

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS



IN RE:

3240-42 Reservoir Street, N.W.)
Applicant,)
Aramus Corporation, N.V.)

) HPA No. 88-114
) HPA No. 88-115

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

OPINION AND ORDER

BACKGROUND

This matter came before the Mayor's Agent for D.C. Law 2-144, the Historic landmark and Historic District Protection Act of 1978, codified as D.C. Code §5-1001 et seq. ("the Act") for review of an application for the construction of two town houses at 3240 and 3242 Reservoir Street, N.W. located on square 1280 in the Georgetown Historic District. The application for new construction was filed by Aramus Corporation, N.V. ("Applicant") and referred to the Commission of Fine Arts ("CFA") pursuant to D.C. Code §5-1007(b) and D.C. Code 55-1102. The CFA submitted the application to the Board of Review ("the Old Georgetown Board") pursuant to D.C. Code §5-1103, for a recommendation regarding the design and plans for the project. The project design for the site has been modified considerably since the initial design for a small hotel was proposed in November 1984. Intense community resistance to that plan resulted in the withdrawal of the proposal and the substitution of an alternative proposal for a condominium apartment building.

The CFA recommended approval of the concept design for a six unit condominium apartment building on May 29, 1985 in a recommendation to the Mayor's Agent. The Historic Preservation Review Board ("Review Board") reviewed the intended demolition work on the site at meetings on three dates in 1985: July 17, 1985; August 21, 1985; and September 18, 1985. On September 18, 1985, the Review Board recommended approval of the demolition permits requested by the Applicant and the permits were subsequently issued by the Department of Consumer and Regulatory Affairs ("DCRA").

Despite CFA approval for the condominium apartment building concept, the Applicant, in an attempt to address lingering opposition to the project, modified the design again. At a meeting of the OGB on September 30, 1986, the Applicant presented the conceptual design for the construction of two town houses. The OGB recommended further refinement of the town house concept in response to issues raised on open space, height, mass, and continuity of scale of the project. The CFA, in its October 16, 1986 meeting, endorsed the Applicant's revisions and suggested further refinements to the design. In a January 15, 1987 report to the CFA, the OGB recommended approval of the town house concept. The CFA agreed with the OGB and recommended approval of the conceptual design for two town houses, in a recommendation to the Mayor's Agent dated January 29, 1987.

On February 17, 1987, the Applicant was advised by the Review Board staff that the Board, in an effort to prevent duplication of the review process undertaken by the CFA, would not review the conceptual design approved by the CFA. The Applicant's final working drawings were submitted to the OGB for final approval at the OGB's meeting on December 1, 1987. The OGB recommended approval of the final drawings. The CFA considered the OGB's recommendation in a meeting on December 17, 1987. At that meeting, the CFA recommended issuance of the construction permit for the town houses and followed up with a written recommendation to the Mayor's Agent, dated January 5, 1988.

One of the most vocal opponents of the project has been Mr. Courts Oulahan, an adjacent property owner who has requested that the Mayor's Agent conduct a public hearing on the proposed construction. The Mayor's Agent has found that such a hearing is not required by the Act, nor has it been requested by the Applicant pursuant to D.C. Code § 5-1007(e).

In lieu of a public hearing, the Mayor's Agent reviewed the record before the various boards and commissions and issued an order dated July 5, 1988 granting the issuance of the construction permit in HPA Nos. 88-114 and 88-115. The following findings of facts and conclusions of law support the July 5, 1988 order.

FINDINGS OF FACT

1. Applicant's overall project for development at 3240-42 Reservoir Street, N.W. has been reviewed by the OGB, the CFA and the Review Board respectively in no fewer than thirty-one (31) hearings.
2. The conceptual design proposal for the construction of two town houses which is before this Mayor's Agent was approved by the OGB on December 1, 1987 and the CFA on December 17, 1987. The Review Board declined to review an earlier conceptual design approval by the CFA and so stated, through staff, on February 17, 1987.
3. The site of the proposed project is zoned commercial (C-2-A).

4. During its meeting on December 17, 1987, the CFA considered a copy of a resolution from the Advisory Neighborhood Commission (ANC) 2E, adopted on September 4, 1985. The resolution stated that the Review Board "should exert maximum effort to assure that such new structure is developed on a scale and in a manner that is compatible with the immediate neighborhood, taking into account its historic character and the desirability of preserving open space at the subject locations".

5. Opponents of the application, specifically Mr. Oulahan and Ms. Alicia Boyd, were present at the December 17th meeting and discussed their opposition to the project. They argued that the proposed project was incompatible with the immediate neighborhood. They stressed issues of preserving open space in the area and providing a continuity of scale by reducing the mass and height of the project to conform with adjacent structures. The opponents also argued that the final working drawings did not conform to the conceptual design.

Mr. Oulahan argued that the conceptual design approved by the CFA on January 15, 1985 was for a three-story building - not a four story building 40 feet in height with an additional three foot chimney. Mr. Mark Policy, counsel for the applicant, stated that the actual height of the proposed structure had not changed. Mr. Cochran, architect for the project, also stated that the total building height had not changed and noted that the difference in the number of stories and how they are measured was based on a formula that changed with the enactment of the Building Officials and Code Administrators (BOCA) code which set forth new building requirements. The Secretary of the CFA noted that, in anticipation of questions about the conformity of the most recent plans with those approved by the CFA in 1985, the staff closely examined the conceptual design and the final drawings. He noted that the size had remained unchanged and the drawings essentially conformed to the approved concept scheme.

6. There were at least twenty-seven (27) hearings held by the OGB and the CFA on the construction project at 3240-42 Reservoir Street, N.W. The issues of preservation of open space, mass and height of the project, and compatibility of the project with the character of the historic district were raised at the majority, if not all, of those hearings.

I find that the issues raised by the opposition, particularly issues of open space, continuity of scale and compatibility of the proposed construction with the character of the historic district, have been adequately reviewed and addressed by the OGB and the CFA in reaching their decisions to recommend approval of the design.

CONCLUSIONS OF LAW

Section 5-1007(f) of the D.C. Code provides that a permit to construct a building or structure in an historic district or on the site of an historic landmark 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. As the Mayor's Agent for the purpose of determining whether the permit should be issued, I find, after careful review of the record before the OGB, the CFA and the Review Board, that the proposed project is compatible with the character of the historic district.

The resolution adopted by ANC 2E requested the Review Board to exert maximum effort to assure that the project was developed in such a manner as to be compatible with the immediate neighborhood taking into account its historic character and the desirability of preserving open space. However, pursuant to § 5-1007(b) of the Act, referral of the design for new construction to the Review Board was only discretionary since the new construction was subject to review by the CFA pursuant to the Old Georgetown Act. In this case, the CFA conducted the necessary review required by Section 5-1007.

Section 5007(b) further provides that 'the Mayor shall consider any recommendation by the Review Board or the Commission of Fine Arts. I accept the recommendation of the CFA which I find is based on lengthy and detailed review of this project for, among other things, its compatibility with the historic district. I find that the concerns of the ANC have been adequately addressed by the CFA. The record clearly shows that the CFA has adequately addressed not only the issue of compatibility with the historic district, but also issues of open space and continuity of scale with adjacent structures. Having given great weight to the issues raised by ANC 2E, I find that the design of the proposed new construction for HPA Nos. 88-114 and 88-115 is compatible with the character of the historic district.

ORDER

Issued July 5, 1988.

Date:

July 6 1988



Diane L. Herndon, Esq.
Mayor's Agent for
D.C. Law 2-144