BEFORE THE BOARD OF ZONING ADJUSTMENT
OF THE DISTRICT OF COLUMBIA

BZA Application of
National Child Research Center

Application No.: 16970
Continued Hearing Date: June 24, 2003

AFFIDAVIT OF EMILY HOTALING EIG

DISTRICT OF COLUMBIA) ss:

I, Emily Hotaling Eig, being duly sworn on oath, does depose and say:

1. I am an architectural historian and preservation consultant and am authorized to make this Affidavit.

2. I am the founder and president of EHT Traceries and meet the professional qualifications prescribed by the Secretary of the Interior (36 CRF 61 – Appendix A). I have been accepted as an expert witness before the D.C. Board of Zoning Adjustment, as well as by the District of Columbia Historic Preservation Review Board; the Montgomery County Historic Preservation Commission; D.C. Mayor's agent for historic preservation; D.C. Zoning Commission; Superior Court of the District of Columbia; the National Capital Planning Commission; and the U.S. Commission of Fine Arts. A true and accurate copy of my *Curriculum Vitae* is attached hereto as Exhibit A.

3. I am competent to be a witness and have personal knowledge of the facts hereinafter set forth.

4. I have reviewed the reports of the Historic Preservation Division regarding the proceedings of the National Child Research Center ("NCRC") before the Historic Preservation Review Board ("HPRB") and have attended the hearings before the BZA regarding this matter.

5. I am familiar with and have testified, as an expert, to the standards for determining whether a building is a contributing building to a historic district. As such, I am



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familiar with the criteria for contributing buildings set forth in the *National Register Bulletin* for determining contributing and noncontributing resources.

6. In accordance with the *National Register Bulletin*, properties can be eligible for the National Register if they are associated with events important in the defined historic context. *National Register Bulletin: How to Apply the National Register Criteria for Evaluation* at p. 12 (Attached as Exhibit B). Mere association with historic events is insufficient; the association must be significant as well. *Id. Period of Significance* is defined in the *National Register* as:

> the length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for National Register listing. Period of significance usually begins with the date when significant activities or events began giving the property its historic significance.

National Register Bulletin: How to Complete the National Register Registration Form at p. 42 (Attached as Exhibit C). Generally, fifty years is used as the closing date for periods of significance. *Id.* In order for events or activities occurring within the last fifty (50) years to justify extending a period of significance beyond this limitation, the events or activities must be "exceptionally important." *Id.*

7. For a new structure or building within a historic district to be considered contributing, it must have been constructed within the period of significance. *See e.g. id.* at 43 (significant date can include "alteration of a building *that contributes to its architectural importance.*")(emphasis added); *see also National Register Bulletin 16A: Determining Contributing and Noncontributing Resources* at p. 16-17 (1997) (Attached as Exhibit D).

8. In the District of Columbia, buildings in historic districts constructed outside the period of significance cannot be contributing buildings, although their construction may be

compatible with the historic district. *See* HPA Nos. 96-214 and 96-342; HPA No. 00-31; HPA No. 01-40; and HPA No. 02-223 (Attached here to as Exhibits E through H).

9. The period of significance for the Cleveland Park Historic District is 1880-1941. *See District of Columbia Inventory of Historic Sites (2002)*(Attached as Exhibit I).

10. Although the HPRB may have found that the proposed new buildings or structures to NCRC's property to be "consistent" or "compatible" with the surrounding historic district, such a finding does not support NCRC's assertion that the new buildings or structures will be contributing buildings to the historic district. Instead, because the new buildings or structures have yet to be constructed and the period of significance ended more than sixty (60) years ago, they could not be considered contributing buildings.

11. Because the new buildings or structures are to be constructed outside the period of significance for the Cleveland Park Historic District, they will not be contributing buildings and, therefore, will not be eligible for the parking waiver in accordance with section 2100.5 of the zoning regulations. Section 2100.5, by its terms only applies to historic landmarks or a "building or structure located in a historic district which is certified * * * as contributing to the character of that historic district."

Further your affiant sayeth not.

Emily Hotaling Eig

Subscribed and sworn to before me, a Notary Public, this 10th day of June, 2003.

Notary Public

[NOTARIAL SEAL]

My Commission Expires:

CYNTHIA FAISON
NOTARY PUBLIC-DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES 07/14/07

NATIONAL REGISTER BULLETIN

Technical information on the the National Register of Historic Places: survey, evaluation, registration, and preservation of cultural resources

U.S. Department of the Interior
National Park Service
Cultural Resources
National Register, History and Education

How to Complete the National Register Registration Form



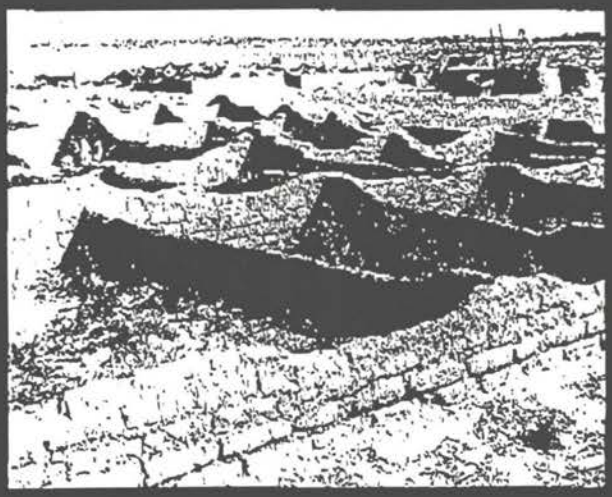






EXHIBIT
BZA No. 16970
6a (CAN)
tabbies

PERIOD OF SIGNIFICANCE

Enter the dates for one or more periods of time when the property attained the significance qualifying it for National Register listing. Some periods of significance are as brief as a single year. Many, however, span many years and consist of beginning and closing dates. Combine overlapping periods and enter them as one longer period of significance.

DEFINITION OF PERIOD OF SIGNIFICANCE

Period of significance is the length of time when a property was associated with important events, activities, or persons, or attained the characteristics which qualify it for National Register listing. Period of significance usually begins with the date when significant activities or events began giving the property its historic significance; this is often a date of construction. For prehistoric properties, the period of significance is the broad span of time about which the site or district is likely to provide information; it is often the period associated with a particular cultural group.

For periods in history, enter one year or a continuous span of years:

1928

1875 - 1888

For periods in prehistory, enter the range of time by millennia.

8000 - 6000 B.C.

GUIDELINES FOR SELECTING THE PERIODS OF SIGNIFICANCE

Criterion A: For the site of an important event, such as a pivotal five-month labor strike, the period of significance is the time when the event occurred. For properties associated with historic trends, such as commercial development, the period of significance is the span of time when the property actively contributed to the trend.

Criterion B: The period of significance for a property significant for Criterion B is usually the length of time the property was associated with the important person.

Criterion C: For architecturally significant properties, the period of significance is the date of construction and/or the dates of any significant alterations and additions.

Criterion D: The period of significance for an archeological site is the estimated time when it was occupied or used for reasons related to its importance, for example, 3000-2500 B.C.

ADDITIONAL GUIDELINES

- The property must possess historic integrity for all periods of significance entered.
- Continued use or activity does not necessarily justify continuing the period of significance. The period of significance is based upon the time when the property made the contributions or achieved the character on which significance is based.
- Fifty years ago is used as the closing date for periods of significance where activities begun historically continued to have importance and no more specific date can be defined to end the historic period. (Events and activities occurring within the last 50 years must be exceptionally important to be recognized as "historic" and to justify extending a period of significance beyond the limit of 50 years ago.)

Base the period of significance on specific events directly related to the significance of the property, for example, the date of construction for a building significant for its design or the length of time a mill operated and contributed to local industry.

Enter one period of significance in each blank on the form, placing the ones most important to the property first. Use a continuation sheet, if more space is needed. Complete this item for all properties, even if the period is less than one year.

SIGNIFICANT DATES

Enter the year of any events, associations, construction, or alterations qualifying the property for National Register listing or adding to its significance. A property may have several dates of significance; all of them, however, must fall within the periods of significance. Enter one date in each blank, placing those most important to the property first. Use a continuation sheet for additional entries. Some properties with a period of significance spanning many years may not have any specific dates of significance. In these cases, enter "N/A."

DEFINITION OF SIGNIFICANT DATE

A **significant date** is the year when one or more major events directly contributing to the significance of a historic property occurred. Examples include:

construction of an architecturally significant building

opening of an important transportation route

alteration of a building that contributes to its architectural importance

residency of an important person

SIGNIFICANT PERSON

Complete this item only if Criterion B is checked as a qualifying criterion. Enter the full name of the person with whom the property is importantly associated. Do not exceed 26 characters, including spaces and punctuation.

GUIDELINES FOR IDENTIFYING SIGNIFICANT DATES

- The property must have historic integrity for all the significant dates entered.
- The beginning and closing dates of a period of significance are "significant dates" only if they mark specific events directly related to the significance of the property, for example, the date of construction that also marked the beginning of an important individual's residency, or the closing of a mine that ended a community's growth.
- For a property significant for Criterion C, enter the date of the construction or alterations through which the property achieved its importance. Enter the dates of alterations only if they contribute to the property's significance.
- For districts, enter construction dates of only those buildings that individually had an impact on the character of the district as a whole. Enter dates of events for which the district as a whole and not individual buildings is significant, for example, the opening of a trolley line that spurred a community's suburban development.

GUIDELINES FOR ENTERING NAMES OF SIGNIFICANT PERSONS

- Do not enter the name of a family, fraternal group, or other organization.
- Enter the names of several individuals in one family or organization, if each person made contributions for which the property meets Criterion B.
- Enter the name of a property's architect or builder only if the property meets Criterion B for association with the life of that individual, such as the home, studio, or office of a prominent architect.

Enter as complete a name as possible, placing the last name first. If the individual is listed in the *Dictionary of American Biography*, enter the name as it appears in that source.

White, Edward Gould

Bartlett, Stephen Jameson

For properties associated with several important persons, enter the name of the person most important to the property on the form, and list all others in order of their importance on a continuation sheet. (If no one stands out as most important, place the name of the person with the earliest associations on the form.) For additional guidance on evaluating properties for Criterion B, see the National Register bulletin entitled *Guidelines for Evaluating and Documenting Properties Associated with Significant Persons.*

If Criterion B has not been marked, enter "N/A."

Hartstene Island Community Hall
Name of Property

Mason County, WA
County and State

EXAMPLE

8. Statement of Significance

Applicable National Register Criteria
(Mark "x" in one or more boxes for the criteria qualifying the property for National Register listing.)

- [x] **A** Property is associated with events that have made a significant contribution to the broad patterns of our history.
- [ ] **B** Property is associated with the lives of persons significant in our past.
- [ ] **C** Property embodies the distinctive characteristics of a type, period, or method of construction or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components lack individual distinction.
- [ ] **D** Property has yielded, or is likely to yield, information important in prehistory or history.

Criteria Considerations
(Mark "x" in all the boxes that apply.)

Property is:

- [ ] **A** owned by a religious institution or used for religious purposes.
- [ ] **B** removed from its original location.
- [ ] **C** a birthplace or grave.
- [ ] **D** a cemetery.
- [ ] **E** a reconstructed building, object, or structure.
- [ ] **F** a commemorative property.
- [ ] **G** less than 50 years of age or achieved significance within the past 50 years.

Areas of Significance
(Enter categories from instructions)
SOCIAL HISTORY

Period of Significance
1914-1939

Significant Dates
N/A

Significant Person
(Complete if Criterion B is marked above)
N/A

Cultural Affiliation
N/A

Architect/Builder
Sund, Bill

Narrative Statement of Significance
(Explain the significance of the property on one or more continuation sheets.)

9. Major Bibliographical References

Bibliography
(Cite the books, articles, and other sources used in preparing this form on one or more continuation sheets.)

Previous documentation on file (NPS):

- [ ] preliminary determination of individual listing (36 CFR 67) has been requested
- [ ] previously listed in the National Register
- [ ] previously determined eligible by the National Register
- [ ] designated a National Historic Landmark
- [ ] recorded by Historic American Buildings Survey # _____
- [ ] recorded by Historic American Engineering Record # _____

Primary location of additional data:

- [x] State Historic Preservation Office
- [ ] Other State agency
- [ ] Federal agency
- [ ] Local government
- [ ] University
- [ ] Other

Name of repository:

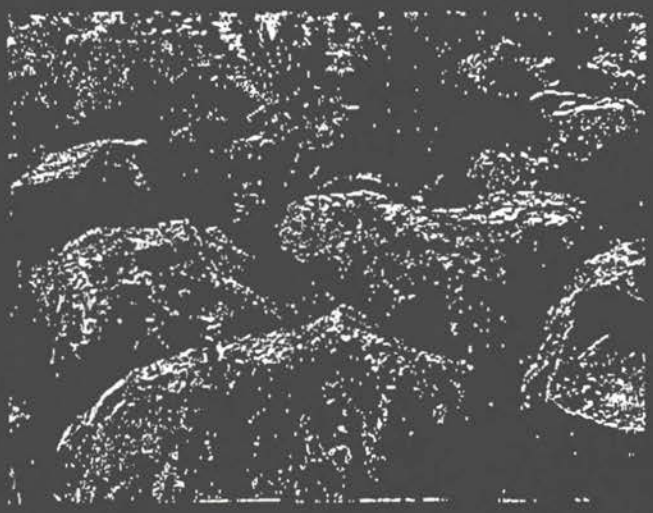
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·NATIONAL REGISTER· BULLETIN

Technical information on comprehensive planning, survey of cultural resources, and registration in the National Register of Historic Places.

U.S. Department of the Interior
National Park Service
Interagency Resources Division

How to Complete the National Register Multiple Property Documentation Form









I. THE NATIONAL REGISTER CRITERIA FOR EVALUATION

National Register criteria define, for the Nation as a whole, the scope and nature of historic and archeological properties that are to be considered eligible for listing in the National Register of Historic Places.

CRITERIA FOR EVALUATION

The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and:

a. That are associated with events that have made a significant contribution to the broad patterns of our history; or

b. That are associated with the lives of persons significant in our past; or

c. That embody the distinctive characteristics of a type, period , or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

d. That have yielded, or may be likely to yield, information important in prehistory or history.

CRITERIA CONSIDERATIONS

Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

a. A religious property deriving primary significance from architectural or artistic distinction or historical importance; or

b. A building or structure removed from its original location but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

c. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life ; or

d. A cemetery that derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or

e. A reconstructed building when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or

f. A property primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own historical significance; or

g. A property achieving significance within the past 50 years if it is of exceptional importance.

NATIONAL REGISTER BULLETIN

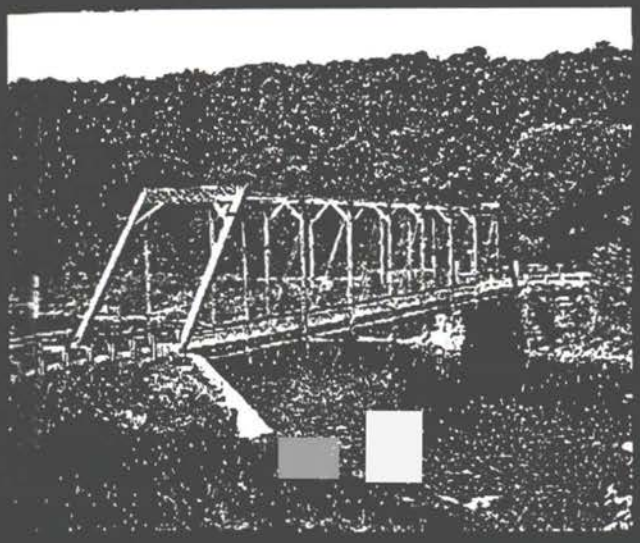
Technical information on the the National Register of Historic Places: survey, evaluation, registration, and preservation of cultural resources

U.S. Department of the Interior
National Park Service
Cultural Resources
National Register, History and Education

How to Apply the National Register Criteria for Evaluation









CRITERION A: EVENT

Properties can be eligible for the National Register if they are associated with events that have made a significant contribution to the broad patterns of our history.

UNDERSTANDING CRITERION A: EVENT

To be considered for listing under Criterion A, a property must be associated with one or more events important in the defined historic context. Criterion A recognizes properties associated with single events, such as the founding of a town, or with a pattern of events, repeated activities, or historic trends, such as the gradual rise of a port city's prominence in trade and commerce. The event or trends, however, must clearly be important within the associated context: settlement, in the case of the town, or development of a maritime economy, in the case of the port city. Moreover, the property must have an important association with the event or historic trends, and it must retain historic integrity. (See *Part V: How to Evaluate a Property Within its Historic Context.)*

Several steps are involved in determining whether a property is significant for its associative values:

- Determine the nature and origin of the property,
- Identify the historic context with which it is associated, and
- Evaluate the property's history to determine whether it is associated with the historic context in any important way.

APPLYING CRITERION A: EVENT

TYPES OF EVENTS

A property can be associated with either (or both) of two types of events:

- A specific event marking an important moment in American prehistory or history and
- A pattern of events or a historic trend that made a significant contribution to the development of a community, a State, or the nation.

Refer to the sidebar on the right for a list of specific examples.

ASSOCIATION OF THE PROPERTY WITH THE EVENTS

The property you are evaluating must be documented, through accepted means of historical or archeological research (including oral history), to have existed at the time of the event or pattern of events *and* to have been associated with those events. A property is *not* eligible if its associations are speculative. For archeological sites, well reasoned inferences drawn from data recovered at the site can be used to establish the association between the site and the events.

SIGNIFICANCE OF THE ASSOCIATION

Mere association with historic events or trends is not enough, in and of itself, to qualify under Criterion A: the property's specific association must be considered important as well. For example, a building historically in commercial use must be shown to have been significant in commercial history.

EXAMPLES OF PROPERTIES ASSOCIATED WITH EVENTS

Properties associated with specific events:

- *The site of a battle.*
- *The building in which an important invention was developed.*
- *A factory district where a significant strike occurred.*
- *An archeological site at which a major new aspect of prehistory was discovered, such as the first evidence of man and extinct Pleistocene animals being contemporaneous.*
- *A site where an important facet of European exploration occurred.*

Properties associated with a pattern of events:

- *A trail associated with western migration.*
- *A railroad station that served as the focus of a community's transportation system and commerce.*
- *A mill district reflecting the importance of textile manufacturing during a given period.*
- *A building used by an important local social organization.*
- *A site where prehistoric Native Americans annually gathered for seasonally available resources and for social interaction.*
- *A downtown district representing a town's growth as the commercial focus of the surrounding agricultural area.*

CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE LAST FIFTY YEARS

A property achieving significance within the last fifty years is eligible if it is of exceptional importance.

UNDERSTANDING CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE LAST FIFTY YEARS

The National Register Criteria for Evaluation exclude properties that achieved significance within the last fifty years unless they are of exceptional importance. Fifty years is a general estimate of the time needed to develop historical perspective and to evaluate significance. This consideration guards against the listing of properties of passing contemporary interest and ensures that the National Register is a list of truly historic places.

Examples of Properties that MUST Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Last Fifty Years

- *A property that is less than fifty years old.*
- *A property that continues to achieve significance into a period less than fifty years before the nomination.*
- *A property that has non-contiguous Periods of Significance, one of which is less than fifty years before the nomination.*
- *A property that is more than fifty years old and had no significance until a period less than fifty years before the nomination.*

Examples of Properties that DO NOT Need to Meet Criteria Consideration G: Properties that Have Achieved Significance Within the Last Fifty Years

- *A resource whose construction began over fifty years ago, but the completion overlaps the fifty year period by a few years or less.*
- *A resource that is significant for its plan or design, which is over fifty years old, but the actual completion of the project overlaps the fifty year period by a few years.*
- *A historic district in which a few properties are newer than fifty years old, but the majority of properties and the most important Period of Significance are greater than fifty years old.*

* For more information on Criteria Consideration G, refer to *National Register Bulletin: Guidelines for Evaluating and Nominating Properties that Have Achieved Significance Within the Last Fifty Years.*

APPLYING CRITERIA CONSIDERATION G: PROPERTIES THAT HAVE ACHIEVED SIGNIFICANCE WITHIN THE PAST FIFTY YEARS

ELIGIBILITY FOR EXCEPTIONAL IMPORTANCE

The phrase "exceptional importance" may be applied to the extraordinary importance of an event or to an entire category of resources so fragile that survivors of any age are unusual. Properties listed that had attained significance in less than fifty years include: the launch pad at Cape Canaveral from which men first traveled to the moon, the home of nationally prominent playwright Eugene O'Neill, and the Chrysler Building (New York) significant as the epitome of the "Style Moderne" architecture.

Properties less than fifty years old that qualify as exceptional because the entire category of resources is fragile include a recent example of a traditional sailing canoe in the Trust Territory of the Pacific Islands, where because of rapid deterioration of materials, no working Micronesian canoes exist that are more than twenty years old. Properties that by their nature can last more than fifty years cannot be considered exceptionally important because of the fragility of the class of resources.

The phrase "exceptional importance" does not require that the property be of national significance. It is a measure of a property's importance within the appropriate historic context, whether the scale of that context is local, State, or national.

Eligible

- The General Laundry Building in New Orleans, one of the few remaining Art Deco Style buildings in that city, was listed in the National Register when it was forty years old because of its exceptional importance as an example of that architectural style.

HISTORICAL PERSPECTIVE

A property that has achieved significance within the past fifty years can be evaluated only when sufficient historical perspective exists to determine that the property is exceptionally important. The necessary perspective can be provided by scholarly research and evaluation, and must consider both the historic context and the specific property's role in that context.

In many communities, properties such as apartment buildings built in the 1950s cannot be evaluated because there is no scholarly research available to provide an overview of the nature, role, and impact of that building-type within the context of historical and architectural developments of the 1950s.

NATIONAL PARK SERVICE RUSTIC ARCHITECTURE

Properties such as structures built in a rustic style by the National Park Service during the 1930s and 1940s can be evaluated because a broad study, *National Park Service Rustic Architecture* (1977), provides the context for evaluating properties of this type and style. Specific examples were listed in the National Register prior to reaching fifty years of age when documentation concerning the individual properties established their significance within the historical and architectural context of the type and style.

VETERANS ADMINISTRATION HOSPITALS

Hospitals less than fifty years old that were constructed by the Veterans Bureau and Veterans Administration can be evaluated because the collection of forty-eight facilities built between 1920 and 1946 has been analyzed in a study prepared by the agency. The study provided a historic and architectural context for development of veteran's care within which hospitals could be evaluated. The exceptional importance of specific individual facilities constructed within the past fifty years could therefore be determined based on their role and their present integrity.

COMPARISON WITH RELATED PROPERTIES

In justifying exceptional importance, it is necessary to identify other properties within the geographical area that reflect the same significance or historic associations and to determine which properties *best* represent the historic context in question. Several properties in the area could become eligible with the passage of time, but few will qualify now as exceptionally important.

POST-WORLD WAR II PROPERTIES

Properties associated with the post-World War II era must be identified and evaluated to determine which ones in an area could be judged exceptionally important. For example, a public housing complex may be eligible as an outstanding expression of the nation's post-war urban policy. A military installation could be judged exceptionally important because of its contribution to the Cold War arms race. A church building in a Southern city may have served as the pivotal rallying point for the city's most famous civil rights protest. A post-war suburban subdivision may be the best reflection of contemporary siting and design tenets in a metropolitan area. In each case, the nomination preparer must justify the *exceptional* importance of the property relative to similar properties in the community, State, or nation.

ELIGIBILITY FOR INFORMATION POTENTIAL

A property that has achieved significance within the past fifty years can qualify under Criterion D only if it can be demonstrated that the information is of exceptional importance within the appropriate context and that the property contains data superior to or different from those obtainable from other sources, including other culturally related sites. An archeological site less than fifty years old may be eligible if the former inhabitants are so poorly documented that information about their lifeways is best obtained from examination of the material remains.

Eligible

- Data such as the rate of adoption of modern technological innovations by rural tenant farmers in the 1950s may not be obtainable through interviews with living persons but could be gained by examination of homesites.

Not Eligible

- A recent archeological site such as the remains of a Navajo sheep corral used in the 1950s would not be considered exceptionally significant for its information potential on animal husbandry if better information on the same topic is available through ethnographic studies or living informants.

HISTORIC DISTRICTS

Properties which have achieved significance within the past fifty years can be eligible for the National Register if they are an integral part of a district which qualifies for National Register listing. This is demonstrated by documenting that the property dates from within the district's defined Period of Significance and that it is associated with one or more of the district's defined Areas of Significance.

Properties less than fifty years old may be an integral part of a district when there is sufficient perspective to consider the properties as historic. This is accomplished by demonstrating that: 1) the district's Period of Significance is justified as a discrete period with a defined beginning and end, 2) the character of the district's historic resources is clearly defined and assessed, 3) specific resources in the district are demonstrated to date from that discrete era, and 4) the majority of district properties are over fifty years old. In these instances, it is not necessary to prove exceptional importance of either the district itself or the less-than-fifty-year-old properties. Exceptional importance still must be demonstrated for district where the majority of properties or the major Period of Significance is less than fifty years old, and for less-than-fifty-year-old properties which are nominated individually.

PROPERTIES MORE THAN FIFTY YEARS IN AGE, LESS THAN FIFTY YEARS IN SIGNIFICANCE

Properties that are more than fifty years old, but whose significant associations or qualities are less than fifty years old, must be treated under the fifty year consideration.

Eligible

- A building constructed early in the twentieth century (and having no architectural importance), but that was associated with an important person during the 1950s, must be evaluated under Criteria Consideration G because the Period of Significance is within the past fifty years. Such a property would qualify if the person was of exceptional importance.

REQUIREMENT TO MEET THE CRITERIA, REGARDLESS OF AGE

Properties that are less than fifty years old and are not exceptionally important will *not* automatically qualify for the National Register once they are fifty years old. In order to be listed in the National Register, all properties, regardless of age, must be demonstrated to meet the Criteria for Evaluation.

FYI

VIII. HOW TO EVALUATE THE INTEGRITY OF A PROPERTY

INTRODUCTION

Integrity is the ability of a property to convey its significance. To be listed in the National Register of Historic Places, a property must not only be shown to be significant under the National Register criteria, but it also must have integrity. The evaluation of integrity is sometimes a subjective judgment, but it must always be grounded in an understanding of a property's physical features and how they relate to its significance.

Historic properties either retain integrity (this is, convey their significance) or they do not. Within the concept of integrity, the National Register criteria recognizes seven aspects or qualities that, in various combinations, define integrity.

To retain historic integrity a property will always possess several, and usually most, of the aspects. The retention of specific aspects of integrity is paramount for a property to convey its significance. Determining *which* of these aspects are most important to a particular property requires knowing why, where, and when the property is significant. The following sections define the seven aspects and explain how they combine to produce integrity.

SEVEN ASPECTS OF INTEGRITY

- Location
- Design
- Setting
- Materials
- Workmanship
- Feeling
- Association

UNDERSTANDING THE ASPECTS OF INTEGRITY

LOCATION

Location is the place where the historic property was constructed or the place where the historic event occurred. The relationship between the property and its location is often important to understanding why the property was created or why something happened. The actual location of a historic property, complemented by its setting, is particularly important in recapturing the sense of historic events and persons. Except in rare cases, the relationship between a property and its historic associations is destroyed if the property is moved. (See Criteria Consideration B in *Part VII: How to Apply the Criteria Considerations*, for the conditions under which a moved property can be eligible.)

DESIGN

Design is the combination of elements that create the form, plan, space, structure, and style of a property. It results from conscious decisions made during the original conception and planning of a property (or its significant alteration) and applies to activities as diverse as community planning, engineering, architecture, and landscape architecture. Design includes such elements as organization of space, proportion, scale, technology, ornamentation, and materials.

A property's design reflects historic functions and technologies as well as aesthetics. It includes such considerations as the structural system; massing; arrangement of spaces; pattern of fenestration; textures and colors of surface materials; type, amount, and style of ornamental detailing; and arrangement and type of plantings in a designed landscape.

Design can also apply to districts, whether they are important primarily for historic association, architectural value, information potential, or a combination thereof. For districts significant primarily for historic association or architectural value, design concerns more than just the individual buildings or structures located within the boundaries. It also applies to the way in which buildings, sites, or structures are related: for example, spatial relationships between major features; visual rhythms in a streetscape or landscape plantings; the layout and materials of walkways and roads; and the relationship of other features, such as statues, water fountains, and archeological sites.

SETTING

Setting is the physical environment of a historic property. Whereas location refers to the specific place where a property was built or an event occurred, setting refers to the *character* of the place in which the property played its historical role. It involves *how*, not just where, the property is situated and its relationship to surrounding features and open space.

Setting often reflects the basic physical conditions under which a property was built and the functions it was intended to serve. In addition, the way in which a property is positioned in its environment can reflect the designer's concept of nature and aesthetic preferences.

The physical features that constitute the setting of a historic property can be either natural or manmade, including such elements as:

- Topographic features (a gorge or the crest of a hill);
- Vegetation;
- Simple manmade features (paths or fences); and
- Relationships between buildings and other features or open space.

These features and their relationships should be examined not only within the exact boundaries of the property, but also between the property and its *surroundings*. This is particularly important for districts.

MATERIALS

Materials are the physical elements that were combined or deposited during a particular period of time and in a particular pattern or configuration to form a historic property. The choice and combination of materials reveal the preferences of those who created the property and indicate the availability of particular types of materials and technologies. Indigenous materials are often the focus of regional building traditions and thereby help define an area's sense of time and place.

A property must retain the key exterior materials dating from the period of its historic significance. If the property has been rehabilitated, the historic materials and significant features must have been preserved. The property must also be an actual historic resource, not a recreation; a recent structure fabricated to look historic is not eligible. Likewise, a property whose historic features and materials have been lost and then reconstructed is usually not eligible. (See Criteria Consideration E in *Part VII: How to Apply the Criteria Considerations* for the conditions under which a reconstructed property can be eligible.)

WORKMANSHIP

Workmanship is the physical evidence of the crafts of a particular culture or people during any given period in history or prehistory. It is the evidence of artisans' labor and skill in constructing or altering a building, structure, object, or site. Workmanship can apply to the property as a whole or to its individual components. It can be expressed in vernacular methods of construction and plain finishes or in highly sophisticated configurations and ornamental detailing. It can be based on common traditions or innovative period techniques.

Workmanship is important because it can furnish evidence of the technology of a craft, illustrate the aesthetic principles of a historic or prehistoric period, and reveal individual, local, regional, or national applications of both technological practices and aesthetic principles. Examples of workmanship in historic buildings include tooling, carving, painting, graining, turning, and joinery. Examples of workmanship in prehistoric contexts include Paleo-Indian clovis projectile points; Archaic period beveled adzes; Hopewellian birdstone pipes; copper earspools and worked bone pendants; and Iroquoian effigy pipes.

FEELING

Feeling is a property's expression of the aesthetic or historic sense of a particular period of time. It results from the presence of physical features that, taken together, convey the property's historic character. For example, a rural historic district retaining original design, materials, workmanship, and setting will relate the feeling of agricultural life in the 19th century. A grouping of prehistoric petroglyphs, unmarred by graffiti and intrusions and located on its original isolated bluff, can evoke a sense of tribal spiritual life.

ASSOCIATION

Association is the direct link between an important historic event or person and a historic property. A property retains association if it *is* the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer. Like feeling, association requires the presence of physical features that convey a property's historic character. For example, a Revolutionary War battlefield whose natural and manmade elements have remained intact since the 18th century will retain its quality of association with the battle.

Because feeling and association depend on individual perceptions, their retention *alone* is never sufficient to support eligibility of a property for the National Register.

ASSESSING INTEGRITY IN PROPERTIES

Integrity is based on significance: why, where, and when a property is important. Only after significance is fully established can you proceed to the issue of integrity.

The steps in assessing integrity are:

- Define the **essential physical features** that must be present for a property to represent its significance.
- Determine whether the **essential physical features are visible** enough to convey their significance.
- Determine whether the property needs to be **compared with similar properties.** And,
- Determine, based on the significance and essential physical features, **which aspects of integrity** are particularly vital to the property being nominated and if they are present.

Ultimately, the question of integrity is answered by whether or not the property retains the identity for which it is significant.

DEFINING THE ESSENTIAL PHYSICAL FEATURES

All properties change over time. It is not necessary for a property to retain all its historic physical features or characteristics. The property must retain, however, the essential physical features that enable it to convey its historic identity. The essential physical features are those features that define both *why* a property is significant (Applicable Criteria and Areas of Significance) and *when* it was significant (Periods of Significance). They are the features without which a property can no longer be identified as, for instance, a late 19th century dairy barn or an early 20th century commercial district.

CRITERIA A AND B

A property that is significant for its historic association is eligible if it retains the essential physical features that made up its character or appearance during the period of its association with the important event, historical pattern, or person(s). If the property is a site (such as a treaty site) where there are no material cultural remains, the setting must be intact.

Archeological sites eligible under Criteria A and B must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to convey important associations with events or persons.

CRITERION C

A property important for illustrating a particular architectural style or construction technique must retain most of the physical features that constitute that style or technique. A property that has lost some historic materials or details can be eligible if it retains the majority of the features that illustrate its style in terms of the massing, spatial relationships, proportion, pattern of windows and doors, texture of materials, and ornamentation. The property is not eligible, however, if it retains some basic features conveying massing but has lost the majority of the features that once characterized its style.

Archeological sites eligible under Criterion C must be in overall good condition with excellent preservation of features, artifacts, and spatial relationships to the extent that these remains are able to illustrate a site type, time period, method of construction, or work of a master.

CRITERION D

For properties eligible under Criterion D, including archeological sites and standing structures studied for their information potential, less attention is given to their overall condition, than it they were being considered under Criteria A, B, or C. Archeological sites, in particular, do not exist today exactly as they were formed. There are always cultural and natural processes that alter the deposited materials and their spatial relationships.

For properties eligible under Criterion D, integrity is based upon the property's potential to yield specific data that addresses important research questions, such as those identified in the historic context documentation in the Statewide Comprehensive Preservation Plan or in the research design for projects meeting the *Secretary of the Interior's Standards for Archeological Documentation.*

INTERIORS

Some historic buildings are virtually defined by their exteriors, and their contribution to the built environment can be appreciated even if their interiors are not accessible. Examples of this would include early examples of steel-framed skyscraper construction. The great advance in American technology and engineering made by these buildings can be read from the outside. The change in American popular taste during the 19th century, from the symmetry and simplicity of architectural styles based on classical precedents, to the expressions of High Victorian styles, with their combination of textures, colors, and asymmetrical forms, is readily apparent from the exteriors of these buildings.

Other buildings "are" interiors. The Cleveland Arcade, that soaring 19th century glass-covered shopping area, can only be appreciated from the inside. Other buildings in this category would be the great covered train sheds of the 19th century.

In some cases the loss of an interior will disqualify properties from listing in the National Register—a historic concert hall noted for the beauty of its auditorium and its fine acoustic qualities would be the type of property that if it were to lose its interior, it would lose its value as a historic resource. In other cases, the overarching significance of a property's exterior can overcome the adverse effect of the loss of an interior.

In borderline cases particular attention is paid to the significance of the property and the remaining historic features.

HISTORIC DISTRICTS

For a district to retain integrity as a whole, the majority of the components that make up the district's historic character must possess integrity even if they are individually undistinguished. In addition, the relationships among the district's components must be substantially unchanged since the period of significance.

When evaluating the impact of intrusions upon the district's integrity, take into consideration the relative number, size, scale, design, and location of the components that do not contribute to the significance. A district is not eligible if it contains so many alterations or new intrusions that it no longer conveys the sense of a historic environment.

A component of a district cannot contribute to the significance if:

- it has been substantially altered since the period of the district's significance *or*
- it does not share the historic associations of the district.

VISIBILITY OF PHYSICAL FEATURES

Properties eligible under Criteria A, B, and C must not only retain their essential physical features, but the features must be visible enough to convey their significance. This means that even if a property is physically intact, its integrity is questionable if its significant features are concealed under modern construction. Archeological properties are often the exception to this; by nature they usually do not require visible features to convey their significance.

NON-HISTORIC EXTERIORS

If the historic *exterior* building material is covered by non-historic material (such as modern siding), the property can still be eligible *if* the significant form, features, and detailing are not obscured. If a property's exterior is covered by a non-historic false-front or curtain wall, the property will not qualify under Criteria A, B, or C, because it does not retain the visual quality necessary to convey historic or architectural significance. Such a property also cannot be considered a contributing element in a historic district, because it does not add to the district's sense of time and place. If the false front, curtain wall, or non-historic siding is removed and the original building materials are intact, then the property's integrity can be re-evaluated.

PROPERTY CONTAINED WITHIN ANOTHER PROPERTY

Some properties contain an earlier structure that formed the nucleus for later construction. The exterior property, if not eligible in its own right, can qualify on the basis of the interior property *only if* the interior property can yield significant information about a specific construction technique or material, such as rammed earth or tabby. The interior property *cannot* be used as the basis for eligibility if it has been so altered that it no longer contains the features that could provide important information, or if the presence of important information cannot be demonstrated.

SUNKEN VESSELS

A sunken vessel can be eligible under Criterion C as embodying the distinctive characteristics of a method of construction if it is structurally intact. A *deteriorated* sunken vessel, no longer structurally intact, can be eligible under Criterion D if the remains of either the vessel or its contents is capable of yielding significant information. For further information, refer to *National Register Bulletin: Nominating Historic Vessels and Shipwrecks to the National Register of Historic Places.*

Natural Features

A natural feature that is associated with a historic event or trend, such as a rock formation that served as a trail marker during westward expansion, must retain its historic appearance, unobscured by modern construction or landfill. Otherwise it is not eligible, even though it remains intact.

COMPARING SIMILAR PROPERTIES

For some properties, comparison with similar properties should be considered during the evaluation of integrity. Such comparison may be important in deciding what physical features are essential to properties of that type. In instances where it has not been determined what physical features a property must possess in order for it to reflect the significance of a historic context, comparison with similar properties should be undertaken during the evaluation of integrity. This situation arises when scholarly work has not been done on a particular property type or when surviving examples of a property type are extremely rare. (See **Comparing Related Properties** in *Part V: How to Evaluate a Property within its Historic Context.)*

RARE EXAMPLES OF A PROPERTY TYPE

Comparative information is particularly important to consider when evaluating the integrity of a property that is a rare surviving example of its type. The property must have the essential physical features that enable it to convey its historic character or information. The rarity and poor condition, however, of other extant examples of the type may justify accepting a greater degree of alteration or fewer features, provided that enough of the property survives for it to be a significant resource.

Eligible

- A one-room schoolhouse that has had all original exterior siding replaced and a replacement roof that does not exactly replicate the original roof profile can be eligible if the other extant rare examples have received an even greater degree of alteration, such as the subdivision of the original one-room plan.

Not Eligible

- A mill site contains information on how site patterning reflects historic functional requirements, but parts of the site have been destroyed. The site is not eligible for its information potential if a comparison of other mill sites reveals more intact properties with complete information.

DETERMINING THE RELEVANT ASPECTS OF INTEGRITY

Each type of property depends on certain aspects of integrity, more than others, to express its historic significance. Determining which of the aspects is most important to a particular property requires an understanding of the property's significance and its essential physical features.

CRITERIA A AND B

A property important for association with an event, historical pattern, or person(s) ideally might retain *some* features of all seven aspects of integrity: location, design, setting, materials, workmanship, feeling, and association. Integrity of design and workmanship, however, might not be as important to the significance, and would not be relevant if the property were a site. A basic integrity test for a property associated with an important event or person is whether a historical contemporary would recognize the property as it exists today.

For archeological sites that are eligible under Criteria A and B, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is important to note, however, that the site must have *demonstrated* its ability to convey its significance, as opposed to sites eligible under Criterion D where only the potential to yield information is required.

Eligible

A mid-19th century waterpowered mill important for its association with an area's industrial development is eligible if:

- it is still on its original site (**Location**), and
- the important features of its setting are intact (**Setting**), and
- it retains most of its historic materials (**Materials**), and
- it has the basic features expressive of its design and function, such as configuration, proportions, and window pattern (**Design**).

Not Eligible

A mid-19th century waterpowered mill important for its association with an area's industrial development is not eligible if:

- it has been moved (**Location, Setting, Feeling,** and **Association**), or
- substantial amounts of new materials have been incorporated (**Materials, Workmanship,** and **Feeling**), or
- it no longer retains basic design features that convey its historic appearance or function (**Design, Workmanship,** and **Feeling**).

CRITERION C

A property significant under Criterion C must retain those physical features that characterize the type, period, or method of construction that the property represents. Retention of design, workmanship, and materials will usually be more important than location, setting, feeling, and association. Location and setting will be important, however, for those properties whose design is a reflection of their immediate environment (such as designed landscapes and bridges).

For archeological sites that are eligible under Criterion C, the seven aspects of integrity can be applied in much the same way as they are to buildings, structures, or objects. It is important to note, however, that the site must have *demonstrated* its ability to convey its significance, as opposed to sites eligible under Criterion D where only the *potential* to yield information is required.

Eligible

A 19th century wooden covered bridge, important for illustrating a construction type, is eligible if:

- the essential features of its design are intact, such as abutments, piers, roof configuration, and trusses (**Design, Workmanship,** and **Feeling**), and
- most of the historic materials are present (**Materials, Workmanship,** and **Feeling**), and
- evidence of the craft of wooden bridge technology remains, such as the form and assembly technique of the trusses (**Workmanship**).
- Since the design of a bridge relates directly to its function as a transportation crossing, it is also important that the bridge still be situated over a waterway (**Setting, Location, Feeling,** and **Association**).

Not Eligible

For a 19th century wooden covered bridge, important for its construction type, replacement of some materials of the flooring, siding, and roofing would not necessarily damage its integrity. Integrity would be lost, however, if:

- the abutments, piers, or trusses were substantially altered (**Design, Workmanship,** and **Feeling**) or
- considerable amounts of new materials were incorporated (**Materials, Workmanship,** and **Feeling**).
- Because environment is a strong factor in the design of this property type, the bridge would also be ineligible if it no longer stood in a place that conveyed its function as a crossing (**Setting, Location, Feeling,** and **Association**).

CRITERION D

For properties eligible under Criterion D, setting and feeling may not have direct bearing on the property's ability to yield important information. Evaluation of integrity probably will focus primarily on the location, design, materials, and perhaps workmanship.

Eligible

A multicomponent prehistoric site important for yielding data on changing subsistence patterns can be eligible if:

- floral or faunal remains are found in clear association with cultural material (**Materials** and **Association**) and
- the site exhibits stratigraphic separation of cultural components (**Location**).

Not Eligible

A multicomponent prehistoric site important for yielding data on changing subsistence patterns would not be eligible if:

- floral or faunal remains were so badly decomposed as to make identification impossible (**Materials**), or
- floral or faunal remains were disturbed in such a manner as to make their association with cultural remains ambiguous (**Association**), or
- the site has lost its stratigraphic context due to subsequent land alterations (**Location**).

Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period can be eligible if:

- the site contains lithic debitage, finished stone tools, hammerstones, or antler flakers (**Material** and **Design**), and
- the site contains datable material (**Association**).

Not Eligible

A lithic scatter site important for yielding data on lithic technology during the Late Archaic period would not be eligible if:

- the site contains natural deposits of lithic materials that are impossible to distinguish from culturally modified lithic material (**Design**) or
- the site does not contain any temporal diagnostic evidence that could link the site to the Late Archaic period (**Association**).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
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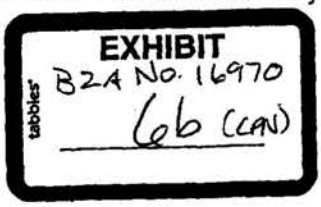
IN THE MATTER OF:	}	
LOT 831 - SQUARE 1232 1301 Wisconsin Avenue, N.W.	}	
Applications for construction/alteration permits to install signage and replace existing fixed-glass windows	}	HPA #96-214 and HPA #96-342

DECISION AND ORDER

A hearing in this matter was held on December 10, 1996, with the record closed on March 10, 1997 after submission of a filing of additional documentation by the Applicant on that date. Present at the hearing were Paul J. Cohn, Executive Vice President and Director of Development of Capital Restaurant Concepts, Inc., the Applicant; Emily Eig, Traceries, Architectural Historian and Expert Witness, witness for the Applicant; Richard B. Nettler, Esq., representing the Applicant; and Stephen Raiche, Chief, Historic Preservation Division, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs.

Background

On or about May 23, 1996, Capital Restaurant Concepts, Inc. (hereinafter "the Applicant"), owner of 1301 Wisconsin Avenue, N.W. (hereinafter "the property") applied for a construction alteration permit to "replace existing fixed glass windows with glazed bi-folding doors" on the west elevation of the property. The property is located in the Georgetown Historic District; thus, the proposed alteration application



was presented to the U.S. Commission of Fine Arts, for a hearing and recommendation as HP #96-214 and OG 96-87. On or about June 27, 1996, the U.S. Commission of Fine Arts voted to recommend that the application be denied, and forwarded that recommendation to the Mayor's Agent on a transmittal form letter dated June 27, 1996. By letter dated July 1, 1996, the Chief of the Historic Preservation Division of the Building and Land Regulation Administration in the Department of Consumer and Regulatory Affairs notified the Applicant that the Historic Preservation Review Board had recommended that Application HP #214 be denied, and that the Applicant could request a public hearing before the Mayor's Agent. By letter dated July 8, 1996, William Andrew Cochran, Project Architect and Applicant's Agent, on behalf of the Applicant, requested a public hearing before the Mayor's Agent.

On or about August 7, 1996, the Applicant applied for a construction permit to install a wall sign and a roof sign. This application was assigned HP #96-342 and OG 96-143, and presented to the U.S. Commission of Fine Arts. The Commission, on or about September 20, 1996, voted to recommend that the application be denied, and forwarded that recommendation to the Mayor's Agent on a transmittal form letter dated September 20, 1996. By letter dated September 25, 1996, the Chief of the Historic Preservation Division of the Building and Land Regulation Administration in the Department of Consumer and Regulatory Affairs notified the Applicant that the Historic Preservation Review Board had recommended that Application HP #342 be denied, and that the Applicant could request a public hearing before the Mayor's Agent.

The Chief of the Historic Preservation Division provided notices dated October 8, 1996 to the Applicant and the adjoining property owners, and placed notification in the October 18, 1996 edition of the D.C. Register of a hearing scheduled for December 6, 1996, to consider HP #214 for alteration of 1301 Wisconsin Avenue, N.W. Subsequently, by letter dated November 19, 1996, counsel for Applicant requested that the hearing be moved to December 10, 1996, and that the HP #342 be consolidated with HP #214. Both requests were granted and the hearing was held on December 10, 1996. No other parties appeared at the hearing or filed statements in support or in opposition to the alterations. The Advisory Neighborhood Commission did not respond in support or in opposition to the alterations.

Jurisdiction

This proceeding was conducted as required by the Historic Landmark and Historic Protection Act of 1978, (hereinafter "the Act") now codified at D. C. Code Ann. §5-1001 et seq., (1981 ed, 1994 repl. vol.). Pursuant to D.C. Code Ann. §5-1005(a), prior to the issuance of a permit to alter the exterior of a building or structure in an historic district, the Mayor shall review the application in accordance with the Act. The Act requires that, prior to making a finding, the Mayor shall refer an application subject to review by the Commission of Fine Arts to that Commission for a recommendation. The Commission voted to recommend that both applications be denied. Pursuant to D.C. Mun. Regs. tit. 10, §2508.7, the Applicant requested a public hearing before the Mayor's Agent. Administrative Issuance Number 2-Delegation-54G, dated July 6, 1995, delegates to the undersigned the authority to conduct hearings as the Mayor's Agent for Historic Preservation under sections 5 through 9 , 12 and 13 of D.C. Law 2-144, the Historic Landmark and Historic Protection Act of 1978.

The provisions of D.C. Code Ann. §5-1005(f) state that "No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner."

Findings of Fact

Based on the record, and testimony presented at the hearing of December 10, 1996, the following findings of fact are made:

1. The property known as 1301 Wisconsin Avenue, N.W. is located in an historic district known as the Old Georgetown Historic District.

2. By Application dated May 23, 1996, Capital Restaurant Concepts, Inc. applied for a construction alteration permit to "replace existing fixed glass windows with glazed bi-folding doors" on the west elevation of the property. (Application for Construction Permits on Private Property, dated 5/23/96, HPA No. 96-214)

3. By Application dated August 7, 1996, the Applicant applied for a construction permit to install one wall sign and one roof sign. (Application for

Construction Permits on Private Property, dated 8/7/96, HPA No. 96-342)

4. The Applicant's property is located on a commercial street and is used as a restaurant. (Testimony of Mr. Cohn)

5. The property to which the alterations are sought adjoins, and is connected to, a larger building used as a restaurant. (Testimony of Mr. Cohn and permit application plans)

6. The property to which the alterations are being sought was built as a "Little Tavern" sometime after the fast food chain began in 1927 in Louisville, Kentucky, and after the chain began using white porcelain enamel walls in the 1930s. The chain was designed to resemble a Tudor cottage on a city street. (Testimony of Ms. Eig)

7. Several changes to the structure and appearance of the original Little Tavern have been made prior to Applicant's purchase of the property. For instance,the property was painted a peach color when Applicant purchased it, and the sign with the name of the prior restaurant covered the original Little Tavern sign on the roof. (Testimony of Mr. Cohn)

8. The replacement of the windows with bi-fold glazed doors will duplicate changes already made, and approved by the U.S. Commission of Fine Arts, to the front and rear of the structure. (Testimony of Mr. Cohn and photograph exhibits)

9. The U.S. Commission of Fine Arts recommended against the issuance of the permit for the bi-fold doors because the alteration to the property would be "a detriment to the integrity of its historic character, a prototype 'Little Tavern' with enamel panel exterior walls and distinctive neon signs." Likewise, the Commission recommended against the application for the sign permit because the lettering "is over-scaled." (Transmittal letters from the U.S. Commission of Fine Arts dated June 27, 1996 and September 20, 1996 respectively)

10. The roof sign being applied for by Applicant is the original Little Tavern sign, which would be refaced and relettered to reflect the name of the Applicant's restaurant. (Testimony of Mr. Cohn)

11. The Old Georgetown Historic District was established by Act of Congress on September 22, 1950, to protect approximately 4,000 properties constructed in Georgetown's early history. (Testimony of Ms. Eig)

12. The Act followed similar legislation passed in other jurisdictions deemed significant in preserving and protecting historic districts in Newport, Rhode Island; Charleston, South Carolina; Williamsburg and Alexandria, Virginia and New Orleans, Louisiana. The Georgetown district included many structures constructed during the first 50 years of the nation's existence, which, during the years immediately preceding the Act being passed, had gone through significant restoration. The consideration of the bill occurred one year before the bicentennial of the establishment of Georgetown in 1751. (Congressional Committee Hearing before the Committee on the District of Columbia, Subcommittee on the Judiciary, June 22, 1950.)

13. The Act for the Preservation of Historic Places and Areas in the Georgetown Area states that "in 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," the plans for any construction, alteration, reconstruction, or razing of any building in the district shall be referred to the U.S. Commission of Fine Arts "for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction which is subject to public view from a highway" and make a recommendation to the Mayor before the Mayor may issue a permit. (D.C. Code Ann. §5-1102)

14. The report from the Commission in this case consisted of a paragraph on each of the two transmittal letters referring the applications to the Mayor's Agent, and did not relate the applications to the character or the architecture of the Georgetown historic district. (Transmittal letters from the Commission dated 6/27/96 and 9/20/96)

15. There has been no cataloguing or designation regarding contributing and noncontributing buildings in the Old Georgetown Historic District. (Testimony of Ms. Eig)

16. The Little Tavern structure located at 1301 Wisconsin Avenue, N.W.

has not been designated an historic landmark or a contributing building to the historic district. (Testimony of Ms. Eig)

17. It is clear from the tone of the Commission's reports that, at the time of the Commission's review of the subject applications, the Commission wishes the Little Tavern had been preserved, with no alterations, as an example of Little Tavern architecture. (Transmittal letters from the Commission dated 6/27/96 and 9/20/96)

18. The Applicant seeks the permits for alteration as "necessary in the public interest", meaning consistent with the purposes of D.C. Law 2-144. Those purposes are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use; [and] to assure that alterations of existing structures are compatible with the character of the historic district...." (See D.C. Code Ann. §5-1002(10), §5-1001(b) and §5-1005 (f); testimony of Ms. Eig; Pre-hearing submission of Applicant)

Conclusions of Law

Based on the foregoing Findings of Fact, the following Conclusions of Law are made:

19. The proposed construction would cause a change in the exterior appearance of a building or structure or its site in an historic district, and is thus an alteration pursuant to D.C. Code Ann. §5-1002(1).

20. D.C. Code Ann. §5-1005(f) states that "No permit [for alteration] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner."

21. "Necessary in the public interest" means consistent with the purposes of the Act which are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use; [and] to assure that alterations of existing structures are compatible with the character of the historic district...." See D.C. Code Ann. §5-1002(10) and §5-1001(b).

22. The Little Tavern structure has lost much of its integrity as a classic example of such establishments, as it has been considerably altered subsequent to following the required regulatory process in earlier applications.

23. The property is not listed as a contributing building to the historic district, or as an historic landmark; therefore the test to be applied is whether the alterations are consistent and compatible with the character of the historic district.

24. The issuance of the permit to alter the exterior by replacing windows with glazed doors is consistent with the purposes of the Act in that the alteration would contribute to the character of the historic district, and would be compatible with the connecting building and the surrounding commercial properties. The alteration is compatible with the character of the historic district in architectural design.

25. The issuance of the sign permit would basically change the lettering on the sign to reflect the name of the restaurant in the property, and has no impact on the exterior of this property in that it will be the same size and style of the original sign and is compatible with the character of this commercial area of the historic district.

26. The proposed alterations are consistent with the purposes of the Act, and thereby considered necessary in the public interest as required by D.C. Code Ann. §5-1005(f).

27. Applicant has met the burden of showing that the proposed alteration is consistent with the purposes of the Act.

ORDER

Accordingly, it is this **7th** day of **July, 1997,**

ORDERED that the two applications of the Applicant for construction permits be, and are hereby, **GRANTED;** and it is

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

Miriam Hellen Jones
Mayor's Agent for D.C. Law 2-144

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order was mailed, postage prepaid, on this 7th day of July, 1997, to Richard B. Nettler, Esq., Robins, Kaplan, Miller & Ciresi, 1801 K Street, N.W., Suite 1200, Washington, D.C. 20006-1301.

Recita Miles, Program Assistant for
Miriam Hellen Jones
Mayor's Agent for D.C. Law 2-144

Document is also available in PDF format.]

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. 20002

In the Matter of:

EASTBANC, INCORPORATED **HPA #2000-31**

Application for Alteration, Construction

and Demolition Permits

3331, 3339 & 3345 M Street, N.W.

Lots 76, 828, Square 1205

Washington, D.C.

DECISION AND ORDER

Background

This matter came before Rohulamin Quander, Administrative Law Judge (the ALJ) and Mayor's Agent for Historic Preservation, on February 2, 2000, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 1-1509, 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 the request for an administrative hearing filed by EastBanc, Incorporated, site developer, (the Applicant) through its legal counsel, Richard B. Nettler, Esquire, of Robins, Kaplan, Miller and Ciresi, L.L.P. The Applicant seeks permits to conduct alterations, construction, and demolition at the above-noted 3331, 3339, and 3345 M Street, N.W., known as Lots 76 and 828 in Square 1205. The record closed on February 11, 2000, upon receipt of the Applicant's Proposed Final Decision and Order.

Mr. Nettler presented the Applicant's case. Testifying on behalf of the Applicant were Anthony Lanier for the Applicant, Shalom Baranes, the project architect, Ellen McCarthy, an urban planner, Emily Eig, an architectural historian, and James Cutts, a structural engineer. No one appeared in opposition to the application, nor has any written opposition to this application been presented to the Mayor's Agent for his consideration..



FINDINGS OF FACT

Based upon the record created in this matter taken as a whole, including the pre-hearing submission documents, testimony during the hearing, other evidence submitted during the hearing, the uncontested nature of the request made by the Applicant, and the recommendations of the Commission of Fine Arts (the CFA), the Mayor's Agent now makes the following Findings of Fact:

1. The Applicant specializes in renovation and restoration of buildings located in the historic M Street and Wisconsin Avenue, N.W., corridors, and now seeks approval for the alteration and partial and complete demolition of structures located at lots 76 and 828 in Square 1205, with street addresses of 3331, 3339, and 3345 M Street, N.W., and the construction of a new structure on the same lots. The new structure will be known as 3333 M Street, N.W.

2. According to the Applicant, the authority and construction permits now requested are consistent with the purposes of D.C. Law 2-144, Sec. 2(b)(1)(A), of the Act, codified at D.C. Code Sec. 5-1001(b)(1)(A), or in the alternative are necessary to construct a project of special merit.

3. On September 2, 1999, the Old Georgetown Board (the OGB), and on September 20, 1999, the Commission of Fine Arts (the CFA) respectively gave conceptual approval to the proposed development. On January 20, 2000, the CFA recommended the approval of the partial and complete demolition of the subject buildings on the grounds that the addition to the Little Tavern, at 3331 M Street, N.W., is not a contributing element to the Old Georgetown Historic District (the Historic District), and the building at 3339 M Street is not a contributing building. [1] The CFA also recommended approval of the partial demolition of 3345 M Street since the Applicant had agreed to incorporate the only remaining historic elements of that building into its proposed project. The Historic Preservation Review Board (the HPRB) previously approved a subdivision for the subject site.

4. The proposed construction, alteration and demolition project is supported by the affected Advisory Neighborhood Commission (ANC-2E), the Citizens Association of Georgetown, the Georgetown Business and Professional Association and neighboring property owners, which support is crucial to the determination of whether the relevant permits should be issued.

5. The present plans for the site include: a) the alteration and removal of a small rear portion of the Little Tavern building located at 3331 M Street, N.W.; b) the salvaging of the rear panels for re-use on the site; c) the removal of the panels in the mid-third of the building for repair and reconstruction on the site in the identical location; and d) either the removal of the panels and roof of the front third of the building for repair and reconstruction on the site in the identical location, or the temporary relocation of this portion of the building until it can be restored to its identical location on the site.

6. The Applicant will also demolish the building at 3339 M Street, a one-story building constructed in 1919, with a 1984 addition that doubled the size of the building. The building is outside the period of significance for the Historic District.

7. The Applicant will retain the second story façade of the 1905 building, located at 3345 M Street, and known as "Eagle Liquor", which is missing its first floor front facade, and will also remove those portions of the building which were constructed in 1924 and 1937 as an alteration. A small structure that is now incorporated into the Eagle Liquor building will also be demolished.

8. On the entire site, the Applicant will then construct a two-story structure which will incorporate the Little Tavern building and the remaining portions of the Eagle Liquor building. The new building, which will utilize less density and height than permitted under the zoning regulations, will contain retail uses and provide a unique opportunity in Georgetown, i.e., the creation of at least eighty-nine (89) underground self-parking spaces on a site which currently accommodates less than 20 automobiles in an unattractive, surface level, street facing, parking lot. [2]

9. The provision of such parking, even on this site, requires significant maneuvering and added expense to configure parking so as not to create a traffic problem, and to align the space use to provide the 89 self-parking spaces that will be provided on the site.

10. This project saves the Little Tavern, a non-contributing but historic building, and appropriately fits it into the project's context, and is consistent with the D.C. Comprehensive Plan and zoning plan goals for the site. The site, which is zoned C-2-A, permits the Applicant to have up to a 2.5 floor area ratio (FAR) of commercial uses on this site. However, and in reaction to well over a dozen meetings with the business and residential community, the Applicant has reduced the project to 1.5 FAR density, and reduced the building's mass in order to make it blend better with the historic residential buildings located behind it, and to provide setbacks that preserve both the view corridors and the sense of scale.

DISCUSSION

Pursuant to D.C. Code, Sec. 5-1004, before the Mayor may issue a permit to partially demolish a building or structure in a historic district, the Mayor shall review the application in accordance with D.C. Code, Sec. 5-1004(e). As well, prior to being presented to the Mayor's Agent for consideration, the application for the partial demolition permit was referred to the OGB and the CFA for their review and recommendations pursuant to D.C. Code, Sec. 5-1004(b). Both organizations reacted favorably, and recommended approval of the project.

Partial demolition of 3345 M Street is appropriate since it is not a contributing building within the Historic District, and, even if it were a contributing building, the action proposed is consistent with D.C. Law 2-144. D.C. Code, Secs. 5-1004(e) and 5-1005(f), provide that the Mayor may authorize the alteration and partial demolition of a contributing building in a historic district, if the alteration and partial demolition is deemed to be necessary in the public interest. D.C. Code, Sec. 5-1002(10) defines "necessary in the public interest" to mean:

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

D.C. Code, Sec. 5-1001(b) specifies that, "With 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.

In this case, the alteration and partial demolition ensures the continued reuse of the Eagle Liquor building, the only portion of the structure which might be considered to be somewhat contributing to the character of this Historic District, even if the structure is not specifically "contributing" within the definition and meaning of the Act. As noted by both the CFA and the OGB, the reuse in the new construction proposed by the Applicant is consistent with the character of the Historic District, despite the fact that the building, for which demolition is sought, lacks integrity, is not itself contributing, and was not constructed during the period of significance for the Historic District.

The Applicant has elected not to utilize the full density available under the zoning regulations, in an effort to ensure that the historic character of the Historic District is retained. Further, the Applicant seeks to preserve buildings that may be historic but, since they are not contributing to the character of the Historic District, it is not obligated to retain. The result will be a significant upgrading of the badly rundown site, while also providing a major increase in the amount of on-site parking spaces, well above what has typically been done in Georgetown. Thus, the proposed project will provide social and other benefits having a high priority for community services.

CONCLUSIONS OF LAW

Based upon the record as established and taken as a whole, including the Findings of Fact, the Mayor's Agent concludes that the Applicant's project should be approved, as the created result will help to assure and maintain a continuous band of retail uses in this Historic District, and is consistent with the D.C. Comprehensive Plan, which addresses the particular importance of keeping and enhancing neighborhood retail areas. Further, the approval will contribute significantly to reducing the automobile parking problem, by eliminating the existing, significantly smaller and unsightly surface parking lot, to be replaced by a consistent wall of buildings in this block of M Street, contributing to the vitality of not only this block of Georgetown, but enhancing the viability of retail in the immediate area.

ORDER

ACCORDINGLY, it is this 17th day of March, 2000,

ORDERED that the Applicant's request to partially demolish the building located at 3345 M Street, N.W., is **GRANTED,** and that the relevant permits should be issued; and it is

FURTHER ORDERED that the Applicant's request for permits to make alterations and to undertake new construction at this combined site is likewise **GRANTED;** and it is

FURTHER ORDERED that, pursuant to 10 DCMR 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, ALJ, D.C., 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 17th day of March, 2000, by mailing a copy of the same via either U.S. First Class Mail, postage prepaid, or via D.C. Government inter-office mail to the following:

Richard B. Nettler, Esquire

Robins, Kaplan, Miller & Ciresi L.L.P.

1801 K Street, NW, Suite 1200

Washington, DC 20006

Counsel for Applicants

Steve Raiche, Program Manager

The Historic Preservation Review Board

DCRA

941 North Capitol Street, N.W., Room #2500

Washington, D.C. 20002

And

Jonda McFarlane, Chair

Advisory Neighborhood Commission 2E

3265 S Street, N.W.

Washington, D.C. 20007

DCRA/OAD, certifying officer

[1] As such, the Mayor's Agent need make no further review of the demolition of those structures or portions of buildings since the actions fall outside the purview of the Mayor's Agent's responsibility.

[2] Testimony also revealed that should the parking lot staff elect to use the valet parking option on certain occasions, the tighter parking configuration will accommodate up to 120 cars.

[Document is also available in PDF format.]

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
941 North Capitol Street, NE - Room 9100
Washington, DC 20002



IN RE:

Application for Alteration **HPA No. 01-149**

(Repair/replacement of windows)

2700 Q Street, N.W

Square 1266, Lot 304

Bernstein Management Corporation,

Agent for Kew Land, L.L.C.

ORDER AND DECISION

Background

This matter came before Rohulamin Quander, Administrative Law Judge and Mayor's Agent for Historic Preservation (the Mayor's Agent) on September 19, 2001, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 2-509, (2001 ed.) 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, (2001 ed), *et seq.,* and upon the request for an administrative hearing filed by Bernstein Management Corporation, Agent for Kew Land, LLC, the Applicant (the Applicant).

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 October 12, 2001, upon receipt of the transcript of the proceedings.

The application was previously considered by the Old Georgetown Board (the OGB) and the Commission on Fine Arts (the CFA), both of which recommended that this application be rejected. After considering the application and the proposed window replacements over a period of approximately 18 months, the CFA concluded that the proposed new alteration was not compatible with Georgetown Historic District (the historic district), and indicated such in its recommended denial transmittal of December 20, 2000. Based upon this determination, on January 11, 2001, the Applicant requested an administrative hearing before the Mayor's Agent.

Richard B. Nettler, Esquire and Jeannine Rustad Zigner, Esquire, Robins, Kaplan, Miller & Ciresi L.L.P., appeared as legal counsel on behalf of the Applicant. Joshua B. Bernstein. President, Bernstein Management Corporation, and Emily Eig, EHT Traceries, Inc., testified in favor of the application. David J. Maloney, Acting Program Manager, Historic Preservation Office, D.C. Office of Planning, testified against the application in his personal capacity.

Based on the record taken as a whole, including the evidence submitted at the hearing, the request made by the

Applicant and the recommendations of the OGB and the CFA, the Mayor's Agent concludes that the application for alteration to install new windows should be **GRANTED.**

Issues

The issues to be decided are: 1) Whether the Applicant's proposed application to replace the windows in the above-noted apartment complex is necessary in the public interest and compatible with the Georgetown Historic District; and 2) Whether Kew Gardens is a "contributing building" to the historic district, as that term is defined and interpreted under the Act.

Findings of Fact

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

1. Bernstein Management Corporation, Agent for Kew Land, LLC, Applicant (the Applicant) seeks approval of an alteration consisting of replacement of approximately 1,000 windows at the Kew Gardens apartments ("Kew Gardens"), located at Lot 304 in Square 1266, bearing the street address of 2700 Q Street, N.W.

2. Constructed in 1922-23, the Kew Gardens is located at the southwest corner of the intersection of 27th and Q Streets, N.W., in the Georgetown Historic District. The Georgian Revival-style apartment house fronts Q Street, N.W. to the north, and 27th Street, N.W. to the east. The south elevation faces a public alley. The west elevation, which is not visible from public space, faces green-space bounded by a hill, trees, and a wood fence. The inner courtyard elevations surround a landscaped garden with a stone lily pond.

3. Principal elevations visible from public space include the Q and 27th Street facades, as well as the south façade, which overlooks the alley, and is visible by residents in the homes to the south. Secondary elevations consist of the west and courtyard elevations, which are not visible from public space.

4. The number of stories varies from two to four, owing to the dramatic grade of the site that rises from the southeast to the northwest. The exterior elevations are articulated with dormers, stone sills, decorative wood and stone elements, and a large variety of window types.

History of Bernstein's Proposal.

5. On the principal façade, the Applicant proposes to retain the wood window frames, replacing the wood window sashes with simulated divided light wood window sashes with configuration, operation, profile, dimensions and finish virtually identical to the existing windows. On the secondary elevations, the windows will be replaced with matching simulated divided light aluminum window sashes with configuration, operation, profile, dimensions and finish similar to the existing windows. All replacement windows will contain double-insulated glass.

6. The Applicant contends that the proposed alteration is consistent with the *D.C. Historic Preservation Review Board's Draft Window Standards* (the *Window Standards)* for maintaining and repairing windows in historic districts, and is compatible with the character of the historic district, and is, therefore, consistent with the purposes of the Historic Landmark and Historic District Protection Act (D.C. Law 2-144, Sec. 2(b)(1)(A)). [1]

7. The Applicant began exploring the appropriate method to replace the window sashes in 1999, owing to the following conditions: (a) general failure of operability; (b) general structural deterioration; (c) lack of energy efficiency; and (d) hazardous conditions created by the presence of lead-based paint. The cost of replacing the windows in the proposed combination of using all wood in certain designated places and all aluminum in other designated locations is approximately $800,000.00. If all of the windows were replaced with aluminum windows, the cost would drop significantly, to approximately $250,000.00.

8. On May 6, 1999, and in response to a concept application submitted by the Applicant, the Old Georgetown Board (OGB) responded favorably and recommended concept approval for the replacement of the existing wooden windows with new wood windows located on the primary elevations, and aluminum windows for the secondary elevations. The OGB also recommended that the new wood windows to be used for the Q and 27th Street facades should match the detailing of the existing wood windows. [2] On May 21, 1999, the Commission of Fine Arts (the CFA) issued a transmittal letter accepting this concept, stating the following recommendation:

No objection to concept design of proposed replacement aluminum windows at Kew Garden Apartments, provided wood windows, matching detailing of existing windows are used on both the Q and 27th street facades. [3]

9. On June 10, 1999, and consistent with OGB's concept approval recommendation, an application was filed requesting a permit to "Replace the existing windows with wood windows on the 27th and Q Street elevations, and with aluminum windows for other areas." [4] No action was taken on the Application.

10. While the application was pending, the Applicant retained EHT Traceries, Inc. in the Fall of 2000 to assist in the selection of an appropriate replacement window sash for the primary elevations. Traceries conducted a survey of Kew Gardens to determine the various number, types, and general sizes of the windows extant in the building and subsequently aided the Applicant in locating contractors who could provide the restoration services and/or appropriate replacement windows in both wood and metal for a project of the identified scope.

11. The survey identified more than 1,000 window openings with more than 26 variations of window types. There were no "special windows" included in the survey, as that term is defined in the appendix to the *Window Standards*.

12. Armed with the results of its window survey, on November 13, 2000, the Applicant submitted a new application to the OGB to again seek concept approval for the replacement of the majority of the window sashes. When the OGB considered the resubmitted concept application on December 7, 2000, buttressed by the results of the window survey, the OGB essentially reversed itself, and took the position that the Applicant's previously accepted concept approval had expired, despite there being no specific regulatory provision that the Mayor's Agent is aware of, that provides for concept approvals to "lapse."

13. As a result of the window survey, and an assessment of the windows in Kew Gardens, the Applicant proposed the use of the previously approved aluminum window sash for the secondary west and interior courtyard elevations only, which were not visible from public space, and proposed the use of a wood, double-insulated glazed sash of the operation, configuration, profile, dimension, and finish of the existing wood sashes for the primary elevations. The OGB, in denying the concept approval for the window sash replacement on any elevation, cited the alleged inappropriateness of using double-insulated glazing to replace single glazing. [5]

14. On January 11, 2001, the Applicant applied for OGB review of a formal permit application to replace the windows, in order to initiate the review process of OGB's recommended denial of December 7, 2000, and CFA's confirming recommendation of December 20, 2000. [6] In its February 15, 2001, letter of transmittal, which contained the recommendation of denial, the CFA referred to the Kew Gardens as a "contributing building" to the Old Georgetown Historic District. To the best of the Mayor's Agent's knowledge, neither the OGB nor the CFA had previously made such a determination, or discussed the applicable criteria for making such a conclusion without first according the Applicant an opportunity to discuss the issue.

15. On March 12, 2001, the Applicant made a formal request for a hearing before the Mayor's Agent on the permit application. Prior to the hearing, the Applicant submitted another window survey, *Existing Conditions Window Survey,* prepared by Nelson Architects, a more detailed survey, which underscored why the Applicant had concluded that the option of repairing the more than 1,000 windows in the Kew Gardens was extremely impractical, not only because of the high number of windows, but also due to the seriously deteriorated condition of a vast number of the windows.

16. On January 25, 2001, the HPRB adopted *Window Standards*, which generally recommend window repair over replacement, but which document also recognized that repair is not always feasible. When repair is not feasible, the *Window Standards*, at Section V., Window Replacement, Item "K", provides:

For replacement windows on a non-contributing building within a historic district, a permit will be issued if the windows are generally consistent in character with the windows found in the historic district.

17. In an attempt to retain as much existing fabric, Bernstein proposes the replacement of only the window sash, rather than the entire window system, and the existing wood frames and trim will be retained. In accordance with the HPRB *Window Standards*, neither the new wood window sashes nor the new aluminum window sashes will have "False muntins or 'grids' located between two panes of glass..." The configuration, operation, profile, dimensions, and finish of the new *wood* (emphasis added) window sashes will be virtually identical to the existing windows. Likewise, the configuration, operation, profile, dimensions, and finish of the new *aluminum* (emphasis added) window sashes will be similar to the existing windows.

18. The window replacements proposed by the Applicant meet the *Window Standards* for either a contributing building or a non-contributing building in an historic district. As well, the window replacements proposed for the visible facades also meet the Secretary of Interior's Standards for Historic Rehabilitation. When the CFA rejected the Applicant's application, it appears not to have relied upon either the Secretary's Standards or HPRB's adopted *Window Standards*, both of which permit double glazed windows. Rather, CFA recommended denial of the window replacements because the new windows would use double-glazing, which the CFA deemed to be incompatible with the existing windows in the historic district. [7]

Non-contributing Status of the Kew Gardens.

19. Despite testimony to the contrary in this record, the Kew Gardens complex is not a contributing resource within the historic district, primarily because its 1922 construction date is well outside of the Period of Significance. S*ee National Register Bulletin 16A: Determining Contributing and Noncontributing Resources* at p. 16-17 (1997).

20. Congress established the historic district on September 22, 1950, to protect approximately 4,000 properties constructed in Georgetown's initial years.[8] It is notable as 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. Georgetown provides a rich variety of residential, commercial, institutional, and industrial buildings spanning Georgetown's history.

21. The Act for the Preservation of Historic Places and Areas in the Georgetown Area (the "Old Georgetown Act") states that, "in order to promote the general welfare and to preserve and protect the places and areas of the historic interest, exterior architectural features and examples of the type of *architecture used in the National Capital in its initial years*" (emphasis added), the plans for any construction, alteration, reconstruction, or razing of any building in the district shall be referred to the U.S. Commission of Fine Arts "for a report as to the exterior architectural features, height, appearance, color, and texture of the materials of exterior construction *which is subject to public view from a highway*" (emphasis added).

22. The CFA is to then make a recommendation to the Mayor before the Mayor may issue a permit. *See* D.C. Code, Sec. 6-1202 (2001 ed.). As the reports and hearings on the Act make clear, the principal purpose of the Act was to protect the original character of Georgetown, which predominates architecturally in residential structures built during the Federal period.[9]

23. Despite various federal and local historic preservation-relation statutes or regulations being passed and implemented, the Mayor's Agent is not aware of any follow-up cataloging or designation regarding contributing and noncontributing buildings in the Old Georgetown Historic District.

24. David J. Maloney, Acting Program Manager of the Historic Preservation Office, D.C. Office of Planning, testified against the application in his personal capacity. He believed the period of significance for the historic district extends through 1930, and that the Kew Gardens is a contributing building to the historic district. He relied upon the fact that the Kew Gardens is more than 50 years old, and pointed to a National Historic Landmark Boundary Review Project statement prepared in 1980, which, in describing the historic district, stated that "in the period after World War I, Georgetown gained a reputation as one of Washington's worst slums . . . This trend began to reverse in the 1930's, when New Deal politicians and government officials rediscovered its charm and convenience . . . .". However, he acknowledged that this document did not expand the historic district, nor was it generated or approved by the District of Columbia, and that the language relied upon was not in the historic district designation documents.

25. Bernstein seeks the permits for alteration as "necessary in the public interest", meaning consistent with the purposes of the Act. Those purposes are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use; [and] to assure that alterations of existing structures are compatible with the character of the historic district . . .. " *See* D.C. Code, Sec. 6-1102.(10), 6-1101(b) and 6-1105(f) (2001 ed.).

DISCUSSION

The Applicant is seeking to replace the approximately 1,000 existing wood sashes with a combination of new wood sashes on the primary elevations that are visible from the public space, and matching new aluminum sashes on the secondary west and courtyard elevations. The original petition stems from the need to provide fully operable windows to its tenants in the Kew Gardens apartment building. The Applicant has specifically requested permission to replace the deteriorated single glazed panes with double insulated glass, to significantly improve the energy efficacy of the building.

The proposed window replacement would cause some change in the exterior appearance of a building or structure or its site in an historic district, and is thus an alteration pursuant to D.C. Code, Sec. 6-1102(1), for which a permit authorization from the Mayor's Agent is required.

D.C. Code, Sec. 6-1105(f) states, "No permit [for alteration] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner." "Necessary in the public interest" means consistent with the purposes of the Act, which are:

With respect to properties in historic districts . . . to retain and enhance those properties which contribute to the character of the historic districts and to encourage their adaptation for current use; to assure that alterations of existing structures are compatible with the character of the historic district; [and] to assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district. [10]

Consistent with prior decisions of the Mayor's Agent regarding other buildings within the Georgetown Historic District, and based upon the Mayor's Agent's evaluation of the criteria for what constitutes a contributing building in the historic district, the Kew Gardens apartment complex is not a contributing resource to the historic district, as it was constructed in 1922 and opened in 1923, well outside of the period of significance for contributing buildings, as defined by the Old Georgetown Act and the National Register Bulletin. Instead, the complex is associated with the development of twentieth-century apartment building design.

The "period of significance" for a historic district is defined as the length of time when a property was associated with important events, activities, or persons, or attained the characteristics, which qualify it for National Register listing. [11] For an individual property to contribute to the historic district it must have been constructed during the period of significance or, if not, it must be shown to have an important association with the events which formed the basis for designating the area an historic district. Despite its location within the historic district, Kew Gardens was not constructed during the previously noted period of significance, and likewise, it is not associated in an important way with any of the events or architectural periods that formed the basis for creation of the historic district.

This finding and conclusion of non-contributing status of twentieth-century resources is consistent with the Mayor's Agent's determination in the Little Tavern (HPA #96-214 and HPA #96-342) case, the building now used as Paolo's Restaurant, located at 1301 Wisconsin Avenue, N.W. In that case, the Mayor's Agent determined that the property was not listed as a contributing building to the historic district, or as a historic landmark. The Mayor's Agent determined that the test to be applied before alterations could be allowed, was a lower standard of whether the alterations are consistent and compatible with the character of the historic district." [12] As the Kew Gardens is likewise not listed as a contributing building to the Georgetown Historic District, or as an historic landmark, the test to be applied, as underscored in the Little Tavern case, is whether the proposed alterations are consistent and compatible with the character of the historic district.

The proposed windows meet the test of "generally consistent in character with the windows found in the historic district." Conversely, even if the Mayor's Agent were to conclude that the Kew Gardens is a contributing building, the window replacement proposal should be approved because the Applicant's proposal also meets the more stringent standards adopted by the HPRB with regard to contributing buildings. The fact that the windows will be double-glazed is not precluded by those standards.

The Mayor's Agent carefully considered the final recommendation of the OGB against approval of this application, which recommendation was adopted by the CFA. It is difficult to ascertain the basis upon which the newer members of the OGB reversed and rejected the concept approval previously granted by the past OGB members. The Mayor's Agent is unaware of any provision that provides that a concept approval expires or lapses within a certain time frame, if an Applicant does not expeditiously come forward with a follow-up to an approved concept plan. The time lag between the initial concept approval, May 6, 1999, and the date the OGB reversed itself, December 7, 2000, was 18 months, not a particularly long time, given the nature, magnitude, and cost of what the Applicant proposed to accomplish, and the detail follow-up window survey that was required as a part of the final approval component of the application.

The OGB and the CFA recommendation against approval of this application should not be accepted. In many cases, their advice is helpful and quite often persuasive. But it is not binding upon the Mayor's Agent. In *Committee For Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1193 (D.C. 1982), the Court held that agencies like the CFA and the OGB function solely in an advisory capacity. [13] The Mayor's Agent need not follow the advice, and can receive and rely upon additional advice contrary to the CFA. However, while the Mayor's Agent need not accord special weight to the advice of the CFA, if the Mayor's agent rejects the advice, he must demonstrate that the recommendation was considered and rejected on a rational basis. *Id.* at 1194. Here, for the reasons stated above, the Mayor's Agent rejects the advice of the CFA and determines, in agreement with the Applicant's position in this matter, that the proposed window replacements comply with the applicable *Window Standards,* and that the Application should be approved.

CONCLUSIONS OF LAW

The foregoing having been considered, the Mayor's Agent now makes the following Conclusions of Law:

1. The proposed replacement of the windows in the Kew Gardens would cause a change in the exterior appearance of the complex, a site located within an historic district, and is thus an alteration pursuant to D.C. Code, Sec. 6-1102 (2001 ed.).

2. The new system of wooden windows proposed for the primary elevations matches the materials, operation, configuration, profile, dimensions, and finish of the existing windows. The only real difference is that the new window system would be double-glazed. The same is true for the windows proposed for the secondary elevations, except that the material would be aluminum rather than wood.

3. D.C. Code, Sec. 6-1105(f) (2001 ed.) states that, "No permit [for alternation] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner." The Applicant has met its burden of showing that the proposed alterations are consistent with the purposes of the Act, and are, therefore, considered necessary in the public interest.

4. "Necessary in the public interest" means consistent with the purposes of the Act, which are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use"; and "to assure that alterations of existing structures are compatible with the character of the historic district ..." *See* D.C. Code, Secs. 6- 1102(10) and 6-1101(b)(1)(B) (2001 ed.).

5. The property is not listed as a contributing building in the historic district, or as an historic landmark as that term is defined and interpreted under the Act. Therefore, the test to be applied is whether the alterations are consistent and compatible with the purposes of the Act and the character of the historic district. The Mayor's Agent concludes that the application to alter the exterior of Kew Gardens by replacing the windows with glazed doubled paned windows, is compatible with the historic district and consistent with the purposes of the Act, as the proposed alterations adhere to the HPRB's adopted *Window Standards,* as set forth at Sec. V, (E) and (K)(1).

6. The recommendations of the OGB and the CFA against the approval of this application for the new window system should be specifically rejected at this time.

ORDER

ACCORDINGLY, it is this **4th of December 2001,**

ORDERED that the Applicant's request for construction permits to install new windows at the Kew Gardens apartment complex is

hereby, **GRANTED**; and it is

FURTHER ORDERED that, pursuant to 10 DCMR, Sec. 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 DCMR, Sec. 2503.5(c).

ROHULAMIN QUANDER,

ADMINISTRATIVE LAW JUDGE, AND

MAYOR'S AGENT FOR HISTORIC PRESERVATION, D.C.