District of Columbia Court of Appeals
500 Indiana Avenue, N.W.
Washington, D.C. 20001

GARLAND F. PINKSTON
CLERK OF COURT

Telephone: 879-2700
Area Code 202

May 8, 2007

07-AA- 362 N Street Follies Limited Partnership vs. D.C. Board of Zoning Adjustment

District of Columbia Zoning Adjustment
Jerrily Kress, Director
441 4th Street, N.W.
Suite 210S
Washington, D.C. 20001

Dear Sir/Madam:

Pursuant to the rules of this Court I am transmitting, herewith, a copy of the petition for review filed May 4, 2007, in the above-entitled case.

Yours very truly,

Garland F. Pinkston
Clerk of Court

By: _____
Information Center Supervisor

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D.C. OFFICE OF ZONING
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cc: Todd Kim, Esq./Edward Schwab, Esq.

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 17337
EXHIBIT NO. 61

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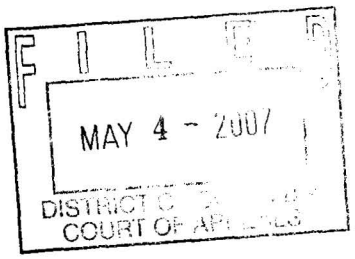
DISTRICT OF COLUMBIA COURT OF APPEALS
PETITION FOR REVIEW



APPEAL NO. 07-AA-362

N STREET FOLLIES LIMITED PARTNERSHIP
Petitioner

v.

DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT
Respondent

BZA Application No. 17337

PETITION FOR REVIEW

The undersigned, Jordan & Keys, LLP, counsel for N Street Follies Limited Partnership, seeks review by the District of Columbia Court of Appeals of the Decision and Order of the District of Columbia Board of Zoning Adjustment in Application No. 17337 entered on the 2nd day of April, 2007, out of the presence of the parties and served by first class mail, a copy of which is attached hereto as Exhibit A.

The names, addresses and telephone numbers of all other parties and their counsel who appeared in the agency proceeding are listed below:

Jeremiah Cohen, Vice President
Tabard Corporation
Hotel Tabard Inn
1739 N Street, N.W.
Washington, D.C. 20036
(202) 686-7391

William A. Green
Director of Operations
Science Service, Inc.
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Washington, D.C. 20036
(202) 785-2255

Advisory Neighborhood Commission 2B
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Washington, D.C. 20036
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Attachment: Exhibit A

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

Application No. 17337 of N Street Follies, pursuant to 11 DCMR §§ 3104.1 and 3103.2 for special exceptions to allow a hotel under section 512, for a partial waiver of the rear yard requirements under subsection 534.6, and to allow multiple roof structures and roof structures not meeting the normal setback requirements of subsection 530.4 under section 411, and for variances from the height requirements under section 530, the floor area requirements under section 531, and the court requirements under section 536, to allow the construction of an addition to an existing building to be used as a hotel in the DC/ SP-1 Zone District.

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

DECISION DATE: June 27, 2006

DECISION AND ORDER

This application was submitted on March 31, 2005 by N Street Follies, Ltd. ("Applicant"), the owner of the property that is the subject of the application. The Applicant sought special exception and variance relief from the Board of Zoning Adjustment ("Board" or "BZA") to construct and establish a hotel at 1743-1755 N Street, N.W., Square 158, lots 69, 835 and 836. For the reasons stated below, the Board dismisses the application as moot.

PRELIMINARY MATTERS:

Notice of Application Public Hearing Pursuant to 11 DCMR 3113.3, the Office of Zoning (OZ), by memoranda dated August 2, 2005, notified Advisory Neighborhood Commission (ANC) 2B of the application, and on August 6, 2005, so notified the Councilmember for Ward 2, Single Member District /ANC 2B05, the District of Columbia Office of Planning (OP), and the District Department of Transportation (DDOT). On August 2, 2005, OZ mailed notices of the public hearing to the ANC, the Applicant and all of the owners of property within 200 feet of the subject property, advising them of the date of hearing.

Request for Party Status The Tabard Corporation, which operates Tabard Inn, located at 1739 N Street, N.W. was granted party status. William A. Green, Director of

Operations for Science Service Inc, located at 1719 N Street, N.W., was also granted party status to represent his company and other companies in the area including John Hopkins University, Penn Arts Ladies, United Auto Workers, and Middle East Institute.

Government Reports

Office of Planning Report In its report dated October 18, 2005, OP recommended denial of the application. After the Applicant revised its plan to reduce the amount of relief requested, OP filed a supplemental report dated January 13, 2006, in which it recommended approval of the requested special exception to allow a hotel in the SP-1 zone and a variance from the court width. OP recommended postponement of consideration of the roof structure special exception.

District Department of Transportation In a memorandum dated February 28, 2006, DDOT recommended that the application be approved with 31 parking spaces for a 96-room hotel, rather than the 96 parking spaces requested by the Applicant.

ANC Report In a letter dated October 11, 2005, ANC 2B indicated that at a regularly noticed meeting held on September 14, 2005, with a quorum present, ANC 2B Commissioners voted 9-0 to oppose the application for a special exception and variance relief.

FINDINGS OF FACT

1. On March 31, 2005, N Street Follies Ltd., ("Applicant" or "Owner") filed an application for special exception and variance relief in order to construct and operate a hotel at 1743-1755 N Street N.W., Square 158, lots 69, 835 and 836 ("the subject property").

2. The subject property is zoned DC\SP-1[1] and is located in the Dupont Circle Historic District.

3. Because the property is located in a historic district, no building permit can be issued unless the Historic Preservation Review Board ("HPRB") recommends approval or the Mayor finds, after a hearing, that that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. D.C. Official Code §§ 6-1104 and 6-1105 (2001).

[1] DC/SP-1 means that the property is mapped within the Dupont Circle Overlay District with an underlying zoning of Special Purpose-1.

4. The regulations of the Historic Preservation Review Board allow property owners to request conceptual design review prior to the filing of an application for a building permit in order "to benefit from the guidance of the Review Board." 10A DCMR § 301.2.

5. Prior to the filing of this application, the Owner met with the staff of the Historic Preservation Office ("HPO"), which provides administrative and technical support to the HPRB. On at least two separate occasions (March 16, and October 1, 2004), HPO staff informed the Owner that conceptual design approval would not be recommended because the project was too large in height and density, and inconsistent with the character of the historic district.

6. Nevertheless, the Owner proceeded with conceptual review before the HPRB, while at the same time seeking zoning relief before this body.

7. On October 17, 2005, the Applicant filed a request for postponement of its upcoming BZA hearing in order to address the concerns expressed by the Office of a Planning, the Historic Preservation Office staff, the ANC, and the community.

8. On the November 1, 2005 hearing date, the Board postponed the hearing to January 24, 2006.

9. At the January 24, 2006 hearing, the Applicant presented its case based upon somewhat revised plans. Following the testimony of the Office of Planning, the hearing was continued to February 28, 2006.

10. Prior to that continuation date, the Historic Preservation Review Board ruled that it could not approve the project on a conceptual basis because of the extensive demolition of the historical site and the failure to maintain more of the existing structures.

11. Rather than proceed before the BZA with rejected plans, the Applicant requested a continuance of the February 28th hearing so that it could consult with HPO staff on possible revisions and go back before the HPRB. The hearing was rescheduled for June 27, 2006.

12. The Applicant did not submit revised plans to the HPRB by the June 27th continuation date.

13. Prior to the resumption to the hearing, the opposing parties made an oral motion to dismiss the application, arguing that it was futile for the Board to consider a

zoning request based upon plans that the HPRB considered unacceptable. The Board agreed and granted the motion to dismiss.

CONCLUSIONS OF LAW

The Applicant is requesting that this Board grant the special exceptions and variances needed to construct and operate a hotel in a DC\SP-1 zone district. Subsection 3125.7 of the Board's Rules of Practice and Procedure provides that approval of an application shall include approval of the plans submitted with the application unless the Board provides otherwise. In addition, applicants are "required to carry out the construction, renovation, or alteration only in accordance with the plans approved by the Board, unless the Board orders otherwise." 11 DCMR § 3125.8. Thus, if this Board were to grant the relief requested, any application for a building permit to construct this project must be accompanied by the revised plans filed in this case, which are the same plans rejected by the HPRB on a conceptual basis. The project cannot be built in accordance with these plans without HPRB's approval. Although there is nothing to prevent the HPRB, once it formally receives these plans, from recommending that the Mayor issue a building permit, the record and common sense suggests this is unlikely to happen. Moreover, if this were to occur, then nothing in this decision would preclude the Applicant from seeking relief from the Board at that time.

It has been held that "a case is moot when the legal issues presented are no longer 'live' or when the parties lack a legally cognizable interest in the outcome. *See Murphy v. Hunt,* 455 U.S. 478, 481, 71 L. Ed. 2d 353, 102 S. Ct. 1181 (1982) (citations omitted)"; *Cropp. v. Williams*, 841 A.2d 328 (D.C. 2004). The legal issue in this case is whether zoning relief should be granted based upon the plans submitted. Since those plans are moribund, if not deceased, there is no "live" legal issue left to be decided.

Based upon the record before the Board and for the reasons stated above, the Board concludes that the Applicant's application for a special exception and variance relief is moot. Accordingly, it is therefore **ORDERED** that the application be **DISMISSED.**

VOTE: **4-1-0** (Geoffrey H. Griffis, Ruthanne G. Miller, John A. Mann II, and Carol Mitten to grant the motion to dismiss; Curtis L. Etherly, Jr., voting to deny the motion to dismiss)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
Each concurring Board Member approved the issuance of this order.

ATTESTED BY: _____
JERRILY R. KRESS, FAIA
Director, Office of Zoning

FINAL DATE OF ORDER: APR 02 2007

UNDER 11 DCMR 3125.9, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE FOR THE BOARD OF ZONING ADJUSTMENT."

SG

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Board of Zoning Adjustment

BZA APPLICATION NO. 17337

As Director of the Office of Zoning, I hereby certify and attest that on **APRIL 2, 2007**, a copy of the order entered on that date in this matter was mailed first class, postage prepaid or delivered via inter-agency mail, to each party and public agency who appeared and participated in the public hearing concerning the matter, and who is listed below:

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Jeremiah Cohen
Vice President
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William A. Green
Director of Operations
Science Service, Inc.
1719 N Street, N.W.
Washington, D.C. 20036

Chairperson
Advisory Neighborhood Commission 2B
9 Dupont Circle
Washington, D.C. 20036

Single Member District Commissioner 2B05
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Dept. of Consumer and Regulatory Affairs
Building and Land Regulation Administration
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Washington, D.C. 20002

ATTESTED BY:

JERRILY R. KRESS, FAIA
Director, Office of Zoning