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# The Exemplary Architecture Exception to the District of Columbia Historic Landmark and Historic District Protection Act

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<b><i>I. Introduction.....</i></b>	<b>3</b>
<b><i>II. Exemplary Architecture in the District of Columbia Historic Preservation Act. 5</i></b>	
<b><i>III. Exemplary Architecture Projects in the District of Columbia.....</i></b>	<b>7</b>
<b>A. Rhodes Tavern (1981).....</b>	<b>8</b>
<b>B. The Homer Building (1984).....</b>	<b>11</b>
<b>C. 1700 Block Rhode Island Avenue (1987) .....</b>	<b>12</b>
<b>D. The Phillips Collection (2000) .....</b>	<b>13</b>
<b>E. Corcoran Gallery of Art (2002) .....</b>	<b>14</b>
<b>F. Arena Stage (2002).....</b>	<b>18</b>
<b>G. Not Exemplary Architecture Cases.....</b>	<b>20</b>
<b><i>IV. Lessons from Outside the District of Columbia.....</i></b>	<b>22</b>
<b>A. New York .....</b>	<b>22</b>
<b>B. Boston.....</b>	<b>25</b>
<b>C. GSA Design Excellence program- a model.....</b>	<b>27</b>
<b>D. Award winning architecture .....</b>	<b>29</b>
<b><i>V. How can application of the Exemplary Architecture Exception improve? .....</i></b>	<b>31</b>
<b>A. Framework .....</b>	<b>31</b>
<b>B. More Specific Definition of Exemplary Architecture .....</b>	<b>32</b>
<b>C. Design Review Advisory Commission.....</b>	<b>33</b>
<b><i>VI. Conclusion.....</i></b>	<b>35</b>

## I. Introduction

The District of Columbia Historic Landmark and Historic District Protection Act [the Act] recognizes the rare need for new construction in historic areas.<sup>1</sup> The Act allows for demolition and alteration when the project is “necessary in the public interest because it is a project of special merit” which provides “significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services.”<sup>2</sup> However, the Act does not define the phrase exemplary architecture. There is some history indicating that the phrase was intended for extreme circumstances but it is unclear what would be exemplary architecture.<sup>3</sup> For this exception to historic preservation rules to be truly effective, landowners, architects, the city and preservationists need more specific guidance to determine which projects are worthy of the exemplary architecture designation.

One long-standing goal of historic preservation has been to maintain the good and protect it from replacement with the mundane, but good preservation ordinances also recognize that in certain situations historic properties could be demolished or altered because the historic property no longer meets the needs of the community and it is time to build a replacement or adapt the property for current use with new construction. Vincent Scully has said that good urban architecture is “a continuing dialogue between the

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<sup>1</sup> D.C. Code Ann. §6-1102 (West, 2001).

<sup>2</sup> D.C. Code Ann., *supra* note 1.

<sup>3</sup> See generally, Jeremy W. Dutra, “You Can’t Tear it Down:” *The Origins of the D.C. Historic Preservation Act*, 29 available at [http://www.ll.georgetown.edu/histpres/papers/papers\\_dutra.pdf](http://www.ll.georgetown.edu/histpres/papers/papers_dutra.pdf) (last visited March 2, 2004); *In re Turkish Chancery*, 2523 Massachusetts Avenue, H.P.A. 87-758 (September, 1988).

generations which creates an environment developing across time.”<sup>4</sup> Recognizing the need for demolition and alteration in specific unusual circumstances is a more flexible approach and ensures that historic districts remain habitable and not akin to Colonial Williamsburg or Plymouth Plantation and frozen in time.<sup>5</sup> Herbert Muschamp has said, “the risk today is that we will be judged not by the landmarks we have destroyed but by the ones we have failed to build.”<sup>6</sup> The exemplary architecture exception of the District of Columbia Historic Landmark and Historic District Protection Act allows the city in rare circumstances to continue to develop landmarks, which complement the historic district and continue the dialogue between generations.

There are a variety of ways to help define exemplary architecture including the design excellence guidelines of the federal government, the award selection process for prestigious architecture awards, looking at the public reception to a proposed design, and undertaking a review of the components of a proposed design to assess consistency, compatibility and its contribution to the landmark or historic district. The challenge for the District of Columbia is to decide what approach or combination of approaches will best serve their historic preservation goals, while encouraging innovative and exemplary projects.

This paper investigates the exemplary architecture exception in the District of Columbia. Part II focuses on the legislative framework for the exemplary architecture exception. Part III focuses on the few projects where this exception has been granted in the twenty-six year history of the act. Part IV samples reasoning from some of the

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<sup>4</sup> VINCENT SCULLY, *AMERICAN ARCHITECTURE AND URBANISM*, 203, Henry Holt and Co. (1988).

<sup>5</sup> See generally Michael Lewis, *It Depends on How you Define ‘Real,’* THE NEW YORK TIMES, Section 4, Page 3, Column 1 (June 23, 2002).

<sup>6</sup> Herbert Muschamp, *Preserving the Shrines of an Age, Not the Spirit,* THE NEW YORK TIMES, Section 2, Page 40, Column 1 (April 30, 1995).

projects where the exception has not been granted. Part V looks at examples of design review and historic preservation from outside the District of Columbia, focusing on New York and Boston’s historic preservation guidelines, the General Services Administration Design Excellence Program and prominent architecture awards. This review of other areas attempts to find ways that the District of Columbia can improve their uniquely flexible Historic Preservation Act. Part VI combines the lessons learned from other places and the application of the exemption in practice and attempts to come up with concrete recommendations for the future improvements for the District of Columbia in the application of the exemplary architecture exception.

## **II. Exemplary Architecture in the District of Columbia Historic Preservation Act**

The District of Columbia Historic Landmark and Historic District Protection Act of 1978 prohibits owners in historic districts or owners of historic landmarks from undertaking any renovation, alteration, new construction or demolition without approval of the mayor’s agent.<sup>7</sup> The Act was passed to prevent unauthorized destruction within historic districts and of historic landmarks. It was a recognition of the unique and varied architecture in the District of Columbia and the importance of preservation. However, in passing this Act, the District of Columbia also recognized that some demolition, alteration and new construction in historic districts would likely be necessary and important. Therefore, they created a special exemption within the act for projects, which are “necessary in the public interest.”<sup>8</sup> In addition to the necessary in the public interest exemption, there is an exemption for situations where denial of the permit would result in

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<sup>7</sup> D.C. Code Ann. §6-1104 (West, 2001).

<sup>8</sup> D.C. Code Ann. §6-1104 (e) (West, 2001).

unreasonable economic hardship.<sup>9</sup> However, the unreasonable economic hardship provision also has an outline of the framework used to assess whether true economic hardship exists, whereas the exemplary architecture provision has no further explanation or procedure for determining which projects fall within its exception.<sup>10</sup> The fact that there is no explanation for exemplary architecture review leaves the provision open to challenge and abuse.

An important component of the Act is the creation of the Historic Preservation Review Board.<sup>11</sup> Any permits for demolition or alteration to allow for new construction in a historic district or on a landmark must come before the Historic Preservation Review Board unless the property is subject to the review by the Commission on Fine Arts, in which case review by the Historic Preservation Review Board is at the mayor's discretion.<sup>12</sup> The current board is composed of a mixture of architects and citizens who are not design professionals.<sup>13</sup> The review board advises the mayor's agent with regard to any applications for alteration or demolition in historic districts or of historic landmarks.<sup>14</sup>

The exemplary architecture exception to the Act is an amorphous concept and there is some concern that the exemption could be exploited by property owners that are searching for an easy way to avoid the strict guidelines governing a historic district. The failure to define exemplary architecture leaves open the potential for unequal application of the exemption and the risk that uneven enforcement of the historic preservation act

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<sup>9</sup> D.C. Code Ann. §6-1104 (e) (West, 2001).

<sup>10</sup> D.C. Code Ann. §6-1104 (g) (West, 2001).

<sup>11</sup> D.C. Code Ann. § 6-1103 (West, 2001).

<sup>12</sup> D.C. Code Ann. §6-1104 (West ,2001).

<sup>13</sup> District of Columbia, Office of Planning, Historic Preservation Review Board Member Biographies at <http://www.planning.dc.gov/planning/cwp/view.asp?a=1284&q=570734&planningNav=|32339|32364> (last visited, March 24, 2004).

<sup>14</sup> D.C. Code Ann. §6-1104 (West 2001).

will undermine the strength of the Act. When initially implemented, the exemplary architecture provision was designed for extreme cases and not to be used frequently.<sup>15</sup> So far, the District of Columbia has only accepted the exemplary architecture provision in a few situations but a close examination of those decisions does not yield a definitive method for determining what will qualify as exemplary architecture. A clearer understanding of what could be exemplary architecture will only strengthen the role of the historic preservation in the District of Columbia because it will further prove that preservation is not by definition at odds with new construction. Instead, preservation is a means of maintaining current exemplary architecture and allowing a city to create future landmarks.

### **III. Exemplary Architecture Projects in the District of Columbia**

The Mayor's agent has, in keeping with the purpose of the act, only granted claims of necessary in the public interest by virtue of exemplary architecture in relatively few circumstances. The reasons given for acceptance of the exemplary architecture claim help to define what type of project is worthy of this special exception but the process results in a case by case de novo analysis. Interestingly, all the cases are clustered in the recent past and in the very early days of the Historic Preservation Act with a relatively long period of inactivity throughout the 1990s. It is unclear why the clusters exist but they could perhaps be explained by changes in the District's political landscape. The cases will be reviewed chronologically.

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<sup>15</sup> Anne Simpson, *Preservationists Sue to Prevent Woodward Building's Demolition*, THE WASHINGTON POST, Page J1, (February 2, 1989).



#### A. Rhodes Tavern (1981)

The first case where the exemplary architecture provision was addressed is also the seminal case for historic preservation in the District of Columbia: the Rhodes Tavern decision.<sup>16</sup> In *Rhodes Tavern*, a Washington area developer wanted to demolish three buildings downtown including the historic Rhodes Tavern as well as the Keith - Albee Theater and the Metropolitan Bank. These three buildings were located on 15<sup>th</sup> street in downtown Washington across from the United State Treasury building. At first the developer attempted to demolish all three buildings completely but their plan was challenged by a group called Don't Tear it Down.<sup>17</sup> The Joint Committee on Landmarks of the National Capital, the then equivalent to today's Historic Preservation Review Board, suggested to the mayor's agent that the preservation of the buildings was consistent with the purpose of the Historic Landmark and Historic District Protection Act of 1978 and demolition was inconsistent. They said that the only way to determine that demolition was appropriate was to deem the project one of special merit.<sup>18</sup> The developer also claimed that the project was one of special merit and argued it was worthy of the exemplary architecture exception. He argued that although he planned to demolish Rhodes Tavern, the demolition was countered by the fact that he planned to maintain the

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<sup>16</sup> Citizens Committee to Save Historic Rhodes Tavern v. District of Columbia Department of Housing and Community Development, 432 A.2d 710 (D.C. App, 1981); HPA No 80-41, Application to raze (demolish) 1429 F. Street, NW. (Rhodes Tavern), Square 224, Lot 809 (December, 1979); HPA 80-43, Application to raze (relocate) 1429 F. Street, NW (Rhodes Tavern), Square 224, Lot 809 (December, 1979); HPA No. 80-46, Application to raze 613 15<sup>th</sup> Street, NW (National Metropolitan Bank Building, Square 224, Lot 811 (December, 1979); HPA No. 80-42, Application for preliminary review, alteration of 610 15<sup>th</sup> Street N.W. (Metropolitan Bank and Keith's Theater-Albee Building) Square 224, Lots 18, 812, 814, 819, 808, 810, 811, 821, 21 (December, 1979) at <http://www.ll.georgetown.edu/histpres/decisions/hpa80-41-43,46.pdf> (last visited, March 15, 2004).

<sup>17</sup> HPA 80-41, *supra* note 16 at 2. (Don't Tear it Down is known today as the District of Columbia Preservation League at <http://www.dcpreservation.org/> (last visited, May 1, 2004).).

<sup>18</sup> HPA 80-41, *supra* note 16.

façade of the theater and the bank. He also noted that the project was bringing new construction to an area that was in desperate need of new development.<sup>19</sup>

The mayor's agent allowed the project to go forward despite heavy protest from the preservation community.<sup>20</sup> She states in her conclusions of law "the alteration is one of exemplary architecture because of the sensitive incorporation of the facades ... into the total project. The facades of these two structures create a major design impact at one of the most strategic locations."<sup>21</sup> She goes on to describe how the facades of the bank and theater are more in line with the rhythm of the street and the scale of the U.S. Treasury and their preservation combined with the new architecture set a better tone for the Presidential parade route.<sup>22</sup> This coupled with a statement that the efforts to develop the block were undertaken prior to passage of the Act provide her reasoning for granting the exemption.

The case was appealed to the District of Columbia Court of Appeals and the judges upheld the mayor's agent decision saying, "the Act implicitly requires that in the case of demolition, the Mayor's agent balance the historical value of the particular landmark against the special merit of the proposed project."<sup>23</sup> The court deems her detailed findings of fact and hearings sufficient evidence that she undertook the proper balancing test in making her decision, but they also note that in any future findings, the mayor's agent should take care to record with "a higher degree of precision which historical values associated with a particular landmark were considered with respect to a

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<sup>19</sup> Citizens Committee to Save Rhodes Tavern v. District of Columbia Department of Housing and Community Development, *supra* note 16.

<sup>20</sup> HPA 80-41, *supra* note 16 at 7.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Citizens Committee to Save Rhodes Tavern v. District of Columbia Department of Housing and Community Development, *supra* note 16.

permit application.”<sup>24</sup> The court seems to be allowing her to get away with more limited findings of fact here with a warning for the future regarding the need for extensive explanation of reasoning.

In a footnote, the court also notes that the mayor’s agent could have found that rather than exemplary architecture, this was a project of special merit due to its community benefit.<sup>25</sup> The court in this case grants much leeway to the mayor’s agent to determine exemplary architecture but the mayor’s agent is not an expert in design nor does she explicitly weigh the importance of the tavern against the design features of the proposed project.

It seems unlikely that today a project of this nature would be approved. This is in part because the preservation of facades is no longer viewed as the ideal method of preservation.<sup>26</sup> Façadism was an ideal method of preservation in 1981 but today the preservation community looks to retain more than just the façade of a historic building. Recently the Historic Preservation Review Board was again faced with the proposal that façade preservation was sufficient in the St. Patrick’s church development project but the final agreement demonstrated that more than a mere façade preservation is required to respect the goals of the Act.<sup>27</sup> Although it is an example of the exemplary architecture exception in application, the mayor’s agent decision in Rhodes Tavern implies that the determination of special merit depends on whether any portion of the historic building can be saved and this kind of limitation on the exemplary architecture concept will

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<sup>24</sup> *Id* at 717.

<sup>25</sup> *Id* at 717, FN13.

<sup>26</sup> Norman Walker explains facadism as a “compromise between retaining a historic streetscape and allowing more density in new construction” but he also goes on to explain that some preservationists now view this method of preservation as a “sacrilege.” NORMAN WALKER, *HISTORIC PRESERVATION: AN INTRODUCTION TO ITS HISTORY PRINCIPLES AND PRACTICE*, 151, W.W. Norton (New York, 2000).

<sup>27</sup> HPA-01-208, 209, 219,220,221,222,223,224, *In the Matter of the John Akridge Company and the Archdiocese of Washington*, (St. Patrick’s Decision) (August, 2001).

prevent the creation of new extraordinary buildings and can lead to an historic district feeling like Disney's Epcot Center where the front looks accurate to the district's time period but what remains behind has no relation and is not compatible or consistent with the area and may not even be interesting or exemplary. Approval today is also unlikely because the conclusions of law do not go into great detail about the new construction and its potential architectural contribution to the district

#### B. The Homer Building (1984)

In 1984, the mayor's agent was again asked to review a claim of necessary in the public interest by virtue of exemplary architecture. The Homer Building is a landmark building and it is located at 601 13<sup>th</sup> Street, NW. The application asked to build an office building including the Homer Building.<sup>28</sup> The mayor's agent granted approval on a special merit basis in part because the building was initially designed to be the base for just such an office building and the mayor's agent sees this project as a completion of the initially intended design. The mayor's agent states "The design evolves from that of the Landmark base and is an extension and completion of the original design, going far beyond what is usually meant as a compatible addition."<sup>29</sup> It is clear from the language used by the Mayor's agent that she views this project to be an extraordinary one and an adaptive reuse of a property that was never properly completed. In her view, this is precisely the unique kind of project that special merit by virtue of exemplary architecture was conceived to handle.

This case was subject to additional review in 1986 because of proposed design modifications to allow the developer to move the loading off of G Street and provide for

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<sup>28</sup> HPA-83-478, *Application for Demolition and New Construction Located at 601 13<sup>th</sup> Street, N.W.*, (1984).

<sup>29</sup> HPA-83-478, *supra* note 28 at 7.

the relocation of the proposed garage.<sup>30</sup> Again the mayor's agent did not see these minimal design alterations as changing the initial decision that the project was one worthy of special merit by virtue of exemplary architecture and the minor design alteration petition was accepted.<sup>31</sup>

### C. 1700 Block Rhode Island Avenue (1987)

The next application of the exemplary architecture provision came in a case where the Archdiocese of Washington sought to renovate several rowhouses on the 1700 block of Rhode Island Avenue in the Dupont Circle area.<sup>32</sup> These rowhouses were contributing buildings in the Dupont Circle Historic District.<sup>33</sup> The proposed project was to create a new building near St. Matthew's Cathedral. The Mayor's agent accepts the recommendation of the office of planning and accepts the demolitions as necessary in the public interest to allow the construction of a project of special merit. In her conclusions of law, she notes that the design protects the "visual dominance of St. Matthew's Cathedral, sympathetically linking the two buildings in architecture while minimizing the visual impact of the new building on the cathedral and the surrounding area."<sup>34</sup> She notes that the "resulting design complements the scale, character, fenestration and color of the existing buildings and establishes a strong relationship between the proposed buildings and the historic site."<sup>35</sup> Although the renovation of the rowhouses was obviously subject to some debate, the mayor's agent decision seems to feel that on balance, the benefit of a demolition and rehabilitation outweighs the loss of contributing buildings. Her language

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<sup>30</sup> HPA 86-660, *Application for revised preliminary design review for a building located at 601 13<sup>th</sup> Street, NW*, (October, 1986).

<sup>31</sup> *Id.*

<sup>32</sup> HPA-87-147, 148, 149,150, *In re 1717, 1719, 1721 and 1723 Rhode Island Avenue, NW*, (December , 1987).

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 12.

<sup>35</sup> *Id.*

regarding the architectural contributions that the new project makes to the district is very clear and could provide a model for future review guidelines.

#### D. The Phillips Collection (2000)

In 2000, a project at the Phillips Collection was approved on the basis of necessary in the public interest by virtue of exemplary architecture and by virtue of having significant educational, cultural and other important social benefits to the District of Columbia.<sup>36</sup> The Phillips Collection is an art gallery and museum located on 21<sup>st</sup> Street in Northwest Washington. The buildings in question were part of the Dupont Circle Historic District. The Collection came before the mayor's agent requesting permission to demolish all except the façade of one of their buildings and to build behind the façade a connection between their two other buildings thus unifying the museums multiple buildings as a whole.<sup>37</sup> The mayor's agent accepts the architect's argument that the preservation of a façade and the adaptive reuse of the space behind the façade is sufficient to warrant the exemplary architecture protection.<sup>38</sup> There is no objection to this project in the record and it seems odd that the mayor's agent has designated this project one of special merit by virtue of exemplary architecture because he has sufficient evidence for it to be merely special merit by virtue of community benefit. However, the reasoning behind the exemplary architecture exception seem to point toward the importance of allowing a unification project and adaptive reuse as sufficient reasoning for allowing demolition. The mayor's agent decision would be better supported if there were more explicit balancing of the impact on the historic district against the benefits of the

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<sup>36</sup> HPA 00-405, *In re Application of The Phillips Collection*, (October 11, 2000).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 4.

proposed unification but this kind of explicit weighing of factors was likely unnecessary due to the lack of objection to the project. It seem clear from the record that the Phillips Collection had to make some renovation to their space to protect their artwork and upgrade their security systems, and perhaps it is this reasoning that helped to convince the mayor's agent that a unification project was exemplary architecture.

E. Corcoran Gallery of Art (2002)

In 2002, the Corcoran Gallery applied for a permit for an addition to their building and the permit was granted because the project had special merit by virtue of its exemplary architecture.<sup>39</sup> This addition is an example of the creation of new architecture that contributes to the conversation among generations and was an obvious candidate for the exemplary architecture provision. The Corcoran held a design competition to choose the architect of their new wing and Frank Gehry won the competition.<sup>40</sup> The Corcoran was able to afford Mr. Gehry, arguably one of the most influential and unique architects of our time to create an addition to their compound.

The current Corcoran Gallery is located near the Ellipse on 17<sup>th</sup> street N.W. between E Street and New York Avenue. Its building has two parts. One was built in 1897 and the other in 1927.<sup>41</sup> The first of these parts was designed by Ernest Flagg and is in the beaux-arts style.<sup>42</sup> The second part was an addition by Charles Adams Platt designed to house the collection of Montana Senator William Andrews Clark.<sup>43</sup> There is an open portion of the site along New York Avenue, that the Corcoran has designated as

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<sup>39</sup> HPA 02-284, *In re Application of the Corcoran Gallery of Art for Partial Demolition of 500 17<sup>th</sup> Street, NW* (September 19, 2002).

<sup>40</sup> *Id* at 5 and 9.

<sup>41</sup> *Id* at 5.

<sup>42</sup> *Id* at 5.

<sup>43</sup> *Id* at 5.

the site for the Gehry addition and the addition will refocus the entrance of the museum to New York Avenue and provide the museum and school with much needed additional space. In its request, the museum wanted to demolish a wall of the Platt addition and a rotunda and gallery space. All the sections proposed for demolition are listed on the National Register of Historic Places as contributing factors to the designation as a landmark but will need to be removed to add the Gehry contribution.<sup>44</sup>

The Historic Preservation Review Board reviewed the application for demolition and decided that the design was inconsistent with the purposes of the act but supported the Corcoran Gallery's claim that the permit should be granted on the basis of special merit by virtue of exemplary architecture.<sup>45</sup> The HPRB faced a difficult balance not wanting to allow demolition even a so-called partial demolition of a historic property as consistent with the act while recognizing the contribution that a Gehry addition would play to the Washington architectural landscape.<sup>46</sup> The Commission on Fine Arts also approved the project recommending it as a "building for the new century."<sup>47</sup>

The mayor's agent in approving this permit, states many reasons why this project is necessary in the public interest but most interesting is that the proposal is "(a) exceptional, innovative architecture that is well integrated with the current landmark."<sup>48</sup> This phrase presents a challenge for future developments that wish to use the exemplary architecture provision. They must be certain to integrate their design with the current landmarks. By extension, this could mean that the new construction must integrate with the historic district broadly but if interpreted narrowly, this could indicate that the

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<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 3.

<sup>46</sup> *Id.* at 4, FN 2.

<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.* at 11.



mayor's agent views proposals for alteration of a historic landmark more favorably than proposals for complete demolition. Is the mayor's agent trying to connect his decision back to the façade retention of *Rhodes Tavern* or is this really an ideal of example of a situation where a world-renowned architect's design is rightfully added to the Washington landscape?

The Corcoran was able to afford a design competition and extensive research into the possibilities for their site and as such they presented a very strong case to the mayor's agent supporting the need for the addition. Additionally, there was very little community opposition to the necessary in the public interest by virtue of exemplary architecture designation with both the District of Columbia Office of Planning and the Advisory Neighborhood Commission offering their support.<sup>49</sup>

The Mayor's agent does seem particularly interested in the community benefits of the proposed project. In his conclusions of law he explains, "The proposed addition will have significant benefits to the community by virtue of its special features of land planning and other social benefits having a high priority for community services."<sup>50</sup> The Corcoran Gallery did not apply for the special merit by virtue of its community benefit exception and yet, the mayor's agent has included this prong of the special merit exemption in an attempt to strengthen his decision. Of course, providing a first rate museum with an addition designed by a world renown architect will renew interest in the museum and the city but this does not guarantee that the design proposed will be exemplary architecture. To satisfactorily meet the exemplary architecture prong, the design ought to be reviewed on its merits. The mayor's agent begins to do this when he

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<sup>49</sup> *Id.* at 9.

<sup>50</sup> *Id.* at 13.

states that the building is prepared for and anticipates the addition but he fails to follow through in his conclusions to explain how the Gehry design is truly exemplary architecture.<sup>51</sup> Is it because it is a modern interpretation of the building or is it because the new building's value to the architecture of the city substantially outweighs the landmarks current value? The mayor's agent avoids this kind of direct balancing in his conclusions of law and states in his findings of fact that the project is "compatible with the design and planning policies for the downtown" thus leaving open the question of what exemplary architecture is compatible with a historic district.

In my opinion, the contribution of a Gehry design to the Washington landscape is precisely what the exemplary architecture provision was designed to protect. It is the rare circumstance worthy of an exception. Gehry designs are among the most adventurous in the field and his design for the Corcoran recognizes its framework and takes Washington into the next century. Washington does not want to be a city bereft of current architecture and when given the opportunity to contribute, many in the preservation community recognized that need. Obviously Gehry designs are not loved by all and some argue that they are downright impractical but they, like the Platt and Flagg additions, represent a commentary on their time period. The mayor's agent decision in focusing on the community benefits of the project failed to recognize the virtue of the architecture itself and again failed to provide a framework for determining future projects worthy of the exemplary architecture exception.

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<sup>51</sup> *Id.* at 13.

F. Arena Stage (2002)

Like the Corcoran, The Arena Stage project was also decided in September of 2002.<sup>52</sup> This project was also granted the exemplary architecture exception but this alteration to a landmark building is not the creation of a world-renowned architect. However, it is again an integration of the historic with new, innovative construction.

Prior to reaching the Mayor's agent, the Historic Preservation Review Board and the Commission on Fine Arts reviewed the new construction plan. The Historic Preservation Review Board, stating that they felt demolition was inconsistent with the act, also noted that this was a project worthy of the "necessary in the public interest" exception for exemplary architecture.<sup>53</sup>

The Mayor's agent then approved the demolition project on the basis of special merit by virtue of exemplary architecture and provided some more current insight into a situation where the exemplary architecture provision of the Act could be effectively utilized.

The plans for expansion of the Arena Stage are a melding of old and new and a modernization of a dated space in an area, which is not a historic district but rather a landmark for the Southwest waterfront area. Mayor Williams is committed to this project saying "We believe that the redevelopment of the Waterfront and related areas is a great critical challenge and opportunity for our City, and Arena's presence, commitment and plans contribute significantly to that vision."<sup>54</sup> The mayor's agent decision in this case reflects the need to allow for development in an area that does not have extensive

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<sup>52</sup> H.P.A. 02-284, *In re: Application of the Washington Drama Society, Inc. (d/b/a Arena Stage) 1101 6<sup>th</sup> St. SW*, (September 27, 2002)

<sup>53</sup> *Id.*

<sup>54</sup> Anthony Williams at <http://www.arenastage.org/thenextstage/community.shtml> (last visited March 23, 2004).

community buildings. The Arena Stage buildings opened in 1961 and the architecture has even been described as “ugly” but it was a landmark on the southwest waterfront.<sup>55</sup> The design by Bing Thom integrates the theater spaces with glass and open space. It combines old and new with glass to create a theatrical compound and not a series of distinct spaces.

However, the fact that the mayor’s agent decided this case on special merit for exemplary architecture grounds rather than special merit for community interest grounds is curious. Clearly there is a very strong argument for community need but the decision in this case reinforces the non explicit statement in the Corcoran decision that exemplary architecture can and should be used for cases where the proposed design is unique and resoundingly meets a community need to continue the conversation among generations.

The design is in the same genre as the renovation of the Reichstag completed by Sir Norman Foster in Berlin. Using glass to give new light and space while keeping older historic properties inside the fabric of the new is an evocative way to combine old and new. The mayor’s agent says “the project is an extraordinary one where the design for the theater blends both programmatic design needs and fine architecture including an innovative water feature, into an exception and remarkable link to the Southwest Waterfront.”<sup>56</sup>

Unlike the Corcoran decision, the Mayor’s agent cites specific features of the architectural plan as exemplary. “The two concepts presented by the Applicant for the theater space- the “cradle” and the cylindrical geometry- both are exceptional and qualify as exemplary architecture.”<sup>57</sup> Additionally the mayor’s agent cites the creation of unique

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<sup>55</sup> Benjamin Forgey, *Standing Ovation: Arena Stage Expansion Would Add Drama to Historic Theater*, THE WASHINGTON POST, Style; C01 (September 27, 2003).

<sup>56</sup> HPA 02-471, *supra* note 52 at 6.

<sup>57</sup> *Id.* at 8.

architecture as the community benefit.<sup>58</sup> This is in sharp contrast to the tourism dollars cited as the reason for allowing the Corcoran decision.<sup>59</sup> The mayor's agent appears to have recognized this design for the sake of its design and not for the sake of the renown that the architect carries with him.

The District of Columbia has only granted requests on the basis of special merit by virtue of exemplary architecture in these few cases concentrated in recent clusters and early clusters. The exemplary architecture exception is intended to be a unique exception for special projects and as of now, it has been viewed as such. The more recent cases are buildings that have been landmarked independently of a historic district characterization so any argument that exemplary architecture is only for situations where the historic building is not significantly contributing to the historic district is not supported by these examples. In fact, to rise to the level worthy of the exception in a historic district, the project might need to be deemed compatible with the district or at least not disruptive. The cases where the exception has been granted indicate that the exemplary architecture provision can be used to recognize special situations where new construction will contribute significantly to the district.<sup>60</sup>

#### G. Not Exemplary Architecture Cases

There have been relatively few cases where the mayor's agent granted a claim of necessary in the public interest by virtue of exemplary architecture. However, there are a

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<sup>58</sup> *Id.*

<sup>59</sup> Focusing on the architecture here was likely more necessary and important because the architect was not as internationally known as Frank Gehry.

<sup>60</sup> An unequal application of the exception such as granting the exception only to certain classes of applicants could raise Constitutional Due Process concerns but the current concerns are mitigated by the extensive review process through the Historic Preservation Review Office, the Historic Preservation Review Board and the Mayor's Agent.

variety of cases where a claim of exemplary architecture has been made and the mayor's agent has denied that claims. Some are very close cases and others are obviously not cases of exemplary architecture and the property owner is just grasping at straws. However a small sample of these cases help to provide more basic qualifications for an application for the special merit by virtue of exemplary architecture exception.

The mayor's agent recognizes that the exemplary architecture is a unique and special level of design achievement in an application from the Turkish Chancery.<sup>61</sup> Here the mayor's agent sees the design as compatible with the act but "the evidence clearly establishes that the proposed structure ... does not rise to the level of exemplary architecture." Exemplary architecture is something beyond a compatible design. In the application for demolition of the Woodward building at 1426 H Street, N.W., the mayor's agent again notes that exemplary architecture requires an extraordinary design.<sup>62</sup> Merely being compatible and relating to the District is not enough to warrant an exception the Historic Preservation Act.<sup>63</sup> The design must do something more than fit in to be exemplary. This is a unique exception reserved for special circumstances.

In supporting a claim for exemplary architecture, it is also important to be certain that the design plans are specific enough to allow adequate review by the Historic Preservation Review Board and mayor's agent.<sup>64</sup> An application for façade retention of the Bond Building at 1406 New York Avenue was denied because the architect could not provide specific enough details about the proposed design. From the mayor's agent

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<sup>61</sup> HPA 87-758, *In re Turkish Chancery, 2523 Massachusetts Avenue, N.W.*, (September, 1988).

<sup>62</sup> "I find the design of the proposed building fails to reach a level that can comfortably be described as "exemplary architecture." HPA-86-729, *In re the Woodward Building, 1426 H Street, NW*, (February, 1988)

<sup>63</sup> *Id.* at 16.

<sup>64</sup> HPA 81-521, *In re Bond Building, 1406 New York Avenue, NW*, (May, 1981).

opinion, it seems that the architect and building owner presented ideas to the Historic Preservation Review Board and the mayor's agent and attempted to claim that since all the ideas included retention of the façade, the project was exemplary architecture.<sup>65</sup> The mayor's agent wisely recognized that the wide variation in plans did not allow an exemplary architecture exception because without specification about which plan will be chosen, it is hard to determine if a design rises to the level of exemplary.<sup>66</sup>

When choosing to pursue a claim of exemplary architecture, it is important to present evidence regarding the merits of the design and the reasoning why this project reaches the threshold level of exemplary.

#### **IV. Lessons from Outside the District of Columbia**

##### **A. New York**

In 2001, the New York landmarks commission surprised observers and approved a new construction project in the Soho historic district.<sup>67</sup> This project was a hotel designed by another world-renowned architect, Jean Nouvel, known for his unique designs including the Institut de Monde Arabe in Paris whose windows act like a camera lens.<sup>68</sup> Nouvel's design for Soho was hailed as unique and creative and the landmarks commission was praised for its forward-looking approach.<sup>69</sup>

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<sup>65</sup> *Id.*

<sup>66</sup> See also, HPA 95-37, *In the Matter of Fraser Mansion, 1701 20<sup>th</sup> Street, N.W.* (August, 1995) (Stating that the failure to submit a plan causes the application for special merit by virtue of exemplary architecture to fail).

<sup>67</sup> Herbert Muschamp, *Fitting into History's True Fabric*, THE NEW YORK TIMES, Section 2, Page 44, Column 1 (May 6, 2001).

<sup>68</sup> See Description of the Diaphragms at Institut du Monde Arabe, at [http://www.imarabe.org/ang/perm/ima/batiment\\_main.html](http://www.imarabe.org/ang/perm/ima/batiment_main.html) (last visited, May 10, 2004).

<sup>69</sup> Muschamp, *supra* note 67.

The New York Landmark Commission has an even less precise mandate than the District of Columbia Historic Preservation Review Board. They are to review a plan for new construction and issue a certificate of appropriateness.<sup>70</sup> The New York Times architecture critic, Herbert Muschamp has said “To be approved by the landmarks commission for building in a historic district, a new design must meet a standard of appropriateness. This is a legal term. Nobody concerned with art values would ever use it, for a very precise reason, it is evasive. It abdicates responsibility for a personal opinion without surrendering the right to exercise it.”<sup>71</sup> In making the determination of appropriateness, the commission must consider the effect of the proposed work and the relationship to other architecture in the district.<sup>72</sup> This is similar to the compatibility considerations in the District of Columbia. The landmark commission holds hearings and can issue a certificate of appropriateness for demolition or alteration when they deem necessary.<sup>73</sup> New York does have a specific economic hardship exception but there is not a “necessary in the public interest exemption.”<sup>74</sup> Instead the commission’s power is more discretionary to allow demolition or alteration when the new design is appropriate for the historic district.

At the time that the Nouvel design was approved by the landmark commission, the decision was hailed by the local press as a vital decision to the continuation of New York City.<sup>75</sup> Muschamp addresses the specific features of the design that make it so innovative. “Nouvel has drawn on features from adjacent buildings: scale, materials,

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<sup>70</sup> N.Y.C. Code §25-307, (West, 2003).

<sup>71</sup> Muschamp, *supra* note 67.

<sup>72</sup> *Id.*

<sup>73</sup> N.Y.C. Code §25-307-308 (West 2003).

<sup>74</sup> N.Y.C. Code §25-309 (West, 2003).

<sup>75</sup> Muschamp, *supra* note 67.



façade proportions, cornices and so on. But he has also inverted, reversed, abstracted, twisted and otherwise played with these features.”<sup>76</sup> At first review, the local community board rejected the design as inappropriate but as the broader audience of the New York Landmarks Commission reviewed the design, the potential contribution to the cityscape was recognized and accepted.<sup>77</sup> Although radical, the landmark commission recognized the contribution that this kind of architecture could make to the district.<sup>78</sup> The danger in historic preservation is that the unknown will be rejected merely because it is new and different but it is only through acceptance of innovation and exemplary design that the conversation among generations can continue. Historic Preservation review in New York guards against inappropriate buildings but the decision in the Nouvel case also indicates that the Commission has the freedom to accept exemplary design when circumstances warrant.

Today, the status of this unique building is further in question because the developer has changed his plan from a hotel to a residence.<sup>79</sup> This change in status requires an alteration to the zoning rules and has soured the neighborhood support that had developed around the project.<sup>80</sup> In November of this year, the City planning commission reviewed the plans and allowed the change in zoning rules despite the many objections from the neighborhood that a residence of this nature was not appropriate in

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<sup>76</sup> *Id.*

<sup>77</sup> Albert Bennett, *Further Clarification*, THE NEW YORK TIMES, Section 2, Page 4, Column 5 (May 20, 2001).

<sup>78</sup> Herbert Muschamp, *Architectural Trendsetter Seduces Historic SoHo*, THE NEW YORK TIMES, Section E, Page 1, Column 5 (April 11, 2001).

<sup>79</sup> Jim O’Grady, *Hotel or ‘Trojan Horse?’* THE NEW YORK TIMES, Section 14, Page 7, Column 1 (June 8, 2003).

<sup>80</sup> *Id.*

SoHo where the residences tend to consist of lofts.<sup>81</sup> It appears that the landmarks commission, having already granted its certificate of appropriateness to the new design, does not review the change in mission for the project.

The recent developments on this project risk jeopardizing the precedent that the landmark commission set when it granted the certificate of appropriateness back in 2001. The “switching purpose” technique used by the developer may dampen the enthusiasm of the Landmarks Commission in approving new design projects and heighten their fear that developers seek to marginalize the role of the commission. A landmark commission must have strength in its powers to maintain a historic district and decide the appropriateness of new design within the district. The approval of the Nouvel design was based in part on its status as a hotel, which would bring tourism and interest to the historic district.<sup>82</sup> This change in purpose demonstrates how the vague nature of a certificate of appropriateness approval in New York City begs further specification. Such specification might include a new provision allowing for a review of any proposed design or purpose changes after the certificate is granted.

## B. Boston

Like New York, Boston has the vague concept of appropriateness for new construction review by the landmarks commission or historic district commission although its appropriateness review results in a certificate of exemption or a certificate of

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<sup>81</sup> New York City Planning Commission, *In the matter of an application submitted by WXIV/Broadway Grand Realty, LLC*, , C030490ZSM.

<sup>82</sup> Muschamp, *supra* note 67.

design approval.<sup>83</sup> A certificate of design approval states that the new construction would be consistent with the purposes of the act but there are very broad guidelines as to what would be consistent with the purposes of the act.<sup>84</sup> A certificate of exemption is granted in situations where there is a) ordinary maintenance, b) economic hardship, or c) any construction authorized prior to the issuance of the act (a grandfathering provision).<sup>85</sup> In practice, most new constructions projects receive a certificate of design approval.

Most historic preservation issues in Boston's historic districts are viewed with extensive attention to detail at the local level and seem geared to residential alterations in the form of renovations rather than large scale building projects.<sup>86</sup> Boston has a series of local neighborhood historic commissions, which are charged with maintaining the design of their historic district. Each neighborhood historic commission has very specific guidelines including rules prohibiting the change of any opening in the façade but the guidelines are very broad when it comes to new construction projects simply saying that it must be consistent with the district.<sup>87</sup> The Boston Landmarks Commission focuses on buildings, which have landmark status throughout the city, and any alteration or construction on those landmarks requires a certificate of design approval.<sup>88</sup> The concept of design review appears outside the purview of the historic district commission and the certificate of design approval seems almost a matter of routine as long as the city is supportive of the project. Boston also only has demolition delay not demolition prohibitions.

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<sup>83</sup> M.G.L.A. Ch 772, Section 7, available at [http://www.cityofboston.gov/Environment/pdfs/BLC\\_Preserv\\_Act.pdf](http://www.cityofboston.gov/Environment/pdfs/BLC_Preserv_Act.pdf) (last visited, April 2, 2004).

<sup>84</sup> M.G.L.A. *supra* note 83.

<sup>85</sup> *Id* at section 8.

<sup>86</sup> Beacon Hill Architectural Guidelines, *available at* [http://www.cityofboston.gov/Environment/pdfs/beaconhill\\_guidelines.pdf](http://www.cityofboston.gov/Environment/pdfs/beaconhill_guidelines.pdf) (last visited April 2, 2004)

<sup>87</sup> *See* Beacon Hill Architectural Guidelines, *supra* note 74.

<sup>88</sup> M.G.L.A., *supra* note 83.

In Boston, the real test to any new design comes not at the historic preservation review phase but rather prior to zoning review. Boston has a Boston Civic Design Commission under the umbrella of the Boston Redevelopment Authority.<sup>89</sup> The Design Commission is made up of design professionals who look at both large and small-scale development projects to determine whether these projects fit into the cityscape. Their mandate does not explicitly address historic preservation but they do review the project for compatibility with the cityscape.<sup>90</sup> Historic preservation in Boston seems more geared at neighborhood preservation rather than a citywide framework for determining projects worthy of exceptions to the preservation act. The very active local neighborhood commissions help to create this framework and review at the citywide level is concentrated in the zoning process, not the historic preservation process.

### C. GSA Design Excellence program- a model

The federal government under the auspices of the General Services Administration has attempted to create design guidelines for federal buildings albeit at the architect selection phase. In 1961, then staff member at labor department and future senator Daniel Patrick Moynihan drafted “Guiding Principles for Federal Architecture.”<sup>91</sup> These principles provide broad based goals for the creation of new federal buildings including an emphasis on excellence and habitability as well as a commitment to the community where the building is located and a commitment to using American designers whenever possible.

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<sup>89</sup> Boston Civic Design Commission, *available at* [http://www.ci.boston.ma.us/bra/BCDC/Design\\_review.asp#2](http://www.ci.boston.ma.us/bra/BCDC/Design_review.asp#2) (last visited, April 2, 2004).

<sup>90</sup> *Id.*

<sup>91</sup> VISION AND VOICE, DESIGN EXCELLENCE IN FEDERAL ARCHITECTURE: BUILDING A LEGACY, General Services Administration, December 12, 2002.

The General Services Administration, as the federal government's landlord, has adopted these principles into a framework for reviewing new design projects and ensuring innovative and creative design.<sup>92</sup> The framework was implemented to "change the course of public architecture," and was a response to complaints about mundane federal architecture like post offices.<sup>93</sup> There was a conscious choice on behalf of the government to seek out the best in architecture because federal buildings are public spaces and obvious places to reflect the American commitment to design and innovation.

When a new project is contemplated, the GSA process mandates a design review of private sector peers.<sup>94</sup> Somewhat like the Boston Civic Design Commission, this private sector peer review looks at the broad purpose of the design and the specific details to see how and if this project will meld into the existing location.

The GSA is different from a historic preservation review board or the mayor's agent because they are also the client-developer of the building. However, their model of advisory peer review for federal buildings is a useful model for exemplary architecture review because it allows design professionals, the opportunity to examine a proposed design and judge it on its design merits.

Although not the landlords, the Historic Landmark and Historic District Protection Act of 1978 reflects a similar commitment to excellence within the historic district. The Act is a reflection of public policy that "the protection, enhancement and perpetuation of properties of historical, cultural and aesthetic merit are in the interests of

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<sup>92</sup> See Design Excellence Program available at [http://hydra.gsa.gov/pbs/pc/design\\_excell/index.htm](http://hydra.gsa.gov/pbs/pc/design_excell/index.htm) (last visited March 15, 2004).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

the health, prosperity and welfare of the people of the District of Columbia.”<sup>95</sup> Similarly Senator Moynihan’s guidelines say, “the policy shall be to provide requisite and adequate facilities in an architectural style and form which is distinguished and which will reflect the dignity, enterprise, vigor and stability of the American National Government.”<sup>96</sup>

The Historic Preservation Review Board and the mayor’s agent can and should look at the broader impact of the design and focus on the design features when determining whether a project is worthy of a special merit exemption for exemplary architecture. A stronger focus on design and perhaps even peer review will encourage designers to reach for landmarks.

The GSA has an obvious advantage in their design excellence program because most projects are subject to a design competition where the architects must prove why their proposed design is best suited to meet the needs of the government. However if the Historic Preservation Review Board and mayor’s agent focused on the merits of the design, then the exemplary architecture review process could be characterized as a kind of competition where the architect proves why their project is worthy of the rare and distinctive honor of exemplary architecture designation.

#### D. Award winning architecture

Design excellence is a concept that confuses and frustrates many laypersons. It is much like art where the beauty is not discernible to every viewer. The architecture field does have some established awards for excellence and these awards could provide further guidance on how to judge a project on its architectural merits.

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<sup>95</sup> D.C. Code Ann. §6-1101 (West, 2001).

<sup>96</sup> VISION AND VOICE, *supra* note 91 at 5.

The most prominent of these architecture awards is the Pritzker prize awarded by the Hyatt foundation for excellence in architecture.<sup>97</sup> The Pritzker Prize is awarded to architects who are currently practicing, for recent exemplary buildings, and has been awarded for projects all over the world. Some of these projects are adaptive reuse of a historic building, like the Reichstag renovation in Berlin by Sir Norman Foster and some are for completely new construction such as the award given to Frank Gehry for the museum in Bilbao. Interestingly, the award committee for the Pritzker prize is composed of both laypersons and design professionals. For the Historic Preservation community, awards like the Pritzker prize and awards of the American Institute of Architects help to establish a list of current, prominent architects whose buildings might provide a welcome addition to the city. Additionally, the awards provide a list of buildings against which the merits of a current proposed design can be measured.

It is very difficult to measure the innovation of a modern contemporary design against Victorian architecture because their purpose and period context are so dramatically different. However, the Pritzker prize allows those making the exemplary architecture determination to see if the proposed design will measure up to the excellence of other forms. Judging design is a very subjective process but there are enough consensuses in the current design community regarding the merits of certain designs that with some careful investigation, the merit of a future project can be successfully established.

New York was able to see the merit of the Nouvel building in their historic district before it was built, in part, by looking at Nouvel's contributions to architecture elsewhere and the Corcoran design was approved in part due to Gehry's reputation as an innovator.

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<sup>97</sup> About the Pritzker Prize, available at <http://www.pritzkerprize.com/main.htm> (last visited March 15, 2004).

Truly excellent design must be measured against its peers and the purpose of the exemplary architecture exception was to allow for truly excellent design to co-exist with the landmarks of the past.

## **V. How can application of the Exemplary Architecture Exception improve?**

### **A. Framework**

There are three possible choices for the role and enforcement of the exemplary architecture exemption to historic preservation rules. First, the process can remain much as it is now reviewing each case on a de novo basis for review and slowly developing precedents where exemplary architecture has been found. This vagueness allows freedom to recognize the truly unique and freedom to reject the truly inappropriate and gives great power to the review board and mayor's agent. The danger with this mode of deciding what is exemplary architecture each time de novo is that it provides very little continuity and guidance to the designers. It does not provide much encouragement of unique and innovative design and the projects may not be designed to meet the standards of the exception because the architects do not view the process as judging exemplary architecture with objective criterion.

The second option for reviewing exemplary architecture is to review it with great detail akin to the architectural review guidelines in historic districts in Boston. The review board could engage in discussions about whether the window should be two inches to the left or right and whether the design matches the district well enough. This kind of nitpicky review tends to diminish the impact of a review board and can raise questions about the relevancy of historic preservation to the creation of exemplary



architecture. The detailed review of paint color loses sight of the broader goals of historic preservation and can lead to a backlash against historic preservation by painting historic preservation as a method for not in my backyard protection. Additionally, in a citywide review process like that of the District of Columbia, this kind of detail can lead to a homogenous nature that does not reflect the true character of a developing city. The positive side of this kind of detailed review is that designs are carefully examined and someone other than the architect and developer, who have a vested interest in the construction, examine the details of design and how those will impact historic preservation.

The third kind of review is a balance of detailed review and broad interpretation of the purpose of the historic district. This approach may be greatly improved with the implementation of a design advisory commission akin to the design commissions of the GSA in the design excellence program. A design review commission should only have an advisory role but its recommendations could help to focus the Review Board and the Mayor's agent on the design of the project and its merits relative to the historic district. A specialized design group would be better equipped to review design plans and balance those against the defined character of the district and see how such plans might or might not provide an exemplary addition to the landscape of Washington, D.C.

#### B. More Specific Definition of Exemplary Architecture

The concept of establishing specific design guidelines is nearly impossible because the guidelines must be vague enough to apply to multiple districts but specific enough to preserve the historic character. The application for an exemplary architecture exception should be reviewed based on a series of factors which include, compatibility, consistency,

scale, height, materials, building relationship to its neighbors and street features. The design of the building should be examined in detail with a focus on the contribution that this new project will make to the District of Columbia, be it as a contrast to its surrounding buildings thus demonstrating a bold distinction between old and new or be it as an updated interpretation of the historic character of the district.

Instead of definitive design rules for the entire District of Columbia, perhaps the process of approving new construction should mirror the process of creating a historic district or landmark. In a historic district application, the applicant must outline the period of significance and character of the district. When the area undergoes its design review process for designation, the National Trust for Historic Preservation recommends looking at a variety of building features such as building use, architectural period, architectural styles, building relationships, street features to help determine period of significance and character.<sup>98</sup> Likewise in evaluating a claim of exemplary architecture, the review board should make a very specific effort to articulate how the new design will enhance the historic district or landmark and the factors that make it worthy of an exception.

### C. Design Review Advisory Commission

The specificity required when reviewing building design for an exemplary architecture exception would be best reviewed by a group of design experts who can present a recommendation to the board regarding the objective criteria of the design. The design expert opinion could function much the way the staff report functions in a historic designation hearing and provide a framework for the review board consideration of the

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<sup>98</sup> Rachel S. Cox, *Design Review in Historic Districts*, 9 National Trust for Historic Preservation; see also Ellen Beasley, *Reviewing New Construction Projects in Historic Areas*, National Trust for Historic Preservation, Information Series 62 (1992).

project. Although the report would be advisory, the trained eyes of design experts would greatly enhance the review process.

The District of Columbia will need to make some choices about how to determine who should belong to such an advisory commission and whether the commission would be a standing body of experts or a group formed for each project requesting the exemplary architecture exception. There are advantages to either model because a standing advisory board has continuity and would likely develop a formula for assessing projects whereas a commission formed to review each new project would have the benefit of not becoming ingrained or fixated on a particular style of design. The board would probably benefit from a composition of seven to nine members because this provides enough diversity to ensure a wide variety of opinions but is not so large that the discussion about projects becomes unwieldy.

The difficulty in establishing a group of design experts is a concern, but with the help of the local society of architects and the American Institute of Architects, the design review process could be a kind of pro-bono opportunity for architects. The review board may also want to consider a mandate to have younger members of the profession who have recently completed schooling serve some of the positions on these boards because they will have had less exposure to the political underpinning of the process and less investment in the outcome. Adding a balance of younger and older design professionals ensures that the review board will have the benefit of experience and the benefit of recently educated design professionals.

The Historic Preservation Review Board has the unique opportunity through the strength of the Historic Landmark and Historic District Protection Act of 1978 to shape

future development in the district and this ability to shape should not be weighed down by minutiae detail of design but rather driven by a detailed analysis of each design which pushes for innovation and creativity contributing to the character of the city. An advisory commission that helps to focus the board on the merits of the design would be a welcome addition to the process and would ensure that the exemplary architecture exception is used in those rare circumstances where it is necessary in the public interest.

## **VI. Conclusion**

Exemplary architecture is a vague amorphous concept and without choices about when and where to grant the exception, there is a risk that it will be used by only the most savvy and perhaps not the most careful landowners as a way to avoid historic preservation. In 1978, the District made a commitment to preservation and they can strengthen that commitment with a commitment to the creation of good design. Up until now, the District of Columbia has been fortunate to have only been presented with a few requests for exemplary architecture where the result was obvious because the building owner was able to afford a world renown architect or the historic landmark needed radical renovation to continue its usefulness and the mayor supported the project. However, tougher choices will come along and practically and legislatively the review board and mayor's agent do not have an expertise in design, which would simplify and focus their review of projects.

Because much of the Historic Preservation Review Board and the mayor's agent do not have expertise in design, they should create and consult with an advisory commission of design professionals, and create a design excellence program prior to granting permits for demolition or alteration. This will help to ensure that designs are reviewed evenly

with an emphasis on the exemplary architectural features and not the ancillary benefits of truly unique design. The development of a stronger design review process will help to ensure that the exemplary architecture provision remains a means to improve and contribute to a historic district rather than a creative, legal loophole around responsible preservation.

Although it might seem easy to create very specific guidelines similar to the specific designations of the historic neighborhood councils in Boston, the Historic Preservation Review Board can and should take a more design-oriented approach to their mandate. The exemplary architecture exception was added to the Act to allow the city to encourage the rare, innovative, complimentary design that contributes to the conversation between generations.