

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Board of Zoning Adjustment**



**Application No. 17337-A of N Street Follies, Ltd.**, pursuant to 11 DCMR § 3104.1, for a special exception to allow a hotel, including construction of an addition to existing buildings, under § 512, in the DC/SP-1 zone district, at premises 1743-1755 N Street, N.W. (Square 158, Lots 69, 835 and 836).<sup>1</sup>

**PRE-REMAND**

**HEARING DATES:** November 1, 2005, January 24, 2006, February 28, 2006, and June 27, 2006

**POST-REMAND**

**HEARING DATES:** April 28, 2009, June 2, 2009, October 6, 2009, December 8, 2009, March 16, 2010, and March 23, 2010

**DECISION DATE:** June 8, 2010

**DECISION AND ORDER ON REMAND**

This application was originally submitted to the Board of Zoning Adjustment ("Board") on March 31, 2005 by N Street Follies, Ltd. ("Applicant"), the owner of the property that is the subject of this application ("subject property"). When the application was first submitted at the Office of Zoning ("OZ"), it included requests for four special exceptions and three variances. However, the plans on which the original application was based were not approved by the Historic Preservation Review Board, and relying on this non-approval, this Board dismissed the application as moot in Order No. 17337, dated April 2, 2007. (Exhibit 59).

The Applicant appealed the Board's dismissal to the D.C. Court of Appeals ("DCCA"), which reversed the Board's decision and remanded the case to the Board to be decided on its merits. (Exhibit No. 62). The Board then re-opened the case and scheduled a new/continued hearing date to hear the case after remand. At this point, the Applicant decided to proceed with new plans, which scaled back the relief required, leaving only the special exception to permit a hotel in a special purpose zone pursuant to 11 DCMR § 512.

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<sup>1</sup>The caption reflects the relief requested after remand, which was the only relief before the Board at the time of the March 23, 2010 hearing, and is the only relief addressed in this Order.

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**BOARD OF ZONING ADJUSTMENT**  
District of Columbia

CASE NO. 17337-A

EXHIBIT NO. 128

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17337  
EXHIBIT NO. 128

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The hearing after remand was first scheduled for April 28, 2009, but due to further refinement of the plans, was continued until October 6, 2009. For various reasons, the hearing was continued several more times, until March 23, 2010, when it was finally completed. At the close of the hearing, the decision was scheduled for June 8, 2010.

On June 8, 2010, the Board deliberated on the application and denied it by a vote of 4-0-1.

**PRELIMINARY MATTERS**

Notice of Application and Notice of Hearing. Prior to the remand from the DCCA, OZ had given proper public notice of the filing of the application and of the date of the hearing. After the remand, the latter step was repeated, alerting the public to the new/continued hearing date. Pursuant to 11 DCMR § 3113.13, OZ published notice of the hearing in the *D.C. Register* and sent such notice to the Applicant; the Office of Planning (“OP”); the D.C. Department of Transportation (“DDOT”); ANC (“Advisory Neighborhood Commission”) 2B, the ANC within which the subject property is located; Single Member District 2B05; the Council Member for Ward 2; and all owners of property within 200 feet of the subject property.

Request for Party Status. ANC 2B was automatically a party to this application. The Tabard Inn, located immediately adjacent to the subject property, was granted party status in opposition to the application. Prior to the remand from the DCCA, another neighboring use, Science Service, Inc., had participated as a party in opposition; but after the remand, it no longer participated in the case.

Applicant’s Case. The Applicant’s architects discussed the plans for the proposed hotel use and explained how, in their opinion, the plans met the special exception criteria, as well as the provisions of the Dupont Circle Overlay (“Overlay”). The architects also presented a sun/shade study to try to refute the loss of sunlight claims made by the Tabard Inn. The Applicant also presented the testimony of an expert traffic engineer/consultant who addressed the parking and traffic impacts of the proposed hotel use, as well as the narrow width of the entrance to the alley at the rear of the subject property.

Government Reports. The first OP report filed with the Board, dated October 18, 2005, recommended denial of the application as it was then-constituted. At that time, the application requested three variances, three special exceptions, and a waiver of the rear yard requirement. (Exhibit No. 35). The second OP report, dated January 13, 2006, recommended approval of the modified pre-remand plans, which needed only two special exceptions and one variance. (Exhibit 43).

OP’s third report, dated September 28, 2009, based on the post-remand plans, also recommended approval of the application. (Exhibit No. 84). The OP report noted that the applicable zoning is DC/SP-1, and addressed §§ 512 and 3104, but failed to discuss the provisions of the Overlay, other than to comment that the Overlay tries to maintain the area’s historic character and control

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the scale, height, and character of new construction by limiting its height and floor area ratio ("FAR") to that permitted in the underlying zone. During the hearing, the OP representative explained that its report did not address the Overlay because OP's position was that the Overlay applies only to Planned Unit Developments constructed within its boundaries.

Although recommending overall approval, OP expressed some reservations with regard to the application and its compliance with the Zoning Regulations. OP's report questioned whether the proposed gross floor area for non-guest rooms is within the 2.5 FAR permitted by § 531.4. OP also took issue with the Applicant's then-stance that it did not need to provide parking because its buildings contribute to the Dupont Circle Historic District. OP opined that because the proposed addition exceeds 50% of the floor area of the existing buildings, the hotel use needs to provide parking for the addition. The Applicant eventually agreed to this and initially proposed 98 underground parking spaces, using a mechanized lift system, when only 19 spaces are required. OP, in its report, pointed out that 98 spaces is high when 19 are required, and that it was unclear if the mechanical parking system would meet the dimensional and access requirements for parking spaces stipulated by the Zoning Regulations. Finally, the OP report also disagreed with the Applicant's original plan for a lay-by, or car drop-off area in front of the hotel, on N Street, but noted that this plan would be reviewed by the Public Space Committee.

DDOT's first report filed with the Board addressed the pre-remand plans and was dated February 28, 2006. (Exhibit 54). In that report, DDOT recommended approval of the application, "with only the 31 parking spaces [then] required," but stressed the unsafe nature of the rear alley. DDOT also filed a post-remand report with the Board, dated September 29, 2009. (Exhibit 86). This second DDOT report recommended disapproval of the application and specifically recommended that the Applicant reduce the amount of parking it would provide. Concerning the alley at the rear of the subject property, the post-remand report stated: "There is a lack of safety, for all users, at the point of access to the alley off 17<sup>th</sup> Street. ... The Applicant's proposed truck delivery trips will additionally burden the already heavily used alley." (Exhibit 86, at 2).

The D.C. Department of Fire and Emergency Medical Services ("FEMS") filed a memorandum with the Board dated November 4, 2009 expressing "reason for concern regarding the alley entrance on 17<sup>th</sup> Street, N.W." (Exhibit 104, at 1). The memo stated that although other D.C. alleys are narrow, most, unlike this one, have multiple points of entrance. The memo also stated that allowing additional traffic and service entrances in the rear of buildings can eliminate rear building access for fire apparatus, often restricting fire access to the front of the building.

ANC Report. ANC 2B's first report, dated October 11, 2005, opposed the application, citing concerns with the bulk, height, and density of the building as then proposed. (Exhibit 30). The ANC's second report, dated February 21, 2006, continued to oppose the application, again citing concerns with bulk, height, and design, as well as with objectionable traffic conditions and failure of the Applicant to meet the burden of proof with respect to the then-requested relief. The ANC filed a third report with the Board dated September 15, 2009, stating that it "objects to" the application and expressing a desire that the Applicant revise its design to bring it more into

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harmony with the height, bulk, and design of neighboring uses and structures. The ANC report also expressed concerns with lack of articulation of the rear of the proposed addition and with the number of parking spaces proposed, in light of the “bottle-necked alley.” (Exhibit 90).

Persons in Support or Opposition. Several individuals and local groups testified or sent post-remand letters to the Board in opposition to the application, including Ward 2 Councilmember Jack Evans (Exhibit 125), the Palladium Condominium Association (Exhibit 88), and the Middle East Institute, a close neighbor. (Exhibit 75). Five persons testified in opposition to the application, each representing one of the following organizations: The League of American Pen Women, the Residential Action Coalition, the Tenants’ Advocacy Coalition, the Law Offices of Janis, Schuelke, & Wechsler, and the urban planning website “Greater Greater Washington.” One individual, representing the owners of a building which fronts on Massachusetts Avenue and backs onto the alley behind the subject property, stated his organization’s neutrality to the application due to a lack of sufficient information to form an opinion.

**FINDINGS OF FACT<sup>2</sup>**

The Subject Property and the Surrounding Neighborhood

1. The subject property encompasses five buildings, located at addresses 1755, 1753, 1751, 1745 and 1743 N Street, N.W., (from west to east), all of which are in Square 158, and on lots 69, 835, and 836.
2. Square 158 is bounded by Massachusetts Avenue, N.W. to the north, 17<sup>th</sup> Street, N.W. to the east, N Street, N.W., to the south, and 18<sup>th</sup> Street, N.W., to the west.
3. The subject property is zoned DC/SP-1, meaning that all five buildings are within the Dupont Circle Overlay District (“Overlay”) and within the Special Purpose-1 District.
4. The subject property is located within the Central Employment Area and within 1,300 feet of the Dupont Circle Metrorail Station. *See*, 11 DCMR §§ 512.7 & 512.8.
5. The subject property is also within the Dupont Circle Historic District, and each of the five buildings has been certified to be a contributing building to the Historic District. The buildings were all built between 1899 and 1908 and are intact examples of the Romanesque Revival and Georgian Revival architectural styles.
6. The subject property comprises approximately 20,648 square feet and has approximately 150.5 feet of frontage along the north side of N Street, N.W.
7. The three westernmost buildings (1755, 1753, and 1751) are attached to each other and to

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<sup>2</sup>All street/avenue references in this order are to those portions of those streets/avenues in the Northwest quadrant of the District of Columbia.

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the building to their west. The easternmost of these three buildings (1751) has a large addition to its east, which appears as a separate building. To the east of that addition is an open area of approximately 10 feet in width – a gap between the old 1751 addition and the next building to the east. On the other side of this gap are the last two buildings included in the subject application, which are attached to each other and to the building to their east, which houses the Tabard Inn.

8. The three westernmost buildings are five stories high; the existing “addition” and the two easternmost buildings are four stories high.
9. All five buildings have been vacant for at least a decade.
10. The five buildings establish a sophisticated and urbane architectural presence on N Street through their overall appearance, punctuated with larger architectural elements such as arches, pediments, recessed windows and doors, and variegated roof treatments and slopes.
11. All five buildings also exhibit smaller, unique architectural details and embellishments, including ornate brick and masonry work, intricately carved stonework, and artistic and curvilinear grillwork.
12. The rear facades of the three westernmost buildings exhibit a smoothly undulating surface created by a series of projecting bays which extend the full heights of the buildings. The rear facades of the two easternmost buildings are “flatter,” but all five rear facades are ornamented with slightly arched stacked windows, topped with arched brickwork.
13. A public alley runs behind all five buildings, varying in width from approximately 43 feet, at its widest point behind the subject property, to barely 10 feet, at its intersection with 17<sup>th</sup> Street, N.W.
14. The rear alley does not reach 18<sup>th</sup> Street, N.W., but “dead ends” at the rear of the buildings fronting on 18<sup>th</sup> Street, leaving the narrow alley mouth at the intersection with 17<sup>th</sup> Street as the only means of vehicular ingress and egress.
15. Although not a “through” alley, the rear alley is heavily used by vehicles and is heavily parked. It is not striped with legal parking spaces, but has enough land area to accommodate approximately 150 parking spaces.
16. The character of the neighborhood surrounding the subject property is mixed, with a predominance of medium-density historic buildings converted to office, hotel, institutional, and multi-family residential uses.
17. There are no residential uses currently in existence on either the north or south side of N Street, N.W., between 17<sup>th</sup> and 18<sup>th</sup> Streets and only two residential buildings in Square 158, one of which is a mixed-use building with a residential component, located to the northwest of the subject property, fronting on 18<sup>th</sup> Street. *See*, 11 DCMR § 512.5.

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18. There are two other hotel uses already established on the same block as the subject property – the adjacent Tabard Inn and the Topaz Hotel, located on the other side of the Tabard Inn. A block or so away, at the corner of Rhode Island Avenue and 17<sup>th</sup> Street, is another hotel, the Beacon Hotel. *See*, 11 DCMR § 512.5.

The Applicant's Proposal

19. The Applicant proposes to renovate the five existing buildings and fill in the gap in the N Street façade with a glass curtain-wall addition, which will attach the three western buildings to the two eastern buildings. All the buildings will then be internally connected through openings in their respective party walls, creating one large building.
20. A five-story L-shaped rear addition will be added. The short leg of the L-shaped rear addition will be attached to the two easternmost buildings and will extend to the rear of the property, perpendicular to N Street. The longer leg of the “L” will be parallel to, but set away from, the rear facades of the three westernmost buildings, leaving an open area between these rear facades and the nearest wall of the long leg of the “L.”
21. The elevator core for the hotel will be placed at the point where the L-shaped rear addition is attached to the two easternmost buildings. The elevator core will extend the five stories of the L-shaped addition. It will be connected to the fifth floor of the three westernmost buildings by a glass-enclosed corridor which will be placed on top of the roofs of the four-story easternmost buildings, and will connect with the fifth floor of the western buildings.
22. The glass-enclosed corridor will be set back from N Street by between 25 and 45 feet, but will be at least partially visible from the street, appearing as a fifth/sixth floor.
23. Two small existing building portions at the rear of 1743 N Street will be demolished, and an existing two-story rear kitchen addition constructed between the rear bays of 1753 and 1755 N Street will also be removed. None of these old rear additions are considered as “contributing” to the historic district. Noncontributing elevator overrides and boiler flues will be removed as well. *See*, 11 DCMR § 1501.4(b).
24. The roof of the old 1751 addition will be removed, and a replacement roof will be constructed three feet higher, and rebuilt as a mansard roof to match its neighbors. This will allow more interior space and enable what was an attic to be used as a guestroom.
25. The Applicant plans to use the new, enlarged structure as a 98-room “boutique” hotel.
26. The Zoning Regulations require 19 parking spaces for the proposed addition. 11 DCMR § 2120. Originally, it was proposed that the hotel would provide 98 parking spaces, but this number was reduced to 58 by the time of the hearing, and was further reduced to 35 in the Applicant's post-hearing submissions.

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27. Originally, the parking spaces were to be provided in an underground garage using a mechanical lift system, but this was changed to a more traditional garage with three levels connected by an elevator. The elevator will bring down a vehicle to the parking level, which will have zoning-compliant drive aisles and parking spaces.
28. The underground parking and the 30-foot long loading berth, which will be within the proposed addition, will both be accessed from the rear alley. Only valet parking attendants will park vehicles.
29. In the open space between the rear facades of the existing buildings and the new L-shaped addition will be a 2,400 square-foot courtyard area to be used by the hotel for outdoor dining and other events. This courtyard area will be open to the sky, but, for the most part, will not be visible from either N Street<sup>3</sup> or from the rear alley, and will be accessible only to hotel patrons.
30. The highest point of the proposed hotel will be at approximately 57 feet, with a 15-foot-tall rooftop penthouse, housing mechanical equipment, for a total height of 72 feet. The SP-1 district allows a maximum building height of 65 feet, and a maximum penthouse height of 18 feet, six inches. 11 DCMR §§ 530.1 & 400.7(c).
31. The rooftop penthouse follows the L-shape and is set back between 50 and 100 feet from N Street, 15 feet from the alley, and 24 feet from the party wall shared with the Tabard Inn.
32. The proposed hotel would occupy approximately 87% of its lot, but will appear, to all intents and purposes, to occupy 100%, because the only “unoccupied” space is in the center of the lot, paved over, and surrounded by the building. 11 DCMR § 532.1.
33. The rear wall of the hotel building will be set on the rear property line, but because the rear yard in this SP District is measured “from the center line of the alley to the rear wall” of the proposed addition, the building will have a rear yard of a minimum of 13.15 feet, with an average measurement of 18 feet. 11 DCMR § 534.3(a). Because the width of the alley between its center line and edge is greater than the required rear yard, the entire rear “yard,” is actually within the alley, and none of it is situated on the subject property.
34. The FAR of the proposed hotel will be 3.88, when a maximum of 4.0 is permitted, but the FAR will appear to a person on N Street or in the rear alley to be approximately 5.0 because the interior courtyard is not visible from either the street or the alley. *See*, 11 DCMR § 531.1.
35. An SP-1 use is permitted up to 2.5 nonresidential FAR devoted to “other permitted uses,” including “function rooms, exhibit space and commercial adjuncts,” and the proposed hotel

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<sup>3</sup>A small glimpse of the courtyard in the distance will be possible through two glass walls to a person standing on N Street directly in front of the entrance to the hotel.

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will have .42 FAR of these nonresidential "other permitted uses." See, 11 DCMR §§ 531.1 and 531.4.

36. The floor area devoted to function rooms and exhibit space will be approximately four percent, less than the maximum of 15% of gross floor area permitted by § 512.6.
37. The hotel use is expected to generate 12-13 delivery truck visits per day, with 8-10 deliveries per day being made by smaller trucks and vans to the front of the property, one trash pick-up per day in the alley, and two deliveries per day in the alley via a larger, 30-foot-long, single-unit truck.
38. The Applicant proposes to establish a loading zone in front of the property on N Street.

The Special Exception

*Adverse Effects on Use of Neighboring Properties (Light, Air, and Privacy)*

39. Under the Applicant's proposal, the party wall shared with the Tabard Inn will be extended back to the rear lot line as the eastern wall of the short leg of the "L-shaped" rear addition. This eastern wall will be approximately 128 feet, five inches long and will be approximately 57 feet high for most of its length.
40. The plans for the proposed addition show that the rear-most 15 feet, three inches of the fifth floor have been removed, reducing the size of the addition by the size of one guest room and lowering its height by one floor for its rear-most 15 feet, three inches. The addition, therefore, appears to have had a notch taken out of it at the northeast corner, and at this corner, instead of a guest room, there will be an open-air terrace for the use of hotel guests.
41. This open-air terrace at the northeast corner of the fifth floor is approximately 14 feet further toward the rear lot line than the rear-most wall of the Tabard Inn.
42. This eastern wall of the proposed rear addition will extend approximately 30 feet further toward the rear of the properties than the rear wall of the Tabard Inn, and will therefore tower over the walled, open-air rear patio/garden of the Tabard Inn, which extends from the Tabard Inn's rear wall to the alley.
43. The Tabard Inn has been in continuous operation on its site for 85 years and relies on its rear patio/garden as a substantial amenity with which to draw business, with 30-35% of the Tabard Inn's restaurant revenue generated by use of the patio.
44. The Tabard Inn's rear patio/garden is used daily, seven months of the year, for breakfast, lunch, and dinner, weather permitting, and is booked for larger celebrations, such as weddings. Patio weddings, many of which take place at 4:00 p.m., result in 15% of the Tabard Inn's overall hotel revenue.

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45. The Tabard Inn's rear patio/garden is available for guest use throughout the day, even during hours when the restaurant is not open for serves.
46. In order to enhance the attractiveness of its rear patio/garden, the Tabard Inn installed a large, round, white, translucent canopy, which diffuses and brightens its natural illumination. The canopy, which looks like a large umbrella, is affixed to the rear one-story portion of the Tabard Inn's building and the top of the garden wall.
47. Situated in a rear, one-story portion of the Tabard Inn building, adjacent to the rear patio/garden, is the Tabard Inn's indoor dining room, which relies on large, curtain-free windows to let in direct sunlight and ambient light.
48. The Tabard Inn has gone to some expense to establish a series of green roofs which absorb a substantial amount of storm water, reducing run-off, act as a cooling agent for the building, and supply its kitchen with herbs. These roofs require light and air availability.
49. The Tabard has also made a down-payment on a 180-tube solar thermal system which will use solar technology to provide all the hot water needs of the inn.
50. The windows of several of the Tabard Inn's guestrooms will be within 18 inches of the tall eastern wall of the proposed addition and the wall will negatively impact both direct and ambient light to approximately 18 of the Tabard Inn's guestrooms – almost half of the total of 40 rooms.
51. The Tabard Inn relies on sunlight from the west, as much of the sunlight coming from its east is already blocked by the nonconforming 10-story Topaz Hotel.
52. There will be approximately 20 windows on the eastern wall of the proposed addition, most, or all, of which will look out onto the Tabard Inn's rear patio/garden, diminishing its privacy and the value attached to such privacy for events like weddings. Privacy behind the Tabard Inn buildings will be further diminished by the presence of the open-air terrace at the fifth floor northeast corner of the proposed addition.
53. The use that is located one address to the west of the subject property, The Middle East Institute, at 1761-1763 N Street, maintains a traditional Islamic Garden behind its buildings in which it hosts small concerts and other outdoor events as part of its scholarly programs.
54. Both the patio and gardens of the Tabard Inn and the Middle East Institute need sunlight for customer enjoyment and plant growth in order to fulfill their functions as amenities.
55. The proposed addition will negatively affect the availability of light and the circulation of air in its immediate vicinity, thereby impacting the Tabard Inn's green roofs and use of solar technology, its dining room, some of its guestrooms, and its rear patio/garden, as well as the rear garden of the Middle East Institute.

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*Incompatibility of Height, Bulk, and Design*

56. There are approximately 25 buildings fronting on the north side of this block of N Street. Other than the three westernmost buildings on the subject property, each of which is just five stories high, there is only one other building that is more than four stories high -- the 10-story Topaz Hotel -- which was built before the Overlay was established.
57. The proposed addition incorporates some of the features found on the rear facades of the existing buildings, such as stacked fenestration, and black metal, to echo the black metal fire escapes on the existing buildings; but the addition's overall design, look, and feel is of a large, modern, steel and glass building.
58. The proposed addition attempts to mimic the varied articulation of the rear facades of the existing buildings, but fails to convey the same sense of lightness and rhythm conveyed by those facades.
59. The proposed addition appears to have been placed incongruously in the alley and dwarfs many of the nearby buildings.
60. The mechanical penthouse on the roof of the proposed addition, one monolithic structure approximately 126 feet long, will stand approximately 14 feet higher than the roofs of the existing historic buildings on the subject property. Although not visible from N Street, the penthouse will be visible from the alley, and appears as a disharmonious element sitting on top of the addition.
61. The penthouse, and the proposed addition itself, are oriented in an east-west direction, whereas the historic pattern exemplified by all the other buildings fronting on the north side of N Street, and most of the buildings fronting on the south side of N Street, is a north-south orientation, situated on long, narrow lots, facing N Street.
62. The traditional building pattern in the Dupont Circle area, which still exists along most of this block of N Street, situates most/all of the building height and bulk at the front of the lot, closest to the street, with open spaces and/or one-story "doglegs" at the rear. The proposed addition does not follow this traditional pattern, but pushes its greatest height and bulk to the rear and eastern side of the subject property.

*Objectionable or Potentially Dangerous Traffic Conditions*

63. This block of N Street is a one-way street, allowing only east-bound traffic between Connecticut Avenue to the west, and 17th Street to the east. Seventeenth Street is one-way, southbound only, during morning rush-hour, from 7:00 to 9:30 a.m.
64. During the morning rush-hour, when 17th Street is one-way southbound, valet parking attendants would be prevented from turning north onto 17th Street and then turning left

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directly into the alley. Instead, they would have to take a circuitous route through local streets to park, and retrieve vehicles parked at, the hotel.<sup>4</sup>

65. Reliance on valet parking will result in more vehicular travel generated by the hotel use because once an arriving hotel patron drives to the site, his or her vehicle will be driven – by the valet – to the parking garage. Similarly, if a patron requires his or her vehicle, the valet must bring it to the front of the hotel, and then the patron must drive it from the hotel. Each time, in essence, one trip is divided into two, doubling the number of trips involving driving patrons.
66. The alley behind the subject property, although two-way, is, at most, 10 feet wide<sup>5</sup> for approximately its first 75 feet in length, measured from 17th Street, and the bollards and even the brick walls on either side of the alley entrance exhibit evidence of damage, attributable to vehicles, particularly trucks, attempting to negotiate the narrow entrance.
67. During an average weekday peak a.m. hour (8:00 – 9:00), approximately 60-65 vehicles enter the alley, and during the p.m. peak hour (5:00 – 6:00), approximately 55-60 vehicles exit the alley. It is anticipated that the proposed hotel will generate at least 42 inbound/outbound trips during the a.m. peak hour and at least 44 inbound/outbound trips during the p.m. peak hour, many, or most of which, will be traversing the alley.<sup>6</sup> (Exhibit No. 83, “Traffic” Tab, at 12, 13, and 18).
68. The major reason the alley “works” now is that it is highly directional, with most vehicles inbound during the morning peak hours and most vehicles outbound during the evening peak hours. A hotel use, with the guests checking out in the morning and checking in in the late afternoon, will cause the opposite traffic flow pattern, resulting in an increase in potentially dangerous vehicle conflicts.
69. The narrow width of the alley entrance, which can accommodate only one vehicle at a time, means that if a vehicle is leaving the alley when another vehicle attempts to enter it, one of

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<sup>4</sup>For example, between 7:00 and 9:30 a.m., to take a vehicle from in front of the hotel to its rear parking garage, a valet attendant would have to drive east on N Street, turn south onto 17<sup>th</sup> Street, turn west onto Rhode Island Avenue, turn north onto Connecticut Avenue, veer north onto 18<sup>th</sup> Street, turn east onto Massachusetts Avenue, turn south onto 17<sup>th</sup> Street, and then, finally turn right (west) into the narrow alley entrance.

<sup>5</sup>The sign at the alley entrance states that the alley is “narrow,” with a “10’6” clearance.” Due to the presence of a concrete bollard on the north side of the alley, snug against the building wall, and two thick metal poles, one on each side of the alley, and projecting slightly into it, the actual alley width is between 9’2” and 9’8,” depending on precisely where the measurements are taken.

<sup>6</sup>These are conservative estimates provided by the Applicant’s traffic expert. The Tabard Inn’s traffic expert doubled these numbers, stating that the impact on the alley and the surrounding road network would be twice as great because guests arriving by car would travel through the road network and then the valets would travel the same network, adding two trips for each guest, instead of one.

the vehicles is forced to back-up. This situation occurs because it is difficult to see vehicles exiting the alley until the entering vehicle is almost at the sidewalk.

70. Backing up into the alley is dangerous, and backing up onto 17th Street is more dangerous because it may involve backing over a sidewalk and into moving traffic.
71. Backing up may not be feasible in any event. Because for its first 75 feet the alley is only approximately 10 feet wide, if three queued vehicles are waiting in the alley to exit onto 17th Street, and a car would like to turn into the alley from 17th Street, the three queued vehicles would all have to back up the full 75-foot length to allow in the turning vehicle.
72. Seventeenth Street, at the alley opening, is heavily trafficked by pedestrians, and the potential for vehicle/pedestrian conflicts will increase with any significant increase in use of the alley. Pedestrian counts done during a.m. and p.m. peak travel hours – in February – show a minimum of 116, and a maximum of 346, pedestrians walking along 17th Street and crossing the mouth of the alley in a one-hour period. (Exhibit 83, “Traffic” Tab, at 14).
73. The plans for the proposed hotel show a bicycle parking area within the underground parking garage, which could mean that bicyclists would also be using this dangerous, narrow alley entrance.
74. A loading zone on N Street, in front of the property, could cause congestion on N Street, which is only 32 feet wide, and could lead to conflicts with pedestrians.
75. The Tabard Inn already receives approximately 42 deliveries per week from N Street and approximately another 42 in the alley, and most or all deliveries to the Topaz Hotel are made from N Street, as it does not have a loading dock in the alley.
76. There are currently 49 metered parking spaces on this block of N Street available for public use. On an average day, between 9:00 a.m. and 3:00 p.m., between 40 and 45 of these spaces are in use; between 3:00 and 5:00 p.m., all 49 are in use. (Exhibit 83, “Traffic” Tab, at 15).
77. The proposed loading zone on N Street would remove at least one on-street parking space.

## **CONCLUSIONS OF LAW**

Pursuant to § 3104 of the Zoning Regulations, the Board is authorized to grant special exceptions where, in its judgment, the relief will be in harmony with the general purpose and intent of the Zoning Maps and Zoning Regulations, including the specific purposes set forth in an applicable overlay zone, and will not tend to affect adversely the use of neighboring property. The purposes of the Dupont Circle Overlay are stated in § 1501.4. In this case, along with the general

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requirements of §§ 3104 and 1501.4, the Applicant also had to meet the requirements of § 512, the specific section permitting a hotel use in an SP district.

Relief granted through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations, and if the applicant meets the burden, "the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

There is considerable overlap among the various provisions of §§ 3104, 512, and 1501.4, and the provisions will be discussed in groupings pertaining to similar subject areas, as in the Findings of Fact.

#### *Adverse Effects on Use of Neighboring Properties – Light, Air and Privacy*

One of the two basic premises of any special exception – as spelled out in § 3104 – is a lack of adverse effect on the use of neighboring properties. Such "adverse effects" are not enumerated in § 3104, but one of the major purposes of the Zoning Regulations, indeed, of zoning in general, is to ensure that adequate light and air reach all properties. *See, e.g.*, 11 DCMR § 101.1(a). Protection of adequate light and air often goes hand-in-hand with protecting a reasonable amount of privacy, and all three of these important attributes of property ownership are reiterated in § 1501.4(e), which states, as one of the purposes of the Dupont Circle Overlay, the preservation of "areas planned as open gardens and backyards" and protection of "the light, air, and privacy that they provide."

The proposed N Street Follies hotel, with its large rear addition, would have an adverse effect on the light, air, and privacy of neighboring properties, particularly on the Tabard Inn. The sheer five-story wall of the proposed addition, situated on the property line shared with the Tabard Inn, would negatively alter the amount and quality of light reaching the Tabard Inn property. The application attempted to mitigate this negative effect through a 24-foot penthouse setback from that property line and through erosion of the northeast corner of the addition, but these actions are simply not enough to have any significant mitigating effects. The penthouse may be set back, but the wall is not. The eroded corner drops the height of the wall only one story for only about 15 feet and this is approximately 14 feet behind the rear wall of the Tabard Inn itself.

Because the Tabard Inn's eastern exposure is largely blocked by the nonconforming 10-story Topaz Hotel, it relies on its western exposure for most of its sunlight. As set forth in the Findings of Fact, this sunlight is crucial for the maintenance of the Tabard Inn's green roofs and planned solar thermal energy system, as well as for the use and enjoyment of its guest rooms, dining room, and outdoor patio/garden. The Tabard Inn's rear patio/garden is a valuable asset

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and brings substantial revenue to the Tabard Inn. The Middle East Institute, although situated to the west of the proposed addition, also has a rear garden whose sunlight may be negatively affected by the proposed addition. The Institute also relies on its garden as an amenity to enhance its scholarly endeavors. "Areas planned as open gardens and backyards" are specifically called out in § 1501.4(e) as worthy of preservation by the Dupont Circle Overlay, and these two gardens, used daily and relied on, fall precisely within the protective ambit of § 1501.4, as well as within the general protections on light and air set forth in § 3104.

The proposed addition would also negatively affect the privacy enjoyed by the neighboring uses, again, particularly harming the Tabard Inn. The Tabard Inn garners considerable revenue from hosting weddings and other special occasion celebrations on its patio. Such occasions, especially weddings, tend to be emotional affairs, where privacy is important. The private, enclosed atmosphere currently provided by the Tabard Inn's patio would be undermined by the presence of nearby hotel room windows overlooking it. The northeast corner terrace, although four stories up, would also afford an unimpeded view into the Tabard Inn's patio, further undermining its sense of intimacy and seclusion. Protection of the "privacy" afforded by rear gardens such as the Tabard Inn's is also one of the purposes of the Overlay set out in § 1501.4(e).

For all the reasons stated above, the Board concludes, despite the mitigation attempts of the Applicant, that the application fails to satisfy the requirements of § 3104 and is inconsistent with the Overlay purpose stated at § 1501.4(e).

*Incompatibility of Height, Bulk, and Design*

Sections 512.3, 1501.4(a) and 1501.4(d) all try to ensure, or state a need for, a general "compatibility" and "harmony" in the scale of new development with that of the existing development within the SP-1 District, and the Dupont Circle Overlay District, respectively. Section 512.3 sets forth the standard succinctly: "[t]he height, bulk, and design of the hotel or inn shall be in harmony with existing uses and structures on neighboring property."

Most of the properties located on the block of N Street on which the subject property is located retain their historic nature relatively intact. The historic buildings along both sides of N Street, even if connected internally, present as separate, individually-detailed, smaller-scale buildings. These buildings now contain non-residential uses, but they, and therefore this whole block of N Street, retain an exterior residential character, with a historical charm and appearance.

The proposed hotel would retain the five contributing buildings on the subject property and would restore their facades. Some demolition would occur and some minor changes would be made to these buildings, but overall, they would remain intact.

A jarring element of disharmony, however, is introduced by the five-story rear addition and the glass curtain-wall which would sit atop the fourth stories of the two easternmost buildings (1745 and 1743) and the old "addition" to 1751. The proposed addition, although technically

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“attached” to the existing buildings, appears as a large, separate, block-like building sitting behind, and parallel to, the existing buildings. The proposed addition does not present as a residential building, or even necessarily a hotel, but, from the outside, could be mistaken for an office building. It retains none of the small-scale historical residential vernacular of the existing buildings. It is simply too big, massive, and bulky to be compatible with the surrounding buildings.

The height of the proposed addition will be five stories, or 57 feet.<sup>7</sup> There are three other five story buildings on the north side of the block, none of which have a rooftop penthouse, and one ten story building, but all the other buildings on the block are four or fewer stories. On top of the proposed addition will be a 15-foot penthouse, effectively adding another story to its height. The full height of the addition and penthouse will rise straight up from the rear property line, and will stick out as a discordant element, towering over the alley.

Not only are the height and bulk of the proposed addition out of proportion with the surrounding buildings, the overall design, as well as the materials of the addition, have a much more modern aesthetic than that of the neighborhood. The Applicant’s architects explained that they tried to “relate to [the] contributing buildings *by contrast*” (Hearing Transcript of March 23, 2010 (“T”), p. 134, lines 9-10, (emphasis added)) and tried to adopt some of the design elements present in the existing buildings, but in an “abstract way.” The architect stated:

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 [or mimicking] 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.

(T. at 144-145, lines 18-22 and 1-3). The “abstraction,” perhaps, was carried a bit too far. The existing buildings are small, graceful, masonry buildings with many curvilinear features, such as prominent archways. The addition is an angular, brick, glass, and black metal box, which might work well in a different setting, but is out of place among the early-20<sup>th</sup>-century residential ambience created by the existing buildings.

The Board finds that a substantial re-design would be necessary here and further finds that the design presented to the Board is not harmonious or compatible with the neighboring properties or

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<sup>7</sup>The SP-1 District permits a maximum building height of 65 feet, and a penthouse of 18 feet, six inches would also be allowed. 11 DCMR §§ 530.1 and 400.7(c). However, a use that is subject to special exception review may not be able to fully utilize the zoning envelope if doing so would be disharmonious with the zone plan or adversely impact neighboring properties, as was the case here. Because the impact of a particular design can be relevant to a special exception, the Board’s rules provide that approval of an application “include[s] approval of the plans submitted with such application for the construction of a building or structure (or addition thereto) or the renovation or alteration of an existing building or structure.” 11 DCMR § 3125.7.

the historic nature of the area in general. Therefore, the Board concludes that the application fails to meet the requirements of §§ 3104 and 512.3, and is inconsistent with §1501.4(a) and, by extension, § 1501.4(d) as well.

*Objectionable or Potentially Dangerous Traffic Conditions*

Both § 512 and § 1504 contain provisions dealing with traffic, and vehicular access and circulation. Section 512.10 states that “the location and design of driveways, access roads, and other circulation elements ... shall be to avoid dangerous or other objectionable traffic conditions.” And, § 1504.1(g) supports this by stating as one of the purposes of the Overlay to “[e]ncourage ... the free circulation of vehicles through public streets and alleys.”

In keeping with the historic nature of N Street, the proposed hotel will not have a driveway, curb cut, or lay-by on N Street. This, however, means that all parking and any large deliveries must reach the hotel in the rear, through the alley. Such use of a rear alley is often preferable to use of street frontage, however, in this particular case, the alley is so narrow, for such a length, as to make its use objectionable and likely dangerous.

The alley behind the subject property reaches an expanse of 43 feet in width, allowing for free circulation and movement of vehicles at its widest point. To reach this expanse, however, each and every vehicle entering and exiting the alley must pass, one at a time, through its 75-foot long narrow, tunnel-like entryway. For approximately its first 75 feet, beginning at the sidewalk paralleling 17<sup>th</sup> Street, the alley is approximately 10 feet wide and can only operate in a one-way manner. Ten feet of width does not provide much margin for error, and this 10 feet is actually somewhat less due to bollards and metal poles set up in the alley to protect the brick walls adjacent on either side.

The alley has existed with its present narrow opening since the late 1800s, but it used to have a connecting alley which opened onto Massachusetts Avenue, providing a second means of ingress and egress. This second alley was closed and built over at some point in the past, leaving the narrow entrance from 17<sup>th</sup> Street as the only way in or out. Probably the major reason the alley in question functions at all is because the traffic is heavily “directional,” with almost all inbound trips occurring during the morning peak period, and almost all outbound trips occurring during the evening peak period. This functioning “directionality” would be upset by the proposed hotel use, with many outbound trips being made during the morning peak, the traditional time that guests would be checking out, and many inbound trips being made during the late afternoon/evening peak, the traditional time that guests would be checking in.

Even if the directionality were not completely upset by the new vehicle trips generated by the proposed hotel use, the sheer number of trips added to the narrow alley neck would make for objectionable congestion. The hotel proposes 35 parking spaces, and there is no way to predict how many times a day or week each of the vehicles in each of these 35 spaces would be entering or leaving the alley. There is no safe way to enter the alley when a vehicle is exiting it, and as it

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is difficult to see exiting vehicles until they are almost at the end of the alley and at the sidewalk, drivers attempting to enter the alley are left to back up onto 17<sup>th</sup> Street – an unsafe move at any time. This unsafe backing-up maneuver occurs now, with the current alley usage, and would probably be resorted to more often with greater alley usage, creating an even more unsafe situation. Even with only valet parking attendants driving these vehicles, the alley would be busier, and its safety further compromised.

Negotiating the rear alley presents dangers and difficulties which make it an unacceptable means of access for the hotel use, but the N Street frontage is not a viable alternative. There are 49 metered parking spaces available on N Street, and on an average day, between 9:00 a.m. and 3:00 p.m., 40-45 spaces are in use, while between 3:00 and 5:00 p.m., all 49 are in use. (Finding of Fact 76). If the Applicant establishes its proposed loading zone on N Street, even at one vehicle length, one on-street parking space is lost. And, because there is no way to predict how many vehicles will be stopping at the hotel at any one time, the loading zone may not be able to accommodate the vehicles, resulting in double-parking and/or queuing in the traffic lane of N Street. Not only does this reduce N Street to a one-lane thoroughfare, but it also forces potentially unsafe maneuvers by drivers trying to avoid double-parked or queued vehicles.

The Board finds that the parking and traffic needs of the proposed hotel use would seriously negatively impact the surrounding road network, particularly, of course, this block of N Street, and the rear alley, but also 17<sup>th</sup> Street in the vicinity of the alley entrance, and other local roads which would sustain both increased parking due to the proposed hotel and increased traffic as well, due to the need for all-valet parking, with its resulting doubling of trips. As to the alley, the Board agrees with the Tabard Inn's traffic expert that "[t]he fact that the alley exists and functions today does not make it acceptable nor capable of accepting additional loadings." (Exhibit 85, Attachment C, at 4-5). Accordingly, the Board concludes that the application fails to satisfy the requirements of § 512.10 and is inconsistent with the Overlay purposes stated in § 1501.4(g).

**Great Weight**

The Board is required to give "great weight" to issues and concerns raised by the affected ANC and to the recommendations made by OP. D.C. Official Code §§ 1-309.10(d) and 6-623.04 (2001). Great weight means acknowledgement of the issues and concerns of these two entities and an explanation of why the Board did or did not find their views persuasive.

OP supported the granting of the special exception, but the Board disagrees with its position. OP's originally-noted areas of concern were ultimately rectified, but the Board does not agree with OP that the application met all the provisions of § 512, specifically §§ 512.3 and 512.10. Moreover, OP chose not to address consistency with the purposes of the Dupont Circle Overlay, which, if it had been addressed, may have created new areas of concern for OP. The OP representative testified that the purpose statements set out in § 1501.4 apply only to the regulations that follow, and therefore, by necessary implication, only to Planned Unit

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Developments and certain curb cuts within the Overlay District. Having decided that § 1501.4 did not apply to this application, OP did not address it in its report.

The Board disagrees with OP's interpretation concerning the relevance of purposes provisions to special exception applications. The Board reads the general § 3104 standards as encompassing not only the general purposes of the Zoning Regulations, but also the specific purposes of the Overlay in which the property is located. And, the Board has consistently interpreted the Dupont Circle Overlay's purposes provisions as applicable to non-PUD development within the Overlay's geographic boundaries. *See, e.g.,* Order No. 17614 of 1825 19<sup>th</sup> Street, LLC (2007) (54 DCR 11297 (11/23/07)), Order No. 16827 of The Stuart Building LLC (2002) (49 DCR 6941 (7/19/02)), and Order No. 16412 of Florida Avenue Partnership (1999) (47 DCR 2304 (3/31/2000)).

ANC 2B, in its report of September 15, 2009, stated that it "objects" to the application. While appreciative of the re-design which retained the historical N Street façade, and reduced the massing and necessary relief, the 2009 report cited several concerns with the project. Specifically, the ANC enunciated concerns with the design of the rear facade of the proposed addition and with the large number of parking spaces to be provided. The ANC also requested that the Board instruct the Applicant to revise its plans to ensure the hotel's height, bulk, and design are in harmony with neighboring structures and uses, thereby implying that the current plans showed a building not in harmony with its surroundings. The Board agrees with the ANC that these three areas were problematic for the project and further agrees with the ANC's overall "objection" to the application.

For all the reasons stated above, the Board concludes that that application fails to satisfy the burden of proof for a special exception to allow a hotel, including construction of an addition to existing buildings, in the DC/SP-1 zone, pursuant to §§ 3104, 512, and 1501.4. Accordingly, it is **ORDERED** that the application is **DENIED**.

**VOTE:**           **4-0-1**           (Meridith H. Moldenhauer, Shane L. Dettman, Nicole C. Sorg and Michael G. Turnbull to Deny. No other Board member (vacant) participating)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**  
A majority of the Board members approved the issuance of this order.

ATTESTED BY:   
JAMISON L. WEINBAUM  
Director, Office of Zoning

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**FINAL DATE OF ORDER: SEP 28 2010**

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.