

**THE GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE
1100 4th Street SW, Suite E650
Washington, D.C. 20024**

In the Matter of:

QC 369 LLC, Applicant

H.P.A. Nos. 14-460 and 14-461

**911 and 913 L Street NW
Square 369 -- Columbia Place (9th & L Streets NW)**

DECISION AND ORDER

This is an application to demolish one building at 913 L Street NW, and partially demolish and relocate another building 911 L Street NW, both contributing buildings in the Shaw Historic District. The applicant proposes a mixed-use development to be located at the southeastern corner of 9th and L Streets NW, to occupy approximately 70,787 square feet of land. The site is located immediately west of the Walter E. Washington Convention Center. The applicant seeks approval of the proposed demolition under the District of Columbia Historic Landmark and Historic District Protection Act of 1978, as amended (the “Act”), D.C. Code §§ 6-1101 *et seq.*, as being “necessary in the public interest” on two grounds: (i) that the requested demolition is consistent with the purposes of the Act,¹ and (ii) that the demolition is necessary to construct a project of special merit. For the reasons explained below, the application will be **GRANTED**.²

The project site contains nine contributing buildings fronting on Ninth and L Streets. Each of these buildings dates from the period of significance for the Shaw Historic District (1833-1932). Although the buildings are in deteriorated condition, they retain sufficient integrity to continue to contribute to the character of the historic district. The applicant proposes to demolish entirely one contributing building and incorporate retained portions of eight contributing buildings on the site. As described in the Historic Preservation Office (“HPO”) Staff Reports, the six buildings with frontage on 9th Street illustrate the evolution of the 9th Street corridor from residential to primarily neighborhood-serving commercial uses in the late-nineteenth and early-twentieth centuries. These buildings retain a strong sense of their early-twentieth-century character, with minimal intrusions and a historical continuity to the streetscape. The three buildings along L Street reflect its residential character as it evolved from rowhouses pre-dating the Civil War to a denser neighborhood of apartment buildings in the early twentieth century.

¹ At the conclusion of the hearing on this matter, the Mayor’s Agent invited the applicant to brief the raze application on the alternative grounds of being consistent with the purposes of the Act.

² This opinion will constitute the findings of fact and conclusions of law required for decision in a contested case under the D.C. Administrative Procedures Act, D.C. Official Code §2-509(e)(2012 Repl.).

The project calls for demolition of 913 L Street, retention and relocation of the older, front half of 911 L Street, retention of the Lurgan Building at 919 L Street, and alterations to remove the rear portions of the six buildings along 9th Street. The only building to be completely demolished of the nine contributing buildings is a three-story brick and brownstone rowhouse constructed in 1892 and designed by Appleton P. Clark, a prolific architect in Washington, D.C. The proposed demolition will allow the applicant to construct a project consisting of a new twelve-story residential building and two Marriott hotels with ground floor retail and service uses at the corner of 9th and L Streets NW. The overall development will feature a mixed-use building with a floor area ratio (“FAR”) of 8.3 and a combined gross floor area of approximately 587,295 square feet. Approximately 362,615 square feet will be dedicated to hotel uses, and approximately 224,680 square feet will be dedicated to residential uses, plus retail uses along 9th Street. Phase 1 of the project will include a Residence Inn by Marriott with 144 guest rooms designed for extended stay travelers, and a Courtyard by Marriott with 360 guest rooms. Phase 2 will include the residential portion of the building with approximately 201 units.

The proposal includes substantial restoration of the preserved buildings and an impressive effort to integrate them with the new construction, including significant setbacks of the new construction along 9th Street. Portions of six contributing buildings fronting on 9th Street (1104, 1106, 1108, 1110, 1112, and 1114 9th Street NW), as well as an historic apartment house fronting on L Street (919 L Street NW), will be incorporated into the design and program of the new building. The retained portion of 911 L Street will be moved next to 919 L Street.

As is clear from the record and testimony at the hearing, the applicant worked extensively with the HPO staff and in direct response to advice and direction from HPRB to achieve a good amount of preservation within the constraints of zoning regulations and a reasonable development scenario. In accordance with the Act, the applicant submitted to the District of Columbia applications for demolition of 911 and 913 L Street. The applications were forwarded to the HPRB for review at its meeting held May 1, 2014. The HPRB adopted staff recommendations at that time and found demolition of 911 and 913 L Street to be inconsistent with the purposes of the Act. The HPRB advised the applicant to improve compatibility of the new construction with the historic district and requested the applicant to return to the Board for further review. The applicant returned to HPRB on June 26, 2014 with revisions, and HPRB reiterated its recommendation that the proposed demolition was inconsistent with the purposes of the Act and commented on the revised concept design. The Board recommended that the applicant: (i) undertake a preservation and rehabilitation plan for the historic buildings, (ii) change the base of the construction to improve the pedestrian experience and to be more consistent with the character of the streetscape of 9th Street as defined by the historic buildings, (iii) change the designs of the hotel and apartment building to be distinct from each other and to break down the scale to be more compatible with the quality of development of the historic district, and (iv) make other refinements in the design elements.

The applicant responded with substantial changes to address the concerns of the HPRB. At the HPRB meeting of September 18, 2014, the Staff Report and Recommendation described how each of these items had been addressed with specific reference to the responsive preservation plan prepared by EHT Tracerics, the applicant's historic preservation consultant. At that meeting, the HPRB determined that the applicant made progress in addressing its previous concerns but

found a number of aspects of the design to require further work. Again, the applicant revised its plan, including preservation of approximately 50 percent of 911 L Street.

At the October 23, 2014 HPRB meeting, the Staff Report stated that each of the concerns of the Board had been addressed in the revised plans. This time the HPRB unanimously recommended approval of the revised concept as being “compatible with the character of the historic district” based upon the significant enhancements and the preservation of a major portion of 911 L Street, a rare pre-Civil War building, which had previously been slated for demolition.

The record reflects no opposition to either of the applications for partial demolition of 911 L Street, or the total demolition of 913 L Street. ANC 2F expressed its support for the project.

Construction of a Project of Special Merit

The Mayor’s Agent should grant a permit to demolish a protected building if he or she finds that “issuance of the permit is necessary in the public interest.” D.C. Code §6- 1104(e). The Act’s public interest standard “means consistent with the purposes of this act as set forth in section 2(b) or necessary to allow the construction of a project of special merit.” Id., §6-1102(10). Prior decisions of the D.C. Court of Appeals and of the Mayor’s Agent clarify the steps by which special merit cases should be decided. First, the Mayor’s Agent must decide whether the project meets the criteria of special merit; that is, whether it prima facie meets the standards set out in the ordinance. *In Re: Application of 2228 MLK LLC and District of Columbia Department of Housing and Community Development for Partial Demolition and Subdivision at 2234 and 2238 Martin Luther King Jr. Avenue, S.E., HPA Nos. 14-221 and 14-222* (October 28, 2014). For a project to possess special merit, it must have significant benefits to the District of Columbia or to the community by virtue of (i) exemplary architecture, (ii) specific features of land planning, or (iii) social or other benefits having a high priority for community services. D.C. Code § 6-1102(11).

This project advances several important goals in the Comprehensive Plan. Most directly, it advances a Central Washington Area Element, Policy CW – 1.1.10, which calls for more hotel construction in the vicinity of the Convention Center, and at different price levels serving different visitors. 10A DCMR § 1608.11. The District has struggled to provide sufficient hotel rooms at different price points to support its massive public investment in the Convention Center. This project makes a large contribution to solving that problem, creating two Marriott hotels aimed at different segments of the visitor market, while also creating new housing in a historic apartment building, the Lurgan, also designed by Appleton Clark. The record contains a letter from Gregory O’Dell, President and Chief Executive Officer of the Washington Convention and Sports Authority, stressing the importance of the project’s hotel rooms to the economic vitality of the Convention Center. The project also will advance city goals repeatedly stated in the Comprehensive Plan to construct new housing and retail space in the downtown, while achieving an extraordinary degree of high-quality historic preservation, in a pedestrian-friendly design that will improve area safety. 10A DCMR §§ 1001.1, 1011.6, 1011.7, 1011.10, 2108.5, and 2111.9. Based upon the evidence and testimony of record, the proposed mixed-use development meets the definition of a project of special merit, because of these important

features of land use planning. *See, e.g., In the Matter of Calvary Baptist Church*, HPA No. 00-601 (April 20, 2001) (consistency with the Comprehensive Plan is a specific feature of land use planning that may provide the basis for a project's special merit).

In evaluating projects of special merit, the Mayor's Agent must balance the goals and objectives achieved by the new construction against the effects of demolition. *See Citizens Committee to Save Rhodes Tavern v. District of Columbia Department of Housing and Community Development*, 432 A.2d 710, 716 (D.C. 1981). Only if the project is found to meet the criteria for special merit does the analysis proceed to the second step, where the special merit of the project must be balanced against the harm to historic preservation values entailed. *Committee of 100 on the Federal City v. District of Columbia Department of Consumer and Regulatory Affairs*, 571 A.2d 195, 200 (D.C. 1990). The public benefits of the hotels next to the Convention Center are substantial. While the demolition of 913 L Street is regrettable, the applicant is preserving, substantially restoring, and bringing back to active use seven contributing buildings that have lain in a degraded state for many years and have no other foreseeable future uses. The most significant portion of 911 L Street, which pre-dates the Civil War, will be retained and incorporated into the new design by shifting it to the west adjacent to the Lurgan. The preservation measures taken for these buildings, based on extensive consultation with the HPRB and HPO, are exemplary. Thus, given the extent of preservation and the close cooperation of the applicant with the HPRB and HPO, the Mayor's Agent must conclude that here the special merit aspects of the project outweigh the loss of some historic resources.

Finally, the Mayor's Agent must determine that the loss of or harm to the historic resources is "necessary" to "allow construction" of the project of special merit. *Application of O Street Roadside, LLC (The O Street Market)*, HPA No. 07-103, at 8. In determining whether the issuance of a demolition permit is necessary in the public interest to allow the construction of a project of special merit, the Mayor's Agent must consider whether the proposed demolition is actually necessary to allow the project to proceed. *Committee of 100 on the Federal City v. District of Columbia Department of Consumer and Regulatory Affairs*, 571 A.2d 195, 200 (D.C. 1990). In this case, the project can move forward only if the building at 913 L Street is removed and the rear half of 911 L Street demolished and the front half relocated just east of the Lurgan Building. The evidence that the functionality of the proposed hotel portion of the building requires an uninterrupted street wall has not been challenged or contradicted. The dual-brand hotel programs for the site need a minimum linear street frontage of 165 feet to accommodate the entrance, two lobbies, guest amenities, and vehicle pick-up and drop-off, as well as below grade parking. Due to the continuous row of historic buildings on 9th Street that will be preserved, the only possible location for an entrance with these characteristics is on L Street. However, L Street does not presently provide the requisite minimum street frontage, due to the presence of the buildings at 911 and 913 L Street. Although the Applicant will relocate the existing public alley to increase uninterrupted frontage on L Street, there are still not enough linear feet on L Street to locate the hotel lobbies without demolishing 913 L Street building and 911 L Street and relocating the front half adjacent to the Lurgan Building.

The required street frontage is also dictated by the internal configuration and program for the hotel and residential uses. Maintaining the buildings at 911 and 913 L Street in their current location would result in a substantial loss of total project floor area, units, and support, which

would jeopardize the entire development. Retaining the buildings at 911 and 913 L Street in their current location results in a loss of approximately 60 hotel rooms (six per floor) and approximately sixteen parking spaces (eight per level), and an overall hotel form that is unworkable. The size of the lobby would be significantly decreased; registration and administration spaces would be lost; and the pre-function and board rooms would be reduced or eliminated. Furthermore, the floors of the existing buildings do not align with the hotel system, creating mismatched floor-to-floor ceiling heights.

As described above, demolition of 913 L Street and partial demolition and relocation of 911 L Street are necessary in order to fulfill the objectives and policies of the District of Columbia Comprehensive Plan, which forms the basis for a project's special merit. Therefore, I find that, taken together, the project can move forward only if the buildings at 911 and 913 L Street are removed or relocated as described herein.

In the opinion of the Mayor's Agent, the plan and composite building have significant benefits to the District of Columbia and to this specific community by virtue of its fulfilling important District land use goals as expressed in the Comprehensive Plan and meeting high standards for historic preservation.

Consistent with the Purposes of the Act

The applicant also argues that the demolition of 913 L Street NW here is consistent with the purposes of the Act, because it is necessary for a project that restores and activates seven other contributing but neglected buildings. The Mayor's Agent seems never to have ruled explicitly on the underlying legal issue. The HPRB at its May 1, 2014 meeting adopted the staff report of the HPO to the effect that demolition of 913 and partial demolition of 911 L Street were not consistent with the purposes of the Act. This reflects the prevailing view that demolition of a contributing building in a historic district simply is never consistent with the purposes of the Act, because a prime purpose is to "retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use." D.C. Code § 6-1101(b)(1)(A). But such a reading means that demolition can never be consistent with the purposes of the Act, which seems to contradict the premise of § 6-1104(e), which authorizes the Mayor's Agent to permit demolition when necessary in the public interest, which includes demolition that is consistent with the purposes of the Act. *Id.*, §6-1102(10).

Moreover, the D.C. Court of Appeals has held that partial demolition of a historic landmark can be consistent with the purposes of the Act "if it retains and enhances the landmark and encourages adaptation for current use." *District of Columbia Preservation League v. District of Columbia Department of Consumer & Regulatory Affairs*, 711 A.2d 1273, 1276 & n. 2 (1998). That holding at least raises the analogous question whether demolition of a contributing building in a historic district can be consistent with the purposes of the Act, if it is a necessary part of development project that restores and enhances many other contributing buildings and introduces valuable new construction not inconsistent with the character of the historic district. The special merit holding in this case leans heavily on the historic preservation benefits that the project

commits to, as it has in several other Mayor's Agent cases; arguably the Act addresses such preservation benefits more directly in the consistency prong of the public interest standard.

On the other hand, the Act must be interpreted in light of its chief purpose regarding historic districts: to preserve properties that contribute to the character of the historic district. D.C. Code §6- 1101(b)(1)(A). Nothing in the language of this provision or of the Act's other enumerated purposes regarding historic districts clearly embraces demolishing one contributing building to preserve and rehabilitate others. Demolition of an entire building in a project that may otherwise enhance a historic district removes a historically significant building from the District's stock, while partial demolition of a landmark in a project of adaptation does not.

This important question of statutory interpretations need not be resolved in this case, because the permit can be granted on the basis of the special merit finding. It should not be resolved here because the application is uncontested and thus there is no party arguing against the applicant's interpretation of the consistency standard. The issue is too important to the operation of the Act to be resolved in an uncontested proceeding.

ACCORDINGLY, based upon the evidence of record, the findings and conclusions stated above, the applications for partial demolition of 911 L Street NW and the total demolition of 913 L Street are hereby GRANTED as being necessary in the public interest in order to construct a project of special merit.

Date: January 16, 2015

Confirmed: January 27, 2015



J. Peter Byrne
Mayor's Agent Hearing Officer



Eric D. Shaw
Director, D.C. Office of Planning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Decision and Order was served this 27th day of January 2015 via email to the following:

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