ORDER

Before the Mayor's Agent for D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978.

EPA No. 80-156, Application to demolish 919 H Street, N.W. (The Washington Lodge No. 15, BP0 Elks), Square 374, Lot 4.


FINDINGS OF FACT:

1. Applicant, the Government of the District of Columbia (hereinafter "the District"), has applied for a permit under Section 5 of the Historic Landmark and Historic District Protection Act of 1978 (hereinafter "the Act") D.C. Law 2-144, to allow demolition of a structure owned by it in the District of Columbia on Lot 4 in Square 374 known as The Washington Lodge No. 15, BP0 Elks (hereinafter "the Elks' Lodge"), at premises of 919 H Street, N.W. to allow construction of a District public works project, commonly known as the D.C. Convention Center.

2. 919 H Street, N.W., the Elks' Lodge is a Category III Landmark on the District of Columbia's Inventory of Historic Sites.

3. On December 31, 1979, in accord with Section 5(b) of D.C. Law 2-144, the permit application was referred to the Mayor's Agent for D.C. Law 2-144.

4. In accord with Section 5(b) of D.C. Law 2-144, the application was referred to the Joint Committee on Landmarks of the National Capital, which serves as the Historic Preservation Review Board. The Joint Committee on Landmarks recommended that a hearing be held on the subject application to determine if the requested demolition should be permitted to construct a project of special merit. A copy of the Joint Committee's recommendation can be found in Exhibit Nos. 2 and 20.
5. Pursuant to Section 2.5(b)(7) of the Rules of Procedure (Rules) pursuant to the Act, a notice of Intent to Schedule a public hearing to consider HPA No. 80-156 dated January 4, 1980 was issued. (Exhibit No. 3)

6. The Applicant filed a claim form for D.C. Law 2-144 for HPA No. 80-156 on January 4, 1980. On the form the applicant claimed that their permit request was necessary to construct a project of special merit. (Exhibit No. 3)

7. Materials required by Section 3.3 of the Rules were filed by the Applicant on January 24, 1980, stating their intention to proceed on the basis that the demolition requested is necessary to construct a project of special merit. (Exhibit No. 5) The Citizens' Planning Coalition filed on January 30, 1980 as a party in opposition in this case. The legal Counsel of the Coalition to represent them at the hearing was not made known to the Mayor's Agent until February 12, 1980. (Exhibit No. 6)

8. On Wednesday, February 13, 1980 and Thursday, February 14, 1980, the Mayor's Agent conducted a public hearing on the application. During the course of the hearing 9 witnesses were heard and 46 exhibits admitted into evidence. The record was left open until February 22, 1980 to allow entry of statements of non-parties in favor or in opposition to the application, and 3 such statements were entered into the record on or before February 22, 1980. The record was left open until March 7, 1980 to allow the Applicant and the Party in Opposition to file Findings of Fact and Conclusions of Law. In addition 7 items of evidence were entered into the record after the hearing.

9. The Elks' Lodge, designed by Washington architect B. Stanley Simmons in 1906 is a private, non-residential building in the eclectic Beaux-Arts style which dominated Washington architecture in the late nineteenth and early twentieth centuries. A more detailed description is stated in the Joint Committee's report of January 4, 1980. (Exhibit Nos. 2 and 20)

10. The first such building and development project in the City's history, the Washington Convention Center is a $98.7 million public works project of the District of Columbia. The Convention Center will be a new civic exhibition and meeting facility designed to accommodate international, national, regional and local events. It will occupy a 9.7 acre site in downtown Washington, bounded by 9th, H and 11th Streets and New York Avenue, N.W. The Center was designed by a joint venture partnership of Wetton Becket Associates, Gray and West, Architects and Nottingham and Associates. All of the structures within such Square are owned by the District. The applicant states that all buildings within Square 344, 373 and 374, the Convention Center site area, must be demolished in order to construct the Center. The Applicant stated further that it was clear from the beginning that all buildings on the proposed site would be demolished including the Elks' Lodge. The site selection report and Environmental Impact Statement indicated that two landmark structures are included in the Mount Vernon Square site and that it would-be necessary to obtain measured drawings and remove some architectural features before the buildings were demolished. (Exhibit Nos. 18, 24, 25 and 26)
11. A civic exhibition and meeting facility designed for large events has been one of the most discussed and reviewed projects in the history of the City. The Convention Center project is the product of considerable work by the District government with the Congress, Federal agencies, and business and community groups. In 1969 the Washington Convention and Visitor's Bureau retained consultants to study the feasibility of a multipurpose facility. The consultants concluded that a multipurpose facility in Washington was feasible from a utilization and economic standpoint. Since then many organizations have published studies which recommend such a facility in the area of downtown Washington: General Services Administration for the House Committee on Public Works (1971); National Capital Planning Commission (1971); the District of Columbia Redevelopment Land Agency (1971) and District agencies with consultant assistance (from 1976 - 1980). Gladstone Associates, the City's primary consultant on this project, has had wide experience in the field of convention center feasibility studies in the Country. The firm which has been in the business for twenty-five years has been retained by Buffalo, Dallas, Atlanta, San Diego, Miami, New York and other cities to study existing or proposed Convention Centers.

In 1972 the Congress held hearings and then enacted Public Law 92-520 which provided for the development, construction, operation and maintenance of a Civic Center at a downtown Washington site. From 1973 to 1980 the District government working with the Congress, Federal agencies, businesses and community groups has held countless public meetings and hearings, applied for grant funds, and undertaken many studies, primarily on economic feasibility and site location, that have resulted in final design of a Convention Center. (Exhibit Nos. 24 and 41)

12. Under various sections of the D.C. Code, the Commission of Fine Arts and the National Capital Planning Commission ("NCPC") have regulatory and oversight functions with respect to the design and location of public buildings of the District of Columbia. Both agencies approved the design and site selection of the Convention Center. (Exhibit Nos. 10 and 11)

13. Pursuant to Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470(f), as amended and Section 800.4(d) of the regulations of the Advisory Council on Historic Preservation ("ACHP"). NCPC entered into a Memorandum of Agreement with the District and the ACHP with the purpose of mitigating adverse effects of the construction of the Civic Center on the L'Enfant Plan. The Agreement relates to the following locations and structures: U.S. Reservations 173 and 174; Eye Street, N.W.; 10th Street, N.W.; 900 block of New York Avenue, N.W.; Mount Vernon Theater; PEPCO Substation; Washington Lodge No. 15, BP0 Elks; and American Mosaic Building. Under this Agreement the District agreed to remove certain items of historical interest from the facade of the Elks' building for relocation or storage. The District also agreed to undertake an archaeological survey of the Civic Center site (which has been completed at an expense of $75,000), and to record the aforesaid properties so that there is a permanent record of their existence, in accordance with instructions and directions of the Historic American Buildings Survey, all of which have been completed. (Exhibit No. 11)
14. In a statement dated February 14, 1980, and submitted to the record February 19, 1980 Advisory Neighborhood Commission ("ANC") 2C, the affected ANC, supports the construction of the Convention Center as a project of special merit citing the economic revitalization and redevelopment of the downtown portion of that ANC's area. (Exhibit No. 50)

15. Many civic groups, area churches and businesses have expressed support for the construction of the Convention Center, including the Washington Board of Realtors, the Chinese Consolidated Association which represents 21 associations in Chinatown, Metropolitan Washington Council of Governments, the Metropolitan Washington Board of Trade, New York Presbyterian Church and Washington Gas Light Company. (Exhibit Nos. 23, 41, 51 and 52)

16. The Convention Center will be the City's largest single capital works project and the single most important economic development project in the City's history. The most important feature of the Convention Center will be its economic development role. The many studies undertaken conclude that a Convention Center will be an important and an appropriate addition to the economic, cultural and social functioning of the City. The Convention Center will be a powerful generator of economic development for the City offering substantially increased tax revenues, new jobs and business receipts. It will also be an important element in revitalizing Downtown and it will be feasible because in covering its capital and operating costs it should return a fiscal profit to the City. (Exhibit Nos. 12, 18, 21, 26 and 30)

17. A well-located, well-designed and well-managed Convention Center is projected to attract a net gain of 350,000 delegates and exhibitors to the City annually. This increase in overnight visitors will support approximately 3,000 new hotel rooms in the District of Columbia while simultaneously strengthening the occupancy in existing hotels. There will also be a demand for new shops, restaurants, and offices. The Mount Vernon Square South site is the best location from which to "market" the Center to potential users; the best for generating hotel spin-off development; and the best in its relationship to Metro and visitor-oriented destinations. (Exhibit Nos. 14, 18, 21 and 26)

18. Austin Kenny, Executive Vice President of the Washington Convention and Visitors Association testified that conversations with many national organizations indicate their desire to meet in Washington, D.C. He stated further that the Association has watched former customers such as the American Legion, the National Association of Broadcasters and the National Automobile Dealers Association outgrow the City's existing facilities and move on to other cities. Organizations have indicated that just as soon as the City is assured of the start of construction of such a facility they will consider Washington once again.
19. The Applicant stated that this is the first time the District will ever build a convention center and that it will be the only such building the City will build. The applicant further stated that this structure will be a unique one-of-a-kind building. For many years there has been a recognized need for an adequate meeting and exhibition facility in the District of Columbia. However, former proposals did not receive necessary Congressional and Federal agency approvals to move forward. The thirteen other large sites that were evaluated were not selected because they were either too small, too far away from support facilities or had some other limiting problems. (Exhibit Nos. 18 and 47)

20. The Convention Center will also provide facilities for local functions which the City is presently lacking—local shows, entertainment, sports events and large civic gatherings. The Center will be located in the most accessible location for all of the residents of the City and the Metropolitan Area. The site is on the north edge of the downtown retail core and within one block of the two major downtown Metro stations—Metro Center and Gallery Place. (Exhibit Nos. 18 and 26)

21. The Convention Center will account for approximately 4,000 permanent new jobs in the City. The majority of the jobs created would be semi-skilled and service industry jobs for which there is a great need in the District of Columbia employment structure. Some 2,506 person years of work in construction of the Center and spin-off development is projected. This project will produce unlimited possibilities for the minority business community, particularly in the construction of the Convention Center, jobs and procurement of supplies, and professional and personal services from minority and small businesses. (Exhibit Nos. 14, 12 and 21)

22. Direct spin-off tax revenues from visitor spending and new development, is estimated to provide $20.7 million a year in new net tax revenues to the City. This will cover a total of $7.1 million per year in debt service ($6.6 million) and annual net operating cost ($0.5 million) and provide a direct tax profit of approximately $13.6 million per year. The District government has already collected nearly $10 million from the hotel occupancy tax and the surtax in addition to the regular franchise tax on corporations and unincorporated businesses. These special taxes pay for the site cost and start up costs of the Convention Center. A substantial private development spin-off has been estimated to be at least $45 million. This is evident in the variety of development projects such as hotels, office buildings, retail space, restaurants and rental housing that are completed or underway as a result either directly or indirectly of approval of the Convention Center construction. (Exhibit Nos. 12, 21, 30 and 41)

23. Under Section 5(h) of the Act, the owner must demonstrate the ability to complete a project of special merit. The applicant presented testimony that (1) all properties located in Squares 344, 373 and 374 are titled in the name of the District, and acquisition and relocation have been completed; (2) the District has received $72 million of funding authorization by Congress in the FY '78 and '80 budgets for the planning, site, construction services and construction funding; (3) Congress has authorized funding in the FY '80 budget of $44 million to begin construction of the Convention Center, and; (4) the City Council has approved $26.7 million in the FY '81 budget request for the project.
The party in opposition questioned whether a shortfall of revenue for the District of Columbia as a whole would affect spending for the Convention Center in this year. Such a question was based on the Court of Appeals ruling that a source of tax revenue for the District of Columbia Government was enacted in violation of the District Charter. Considering the possibility of a refund which would result in an annual reduction in taxes earmarked for the Convention Center, the District proposed the following possibilities for continued funding of the Convention Center in the Washington Convention Center Report prepared for the use of the City Council in October, 1979 by the Executive Branch of the District Government:

1. The taxes would remain in effect for a longer period until the amount needed for site acquisition and start up costs has been collected, including the interest on the increased amount of short-term borrowing that would be required.

2. The proportion of the franchise surtax which is earmarked for the Convention Center could be increased from its current 50 percent limit to a higher percentage sufficient to recover the estimated annual loss. This course of action would result in no increase in the actual current tax rates paid by corporations and unincorporated businesses. There would, however, be a decrease in general fund revenues available for non-Convention Center related purposes equal to the estimated annual loss from the unincorporated business franchise tax.

3. The rate of the franchise surtax could be increased while maintaining the current restriction on using no more than 50 percent of the surtax for the Convention Center. Such a course of action would increase the tax burden on corporations and District unincorporated businesses, which already is one of the highest in the nation.

24. Although the party in opposition presented testimony which challenged the technical analysis in the feasibility report, this did not rebut the evidence presented by the Applicant on the reliability of the integrity and methodology used in the Gladstone Associates reports. Mr. Gordon Kennedy, Jr., Resident of Gladstone Associates testified that the methodology used in these studies was basically the same as has been applied by all of the other cities and states which have developed convention-oriented civic centers.

Cross-examination revealed that Mr. John Phelan, the party in opposition's primary witness on convention centers is an economist in the field of industrial organization at the Federal Trade Commission and considers himself familiar with the area of convention centers only within the last three years. Considering the fact that Mr. Phelan's interest in the convention center industry is a part-time interest that he has had only in the last three years, his opinion, while it has been considered, is entitled to less weight when measured against the Gladstone reports,
CONCLUSIONS OF LAW:

1. Pursuant to Section 5(e) of D.C. Law 2-144 no demolition permit may be issued unless the Mayor or his designated agent finds that issuance of their permit is necessary in the public interest. Section 3(j) of the Act defines "necessary in the public interest" as "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." Section 3(k) defines "special merit" as a plan or building having significant benefits to the District of Columbia or the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." Under the law the applicant has the burden of proving a case of special merit.

2. The Washington Convention Center is a project of special merit because it will provide social and other benefits having a high priority for community services. The Center will provide a large meeting and exhibition facility for international, national, regional and local events, chiefly conventions, trade shows and large-scale meetings, that do not now come to Washington or will not return to Washington because of a lack of an adequate facility. This is the first time the District has ever built a convention center and it is the only such building it will build. This is a unique one-of-a-kind building that is the City's largest capital works project.

In its attraction of such meetings and convention delegates, the Convention Center will be the single most important development project in the history of Washington, having a profound impact upon the entire economy of the City by encouraging revenue generation for the City, spin-off development, employment opportunities for permanent jobs in diverse fields, and increased market potential in related industries and surrounding geographic areas.

3. As the Findings of Fact state, the construction of the Convention Center requires the demolition of all structures on Squares 344, 373 and 374, the Convention Center site area. Accordingly the proposed Convention Center requires the demolition of the Washington Lodge No. 15, BPO Elks at the premises of 919 H Street, N.W.

4. The Applicant has demonstrated the ability to complete the construction of the Washington Convention Center within the scheduled time frame and cost limitations.

ORDERED:

Issue demolition permit. Application for EPA No. 80-156 is necessary in the public interest in order to allow the construction of a project of special merit.

Carol B. Thompson
Mayor's Agent
April 11, 1980
Date