

**BEFORE THE MAYOR' AGENT FOR D. C. LAW 2-144
HISTORIC DISTRICT AND HISTORIC PROTECTION ACT OF 1978
HPA NOS. 90-139 AND 90-140**

**Application for Demolition Permits
for Buildings Located at 2521 and 2523 K Street, NW**

STATEMENT OF THE CASE

1. The Applicant, Bronberg Incorporated (hereinafter Bronberg), applied for a permit under Section 5 of the Historic Landmark and Historic District Protection Act of 1978, D.C. Law 2-144 (hereinafter the Act) to partially demolish two landmark buildings known as the Cooper Houses, located at 2521 and 2523 K Street, N.W

These two story buildings, the oldest in Foggy Bottom, were granted landmark status in 1984 and have been uninhabited since 1983.

2. The facades of both buildings would be retained and restored and the remaining walls of the structures would be demolished by hand and reconstructed to the degree possible. Bronberg, Inc. also applied for a permit to construct an 180-unit apartment addition to the landmark structures. The residential apartment building will be constructed in such a manner to integrate the landmark structures into the new building.

3. The applications were referred to the Historic Preservation Review Board (HPRB) on November 7, 1989.

4. The HPRB reviewed the demolition application at its December 13, 1989 public meeting. The staff report, which stated that the proposed partial demolitions were consistent with the purposes

of the Historic Preservation Act, was adopted by the HPRB. However, the HPRB noted that Section 5 of the Act, requires the Mayor's Agent to conduct a hearing prior to the issuance of the requested partial demolition permit. Consequently, Bronberg was notified that the HPRB had referred their recommendation to the Mayor's Agent and advised Bronberg to request a public hearing.

4. By letter dated December 15, 1989, Bronberg requested the Mayor's Agent to convene a hearing to consider the matter. It was originally scheduled for January 28, 1990, and subsequently re-scheduled for February 20, 1990.

5. Notice of the scheduled public hearing was published in the D.C. Register and mailed to all appropriate persons as required by law.

6. On January 18, 1990, Bronberg submitted its prehearing statement, which concluded that the proposed demolitions were consistent with the purposes of the D.C. Law 2-144 and were in the public interest.

7. On February 20, 1990, the Mayor's Agent convened a public hearing on the application, during which time, 12 witnesses were heard and 59 exhibits were admitted into evidence. The groups participating in the hearing included Bronberg, D.C. Preservation League, ANC 2A, Foggy Bottom Association, ANC 2A-Single Member District 03, Foggy Bottom Historic District Conservancy, and the Bader Unit Owners' Association.

8. Gerald Goldberg testified for Bronberg about the background of the project, the evolution of the plans and the efforts to incorporate community comments into the final design. According to his testimony, the property first came to his attention in December, 1988. From January through April 1989, he devised several conceptual schemes in conjunction with his architects and members of the community to come up with an appropriate building design for that property. He stated that the initial concepts merely preserved the front facades of the building, building them into a matter-of-right apartment building which was to be built at the streetline. This proposal was unacceptable, and consequently, he continued to work with the parties to determine the appropriate structure for the site.

9. Bronberg developed a concept that maintained the two townhouses and incorporated them into a matter-of-right apartment building directly above them. Although this concept was rejected by the HPRB in May of 1989, several persons, including the Preservation League, Historic Preservation staff and members of the affected ANC requested Bronberg to continue to work with the affected community to find an acceptable solution. Finally, Bronberg developed a concept which displayed the townhouses forward, with the new building set back. Bronberg presented the concept, which included a new building 110 feet in height with appropriate set backs at the June 1989 HPRB meeting. According to Bronberg, the proposed building is compatible with its surrounding neighborhoods, including the block as a whole, the buildings across the street and other structures within the immediate vicinity.

10. Additional discussions continued after the June HPRB meeting that led Bronberg to reduce the height of the overall structure by 2.5 feet to 107.5 feet. Both the Historic Preservation Division staff and the D.C. Historic Preservation League supported this concept, which was approved by the Board at its July 1989 hearing. Bronberg argued that he could not reduce the height more because of economic considerations, i.e. the cost of preserving the Cooper Houses.

11. The Board of Zoning Adjustment approved the HPRB-approved concept in November of 1989.

12. Oehrlein Associates, preservation architects, were hired to negotiate with the staff of the HPRB a Mitigation Plan which embraces the preservation aspects of the project including archeological requirements and proper historical documentation. In addition, John Milner Associates will perform the required archeological studies or excavations if needed. Mr. Goldberg testified that additional efforts were undertaken to preserve original materials contained in the landmark structures including the fireplace mantels, wood trim and other items in order to ensure that they were preserved for inclusion in the proposed project.

13. According to Mr. Goldberg, one of the major concerns of the ANC and the neighbors was that the building be used strictly for residential purposes. He further testified that throughout the conceptual design phase, Bronberg had tried to satisfy all the various interests of the community. For example, Bronberg would produce

three levels of underground parking which exceeds the parking requirements under the Zoning Regulations. Bronberg also agreed to place restrictive covenants on the property restricting the building to long term residential use pursuant to the desires of the local community.

14. Ms. Oehrlein, the preservation architect retained by Bronberg as an expert witness, testified that the buildings at 2521 and 2523 K Street are the two oldest documented houses in the Foggy Bottom neighborhood. The older house, 2521 K Street, has been documented to the year 1843, and the dwelling at 2523 K Street is dated at 1868. According to Ms. Oehrlein, these two buildings have four areas of historical significance: (1) the illustration of regional trends in vernacular design, (2) the evolution of building forms in an increasingly urban setting, (3) introduction of academic ornament in vernacular architecture, and (4) the change in the immigrant social composition. The building located at 2521 K Street was originally constructed as a detached house and was sited with its western elevation on the center line of the lot. In 1868 the lot was subdivided and the second house was constructed directly adjacent to the first and given the number 2523 K Street.

15. According to Ms. Oehrlein, neither of the buildings is in good physical condition. The building located at 2521 K Street is in poor condition and marginally stable. The roof is severely damaged and the building is open to the weather. The exterior brick masonry appears to be sound and the windows have been blocked off with concrete block to prevent unauthorized entry. The exterior

wooden trim is in very poor condition. The east porch has been badly damaged by a fire and the front cornice is now missing entirely as a result that fire. The entire floor framing of the second and attic levels as well as most of the roof framing is either badly burned or missing, making the upper floors of the building inaccessible. Charred remnants of the original stair paneling, cupboards, wainscoting, and window and door casings remain intact in some areas, and a variety of sashes, doors and mantels remain in the building.

16. The building at 2523 K Street has less fire damage and the roof is basically weather tight but the exterior masonry walls are in poor condition. There is substantial bowing on the south elevation and in the separation wall between the two buildings on the lot line. The window openings on 2523 K Street have also been closed off. Some of the second floor framing and all of the attic and roof framing are intact. A few sash and front door casings are in place, but other finishes and plaster have been removed from the walls.

17. Ms. Oehrlein further testified that the five loose mantel pieces and miscellaneous wood trim stored on the first floor of 2521 have been removed from the building and preserved for future use and documentation.

18. A documentation program has been developed in coordination with the D.C. Historic Preservation Division staff and D.C. Preservation League. The program of documentation includes four by five inch black and white photography of the major elevations

of the buildings and substantial portions of the entrance. Additional color and black and white photographs of all the remaining elevations and details would be included in the documentation program. Measured drawings of the first and second floor plans and drawings of the southwest and east side elevations as well as details of the entire millwork would also be included. Data sheets for each house would be prepared based on the research that was done for the landmark application. In addition, there would be an archeological program which would be conducted in two phases. The first phase is now well under way with archival research being basically complete. Preparations are ongoing for on-site investigations.

18. Ms. Oehrlein testified that she would be conducting mortar and paint analysis on the remaining fabric of the buildings as well as the fabric that has already been removed to determine the original mortar composition and paint colors. Documentation of the brick and joint sizes and coursing, and documentation, dating, and possible relocation for any fabric that had been removed would be important in the restoration of the two landmark structures. She testified that the Applicant would stabilize the facades and support them in place during construction and dismantle the remaining portion of the entire building including any original or significant interior trim. Further, the Applicant would dismantle and store for reuse the masonry of the east and west exterior walls as well as the center party walls.

19. Prior to any demolition on the site, the facade would be stabilized by repairing the damaged areas of the facade at 2523 K, particularly along the windowheads and along the east edge where it is now unstable. The Applicant would remove the remaining wood windowheads, cornice and porch details and any original sash would be protected during the course of construction to make sure that it was available for reinstallation in the buildings. The Applicant would also remove the wood trim and flooring that is determined to be original from the significant period of the buildings and restore it for reinstallation. Ms. Oehrlein further testified that a facade bracing system to support the south facades of the building will be installed to support the full depth of the wall and prevent damage to the masonry. In addition, under Ms. Oehrlein's supervision the Applicant will strip the paint and dismantle by hand, the east, west and party masonry walls. The cleaned brick will be stored for reinstallation. The remainder of the entire building fabric and finishes would be demolished by hand including the roof framing and roofing materials. During the course of new construction, new concrete frames will be constructed behind the facades with floor levels at the original location. This frame will be connected to the original facades at the south portion of the buildings.

20. Ms. Oehrlein explained that during the course of the restoration of the facades, the brick will be cleaned, the paint removed, all of the mortar joints pointed to match the original profile with the original mortar composition, and any damaged brick will

be replaced to match the existing brick. At the rear of the buildings, the Applicant would reconstruct the east and west walls with salvaged face brick to as far north of the side as will be visible in the completed project. The party wall between the two buildings would be constructed above the roof line with salvaged brick. The mortar and joint profile of the new wall construction would match the original wall. Further, the Applicant would reconstruct the roofs on both buildings to match the existing configurations with new roofing material. The east porch will be reconstructed using the portions of the existing structure that are salvageable along with new material to match to the existing or documented configuration of the porch. The entire partitions will be reconstructed with a minimal amount of new partitions to meet modern usage, i.e., bathrooms and kitchens. New and salvaged exterior trim will be reinstalled at the original locations, and new interior trim will replicate the earliest extant trim identified during the documentation.

21. Ms. Oehrlein further testified that the Applicant would install new or salvaged wood flooring in main rooms on the first floor of both buildings. In addition, modern mechanical, electrical, and plumbing systems would be installed in the buildings to have a minimal impact upon the original room configurations.

22. In response to a question, Ms. Oehrlein further testified that retention of the buildings in their total form including the party wall, the east west and north exterior walls was not possible for two reasons. First, the exterior walls are not stable and second,

the proposed construction would disrupt the form of the walls. Ms. Oehrlein stated that the masonry walls are reasonably stable, but there is no frame to the building at 2521 K Street so that the east wall and the party wall between the buildings has no lateral support. The proposed construction on the site and the necessary underpinning of the adjacent apartment buildings necessitated the removal of the existing east and west walls. The south wall of 2523 is recognized as not being in stable condition, however, the Applicant is committed to stabilize it and support it in place. Photographs of the wall conditions were offered as Exhibits Nos. 52 and 53.

23. Robert McMahon of Smith-McMahon Architects, project architect, testified regarding the development of the design of the proposed project. He explained that in designing the project he had conferred with the HPRB staff, the Advisory Neighborhood Commission, the D.C. Preservation League and various members of the surrounding community. He noted that each of these groups have supported the architectural design of the new project and that the design is reflective of the diverse opinions received during the development process. He described the surrounding neighborhood and its architecture and stated that the proposed project is compatible in size, design, and bulk to its urban environs. Mr. McMahon stated that the solution of the urban context problem presented was derived by taking hue from portions of the existing buildings, detailing smaller fabric, massing the first transitional piece of architecture and creating

a building which sits back approximately 16 feet from the street while stepping back to the west. This formed an entry court for the new building and also preserved the existing side yard to 2523 K Street. The new addition attempts to mimic some of the proportion and details of the existing Cooper Houses and provide through proportion and perspective a proper distance between the existing landmarks and the new addition.

24. Mr. McMahon further testified that the succeeding portions of the building would divide into two stepping and retreating elements. There are balconies that retreat on the upper floors in a pair and are set back almost 36 and 40 feet from the street. This transitional element paints a background palette for the colors of the Cooper Homes. The new building will fall to the background and provide a proper setting for the historic landmarks. Mr. McMahon further testified that the architecture of the building behind it is divided through its massing and also through a color scheme that incorporates the natural brick of the existing buildings. The schemes are borrowed from the general brick scheme and tone of the building to the west known as Potomac Overlook. In a like manner, a portion of the structure that was located on the east side would also borrow from the color and tone of the building located on that side.

25. Mr. McMahon further testified that one of the distinctive features of 2521 K Street is an exposed porch that would be maintained to its full depth and would provide a view into a private court.

He further testified that the whole volume of the buildings will be retained. The walls that meet with the new building will be constructed of new material but they will not be visible. He further stated that they would provide similar examples of the brick paving that is found in the general area and would create a garden along the edge of 2521 K Street.

26. Mr. McMahon stated that the most important aspect of this project was the restoration of the two landmark buildings. He indicated that the Applicant was going to great lengths to restore the two townhomes so that they could be used for future Foggy Bottom residents.

27. Suzanne Ganschinetz, HPRB staff representative, testified on behalf of the Historic Preservation Division. She stated that the HPRB and the staff approved the project and were satisfied that it met the requirements of the Historic Preservation Review Board. In regard to the demolition, the staff recommended taking down the side facades for the stabilization and retention of the original building footprint. The staff recommended that the HPRB adopt their recommendation and that the Board recommend that the Mayor's Agent approve the issuance of the permit because the proposed partial demolitions in conjunction with the project were consistent with the purposes of the Historic Preservation Act. The staff further recommended that if the Mayor's Agent found demolition necessary in the public interest, the issuance of a demolition permit should

be conditioned on the completion of filing of plans for the new construction. Ms. Ganschinetz stated that the staff was satisfied with the plan for the restoration, retention, stabilization and rebuilding of this project.

28. Charles Clapp, Chairman of ANC 2A, stated that the ANC supported the application of Bronberg for the partial demolition of the properties located at 2521 and 2523 K Streets and urged that the Mayor's Agent find that such actions were desirable and necessary and consistent with the Historic Preservation Act. Mr. Clapp stated that it was vital to move expeditiously on the project because of the advancing deterioration of the project. The houses are among the oldest in the Foggy Bottom area and are in an extremely fragile state. He further noted that the buildings had not been occupied for more than six years and that a previous owner of the property had consistently neglected the property. He noted some of the problems that the building currently suffers such as fire damage, water penetration, loss of part of the entire structure, wanton vandalism, habitation by itinerants and the unacceptable accumulation of debris along with the general disintegration of the property. He noted further that the ANC had three vital concerns: (1) preservation of the historic structures, (2) insurance that genuine long term residential housing be maintained, and (3) that the completed buildings be an asset to the area. He further testified that the proposed partial demolition was consistent with the purposes of the Act because it would permit

preservation work of significant public benefit that could not reasonably be expected to occur without major reconstruction that outweighed the disadvantages of demolition.

29. Mr. Clapp noted that the Applicant had agreed to preserve the structure to the extent possible and that the ANC was reassured by the steps already taken to preserve the structure. He noted that the development of this property had a long history but had been a productive effort. Although the initial proposal by the Applicant was initially rejected, the ANC offered to work with him to come up with a proposal that would meet community and developer needs. The ANC was successful in pursuing its desire for more parking, for set backs, full restoration of the houses, and for design changes directed towards improving the appearance of the building. He noted that the Applicant had always been willing to meet with the ANC and when possible has tried to accommodate the stated desires of the ANC. He further stated that the ANC 2A favors the proposal and requested that the Mayor's Agent find that the partial demolition is consistent with the provisions of the Historic Preservation Act and rule accordingly so that the project could proceed expeditiously.

30. Patricia D. Wilson of the D.C. Preservation League ("DCPL") stated that the DCPL supported the HPRB's recommendation regarding the partial demolition of the subject structures as consistent with the purposes of the Act. She stated that the League supported the proposed demolition of the rear and side walls of the Cooper

Houses because the proposed treatment would not result in the loss of significant historic features and because substantial documentation indicated that the desired preservation of the building is impossible without reconstruction. She further stated that the DCPL strongly recommended that the Applicant be required to adhere to a strict and enforceable program of mitigation involving documentation, hand demolition, salvage and reconstruction. She further stated that in DCPL's opinion the project failed to meet the test and provide sufficient amenities to be considered a project of special merit. However, the DCPL supported the application for partial demolition as a case which is consistent with the purposes of the Preservation Act because the project will retain and enhance the landmark structures thereby encouraging their adaptation for current use.

31. Maria Tyler, Commissioner, ANC 2A Single Member District 03, testified in opposition to the Applicant's proposal. She stated that the Applicant had failed to reduce the height of the building in accordance with specific instruction and that no economic evidence justifying the need for the additional height and bulk had ever been presented despite her request. She stated that there should be a new look at the height issue and that she had been directed by the Chairman of the HPRB to take up the matter of height and costs with the Mayor's Agent. In response, the Mayor's Agent stated that the Applicant had not presented a case of unreasonable economic hardship for decision at this hearing. The sole grounds for this action was

consistency with the Historic Preservation Act. It was also noted that the issue of height had already been addressed by the Board of Zoning Adjustment at a previous hearing. Statements regarding the cost data were not added to this particular record.

32. David Fothergill-Quillin testified that the Bader Unit Owner's Association, an adjacent land owner, would be affected by the Applicant's proposal. He stated that it was his position that there should be a reduction in the height variance which the developer obtained from the Board of Zoning Adjustment because the cost of the proposed development did not suggest a need for additional height. Mr. Fothergill-Quillin noted that the issue of costs seemed to keep coming up in the various proceedings. In response the Mayor's Agent stated that the Applicant had decided to proceed on the basis of consistency with the purposes of the Act and that it was the Applicant's responsibility to show that his proposal was consistent with the purposes of the Act. Mr. Fothergill-Quillin also stated that the views of Bader Condominium and the Barkley House had been voted down before the ANC 2A on January 13, and thus their views were not included within the proposed covenant.

33. Elaine DeVito, president of the Foggy Bottom Association testified that height should have been an issue in the particular case and that recommendations of the BZA had not been followed in the final development of the Applicant's proposal.

34. Jeffrey Tyler, a representative of the Foggy Bottom Historical District Conservancy testified that economic hardship and height should have been major considerations under the Act and that economic consideration should be part of the Mayor's Agent's decision. He stated that the Applicant has never placed any connotative economic evidence in front of the Historic Preservation Review Board and that the Board did not ask for such evidence. He stated that the Mayor's Agent had the right to look at economic evidence and that the economic argument was the crux of the whole project.

35. Reverend William Wegener testified for Petra Ocsinsky and read a statement into the record stating that her own particular building would be robbed of sunshine if the developer's request was approved, thus having a detrimental effect on her property. The letter was submitted into evidence as Exhibit 58.

36. The record was left open until March 13, 1990 for the filing of the proposed finding of fact and conclusions of law. Applicant requested the right to submit additional photos and a final set of plans at the time of that filing.

FINDINGS OF FACT

1. The subject applications for demolition will permit restoration of significant historic landmarks at 2521 and 2523 K Street, NW in the Foggy Bottom area by the Applicant. The proposal calls for the construction of an 18 unit apartment building incorporating the restored landmark structures plus three levels of parking within the building.

2. The partial demolition of the landmark buildings is required in order to restore and reconstruct the landmarks to their original appearance. The Mayor's Agent finds that the facades of both buildings will be retained and the two townhouses will be carefully integrated into the overall residential structure. The Mayor's Agent finds that in addition to integration of the townhouses, the project will be carefully documented, and an acceptable mitigation program will be a part of the overall project.

3. The Mayor's Agent finds that the Applicant's efforts to retain and restore the townhouses to their original condition will be significant enhancements which will make them available for current use. Further, the granting of the requested relief will assure that the existing landmark structures will remain as examples of the City's aesthetic and cultural heritage and will ensure that the construction and subdivision of the lots are compatible with the character of the Cooper Houses. The Mayor's Agent finds based on the testimony of the architect, the Applicant, and the preservation architect that the proposal provides for the retention, restoration and reconstruction of the landmark structures and that the restoration will reestablish the historic appearance of the buildings and enhance the landmarks significant character. Further the project will allow for the introduction of additional residential units and parking spaces, thereby encouraging their adaptation for current use.

4. The Mayor's Agent also finds that the program of mitigation proposed by the Applicant will actively help to restore and reconstruct the properties, and will contribute to the understanding of the history and character of the buildings.

5. The Mayor's Agent further finds that the demolition process will not result in the loss of significant features because a substantial portion of the masonry walls, roof, and finishes will be dismantled by hand, cleaned and used to reconstruct the landmarks.

6. Issues related to undue economic hardship are not before the Mayor's Agent. The Board of Zoning Adjustment and the Historic Preservation Review Board have considered issues related to the height and mass of the 18 unit addition. Consequently, the Mayor's Agent finds that the 107.5 feet addition will encourage the adaptaton of the landmark for current use.

CONCLUSIONS OF LAW

Section 3(j) of the Act defines necessary in the public interest as consistent with the purposes of the Act as set forth in Section 2(b): (a) to retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation to current use; and (b) to encourage restoration of historic landmarks.

Based on the evidence of record and findings of fact, the Mayor's Agent holds that the proposed project is consistent with the purposes of the Act, because it will restore and enhance two historic landmarks known as the Cooper Houses, thereby encouraging current use of the buildings.

ORDER

In accordance with the findings of fact and conclusions of law ended on this date, it is by the Mayor's Agent this 29th day of June 1990, hereby ordered that the demolition permits for HPA No. 90-139 and 90-140 be issued. The subject applications are necessary in the public interest in order to allow for a project that is consistent with the purposes of the Act. And it is further ordered, that no demolition permit shall be issued unless a permit for new construction is issued simultaneously under Section 8 of the Act and the owner demonstrates the ability to complete the project. And it is further ordered that the Applicant will prepare and execute a memorandum of record which will include a copy of this order as an exhibit. The Applicant further commits to record said memorandum and accompanying memorandum among the land records of the District of Columbia prior to the issuance of any certificates of occupancy for the project.

DATE:

June 29, 1990


Cassandra Sneed-Ogden, Esquire
Mayor's Agent for D.C. Law 2-144