

Case No. #68-041-03
Marché Florists Building
Proposed Historic Site Designation
and Environmental Setting

Appellant: Barbara Johnson t/a
White Angelica, LLC

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND,
SITTING AS THE DISTRICT COUNCIL

ORDER OF DISAPPROVAL

IT IS HEREBY ORDERED, after review of the administrative record, that the determination of the Historic Preservation Commission and recommendation of the Zoning Hearing Examiner as to the proposed designation of an unclassified historical resource known as the Marché Florists Building (#68-041-03) as a Historic Site, and surrounding 0.868-acre parcel as a proposed environmental setting, in the County Inventory of Historic Resources within the 2010 *Historic Sites and Districts Plan*, be and the same is hereby DISAPPROVED, pursuant to §29-119 of the Prince George's County Code, §§27-131 and 27-141 of the Zoning Ordinance of Prince George's County, being also Subtitle 27 of the County Code, and the Regional District Act, as set forth in Md. Code Ann., Land Use §22-108 (2012 & Supp. 2014);¹ and

IT IS FURTHER ORDERED, that the 2010 *Historic Sites and Districts Plan* be and the same is hereby AMENDED to remove the designation of the Marché Florists Building (No. 068-041-03) as an unclassified historic resource within the County Inventory of Historic Resources therein.

¹ For purposes of this Order of Denial, references to the County Council of Prince George's County, Maryland, sitting as the District Council, herein, shall be "District Council"; references to the Historic Preservation Commission of Prince George's County, Maryland, herein, shall be "HPC"; references to Historic Preservation provisions within Subtitle 29 of the Prince George's County Code, herein, shall be "PGCHPC"; references to the Zoning Ordinance of Prince George's County Code, being also Subtitle 27 of the Prince George's County Code (2011 Ed. & Supp. 2012-13), herein, shall be "PGCZO"; and references to the Regional District Act set forth in Md. Code Ann., Land Use, §§20-101–25-807 (2012 & Supp. 2014), herein, shall be "RDA."

As the basis for this final decision, and as expressly authorized by law, we hereby adopt the findings and conclusions within the administrative record regarding the proposed designation as to the subject property, except as provided herein.

I. PROCEDURAL BACKGROUND

This appeal emanates from the review and determination by the Historic Preservation Commission of Prince George's County, Maryland, to amend the 2010 *Historic Sites and Districts Plan* ("Plan") to designate as a Historic Site the improvements known as the Marché Florists Building (# 068-041-03), with a street address of 4800 Rhode Island Avenue, Hyattsville, Maryland, as well as the proposed environmental setting of approximately 0.0680 acre, or 37,814 square feet of land, within the C-S-C (Commercial Shopping Center) Zone.

After purchasing the subject property in March, 2013, Appellant filed a building permit application (No. 37181-2013-CU-00) to perform certain interior demolition and window replacement activities on the subject property on October 17, 2013. *See* 08/27/2014 Dec'n of ZHE, at 1; 12/23/2013 Dec'n of HPC, at 1. Because the property is listed as an unclassified historic resource in the County Inventory of Historic Resources within the 2010 *Historic Sites and Districts Plan*, County law requires evaluation by HPC for potential designation as an Historic Site prior to the issuance of a building permit. *See* §29-118, PGCHPC; 08/27/2014 Dec'n of ZHE, at 1; 12/23/2013 Dec'n of HPC, at 1.

Appellant then requested a Historic Site Evaluation as to unclassified historic resource #68-041-03. Accordingly, the HPC conducted a public hearing, as set forth in §29-118 of the PGCHPC, on December 17, 2013. At the conclusion of its hearing, the HPC voted 8-0-1 to recommend designation of the subject property as a Historic Site, and issued a written decision

commensurate with this decision on December 23, 2013. *See* §29-118, PGCHPC; 08/27/2014 Dec'n of ZHE, at 1; 12/23/2013 Dec'n of HPC, at 1.

On January 7, 2014, Appellant appealed the determination by the HPC with the Zoning Hearing Examiner ("ZHE"), in accordance with §29-119 of the PGCHPC. *See* 08/27/2014 Dec'n of ZHE, at 1. After ZHE conducted a *de novo* review of the evaluation pursuant to §29-119 of the PGCHPC, including a new hearing held on April 15, 2014, the ZHE issued its Notice of Decision on August 27, 2014, and recommending approval for designation of the Marché Florists Building as a Historic Site and proposed Environmental Setting in the County's Inventory of Historic Resources, subject to certain conditions. *See* §29-119, PGCHPC; 08/27/2014 Dec'n of ZHE, at 11. In turn, on September 8, 2014, Appellant filed written notice of appeal from the ZHE's decision with the Clerk of the Council. *See* §29-119, PGCHPC; 09/08/2013 Letter to Redis C. Floyd, at 1. We conducted Oral Argument in accordance with the Zoning Ordinance and our Rules of Procedure on October 20, 2014, and referred the matter to staff to prepare an Order of Disapproval. On October 28, 2014, the Council voted to approve the prepared Order of Disapproval.

II. APPELLATE QUESTIONS

The appeal filed with the Clerk of the Council on September 8, 2014, states the following exceptions to the August 27, 2014, decision issued by the Office of the ZHE:

- 1.) the ZHE erred in concluding from its findings that the subject historic resource, because it was historically family or woman-owned, satisfies the prescription of §29-104(a)(1)(A)(iv);
- 2.) the ZHE erred in concluding from its findings that the subject historic resource is the work of Washington D.C. architect, John Robie Kennedy, represents the work of a master craftsman, architect, or builder that satisfies the requirements of §29-104(a)(2)(A)(ii);

- 3.) the ZHE erred in concluding that the specific design and form of the subject historic resource possesses high artistic value sufficient to meet the requirements of §29-104(a)(1)(A)(iii);
- 4.) the ZHE erred in concluding from the record evidence that the subject resource meets the requirement recited in §29-104(a)(1)(A)(i) as having significant character, interest, or value as part of the development, heritage, or cultural characteristics of the County;
- 5.) the ZHE erred in concluding from the record evidence that the subject resource meets the requirement within §29-104(a)(1)(A)(v) in determining its value as an established and familiar visible feature of the neighborhood since its erection in the 1950s;
- 6.) notwithstanding these foregoing erroneous conclusions by ZHE, no provision exists in the law compels a designation as a Historic Site, and may be disapproved despite adequate record evidence to support the designation;
- 7.) the ZHE conditions of approval for designation are insufficient to properly safeguard Appellant's property interests against lengthy or subjective determinations by the HPC in order to secure approvals for necessary rehabilitation of the property and is therefore unreasonable, and more specifically as to the rooftop addition; and
- 8.) the ZHE erred in concluding from the record evidence that certain tax incentives are sufficient or germane to support the approval of the subject resource as an Historic Site.

III. APPLICABLE LAW

A. Statutory Requirements

The broad authority vested in the District Council to regulate zoning and the uses of land for the protection and preservation of historical areas of Prince George's County derives from the RDA, Land Use Article, Maryland Annotated Code, as follows:

§22-108. Protection of historical, archaeological, architectural, or cultural heritage areas.

(a) Purposes. -- The purposes of this section are to:

(1) protect the historical, archaeological, architectural, or cultural heritage areas in Montgomery County and Prince George's County that comprise the regional district; and

(2) preserve and enhance the quality of life in the community.

(b) In general. -- In addition to the power to regulate planning, zoning, or subdivision, a district council may adopt local laws to protect, preserve, and enhance, as designated on the adopted and approved general plan:

- (1) sites;
- (2) structures and their appurtenances and environmental settings; and
- (3) districts of historical, archaeological, architectural, or cultural value.

(c) Requirements; limitation. --

(1) The enactment and application of a local law under this section shall be:

- (i) reasonable and appropriate to the purpose of this subtitle; and
- (ii) limited to the protection, preservation, and enhancement of the exterior of the site, structure, or district.

(2) If the enactment or application of a local law by the district council effects a taking of private property, the district council shall make provision for just compensation.

See Md. Code Ann., Land Use, §22-108 (2013 & Supp. 2014).

To this end, the Council enacted certain provisions in its County Code that are relevant to the subject property, as follows:

Sec. 29-101. Purpose.

(a) The purpose of this Subtitle is to provide for the identification, designation, and regulation, for purposes of protection, preservation, and continued use and enhancement of, those sites, structures (including their appurtenances and environmental settings), and districts of historical, archaeological, architectural, or cultural value.

(b) It is the further purpose of this Subtitle to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of the County; strengthen the local economy, and stabilize and improve property values in and around such historic areas; foster civic beauty; and preserve such sites, structures, and districts for the education, welfare, and continued utilization and pleasure of the citizens of the County, the State of Maryland, and the United States of America

Sec. 29-104. Historic Sites and Historic Districts criteria.

(a) In considering unclassified historic resources for classification as Historic Sites or Historic Districts, the following criteria are applicable:

(1) Historical and Cultural Significance.

(A) The historic resource:

- (i) Has significant character, interest, or value as part of the development, heritage, or cultural characteristics of the County, State, or Nation;
- (ii) Is the site of a significant historic event;
- (iii) Is identified with a person or a group of persons who influenced society; or

(iv) Exemplifies the cultural, economic, social, political, or historic heritage of the County and its communities.

(2) Architectural and Design Significance.

(A) The historic resource:

(i) Embodies the distinctive characteristics of a type, period, or method of construction;

(ii) Represents the work of a master craftsman, architect or builder;

(iii) Possesses high artistic values;

(iv) Represents a significant and distinguishable entity whose components may lack individual distinction; or

(v) Represents an established and familiar visual feature of the neighborhood, community, or County, due to its singular physical characteristics or landscape.

(b) If the historic resource meets any of the criteria noted above, it may be classified as a Historic Site or Historic District.

Sec. 29-117. Unclassified historic resources.

If the historic resource is unclassified on the master plan for historic preservation, it shall be reviewed under the provisions of Division 6 of this Subtitle before the provisions of this Division 5 may take effect.

Sec. 29-118. Public hearing.

(a) The Historic Preservation Commission shall conduct a public hearing to make findings as to the significance of any unclassified historic resource designated as such on the master plan for historic preservation, and shall determine whether it should be classified as a Historic Site or property within a Historic District when:

(1) Any application for a permit to demolish or substantially alter the exterior features or environmental setting of any historic resource is referred to the Commission;

(2) Any zoning map amendment, special exception, subdivision, or site plan approval application is referred to the Commission, as required by either Subtitle 27 or Subtitle 24 of this Code;

(3) The Commission is notified that a historic resource is the subject of demolition by neglect;

(4) The Commission is requested by any owner or public agency to make such findings and determinations; or

(5) The Commission, of its own volition or at the request of any other person or agency, decides to make such findings and determinations.

(b) At least two (2) weeks prior to the scheduled public hearing, the Historic Preservation Commission shall send written notice of the date, time and place of the hearing to the owner(s) of the historic resource, adjoining property owners and to those departments, agencies, organizations, and citizens which the Commission reasonably believes may have an interest in the proceedings.

(c) At least two (2) weeks prior to the scheduled public hearing, the Planning Board shall post the property with a detailed sign identifying the historic resource, giving the date, time, and place of the public hearing, and giving instructions for obtaining further information. All signs shall be posted in such a manner as to be conspicuous and legible. When the subject of the public hearing is a proposed Historic Site, the signs shall be posted in the same manner detailed for Zoning Map Amendment applications (see Section 27-150 of the Zoning Ordinance). When the subject of the public hearing is property within a Historic District, the location and number of signs necessary to provide adequate public notice shall be determined by the Historic Preservation Commission, provided that there shall be at least one (1) sign on each road on which the Historic District has frontage. Notwithstanding the provisions of the Zoning Ordinance, no fee shall be required for the posting of such signs.

Sec. 29-119. Determination by Historic Preservation Commission; appeal to the District Council.

(a) The Historic Preservation Commission shall make a determination as to whether an unclassified historic resource should be classified or not classified as a Historic Site or property within a Historic District. The Commission's decision shall be in writing, shall include findings of fact and conclusions, and shall be sent to all persons of record.

(b) If a permit application is involved and the Historic Preservation Commission determines that the historic resource should not be classified as a Historic Site or as property within a Historic District on the master plan for historic preservation, the Director shall forthwith issue the permit.

(c) If a permit application is involved and the Historic Preservation Commission determines that the historic resource should be classified as a Historic Site or property within a Historic District on the master plan for historic preservation, the permit application shall be governed by the procedures established in Division 4 of this Subtitle.

(d) If the historic resource is subject to demolition by neglect and the Historic Preservation Commission has determined that the resource should be classified as a Historic Site or property within a Historic District on the master plan for historic preservation, the provisions of Division 5 of this Subtitle shall govern.

(e) Any person of record may appeal the decision of the Historic Preservation Commission, on the question of treating the property as classified or unclassified, to the District Council. Any appeal of the Commission's decision shall be filed with the Commission within thirty (30) days of service of the decision.

(1) Upon receipt of an appeal, the Commission shall transmit to the Zoning Hearing Examiner the notice of appeal, and the names and addresses of all persons of record. In addition, the Commission shall transmit its findings of fact and conclusions along with all record evidence.

(2) Upon receipt of the foregoing, the Zoning Hearing Examiner shall cause the matter to be set for public hearing. The hearing shall be advertised in

the County's newspapers of record and notice of the date, time, and place of the hearing shall be sent to the Historic Preservation Commission, the Planning Board, and all persons of record in the case before the Historic Preservation Commission.

(3) The hearing before the Zoning Hearing Examiner shall be a de novo hearing and shall be held in accordance with Section 27-129. After the close of the hearing record, the Zoning Hearing Examiner shall file a written recommendation with the District Council. All persons of record shall be given at least ten (10) days written notice by the Clerk of the Council of the date and time of the District Council's consideration of the matter. Any person of record may appeal the recommendation of the Zoning Hearing Examiner within fifteen (15) days of the filing of the Zoning Hearing Examiner's recommendation with the District Council. If appealed, all persons of record may testify before the District Council. Persons arguing shall adhere to the District Council's Rules of Procedure, and argument shall be limited to thirty (30) minutes for each side, and to the record of the hearing. The recommendation of the Zoning Hearing Examiner and the decision of the District Council shall be based upon Section 29-104(a), the Historic Sites and Districts criteria, as well as the record submitted by the Historic Preservation Commission and any additional evidence submitted before the Zoning Hearing Examiner. Any party wishing to submit a transcript of the testimony taken before the Historic Preservation Commission shall be required to pay the costs thereof.

(4) The District Council's decision to approve or disapprove the decision of the Historic Preservation Commission shall be in writing, and shall expressly declare the unclassified historic resource to be a Historic Site or property within a Historic District, or declare that the site is no longer a historic resource. Copies of the decision shall be sent to the Commission, the Planning Board, and all persons of record.

(f) For the purposes of this Section, "Person of Record" means the owner(s) of the historic resource, and any municipality, person, firm, corporation, partnership, association, organization, or agency who, in writing or in testimony before the Historic Preservation Commission, requests to be made a person of record prior to the close of the hearing record.

See §§29-101, 29-104, 29-117, 29-118, and 29-119, PGCHPC (2011 Ed. & Supp. 2012-13).

B. Comprehensive Plan Recommendations and Regulatory Requirements

In addition to the statutory requirements recited above, our evaluation contemplates the recommendations embodied within applicable comprehensive plans for the area of the subject property, such as master plans, functional plans, and the General Plan. While the County general plan and master plans serve as broad comprehensive planning guides for implementing land use

vision for future development in the County, implementation of this vision depends on land use and development patterns, environmental infrastructure, transportation, public facilities, economic development, urban design, historic preservation, and arts and cultural heritage. Of particular relevance in our assessment is the guidance as to specific elements of land use and development policy for the area of the subject property, as follows:

1. County General Plan

The 2002 *Prince George's County General Plan*² designated three policy tiers—Developed, Developing, and Rural—each with unique characteristics and opportunities. The area of the Marché Florists Building is within the Developed Tier and includes part of the Baltimore Avenue (US 1) Corridor, an area in which the General Plan recommends more intensive development and redevelopment. See 2004 *Sector Plan and SMA for the Prince George's County Gateway Arts District*, at 5. In general, the Developed Tier vision involves mixed-use, pedestrian-oriented, medium to high-density neighborhoods to achieve those goals. *Id.*

2. Master Plan for Planning Area 68

The 1994 *Master Plan and Sectional Map Amendment for Planning Area 68* recommends revitalization of eight municipalities, including the City of Hyattsville, where the subject property is located. The plan provides detailed revitalization concepts for the City of

² It should be noted that, on May 6, 2014, by adoption of CR-26-2014, the District Council approved *Plan Prince George's 2035*, a comprehensive update to the general plan for that portion of the Maryland-Washington District within Prince George's County, pursuant to the provisions of Md. Code Ann., Land Use, §§ 21-103(a, b), 21-104 (2012 & Supp. 2014). In so doing, *Plan Prince George's 2035* incorporates by reference the recommendations within current approved sector plans or area master plans for the County. See *Plan Prince George's 2035*, Land Use Element, at p. 9; PGCPB No. 14-10, Att. B., Map 9. Thus, while adoption of *Plan Prince George's 2035* does not substantively affect the relevant land use policy for the area, properties within the 'Developed Tier' under the 2002 General Plan are now designated as 'within the County Growth Boundary of the County.' *Id.*

Hyattsville, as well as municipalities targeted therein. *See 2004 Sector Plan and SMA for the Prince George's County Gateway Arts District*, at 5-6.

3. Historic Sites and Districts Plan

The 2010 *Historic Sites and Districts Plan* sets forth the County's historic preservation program and identifies existing and potential historic resources, Historic Sites, and Historic Districts within an Inventory of Historic Resources. In buttressing the statutory processes recited in the preceding section, above, the Plan reiterates the policy recommendation that historic resources be evaluated to determine whether they meet the criteria for designation as individual Historic Sites. *Id.*, at 32-34. As such, upon restating the procedural requirements for historic designation in the Code, the plan further states that a property may be added to the inventory as a historic resource through a functional master plan or sector plan amendment. *See 2010 Historic Sites and Districts Plan*, at 32. To this end, the plan recommended, and the District Council approved, designation of the Marché Florists Building (# 68-041-03) as an unclassified historic resource in the County Inventory of Historic Resources by adoption of the 2010 *Historic Sites and Districts Plan* on June 8, 2010. *See CR-51-2010*, at 3. *See also 2010 Historic Sites and Districts Plan*, at 178, 205, 263; 08/27/2014 Dec'n of ZHE, at 2; 12/23/2013 Dec'n of HPC, at 2.

4. Gateway Arts District Sector Plan and Sectional Map Amendment

The most detailed recommendations and regulatory controls for land use and development activities in the area surrounding the subject property are set forth within the 2004 *Sector Plan and Sectional Map Amendment for the Prince George's County Gateway Arts District*. The Sector Plan combines the broader vision for the area as set forth in the general plan, master plan, and functional plans with the community's vision for a defined focal point for art,

entertainment, dining, and shopping activities. *See 2004 Sector Plan and SMA for the Prince George's County Gateway Arts District*, at 10-11.

The subject property, with its frontage along Rhode Island Avenue and location within the City of Hyattsville, falls within the Town Center character area of the Gateway Arts District Sector Plan. As such, the development standards emphasize the creation of a pedestrian-oriented streetscape, with mixed use development to infuse the area with new residents to enliven streets and support commercial retail, because the “the potential exists for undesirable activities to be drawn to the area as it redevelops.” *See 2004 Sector Plan and SMA for the Prince George's County Gateway Arts District*, at 4-5. More importantly, this area is specifically designated in the plan as an economic engine for the Arts District, including recommendations for a commercial core with new mixed-use in town centers to rejuvenate the Arts District and attract new and revitalized businesses such as restaurants, theaters, and other quality development to the area, to create job and income growth, and to add value to the tax base. *See 2004 Sector Plan and SMA for the Prince George's County Gateway Arts District*, at 11, 64-65.

In its discussion of the Historic Preservation element of the plan, the sector plan emphasizes the adaptive reuse of existing buildings, as “many properties have been lovingly restored, others have had compatible rehabilitations, and others have been muddled.” *See Id.*, at 83.

IV. FINDINGS AND CONCLUSIONS

A. Designation of Property in County Inventory of Historic Resources

In 2009, the Marché Florists Building (# 68-041-03) was surveyed and documented by EHT Tracerics, Inc. *See 08/27/2014 Dec'n of ZHE*, at 2; *12/23/2013 Dec'n of HPC*, at 2. The survey results prompted a recommendation by staff for designation of the property as an

unclassified historic resource in the Preliminary *Historic Sites and Districts Plan*, as discussed above. *Id.* The District Council and Prince George's County Planning Board held a duly advertised Joint Public Hearing on the Preliminary *Historic Sites and Districts Plan* on January 19, 2010. *See* CR-51-2010, at 1. *See also* 08/27/2014 Dec'n of ZHE, at 2; 12/23/2013 Dec'n of HPC, at 2. The record contains no testimony—neither in support nor opposed—as to the recommendation for designation of the Marché Florists Building as an unclassified resource. *Id.* Thus, in its vote to approve the Plan on June 8, 2010, the District Council also approved the County Inventory of Historic Resources, and proposed designation as to the Marché Florists Building therein, as part of its final action on the 2010 *Historic Sites and Districts Plan*. *See* CR-51-2010, at 3. *See also* 08/27/2014 Dec'n of ZHE, at 2; 12/23/2013 Dec'n of HPC, at 2.

B. Physical Description and History

As set forth in the administrative record, the Marché Florists Building described as a one-and-two- story commercial building of masonry construction construct in 1951; over the next six years, two additions enlarged enclosed area of the original structure. Its primary historical focus is its one-story storefront with large, plate-glass display windows. At the south end of the property, there are other historical features on the property—namely, a glass, metal, and masonry greenhouse constructed commensurate with the structure. The building front also includes the original storefront (c. 1951) and central entry with its slightly chamfered projection. Improvements on the north end of the property (c. 1957) include an addition to the 1951 structure. A further addition at the northern portion of the site (c. 1957) provides additional retail space; a single-door entry from the adjacent parking area extends the enclosed area of the storefront is slightly recessed from the original block. *See* 08/27/2014 Dec'n of ZHE, at 2-3; 12/23/2014 Dec'n of HPC, at 2-3.

As described in the administrative record, the storefront is very conducive to product display visible to pedestrian and automobile traffic. Facing Rhode Island Avenue is the storefront's one-story, horizontal composition of large, plate glass windows and its simple metal frames flanking an all-glass centered double-door entry. The detailing of the original storefront extends across the addition to the north; this detailing wraps around the northeast corner and extends the storefront and greenhouse as a visual focus of the building. Retractable canvas awnings surmount the large plate-glass storefront windows. The storefront portions of the building are sheathed, with a random-ashlar cut stone veneer that frames the large display windows; the entire storefront cornice is sheathed a single color of red-brown brick, which originally served as the background for applied aluminum signage (since removed) facing Rhode Island Avenue. The brick sign panel/cornice and stone storefront below are separated by a simple horizontal metal band cornice, which also wraps around the northeast corner of the building. The masonry base of the attached greenhouse is sheathed, with the same brick as the storefront; the corners of the greenhouse are sheathed with the same random-ashlar stone used as quoining on the most visible corners of the greenhouse. The greenhouse includes outside entrances; one in a small front-gable projection facing Rhode Island Avenue, the other faces south to Crittenden Street. Both entries have small canted hoods with decorative scroll supports. *See* 08/27/2014 Dec'n of ZHE, at 2-3; 12/23/2014 Dec'n of HPC, at 2-3.

The secondary elements of the overall composition include the portions of the storefront further away from Rhode Island Avenue. These areas of the structure are composed of painted concrete block and are considerably less detailed than the storefront/greenhouse. Like the more formal portions of the building, the secondary areas also have flat or shallow roofs concealed by simple parapets. The secondary elements of the north elevation include two large windows.

Smaller than the storefront plate glass windows, the windows of the north elevation are large enough to provide views of the shop interior, although here the fenestration is separated to include combinations of small panes at the outside edges and larger ones at the center, all fixed, in a balanced arrangement. The two-story office addition that is the westernmost element of the building includes a large multi-light metal window at the first story on the south and smaller multi-light metal windows at the second story in several locations. The eastern “storefront” portion of the building has a flat roof drained with external scuppers and downspouts; the two-story office wing to the west is covered with a shallow west-sloping shed roof concealed on the north, east and south by an undecorated parapet. *See* 08/27/2014 Dec’n of ZHE, at 2-3; 12/23/2013 Dec’n of HPC, at 2-3.

According to the historical account in the administrative record, John Robie Kennedy (1881-1966), Washington, D.C. architect and friend of the Marché family, designed both Marché House and the Marché Florists Building as a private design commission. The resulting Florists Building structure is a purpose-built commercial building exhibiting elements of the “Mid-Century Modern” style, and the emergence of Mid-Century Modern style in the County correlates with the substantial regional growth during the post-World War II era. *See* 12/23/2013 Dec’n of HPC, at 1-2. The HPC and ZHE found substantial significance in its finding that the Marché Florists Building is the only known architect-designed commercial building from this period. *Id.*

Marché specifically recruited architect John Robie Kennedy to design a commercial building suitable for the commercial corridor postwar Hyattsville; Kennedy’s design included a commercial storefront with large display windows and an attached greenhouse. *See* 08/27/2013 Dec’n of ZHE, at 3-4; 12/23/2013 Dec’n of HPC, at 2-3. These structural designs, coupled with

its position as a freestanding building located at a prominent intersection, prompted HPC and the ZHE findings that the subject property is a potent example of “Mid-century Modern” style, emphasizing streamlined design, roadside visibility, and substantial product display opportunities to attract passing pedestrians and motorists. *Id.*

The Marché Florists Building stands upon on a 0.868-acre parcel located on the west side of Rhode Island Avenue, at its intersection with Crittenden Street and 42nd Place. The subject building is situated on a neighboring parcel lying south and east of another property associated with the Marché family, the Historic Site located on Crittenden Street, known as the Marché House (Historic Site # 68-010-62). To illustrate this association, the record reflects that, as originally configured, both the Marché House and Marché Florists Building were part of the same 3.10-acre parcel used by the Marché family as both a residence and business location. Improvements on this combined property at this time, spanning roughly from 1932 to 1950, include a large greenhouse flanking the residential dwelling and, by the late 1930s, a small shop at the Rhode Island Avenue corner. The current Marché Florists Building replaced this original shop in 1951. *See* 08/27/2014 Dec’n of ZHE, at 2-3; 12/23/2014 Dec’n of HPC, at 2-3.

The Marché Florists Building is described as the retail component of a significant commercial enterprise in the City of Hyattsville, and in Prince George’s County. In fact, in spite of its longstanding vacancy and current state of disrepair, the record instead reflects its former function as commercial face of the Marché family enterprise. *See* 08/27/2014 Dec’n of ZHE, at 4; 04/15/2014 Tr., at 16. *See also* 12/23/2013 Dec’n of HPC, at 3.

Construction of the improvements on the subject property resulted from relocation of the business to Hyattsville from the District of Columbia, after the death of Augusta Marché’s husband. In making a determination as to the subject property, both the HPC and ZHE found the

ownership and management of the business persuasive as to its cultural significance under §29-104. *See* 04/15/2014 Tr., at 34. We are not so persuaded.

The historical greenhouse near Decatur Street no longer stands, and the mere fact that the Marché family dwelling and associated mid-century retail structure are substantially intact and represent designs attributed to a local architect is not, in our view, convincing. *See* 09/08/2014 Letter to Redis C. Floyd, at 2-3; 08/27/2014 Dec'n of ZHE, at 9. Instead, we find persuasive the observation by People's Zoning Counsel that the evidence is far from clear as to whether, of the 4,900 square feet of the Marché Florists Building, architect John Robie Kennedy even designed more than one-third of it. *See* 04/15/2014, at 112.

What's more, we also find that the Marché family dwelling is not part of the subject property contemplated by this evaluation; nevertheless, HPC and ZHE found a basis for recommending designation of the subject property as a Historic Site, that the subject property should be evaluated together with the Marché Property to reflect the evolving artistic and architectural tastes from the 1930s to the 1950s, as a constructive re-joinder of the properties. *See* 08/27/2014 Dec'n of ZHE, at 4-5; 12/23/2013 Dec'n of HPC, at 3-4. We disagree, as we find no ascertainable basis to do so.

As to the proposed design for the development at the subject property, we note Appellant's testimony during the hearing before the ZHE, and those offered during the Oral Argument conducted before the District Council stating that, with the exception of a "bumpout" on the roof line to accommodate a Code requirement for the staircase, there are no other external architectural changes are proposed or planned that would result in a conflict with the historic appearance of the subject property. *See* 04/15/2014 Tr., at 39-42. We find this testimony consistent with the purposes and vision for the Town Center Character Area of the 2004

Gateway Arts Sector Plan and SMA to function as an “economic engine for the Arts District,” including recommendations for a commercial core with new mixed-use in town centers to rejuvenate the Arts District and attract new and revitalized businesses such as restaurants, theaters, and other quality development to the area, to create job and income growth, and to add value to the tax base. *See 2004 Sector Plan and SMA for the Prince George’s County Gateway Arts District*, at 11, 64-65.

In like fashion, during both proceedings Appellant stated that between 1,200 and 1,500 square feet of the approximately 4,941 square-foot main floor of the structure is a proposed pizzeria location. *See 04/15/2014 Tr.*, at 57-58. All other space within the structures on the property, including the greenhouse, is proposed to be occupied by ArtWorks. *Id.* Also proposed in the redevelopment concept is approximately 752 square feet of second floor space to be designated as offices and storage for Art Works; since public access is not appropriate for this space, no access by the public is proposed for the space. *See ZHE Dec’n*, 08/27/2014, at 9; *04/15/2014 Tr.*, at 62-64.

Appellant offered substantial testimony to support the disapproval of the recommended designation from expert witness Mr. Mark McInturff, Licensed Architect, with expertise in the field of architecture throughout the United States. *See 04/15/2014 Tr.*, at 73. After being duly sworn and qualified at the hearing before the ZHE, Mr. McInturff opined that the construction and operation of the subject business and property from approximately 1950-85 by a woman-owned business is insufficient to substantiate the property as an example of “the cultural, economic, social, political, or historic heritage of the County.” *See §29-104(a)(1) (A)(iv)*, PGCHPC; *04/15/2014 Tr.*, at 79-80. In fact, Mr. McInturff further stated that he was unsure as to

how many commercial businesses in Prince George's County in the 1950s were owned and operated by women. *See* 08/27/2014 Dec'n of ZHE, at 7; 04/15/2014 Tr., at 79-80.

Mr. McInturff further opined that the architectural design of the subject structure embodies the "modern movement." *See* §§29-104(a)(2)(A)(1); PGCHPC; 08/27/2014 Dec'n of ZHE, at 11; 04/15/2014 Tr., at 80. Lastly, Mr. McInturff observed that the only example of this movement in the general area of the Route 1 Corridor of Hyattsville is the Lustine showroom. *See* 04/15/2014 Tr., at 87. We are persuaded by Mr. McInturff's expert opinion stating that the mere fact that a "building has been designed by an architect is not all that unique." *See* 04/15/2014 Tr., at 80. Mr. McInturff stated on the record that he had not heard of the architect John Robie Kennedy prior to this project. *See* 04/15/2014 Tr., at 88. Moreover, as cited previously, the record remains far from clear as to whether this architect designed a substantial portion of the structure of the Marché Florists Building. *See* 04/15/2014 Tr., at 112.

Other opinion testimony of this expert in the record indicates that the subject structure has "a fairly clumsy composition," and documented the building's "moderate integrity" by the National Register of Historic Districts. *See* 04/15/2014 Tr., at 89. Despite qualification of McInturff as an expert witness, the ZHE observed that he has "no particular or specialized knowledge of Prince George's County", and instead offers only general insights informed by "having practiced here and taught here and lived here." We do not share this view; instead, we find the expert opinions offered before the April 15, 2014, evidentiary hearing persuasive, relevant, and wholly undisputed within the record of this matter or within the comments offered at the Oral Argument conducted on October 20 2014. *See* 08/27/2014 Dec'n of ZHE, at 9; 04/15/2014 Tr., at 8.

Bolstering the expert opinion as to the subject, we note substantial testimony in the record of the hearing held before the HPC on December 17, 2013, from 19 individuals concerning the proposed designation—18 opposed the designation and undue. *See* 12/23/2013 Dec'n of HPC, at 6.

Maryland recognizes the District Council's authority to assess the credibility of witnesses in rendering making a final decision. *See County Comm'rs of Carroll County v. Uhler*, 78 Md. App. 140, 552 A.2d 942 (1989) (holding that administrative agency, in rendering final decision in a zoning case, need not grant requested relief where supportive testimony not contradicted in the record). Here, the prescriptions of the Historic Preservation Subtitle of the County Code plainly vest the District Council as arbiter of the final disposition as to designation of a property as a Historic Site. *See* §22-119, PGCHPC. Accordingly, and notwithstanding certain undisputed evidence or insight in the administrative record as to the history of the subject property, we are not compelled to grant that designation.

Next, and as pointed out during the October 20, 2014, oral argument, the property is vacant. Appellant and McInturff testified that the property has remained vacant for more than ten years and, as a result, has progressively declined due to longstanding disuse. *See* 04/15/2014 Tr., at 73-76. Further, we find the photographic exhibits and discussion in the administrative record highly persuasive in finding a current state of blight on the property. *See* Md. Hist. Trust, Md. Inventory of Hist. Prop's Form, at 3-6; 04/15/2014 Tr., at 73-76.

Instead, informing our final decision to disapprove the proposed designation of the Marché Florists Building as a Historic Site is the persuasive gravity of evidence in the record that the subject has remained vacant for a period of over ten years, the lifespan to date of the Gateway Arts Plan. According to the administrative record, the property stood tenantless for at

least six years prior to the designation of the property as an unclassified historic resource. The resultant blight and deterioration from the decade of disuse of the property is a public safety, health, and welfare concern deserving all expedient efforts for immediate abatement. We find that additional layers of review associated with the proposed designation will serve to delay or otherwise impair the use of subject property in a manner specifically forecast for this character area within the Gateway Arts Sector.

In fact, even the current owner of the Marché House family dwelling, Jonathan Barrett, testified before the ZHE in opposition to the proposed Historic Site designation, stating that the current disrepair of the Marché Florists Building is unattractive, very evidently reflects its abandoned state, and the trash is constant. *See* 04/15/2014, at 127-28. The testimony also points out the consistency between the proposed development by Appellant within the 2004 *Sector Plan and SMA for the Prince George's County Gateway Arts District*, and disapproval of the proposed designation will help bring a tenant into the vacant building as envisioned by the Gateway Arts plan. *Id.* We concur.

Finally, we agree with Appellant's assertion as to the plain meaning of §29-104(b) that "[i]f the historic resource meets any of the criteria noted above [for Historic Site designation], **it may** be classified as a Historic or Historic District." (emphasis supplied). Maryland case law is well established on the statutory use of the term "may." *See Board of Physician Quality v. Mullan*, 381 Md. 157, 166, 848 A.2d 642, 648 (2004); *State v. Green*, 367 Md. 61, 82, 785 A.2d 1257, 1287 (2001); *Brodsky v. Brodsky*, 319 Md. 92, 98, 570 A.2d 1235, 1237 (1990) (determining that "may" is generally interpreted as permissive, in contrast with "shall," which is interpreted as mandatory). *See also* §27-108.01(a)(19), PGCZO (2011 Ed. & Supp. 2013-13) (stating "Interpretations and rules of construction, "the words "shall," "must," "may only" or

“may not” are always mandatory and not discretionary. The word ‘may’ is **permissive.**”) (emphasis added.)

V. CONCLUSION

For the reasons stated above, IT IS HEREBY ORDERED, after review of the administrative record, that the determination of the Historic Preservation Commission and recommendation of the Zoning Hearing Examiner as to the proposed designation of an unclassified historical resource known as the Marché Florists Building (#68-041-03) as a Historic Site, and surrounding 0.868-acre parcel as proposed environmental setting, in the County Inventory of Historic Resources within the 2010 *Historic Sites and Districts Plan*, be and the same is hereby DISAPPROVED, pursuant to §29-119 of the Prince George’s County Code, §§27-131 and 27-141 of the Zoning Ordinance of Prince George’s County, being also Subtitle 27 of the County Code, and the Regional District Act, as set forth in Md. Code Ann., Land Use §22-108 (2012 & Supp. 2014); and

IT IS FURTHER ORDERED, that the 2010 Historic Sites and Districts Plan be and the same is hereby AMENDED to remove the designation of the Marché Florists Building (No. 068-041-03) as an unclassified historic resource within the County Inventory of Historic Resources therein.

Ordered this 28th day of October, 2014, by the following vote:

In Favor: Council Members Campos, Davis, Franklin, Harrison, Patterson, Toles and Turner.

Opposed: Council Member Lehman

Abstained:

Absent: Council Member Olson

Vote: 7-1

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON
REGIONAL DISTRICT IN PRINCE GEORGE'S
COUNTY, MARYLAND

By: _____
Mel Franklin, Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council