

**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, D.C. 20013-7200**

**IN RE:**

**Alteration of Storefront and Windows  
3324-3326 M Street, N.W.  
Washington, D.C.**

**Square 1184  
Lot 811**

**H.P.A. No. 02-118 & 02-233<sup>1</sup>  
O.G. No. 02-084 & 02-146**

**DECISION AND ORDER**

**Background**

This case came before Rohulamin Quander, Administrative Law Judge (the ALJ) and designated Mayor's Agent for Historic Preservation (Mayor's Agent), on June 26, 2002, upon the request for an administrative hearing filed by George Gordon, agent for the tenant at 3324-3326 M Street, N.W. (Square 1184, Lot 811). Gordon appealed the recommendation of the Old Georgetown Board (the OGB) and the Commission of Fine Arts (the CFA) to deny issuance of a building permit to alter the storefront and windows of the two adjacent retail buildings located at the above-noted address, situated in the Georgetown Historic District (the historic district). AAA/Kitchens, Inc., Applicant (the Applicant), contends first, that the proposed alteration is consistent with the purposes of the D.C. Historic Landmark and Historic District Protection Act of 1978 (the Act), and second, that should the denial of this application be upheld, it will impose an unreasonable economic hardship upon the Applicant. The hearing was conducted pursuant to the provisions of Title 10 of the District of Columbia Municipal Regulations (DCMR). The record was closed at the conclusion of the hearing, except to allow the submission of certain requested documents.

Pursuant to section 6-1105 of the Act, the application was considered by the OGB and the CFA under the provisions of the Old Georgetown Act, codified at D.C. Code, Sec. 6-1201 *et seq.*, both of which, by letter dated 22 February 2002, and directed to the Mayor's Agent's for his consideration, recommended against issuance of the alteration permit. Their letter indicated that, "... alterations to storefront ... as proposed, would remove historic fabric and any reference to the original buildings. Historic storefront which has undergone renovation work recently must be retained." Based on this determination, the Applicant requested an administrative hearing before the Mayor's Agent.

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<sup>1</sup> The ALJ notes that two different HPA and two different OGB case file numbers were used interchangeably in this file folder. Therefore, in the interest of caution, the ALJ has listed each of the two numbers in his final order.

George Gordon (Gordon), AIA, the tenant's architect and primary coordinator of this application, testified on behalf of the Applicant in support of the proposed alterations. Amir Farazad, Director and CEO, of AAI/Kitchens, Inc., the current tenant and beneficiary of this application, was also present and testified. Advised of his right to be represented by legal counsel, Mr. Farazad (the Applicant) elected to proceed *pro se*. The D.C. Government was represented by Tim Dennee, from the staff of the D.C. Historic Preservation Office, D.C. Office of Planning.

Based on the record taken as a whole, including the evidence submitted at the hearing, the request made by the Applicant and the recommendations of the OGB and the CFA, the requested post-hearing submissions, and the position taken by the relevant Advisory Neighborhood Commission, the Mayor's Agent concludes that the application for alteration to the storefronts should be **DENIED**.

### Issues

The issues to be decided are: 1) whether the Applicant's proposed application to alter the storefronts is necessary in the public interest because it is consistent with the purposes of the Act and compatible with the historic district; and 2) whether 3324-3326 M Street, N.W., are "contributing buildings" to the historic district, as that term is defined and interpreted under the Act.

### Findings of Fact

The Mayor's Agent, having received all the evidence presented in this matter, and having reviewed same and having given the proper weight to the testimony presented, now makes the following Findings of Fact:

1. Applicant, through the assistance of Amir Farazad, its CEO, and with the guidance of George Gordon, Applicant's architect, seeks approval of a permit to alter the street level façades of the existing retail buildings at 3324-3326 M Street, N.W., located at Lot 811 in Square 1184, in the Georgetown Historic District.

2. The two existing adjacent masonry building structures are two stories in height and were constructed in the mid to late 19<sup>th</sup> Century on the north side of M Street in the historic district. (App. Exhib. #1) The ground floor levels are currently being used as the only kitchen remodeling business in the area. Applicant, who projects to be a long-term tenant, asserts that the business is unable to adequately showcase and advertise a marketable sample of its kitchen product, because the two structures have a combined width of 29 feet, approximately six feet of which width is consumed by two separate entrance doors, plus a combination of four window panels which totally dissect the product presentation, and does not accommodate creating a window-based show area to attract customers into the store for business. (App. Exhib. #3)

3. Applicant's objective is to create a façade containing one central entrance, with two show areas on each side of the entrance. At present, and due to the many dissections in the

entrance area, there is not enough room for one show area that is not, likewise, partially obscured by the present configuration of the entrance area.

4. These buildings are a component of a group of other adjacent buildings located in the 3300 block of M Street, N.W., all or most of which were significantly renovated in 2000-2001, and are a part of a Declaration of Covenants executed on December 21, 1999. (Govt. Exhib. #1, pp. 1-4) The covenant allowed major internal renovations and some rear of buildings additions, but anticipated that façade renovations would still convey that the adjacent buildings continue to present the appearance of being separate buildings from the public sidewalk and principal street frontage. (Govt. Exhib. #1, p. 2)

5. Subsequently, the façade of the two current buildings (3324-3326 M Street) were altered in 2001, to: a) remove a centrally located third door, and in its place to install a window and base which matched the remaining two doors, and the existing fabric and design; b) lower the base of all of the remaining windows, which were subsequently enlarged by the consistent installation of transoms over each of the existing windows; and c) remove the slight baying of the windows on the façade. (Govt. Exhib. #1, p. 9 & p. 11)

6. Although the D.C. Government opposed this current application on the basis that it was inconsistent with both D.C. regulations and policies relating to the retention of storefronts in historic districts, the government submitted a copy of the CFA's letter of February 18, 2000, for the prior renovation, which specifically stated that the CFA had no objection to the issuance of a permit for the 2000 alterations to the site as shown in the revised submitted drawings, provided the wood windows on M Street would be repaired, if possible, and replacement in kind of wood elements only when necessary. (Govt. Exhib. #1, p. 7)

7. Applicant proposes to take the 2000 CFA-approved alterations one step further, by: a) removing one of the two remaining doors, and centrally relocating the other door; b) removal of three of the seven existing wooden columns, all of which are reportedly original fabric, and realignment of the retained columns to create a centralized architectural flow; c) retention of the existing corbels, pilasters and cornice treatments, and all of the building above the first level; and d) installation of larger show room type windows with overhead transoms, which in appearance, although not in size, will be identical to the windows and transoms installed in 2001. However, from the exterior of the buildings, the end result of the requested alternation will reduce, if not eliminate, the ready appearance of two separate buildings.<sup>2</sup>

8. While awaiting the Mayor's Agent's decision on this application, Applicant has already undertaken to operate the business, using the store front as presently configured, and asserted that it was necessary to begin the operation of the business because of the high cost of operation, including the monthly rent obligation of almost \$10,000.00 per month, plus significant other business expenditures as outlined, which obligations must be met regardless of the eventual outcome on this application. (App. Post Hearing Exhib. #1)

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<sup>2</sup> Based upon a photograph submitted by Applicant, the building already appears to be one single building above the first level, although testimony indicated that the second level was apparently divided into two separate buildings with a party wall in between the two halves. (App. Exhib. #1)

9. Because the business is new at this location, and did not yet have a income and expense statement, Applicant submitted a Projected 12 Months Income Statement, dated June 26, 2002, which projected gross income for sales at \$3,000,000.00; total costs of good sold at \$2,743,667.00; gross profit of \$256,333.00; total expense of \$180,308.00; and first year net income of \$76,025.00. (App. Post Hearing Exhib. #1)

10. Applicant also submitted pages 27-28, from the commercial lease, dated December 6, 2001, and duly executed by Anthony M. Lanier, President, 3320 M Street, LLC, Landlord, and Amir Farazad, Applicant's CEO, plus Schedule B-1, a supplemental statement which contemplates the changes to the façade now being requested, likewise dated December 6, 2001. (App. Post Hearing Exhib #2)

### **Discussion and Evaluation of the Evidence**

The Mayor's Agent has been requested to approve the alteration of the façade on a building located in the Georgetown Historic District that would result in a change in the street level front entrance of two buildings that are located in the historic district. If granted, the effect of this decision would alter the appearance of buildings that the OGB and CFA have each determined should not be altered, on the basis that the requested change, "... would remove historic fabric and any reference to the two original buildings." The CFA also added, "Existing historic storefronts, which were recently restored, are contributing elements to the character of the historic District and should be preserved. Restoration and retention of these historic storefronts, as well as the retention of party walls in coordination with established covenants, was integral part of the review and approval for major addition to rear for the Design Center West complex and must be retained. See previous review (case O.G. 00-29)" Further, ANC 2E, at its regularly scheduled meeting attended by all of the commissioners, considered the application, and voted against it as designed and presented. Although the Mayor's Agent does not have the benefit of any narrative from the ANC deliberations, the fact that the commissioners voted against this application is entitled to great weight consideration, as mandated by D.C. Code, Sec.1-309.10(d) (2001 ed.)

Some 18 months after the covenant was recorded, and less than a year after Applicant entered his lease with property owner/landlord, the Mayor's Agent is being asked to set aside some provisions of the covenant that allowed: a) the owner to make significant additions onto the rear of this consolidated premises; b) interior alterations that restored the separate premises, and likewise conveyed that, internally, these structures are separate buildings; and c) as a component of being able to make these alterations and new additions, the façades of the buildings were required to be restored. The building that Applicant seeks to alter falls within the period of historical significance, and both the OGB and CFA applied a proper legal standard of evaluation for contributing buildings under the law, which correctly resulted in the rejection of this Application.

The Applicant cited precedents for storefront alterations which were previously approved in the historic district, some of which were 19<sup>th</sup> or early 20<sup>th</sup> Century buildings and unquestionably an integral part of the historic district. Among the precedents cited were buildings where the storefronts apparently were consolidated from two separate buildings into

one single-appearing entrance. However, Applicant presented no evidence of how prior determinations were made that allowed two façades to be merged into one larger façade, and likewise provided no specific recommendation by either the OGB or the CFA which authorized such a result. As well, this Mayor's Agent recently approved a façade change for 3061 M Street, N.W. However, there are a number of distinctions between that situation and the one at hand. First, the relevant building in that application was outside of the period of historical significance, having been constructed in 1942. Second, the objective of the prior application was to return the façade to the original Art Moderne style that was traditional in the 1940s, when the building was built. Third, the prior building was not subject to a covenant of record which limited and directed the amount of alterations and additions that could be constructed on the site. And fourth, the two current buildings were subjected to a façade makeover in 2001, the effect of which not only restored the façades to historical accuracy, but also maintained the clear conveyance of the message that 3324 and 3326 are two separate buildings, despite their unified first floor use for retail.

The Mayor's Agent is not unmindful of the fact that Applicant and landlord entered a lease on December 6, 2001, that clearly anticipated a possible expansion of the Applicant's use of the leased space in a manner that, according to Schedule B-1, would remake the storefront in accordance with approved plans. However, both the lease and the supplemental schedule are private agreements reached between Applicant and landlord, and are not binding upon the Mayor's Agent in terms of how the leased space is ultimately to be utilized. Otherwise, parties could contract to commit a legal or inadvisable act, and bind the Mayor and his agent, simply because the parties have previously consented.

Drawings submitted to the Mayor's Agent depict how the façades appeared prior to 2001, how they appeared after being redone in 2001, and how Applicant projects it to appear in 2002, if this Application is approved. Both the prior to 2001 and 2001 drawings show two separate, but closely related façades, and ensure that passersby certainly know and understand that the structures are two separate buildings, although peering inside on the street level will also convey that these two separate buildings are singularly devoted to one retail operation. The requested approval removes that sense of separateness, and likewise attempts to compromise and dilute the intent and directives of the covenant, which mandates that a sense of separateness of the first floor space must be conveyed, "... so that the buildings, to the maximum extent possible, continue to present the appearance of separate buildings from the public sidewalk and principal street frontage and so that the sense of individual buildings can be determined from being inside of the subject site." (Govt. Exhib. #2, p. 2)

Applicant has also asserted that to deny this application will impose an economic hardship upon the retail kitchen installation business. Applicant supplied a Projected 12 month Income Statement that indicates a planned net income of only \$76,025.00, based upon gross sales of \$3,000,000.00, and asserted that being able to expand its showcase area is critically important to creating and maintaining the needed case flow. The Mayor's Agent appreciates that Applicant has placed a lot of faith in the company's ability to attract new customers, and that a major component of that effort is to be able to showcase its offerings in the most favorable light, i.e., unfettered viewing of sample kitchens and appliances. However, Applicant voluntarily placed itself into this position, by electing to set up operations and to open the

business at the location in question without any assurances or reasonable belief of being able to alter the façades in the manner now requested.

Further, and perhaps actually controlling, the Act, at D.C. Code, Sec.6-1102(14), in defining *unreasonable economic hardship*, specifically recognizes unreasonable economic hardship as a potential remedy for the property owner, but does not accord similar standing to seek relief, via this option and claim, to a tenant.<sup>3</sup> As well, analogous sentiment to the same effect is recited at 10 DCMR 2516.4, the municipal regulation which directs the procedure to be followed when an applicant makes a claim of unreasonable economic hardship.

### CONCLUSIONS OF LAW

The foregoing having been considered, the Mayor's Agent now makes the following Conclusions of Law:

1. The proposed changes to the street level façades 3324-3326 M Street, N.W., would cause a change in the exterior appearance of two contributing buildings which are located in the Georgetown Historic District, and thus would cause an alteration that is inconsistent with the historic preservation law, D.C. Code, Sec. 6-1102 (2001 ed.).

2. A covenant was placed on this group of buildings on or about December 21, 1999, which, among many other considerations and resolutions regarding major renovations to the complex, specifically governed and directed what alternations could be made, and likewise mandated that a separateness must remain in place so that, from the street, the two buildings continue to present the appearance of being different structures.

3. The historic preservation law states that "[n]o permit [for alteration] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner." D.C. Code, Secs. 6-1105(f). The Applicant is not the building owner and lacks standing under the Act and regulations, and further, has not met its burden of otherwise showing that the proposed alterations are consistent with the purposes of the Act.

4. The recommendations of the OGB and the CFA against issuance of a building permit for this work should be adopted as the Mayor's Agent's conclusion. Further, pursuant to D.C. Code, Sec. 1-309.10(d), the recommendation of ANC 2E against the granting of this application is accorded great weight, and is adopted as the Mayor's Agent's conclusion.

### ORDER

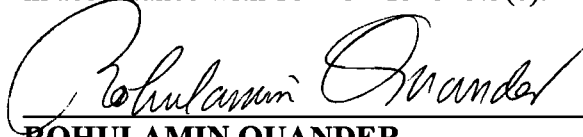
**ACCORDINGLY, it is this 3<sup>rd</sup> day of October, 2002,**

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<sup>3</sup> Under the Code, *unreasonable economic hardship* means that failure to issue a permit would amount to a taking of the *owner's* (emphasis added) property, without just compensation or, in the case of a low-income *owner(s)* (emphasis added) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such *owner(s)* (emphasis added).

**ORDERED** that the Applicant's request for a building permit to alter the storefront façades of 3324-3336 M Street, N.W., be, and the same is hereby **DENIED**; 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 in accordance with 10 DCMR 2503.5(c).



**ROHULAMIN QUANDER**  
**ADMINISTRATIVE LAW JUDGE, AND**  
**MAYOR'S AGENT FOR HISTORIC PRESERVATION, D.C.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing Decision and Order was served this \_\_\_\_ day of October, 2002, by mailing a copy of the same via U.S. Mail, postage prepaid, to the following:

Amir Farazad, *pro se*  
 AAI/Kitchens, Inc.  
 6809 Wisconsin Avenue  
 Chevy Chase, Maryland 20815  
 Applicant

David J. Maloney, Acting Program Director  
 Historic Preservation Office  
 D.C. Office of Planning  
 801 North Capitol Street, N.E., Third Floor  
 Washington, D.C. 20002  
 Via e mail to: [david.maloney@dc.gov](mailto:david.maloney@dc.gov)

George Gordon, AIA  
 1031 Wisconsin Avenue, N.W.  
 Washington, D.C. 20007  
 Applicant's architect

Tersh Boasberg, Chair  
 Historic Preservation Review Board  
 Via e mail to: [tershboasberg@aol.com](mailto:tershboasberg@aol.com)

Andrew Altman, Director  
 D.C. Office of Planning  
 801 North Capitol Street, N.E., Suite #4000  
 Washington, D.C. 20002  
 Via e mail to: [andrew.altman@dc.gov](mailto:andrew.altman@dc.gov)

Peter Pulsifer, Chair  
 ANC 2E  
 3265 S Street, N.W.  
 Washington, D.C. 20007

Janette Anderson  
 Associate Director for Technical Services  
 Georgetown University Law Center  
 Via e mail to:  
[anderjan@law.georgetown.edu](mailto:anderjan@law.georgetown.edu)

  
 Certifying Party, DCRA, OAD