

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
941 North Capitol Street, N.E. – Room 9100
Washington, D.C. 20002**

IN RE:

**Application of the Washington Drama Society, Inc.
(d/b/a Arena Stage)
1101 6th Street, S.W.**

**SQUARE 472
Lots 123 and 126**

- **Demolition in part**
- **Subdivision (consolidation of lots)**
- **New Construction (concept)**

**H.P.A. No. 02-471
H.P.A. No. 02-472
H.P.A. No. 02-515
S.L. No. 02-262**

DECISION AND ORDER

Background

This case came before Rohulamin Quander, Administrative Law Judge, and the designated Mayor's Agent for Historic Preservation (the "Mayor's Agent"), on September 10, 2002, upon the request for an administrative hearing filed by the Washington Drama Society d/b/a the Arena Stage (the "Applicant" or "Arena Stage") for a demolition permit to remove the administrative and service wings of the Arena Stage at 1101 6th Street, S.W., in order to construct a project of special merit and one that is consistent with the purposes of the District of Columbia's Historic Landmark and Historic District Protection Act of 1978, as amended (the "Act"), D.C. Code Ann. §§ 6-1101 *et seq.*¹ (2001 ed.). *See also* Title 10, DCMR, Chapters 24 and 25 (1991). The Applicant proposes a project involving an addition to the Arena Stage, which is listed as an individual landmark in the District of Columbia Inventory of Historic Sites. The hearing was conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR).

¹ Much discussion has occurred over the use of the word "partial" in reference to cases where an applicant wishes to demolish a portion of an historic landmark or contributing building. The Mayor's Agent takes the position that regardless of the extent of the demolition, the removal of historic fabric is a demolition nonetheless. Therefore, the use of the word "partial" belies the fact that historic fabric will be destroyed in the process of the requested demolition. As such, the word "partial" should be used sparingly, if at all.

The demolition application and proposed project had been previously considered by the U.S. Commission of Fine Arts (“CFA”) under the provisions of the Shipstead-Luce Act, 40 U.S.C.A. § 121 *et seq.* (2001). The CFA recommended that the Mayor approve the new construction by letter dated June 25, 2002. Pursuant to sections 6-1104 and 6-1107 of the Act, the demolition permit application, the subdivision request, and proposal for new construction were referred to the Historic Preservation Review Board (“HPRB” or “Board”). By action taken July 25, 2002, the HPRB adopted its staff’s report and recommended that the Mayor's Agent approve the proposed subdivision as "consistent with the purposes of the Act," but deny the application for a permit for partial demolition as “inconsistent with the purposes of Act.”

The HPRB also adopted its staff report on the conceptual design of the new addition, which noted the "architectural concept is entirely fresh, innovative, and – appropriately – dramatic" and could support a claim of "exemplary architecture" before the Mayor's Agent.

At the Mayor’s Agent hearing, Norman M. Glasgow, Jr., Esquire, and Carolyn Brown, Esquire, of Holland & Knight LLP appeared as legal counsel on behalf of the Applicant. Witnesses testifying on behalf of the Applicant in support of the project were: Stephen Richard of the Washington Drama Society; Emily Eig of EHT Traceries, who was qualified as an expert in architectural history; Bing Thom of Bing Thom Architects, who was qualified as an expert in architecture and theater design; and Steven E. Sher, Director of Zoning and Land Use Services at Holland & Knight LLP, who was qualified as an expert in land use and planning. Besides the Applicant, there were no persons or parties of record, either in support of, or in opposition to the Applicant’s project.

Based on the substantial evidence in the entire record of this proceeding, including all written and oral testimony submitted at or as part of the hearing by experts and others, the HPRB report and recommendation, and the recommendations of the Commission of Fine Arts, the Mayor's Agent concludes that the applications for demolition and subdivision should be **GRANTED**.

ISSUE

The sole issues to be decided are whether the Applicant has sustained its burden of proof under the Act that: (i) the issuance of the demolition permit for the project is “necessary in the public interest” in order to construct a project of “special merit;” and (ii) that the subdivision of two lots into one lot of record is "necessary in the public interest" because it is "consistent with the purposes of the Act."

FINDINGS OF FACT

The Mayor's Agent, having received all of the evidence presented in this matter, and having reviewed same and given the proper weight to the expert testimony presented, now makes the following Findings of Fact:

Jurisdictional and Procedural History

1. In accordance with sections 6-1104 and 6-1107 of the Act, Arena Stage submitted to the District of Columbia applications for demolition of portions of the Arena Stage, conceptual design plans for the new addition, and subdivision of two lots into one lot of record. The applications were forwarded to the Historic Preservation Review Board ("HPRB" or the "Board") as H.P.A. Nos. 02-471 (partial demolition), 02-472 (subdivision) and 02-515 (new construction), and to the Commission of Fine Arts ("CFA") pursuant to the Shipstead-Luce Act as S.L. Case Nos. 02-262 (new construction). CFA unanimously recommended that the Mayor approve the proposed addition in concept. The HPRB also recommended approval of the new addition in concept and subdivision, and referred the demolition application, which it found to be inconsistent with the purposes of the Preservation Law, to the Mayor's Agent for consideration at a formal hearing.

2. The CFA unanimously recommended that the Mayor approve the proposed addition in concept and the demolition application. At its July 18, 2002, meeting, the U.S. Commission of Fine Arts unanimously recommended approval of the conceptual design to the Mayor. At the conclusion of the presentation, CFA praised the design as a "wonderful jewelbox" and stated that "we are all in love with the project."

3. Pursuant to the Act, the Mayor or the Mayor's designated agent has the authority to hear the merits of demolition applications for individually designated landmarks. *See* D.C. Code §§ 6-1104 (c) and (e), and 6-1107. In accordance with the Act, the application was referred to the Mayor's Agent for administrative hearing, and the Applicant notified the Mayor's Agent that it would argue that the proposed partial demolition is necessary in the public interest to construct a project of special merit, and that the proposed subdivision is consistent with the purposes of the Act. *See* 10 DCMR 2507.8(a). A timely notice of the hearing was published in the *D.C. Register* on August 9, 2002.

4. By action taken on July 25, 2002, at its regularly scheduled meeting, the HPRB adopted its staff's report and recommended to the Mayor's Agent that the demolition application is "inconsistent with the purposes of Act." It also recommended, however, that the Mayor's Agent approve the subdivision request as "consistent with the purposes of the Act." Finally, the HPRB adopted the staff report's favorable recommendation on the conceptual design of the new addition. The HPRB staff report stated that "[f]rom the standpoint of architecture and urban design, ... there is much to recommend this new project."

The Applicant

5. Constructed in 1960, Arena Stage is considered a pioneer in the American Regional Theater Movement and was designated an historic landmark for its role as one of Washington's unique cultural institutions. The glass and masonry building is recognized for its architectural composition, structural expressionism, and exposed raw

materials. Arena Stage is also important as a focal point in the Southwest Urban Renewal Area, a segment of a master plan for the city to eradicate urban blight and revitalize economically depressed neighborhoods and communities during the late 1950s and early 1960s.

6. Situated along the Southwest Waterfront, Arena Stage is located on the triangular parcel bounded by Maine Avenue to the south and west, 6th Street to the east, and the Waterside Tower Apartments to the north. The area includes a mixture of residential uses, restaurants, and waterfront activities. Farther north of this site are numerous federal office buildings. Arena Stage also falls within the boundaries of the Anacostia Waterfront Initiative, a project area designated by the District of Columbia Office of Planning ("OP") for coordinated revitalization efforts among the District, federal agencies and private interests.

7. The present Arena Stage consists of three main sections: the Fichandler Theater, the Kreeger Theater, and administrative and service wings. Constructed in 1960, the Fichandler Theater comprises the original portion of the Arena Stage. The octagonal-shaped "theater in the round" is located at the southeastern portion of the site. In 1969, the Kreeger Theater was added to the complex at the northwest portion of the site, along with additional administrative space, classrooms, and the Old Vat Room, a cabaret theater located in the lower level of the 1969 addition. The administrative wing connects the two theater areas. The main lobby entrance to Arena Stage is located off 6th Street to the east. A parking lot is located to the north of the building.

8. According to the Applicant, the partial demolition is necessary to retain, enhance and adapt for current use the existing theater building. Currently, Arena Stage suffers from cramped quarters, inefficient circulation and lobby space, and inadequate soundproofing from outside noise and traffic. The Fichandler is particularly vulnerable to acoustical interference because, for the most part, it lacks any lobby or foyer area to buffer performances from outside noise. Moreover, Arena Stage is not fully compliant with the American with Disabilities Act ("ADA"), although the structure is exempted from its provisions by virtue of its historic status. Additionally, the rehearsal space is particularly inadequate for many of the theater's artists, who must rehearse off-site in underground space off a parking lot several blocks away. The building is also of insufficient size to support the growing artistry and audiences of the organization. And although recognized for its theatrical spatial arrangement, from an architectural standpoint, only the original theater spaces offer a memorable public image, according to the HPRB staff.

The New Addition: Design and Functions

9. In response to inefficiencies in the current configuration of the theaters unprecedented growth, new programmatic requirements, as well as specific planning goals of the city, Arena Stage is proposing to construct a new addition to its building. The innovative design by Bing Thom Architects will, in essence, encapsulate the historic Kreeger and Fichandler theaters in a transparent structural glass building and, in the

process, distinguish new construction from old, creating a dramatic new landmark for the District. The two theaters will be “show-cased” through massive windows and continue to present a public image along the streetscape. A bold new structure cradling a third theater at the center will join the two theaters. The design of this new structure is under continuing study by the Applicant. It is shown in an egg-like structure in a preliminary set of conceptual drawings, and in a subsequent concept plan, it is expressed in a more cylindrical geometry. In both designs, the upper level of this structure will also provide residential accommodations for visiting performers and theater personnel. Classrooms have also been added to the project and would be available to the community at-large as part of the Arena Stage educational outreach program. The design plan for the new addition also includes projections into public space.

10. The exterior of the building is visually composed of four elements: the structural glass, the above-referenced new structure, architectural concrete block, and a massive cantilevered roof that unifies the composition. In recognition of its close proximity to the waterfront, the new design introduces water as a feature in the complex. The transparency of the building accentuates the fluid interplay between interior and exterior spaces. A large terrace, located at the northwest corner, continues this theme outdoors. Two entries to the building create a promenade through the complex so that people can stroll through the Arena Stage, even during non-performing hours, creating a sense that the community is welcomed into the project and marking the building as a focal point of the Southwest Waterfront.

11. The programmatic and artistic space created by the new design will greatly improve Arena Stage's ability to develop new plays, work with young and emerging artists, and undertake the diversity of work for which the theater is increasingly known. The addition will also provide greatly enhanced shop space for scenery, props and costumes that meets contemporary standards.

12. The Applicant will retain approximately 96 of the 100 parking spaces existing on the site. It is currently studying other schemes that will allow it to "stack park" automobiles to maintain the current inventory of spaces. Nonetheless, because Arena Stage is an historic landmark, no parking is required for the addition under the District's Zoning Regulations pursuant to 11 DCMR 2100.5.

Demolition

13. The Applicant seeks demolition of the administrative wing, service areas, and lobby space of the Arena Stage. All significant theater space honored through the landmark designation will remain intact. Both the Kreeger and Fichandler theaters will continue to have a strong and dramatic visual presence along the streetscape.

Proposed Subdivision

14. A significant part of the new addition will be located on the site of the parking lot to the north of Arena Stage, which is on a separate lot from the main building.

The site is presently composed of two record lots, Lots 123 and 126. The subdivision into one lot of record is necessary in order to comply with the Zoning Regulations for new construction and, thus, is also necessary in order for the project to proceed.

Other Evidence

15. From the architectural history point of view, the plan to improve the theater is consistent with the purposes of the Act to retain, enhance and adapt for reuse the most significant elements of the original buildings. The project is an extraordinary one where the design for the theater blends both programmatic design needs and fine architecture, including an innovative water feature, into an exceptional and remarkable link to the Southwest Waterfront. On this basis, the project is one of exemplary architecture and land planning, and that the demolition is necessary in the public interest to construct this project of special merit.

16. From the land use and planning point of view, the project fulfills several major themes and elements of the city's Comprehensive Plan. Among several of the goals of the Historic Preservation Element of the plan are: (i) preserving the "important historic features of the District while promoting new development that is compatible;" (ii) encouraging to the maximum extent possible organization and individuals undertaking preservation by private means; (iii) providing for continued appropriate use of historic properties; and (iv) protecting the "distinguishing original quality or character of historic properties." *See* 10 DCMR 801.1, 804.1(n), 805 and 805.15. The proposal fulfills these goals by preserving two major historic interior theater spaces, providing a third theater and adding the support space necessary for the continued viability of the theater company in an architecturally significant addition to the existing building. The project also fulfills a major theme of the plan to "continue to support a healthy arts and cultural community through ... land use, economic development and programmatic policies and actions." 10 DCMR 105.1.

Discussion

Pursuant to D.C. Code § 6-1104(e), before the Mayor or his designated agent may issue a permit to demolish a historic landmark or a building in a historic district, the Mayor shall find that issuance of the permit is necessary in the public interest, or that failure to issue a permit shall result in unreasonable economic hardship to the owner. The term "necessary in the public interest" means consistent with the purposes of the Act as set forth in D.C. Code § 6-1101(b) or to allow a project of "special merit." *See* D.C. Code § 6-1102(10). The term "special merit" means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, special features of land planning, or social or other benefits having a high priority for community services. *See* D.C. Code § 6-1102(11).

When the Council of the District of Columbia adopted the Act, the Council envisioned the Mayor's Agent balancing the special merit of a proposed project against the historic value of existing historic buildings, because only projects that offer

significant benefits to the District of Columbia or the community, can readily offset the Council's recited public policy in favor of protecting, enhancing, and perpetuating the use of properties with historical, cultural and aesthetic merit. *See Committee of 100 on the Federal City v. D.C. Department of Consumer and Regulatory Affairs*, 571 A.2d 195, 200 (D.C. 1990). *See, also, Don't Tear It Down, Inc. v. D.C. Department of Housing and Community Development*, 428 A.2d 369, 373 (D.C. 1981). The Mayor's Agent's decision on special merit must reflect a trade-off between the value of the existing structure and the value of what would be constructed in its place if demolition is allowed to proceed. *Id.* Furthermore, factors which are common to all projects are not considered as special merits. *See* Legislative History to Bill 2-367, "The Historic Landmark and Historic District Protection Act of 1978", at 6. *See, also, Committee of 100 on the Federal City*, 571 A.2d at 200.

The determination by HPRB on a matter within its expertise has been accorded considerable deference. *See Committee for Washington's Riverfront Parks v. Thompson*, 451 A.2d 1177, 1194 (D.C. 1982). Moreover, while the views on a project by the CFA are advisory only, they can certainly serve as factors in the Mayor's Agent decision. *See, generally, Don't Tear It Down, Inc., supra.*

The evidence presented by the Applicant and its expert witnesses demonstrates that the selected design provides the appropriate balance of a number of interests: a) exceptional, innovative architecture that is well integrated into the current landmark; b) the preservation of as much of the landmark building as reasonable; c) the programmatic needs of the Applicant, which includes an enhancement and expansion of its outreach programs, which have significant social, cultural, and educational benefits to the community; and d) fulfillment of the planning policies and incorporation of the interests of the immediately surrounding Southwest Waterfront area.

The Mayor's Agent concurs with the expert findings of the HPRB and CFA that the proposal constitutes "exemplary architecture" as that term is defined under the Act. In relevant part, the staff report adopted by the HPRB, states the following:

From the standpoint of architecture and urban design, ... there is much to recommend the new project. The architectural concept is entirely fresh, inventive, and – appropriately – dramatic. Far more than just addressing operational inadequacies of the theater facility, the new plan creates an entirely new place, thereby holding significant promise for reinvigorating the Southwest Waterfront. If the superior quality of the design concept can be faithfully maintained, it appears that Arena may be able to support a claim of "exemplary architecture" before the Mayor's Agent.

Based upon the substantial evidence in the record, the Mayor's Agent determines that the proposed new addition embodies exemplary architecture, in both the quality and aesthetics of its architectural expression and its programmatic vision for a pioneering American theater. The project will also bring to the city the innovative work of a leading theater architect, thereby promoting and enhancing the city's role as a leading

international arts and cultural center. Finally, the project is entirely compatible with the design and planning policies under the Comprehensive Plan.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Mayor's Agent now makes the following Conclusions of Law:

1. Pursuant to D.C. Code § 6-1104(e), the issuance of the permit to demolish a portion of the Arena Stage, an individually designated historic landmark, is necessary in the public interest. The removal of secondary support spaces will in no way compromise the significant theater spaces honored by landmark status, but will allow for the retention and enhancement of the landmark and accommodate its readaption for both current and future uses.

2. The term "necessary in the public interest" means consistent with the purposes of the Act as set forth in D.C. Code § 6-1101(b) or to allow a project of "special merit." *See also* D.C. Code § 6-1102(10). The term "special merit" means a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, special features of land planning, or social or other benefits having a high priority for community services. *See* D.C. Code § 6-1102(11). These demolition and concept applications should be granted on the basis of their special merit as defined by the Act.

4. The proposed addition will have significant benefits to the community by virtue of its special features of land planning and other social benefits having a high priority for community services. The project will bring to the Southwest Waterfront area an innovative and dramatic work of architecture, thereby enhancing Washington's role as a leading arts and cultural center of the world. The effect will be increased and sustained significant and substantial benefits to the community, having a high priority for the city as set forth in the Comprehensive Plan.

5. There is substantial evidence in the record of this proceeding that the Applicant's proposal to construct a new addition to the Arena Stage, requiring the demolition of the secondary spaces of the landmark building, is "necessary in the public interest" as a project of "special merit" on the basis of its exemplary architecture, as well as a project which provides significant benefits to the District of Columbia. *See* D.C. Code § 6-1102(11). The two concepts presented by the Applicant for the theater space – the "cradle" and the cylindrical geometry – both are exceptional and qualify as exemplary architecture. Thus, the Applicant may proceed with either design scheme in development final design plans for the project.

6. Additionally, there is substantial evidence of record that the proposed subdivision required under the Zoning Regulations is necessary to construct the project and is consistent with the purposes of the Act.

ORDER

Accordingly, it is this **27th day of September, 2002,**

ORDERED, that H.P.A. Application #02-471, for the demolition of part of the Arena Stage at 1101 6th Street, S.W., be, and the same is hereby, **GRANTED**; and, it is

FURTHER ORDERED that H.P.A. Application #02-472 for the subdivision of Lots 123 and 126 into one lot of record be, and the same is hereby **GRANTED**; and it is

FURTHER ORDERED that, H.P.A. #02-515 (also known as S.L. Application #02-262), for new construction, be, and the same is hereby **GRANTED**; and, it is

FURTHER ORDERED that, pursuant to D.C. Code § 6-1104(h), the demolition permit shall not be issued unless a permit for new construction is issued simultaneously under D.C. Code § 6-1107, and the Applicant demonstrates the ability to complete the project; and it is

FURTHER ORDERED that, pursuant to D.C. Code § 6-1112(a), this Order shall take effect fifteen (15) days after issuance.

ROHULAMIN QUANDER
ADMINISTRATIVE LAW JUDGE, D.C., AND
MAYOR'S AGENT FOR HISTORIC PRESERVATION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ____ day of _____, 2002, I mailed by either e-mail or regular first-class mail, the foregoing Decision and Order to the following persons:

Norman M. Glasgow Jr., Esquire, and
 Carolyn Brown, Esquire
 Holland & Knight LLP
 2099 Pennsylvania Avenue, N.W., Suite 100
 Washington, D.C. 20007
 Counsel for the Washington Drama Society
 Also via e mail to: nghlasgow@hklaw.com
 and mcbrown@hklaw.com

Andrew Altman, Director
 D.C. Office of Planning
 801 North Capitol Street, N.E., 4th Floor
 Washington, D.C. 20002
 Via e mail to: andrew.altman@dc.gov

David Maloney, Acting Chief
 Historic Preservation Office
 D.C. Office of Planning
 801 North Capitol Street, N.E., 3rd Floor
 Washington, D.C. 20002
 Via e mail to: david.maloney@dc.gov

Janette Anderson
 Associate Director for Technical Services
 Georgetown University Law Center
 Via e mail to: anderjan@law.georgetown.edu

Tersh Boasberg, Chair
 Historic Preservation Review Board
 Via e mail to: Tershboasberg@aol.com

Bruce Brennan, Esquire
 Assistant Corporation Counsel
 Via e mail to: bruce.brennan@dc.gov

Certifying Officer, DCRA, OAD