



GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
WASHINGTON, D.C.

Reply To

ORDER

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

HPA No. 80-71 (Revised), Application for a new construction permit for a building at 1330 Connecticut Avenue, N.W., Lots 800, 801, and 8-12 in Square 138.

HEARING DATES: May 21, 1980 and May 22, 1980

FINDINGS OF FACT:

1. Applicant, The International Association of Machinists (hereinafter "IAM"), has applied for a permit under Section 8 of the Historic Landmark and Historic Protection Act of 1978, D.C. Law 2-144 (hereinafter "the Act"), to allow for new construction of a planned unit development (hereinafter "PUD") at 1330 Connecticut Avenue, N.W. Lots 800, 801, and 8-12 in Square 138. It is a vacant parcel of land owned by the IAM which is presently used as a parking lot.

2. The subject square is in the Dupont Circle Historic District, which was designated as a Category II Landmark on the District of Columbia's Inventory of Historic Sites on June 17, 1977, and has been listed in the National Register of Historic Places.

3. On October 29, 1979, in accord with Section 8(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 8(b) of D.C. Law 2-144, the application was referred to the Joint Committee on Landmarks of the Rational Capital (hereinafter "the JCL"), which serves as the Historic Preservation Review Board. The JCL considered the Applicant's design in four separate meetings: September 19, 1979; November 15, 1979; December 19, 1979; and February 21, 1980. The first review was pursuant to a referral from the National Capital Planning Commission (hereinafter "the NCPC") while subsequent reviews by the JCL were pursuant to the Act and for the purposes of making a recommendation to the Mayor's Agent as to whether a building permit

should be issued. After each session the JCL recommended that the design was incompatible with the historic district. The specific findings of the JCL are as follows:

September 19, 1979 - Given the comparable height of a number of other buildings in the immediate vicinity, the Committee believes that a 118' high building in this location will be incompatible with the character of this part of the Dupont Circle Historic District because the increase of F.A.R. from 6.5 to 7 and the increase in allowable height on N and 19th Streets would be detrimental.

November 15, 1979 - The design of the building and the character of the Historic District are incompatible because of the proposed materials, facade treatment and fenestration. The Committee recommends that 19th and N Street elevations be restudied in order to deemphasize the verticality of those facades and that the architect work with the Committee to revise the design to be compatible with the character of the historic district.

December 19, 1979 - The design of the building and the character of the Historic District are incompatible because of the proposed materials, facade treatment and fenestration.

February 21, 1980 - The design of the building and the character of the Historic District are incompatible because the height, bulk, and facades of the proposed building do not satisfactorily relate to the townhouses along 19th and N Streets.

Copies of the JCL recommendations can be found in Exhibit Nos. 3 and 6.

5. Pursuant to Section 2.5(d) (7) of the Rules of Procedure (hereinafter "the Rules") pursuant to the Act, a Notice of Intent to schedule a public hearing to consider HPA No. 80-71 (Revised) dated March 11, 1980 was Issued, (Exhibit No. 4)

6. The Applicant filed a claim form for D.C. Law 2-144 for HPA No. 80-71 (Revised) on March 19, 1980. On the form the Applicant claimed that their permit request was necessary to determine whether the design of the proposed new construction and the character of the historic district are incompatible. (Exhibit No. 5)

7. Materials required by Section 3.3 of the Rules were filed by the Applicant on March 20, 1980, March 24, 1980 and April 29, 1980, requesting that the Mayor's Agent grant the subject permit application without holding a public hearing. However, it was also stated that if the Mayor's Agent declined to grant the request that a public hearing be held. (Exhibit Nos. 6, 7 and 17) On May 10, 1980 through separate letters the Dupont Circle Citizen's Association and the DuPont Historic Preservation Committee filed as a party in opposition in this case. (Exhibit Nos. 19 and 20) The Legal counsel to represent both the Association and the Committee at the hearing was made known to the Mayor's Agent on May 20, 1980. (Exhibit No. 26)

8. On Wednesday, May 21, 1980 and Thursday, May 22, 1980 the Mayor's Agent conducted a public hearing on the application. During the course of the hearing thirteen witnesses were heard and forty-two exhibits admitted into the record. The record was left open until close of business Friday, June 6, 1980 to allow the Applicant and the Party in Opposition to file Findings of Fact and Conclusions of Law and to receive photographs of items previously entered into evidence at the hearing. Four additional exhibits were entered during this time.

9. The first order of business at the hearing was the disposition of the Party in Opposition's motion to disqualify the firm of Wilkes and Artis from participation in the hearing.

Citing Brown v Board of Zoning Adjustment, a recent D.C. Court of Appeals decision, the Party in Opposition filed a motion to disqualify the firm of Wilkes and Artis from representing the applicant on the ground that Louis P. Robbins, partner in the firm and co-counsel in the case, had substantial responsibility in and passed on the subject of the applicability of D.C. Law 2-144, and its regulations to proceedings before the Zoning Commission and the JCL on PUDs during his tenure as Acting Corporation Counsel. Extensive testimony was taken of both Mr. Robbins and Mr. Glasgow.

Based on the testimony and specifically the testimony of Mr. Robbins that he had no knowledge of or involvement in the Applicant's PUD application before the Zoning Commission during his tenure at the Corporation Counsel's Office, the Mayor's Agent concluded that Mr. Robbins did not accept employment in a matter in which he had substantial responsibility while he was a public employee. The Mayor's Agent also concluded that Mr. Robbins' substantial role in the drafting and interpretation of the Historic Preservation Act and regulations thereunder while a public employee is not a "matter" under Disciplinary Rule 9-101(b), as that term is defined in ABA Formal Opinion 342. Therefore, the Party in Opposition's Motion to Disqualify the firm of Wilkes and Artis from participating in the hearing was denied. (Exhibit Nos. 9, 15, 18, 19, 26 and 27)

10. On September 1, 1978, IAM filed an application with the Zoning Commission for approval of a one-step PUD to construct a building at 1330 Connecticut Avenue, N.W. (Exhibit No. 6)

11. The Applicant, IAM proposes to construct a ten story office building and retail structure adjacent to the existing IAM headquarters building. No zone change is being requested because under the PUD regulations in the C-3-B zone an increase in height from 90 feet to 130 feet and an increase in floor area ratio from 6.5 to 7.0 may be allowed. The Applicant is requesting the additional .5 floor area ratio and a height of 118 feet. An interior arcade, arcades along both Connecticut Avenue and N Street, N.W. and a landscaped mini-park at the southwest corner of the site at 19th and N Streets which are considered public amenities are a part of the project. Based on discussions with members of the JCL a change in material from white marble to granite and the inclusion of granite spandrels were made.

12. Upon referral by the Zoning Commission the NCPC reviewed the PUD application. In accordance with its internal procedures governing proposed zoning actions in historic districts, the NCPC referred the matter to the JCL. The JCL recommended that the NCPC report unfavorably to the Zoning Commission on the proposed PUD action because it found that the height and bulk of the development would be detrimental to the Dupont Circle Historic District. The specific finding of the JCL at its September 19, 1979 meeting is stated in Finding 4 of this Order. The JCL also considered the design and plans of the proposed development but did not take any action under Section 2.5(f) of the Rules, "Application for Conceptual Design Review of New Construction or Alteration."

NCPC staff through a recommendation of the Associate Executive Director for D.C. Affairs recommended that the NCPC report to the Zoning Commission that the proposed approval of the PUD application would have an adverse impact on the Dupont Circle Historic District. To quote directly from the report:

Staff studies indicated that if the building were redesigned to create a 70 foot high building along N and 19 Streets for a depth of approximately 64 feet, the same floor area ratio could be achieved with approximately 7,000 square feet over the proposed amount. This additional floor area could be used to create an enlarged arcade along 19th Street at the "through block connector."

If sensitively designed to relate in scale and materials with the townhouse architecture across N and 19th Streets, such a building would have the following advantages over the current proposal with respect to its impact on significant qualities of the DuPont Circle Historic District: (1) by occupying the entire site, it would be consistent with the fully built-up street frame which characterizes the grid streets in the historic district, (2) it would largely obscure the unfinished blank wall of the existing Machinist's Building.

Paragraph 7501.11 of the Zoning Regulations indicate that "historic preservation objectives" . . . "are goals of the Planned Unit Development process. Achieving the historic objectives by re-designing the 19th and N portion of this proposed building should be considered the public amenities provided by this project.

By Memorandum of Action, dated October 4, 1979, the NCPC reported to the Zoning Commission that the Proposed approval of the PUD application "will not have an adverse impact on the interests or functions of the Federal Establishment in the National Capital." (Exhibit No. 6)

13. On October 11, 1979, the Zoning Commission issued Order No. 297 (Case No, 78-21), approving the PUD application. The Order contains detailed Findings of Fact, Conclusions of Law, guidelines, conditions and standards. This order was issued after public hearings were held by the Zoning Commission on January 29, April 30, June 4 and August 6, 1979.

Of particular pertinence to this proceeding are the following Findings of the Zoning Commission Order:

Finding 3: The site is currently zoned C-3-B which permits a high bulk major business and employment center for office and retail commercial uses, to a maximum floor area ratio of 6.5 and a maximum height of ninety feet. Additional height and density may be permitted by the Zoning Commission under the Planned Unit Development process.

Finding 5: The subject square is located in the northern portion of the central employment area. Land uses in this section of the City are predominantly commercial. Connecticut Avenue is a major retail center and contains a wide range of speciality shops and retail services. To the west of the subject site is an SP office building at 1901 N Street, N.W., a series of row houses used as office space. Another SP office building at the corner of 19th Street and Sunderland Place and a 130 foot office building at 1333 New Hampshire Avenue, N.W. To the east of the site across Connecticut Avenue is the National Rural Electrical Utilities Cooperative building at 1800 Massachusetts Avenue, N.W. The south side of N Street between Connecticut Avenue and 19th Street includes a ten-story commercial building and a group of townhouses devoted to office uses. To the north of the site, abutting the property, is the existing Dupont Circle Building, which is 130 feet high.

Finding 8: The property involved in the PUD application is located within and adjacent to the southern boundary of the Dupont Circle Historic District. In reviewing this application, special consideration has been given to this fact. The Zoning Commission has taken into account the height and bulk of surrounding buildings. The implementation of the special treatment of 19th Street, the urban park, the proposed height of 118 feet and its relation to the adjacent buildings, and finds that the building is in harmony, both architecturally and in height and bulk with the surrounding neighborhood.

Finding 13: The architect of the project thoroughly reviewed the applicant's compliance with Section 7501.6 of the Zoning Regulations, and the special treatment of 19th Street frontage including the mini-park, designed by Hideo Sasaki, an internationally known landscape architect. A model was presented which showed the careful attention given to the design of the building, and in particular the 118 foot height of the new building as it relates to the adjacent buildings. The cornice line of the new building meets the setback line of the Dupont Circle Building and lines up with the coping of the existing Machinists building. The Commission finds that the proposed height of 118 feet will be completely in keeping with the scale of the adjacent buildings .

Finding 18: The Corporation Counsel by memorandum, dated August 18, 1979, and testimony presented at the hearing stated that D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1979 would control the design of the proposed building. The Historic Reservation Review Board could dictate a more restrictive height and density than existing zoning would allow. The Corporation Counsel representative also stated that procedural and jurisdictional problems, vis-a-vis the Zoning Commission and the Review Board, need to be worked out. (Exhibit No. 6)

14. The DuPont Circle Historic District is a primarily residential district extending generally in all directions from Dupont Circle. The area, which developed during the last quarter of the nineteenth century and the early decades of the twentieth century, is characterized by rows of three and four story residential structures on the grid streets and mansions and freestanding houses along Massachusetts and New Hampshire Avenues.

A number of architectural styles dominate the area and the general design quality of all the styles is extremely fine. Scale, similar building materials, and a building vocabulary and design concept that are consistent throughout the historic district relate the buildings in a way that forms a lively, visually fascinating streetscape. This variety of styles, along with the contrasting building types and street patterns, creates two distinct feelings within the boundaries of the historic district: one of open space and grandeur and one of small-scale intimate space. This quality of feeling within a single, easily definable neighborhood is rare in Washington.

Although the area was developed as a residential neighborhood, other building types are found within the boundaries of the historic district. A commercial corridor developed along Connecticut Avenue and P Street vest of the Circle. This area continues the character of the grid streets in the historic district. Occasional five- and six-story apartment buildings and the dome of St. Matthew's Cathedral, a focal point in the area, interrupt the low-scale residential streetscape, adding variety to the historic district. In recent years a number of new office buildings have been constructed in the area. Because of the scale and unsympathetic design of these buildings, most of the mid-twentieth century structures are considered intrusions in the historic district. The following list of Major Intrusions in the Dupont Circle Historic District was included in the Nomination Form for the DuPont Circle Historic District to the National Register of Historic Places Inventory:

1601 Connecticut Avenue, N.W.
1666 Connecticut Avenue, N.W.
1700 Connecticut Avenue, N.W.
1 Dupont Circle
11 Dupont Circle
1500 New Hampshire Avenue, N .W.
1776 Massachusetts Avenue, N .W.
2015 Massachusetts Avenue, N .W.
2006 Florida Avenue, N.W.
1800 R Street, N.W.
2001 S Street, N.W.
1325 18th Street, N.W.
1616 18th Street, N.W.
1800 18th Street, N.W.
1400 20th Street, N.W.

Several witnesses, including Arthur Keyes, the Applicant's architectural witness, stated that the rowhouses have great value in that they reflect the original residential character of the district.

This is not uniformly the case, however, The Euram Building, a new office building on the Circle is an unusual example of good contemporary design that does not detract from the character of the historic district. The combined effect of good new construction and the older large, well-designed buildings in the area, such as 1785 Massachusetts Avenue, the Dupont Circle Building and apartment buildings in the area is to mitigate the negative impact of the intrusions in the historic district. (Exhibit Nos. 23, 32, 33 and 41)

15. Section 3(d) of D.C. Law 2-144 defines "design" as exterior architectural features including height, appearance, texture, color and nature of materials. Based on the testimony of Charles McLaughlin, a member of the JCL; Perry Fisher, Executive Director and Librarian of the Columbia Historical Society; and Charlotte Burk, a member of the Dupont Historic Preservation Committee and several exhibits entered into the record, the design of the DuPont Circle Historic District is described as follows:

Height: Structures which rarely acted forty to fifty feet

Appearance: Low scale buildings with varying treatment of each floor from the street level up to the roof, with the upper levels being smaller in height than the main floor; the arrangement of windows and doors, necessarily reflects this design and so the fenestration is basically a vertical domestic style rather than a slick unrhythmic bank or module; and

the buildings meet the street intersections with a solid, powerful building mass creating some sort of rhythm and break in the facade; the scale of the buildings is respectful of the tree line

Texture: patterns created through articulation of the brickwork or stonework both on the facade and cornice

Color: mostly bright pastels and muted primaries, especially red brick

Nature of Materials: brick, atone, terra-cotta

The architectural elements which characterize the DuPont Circle Historic District, such as terra-cotta ornamentation, the decorative brickwork, the ordering of the fenestration, and the heavy and rusticated stonework, are among the most imaginative in the City. The variety in color, texture and cornice treatment creates a design rhythm that is of a harmonious grouping that is active and not unduly repetitive. (Exhibit Nos. 6, 23, 29, 31 and 40)

16. Several large buildings, located on the grand avenues, were incorporated into the overall character of the historic district through careful application of the same height or other design elements. The Dove Mansion, the Plowright Mansion and the Columbian Embassy are such examples. These buildings pick up basic fabric of the surrounding neighborhood which is red brick and stone regular rhythmic placement of windows which are more vertical.

Never large buildings such as the Sunderland, the Euram and the Dupont Circle Building are examples of design which acknowledge that a certain balance and harmony exists in buildings of this historic district. Along with the older large buildings in this district these buildings demonstrate that use of varied decorative articulation of the facades, harmonious colors and materials and nonrepetitive fenestration can result in larger buildings which maintain the rhythm and character which the rowhouses create. (Exhibit Nos. 6, 23, 29, 31 and 40)

17. The Applicant's architect, Vlastimil Koubek, stated that the immediate surrounding area of the subject site has nineteen buildings which are or exceed ninety feet. However, the record shows that only nine of the nineteen that were referenced are located within the historic district. All but three of the nine conform with the current ninety foot height limit of the C-3-B zoning. Those which exceed ninety feet are the Dupont Circle Building, the existing IAM building and the PUD constructed in part with development rights transferred from the historic Heurich Mansion. As already stated in Finding 16, only one of these three can be said to have a relationship to the historic district's characteristic architecture and that is the DuPont Circle Building.

18. When considered against the design of the Dupont Circle Historic District that is stated in Finding 15, the design of the proposed building compares as follows:

Height: The proposed design involves a height of 118 feet at the cornice line and 136 feet including the roof structure. The roof structure is substantial and even according to testimony by the Applicant's witness, architect Arthur Keyes, should be included as a design consideration.

The disparity between the proposed height and the height of historic period buildings across Connecticut Avenue, N. Street and 19th Street would be 68 feet at the cornice line or 86 feet overall. This can be compared with 6 maximum disparity of 40 feet for structures within the 90 foot limit of the C-3-B zone.

The 118 foot cornice line height is justified in terms of serving an "in-fill" function between the existing DuPont Circle and IAM buildings. There is, however, no space between structures to be filled on the 19th or N Street side of the development.

The Applicant's architect, Vlastimil Koubek, testified that a building could be constructed on the available land which would achieve the same square footage of floor space as proposed but still conform with the 90 foot height of casting zoning.

Materials, Texture and Color: The proposed facade is of large, low-lustre reddish brown granite panels. The facade treatment, while an improvement over the initially proposed glossy white marble, is nonetheless a marked departure from the painted and unpainted brick construction which predominates in the historic district.

Appearance: The proposed fenestration design is that of horizontal bands of dark glass which span across the width of the structure. The glass is flush with the exterior granite bands which interspace the glass bands. The discrete indented windows of varying proportion from one story to another, and frequent rich detail in the window casing brick work of the historic period structures, stand in stark contrast with the flat unarticulated and abstract bands of glass and granite.

The proposed structure presents a monolithic facade to both Connecticut Avenue and 19th Street marked only by a series of fine vertical lines at approximately 10 foot intervals. There is no relationship to the rhythm of the proportional scale created by the historic period rowhouse or mansion type construction. The streetscape presented by the new structure would be a flat horizontally banded wall rising far above the tree level - in contrast with the repeated vertical patterns of the predominant historic design.

The Applicant advances the theory that the standard for design compatibility for the Dupont Circle historic district is established by contiguous structures which, in this case, are of substantial height and bulk proportions far in excess of that of the historic period of development - and even the C-3-B zoning. In support of this proposition, Applicant cites the map of the district with "zig-zags" around some modern buildings and not others. Because the map includes both Urge buildings on the subject square, but not large buildings across 19th Street and Connecticut Avenue, Applicant argues that the design standard must defer to modern height and bulk proportions.

After, considering all of these factors, the Mayor's Agent finds that while the standard for design compatibility for this site can recognize the adjoining structures, particularly on the Connecticut Avenue side, the primary standard must be that of the historic period structures. Section 2(b)(c) of the Act states "to assure that new construction... in an historic district are compatible with the character of the district . . ." (Exhibit Nos. 6, 23, 28, 29, 30, 31, 32, 33, 33 and 40)

19. The record as transcribed by Neal Gross, Court Reporters and Transcribers is incomplete. There are countless typographical and grammatical errors and the following segments of testimony have been identified as missing by the Mayor's Agent and/or the Counsels for the Applicant and the Party in Opposition: the segment of Charlotte Burk's testimony that accompanied her slide presentation; the segment of Anne Helwig's testimony which clarified questions raised during her first appearance during the bearing; and closing remarks by the Mayor's Agent .

Orders by the Mayor's Agent dated May 30, and June 4, 1980 were placed into the record. They indicate an acknowledgement of the problems with the official transcript by the Applicant and the Party in Opposition and their agreement to an extension of the time by which to file Findings of Fact and Conclusions of Law and the time by which the Mayor's Agent must make a decision. (Exhibit Nos. 45 and 46)

CONCLUSIONS OF LAW:

1. Section 2(a) of the Act states that "..this Act is intended to:
 - (1) effect and accomplish the protection, enhancement and perpetuation of improvements and landscape features of landmarks and districts which represent distinctive elements of the City's cultural, social, economic, political and architectural history.
 - (2) safeguard the City's historic, aesthetic and cultural heritage, as embodied and reflected in such landmarks and districts..."

Section 2(b) continues that "It is further declared that the purposes of this Act are:

(1) with respect to properties in historic districts;...

(c) to assure the new construction "in an historic district are compatible with the character of the historic district;"

2. Section 8(f) of the Act, states that a new construction permit "shall be issued unless the Mayor, after due consideration of the zoning laws and regulations of the District of Columbia, finds that the design of the building and the character of the historic district or historic landmark are incompatible. Section 3(d) defines "design" as exterior architectural features including height, appearance, texture, color and nature of materials. The burden of proof as to the incompatibility of the design of the proposed new construction and the character of the historic district is on the Party in Opposition.

3. The Findings of Fact and the record show that due consideration of the zoning laws and regulations have been made in this case.

4. The Mayor's Agent concludes that the character of the Dupont circle Historic District as stated in the Findings of Fact is a primarily residential district extending generally in all directions from Dupont Circle. The area, which was developed during the last quarter of the nineteenth century and the early decades of the twentieth century, is characterized by rows of three- and four-story residential structures on the grid streets and mansions and freestanding houses along Massachusetts and New Hampshire Avenues. The commercial area that developed along Connecticut Avenue continues the character of the grid streets in the historic district.

5. As stated in the Findings of Fact, the Mayor's Agent concludes that the design of the building and the character of the historic district are incompatible because: (1) the disparity between the height of the proposed building and the height of buildings in the historic district is substantial, with the height of the proposed building much higher; (2) the material of the proposed facade is a marked departure from the material of the facade construction which predominates the historic district; (3) the discrete indented windows of varying proportion from one story to another and frequent rich detail in the window casing brickwork of the historic structures, stand in stark contrast with the flat unarticulated and abstract bands of glass and granite in the proposed design; (4) the proposed structure presents no relationship to the rhythm of the proportional scale created by the historic period residential and commercial structures; and (5) the building is not respectful of the streetscape and tree lines of the historic district.

6. Also based on the Findings of Fact, the Mayor's Agent concludes that while the standard for design compatibility for this site can recognize the adjoining structures, the primary standard in cases of applications for new construction permits must be that of the historic period structures within the historic district.

ORDERED:

Do not issue new construction permit. The design of the building in Application for HPA No. 80-71 (Revised) and the character of the historic district are incompatible.

Carol B. Thompson
Mayor's Agent

June 9, 1980
Date