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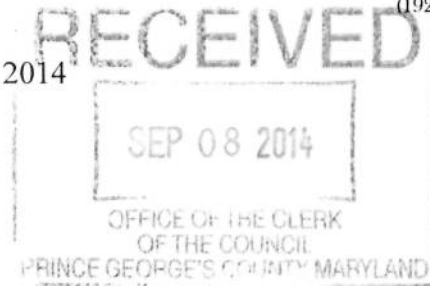
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September 8, 2014



Ms. Redis C. Floyd
Clerk of the District Council
County Administration Building
Upper Marlboro, MD 20772

Re: Appeal of Decision of Zoning Hearing Examiner Re: Classification of Marche Florists Building (Historic Resource 68-041-03) and its Environmental Setting as a Historic Site

Dear Ms. Floyd:

I represent White Angelica, LLC (“Appellant”), owner of the above referenced property (the “Subject Property”) in its appeal of the Decision of the Historic Preservation Commission (“HPC”) to classify the Subject Property and its proposed Environmental Setting as a Historic Site. The de novo appeal of the HPC decision was heard by the Zoning Hearing Examiner who subsequently issued a Notice of Decision on the matter. This letter constitutes the Appellant’s exceptions to the Decision of the Zoning Hearing Examiner in the above-referenced case, which was filed on August 27, 2014.

The Appellant also hereby requests oral argument in this case before the District Council.

The Appellant, objects to the findings and conclusions of the HPC in this matter and also disagrees with the conclusions and recommendation of the Zoning Hearing Examiner in her Notice of Decision and desires to appeal this matter to the District Council. The Appellant opposes designation of the Subject Property as a Historic Site and opposes any imposition of an associated Environmental Setting on the Subject Property and has submitted testimony and argument on the record below in support of its position which it desires to present to the District Council at oral argument. Specifically, the Appellant objects to the findings and conclusions of the Zoning Hearing Examiner as follows:

I. Zoning Hearing Examiner’s Conclusions of Law:

(1) As the retail outlet of an important local, family-owned and woman-owned floral business, the Marché Florists Building exemplifies the cultural, economic, social, political, or historic heritage of the County and its communities (Hyattsville). §29-104(a)(1)(A)(iv)

While perhaps interesting, the status of a property being the location of a family or woman owned business is not historically unique. The Marche family while a respected business owner in the mid 20th century does not rise to the level of significant contribution to the culture or history of Hyattsville or Prince George's County to warrant classification as a historic site on this factor alone.

(2) As a rare example of an architect-designed commercial building in the county, the design, form and decorative features of the Marché Florists Building embody the distinctive characteristics of the Modern Movement in commercial architecture of the post-World War II period. §29-104(a)(2)(A)(i)

The fact that the subject building was designed by an architect is, in fact, not rare. There are several buildings in the Route 1 corridor, let alone the entire County, which were designed by an architect. The key factor is not whether the building was designed by an architect or not (most buildings are), but whether the architect who designed the building is of sufficient historic importance to warrant consideration. The architect of the subject building was not historically significant. The record indicates Staff was unable to list one building of historic significance designed solely by the architect in question in this case.

As for the design of the building, while it may contain elements of the Modern Movement, it does not embody the characteristics of the era. In addition, the building is not unique or scarce. There are many examples of similar architecture in the Route 1 Corridor, some of which have been successfully adapted to modern use (Franklin's restaurant, Lustine showroom).

(3) As the work of John Robie Kennedy (1881-1966), an important Washington, D.C. architect, the Marché Florists Building represents the work of a master craftsman, architect or builder. §29-104(a)(2)(A)(ii)

John Robie Kennedy while a competent architect of his time was not a renowned architect of significant historical importance. Much has been made of his connection to John Earley who was indeed a historically recognized architect. While John Robie Kennedy was part of the Earley Studio for a brief period and while John Earley designed many significant structures, the two did not collaborate on the design or construction of the commercial building in question. In fact, Mr. Early was deceased for 6 years before the building was designed and constructed. There is nothing in the records to suggest that Mr. Kennedy was a renowned architect, that he developed a distinct style of design, or that he in any way contributed to the principles of the profession of architecture.

(4) Based on the faceted form of the main block and subservient massing of other elements, the expanses of plate glass anchored by the rustic stone podium, and the sheathing of elongated Roman bricks and ashlar stone veneer, which continues to the interior to meet slabs of black marble and polished travertine, the Marché Florists Building possesses high artistic value. §29-104(a)(2)(A)(iii)

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The subject building is not a particularly fine example of a significant architectural style. While it will be an attractive and useable commercial structure with significant rehabilitation and upgrades, it is not an intact or unique specimen.

(5) Located on the west side of U.S. Route 1 (Rhode Island Avenue) in Hyattsville, one of the county's principal commercial corridors and the prominent intersection of Rhode Island Avenue, 42nd Place and Crittenden Street, the Marché Florists Building has been an established and familiar visual feature of the neighborhood since its completion in the 1950s. §29-104(a)(2)(A)(v)

Commercial properties as a rule seek visibility. Being located at an intersection with a main road in a corridor is not in of itself historically unique or significant. While the Marche Florist store operated for a relatively short period in the County's history, from 1951 to the mid 1980's, its recent history is one of blight and neglect. The site of vandalism, deterioration, loitering and criminal activity defines the property in its current state dating back to the cessation of commercial activities thirty years ago.

(6) Designation as a Historic Site does not preclude the approval by the Historic Preservation Commission of compatible new additions or modifications that enhance the utility of the property. In its review process, the HPC must invoke specific criteria for the approval of a Historic Area Work Permit (HAWP) required to make alterations to a Historic Site (Subtitle 29-111). These criteria provide a reasoned basis of the review and approval of an application but do not provide specific design direction. To further frame its review of a HAWP application, the HPC has adopted the Secretary of the Interior's Standards, a set of preservation standards promulgated by the National Park Service, and widely used across the country by local jurisdictions in the review and approval of applications affecting regulated properties. The Standards are summary statements with general application. To address a range of specific issues, the National Park Service has produced a series of technical papers designed to address common issues affecting historic properties. One such document, Preservation Brief 14, New Exterior Additions to Historic Buildings: Preservation Concerns, can be consulted for general guidance on the issue of compatibility of new additions:

There is no formula or prescription for designing a new addition that meets the Standards. A new addition to a historic building that meets the Standards can be any architectural style—traditional, contemporary or a simplified version of the historic building. However, there must be a balance between differentiation and compatibility in order to maintain the historic character and the identity of the building being enlarged. New additions that too closely resemble the historic building or are in extreme contrast to it fall short of this balance. Inherent in all of the guidance is the concept that an addition needs to be subordinate to the historic building.

A new addition must preserve significant historic materials, features and form, and it must be compatible but differentiated from the historic building. To achieve this, it is necessary to carefully consider the placement or location of the new addition, and its size, scale and

massing when planning a new addition. To preserve a property's historic character, a new addition must be visually distinguishable from the historic building. This does not mean that the addition and the historic building should be glaringly different in terms of design, materials and other visual qualities. Instead, the new addition should take its design cues from, but not copy, the historic building.

Had the building on the Subject Property existed as a Historic Site at the time the Appellant acquired the Subject Property, the discussion of the Secretary of the Interior's Standards presented by the Examiner would make reasonable sense as to how to evaluate any proposed addition to a historic structure. However, as is clear from the discussion above, the interpretation and application of the Standards is subjective in nature and is often a matter of the personal taste. The Appellant proposes to revitalize the Subject Property as an art education facility for a non-profit community organization with the addition of a for profit restaurant business (Pizzeria Paradiso). The Appellant's intent is to create a signature building while revitalizing a blighted corner in keeping with the goals of the Arts District. The proposed architecture of the renovation is tasteful and compatible with the original structure. However, adding a new layer of review that may substitute a rigid historic preservation minded perspective for much needed economic revitalization to a site that is not currently classified as a Historic Site is onerous and threatens the viability of the project. The assumption that review by the HPC of proposed additions to historic properties is not difficult is disputed by the Appellant. Had the Historic Site status pre-existed its acquisition of the Subject Property that would present a different scenario. However, since the Subject Property is merely a historic resource, the Appellant desires to present its request to the District Council to avoid the onerous classification of the Subject Property as a Historic Site.

(7) Preservation Brief 14 more specifically addresses the issue of rooftop additions and provides the following guidance:

The guidance provided on designing a compatible new addition to a historic building applies equally to new rooftop additions. A rooftop addition should preserve the character of a historic building by preserving historic materials, features and form; and it should be compatible but differentiated from the historic building.

However, there are several other design principles that apply specifically to rooftop additions. Generally, a rooftop addition should not be more than one story in height to minimize its visibility and its impact on the proportion and profile of the historic building. A rooftop addition should almost always be set back at least one full bay from the primary elevation of the building, as well as from the other elevations if the building is free-standing or highly visible.

It is difficult, if not impossible, to minimize the impact of adding an entire new floor to relatively low buildings, such as small-scale residential or commercial structures, even if the new addition is set back from the plane of the façade. Constructing another floor on top

of a small, one, two or three-story building is seldom appropriate for buildings of this size as it would measurably alter the building's proportions and profile, and negatively impact its historic character. On the other hand, a rooftop addition on an eight-story building, for example, in a historic district consisting primarily of tall buildings might not affect the historic character because the new construction may blend in with the surrounding buildings and be only minimally visible within the district. A rooftop addition in a densely-built urban area is more likely to be compatible on a building that is adjacent to similarly-sized or taller buildings.

A number of methods may be used to help evaluate the effect of a proposed rooftop addition on a historic building and district, including pedestrian sight lines, three-dimensional schematics and computer-generated design. However, drawings generally do not provide a true "picture" of the appearance and visibility of a proposed rooftop addition. For this reason, it is often necessary to construct a rough, temporary, full-size or skeletal mockup of a portion of the proposed addition, which can then be photographed and evaluated from critical vantage points on surrounding streets.

The discussion above illustrates the difficulty faced by the Appellant should the Subject Property be classified as a Historic Site. The review of its proposed expansion and rehabilitation of the building to make the site a welcome home for its non-profit use and the much desired for profit restaurant most likely will be lengthy and difficult should the label of Historic Site be imposed on the Subject Property. In light of the testimony provided by the Appellant below, it is clear that classification of the Subject Property is not warranted and, by statute, is not mandatory. In making its decision, the District Council should weigh all the relevant factors and in this case there is no compelling reason to classify the Subject Property as a Historic Site.

(8) Significant local, State, and Federal programs are in place to encourage the rehabilitation of historic properties. These incentives can be combined to provide maximum leverage for private funds to rehabilitate the building. The designation of the Marché Florists Building as a contributing structure in the Hyattsville National Register District provides eligibility for certified rehabilitation expenses through: (1) a 20% Federal income tax credit and (2) a 20% refundable (no liability required) Maryland State income tax credit. Additionally, the designation of Marché Florists as a Prince George's County Historic Site provides eligibility for certified rehabilitation expenses through: (1) a 25% credit on Prince George's County property taxes; and (2) up to \$100,000 in grants via the Historic Property Grant Program.

The existence of a tax credit program is not relevant to the decision of whether to classify the Subject Property as a Historic Site and it is unclear they would be of any benefit in this case given the proposed use of the site by Artworks, a tax exempt non-profit.

II. Recommendation of Zoning Hearing Examiner

Based on the record submitted by the HPC and addressed during the evidentiary hearing before the ZHE, and in consideration of the criteria established in §24-104(a), this Examiner recommends that the District Council approve the designation of the Marché Florists Building and its Environmental Setting as a Historic Site with the following conditions:

1. Designation as a Historic Site does not preclude the approval by the HPC of compatible new additions that enhance the utility and adaptive reuse of the property. The following additions/alternations to the Marché Florists Building, if proposed, shall be reviewed and approved by the HPC:

- A second-story, one-level addition that is horizontal in character and is set back from the façade to the juncture of the brick/stone elevations and the cement block portion of the building.
- A two-story, at-grade addition directly west of the greenhouse;
- A one-story, at-grade addition on the building's north elevation west of the existing storefront entry door.

While it is appreciated that the Examiner attempts in this recommendation direct the HPC to review and approve certain designated improvements to the building, there is no guaranty of approval by the HPC in a manner consistent with the reasonable needs of the Appellant and its tenant (the restaurant use).

2. Additions shall take their design cues from, but not copy, the historic building and shall not obscure its features. Additions may be contemporary or a simplified version of the historic building and shall be subordinate in massing and character to the historic building. New additions in extreme contrast to the historic building shall not be approved. All proposed building additions/alterations must comply with the HPC's requirement for Historic Area Work Permits as set forth in Section 29-107 and shall be approved under the criteria set forth in Section 29-111 of the Historic Preservation Ordinance.

The proposed recommendation sets a subjective standard of review not easily ascertainable to potential applicants for building permits. Interpretations concerning taking design cues; not obscuring features; subordination in massing and character; and not being in extreme contrast depend largely on the perspective of the reviewing body. A perspective driven primarily from the perspective of preservation of a historic site may be in opposition to perspectives embodied by an Arts District motivated by adaptive economic reuse; removal of blight and community vitality.

Based on the foregoing the Appellant, respectfully disagrees with the conclusions and recommendations of the Examiner and request oral argument in the matter. It is further respectfully requested that the District Council not classify the Subject Property as a Historic Site

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with associated Environmental Setting. The Appellant's argument is supported in the record by the testimony of its expert witness and is supported in the record by the City of Hyattsville, The Hyattsville Community Development Corporation; and numerous area residents and stakeholders. It is important to note that the legal standard of review, as set forth in the Code and quoted in the Examiner's Notice of Decision (Page 8), states that "If the historic resources meets any of the criteria noted above, it may be classified as a Historic Site or Historic District. Section 29-104(b). Clearly, the District Council has the authority to weigh all the relevant factors and classification as a Historic Site is not mandatory by statute in this situation.

Respectfully Submitted,

O'Malley, Miles, Nysten & Gilmore, P.A.


By: William M. Shipp

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2014, a copy of the foregoing Exceptions to the Decision of the Zoning Hearing Examiner and Request for Oral Argument, was mailed first class, postage prepaid to Stan Derwin Brown, Esquire, People's Zoning Counsel, 9500 Arena Drive, Suite 104, Largo, MD 20774, and to all parties of record in this case.


William M. Shipp, Esquire