



GOVERNMENT OF THE DISTRICT OF COLUMBIA
Dupont Circle Advisory Neighborhood Commission 2B

April 13, 2013

Gretchen Pfaehler, Chair
Historic Preservation Review Board
Office of Planning
801 North Capitol Street, NE Suite 4000
Washington, DC 20002
historic.preservation@dc.gov

Re: Historic Preservation 2016 Plan

Dear Chairperson Pfaehler,

At its regular meeting on April 10, 2013, the Dupont Circle Advisory Neighborhood Commission (“ANC 2B” or “Commission”) considered the HPO’s draft Historic Preservation 2016 Plan and voted to submit comments. With all Commissioners present, a quorum at a duly-noticed public meeting, the Commission approved the following comments through a resolution, by a vote of (9-0):

Whereas, the Historic Preservation Office (HPO) has released a draft “2016 District of Columbia Historic Preservation Plan: Enriching Our Heritage” and seeks public comment;

Whereas, ANC 2B recognizes the effort that went into the draft plan and commends the HPO on its work;

Whereas, ANC 2B includes parts of 5 historic districts and numerous designated historic landmarks, and thus deals regularly with the Historic Preservation Review Board (HPRB) and the HPO;

Whereas, ANC 2B agrees with the draft report that “some of the [HPRB/HPO] systems are rusty,” that the HPRB/HPO “communications are not up to par,” and that the HPRB/HPO “need[s] to strengthen and reinvigorate . . . partnerships,” especially with respect to ANCs;

Therefore be it resolved that ANC 2B requests that the draft plan be revised to address explicitly the following points:

1. **Effective Enforcement** The plan should explore how to more effectively enforce historic preservation laws, rules, decisions, and orders. This may require a more formalized enforcement relationship between HPO/HPRB and the Department of

Consumer & Regulatory Affairs (DCRA). Frequently, violators pay a limited fine, sometimes as little as \$500, but are not forced thereafter to actually correct the offending construction or work. Rules and decisions are not meaningful unless they can be properly enforced.

2. Great Weight: Addressing ANC Opinions The plan should address improving how ANC resolutions are discussed in HPO staff reports and HPRB decisions. The HPO/HPRB needs to comply with D.C. law requiring agencies to provide “great weight” to ANC opinions by addressing, point-by-point, any ANC resolutions submitted to the HPO/HPRB. Currently, HPO staff reports frequently fail to even mention the ANC opinion, let alone discuss each substantive point set forth in the ANC resolution as required. This means that the final HPRB action, which is generally an adoption of the staff report (with or without changes), does not explicitly address relevant ANC resolutions. This violates D.C. law and needs to be corrected.

3. Great Weight: Notice to ANCs The plan should address improving notice to ANCs of applications before the HPRB. The HPO/HPRB is the only regulatory board that does not currently send a notice document directly to ANCs for each application within the respective ANC that will be on the board’s agenda. This is contrary to the practice of the Alcoholic Beverage Control Board, the District Department of Transportation Public Space Committee, the Board of Zoning Adjustment, and the Zoning Commission. In practice, this diminishes “great weight,” because it prevents ANCs from carefully reviewing HPO/HPRB applications and providing timely and thoughtful opinions.

4. Transparency and Accessibility We support the plan’s recognition that the “government’s rules for the preservation process should be understandable and easily obtained.” We find that HPRB/HPO decision-making is difficult to predict and difficult to follow. The HPRB/HPO should develop and share an understandable plan of procedures and guidelines. This should include (1) an HPRB docketing system, (2) published transcripts of all HPRB meetings, (3) final crafted and published HPRB orders, similar to the orders issued by other boards such as the Board of Zoning Adjustment or the Alcoholic Beverage Control Board. Again, those orders should address ANC resolutions point by point, as described above.

5. Ensuring Timely and Fair Staff Reports The plan should address how to improve the timeliness and fairness of HPO staff reports. The HPO needs to release draft staff reports in time for relevant ANCs to weigh in and respond, before the HPRB hearing on the matter. Otherwise, ANCs are submitting opinions in a vacuum, rather than addressing the discrete points that will be before the HPRB in the staff report. In addition, the HPRB needs to ensure that staff reports are fair and cite all relevant precedent. For example, the HPO issued a 16-page staff report on the ICG/Third Church project (900 16th St NW) that referenced the height of buildings as far away as Massachusetts Avenue NW, but never mentioned the Hay-Adams Hotel less than one block away, which was granted a waiver by HPRB four years earlier, and is higher than what the ICG/Third Church sought in its application.

6. Fair Appeals Process The plan should address the process for appealing an HPRB decision, which can be slow and costly. The HPRB/HPO should work together with the Mayor and Council to develop and ensure a fair, efficient, and transparent appeals mechanism that is not overly burdensome on applicants.

7. Recognition of the Place of Preservation Among Other Important Policies & Values The plan lacks any discussion of how preservation fits into the framework of broader law and policy in the District, and that other values and policies – such as civil rights, treatment of the aged and disabled, public safety, smart growth, individual property rights, or economic development – may at times override preservation concerns.

8. Consideration of Americans with Disabilities Act (ADA) Concerns The plan should address how to improve HPO/HPRB procedures when seniors and the disabled are involved. The HPO/HPRB needs to provide for fast-tracked consideration of ADA-related proposals – especially those that involve modifications to structures to allow seniors and those with disabilities to stay in their homes. Seniors and disabled citizens who suffer health setbacks cannot wait months or years for approval of such modifications.

9. Recognition of the Supremacy of the Constitution and Federal Law The plan should address how HPO/HPRB will incorporate applicable Constitutional and federal laws explicitly into its decision-making. The HPO/HPRB must recognize that the United States Constitution and federal law, as the supreme law of the land, control HPRB/HPO decision-making and actions. In past cases, the HPRB has refused to consider or discuss the implications of the First Amendment, the Religious Freedom Restoration Act, the Religious Land Use and Institutionalized Persons Act, and the Americans with Disabilities Act (ADA). This was done ostensibly on the basis that the HPRB is limited to considering only the relevant regulatory factors under D.C. law, and those federal questions went beyond that limited scope. This represents a fundamental misunderstanding of how law works in the United States. All government bodies must comply first and foremost with the Constitution, then applicable federal law, and then applicable local law. Ignoring Constitutional and federal law questions is not behaving with limited scope and power, but with overly expansive power. D.C. laws limit the powers of the HPO/HPRB, and the Constitution and federal law limit those powers even further.

10. Respect for Democratic Choices The plan should address how to improve upon the substantive rules for historic districts and the processes for approving historic districts, not just how to communicate about preservation more effectively. The plan frames the opposition to new historic districts in Barney Circle, Chevy Chase, and Lanier Heights as a communication and perception failure. This implies that if residents had better understood historic district designations, the districts would have been approved. This demonstrates a lack of respect for the democratic process. It also represents failure to recognize that the substantive rules of historic districts may need to be revised to address legitimate voter concerns.

11. Expanding the “Economic Hardship” Criteria to Include Non-profits The plan should address correcting the oversight that non-profits are not explicitly included in the waiver rules. Under existing rules, applicants who demonstrate economic hardship may be granted a waiver. However, the rules as drafted include hardship on for-profit entities, but do not include non-profit entities, such as schools, charities, or religious institutions. This should be corrected.

Be it further resolved that ANC 2B requests that HPO ensure substantial ANC commissioner participation in its “steering committee” that the HPO has convened for the plan.

Commissioners Mike Feldstein (mike.feldstein@dupontcircleanc.net), and Will Stephens (will.stephens@dupontcircleanc.net) are the Commission’s representative on this matter.

Sincerely,

A handwritten signature in blue ink that reads "William F. Stephens". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Will Stephens, Chair