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November 5, 2002

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Hand Delivery

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Board of Zoning Adjustment
441 4th Street, NW
Suite 210
Washington, DC 20001

Re: BZA Application No. 16945

Dear Members of the Board:

Enclosed please find an original and 20 copies of the Applicant's Statement in Support of the above-referenced application, scheduled for public hearing on November 19, 2002.

Please do not hesitate to contact us should you have any questions or require further information.

Very truly yours,
HOLLAND & KNIGHT LLP

Dennis R. Hughes

Enclosures
CC: David McGettigan, Office of Planning
Leroy Thorpe, ANC 2C

BZA
Case No. 16945
Exhibit No. 23

Board of Zoning Adjustment
District of Columbia
CASE NO.16945
EXHIBIT NO.23A1

BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

Application of Calvary Baptist Church and Congregation Inc. and Calvary Baptist Church Extension Association	BZA Application No. 16945 Public Hearing: November 19, 2002 ANC 2C

STATEMENT OF THE APPLICANT

I.
NATURE OF RELIEF SOUGHT

This is an application pursuant to 11 DCMR §3103.2, for variance relief as it relates to the Calvary Baptist Church main sanctuary building, to vest more than 25 percent of eligible transferable development rights ("TDRs") in a receiving site, as set forth in §1707.5(i) of the Zoning Regulations, in order to facilitate the major restoration efforts required as a result of the Orders of the Mayor's Agent for D.C. Law 2-144 (the "Mayor's Agent for Historic Preservation" or the "Mayor's Agent") in the DD/C-4 District at premises 711-725 8th Street, NW (Square 429, Lot 21 (Former Lots 18, 19, 803, 805).

II.
JURISDICTION OF THE BOARD

The Board of Zoning Adjustment has jurisdiction to grant the requested variance relief pursuant to §3103.2 of the Zoning Regulations. The authority of the Board to grant variances is set forth in §3103 of the Regulations. Section 3103.2 provides,

> [w]here, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under D.C. Code, 2001 Ed., §§6-641.01 to 6-651.02 would result in peculiar and exceptional practical difficulties to or exceptional and undue

hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

III.
EXHIBITS IN SUPPORT OF THE APPLICATION

Before proceeding with the discussion of the merits of this application, the following additional materials are submitted:

Exhibit A:	A portion of the Sanborn Atlas showing the Subject Property outlined in red ink.
Exhibit B:	A portion of the Zoning Map showing the Subject Square outlined in red ink, with zoning designation of DD/C-4.
Exhibit C:	Outline of testimony of Representatives of Calvary Baptist Church and Congregation, Inc. and Calvary Baptist Church Extension Association, Applicant.
Exhibit D:	Outline of Testimony of Baird Smith, Preservation Architect, Quinn Evans Architects.
Exhibit E:	Outline of Testimony of Representatives of the Trammell Crow Company, construction manager for the sanctuary restoration and the developer for the Development Project.
Exhibit F:	Outline of Testimony of Emily Hotaling Eig, Architectural Historian, EHT Traceries, Inc.
Exhibit G:	Outline of testimony of Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight LLP.
Exhibit H:	Mayor's Agent Orders dated April 20, 2001 and October 4, 2002.
Exhibit I:	Letter of support from Advisory Neighborhood Commission 2C dated October 22, 2002.
Exhibit J:	Copy of Deed, with Restriction, executed June 15, 1869, transcribed in excerpt from Chronicles of Calvary Baptist Church in the City of Washington by William Allen Wilbur, Judd & Detweiler, Inc.,1914.
Exhibit K:	Architectural Drawings depicting Restoration Scope of Work approved by Mayor's Agent, September 2002.

IV.
BACKGROUND

A. Site and Vicinity Characteristics

1) The Subject Property:

Calvary Baptist Church and Congregation, Inc. and Calvary Baptist Church Extension Association (collectively, "Calvary" or "Applicant") own that certain property in the western half of Square 429 in downtown Washington, D.C. known as Lot 21 (formerly Lots 18, 19, 803 and 835)(the "Subject Property" or "Subject Site"). The Subject Property is included in the Downtown Historic District, a locally-designated historic district which is also listed on the National Register of Historic Places. Located at the southeast corner of 8th and H Streets, NW, the Subject Property is improved with the Calvary Baptist Church (the "Church"),which is comprised of the original 19th century sanctuary and a total of three expansion buildings extending south along 8th Street, NW, namely, the Woodward, Greene and Abernethy Buildings.(Exhibit A).

2) Vicinity:

The Subject Site is located immediately north of the Old Patent Office Building. As stated by the Joint Committee on Landmarks in nominating the Downtown Historic District to the National Register of Historic Places, the pressed brick Gothic style of the Church building maintains a commanding presence along the 8th Street vista between the Patent Office and Mount Vernon Square. With its tower base and buttressing, the Church possesses a strong vertical rhythm, reinforced in the immediate vicinity by the Greater New Hope Baptist Church, diagonally north of the Church along 8th Street, NW, in Square 404, and the use of turreted

towers and other details in surrounding construction, including at the Family Research Council building at 801 G Street, NW, and the building recently constructed at 801 H Street, NW. This vertical rhythm will be further enhanced by the restoration work proposed by the Applicant.

Amidst great change taking place in virtually every direction, Calvary Baptist Church has anchored the southeast corner of 8th and H Streets, NW, for nearly 140 years. Today, the Church stands surrounded by commercial and institutional activity – the MCI Center, a booming Chinatown precinct, Techworld, the U.S. Mint Headquarters, PEPCO, various other new office buildings, and the National Portrait Gallery/Museum of American Art.

B. Calvary Baptist Church – History and Resulting Unique Situation

Calvary has taken a leading role within its increasingly developed community to provide outreach, including daily counsel and assistance, to its neighbors and their varied needs. Importantly, this assistance and ministry extends to those most economically deprived, namely the homeless and working poor. Calvary also enriches the lives of young people through a variety of community programs, from on-site day-care to after-school tutoring and enrichment programs, day and summer camps to organized recreation. At the public hearing in this matter, representatives of the Applicant will more fully describe Calvary's many community activities. These activities are specific to this congregation and not part of an overall denominational program.(Exhibit C).

Owing to the historic nature of its buildings and the changes over time to the main sanctuary, including the loss of its steeple in 1913, Calvary is uniquely affected by the cost and complexity of restoring the Church sanctuary consistent with the Mayor's Agent's approvals dated April 20, 2001, and October 4, 2002.(Exhibit H). In order to address the historic preservation and restoration unique to this site, the Applicant has entered into an agreement

which will provide for the funding of the historic restoration effort, which is being undertaken in conjunction with development of new mixed-use construction on the southern portion of Lot 21, to include modernized meeting, office and recreation space for Calvary as well as general commercial space (together, "the Development Project"). The Trammell Crow Company will serve as construction manager for the sanctuary restoration and the developer for the new construction portion of the Development Project (the "Developer"). This undertaking will provide a significant financial asset to Calvary, allowing it to continue to exist at its historic location, in its historic sanctuary, as well as to continue its integral community service activities.

With respect to the present application, Calvary will not be able to undertake the restoration of the facades of the historic sanctuary without first securing the revenue generated from the sale of TDRs to the new construction portion of the Development Project. The extraordinary costs involved with the restoration at this site, amounting to approximately $1.7 Million, leaves Calvary in the exceptional position where both Calvary and the Developer are ready and willing to proceed, but unable to proceed because the element that creates value, the 53,000 square feet of TDRs generated by the restoration work, cannot be fully utilized without relief from this Board.

As will be detailed below, there is no way to fund the approved restoration effort without relief from the Board. In the present case, a "Catch-22" results because buyers of TDRs will not close on the transaction until TDRs are vested, yet the TDRs cannot vest until the restoration work is completed, and the restoration work cannot be undertaken by Calvary until it has the funds in hand from the sale of TDRs. This situation, unique to this Property due to the comparatively extensive scope of restoration proposed, the significant cost of the preservation effort, and Calvary's inability to raise the funds in another manner, will have the effect of stymieing a project that everyone looks forward to proceeding.

C. Calvary Baptist Church – Construction History

Construction began on Calvary Baptist Church in 1864 and was completed in 1866, only to be almost entirely destroyed by fire in December, 1867. The steeple survived this blaze, although the clock was destroyed. Almost immediately thereafter, rebuilding efforts began at the Church. By 1894, the Church expanded to the south, with the construction of Woodward Hall, fronting 8th Street, NW. The Church's spire and lantern were lost in a windstorm in 1913.

The Church further expanded in the 1920s, with the construction of the Greene Memorial Building, to the south of Woodward Hall. Most recently, in 1960, the Church was enlarged once more, again to the south, along 8th Street, NW, in the form of the Abernethy Building. South of the Abernethy Building, to the intersection of 8th Street with G Street, NW, is a vacant lot, approximately 7,800 square feet in area, currently used as a parking lot.

As discussed below, the Applicant proposes to restore the spire, lantern, clock and other original elements of the Church, as reviewed and approved by the Mayor's Agent.

D. Restoration Project Description

Calvary is proposing to utilize revenue generated from the sale of certain land and development rights to finance an extensive capital improvement campaign that includes the restoration effort at the sanctuary, renovation of the Woodward Building, and the reconstruction of a new Greene Building behind the preserved façade. The Applicant has dedicated approximately$1.7 Million, including all those funds generated by the sale of Calvary's TDRs to the Developer, to finance extensive preservation and restoration of the facades of the Church sanctuary. Important historic preservation goals will be accomplished as a result of this

Development Project and Calvary's restoration efforts, as has been established through the approvals granted by the D.C. Mayor's Agent for Historic Preservation, as detailed below.(Exhibit H).

Over the years, Calvary has lost many of its original architectural embellishments, including its spire, which once towered over the neighborhood, and numerous decorative features. The focus of the restoration effort will be on the sanctuary's tower and spire elements, which are integral to recapturing the soaring verticality of the building's original Gothic Revival design and to reestablishing the Church as a primary visual landmark in this neighborhood.(Exhibit K). The primary restoration elements of the tower are: a 60-foot tall open spire; a 31-foot tall masonry lantern; and 8-foot square clock faces. Once restored, the tower element will exceed 150 feet in height. The Applicant is prepared to undertake the most detailed and accurate recreation of the historic spire and its almost-lace work detailing.

To support the spire, an intricate masonry lantern will be constructed that accurately recreates the historical massing of the missing element. Due to the implementation of structural codes following the construction of the original structure, a substantial amount of structural reinforcement will need to be inserted within the lantern in order to meet current code and support the spire.

Attached to the face of the lantern will be the Church's clock, an important community resource both past and future. As shown through chronicles of the Church's history, including its burning in 1867, the clock served a central role in the life of the Church as well as the downtown. Like the spire, the clock face will be constructed using efforts to attain as historically accurate a recreation as possible. In addition, the Applicant proposes to enhance this scope item by adding a third clock face to the tower/lantern, facing east. This addition will serve as an added benefit to this very busy Chinatown and downtown community.

The Applicant also proposes to restore the Gothic pinnacles at each corner of the tower. Owing to drastic cost overruns, the Applicant proposes to provide the masonry bases for the pinnacles, measuring approximately 14 feet in height, but simplify the construction of the pinnacle caps themselves. The four new pinnacle caps would replicate the caps currently found on the structure.

Farther down the existing corner tower of the sanctuary, the Applicant proposes to provide decorative buttress caps. The Applicant proposes to leave the remaining buttresses, primarily along the north wall of the sanctuary, in their existing condition. The Applicant proposes to retain the existing slate roof of the sanctuary, which has a useful life remaining of approximately 50 or more years.

The Applicant will also provide lettering on the facade of the Church. The text "Calvary Baptist Church" in individual letters in and Old English Style typeface will be mounted above the west entrance.

These efforts are consistent with §835.15 of the District's Comprehensive Plan (10 DCMR), which states, "[t]he distinguishing original quality or character of historic properties should be protected. The removal or alteration of any historically valuable material or distinctive architectural features should be avoided when possible and kept to a minimum when required for continued use."

E. Project Approvals

The Development Project was first reviewed and approved by the Mayor's Agent by Order dated April 20, 2001 (Exhibit H), wherein the Mayor's Agent approved the Applicant's requests for subdivision and partial demolition approval in order to construct a mixed-use project of special merit on the Subject Property. The Mayor's Agent concluded that the preservation

benefit resulting from the restoration of the Church would be exceptional and beyond what would otherwise be required or attainable, thus making approval of the subdivision and partial demolition requests consistent with the purposes of the Preservation Law.

The Church restoration referred to in the Order was found by the Mayor's Agent to be:

> an ambitious scope of work at the Church to restore 11 major items, primarily exterior elements of the original building that have been lost over the course of the Church's history, including its spire, which once towered over the neighborhood, and numerous decorative features. The soaring spire will recapture the verticality of the building's original design, and will reestablish the Church as the primary visual landmark in this neighborhood. (April 20, 2001, Order, at p. 9).

The Mayor's Agent likewise found that the scope of the restoration work for the Church sanctuary was estimated to cost approximately $1.3 Million. Also in that Order, the Mayor's Agent found that the Applicant might need to return to the Mayor's Agent to address the feasibility of the proposed scope of the historic preservation efforts for the Development Project.

The estimated costs to the Applicant to undertake the full restoration scope of work as originally presented to the Mayor's Agent increased dramatically, to a cost of more than $2 Million, in the course of further investigation by the Applicant, through its experts (which investigation included a thorough examination of the structural stability of the sanctuary to hold the restored spire and lantern) and in the course of further review by the Historic Preservation Review Board ("HPRB") and its staff. Because the Applicant is not able to dedicate the significant additional monies to the restoration project, it returned to the Mayor's Agent in 2002 for further review and with a request for modification of the scope of the sanctuary restoration work underlying the Mayor's Agent's approval in the April 20, 2001, Order.

Noting that the Applicant is unable to proceed under the original approval without jeopardizing Calvary's future ministry and community outreach efforts and its ability to remain a viable downtown institution, the Mayor's Agent, by Order dated October 4, 2002, approved a revised scope of restoration work.(Exhibit H).

The Applicant worked with a committee of members from the HPRB and with senior HPRB staff to help determine the most important elements of the Church building needing restoration and the level of detail of said restoration. The result of this coordination was a prioritization of seven restoration elements, many to be completed to a greater level of historical accuracy than originally proposed.

F. Other Significant Aspects of the Project

Advisory Neighborhood Commission ("ANC") 2C voted unanimously (5-0) to support the project at its October 22, 2002 public meeting. The ANC 2C letter in support of the project is attached as Exhibit I.

V.
DISCUSSION

As set forth above, the Subject Property is located within the DD and is improved with designated historic buildings. Therefore, it is subject to those provisions of the Zoning Regulations applicable to historic properties located in the DD. These Regulations limit on-site density (FAR) permitted for historic buildings in the DD and also provide the ability to generate and transfer undeveloped gross floor area, in the form of TDRs, to other properties within the DD or to properties located in designated TDR receiving zones located in other areas of the District of Columbia. In order to qualify for the transfer of such undeveloped gross floor area, a property must be restored pursuant to the Historic Landmark and Historic District Protection Act of 1978 ("D.C. Law 2-144" or the "Preservation Law"), per §1707.5(a) of the Regulations.

Subsection 1707.5(e) of the Regulations further provides that in order for a property owner to qualify for the transfer of development rights, that owner must first execute an

instrument of transfer that: (1) effects a binding reduction in the unused TDRs otherwise available to the sending lot; and (2) requires completion of restoration of the historic building pursuant to plans approved by the HPRB or Mayor's Agent, this latter requirement being satisfied by written certification issued by the Historic Preservation Division of the Office of Planning, per §17075(f). Thus, the District-approved preservation scope of work must normally be completed and certified before TDRs can be created and transferred.

Pursuant to §1707.5(g) and (h), the Regulations provide an alternative means of transfer. There, one or more TDR transfers may be undertaken following issuance of a building permit for the preservation work but prior to its completion. However, the Certificate of Occupancy for the TDRs on the receiving lot cannot be issued until the preservation work on the sending site has been certified.

Notwithstanding the above options, §1707.5(i) provides an additional transfer mechanism, which allows up to 25 percent of TDRs being generated to be transferred and fully vest in a receiving lot prior to completion of restoration, provided certain enumerated conditions are met, as follows:

- (1) The sending lot owner shall receive final approval of restoration plans from HPRB;

- (2) Instrument of Transfer (per §1707.5(e)) shall include requirement that proceeds of TDR transfer shall be used by sending lot owner exclusively for cost of design and restoration, or restoration and new construction, of the historic building on the sending lot;

- (3) If financial proceeds of transfer exceed restoration costs, the instrument of transfer shall provide that full funding of design and construction shall be reserved, together with a draw schedule and timetable for construction work, prior to any use of the funds in excess of that required for design and construction; and

- (4) If (3) above is applicable, the TDRs shall not vest in the receiving lot(s) until the Director of the Office of Planning has certified to the Zoning Administrator that the allocation of funds and draw schedule are sufficient to allow completion of project.

Unfortunately, because of its unique situation resulting from the existing building and its requirements for historic restoration, the restoration work proposed for the Subject Property cannot proceed even under the most generous of the TDR transfer mechanisms set forth above, which provide a sending lot owner opportunity to vest in a receiving lot up to 25 percent of TDRs. In order for this important approved project to move forward, the Applicant needs variance relief from §1707.5(i) so as to allow up to 100 percent of the TDRs created by the restoration work to vest in a receiving lot or lots prior to completion of the restoration scope of work on the Subject Property.

In order to protect the interests of the District, Calvary and the Developer have agreed that a condition of the Board's Order, should it grant the application, could read as follows:

> that no Certificate of Occupancy for the office building to be constructed on the southern portion of Lot 21 may be issued until a Certificate of Completion is issued representing that the historic restoration work has been undertaken consistent with the Mayor's Agent's Orders.

VI.
THE APPLICATION MEETS THE REQUIREMENTS FOR VARIANCE RELIEF FROM THE ZONING REGULATIONS

As set forth below, the Applicant satisfies the three-prong test for variance relief as established in §3103.2. Variance relief is therefore appropriate in the present case.

A. <u>The Property is Affected by an Exceptional Or Extraordinary Situation or Condition</u>

The Subject Property is affected by a number of exceptional situations and conditions relevant to the requested variance relief. These include the presence of a number of historic buildings that are in need of extensive and very costly restoration, all located on an exceptionally narrow lot that occupies virtually half of a square in downtown Washington.

Further relevant and extraordinary conditions impacting the Property include its improvement and occupation of the Subject Property for nearly 150 years with a single Church

and its congregation, which congregation provides significant and often exceptional services to the immediate downtown community and larger metropolitan area primarily through programs offered on the premises of the Subject Property. The current very poor condition of numerous aspects of the existing buildings on the Subject Property, several of which have been deemed "contributing" buildings to the Downtown Historic District, directly impacts the sustainability of these important programs. This combination of space and other constraints inherent in the Subject Building, as described above, work a practical difficulty upon the Applicant deserving of the variance relief herein requested. As found by the District of Columbia Court of Appeals in *Clerics of St. Viotor, Inc. v. District of Columbia Board of Zoning Adjustment*, "[i]t makes no practical difference whether the inability to use property in accordance with zoning regulations stems from topographical conditions of the land itself or from the existence of a structure on the land," (320 A.2d 291, at 294). Further, that Court has likewise held that the term "extraordinary or exceptional condition" was designed to allow the Board of Zoning Adjustment to temper the strict application of the Zoning Regulations in appropriate cases. Such conditions need not be inherent in the land and can be caused by subsequent events extraneous to the land. *De Azcarate v. D.C. Board of Zoning Adjustment*, 388 A.2d 1233, at 1237.

Furthermore, the expense required to accomplish the ambitious restoration of the Church sanctuary, including the historically accurate re-creation of its enormous and elaborate spire, is a direct product of the Subject Property's historical use, its development history, and, with the implementation of the Preservation Law in 1978 and the comparatively recent creation of the DD in 1992, its zoning history, and therefore constitutes an exceptional condition confronting the Subject Property.

The non-profit and public service status of the Applicant is likewise relevant and proper for the Board's consideration in evaluating the exceptional nature of the Subject Property. As has been

held by the District of Columbia Court of Appeals in *Monaco v. District of Columbia Board of Zoning Adjustment*, the BZA does not err in considering the needs of a public service organization as possible other extraordinary and exceptional situation or condition of a particular piece of property. (407 A.2d 1091, at 1099).

B. The Strict Application of the Zoning Regulations Would Result in a Practical Difficulty

In order to obtain an area variance, an owner must prove peculiar and exceptional practical difficulties caused by compliance with the applicable regulation. Furthermore, these difficulties must be related to a property's exceptional circumstances and not to general conditions in the neighborhood. As set forth below, the strict application of the TDR transfer regulations for certified restoration work on designated historic properties, especially §1707.5(i), results in a practical difficulty for Calvary in that they work to prevent the important restoration scope of work for the sanctuary from proceeding, they threaten the viability of the Development Project, and possibly even jeopardize the Subject Property's continued use as the site of Calvary's congregation. For all these reasons, Calvary meets its burden of compliance with the practical difficulty prong of the variance test and is deserving of relief from the Board.

As detailed above, Calvary has developed significant needs in its efforts to remain at its historic location and to continue to provide its important ministries to the community, let alone to provide adequate worship and social spaces for its congregation. The revenue generated from the Development Project is integral to the future of Calvary, to its programs and to its ability to undertake the ambitious restoration of this truly exceptional historic structure. At the same time, the Development Project, and more importantly the revenue stream from that project dedicated to the work on the Church, includes as a significant line item, the transfer of TDRs created by the

sanctuary restoration under §1707 of the Regulations to the Developer for use on the new construction portion of the Development Project and possibly elsewhere, with the result that the Calvary must have the funds from the sale of the TDRs before it can move forward to actually undertake the restoration scope of work. In turn, the Developer cannot purchase TDRs until it is assured that they have vested. Nor would any other purchaser of TDRs make such a purchase and provide closing funds without first having assurance of vesting, which approval of the present variance request will provide.

Furthermore, the Church, as a non-profit organization and community service provider, is not in any position to fund the approximately $1.7 Million restoration scope of work itself and then seek to recover the funds at a later date, once the work is completed and certified and the TDRs would otherwise transfer under the Regulations. Not only would it be imprudent for Calvary to take the risk that the Developer may not close without assurance of vesting the TDRs, thereby causing Calvary to default in it financing, Calvary is unable to borrow such funds as it is a sole purpose facility. In addition to the fact that lenders do not wish to foreclose upon places of worship, Calvary is prohibited via deed restriction from undertaking any such a sizeable debt. (Exhibit J).

Likewise, as stated above, Calvary is making every effort to continue to provide its important services and to provide regular maintenance of its badly-deteriorating facilities. The revenue from its congregation is nowhere near sufficient to fund the restoration program. Similarly, Calvary cannot seek to finance the restoration work without the very valid and dangerous prospect that it might default on a loan were the Development Project to stall in a slow real estate market and Calvary were to be unable to re-sell the TDRs at a later date.

For all these reasons, a strict interpretation of the Zoning Regulations would cause a practical difficulty to Calvary.

C. **Variance Relief Can Be Granted Without Substantial Detriment to the Public Good and Without Impairing the Intent, Purpose and Integrity of the Zone Plan.**

The Applicant proposes only to vary slightly the timing mechanism for the vesting of preservation-related TDRs created by the DD overlay. This may be accomplished with no substantial detriment to the public good and with no impairment to the intent, purpose and integrity of the Zone Plan, as set forth below. The relief requested can be granted by the Board without detriment to the Public Good or impairment to the Zone Plan.

1. Public Good:

The grant of relief in the present application will work no harm upon the general public. No light or air will be lost by any property owner, nor will any other property owner suffer a diminution in the value of its property as a result of the grant of relief. By contrast, the grant of relief in this case will facilitate this highly-anticipated restoration project. It will further enhance the increasing vibrancy of the east end downtown/Chinatown area, and it will reestablish to some degree, Calvary's historic place in the downtown area. On a larger scale, approval of the application will allow for the new construction portion of the Development Project, similarly crucial to the Subject Property's future, to move forward.

2. Zone Plan:

The grant of variance relief in the present case will likewise not impair the District's zone plan. Arguably, the alternative transfer mechanisms set forth in §1707.5(g) and (h) and also in (i) indicate an effort by the Zoning Commission to provide flexibility in the Regulations to facilitate restoration work and TDR transfer in the DD for projects of all sizes and complexities. The Applicant's request seeks only to extend this flexibility one step further to accommodate the

exceptional nature of the Property, the restoration project and the non-profit Applicant, in order to avoid a practical difficulty upon the Applicant.

Returning to §1707.5(i), the Applicant notes that it requests only variance from §1707.5(i)(1) in order to raise the permitted percentage for vesting TDRs from 25 percent to 100 percent. The Applicant will comply with all other applicable provisions of §1707.5(i), most especially the requirement in §1707.5(i)(2) that the transfer instrument include a provision that the proceeds from the transfer be utilized first for the design, restoration and construction on the sending site.

Finally, the Applicant notes that the Developer, the prospective purchaser of the TDRs, is willing to put itself at risk, to the added security of the District, in that it is willing to make the issuance of the Certificate(s) of Occupancy for the Developer's portion of the Development Project on the southern portion of Lot 21 dependent upon the completion and certification of the preservation scope, so long as the Applicant is granted variance from §1707.5(i) to transfer and vest up to 100 percent of said TDRs to the Developer without regard to the status of work at the sending site.

For all the above reasons, variance relief from §1707.5(i) of the Regulations can be granted without detriment to the public good or without substantial impairment to the Zone Plan.

VII.
WITNESSES

A. Representatives of Calvary Baptist Church and Congregation, Inc. and Calvary Baptist Church Extension Association, Applicant.

B. Representatives of the Trammell Crow Company, construction manager for the sanctuary restoration and the Developer for the Development Project.

C. Baird Smith, Preservation Architect, Quinn Evans Architects.

D. Emily Hotaling Eig, Architectural Historian, EHT Traceries, Inc.

E. Steven E. Sher, Director of Zoning and Land Use Services, Holland & Knight, LLP.

VIII.
CONCLUSION

For the reasons stated above, the requested relief meets the applicable standards of the Zoning Regulations and can be granted without substantially impairing the intent, purpose and integrity of the Zoning Regulations. The Applicant therefore requests that the Board grant the application.

Respectfully submitted,

HOLLAND & KNIGHT, LLP

By _____
Norman M. Glasgow, Jr.

_____
Dennis R. Hughes

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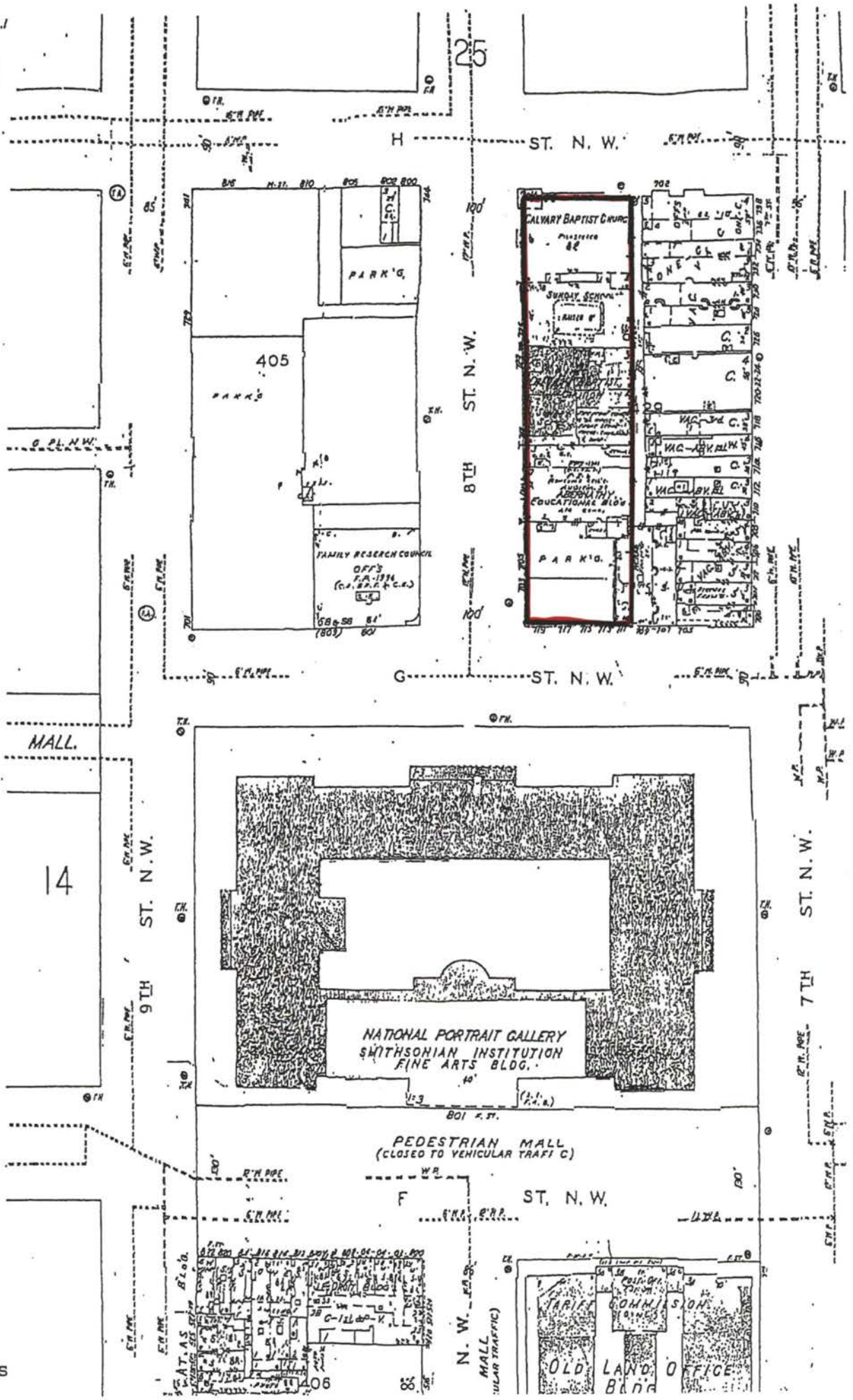
November, 2002



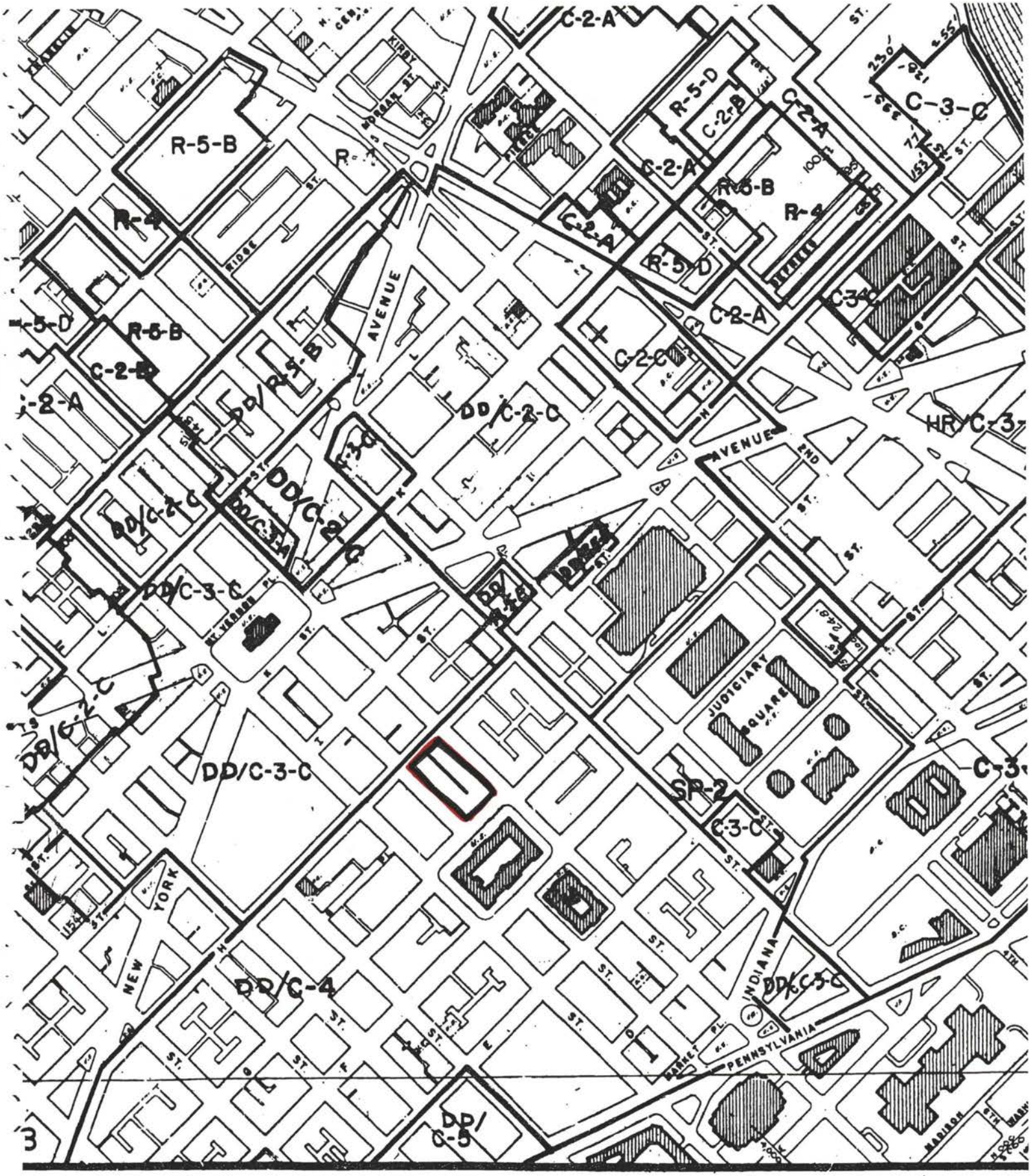
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WASHINGTON, D.C., VOL. 1

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(134-135)







F COLUMBIA

MAP

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OUTLINE OF TESTIMONY
REPRESENTATIVES OF APPLICANT
CALVARY BAPTIST CHURCH AND CONGREGATION, INC.
AND CALVARY BAPTIST CHURCH EXTENSION ASSOCIATION

I. INTRODUCTION

II. HISTORY OF CALVARY BAPTIST CHURCH AT SITE

III. OVERVIEW OF CALVARY'S COMMUNITY MINISTRY AND PROGRAMS

IV. DISCUSSION OF EXISTING CONDITIONS AND LIMITATIONS

V. DESCRIPTION OF PROPOSED RESTORATION AND NEW CONSTRUCTION AND FUNDING – IMPORTANCE OF TDRS

VI. VARIANCE RELIEF IS NEEDED

VII. CONCLUSION



OUTLINE OF TESTIMONY
BAIRD SMITH
REPRESENTATIVE, QUINN EVANS ARCHITECTS
PRESERVATION ARCHITECT

I. INTRODUCTION AND PROFESSIONAL QUALIFICATIONS

II. SITE AND LOCATION DESCRIPTION

III. SCOPE OF RESTORATION WORK

IV. CONCLUSION



OUTLINE OF TESTIMONY
REPRESENTATIVES OF THE TRAMMELL CROW COMPANY,
CONSTRUCTION MANAGER FOR SANCTUARY RESTORATION AND
DEVELOPER FOR THE DEVELOPMENT PROJECT

I. INTRODUCTION AND PROFESSIONAL CREDENTIALS

II. DESCRIPTION OF DEVELOPMENT PROJECT

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EMILY H. EIG, ARCHITECTURAL HISTORIAN
EHT TRACERIES, INC.

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STEVEN E. SHER
DIRECTOR OF LAND USE SERVICES
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GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
941 North Capitol Street, N.E., Suite #9100
P.O. Box 37140
Washington, D.C. 200013-7200

IN THE MATTER OF

Calvary Baptist Church, **H.P.A. Nos. 00-601, 01-044**
Lots 18, 19, 803, 835 in Square 429
711-724 8th Street, N.W.
Washington D.C.

MODIFIED DECISION AND ORDER

Jurisdiction

This matter came before Rohulamin Quander, Administrative Law Judge and Mayor's Agent for Historic Preservation (The Mayor's Agent) on September 10, 2002, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 2-509 *et seq.*, and the D.C. Historic Landmark and Historic District Protection Act of 1978 (the Act), D.C. Law 2-144, codified at D.C. Code, Sec. 6-1101, *et seq.*, and upon request for an administrative hearing filed by the Calvary Baptist Church and Congregation, Inc., and the Calvary Baptist Church Extension Association, hereinafter collectively referred to as the "Applicant."

Background

The hearing was conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR), Chapter 25. There were no parties or persons in opposition to the applications. The record closed on September 23, 2002, upon receipt of a proposed findings of fact and final order, submitted by Norman M. Glasgow, Jr., Esquire, and Dennis R. Hughes, Esquire, Holland and Knight LLP, the Applicant's co-counsel.

The Applicant owns Lots 18, 19, 803 and 835 (the "Subject Property") in the western half of Square 429 in downtown Washington, D.C. The Subject Property is located within the Downtown Historic District, a locally-designated historic district that is eligible for listing in the National Register of Historic Places. The Subject Property is improved with the Calvary Baptist Church (the "Church"), 711-725 8th Street, N.W., at the southeast corner of 8th and H Streets, N.W., which includes the original sanctuary and three expansion buildings – Woodward Hall, the Greene Memorial Building and the Abernathy Building - extending south along 8th Street, N.W.

In 2001, the Applicant sought approval, pursuant to the Act, to subdivide the above-referenced four lots into a single lot of record as well as to essentially demolish all but the façade of the Church's Greene Memorial Building addition, which building was determined by the Historic Preservation Review Board ("HPRB", the "Board") at its September 28, 2000, public

meeting to contribute to the character of the Downtown Historic District.[1] The demolition in significant part would have allowed the construction of a mixed-use project adjoining the Church buildings on the Subject Property.[2] The proposed subdivision to create a single lot of record is required in order to obtain a building permit for this project. The Trammell Crow Company ("Developer") would undertake the new construction, along with efforts to restore the exterior of the Church.

Pursuant to D.C. Code, Sec. 5-1004(c), Demolitions, and Sec. 5-1006(c), Subdivisions, a public hearing was held on March 6, 2001, in HPA #00-601 and HPA #01-044 before the Mayor's Agent. By Order dated April 20, 2001 (the "Original Order"), the Mayor's Agent determined that the Applicant had met its burden of proof and granted the application for demolition in significant part and subdivision.

The Applicant is now before the Mayor's Agent for reconsideration and further discussion and consideration of the scope of restoration work to be undertaken to the Church building at the corner of 8th and H Streets, N.W. The Original Order found that the Applicant would "be undertaking an ambitious scope of work at the Church to restore 11 major items," and that the "scope of restoration work is estimated to cost approximately $1.3 million." The Applicant has now indicated that further investigation by the Applicant's architectural and construction experts has determined that the full scope of restoration work originally presented to the Mayor's Agent would cost between $2 and $2.5 million, which the Applicant is unable to fund completely. Therefore, the Applicant seeks to modify the scope of the restoration work identified by the Mayor's Agent in the Original Order.

In addition to providing a comprehensive pre-hearing written submission, the Applicant, represented by Norman M. Glasgow, Jr., Esquire, and Dennis R. Hughes, Esquire, of Holland & Knight LLP, presented several witnesses in support of its applications, including: Aldon Nielsen, representing Calvary; Jeffrey Sherman, representing the Developer; Emily Hotaling Eig, of EHT Traceries, expert in architectural history and historic preservation; Baird M. Smith, AIA, of Quinn Evans Architects, as project architect and expert in architecture and preservation architecture; and Steven E. Sher, Director of Zoning and Land Use Services for Holland & Knight LLP, as an expert in planning and land use. The Mayor's Agent also hereby incorporates by reference all of the record previously established in the proceeding leading up to the issuance of the Original Order in 2001.

For the reasons that follow, the Mayor's Agent finds that the scope of restoration work now proposed by the Applicant is still sufficient to support a project of special merit and the

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[1] In addition, the Abernathy Building was deemed a non-contributing building by the Board at its September 28, 2000, meeting and may be demolished as a matter of right without the necessity of a public hearing by the Mayor's Agent.

[2] The use of the term, "partial demolition" has been a source of significant discomfort in the preservation community, which maintains that a demolition is just that, i.e., the removal of a structure which is historically significant. However, the Mayor's Agent takes administrative notice that the Act specifically references at D.C. Code § 6-1102(3), demolish or demolition, and states that, it "means the razing or destruction, entirely or in significant part, of a building or structure and includes the removal or destruction of any façade of a building or structure."

applications for a subdivision and for demolition in significant part are **GRANTED,** in accordance with the specific criteria set forth below.

ISSUE

The sole issue to be decided is whether the reduced scope of restoration work now proposed is still sufficient to continue to support the original finding that the proposed subdivision and demolition in significant part are necessary in the public interest in order to allow for the construction of a project of special merit.

FINDINGS OF FACT

Based upon the total record created during both sets of administrative hearings, the Mayor's Agent now makes the following Findings of Fact:

1) Subsequent to the Original Order issued on April 20, 2001, the Applicant undertook to proceed with the scope of preservation work which had been described to the Mayor's Agent. In working with contractors, architects and the HPRB and its staff, the Applicant came to determine that the cost to complete all of that work would be between $2 and $2.5 million, significantly higher than the original estimate of $1.3 million dollars.

2) The Applicant will be unable to proceed with that level of financial commitment without jeopardizing the future ministry and community outreach of the Church and its ability to remain as a viable institution in Downtown. The funds that the Church will receive from the Developer have to cover the renovation of the Woodward Building and the rebuilding of the Greene Building, in addition to the improvements to the Sanctuary and the funding of programs critically important to the church's ministry. After a careful reassessment of its options, the Church elected to increase the funding from $1.3 million dollars to the $1.74 million dollars as now proposed to be devoted to the restoration of the sanctuary within the limits of the current financial situation, but to pare back some other restorations which, while historically and architecturally significant, were deemed to be less important at this time.

3) The Applicant worked with a committee comprised of two members of the HPRB and senior HPRB staff to help determine what were the most important elements of the Church building that needed to be restored and to what level of detail this restoration was to be completed. The plans now before the Mayor's Agent represent the agreement between the Applicant and the HPRB committee.

4) The Applicant now proposes to accomplish the following seven defined elements in lieu of the initial 11 elements that were anticipated:[3]

[3] Although the initial application focused upon 11 specific restorations that were anticipated, that figure can vary, as the magnitude of the undertaking cannot be specifically limited to 11 clearly defined areas.

a) *A historically accurate restoration of the gothic spire*: In lieu of the simple aluminum tube shapes contemplated in the original proposal, a cast material with enhanced detailing will be used to accurately portray the three dimensions of the 60-foot spire lost in 1910;
b) *A reconstruction of the 27-foot tall masonry lantern*: The lantern will be constructed to accurately recreate the historical massing of the missing element. A substantial amount of structural reinforcement will be necessary to meet current building code requirements and support the spire;
c) *A recreation of the historic clock faces*: Similar to the metal spire, an enhanced historically accurate restoration of the clock faces on the north, east and west faces of the tower will be created. A cast material will be used to replicate the depth and shadow of the more intricate design contained in the original;
d) *Four 15-foot tall gothic finials located on the spire*: Composed of cast aluminum or fiberglass, these finials will replicate the original gothic details as accurately as possible;
e) *Two pinnacles*: Two pinnacles will be accurately restored at the west and east ends of the roof ridge;
f) *Chevron shaped buttress caps on the spire*: The buttress caps on the spire will be accurately restored; and
g) *Historic signage*: Along the west facade of the Sanctuary, the text "Calvary Baptist Church," in a gothic typeface, will be mounted above the main entrance.

5) With respect to the other items originally proposed, the Applicant will not: a) construct the free-standing gothic finial on the west façade; b) install metal cresting along the roof ridge; c) replace the existing roof; d) replace the existing buttress caps along the north elevation; e) construct a decorative railing along the north elevation of the Sanctuary; f) reconstruct the southwest gable and its associated embellishments; and g) reconstruct the three small finials at the main entrance to the sanctuary. These elements are deemed to be less important to the historical context of the building than the items described in finding No. 4, and the Applicant further enumerated cogent reasons why these elements would not be accomplished at this time as part of this proceeding.

6) The cost to accomplish the items described above will be about $1,740,000, approximately one-third more than the $1.3 million committed to undertake the restoration work originally proposed.

7) The totality of the work to be accomplished will be closer in character and detail to the original elements of the building than what would have been the result from the scope of work originally proposed and approved by the Mayor's Agent. The nature of the work to be undertaken will be historical restoration of the highest quality.

8) The preservation component of this application, as described above, at least meets and perhaps exceeds the requirement of law or city policies to provide a substantial historic preservation benefit.

9) The social service components of the project, as previously described to the Mayor's Agent, will remain as part of the project.

10) As proposed, the overall project remains consistent with and furthers a number of the District's planning objectives, as set forth in its Comprehensive Plan (10 DCMR 1-19), particularly the Downtown, Land Use and Preservation and Historic Features elements.

11) There was no report from Advisory Neighborhood Commission 2C on the proposed change in the scope of preservation elements.

12) There were no parties or persons in opposition to this application.

Discussion

As set forth above, there is only one issue before the Mayor's Agent in this proceeding: whether the revised scope of preservation and restoration work to be undertaken to the Church building at the southeast corner of 8th and H Streets, N.W., continues to support the original finding that the project is one of special merit under the Act. The Mayor's Agent was initially concerned that the Applicant appeared to have reduced the amount of preservation work and sought to continue with the same building project as originally presented. However, as set forth in the Findings, above, the Applicant has demonstrated that the level and quality of the work to be undertaken is superior to what was contemplated originally. The Mayor's Agent is satisfied that the Applicant has made a well thought out response to the situation where the initial *quantity* of work could not be accomplished but a higher *quality* of work will ultimately result. The scope, extent and, not coincidentally, the cost to complete the now proposed scope of work are a substantial commitment by the Applicant above and beyond any minimum requirements of law or regulation, and continue to comprise a project of special merit.

CONCLUSIONS OF LAW

Based upon the record as established and taken as a whole, including the foregoing Findings of Fact, the following Conclusions of Law are made:

1) The Mayor's Agent concludes that the Applicant in the instant case has sustained its burden of proof in that, as revised and presently before the Mayor's Agent, the demolition in significant part of the Greene Building (HPA No. 00-601), with the retention of its façade, and the subdivision (HPA No. 01-044) are necessary to allow for the construction of a project of special merit and, thus, are necessary in the public interest.

2) Furthermore, the Mayor's Agent concludes that the Applicant in the instant case has sustained its burden of proof, in that the approval of the demolition in significant part and subdivision is consistent with the purposes of the Act and, thus, are necessary in the public interest.

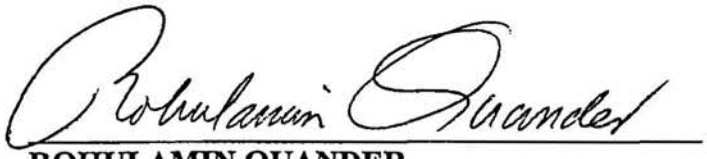
ORDER

ACCORDINGLY, it is this **4th day of October, 2002,**

ORDERED that Application No. 01-044, for Subdivision of Lots 18, 19, 803 and 835 in Square 429, and Application No. 00-601, for demolition in significant part of the Greene Memorial Building, be and same are hereby, **GRANTED**; and, it is

FURTHER ORDERED that pursuant to D.C. Code, Secs. 5-1004(h) and 5-1006(g), no subdivision or demolition permits shall be issued unless a permit for new construction, including Church restoration as described herein, is issued simultaneously; and, it is

FURTHER ORDERED that pursuant to D.C. Code §5-1012(a), this Decision and Order shall not become effective until fifteen (15) days after issuance.



ROHULAMIN QUANDER
ADMINISTRATIVE LAW JUDGE, AND
MAYOR'S AGENT FOR HISTORIC PRESERVATION, D.C.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Decision and Order was served this 4th day of October, 2002, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following:

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Maurice Jackson
DCRA/OAD Certifying Officer

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 North Capitol Street, N.E., Suite #9100
Washington, D.C. 20002

IN THE MATTER OF:

CALVARY BAPTIST CHURCH **H.P.A. Nos. 00-601, 01-044**
Lots 18, 19, 803, 835 in Square 429
711-724 Eighth Street, N.W.
Washington, D.C.

DECISION AND ORDER

Jurisdiction

This matter came before Rohulamin Quander, Administrative Law Judge and Mayor's Agent for Historic Preservation (The Mayor's Agent) on March 6, 2001, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 1-1509 *et seq.*, and the D.C. Historic Landmark and Historic District Protection Act of 1978 (the Act), D.C. Law 2-144, codified at D.C. Code, Sec. 5-1001, *et seq.*, and upon a request for an administrative hearing filed by the Calvary Baptist Church, hereinafter collectively referred to as the "Applicant".

Background

The hearing was conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR), Chapter 25. The record closed on March 30, 2001, upon receipt of a proposed findings of fact and final order, submitted by Norman M. Glasgow, Jr., Esquire, and Dennis R. Hughes, Esquire, Holland and Knight, LLP, the Applicant's co-counsel.

Calvary Baptist Church and Congregation, Inc. and the Calvary Baptist Church Extension Association (the Applicant) own Lots 18, 19, 803 and 835 (the Subject Property) in the western half of Square 429 in downtown Washington, D.C. The Subject Property is located within the Downtown Historic District, a locally designated historic district that is eligible for listing in the National Register of Historic Places. The Subject Property is improved with the Calvary Baptist Church (the Church), 711-725 Eighth Street, NW, at the southeast corner of Eighth and H Streets, NW, which includes the original sanctuary and three expansion buildings – the Woodward Hall, the Greene Memorial Building and the Abernathy Building - extending south along Eighth Street, NW.

Pursuant to the Act, the Applicant seeks approval to subdivide the above-referenced four lots into a single lot of record, and to partially demolish the Church's Greene Memorial Building addition, which was determined by the Historic Preservation Review Board (HPRB, or the Board) at its September 28, 2000, public meeting to contribute to the character of the Downtown Historic District.[1]

The partial demolition permit will allow mixed-use new construction adjoining the Church buildings on the Subject Property. The proposed subdivision to create a single lot of record is required in order to obtain a building permit for this project. The Trammell Crow Company (the Developer) will

[1] In addition, the Abernathy Building was deemed a non-contributing building by the Board at its September 28, 2000, meeting and may be demolished as a matter of right without the necessity of a public hearing by the Mayor's Agent.

undertake the new construction, along with efforts to restore the exterior of the Church.

Pursuant to D.C. Code §5-1004(c), Demolitions, and §5-1006(c), Subdivisions, a public hearing was held on March 6, 2001, before the Mayor's Agent for D.C. Law 2-144. Notice of the public hearing was published in the D.C. Register on November 24, 2000, and on January 26, 2001.

In addition to providing a comprehensive pre-hearing written submission, the Applicant presented six witnesses in support of its applications, including: Aldon Nielson, representing Calvary; Jeff Sherman, representing the Developer; Anne H. Adams of Shaw Pittman, expert in architectural history and historic preservation; Michael Winstanley, AIA, of Leo A Daly Architects, as project architect and expert in architecture and preservation architecture; Randy Granzow, PE, of Haynes Whaley Associates, Inc., as an expert in structural engineering; and Steven E. Sher, Director of Zoning and Land Use Services for Holland & Knight LLP, as an expert in planning and land use.

The Mayor's Agent also received testimony from Steven Raiche and David Maloney, both from the D.C. Office of Planning's Historic Preservation Division. The record was left open until March 15, 2001, to receive a written testimony statement from the Office of Planning concerning the applications, and until March 19, 2001, for any response. The record closed on March 30, 2001, upon receipt of the Applicant's proposed final order. There were no parties or persons in opposition to the applications. For the reasons that follow, the applications for a subdivision and for partial demolition are **GRANTED.**

ISSUE

The two issues to be decided are: 1) whether the proposed subdivision and partial demolition are necessary in the public interest in order to allow for the construction of a project of special merit; and, 2) whether the proposed subdivision and partial demolition are consistent with the purposes of the preservation law.

FINDINGS OF FACT

Based upon the total record created during the administrative hearing, the Mayor's Agent now makes the following Findings of Fact:

1. The Applicant's proposed project has three recited objectives: a) restoration and expansion of the Church's facilities; b) restoration of important historic building elements to the Church building; and c) construction of an economically viable office building.

2. The subject property is located within the Downtown Historic District, which generally centers along F Street, NW, between 11th and Seventh Streets, N.W, and along Seventh Street, NW, between Pennsylvania Avenue and Mount Vernon Square. The Church stands surrounded by commercial and institutional activity, including PEPCO, the MCI Center, a booming Chinatown precinct, Techworld, the U.S. Mint Headquarters, and various other new office buildings. As well, there are monumental public buildings including the National Portrait Gallery/Museum of American Art located in the Old Patent Office.

3. These public buildings are in a variety of styles, shapes and sizes, and line the various commercial streets within the historic district and reflect the

growth and development of downtown. When nominating the Downtown Historic District to the National Register of Historic Places, the Joint Committee on Landmarks specifically noted that the pressed brick Gothic style of the church building maintains a commanding presence along the Eighth Street vista between the Old Patent Office and Mount Vernon Square.

4. In August 2000, the Applicant filed applications with the Permit Information Branch of the D.C. Department of Consumer and Regulatory Affairs (DCRA) seeking permits to demolish the Abernathy Building and to partially demolish the Greene Memorial Building, located at 711 and 723 Eighth Street, NW, respectively. Pursuant to §5-1004 of the D.C. Code, the applications for demolition permits were referred to and reviewed by the HPRB. At its September 28, 2000, meeting, the HPRB determined that the Abernathy Building did not contribute to the Downtown Historic District, and that the partial demolition of the Greene Memorial Building was not consistent with the purposes of the Act. The partial demolition application, HPA No. 00-601, was then forwarded to the Mayor's Agent for consideration at a public hearing pursuant to §5-1004 of the D.C. Code.

5. In October 2000, the Applicant filed an application for HPRB review of a subdivision to consolidate Lots 18, 19, 803 and 835 in Square 429 into a single lot of record. The HPRB, reviewing the application for subdivision, HPA No. 01-044, at its November 16, 2000, meeting, adopted its Staff Report and Recommendation on the subdivision, including the Staff recommendation that the HPRB defer consideration of the subdivision until such time as conceptual plans

for the proposed new construction were submitted for the Board's review. Pursuant to §5-1006, the subdivision application was forwarded to the Mayor's Agent for consideration at a public hearing.

6. The Applicant subsequently filed application for HPRB conceptual design review of its proposed new construction. The HPRB reviewed the application, HPA No. 01-101, at its December 14, 2000, public meeting and requested that the Applicant further study the massing and height of the proposed new construction. The Board also requested information regarding the Applicant's restoration proposal for the exterior of the Church building.

7. The Applicant returned to the Board at its February 22, 2001, public meeting with revised conceptual design drawings. There, the Board approved the Staff recommendation noting that "... the exterior restoration of Calvary Church to its historic appearance would constitute an unusual and substantial historic preservation accomplishment with clear benefits to the public at large and a direct relation to the public interest in perpetuating, enhancing, and promoting appreciation of the city's prime cultural assets."

8. At its February 22, 2001, public meeting, the HPRB also specifically found that the bulk, height, size and massing of the revised concept design were acceptable, and adopted the Staff report, which stated that the revised conceptual plans, with "appropriate further redesign undertaken in consultation with the Board, are compatible with the character of the Downtown Historic District," in the event the Mayor's Agent finds partial demolition of the Greene Memorial Building necessary in the public interest. The Board also

recommended to the Mayor's Agent that the proposed subdivision of the property into a single record lot is appropriate were the Mayor's Agent to approve the requested partial demolition.

9. Calvary Baptist Church was originally constructed between 1864 and 1869 in the Gothic Revival style, under the direction of prominent Washington architect Adolph Kluss. The Church was expanded in 1894, with the construction of Woodward Hall, fronting Eighth Street, N.W., to the south of the original Church, and further expanded in the 1920s, with the construction of the Greene Memorial Building, to the south of Woodward Hall. The Church was once again enlarged in 1960 to the south along Eighth Street, N.W., with the construction of the Abernathy Building. Further south of the Abernathy Building, towards the intersection of Eighth and G Streets, are vacant lots, totaling approximately 7,800 square feet in area, currently used for vehicular parking lot.

10. The Calvary Baptist Church building has generally withstood this encroachment on the historic district, and now provides a unique opportunity for restoration to its original appearance, an important component of the historic district, and thereby to reinforce the historical importance of this area.

11. Calvary has adapted to and taken a leading role in this increasingly developed community in providing outreach, including daily counseling and assistance, and extending its ministry to include those who are the most economically deprived, i.e., the homeless and working poor. Calvary also enriches the lives of young people through a variety of community programs, including on-site day-care, after-school tutoring and enrichment programs, day

and summer camps, and organized recreation. Such activities, funded by the congregation, are specific to this Church and to this building, and are not part of an overall denominational program.

12. The Applicant has developed significant financial needs resulting from its attempts to maintain the Church while at the same time providing its numerous community services. Calvary has utilized the benefits provided for historic churches in the Downtown Development overlay by selling its unutilized development rights in order to generate funds needed to undertake renovation and restoration of its sanctuary. As Calvary's financial burdens have continued to intensify, it has negotiated a sale of land and development rights for a portion of its property along Eighth Street, N.W., which sale allows for development of the proposed project, including the restoration and updating of space for Church use. The development rights require the subdivision to be recorded.

13. The Applicant also seeks to improve and modernize its meeting, office, parking and recreation spaces, which at present are functionally obsolete in terms of its building systems, and do not meet current building or safety codes, due to their cramped configuration and antiquated mechanical systems. Further, the office and meeting spaces currently available in the Greene and Abernathy Buildings are inefficient and programmatically ill configured for Calvary's present and future needs.

14. According to engineering reports and sworn testimony, the Greene Memorial Building has insufficient load capacity to permit additional levels, and it is infeasible to install the necessary life safety, building systems and egress

improvements, reconfigured meeting and office spaces, and assembly space within the existing structure, without significant demolition, structural reinforcement, and extensive reconfiguration of the existing structure.

15. As part of the proposed project, the redeveloped Greene Memorial Building will contain four floors above and below-grade levels for Church use, totaling approximately 78,000-86,000 square feet of modern, code compliant space tailored to the Church's present needs. An auditorium will be located within this space, which will serve as multi-function assembly space and recreation space. Although as currently configured, the Greene and Abernathy Buildings contain approximately 86,000 square feet of space for the Church's use, most of this space is inefficient, and in some cases grossly limited use, inconsistent with the Applicant's long term plans.

16. Important historic preservation goals will be accomplished as a result of this redevelopment project. The Applicant will be undertaking an ambitious scope of work at the Church to restore 11 major items, primarily exterior elements of the original building that have been lost over the course of the Church's history, including its spire, which once towered over the neighborhood, and numerous decorative features. The soaring spire will recapture the verticality of the building's original design, and will reestablish the Church as the primary visual landmark in this neighborhood. Roof cresting, decorative finials and turrets, and signage are other aspects of the Church's restoration effort. Additionally, the facade of the Greene Building will be restored as part of this project.

17. The scope of restoration work is estimated to cost approximately $1.3 million, which proceeds the Church has agreed to set aside from the funds to be realized by the sale of the remaining development rights, and dedicated to the restoration effort at the Church.

18. The proposed project furthers a number of the District's land planning objectives, as set forth in its Comprehensive Plan, 10 DCMR 1-19, (the Plan), particularly the Downtown, Land Use, and Preservation and Historic Features elements.

19. In the Downtown element of the Plan, specific provision is made that "[s]ocial programs should accompany the increased Downtown growth," and that, "[s]pecial emphasis is needed to address the problems of Downtown homeless and transient people." 10 DCMR §900.22. The Applicant is furthering this District goal, and requires updated and more efficient space in order to accomplish this undertaking, and provide the numerous other community activity programs in which it is regularly involved.

20. The proposed project is consistent with the provisions of the Plan's Preservation and Historic Features element. Section 835.11 of the Plan provides that demolition of contributing structures in historic districts should only be permitted on certain occasions, including those instances where the project has been determined to include the undertaking of a project of special merit. Further, §835.1 states, "[i]f the original use or reasonable intensification of the original use is no longer feasible, appropriate adaptive uses consistent with applicable land

use regulation should be encouraged." The Applicant demonstrated that its project adheres to these goals of the Plan.

21. The Applicant's restoration efforts further the objectives of §835.15 of the Plan, which states, "[t]he distinguishing original quality or character of historic properties should be protected. The removal or alteration of any historically valuable material or distinctive architectural features should be avoided when possible and kept to a minimum when required for continued use."

22. In its post hearing submission, the D.C. Office of Planning determined that "the proposed restoration of the landmark Calvary Baptist Church building project is in harmony with the historic preservation element of the Comprehensive Plan, and therefore the land use planning objectives for the city, and merits approval." (OP written testimony, at pg.3). Further, OP "concur[red] with the assessment of the Historic Preservation Review Board on the public benefit of restoring the historic appearance of the Calvary Baptist Church." (OP written testimony, Pg. 1).

23. The Applicant responded to OP's post hearing submission by letter dated March 19, 2001, specifically agreeing with OP's suggestion that the Mayor's Agent approve the applications and, should complications arise over the completion of the scope of work, re-open the proceedings at such time to hear testimony regarding how to resolve those complications. (Applicant's response, Pg. 2).

24. Advisory Neighborhood Commission (ANC) 2C voted unanimously (4-0) to support the project at its December 6, 2000, public meeting and submitted to the record a letter of support dated December 15, 2000.

25. There were no parties or persons in opposition to this application.

DISCUSSION

Jurisdiction

Pursuant to Administrative Issuance Number 2-54A, dated July 18, 1991, the undersigned is delegated the legal authority to conduct hearings as the Mayor's Agent for Historic Preservation under §§5 through 9, 12, and 13 of D.C. Law 2-144.

Pursuant to D.C. Code §5-1004, before the Mayor (or the Mayor's Agent) may issue a permit to demolish a historic landmark or a building or structure in a historic district, the Mayor shall review the permit application in accordance with D.C. Code §5-1004, which provides in pertinent part that the "Mayor shall after a public hearing, make the finding required by subsection (e) of this section ..." D.C. Code §5-1004(c). Section 5-1004(e) states that "[n]o permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest ..."

Pursuant to D.C. Code §5-1006, before the Mayor may admit to record any subdivision (including assemblage of lots) of a historic landmark or of a property in a historic district, the Mayor shall review the application for admission to record in accordance with D.C. Code §5-1006, which provides in pertinent part that the "Mayor shall after a public hearing, make the finding required by

subsection (e) of this section ..." D.C. Code §5-1006(c). Section 5-1006(e) states that "[n]o subdivision subject to this subchapter shall be admitted to record unless the Mayor finds that admission to record is necessary in the public interest ..."

Necessary in the Public Interest

The standard for review of a permit for demolition in a historic district is D.C. Code §5-1004(e), which requires that no permit shall be issued unless the Mayor finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. As well, the standard for granting enrollment on the record as a subdivision under the Act is identical to the standard for the demolition permit.

In §5-1002(10) of the D.C. Code, "necessary in the public interest" is defined as either consistent with the purposes of the preservation law or "necessary to allow the construction of a project of special merit." For purposes of the Act, "special merit" is defined as "a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." D.C. Code §5-1002(11).

The proposed project is consistent with the purposes of the Act, as it involves significant exterior restoration of the Calvary Church building to its historic appearance, which the HPRB specifically determined on February 22, 2001, when it stated that the project would " . . . constitute an unusual and substantial historic preservation accomplishment with clear benefits to the public

at large and a direct relation to the public interest in perpetuating, enhancing, and promoting appreciation of the city's prime cultural assets." The positive impact of this restoration effort would be exceptional and beyond what would otherwise be required or attainable.

The proposed project will provide significant benefits to the District of Columbia and to the community by virtue of social and other benefits having a high priority for community services enumerated in the above-referred Findings of Fact, and specific features of land planning. These features of the project establish the special merit necessary for the issuance of the required permit for partial demolition and the approval of the recordation of the required subdivision.

In those instances in which the Mayor's Agent finds that demolition is necessary to allow the construction of a project of special merit, no demolition or subdivision permit shall be issued unless a permit for new construction is issued simultaneously under D.C. Code §5-1007 and the owner demonstrates the ability to complete the project. D.C. Code §§5-1004(h), 5-1006(g). Based upon the information presented, the Mayor's Agent is of the opinion that there is reasonable expectation that the Applicant possesses sufficient financial ability and other expertise to complete the project.

CONCLUSIONS OF LAW

Based upon the record as established and taken as a whole, including the foregoing Findings of Fact, the following Conclusions of Law are made:

1. The Mayor's Agent concludes that the Applicant in the instant case has sustained its burden of proof. The partial demolition of the Greene Building

(HPA No. 00-601) and the subdivision (HPA No. 01-044) are necessary to allow for the construction of a project of special merit, which is, with respect to the bulk, height, size, massing and general concept of the new construction and the restoration of the Church and the Greene Building facade, reflected in HPA No. 01-101, as presented to the HPRB at its February 22, 2001, meeting, and thus necessary in the public interest.

2. The Mayor's Agent further concludes that the Applicant in the instant case has sustained its burden of proof, in that the preservation benefit resulting from the restoration of the Calvary Church as presented to the Mayor's Agent would be exceptional and beyond what would otherwise be required or attainable, and that the approval of the partial demolition (HPA No. 00-601) and subdivision (HPA No. 01-044) is consistent with the purposes of the Act and, thus necessary in the public interest.

ORDER

ACCORDINGLY, it is this **20th day of April, 2001,**

ORDERED that HPA No. 01-044, for Subdivision of Lots 18, 19, 803 and 835 in Square 429, and HPA No. 00-601, for partial demolition of the Greene Memorial Building, be and same are hereby, **GRANTED**; and, it is

FURTHER ORDERED that, pursuant to D.C. Code §§5-1004(h) and 5-1006(g), no subdivision or demolition permits shall be issued unless a permit for new construction, including Church restoration, is issued simultaneously, and such permits should now be issued; and, it is

FURTHER ORDERED that, pursuant to D.C. Code §5-1012(a), this Decision and Order shall not become effective until fifteen (15) days after issuance.

ROHULAMIN QUANDER,
ADMINISTRATIVE LAW JUDGE, AND
MAYOR'S AGENT FOR
HISTORIC PRESERVATION

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision & Order was served this 20th day of April, 2001, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following persons:

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