

Loews Theatres – Georgetown Incinerator

SECTION THROUGH LOBBY

rockwellgroup



Loews Theatres – Georgetown Incinerator

FOYER

rockwellgroup



Loews Theatres – Georgetown Incinerator

BATHROOMS

rockwellgroup



Bovis
Lend Lease

Bovis Lend Lease, Inc.

1001 Wisconsin Avenue N.W.
Washington, DC 20007

Telephone
202 944 3737
Facsimile
202 944 3738

www.bovislendlease.com

Regional Headquarters
London
New York
Sydney

Mr. Jeff Perlik
Millennium Partners
1995 Broadway
New York, NY 10023

Re: **Georgetown Incinerator Project**
BLL # 46255300

Dear Mr. Perlik:

Pursuant to your request we have identified the following costs relating to the above referenced project;

A.	Costs for Moving and restoring the three historic houses, along with costs for working in and around the existing Incinerator Building.	$4,146,509
B.	Costs for maintaining the view corridors and creating a campus style structure with associated services, enhancements to stone walls and windows for the Georgetown area.	$11,324,843
C.	Costs for flood protection during construction, and items incorporated for flood protection during occupancy. Impact costs associated with protection and working around the Whitehurst Freeway.	$896,000
D.	Costs associated with the geology and other existing conditions of this site.	$4,710,500
	Total	$21,077,852
	With General Conditions and Sub Bonds	**$23,027,553**

If you any additional information or clarifications please do not hesitate to ask.

Very truly yours,

BOVIS LEND LEASE, INC.

James A. Klein
Assistant Vice President

Cc: Andrew Gutowski, Millennium
Roger McElfresh, Bovis
Greg Terry, Bovis

Cost Analysis Table

for additional project cost imposed by unique site constraints of the Incinerator Site

N^0	Description of Work	Georgetown Incinerator Site	M-Street Site(using 650,000 sq. ft as comparison)	Delta
A.	**HISTORIC PRECINCT**			
	Historic Houses			
	a. Moving out	$ 288,153.00		$ 288,153.00
	b. Rent space for storage	$ 300,000.00		$ 300,000.00
	c. Moving back	$ 145,000.00		$ 145,000.00
	d. Additional reinforcing of structure to allow move back	$ 15,000.00		$ 15,000.00
	e. Restoration	$ 591,500.00		$ 591,500.00
	f. Historic Consultant	$ 155,290.00		$ 155,290.00
	g. Historic Architect	$ 138,800.00		$ 138,800.00
	h. Rubble foundation	$ 80,000.00		$ 80,000.00
	i. Engineer	$ 15,315.00		$ 15,315.00
	j. Archeologist	$ 100,000.00		$ 100,000.00
	Incinerator Building and Chimney			
	a. Restoration of Façade	$ 648,792.00		$ 648,792.00
	b. Pre-blast Chimney Stabilization	$ 318,000.00		$ 318,000.00
	c. Pre-blast removal of building parapet	$ 7,343.00		$ 7,343.00
	d. Removal of Hazardous Materials	$ 145,000.00		$ 145,000.00
	e. Selective Demo	$ 150,000.00		$ 150,000.00
	f. Environmental Consultant	$ 157,316.00		$ 157,316.00
	g. Pre-construction Inspection	$ 180,000.00		$ 180,000.00
	h. Incinerator Probes	$ 85,000.00		$ 85,000.00
	i. Additional shoring of Incinerator Building and Chimney, shoring for Theater # 14	$ 1,068,000.00	$ 442,000.00	$ 626,000.00
			sub-total	**$ 4,146,509.00**
B.	**VIEW SHEDS AND CAMPUS PLAN**			
	Concrete Structure	$ 20,719,341.00	$ 16,016,000.00	$ 4,703,341.00
	H.V.A.C. for theaters and campus site	$ 14,950,000.00	$ 12,324,000.00	$ 2,626,000.00
	Electrical for theaters and campus site	$ 8,750,000.00	$ 6,864,000.00	$ 1,886,000.00
	Elevators, due to Campus Design	$ 2,800,000.00	$ 1,669,500.00	$ 1,130,500.00
	Bridge to Residences	$ 235,000.00		$ 235,000.00
	Rubble stone and window panels	$ 744,002.00		$ 744,002.00
			sub-total	**$ 11,324,843.00**
C.	**TOPOLOGY AND FLOOD PLAIN**			
	Flood Plan Mitigation			
	a. During construction	$ 170,000.00		$ 170,000.00
	b. After construction	$ 100,000.00		$ 100,000.00
	Sheeting and Shoring	$ 1,068,000.00	$ 442,000.00	$ 626,000.00
			sub-total	**$ 896,000.00**
D.	**GEOLOGY AND ROCK**			
	a. Removing Hazardous Material from Site	$ 300,000.00		$ 300,000.00
	b. Removing Contaminated Material from Site	$ 370,000.00		$ 370,000.00
	c. Rock excavation	$ 6,400,000.00	$ 2,359,500.00	$ 4,040,500.00
			sub-total	**$ 4,710,500.00**
	Total Trade Costs			**$ 21,077,852.00**
	General Conditions		9%	$ 1,897,006.68
	Bonds		.25% of trade cost	$ 52,694.63
	Total			**$ 23,027,553.31**

GEORGETOWN INCINERATOR
SUMMARY OF PROFORMAS

	Without Site Constraints	*With Site Constraints*
Development Cost	$140,220,787	$163,248,340
Gross Project Value over 5-year development period	$153,401,541	$153,401,541
Profit/(Loss)	$13,180,345	($9,846,799)
Profit (% of Cost)	9%	n/a

GEORGETOWN INCINERATOR, WASHINGTON

PROFORMA WITHOUT SITE CONSTRAINTS

A. DEVELOPMENT COSTS

CATEGORY	COST
Land	20,062,615
Direct Costs	84,939,447
Indirect Costs	27,118,725
Construction Interest	8,100,000
TOTAL DEVELOPMENT COSTS	140,220,787

| $979 |

B. COMPUTATION OF PROFIT

COMPONENTS		STAB. NET INCOME UPON COMPLETION	NET CAPITALIZED VALUE *
CARPARKING GARAGE	Triple Net Income	1,680,000	
	Less Management Expenses	50,400	
	Capitalized at:	8%	19,758,900
RETAIL	Income	438,000	
	Less Management Expenses	21,900	
	Net Income	416,100	
	Capitalized at:	8%	5,045,213
THEATERS	Income	1,750,000	
	Less Management Expenses	107,643	
	Net Income	1,642,357	
	Capitalized at:	8%	19,913,579
RITZ CARLTON	Presold for:		39,200,000
RESIDENTIAL - AS CONDOMINIUMS		78,293,345	73,204,278
	Less Ritz Carlton Payment		3,720,428
			69,483,850
GROSS PROJECT VALUE			153,401,541
PROFIT/ (LOSS)		13,180,754	
PERCENT		9%	

* Net Capitalized Value assumes 6.5% transaction costs for condominiums and 3% for all other components

GEORGETOWN INCINERATOR, WASHINGTON

PROFORMA WITH SITE CONSTRAINTS

A. DEVELOPMENT COSTS

CATEGORY	COST
Land	20,062,615
Direct Costs	107,967,000
Indirect Costs	27,118,725
Construction Interest	8,100,000
TOTAL DEVELOPMENT COSTS	163,248,340

B. COMPUTATION OF PROFIT

COMPONENTS		STAB. NET INCOME UPON COMPLETION	NET CAPITALIZED VALUE *
CARPARKING GARAGE	Triple Net Income	1,680,000	
	Less Management Expenses	50,400	
	Capitalized at:	8%	19,758,900
RETAIL	Income	438,000	
	Less Management Expenses	21,900	
	Net Income	416,100	
	Capitalized at:	8%	5,045,213
THEATERS	Income	1,750,000	
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RESIDENTIAL - AS CONDOMINIUMS		78,293,345	73,204,278
	Less Ritz Carlton Payment		3,720,428
			69,483,850
GROSS PROJECT VALUE			153,401,541
PROFIT/ (LOSS)		(9,846,799)	

* Net Capitalized Value assumes 6.5% transaction costs for condominiums and 3% for all other components

GEORGETOWN INCINERATOR, WASHINGTON

PROFORMA WITH SITE CONSTRAINTS WITH INITIAL LOEWS DEAL

A. DEVELOPMENT COSTS

CATEGORY	COST	$/GROSS SQ.FT. (w/o parking)
Land	20,062,615	$56
Direct Costs (net of Loews contribution)	82,967,000	$233
Indirect Costs	27,118,725	$76
Construction Interest	8,100,000	$23
TOTAL DEVELOPMENT COSTS	138,248,340	$388

| $979 |

B. COMPUTATION OF PROFIT

COMPONENTS		STAB. NET INCOME UPON COMPLETION	NET CAPITALIZED VALUE *
CARPARKING GARAGE	Triple Net Income	1,680,000	
	Less Management Expenses	50,400	
	Capitalized at:	8%	19,758,900
RETAIL	Income	438,000	
	Less Management Expenses	21,900	
	Net Income	416,100	
	Capitalized at:	8%	5,045,213
THEATERS	Income	1,750,000	
	Less Management Expenses	107,643	
	Net Income	1,642,357	
	Capitalized at:	8%	19,913,579
RITZ CARLTON	Presold for:		39,200,000
RESIDENTIAL - AS CONDOMINIUMS		78,293,345	73,204,278
	Less Ritz Carlton Payment		3,720,428
			69,483,850
GROSS PROJECT VALUE			153,401,541
PROFIT/ (LOSS)		15,153,201	
PERCENT		10%	

* Net Capitalized Value assumes 6.5% transaction costs for condominiums and 3% for all other components



ERA

Economics Research Associates

May 3, 2001

Ms. Sheila Cross Reid
DC Board of Zoning Adjustments
441 4th Street, NW
Washington, DC 20001

Via Facsimile: 202-727-6072

Dear Ms. Reid:

Anthony Lanier has asked me to comment on the viability of leasing retail space located in the 100-year floodplain. Our company is involved in retail planning, feasibility studies, and leasing plans for mixed-use projects around the world. Over the past 42 years, Economics Research Associates (ERA) has completed about 14,000 consulting assignments.

In our experience, such a condition would impose sufficient risk as to make the space unleasable. Tenants would face difficulties finding adequate property insurance coverage on the leasehold improvements, equipment, and inventory. Credit tenants would be highly unlikely to consider the space, absent extraordinary flood-protection measures.

Sincerely yours,

Patrick L. Phillips
President

PLP:jm

cc: Anthony Lanier

1101 Connecticut Avenue, NW Suite 750 Washington, DC 20036
202.496.9870 FAX 202 496 9877 www.econres.com ERA is affiliated with Privers Israel
Los Angeles San Francisco San Diego Chicago Dallas Washington DC New York London

ECONOMICS RESEARCH-DC Fax:2024969877 May 3 '01 14:38 P.02

F

GOVERNMENT OF THE DISTRICT OF COLUMBIA

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUILDING AND LAND REGULATION ADMINISTRATION

RECEIVED
FEB 9 2001
COMMISSION OF FINE ARTS

RECEIVED BY

Date ___/___/___

Staff

RECEIVED
SHALOM BARANES ASSOC.
APR 27 2001

Filing Date 2-8-01

TRANSMITTAL LETTER - COMMISSION OF FINE ARTS

TO: **The Commission of Fine Arts**

☐ **Concept** ☐ **Final**

The Accompanying application HPA No. 01-190 and OG No. 01-090 is referred for considerations and appropriate action in accordance with the provisions of D.C. Law 2-144. The Historic Landmark and Historic District Protection Act of 1978 and in accordance with the following Act(s):

( ) The Old Georgetown Act, Public Law 808, 81st Congress
( ) The Shipstead-Luce Act, Public Law 231, 71st Congress

PREMISES	LOT	SQUARE
3100 South St, NW	88	1189

Complies with the D.C. Zoning Regulations

for Zoning Division

Subject to final zoning review

The submitted documents were checked for general compliance of the exterior features with the D.C. Construction Codes: No objections to filing with CFA. This clearance does not constitute an approval for building permit.

4/8/01
Structural Section

Cleared to file with CFA by Permit Service Center

Permit Service Center

TO: Mayor's Agent for D.C. Law 2-144, Public Law 808, and Public Law 231, for those applications also subject to D.C. Law 2-144.

The accompanying application is returned by the Commission of Fine Arts with recommendation as noted.

Recommendation: See letter to Ms. Sheila Cross Reid, Chairperson of the Board of Zoning Adjustment for the Government of the District of Columbia, dated 11 April 2001.

for Carter Brown, Chairman

Date 20 April 01

White=PPD Canary=HPD Pink=Record

THE COMMISSION OF FINE ARTS

ESTABLISHED BY CONGRESS 17 MAY 1910

NATIONAL BUILDING MUSEUM
441 F STREET, N.W., SUITE 312
WASHINGTON, D.C. 20001-2728

202-504-2200
202-504-2195 FAX

11 April 2001

Re: BZA case 16702

Dear Ms. Cross Reid:

The Commission of Fine Arts and its Old Georgetown Board have reviewed the proposed increase in height of an additional residential floor at the Georgetown Incinerator project at their respective public meetings 15 March, and 5 April. The Commission is strongly opposed to the project exceeding the zoning height limit at this sensitive location on the Georgetown historic waterfront and the variances sought by the developer to permit this increase.

We would like to point out that Public Law 808, the Old Georgetown Act under which we operate, specifically charges the Commission with the responsibility "to regulate the height, exterior design, and construction of private and semipublic buildings in the Georgetown area of the National Capital". The Commission is aware that the forty foot height limitation for the Incinerator project has been measured from South Street, the highest elevation on the site, which is normal practice in developing a scheme with maximum allowable density. However, there is a major drop in elevation of more than forty feet to the south perimeter of the project site, thereby permitting the developers a greatly increased building mass. Its elevation above the grade of K Street is ninety feet as approved. This condition already limits the vista north of the C & O Canal down Wisconsin Avenue and 31st Street to the Potomac River, an important aspect of the historic district. To add an additional floor to the Incinerator project would further diminish this crucial aspect of this site.

Thirty years ago the Commission spear-headed the drive to down-zone the industrial waterfront area which at that time had a height limit of ninety feet. Two new zones were created with height limits of sixty feet and forty feet. This latter category was applied to sites on the waterfront that were deemed especially critical to preserving the views of the Potomac River and national memorials beyond. The Incinerator project site is on one of the most important of these, thus raising the concern of the Commission and the community.

At each public meeting, this important issue was emphasized in testimony. The Old Georgetown Board stated that, from a design standpoint only, the revised scheme adding an additional floor was acceptable. However, in response to the background information on the special zoning designation, the concerns of the Citizen's Association of Georgetown and various community organizations, as well as the precedent of the Commission's efforts to lower the building heights in the waterfront area, the Board recommended against the added height given its context. The Commission strongly concurs with the Board.

I will be happy to address any question you may have regarding the Incinerator project.

Sincerely,

J. Carter Brown
Chairman

Ms. Sheila Cross Reid, Chairperson
Board of Zoning Adjustment
Office of Zoning
441 4th Street, NW, Suite 210
Washington, DC 20001

VIA FAX: 202-727-6072

Acting Chair Harry G. Robinson: With the one that was discussed earlier this morning it's on the first page, Case 0G01 that's 90 with the 3100 South Street N.W. That's the Georgetown Incinerator project and it should be the action is related back to the letter that was sent to the chairperson of the BZA. I do have copies of that letter if you want.

Lanier: Esteemed member of the Commission by name is Anthony Lanier and I am one of the developers of the controversial incinerator project and I wanted to take this opportunity to clarify perhaps some issues affecting this project. As you may know we got to this situation inadvertently as a result of the economic demise of not a tenant but an extremely important component of our project we selected originally in order to create an amenity to the project which was not being utilized during day time, namely extraordinarily complex and expensive parking garage of accommodating 600 cars which during the day is not utilized by the cinemas while it brings life to K St. which currently is dead in the evening and invigorates the K St. life. I would like to take this opportunity to dispel a rumor that this argument is a contrived argument. I have this discussion briefly with Secretary Atherton last week but it comes to my attention that we lack credibility in the argument of the movie situation and while I am neither shareholder for the movie chains nor do I have more inside than many other people. I can assure you that as sure as tomorrow is Friday the movie industry will not recover financially from where it is within the next 12 months. Major corporations much clever than I have lost their entire investment in these companies and the movie industry is effectively in bankruptcy. Now

what does that really mean. It doesn't mean that we won't be seeing movies but it does mean that they cannot contribute to the complex as originally complicated. We are therefore missing an economic investment by the movie cinemas in the amount of $25 million, plus the rental stream in the amount of $1.7 million which we need to replace now because we are currently in construction of precisely that element so we are not given the luxury to look far and away for a solution. We either have to stop or find a solution which resolves the issue for us now. That is why we come up with another floor on part of the project. That other floor allows us to convince our construction lenders that we have an alternative revenue source which we can apply to the completion of the project thus making up for the failure of the moving industry to a) contribute $25 million, and b) providers with a creditworthy rental stream of $1.7 million. So in essence, in gross terms we have facing a lack of somewhere in the range of $35 million on a project in mid-construction. The second issue I think I would like to address is that without wanting to debate Secretary Atherton's eloquent assessment of what constitutes hardship or a difficult side. I doubt if there are many projects that have gone through more reviews than this single project. And when you listen to the litany of approvals we have obtained to build this project you must ask yourself at the end if we have lost our mind or if we are philanthropists. We have been in front of this Commission and the Old Georgetown Board I believe 17 times. We have been twice in front of the City Council, we have been in front of the Mayor's Agent, we have been in front of NCPC, the National Park's service the design committee of the Department of Housing, many times in front of ANC and the

Business Association of Georgetown and while I do this as a matter of life never have I gone to this extreme. It has a result an extremely difficult project to bring about.

Robinson: Well have these approval conferences weren't added on after you started this. I mean they have been for years. Anybody who has worked in the city knows the nature of all this. Especially your architect. I can't believe this is [inaudible].

Lanier: We can all look back and say hindsight is 20/20 and while we are lucid people it still turned out to be a much more elaborate process than anyone of us had predicted and nevertheless with all our predictions when you start into a process of this nature you do not you don't have the ability to know everything up front. When you buy a sight for the city in an RFP you don't know how deep your rock is, what kind of rock you have, if you are going to get water, if the chimney is going to fall, if the chimney is not going to fall and what concessions you enter into during the course of that transaction. As an example we did not know that we would have to provide let's say 600 parking spaces. We entered into an agreement with the city to provide 250 in a site where you have a very marginal periphery since it is occupied by a major structure in the center you did not have the opportunity to provide these parking spaces hence we have to proceed and acquire eight other properties in order to find a block of space where we could be the parking and providing this parking structure we also came to this commission and with the help of this commission we are given the ability to demolish some of the buildings which were found were contributing? So when the commission views the 40 foot height limit I do believe that the commission has the opportunity to look at it in the context of what this project means. Just as the Commission has the ability to look at an old building and determine

if it is historic and significant or non-contributing so without wanting to educate the commission as to what is possible or not I just beg to differ that this is simply an absolute term that needs to be seen in the context of the project and if the commission is so finding I would like to have the opportunity of an architect kind of explain what I tried to do in commercial terms or layman's terms in an architectural context. Perhaps simply for your understanding of our view I understand that we don't have to have the same view at all times, that there is a right to differ and I am perfectly happy to accept that we don't come out with the same solution. I just want you to understand that our position is one which is based on voracity, true hardship and always a desire to build in the context of what we believe and we are a big believer of this historic district in Georgetown. I love it as much as anybody else and I always am trying to maintain it and hope that it will one day be the jewel of our nation. And with that if you would be kind enough and would like to have Shalom speak a couple of words.

Robinson: I'm sure that your conversations with the Secretary of the Commission were enlightening in that he presented our position correctly. I want you to understand that we are constrained not by some discretionary ability to grant conditional rule. The reason I ask Mr. Atherton to speak about the exceptions to the height and zoning in the city was for the purpose to understand clearly that we don't have the discretion to say "gee we feel really bad for you. As you've said the movie industry is in major disrepair and maybe they are, and we are willing to acknowledge that and to solve the problems. We don't have that discretion. The Georgetown Act , in fact is about height and density. As Mr. Atherton said the zoning exceptions relating to conditions contributed by the site are

things that couldn't be foreseen when zoning was applied to the city lot by lot and was to owners and architects some, some manuvering room to respond to their programs and to the zoning department. I'm just not aware of any exception to be made either of the Georgetown Act or to the zoning commissions regulations for economic hardship. I don't know want to cut Shalom off and you must know that whenever he comes here we are all willing to sit and see what he shows us because it is always well done as this was. I don't want to put him in a position to trying to make something real that's not going to be real. I mean we're constrained by laws and acts and we act within their framework and I don't know the exception and ask Mr. Atherton is it exception of economic hardship? And there is none. If there was a way for this commission to assist you and not violate the tenants on which we stand we can certainly do that but I don't know what they are. If Shalom can make that presentation, I am perfectly willing to hear what he has to say and I take my hat off to him. I don't think that avenue is available to any of us.

Lanier: I don't believe that our case is based on hardship and far from me taking away to answer, chipping away on Shalom's time. The trigger of this issue is based on economics but the variance we are seeking is because we do not have as a result of the unique aspects of the side the ability to add mass, if you so want, without dealing with height. We have a lot of surface, we could easily come to you and say let's not argue about height why don't we just try and declare the incinerator noncontributing building and then we have space to resolve this. So the uniqueness of the side is what creates the difficulty. The fact that we are only able to build on let's say without being necessary perfectly accurate on 50% of the side and 50% of the side is occupied by openness, space and the incinerator structure.

That I believe is our argument. Had we known what we know today, we could easily approach this project as was suggested by the city as a PUD and we would have had the ability to build up to 60 feet and change all sorts of things in our life that I wish we had. But our intent at the time was to build a matter of right project and I feel stupid today in the middle of construction trying to amend the project. It's not desirable. Had I know that this is, the next time I'll know better and build myself this flexibility but our goal was to be as fast as possible within the envelope prescribed.

Robinson: Mr. Atherton, would a PUD the designation have allowed them to exceed what is now imposed in terms of height and depth. I mean that development strategy doesn't override the zoning or the Old Georgetown Act?

Atherton: I mean, had they gone the PUD route, from our perspective, the forty foot height regulation would prevail. I don't think there is any doubt about that.

Lanier: That to me draws a legal conclusion and I am out of it.

Robinson: Thank you.

Baranes: I was going to say I'm going to do two things here I've never done before, one of them is to talk to you about drawings so that you have drawings and the other thing is to talk to you about zoning which I've never done before. Let me start, I'll limit my presentation to that discussion of these issues of zoning. Let me start with just one very straightforward, simple issue which is the FAR that Mr. Atherton discussed this morning. This is the case where the topography is not working for us it's actually working against us. If you look at our zoning submittal to the district I think you have copies of it right here, which you will see is that 23% of our allowable FAR, then equates to 58,000 square

feet is this built below the South Street level. So in fact we're losing a lot of that area down on K Street, the area above it there are several levels buried into the hill, there are some fairly intricate calculations associated with that and the cost against the project is 58,000 square feet. That's just a zoning calculation we went through, and it has been accepted by the district, and that's how we are building. Of the 248,000 square feet they are allowed in FAR, 58 are below the South Street elevation. Now let me talk a little bit about – yes?

Robinson: And your point about that 58,000 square feet is what?

Shalom: I was really just trying to clarify a statement that was made this morning, where I think the point was made that none of that area counted against us and in fact the FAR; in fact, it does count against us. It's part of their calculation. The reason it's important here is because that area, first of all you start down at the K Street level, there are very limited uses you can place down there for different reasons. There's a prohibition against placing any residential down there, any hotel rooms down there, because the 100 year flood level is an elevation 17.5. K Street is about an elevation 10, 10 1/2, so there are very limited uses that you can place down there. We were very fortunate in this instance to have the theaters. They are one of the few uses that actually will go to the 100 year flood plan level. A lot of retailers won't do that, some retailers will, but there is in terms of requirements that we have to meet, we cannot place any of these other uses down there. We can never insure it. So, that is an issue. We are struggling with the fact that anything you put down there does count against the FAR and then on top of that the uses are limited that we are allowed to place down there. With respect to the test that we have to

meet with regard to this variance that we are asking for and I think Mr. Atherton read part of it to you this morning. It does have to do with the uniqueness of the site, and the practical difficulties the site creates against the design of the project and we have designed and gone through the Board of Zoning Adjustment many, many times over the last 20-25 years where we have historic buildings on our site and because of the presence of the historic building we could not achieve the FAR, we could not achieve the height, we could not achieve the setbacks, and the board has routinely accepted the presence of these historic buildings on the site as presented, meeting that test of the zoning. And Mr. Nettler informed me this morning that it actually if it has been contested in the courts then it's been upheld. That's second hand information as far as I am concerned. All I can attest is the fact that we have been through this process ourselves and the board has accepted the presence of historic buildings that's creating practical difficulties. So on this particular site, the parcel that we started out with was the incinerator parcel, the historic parcel which ran from South Street was a single lot all the way down to K St. and the measuring point there, the way zoning allows you to measure and the way the way the FAR is calculated, essentially yields you a situation where a lot of that space that you have to assert at the bottom of the site in the flood plain counts against you in the FAR and the zoning does accept that as a practical difficulty attributable to the uniqueness of the site. I mean that's a fairly straightforward argument. The other issue as it specifically relates to height that I think is really important to think about, is the fact that we have W1, W2, W3 in Georgetown and the heights for those three zones are 40, 60 and 90 I believe. When you look at the zoning regulations it's only in the W1 which the zone that we're

in that you are allowed through the PUD process that you refer to this morning, to go up to 60 feet, to get an increase in height of an additional 20 feet. When the zoning regulations were changed back in the 70s, it was only in the W1 that this incremental increase in height was allowed. If you look at the PUD regulations for W2 and W3 we are not allowed any additional height. With the PUD the height limitations are 60/60/90 without the PUD they are 40/60/90. So it's only in this zone that you are allowed to increase in height. I think that was done because there was a recognition that with a W1 you would have a lot of issues with topography as Georgetown is laid out, and then buildings and special circumstances should be allowed to go taller. The only other issue I want to make and I'm going to rely on drawing here if you don't mind. When we were here a long time ago, 15 meetings ao, there was, this is the K Street elevation as seen from the river, this is the Whitehurst Freeway, and I remember that we had a lot of photographs as well as a drawing similar to this that address the issue of the height along K St. moving from the West to the East and there was I think a confirmation of the notion that the height is tall on the West side and it steps down towards the East and with that in mind we are seeing here the Washington Harbor across the street. Now what we've drawn here is the project with the proposed additional 10 feet. And I think that this relationship and these buildings stepping down to the east is something that the commission, and I remember Mr. Brown specifically commenting on this that this is an important feature here, there was a stepping down that would in sense reinforce the pattern in the skyline and I think it's important to understand that we are still maintaining that. I mean I think in terms of the stepping, the project still looks very well. Then of course you have the

issues of what are the site lines as you go down Wisconsin Avenue, 31st Street, I won't go into them, but we do have other boards if you want to see them. But because we added the setbacks of the Citizens of Association of Georgetown asked for and you did not see that last time, but we have reintroduced an additional 12 feet of setbacks on the top floors your view of the river as you go down Wisconsin or 31st is essentially the same as it is under this plan as it is under the plan that's been approved and is currently under construction. It's this old top floor and it's relationship to the penthouse that control your views of the river. When you look at the way we've added this floor and set it back they don't in any way impinge on the views of the project that you approved in the past year. So those I think are the essential issues, and it looks like was must have left something out.

Nettler: Richard Nettler, now it's on. I'm sorry Richard Nettler on behalf of the applicants: I just want to just for two minutes to add something because I think a context in terms of the waterfront zone is important to understand also because it was a very unusual rezoning that was done in 1973. If you know your history of the district which I know you do, it was pre-home rule, and it was the only instance in which there had been the litigation that had been brought against the district to ensure, pre-home rule, to insure that the zoning in the district was consistent with a comprehensive plan because at that time the comprehensive plan was a National Capital Planning Commission's comprehensive plan which had been adopted in the late 60s. What happened was this commission actually had approved development in Georgetown that was perceived by the National Capital Planning Commission that was the inland site which is to the east of this site that was in

the view of the National Capital Planning Commission on the Park Service at a height that was greater than what the Park Service believed was appropriate and the National Capital Planning Commission. What's important about this is that the Citizen's Association of Georgetown urged the zoning commission on an emergency basis to adopt regulations to change the height, to reduce that height, which the commission of fine arts supported and to reduce that height down as Shalom says to a W1 at 40, W2 was at 60, W3 was at 90. Actually W2 is all along here, W3 is down here. And in adopting that on an emergency basis the Citizen Association of Georgetown sued the city because they felt that in allowing these other projects to go forward they were still violating the comprehensive plan. And the only decision addressing this issue because home rule became into effect in 1974, the United States Court of Appeals directed the zoning commission to issue what's called in the federal terms a basis and purpose statement which doesn't exist under the local administrative procedures act and after that, while that case was pending the zoning commission then went back and issued this statement and in that statement they addressed the issue of the topography of Georgetown the heights that they were setting in Georgetown and the densities and why they were picking certain sites to have that height as well as the fact they had adopted these PUD regulations, which only as Shalom said, in the W1 would allow you to go above what they were setting as the height for a matter of right projects. And they did this because they understood that there were 1) the W1 was being done along the canal and there was a particular concern by the Park Service which was reflected in one member of the Park Service who was Mr. Stanton who was a part of the Zoning Commission was concerned about the heights along the canal,

2) on the river side of K Street which is going to be a park area and where you have the boat houses and the only other site that had been selected was this site the incinerator site because as was stated in the base and purpose statements they wanted to make sure that the vista down Wisconsin Avenue was preserved. But they recognized because of the topography that through the PUD process you could build up to 60 feet because that would still preserve the values that they were seeking to protect under that zoning. We are less than that 60 feet that was authorized and still is in effect under those zoning regulations as a PUD. And as Shalom stated, because we've stepped back the building as suggested by the Citizen Association of Georgetown, we are back at 40 ft. along Wisconsin Avenue in terms of the vista. So we have done exactly what the Zoning Commission expected to be done in 1973 for this project. 1) to make sure you retain that vista along Wisconsin Avenue and 2) as actually Mr. Hood the members of the Zoning Commission recognize in the Office of Planning at the hearing two days ago, that this project reviews - and that's why I think why Anthony was getting into all that reviews is analogous to a PUD project. The Department of Housing and Community Development had urged us when the project started to do this as a PUD which would have allowed us to go to 60 feet. We thought all along that we could do this within the 40 feet because we never anticipated the movie industry to go bankrupt and as Lowes has told the Board Zoning Adjustment 10 of the major movie companies around the country have all gone bankrupt and the Park Service has actually supported us in the seeking of this variance and has submitted a letter to that effect. So we've done everything that was authorized under the zoning regulations. We're not above the 60 feet, we're actually below 60 feet.

We are at 40 feet along the vistas and in terms of the area, most of the area that additional area that's being sought is actually inside the building, it's inside the building because we've turned what used to be unproductive space into usable space and that's where the additional density comes in. You don't see that additional density. The only additional density you see is in those small little pieces on K Street that are framing the incinerator tower and I just wanted at least clarify that aspect of it. The Zoning Commissions basis and purposes statement is extremely long it's about 30 pages, you can see for yourself it goes into all these issues of what it understood to be the issues that were raised why it was protecting the inland steel side, why it was doing the different height limitations. But it did create for the site the opportunity to go to 60 feet, thank you.

Robinson: This afternoon _____[inaudible].

[background voice inaudible]

Nettler: I can provide to you the letter from the Parks Service to the Board of Zoning Adjustment supporting the variances that were sought by the applicant. It was submitted to them, the representative of the Park Service, were here this morning, and they could have attested to the exact same thing. They submitted a letter in support of the variances that were being sought and if you would like me to provide with a letter I can do so.

Robinson: I am going to concede that yes. Do you have it with you?

Nettler: They had the letter actually with them this morning when they were here and fortunately they've left.

Robinson: Other comments from the commission?

CFA Member Emily Molina: I think we've pretty much said everything at our last meeting and I don't really see anything new here as you know from now having worked in Georgetown for several years and some of us who have lived in Georgetown for many more than that, there are many rumors stemming around. One is that all of the residential units have been sold and second that there is already and applicant for the theater space from Canada. Now those are probably two wild rumors, but they are circulating as you probably know.

Lanier: That is not correct.

Molina: And why is that?

Lanier: Because we have not marketed. We never entered market status, we have only issued plans of this space some 60 days ago. And we not sold, contracted to sell, not promised to sell or any form of agreement whatsoever with anybody on any square foot on this project. And while it is true that we intend to move forward the theaters it is based simply on the basis that we have just built them. They are built.

Molina: I understand that. You are proceeding looking for a tenant?

Lanier: No, the theaters who were willing to operate them always are willing to operate them. The major difference is not that we won't have any movies anymore it is who has the risk of building a movie. Yesterday the risk of building movies was with the movie companies who understood the risk. Today the risk of building movies is with the building owners who don't understand it and this is an occurrence of 60 days. While your commission is not dealing with it there is a well known project in the city called Gallery place which started before we started the incinerator project which has $100 million dollars of city

capital support and still has not commenced construction because precisely this issue and now is go into the process of redesigning the building, decreasing the movies, decreasing the residential and adding office space. All I am trying to say is that every project you can look at which involves movies today is going through a redesign, a financial redesign and a structural redesign. We are just one of many. So, what is important to understand the movie operators love operating the movies but instead of them paying us, we will be paying them and the difference is simply somewhere in the range of $25 to $35 million we have to find without being able to show anybody credibly that there will be earnings against this $25, $35 million. Because all we will get if the movies are profitable we will get something but if they are not profitable none of which we really understand we may get nothing or very little or not a commensurate amount so it's really an odd situation we find ourselves in which has triggered us into this position but certainly not one we treasure or anticipated. Thank you. I hope that dispels that rumor.

Molina: You mentioned that the existing building the incinerator placed undo hardship on your in your project because it was there as part of the original structure and what if it had not been are you would have had that extensive square footage to use in a more profitable way. But there was an article in the *Washington Post* quite recently saying that the hotel is going to use the incinerator as a part of its lobby. Is that correct?

Lanier: Two answers you know that I have. One answer is that we always have attempted in a consensus with your committee and the Old Georgetown Board to retain as much as possible of the open-ended volume of the incinerator. So you, I don't know if you have ever been inside, but there are very few intervening structures within the volume once you

take away some of the crane and so on so in retaining this openness in the incinerator so that when you are walking underneath, you know where you are. So while we are utilizing it we certainly are not utilizing anywhere close to capacity. The other point I was trying to make is not withstanding the incinerator volume if there was no incinerator we would have a third more or half more of the site to build on. The third thing the incinerator has created is that it was an obstruction in order for us to deliver subsequent to our acquisition a concession to the citizenship that made it important for them. There is no requirement on the zoning or any law to build one parking space in this project. So 600 parking spaces in a site which is occupied at the time when we bought it by 50% by a I think 90 foot tower and an incinerator was basically that you had to carve out every parking space with a toothpick. You had to literally had a very like a moon shape site to work with which made it impossible to deliver any parking whatsoever. That was the basis of every failure of this project previously because it always was looking for parking and nobody could provide it.

Nettler: I guess trying to be somewhat exact, there is a terminology here that I want to make clear. We're not saying that the incinerator creates a hardship for us. What we're saying is that before you get to the issue of whether, one of the first things you have to get to in between the zoning process to determine whether you are entitled to an area variance is whether there is something unique about the site. And our argument is that there are historic buildings on the site that are unique and because this is a building that you did deal with the Corcoran not the present situation going on with the Corcoran but a few years ago when the Corcoran came before you for an addition, there was a zoning case

attached to that and a group adjacent property owners you had approved a project or a zoning adjustment approved the project and a group of property owners had sued the Board of Zoning Adjustment to overturn that and the Court of Appeals said that when you have a historic landmark building that that in and of itself settles the first part of the analysis in terms of whether you are entitled to a variance. The Corcoran was a landmark; it's unique. There are a lot of landmarks around Washington but merely having a landmark building on your site creates uniqueness. That doesn't mean you are entitled to a variance, but that settles the first part. The second part is, does the fact that you have the buildings on there create your practical difficulty? The practical difficulty is that because they are on the site and because the advisory counsel and historic preservation and the National Capitol Planning Commission, the District of Columbia all signed the memorandum of agreement they put a covenant on this site that precluded us from removing the incinerator building and we can't remove the brickyard hill houses which that we can't move this additional FAR that would have solved our problem into the area where those buildings occupy, so that's the practical difficulty. It's not that this is a hardship issue, we are not claiming a hardship issue. We are claiming these two components of the area variance requirements. Then the last requirement is - and I know you are not the BZA - I'm sorry that I am giving you this. And the last requirement is the zone plan, and I understand that is where you get into the issue of the 40 foot height. And that' where our argument comes back to. When you look at what the zoning commission said about it's re-zoning for W-1, where it allowed you to go to 60 in a W-1 zone and it recognized that the topography of certain sites, and actually ours in the only

one that has a topography in the W-1, that creates this issue, that you can take advantage of that topography and use the variations in the topography to actually give you a higher height out to 60 feet for the PUD for this site. The interesting thing is the zoning commission made it absolutely clear when they set this 40 foot height, at the same time recognize the topography of the 60 ft height, that they said and specifically said this, we are not saying that this is going to result in - cause we want it residential - that this is going to result in townhouses being built. We understand that if you take the topography, you could build apartment buildings, because you could take advantage of the fact that, as we are, you've got South Street as your measuring point, you've got a site that's a W-1, you can go up to 60ft through a PUD process or 40ft thought the regular matter of right process and still accomplish the objective they were seeking, which was 1) more residential 2) which was an entertainment area that they wanted on the waterfront, which is exactly what this was and 3) the elimination of the abandoned warehouses. That's the context in which you get into the zone plan and why they rezoned this and why we fit into that zone plan, which you supported. You did, you supported the rezone plan, you testistified in support of the rezone plan because you wanted the heights to be lower, you wanted to make sure that these things could be accomplished, but at the same time, recognize that there was a way to accomplish this within that rezoning that was being done.

Molina: Mr. Nettler,

Robinson: I am sitting here, and I'm putting my developer hat on and I am thinking that if there was an opportunity to provide, to do the additional height in whatever case, in W-1, the

developer wants to maximize the site, why wasn't this done as a beginning point? I mean why did we not see this additional story early on? I can't imagine giving away the space if you had it as a matter of right in the beginning.

Lanier: From a development standpoint we wanted to build a matter of right project in Georgetown. We had no intention of pushing the envelope. I have in 17 projects in Georgetown, never sought a variance for anything. And to the contrary, I am also very understanding of the fact that sometimes I didn't even get to build the full FAR as in the Eagle Liquor property, where I am building 3 stories instead of 5 stories, or whatever I could have built. So, our intent was to build a matter of right project and to expedite the process. In the process itself, certain issues came up with the citizens in order to accommodate them. Such as the parking; we started off with a small arts theater, with limited parking that we had to provide when the issue of the waterfront parking raised its head and people asked, "where are these hundreds of cars going to go?". That drove us to double the size of the project. So this has been a project which has changed all the time during the first say 12-18 on intent and size. If you then add on top of it that we should have then stepped back and done a PUD, in retrospect that is what we should have done. But our goal was always to build it as a matter of right, I'd hoped.

Robinson: This PUD would have given you the matter of right of the additional density and height and I just, you don't put your money in the stock market not to maximize it, and I would assume that you wouldn't put your money into this not to maximize it.

Lanier: This could get into a long story, but I can assure you that everything we are do in Georgetown is not driven to maximize our profits. That is, 80% emotion and 20% in

hope of profit, sometime down the road. Since nobody else seems to be doing what we are doing, it is a test to the uneconomic basis of our venture. Contrary to our process on the Incinerator, another project we did build on in the west end, we did push everything to maximize profit. We were not in historic zone. We were building on a parking lot which had for three attempts to get a PUD accomplished failed. We still went back into PUD and succeeded. While we are for profit, it just did not seem that this project lent itself to that. And when you look back in history, it certainly doesn't.

Robinson: I agree. So now you have come to this point because of the financial strain of making tenant, who has pulled out and a possibility of similar tenant not taking that space and then your having to carry that financial burden.

Lanier: No, no, the cinema will take the space. We will have a cinema. It's just that we need to carry the financial burden.

Robinson: You need to carry the financial burden?

Lanier: Yes, yes.

Robinson: So, let me understand. I noted the last time we were here that the cinema was voted out and because of financial hardships, you needed to add a floor. And that's kinda the way we, I assumed we were approaching it. I am hearing today that you want to add an extra floor not because of financial hardship. So I need to... Mr. Nettler says it's really not a financial hardship. If you tell us that you are losing $25 million and you have to have a floor because of the cash.

Lanier: I don't want to walk around the word hardship. But I just want to confirm that the cinemas will operate.

Robinson: I understand this. But not in the same way that you had planned. It still has the financial impact and that financial impact is what causing you to seek the variance for the additional height because you are build a matter of right building.

Lanier: That is the triggering event. Correct.

Robinson: So it is the financial hardship that is causing this request for the redesign of the extra floor.

Lanier: Without getting into terminology, it is the financing, the lack of a financial contribution in excess of $25 million as evidence in the letter by Lowes to the Board of Zoning Adjustment, which I am happy to provide you a copy of.

Robinson: That's what I understood, but I heard somewhere along line that it really wasn't the finances that was causing the request for this.

Lanier: Now we get to technicalities.

Robinson: Excuse me. Mrs. Broady has to go and she has a comment.

CFA Member Broady: I would like to say one thing because I did speak on this at the last meeting. I have, and I think we all do, a fair amount of sympathy, I don't have sympathy for the litany of approvals because this is a complicated project and that's the real world. So, I don't respond to that. I do have a certain degree of sympathy for mid course corrections that are mandated from something that you can't control. I think this is more complicated now to us that it was before simply because in a way you have terrific advantages from the topography of this site, which you have exploited and yet at the same time, you are trying to appeal a different thing. I also have a fair mount of sympathy for your ability if

it came to this to handle this from a design standpoint and I said as much the last time you were before us. But upon reflection and seeing the correspondence and greeting the BZA whatever this is. I don't feel that we are the commission to break you out of this process. I don't think it's appropriate for us to do that. I don't think in this case it's appropriate for us to take the lead. We don't take the lead in general over the Old Georgetown Board, I wouldn't do it here as I said before. You have complications with BZA so much as I think there is some sympathy to where you are. I honestly don't feel that we are the ones to break to out of it.

Lanier: And I appreciate that and I...

Broady: I wanted to just tell you that I think I have a little more than sympathy than some others for the height variance, etc. I'm clearly in the minority. But at the same time from a precedent setting standpoint and the standpoint of what's our mandate as a Fine Arts Commission, I would not feel comfortable taking the lead to kind of break this cycle.

Lanier: And I appreciate that. I don't believe we wanted to pressure you into a zoning decision or seek a zoning decision, we wanted avoid the zoning decision by this Board.

Robinson: With that comment, I would like to thank you for the presentation and tell you that we will take under consideration your request and at such as that there is a need for us to respond to you, we will do that.

Nettler: Is it possible...there was a question that I think in part was directed to me because I made a statement that I think added some confusion. If I could just clarify that.

Robinson: Sure.

Nettler: I meant hardship in a legal since. Because hardship under the zoning regulations requires you to do something else other than what we are doing. Actually, and I don't want to get into a legal argument, but the Court has said in that case, Gilmartin v. BZA, that economic considerations are specifically permitted in an area variance issue to address practical difficulties. It doesn't create a unique thing, it's not a hardship issue, it's the economic considerations can be addressed as part of the practical difficulty if trying to do something. That is the only context in which we bring the economic issue and with that, thank you very much.

Robinson: Thank you.

H

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.
ATTORNEYS AT LAW

ATLANTA
BOSTON
CHICAGO
LOS ANGELES
MINNEAPOLIS
ORANGE COUNTY
SAINT PAUL
WASHINGTON, D.C.

SUITE 1200
1801 K STREET, N.W.
WASHINGTON, D.C. 20006-1301
TELEPHONE (202) 775-0725
FACSIMILE (202) 223-8604
TELEX 4931197 RKMC

RICHARD B. NETTLER
(202) 775-0725

May 3, 2001

BY HAND

The Honorable Rohulamin Quander
Mayor's Agent for D.C. Law 2-144
D.C. Department of Consumer and Regulatory Affairs
Building and Land Regulation Administration
c/o Mrs. Ellen McCarthy
801 North Capitol Street, N.E.
Fourth Floor
Washington, D.C. 20002

Re: Georgetown Incinerator; 3100 South Street, N.W.;
Square 1189, Lot 88
Request for Mayor's agent hearing on H.P.A. # 01-190
Our File No.: 091852.0000

Dear Judge Quander:

On April 20, 2001, the Commission of Fine Arts recommended denial of an application for new construction with regard to the above-referenced property. *See* Exhibit A attached hereto (received by the undersigned on April 30, 2001). Although both the Old Georgetown Board and the Commission of Fine Arts approved of the design of the new construction, they recommended denial on the grounds that the additional height violates the forty foot height limitation established by the zoning regulations. Although formal notification under 10 D.C.M.R. § 2508.5 has not been received, the applicant, in accordance with § 2508.7 hereby requests that the Mayor's agent act immediately to reject the recommendation of the CFA, either without a hearing, as is authorized by D.C. Code § 5-1007 (e), or at an expedited public hearing. The applicant intends to claim that (1) the proposed new construction or addition, to a non-contributing building, is compatible with the character of the historic district and therefore consistent with the purposes of D.C. Code § 5-1001(b)(2)(B), or necessary to construct a project of special merit.

You have previously concluded that the project being developed constitutes a project of special merit. *See* Exhibit A attached hereto. In addition, since neither the OGB nor the CFA addressed the issues relative to whether the addition to the new construction already approved is compatible with the historic district, as required under the law, and the attached expert report

demonstrates that it is compatible (*see* Exhibit B attached hereto) we request that the recommendation of the CFA be rejected.

I appreciate your immediate cooperation.

Sincerely,

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

Richard B. Nettler

cc: Mr. Anthony Lanier
Mr. Phillip Aarons

RECEIVED
OCT 16 1998

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
614 H Street, NW - Room 619
Washington, DC 20004

IN RE:

Application for Subdivision & Demolition Permits

HPA # 98-355 through # 98-361
S.O. #1643

3133 Copperthwaite Alley, N.W.
3135-3141 K Street, N.W.
1003-1015 Wisconsin Avenue, N.W.
3134-36 South Street, N.W., and alley
Square 1189
Washington, D.C.

DECISION AND ORDER

Background

Millennium Georgetown Development (MGD) seeks approval of a subdivision of lots 826 & 827 in Square 1189, the site of an historic landmark, the Brickyard Hill House, subdivision on the entire Square 1189, and, on behalf of the current owners, the demolition of buildings located at 3133 Copperthwaite Alley, N.W.; 3135, 3137, & 3141 K Street, N.W. and for 1003, 1007 & 1015 Wisconsin Avenue, N.W., and the closure of an alley. According to MGD, the subdivision and demolitions would allow MGD to restore the landmark Brickyard Hill House, restore the Georgetown Incinerator and retain two alley dwellings historically associated with the Brickyard Hill House, albeit in a different context.[1]

Because the site is an historic landmark, the application was referred to the Historic Preservation Review Board (the HPRB) for its review and recommendation, pursuant to D.C. Code, Sec. 5-1006(b). At its public meeting held on July 23, 1998, the

[1] At the hearing in this matter, the applicant withdrew its request for a hearing on the demolition permits in light of the finding by the Commission of Fine Arts that the buildings were contributing buildings to the Old Georgetown Historic District. On August 28,1998, counsel for the applicant and the Office of the Corporation Counsel informed the Mayor's Agent that the demolition permits would be dealt with administratively.

Board voted to adopt the Staff Report of the Historic Preservation Division of DCRA, Building and Land Regulation Administration, and recommended to the Mayor's Agent that this subdivision be approved as consistent with the requirements of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, (the Act), codified at D.C. Code, Sec. 5-1001, et seq. The administrative hearing was conducted consistent with the requirements of District of Columbia Municipal Regulations (DCMR) Title 10, Chapter 25, and in accordance with the D.C. Administrative Procedures Act, D.C. Code Sec. 1-1501 et seq.

Pursuant to D.C. Code, Sec. 5-1006(c), Subdivisions, a public hearing was held on May 19, 1998, before Administrative Law Judge Rohulamin Quander, the Mayor's Agent for Historic Preservation. Notice of the public hearing was published in the D.C. Register. The Applicant was represented by Richard B. Nettler, Esquire, the Law Offices of Robins, Kaplan, Miller and Ciresi, L.L.P.

The applicant, Millennium Georgetown Development, L.L.C. (MGD), presented the following witnesses on behalf of the application: Shalom Barnes, architect; Emily Eig, architectual historian; Ellen McCarthy, land planning expert; Anthony Lanier, on behalf of the Applicant, MGB; and Rev. David Bird, Rector, Grace Episcopal Church. There was no opposition noted to the granting of this application.

Testifying on behalf of the District of Columbia Government were: David Colby, the D.C. Office of Planning, and James Thackaberry, D.C. Department of Housing and Community Development. Steve Raiche, Chief, Historic Preservation Division, DCRA, was present, but did not testify. However, he was called upon during the hearing to clarify a minor preliminary manner. Several non testifying persons were present as observers of the administrative proceeding, including Bruce Brennan, Esquire, Senior Counsel, Government Operations, Office of the Corporation Counsel.

The Applicant tendered a comprehensive pre-hearing submissions, complemented with multiple exhibits, including: lot surveys and plats; illustrated current layout of the current buildings and immediate area; and multiple photographs. The record was officially closed on August 31, 1998, upon receipt of the Applicants' Proposed Findings of Fact, Conclusions of Law, and Order.

For the reasons that follow, the application for a theoretical subdivision is GRANTED.

Findings of Fact

Based on the record taken as a whole, including the evidence submitted at the hearing, the following uncontested Findings of Fact are made:

1. On February 19, 1998, MGD filed for conceptual design review of its proposed development project and the demolition of certain buildings necessary for construction of that project. The proposal was supported by, *inter alia*, the Department of Housing and Community Development, the Office of Planning, the affected Advisory Neighborhood Commission, the Citizens Association of Georgetown, the Georgetown Business and Professional Association and neighboring property owners, such as Grace Episcopal Church.

2. On May 7, 1998, the Old Georgetown Board (OGB) gave conceptual approval to the proposed development and on June 22, 1998, the Commission of Fine Arts (CFA) did as well, including recommending the approval of the demolition of the subject buildings, after a site visit, as non-contributing to the historic district.

3. Preliminary permits for the demolition of the subject buildings were filed in June 1998, on behalf of their current owners, and the demolitions were formally approved by the OGB on July 9, 1998, and the CFA on July 24, 1998, on the grounds that the buildings were not contributing to the Old Georgetown Historic District.

4. On July 23, 1998, a hearing before the HPRB was held on the subdivision request, at which time the HPRB recommended that, "[b]ecause the subdivision calls for the combination of several historic lots and an historic alley into one lot of record, . . . the Mayor's agent . . . [give] great attention . . . to the historic preservation implications of the proposed development." The Mayor did not refer the demolition permits to the HPRB for review.

5. The southern half of Square 1189 is bounded by South Street to the north, Wisconsin Avenue to the west, K Street to the south, and 31st Street to the east. An alley that runs east-west, Copperthwaite Lane (formerly Cooper Shop Alley) bisects this block. This block, now included in Square 1189, was historically part of Georgetown's original Plat of 1751. Many small structures stood in this square in the nineteenth century, including the Brickyard Hill House, Peter's commercial enterprise, as well as a number of small dwellings, rowhouses, and assorted ancillary structures. Over time, substantial changes have occurred to the square.

6. Today, nine (9) buildings occupy the western portion of the southern half of Square 1189. These buildings span two centuries. Brickyard Hill House, originally owned by Robert Peter and leased to tenants, the first mayor of Georgetown, was erected circa 1800. The stone stable behind it (3133 Copperthwaite Lane) was erected sometime in the first half of the nineteenth century, apparently in association with the Brickyard Hill House. A second story of brick was added in 1898, with other changes to turn it into a dwelling, substantially altering its appearance and association with the Brickyard Hill House. The adjacent two-story wood frame dwelling at 3135 Copperthwaite Lane was not erected until the third quarter of the nineteenth century and, if it ever had a relationship to the Brickyard Hill House, the relationship has been severely altered. The building at 3135 K Street, now the Bayou, was constructed in 1939, but appears to have incorporated at its rear a portion of what may be the remains of a nineteenth century cooperage, substantially altered. The buildings at 3137 K Street and 1003 Wisconsin Avenue were constructed as a warehouse for Harlan-Adams in 1918, and have been altered several times since. The building at 1007 Wisconsin Avenue largely dates from 1924-25, with a large rear addition constructed in 1934 and a second story over the western half of the building in 1940. In 1935, Washington Petroleum Products erected a filling station at the corner of Wisconsin Avenue and Water Street (3141 K Street). Between 1954 and 1962, a commercial building was erected at 1015-19 Wisconsin Avenue.

7. The eastern portion of this half of Square 1189 is currently occupied by a single building, the Georgetown Incinerator. This Industrial Art Deco-style building was erected in 1932. Designed by the noted Boston engineering firm, Metcalf and Eddy, the building was constructed by the District of Columbia, and landscape design was provided by the landscape architects Olmsted Brothers of Brookline, Massachusetts. The structure operated as an incinerator from its completion in late 1932 until October 1971, and has remained unoccupied since that time. Currently the property is unattended, overgrown, and in poor condition.

8. MGD proposes to construct a mixed-use retail, entertainment, hotel and residential complex on the site. The subdivision will afford MGD the opportunity to restore the significant historic buildings on the site. MGD will retain and adaptively reuse the Incinerator building. In combination with all the remaining property in square 1189, the mixed use complex will consist of approximately a 450-500 space public parking garage, 100,000 square feet of condominium apartments, a 125 room boutique hotel, a 2,200-3,000 seat multi-theater art cinema, and 75,000 square feet of retail space.

9. In light of the recommendation of the HPRB regarding the subdivisions and the fact that the subdivision involves the site of a historic landmark, MGD sought review of the

application by the Mayor's agent, as required by the Act.

10. Notice of the Mayor's Agent hearing for the demolition application was published in 45 D.C. Register 4544, on July 10, 1998.

11. The matter came before the Mayor's Agent for a hearing on the basis that the subdivision was consistent with the purposes of the D.C. Law 2-144 or necessary to construct a project of special merit.

12. Testifying in favor of MGD was Anthony Lanier for the Applicant; Shalom Baranes, the project architect, Ellen McCarthy, an urban planner and Emily Eig, an architectural historian. No one appeared in opposition to the application.

13. Mr. Baranes reviewed the development plans for the site and stated that the project will create a preservation district composed of the Incinerator, the Brickyard Hill House, and the two alley dwellings. According to Mr. Baranes, subdivision of the Brickyard Hill House site and the Square will allow MGD to restore the landmark Brickyard Hill House by transferring the excess floor area ratio available on the lot to the rest of the site, thereby eliminating development pressures on the landmark building and generating funds for its restoration. Subdivision of the entire square will permit MGD to maximize the restoration of the Incinerator by moving the parking required for the proposed project to other portions of the square, thereby eliminating the need to excavate underneath the Incinerator. Furthermore, subdivision of the entire square allows MGD to save two other buildings on the site and re-position them behind the Brickyard Hill House in a manner which reflects their current configuration.

14. According to Ms. Eig, Square 1189 is located within the Old Georgetown Historic District. It is considered an intact example of a complete historic town, encompassing an area laid out as a port town in 1751 prior to the establishment of the District of Columbia. Later absorbed into the District of Columbia, its narrow grid streets differentiate the port town from L'Enfant's plan. In 1950, the U.S. Congress passed the Old Georgetown Act creating a special district within the District of Columbia to be known as "Old Georgetown". The law, which mandated the regulation of the height, exterior design, and construction of private and semi-public buildings in the Georgetown area, was approved by Congress, "[i]n order to promote the general welfare and to preserve and protect the places and areas of historic interest, exterior architectural features and examples of the type of architecture used in the National Capital in its initial years."[2] Old Georgetown was listed in the National Register of Historic Places and declared a National

2 Public law 808, 81st Congress, H.R. 7670, D.C. Code 5-801, 64 Stat 603.

Historic Landmark in 1967. It was listed on the District of Columbia Inventory of Historic Sites in 1964.

15. According to Ms. Eig, subdivision of the lots will afford MGD the opportunity to preserve and rehabilitate four structures, one of which is an individually designated landmark - the Brickyard Hill House, the others are two small alley dwellings, and the last is the edifice known as the Georgetown Incinerator. With regard to the Brickyard Hill House, it was constructed ca. 1800, and possibly as early as the late Eighteenth Century. It is sited on old Lot 52, of the Georgetown block known as Peter's Square, named for landowner Robert Peter. The house was owned and probably built by Robert Peter, a member of an early prominent Georgetown family. Robert Peter was one of the first Georgetown Commissioners and when the town was incorporated in 1789, its first mayor. He is believed to have rented the Brickyard Hill House for income. Over time, due to neglect, the house, particularly 3136 South Street, has deteriorated. The house is one of the most important structures in the Old Georgetown Historic District. Possibly dating to the eighteenth century, the two-story, wood frame and brick nogging double house is a rare, intact example of a modest dwelling in Georgetown's waterfront district associated with the initial years of the Federal City. Its very existence is threatened at this time.

16. Ms. Eig further testified that the subdivision sought by MGD of the remaining lots on this half of the square is not new to the Old Georgetown Historic District, and examples of it exist from the late nineteenth century when the Capital Power Plant was sited across the street on the waterfront, and in 1932 when the District constructed the incinerator on this very square. While the act of subdivision will alter the lot lines that have been associated with the Brickyard Hill House, and those of the surrounding buildings, all within the Old Georgetown Historic District, such subdivision is common to Georgetown, both before and since the designation of the historic district in 1951. This proposed subdivision is consistent with the purposes of the act, for it will retain and enhance the landmark building, encourage its adaptation for current use, as well as result in its restoration. In summary, the proposed subdivision is the tool that will retain, enhance, and adapt the landmark Brickyard Hill House, by providing the initiative and wherewithal for restoration.

17. According to Ms. McCarthy, she had reviewed past decisions by the Mayor's Agent regarding special merit, and it was her professional opinion that this is one of the clearest instances where the benefits to be derived by the citizens of the District of Columbia from the project are so considerable that they more than outweigh any potential adverse consequences of subdividing the property. Ms. McCarthy explained that the project proposes to take an area which has seen negligible investment in retail and entertainment uses, and to subdivide the property in order to construct an arts cinema,

upscale residential condominiums, a boutique hotel/inn, and high-quality retail. Significantly, the entire exterior of the Incinerator and its smokestack, along with four historic dwellings, will be preserved and restored. In terms of the economic revitalization of the area, it is precisely the type of "bridge" which has been necessary between the retail and entertainment activity along M Street, and the waterfront, where the only major investment in any sizeable non-office use, the retail and residential portions of the Washington Harbor, have been isolated, and thus unable to make their full contribution to the economic vitality of the area.

18. In terms of preservation, Ms. McCarthy stated that the rehabilitation of a huge structure like the Incinerator, especially the preservation of the volume of the building, and the restoration of the Brickyard Hill houses and the two alley-dwellings, go far beyond the usual level of preservation. Finally, in terms of land planning and community benefits, Ms. McCarthy made two observations. First, the Incinerator portion of the project already was extensively analyzed by the Department of Housing and Community Development, and MGD's proposal was judged superior to the other site redevelopment applicants in terms of the benefits it was proposing to the District. Second, the project proposes a number of "preferred uses", i.e., uses such as housing, retail, hotel and arts, which are not generally considered to be as lucrative for a developer as office space, but which provide substantial benefits to the District in terms of tax revenue, employment of District residents, street vitality (especially in the evenings and on weekends), and new residents to participate in our civic life and take an interest in safeguarding and improving the neighborhood. All these are being provided with no zoning concessions, as MGD has asked for no extra density or similar concessions to make it more financially attractive to provide these uses.

19. Ms. McCarthy also testified that the parking component of the project is also significant. Parking is a particular concern in Georgetown. Virtually every large project which has been proposed to improve the economic vitality of the area has foundered on the shoals of community concerns about worsening of the parking situation. She stated that when the District tried, several years ago, to develop this site, it was the inability to satisfy concerns about parking which led to the termination of the development negotiations. Parking has become even more important because of the announced plans to convert several hundred spaces which currently occupy waterfront land owned by the District government into a new waterfront park. MGD's willingness to acquire additional parcels beyond the Incinerator site itself has been the key to being able to accommodate sufficient parking in this project, not only to assure its economic and community viability, but also to permit the construction of the waterfront park to go forward. According to Ms. McCarthy, the need to provide this parking, which really is key to assuring the viability of the site and the ability to preserve the Incinerator and the other buildings, is a major

reason why this subdivision must be made.

20. Ms. McCarthy also stated that, in addition to the contribution which will be made by the on-site parking being provided in this project, it was her opinion that the project will make a positive contribution to solving the overall parking problem in Georgetown. Extensive analysis of parking demand and supply in the southern portion of Georgetown was funded by MGD, and performed cooperatively with the Waterfront Commission, the group charged with implementing the new waterfront park. The analysis discovered that there are hundreds of vacant parking spaces which could be available to meet the demand, largely located in the newer office buildings south of M Street, but the building owners do not open them to the public at night, because of a perception that the spaces would not be used. Ms. McCarthy opined that this situation is because there have been so few activity generators in the southern section of Georgetown. The Incinerator itself has stood, vacant, forlorn and forbidding, discouraging those who are patronizing shopping or dining establishments along M Street from parking to the south. The transformation of square 1189, which will be made possible by the proposed subdivision, should serve to alter public perceptions of safety, particularly since the entire Wisconsin Avenue frontage will be solid retail, creating a bright and inviting path to the waterfront and to the parking available in the vicinity of the project. In addition to the likely increase in public willingness to venture south of M Street, MGD has committed to meeting with the building owners and parking operators in an effort to have them leave their parking facilities open for the evening. In summary, the benefits to the community and the exemplary land planning related to this project clearly provide sufficient merit to outweigh any preservation drawbacks, which, are at worst, minimal.

21. James Thackaberry, project manager within the D.C. Department of Housing and Community Development (DHCD) for the disposition and development of the Georgetown Incinerator property, testified in support of the application. According to Mr. Thackaberry, the proposed land disposition agreement regarding the sale of the site was submitted to the Council of the District of Columbia by the Mayor, and subsequently approved by the Council. After receiving many inquiries from developers regarding the availability of the Incinerator property for development, DHCD released a Request for Proposals (approved on July 1996 by the D.C. Council) to redevelop the Georgetown Incinerator property. Three development teams – MGD, and two others - submitted development proposals on September 30, 1996 for the redevelopment of the Georgetown Incinerator. The development proposals were reviewed and ranked by a five member DHCD selection panel that included three members from outside the agency. The panel's recommendation, which the DHCD Director accepted, was that MGD be selected for the negotiation of an Exclusive Right Agreement. The Exclusive Right Agreement was executed on June 13, 1997.

22. According to Mr. Thackaberry, the original development proposal, limited to the Incinerator property, was accepted by DHCD, and called for 100,000 square feet condominium apartments, approximately 30,000 square feet of retail space, and a 250 space parking garage. MGD has now obtained control for the remainder of the land in Square 1189 and has expanded the project to include the whole square. According to DHCD's spokesperson, redevelopment of the Incinerator property will remove a major eyesore that has been vacant and unused since the closure of the old Incinerator in the 1970s and will retain the Incinerator building and create adaptive new uses of the site that return it to producing income, sales and property tax revenue for the District. The project development will produce market rate housing units, provide badly needed public parking, add high quality retail space, and add a much needed art cinema to fill the void left by the recent closure of both the Key and Biograph Theaters. The project will also create 530 jobs and 127 spin-off jobs during the construction phase, and upon completion will create 352 permanent jobs with 66 permanent spin-off jobs elsewhere in the District economy. During the year and a half construction period, the project will generate $3,000,000 in taxes. Upon completion, it will generate $8,000,000 annually in taxes for the District from all tax sources.

23. David Colby appeared on behalf of the Office of Planning in support of MGD's application. According to Mr. Colby, the location is the last major private development site in the historic waterfront area. Mr. Colby reviewed the major elements of the project and noted that the Incinerator site, which is owned by the District Government, has been vacant for over 25 years. Mr. Colby also stated that the historic incinerator and smokestack structures would be retained and used as a restaurant and lobby for the hotel, and that five new structures would be built on a plinth surrounding the Incinerator to compensate for the steep differences in the slope of the site (20 to 30 feet) between South and K streets. On behalf of the Office of Planning, Mr. Colby stated that he believes that this project does meet the test for "Special Merit" designation, and concluded that this is an important project in a particularly sensitive area of the city, and that the Office of Planning strongly supports the project and its application for a "Special Merit" designation.

24. Mr. Colby also testified that the proposed development is consistent with the Comprehensive Plan Generalized Land Use Map designation of "mixed-use moderate density residential and commercial land use" for the site. The proposed development is further supported by the following Comprehensive Plan major theme (objective):

> ...ensuring good quality neighborhoods is of utmost importance to the District. The District elements of the Plan's policies and strategies on

increasing housing opportunities, neighborhood commercial facilities and improving transportation in some neighborhoods will be combined with other District policies on historic preservation, environmental quality and public facilities to conserve functioning, stable neighborhoods and to improve those which need redirection.

25. Mr. Colby also noted that the residential areas immediately surrounding the site have not achieved a critical mass, and that the recent development south of M Street has been primarily for office and commercial uses. Consequently, the area south of M Street and immediately adjacent to the freeway has not been considered a secure, stable neighborhood, especially during the evenings when office and most commercial establishments are closed. Accordingly, the proposed development will significantly enhance the area of Wisconsin Avenue and K Street, adjacent to the freeway. The project, with its residential units, hotel/restaurant use and retail spaces, will infuse street life into an area that has been somewhat foreboding, because of the elevated freeway and derelict environment. Additionally, the project will preserve and adaptively reuse historic structures on the site and help connect the rest of Georgetown with the new waterfront park to be built along the Potomac River directly south of the site.

26. Finally, Mr. Colby testified that because the National Park Service will eliminate approximately 400 spaces for the waterfront park with the anticipated closing of the harbor, the Department of Public Works ("DPW") believes the parking spaces provided by the Incinerator development will be a significant benefit to parking within the area. Under the zoning regulations, the applicant is required to provide at least 414 parking spaces for the entire facility. The proposed facility will have some approximately 224 spaces greater than that required by the regulations. In summary, Mr. Colby stated that the redevelopment of the Georgetown Incinerator site will provide an immediate benefit to the surrounding neighborhood and to the District on a number of levels. The Incinerator site has become an "eyesore" within the surrounding area, and has led to the perception that the adjacent portion of K Street is not safe during evening hours. The proposed project will bring important new street life to the area. Additionally, the proposed project will contribute to the economic and fiscal vitality of the District. Presently, since the District Government owns the site, the property does not provide any tax revenue to the city. With its sale and redevelopment, the site will generate significant income, property, restaurant, hotel and sales tax revenues for the District. Therefore, the Office of Planning recommends that the Millennium Georgetown Development (MGD) be granted a "Special Merit" designation and its applications for the required demolition and new construction be granted.

27. Rev. David Bird, Rector of the Grace Episcopal Church, which is located

directly north of the site on South Street, also testified in support of the application, stating that the church community was very much in favor of the restoration, which will significantly enhance the neighborhood, and restore much of its historic character, which is in danger of being lost, if this application is not approved.

DISCUSSION

Pursuant to D.C. Code, Sec. 5-1005, before the Mayor may issue an Order to authorize a subdivision of an historic landmark, it must be determined whether the subdivision is necessary in the public interest. D.C. Code, Sec. 5-1007(c) & (e). D.C. Code, Sec. 5-1002(10) defines "necessary in the public interest" to mean:

> consistent with the purposes of this subchapter as set forth in Sec. 5-1001(b) or necessary to allow the construction of a project of special merit. (emphasis added)

D.C. Code, Sec. 5-1001(b)(2) specifies that, "[w]ith respect to historic landmarks", its purpose is:

(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and

(B) To encourage the restoration of historic landmarks.

With regard to the subdivision of the lots on which the Brickyard Hill House sits, the byproduct of such an act is the restoration of the landmark building. The site is included within the development project to provide the underground parking deemed necessary for the project and the community and to enable the unusable floor area ratio on the landmark site to be utilized elsewhere. But for the subdivision, neither the unusable floor area ratio nor the parking could be provided. Thus, if the site is not subdivided, it cannot become part of the Incinerator project, will not be restored, but will continue to deteriorate. The connection between the subdivision of the site and the retention and enhancement of the only landmark structure in the Square could not be more obvious.

The Mayor's Agent also concludes that the subdivision is necessary to construct a project of special merit. Section 5-1004(e) provides that no "permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest."

Again, D.C. Code, Sec. 5-1002(10) defines "necessary in the public interest" to mean:

> consistent with the purposes of this subchapter as set forth in Sec. 5-1001(b) or necessary to allow the construction of a project of special merit. (emphasis added)

D.C. Code, Sec. 5-1001(b) specifies that "[w]ith respect to properties in historic districts", its purpose is:

> (A) To retain and enhance those properties which contribute to the character of the historic districts and to encourage their adaptation for current use;
>
> (B) To assure that alterations of existing structures are compatible with the character of the historic district; [and]
>
> (C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.

Under the "special merit" provision of D.C. Law 2-144, the Council envisioned the Mayor's Agent balancing the merit, albeit special merit, of a project with the historic value of the contributing building because only projects which offer significant benefits to the District of Columbia or to the community offset the Council's policy in favor of protecting, enhancing and perpetuating the use of properties with historical, cultural and esthetic merit. *See Don't Tear It Down, Inc. v. D.C. Department of Housing and Community Development*, 428 A.2d 369, 373 (D.C. 1981).

As such, there must exist some specific feature of land planning or social benefit having a high priority for community services associated with the proposed development for it to be considered a project of special merit. In *Citizens Committee to Save Historic Rhodes Tavern v. D.C. Department of Housing and Community Development*, 432 A.2d 710 (D.C.), *cert. denied*, 454 U.S. 1054 (1981), the Court held that in special merit cases, "a balancing of historical and development values is required under the Act," inasmuch as decisions "under a locality's historic preservation statute 'should not be made in a vacuum. The architectural and historical characteristics of a building must be weighed against its societal functions and the significance of its preservation in human terms.'". *Id.*, quoting *Young v. Mellon*, 156 Cal. Rptr. 165, 169 (1979). Citing the Act's emphasis on "safeguard[ing] the city's historic, aesthetic and cultural heritage, as embodied and reflected in [its] landmarks and districts," D.C. Code, Sec. 5-1001(a)(2), the Court held that "the Act implicitly requires that, in the case of demolition, the Mayor's Agent balance the historical value of the particular landmark against the special merit of the proposed

project." 432 A.2d at 716. *See also Committee of 100 on the Federal City v. District of Columbia Department of Consumer & Regulatory Services*, 571 A.2d 195 (D.C. 1990).

However, the Act also makes it clear that a proposed amenity must meet rigorous criteria in order to support a finding that demolition is "necessary in the public interest". Thus, only architecture which is "exemplary" in nature, or has specific features of land planning which are considered special, or benefits which have a "high priority" for community service, may be considered. D.C. Code, Sec. 5-1002(11). The point is buttressed by the legislative history to this Act, which states: "Factors which are common to all projects are not considered as special merits." Legislative History, Bill 2-367, "The Historic Landmark and Historic District Protection Act of 1978," at 6. To the same effect is this Court's decision in *MB Associates v. District of Columbia Department of Licenses, Investigations & Inspections*, 456 A.2d 344 (D.C. 1982), which held that contributions which are common to downtown or any development plans and which are not unique cannot constitute proposals of special merit.

This reading of the Act makes sense particularly when it is considered in light of the Act's purposes. The designation of a landmark structure or a historic district constitutes a formal, governmental determination that the affected properties are worthy of "protection, enhancement and perpetuation" as "distinctive elements of the city's cultural, social, economic, political and architectural history." See D.C. Code, Sec. 5-1001(a)(1). Once such a determination has been made, the Act contemplates that it cannot be overridden absent a demonstration that the people of the District of Columbia are obtaining something sufficiently "special" to warrant the permanent and irreversible act of demolition.

In assessing the special merit of the proposed project, it is useful to compare the presentation here with the finding of special merit in other cases. *See Committee of 100, supra,* 571 A.2d at 200, n. 5 (Past projects of special merit included a one-of-a-kind building project which benefited more than just a few people and projects which incorporated historic structures). In the majority of cases, full building restoration, much less four distinct buildings, including a landmark structure, as proposed here, was nonexistent. Here, moreover, the use proposed for the site was one which was subject to a public competition and decided upon as a use that provided the greatest benefits to the community and the city. Judged in that context, the vetting of land planning for this project far exceeds that proposed for other special merit projects, except for the original Convention Center. In addition, the proposed project goes far beyond what could be built as a matter of right to address arts, retail, residential and parking issues which have a high priority in Georgetown, and to provide vitality for a neglected area of Georgetown. Thus, the proposed project will provide social and other benefits having a high priority for

community services.

In sum, the subdivision is consistent with the purposes of the Act in that it both encourages the maximum amount of historic preservation and encourages the adaptation of the historic features for current use. Furthermore, the proposed subdivisions are, in the alternative, necessary to construct a project of special merit.

Conclusions of Law

The foregoing considered, the Mayor's Agent also concludes that:

The subdivision is necessary, and is consistent with the purposes of the Act, the proposed project being one of special merit, which will encourage both the maximum amount of historic preservation and encourage the adaptation of the historic features for current use, as well as provide substantial social and community benefits.

ORDER

ACCORDINGLY, it is this 6th day of October, 1998

ORDERED that the Applicant's request to subdivide Square 1189 into one lot of record, including the closure of the alley, be, and the same is hereby, GRANTED; and it is

FURTHER ORDERED that, pursuant to 10 D.C.M.R. 2523.4, this Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service pursuant to 10 D.C.M.R. 2503.5(c).

Rohulamin Quander

Rohulamin Quander, Administrative Law Judge, D.C., and Mayor's Agent for Historic Preservation

EHT TRACERIES INC

1121 FIFTH STREET, NW, WASHINGTON, DC 20001-3605 TEL (202) 393-1199 FAX (202) 393-1056 E-MAIL EHT@TRACERIES.COM

Statement of Emily Hotaling Eig

My name is Emily Hotaling Eig. I am an architectural historian and the president of EHT Traceries, Inc., a research and consulting firm concerned with architectural history and historic preservation. This statement is submitted in support of the application for Square 1189, which is within the Old Georgetown Historic District.

Historic Resources Associated with Site

The Incinerator site (Square 1189) contains four resources considered historically significant.

- The **Georgetown Incinerator** (1932) was designed by the noted Boston engineering firm of Metcalf & Eddy. It is a fine example of the Art Moderne style interpreted for industrial design specifically intended for Georgetown. A large red brick and limestone edifice, it is significant for its unique purpose-built character and form, including a prominent smokestack, as well as its distinguished architectural design. In an unusual interpretation of National Park Service Standards, it was deemed by HPRB in 1980s as "contributing" to the Old Georgetown Historic District, although it is clearly a unique modern property that could qualify as an individual landmark in the National Register.
- The **Brick Yard Hill House** is a modest, double, wood-frame house at 3134-36 South Street built for Robert Peters as rental property, circa 1802-1806. Peters, the first Mayor of Georgetown, owned the entire square, and this building stands as one

of, if not, the oldest wood-frame and brick nogging buildings in Georgetown. It is designated as an individual historic landmark in the District of Columbia.

- The **Red House**, a modest, two-story, wood-frame structure, was built as an alley dwelling for rental between 1865-75 (to the rear of the Brickyard Hill House at 3135 Copperthwaite Lane). It was significantly altered in the 20th century.
- The mid 19th century, **stone stable** originally located at 3133 Copperthwaite Lane (to the rear of the Brickyard Hill House) is the fourth resource; It was converted to residential use in 1898 when a brick second story was added. It was dramatically altered in 1950.

COMPATIBILITY

The increase in height proposed for the new construction will not have a negative impact on the historic resources on site, nor on the Old Georgetown Historic District. Located within a distinct area of the Historic District, one marked by a steeply sloped terrain, its waterfront character, and original purpose as a focus for commerce and industry, the project deserves special consideration. The additional height proposed here does not take away from the unique character of this site, but rather improves the architectural character of the new building. The change in design better distributes the building mass, allowing for a more articulated volume—including a modulation of roofscape forms and setbacks, as well as varied heights from the street.

Conversely, if that increase insures the completion of the project as planned, it will have a positive affect. This major new project will incorporate and restore the landmark houses, two older alley dwellings and the Incinerator itself. The project anticipates the historic rehabilitation of the Incinerator, re-location of three buildings back to their approximate sites, the restoration of

the Brickyard Hill House (one of Georgetown's most important early nineteenth century landmarks), and the historic rehabilitation of the Red House and brick stable. It is also a project that will introduce contemporary uses and dynamic city life into an area that has been marked by abandonment and under utilization for more than **seventy** years.

In 1950, when the Old Georgetown Act was passed, the waterfront, to quote the Commission of Fine Art's publication *Georgetown Historic Waterfront*, (1968, revised 1974; 1998) was considered "an active center industry." and "...also profoundly unattractive."(112). The campaign to manage the future of this long under-utilized area of Georgetown met with great interest, a host of approaches, and diversity of opinion, but has since resulted in the development of a number of successful projects along the waterfront.

The existing development surrounding the project includes Washington Harbour (3020 K Street); Jefferson Court (1025 Thomas Jefferson Street); Dodge Center (1000 Wisconsin Avenue); The Paper Mill, 3251 K Street/3250 Grace Street; Flour Mill, 3261 K/1000 Potomac Street, Office Building, 3333 K Street/1001 34th Street. These buildings are of a large scale, massing, volume, and height, several of recent construction, all representative of a type compatible with the industrial rather than residential character of Georgetown. The profile of these buildings follows the bold geometry of 20th-century industrial architecture. Large, strong forms, often incorporating earlier structures, built of solid materials, generally employing brick, metal, and stone to form their mass rather than the brick and wood of earlier periods. These structures are larger and taller than their commercial and residential neighbors above M Street, but are compatible to one another, to the waterfront, their part of the Historic District.

Specifically, this proposal is not detrimental to the historic resources on the site nor the historic district. Further, it is consistent with the purposes of the District's Historic Preservation

Act, for it will retain and enhance the historic buildings, encourage their restoration and adaptation for current use. The increase in height is consistent with the character of the continual response to new uses and requirements, is not inconsistent with the historic district in this area, and is not harmful to the historic resources in its immediate environs.

In summary, the proposed increase in height does not harm the integrity of the historic district or the historic resources. It is the tool that will retain, enhance, and adapt the landmark Brickyard Hill House and the unique Georgetown Incinerator, by providing the initiative and wherewithal for restoration. Further, it will assure that the project will remain compatible with the character of the Old Georgetown Historic District.

Thank you for your consideration.