

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF ADJUDICATION
941 NORTH CAPITOL STREET, N.E., SUITE #9100
P.O. Box 37140
WASHINGTON, DC 20013-7200**

In the Matter of:

HPA #00-234

**Evans-Tibbs House
1910 Vermont Ave., N.W.
Washington, D.C. 20001**

**Location:
1910 Vermont Ave., N.W.
Washington, D.C.**

DECISION AND ORDER

STATEMENT OF THE CASE

This matter came before Rohulamin Quander, Administrative Law Judge and Mayor's Agent for Historic Preservation on July 20, 2000, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 1-1509, and the D.C. Historic Landmark and Historic District Protection Act of 1978 (the Act), D.C. Law 2-144, codified at D.C. Code, Sec. 5-1001, *et seq* and upon the request for an administrative hearing filed by Ann M. Garfinkle, Esquire, legal counsel for Laurence Savoy, Personal Representative of the Estate of Thurlow E. Tibbs, Jr., co-owner of the property, the Applicant (the Applicant).

The Applicant seeks approval for the already completed installation of eight replacement windows on a home that was placed on the National Register of Historic Places in the 1980s. The Applicant asserts that: 1) The replacement of the windows was necessary in order to protect a project of special merit from further deterioration due to age; 2) To require that the estate remove two of the recently installed windows and replace them with two diamond pane windows similar to the ones that were removed in 1999 is an economic hardship; 3) The diamond pane windows are out of character with the other windows both in the house and in the neighborhood, and therefore, were not a defining feature of the site; and 4) The completed alternation is consistent with the purpose of D.C. Law 2-144(2)(b).

At its meeting convened on March 23, 2000, the Historic Preservation Review Board (the Board) adopted the Staff Report, which recommended that the Applicant be denied the permit application for the proposed replacement of the two windows for the dining room, and directed that the Applicant either repair or replace in kind the diamond pane windows that had been removed.

For the reasons that follow, this application for the approval of a construction permit to alter these eight windows is **DENIED in part and APPROVED in part.**

SUMMARY OF THE EVIDENCE

The Applicant was the only person to testify at the hearing. On March 3, 2000, Steve Callcott, a member of the staff, notified the Applicant by letter what the procedure was for replacing windows in historic districts. In response to that letter, and because the windows had already been replaced, Ms. Garfinkle, the Applicant's counsel, requested a hearing before the Mayor's Agent.

The record of the case primarily consisted of: 1) The sworn testimony of Laurence Savoy, the sole witness; 2) The official case file prepared by Board staff, which included the Staff Report and Recommendation and the post completion of installation construction permit application; 3) A cross section of photographs of windows in homes in the immediate neighborhood; and 4) Photographs of the windows in the Evans-Tibbs home, including two photographs which depicted the diamond pane windows before replacement, and one photograph of how the two windows appeared after the 1999 replacement with standard one over one windows.

The staff recommended that the Board deny the application for approval of the already completed replacement of the two dining room windows, and requested that the Board direct that the Applicant repair, restore, or replace in kind the diamond pane windows which were removed.

FINDINGS OF FACT

1. Laurence Savoy, the Applicant, is the personal representative of the Estate of Thurlow E. Tibbs, Jr., which estate, under the name of the Thurlow E. Tibbs Trust, is the co-owner of the realty located at 1910 Vermont Avenue, N.W., Washington, D.C. The other co-owner of the house is Diane Tibbs Islam, the sister of the late Mr. Tibbs. Ms. Islam resides in New York City, and took no active part in this administrative hearing. In light of Mr. Tibbs's death, the Corcoran Gallery is the contingent remainder party of the estate's legal interest in the property.

2. The Victorian rowhouse, constructed in 1894 and located in the Shaw District, has a very significant national history, and in the 1980s was placed on the National Register of Historic Places by the United States Department of the Interior. As well, the District of Columbia recognized the site as an individual landmark in the Greater U Street Historic District.

3. The primary incentives for these recognitions and designations were the life and contributions of Lillian Evans-Tibbs (1890-1967), known professionally and internationally as "Madame Evanti". As Madame Evanti, she became the first internationally recognized and acclaimed African American opera singer, and toured the capitals of Europe where she was critically acclaimed for her voice, talents, and artistic flair. Her portrait, costumed in one of

her singing roles, is part of the permanent collection of the National Portrait Gallery.

4. On March 23, 2000, and in anticipation of the monthly meeting of the Historic Preservation Review Board, a Staff Report was prepared incidental to Mr. Savoy's post installation effort to obtain a construction permit for the replacement of eight side windows at the site. The Report noted that:

"While architecturally similar to many other Victorian rowhouses in the neighborhood, it was improved and decorated by Madame Evanti over the years with various artistic flourishes, both inside and out. Among there were a variety of multi-light casement windows and two diamond paned wood windows in the dining room on the side elevation."

In referring to the two diamond paned windows, the Report further states that with the,

"... replacement with a single, uniform window type results in a loss of the *variety* of windows originally found on this side elevation. This variety of windows is part of the character of this individual landmark, and reflects its association with an artistic person, who modified the house in accordance with her aesthetic tastes."

5. Based upon the testimony of Savoy, the following additional facts are found:

- a) One of his responsibilities as the personal representative, and as a personal commitment to the late Thurlow E. Tibbs, Jr., was to maintain the property in as good a condition as possible, which effort also required securing the property, including strengthening the windows, several of which were old, rotted, and weak;
- b) He upgraded the old security system after a burglary occurred during his tenure as the personal representative;
- c) Although many art pieces have been removed by the estate, several valuables remain in the house, including some of Mr. Tibbs's and Madame Evanti's personal papers, her custom made spinet piano, and certain renovations to the property which she made during her many years of residency in the property;¹
- d) As a follow through on conversations he had had with Thurlow Tibbs prior to his death about the need to replace several of the windows, in late 1999 Savoy obtained several estimates for the replacement of all eight side windows at the house, and based upon those estimates, selected a company which contracted to

¹ The itemization of what some of these features were, was not recited in the record. However, the ALJ takes administrative notice that the delineation of the modifications that Madame Evanti incorporated into the house was undoubtedly a part of the national historic register application that resulted in this site being placed on both the national and local historic registers.

replace all eight windows for \$4,600.85, an average price of \$575.00 per window;

e) One window was a casement window, and the remaining seven windows were essentially identical in design, i.e. , although sized according to the space, and were wooden windows clad in aluminum;

f) The two diamond paned windows, which were custom made to Madame Evanti's order in the 1950s, with each pane individually set into its frame, were removed, and replaced with windows identical in style to all of the other windows;²

g) While each of the solicited salespersons touted their companies' respective products, none of them ever mentioned to Savoy that he needed a construction permit, or that there were additional requirements because the house was located in a historic district;

h) Several photographs were admitted into the record as Applicant's Exhibit #5a through #5m – photographs #5a through #5d, #5l (taken in the 1950s) and #5m all featured different photographic angles of the Evans-Tibbs, house, but only #5m included the two diamond paned side windows, prior to their removal;³

i) Photographs #5e through #5k depicted windows in houses in the immediate neighborhood, all of which were of the one over one double hung style, some of which windows appear to be aluminum clad, and others of which were clearly all wooden;

j) The witness, in describing the two diamond paned windows, referred to them as an "artistic enhancement", based upon the words used to describe said windows by certain Tibbs family members, with whom he had had conversations; and

k) Although he has looked throughout the neighborhood, he has never seen any diamond paned windows on any other house in the area.

6. On cross-examination by the Mayor's Agent, Savoy admitted that:

a) It was naivete on his part not to have first sought a construction permit, because had he done so, he would have been advised of the requirements and limitations, based upon the property being both on the local and National Register of Historic Sites and being in the U Street Historic District;

b) The cost of replacing the diamond pane windows in kind would most likely have been substantial;

² The ALJ takes administrative notice that, based upon an eye count, there were approximately 44 whole or partial panes in each of the diamond paned windows, which consisted of two side by side panels. Whether the prior windows could be opened is not a part of this record.

³ However, the Applicant's construction permit application also included an additional photograph of the dining room, which contained both a side view of the diamond paned window, and a beautiful cascade of natural light beaming through the window onto the front wall of the dining room.

- c) None of the companies that gave him estimates indicated a capacity to replace them in kind; and
- d) He did not consult with or obtain any replacement cost estimates for the diamond pane windows from any companies which specialized in historic restoration or duplications in kind.

DISCUSSION

The matter before the Mayor's Agent is both simple and direct. Laurence Savoy, the personal representative of the estate and Applicant, undertook to install eight aluminum clad windows onto the side of a house that is listed on both the local and National Register of Historic Places, and likewise located in a historic district, without having taken the initiative of securing a construction permit or investigating to determine what the pre-renovation legal requirements were.

Had he at least filed for the permit, he would have been immediately advised that, due to the property being located in the U Historic District, and further because of the site's local, national, and international significance, he would first have to comply with historic preservation requirements. To allow otherwise would create a dangerous precedent regarding both construction permits and mandatory requirements for the preservation of the historic district.

The Act was adopted in 1978 for very specific reasons. Among those reasons was a recognition that people needed to be given an opportunity to maintain their properties, and to readapt them for current use. The Act clearly contemplated that in that readaptive process, there would be certain guidelines to adhere to. And the simplest guideline is to make an application for a permit, and then submit the application package to scrutiny by the Board, for its staff to assure that the proposed construction, i.e., installation of windows, adheres to both the spirit and letter of the law.

While the naivete of the Applicant may have put him at the mercy of the competing window installation companies, as he searched for the best product at the most accommodating price, the law makes it clear that the obligation to have the permit rests first and foremost with the homeowner, or in this case, with the estate's personal representative, who was acting on behalf of the deceased homeowner. That the contractor apparently never mentioned the legal requirements is unfortunate, but they are in the business of selling products and making *standard* (emphasis added by the ALJ) window installations. That they did not advise him of the permit and historical district requirements is regrettable, but said lapse is not excusable.

The Applicant's counsel asserted four criteria as the claimed basis for allowing the completed window installations to remain in place; a) That the completed project was necessary as a project of special merit and to prevent further deterioration of the historic premises; b) That to require removal of the two windows and replacement with two custom made diamond pane windows would

impose an economic hardship; c) That the removed windows were not in accord with the style of windows in houses in the neighborhood, and as such, were not a character defining feature; and d) The completed alteration was consistent with the purposes of the Act.

The Mayor's Agent rejects all of these positions. First, while it is true that the personal representative, as a fiduciary, has the obligation to secure the site, and to protect it from deterioration, vandals, and burglars, the Applicant's rush to select a contractor does not justify changing the windows without first adhering to the law governing such replacements. Had he consulted the HPRB staff, he would have been provided not only advice, but a copy of *Windows and Doors for Historic Buildings*, a D.C. Government publication which underscores that in replacing windows: a) If original windows have been altered in the past, as in this case, if the alternation has achieved significance in its own right, it should be maintained; b) It is important to replicate the significant characteristics which define the windows, which includes the profile, material, and method of operation; c) It is important to know whether the replacements are appropriate or inappropriate; and d) Classical architectural style windows were revived in the twentieth century, and multi-paned windows came back into fashion.

Second, the artistic enhancements that Madame Evanti installed into her home set a tone and atmosphere that became legendary in her time, and still are of relevant consideration today. She installed the two diamond paned side by side windows in the 1950s, which windows were not only beautiful in every sense of the word, but also captured the natural light and cast a smoky, diamond paned reflection onto her dining room wall, as clearly illustrated in a photograph taken on April 12, 1997, which was submitted as a part of the Applicant's construction permit package.

While the Mayor's Agent is not privy to all of the specifically selected artistic enhancements Madame Evanti chose to complement her home, the selection and installation of these windows were not the only such unique characterization. She installed internal columns between the living room and the dining room, lending a classical flair and ambiance. She or her immediate ancestors obtained discarded natural gas light chandeliers from the United States Capitol building when the Capitol was electrified, and hung them on the first floor. As well, the custom-made spinet piano, located in the living room, was used to accompany her when she sang, and to otherwise entertain her guests.

Considered as a whole, all of the above were an integral part of who Madame Evanti was, and adds to conveying the cultural and political significance of the home as a place where salons were continuously held, where the most influential African Americans from the late nineteenth through the late the twentieth centuries gathered as regular guests and conversationalists, to discuss the critical issues of the day.

The Applicant's counsel asserted that the two diamond shaped pane windows neither matched the rest of the windows in the house nor the houses in

the neighborhood. However, her remark completely missed the point that Lillian Evans Tibbs's (Madame Evanti) entire professional life was about doing things differently. She was not focussed upon making things match. Rather, in the words of her own family members, she was focussed upon the "artistic enhancements" in her life, and in pursuit of such, she selected these two custom made windows, had them installed, and enjoyed them for the rest of her life. Those windows should be reinstalled under these circumstances.

Counsel has emphasized that should a building be built next to the site, the ability to see the diamond pane windows will be lost to the general public, which will lose its view of the windows from across the vacant lot on the corner. The Mayor's Agent is not unmindful of the fact that a building might be constructed on the lot in the future, but notes that the historical significance of the site is not solely dependent upon whether the windows will remain visible from the street. The historical significance of this site is primarily focussed upon who lived in the building and the activities that were conducted inside the building. None of that essential component of the history of the site would be lost by the construction of a building which might obscure the windows from the general public's view.

As well, there is a green space between this site and the vacant lot, and it is entirely possible, and perhaps even likely, that when and if a building is built on the corner lot, the green space might still be preserved to convey a sense of place with regard to this site. Further, the architecture and planning for any new building being constructed and located directly next to such a significantly historical structure, should likewise convey that historical and artistic appreciation.

CONCLUSIONS OF LAW

The evidence having been considered, the Mayor's Agent concludes that the Applicant must come into legal compliance, and remove the offending two windows in question, and replace them with two diamond pane side by side windows, identical to or as closely replicative as possible, to those that he illegally removed. Within his discretion, he should consult with and work closely with the staff at the Historic Preservation Review Board, to identify companies that might carry this type of window in stock or are able to replicate it as exactly as possible.

The Mayor's Agent is not unmindful that the cost of replicating the two windows might be significant, but the Applicant has provided him no specific cost estimates. Had he done so, it is doubtful that the outcome in this case would have been any different, due to the contributory significance of these windows as an integral part of this historic site.

The underlying fact is that 1910 Vermont Avenue, N.W., Washington, D.C. is a very special place, so special that it was placed onto both the local and National Register of Historic Places, the latter under the direction of the U.S.

Department of the Interior. The two windows in question were an integral part of that registry, and must be returned to their original location on the side of the historic site.

ORDER

ACCORDINGLY, it is this **10th day of August, 2000**,

ORDERED, that the Applicant's request for the issuance of a construction permit approving the currently existing eight window installations is **DENIED**; and it is

FURTHER ORDERED, that the Mayor's Agent will approve the belated application for the installation construction permit for the five one over one aluminum-clad windows and the one casement window; and it is

FURTHER ORDERED, that the Applicant is directed to remove the two one over one windows that were installed at the location of the two side by side diamond pane windows, and in their place to install new side by side diamond pane windows replicative of those that were removed in 1999, and may, within his discretion, either amend the pending construction permit application or file a new application for the two diamond pane windows, which window installations must comply with all of the historic district guidelines, in order to come into full compliance with the Act; and it is

FURTHER ORDERED, that, pursuant to 10 DCMR 2523.4, this Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service, pursuant to 10 DCMR 2503(c).

ROHULAMIN QUANDER, ALJ, D.C.
MAYOR'S AGENT FOR HISTORIC PRESERVATION

Certificate of Service

I hereby certify that on August 11, 2000, that a copy of the foregoing Decision and Order was sent via first class, postage prepaid U.S. mail or D.C. Government interoffice mail to the following:

Ann M. Garfinkle, Esquire
1150 Connecticut Avenue, N.W., Suite #505
Washington, D.C. 20036
Counsel for Applicant,
Laurence Savoy, Personal Representative,
Estate of Thurlow E. Tibbs, Jr.

Steve Raiche, Program Manager
The Historic Preservation Review Board
DCRA
941 North Capitol Street, N.E., #2500
Washington, D.C. 20002

And

Advisory Neighborhood Commission 1B
The Reeves Center, Box 73710
Washington, D.C. 20056

Certifying Officer, DCRA/ OAD