

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
THE OFFICE OF PLANNING  
HISTORIC PRESERVATION OFFICE  
801 NORTH CAPITOL STREET, NE. THIRD FLOOR  
WASHINGTON, DC 20002<sup>1</sup>**

**IN RE:**

**Application for Subdivision**

**H.P.A. No. 03-200  
(S.O. No. 03412)**

**IN THE MATTER OF  
ATLAS THEATER AND SHOPS  
1313-1333 H STREET, N.E.  
WASHINGTON, DC**

**DECISION AND ORDER**

**BACKGROUND**

Pursuant to District of Columbia Official Code § 6-1106(c)(2001 ed.), Subdivisions, a public hearing was held on May 23, 2003, before Rohulamin Quander, Senior Administrative Law Judge and the Mayor's Agent for Historic Preservation ("Mayor's Agent"). Further, the administrative review was conducted in accordance with the requirements of the District of Columbia Municipal Regulations Title 10, Chapter 25, and in accordance with the D.C. Administrative Procedure Act, D.C. Code § 2-501 *et seq.*

Notice of the public hearing was published in the D.C. Register on April 25, 2003, as required. Anne H. Adams, Architectural Historian, of Shaw Pittman, LLP represented the

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<sup>1</sup> As of October 7, 2002, the physical location and telephone contact number of the designated Mayor's Agent has changed to: Rohulamin Quander, Senior Administrative Judge, c/o the D.C. Office of Employee Appeals, 717 14<sup>th</sup> Street, NW, Third Floor, Washington, DC 20005, (202) 727-0004. All correspondence and telephonic communications are to be directed to that location.

Applicant (Atlas Performing Arts Center). Applicant requested that the Mayor's Agent find the proposed subdivision necessary in the public interest because it is consistent with the purposes of the Historic Landmark and Historic District Protection Act of 1979 ("Act"), as defined in the Act. Because the property proposed for subdivision is a historic landmark known as the Atlas Theater and Shops, a hearing before the Mayor's Agent is required under the Act.

The Applicant is seeking approval of a subdivision that combines the five existing record lots on which the landmark was originally constructed into a single record lot. The Applicant is seeking this subdivision in order to obtain the permit(s) required to convert the Atlas Theater and Shops into a performing arts center. This adaptive reuse, which will be accomplished through the rehabilitation and restoration of the landmark, has been reviewed and granted conceptual approval by the Historic Preservation Review Board ("HPRB"). The HPRB found that the "The proposed plans, including the façade restoration and theater addition, are a commendable effort to bring this important but dilapidated building back to life."

Because the Atlas Theater and Shops is a designated landmark the application for subdivision was referred to the HPRB for its review and recommendation to the Mayor's Agent pursuant to D.C. Code, § 6-1106(b). At its public meeting on February 27, 2003 the HPRB unanimously adopted the Staff Report and Recommendation of the Historic Preservation Office (HPO) of the District of Columbia Office of Planning ("DCOP") which found the proposed subdivision consistent with the purposes of the Act.

Testimony on behalf of the Applicant was presented by Anne H. Adams, who has previously qualified before the Mayor's Agent as an expert in architectural history and historic preservation. Ms. Adams testified about the proposed treatment of the property and why the

subdivision is consistent with the purposes of the Act. Further, Ms. Adams submitted a written statement further outlining the significance of the Atlas Theater and Shops and how the proposed subdivision meets the tests for approval established by the Act. Scott Kenison, Administrator for the Atlas Performing Arts Center, and Adriana Radulescu, the project architect with Core Group, P.C. were also present at the hearing.

### **ISSUE**

The issue to be decided is whether Applicant has met the burden of proof to establish that the requested subdivision involving the landmark property known as the Atlas Theater and Shops is necessary in the public interest because it is consistent with the purposes of the Act.

### **FINDING OF FACT**

Based on the evidence presented and the record as a whole, the Mayor's Agent now makes the following Findings of Fact:

1. The issue presented before the Mayor's Agent is the Application for Subdivision of five lots of real property known as the Atlas Theater and Shops, an individually-designated landmark located at 1313-1333 H Street, N.E. and listed in the District of Columbia Inventory of Historic Sites.
2. The proposed subdivision will combine five existing record lots into one new record lot with the same perimeter boundary and square footage as the five existing lots.
3. Such a subdivision of the landmark will allow for the issuance of the permit(s) required to undertake the conversion of the landmark into a performing arts center

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and its rehabilitation and façade restoration, thus retaining and enhancing the landmark and encouraging its adaptation for current use.

4. No individuals or organizations applied for party status in this matter, and no persons or organizations filed any opposition to the proposed subdivision.

## **DISCUSSION**

### **Jurisdiction**

This historic preservation case was referred to the Mayor's Agent for an administrative hearing upon the HPRB's review of and recommendation that the application should be approved because it is consistent with the purposes of the Act.

D.C. Code § 6-1106 sets forth the Mayor's authority, which has been delegated to the Mayor's Agent, and the procedures with respect to approving applications for subdivision. In the matter at hand, subdivision would enhance the Atlas Theater and Shops by allowing an adaptive reuse of the landmark and restoration of its façade to go forward. Such a subdivision can be necessary in the public interest by virtue of being consistent with the purposes of the Act.

D.C. Code § 6-1106(b) provides that before the Mayor may admit to record any subdivision of an historic landmark or of a property in an historic district the Mayor shall review the application and refer it to the HPRB for its recommendation. Under § 6-1106(c) "Within 120 days after the Review Board receives the referral the Mayor shall, after a public hearing, make a finding required by subsection (e) of this section; provided that the Mayor may -make such finding without a public hearing in the case of a subdivision of a lot in an historic district if the Review Board advises him that such subdivision is consistent with the purposes of this subchapter."

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**Necessary in the Public Interest**

Applicant is requesting that the proposed subdivision be approved as necessary in the public interest by virtue of being consistent with the purposes of the Act. The standard of review of a subdivision to be admitted to record under D.C. Code § 6-1106(e) requires that no subdivision subject to this subchapter shall be admitted to record unless the Mayor finds that admission to record is “necessary in the public interest.”

The term “necessary in the public interest” is defined in Section 6-1102(10) as “... consistent with the purposes of this subchapter, as set forth in Section 6-1106(b) or necessary to allow the construction of a project of special merit.” The Applicant is making no claim that the subdivision is necessary to construct a project of special merit but rather claim only that the subdivision is consistent with the purposes of the Act. The Applicant bears the burden of proof to establish that the proposed subdivision of the landmark is necessary in the public interest.

With respect to historic landmarks, pursuant to § 6-1106(b)(2), two of the purposes of the Act are, “to retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use” and “to encourage the restoration of historic landmarks.”

The Mayor’s Agent further determines that the proposed subdivision will enhance the significant character of the Atlas Theater and Shops because it will allow for the issuance of permits necessary for the adaptive reuse, rehabilitation, and restoration of the landmark. The Mayor’s Agent concurs with the findings of the HPRB as outlined in its Staff Report and Recommendation adopted on February 27, 2003.

**CONCLUSION OF LAW**

Based on the entire record in this matter, including the provision of the Act and testimony and evidence submitted by the Applicant, the Mayor's Agent reaches the following Conclusion of Law:

1. Applicant has sustained its burden of proof that the approval of the subdivision is necessary in the public interest because it is consistent with the purposes of the Act.

**ORDER**

The foregoing having been considered, it is this \_\_\_\_\_ day of \_\_\_\_\_, 2003,

**ORDERED** that the Application for Subdivision of 1313-1333 H Street, N.E., Square 1027, Lots 149, 150, 151, 152 and 153, H.P.A. No. 03-200 (S.O. No. 03412), be and the same is hereby, **GRANTED**, because the subdivision is necessary in the public interest because it is consistent with the purposes of the Act.

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Rohulamin Quander

Senior Administrative Judge, D.C., and  
Mayor's Agent for Historic Preservation

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing decision and order was served this \_\_\_\_\_ day of \_\_\_\_\_, by mailing a copy of the same via e-mail or U.S. Mail, postage prepaid, to the following:

Copies to:

Jane Lang  
Sprenger-Lang Foundation  
Via e-mail to: [jlange@sprengerlang.com](mailto:jlange@sprengerlang.com)

Scott Kenison  
Atlas Performing Arts Center  
Via e-mail to: [skenison@sprengerlang.com](mailto:skenison@sprengerlang.com)

Andriana Radulescu  
Core Architects  
Via e-mail to: [agr@coredc.com](mailto:agr@coredc.com)

Anne H. Adams  
Via e-mail to: [andi.adams@shawpittman.com](mailto:andi.adams@shawpittman.com)  
Also via First Class U.S. Mail to:  
Shaw Pittman, LLP  
2300 N Street, N.W.  
Washington, D.C. 20007-1128

Lisa Burcham, Program Manager  
Historic preservation Office  
Via e-mail to: [lisa.burcham@dc.gov](mailto:lisa.burcham@dc.gov)

David J. Maloney  
Historic Preservation Office  
Via e-mail to: [david.maloney@dc.gov](mailto:david.maloney@dc.gov)

Emily Paulus  
Historic Preservation Office  
Via e-mail to: [emily.Paulus@dc.gov](mailto:emily.Paulus@dc.gov)

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Tersh Boasberg, Chair  
Historic Preservation Review Board  
Via e-mail to: [tershboasberg@aol.com](mailto:tershboasberg@aol.com)

Bruce Brennan, Esq.  
Office of the Corporation Counsel  
Via e-mail to: [bruce.brennan@dc.gov](mailto:bruce.brennan@dc.gov)

Andrew Altman, Director  
D.C. Office of Planning  
Via e-mail to: [andrew.altman@dc.gov](mailto:andrew.altman@dc.gov)

Janette Anderson  
Associate Director for Technical Services  
Georgetown University Law Center Library  
Via e-mail to: [anderjan@law.georgetown.edu](mailto:anderjan@law.georgetown.edu)