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October 13, 2008

VIA FACSIMILE AND FIRST CLASS MAIL

Ms. Harriet Tregoning
Mayor's Agent for Historic Preservation
District of Columbia Office of Planning
801 North Capitol Street, NE, Suite 4000
Washington, DC 20002

**Re: HPA No. 08-141, Third Church of Christ, Scientist,
900 16th Street, NW**

Dear Ms. Tregoning:

By letter dated August 29, 2008, the D.C. Preservation League ("DCPL") requested party status in the above-referenced proceeding as an opponent of the permit application filed by Third Church of Christ, Scientist for demolition of the church building at 900 16th St., NW. We understand that you have been designated the Mayor's Agent for this matter and will be presiding at the hearing scheduled for October 28, 2008.

By letter dated October 8, 2008, the applicant filed what it called a Supplemental Pre-Hearing Submission in support of its application. We presume that this submission was intended to comply with the requirements of 10A D.C.M.R. § 407.1, requiring an applicant to submit certain information to the Mayor's Agent at least 20 days in advance of the hearing date. Among other things, the regulation requires an applicant to provide a "written statement setting forth the grounds upon which the applicant bases the claim of consistency, special merit, or economic hardship." 10A D.C.M.R. § 407.1(a). In this case, the applicant states that it intends to rely on each of those three bases and, in addition, states that it will place principal reliance on a claim that denial of the application would substantially burden its free exercise of religion in violation of certain federal statutes.

10A D.C.M.R. § 408 addresses requests for party status by persons or groups (other than the applicant) wishing to participate as a party. Among other things, it requires such groups to provide a written statement setting forth “the grounds upon which the party supports or opposes the application.” 10A D.C.M.R. § 408.1(d). Accordingly, this letter supplements our prior request for party status by providing a more specific statement of our grounds in opposition to the applicant’s newly stated grounds in support of the application. We provide the DCPL position in opposition to each of those grounds, below.

1. First Ground: Denial of the Permit Would Violate the Constitution and Two Federal Statutes

The applicant contends that denial of the permit would violate the free exercise clause of the First Amendment and would violate the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq.* (“RFRA”), and the Religious Land Use and Institutionalized Persons Act, 42 U.S.C. §§ 2000cc *et seq.* (“RLUIPA”).

DCPL does not know whether or not the Mayor’s Agent will entertain the applicant’s constitutional or statutory claims. If these claims are presented at the hearing, DCPL’s position is that both the District of Columbia Historic Landmark and Historic District Protection Act (“the Act”) and its application to the applicant in this case are constitutional and that, for purposes of RFRA, denial of the application will not cause a substantial burden to the applicant’s free exercise of religion. We do not believe that RLUIPA applies to the District of Columbia (because the District is not a “State”), but even if it did, there would be no substantial burden on applicant’s free exercise for purposes of RLUIPA either.

2. Second Ground: Demolition Would Be Consistent with the Purposes of the Act

The applicant contends that issuance of the permit is consistent with the purposes of the Act. In support of this ground, the applicant states that it intends to donate a record of the church building’s architectural plans and the history of its construction to the Washingtoniana Collection of the Martin Luther King Jr. Memorial Public Library.

The express purpose of the Act is to retain and enhance historic properties, encourage the adaptation of historic properties for current use, and ensure that changes to designated properties are compatible with their historic character. D.C. CODE § 6-1101(b) (2008). The applicant seeks to completely demolish a building that is a designated historic landmark. This is contrary to every purpose of the Act. Further, the

applicant's plan to donate documentation of the building to a public library is not legally sufficient to establish consistency with the purposes of the Act.

3. Third Ground: Demolition Is Necessary to Construct a Project of Special Merit

The applicant contends that demolition is necessary to construct a project of special merit without offering any documentation or specific information regarding the purported project. Although the applicant alludes to an intent to construct a new church structure and says that it has worked with an architect on a "design program" for such a structure, it apparently does not have any specific plan for the alleged project of special merit. Additionally, the applicant has presented no proposed project to the Historic Preservation Office or to the Historic Preservation Review Board for advice or review. For all of these reasons, there is no basis for the Mayor's Agent even to consider this claim at this time.

4. Fourth Ground: Failure to Issue the Permit Would Result in Unreasonable Economic Hardship

The applicant contends that denial of the permit will result in financial hardship that will render its continued use of the church building effectively impracticable. Under the Act, an unreasonable economic hardship occurs where denial of a permit would amount to a taking of an owner's property without just compensation. D.C. CODE § 6-1102(14). Because the applicant is not undertaking to make a showing of that nature, this ground is also legally insufficient.

For your information, DCPL intends to present approximately three to five witnesses to testify orally at the hearing, including an architect. Based on the applicant's witness list, the number and nature of grounds asserted in support of the application, and the likelihood that there will be a number of other persons and parties who will wish to testify in support of or in opposition to the application, it may be difficult to complete the hearing in one day. In order to facilitate an efficient hearing process, we respectfully suggest that the Mayor's Agent may wish to convene a pre-hearing telephonic conference among all persons or groups who have been afforded party status in advance of the hearing.

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Sincerely,



Thomas C. Papson
Matthew T. Crosby

Counsel for the D.C. Preservation League

cc David Maloney, District of Columbia State Historic Preservation Officer
Alan Bergstein, Office of the Attorney General
George R. Keys Jr., Jordan & Keys, PLLC
Laura Richards, Committee of 100