

May 22, 2020

VIA EMAIL

Marnique Heath, Chairperson
D.C. Historic Preservation Review Board
historic.preservation@dc.gov

**Re: Concept Approval for National Geographic Society New Front Pavilion
and Consideration of Marabar at 1600 M Street NW (HPA No. 19-460)**

Dear Chairperson Heath and Members of the Board:

On behalf of the National Geographic Society (“NGS”), we write this letter in response to the requests of Charles Birnbaum of The Cultural Landscape Foundation (“TCLF”) and others that the Historic Preservation Review Board (“HPRB” or “Board”) reconsider its August 1, 2019 concept approval of the new front entrance pavilion for the National Geographic Society’s headquarters. TCLF and others made this request because the Elyn Zimmerman sculpture “Marabar” will be removed to accommodate the new pavilion. However, as explained below, the Board should not reconsider its concept approval to account for Marabar because Marabar is not historic, reconsideration would establish a bad precedent, NGS was forthcoming with its plans, Marabar removal is necessary for an improvement, and Marabar is NGS’ private property.

I. Background

The new entrance pavilion for the NGS will be constructed on the site of the Skidmore, Owings & Merrill building (“SOM Building”) (a.k.a. the M Street Building), located at 1600 M Street NW. The new pavilion also will connect to the Edward Durell Stone Building (a.k.a. the 17th Street Building), located at 1145 17th Street NW. The SOM Building site currently includes a front plaza where Marabar, a sculpture consisting of a pool and large granite stones, is located. The new pavilion will be constructed in this plaza, displacing Marabar, as shown in the approved concept plans and drawings.

The Board reviewed the design concept for the new pavilion because of its location in a historic district and connection to a pending landmark building. The SOM Building site is located in the Sixteenth Street Historic District, which has a

period of significance of 1815-1959. However, the SOM Building and the plaza, including Marabar, are not contributing to the historic district since they were constructed in 1984, which is well after the period of significance. In addition, the Sixteenth Street Historic District nomination specifically identifies the SOM Building and site, including the plaza, as non-contributing. Finally, the Stone Building, constructed in 1964, is the subject of a pending landmark application.¹ NGS has been a dedicated steward of its historical buildings over the years, keeping them in exceptional repair and appearance. This has included, by way of example, extensive repairs to the marble façade of the Stone Building following the earthquake in 2011, as well as more recent follow-up repairs to its exterior.

II. In Approving the Concept for the new Pavilion, the Board Correctly Executed its Charge under the Law.

Under the Historic Landmark and Historic District Protection Act of 1978, as amended (“Act”), with respect to proposed new construction, which includes additions, in a historic district or on the site of a historic landmark, the Board’s charge is to review the permit application (and conceptual plans before the permit application is filed) and advise the Mayor whether the design of the proposed new structure is compatible with the character of the historic district and/or landmark.² By definition, if a site or structure is not contributing to a historic district or is not qualified as a landmark, then it is not part of the character of that historic district or landmark. Accordingly, under the Act, a non-contributing site or building should not be part of the Board’s consideration whether new construction is compatible with a historic district or landmark, and the Board cannot require retention of a non-contributing building or site.

In this case, the Board’s charge was to review the concept design of the new pavilion and determine whether it is compatible with the character of the Sixteenth Street Historic District and the character of the Stone Building. The Board dutifully and correctly executed its responsibility under the law and reviewed the pavilion design within that scope. As a matter of law, that review should not have considered compatibility with or effect on the non-contributing SOM Building and plaza, including Marabar. Since the Board’s jurisdiction does not extend to Marabar, NGS had no obligation to specifically discuss Marabar in its plans in any event since it not relevant to the concept review. Accordingly, the Board properly determined by unanimous vote that the design of the new pavilion is compatible with both the historic district and pending landmark, irrespective of Marabar. No further consideration with respect to Marabar is authorized under or required by the Act.

¹ Since the Stone Building is the subject of a pending landmark application, it is protected by the applicable historic preservation laws and regulations. See 10-C DCMR § 208.2.

² D.C. Code §§ 6-1103(c)(1) & 6-1107(f).

III. Reconsidering the Concept Approval would Establish a Bad Precedent.

The HRPB concept review process is based on established law and regulation.³ It is successful because it is limited to the scope established in the Act, guarantees all stakeholders an opportunity to participate, and the decision is made in public after notice. With concept approval and delegation of final permit review to the staff, the HPRB gives the applicant assurance that further Board review is not required and that the applicant can rely on it and proceed with more advanced design development. In other words, predictability matters, and precedent is critical to the concept review process working for all stakeholders.

The Board reviewed and approved the concept design of the pavilion in accordance with the Act and the established process. For the Board to reconsider its decision because of an after-the-fact objection about the outcome would upend the integrity of the concept review process. Since Marabar is not germane to whether the pavilion's design is compatible with the Sixteenth Street Historic District or the Stone Building and NGS presented the project in multiple public settings, reconsidering this concept approval after an extensive public process, in which TCLF and others failed to participate, would set a dangerous precedent. Reconsideration in this case would tell future applicants that they cannot rely on a concept approval given in accordance with the Act and regardless of the extent of public outreach and participation. Reconsideration in this case also would tell future opponents that they do not need to participate in the established process and do not need to provide a legal basis for reconsideration as long as they are loud enough. The Board did everything right in this case, so they should be extremely wary of second-guessing themselves and establishing a new precedent for the unreliability of a concept approval.

IV. NGS was Forthcoming with its Plans to Remove Marabar.

In his letters, Mr. Birnbaum insinuates that NGS kept the removal of Marabar a secret. This is incorrect. NGS never tried to hide the removal of Marabar. The concept plans, dated June 28, 2019, submitted at each level of review to the Board and others ("**Concept Plans**") show eight depictions of Marabar in its current location along with all other elements of the current plaza.⁴ The Concept Plans for the renovated plaza and new pavilion also show that Marabar and the rest of the driveway configuration will be displaced.⁵

At least three stakeholder groups reviewed the Concept Plans in multiple private and public presentations: The Dupont Circle Conservancy, the Advisory

³ D.C. Code § 6-1108; 10-C DCMR § 301.

⁴ See pages 3-6, 10, 12, 20, and 30 of the Concept Plans.

⁵ See pages 7-9, 11, 13-14, and 31 of the Concept Plans.

Neighborhood Commission, the Historic Preservation Office staff, and the Board members themselves all reviewed this project, sometimes more than once.⁶

Further, there was no need for NGS to specifically highlight the removal of Marabar beyond any other elements of the existing plaza. First, as stated above, Marabar is not contributing to the character of either the historic district or the Stone Building. Second, NGS has the legal right to remove it and believed it had agreed on a plan for such removal with Ms. Zimmerman herself in 2017.

Prior to any phase of the public reviews described above, NGS reached out to Ms. Zimmerman. In November 2017, NGS sent Ms. Zimmerman its letter,⁷ explaining the reasons for the need to remove Marabar and offering to carefully remove the large granite stones to a new location. In subsequent conversations with NGS' architect, Ms. Zimmerman identified a location in New Jersey. NGS received a cost estimate for moving the stones and made this a line item in its budget. NGS believed that a plan was in place for careful removal. It was not until more than two and a half years later, following the conclusion of all the publicly noticed reviews and hearings referenced above, that NGS received any objection or protest, directly or indirectly, from Ms. Zimmerman.

V. Marabar Must be Removed to Create a more Publicly Accessible and Inviting Entrance.

NGS has explained its reasons for the pavilion and need to expand: a more engaging public space, unifying the campus, more area for programming, modernization of its headquarters. In particular, it is central to NGS' mission to enhance our public outreach and transform the NGS campus into an open space that can be fully utilized for gatherings of student groups, lecture, exhibits, presentations by explorers and other events.⁸ The only location an expansion to achieve these goals can occur is in the plaza of the SOM Building site. Although it is small compared to the rest of the NGS buildings, the size of the pavilion can be accommodated only by removing and replacing Marabar. Without removing

⁶ NGS presented the Concept Plans at the following meetings:

ANC 2B Zoning, Preservation, and Development Committee – July 6, 2019

Dupont Circle Conservancy – July 8, 2019

D.C. Preservation League – July 22, 2019

ANC 2B – July 23, 2019

HPRB – August 1, 2019

ANC 2B Zoning, Preservation, and Development Committee – October 2, 2019

ANC 2B – October 10, 2019

Board of Zoning Adjustment – November 6, 2019

⁷ See November 29, 2017 letter from NGS to Ms. Zimmerman, previously provided to the HPRB.

⁸ These substantial modernization plans and goals need to be viewed over the long-term, well beyond the current pandemic.

Marabar, NGS cannot expand, thereby depriving NGS of its ability to improve its site and fulfill its mission.

NGS believes that the transformed campus will be a much greater attraction to the general public, both in and outside of DC, than Marabar. It is understandable that some members of the HPRB may not have been aware of Marabar's existence. Despite the impression given by various letters sent to the HPRB, Marabar is not a feature of the Washington built landscape that draws attention. Standard tour guide books to Washington, DC, generally have entries describing National Geographic Society and/or its museum, but do not mention Marabar by name or otherwise.⁹ Further, and most notably, Marabar receives no mention in the encyclopedic work on outdoor sculpture in Washington, Washington Sculpture, A Cultural History of Outdoor Sculpture in the Nation's Capital, by James M. Goode (Johns Hopkins University Press, 2008). Despite 800 pages covering outdoor sculpture of all types in the nation's capital, including two entries of other outdoor sculpture connected to National Geographic, Marabar cannot be found. One of these sculptures was a rotating animal sculpture exhibit that began in 2002, many of which were located around the courtyard that includes Marabar, such as the one pictured in Goode's book on page 530.

As previously explained to Mr. Birnbaum¹⁰, Marabar also has many safety and maintenance problems that warrant its removal. Due to its design and location, there have been many instances over the years of people falling into the pool, leading to numerous personal injury and workers compensation claims. Additionally, despite NGS' signs instructing people not to climb on the rocks, children especially have a hard time resisting the temptation to climb on the rocks, some of which are quite tall.¹¹

Instead of this, NGS intends to create an open space that is far more usable and safer for the public to gather and learn about NGS' mission; participate in teacher/student gatherings, lectures, explorer reports and demonstrations and other events described above; and make National Geographic more accessible to all. NGS is working with nationally renowned Olin landscape architects as well as Hickok Cole to create a state-of-the-art plaza and pavilion that will use the latest in sustainable materials and environmentally-friendly "green" technology. The project

⁹ See *e.g.*, Lillis et al., Fodor's Washington, D.C. (Random House, 2016), pp. 70, 74 and 127; Gatusso et al., Insight Guides, Washington, D.C. (Apa Publications, 2008), pp. 10, 14-12; Rich, Insider's Guide to Washington, D.C. (Globe Pequot Press, 2010), pp. 133, 173 and 215; Whitman, Off the Beaten Path, Washington, D.C. (Morris Book Publishing, 2009), pp. 15-16; and Time Out Guides, Washington, DC (Ebury Publishing/Random House 2013), pp. 56, 157.

¹⁰ NGS April 8, 2020 letter to Mr. Birnbaum, previously provided to the HPRB.

¹¹ The use of large granite rocks in the NGS courtyard has not met with universal acclaim: "I also loathe the huge rocks sprinkled about and regarded as sculpture, but feel that the future generations will become sufficiently annoyed by them they will be removed in time." Mitchell, *Washington Post*, May 12, 1985, p. H4.

will be a showcase and educational experience for the latest in sustainable building construction.

VI. NGS Owns Marabar and may Remove it per Contract with the Artist.

Marabar is NGS' property located on NGS' land. Marabar is not public art and is not in the public realm. It was privately commissioned for a private development and was not offered as part of a public entitlement process. While NGS allows the public to access the SOM Building plaza and Marabar, it is ultimately under NGS' exclusive control. Accordingly, NGS is free to exclude public access and to remove Marabar if it desires.

From the inception of Marabar, both Elyn Zimmerman and NGS understood that the installation would be the exclusive property of NGS and not intended to exist in perpetuity. The 1982 contract between Zimmerman and NGS established the monetary compensation paid to Zimmerman for the installation, and it explicitly addressed NGS' potential alteration or removal of the installation. For NGS to alter or remove Marabar, its contractual obligation is to notify Zimmerman. NGS fulfilled this obligation and contacted Zimmerman by letter in 2017, as described above, informing her of their intent to remove it. NGS is still willing to carefully remove and relocate the large granite stones at its expense and produce a professional photographic record of Marabar, as offered to Ms. Zimmerman nearly three years ago, either to New Jersey (or similar location) or possibly as a donation to an art museum.

Accordingly, we urge the Board to stand by its concept approval and to not reconsider its decision to account for Marabar.

Sincerely,
GOULSTON & STORRS, PC

/s/ _____

Cary R. Kadlecek

CC: Steve Callcott, Historic Preservation Office (steve.callcott@dc.gov)