

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
THE OFFICE OF PLANNING
HISTORIC PRESERVATION OFFICE
801 NORTH CAPITOL STREET, N.E., SUITE #3000
WASHINGTON, DC 20002**

In the Matter of:

HPA #02-322

**Robert W. Jerome and William J. Courville
1801 Lamont Street, N.W.
Washington, D.C. 20010**

**Location:
1801 Lamont Street, N.W.
Washington, D.C.**

DECISION AND ORDER

Background

This matter came before Rohulamin Quander, Administrative Law Judge and Mayor's Agent for Historic Preservation (the Mayor's Agent) on June 26, 2002, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 2-509 *et seq.* (2001 ed.), 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. 6-1101, *et seq.*, and upon the request for an administrative hearing filed by Robert W. Jerome and William J. Courville, homeowners and Applicants (Applicants).

Applicants seek a construction permit to replace badly rotted wooden eaves and the Mansard green clay tile roof on their *circa* 1910 corner residence located on the corner of 18th and Lamont Streets, N.W., in the Mount Pleasant Historic District (the Historic District), which building contributes to the significance of the historic district. To replace the wooden eaves and install new roof supporting eaves and a new roof will required the removal of virtually all of the original green roof tile. Ideally, the same tiles could be reinstalled, but all parties agree that a significant portion of the tiles will inevitably break in the course of removal, and some of the other tiles will not be reusable due to wear and age. Applicants worked closely with the Historic Preservation Office staff (the staff) to find an acceptable solution to repairing and restoring the roof, including Applicants' proposal of various alternatives that included a greater use of copper in lieu of replacing the original tiles with new tiles of an identical type.

After extended negotiations, the Staff Report and Recommendation, dated March 28, 2002, recommended to the Historic Preservation Review Board (the Board) a solution that would allow the re-roofing of the house using a combination of salvaged existing tiles on some of the move visible areas, plus generous applications of copper cladding materials in a carefully planned complimentary manner. At its monthly meeting held on April 25, 2002, the Board rejected the Staff Report, and determined that, if the rotted wooden eaves and Mansard tile roof are replaced, all places where tiles are to be removed must be replaced with the identical type of material, which would not allow the use of copper cladding or less roof tile, as recommended in the Staff Report. The Board was of the opinion that to replace the roof in the manner requested would not be consistent with

the Act, and is likewise incompatible with the architectural significance and character of the Mount Pleasant Historic District.

In its report, the Staff noted that roof material is important to defining the character of the buildings they cover, and that although tiles roofs are among the rarest roof types in the District of Columbia, the 1800 block of Lamont Street, N.W., is notable for the fact that most of the houses in that block have such tile roofs, some in green, like Applicants, and others in red terra cotta. Further, the Report noted that three residences in this block, the other two facing onto 18th Street, share the same green tile roof style roof. On May 2, 2002, Applicants requested an administrative hearing before the Mayor's Agent, asserting that the failure to issuance the permit would impose an unreasonable economic hardship upon Applicants.

Now therefore, and based upon the record taken as a whole, the Mayor's Agent concludes that Applicants' request for a construction permit to replace the eaves and to install a new roof, using the materials requested, should be **DENIED**.

FINDINGS OF FACT

Based upon the entire record established in this matter, the Mayor's Agent makes the following Findings of Fact:

1. William J. Courville and Robert W. Jerome, Applicants, are co-owners of the subject premises known as 1801 Lamont Street, N.W., Washington, D.C. In December 1986, they purchased the corner realty at a cost of \$275,000.00. The realty, a four-story structure that includes a basement apartment, is located in the Mount Pleasant Historic District. As such, exterior renovation work on the premises is subject to the renovation provisions of D.C. Law 2-144.

2. According to District of Columbia real estate tax assessment records, the current assessed value of the realty for 2002 is \$346,210.00. The tax assessment imposed by the District is traditionally a figure that is significantly lower than the fair market value of a realty that has been placed in the real estate sales market. Applicants obtained at least one independent appraisal within the last two years, which valued the fair market value of the realty at \$759,000.00, which is more than twice the value imposed by the District for real estate taxation purposes.

3. Applicants seek to remove and replace the rotted wooden eaves located just under the overhanging Mansard green tile roof line, and after the replacement of the eaves, to then install a new roof, using: a) a combination of returning some of the same roof tiles that would be removed; b) installing identical tiles that would be purchased from the same company that manufactured the tiles *circa* 1910, to replace those tiles that would either be broken or worn out due to age; and c) using copper clad materials in a complimentary manner and in combination with the existing tiles to cover certain portions of the roof area that would be visible from the street.

4. Applicants secured estimates for the cost of replacing the entire roof, including a comparison of the cost to repair the roof with tiles, as opposed to using

cheaper alternative materials. Applicants selected Wagner Roofing Company (Wagner), an experienced roofer that has been in business since 1914, and is experienced in the use and installation of all types of roofing materials. Wagner's estimates were also the least expensive for the eaves and tile roof replacement.

5. Applicants presented two estimates from Wagner, each of which entails a combination of the re-use of original tiles, installation of matching new tiles in the event that the number of broken or worn removed tiles is insufficient for re-use, and utilization of complimentary copper where necessary. Applicant Courville explained the details of the estimates as alternative options identified as Plan "A", Plan "B", and Plan "C". Plan "C" is a slight modification to Plan "B". The estimates were \$28,756.00 and \$28,460.00, respectively. It is these estimates, or at least what is proposed in each of these estimates, that the Board declined to approve at its monthly meeting held on April 25, 2002.

6. According to Courville's supplementing testimony, the above estimates could go as high as \$58,000.00 for the total eaves and roof replacement in kind, if only new tiles are used (\$38,000). This option would also include the scaffolding (\$10,000.00), and woodwork for eaves replacement and labor costs (\$10,000.00). Further, if the tiles could be replaced with high quality roof shingles, the cost of the roof materials would be reduced from \$38,000.00 to \$22,000.00.

7. The basement apartment in Applicants' residence has been occupied by the same tenant for the past 16 years. The tenant pays \$750.00 per month as rent, which amount has remained the same since the tenant assumed occupancy.

8. Although notified of the pendency of this application, Advisory Neighborhood Commission 1E took no position with regard to whether this application should be granted or denied.

DISCUSSION

Pursuant to D.C. Code, Sec. 6-1105(a) (2001 ed.), before the Mayor or his agent may issue a permit to alter a contributing building in a historic district, the Mayor shall review the permit application in accordance with the standards and procedures set forth in that section, and may also refer to the HPRB for its recommendation on all applications filed pursuant to this section of the Act. As well, D.C. Code, Sec. 6-1105(b), directs the Mayor's Agent to consider any recommendation so rendered by the HPRB pursuant to that referral.

Applicants assert that the cost of repairing the eaves and roof, using the least expensive option, i.e., \$22,000.00, verses the cost of replacement using the option that the Board mandated, i.e., up to \$58,000.00, if no old tiles are reused, imposes an undue burden and unreasonable economic hardship upon them. They requested the Mayor's Agent to grant them relief, pursuant to D.C. Code, Sec. 6-1105(e), via holding a public hearing and issuing a ruling to their benefit. Applicants underscore that in order to meet the Board's expectations, they would have to assume an additional \$36,000.00 in loans, which would translate into approximately \$61,000.00 in added debt (\$36,000.00 plus

\$25,000.00 in accumulated interest), if they secured a 15 year home improvement loan at eight percent (8%) interest.

At its monthly meeting held on April 25, 2002, the Board considered Applicants' situation and the Staff Report which recommended what the staff considered to be a compromise that allowed the use of some copper cladding in places where roof tiles would be removed, plus the reinstallation of several of the tiles that would have been removed during the repairs. The Board specifically rejected the staff's recommendation to allow the use of some different material, and in lieu of that recommendation, determined that all of the tile that would have to be removed must be re-installed in like manner. Although a significantly more costly option, the alternative is in alignment with the historic district.

While the staff's recommendation is for a compromise, the Mayor's Agent notes specific qualifying language recited in the Staff Report. Specifically, staff noted that:

Despite the fact that tile roofs are among the rarest sort in Washington, the 1800 block of Lamont Street is notable for the fact that most of the houses have such roofs, some in green and others in red terra cotta. The roof material is important to defining the character of the buildings they cover. The subject property is actually part of a block of three residences, the other two of which face 18th Street and share the same roof. Any substantial change in the character of this roof would have a decidedly negative effect on the character of the district and would likely encourage inappropriate roof replacement on other properties.

A similar sentiment is stated in the *District of Columbia Historic Preservation Guidelines*, which states:

In most cases, consideration should first be given to maintaining the existing material, element or detail. If this proves not to be technically or economically feasible, repairing only the deteriorated areas, using in-kind materials should next be considered. If the deterioration is more extensive, replacing the entire roof material, element or detail in-kind may then be considered. Only after repair or replacement in-kind has been determined not to be technically or economically feasible should the owner consider using a substitute material.

Following the directives of 10 DCMR 2516.4, the Applicants submitted a sworn affidavit and documents related to the replacement costs for the roof and eaves. They provided information addressing the price they paid for the house 16 years ago, the District's tax assessment, the fair market value, and the annual debt service, which would include the monthly mortgage obligation. They also receive \$9,000.00 in rental income for the basement apartment at the rate of \$750.00 per month. The basement tenant has resided in the unit for 16 years at exactly the same rent level.

Unreasonable economic hardship is defined as circumstances where failure to issue a permit would amount to a taking of the owner's property without just

compensation or, in the case of a low income owner or owners, as determined by the Mayor, when failure to issue a permit would place an onerous and excessive financial burden upon the owner(s).¹

The Mayor's Agent has carefully considered Applicant Courville's testimony, examined all documents submitted, and assessed each aspect of this present situation, including the claim of unreasonable economic hardship, and is of the opinion that such hardship has not been established. That Applicants would sustain a significant inconvenience and financial outlay to replace the eaves and roof cannot be denied. But the privilege of residing in the historic district also carries significant obligations and responsibilities. The implementation of this Mayor's Agent's ruling does not impose an impermissible taking upon the Applicants, as the end result will be a substantially improved residential property, with a concomitant increase in its net worth, by reason of being in compliance with the roofs in historic districts standard previously adopted for the historic district.

CONCLUSIONS OF LAW

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

1. Applicants, who bear the burden of proving that the eaves and roof replacement would be consistent with the purposes of the Act, have not met that burden by the preponderance of the evidence presented to the Mayor's Agent.
2. The Board, consistent with the Act and its own policy and standards governing roofs on buildings located in historic districts, was correct when it voted to deny Applicants' application to use alternative materials in the replacement of the eaves and roof.
3. Although Applicants have asserted that a denial of their request by the Mayor's Agent will impose an unreasonable financial hardship upon them, Applicants are neither without a remedy, nor have they been deprived of their property by a regulatory taking.
4. The Mayor's Agent, while not unmindful of the financial inconvenience that Applicants might incur, concludes that the governing regulations have a sound basis in law and policy for being adopted. Further, Applicants voluntarily elected to reside in the historic district, and as such, are subject to abide by the law, regulations, and standards that govern the exterior of the premises located in the district. If Applicants do not wish to abide by these standards, and given the value of their corner real property located in historic district, there is a great likelihood that they can sell the realty "as is" and realize a sales price significantly greater than they paid when they purchased the house in 1986. Further, if eaves and roof replacement occur at the current time, the fair market value of the realty will be even more enhanced than the value prior to the replacement work.

¹ See 10 DCMR 2599, Definitions.

5. The Mayor's Agent concludes that, for the foregoing reasons noted above, this application for a permit to install new eaves and a new roof, using non conforming materials on the principal façade of this contributing building located in the Mount Pleasant Historic District, must be denied.

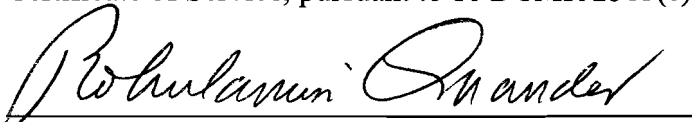
ORDER

ACCORDINGLY, it is this 28th day of October, 2002,

ORDERED, that the Board's recommendation to deny application of Applicants for a construction permit that would allow them to replace the rotten wooden eaves and roof with non conforming roof materials on the principal façade of this contributing building is adopted by the Mayor's Agent, and the application is **DENIED**; and it is

FURTHER ORDERED, that the Applicants are directed to work with the D.C. Office of Planning, Historic Preservation Office staff, either by amending the initial construction permit application or by filing a new application for eaves and roof replacement which application must comply with all of the historic district guidelines, in order to be in full compliance with the Act. The staff may well be able to recommend other options that are less expensive than Applicants' resources indicate; 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, ADMINISTRATIVE JUDGE, D.C.
MAYOR'S AGENT FOR HISTORIC PRESERVATION**

Certificate of Service

I hereby certify that on 28th day of October, 2002, that a copy of the foregoing Decision and Order was sent via either e-mail or first class, postage prepaid U.S. mail to the following:

William J. Courville and
Robert W. Jerome
1801 Lamont Street, N.W.
Washington, D.C. 20010,
Applicants

Tersh Boasberg, Chair
Historic Preservation Review Board
Via e-mail to:
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David Maloney
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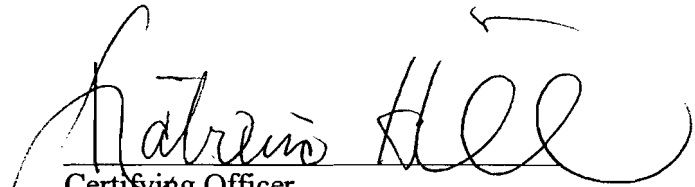
In the Matter of the Courville and Jerome, HPA #02-322

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