

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

PUBLIC HEARING

+ + + + +

TUESDAY

NOVEMBER 1, 2005

+ + + + +

The Public Hearing convened in Room 220 South, 441 4th Street, N.W., Washington, D.C., 20001, pursuant to notice at 1:21 p.m., Geoffrey H. Griffis, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

GEOFFREY H. GRIFFIS Chairperson  
RUTHANNE G. MILLER Vice-Chairperson  
JOHN A. MANN, II Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN Chairperson

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY Secretary  
BEVERLEY BAILEY Zoning Specialist  
JOHN NYARRU Zoning Specialist  
TRACEY W. ROSE Special Zoning Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.  
LORI MONROE, ESQ.

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OFFICE OF PLANNING STAFF PRESENT:

TRAVIS PARKER

This transcript constitutes the minutes  
from the Public Hearing held on November 1, 2005.

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

1:21 p.m.

CHAIRPERSON GRIFFIS: Good afternoon, ladies and gentlemen. Let me call to order the 1st of November, 2005 afternoon Public Hearing of the Board of Zoning Adjustments to the District of Columbia.

My name is Geoff Griffis, Chairperson. Joining me today is the Vice-Chair, Ms. Miller. And representing the National Capitol Planning Commission is Mr. Mann. Representing the Zoning Commission with us this afternoon is Ms. Mitten.

Mr. Etherly is away on business travel and will not be joining us for this case proceeding this afternoon.

Copies of this hearing agenda are available to you, for you, where you entered into the hearing room. It should be fairly easy to understand.

Let me just make a couple of quick announcements of formality. First of all, I would ask that everyone turn off cell phones and beepers at this time so we don't disrupt the transmission and the attention of those giving important testimony and evidence to the Board, during our proceedings.

Normally, I would say that we are being also broadcast live as well as being recorded by the

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1 court reporter sitting to my right. We are being  
2 recorded; however, we're not being broadcast as our  
3 wiring is not fully up and ready in our brand new  
4 hearing room, but will be hopefully within a week or  
5 two.

6 However, to that, I would ask that  
7 everyone fill out witness cards prior to coming  
8 forward to address the Board. Witness cards are  
9 available at the table where you will provide  
10 testimony. There should be some by the door also.

11 Two cards go to the court reporter prior  
12 to coming forward, thereby, allowing us to spell your  
13 name correctly in the transcript and, importantly, to  
14 give you the credit, of which you will be, for all  
15 that you're stating today.

16 The order of procedure for special  
17 exceptions and variances is as follows. Of course,  
18 we'll hear from the Applicant first, a presentation of  
19 their case.

20 Secondly, we will go to any government  
21 reports attendant to that application.

22 Third, we will hear from the Advisory  
23 Neighborhood Commission within which the property is  
24 located.

25 Fourth, we will hear from persons or

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1 parties in support of an application.

2 Fifth, we would be persons or parties in  
3 opposition to an application.

4 And sixth, finally, we will allow time for  
5 rebuttal witnesses from the Applicant and/or  
6 conclusions and closing remarks.

7 Cross examination of witnesses is  
8 permitted by parties in a case. Those parties, of  
9 course, will be established by this Board prior to  
10 calling a case to full hearing.

11 The ANC within which the property is  
12 located is automatically a party in the case and  
13 therefore will be afforded the ability to conduct  
14 cross examination and is also responsible for those  
15 weighty aspects that all parties will participate and  
16 be requested to offer this Board.

17 The record will be closed at the  
18 conclusion of hearing on a case, except for any  
19 materials that the Board specifically requests. And  
20 we are very specific as to what is to be submitted and  
21 when it is to be submitted into the Office of Zoning.

22 We will get into that specificity  
23 obviously as we go forward into the details of each  
24 case.

25 The Sunshine Act requires that the Board

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1 conduct all it's hearings in the open and before the  
2 public. This Board does enter into executive session,  
3 both during and after hearings on a case. This is for  
4 the purpose of reviewing records. It is also for the  
5 purposes of deliberating on cases.

6 These executive, off the record, sessions  
7 are in accordance with our rules and regulations and  
8 they are in accordance with the Sunshine Act.

9 Let me say a very good afternoon to Ms.  
10 Bailey who is with the Office of Zoning on my very far  
11 left, and Mr. Moy, closer to me on my left. Ms.  
12 Glazer with the Office of Attorney General is also on  
13 the dias with us this afternoon.

14 I would ask all those persons here today  
15 present that are going to provide testimony for the  
16 Board if you would please stand and give your  
17 attention to Ms. Bailey, she's going to swear you in.

18 Anyone going to provide testimony today?

19 MS. BAILEY: Please raise your right hand  
20 sir. Do you solemnly swear or affirm that the  
21 testimony that you will be giving this afternoon will  
22 be the truth, the whole truth, and nothing but the  
23 truth?

24 (No audible response)

25 MS. BAILEY: Thank you.

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1 CHAIRPERSON GRIFFIS: Good. It doesn't  
2 look like a long list of testimonies today. However,  
3 let us first go to the specific details of the Board's  
4 business. And that is preliminary matters.

5 Preliminary matters relate to whether a  
6 case will or should be heard today. Requests for  
7 postponements, continuances, withdrawals, whether  
8 proper and adequate notice has been provided; these  
9 are elements of preliminary matters that need the  
10 Board's immediate attention.

11 If you have a preliminary matter for the  
12 Board's attention, I would ask that you come forward  
13 and have a seat at the table in front as an  
14 indication.

15 I'm going to ask first, Ms. Bailey, if  
16 you're aware of any preliminary matters for the  
17 Board's attention?

18 MS. BAILEY: Mr. Chairman and members of  
19 the Board and to everyone, good afternoon. Mr.  
20 Chairman, there is only one case scheduled on the  
21 docket for this afternoon; 17337 N Street Follies, and  
22 there is a request for this to be postponed. And, in  
23 addition, there is a request for party status.

24 CHAIRPERSON GRIFFIS: Excellent. Why  
25 don't we call the case then. And we can take up,

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1 first of all, the party status in this case. And then  
2 we can have those attended to the application address  
3 the motions that are before us.

4 MS. BAILEY: Application No. 17337, of N  
5 Street Follies, Ltd., pursuant to 11 DCMR 3104.1 and  
6 3103.2, for special exceptions to allow a hotel under  
7 section 512, and a partial waiver of the rear yard  
8 requirements under subsection 534.6, and to allow  
9 multiple roof structures and roof structures not  
10 meeting the normal setback requirements of subsection  
11 530.4, under section 411, and for variances from the  
12 height requirements under section 530, the floor area  
13 ratio requirements under section 531, and the court  
14 requirements under section 536, to allow the  
15 construction of an addition to existing buildings to  
16 be used as a hotel.

17 The property is zoned Dupont Circle, SP-1  
18 and it's located at 1743-1755 N Street, N.W., also  
19 known as Square 158, Lots 69, 835, and 836.

20 CHAIRPERSON GRIFFIS: Thank you very much.  
21 Board members, let's first take up the request for  
22 party status.

23 I'll have you introduce your subjects for  
24 the record, Ms. Brown.

25 MS. BROWN: Good afternoon. I'm Carolyn

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1 Brown with the Law firm of Holland Tonight on behalf  
2 of the Applicant, N Street Follies.

3 CHAIRPERSON GRIFFIS: Good. And Mr.  
4 Nettler?

5 MR. NETTLER: Richard Nettler, on behalf  
6 of the Tabard Inn, which is seeking party status here  
7 today.

8 CHAIRPERSON GRIFFIS: Excellent. Board  
9 members, let's have your attention go to Exhibit 29,  
10 which is the request for party status. Mr. Nettler  
11 representing.

12 I would take any discussion or, if there  
13 are questions to be addressed at this time.

14 Any discussion then?

15 VICE-CHAIRPERSON MILLER: Does the  
16 Applicant have any objections?

17 CHAIRPERSON GRIFFIS: That wasn't a  
18 discussion. That was a question.

19 VICE-CHAIRPERSON MILLER: I wanted that  
20 first before the discussion.

21 CHAIRPERSON GRIFFIS: Yes, indeed. Very  
22 well. Okay. If there's no questions or  
23 clarifications needed from the Board, that was an  
24 excellent question. Of course, there's no opposition  
25 from the Applicant.

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1                   At this point, let me hear any  
2 deliberative comments on this. Any opposition? Ms.  
3 Mitten?

4                   MS. MITTEN: I think that the request  
5 meets the requirements for party status in this case  
6 and I would support the granting of party status to  
7 the Tabard Corporation.

8                   CHAIRPERSON GRIFFIS: Excuse me. Thank  
9 you very much. Is there any opposition to the party  
10 status application?

11                   I think Ms. Mitten has adequately said it  
12 and I would tend to focus on some of the detail and,  
13 of course, the adjacency and the potential impact and  
14 concern.

15                   Obviously, it rises to the level of  
16 granting party status. I have no opposition to it and  
17 I can take it as a Board consensus to grant party  
18 status at this point.

19                   Very well. That being done, let's move  
20 ahead then to the first motion for a postponement.  
21 Let me take just a moment to allow both of you to  
22 speak to that.

23                   MS. BROWN: Yes. Thank you, Mr. Chairman.  
24 Again Carolyn Brown on behalf of the Applicant, N  
25 Street Follies.

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1           On October 17, we filed a request for  
2           postponement, based on the amount of concern that  
3           several in the community had, and the Historic  
4           Preservation Review Board staff and the Office of  
5           Planning in opposition to the project, given its  
6           height and density.

7           And, in light of those concerns, we would  
8           like additional time in which to work with these  
9           groups to see if we can come up with a reasonable  
10          development that addresses these concerns.

11          CHAIRPERSON GRIFFIS: Okay. Understood.  
12          Let me make a clarification question. Mr. Nettler,  
13          did you receive the recent filing, I think it's  
14          Exhibit 36, that was handed to us from the Applicant?

15          MR. NETTLER: That was dated October 28th?

16          CHAIRPERSON GRIFFIS: Yes. Is that right?  
17          Yes. Yes.

18          MR. NETTLER: Yes. I received that  
19          yesterday.

20          CHAIRPERSON GRIFFIS: Okay. Good. Let me  
21          ask, because I imagine this will be some of the  
22          questions that will come up. Why are we at this late  
23          date with just the understanding from the Applicant  
24          that changes need to be made?

25          MS. BROWN: Some of the changes with the

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1 Historic Preservation Review Board, had to deal with  
2 the extent of demolition that was proposed for these  
3 historic structures.

4 And there is considerable discussion about  
5 how much of the interior walls of the building would  
6 need to be retained for it to be considered an  
7 alteration versus a demolition; thereby, obviating a  
8 need for a Mayor's Agent Hearing on the project.

9 We had, we though, and maybe mistakenly,  
10 some preliminary indication that if certain things  
11 were done to the project, that we would be able to  
12 garner support for the project.

13 It has become clear that there is still  
14 quite a bit of opposition to this project. And,  
15 instead of filing the pre-hearing statement with all  
16 the support for this project that we don't want to go  
17 forward with at this time, because it does have some  
18 significant concerns for the community, we instead  
19 would request a postponement.

20 CHAIRPERSON GRIFFIS: Okay. Two things  
21 then to follow up. First of all -- well I guess  
22 they're aligned.

23 Are you aware -- is the Applicant aware of  
24 the changes that need to be made? Are they fairly  
25 articulated changes that are now going back to the

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1 drawing board to be redone?

2 And then the addition to that question, I  
3 guess, is are you prepared to move ahead today with  
4 what we have if it's more of a kind of a trying to  
5 feel the way of allaying some of the opposition?

6 MS. BROWN: Unfortunately, I have not been  
7 involved in this project from the outset. Other  
8 attorneys in our office have been handling this  
9 matter. But, due to previous obligations and hospital  
10 visits, and that sort of thing, I am left here today  
11 to field your questions.

12 CHAIRPERSON GRIFFIS: Okay.

13 MS. BROWN: But it's my understanding that  
14 the concerns are substantial enough still that they  
15 need to go back to the drawing board. I don't know  
16 whether -- how well those have been articulated or  
17 whether there has been any sort of meeting of the  
18 minds.

19 They want to have that kind of dialogue to  
20 continue to resolve those issues. We do not want to  
21 go forward with the application as it is today because  
22 we do not believe it's the right one to go forward  
23 with.

24 CHAIRPERSON GRIFFIS: Okay. Other  
25 questions?

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1 MS. MITTEN: Given that you are, and I  
2 suppose at some point, Mr. Nettler's going to get a  
3 chance to say something. Given that what you're  
4 suggesting is that there will be substantial changes  
5 to be made, why wouldn't you just withdraw this  
6 application and, as you say, go back to the drawing  
7 board and reapply?

8 MS. BROWN: Well, I think part of it is to  
9 keep these drawings in the record to make sure that  
10 it's complete, to see the development of this. And I  
11 believe it's some of -- I don't now where they are on  
12 the resolution of these issues.

13 I'm not certain as to whether certain  
14 compromises can be made on height or if it's FAR, how  
15 to address them. And it just seems better to keep  
16 this record open with the complete documents in the  
17 file to show the changes and to have a complete  
18 history.

19 MS. MITTEN: Okay. I don't find that  
20 compelling, myself. But maybe others do. I'll have  
21 some more comments then.

22 CHAIRPERSON GRIFFIS: Okay.

23 MS. MITTEN: As we work through this.

24 CHAIRPERSON GRIFFIS: Do you want to  
25 continue with that or do you want to hear Mr.

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1       Nettler's reaction?

2                   VICE-CHAIRPERSON MILLER:   May I ask just  
3       one question?

4                   CHAIRPERSON GRIFFIS:   Certainly.

5                   VICE-CHAIRPERSON MILLER:   Is my mike on?  
6       How long do you think it would take to resolve those  
7       concerns and get to the point where you're ready to  
8       amend the application?

9                   MS. BROWN:   We would like to have a  
10      hearing scheduled for April, which means that we would  
11      be submitted revised drawings in March or April.  And  
12      we'd also, I think, a significant part of this work is  
13      with the Historic Preservation Review Board.  And  
14      that's why we wanted the additional time to do that  
15      and work through those issues.

16                   It's rare that you can get sequential  
17      review the Historic Preservation Review Board.  If you  
18      file an application for one month, they ask for  
19      modifications, you have to wait two months before you  
20      can get back before them to get feedback and any kind  
21      of official direction.

22                   We've not had a formal presentation to the  
23      HPRB because of the concerns that staff raised.  So we  
24      have not made it to that point.  We had hoped to have  
25      that taken care of by the time we got here today.

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1 MS. MITTEN: Could you just explain a  
2 little more fully why April is the date? Is it  
3 dependent on something happening in March with HPRB,  
4 or what? What is the reason?

5 MS. BROWN: No. If we came up with  
6 revised drawings, which I understand are being worked  
7 on now, I don't know the scope of them and I apologize  
8 for not having a better answer on that.

9 We would -- the earliest we would be able  
10 to file for HPRB would be the end of this month,  
11 November, for a December HPRB review.

12 If -- it's rare that you get approval the  
13 first time you're at HPRB. So we would need to  
14 resubmit. We would not be able to get on the January  
15 calendar.

16 We could, at the earliest, get on the  
17 February calendar. And it's only then that we would  
18 have the comfort from HPRB to proceed. So, you know,  
19 April is where we ended up.

20 MS. MITTEN: Thank you.

21 CHAIRPERSON GRIFFIS: Any other questions?  
22 Mr. Nettler? Oh, I'm sorry. Let me just interrupt.  
23 Is the ANC present today? Is the ANC representative  
24 here? Okay.

25 Mr. Nettler? And you did file an

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1 opposition to this motion, of which the Board has read  
2 and reviewed. But highlight or comment on what you've  
3 heard today.

4 MR. NETTLER: Actually, we filed two; one  
5 in anticipation, since we understood that one was  
6 being made.

7 CHAIRPERSON GRIFFIS: Indeed.

8 MR. NETTLER: I think, going in reference  
9 to some of the comments made today, I became involved  
10 with this almost a year ago.

11 The plans that I saw being developed then,  
12 and this was prior to it being filed with the Board,  
13 have not changed since that time.

14 We began discussions with the Office of  
15 Planning, Historic Preservation Review Board, contrary  
16 to the statements made by the letter that was  
17 submitted yesterday, have been at every community  
18 meeting that's been held; some of which have been held  
19 at the Tabard Inn, on the project.

20 Nothing has changed since that time. We  
21 understood that what comments the Office of Planning  
22 made to suggest changes actually going as far back as  
23 last April, none of those changes have ever been made.

24 So, it's kind of odd for us to assume at  
25 this late date that all of a sudden a new round of

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1 changes are going to be made which haven't been made  
2 in the last five months, notwithstanding, there's some  
3 pretty significant comments that were made.

4 The problem is, of course, that the Office  
5 of Planning hasn't submitted its report. The ANC is  
6 not here. Others who were anticipating participating  
7 in this hearing today have, because of the filing that  
8 was made for a postponement, not shown up.

9 Although there are a couple of  
10 individuals, I understand, who did nevertheless show  
11 up here, it's obvious that the application isn't --  
12 Applicant isn't prepared to go forward today.

13 I think the suggestion made about it being  
14 withdrawn is probably a more sensible suggestion.  
15 Because it obviously cannot go forward as it is today.  
16 And that, in light of our opposition, we believe would  
17 be the appropriate course. Either that, or dismiss it  
18 and allowing them to refile it when it is, in their  
19 view, ready to be receive -- or to proceed before this  
20 Board.

21 The problem with having it be continued to  
22 a some date in April is, as I'm sure you're aware,  
23 your calendar's getting very busy -- getting filled up  
24 very fast with many applications that are ready to go  
25 forward.

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1           And, if this one hasn't changed in the  
2           last five months, and takes up space for a date in  
3           April, there's nothing that I think we can feel  
4           assured about it being that it's going to change by  
5           April either.

6           It seems to be the case with another  
7           matter also with the same developer on Chain Bridge  
8           Road. The same party, different name of an entity,  
9           but where there have been numerous continuances for  
10          the same reasons.

11          And we just are concerned that this is an  
12          open ended situation and needs to come to some type of  
13          resolution.

14          I also recognize that it's the first time  
15          they've asked for it formally, although the  
16          application was filed much earlier this year and would  
17          have been set down for a hearing much earlier than  
18          today.

19          But I think the sensible course is to  
20          withdraw the application -- have the application  
21          withdrawn and refiled when it is ready to be heard in  
22          an appropriate manner.

23          CHAIRPERSON GRIFFIS: Good. I see an  
24          awful lot in that. And the first address in my mind  
25          is this does become problematic for us, as we've set

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1 an entire afternoon aside for an application that we  
2 figured we could start and finish. And it does set our  
3 schedule off.

4 Of course, it is our mission to clear up  
5 our schedule as quickly as possible, so we don't waste  
6 anyone's time. We have announced our schedule all the  
7 way out, well into next year. And so it is difficult  
8 for us to lose an entire afternoon.

9 That being said, Mr. Nettler, you  
10 mentioned that we don't have Office of Planning's or  
11 the ANC's, but I have submissions from each of those  
12 entities.

13 MR. NETTLER: Okay. But I haven't seen  
14 them. I'm sorry.

15 CHAIRPERSON GRIFFIS: Then, if I'm not  
16 mistaking, the Office of Planning has Exhibit No. 35  
17 in our file and has a very strong -- in fact, their  
18 words exactly were a strong recommendation.

19 I won't tell you what it is. I'll let you  
20 read it. And the ANC has also submitted. So I'm not  
21 so sure that we aren't ready from that end.

22 MR. NETTLER: Okay.

23 CHAIRPERSON GRIFFIS: To continue on this.  
24 But let me ask you the question. Why isn't it  
25 advantageous to have this reviewed in its

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1 particularity through the Historic Preservation prior  
2 to looking at the zoning issues?

3 MR. NETTLER: Well, it's been set up for  
4 review by Historic Preservation in I believe July. I'm  
5 not sure if they were on August; the September  
6 calendar; an October date. None of those dates have  
7 -- all of those dates have come to pass, and nothing  
8 has been heard of this matter, with the same comment  
9 that the plans are going to be changes and we'll  
10 respond.

11 So, there's nothing for us -- the past  
12 gives us somewhat of an idea of what may happen in the  
13 future; which is nothing will change and this is  
14 simply in a holding pattern for a long period of time;  
15 possibly for other reasons that may not be in your  
16 germane, but it's not going anywhere very fast.

17 CHAIRPERSON GRIFFIS: Okay. Other  
18 questions? Follow-ups?

19 MR. NETTLER: And I -- may I add one more  
20 thing? We've had to, however, prepare for each one of  
21 those meetings.

22 CHAIRPERSON GRIFFIS: Right.

23 MR. NETTLER: Because we were -- were not  
24 the moving party in terms of being assured that the  
25 application is going to be heard that day. And so we

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1 did have to appear, including additional consultants  
2 that were hired for every one of those meetings.

3 CHAIRPERSON GRIFFIS: Are you ready to go  
4 forward today?

5 MR. NETTLER: We are ready to go forward.

6 MS. BROWN: Mr. Chair, if I could add just  
7 a couple comments on that.

8 CHAIRPERSON GRIFFIS: Yes.

9 MS. BROWN: The fact that the HPRB review  
10 was delayed for a couple months is no indication that  
11 there isn't any movement forward.

12 One of the most recent cases that I've  
13 worked on that you heard for St. Alban's was continued  
14 four times before we actually got forwarded. And  
15 there was considerable development moving forward.

16 And it is just a function of the HPRB  
17 calendar. And they never guarantee whether or not you  
18 can get on the consent calendar -- or on the  
19 conceptual design calendar.

20 The second point I wanted to make, again,  
21 about whether it's more advisable to withdraw or  
22 postpone, we've already paid a substantial application  
23 fee of over \$14,000. And to withdraw it and then have  
24 to repay a fee for those whatever areas of relief just  
25 is not prudent, I believe.

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1 CHAIRPERSON GRIFFIS: Understood. Others?

2 MS. MITTEN: Mr. Chairman?

3 CHAIRPERSON GRIFFIS: Yes.

4 MS. MITTEN: Mr. Nettler mentioned that  
5 the project itself, the proposal, hasn't changed in  
6 any substantial way, over the approximately a year  
7 that you've been representing the Tabard Corporation.

8 And I was hoping to ask Mr. Parker if he  
9 shares that view that there hasn't been over this long  
10 period of time, that there hasn't been a substantial  
11 change. And I think that does bear on what we can  
12 expect in terms of the way this application would go  
13 forward.

14 And, you know, one of the comments that I  
15 would like to make, and it mirrors what the Office of  
16 Planning has said in their report, where they strongly  
17 recommend denial of the requested variances.

18 Which is, as this project is proposed now,  
19 there are significant aspects of it that are contrary  
20 to the ordinance.

21 And it would really be a departure from,  
22 as the Office of Planning says, both the spirit and  
23 intent of the regulations, as well as the letter of  
24 the regulations to grant this relief.

25 And so, unless there is going to be

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1 substantial change, I just -- I think the Board is  
2 having its time wasted.

3 And, if this had come to the Zoning  
4 Commission, and I know that this is not a planned unit  
5 development proposal and the standard is different,  
6 but I would not vote in favor of a set down with  
7 something that required relief of this magnitude in  
8 this particular zone, because of the Dupont Circle  
9 Overlay.

10 So, I just am not really in support of  
11 dragging this out, because the Applicant chose to make  
12 an application that they had a lot of indication where  
13 required a lot of reform, and they have yet to  
14 undertake that reform.

15 CHAIRPERSON GRIFFIS: Understood. So you  
16 want to ask the Office of Planning if they've seen the  
17 substantial changes or modifications to the plans?

18 MS. MITTEN: Right.

19 CHAIRPERSON GRIFFIS: Then I'll let you,  
20 Mr. Parker. Good afternoon.

21 MR. PARKER: Good afternoon, I suppose. OP  
22 first met with the Applicant in March of 2004, and met  
23 again in October of 2004. And the plans in front of  
24 you are the ones that we saw on both of those  
25 occasions.

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1           It has not changed significantly, if at  
2 all in over a year and a half.

3           CHAIRPERSON GRIFFIS: Any other questions?

4           VICE-CHAIRPERSON MILLER: I have a  
5 question for Office of Planning. Did you hear  
6 anything today that would change your mind with  
7 respect to Office of Planning's position on the  
8 postponement?

9           CHAIRPERSON GRIFFIS: He doesn't have a  
10 position on the postponement. Do you, Mr. Parker?

11          MR. PARKER: We recommended against the  
12 postponement.

13          CHAIRPERSON GRIFFIS: Oh, you did?

14          MR. PARKER: It's our opinion that the  
15 nature of the relief requested is not supportable by  
16 our office. Most specifically the FAR and the height,  
17 which we feel that a matter of right is what's called  
18 for in the Dupont Circle Overlay, and necessary for  
19 the Historic District.

20                 We don't believe that the application as  
21 it stands is supportable. And so we think something  
22 that would be supportable would be significantly  
23 enough different that it would be a separate  
24 application. And that we should look for a different  
25 application.

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1 VICE-CHAIRPERSON MILLER: Let me just ask  
2 you this. What would be the difference between a  
3 different application, in your opinion, and an amended  
4 application, other than the fee?

5 MR. PARKER: Half the number of variances  
6 and special exceptions.

7 CHAIRPERSON GRIFFIS: I think your  
8 question is more procedural and I'm not sure the  
9 Office of Planning needs to answer that.

10 But I mean procedurally, there's nothing  
11 that precludes them from amending the application or  
12 removing a lot of variances.

13 MR. PARKER: True.

14 CHAIRPERSON GRIFFIS: And the whole point  
15 is, and what does our fee go to? Our fee goes to pay  
16 for all the paper processing. We could essentially,  
17 you know, limit some of that.

18 Or, is it so substantial, so substantially  
19 different that well this is all just too much to be  
20 carrying around that we might as well start it all  
21 over. I have no clue because I don't get involved in  
22 that aspect of it.

23 But, what we have today, I think,  
24 substantively, hearing from Office of Planning's  
25 position. But what we have today is the determination

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1 that this Board needs to make. And whether we need to  
2 force the Applicant to move ahead with this  
3 application at this time, or whether we would not hear  
4 it today and we would like to continue its processing.

5 So, comments on that.

6 VICE-CHAIRPERSON MILLER: Well, I think --  
7 I think the decision we have to make is whether to  
8 grant a postponement or whether to dismiss and require  
9 them -- which would be -- or have them -- we can't  
10 make them withdraw.

11 So that was kind of the point I was trying  
12 to get at. It's what is the difference here, other  
13 than the fee, which sounds fairly substantial?

14 CHAIRPERSON GRIFFIS: Well, I think  
15 there's a lot of difference. I mean, I think first of  
16 all, we can set the schedule now. We're not setting  
17 the schedule if we dismiss this outright and it goes  
18 away.

19 Maybe it should go away. I'm not sure we  
20 have the substantive or need to reach that conclusion  
21 at this point. And I don't think that any decision we  
22 make today will be that substantive of a decision of,  
23 you know, a determination of success of the  
24 application.

25 So I think it's a matter of how much

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1 control we want to maintain in terms of setting the  
2 schedule. And then having certain requirements set in  
3 by certain dates, so that we can all be prepared for  
4 the next time.

5 Or let this go and put it back out there.  
6 However, the majority of the Board wants to do it. I  
7 think you're right though. I mean, that's what we're  
8 faced with. I would say we're looking at a motion to  
9 dismiss or setting this for a postponement and  
10 continuance and set the date on it.

11 I don't think I would set an April date  
12 though. I want to set this much closer. I reviewed  
13 the schedule and I think that we would set a filing  
14 schedule that would be pretty rigorous. And we'd get  
15 this moving fairly quickly.

16 Hopefully, when we have the amended  
17 application, this wouldn't take an entire afternoon.  
18 And reviewing just the substantive variances that are  
19 here today, it is fairly clear.

20 I mean, I don't think we're discovering  
21 what variances are or what is or what isn't.  
22 Graphically, it is represented.

23 I know we may not be seeing exactly this.  
24 But my point is that I don't think this is going to  
25 need to take an awful long time for the Board's

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1 understanding and deliberation on it. So I think we  
2 can expedite a case proceeding on this.

3 So, let me hear other's opinions at this  
4 point.

5 MS. MITTEN: I guess, what I would offer  
6 in terms of -- I think we can certainly handle it  
7 different ways. Where we would dismiss the case; the  
8 Applicant would withdraw. Or they would amend it in  
9 some kind of substantial way.

10 I don't think there's anything that  
11 precludes us from pursuing any of those options. But  
12 one of the reasons why I thought it was worthwhile  
13 invoking a practice, and I know it's not the practice  
14 of the Board, to have set down consideration.

15 But, if you have an applicant -- one of  
16 the reasons why the set down is important at the  
17 Commission is because it's a sort of at the front door  
18 of the process, we say is this worth our time.

19 And so when you have an application that  
20 comes in and the applicant has been told repeatedly  
21 that this can't be supported by the Historic  
22 Preservation Division; it can't be supported by the  
23 Office of Planning, there's a lot of opposition in the  
24 community, which we often have even in cases where the  
25 Office of Planning is supporting it.

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1                   But, you know, I think there have been  
2 very -- you now, we do not often get memos from the  
3 Office of Planning saying strongly recommend denial.  
4 We don't often get that.

5                   So there's been --

6                   CHAIRPERSON GRIFFIS: It's the first time  
7 I've ever seen it.

8                   MS. MITTEN: There's been a lot, I think,  
9 of strong indications to this Applicant that this  
10 application in its current form is not going to be  
11 supported.

12                  CHAIRPERSON GRIFFIS: Right.

13                  MS. MITTEN: And yet, here we are. So, one  
14 of the reasons why I think it would have merit for the  
15 BZA to either press forward today or dismiss the case  
16 is because you want to -- I think you want to send the  
17 message to applicants that you should not bring a case  
18 that is so unlikely to succeed and take an afternoon  
19 of the Board's time to do that.

20                  Because, when you guys set your schedule,  
21 you think people are ready to go and ready to speak to  
22 the merits of their case and that they believe their  
23 case will succeed, when they get to a hearing.

24                  And we have cases that, you know, we send  
25 people back and they negotiate further and -- but this

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1 is -- this is a significant departure that is required  
2 from what is before us before this application will  
3 have any chance of success.

4 And so, that's why I'm advocating fairly  
5 strongly that the Board not let this just, you know,  
6 that the Applicant is in control.

7 CHAIRPERSON GRIFFIS: Right.

8 MR. VERDUCCI: I think the Board needs to  
9 assert some control in this case.

10 CHAIRPERSON GRIFFIS: Good. Well, I think  
11 that's very well said and I think your differentiation  
12 between the PUD set down process and ours is a good  
13 one. And this is what I'm trying to balance.

14 Because our essentially set down process  
15 is a full application. And that's what we are going  
16 to oversee to make sure everything's checked off and  
17 everything's filled and the record's ready to go.

18 What I'm balancing is never in an  
19 application should all our filings prejudice our  
20 decision. Meaning, if an applicant has the community  
21 in opposition, that doesn't mean they should run away  
22 scared.

23 MS. MITTEN: No.

24 CHAIRPERSON GRIFFIS: I understand that  
25 the majority here is in one direction. But I still

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1 look at the whole entire process. So that's what I'm  
2 balancing, because I agree in many respects of what  
3 you're saying. It's you know, a message or even just  
4 an individual decision on this.

5 However, in terms of our own process, I  
6 don't want people to come in and say, you know, we  
7 have a failing application because Office of Planning  
8 says we've failed.

9 So that's where I am with that. But let's  
10 hear from others too. Because I think this is an  
11 important issue. Ms. Miller?

12 VICE-CHAIRPERSON MILLER: Mr. Chairman, I  
13 would be inclined, at this point, to postpone as  
14 opposed to dismiss.

15 Because, first of all, I think that the  
16 Applicant is saying that something concrete will be  
17 done in the interim. That there is a reason for the  
18 postponement.

19 Whether or not that could have been done  
20 before is a question. But I think that a one-time  
21 continuance; and then, if nothing changes in the next  
22 month or two, whenever this goes to, then at that  
23 point it would be appropriate perhaps to take the  
24 other action.

25 I agree that, in these kind of cases, we

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1 don't prejudge, based on the opposition that's been  
2 put forth in a case. So I wouldn't want to do that.

3 I think we can consider that there is a  
4 big fee, and that's a difference here. And I'm not  
5 sure, it's almost like a punishment. And I'm not sure  
6 that the facts rise to that level.

7 So that's where I stand. Oh, I'd like to  
8 say one other thing, though. In general, though, I  
9 think what's paramount are that the cases are handled  
10 fairly. But I -- and efficiently.

11 But I think that the parties need to take  
12 consideration of the Board's schedule; that, in fact,  
13 this afternoon was set aside to hear the case. And  
14 it's not clear why a motion couldn't have been filed  
15 much earlier so that we could have put another case on  
16 the calendar.

17 So I think that parties should bear that  
18 in mind when they think that they're going to need a  
19 postponement.

20 MS. MITTEN: I just wanted to clarify one  
21 point, which is I'm not suggesting that because  
22 there's opposition, that we should take a certain  
23 action because the opposition exists.

24 I think that the reasons why the Office of  
25 Planning strongly opposed this application,

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1 specifically, the height and the density in the Dupont  
2 Circle Overlay District that speaks specifically to  
3 that -- those, that's -- for that reason, which gives  
4 rise to their opposition, but it's for that reason  
5 that I feel strongly about this.

6 I just wanted to clarify that.

7 CHAIRPERSON GRIFFIS: And that was very  
8 clear to me. And I didn't want to run across that.  
9 Because that's where I am in line with you, is that  
10 this was a very substantive indication from all  
11 directions.

12 Clearly, any application should be coming  
13 into this fully understanding that they should have  
14 addressed or will be addressing those issues. That's  
15 absolutely clear.

16 Okay. Here we are. Mr. Mann, did you  
17 have comments?

18 MR. MANN: Well, I think that none of the  
19 options that's in front of us is terribly appealing.  
20 But I do think that it might be more consistent. I  
21 feel like it would be more consistent if we were to  
22 grant a postponement.

23 That would be a little more in line with  
24 what we would typically offer to an applicant that's  
25 requested one. Although I certainly understand why,

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1 in this case, it doesn't sound so attractive.

2 CHAIRPERSON GRIFFIS: Right. Well, you  
3 know, and I think what we're balancing, as we all well  
4 know, is the fact that we don't grant continuance  
5 based on the likelihood of success of a variance, but  
6 rather for the causes that are presented to us.

7 In this particular case, I think Ms.  
8 Mitten has touched upon it very well. It does go to  
9 essentially the substance of the issues of the case.  
10 You know, we're being asked for a continuance to  
11 change things because substantively they aren't  
12 supportive or don't look like they might be  
13 successful.

14 That perhaps is what's rendering us some  
15 difficulty in this. Mr. Mann's wise in his words that  
16 we do often look to more leniency in our first request  
17 of a postponement and not very well on a second, by  
18 any means.

19 I think, at this juncture, unless there's  
20 a strong movement, let me ask again, Ms. Brown, the  
21 time -- minimum time required that you think it will  
22 take the Applicant's team to put together the  
23 amendments and changes to the application?

24 If we were to set this for December 6,  
25 would that be enough time for a 14-day filing prior to

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1 that hearing?

2 MS. BROWN: No, sir. We really would like  
3 to get better feedback from the HPRB before we go  
4 forward to the basic --

5 CHAIRPERSON GRIFFIS: So you want to  
6 process this through Historic prior to coming to  
7 Zoning?

8 MS. BROWN: At least one meeting before  
9 HPRB, so we have some kind of concrete direction from  
10 them.

11 VICE-CHAIRPERSON MILLER: Why does that  
12 impact the proceedings here?

13 MS. BROWN: I recognize that you could  
14 delegate any final design approval to the HPRB. But  
15 if they had a difference in what they felt in the  
16 appropriate height for the neighborhood, that might be  
17 different from the BZA, that would require perhaps  
18 further -- for example, if you suggested that 75 feet  
19 were appropriate and they said absolutely not; only  
20 65, that would be a major re-design that would require  
21 us to come back to the Board, as opposed to having is  
22 sequentially approved.

23 VICE-CHAIRPERSON MILLER: Can that happen  
24 the other way around?

25 MS. BROWN: Yes. But that's why we would

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1 like at least one month from the HPRB to have some  
2 sort of concrete guidance so we understand exactly  
3 what we're getting into.

4 MR. NETTLER: Is it possible -- might I  
5 respond?

6 CHAIRPERSON GRIFFIS: Yes.

7 MR. NETTLER: My concern about that is  
8 that the Dupont Circle Overlay was the first overlay  
9 adopted to incorporate the Historic Preservation  
10 Design guidelines into zoning. And so, it was  
11 intended to make the Historic Preservation and the  
12 zoning meet.

13 And it set a very stringent requirements  
14 for the Dupont Circle area that were otherwise not  
15 applicable in that area before; particularly with the  
16 amount of PUDs that used to be approved in Dupont  
17 Circle.

18 So, it seemed somewhat incongruous to say  
19 that Historic Preservation is going to go forward in  
20 a direction that's going to be inconsistent with this  
21 Board on the Dupont Circle Overlay, when they were --  
22 when the whole reason for adopting it was to make them  
23 consistent.

24 And, as the Office of Planning has said,  
25 it's not at all even close to being consistent with

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1 it.

2 CHAIRPERSON GRIFFIS: Follow-up?

3 VICE-CHAIRPERSON MILLER: Well, from what  
4 I've heard, I'm not convinced that we need to wait for  
5 HPRB. And it seems like, unless the Applicant's not  
6 willing to put in another application before they hear  
7 from HPRB.

8 It sounds like concerns have been  
9 identified; real concerns, by Office of Planning and  
10 others that I thought I heard they intended to respond  
11 to. And that they should be able to respond to those  
12 concerns without going through the whole HPRB process.

13 MS. BROWN: If I could just briefly  
14 address that. I have not spoken with the architects  
15 to know how quickly they could turn around the  
16 drawings.

17 To -- if you're suggesting that there is  
18 a hearing on December 6th, and then two weeks before  
19 that, then that gives us perhaps two weeks to get  
20 something filed with you.

21 I think that that is a fairly ambitious  
22 turn-around time; particularly when we will need to  
23 meet with the Office of Planning. We will need to  
24 meet with the ANC. We will want to meet with the  
25 Dupont Circle Conservancy. And get their feedback as

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1 well.

2 I don't know how productive it would be to  
3 schedule something for December 6th.

4 CHAIRPERSON GRIFFIS: We were intending to  
5 invite everyone down for that. They could all be here  
6 and see it when we see it.

7 Well, let's have more dates. Yes? Unless  
8 there's other discussion.

9 VICE-CHAIRPERSON MILLER: I just wanted to  
10 ask Mr. Nettler a question. In that, if the Board  
11 does postpone, does it make a difference to your  
12 client whether or not it's December, January, or  
13 April? Is that an issue for them?

14 MR. NETTLER: Well, it obviously depends  
15 on the date, from my own personal schedule. But I  
16 think sooner rather than later is probably more  
17 appropriate.

18 Because if there aren't going to be really  
19 any changes, and there haven't been, as you've heard  
20 from the Office of Planning, in the last year and a  
21 half, even though there's all these meetings that have  
22 been alluded to that have occurred, then I think we'd  
23 all like to get it resolved sooner as well.

24 CHAIRPERSON GRIFFIS: But let's go further  
25 with that. What's the adverse impact for the party in

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1 opposition in this case if it was postponed until  
2 April?

3 MR. NETTLER: Well, there's significant  
4 amount -- there's significant amount of costs that  
5 keep on being incurred by having to respond to whether  
6 it's additional meetings, which we do attend, or  
7 having experts who are reviewing things.

8 And having a process left open, and  
9 particularly with the operations of the Tabard Inn in  
10 terms of making clear what is going to happen and its  
11 impact on the rear of the building, which is one of  
12 the significant concerns that we've had about the  
13 proposal.

14 And so, leaving those things open ended  
15 not only produces additional costs for us because of  
16 having to deal with the iterations that never get  
17 finally either denied or approved, or because of the  
18 uncertainty as to how we have to respond too in terms  
19 of the operations of the hotel.

20 CHAIRPERSON GRIFFIS: Okay. What's the  
21 condition of the property? It's a substance of the  
22 record that talks about at one point they were going  
23 to be condemned by the city. Are they sealed and  
24 maintained? There's no concern in terms of the  
25 weathering in the next month or so, as we wait for a

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1 new hearing?

2 MS. BROWN: Based on the letter that we  
3 submitted on October 28th, the properties are clean.  
4 They have been maintained.

5 CHAIRPERSON GRIFFIS: Okay. And I didn't  
6 see anything else other than that old news, I believe  
7 it was a while ago. Okay. Opinions?

8 MS. MITTEN: I'm not in favor of a  
9 postponement. So I don't -- if you want to talk about  
10 that, then.

11 CHAIRPERSON GRIFFIS: Okay.

12 MS. MITTEN: I can't -- I understand where  
13 you all --

14 CHAIRPERSON GRIFFIS: You understand what  
15 it's based on?

16 MS. MITTEN: I understand where the rest  
17 of the Board is coming from and I don't know what I  
18 could say to persuade you otherwise, other than what  
19 I've already said.

20 So I don't want to belabor it.

21 CHAIRPERSON GRIFFIS: I guess let's  
22 explore very quickly, if we were to dismiss this, the  
23 Applicant's intentions, I would assume, are not going  
24 away. They have to project in front of HPRB.

25 Is it your thought that they would pursue

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1 the changes with HPRB and then bring a new application  
2 to the Board?

3 MS. MITTEN: Yes.

4 CHAIRPERSON GRIFFIS: Well, wouldn't that  
5 put us more towards probably May or June with the new  
6 application? I guess, how does that serve us, in  
7 terms of process?

8 MS. MITTEN: The way that I think that it  
9 serves the Board, which is the point that I was trying  
10 to make earlier, is that if you dismiss the  
11 application, then you say this is too -- this is too  
12 far off the mark.

13 CHAIRPERSON GRIFFIS: Right.

14 MS. MITTEN: To remain in on our docket.  
15 And I think the message that you would send to the  
16 Applicant is don't come back until you have something  
17 that is substantially different.

18 CHAIRPERSON GRIFFIS: Yes.

19 MS. MITTEN: One of the things, and it may  
20 be -- it may be the meaning that Ms. Brown intended it  
21 and it may not, but one of the things that happens  
22 sometimes -- I asked, why not withdraw. And there was  
23 some notion of keeping the record intact and having  
24 these plans as part of the record of the case.

25 And one of the things that often happens

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1 in planned unit developments is that applicants come  
2 forward and begin to compromise off of their initial  
3 proposal, as if well see, now we've come and we've  
4 compromised so much so we've given what we need to  
5 give and now you need to give back. Instead of saying  
6 the standard is the variance and special exception  
7 standards in this case, it is not how much they've  
8 compromised.

9 CHAIRPERSON GRIFFIS: Right.

10 MS. MITTEN: So, I don't want to use what  
11 they've proposed as a benchmark for anything.

12 CHAIRPERSON GRIFFIS: Right.

13 MS. MITTEN: Which is why I would like to  
14 close this file, and have a new case. I think that's  
15 yet another reason to do it.

16 CHAIRPERSON GRIFFIS: Yes. Well said.  
17 Yes. I don't think the Board -- you know, it's  
18 interesting. Because you almost, by dismissing this,  
19 your words themselves have maybe done the exact point  
20 of saying don't bring back the same application.

21 MS. MITTEN: Well, one would hope.

22 CHAIRPERSON GRIFFIS: It's an interesting  
23 point that I was looking at and wondering why this  
24 wasn't a PUD. And then all of this discussion. But  
25 then, that's another piece that we don't necessarily

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1 need to get to.

2 Okay. Others?

3 MS. MITTEN: Well, I can tell you why it's  
4 not a planned unit development, if you'd like to know.  
5 I mean, it's on page 3 of the Office of Planning  
6 report.

7 CHAIRPERSON GRIFFIS: Right. I  
8 understand.

9 VICE-CHAIRPERSON MILLER: Just picking up  
10 what you said. I guess I still support the  
11 continuance. Because I think if there is a dismissal,  
12 then the two ramifications are 1) a fee is assessed  
13 basically, because they have to pay a new fee, and 2)  
14 this case is delayed even further.

15 And the intervener stated that the sooner  
16 it gets resolved, the better. So, I'm still inclined  
17 for a continuance.

18 And now, looking at our schedule, I don't  
19 have an objection to April in the sense the it's  
20 really like a drop dead date. If Applicant is saying  
21 they're going to have everything by then, then we'd  
22 have a full record and no questions.

23 Not that, if there's an earlier date, I  
24 don't object to that either. I don't think we need to  
25 wait for HPRB. But I didn't hear anything from the

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1 intervener that rose to the level of such adverse  
2 impacts that it would be prejudicial to them to wait  
3 until April.

4 CHAIRPERSON GRIFFIS: Mr. Mann? Where are  
5 you?

6 MR. MANN: Well, again I would -- I like  
7 Ms. Mitten's reasoning for not postponing, but I just  
8 feel that based on how we would typically deal with  
9 these requests, that we should be consistent in this  
10 case.

11 I'm not convinced that the filing fee  
12 really should come into play here because, presumably,  
13 those filing fees are set for a reason that's pegged  
14 to the amount of the processing costs. So, and  
15 perhaps to the costs of the project itself. So that  
16 doesn't come into play.

17 But I just think that out of fairness and  
18 consistency, that we should grant a postponement once.  
19 And see what happens. And if they're not ready to go  
20 the next time, then maybe we should take a different  
21 course of action then.

22 MS. MITTEN: Can I just say one thing to  
23 the extent that it would be persuasive to Mr. Mann,  
24 which is I understand and I appreciate and I think  
25 I've been -- I have been very supportive in the past

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1 of continuances that the Board has granted for other  
2 cases.

3 And the desire for consistency is a good  
4 one. This case stands out to me because of the --  
5 what I think and the Office of Planning has said it  
6 well, is an excessive amount of relief that would, if  
7 I mean, if it were to be granted, the Board would have  
8 to -- the Board would be basically rewriting the  
9 Dupont Circle Overlay.

10 And so, it's not typical. And so I don't  
11 think that taking a case that's at the end of the  
12 spectrum and treating it different than other cases is  
13 really -- would be an inconsistent action on the part  
14 of the Board.

15 VICE-CHAIRPERSON MILLER: I just have a  
16 question for you. Are you saying that we would be  
17 dismissing on the merits then, instead of  
18 procedurally?

19 MS. MITTEN: Well, I guess it would be up  
20 to the -- I don't know what all of our options would  
21 be. I would be prepared to dismiss on the merits  
22 because of -- because it's -- it's on its face, what's  
23 being requested is not supportable.

24 But if, I'd also be in favor of going  
25 forward and hearing what the parties have to say. I'm

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1 happy to have the hearing. I have no problem with  
2 that.

3 MR. MANN: I think the Applicant knows  
4 what's at risk here though. And if they were to come  
5 back in six months and the application is the same, I  
6 think they've heard what some of the concerns are and  
7 they probably know that there's going to be a lot of  
8 opposition from the other party; from the Office of  
9 Planning.

10 CHAIRPERSON GRIFFIS: Well, it's pretty  
11 clear to me it would be easier to get to the substance  
12 of this than actually deciding whether to continue or  
13 not.

14 But let's focus on what we have. Because  
15 it's a very simple thing. I think everyone has spoken  
16 very eloquently on their positions.

17 I think, in my opinion, it would be very  
18 difficult to dismiss, based on the merits. And I  
19 don't think we'd rise to that level, because that  
20 would probably prejudice those in involvement because  
21 of the fact that we haven't had a full hearing on  
22 this.

23 But needless to say, I think the words are  
24 well spoken by everyone here that this is obviously  
25 problematic, which is exactly what the Applicant is

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1 saying. They need more time to remedy the application  
2 of its problems. And that is of the substantive  
3 issues that have been brought forward by all those  
4 involved.

5 I think we should, if it is an error, we  
6 ought to err in our consistency of granting  
7 continuances, postponements, wants, in order to remedy  
8 aspects of the application. Or, I should say, look at  
9 those to change as an applicant would be willing to  
10 do.

11 And so, let's get to timing, if that is  
12 appropriate from the Board member's perspectives of  
13 when we want to do this.

14 I am not persuaded of the fact that we  
15 should try and set our schedule for Historic and their  
16 schedule. There are different tracts of things  
17 they're on. And it is in a great perfect place,  
18 Historic would approve and it would come here and we  
19 would do, and it would go there and it would all be  
20 approved.

21 We're all going to be looking at different  
22 things at this point. It is well said that it would  
23 have been better to have perhaps it further along in  
24 either process. But we have what we have.

25 We have an opening, actually, that we have

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1 left for cases not of this magnitude or situation.  
2 But it looks like we do have an opening in January  
3 which may somewhat split the December April dates.

4 But let me hear feedback on that. I have,  
5 and Mr. Moy, if you wouldn't mind checking my schedule  
6 also, the 24th at 1:00 in the afternoon.

7 Let's hear from the Applicant if that's --  
8 any opinion on that date.

9 MS. BROWN: I do not have the architects  
10 here or the owner to check their schedule or the other  
11 attorneys in our office who would most likely be  
12 handling this when it goes forward.

13 All I can do is check with them.  
14 Obviously, we would continue to want more time, as  
15 opposed to less.

16 CHAIRPERSON GRIFFIS: Okay. That's the  
17 first volley of dated. Mr. Nettler, do you have an  
18 opinion?

19 MR. NETTLER: I'm fine with the 24th.

20 CHAIRPERSON GRIFFIS: You are? Okay.  
21 January? Or one of the opinions one of the Board  
22 members brought up is let's just do it in April. I  
23 mean, at this point that's, you know, it's impacted  
24 our schedule. So it would be worse to make it another  
25 impact that wasn't good.

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1           Anyone have an opinion on that? Mr. Moy,  
2 do you have an opinion on the January date as opposed  
3 to setting it April? And it would be the end of  
4 April, according to my schedule, as has been approved  
5 to date.

6           So we're really pushing this way far out.  
7 Just to --

8           MR. MOY: Well, I think, as far as staff's  
9 concerned, Mr. Chair, January 24th is fine. If the  
10 Board desires April, then we're looking at April 25th.

11           CHAIRPERSON GRIFFIS: Where are we?  
12 November. I don't care. What do you all want to do?

13           MS. MITTEN: Can I just suggest something?

14           CHAIRPERSON GRIFFIS: Sure.

15           MS. MITTEN: And I don't know where the  
16 Board is on this. I know I've made myself clear. But  
17 let's just say that you were to set aside an afternoon  
18 for this case in April. And it would not have changed  
19 in any substantial way, for whatever reason. The  
20 Applicant chose not to -- they chose not to heed the  
21 advice they'd been given. And you would have lost  
22 another afternoon. I don't know if there's any merit  
23 or if you -- this would be unusual, but I don't think  
24 it's outside of the Board's prerogative to do this, to  
25 have sort of like a checking in point.

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1 CHAIRPERSON GRIFFIS: Yes.

2 MS. MITTEN: So that you don't set aside  
3 a whole afternoon for a case that you don't want to  
4 hear. You know, to have kind of like a set down.

5 CHAIRPERSON GRIFFIS: Right. Yes. And  
6 it's something that we've struggled with, based on the  
7 fact that we don't have the system to do that, in that  
8 the time -- the prior time for the formal  
9 announcements required in our regulations is so far  
10 ahead.

11 I mean, we've actually tried to bring up  
12 motions and we've been dealing with that, as I'm sure  
13 you're aware, of having motions for continuance happen  
14 in a meeting session, you know, a week before, so that  
15 we can set the schedule.

16 But it's hard to maneuver that. But that  
17 was my point I was getting to is how much was  
18 anticipated of specificity of change. We would set a  
19 date well in advance to a hearing so that we might  
20 assess. And what we do and often have is continuances  
21 over in processing hearings that take more than one  
22 shot in over the afternoon that is scheduled. And we  
23 could fill that time easily.

24 So I think that's appropriate to have a  
25 submission ahead of time to kind of schedule a check

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1 on what we're looking at. But that would perhaps be  
2 more in favor of setting this to April, in terms of  
3 allowing that amount of time. Because we would need  
4 a couple of months in order to really schedule over  
5 something.

6 But it --

7 MS. MITTEN: Maybe I didn't make myself  
8 clear. If you were going to set an afternoon in  
9 April, that a month or two before that, there would be  
10 this checking in point.

11 CHAIRPERSON GRIFFIS: Right.

12 MS. MITTEN: Okay.

13 CHAIRPERSON GRIFFIS: Right. We'd still  
14 have to hear the case though. I mean, we couldn't  
15 decide a case at that prior. But we could set  
16 something else on to it, knowing that it would be, you  
17 know, we wouldn't need an entire afternoon, because it  
18 seems everyone's in -- you know, it seems to be  
19 straight forward, or whatever it is.

20 Yes?

21 MS. BROWN: If I could briefly address  
22 this point.

23 CHAIRPERSON GRIFFIS: Sure.

24 MS. BROWN: The Applicant would be happy  
25 to submit sort of a status report in advance of the

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1 hearing. And I would note that one of the reasons  
2 that it again looks like no changes have been made,  
3 there have been no drawings submitted showing any  
4 changes. What you have are the preliminary drawings  
5 submitted with the initial application.

6 And I think it's rare when an applicant  
7 proceeds on based on those drawings. The pre-hearing  
8 submission two weeks ahead of time usually has  
9 substantial changes to the drawings.

10 So again, I don't know the status of those  
11 changes at this point, but we would be happy to check  
12 in.

13 CHAIRPERSON GRIFFIS: No. And I perfectly  
14 appreciate that. And I totally understand and I  
15 appreciate what Ms. Mitten is saying. And I think  
16 it's correct.

17 However, it pushes our system to where we  
18 don't have a process. Even if we were to require you  
19 to submit on December 6th something, there's not much  
20 we could do with it unless we set a hearing. And then  
21 you're serving everybody.

22 And then what are they doing? Are they  
23 submitting in feedback of your submissions? And  
24 that's fine, but we can do that three weeks prior.  
25 And we can have everyone's submissions in. But we're

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1 all leading up to this one date. You know, we're not  
2 getting a lot of work done prior to the hearing.  
3 Because that's when the Board's work starts.

4 But getting everyone involved and getting  
5 everyone set up is exactly so. I don't have any  
6 difficulty with that. Time?

7 MR. NETTLER: Can I just --

8 CHAIRPERSON GRIFFIS: Sure.

9 MR. NETTLER: -- make a remark? What's  
10 playing on me at this point is, as you heard from the  
11 Office of Planning, I mean, it's been a year and a  
12 half. Last April these exact same comments were made.  
13 I know Ms. Brown was not there. To everybody who had  
14 a concern about what was being developed. And nothing  
15 changed.

16 And I think to let this thing just play  
17 out for two years, which is what will happen if it's  
18 heard in April, from the time when it first came to  
19 the Office of Planning, just -- it shocks my  
20 conscience.

21 I mean, I think it needs to get resolved  
22 sooner and if the Applicant can't do it in a year and  
23 a half, or it can't do it in six months, after having  
24 promised the ANC and Dupont Circle and the Office of  
25 Planning six months ago to be able to do that,

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1 I just think we're wasting a lot of time  
2 by just letting this thing just float until April. If  
3 we have a date in January, you know, the Applicant's  
4 the one who's put us in this position. Let's just  
5 take that date and move along.

6 CHAIRPERSON GRIFFIS: Okay. Ms. Miller?

7 VICE-CHAIRPERSON MILLER: Ms. Brown, you  
8 did say you're going to have architectural drawings  
9 for HPRB in January, didn't you?

10 MS. BROWN: I don't know what the schedule  
11 is, but I presume that that could be met. I wish I  
12 could give you a precise timetable. I just have not  
13 had the opportunity to consult with the architects.

14 CHAIRPERSON GRIFFIS: Anything else? Any  
15 other questions? You're sure?

16 MS. MITTEN: I do have one thing to share  
17 which is 3105.11, which is unless all parties to a  
18 hearing before the Board agree otherwise, or unless  
19 the Board -- I guess the Board can order otherwise,  
20 the Board shall not postpone or continue a hearing for  
21 a period in excess of 30 days from the date of such  
22 postponement or continuance, or until the next  
23 available schedule hearing date, whichever's earlier.

24 So I guess the Board does the prerogative  
25 to overrule the consensus of the parties on that. But

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1 the guidance of the ordinance is that prolonged  
2 continuances are not advised.

3 CHAIRPERSON GRIFFIS: Indeed.

4 MR. NETTLER: May I have one more?

5 CHAIRPERSON GRIFFIS: Sure.

6 MR. NETTLER: I was just reminded of the  
7 fact that in May the Applicant was asked to prepare a  
8 traffic study. Because it's not just a matter of the  
9 aesthetics of what's being proposed, or the design of  
10 it, but the traffic study, which you normally see  
11 before you when any type of application like this  
12 comes before you.

13 None was ever prepared, as far as we know.  
14 And so, in terms of getting this thing ready for a  
15 hearing, that would have had to have been done a  
16 fairly long time ago.

17 It just seems like this applicant has been  
18 proceeding with the idea that it would never come to  
19 this hearing as far back as last May and April with  
20 anything different than was filed then. Regardless of  
21 what anybody's position was.

22 So, again, to continue to reward the  
23 Applicant in going out until next April just doesn't  
24 seem to make sense.

25 CHAIRPERSON GRIFFIS: Filing a traffic

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1 study is not a requirement for an application. It  
2 would be a strategic maneuver to make their case.

3 MR. NETTLER: But they promised the ANC to  
4 do that.

5 CHAIRPERSON GRIFFIS: Right.

6 MR. NETTLER: At the ANC's request. You  
7 would have thought that at least somebody would have  
8 started doing something.

9 CHAIRPERSON GRIFFIS: Sure. Sure. Okay.  
10 I think we're moving towards the January 24th, the  
11 first in the afternoon. We have a spot that we've  
12 kept open for carryover cases.

13 I'd like to slip that in. We have a  
14 substantial case already scheduled for that afternoon,  
15 and I will hear that first and put this second. I say  
16 substantial, but it doesn't look as though it's -- I  
17 haven't reviewed it, but it doesn't look as though it  
18 will take a substantial amount of time.

19 So I believe that we can get through all  
20 of this in that afternoon. So, with that, if there's  
21 no other comments on that date, let's move to set a  
22 schedule for filings then.

23 Ms. Bailey, when you get a moment.

24 MS. BAILEY: When did you want to schedule  
25 the Applicant's submission? A month in advance, as

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1 suggested by staff?

2 CHAIRPERSON GRIFFIS: I think I'd like to  
3 do just -- I'd like to do two weeks in advance. The  
4 week of the 16th of January for the any of the filings  
5 of the Applicant's. Obviously, they can come in  
6 before that.

7 But, by that date. And that will give --  
8 pardon me, is that one week? Oh, I'm sorry. I'm  
9 looking at that. I'm sorry. The week of the 10th.

10 MS. BAILEY: So that's January the 10th  
11 for the Applicant, Mr. Chairman?

12 CHAIRPERSON GRIFFIS: Right. Is that 14  
13 days?

14 MS. BAILEY: That's two weeks. Would the  
15 Applicant obviously be serving the ANC and the party  
16 in opposition at that point, as well?

17 CHAIRPERSON GRIFFIS: Absolutely.

18 MS. BAILEY: And the Office of Planning  
19 would file their report on the 17th?

20 CHAIRPERSON GRIFFIS: Or before.

21 MS. BAILEY: Or before.

22 CHAIRPERSON GRIFFIS: No, I'm just  
23 kidding. Anything else?

24 MS. BAILEY: That's it.

25 CHAIRPERSON GRIFFIS: Perfect. Okay.

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1 Everyone understanding? Yes? Comment?

2 MS. BROWN: Simply that that's a very  
3 compressed schedule given the holidays of Thanksgiving  
4 and Christmas and schedules. We will do our best to  
5 meet that. I would hate to waste the Board's time on  
6 the 24th by not having everything resolved ain any  
7 negotiations that we were in.

8 CHAIRPERSON GRIFFIS: Right. And I think  
9 what the Board's looking for and the comments were  
10 very specific and direct. And the fact is that we  
11 should know and be well -- it shouldn't take that much  
12 time if alternatives are being sought and pursued.

13 And so, let's bring those and air them and  
14 get them through the public process here. There's  
15 enough site information. What we need to know is the  
16 substantive variance requests that are being changed  
17 or the tests for that.

18 With that, hopefully, it will be able to  
19 be met. Yes?

20 VICE-CHAIRPERSON MILLER: I just want to  
21 say that it may sound like a compressed schedule, but  
22 that's really, based on what we've heard today, is  
23 that this has been in the process for a long time and  
24 that the Applicant's been on notice of these problems  
25 for a long time, and has represented that they have --

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1 they have some specific changes in mind that they're  
2 going to make.

3 CHAIRPERSON GRIFFIS: Okay. Anything  
4 else? Everyone okay? Very well. Then we will see  
5 you on the afternoon of the 24th. Thank you very  
6 much.

7 Ms. Bailey, are you aware of any other  
8 business for the Board this afternoon?

9 MS. BAILEY: No, Mr. Chairman.

10 CHAIRPERSON GRIFFIS: Indeed. Thank you  
11 all very much. Then let's adjourn our afternoon  
12 session.

13 (Whereupon, the meeting was adjourned at  
14 2:28 p.m.)

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