

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC MEETING

+ + + + +

TUESDAY

JUNE 8, 2010

+ + + + +

The Regular Public Meeting
convened in Room 220 South, 441 4th Street,
N.W., Washington, D.C., 20001, pursuant to
notice at 9:30 a.m., Meridith H. Moldenhauer,
Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MERIDITH H. MOLDENHAUER, Chairperson
SHANE L. DETTMAN, Vice Chairman (NCPC)
NICOLE SORG, Member

ZONING COMMISSION MEMBER PRESENT:

MICHAEL G. TURNBULL, FAIA, Commissioner
(AOC)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
TRACEY W. ROSE, Sr. Zoning Specialist
JOHN NYARKU, Zoning Specialist

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Board of Zoning Adjustment
District of Columbia
CASE NO. Transcript
EXHIBIT NO.null

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

LORI MONROE, ESQ.

The transcript constitutes the minutes from the Public Meeting held on June 8, 2010.

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AGENDA ITEM	PAGE
Motion for Modification of Condition A of Order No. 14619 of Lenore Partnership and Waiver of the Two (2)-Year Filing Time Requirement5
Vote to Approve	11
DCCA Remand of Application No. 17337-A of N Street Follies, LP.	12
Vote to Deny.	50
Adjourn, Chairperson Moldenhauer.	50

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P-R-O-C-E-E-D-I-N-G-S

9:30 a.m.

CHAIRPERSON MOLDENHAUER: This meeting will please come to order.

Good morning, ladies and gentlemen. This is the June 8, 2010 Public Meeting of the Board of Zoning Adjustments of the District of Columbia.

My name is Meridith Moldenhauer, Chairperson.

Joining me today is Vice Chair Shane Dettman, a representative of the National Capital Planning Commission; Nicole Sorg, mayoral appointee; and Michael Turnbull, representative of the Zoning Commission.

Copies of today's agenda are available to you and are located to my left in the wall bin near the door.

We do not take any public testimony at our meetings unless the Board asks someone to come forward.

Please be advised these

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1 proceedings are being recorded by a court
2 reporter and are also Webcast live.
3 Accordingly, we must ask you to refrain from
4 any disturbing noise or actions in the hearing
5 room.

6 Please turn off all cell phones
7 and beepers.

8 Mr. Secretary, are there any
9 preliminary matters?

10 MR. MOY: Good morning, Madam
11 Chair and members of the Board.

12 Yes, there are. Staff would
13 suggest that the Board take up the preliminary
14 matters on a case by case basis.

15 CHAIRPERSON MOLDENHAUER: Thank
16 you. Then can we call the first case for
17 decision?

18 MR. MOY: Yes. That would be a
19 Motion for Modification of Condition A of
20 Order No. 14619 of Lenore Partnership and
21 Waiver of the Two (2)-Year Filing Time
22 Requirement, pursuant to Section 3129 of the

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1 Zoning Regulations.

2 The original application, which
3 was acted on in 1987, was pursuant to
4 Subsection 8207.2 (3108.1, 11 DCMR) of the
5 Zoning Regulations, for a special exception
6 under Paragraph 3101.45 (209.1, 11 DCMR) to
7 permit construction of a community center
8 building, including a tennis court and a
9 swimming pool in an R-1-A District at premises
10 4201 Lenore Lane, N.W. (Square 2246, Lot 27).

11 The filing was made on April 26,
12 2010. The letter itself was dated April 22,
13 2010.

14 The applicant filed for a minor
15 modification and a waiver of the 2-year filing
16 time requirement. That document is identified
17 in your case folders as Exhibit 24.

18 Madam Chair, there are also two
19 responses to the filing. The first is a
20 response from the Office of Planning, dated
21 June 1, 2010, identified in your case folders
22 as Exhibit 25. The report is in support of

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1 the request for minor modification.

2 The second filing is from ANC-3F,
3 identified in your case folders as Exhibit 26.
4 The letter is dated June 4, but the Office of
5 Zoning received it yesterday, Monday, June 7.
6 Therefore this filing doesn't meet the time
7 requirement of responses within a 10-day
8 period, pursuant to Section 3129.4, and should
9 be treated as a preliminary matter.

10 The second preliminary matter is
11 pursuant to Section 3129.7, which states that
12 a request to modify other aspects of a Board
13 order may be made at any time, but shall
14 require a hearing.

15 Those are the primary cases for
16 preliminary matters. The Board is to act on
17 the merits of the request for a minor
18 modification of Condition A, request for a 2-
19 year time requirement, and the requirement for
20 a hearing.

21 That completes the staff's
22 briefing, Madam Chair.

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1 CHAIRPERSON MOLDENHAUER: Thank
2 you very much, Mr. Moy.

3 By looking at the Board, I think
4 that we can probably have a consensus in order
5 to waive the requirement for a hearing. If
6 we'd like, we can go on to just the merits of
7 the minor modification and discuss that.

8 Mr. Dettman, would you like to
9 start us off?

10 VICE CHAIR DETTMAN: Certainly,
11 Madam Chair, and good morning, colleagues.
12 Madam Chair, I think this can be done very
13 quickly. I'll just rely upon the Office of
14 Planning's report to take us through the
15 request.

16 It's simply a request to modify
17 two conditions in a previously issued Board
18 order for Application No. 14619, which at the
19 time the applicant was Lenore Partnership.
20 That entity has since changed its name to the
21 Lenore Pool and Tennis Club.

22 There's two conditions that are

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1 being requested for modification. The first
2 one stipulates that originally it limited the
3 number of families to 15. The request is to
4 increase to 20.

5 The Office of Planning is
6 recommending that Condition D be modified to
7 stipulate that the layout of the recreation
8 facility shall be as shown on the site plan
9 submitted with the application. Which, I have
10 to admit, I didn't see if a site plan was
11 submitted as part of the updated application.
12 But if there was, we can just reference the
13 exhibit number.

14 With that, Madam Chair, I think
15 it's a very simple and straightforward
16 request, and I'm certainly in support of it.

17 CHAIRPERSON MOLDENHAUER: I
18 concur, Mr. Dettman. I think we can probably
19 just indicate that the building has actually
20 been in existence for many years, and maybe
21 just modify Condition D to indicate that
22 there's no additional changes to the current

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1 structure as it is. That way we don't have to
2 actually reference the plans.

3 I would be also in concurrence
4 with your assessment and with OP's assessment
5 that we can grant this minor modification.

6 If there's a motion, I think we'd
7 be able to move forward.

8 VICE CHAIR DETTMAN: Sure. Just
9 to clarify the two conditions, the first one
10 is to increase the number of families from 15
11 to 20. And then also, the second sentence of
12 the first condition, that no more than -- it
13 was two, now they're requesting three -- of
14 the member families may reside in excess of
15 1,000 feet.

16 Mr. Moy provided me with the
17 exhibit of the site plan which was submitted.
18 That's Exhibit 23-C.

19 With that, I would move for
20 approval of Application No. 14619, to modify
21 an approved condition of special exception for
22 established existing community center use at

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1 4201 Lenore Lane, Northwest; noting that the
2 two conditions being proposed for modification
3 are Condition A and Condition D.

4 CHAIRPERSON MOLDENHAUER: I
5 second.

6 The motion's been made and
7 seconded.

8 All those in favor, say aye?

9 ALL: Aye.

10 CHAIRPERSON MOLDENHAUER: Mr. Moy,
11 can you read back the vote?

12 MR. MOY: Yes, Madam Chair. The
13 staff would record the vote as 3-0-2. This is
14 on a motion of the Vice Chair, Mr. Dettman to
15 approve the request for minor modification
16 with two conditions, as cited by the Vice
17 Chair, which go to Condition A and Condition
18 D.

19 In support of the motion, the
20 Chairperson, Ms. Moldenhauer. Also in support
21 of the motion, Ms. Sorg. No other Zoning
22 Commissioner participating or another Board

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1 Member.

2 Again, the vote is to approve, 3-
3 0-2.

4 CHAIRPERSON MOLDENHAUER: Thank
5 you very much, Mr. Moy. I believe we have one
6 other matter on the calendar for this morning?

7 MR. MOY: Yes, we do. This is the
8 District of Columbia Court of Appeals' REMAND
9 of Application No. 17337-A of N Street
10 Follies, LP, pursuant to 11 DCMR 3104.1, for
11 a special exception to permit a hotel under
12 Section 512, to allow the construction of an
13 addition to existing buildings to be used as
14 a hotel in the DC/SP-1 District at premises
15 1743-1755 N Street, Northwest (Square 158,
16 Lots 69, 835, and 836).

17 The staff notes for the Board and
18 for the record that the application was
19 amended and re-advertised only for the special
20 exception relief under Section 512, after
21 withdrawing multiple zoning variance relief
22 originally filed prior to October 2009.

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1 On March 23, 2010, as the Board
2 will recall, the Board completed public
3 testimony, closed the record, and scheduled
4 additional information to supplement the
5 record from the applicant, in opposition
6 parties, and other parties.

7 Very quickly, just for
8 documentation on the record, the Office of
9 Zoning has received a series of filings. The
10 first filing is from the applicant's initial
11 post-hearing filing dated April 6, 2010,
12 identified in your case folders as Exhibit
13 120.

14 The party in opposition was
15 allowed to respond to that filing. That is in
16 your case folders identified as Exhibit 122,
17 dated April 20, 2010.

18 The applicant filed revised plans
19 dated May 6, 2010, identified as Exhibit 123.

20 The party in opposition's response
21 to that filing of the applicant's revised
22 plans is dated May 18, 2010, identified as

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1 Exhibit 124.

2 The Board also allowed proposed
3 findings of fact and conclusions of law from
4 the applicant and the parties. The applicant
5 filed dated May 25, 2010, identified as
6 Exhibit 126. The party in opposition's
7 document is dated May 25, 2010, identified as
8 Exhibit 127.

9 Finally, Madam Chair, we have a
10 letter in opposition from Councilmember Jack
11 Evans dated May 19, 2010, identified as
12 Exhibit 125. This could be treated as a
13 preliminary matter since this was a filing
14 that the Board did not request as a
15 supplemental after the record was closed.

16 The Board is to act on the merits
17 of the requested special exception relief
18 under Section 512. That completes the staff's
19 briefing, Madam Chair.

20 CHAIRPERSON MOLDENHAUER: Thank
21 you very much, Mr. Moy.

22 I think for the preliminary matter

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1 in regards to the letter from Councilmember
2 Jack Evans' office, obviously the record was
3 closed. But out of respect for the
4 Councilmember we will admit that into our
5 record. I believe we have actually already
6 provided an exhibit number and taken it under
7 review during our review process.

8 At this point in time, I will
9 start us off with a recap and some review of
10 the facts in regards to the beginning of our
11 deliberation.

12 This case has been before us. We
13 heard a great deal of testimony from the
14 applicant, from opposing parties, and from the
15 community involved.

16 Just to start off with some
17 government reports, we have an OP report. The
18 most recent report is Exhibits 35, 30, and 84,
19 which was dated September 28, 2009. That
20 report from OP recommends approval.

21 I do think there's some aspects of
22 the report that don't specifically speak to

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1 some of the areas that I find more at the
2 merits of this case, in regards to the impact
3 on the neighboring properties under 512 and
4 that standard.

5 So while OP does in its final
6 evaluation recommend approval, I feel that
7 some of the heart of the issue that was before
8 us, both in testimony and in all of the
9 documentation, really goes to 512 and some of
10 the references that it has, in regards to
11 whether or not the property is in harmony with
12 the existing use and neighboring properties.
13 I think that OP did not provide us as much in-
14 depth analysis on that point in reviewing
15 their report. But we do give their report
16 great weight.

17 We also have a report from DDOT.
18 This report is our Exhibit 54. This was
19 actually a report back in 2009.
20 Unfortunately, it's an older report that
21 references the 98 spaces. Since then the
22 application has been modified, I believe, a

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1 couple of different times. In the final
2 submissions the applicant indicated only 35
3 spaces would be submitted.

4 So while DDOT's report does
5 provide us some analysis as to their concerns,
6 and their concerns were both provided by DDOT
7 and also reiterated by the neighborhood in
8 regards to the safety concerns of the heavy
9 traffic flows on 17th Street, heavy pedestrian
10 and street traffic on the sidewalk, and the
11 narrow rear alley that the applicant would be
12 parking in -- I think that it is a challenge
13 to review the report because obviously they're
14 referencing the 98 parking spaces.

15 But I think that the report does
16 articulate and provide us with some important
17 aspects as to the adverse impact that the
18 potential applicant's project would have on
19 the alley on 17th Street and on N Street for
20 valet parking, access, pedestrian safety, and
21 things to that effect.

22 Next in regards to government

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1 reports, we have government reports from DC
2 Fire and Emergency Medical Service which is
3 our Exhibit 104. Again, that reiterates some
4 of these concerns about the public alley.

5 As I referenced in the preliminary
6 discussion, we have Jack Evans' report which
7 is now our Exhibit 125, which indicates his
8 opposition to the case and his concern over
9 the harmony of the project in regards to the
10 neighboring communities.

11 Next, we have the ANC report which
12 was, I believe, our Exhibit 30. This report
13 I find some conflicting statements in from my
14 records, my review of my notes, and the
15 hearing.

16 Mr. Silverman testified, and it
17 seems as though during his testimony he was
18 talking about a time of peace. After all of
19 these years of back and forth with the
20 community, that the ANC was finally supporting
21 this project conditioned upon two conditions
22 that I had: a desire to set back on the Tabard

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1 and the open garden, and a reduction of the
2 parking.

3 But then if you look at Exhibit
4 100, which is the September 15, 2009 ANC
5 report, it indicates that on September 9, 2009
6 the ANC voted 9-0. The final resolution is
7 that ANC 2-B objects this application.

8 So we do have conflicting
9 statements in regards to the testimony versus
10 the report, which satisfies our requirements
11 under the Zoning Regs and should be given
12 great weight. But I want to make sure that's
13 known in regards to the different testimony,
14 that we did hear on those two different
15 points.

16 Then we had a number of different
17 individuals who testified in opposition and
18 two that testified in support. We have Mr.
19 Robert Sutton, who was in a law office at 1728
20 Mass Avenue, who testified as to concerns of
21 parking.

22 Ms. Ecklers from the Residential

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1 Action Coalition testified about trying to
2 protect the residential use in the SP Zone.

3 Jim McGrath from the DC Tenants'
4 Advocacy Coalition provided some testimony,
5 which was not as relevant, about the past
6 history and the desire to maintain
7 residential. But he did provide more
8 testimony as to the harmony and to using the
9 texture, providing more variety on the street,
10 and more variety in regards to not just having
11 an increased number of hotels but rather to
12 have a mix.

13 We also had a testimony from David
14 Alpert, who testified about the need to
15 protect the Tabard Inn and the historical
16 importance of that.

17 Then we had testimony from Richard
18 Busch who testified in support of the
19 application, who is the president of the
20 Dupont Conservancy. I think he was testifying
21 more about the history of the project and the
22 need to move on, in my recollection of the

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1 facts.

2 That is just a summary. Obviously
3 we have other documentation that maybe were
4 not provided in specific testimony. But we
5 have referenced all the different
6 documentation from different exhibits, both in
7 support and in opposition of the application,
8 in our record. We have reviewed those.

9 Then we have the applicant's
10 testimony. The applicant presented testimony
11 from his architect. The architect provided
12 us, I think, an important aspect of their need
13 to balance.

14 I think that there are a lot of
15 compliments of factors on this project in
16 regards to the many aspects in the historical
17 aspect of the building, and the fact that this
18 is a large project that they're trying to
19 develop. Obviously, they're choosing it as
20 one project.

21 But the need to potentially, as
22 was testified -- that the massing needed to be

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1 moved back more towards the rear in order to
2 protect the more historical aspects of the
3 building. And that in contrast with the
4 result, unfortunately, which was then to have
5 a large massing near the Tabard Inn which is
6 a historical building since 1924.

7 There was testimony from the
8 applicant about the customers, that their
9 patrons would be coming to the property not
10 just by car, which is obviously one of the
11 concerns, but also by foot taxi; that it's
12 metro accessible; that this is a very public
13 transportation/commuter area; and that there
14 would be a majority of alternate sources of
15 access to the project.

16 There was testimony about the
17 parking capabilities of the building. As I've
18 said, we've gone from 98 to 58 and now to 35,
19 in regard to parking spaces. But there was
20 testimony from the architect that there would
21 be two cars that would be able to move at one
22 time up and down in the system that they

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1 currently have in their plans, and that that
2 would reduce the average traffic effects or
3 any concerns about traffic safety.

4 We also had testimony, talking
5 more about traffic and flowing into that
6 conversation, from Mr. George indicating that
7 the traffic on 17th Street has decreased over
8 the last couple of years in which this
9 application has been in review and back and
10 forth before us. They tried to present
11 evidence as to the issue of pedestrian
12 accidents, and provide us reports in that
13 aspect.

14 Mr. George also presented
15 documentation about the number of deliveries
16 and the number of trash deliveries, to try to
17 articulate his perspective and his point that
18 this would not adversely increase the amount
19 of traffic that would already be servicing the
20 community.

21 One thing I find troubling is to
22 try to review his testimony now, as it's been

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1 changing. The number of parking that they've
2 been providing has now changed yet again. So
3 I would think his testimony would mean that
4 there is even less impact to the potential
5 alley, and to the 17th Street and N Street
6 corridor.

7 There was testimony as to the
8 circulation of vehicles and trying to portray
9 how the cars would drive up 17th, around Mass,
10 and down to try to get access to the alley.

11 Then in opposition we had the
12 party opponent, the Tabard Inn. Mr. Cohen
13 testified, the general manager, and indicated
14 the impact that would occur for his property.

15 He provided facts about the 30 to
16 35 percent of his residential sales come from
17 the outdoor area; that about 50 percent of the
18 hotel revenue comes from the wedding business.
19 That would be impacted adversely by the
20 massing on the side of the building and by the
21 decrease of light.

22 He had Robert Schwartz, an

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1 architect and city planner with a city
2 planning background, testify as to the loss of
3 light based on the design. He then
4 recommended setbacks.

5 And I think the Board went into
6 some very detailed questions, pressuring the
7 applicant to say -- looking at these impacts
8 and discussing this issue of ambient light or
9 reflective light -- how can there be other
10 opportunities to potentially revise these
11 plans and improve this negative impact on your
12 neighboring property? That's under 512 and
13 it's really our job. The regs specifically
14 point out neighboring properties. I think the
15 Tabard Inn did present a lot of evidence about
16 the impact and the challenges.

17 There was very strong testimony as
18 to the hours of business that were presented
19 on their Web site. But I think at the same
20 time, when you're looking at a hotel, the
21 hours of business -- there was testimony from
22 Mr. Cohen and in some of the documentation

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1 that it's really open at any time, no matter
2 what's advertised. So while I think that was
3 a positive issue that was brought up by the
4 applicant as to potentially reducing the
5 impact, a hotel is constantly being used. And
6 the outdoor area, I would think, would be used
7 at all times, as the opponent indicated in
8 their testimony.

9 There was also testimony from
10 Emily Hotaling, an architectural historian,
11 about the issue of the bulk design of the
12 building. The Board really was focusing on
13 that. She pulled up a lot of issues in the
14 fact that it's really out of character with
15 the neighborhood. She spoke on the issue of
16 the penthouse, the bulking of the penthouse,
17 and the impact that that would have.

18 Then Mr. David Nelson testified
19 about parking. There was a lot of back and
20 forth on the issue of the alley access and the
21 issue of cuing. There was testimony that the
22 alley has been in use for many, many years.

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1 But the question really is, how
2 will a new project affect any increased
3 problems? Again, going back to the regs, what
4 we have to evaluate under 512.9 and 512.10 is
5 how that is potentially going to affect any
6 dangerous or objectionable traffic conditions.
7 I think that's what we have to look at.

8 Ms. McCarthy testified as to the
9 general impact on the harmony of the community
10 and the harmony of the overlay. In my review
11 I don't really need to get into the details of
12 the overlay as much, because I think that's
13 really incorporated into our standard of the
14 special exception 3104, in regards to the
15 harmony with the Zoning Regs and with the
16 purpose and integrity of the area that the
17 property is within. It's within the DC
18 Overlay.

19 Going through all of those
20 different factors and all the different
21 testimony before us, in my opinion the
22 opposing party, the Tabard Inn, has definitely

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1 presented that there are needs and concerns in
2 regards to protecting the neighboring
3 property. The current design does not
4 adequately protect them in regards to the
5 harmony of the existing use and the harmony of
6 the SP Zone District.

7 I would recommend to see if we
8 couldn't potentially under 512.4 articulate
9 some specific design or setback requirements
10 on the applicant, as permitted by this
11 section.

12 I'll open it up now to the Board
13 to see if the other Board Members feel as
14 though the plans are in a position where we
15 can recommend recommendations, or if they
16 don't feel as though the applicant has
17 satisfied anything to the degree in which we
18 can then make recommendations.

19 VICE CHAIR DETTMAN: Thank you,
20 Madam Chair. That was an excellent summary of
21 the case. I have several points to make.

22 But specifically, to your question

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1 on whether or not I think the plans are at a
2 point where the Board under 512.4, I believe
3 it is, could go and exercise their authority
4 and prescribe changes to the plans with
5 respect to building setback, design,
6 screening, and signage -- I don't think I'm in
7 the same place as you are. I think I'm
8 prepared to go forward today on our
9 deliberations and to render a vote.

10 CHAIRPERSON MOLDENHAUER: From
11 Vice Chair Dettman's comments, I think there
12 are some feelings that obviously we had
13 presented the applicant with multiple
14 opportunities. I believe almost a year ago on
15 July 31, 2009, Chairman Loud had indicated to
16 the applicant that this was the last
17 opportunity for them to present any revisions
18 to the plans.

19 There were numerous points in time
20 in the discussions back and forth by the Board
21 where there were inklings of discontent and
22 concern about potential affects. I know I

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1 even made comments about what options are
2 there out there that could potentially
3 increase or reduce the affect of this wall
4 against the Tabard Inn; are there other
5 options in regards to parachutes; and things
6 to that effect.

7 I don't think the applicant ever
8 really took that upon themselves to make those
9 changes. I still think that maybe under the
10 section, we could articulate changes in
11 regards to design and setback. But I am not
12 an architect so I don't really know exactly
13 how to prescribe those specific requirements.

14 I think the best potential
15 opportunity, based on Vice Chair Dettman's
16 recommendation, would be to decide the case
17 currently, today, on the plans before us,
18 having provided multiple opportunities to the
19 applicant to revise their plans. Obviously
20 they can always make any changes and come back
21 to us at a later date.

22 If we want to move forward, then,

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1 based on the plans we have today, does anybody
2 have any additional deliberation?

3 COMMISSIONER TURNBULL: Thank you,
4 Madam Chair. I think I'm in basically the
5 same situation that Mr. Dettman is.

6 I strongly feel that we should
7 deny this application. Basically, even
8 looking at 512.3 or 512.4, I think the
9 modifications would go beyond a minor
10 modification. I'm just looking at where they
11 are right now with the current design.

12 I think there's a failure to break
13 down the scale in density of the proposed
14 hotel. The lowered height at the northeast
15 corner, I think, is a token gesture to
16 compatibility to the Tabard Inn and does not
17 go far enough to be sympathetic to the
18 historical property in general and the
19 character in the historic district. While if
20 we look at the rear elevation and it may allow
21 for more leeway, I think the present design
22 provides no relationship with scale, rhythm,

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1 and the character of the townhouse and other
2 elevations that are part of this block.

3 The open court does not break up
4 the massing of the building. It really is
5 only a benefit to those within the building.
6 I think it creates a rather ominous cliff wall
7 along the alley. And it's a stark feature
8 that adds to the bulk and blockiness of this
9 current design.

10 If the applicant had looked at the
11 existing structure next to the Tabard Inn as
12 a height, I think that would have given them
13 a clue as to how to better incorporate heights
14 into their current design.

15 What I see as something that would
16 be sympathetic to the neighborhood I think may
17 involve significant more design than we would
18 consider a minor modification. And we may end
19 up having a hearing anyway.

20 My feeling right now is to deny
21 this application, just because I think 30 days
22 is not going to be enough for anybody to come

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1 back with something substantial that would
2 meet at least my feeling of how this project
3 can be sympathetic and match the historic
4 character of the neighborhood.

5 VICE CHAIR DETTMAN: Madam Chair,
6 I am in agreement with Mr. Turnbull.

7 Before I get into the merits of
8 the case and applying the standard under 512
9 and 3104, just a note about my opinion on
10 whether or not the Dupont Circle Overlay
11 applies to this particular case as opposed to
12 just PUDs.

13 I think in developing the overlay,
14 the Zoning Commission's intent was to protect
15 the Dupont Circle area, the historic
16 landmarks, and the historic districts that
17 exist within the overlay. My interpretation
18 is the reason why we have provisions under
19 1503 that apply to PUDs specifically is that
20 the Zoning Commission is acknowledging the
21 size and scale of a typical PUD, and that it
22 warrants special attention, especially

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1 considering the low-scale and historic nature
2 of the Dupont Circle area.

3 Just looking through the purposes
4 under 1501.4, I think the wording is
5 interesting in 1501.4(b). It says one of the
6 purposes of the DC Overlay is to protect the
7 integrity of contributing buildings, as that
8 term is defined in the DC Historic
9 Preservation Law.

10 I know that the word integrity is
11 kind of scattered throughout the Zoning
12 Regulations, but when you're using the word
13 integrity when you're assessing historic
14 preservation, it takes on a very specific
15 meaning. The DC law is loosely based off of
16 a 1966 National Historic Preservation Act.
17 Integrity is defined in that act, as well.

18 When you're assessing impacts on
19 integrity you're looking at workmanship;
20 location; setting; association, whether it's
21 associated with a specific person or event;
22 and you're even looking at feeling, which I

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1 know is hard to quantify, but you are looking
2 to do that.

3 Now, because the Dupont Circle
4 Overlay doesn't have any kind of metric or way
5 to quantify impacts, I think we look to
6 Chapter 3104. The Board is required when
7 looking at a special exception to assess the
8 impacts of a particular project on the use of
9 adjacent buildings and structures. And also,
10 looking at whether or not a special exception
11 can be granted without substantially
12 compromising the intent, purpose, and
13 integrity of the Zone Plan. We also in this
14 case look to Section 512.

15 So I guess with that in mind, my
16 approach is saying that not only am I going to
17 determine whether or not the special exception
18 meets the standard under 512 and 3104, but
19 also keeping in mind that we have the Dupont
20 Circle Overlay, an area that we need to seek
21 to protect against large-scale developments
22 and large projects.

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1 I'm going to use the Office of
2 Planning's report as kind of a guide for my
3 remarks, and kind of just go through some of
4 the individual provisions of 512. In 512.3
5 the Office of Planning states that the current
6 proposal would be five stories tall, in
7 keeping with the existing scale and design of
8 the buildings on the site as well as other
9 structures on the block.

10 I think the Office of Planning
11 took a little bit too broad of an approach to
12 that provision. I think the standard on that
13 provision is to determine whether or not the
14 hotel would be in harmony with existing uses
15 of the structures on the neighboring property.

16 Certainly if you look at the
17 buildings on the block, you have the Topaz
18 there; on the other corner to the west, you
19 have a fairly large building. I think that
20 the Office of Planning is correct. It is
21 appropriate with respect to the existing scale
22 and design of the buildings on the block. But

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1 with respect to the adjacent buildings, I
2 think that the proposed design is not in
3 keeping with the existing size, scale, and
4 bulk.

5 The Office of Planning also talks
6 about how the mass is broken by a 2,400 square
7 foot interior courtyard which is enclosed with
8 a glass curtain wall. To me, a 2,400 square
9 foot courtyard enclosed by a glass curtain
10 wall means that I could stand outside that
11 curtain wall, look in, and get a sense of the
12 openness of this courtyard in perhaps a garden
13 setting, which the Dupont Circle Overlay
14 certainly looks to preserve to a certain
15 extent.

16 To me, the proposed design of the
17 courtyard does not break down the mass, bulk,
18 and scale of this building. Because you can't
19 experience that courtyard or that garden as
20 it's described in the post-hearing filings
21 from anywhere except from within the building.

22 My last comment will be to 512.4

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1 about the Board's authority, if it so chooses,
2 to require special treatment. But under that
3 provision 512.4, the Office of Planning says
4 that the project would be in compliance with
5 the height and bulk standards for the SP-1
6 Zone. But the provision actually says that to
7 ensure the height, bulk, and design of the
8 hotel is in harmony with the existing uses and
9 structures on neighboring properties, not
10 within the larger SP-1 Zone. Because again,
11 within the larger SP-1 Zone that this project
12 is located in, there are some fairly large
13 buildings. But again, the standard always
14 goes to the adjacent property.

15 The other provisions in 512, I
16 agree with the Office of Planning. I think
17 that the project if built as proposed would
18 still maintain this relatively even balance of
19 residential office and hotel uses. I think
20 the applicant has demonstrated that it meets
21 512.6.

22 I do have some concerns about the

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1 parking. During the hearing, the Office of
2 Planning actually said to the Board that since
3 the DDOT report was submitted after their
4 report, that the Board should rely more
5 heavily on the DDOT report as opposed to their
6 conclusion on 512.9. We do have a dated
7 report from DDOT that says they would be happy
8 with 31 spaces. They wrote that when they
9 were proposing 98. They're proposing 35 now.
10 So the only thing we know is that DDOT would
11 accept 31; it's 35.

12 The transportation study, I think,
13 is interesting in that if you look at the
14 times of day where it's check-in and check-out
15 -- I believe check-in is later on in the
16 afternoon, 3:00 to 7:00; check-out was 7:00 to
17 11:00 -- it's the exact opposite direction
18 that the normal activity of this alley is
19 taking place. When the hotel patrons are
20 going in, everyone's coming out. Business
21 people, offices, residential; they're coming
22 out.

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1 Also I have some concern about,
2 depending upon the hour of the day, this
3 circuitous route that the valet attendants
4 would need to take in order to get to the
5 alley. It's putting more traffic onto streets
6 in an area that's actually very congested at
7 times.

8 Specifically with respect to the
9 design, the Office of Planning says that
10 although a side yard setback is not required -
11 - they allude to the fact that the northeast
12 corner of the building is eroded at the top
13 level -- will provide additional light,
14 suggesting that that's some sort of side yard
15 setback. And it's not. A side yard setback
16 as it's defined in the Zoning Regulations is
17 the entire length of the building from the
18 ground to the top.

19 As Mr. Turnbull describes it, I
20 think it's a token gesture that I don't
21 believe will make any change whatsoever with
22 respect to the impacts of light and air on the

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1 adjacent property, which is the Tabard Inn.

2 The post-hearing submission
3 supplied by the applicant I thought was
4 informative where they were describing,
5 through a series of diagrams and colored
6 photos, how the actual design looks to match
7 the material, the height, the module, the
8 walled gardens, and some other features of
9 this area.

10 I agree with some of their points.
11 However, when you're looking at the module of
12 the rear alley, I think that what they've
13 missed is if you look at the surrounding area,
14 the subject block on the alley side -- when
15 you look at that in plan, there's a certain
16 module. The rear facades of buildings are
17 jutting in and out. Some are higher than
18 others. Some are attached to black steel or
19 wrought iron fire escapes and porches.

20 The result is that the proposed
21 project basically creates a consistent wall.
22 It is articulated a little bit, but nothing to

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1 the extent that the surrounding neighborhood
2 is at.

3 In fact, the Tabard's post-hearing
4 submission quotes the architect, talking about
5 how instead of very explicitly looking to
6 match the size, scale, module, pattern, and
7 rhythm of the Dupont Circle Historic District,
8 they've decided to do it in a more abstract
9 way. In an area of the city that is so
10 historic and so special, I think that you
11 should not opt to do it in an abstract way.
12 I think you should do it very explicitly and
13 very sensitively.

14 My last comment -- I know I've had
15 a lot of them -- goes to the Board's authority
16 under 512.4. I think a very real approach
17 could be to just continue going back and forth
18 with the applicant with the input of the
19 opposition party through ideally just one more
20 round of plans. But it's questionable whether
21 or not it would be multiple rounds of plans.
22 And trying to get us to a point where we can

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1 feel comfortable that it meets 512, for those
2 of us that feel it doesn't currently.

3 But again, 512.4 says that the
4 Board may prescribe or require certain things.
5 It doesn't say shall. So it says may, simply,
6 just like we may decide to go forward today
7 and make a decision. It's the Board's
8 determination whether or not they want to
9 exercise that authority.

10 I think that in order for me to
11 feel comfortable going forward with this use
12 of this size, 98 rooms at this location,
13 substantial design changes would need to be
14 required.

15 I think the penthouse, even though
16 the Zoning Regulations require it to be in one
17 enclosure -- I think that you can go a long
18 way to minimizing the impacts on the Tabard
19 simply by breaking that penthouse up into
20 multiple penthouses, and seeking a very simple
21 special exception. Which, to my knowledge in
22 my 3 years on the Board, the Board has never

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1 denied relief from the provisions under 411.

2 I think that the design changes
3 would be substantial enough to warrant a
4 denial of the case now, and send a strong
5 signal to the applicant that what we're seeing
6 now is too big, out of scale, and is not
7 sensitive to the adjacent properties.

8 Thank you, Madam Chair.

9 CHAIRPERSON MOLDENHAUER: Thank
10 you very much, Vice Chairman Dettman and Mr.
11 Turnbull. I think both of you guys have
12 really articulated a lot of the issues and the
13 concerns that I have.

14 But I feel as though I would
15 rather provide the applicant maybe one more
16 opportunity. As Vice Chairman Dettman was
17 saying, we may under 512.4 provide them an
18 opportunity to make changes based on special
19 treatments that we would dictate or we would
20 deem necessary in order to protect the
21 neighboring property.

22 I think we all feel as though the

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1 current plants are substandard in regards to
2 addressing very clear issues in regards to the
3 neighboring property, especially as
4 articulated in regards to the wall on that
5 corner, the sun and light that was provided by
6 multiple different sun studies.

7 However, I come out on the other
8 side. I think that at this point in time we
9 have gone through multiple reiterations and
10 in-depth hearings. I think that the statute
11 provides us an opportunity to take into
12 consideration the protections that we deem are
13 necessary, and then to provide the applicant
14 with the opportunity to try to resolve those
15 based on statements that we would include.

16 Looking at the diagrams, I agree
17 that a large portion of the corner on the
18 third, fourth, and fifth floor and penthouse
19 would have to be set back or redesigned in
20 order to address the current impact it has.

21 I think that there would have to
22 be changes or potential modifications to the

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1 number of spaces that they are having to
2 address the safety, adverse effects to the
3 neighboring properties, and to the traffic
4 issues in regards to the alleyway.

5 I'll open it up to our last Board
6 Member to see whether or not she feels as
7 though there's an opportunity here to provide
8 the applicant with comments, or if everybody
9 is more under the opinion of we have the
10 current plans in front of us and thus we must
11 make a decision on the plans. And that
12 really, under 512.4, from what I'm hearing
13 from other Board Members, there are just too
14 many changes that would be required at this
15 point in time, in your opinions.

16 So I'll open it up to our last
17 point of deliberation.

18 MEMBER SORG: Thank you, Madam
19 Chair. I think the comments that everyone has
20 made this morning are in many ways keeping
21 with what I believe.

22 I think on that question, I come

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1 down versa with Mr. Dettman. I think if it
2 were merely a matter of making recommendations
3 on a setback or some other treatment to the
4 northeast corner of the building, that would
5 be one thing. But it seems like there's
6 disharmony, often significant, with a number
7 of the provisions; in fact, a majority of the
8 provisions under 512. So for me, that comes
9 out to be maybe a question of threshold with
10 regard to the recommendations that we can
11 provide.

12 I wanted to just make a comment on
13 something that Mr. Dettman brought up about
14 how the applicant's architect in this case
15 characterized going about being sensitive to
16 the integrity of the historic area.

17 Specifically, there isn't a
18 general issue in my opinion with going about
19 being sensitive to these kinds of historic
20 areas in an abstract way. In fact, I think
21 you can even use the example of the N Street
22 facade in this case, which seems in the front

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1 elevation to be a very modern addition to what
2 is the most important piece of the property to
3 be sensitive to. I actually think that is a
4 good example of the thoughtfulness and
5 sensitivity that I wish would be present in
6 some of the other facades, massing, and bulk
7 of this building, as a way to actually
8 abstractly and sensitively deal with the
9 historic buildings and historic areas that
10 we're dealing with.

11 I would take exception with
12 instructing the applicant to look explicitly
13 towards, in terms of thoughtfulness, to the
14 historic building stock in the area. Just
15 because I think that often leads people down
16 a wrong path, as well. But that's just a side
17 comment.

18 In general, though, I am in
19 agreement that there seem to be more issues
20 than we could reasonably set down in
21 conditions on an approval, or a preliminary
22 action that we would expect to see plans back.

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1 Also, I agree that there have been
2 many opportunities for the applicant over a
3 year, and certainly far before my time, to
4 respond to the specific requests of the Board
5 for updates in plans. But also, to kind of be
6 sensitive to what is significant opposition,
7 and issues and concerns of theirs surrounding
8 community, and go that distance of increasing
9 the sensitivity without pushing for the
10 explicit instruction of the Board.

11 CHAIRPERSON MOLDENHAUER: Thank
12 you very much, Ms. Sorg.

13 Is there any additional
14 deliberation?

15 I think at this point in time,
16 under 512 and 3104, I will submit a motion to
17 deny Application No. 17337-A of N Street
18 Follies, LP, pursuant to 11 DCMR 3104.1, for
19 a special exception under 512, to allow the
20 construction of an addition to existing
21 buildings to be used as a hotel in the SP-1
22 Zone District at premises 1743-1755 N Street.

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1 VICE CHAIR DETTMAN: Second.

2 CHAIRPERSON MOLDENHAUER: The
3 motion's been made and seconded.

4 All those in favor?

5 ALL: Aye.

6 CHAIRPERSON MOLDENHAUER: Mr. Moy,
7 could you please read back the record?

8 MR. MOY: Yes, Madam Chair. The
9 staff would record the vote as 4-0-1. This is
10 on the motion of the Chair, Ms. Moldenhauer to
11 deny the application seeking special exception
12 relief under 512. Seconded by Mr. Dettman.
13 Also in support of the motion, Ms. Sorg and
14 Mr. Turnbull. We have no other Board Members
15 participating.

16 Again, the vote is 4-0-1.

17 CHAIRPERSON MOLDENHAUER: I
18 believe that ends our public meeting for the
19 morning.

20 MR. MOY: Yes.

21 (Whereupon, at 11:01 a.m. the
22 meeting was concluded.)

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