

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE
MAYOR'S AGENT FOR HISTORIC PRESERVATION
1100 4TH STREET SW, SUITE E650
WASHINGTON, D.C. 20024

In the Matter of:

**Washington International School
Square 2084, Lot 8413100 Macomb St., N.W.
(Tregaron)**

HPA No. 17-615

DECISION AND ORDER

The Washington International School (“WIS”) brought this application for site alterations and the construction of a new classroom building on the 20-acre Tregaron Estate, an individual landmark located in the Cleveland Park Historic District. The application calls for construction of a 21,500 square-foot academic building with a below-grade parking garage. The proposed work will expand the building footprint on the 20-acre site by approximately 3,000 square feet, and will be visible from the Macomb Street entrance. The applicant claims the proposed construction is necessary in the public interest because it is consistent with the purposes of the D.C. Historic Landmark and Historic District Protection Act (“Act”) and necessary to allow construction of a project of special merit, as provided for in the Act.

Pursuant to notice, the Mayor's Agent for Historic Preservation Hearing Officer (“Mayor's Agent”), held a public hearing on April 6, 2018, to consider the application. The Mayor's Agent conducted the hearings in accordance with the provisions of 10-C DCMR §§ 400, et seq. (2004) and D.C. Code §§ 2-501, et seq. (2012 Repl.) to consider the application for site alteration and new construction at Tregaron under D.C. Code §§ 6-1105 and 6-1107. Based on the substantial evidence of record, both in support of and opposition to the

application, and the recommendations of the Historic Preservation Review Board, the application will be DENIED in part and REMANDED.

Findings of Fact

The Tregaron Estate, located at 3100 Macomb Street, N.W. (Square 2084 Lot 841), was designed in 1912 by Charles Adams Platt and Ellen Biddle Shipman as a country house estate. The most significant building on the site is Platt's Georgian Revival mansion, which sits atop a prominent hill. Other contributing buildings include a carriage house, greenhouse, a gardener's residence, and a Russian-style dacha building, all situated on the same hill to the rear of the mansion. In addition to its historic buildings, the property is significant for its landscape architecture. Ellen Biddle Shipman, who often worked with Platt, designed formal gardens and informal landscape for the estate. She utilized the natural characteristics of the site to create the informal, naturalistic landscape that adorns the property below the hilltop. The property is located within the Rock Creek Valley and is characterized by steeply sloped terrain. From the hilltop, the grounds descend toward the front of the property and Klinge Road, and sweep around to the rear of the property and the entrance from Macomb Street. The 1915 Platt-Shipman plan organized the grounds around the mansion. Except for the formal area around the mansion at the top of the hill, the grounds were laid out in a naturalistic style enriched with flowering trees, shrubs, ground covers and flowers. Shipman's plans for the landscape were developed between 1914 and 1927. Both Platt and Shipman are recognized as important designers.

After the death of the last individual owner, Ambassador Joseph Davies, in 1958, the estate entered a period of decline and neglect. In 1980, the estate was purchased in part by Tregaron Limited Partnership ("TLP") and in part by WIS, which purchased approximately six acres. In 1979, the entire 20-acre site was listed in the D.C. Inventory of

Historic Sites. The property also became part of the Cleveland Park Historic District when that neighborhood was designated in 1987. In 1990, Tregaron was also listed in National Register of Historic Places. TLP sought to develop single family homes throughout the property, but in 2006, after development had stalled for decades, TLP, WIS, and the Friends of Tregaron (a non-profit community group) entered into an agreement. TLP donated approximately ten acres to the newly created Tregaron Conservancy to be preserved in perpetuity and opened to the public, retaining one acre to be developed into eight lots designated for single family homes. The Mayor's Agent approved the subdivision for this plan as a project of special merit. *In re Tregaron*, HPA 04-105 (2006), at <https://repository.library.georgetown.edu/bitstream/handle/10822/761620/Full%20text%20of%20order.pdf?sequence=1&isAllowed=y>. The subsequent closing of Klinge Road, NW frustrated TLP's development plans, and it conveyed its remaining interest in the estate to the Tregaron Conservancy in 2015. As Steve Callcott, the District's Deputy State Historic Preservation Officer, stated in his testimony, the Tregaron settlement was "an amazing preservation success story in DC." Tr. 404.

WIS is a coeducational, independent, private school educating about 900 students, from Preschool through Grade 12. The school has two campuses: students in Grades 6 to 12 attend classes at the Tregaron campus; the primary school is located in Georgetown. The school is highly valued by the families it serves, perhaps especially by families in Washington's international community with a parent working at a foreign embassy or international organization. Over 90 different nationalities are represented in the school's students and faculty. Enrollment on the Tregaron campus is capped at 450 students by a DC zoning order. Students at WIS follow the inquiry-based International Baccalaureate Program with dual-language classes. In addition to their academic studies, students learn

how to be engaged global citizens. WIS has operated on the Tregaron Estate since 1972 and has owned the inner six acres of the property since 1980.

Operating within a historic landmark estate has had great benefits for WIS but also has complicated the normal growth of a successful private school. Its prior building projects have required review and approval by the Historic Preservation Review Board (“HPRB”), including a classroom building (1988), gym (1999), and library and performing arts building (2006). As stated in the staff report approved by the HPRB in this application, the prior expansion projects were approved “because they were organized along the axis of historic service buildings in the zone where construction was intended by Platt, because they had limited or no visibility from the mansion or from the exterior of the property, and they did not intrude on areas that were originally important landscape or wooded buffer zones.” Staff Report (May 25, 2017) at 5. Also, in the past decade, the Tregaron Conservancy has been able to restore many landscape features on the thirteen acres it now owns, enabled in part by payments from WIS, as agreed to in the 2006 settlement.

In the current application WIS seeks to build a new science and technology building consisting of labs, prep space, a robotics and makerspace, as well as a one-level garage.¹ The current laboratories, housed in the historic carriage house, are substandard in size, configuration, and connectivity. The new building would be a two-story, 127 feet in length, 21,500 square foot classroom building above a one-story 14,650 square foot garage. The structure will extend over the hillside facing Macomb Street, visible from what is now the

¹ Maker-centered learning refers to an educational approach that supports students using technology to learn by trying to create new applications and devices. See Edward P. Clapp, Jessica Ross, Jennifer O. Ryan, Shari Tishman, *Maker-Centered Learning: Empowering Young People to Shape Their Worlds* (2016). WIS has partnered with Agency By Design researchers at Project Zero at the Harvard Graduate School of Education to promote maker-centered education in DC and would like to use the proposed facility both for its own students and to provide workshops for teachers from across D.C. Tr. 66-73 (testimony of Jim Reese).

primary entrance to WIS and the Tregaron site. According to the HPRB Staff Report, “[i]t will be a full three stories tall at its highest point, unfortunately at the northwest corner where it is closest and most visible from Macomb Street and projects the most down the descending hillside.” HPRB Staff Report, at 4. WIS also proposes significant landscape improvements, both in and around the historic buildings as well as on the north slope and Macomb Street entrance, and to pay the Tregaron Conservancy \$500,000 over ten years for additional landscape improvements.

The HPRB considered the WIS application in May 2017, and unanimously rejected it as inconsistent with the purposes of the Historic Landmark and Historic District Protection Act, D.C. Code §6-1101, et seq. It unanimously concluded that construction of a building at this scale on top of the slope facing Macomb Street was incompatible with the character of the landmark. HPRB Tr., June 22, 2017, at 89-90. As Chair Marnique Heath summarized, “[T]he issue really resides with height and mass and the relationship of the new building to the edge of the hill and the landscape.” *Id.*, at 87. The Staff Report that HPRB adopted recommended against approval because “it is still difficult to reconcile how a building of this size, location and overall impact are compatible with the character of the landmark, consistent with the analysis of this portion of the property in the CLR [Cultural Landscape Report], and consistent with the Board’s prior direction on the compatibility of new construction on this property.” HPRB Staff Report at 4. The CLR was prepared by a historic landscape consultant and an early draft was incorporated into the 2007 agreement regarding the WIS and Conservancy properties; the more complete final draft addresses appropriate treatment of the hillside facing the Macomb Street entrance. The HPRB’s prior approval of new academic buildings for WIS had emphasized that “they were organized along the axis of historic service buildings in the zone where construction was intended by

Platt, because they had limited or no visibility from the mansion or from the exterior of the property, and they did not intrude on areas that were originally important landscape or wooded buffer zones.” *Id.* at 5.

WIS then brought this application before the Mayor’s Agent for site alterations and the construction of the classroom building, arguing that the proposed alterations and new construction are necessary in the public interest because they are consistent with the purposes of the Act and will allow for a project of special merit. A hearing was held on April 6, 2018. A group of neighbors, describing themselves as the Protectors of Tregaron Estate, was recognized as a party in opposition. WIS presented the following witnesses in support of its application: Clayton Lewis, WIS Head of School; Jim Reese, Director of the Professional Development Collaborative at WIS; Doug Bothner of Ziger Snead Architects, who was qualified as an expert in architecture; Michael Vergason of Michael Vergason Landscape Architects, who was qualified as an expert in landscape architecture; and Roger Lewis, who was qualified as an architect with expertise in historic preservation. The Protectors presented Emily Eig, of EHT Traceries, who was recognized as an expert in architectural history and historic preservation; Bruce Reed, who was recognized as an expert in education policy; Bonnie LePard, a neighbor; Patricia Franco, a neighbor; Rebecca Miller, Director of the D.C. Preservation League; Scott Craver of the Cultural Landscape Foundation; Charles Clark, a neighbor; and Nancy MacWood, a former member of the D.C. Comprehensive Plan Revision Task Force. At the conclusion of the hearing, the parties were invited to submit briefs and proposed findings of fact and conclusions of law, which they did in a timely manner.²

² The applicant filed a motion to strike the submitted testimony of Mr. Reed on the ground that the submitted testimony contained hyperlinks to materials that constituted new

Legal Standards

The Mayor's Agent can clear a permit for alteration and new construction on a landmark site only if he or she finds that a proposed project is "necessary in the public interest." D.C. Code §§ 6-1104(e), -1106(e). "Necessary in the public interest means consistent with the purposes of this act as set forth in section 2(b) or necessary to allow the construction of a project of special merit." *Id.*, § 6-1102(10). With respect to designated landmarks, such as Tregaron, the purposes of the Act are: "(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and (B) To encourage the restoration of historic landmarks." *Id.*, § 1101(b)(2). The Court of Appeals has decreed that any preservation benefits from a proposed project must be weighed against its preservation losses under the standard of consistency with the purposes of the Act:

[A] project's historic-preservation benefits are appropriately treated as reducing the project's net historic-preservation loss rather than as contributing to the project's special merit.... [I]f a project on balance advance historic-preservation interests more than it harms those interests, the Mayor's Agent need not make a special-merit finding before approving demolition or subdivision.

Friends of McMillan Park v. District of Columbia Zoning Comm'n, 149 A.3d 1027, 1041 (D.C. 2016). For a project to be one of special merit, it must propose to create "significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." *Id.*, § 1102(11). Preservation benefits can play a role in

information that the applicant never had a chance to rebut. The motion is denied on the ground that permission to submit written testimony was granted because the hyperlinks on the written testimony available on the day of hearing were not live. Tr. 288, 314. In any event, admission of the hyperlinks is harmless, as Mr. Reed's critique of WIS's educational program plays no role in this decision.

special merit analysis by reducing net preservation losses to be balanced against the special merit community benefits of a project.

The Mayor's Agent's role is constrained. "A broad focus on the overall benefits flowing from a project runs beyond the task assigned to the Mayor's Agent." *Friends of McMillan Park, supra*, 149 A.3d at 1039-40. "[T]he limited task of the Mayor's [A]gent is to evaluate a[n] ... application in accordance with the Preservation Act, *and nothing more*." *District of Columbia Preservation League v. Department of Consumer & Regulatory Affairs*, 646 A.2d 984, 990 (D.C. 1994) (emphasis in original).

Discussion

For reasons that will become apparent, this decision will address the applicant's special merit arguments first and then turn to those related to consistency with the Act.

Special Merit

The Mayor's Agent can readily accept that WIS has a legitimate need to improve its science facilities and that doing so within a historic landmark site poses substantial challenges that the school has labored thoughtfully and in good faith to address. Moreover, WIS is an important private, non-profit institution in the educational life of the District of Columbia that plays a special role in educating the children of our international community. WIS has put forward a meritorious proposal that deserves to be viewed sympathetically. But the proposal does not qualify as a project of special merit as that term has meaning within the Act.

The Mayor's Agent must find that a project qualifies as one of special merit before proceeding to any balancing of the special merit of the project with net harm to a historic resource. The Court of Appeals has instructed: "[T]he balancing of the historic value of the

Woodward Building against the special merits of the project could not proceed until the Mayor's Agent found that the amenities proposed by S.J.G. were sufficient to constitute a project of special merit." *Committee of 100 on the Federal City v. D.C. Dept. of Consumer and Regulatory Affairs*, 571 A.2d 195, 203 (D.C. 1990). Moreover, the Court has interpreted the Act to mean that historic preservation benefits from the project cannot be considered as elements contributing to special merit, but should be weighed only under the other prong of necessary in the public interest, that is, whether the project is consistent with the purposes of the Act. *See supra*. That inquiry will be addressed below.

WIS presents three possible bases for special merit. First, WIS argues that the science building meets the standard for "exemplary architecture." As the testimony of the architect, Douglas Bothner (Tr. 80-112), reinforced by the evaluative testimony of Roger Lewis (Tr. 180-197), and the commendation of the Cleveland Park Historical Society Architectural Review Board (*See Applicant's Prehearing Statement, Exhibit G*), the new building will fit thoughtfully into the ensemble of academic buildings near the mansion and provide an efficient solution to complex spatial challenges. But good, professional architecture like that WIS proposes does not reach the standard for exemplary architecture within the meaning of the Act; otherwise landmarks would be extremely vulnerable to demolition and alteration. Past decisions by the Mayor's Agent have found exemplary architecture primarily for new construction that provides significant aesthetic benefits to the District of Columbia.³ Thus, in finding that the redevelopment of the landmarked Arena

³ In some cases, exemplary architecture was found because of the degree of historic preservation in the plans. *See Citizens Committee to Save Rhodes Tavern v. District of Columbia Department of Housing and Community Development*, 432 A.2d 710, 716 (D.C. 1981). Such an approach now would be inconsistent with the ruling by the Court of Appeals that the Mayor's Agent should weigh preservation benefits against preservation losses and not as special merit features under the prong of consistency with the purposes of the Act.

Stage complex qualified as exemplary architecture, the Mayor’s Agent found that the “innovative design” would create a “dramatic new landmark for the District.” *In re Washington Drama Society, Inc. SQUARE 472 (d/b/a Arena Stage)*, HPA 02-471, 472 & 02-515, at 5 (Sept. 27, 2002), at <https://repository.library.georgetown.edu/bitstream/handle/10822/761607/Full%20text%20of%20order.pdf?sequence=1&isAllowed=y>; see also *id.* at 7-8; *In re Corcoran Gallery of Art*, HPA No. 2002-284, at 5, 10 (Sept. 19, 2002), at <https://repository.library.georgetown.edu/bitstream/handle/10822/761603/Full%20text%20of%20order.pdf?sequence=1&isAllowed=y> (noting that the project architect, Frank Gehry, who won the Corcoran Gallery commission as a part of a design competition, “is generally regarded as an architect of world-renown”). In the Arena Stage case the HPRB had lauded the design of the new building; here the Board members’ comments were mixed, and HPRB unanimously concluded that the building was inconsistent with the character of the landmark. Moreover, many of the design elements identified by Professor Lewis were historic preservation compatibility and enhancements that may not be considered in evaluating elements of special merit. Tr. 184-6. Similar observations are appropriate to WIS’s somewhat strained arguments that elements of land use planning, principally the clarifying of WIS’s central courtyard, constitute special merit. To the extent the site design may be considered apart from its proposed architecture and from its historic preservation benefits, the land use elements of the proposal do not begin to approach special merit.

The strongest argument for special merit rests on the educational benefits that WIS can realize through the development of this much-improved science, technology and arts

Friends of McMillan Park v. District of Columbia Zoning Commission, 149 A.3d 1027, 1041-42 (D.C. 2016).

space. WIS is unique and valuable private school, which serves the international community as well as other District residents. But the Act requires such educational benefits to have a “high priority for community benefits.” The Court of Appeals has instructed that this language “makes clear that the offered benefits must be for the community at large, not primarily for a subset of privileged persons.” *Embassy Real Estate Holdings, LLC v. D. C. Mayor’s Agent for Historic Preservation*, 944 A.2d 1036, 1051-52 (D.C. 2008), quoting *Kalorama Heights Ltd. P’ship v. D.C. Dep’t of Consumer & Regulatory Affairs*, 655 A.2d 865, 873 (D.C.1995). The benefits of WIS’s construction would accrue primarily to the students from families that can pay private school tuition. Cf. *In re Duke Ellington School for the Arts*, H.P.A. 14-322, at 2 (2014)(“The evidence presented at the hearing clearly established the importance to the community of the unique arts education provided to public school students at Duke Ellington.”). WIS seeks to finesse this constraint by emphasizing the professional development programs it offers teachers throughout the metropolitan area, particularly regarding maker-centered learning, which would be enhanced by construction of the new science plus facilities. But these benefits, which are incidental to the educational benefits WIS seeks for its own students from the proposed construction, were not shown to be so significant for the District “community at large” as to qualify as special merit. Finding WIS’s new science facility to rise to the level of special merit based on its educational benefits would create a precedent that would allow any private school with a well-considered expansion plan to overcome historic preservation restrictions on their property. Whatever the merits of such a tradeoff, it is not one sanctioned by the Act.⁴

⁴ Because the project does not rise to the level of special merit, there is no need to consider whether the project’s special merit benefits outweigh its preservation losses or whether the alteration is necessary to deliver the project’s special merit features.

Consistent with the Purposes of the Act

WIS also argues that the project is consistent with the purposes of the Act because the preservation benefits proposed outweigh the preservation harms. Indeed, WIS proposes several significant preservation enhancements, including the reorganization of the “Academic Way” to the west of the campus, which will enhance views to and from the Platt mansion, the extensive new landscaping in parts of Tregaron facing Macomb Street, which will implement parts of the Cultural Landscape Report, the extension of the native woodland garden to the Macomb entrance, improvements in stairs and roadway, and the payment of \$500,000 to the Tregaron Conservancy for its ongoing rehabilitation of its entire landmark property. It also offers arguments to the effect that any historic preservation harms are minor. Balancing these preservation benefits against the harms to the landmark estate caused by the erection of the proposed science building on the crest of the hill over Macomb Street involves a delicate judgment about relative significance and preservation intangibles. The parties presented impressive experts who debated these questions.

Review of the staff report and transcript of the HPRB meeting reveals that neither the HPRB nor the HPO ever made a judgment about this balance. HPRB members unanimously adopted the staff report, which concluded that the proposed building was “incompatible with the landmark.” Staff Report at 6; *see also* HPRB Tr., *supra*. The Mayor’s Agent generally defers to the HPRB’s judgment on questions of compatibility, given the member’s expertise in architecture and historic preservation. *In re 2422 Tracy Place NW*, H.P.A. 13-600, at 2 (2015); *see also In re 2225 California Street NW*, H.P.A. 11-472 (2013). While the HPRB made a clear judgment that the proposed new building was incompatible, it did not express any opinion on the degree of harm that the building would inflict on the overall landmark. Nor did it assess the value of the proposed preservation benefits, or

balance these benefits against the harm caused by the incompatible building. Yet, the Court of Appeals now has directed that historic preservation benefits be weighed against the historic losses, rather than as special merit features. *Friends of McMillan Park, supra*, 149 A.3d at 1041-42. While there may be cases in which the Mayor's Agent is in a good position, based on an extensive record and clear balance, to make this determination in the first instance, *In re McMillan Sand Filtration Site*, H.P.A. 14-393 and 15-133 (April 3, 2018), it seems clearly preferable in most cases that the Mayor's Agent have the expert judgment of the HPRB, staffed by experts in historic preservation in the HPO. The Mayor's Agent urges HPRB to weigh preservation benefits against preservation losses in future cases as part of its analysis of a project's consistency with the purposes of the Act.

Accordingly, this case will be remanded to the HPRB solely to assess whether the preservation benefits proposed here outweigh the harm caused by the incompatibility of the new building. HPRB may be able to make this assessment based on the record created before them and the Mayor's Agent, unless the applicant seeks to modify its proposal to decrease preservation harms or increase preservation benefits.

Conclusion

The application based on the claim of special merit is DENIED. The application claiming that the application is consistent with the purposes of the Act because historic preservation benefits exceed historic preservation harms is REMANDED to the Historic Preservation Review Board solely to address that issue.

Date: July 26, 2018



J. Peter Byrne
Mayor's Agent Hearing Officer

Confirmed:



Eric D. Shaw
Director, D.C. Office of Planning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was served this 26th day of July 2018 via electronic mail to the following:

Washington International School
c/o Mary Carolyn Brown, Esq.
carolynbrown@donohuestearns.com

Protectors of Tregaron Estate
c/o Andrea C. Ferster Esq.
[aferster@railstotrails.org](mailto: aferster@railstotrails.org)

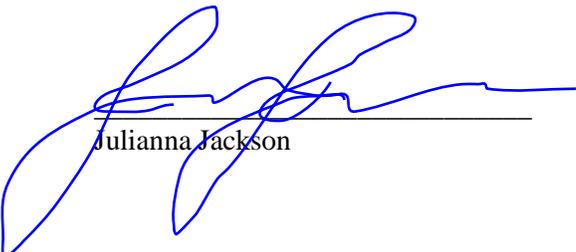
Advisory Neighborhood Commission 3C
3C@anc.dc.gov
3C01@anc.dc.gov
3C02@anc.dc.gov
3C03@anc.dc.gov
3C04@anc.dc.gov
3C05@anc.dc.gov
3C06@anc.dc.gov
3C07@anc.dc.gov
3C08@anc.dc.gov
3C09@anc.dc.gov
anc3c.office@gmail.com

David J. Maloney
District of Columbia State Historic Preservation Officer
david.maloney@dc.gov

Marnique Heath, Chair
Historic Preservation Review Board
Marnique.heath@dcbc.dc.gov

Matthew Lane
Office of the Attorney General
matthew.lane2@dc.gov

Leah Prescott
Associate Law Librarian for Digital Initiatives and Special Collections
Georgetown University Law Center Library
lp627@law.georgetown.edu



Julianna Jackson