

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE
801 North Capitol Street, N.E., Third Floor
Washington, D.C. 20002**

IN THE MATTER OF:

**Brian E. Rich
3401 Dent Place, NW
Washington, D.C. 20007
Square 1291, Record Lot 208**

**H.P.A. No. 07-383
O.G. No. 07-248**

DECISION AND ORDER

BACKGROUND

This matter came before Rohulamin Quander, Senior Administrative Law Judge and the Mayor's Agent for Historic Preservation (the "Mayor's Agent") on January 16, 2008. The real property is located at 3401 Dent Place, N.W., Washington, D.C., and is known of record as Lot 208 in Square 1291 (the "Property"). The administrative hearing was conducted in accordance with the requirements of Title 10A of the *District of Columbia Municipal Regulations* ("DCMR"), and Chapters 1-99 and the *District of Columbia Administrative Procedure Act, D.C. Official Code* ("D.C. Code") § 2-509 (2001). The record closed on January 16, 2008, upon the conclusion of the administrative hearing.

The record reflects that on August 16, 2007, the Applicant filed with the D.C. Department of Consumer and Regulatory Affairs, Application 07-383 (OG 07-248) for a permit to install new planter boxes, entry patio, and window alternations on a single family dwelling located at 3401 Dent Place, N.W. The property is located on the corner of 34th Street and Dent Place, and is a contributing building to the Georgetown Historic District. The "Scope of Work" recited on the face of Page One of the submitted photograph and plan, states, "Build 8 [inch] masonry retaining wall at edge of existing planters. New double hung window." The photograph contained on Page One of the plans indicated that some portion of the work had already been initiated, and possibly even completed. The "Description of Proposed Work" section of the permit application varies from the plans, reciting that the work will be, "new planter boxes and entry patio, window alterations."

Pursuant to the *District of Columbia Historic Landmark and Historic District Protection Act of 1978*, as amended (the "Act"), *D.C. Code* § 6-1101 *et seq.* (2001), the matter was referred by the District of Columbia Historic Preservation Review Board (the

“HPRB”) upon the Recommendation of Denial issued to the Mayor’s Agent by the U.S. Commission of Fine Arts (the “CFA”) on September 21, 2007.

On October 17, 2007, the Historic Preservation Office of the D.C. Office of Planning (the “HPO”), notified the Applicant in writing that his previously submitted plans for the alternations had not been approved, based upon CFA’s determination that the proposal was incompatible with the existing historic streetscape pattern of Georgetown. Although the HPO’s letter of October 17th did not enumerate the same degree of detail as stated in the CFA Recommendation of Denial, the Mayor’s Agent presumes that a copy of the CFA letter, dated September 21, 2007, was provided to the Applicant.

Separated into specific components, the CFA’s recommendation observed that the Applicant had completed some aspects of the changes prior to seeking and gaining approval or permits, noting that:

1. Work was initiated prior to review and without a permit;
2. The already built conditions or in process alternation to the entrance walkway and planting beds were in public space, and also were not appropriate to this historic structure with a corner entrance;
3. Existing door and door surround must be retained;
4. Double hung window on second floor, as well as brick mold and half-screens on all windows, must be installed as approved under a previously decided application, granted in O.G.05-091;
5. Planters must be returned to a condition perpendicular to the exterior walls of the house and set back from the corner; and
6. All corrective work must be completed by 31 December 2007.

The Applicant filed a timely appeal on October 30, 2007, asserting in his appeal letter that the work proposed was consistent with the historic preservation law, and that the compatibility both enhances the property and the character of the historic district as a whole. The letter did not acknowledge or make any reference to work that was already completed, or any completed work that was allegedly at variance with existing approved permits.

Present and testifying at the hearing, all in opposition to the granting of the Application, were: Timothy Dennee, Architectural Historian, HPO; Eve Barsoum, Staff Architectural Historian, CFA; Ronald B. Lewis, ANC Commissioner, ANC 2E; and Barbara Zartman, representing the Committee of 100 and Citizens Association of Georgetown. Although duly notified of the date, time, and place of the hearing, Bryan Rich, Applicant, did not appear. After waiting 30 minutes for him to show, in the event of some unavoidable delay, the Mayor’s Agent proceeded with the hearing at 10:35 a.m.

Based upon the evidence in the entire record of this proceeding, including all written and oral testimony submitted at the administrative hearing and the

recommendation of the CFA, the Mayor's Agent concludes that the Application for planter boxes and entry patio should be **DENIED**.

According to documents submitted to the Mayor's Agent, a prior construction permit (B471669) was issued on April 20, 2005, for the installation of a new door(s), plus new windows on three levels. Apparently some of the alterations, but perhaps not all, were made pursuant to this permit. Now, given the passage of time and the inclusion of "window alteration" in the current permit application, filed on August 16, 2007, that component of the Application that addresses window and door alteration is **APPROVED**, but only to the extent that the to-be-installed window and door alterations must be in full compliance with the directives of the HPO staff and the approved plans and permit.

ISSUE

The initial issue to be decided is whether the Applicant has met the burden of proof to establish that the proposed alteration of the entranceway to the residence at 3401 Dent Place, N.W., Washington, D.C., is consistent with the purposes of the Act, and that the installation would enhance the property and the character of the historic district as a whole, as asserted by the Applicant.

FINDINGS OF FACT

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

1. In accordance with *D.C. Code* § 6-1106 (the "Act"), on August 16, 2007, the Applicant submitted an Application for Construction Permits on Private Property to the D.C. Office of Consumer and Regulatory Affairs, Building and Land Regulation Administration, to install new planter boxes, entry patio, and window alterations at his single family residence, located at 3401 Dent Place, N.W., Washington, D.C.
2. Government staff noted that the property address is located in the Georgetown Historic District, and that the single family residential building is a contributing building in the district.
3. In a pre-printed Transmittal Letter, also dated August 16, 2007, the Application was forwarded to the Historic Preservation Review Board (the "HPRB") as H.P.A. No. 07-383 (O.G. 07-248). The letter also recited that the Application was being forwarded to the Commission of Fine Arts.
4. On September 21, 2007, the CFA responded to the Mayor's Agent, returning the Application with a formal Recommendation against the granting of the Application.

5. In a letter signed by Frederick J. Lindstrom, Assistant Secretary. the CFA recommended denial stated as follows:

The Commission regrets that work was initiated prior to review and without a permit. Recommend **AGAINST** issuance of permit for as-built conditions of alternation to entrance walkway and planting beds in public space, which are not appropriate to this historic structure with a corner entrance. Existing door and door surround must be retained. Double hung window on second floor, as well as brick mold and half-screens on all windows, must be installed as approved under case O.G.05-091. Planters must be returned to a condition perpendicular to the exterior walls of the house and set back from the corner. All corrective work must be completed by 31 December 2007.
6. By letter dated October 17, 2007, the Applicant was notified of the CFA's recommendation, and of his right to note an appeal with the Mayor's Agent. The letter also advised the Applicant that the burden of proving his case rested with him, and outlined what the parameters were for providing sufficient evidence, including in order to successfully argue that a proposed alteration was consistent with the purposes of the Act, as noted in *D.C. Official Code* § 6-1101 et seq. (2001).
7. The Applicant filed a timely appeal in a letter dated October 30, 2007. In the appeal letter, the Applicant asserted that the proposed work was, ". . . consistent with the purposes of the historic preservation law. It is compatible with and enhances the property and the character of the historic district as a whole."
8. The administrative hearing in this matter was convened on January 16, 2008, at 10:35 a.m. The Mayor's Agent waited 35 minutes, in order to give the Applicant some extra time to appear. Although duly notified of the date, time, and place of the hearing, the Applicant failed to attend.¹
9. Based upon the testimony of Timothy Dennee, Architectural Historian and HPO staff, the Mayor's Agent makes the following findings:
 - a. The official written notice for the administrative hearing was mailed to the Applicant in a timely manner via regular first class mail. Said notice was not returned to the HPO, marked "addressee unknown," "undeliverable," or in any manner that would suggest that the notice was not delivered by the U.S. Postal Service in a timely manner;
 - b. Applicant's address of record is 3401 Dent Place, N.W., Washington, D.C. 20007, a single family residence that is located in the Georgetown Historic District.

¹ Several days later, the Applicant telephoned the HPO and advised staff that he overlooked the hearing date, and forgot to attend. Staff notified the Applicant that a bench decision had been issued by the Mayor's Agent, based upon the official record created during the hearing, and that a written decision in support of the Mayor's Agent's determination would follow.

- c. Prior to the hearing, the witness did speak to the Applicant on at least one occasion, and also left a voice mail message on a telephone number of record, the effect of which should have kept the Applicant's attention with regard to the then forthcoming hearing before the Mayor's Agent;
 - d. Although the Applicant has couched this request for a hearing in the context of what is "proposed," he has essentially undertaken and completed most all of the work, despite there being no authorizing permit for such;
 - e. The issues of the planter boxes place in a combination of public and private space, and the failure to properly install the previously approved window(s) remains unresolved. Although the flower beds existed on the property prior to the Applicant's ownership, he is seeking to extend the flower beds, including the installation of a two-course and three-course brick perimeter, some of which encroaches upon public space;
 - f. The Applicant installed a fixed window on the second floor, contrary to precisely filed and approved plans, and said window must be replaced with a compatible, approved one over one double hung window and sash;
 - g. The chamfered entrance that is characteristic of so many corner properties in this historic district, has been or will be compromised if the Applicant is allowed to modify the entranceway, as such requires explicit CFA approval prior to any such change;
 - h. With regard to that portion of the house that faces onto 34th Street, all planted areas from the line location of the bay, back towards the exterior wall of the house, is private property, and can be compatibly landscaped by the Applicant/property owner; and
 - i. Conversely, all visible areas from the exterior wall of that portion of the house that fronts onto Dent Place is public space, and the Applicant may not subject that space to his private and personal use without express written permission, which, within the prerogative of the government, still might well not be granted.
10. Based upon the testimony of Ronald B. Lewis, Advisory Neighborhood Commissioner for ANC 2E, the Mayor's Agent makes the following findings:
- a. Subsequent to obtaining a construction permit(s), in 2005, or shortly thereafter, the Applicant initiated the installation of a two- to three-course high brick fence, some portion of which was apparently installed on the public space;
 - b. During this same general time frame, he also installed at least one non confirming window, which was at variance with the previously approved window plans;
 - c. The effect of the Applicant's method of operation has compromised the inviting architectural character of the entrance to his corner property, as his impermissible efforts have eliminated or reduced the invited and

- welcoming appearance that chamfered entrances are specifically designed to convey;
- d. In response to complaints from the ANC, the OGB, and other community organizations, Tony Cherry, an HPO building inspector, visited the site. She observed the Applicant's non compliance with both the approved building plans and permit, and the general regulations that govern construction in an historic district. She then issued a Stop Work Order;
 - e. The Applicant's attitude continues to be one of defiance, electing to initiate unapproved or non conforming installations or construction, which only exacerbates all efforts to achieve the Applicant's voluntary cooperation;
 - f. The witness presented a statement reflecting that ANC 2E has registered its unanimous objection to the Applicant's actions and method of operation on at least three official occasions, i.e., duly constituted ANC meetings conducted on June 5, 2007, September 4, 2007, and January 2, 2008. Each time the ANC voted or sustained its opposition to the installation of a private patio on the public space, and requested that the patio be removed; opposition to the two- and three-course fence; and urging OGB to require the Applicant to install a suitable window, as indicated in previous plans and issued permit. The Applicant has in essence ignored everyone, and is still not in compliance; and
 - g. Pursuant to D.C. Official Code § 1-309.10(d) , the position of the ANC is entitled to be given "great weight" consideration, and such consideration is now being requested.
11. Eve Barsoum, a member of the CFA staff, and Barbara Zartman, Committee of 100 and Citizens Association of Georgetown, each testified in opposition to the application and on behalf of their respective organizations.
 12. The term "necessary in the public interest" is defined in *D.C. Code* § 6-1102(10) as "consistent with the purposes of this subchapter, as set forth in *D.C. Code* § 6-1106(b), or necessary to allow for the construction of a project of special merit." The Applicant has not asserted that the subdivision is either necessary to construct a project of special merit or that the denial will result in unreasonable economic hardship. Rather, the Applicant only claims that the subdivision is consistent with the purposes of the Act.

DISCUSSION

The Applicant, who bears the burden of proof to establish that the proposed subdivision of the landmark is necessary in the public interest, failed to attend the hearing when scheduled, and to put forth a case to sustain his burden. Pursuant to § 1-309.10(d) of the *D.C. Code*, the three recommendations of the ANC, that were adopted on three separate occasions, each time in opposition to the granting of the application, are entitled to "great weight" consideration by District agencies. The Mayor's Agent

credits the ANC's objections to the subject Application and accordingly assigns the required "Great Weight."

The evidence demonstrates that the Applicant has consistently engaged in a pattern of non compliance. He has ignored OGB, CFA, and the ANC. Now he has also ignored the HPO and the Mayor's Agent, by electing not to appear at the latter's convening of the administrative hearing, which was specifically scheduled at the Applicant's request. At the behest of both HPO and the ANC, the Mayor's Agent, weighing all the evidence presented during the hearing, and finding the sworn testimony of four witnesses to be both credible and consistent with the law, granted the request, and issued a bench decision ruling at the conclusion of the proceedings.

The Mayor's Agent cannot condone the pattern of action that the Applicant has undertaken, whereby he has engaged in a course of conduct that has either been completed without a permit, or not in conformance with the permit that has been issued. Likewise, the Mayor's Agent rejects the Applicant's intrusion into public space, as has been the characterization of the construction of the patio and the two- and three-course brick barrier fence.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact and Discussion, the Mayor's Agent concludes that the Applicant has failed to meet his burden of proving that the requested alteration to the entranceway of his residence at 3401 Dent Place, N.W., Washington, D.C., is necessary in the public interest, in that the requested adjustment to the site is consistent with the purposes of the Act, as stated in *D.C. Code* § 6-1105(f). The Mayor's Agent concludes that the Applicant has not claimed, nor has he demonstrated, that the project is one of special merit. Nor is there economic hardship indicated.

Further, the Applicant has likewise asserted that, pursuant to *D.C. Code* § 6-1106(b)(2), the granting of his request is compatible with, and will both enhance his residential propriety and the character of the historic district as a whole. Other than the bare assertion, he cites no legal authority for this position, and likewise failed to put his legal position on the record.

Consistent with the provisions of *D.C. Code* § 1-309.10(d), the Mayor's Agent will accord "Great Weight" consideration to the position of the ANC, which is a Party of record opposed to the granting of this Application.

ORDER

Accordingly, it is this **2nd day of May, 2008**,

ORDERED that the application filed by the Applicant on August 16, 2007, for the installation of new planter boxes and entry patio, is hereby **DENIED**; and, it is

FURTHER ORDERED that the application for window alterations, which was submitted and listed on the same permit application, is **GRANTED**, with the Applicant directed to work closely and directly with the HPO staff, to assure that the selected windows are compatible with the windows that are currently in place, and likewise compatible with the window installation requirement that are operable in the Georgetown Historic District; and it is

FURTHER ORDERED that the Applicant may not make any changes to the front entrance of the property, including the installation or modification of the front entrance door, unless and until said changes are considered and specifically approved by the staff of the CFA and/or the HPO; and it is

FURTHER ORDERED that, pursuant to the *D.C. Code* § 6-1112(a) (2001) and 10A DCMR § 2523.4, this Order shall take effect fifteen (15) days from the date of service as evidenced by the attached Certificate of Service pursuant to 10A DCMR § 2523.5(c).

/s/ Rohulamin Quander

**ROHULAMIN QUANDER,
Senior Administrative Judge, and
Mayor's Agent for Historic Preservation**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Decision and Order was served this 2nd day of May 2008 by mailing a copy of the same via either electronic D.C. Government inter-office mail or via U.S. Mail, postage prepaid, or both, to the following:

Brian E. Rich, *pro se*
Applicant
3401 Dent Place, N.W.
Washington, D.C. 20007

David Maloney, HPO
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e mail - david.maloney@dc.gov

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Certifying Officer