

**RICHARD B. NETTLER**  
202-736-2720/2721

October 13, 2005

**BY HAND**

Geoffrey Griffis, Chairman  
District of Columbia Board of Zoning Adjustment  
441 Fourth Street, Second Floor  
Washington, DC 20001

**BOARD OF ZONING ADJUSTMENT**  
**District of Columbia**

**CASE NO.** 17337  
**EXHIBIT NO.** 32

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17337

Re: BZA Case No. 17337, Opposition to Continuance or Postponement  
Our File No.: 091556.0001

Dear Chairman Griffis:

On behalf of our client, Tabard Corporation, operator of the Hotel Tabard Inn (hereinafter "Tabard"), who has previously filed a Request for Party Status in the above-referenced matter, we hereby express our opposition to any requested postponement or continuance of this case before the BZA.

It has recently come to our attention that counsel for the Applicant in Case No. 17337 intends to request a "deferral" of the hearing before the BZA presently scheduled for November 1, 2005, in order to "address the concerns raised by OP, the ANC and the Dupont Conservancy." Tabard strenuously objects to any such deferral, continuance, or postponement in this matter.

In the first place, it is apparent that both the filing of the application, and the request for deferral, after it has become clear that there is no support for the application, is simply to defer action by the District of Columbia government, initiated over a year ago, to change the tax status of the rundown and neglected property. In April 2005, the applicant asked the Office of Tax & Revenue for an exception from the Class 3 certification given the property as a consequence of the neglect of the property, and also following condemnation proceedings initiated against the applicant. The filing of the instant application, which had previously been denied and which garners no support, appears to serve no other purpose than to delay actions of other District agencies.

As also noted in our Request for Party Status, the proposed development is virtually identical in terms of bulk, height, massing, and scale to the Planned Unit Development proposed by the Applicant in Zoning Commission Case No. 90-12C. That application was denied by the Zoning Commission in August of 1990, with the Commission specifically noting that the height (which is the same as that proposed in the instant application) and FAR were excessive—

Board of Zoning Adjustment  
District of Columbia  
CASE NO. 17337  
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concerns that have today been expressed by the ANC and the Dupont Conservancy with regard to the instant application. The Applicant has had ample time to address these issues—any deferral of consideration by the BZA would not be in the best interest of the surrounding neighborhood.

Tabard and its neighbors have endured over fifteen years of vacant structures on the Subject Property which have been left in disrepair and have blighted an historically significant block within the protected Dupont Circle Historic District. The Applicant has not, in this time period, returned to the drawing board to present a more acceptable plan to the community and the agencies which must approve any development on the Subject Property, nor can he be expected at this point to radically change the proposal to ease the concerns of the ANC or the Dupont Conservancy—both of which have voted to oppose the application as presented.<sup>1</sup>

We note our continued opposition to the application as proposed and hereby request that the Board deny any motion for continuance. We look forward to a full hearing on this proposed development at the hearing on November 1, 2005.

Sincerely,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.

A handwritten signature in black ink, appearing to read "Richard B. Nettler", is written over the typed name.

Richard B. Nettler

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<sup>1</sup> See *Dupont Current*, "N Street hotel plan attracts scrutiny from ANC," May 18, 2005; *Dupont Current*, "ANC votes to object to N Street addition," September 22, 2005; and *Washington Business Journal*, "Plan for Dupont Circle hotel rejected by groups," September 29, 2005, attached.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was mailed, first-class, postage prepaid, on this 13th day of October, 2005, to the following:

Ellen McCarthy, Director  
Office of Planning  
801 North Capitol Street, N.E., Fourth Floor  
Washington, DC 20001

Alan Bergstein  
Chief, Land Use/Public Works Division  
Office of the Attorney General for the District of Columbia  
441 4th Street, N.W., 6th Floor South, Suite 680  
Washington, DC 20001

Darren Bowie, Chairman  
Advisory Neighborhood Commission 2B  
9 Dupont Circle, N.W.  
Washington, D.C. 20036

Norman Glasgow  
Thomas J. Carroll  
Holland & Knight LLP  
2099 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006

A handwritten signature in black ink, appearing to read "Richard B. Nettler", written over a horizontal line.

Richard B. Nettler

Wednesday, May 18, 2005

Dupont Circle's Weekly Community Newspaper

# THE DUPONT CURR

## N Street hotel plan attracts scrutiny from Dupont ANC

By LAILA AL-ARIAN  
Current Staff Writer

As part of a quest to make his proposed "five-star boutique hotel" on N Street a reality, local real estate magnate Morton Bender last week asked the Dupont Circle advisory neighborhood commission to support his latest request for special exceptions and variances.

Bender is seeking to add two floors to the properties at 1745-1755 N St. to compensate for space that would be lost if he complies with a Historic Preservation Office request that he retain the interior walls of the vacant properties.

The addition would bring the total number of floors to six.

In order to receive the allowances needed to add two floors, Bender would have to prove some sort of hardship to the Board of Zoning Adjustment.

The neighborhood commission declined to take action, unanimously voting instead to send a letter to the Historic Preservation Office, requesting a document corroborating Bender's claim.

"If there's some flexibility in what he can do, he may not need all the relief he's seeking," commission chair Darren Bowie said in an interview yesterday.

Michael Beidler, president of the Dupont Circle Conservancy, which makes recommendations to the Historic Preservation Review Board, said Bender has made similar arguments to the commission in the past.

"He has indicated that the [preservation office] requested several things, but he has never provided anything that clearly substantiates that they've asked him to do

anything," Beidler said yesterday.

"There are questions as to what the facts are," he added.

Commissioner Mark Bjorge, whose single-member district includes the proposed project, told *The Current* in December that he doubted Bender would be granted added density in return for preserving the historic structure of the buildings.

"I don't believe that's ever been allowed before by the BZA. I don't believe they've ever said: 'Historic preservation is a hardship to the owner.' Usually you know what you're getting when you get it," Bjorge said at the time.

Late last year, Bender outlined his plans for the vacant, deteriorating properties, which will include a "new free-standing structure" directly behind the existing building, with the two being bridged together by a glass ceiling that would create an outdoor courtyard.

According to Beidler, the proposed building would occupy nearly 100 percent of the lot it sits on.

Critics say the N Street properties have been neglected and crumbling since Bender purchased them in 1988.

Previous proposals by Bender, including one for a hotel and one for a mixed-use plan consisting of commercial, office and luxury condominium units, were rejected by city decision-making bodies.

On top of historic issues, proposed projects face an extra layer of review because the buildings sit in the Dupont Circle Overlay District, which places limitations on building density.

While the properties are not individually landmarks, they do con-

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## HOTEL

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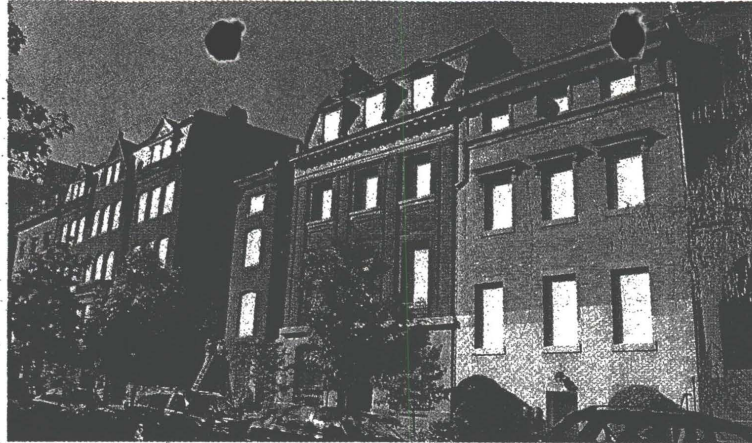
tribute in character and significance to the area's historic district, according to state historic preservation officer Lisa Burcham.

"I think because time has lapsed and there are issues whether damage to the buildings [occurred], the ANC and the District have a heightened concern about the condition of

these buildings, and we certainly would like to see them preserved as quickly as possible," Bowie said yesterday.

Bender yesterday declined comment on his request to the commission or the proposed project general.

The D.C. Board of Zoning Adjustment is expected to hold public hearing on Bender's application in September, his attorney said at the meeting.



JOANNE S. LAWTON

**NEIGHBORHOOD HOTEL:** Banker Morton Bender owns several row houses on N Street NW in Dupont Circle, and he wants to convert the property into a new hotel with a 126-space parking garage.

#### HOSPITALITY

## Plan for Dupont Circle hotel rejected by groups

By Erin Killian  
Staff Reporter

Morton Bender still wants to build a hotel on N Street NW in Dupont Circle — 17 years after the real estate developer and owner of Rockville's Colombo Bank bought three townhouses for just that purpose.

His most recent plan for redeveloping 1745-1755 N St. NW calls for a hotel with a 126-space parking garage behind the building.

A local neighborhood group and the Dupont Conservancy rejected the plan, which he filed in March, last week.

"We declined to give him our blessing due to the massing and concerns about traffic and the alley," says ANC Commissioner Mark Bjorge. "I don't even know if a Hum-vee could fit in the alley. We would be surprised if the [board of zoning adjustment] approved it."

Others agree.

"It looks more like a Holiday Inn to me," says Jeremiah Cohen, owner of the Tabard Inn, who opposes Bender's plan. "All I know is that it's not much better than what he presented in 1991."

Now Bender will take his case to the D.C. Board of Zoning Adjustment Nov. 1.

Bender would not reveal his intentions for the buildings or the progress he's made

with the city.

"We're still in the midst of discussing of it," Bender says. "When I get done, I'll know. I'm just not sure right now."

Dupont Circle residents want the townhouses to be developed so the properties can contribute to city tax rolls.

"The city isn't going to want to let them continue to degenerate," Bjorge says. "The neighborhood wants something. We really hope he brings back a proposal that we can embrace."

Bender bought the townhouses in 1988. He evicted the last tenant in 1775 N St. in 1998 after years of dispute in D.C. Landlord and Tenant Court. In 1991, he sought to build a 75-foot-tall residential and commercial building on the site. The city rejected the plan. Last year, Bender faced the D.C. Board of Condemnation because the buildings were falling into disrepair. The board granted him an extension on bringing them up to code and will review the case again Oct. 26.

But Bender owes \$722,000 in city taxes on the three properties as of Sept. 15, according to D.C. tax records. He has applied for a vacant property exception for 1755 N Street NW, but the D.C. Attorney General has said Bender does not qualify for an exception. Bender is appealing the decision.

■ E-MAIL: EKILLIAN@BIZJOURNALS.COM; PHONE: 703/816-0331

# CURRENT

## ANC votes to object to N Street addition

by JULIE WESTALL  
Current Staff Writer

Dupont Circle advisory neighborhood commissioners gave their stamp of disapproval last week on an estate magnate Morton Bender's latest plan to convert five row houses in the 1700 block of N Street into a boutique hotel with a 10-foot-higher roof and multiple other zoning exceptions. Neighbors and commissioners are eager to see the property filled, but not at the price of their neighborhood's character or a high-

er roofline. The commission opposed Bender's applications pending before the Board of Zoning Adjustment and Historic Preservation Review Board.

The newest plans for the vacant properties Bender has owned for 17 years have been circulating through various city boards since Bender announced intentions for a hotel in the fall of 2003.

"He seems to have very strong views about what he wants to do with this property, and he has not demonstrated a real willingness with

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## HOTEL

From Page 1

the community to come up with a viable project," said the advisory neighborhood commission chair, Darren Bowie.

The project, which was to be reviewed by the Historic Preservation Review Board this week, has been postponed until October. Bender told commissioners that his proposed addition is necessary to make up for square footage he is losing because the city's historic preservation review staff asked him to retain the interior walls of the historic row houses.

But historic preservation officer Steve Calcott and Dupont Conservancy president Michael Beidler said the request was merely a recommendation, not a requirement, so that the project could avoid further reviews.

"It's a baseless claim. The guidance that the historic preservation office has given to this applicant is the same as we give to everyone else," Calcott said. "He makes it

sound like we're asking for non-structural interior partition walls to be saved. What we're trying to do is guide him to a project that will not require him to go to the [administrative law judge]."

Bender is standing by his statements.

"They can tell me it isn't true. I know what they said," he said in an interview.

Historic preservation law gives the city purview only over walls essential to a building's structure. In a letter to Dupont commissioners, Calcott said it is unorthodox for city officials to consider preservation of structural walls a "hardship," which Bender needs to qualify for zoning exceptions such as a higher roof.

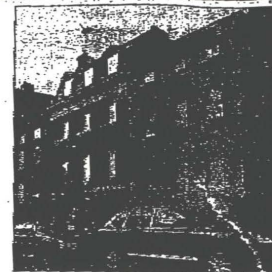
Tabard Inn owner Jeremiah Cohen, whose hotel and restaurant abuts Bender's property on the east side, has long questioned the seriousness of the developer's plans. Several similar proposals rife with requests for zoning exceptions have been rejected by the city.

"Is this a real plan, or is this an excuse not to pay vacant property tax?" he asked Bender at the meeting.

Last February, Bender appealed the Office of Tax and Revenue's decision to tax the properties at a higher tax rate reserved for vacant and unimproved buildings. As long as a Board of Zoning Adjustment application is pending, the vacant building tax rate does not apply.

However, the District attorney general's office wrote a brief for the appeals board saying that there was "no dispute that the property is vacant" and questioned Bender's motives for filing a zoning application.

"Considering the multiple and



Bill Petros/The Current

**A zoning application for a hotel on N Street has drawn questions.**

extensive exceptions from the zoning requirements that the taxpayer seeks. [Office of Tax and Revenue] continues to seek information and to undertake intergovernmental discussion in order to determine whether the recent filing was made in good faith," the brief states.

It goes on to say that "while [Bender] may be dissatisfied with the range of what the zoning laws allow him to do with his property, nothing in those regulations precludes him, as a matter of right, from undertaking action that can remove the entire residential property from its status as 'vacant' for purposes of tax classification."

Dupont commissioners view the empty houses as a public-safety hazard. Commissioner Mark Bjorge described the block as "dark, unengaged and sort of derelict."

Bender is also trying to develop a swath of property on Chain Bridge Road. The Palisades advisory neighborhood commission last spring opposed his Board of Zoning Adjustment application to build 13 single-family homes there on multiple grounds.

*Dupont Current  
9/22/05*