DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
613 G Street, NW - Seventh Floor
P.O. Box 37140
Washington, DC 20013-7200

IN RE:

THE VICTOR BUILDING
Application for Partial demolition
Application for Subdivision
Square 375, Lots 29, 30, 116, 117, 804, 805, 806, 807, 808, 817, 820 and 821
724 Ninth Street, N.W.
Washington, D.C.

HPA No. 92-535
HPA No. 92-538

ORDER AND DECISION

Introduction
Parties present at the hearing on November 4, 1992 before the Mayor's Agent were: Norman M. Glasgow, Esq. of Wilkes, Artis, Hedrick and Lane, on behalf of the Applicant; Andrea C. Ferster, Esq. on behalf of the Opposition - D.C. Preservation League, Committee of 100 on the Federal City, and the Art Deco Society of Washington.

Findings of Fact
Based on the Record taken as a whole, including the evidence submitted at the hearing, the following Findings of Fact are made -

1. The Victor Building, located at 724-726 Ninth Street, N.W., Washington, District of Columbia was constructed in three phases ("the Victor Building" or "the Building").

2. The original six story building, constructed in 1909, was designed by Appleton P. Clark in the Renaissance Revival style and consisted of an eight-bay by three-bay style structure at the corner of 9th Street and G Place, N.W. (Uncontested)

3. In 1911, an addition consisting of four bays was added along G Place. This addition was also designed by Appleton P. Clark in the Renaissance Revival style and contained six stories and extended the building 40 feet to the rear. (Uncontested)

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4. A second addition was added in 1925. This addition (or third phase) extended the 9th Street frontage by 47 feet with a depth of 54 feet containing eight stories. Two stories were also added above the three bays of the 1909 building for a depth of 54 feet. This addition was designed by Waddy B. Wood in the Classical Revival Style. (Uncontested)

5. All three phases were commissioned by the same client, patent attorney Victor Evans. (Uncontested)

6. The Historic Preservation Review Board (the "Board") found that all three phases were built for the same purpose, to house his expanding law practice.¹ (Uncontested)

7. Both Appleton P. Clark and Waddy B. Wood were noted architects in Washington. (Uncontested)

**Designation Hearing**

8. In 1991, the D.C. Preservation League ("the League"), filed an application to designate the Victor Building as an historic landmark under the Historic District Protection Act of 1978 (D.C. Law 2-144) ("the Act").

9. The entire Victor Building, including all three phases, was designated an historic landmark under the Act on April 15, 1992. (Uncontested)

10. The Board designated the entire Building, under two separate historical considerations, to be significant to the early twentieth century. The first dealt with its historical significance in the patent business and overall civic attitude of that time ("historical significance"). The second consideration dealt with its architectural significance ("architectural significance"). (Uncontested)

11. With respect to the Wood addition the Board specifically found it to be of historical significance in representing the development of the patent business in Washington and to the overall

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¹ After the hearing before the Mayor's Agent, the Applicant submitted an affidavit contesting the factual basis for this finding by the Board.
civic attitude of the time -- of classically-derived styles -- in the national capital.\footnote{2}

12. However, the Board found the 1925 addition architecturally insignificant, a detriment to the Clark design and, in simple terms, a major architectural eye sore.\footnote{3}

\footnote{2} The Board's designation decision indicates that the 1925 addition contributes to the overall significance of the landmark in two respects. First, the Board determined that:

The final expansion of the Victor Building reflects the sustained growth of the business district in the early years of the century. Soon after the original building was completed, the 1910 Building Height Act increased the allowable building height by 20 feet on 9th Street, and beginning in 1919, the Patent Office reported a postwar spurt in its volume of activity. It was apparently this new combination of demand and opportunity which led to the upward expansion of the Victor Building and the form it retains today. (4/15/92 Board Decision 3)

The Victor Building illustrates the evolution and growth of a large patent law firm, whose location near the U.S. Patent Office was part of the long-established historical trend in the development of Washington's business district. The firm's construction of a prominent headquarters in the Beaux-Arts manner evidence the early commitment of the city's civic and business leaders to the principles of urban embellishment advocated in the McMillan commission Plan. (4/15/92 Board Decision 5)

Second, the Board determined that:

The second expansion of the building demonstrates the continued growth of the firm and the sustained importance of Federal institutions to the city's business expansion. (4/15/92 Board decision 5)

\footnote{3} The Board specifically found:

As altered by Waddy Wood 15 years after its initial construction, the expanded Victor building is an impure even awkward architectural composition. The enlargement gives the building a more imposing stature and greater presence on 9th Street, but the design lacks the distinction of the original, failing to match it either in sophistication or quality of (continued...
2nd Board Meeting - Conceptual Design

13. Approximately one month after the Board's designation, Banyan Management Corporation, acting as agent of the owners, VSLT 9th Street Corporation and VSLF II H Street Corporation, ("the Applicant") applied for conceptual design approval for its redevelopment proposal for the Victor Building. (Uncontested)

14. At the July 15, 1992 Board Meeting, the Applicant represented that the loss of the 1925 addition to the landmark would be justified by the alleged benefits of the Applicant's commitment to undertake a restoration of the 1909 and 1911 portions of the landmark exterior, as well as "period restoration" of the

\[3\] (\ldots continued)

inspiration.

The expansion disfigures Clark's original design. In order to execute the addition, it was necessary to remove portions of his attic, cornice and balustrade, truncating the entrance facade, disrupting the balance of the composition, and severing details such as the limestone swags from their visual supports. In place of the original richly shadowed and sculptured top was constructed a highly stylized colonnade effect of flat piers with spare ornament and a modest classical cornice (which has since been altered). The uniform top runs unvarying across changing elevation below. (4/15/92 Board Decision 4)

The Board further noted that in "contrast to the significance of the original building in Appleton Clark's career, the addition is not among Wood's most important commissions, nor is it representative of his best work." (4/15/92 Board Decision 5)

The second expansion of the building demonstrates the continued growth of the [Victor Evans] firm and the sustained importance of Federal institutions to the city's business expansion. Its design, though unremarkable, illustrates the evolution of architectural trends in the early 20th century, and the continued commitment of business leaders to using classically-derived styles in the national capital. While the addition is the work of an equally prominent local architect, Waddy Wood, it is neither a notable example of his work nor as distinguished a design as the original whose integrity it significantly diminishes. (4/15/92 Board Decision 5)
building's interior, and to construct a new, separate building of exemplary architectural design that would occupy the remainder of the block's 9th Street frontage. (Transcript ("Tr.") of 7/15/92 Board Meeting 201-230)

15. The application was opposed by D.C. Preservation League on the ground that the 1925 addition clearly contributed to the landmark by reflecting an important phase in the evolution of the building and its role in the history of the City. The League argued that the Board could not approve the demolition, because demolition of a contributing portion of a designated historic landmark could never be consistent with the purposes of the Act. The League further argued that a demolition permit could only be granted if necessary to construct a project of "special merit" or if it would suffer unreasonable economic hardship by the denial of the permit -- neither of which provisions, the Applicant had sought to be considered.

16. The Board in comparing the relative merits of the 1925 alteration to the Victor Building and its 1909 and 1911 portions concludes that:

   Removal of the addition would undoubtedly diminish the visual evidence of growth and change. Even so, in this instance the [Board] believes that the sacrifice of a relatively minor part of the historical record in favor of a much greater gain with respect to more essential qualities of significance justifies a period restoration. (7/15/92 Board Approved Staff Report 3)

   The Board also specifically found:

In the case of the Victor Building, the original structure is a superior example of its style, and among [sic] its architect's most significant work. The 1925 addition, in contrast, is of questionable value both for its inherent lack of distinction and for its damaging effect on the original design. While competent, it neither embodies the distinguishing characteristics of its style, nor is it a notable example of its architect's work. It would not meet the criteria for landmark designation on the basis of (continued...)
17. The Board adopted its staff report, which recommended approval of the application, subject to a number of conditions, including requirements that (1) the architectural design of the new building be "exemplary;" (2) both the interior and the exterior be restored to the highest preservation standards, in accordance with the Secretary of the Interior's Standards for Restoration; (3) that the Mayor's Agent review the proposed demolition; and (4) Historic American Buildings Survey documentation be prepared to document the demolished portion of the landmark. (7/15/92 Board Meeting Tr. 266, Staff Report 4)

18. In addition, the Board added to its recommendation that the Mayor's Agent "take appropriate steps to ensure that no alteration is permitted to the Victor Building without assurance that the entire proposed new project, as well as the alteration, will be built. (7/15/92 Board Meeting Tr. 266)

3rd Board Meeting - Application

19. On August 24, 1992, the Applicant applied for a permit for partial demolition under §5 of Historic Landmark and Historic District Protection Act of 1978 (the "Act") (D.C. Code §5-1004). Pursuant to the permit, the Applicant proposed to demolish the 1925 addition. At the same time, the Applicant filed for a request for subdivision to combine the adjoining eleven lots to the lot of the Victor Building. (Uncontested)

20. The Applicant returned to the Board requesting approval of more fully developed concept drawings and review of the

(...continued)

aesthetic merit alone. Moreover, it disfigures the primary facade of the original design, disrupting its balance and proportion--precisely the qualities most significant to a classical sense of order. ...

And finally, removal of the addition provides a practical opportunity to restore the visual beauty of a landmark and to place it in a more complementary setting, thus enhancing the qualities which are most accessible and meaningful on a day-to-day basis to the average citizen. (7/15/92 Board meeting)

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applications for partial demolition. The Applicant also asked for subdivision approval to combine the Victor Building lot with eleven smaller lots to create a single new lot of approximately 40,000 feet.\footnote{The Applicant applied for the admission to record of a subdivision of Lots 29, 30, 116, 117, 804, 805, 806, 807, 808, 817, 820 and 821 into one lot of record in Square 375 under §7 of the Act. (D.C. Code §5-1006)} (Uncontested)

21. At its meeting on September 16, 1992, the Board reviewed the Applicant's new package. (Uncontested)

22. The Board noted that the assembly of land facilitates Board review of the design of the new construction to ensure its compatibility with the adjacent landmark. (9/16/92 Approved Staff Report 1)

23. The Board, under the same conditions as its initial approval supra. paragraphs 17 and 18, gave final approval to the application, determining that both the proposed partial demolition and subdivision were "consistent with the purposes of the Historic Preservation Act in order to permit restoration of the Victor Building to its 1911 appearance, and construction of a complementary adjacent structure." (9/16/92 Approved Staff Report 2)

Mayor's Agent Hearing

24. Because the proposal involved partial demolition of a landmark, the Board referred the subdivision and demolition applications to the Mayor's Agent for review, as required by the Act. (9/16/92 Approved Staff Report 2)

25. The Victor Building is now close to fifty percent occupied. The 1925 addition also is presently leased with under fifty percent occupancy. (11/4/92 hearing before Mayor's Agent ("MA") Tr. 25-26)

26. The Applicant claims the need for the renovation is reflected in its present problem in obtaining new tenants. (Tr. 25)

27. All parties agree that the interior of the building was
not designated a landmark. (MA Tr. 61-62, 73 & Opp. Proposed Finding of Fact #16)

28. The Applicant does not assert that its request for demolition of the 1925 addition and the subdivision of lots meets the criteria for a project of "special merit" or works an "unreasonable economic hardship" on the owner. (MA Tr. 21-121)

29. All sides agree that the Building in its current state reflects its entire history by reflecting the trends in the development of Washington. (MA Tr. 116 & Opp. Findings of Fact #18)

30. The Board made no finding, at either its July 15, 1992 or September 16, 1992 hearings, that the 1925 addition to the Victor failed to contribute to the historical significance of the landmark.

31. Testifying in favor of the applications was Walter A. Rebenson, a representative of Applicant, MA Tr. 22-28; Betty Bird, an architectural historian, (as an expert in architectural preservation, MA Tr. 28-53; Mary Oehrlein, an architect, (as an expert in preservation architecture) MA Tr. 54-78; George Hartman, FAIA, partner with Hartman and Cox Architects (as an expert in architecture and preservation architecture), MA Tr. 78-98; Anne Adams, an architectural historian with the law firm representing the Applicant (as an expert architectural historian) MA Tr. 99-112; Nicholas A. Pappas, individual, MA Tr. 208-212. (The Advisory Neighborhood Commission 2C informed the Board that it supported the application.)

32. Testifying in opposition to the applications were Emily Eig, an architectural historian with Traceries (as an expert in architectural history and in the application of the Secretary of Interior's Standards for the Treatment of Historic Properties), behalf of the Opposition, MA Tr.129-162; Jacqueline Prior, on behalf of the D.C. Preservation League, MA Tr. 204-206; Kathryn A. Eckles, on behalf of the Residential Action Club, MA Tr. 212-215; Anne Sellin, on behalf of Midway Civic Association, MA Tr. 215-217; Sally Berk, on behalf of the Sheridan Kalorama Association, MA Tr.
217-220; and Elizabeth Jones, on behalf of the National Trust for Historic Preservation in Washington D.C., MA Tr. 222-226; Russell Keune, Vice-President of International Council of Monuments and Sites (as an expert in architectural history and historic preservation); Richard Longstreth, professor of architectural history and historic preservation at George Washington University (expert in architectural history and historic preservation), MA Tr. 167-193.

33. Notice of the Mayor's Agent hearing for partial demolition and subdivision applications was published in the D.C. Register on September 11, 1992 (Exh. 2).

Conclusions of Law

Based upon the Record as established and taken as a whole including the above Findings of Fact, the following Conclusions of Law are made -

Jurisdiction

34. Pursuant to D.C. Code §5-1004, before the Mayor may issue a permit to demolish an historic landmark, the Mayor shall review the application in accordance with D.C. Code §5-1004.

35. Pursuant to D.C. Code §5-1006 before the Mayor may admit to record any subdivision (including any assemblage of lots) of an historic landmark, the Mayor shall review the application for admission to record in accordance with D.C. Code §5-1006.

36. The applications for the demolition permit and subdivision were referred to the Board for its recommendation pursuant to D.C. Code §5-1004(b) and §5-1006(b) respectively. At its public meeting of September 16, 1992, the Board adopted the Historic Preservation Division's Staff Report and Recommendation to grant the demolition permit and the subdivision.

37. On July 18, 1991, Administrative Issuance 2-54A was issued delegating the authority to conduct hearings as the Mayor's Agent for Historic Preservation under §5 through 9, 12, and 13 of D.C. Law 2-144, the Historic Landmark and Historic District
Protection Act of 1978 to the undersigned.

38. Pursuant the Act the Mayor's Agent held a hearing in this matter on November 4, 1992; where all interested parties were given ample opportunity to set forth their case. In addition, all parties submitted proposed Findings of Facts and Conclusions of Law after all evidence was submitted.

Demolition

39. Pursuant to the Act, no demolition permit shall be issued:

unless the Mayor['s Agent] finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. D.C. Code §5-1004(e)

40. Since the Applicant makes no claim under "unreasonable economic hardship," the Applicant must show that the permit is "necessary in the public interest."

41. D.C. Code §5-1002(10) defines "necessary in the public interest" to mean consistent with the purposes of this subchapter as set forth in §5-1001(b) or necessary to allow the construction of a project of special merit. (emphasis added)

42. The Applicant asked that the decision not be based on a project of special merit. Thus Applicant must meet solely the test set forth in D.C. Code §5-1001(b). That section specifies that "[w]ith respect to historic landmarks" its purpose is

(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and

(B) To encourage the restoration of historic landmarks.

43. While refusing to come under the provisions of the Act
for review of a project of special merit, the Applicant has argued that the permit should be granted because it is planning to construct an exemplary project on that portion which would have been the 1925 addition and the eleven lots it wants assembled into the subdivision and because it will rehabilitate the 1909 and 1911 parts of the Victor.

44. Putting aside for the moment this claimed proposed "exemplary project", the Applicant's argument for demolition appears to be that renovation of the rest of the building is necessary to:
   a) Meet various building code sections; and
   b) Increase the number of tenants in the building.

45. Either of these reasons, the Applicant has argued, meets the test of encouraging the Building's "adaptation for current use."

Building Code

46. Old buildings often fail to meet modern building code and exceptions to the code are often granted. The Applicant has not shown that it has been required by the government to change the building to meet code. Nor has the Applicant shown why the destruction of the 1925 addition is the only option it has to meeting code.

Insufficient Tenancy

47. The Applicant has not shown where the destruction of the 1925 addition in and of itself would increase the tenants of the building. Quite the contrary, destruction of available space in and of itself would decrease the tenanted space.

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6 In order to obtain approval under the "special merit" exception, an applicant must submit to the Mayor's Agent a written statement setting forth the grounds upon which the applicant bases his or her claim of "special merit". 10 DCMR 2516.3(A). If the claim is based on "exemplary architecture, the applicant must submit architectural drawings of sufficient completeness to indicate the exterior design of the building or structure. Id. S2516(b).
48. The Applicant did not explain why renovation of the interior of the addition may not have aided its tenancy problem without destruction of the 1925 addition. Furthermore, the Applicant offered no evidence that the exterior style of the unwanted addition was in anyway a detriment towards obtaining tenants.

49. The Applicant acknowledges that destruction of the 1925 addition and the rehabilitation of the 1909 and 1911 parts would not resolve its problems with the Victor and has not offered to do it in isolation.

New Construction

50. Rather the Applicant is ready to create such rehabilitation only as part of its major construction project with the additional new building. The Applicant's arguments for destruction are totally intertwined with its proposal for construction on the adjoining lots.

51. The Board's approval of the demolition (and subdivision) also is intertwined with Applicant's proposed new construction.7

52. The record is clear that the Board's opinion concerning the 1925 addition remained the same from the time it designated it as part of the historic landmark to the time it recommended its demolition. Both at the time of the designation and after the recommendation of demolition, the Board found while the addition was an eye sore, it is historically significant with respect to the early 1900's history of the patent business and business in general. The only change in the Board's decision was a finding that the Applicant's proposed project was sufficiently exemplary

7 The Act requires the Mayor's Agent to consider the recommendation of the Board when deciding whether to issue a demolition permit for an historic landmark, D.C. Code §5-1004(b) (1988), but ultimately vests authority for such decision with the Mayor. Committee For Washington's Riverfront Parks v. Thompson, 451 A.2d 1177, 1194 (D.C. 1982) ("the function of the Commission is solely advisory").
to justify the destruction of an historically significant addition.  

53. The Applicant argues that its proposal is consistent with the purposes of the Act in that it both encourages the restoration of the Victor and encourages the adaptation of the Victor for current use.

54. However, by definition, all exemplary architecturally special merit projects fit within the same definition by encouraging the adaptation of a landmark (or at least portions of it) for current use.

55. The drafters were not being redundant when they created the separate category of projects of "Special Merit." Rather they understood the risks associated with permitting destruction of a landmark based on proposed construction.

56. Thus the Act requires, where the demolition is granted because of a proposed "special merit" project, that both the demolition and construction be tied together, requiring among other things:

(i) that the design of the new building be "exemplary" (D.C. Code §5-1002(11);
(ii) that the owner demonstrate financial ability to complete the project; (D.C. Code §5-1004(h)) and
(iii) that both demolition and construction permits simultaneously. (D.C. Code §5-1004(h))

57. The Board also recognized the same basic risks in recommending demolition based on proposed new construction. However, for some unknown reason, instead of requiring the Applicant to follow the required regulations for a "special merit" project, the Board attempted to abrogate its authority under the Act, and set conditions for the Mayor's Agent approval. E.g. The

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8 The determination of whether a structure is contributing to a landmark or historic district must be ascertained by the Board at the time a demolition application is reviewed. See 10 DCMR 2507.4.
Board conditioned its recommendation on, enter alia:

(i) the architectural design of the new building being "exemplary;" and
(ii) the Mayor's Agent taking "appropriate steps to ensure that no alteration is permitted to the Victor Building without assurance that the entire proposed new project, as well as the alteration, will be built. (7/15/92 Tr. 266)

58. We have found no validity in abrogating the legislation's clear mandate in treating proposals for projects of special merit.⁹

59. Balancing the benefits of new construction and restoration/rehabilitation proffered by an Applicant against the destruction of a contributing portion of an historic landmark or historic district is inappropriate as a matter of law except in the context of a properly filed request for approval of a special merit project. See Committee of 100 v. D.C. Dept. of Consumer and Regulatory Affairs, 571 A.2d 195, 203 (D.C. 1990) (balancing could not proceed until Mayor's Agent found that amenities offered met criteria for special merit). The Board's hybridization in the instant case of the procedures for processing "special merit" and "consistent with the purposes of the act" applications improperly circumvented the special merit process and disregard the protection offered to historic landmarks and historic districts under the Act.

60. Once stripped of its proposed new construction, the Applicant has not demonstrated that demolition of the 1925 addition to the Victor Building is necessary for current use." D.C. Code §5-1001(b)(2) (1988), To the contrary, the record demonstrates that the Victor Building, including the addition, is structurally sound and is currently occupied.

61. The Applicant has failed to met its burden of proving that its application for demolition is consistent with the purposes

⁹ Neither the Board nor the Applicant gave any explanation as to why the statute should be reformulated to expand one area when another adequately would take care of the concerns.
of the Act.

Subdivision

62. The standard for granting enrollment on the records as a subdivision under the Act is identical to the standard for the demolition permit.

63. Pursuant to the Act, no subdivision shall be admitted to record:

unless the Mayor['s Agent] finds that issuance of the permit is necessary in the public interest, or that failure to issue a permit will result in unreasonable economic hardship to the owner. D.C. Code §5-1006(e)

64. The term "subdivision" was amended in 1991 to include "assembly of land into 1" lot. D.C. Code §5-1002(13)

65. In granting, the Applicant's request to combine the 11 lots into the landmarked lot of the Victor, the Board noted that the assembly of land facilitates Board review of the design of the new construction to ensure its compatibility with the adjacent landmark.

66. Once the assemblage of lots was granted under the subdivision provisions of the Act, any permit for alteration to the site would require approval under the Act.

67. The Applicant has not submitted a permit for new construction on the assembled 11 lots. (The only permits at issue concern demolition of the addition, and assemblage of the lots)

68. Thus if the assemblage of lots is granted, the Applicant will still have to go back through the process for specific approval of its plans, since its proposal includes construction on designated lots.

69. There was no objection to the assemblage of the 11 lots into the lot of the Victor.

70. Based on the above, it is found that issuance of the permit to assemble the lots is necessary in the public interest.
ORDER

ACCORDINGLY, it is this 31st day of March, 1993

ORDERED that the Applicant's request number HPA 92-535 for a permit for partial demolition on lot 817, of Square 375 be, and the same is hereby DENIED; and it is

FURTHER ORDERED that the Applicant's request number HPA 92-538 to assemble the current lots of 29, 30, 116, 117, 804, 308, 817, 820 and 821 of Square 374 into the historically designated Victor lot of 817 Square 375 be, and the same is hereby GRANTED; and it is

FURTHERMORE ORDERED that pursuant to 10 DCMR 2523.4, this Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service pursuant to 10 DCMR 2503.5(c).

[Signature]

Donald J. Sheehy
Chief Administrative Law Judge, D.C.
Mayor's Agent - D.C. Law 2-144

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision & Order was served this 31st day of March, 1993 by mailing a copy of the same via U.S. Mail, postage prepaid to the following:

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