other circulation elements

of the hotel or inn shall be to avoid dangerous or other objectionable traffic conditions.

Principal access to the subject property for parking and loading purposes would be from the public alley to the rear of the subject property. The alley width appears adequate for loading purposes and as the parking would only be utilized by valet parking staff, the design would not increase public use of the alley. OP discourages the creation of a lay-by in front of the hotel and defers to DDOT and the Public Space Committee on such a feature.

3104.1(a) Will the special exception be in harmony with the general purpose and intent of the Zoning Regulations and Maps?

OP noted that hotel uses are permitted by special exception in the SP-1 zone. The Applicant's plans satisfy the special exception standards of § 512 and accomplish the preservation of five contributing historic structures and, as such, are in harmony with the purpose and intent of the Zoning Regulations and Maps.

3104.1(b) Will the special exception tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Maps?

The proposed hotel fits into the context of neighboring properties in terms of use and height and the mass of the addition is moderated by the large open air garden courtyard. The addition is set-back at its northeast corner to provide additional light and air to the property to the east. There is no visual impact of the addition as seen from the public street.

District Department of Transportation (DDOT). By Memorandum dated September 29, 2009, DDOT did not recommend approval of the Applicant's request for special exception relief, unless the Applicant "reconsider its parking inventory and significantly reduced the number of parking spaces in the rear of the hotel property." In a previous memorandum, dated February 28, 2006, DDOT calculated that the Zoning Regulations required 31 parking spaces for a 98-room hotel and that the Applicant should be limited to this number of parking spaces. DDOT expressed concern about the impact of greater traffic in the public alley serving Square 158 given the narrowness of the public alley.

3. Parties In Opposition

ANC 2B Report. On September 9, 2009, at a public meeting at which a quorum was present, ANC 2B passed a resolution opposing the special exception application. The resolution acknowledged the improvements in the project design, the reduction in massing and the historic preservation elements; however, ANC 2B raised the following substantive issues: parking in excess of that recommended by DDOT, an articulation of the rear alley facade that does not respond to historic district standards, and a lack of harmony with existing uses and structures on neighboring property.

Tabard Inn. Jeremiah Cohen testified on behalf of the Tabard Inn, where he is the general manager. Mr. Cohen asserts that the proposed hotel will deprive its courtyard, green roof, main dining room and a portion of the west-facing hotel rooms of afternoon sunlight which they now receive. The courtyard is used for afternoon weddings and the loss of sunlight will hurt this aspect of the business of the Tabard Inn. Mr. Cohen was also concerned that additional delivery vehicles for another hotel (N Street already has two hotels) will create bottlenecks in the narrow public alley.

Emily Hotaling Eig, EHT Traceries, an architectural historian, testified as an expert witness for the party opponent. Her testimony focused largely on the rear of the subject property contending that the elimination of the rear yard and the size of the addition as seen from the rear was not consistent with the historic pattern of development for the Dupont Circle Historic District.

Ellen McCarthy, admitted as an expert in planning, testified regarding the planning background to the SP-1, the Dupont Circle Overlay and the Comprehensive Plan. She objected to the proposed hotel on several grounds: (i) impacts on light and air to neighboring property, (ii) elimination of rear yard, (iii) disturbance to the balance of uses within the vicinity of the subject property (which she interprets as a 200-foot radius around the subject property or alternatively within the SP-1 zone district where the subject property is located), (iv) creation of dangerous traffic conditions in the public alley, and (v) the proposed hotel violates the purpose and intent of the Dupont Circle Overlay.

4. Persons in Opposition. Catherine Eckles of the Residential Action Coalition testified in opposition to the Applicant's proposal largely on the grounds that it represented a destruction of a housing opportunity in the Dupont Circle area.

Jim McGrath, Chairman of the D.C. Tenants Advocacy Coalition testified in opposition to another special exception application that would result in the loss of housing in the area.

5. Persons in Support. Richard Busch of the Dupont Circle Conservancy ("DCC") appeared at the October 6, 2009 hearing and reported on a resolution adopted by the DCC as follows: "I think it is a resolution in favor of the project and that is, or in favor of the Applicant's proposal." The DCC he further offered would like to see greater articulation of the rear wall in order to reduce the visual presence and greater transparency in the east wall of the proposed addition.

FINDINGS OF FACT:

1. The subject property is located on the north side of the 1700-block of N Street, N.W. lies within the Dupont Circle Overlay District and the Central Employment Area and is zoned DC/SP-1. The subject property is within 1300 feet of the Dupont Circle Metro Station.

2. The subject property consists of three record lots and comprises approximately 20,563 square feet of land area with 150' of frontage along N Street, N.W. The subject property is improved with five vacant buildings which are considered to be contributing structures within the Dupont Circle Historic District. The five buildings, built between the years 1889 and 1908 are in

Romanesque Revival and Georgian Revival architectural styles. The three five-story townhouses at 1751-1755 N Street form a symmetrical block. These buildings were built originally as single-family residences but over time their use has varied from apartment to offices with the consequence that the interiors have been chopped up and reconfigured. There is a gap between 1751 and 1745 N Street, N.W., forming a passage which connected to the private garden at the rear. In the 1930's, 1745 N Street and its accompanying garden became the Gralyn Hotel.

3. In order to redevelop the subject property, the Applicant will require concept approval from the Historic Preservation Review Board ("HPRB") and a parallel administrative proceeding is current underway before HPRB. The report and recommendation of HPRB Staff, dated November 19, 2009, is for approval of the revised design concept, which is the same design presently before the Board in the instant application.

4. The 1700-block of N Street, N.W. is a mixture of new construction (National Association of Broadcasters, World Bank Building, Topaz Hotel) and historic buildings reflecting a wide range on institutional, philanthropic, restaurant and professional office uses. There are no remaining residential uses along the street. This block lies within a larger DC/SP-1 Zone District to the south and east of Dupont Circle characterized by multifamily apartment buildings, diplomatic offices, educational institutions, commercial offices along Massachusetts Avenue, 18th Street and 17th Street, N.W.

5. Square 158 is serviced by a public alley which according to the records of the Office of the Surveyor, D.C. is ten feet (10') wide, which is the minimum required by the Zoning Regulations under § 2117.4 in order to provide access to required parking spaces.

6. Based on the testimony of the Applicant's traffic engineer, the number of vehicles that will likely be generated by the hotel does not accord with the proposed capacity of the parking garage or proximity of the subject property to public transportation.

7. The public alley is used by persons familiar with its narrowness and the procedure needed to negotiate it safely. Traffic counts and gap analysis conducted by Mr. George and MPD accident data do not present evidence of a dangerous condition in the public alley. The likely additional traffic generated by the hotel does not change this assessment.

8. The proposed hotel will have an impact in casting a shadow over the courtyard of the Tabard Inn in the afternoon at certain times of the year with its peak impact at mid-summer. The seasonal impact, however, is slight and occurs largely at a time when the Tabard Inn dining room and courtyard are not in use. Although the Tabard Inn makes intermittent use of the courtyard as a wedding venue during the afternoon interval between lunch service and dinner, there is no evidence that the hotel's impact on the courtyard would cause the loss of such business opportunity. A finding of adverse impact cannot be based on speculation.

9. The design of the hotel preserves contributing buildings in a manner that does not overwhelm the other buildings on N Street. The building height, Floor Area Ratio and penthouse height are less than would be permitted as a matter-of-right in the DC/SP-1 zone district and the penthouse setbacks on the eastern side facing the Tabard Inn are greater than required by the Zoning Regulations. The Applicant has paid considerable attention to the design of the rear of the building which is articulated with materials typical of those in use on other properties along the public alley.

The height and bulk of the hotel are in harmony with neighboring properties, which include such large buildings within Square 158 and the DC/SP-1 zone district as the Topaz Hotel, the National Association of Broadcasters and the World Bank Building along N Street and Johns Hopkins University, the Petersen Institute of International Economics directly across the public alley and facing on Massachusetts Avenue NW.

10.. The addition of the proposed hotel does not change the balance of uses within the contiguous SP zone districts in the vicinity of the subject property.

CONCLUSIONS OF LAW AND OPINION

The Board is authorized under the Zoning Act of June 20, 1938 (52 Stat. 797, as amended, D.C. Code § 6-641.07(g)(2) (2001) to grant special exceptions as provided in the Zoning Regulations. The Applicant applied under 11 DCMR §3104.1 for a special exception pursuant to 11 DCMR § 512 to allow the construction of an addition to existing buildings to be used as a hotel in the DC/SP-1 District at the subject property.

The Board can grant a special exception where, in its judgment, two general tests are met, and, the special conditions for the particular special exception are met. First, the requested special exception must “be in harmony with the general purpose and intent of the Zoning Regulation and the Zoning Map.” 11 DCMR § 3104.1. Second, it must “not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Map.” 11 DCMR § 3104.1. The Board concurs with OP that the proposed hotel complies with the provisions of § 512 and satisfies the general special exception criteria of § 3104.1 The Board shares OP’s concern that the Applicant proposes too much parking on the subject property and agrees with DDOT and ANC 2B that in view of the limited capacity of the public alley serving Square 158 the amount of parking should be substantially reduced.

The Board is required under Section 13 of the Advisory Neighborhood Commission Act of 1975, effective October 10, 1975 (D.C. Law 1-21), as amended, now codified at D.C. Code § 1-309.10(d)(3)(A)) to give “great weight” to the issues and concerns raised in the affected ANC’s written recommendations. To give “great weight” the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances and make specific findings and conclusions with respect to each of the ANC’s issues and concerns.

The Board concludes that it has accorded ANC 2B the “great weight” to which it is entitled. The record reflects that ANC 2B opposed the application on several grounds, as evidenced by

Exhibit __, a letter dated September 15, 2009 evidencing the resolution of ANC 2B . In Findings of Fact Nos. 6, 8 and 9 above and in the conditions attached to the Board's Decision and Order, the Board has responded to the concerns of ANC 2B in opposition to this application.

The Board is also required under D.C. Official Code § 6-623.04 (2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board agrees, in large part, with OP's advice that the application be approved with conditions.

For the reasons stated above, the Board concludes: (i) that the Applicant has satisfied the burden of proof with respect to the application for a special exception under § 512 to allow to allow the construction of an addition to existing buildings to be used as a hotel in the DC/SP-1 District at the subject property; and (ii) that the requested relief is in harmony with the general purpose and intent of the Zoning Regulations and the Zoning Map and can be granted without adversely affecting the use of neighboring property in accordance with the regulations and the map.

Accordingly, it is ORDERED that this special exception application is GRANTED, SUBJECT to the following **CONDITIONS**:

1. The Applicant shall offer valet parking to hotel guests and visitors at all times during the operation of the hotel.
2. The Applicant shall provide no more than thirty-five (35) parking spaces in the parking garage at the rear of the subject property to be located on two (2) below grade parking levels and access to the parking garage shall be restricted to valet parking attendants.
3. The Applicant will not seek a lay-by on N Street in front of the hotel that would reduce on-street parking or narrow the public sidewalk.

VOTE: __-__-__ (_____, to approve;
_____, to oppose)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

Each concurring Board member approved the issuance of this order.

FINAL DATE OF ORDER: _____, 2010

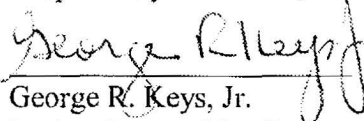
PURSUANT TO 11 DCMR § 3125.6, THIS ORDER WILL BECOME FINAL UPON ITS FILING IN THE RECORD AND SERVICE UPON THE PARTIES. UNDER 11 DCMR § 3125.9, THIS ORDER WILL BECOME EFFECTIVE TEN DAYS AFTER IT BECOMES FINAL.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSES OF SECURING A BUILDING PERMIT.

PURSUANT TO 11 DCMR § 3125 APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE, UNLESS THE BOARD ORDERS OTHERWISE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD. PURSUANT TO 11 DCMR § 3205, FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART, SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

THE APPLICANT SHALL COMPLY FULLY WITH THE PROVISIONS OF THE HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, CODIFIED AS CHAPTER 25 IN TITLE 1, OF THE D.C. CODE. SEE D.C. CODE § 1-2531 (2001). THIS ORDER IS CONDITIONAL UPON FULL COMPLIANCE WITH THE HUMAN RIGHTS ACT. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

Respectfully submitted,



5/25/10

George R. Keys, Jr.

Jordan & Keys PLLC

1400 16th Street, N.W. - Suite 710

Washington, D.C. 20036

(202) 483-8300

gkeys@jordankeys.com