

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, N.E., SUITE #9100
P.O. Box 37140
WASHINGTON, DC 20013-7200**

IN RE:

**Yale Steam Limited Partnership
Application for Subdivision**

**HPA # 2000-26
S.O. #7310/File No. 2000-01**

DECISION AND ORDER

Background

This matter came before Rohulamin Quander, Administrative Law Judge and the Mayor's Agent for Historic Preservation (the "Mayor's Agent"), on June 6, 2000, pursuant to the District of Columbia Administrative Procedure Act, codified at District of Columbia Code, Section 1-1509 and the District of Columbia Historic Landmark and Historic District Protection Act of 1978 (the "Act"), codified at District of Columbia Code, Section 5-1001, *et seq.*

The Yale Steam Limited Partnership, aka Yale Steam Associates Limited Partnership, (the "Applicant") filed with DCRA the Application for consolidation by subdivision of lot of record 6 ("Lot 6") with lots of record 67, 68, 73, and 74 (the "Lots") in Square 514 (the "Square"), to create a single building lot of record of sufficient dimensions to allow for construction of a proposed hotel. The Applicant claimed that consolidation of Lot 6 with the Lots by subdivision was consistent with the purposes of the Act, this standard being one of the standards upon which a subdivision may be approved by the Mayor's Agent.

The subdivision was requested in conjunction with the Applicant's proposal to re-develop the Yale Laundry complex and site (the "Complex"), which proposal included the whole building preservation of the Yale Laundry buildings and preservation and restoration of the signature smokestack attached to the 1902 Yale Laundry building (the "Project").

The lots of record are located in a historic district and involved the proposed consolidation by subdivision of a lot of record on which a historic landmark is located with other lots (the "Application"). Because the proposed subdivision of lots involved lots of record located in a historic district recognized by the District of Columbia and

involved a lot of record on which a historic landmark was located in part, the Application was referred by the Historic Preservation Review Board (HPRB) to the Mayor's Agent for the conduct of a hearing on the matter of the Applicant's request for subdivision.

The Mayor's Agent conducted a proceeding on the Application in accordance with the provisions of Title 10 D.C. Municipal Regulations ("DCMR") 2500 *et seq.* The Applicant was the sole entity with party status in the proceeding before the Mayor's Agent, no other person having filed, in accordance with the provisions of 10 DCMR 2517.1 and 2517.2, a timely notice of request for treatment as a "party" in this matter. The record closed on July 11, 2000, upon receipt of the Applicant's proposed Final Decision and Order, and a post-hearing opposition to this Application, filed by Jonathan B. Fox, a local resident.

Square 514 is located in the northwest quadrant of the District of Columbia and is bound by New York Avenue on the south, 4th Street on the east, 5th Street on the west and M Street on the north. Lot 6 and lots of record 67 and 68 front on New York Avenue, NW; Lot 6 and lots of record 73 and 74 front on Brown's Court, a thirty foot wide east-west alley which substantially bisects the Square. Lots of record 73 and 74 have no direct frontage on New York Avenue, NW. Brown's Court is connected to the abutting street rights of way by four (4) feeder alleys of varying widths, all of which are less than 20 feet in width.

The Square in its entirety is located in the Mount Vernon Square Historic District (the "Historic District"). The Historic District was designated by the HPRB as a historic district under the Act by its action in Review Board Case No. 99-6, effective as of July 22, 1999, and was nominated and has been listed on the National Register of Historic Places. Lot 6 is the site of a portion of the Complex. The Yale Steam Laundry Complex is a historic landmark listed on the District of Columbia Inventory of Sites and the National Register of Historic Places, designated as such by the HPRB in its Case No. 99-1, on December 17, 1998.

At the November 18, 1999, monthly public HPRB hearing, which included this Application, and further upon reviewing the Historic Preservation Division Staff Report, the HPRB unanimously adopted the Staff Report, and recommended the approval of the Application for subdivision of Lot 6 with the Lots. In doing so, the HPRB found that, as required by the Act, the consolidation of the Lots with Lot 6 by subdivision into a larger lot of record, was in the "public interest" and was consistent with the purposes of the Act. The HPRB then referred the matter to the Mayor's Agent for a final determination on the subdivision issue, which hearing was convened on June 6, 2000.¹

¹ This HPRB action, subsequently followed by a recordation of the subdivision at the D.C. Office of the Surveyor prior to the Mayor's Agent hearing, created some confusion about whether the recordation action was premature. The Mayor's Agent will address this issue during this Final Order.

The Applicant was represented by David W. Briggs, Esq. of Holland and Knight LLP, who requested the incorporation into the record of the Mayor's Agent's proceedings on the Application, the pertinent records of the deliberations by the HPRB, which records included various letters of support for the Project, including a letter of support from Ward 2 Councilmember Jack Evans, and petitions of support signed by neighborhood residents.

The Mayor's Agent also notes that the D.C. Office of Planning (DCOP), in conjunction with the large tract review of the Yale Laundry Project recommended approval of the Project. Since the Project contemplates construction upon the Lots and Lot 6 with a single structure, and such construction may only be accomplished upon a single lot of record, the recommendation of the Office of Planning in fact represents a recommendation that the Application before the Mayor's Agent be approved.

The Applicant presented the following witnesses, all of whom testified in support of the Application:

1. Emily Hotaling Eig, EHT Traceries, Inc.
2. Laura Trieschmann, EHT Traceries, Inc.
3. Nathan Gross, Arnold & Porter
4. Michael Minkoff, Yale Steam Corporation, General Partner of Applicant
5. Suman Sorg, Sorg and Associates.

The following witnesses also testified in support of the Application:

1. Lydia Goring, Single Member District Commissioner, ANC 2C04, on behalf of and as the designated representative of ANC 2C
2. Peter Easley, Vice President, Mount Vernon Square Neighborhood Association, on behalf of the Mount Vernon Square Neighborhood Association

The following persons noted their opposition to the Application:

1. Jonathan B. Fox
2. Jessica Fox

In addition Jonathan B. Fox, a nearby neighbor, specifically provided testimony and, with leave of the Mayor's Agent pursuant to the provisions of 10 DCMR 2518.2(c), also submitted a statement in opposition to the Application. No person in opposition to the Application filed for or made a timely request for "party" status in accordance with 10 DCMR 2517.

For the reasons set forth herein, the Application is hereby **GRANTED**.

ISSUE

The sole issue to be decided is whether the Applicant has sustained its burden of proof in showing that the consolidation of Lot 6 with the Lots by subdivision would be consistent with the purposes of the Act.

FINDINGS OF FACT

The Mayor's Agent, having received and reviewed all of the evidence presented in this matter, including sworn testimony or documentary statements submitted as official statements, or both, plus other evidence in support of and in opposition to the Application, and having reviewed the same, now makes the following Findings of Fact:

1. The Applicant is owner of record of Lot 6 and the immediately contiguous Lots 67, 68, 73, and 74 (the Lots).
2. The Applicant is also the owner of abutting lot of record 78 ("Lot 78") and adjacent lot of record 87 ("Lot 87").
3. Lot 6 is separated from Lot 87 by a 15' wide public alley, connecting New York Avenue, NW with Brown's Court, a 30' wide public alley which substantially bisects the interior of Square 514, east to west.
4. The Applicant applied to the HPRB for a consolidation of Lot 6 and the Lots by subdivision.
5. Lot 6 and Lot 87 are the site of the historic Yale Laundry Complex, a designated landmark in the D.C. Inventory of Historic Structures and Sites and a registered landmark on the National Register of Historic Places.
6. The historic Complex and Lots 6 and 87 were so designated on the D.C. Inventory of Historic Structures and Sites by action of the HPRB on December 17, 1998.
7. Historic designation of the Complex arose out of, and was required by a memorandum of understanding reached between the U.S. Advisory Council on Historic Preservation, the National Capital Planning Commission, and the D.C. State Historic Preservation Office, which memorandum identified six (6) buildings or groups of buildings which required landmark designation and protection as a condition for approval/consent/clearance for the proposed Washington, D.C. Convention Center, which was proposed to be located in the Shaw

neighborhood of the District of Columbia, north of Mount Vernon Square (the "Memorandum").

8. The Memorandum also required that the District undertake to identify and designate a historic district for the area northeast and east of Mount Vernon Square, having boundaries roughly of 7th Street, N.W. on the west, New York Avenue, N.W. on the south, 1st Street on the east, and variously M and N Streets, N.W. on the north.
9. On June 17, 1999, the HPRB identified and adopted the Mount Vernon Square Historic District (the "Historic District").
10. The Yale Laundry Complex, while being a designated historic landmark individually, is also located within the Historic District.
11. The Complex consists of three (3) structures - the main 1902 laundry building, a 1924 addition to the 1902 building, both of which are located on Lot 87; and a stable/vehicular garage building constructed in 1919 (the "Stable Building"), which is located on Lot 6, being one of the lots of record which is the subject of the Application.
12. On November 18, 1999, the HBRB at its monthly meeting, conducted a hearing on the matter of the subdivision of Lot 6 and the Lots into a single lot of record, and also considered a concept review of the Applicant's proposed development of the historic Complex within the context of the Complex's designation as an historic landmark and the Complex's location within the Historic District.
13. At the conclusion of the hearing the HPRB adopted the Historic Preservation Division's (HPD) Staff Report, and approved the subdivision of Lot 6 and the Lots into a single lot of record, and gave conceptual review approval to a scheme of massing and height for the proposed development for the Complex by the Project on Lot 87, Lot 6 and the Lots.
14. Subsequently, HPRB considered the matter of the proposed development of the Complex at its hearings of April 27, 2000, and May 25, 2000, and between those two hearings approved a modified proposal for height, bulk and massing for the development, plus recommendation as to materials and fenestration of the Project on Lot 87, Lot 6 and the Lots, delegating to the staff the authority to grant final approval of any building permit applications related to the proposed development of the Project, provided the same were consistent with the approvals given by the HPRB in its prior considerations.

15. All of the development proposals for the Complex, as approved by the HPRB, including the Project, have called for the total preservation of the buildings of the Complex without demolition of, or construction above the three (3) historic structures of the Complex.
16. All of the development proposals for the Complex require development on the Lots, in addition to development on the open spaces of Lots 6 and 87.
17. Based upon the testimony of Emily Hotaling Eig, an architectural historian and an expert in that field recognized as such by the Zoning Administrator, the Mayor's Agent finds, as to the matter of the consistency of the proposed subdivision of Lot 6 with the Lots as the same relates to the historic Yale Laundry Complex landmark as an individually designated landmark, that:
 - a. The subdivision of Lot 6 and the Lots will foster full building preservation of the historic Yale Stable Building, located on Lot 6, in its entirety, by permitting new development to occur without the need to demolish, or construct physically above the historic Stable Building.
 - b. The subdivision of Lot 6 and the Lots will foster full building preservation of the larger Complex, in its entirety, including the preservation and restoration of the signature smokestack without the need to demolish, or construct physically above the historic Complex, all as proposed in the Project approved by the HPRB.
 - c. The physical considerations of whole building preservation of the magnitude being proposed by the Applicant in the Project would necessitate the consolidation by subdivision of Lot 6 and the Lots into a single lot of record, in order to permit a sufficient amount of new development to be made available to support the whole building preservation of the Complex and the preservation and restoration of the smokestack, while avoiding demolition of any portion of the Complex or construction upon and above any of the historic structures of the Complex.
 - d. The subdivision of Lot 6 and the Lots will contribute to the character of the historic Complex as an individual landmark, will encourage its adaptive reuse of the Stable Building for a current use, and will encourage in larger part the restoration and adaptive reuse of the entire Complex.

- e. The subdivision of Lot 6 and the Lots from the perspective of the impact upon the historic Complex, as a designated landmark site, is consistent with the purposes of the Act and in the public interest.
18. Based upon the testimony of Emily Hotaling Eig and of Laura Treischmann, respectively an architectural historian and an expert in that field recognized as such by the Mayor's Agent, the Mayor's Agent finds, as to the consistency of the proposed subdivision of Lot 6 with the Lots as the same relates to the Mount Vernon Square Historic District, that:
- a. The Lots, as presently subdivided, are an anomaly in the Mount Vernon Square Historic District, and specifically in the Square, and do not reflect the pattern of land division that otherwise is present in the Historic District.
 - b. The present configuration of the Lots as separate lots of record were not historically intended to be preserved or maintained as open space, but instead reflected the intent of an earlier owner of the Lots to maximize the development possibilities under governmental land controls in existence at the time that the subdivision of the Lots was originally undertaken.
 - c. The Lots in their present physical configuration do not contribute to the character of the Historic District, and thus the subdivision of the Lots with one or more other lots of record will not harm the character or cause the lose of any contributing aspect of the Historic District.
 - d. The preservation of the historic Complex will enhance the character and integrity of the Historic District.
 - e. The subdivision of Lot 6 and the Lots will enhance the likelihood that the Complex in its entirety, including the signature smokestack, can be preserved without the need to demolish, or otherwise physically construct above the historic Complex, and thus will enhance the character and integrity of the Historic District.
 - f. The subdivision of Lot 6 and the Lots are compatible with the character of the Historic District.
 - g. From the perspective of the impact upon the Historic District, the subdivision of Lot 6 and the Lots is consistent with the purposes of the Act and in the public interest.

19. Based upon the testimony of Nathan Gross, a zoning specialist and an expert in that field, who was recognized as such by the Mayor's Agent, the Mayor's Agent finds that:
 - a. None of the Lots individually in their current physical configuration can be developed as a matter of right with a structure for human use and occupancy under the Zoning Regulations of the District of Columbia (the "Zoning Regulations") which are in effect as of the date of this Order.
 - b. The Lots can only be developed under the current Zoning Regulations as a matter of right by undertaking a subdivision of the Lots which consolidates them together as a single lot of record, or consolidates them with one or more of the other adjacent lots of record in order to create a physical configuration that could readily lead to the possibility of development as a matter of right under the applicable provisions of the Zoning Regulations.
 - c. The consolidation by subdivision of the Lots with Lot 6 creates a physical configuration that would permit development as a matter of right under the applicable Zoning Regulations.

20. Based upon the testimony of Michael Minkoff, President of Yale Steam Corporation, General Partner of the Applicant, the Mayor's Agent finds that:
 - a. The Applicant has committed to the full building preservation of the Complex as part of the Yale Laundry Project.
 - b. The Applicant has received HPRB approval for the Project which includes the Applicant's commitment to full building preservation of the Complex, including restoration of the signature smokestack.
 - c. In order to undertake the full building preservation of the Complex, including the preservation and restoration of the signature smokestack, for which there is an extant demolition permit, sufficient land area not occupied by the historic structures of the Complex must be available to permit new development density that can support the full building preservation.
 - d. To generate a sufficient amount of development density to support the full building preservation contemplated by the Project, there must be a sufficient amount of land area to provide the necessary amount of physical area as well as development density, to support the preservation activities.

- e. The subdivision of Lot 6, on which the Stable Building is located, with the Lots provides additional land area that can generate additional development density. That additional density can support, in the Applicant's opinion, the Project, including the full building preservation of the Complex, including the smokestack.
- f. The HPRB, in considering the Project, has approved the concept of the Applicant's proposal for new development on the Lots and on the other open spaces of Lot 6 and Lot 87 in support of the proposed preservation activities for the Complex, and directed that the Applicant work with the staff to finalize the Project, consistent with the HPRB's adopted guidelines.
- g. Additionally, and notwithstanding the need for additional development density, the physical configuration of land, which would arise from the consolidation by subdivision of Lot 6 with the Lots, would create a physical land configuration that could support new development on Lot 6 without having to demolish a large portion of the Stable Building.
- h. Having additional land area of the Lots associated with Lot 6 permits the Applicant to develop new construction, as an addition to the Stable Building, which provides a reasonable configuration and layout for off street parking and off street loading necessitated with any new development involving the Stable Building; the area and configuration of Lot 6 alone cannot physically accommodate off street loading and off street parking for any development which might occur in conjunction with the Stable Building, whether as part of the Project or otherwise.
- i. The subdivision of Lot 6 and the Lots into a single lot of record provides a satisfactory physical configuration that can support new development while permitting the preservation in whole of the stable/vehicle garage, without the need for demolition or construction upon and above that historic structure.
- j. The Lots in their present configuration as separate lots of record cannot be developed for or constructed upon to produce a structure for human habitation, thus materially limiting the usefulness of these Lots.
- k. The present use of the Lots as vacant land used for vehicular car sales and storage does not contribute to the character of the

Historic District, and does not create a highest and best use of the land within the boundaries of the Lots.

21. Based upon the testimony of Suman Sorg, a licensed architect in the District of Columbia and the architect of record for the proposed Project, the Mayor's Agent finds that:
 - a. The Project as designed and as approved by the HPRB would require the consolidation by subdivision of Lot 6 and the Lots into one large lot of record.
 - b. The consolidation by subdivision of Lot 6 and the Lots is necessary to create a physical configuration of land that can reasonably support new development and which does not involve the demolition in whole or in part of the Stable Building, or other physical intrusion into or upon the Stable Building.
 - c. The amount of new development rights generated from the larger lot of record resulting from the subdivision of Lot 6 with the Lots creates necessary additional development that can support a whole building preservation program as proposed by the Applicant in its Project for the Complex.
 - d. The subdivision of the Lots with Lot 6 is necessary in order to create viable and workable off-street parking and off-street loading arrangements for any development involving the Stable Building, where that building is not to be demolished in whole or in part, or built upon, either over or under.

22. Based upon the testimony of Lydia Goring, Single Member District Commissioner for ANC 2C04, and in whose district the Complex and the Lots in question are located, the Mayor's Agent finds that:
 - a. ANC 2C has considered the matter of the development of the Complex at numerous ANC meetings, at which both proponents and opponents were present.
 - b. ANC 2C at duly constituted meetings of that Advisory Neighborhood Commission, did vote unanimously, of those present, at its November 3, 1999, meeting and again unanimously, of those present, at its May 3, 2000, meeting to support the proposed Project for the redevelopment of the Complex, including the subdivision of Lot 6 with the Lots.

23. Based upon the testimony of Peter Easley, Vice President of the Mount Vernon Square Neighborhood Association (the "Association"), the Mayor's Agent finds that:
- a. The Yale Laundry Complex is located within the geographical area of the Association.
 - b. The Association is an association of neighborhood property owners, residents and businesses which has been in existence for more than 40 years.
 - c. The Association has held numerous meetings concerning the proposed development for the Complex, including the subdivision of Lot 6 with the Lots.
 - d. The Association has voted to support the proposed Project, and has testified in full support of the proposed the Project at various forums, including meetings of the HPRB.
24. Jonathan B. Fox, a resident of 441 M Street, NW in Square 513, one square to the north of the Square, testified in opposition to the Application, essentially as follows:
- a. He opposed the proposed development for the Yale Laundry Complex as approved by the HPRB, and is essentially asserting that the Mayor's Agent should broaden his scope of consideration on this Application beyond the sole issue of subdivision, because the Applicant has committed numerous errors and misrepresentations during the process, which errors have only been compounded by various governmental agencies, including the HPRB, the Zoning Commission, and the Office of the Surveyor, each of which in some way accepted, participated in, or otherwise neglected to block, correct, or disapprove of the Applicant's alleged wrongdoing.
 - b. The proposed development does not match the character of the Historic District, as to its purpose, design, massing, and scale.
 - c. The subdivision of Lot 6 with the Lots would facilitate the undertaking of the Project, and in doing so would be contrary to the goals of the Historic District, without any proof that the Project, if approved, would help retain, enhance, and restore the historic landmark buildings, and likewise be consistent with the guidelines of the Act.

- d. There still remains a question about the standing of the Applicant to in fact be an "Applicant", as the named party Applicant in this Application is "Yale Steam Limited Partnership", whereas the alleged true owner of the site is "Yale Steam Associates (emphasis added) Partnership", a different named entity, creating a situation where a material misrepresentation exists as to who is the true applicant and whether the entity which filed for approval of this Project has standing to do so.
 - e. It was illegal for anyone, including the historic preservation staff, the HPRB, or the Office of the Surveyor to approve the Application for Subdivision on or about January 24, 2000, without the issue being first presented to the Mayor's Agent for a hearing on the merits of the case, which improper sign-off resulted in the subdivision being recorded as a matter of public record in the D.C. Office of the Surveyor on February 1, 2000, several months prior to the issue being subsequently presented to the Mayor's Agent at the June 6, 2000, public hearing.
 - f. The Project is locating in Housing Priority Area "A", a part of Downtown Development District C-2-C, an area which has historically been a mix of two (2) to three (3) story low scale and low height residential and commercial buildings, generally not exceeding 45 feet above grade, but the height of the Project is entirely too tall and violates the residential and light commercial character of the neighborhood.
 - g. The residents of the historic district, and particularly those whose properties front onto Brown's Court Alley, M Street, and Fourth and Fifth Streets, N.W., will forever and irrevocably lose their Washington, D.C., vistas, including the U.S. Capitol Building, the Washington Monument, and the Potomac River, with the construction of a 100-foot tall Hotel Tower between the view and their residential properties
25. Jessica Fox, also a resident of 411 M Street, NW, although not a sworn witness at the Mayors' Agent's hearing, noted her opposition to the Project for the record, and thus the Application for subdivision. She associated herself with the testimony of Jonathan B. Fox.
26. Steven Raiche, Director of HPD, DCRA, was present at the hearing, and although he did not testify as a witness in the Mayor's Agent's Hearing, he noted to the Mayor's Agent that the HPRB had in fact given approval to

the Applicant's Project for the Complex, and had delegated final approval authority to the staff of HPD at the Review Board's May 25, 2000, meeting. Mr. Raiche also noted that the HPRB had approved, at the recommendation of Staff, the subdivision as requested by the Application at the Review Board's November 18, 1999, meeting.

DISCUSSION

The Mayor's Agent, by delegation from the Mayor, may authorize a subdivision of land on which a historic landmark is located, if the subdivision of such land is necessary in the public interest. See D.C. Code, Secs. 5-1006[c] and (e). D.C. Code Sec. 5-1002 (10) defines "necessary in the public interest" to mean:

consistent with the purposes of this subchapter as set forth in Sec. 5-1001(b), or necessary to allow the construction of a project of special merit.

The Applicant has asserted in its Application, its supplemental filing, and at the Mayor's Agent's hearing, that the subdivision would be one consistent with the purposes of the Act, and specifically those in Sec. 5-1001(b).

D.C. Sec. 5-1001(b)(1) specifies that "[with] respect to historic landmarks" the purpose of the Act 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.

The District of Columbia Code also notes that where properties are located in an historic district, then the purpose of the Act is:

- (A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
- (B) To assure that alterations of existing structures are compatible with the character of the historic district; [and]
- (C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.

The Applicant's burden in support of the Application for the subdivision by consolidation of the Lots with Lot 6, on which the Stable Building of the historic landmark Complex is located, is to show to the Mayor's Agent satisfaction that the subdivision of Lot 6 with the Lots will meet the standards of the Act applicable with respect to an historic landmark. Tangentially, although not required to be satisfied to support an approval of a subdivision of the land on which a landmark structure is

located, is the matter of does the proposed subdivision also meet the purposes of the Act where the landmark property is also located in an historic district.

The Mayor's Agent is called upon to decide whether the Applicant has fully complied with the requirements of the Act, and has proven to the satisfaction of the Mayor's Agent that the subdivision is necessary in the public interest, both as the same relates to the historic landmark Complex and as the same relates to the Historic District in which the Complex is located. The Mayor's Agent is of that opinion, based upon the following considerations: 1) The substantial evidence in support of the proposed Project for the Complex before the HPRB, and in the Mayor's Agent's hearing proceeding; 2) Approval by the HPRB of the subdivision and the subsequent approval by the HPRB of the height, bulk and massing of the proposed Project as both being consistent with purposes of the Act; 3) The support of ANC 2C for the proposed Project as approved by the HPRB, which support must be given "great weight", according to local law; and, 4) The fact that the subdivision would appear to be integral to the success of the preservation and restoration in whole of the Complex, a landmark listed on the D.C. Inventory of Historic Sites.

Mr. Fox, a nearby resident of M Street, N.W., has made a series of allegations of irregularity in the process by which the proposed Yale Laundry Project was addressed by the HPRB and its staff. While several of these allegations are either completely beyond the sole issue before the Mayor's Agent – subdivision, and whether it is compatible with the Act and in the public interest – or beyond the Mayor's Agent's statutory jurisdiction, it is important to at least recognize that several substantive assertions have been made against this Project, underscoring that the Mayor's Agent is aware of the fact that not everyone is in agreement that this proposed Project is the best way to restore the Complex to useful life.

Essentially, the issues Fox raised were: 1) Whether the Project matched the character of the Historic district as to its purpose, design, massing, scale and height; 2) Was their adequate proof that the Project, if approved, would help retain, enhance, and restore the historic landmark buildings, and be consistent with the Act; 3) Allegedly administrative errors in allowing the subdivision to be recorded with the D.C. Office of the Surveyor before the Mayor's agent ruled on the issue of subdivision; 4) Is the Applicant's legal name correct, as one version of the name also contains the word, "Associates", and the other does not; and 5) Being located in Housing Priority Area "A" in Downtown Development District C-2-C, which is appropriate for low level housing, or low level/low density commercial use, is it appropriate to allow a structure significantly taller than 100 feet in height to be constructed at the site, which will also permanently block many of the residents' long-standing, historic view of the National Monuments.

The Mayor's Agent has reviewed the history of this case and the record created, both during the administrative hearing on June 6, 2000, and in various forums conducted prior to the Mayor's Agent's hearing, and is satisfied that each of the above-

noted issues was addressed in the appropriate forum, and that the administrative and judicial paths to other needed approvals for this Project were cleared issue by issue, prior to the case being convened by the Mayor's Agent. As well, should there still be a

need for additional legal considerations, such as a zoning variance(s), those can still be sought, if deemed necessary. That the resolution was not to Mr. Fox's satisfaction is unfortunate, but in a democratic society, disagreement and minority opinions are a staple of democracy.

In addition, where human errors were allegedly committed, such as the listing of the Applicant as "Yale Steam Limited Partnership" instead of "Yale Steam Limited Associates (emphasis added by the ALJ) Partnership" they do not amount to a material misrepresentation in the absence of specific evidence to show that some improper or illegal intent was the objective. As well, the HPRB and other DCRA entities signing off on the subdivision application in November 1999, before the matter was presented to and decided by the Mayor's Agent, was perhaps a little premature.

Pursuant to the Sec. 5-1006 of the Act, all subdivision considerations for lots located in a historic district are referred to the HPRB for consideration, and pursuant to subsec. (c), the HPRB, as agent for the Mayor, may approve a subdivision of a lot located in a historic district *without a public hearing before the Mayor's Agent* (emphasis added), if the subdivision is consistent with the purposes of the Act. However, in reading subsecs. (a), (c), and (e) together, if the subdivision is for an individually designated landmark, as is the entire Yale Laundry Complex, then the public hearing before the Mayor's Agent is still required. Undoubtedly the HPRB staff was aware that this site was both an individually designated landmark and located within the more recently created historic district, and perhaps the processing of this subdivision to the final stage of allowing it to be recorded before the Mayor's Agent's final decision was hasty.

Still, either when the harmless human error was realized, or because the Applicant felt unclear, uncertain, or uneasy about the interpretation of the Act and whether a Mayor's Agent hearing was still required, the Applicant still requested the hearing before the Mayor's Agent, and every effort to clarify this matter has been made.

In this case, and in all other statutorily mandated Mayor's Agent's hearings, the conducting of the hearing is not a *pro forma* action. Had the Mayor's Agent ruled against subdivision and the Applicant in this case, the Mayor's Agent would have directed that the prior action of proceeding with the subdivision and recordation of same at the D.C. Office of the Surveyor, be vacated, and the subdivision be set aside.

Mr. Fox has also made much of the fact that the Complex is an integral part of the larger residential community, and as such, the site should be dedicated to housing or a low rise, low density commercial project. His sentiments were discussed during the

HPRB meeting of April 27, 2000, as several of the HPRB members expressed concern that the approval of a project that would well exceed 100 feet in height would forever remove the view of the historic monuments that the residents of the M Street area now enjoy.

The HPRB discussion also noted that there were several other considerations, including that: 1) New York Avenue is a 130 foot wide commercial corridor, and that under the provisions and considerations of the historic D.C. act which guided and limited the height of buildings in the city, and the current zoning law which governs this site, a building of up to that same 130 height would be permissible at this location, if approved; 2) In a location where residential structures back up directly to commercial structures, invariably there are widely varied heights, even side by side or back to back, and such is allowed if approved, consistently with appropriate regulations; 3) That limiting the height of the two new buildings to 110 feet, including a 30 foot setback on the east tower was adopted out of respect for the 106 foot height of the smokestack, the historic Yale Laundry buildings, and the close proximity of the Fletcher Chapel; and 4) As far as height is concerned, there is no transition area between the higher heights allowed in a commercial corridor and the lower heights allowed in this immediately adjacent residential area, and it was a struggle to consider, balance, and accommodate everyone's point of view, especially the residents whose view of the Monumental Corridor will be forever vacated by the construction of the two buildings in the Complex.

It is also significant to note that the HPRB Staff Report of November 18, 1999, noted that the site was one of the very few in the Mount Vernon Square Historic District on which such large buildings could be constructed, and the *only* (emphasis added) vacant lot site in the historic district located in the Downtown Development district that is zoned for commercial use, and also has an allowed height of up to 130 feet. The Staff Report also noted that, "From a design perspective, the site's frontage on New York Avenue, and the varied height of the historic buildings on the block, makes it one of the few in the historic district appropriate for tall new construction." This sentiment was likewise expressed by the D.C. Office of Planning Report, dated June 5, 2000, as it recommended approval of the Project, as a appropriate opportunity to redevelop the New York Avenue corridor and the Mount Vernon Square neighborhood and area surrounding the new Convention Center, which is vital to the District of Columbia.

CONCLUSIONS OF LAW

The Mayor's Agent, having considered this entire Application for subdivision, including all of the sworn testimony, the formal exhibits and other documents submitted into the record, and having made the above-noted Findings of Facts and considered the ensuing Discussion, Concludes as a matter of law as follows:

1. The Mayor's Agent concludes that the proposed subdivision is consistent with the purposes of the Act, and that the subdivision would be compatible with the character of the Mount Vernon Square Historic District.

2. The Mayor's Agent further concludes that the consolidation of Lot 6 and the Lots by subdivision as requested in the Application by the Applicant is consistent with the Act, being necessary in the public interest.

ORDER

ACCORDINGLY, it is this **6th day of September, 2000**.

ORDERED that the Applicant's request for approval of a subdivision of Lot 6 with the Lots into a single lot of record is **GRANTED**; and it is

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

**ROHULAMIN QUANDER, ALJ, D.C.,
And the Mayor's Agent for
Historic Preservation**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Decision and Order was served this 7th day of September, 2000, by mailing a copy of the same via either D.C. Government inter-office mail or via U.S. Mail, postage prepaid, to the following:

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And

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