In the Matter of:

Application of Georgetown 29K Acquisitions LLC

West Heating Plant
1051-55 29th Street NW
Square 1193

DECISION AND ORDER

Georgetown 29K Acquisition LLC ("G29K" or "Applicant") seeks a permit to demolish a significant portion of the West Heating Plant ("WHP"). This demolition would implement the Applicant’s plan to redevelop the site with new housing and a one-acre public park providing a connection between Rock Creek Park and the Georgetown Waterfront. The Applicant contends such demolition is permissible under the Historic Landmark and Historic District Protection Act, D.C. Code §6-1101, et seq., because the project is consistent with the purposes of the Act and is one of special merit. For the reasons stated below, the permit will be CLEARED.1 Additionally, the Applicant has requested that one of the historic preservation covenants in the deed to the WHP be canceled or modified for good cause to allow the project to proceed. For the reasons stated below, I recommend that the State Historic Preservation Officer ("SHPO") find that there is good cause to modify the covenant.

BACKGROUND

The WHP occupies a significant two-acre, triangular site at the southeast corner of Georgetown. The site is bounded by 29th Street to the west; the C&O Canal to the north; Rock Creek to the east; and the Whitehurst Freeway and K Street to the south. The area immediately surrounding the site contains a mix of residential and commercial uses. The Georgetown Waterfront Park is located to the southwest across K Street. At one time, the site was the terminus of the historic C&O Canal, which operated along 185 miles as an artery of commerce between 1831 and 1924. In 1938, the National Park Service ("NPS") began to pursue the creation of the C&O Canal Park. It purchased the then defunct C&O Canal with the intention of restoring it for use as a recreational park. The property, which is adjacent to Lock 1 and contained a historic dry dock that was used to repair the canal boats, was included and featured in the restoration plan.

1 This opinion will constitute the findings and fact and conclusions of law required for decision in a contested case under the D.C. Administrative Procedure Act, D.C. Code § 2-509(e).
In 1939, the federal government proposed constructing a new heating plant in the northwest section of the District to serve the burgeoning federal office buildings. Following much debate, in 1941, the National Capital Park & Planning Committee concluded that the present site of the WHP was the most appropriate site for the new heating plant, even though the land was then owned by the NPS and planned for a public park. Construction of the West Heating Plant was delayed by the war, but it was completed in 1948. Designed by William Dewey Foster, a consulting architect to the U.S. Treasury’s Office of the Supervising Architect, the structure’s Art Moderne masonry walls wrap around a coal-fired a steam heat plant.

For many years, the area of Georgetown between M Street and the Potomac River had been the site of transportation and industrial operations. In the 1930s and 40s it also housed a predominantly African-American working-class population, a community that was impacted by the construction of the WHP. By the time the funds were approved for the construction of the WHP, the area south of M Street had begun transitioning from industrial uses.

The WHP served the federal government as an active heating plant until the mid-1990s and was decommissioned in 2000. The plant has been defunct and the site abandoned since then, walled off and closed to the public. However, based upon its architecture and role in the development of Washington, DC, the WHP is both an individual landmark and a contributing property to the Georgetown Historic District. It occupies a historically significant and strategic site, at or adjacent to the intersection of the C&O Canal, Rock Creek Park, and the Potomac River.

In September 2012, the General Services Administration ("GSA") declared the WHP to be "excess property," and announced its intent to put the Property up for auction. The GSA held an online auction for the WHP, and G29K was the winning bidder when the auction ended on March 6, 2013. As part of the Section 106 review, pursuant to the National Historic Preservation Act, 54 U.S.C. 300101, et seq., GSA concluded that the transfer of the Property would include covenants consistent with federal preservation requirements. Accordingly, GSA, in consultation with the SHPO, included a Historic and Cultural Preservation Covenant in the deed to the Property, which states:

1. Any alteration, restoration, rehabilitation, demolition, or modification of existing structures on the property, and any development or new construction in the property, shall be in compliance with applicable local historic preservation law and consistent with the recommended approaches set forth in the applicable sections of the Secretary of Interior’s Standards for the Treatment of Historic Properties with Guidelines for Rehabilitating Historic Buildings (U.S. Department of the Interior, National Park Service, 1992), as the same may be amended from time to time;

2. Any alteration, restoration, rehabilitation, demolition or modification of existing structures on the property, and any development or new construction on the property shall be subject to the written approval of the SHPO, which approval shall not be unreasonably withheld, conditioned or denied;

3. In the event of a violation of any provision of the Historic Preservation Covenants, the SHPO may, following notice to Grantees and a reasonable opportunity to cure, institute
suit to enjoin any such violation and obtain any appropriate legal or equitable remedies to require full and immediate compliance with the Historic Preservation Covenants described herein; and

4. The Historic Preservation Covenants shall be binding in perpetuity; provided, however, that the SHPO may, for good cause, modify or cancel any or all of the Historic Preservation Covenants upon written request of Grantees.

On June 20, 2013, the Applicant took title to the Property, pursuant to the deed containing the covenants.

The Applicant assessed the structural and environmental condition of the WHP, and, as discussed in greater detail below, discovered significant structural degradation and environmental contamination. Both conditions present significant health and safety hazards that require extensive remediation when the site is redeveloped.

The Applicant’s plan converts the WHP into a 10-story residential condominium building adjacent to a new one-acre public park, which occupies the site of the former coal yard. Most of the exterior of the WHP is proposed to be demolished, based on the Applicant’s findings of significant environmental contamination and structural weakness. The new residential building will rise from the retained stone base and mirror the massing and height of the WHP. Although the 29th Street façade of the building will be retained, the north and south façades will be reconstructed with a new metal screen wall mechanism composed of operable shutters and braced frames, intended to evoke the industrial heritage of the WHP. The building’s east elevation will be rebuilt to feature a predominantly glass façade overlooking Rock Creek Park, with balconies creating an inversion of the historic design. The proposed building has been designed by Sir David Adjaye, who designed the Museum of African American History and Culture on the National Mall and several striking District of Columbia public library buildings.

The Applicant’s plan also proposes to construct a new public park on the one-acre site of the WHP’s coal storage yard. This park has several exceptional features: Designed by the nationally regarded landscape architect, Lorrie Olin, the park will connect Rock Creek Park with the Georgetown Waterfront. A new bridge will link the C&O Canal Park and Rock Creek Park to the north to the rehabilitated path along the Property’s east side, providing a direct pedestrian and bicycle connection between the new bridge and the Georgetown Waterfront Park to the south. The deteriorating seawall on the east side of the Property along Rock Creek will be rehabilitated to further enhance the new park and path, and to create open space access where none currently exists. In addition to the Applicant’s construction and opening of the park to the public, the condominium association for the residential building will be responsible for maintaining the park in perpetuity. Thus, the park will provide a significant public amenity to the broader community without the District of Columbia bearing the burden of the land acquisition, design, construction, or maintenance of this public park.

In addition to the redevelopment of the WHP site as described above, the Applicant has committed to provide other significant public benefits as part of the project:

(1) Financial support of Georgetown Heritage’s effort to restore the C&O Canal trail;
(2) Financial and project management support to Mount Zion Methodist Church for restoration of its
historic cemetery;
(3) An interpretative on-site exhibit on the industrial heritage of Georgetown, specifically including
the C&O Canal and its barges;
(4) A significant monetary contribution – at least $2.8 million – for the development of affordable
housing; and
(5) Documentation of the WHP site’s history in a report that will be donated to the D.C. Public
Library’s Peabody and Washingtoniana Collections.

PROCEEDINGS

The project has been reviewed by the Old Georgetown Board, the U.S. Commission of Fine Arts, and
the D.C. Historic Preservation Review Board. The Commission of Fine Arts (“CFA”) reviewed the
concept design for the WHP project pursuant to the Old Georgetown Act. Under the Old Georgetown
Act, CFA shall make a recommendation regarding historic compatibility to the Mayor before the
Mayor can issue a permit for construction or alteration in the Georgetown Historic District. D.C. Code
§ 6-1202. At its September 20, 2017 meeting, CFA reviewed and voted unanimously to recommend
approval of the project’s conceptual design; CFA does not make a specific recommendation about
demolition.

Subsequently, in accordance with the applicable provisions of the Act, the Historic Preservation
Review Board (“HPRB”) reviewed the applications for partial demolition of the WHP and conceptual
design at public meetings on November 2, 2017 and April 26, 2018. The HPRB found that the
proposed demolition of the WHP is inconsistent with the purposes of the Act. D.C. Code §§ 6-1104 &
6-1107. It also found that the project design does not follow the recommended approaches in the
Secretary’s Standards, and that repair, or if necessary, in-kind reconstruction of the brick façades, is a
technically feasible response to irreparable deterioration. At the same time, the HPRB urged the
Mayor’s Agent to allow design flexibility, found that the conceptual design achieves “meaningful
preservation,” and concluded that in replicating the existing building’s height the proposed building
height remains compatible with the Georgetown Historic District.\(^2\)

The Applicant requested a hearing before the Mayor’s Agent to pursue its claim that the proposed
partial demolition is necessary to construct a project of special merit and, in the alternative, the
demolition is consistent with the purposes of the Act. Hearings were held on July 16 and 17, 2018.\(^3\) In
addition, the Mayor’s Agent was asked to provide a recommendation to the SHPO on the issues
relevant to the Section 106 covenant, including the Applicant’s request to modify it.\(^4\) The District of
Columbia Preservation League (“DCPL”) was recognized as the only party in opposition to the

\(^2\) More specifically, HPRB “did not find the concept ‘attempts a compromise that is architecturally unconvincing and does
not achieve meaningful preservation.’”

\(^3\) The transcripts of these hearing are cited as “Tr1” for the July 16 hearing and “Tr2” for the July 17 hearing.

\(^4\) Per a memorandum from Jennifer Stingasser, Deputy Director of the Office of Planning, to Brian Kenner, Deputy Mayor
for Planning and Economic Development dated October 23, 2015, the Mayor’s Agent shall make a determination about the
Covenants for the Director of the Office of Planning, who in his capacity as advisor to the SHPO, shall provide guidance to
the SHPO that the SHPO will implement them. Accordingly, the Applicant requested that the Mayor’s Agent find, based on
the evidence in this case, that there is good cause to modify Covenant No. 1, and advise the SHPO to modify the first
Covenant. Similarly, the SHPO, by memorandum dated June 6, 2018, requested “that the Mayor’s Agent consolidate review
of the Applicants’ special merit and covenant requests into the scheduled hearing, and that the Mayor’s Agent provide a
recommendation to the SHPO.”
application. The Citizens Association of Georgetown ("CAG") and Friends of Georgetown Waterfront Park ("FOGWP") were recognized as parties in support of the application.

G29K presented the following witnesses in support of the project and the application for partial demolition and modification of the Covenants: Emily Eig of EHT Traceries, Inc., who was recognized as an expert in historic preservation; Joel Silverman, who was recognized as an expert in structural engineering; Laurie Olin, who was recognized as an expert landscape architecture; Sir David Adjaye, who was recognized as an expert in architecture; Andy Altman, who was recognized as an expert in urban planning; Robert Peck, former head of GSA, who was recognized as an expert in public policy; Roger Lewis, professor and land use commentator, who was recognized as an expert in architecture; Richard Levy of The Levy Group; Peter Armstrong of the Georgetown Company; professor and architectural critic Paul Goldberger, recognized as an expert; and former Mayor Anthony Williams. Kevin Brandt of the National Park Service; Jennifer Romm board chair of Georgetown Heritage; Dr. Thornell Page from Mount Zion United Methodist Church; and Walter Groszyk, a neighbor, also spoke in support of the project and the application for partial demolition.

CAG presented the following witnesses in support of the project and partial demolition: Pam Moore; Victoria Rixey; and Richard Hinds. FOGWP presented Steve Crimmins as a witness in support of the project and partial demolition. The affected Advisory Neighborhood Commission 2E testified in support of the application.

DCPL presented the following witnesses in opposition to the project, partial demolition, and modifying the Covenants: Rebecca Miller of DCPL; John Sandor, who was recognized as an expert on the Secretary’s Standards and Kevin Sperry, who was recognized as an expert in architecture. Lauren McHale of the L’Enfant Trust also testified as an expert on easements.

In addition to the testimony reviewed below, several District residents offered thoughtful statements both in support of and in opposition to the application.

The Applicant and DCPL both submitted proposed findings of fact and conclusions of law on August 31, 2018.

**DISCUSSION**

*Special Merit*

The Act authorizes the Mayor’s Agent to grant a permit to demolish a protected historic resource if doing so is "necessary in the public interest.” D.C. Code § 6-1105(e). That requires either that the demolition be consistent with the purposes of the Act or necessary to construct a project of special merit. Id., § 6-1102(10). “Special merit means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.” Id., § 6-1102(12).

Prior decisions of the D.C. Court of Appeals and of the Mayor’s Agent establish the three steps by which special merit cases should be decided. First, the Mayor’s Agent must decide whether the project meets the criteria of special merit, that is, whether it meets the standards set out in the law. A project of special merit may be combination of a number of features: "A project’s special merit could rest in

If the project meets the criteria for special merit, the Mayor’s Agent next evaluates whether “the specific aspects of the project that provide ‘sufficiently special’ benefits” outweigh the “historical value of the landmark.” *Id.* at 1041-42; see also *Committee of 100 on the Federal City v. D.C. Department of Consumer and Regulatory Affairs*, 571 A.2d 195, 200 (D.C. 1990) (“the 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”); *Citizens Comm. To Save Historic Rhodes Tavern v. D.C. Department of Housing and Community Development*, 432 A.2d 710, 715-16 (D.C. 1981) (“the Act implicitly requires that, in the case of demolition, the Mayor’s Agent balance the historical value of the particular landmark against the special merit of the proposed project”). Finally, if the balance favors the applicant, then the Mayor’s Agent must determine that the demolition is necessary for the project. To prove necessity, an applicant is not required to show that there are no other feasible alternatives, but it should show that all reasonable alternatives were considered. *Friends of McMillan Park*, 149 A.3d at 1042 (quoting *Citizens Comm. To Save Historic Rhodes Tavern*, 432 A.2d at 718). Factors that warrant “necessity” include cost, delay, and technical feasibility. *Id.*

In this case, it can hardly be contested that the project is one of special merit because of specific features of land planning and the profusion of important community benefits. Steve Calcott, the experienced Deputy Head of the Historic Preservation Office repeatedly testified that the special merit question in the case was relatively easy. Tr2 at 16, 34, 58. The conversion of the polluted and inaccessible coal yard to a well-designed public park, provided to and maintained for the residents of the District at no cost is a significant community benefit. Jennifer Steingasser, the Deputy Director of the D.C. Office of Planning for Historic Preservation and Development Review testified that the proposed park advanced key elements of the D.C. Comprehensive Plan for the site and the plan of the National Capital Planning Commission for Georgetown parks, and also fulfilled them beyond what could have been required: “It’s the enhanced design and commitment to keep the park open to the public at the expense of the private property that provides the significant public benefit.” Tr2 at 6-7. Andrew Altman, former Director of the Office of Planning, described the park as an “exquisitely designed, open-space ensemble [destined] to become one of the great, iconic and enjoyed parks of our city and region.” Tr1 at 195. Representatives of community organizations and the ANC also praised the park as an important community benefit. Tr1 at 255-56, 265, 279-80.

The connectivity the park will provide between Rock Creek Park, the C & O Towpath, and the Georgetown Waterfront Park constitutes a valuable element of land use planning, as Jennifer Steingasser testified. Kevin Brant of the National Park Service underscored the importance of the planned bridge that will connect the new public park with the C&O Canal trail and Rock Creek Park: “Connecting this new park to the canal towpath and the Rock Creek Trail will be an important amenity to all visitors.” Tr1 at 147. Accordingly, the exceptional land planning aspects of the project contribute significantly to the special merit of the project. DCPL did not dispute the importance of this park.

Additionally, the Applicant will make significant monetary contributions for public benefits for restoration of the C&O Canal, and rehabilitation of the Mt. Zion Cemetery, both of which are located
within the Georgetown Historic District, and affordable housing. While these community benefits individually would not meet the threshold for special merit, combined with the extraordinary public park they contribute to an impressive special merits package.

DCPL argues expensive condominium residence never be constructed as a project of special merit. project of special merit. Putting aside the veracity of this statement - the Mayor’s Agent has certainly found a project that includes a substantial upscale residential component to be one of special merit (e.g. In re The O Street Market., HPA No. 2007-103) - there is no legal reason why a luxury residential building should be precluded from being part of a project of special merit. In *Kalorama Hghts. Ltd. Partnership v. DCRA*, 655 A.2d 865, 874 (1996), the Court of Appeals wrote: "We do not preclude the possibility that an office building or an apartment complex may have ‘special merit’ if it provides particular ‘social or other benefits’ that can be said to offer ‘community services’ for persons other than those who primarily inhabit or work in the buildings.” Here, the residential building will provide the funds for the park and other special merit features. As discussed below, any economically viable use of the WHP will require extensive demolition.

The special merit of the project clearly outweighs the net loss in historic preservation. The land use improvements and community benefits expected here are very substantial and strongly supported by the community. A new, well-designed park at the site, connecting crucial public historic resources, the Rock Creek Park, the C & O Canal Park, and the Georgetown Waterfront, enriched by a perpetual obligation to support maintenance of the park, has extraordinary public value. The emphatic support for the project by the ANC and by Georgetown civic groups testify to this. The $2.8 million contribution for affordable housing augments this public value, even if it could not have provided sufficient weight in itself.

The Court of Appeals has instructed that the Mayor’s Agent should weigh special merit elements against net preservation losses. Here the plan anticipates demolishing seventy percent of the existing structure but retaining WHP’s height, bulk, and massing, which preserves the site’s organization. Moreover, the plan calls for preserving and restoring most of the WHP’s western façade, the rusticated brick ‘quoining’ on the western façade and returns on the north and south façades, the ashlar rubble stone base, and the stone wall surrounding the WHP’s perimeter. The Applicant also offsets the preservation losses in part with design elements in the park that will reference the historic canal dry dock on the site, the WHP’s machinery yard, and the industrial history of Georgetown.

The WHP today is dangerous, toxic, and inaccessible. Its exterior is a thin brick shell with limited steel supports that had surrounded a coal burning boiler. It is cracked and corroded. It also is heavily polluted with toxic chemicals, including asbestos, PCBs, and mercury. The current structure is a

5 DCPL’s contention that these payments for affordable housing and historic preservation projects should not qualify as aspects of a special merit project elevates form over substance. Cf. *Koontz v. St. John’s River Water Mgt. Dist.*, 570 U.S. 575 (2013)(treating monetary exactions as equivalent to exactions of interests in real property). As in monetary exactions as used in the development process more generally, it is essential that the special merit payments be committed to appropriate projects. Below are listed conditions on the clearing of the Applicant’s permit intended to ensure that the funds are paid as promised.

6 The redesign of the WHP by David Adjaye also was repeatedly lauded by community members as creating a new visual highlight at the entrance to Georgetown and architect Victoria Rixey, who has chaired the Historic Preservation Committee of the Citizen’s Association of Georgetown, testified that Adjaye’s redesign constituted “exemplary architecture.” Tr 1 at 274. For reasons never clarified at the hearing, the Applicant never argued that the project met the special merit standard on the basis of exemplary architecture.
hazardous shell, however architecturally significant its façade design, and must be substantially demolished to be adapted for any contemporary use. For this conclusion I rely on the Wiss Janney Report, Ex. 18, and the convincing testimony of Joel Silverman. Tr1 at 89 – 106. DCPL did not seriously contest this evidence, but argued that the Applicant should restore the façade in a manner closer to the current design.

WHP was designated a landmark because of its exterior design, illustrating a transition from Art Moderne to Modern styles and their application to industrial structures and because it illustrates the growth of federal buildings in Washington, which necessitated a new heating plant.\(^7\)

Although the HPRB found that WHP merited the protection of the Act as a landmark, the Mayor’s Agent must make some determination of the degree of significance a landmark enjoys in order to assess the preservation loss to be balanced against the special merit of the proposal. Here, the architectural history values are real, although WHP is not critical to illustrating the growth of the federal government. The noted architectural critic Paul Goldberger opined: “[The WHP] is not a critical part of our architectural history.” Tr1 at 182. It is striking that the Georgetown community groups, which could hardly be characterized as “indifferent to historic preservation” (id.), unanimously testified that the values of the project outweighed the loss of the elements of the WHP. The ANC enthusiastically supported the special merit of the project and its “long-sought community benefits” as compared to the limited value of the WHP in its present condition.\(^8\) Tr1 at 254. CAG testified that it believes that the WHP should not have become an individual landmark, and it recognized the significant community benefits that are much greater in value than the WHP. Tr1 at 268, 279. Similarly, FOGWP testified that the WHP “is not something that’s cherished by our community that needs to be preserved” and stated that the fulfillment of parkland on the Property is a significant community benefit of greater value than the WHP. Tr1 at 289, 294. Also, it should be noted that WHP was built on land that the National Park Service had acquired to be the terminus of the C&O Canal National Park, thus thwarting a historic preservation project of great significance.\(^9\) Georgetown Heritage testified in the hearing that “the transformation of the West Heating Plant site is important to [our] efforts to revitalize the Canal Park.” Tr1 at 299.

Thus, while there surely will be preservation losses from the partial demolition of the WHP, they are not as great as they might be for a more significant landmark. Moreover, there are preservation benefits that lessen the overall net loss, so that the special merit benefits of the project clearly outweigh the net preservation losses.

\(^7\) https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/West%20Heating%20Plant%20Nomination%202017_0.pdf. The HPRB refused to designate WHP as a landmark in 2015, but on a new application did designate it in November 2017.

\(^8\) For purposes of the Mayor’s Agent’s analysis, the condition of the building does not factor into the assessment of the building’s historic significance.

\(^9\) The Applicant presented testimony by former Mayor Anthony Williams that the placement of the WHP within a predominantly African American residential neighborhood was an act of environmental racism, a contention that DCPL disputes. If that historical assertion could be documented, it should affect the weighing of the preservation value of preserving more of the façade design of the WHP, although the prior decisions of the Mayor’s Agent do not indicate a method or standard for doing so. In this case, although WHP generated a great deal of pollution that would have impacted nearby residents, the assertion of environmental racism was not proven. Still, this contention highlights the importance of historic preservation considering the perspectives of all people.
Finally, the partial demolition is necessary to construct the project of special merit. First, the historic coal yard, which is part of the designated landmark, must be demolished in its present form or transformed in order to construct the new park. Second, the evidence clearly established that much of the plant itself must be demolished to make it structurally capable of adaptive reuse, as discussed above, because it is permeated with toxic chemicals and is structurally unsafe. ¹⁰ Third, the success of the new residential building is obviously necessary to financially support the special merit elements of the project, which will be expensive.¹¹ The WHP was designed to be a power plant, not a residence; its exterior is austere, with limited fenestration and the brick skin is a thin shell supported by steel trusses. Some changes need to be made to the exterior design of the building in order to develop viable residences. The parties in this case disagree more about the extent of the retention of the existing design elements of the façade than about the demolition at issue in the special merit determination. That topic will be addressed below in considering the extent to which the preservation covenant attached to the site should be modified or cancelled.

_Historic and Cultural Preservation Covenant_

The Historic and Cultural Preservation Covenant pursuant to which the WHP was transferred provides that the SHPO can “modify any or all” the individual covenants for “good cause.” It further provides that approval of any proposal for redevelopment of the property “shall not be unreasonably withheld, conditioned or denied.” The SHPO has delegated the task of considering a waiver to the Mayor’s Agent and has committed to following the Mayor's Agent’s decision on the matter. Letter from David L. Maloney, SHPO, to the Mayor’s Agent (June 6, 2018). The parties have been unable to cite and the Mayor’s Agent is aware of no precedent for what constitutes good cause to waive such a clause, and the SHPO suggests that the Mayor’s Agent’s decision in this case would have no practical precedential significance, because the District of Columbia would not accept in the future the conveyance of any property from the federal government with such a waiver clause attached, because there is too much difficulty in interpreting it. Tr2 at 21-22.

Applicants seek relief from Covenant One, which requires: “Any alteration, restoration, rehabilitation, demolition, or modification of existing structures on the property, and any development or new construction in the property, shall be in compliance with applicable local historic preservation law and consistent with the recommended approaches set forth in the applicable sections of the Secretary of Interior’s Standards for the Treatment of Historic Properties.” The problem for the Applicant here is that the Secretary’s Standards provide that historic material and design should be retained and repaired to the extent feasible and that when replacement is necessary character-defining elements should be “replaced to match the historic feature based on physical or historic documentation of its form and detailing.” The Standards and associated Guidelines expressly disapprove of “removing a masonry feature that is

¹⁰ DCPL’s argument that the proposed public benefits are not “unique” to this project both exaggerates the applicable standard, which is whether the demolition is necessary to construct a project of special merit, and ignores that the demolition is necessary for any adaptive reuse of the plant. Similarly, when it suggests that the public benefits could be achieved by a project designed with greater fidelity to the historic design, DCPL ignores that under the required special merit analysis, if, as in this case, the demolition is necessary, the question is whether the special merit benefits provided by the project outweigh the preservation losses. If they do, the demolition must be approved. An applicant could reduce the preservation losses by rebuilding in-kind post-demolition, but that is not required.

¹¹ Kevin Brant of the National Park Service testified that a 1986 NPS plan for the Georgetown Waterfront Park envisioned converting the entire WHP site to a park, which would have involved the entire demolition of the heating plant, “but the practical and financial challenges of that plan rendered our original aspiration an impossibility.” Tr1 at 146.
unrepairable and not replacing it, or replacing it with a new feature that does not match, using substitute materials for the replacement that does not convey the same appearance of the surviving components of the masonry feature.” Thus, to the extent feasible, materials that cannot be retained and repaired must be replaced by materials that look like the replace materials. Read literally, the Secretary’s Standards would require that the residential building look just like the heating plant building.

The proposal that the Applicant has brought forward clearly does not meet the Secretary’s Standards. The design presented by Sir David Adjaye seeks to convey the history of the building both through retention or duplication of material in many respects but also an interpretation through new design elements that attempt to evoke the structural and use history of the building while creating a striking design that will serve as a visual monument and function as a successful residential building. Adjaye’s testimony demonstrated the care with which he had reinterpreted the building, evoking non-literally its structure and former use. Architecture critic Paul Goldberger testified that the Adjaye design would create “one of the most meaningful pieces of contemporary architecture in Washington that skillfully honors the spirit, if not the literal form in every way, of a memorable, but difficult, building.” Tr.1 at 186-87. Planning and architectural expert Roger Lewis testified that “the proposed physical transformation of the historically landmarked site and plant structure wisely and creatively blending preservation and new construction is technically and economically realistic, culturally and contextually appropriate and, of equal importance, aesthetically compelling.” Tr.1 at 228.

DCPL advocated for greater adherence to the Secretary’s Standards. While it did not signal support for an earlier design that retained more of the features of the existing WHP, DCPL argued that the earlier design had shown that greater fidelity to the original design was practicable.

Steve Callcott speaking for the HPO sought to take a middle position. He recognized that some deviation from the Secretary’s Standards was needed to develop a viable residential building with adequate windows but urged that ongoing consultation with Applicant could result in a design that would retain more of the existing design features of the WHP, which would be more consistent with the goals of the Historic Preservation Act. The HPO’s views were closer to those of the HPRB, which had asked the Applicant to provide a design closer in specific elements to the existing WHP, than that of the CFA, which had rejected the literalism of an earlier design as sterile and approved enthusiastically of the Adjaye proposal.

Upon consideration of all the testimony and other evidence, there is good cause to modify the covenant in this case to the extent necessary to allow the proposed demolition and construction of the design shown on the plans submitted to the Mayor’s Agent on June 29, 2018. The federal government conveyed the WHP with the understanding that the District of Columbia has a sophisticated historic preservation law, a committed preservation community, and fair public processes for addressing preservation disputes. The finding that a project is one of special merit would seem to provide a reasonable basis for modifying Covenant One to allow the project to be built. Here the special merit elements of the project – the well-designed park and other community benefits – require a successful conversion of a coal-burning plant to a residential building. The removal of the existing and toxic material from the site are plainly encompassed within this. But the Applicant should be permitted to build a design that can successfully function economically as a residential building.

But the applicant has done much more than that. The applicant has brought forth a stunning design by a
world acclaimed architect, who already has earned special regard for his previous buildings in the District. The design he has proposed for the site may achieve an aesthetic and cultural significance exceeding that of the existing WHP. However, because the Applicants did not offer “exemplary architecture,” as part of its special merit case, the Mayor’s Agent did not hear opposing views about the architecture and will not make a finding about it.

The role of the Mayor’s Agent is not normally to review the design of a project, which is better entrusted to the expertise of the HPRB. In Georgetown, however, design review is under the purview of both HPRB and CFA (delegated to OGB). Both entities make a recommendation to the Mayor about whether she should issue a permit for construction. DCMR 10C § 401.3. The Mayor is not obliged to take one recommendation over the other, and both have equal standing. Mr. Calcott stated that the Mayor’s Agent has authority to accept the CFA recommendation as approving a design that was aesthetically superior to that of more literal preservation approaches as good cause for modifying Covenant One. Tr2 at 54. Thus, I accept the conclusion of the CFA, which unanimously “commended the design’s approach of extending a preservation sensibility beyond the retention of historic building material to the expression of other defining qualities – such as mass, structural character, and industrial heritage.”

ACCORingly, the permit to demolish the WHP as proposed is hereby CLEARED, subject to the following conditions:

(1) Before issuance of any use and occupancy permit, the pedestrian and cycling bridge, restoration of the pathway along Rock Creek on the east side of the property, rehabilitation of the seawall along the east side of the property, and the public park must be constructed as shown on the plans submitted to the Mayor’s Agent on June 29, 2018;

(2) Before certificate of occupancy issuance for the entire building, the Applicant must record an instrument or instruments, in a form approved by Counsel for the DC Office of Planning, that provides for public access to the park and for the property owner to pay for the maintenance of the park in perpetuity;

(3) Before issuance of any building permit, the Applicant must make the proffered payments to Georgetown Heritage and Mount Zion Church Cemetery;

(4) The Applicant must contribute no less than $2.8 million and no more than $4.3 million to support the provision of affordable housing in the District, as follows:

(a) Before building permit issuance, the Applicant must pay $1.4 million into the D.C. Housing Production Trust Fund;

(b) Before certificate of occupancy issuance for the entire building, the Applicant must pay an additional $1.4 million to the D.C. Housing Production Trust Fund; and

(c) To the extent that 1% of the gross sales for the entire project exceeds a total of $2.8 million, the Applicant must pay 1% of the additional amount of gross sales, up to a maximum additional payment of $1.5 million, with the first $250,000 of this amount to be paid to LISC DC and the remainder, up to $1.25 million, to be paid to the D.C. Housing Production Trust Fund. This
payment must be made by the sooner of 60 days within the (1) date of the closing on the last residential unit or (2) date when the total sales result in an additional payment of $1.5 million. Before certificate of occupancy issuance, the Applicant must enter into a surety agreement with the DC Office of Planning, in a form approved by the Office’s counsel, reflecting these requirements. The agreement must include a performance bond or other form of surety in the amount of $1.5 million.

(5) Before certificate of occupancy issuance, the Applicant must donate documentation of the WHP site’s history to the D.C. Public Library’s Peabody and Washingtoniana Collections.

(6) Any changes to the design shown in the September 20, 2017 concept plan shall be submitted to the HPO for review who may refer substantive changes to the HPRB for review. The HPRB shall review any changes or alterations to facilitate compliance with this order while ensuring that its quality of design and materials is maintained. Any change to the project or design that would materially alter the preservation value or public benefits must be approved by the Mayor’s Agent.

FURTHER, for the reasons explained above, I recommend that the SHPO MODIFY the Historic and Cultural Preservation Covenant to the extent necessary to allow the proposed demolition and construction of the design shown on the plans submitted to the Mayor’s Agent on June 29, 2018.

Date: January 11, 2019

Confirmed:

J. Peter Byrne
Mayor’s Agent Hearing Officer

Malaika A. Scriven
Mayor’s Agent’s Designee

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Andrew Trueblood, who as the Interim Director of the DC Office of Planning serves as the Mayor’s Agent, but who in his previous role as Chief of Staff for the Deputy Mayor for Planning and Economic Development was privy to discussions about certain aspects of the planned redevelopment of West Heating Plant, has delegated his authority to act in this matter to Ms. Scriven to avoid any appearance that the decision might be based on ex parte information.
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Order was served this 11th day of January 2019 via
electronic mail to the following:

Georgetown 29K Acquisitions LLC
c/o Allison C. Prince
Goulston & Storrs
1999 K Street NW, Suite 500
Washington, DC 20006-1101
APrince@goulstonstors.com

Citizens Association of Georgetown (CAG)
c/o Richard Hinds
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue NW, Suite 9000
Washington, DC 20006-1801
rhinds@cgsh.com

D.C. Preservation League (DCPL)
c/o Michael Pfeifer
Dentons US LLP
1900 K Street NW
Washington, DC 20006
mike.pfeifer@dentons.com

Friends of the Georgetown Waterfront Park (FOGWP)
c/o Stephen J. Crimmins
1077 30th Street NW
Washington, DC 20007
scrimmins@mmlawus.com

Advisory Neighborhood Commission 2E
3265 S Street NW
Washington, DC 20007
anc2E@dc.gov
2E01@anc.dc.gov
2E02@anc.dc.gov
2E03@anc.dc.gov
2E04@anc.dc.gov
2E05@anc.dc.gov
2E06@anc.dc.gov
2E07@anc.dc.gov
2E08@anc.dc.gov

David J. Maloney
District of Columbia State Historic Preservation Officer
david.maloney@dc.gov
Marnique Heath, Chair  
Historic Preservation Review Board  
Marnique.heath@dc.dc.gov

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

Juliana Jackson