

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
614 H STREET, N.W.
WASHINGTON, D.C. 20001**

IN THE MATTER OF:

**LOT 809 - SQUARE 820
312 4TH STREET, S.E.**

**Application for construction/alteration permit
to construct a driveway with curb cut and fence**

HPA #95-281

**RECONSIDERATION
DECISION AND ORDER**

A hearing to reconsider the Order of the Mayor's Agent for Historic Preservation of April 25, 1996 in this matter was held on February 26, 1997. Present at the hearing were Michael D. Timmeny and Katherine Connor, Applicants; Anne H. Adams, Architectural Historian and Expert Witness, witness for the Applicant; John Epting, Esq., representing the Applicant; Tommy Wells, ANC 6B, SMD 4; and Stephen Raiche, Chief, and Steven Callcott, architectural historian, Historic Preservation Division, Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs.

Background

On or about May 18, 1995, Michael D. Timmeny (hereinafter "the Applicant"), owner of 312 4th Street, S.E. (hereinafter "the property") applied for both a construction alteration permit and a public space permit for a driveway onto his property. The alteration would include a curb cut, a driveway over the public space and the construction of a wall, fence and gate. The property is located in the

Capitol Hill Historic District; thus, the proposed alteration application was presented to the Historic Preservation Review Board for a hearing and recommendation as HP #95-281.

On or about June 22, 1995, the Historic Preservation Review Board, at a public hearing, voted to recommend that the application be denied. By letter dated June 23, 1995, the Chief of the Historic Preservation Division of the Building and Land Regulation Administration in the Department of Consumer and Regulatory Affairs notified the Applicant that the Historic Preservation Review Board had recommended that the Application be denied and that the Applicant could request a public hearing before the Mayor's Agent. By letter dated June 26, 1995, the Applicant requested a public hearing.

By notice dated August 8, 1995, the Applicant and all interested parties were notified that a Public Hearing would be held before the Mayor's Agent on Wednesday, October 11, 1995. The Mayor's Agent, in an order dated April 25, 1996, denied the application, finding that the proposed project was not consistent with purposes of the law, in concurrence with the recommendation of the Review Board.

On June 25, 1996, the Applicant filed a motion for reconsideration, claiming that the Mayor's Agent had not given great weight to the views of the Advisory Neighborhood Commission, among other factual and procedural matters. By notice dated January 15, 1997, the Applicant and all interested parties were notified that a Public Hearing would be held to reconsider the application before the Mayor's Agent on Wednesday, February 26, 1997.

Jurisdiction

This proceeding was conducted as required by the Historic Landmark and Historic Protection Act of 1978, (hereinafter "the Act") now codified at D. C. Code Ann. §5-1001 et seq., (1981 ed, 1994 repl. vol.). Pursuant to D.C. Code Ann. §5-1005(a), prior to the issuance of a permit to alter the exterior of a building or structure in an historic district, the Mayor shall review the application in accordance with the Act. The Act requires that, prior to making a finding, the Mayor shall refer an application not subject to review by the Commission of Fine Arts to the Historic Preservation Review Board for a recommendation. On June 22, 1995, the Historic Preservation

Review Board, after hearing evidence, voted to recommend that the application be denied. Pursuant to D.C. Mun. Regs. tit. 10, §2508.7, the Applicant requested a public hearing before the Mayor's Agent. Administrative Issuance Number 2-Delegation-54G, dated July 6, 1995 delegates to the undersigned the authority to conduct hearings as the Mayor's Agent for Historic Preservation under sections 5 through 9, 12 and 13 of D.C. Law 2-144, the Historic Landmark and Historic Protection Act of 1978.

The provisions of D.C. Code Ann. §5-1005(f) state that "No permit 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."

Findings of Fact

Based on the record, and testimony presented at the hearings of October 11, 1995 and February 26, 1997, the following findings of fact are made:

1. The property known as 312 4th Street, S.E. is located in an historic district known as the Capitol Hill Historic District and contributes to that historic district. (Historic Preservation Division Staff Report)
2. By Application dated May 18, 1995, the Applicant applied for a construction permit to construct a fence and driveway next to his residence. (Application for Construction Permits on Private Property, dated 5/18/95, HPA No. 95-281)
3. By Application dated May 19, 1995, the Applicant applied for a permit to construct a driveway across public space and onto his side yard. (Application for Public Space Permits, dated 5/19/95, HPA 95-281)
4. The Applicant's property is located on a land-locked square (i.e., no access from an alley) fronting a busy street in a semi-commercial neighborhood, which makes it difficult for the Applicant and his family to find a parking space, especially when activities are taking place at nearby churches. (Testimony of Applicant; Photographs of automobiles double-parked, etc.-Exhibit A-A; Baist

map-Exhibit A-G)

5. The construction of a driveway would necessitate a curb cut at the entrance to the driveway. (Applicant's Plans; testimony of Anne H. Adams, Architectural Historian, Wilkes, Artis, Hedrick & Lane Chartered)

6. There is no "outright policy" by the Historic Preservation Review Board regarding the appropriateness of curb cuts. (Testimony of Anne H. Adams)

7. An analysis of reports, photographic evidence and testimony regarding other properties with curb cuts, and of staff reports and Historic Preservation Review Board decisions recommending approval or disapproval for curb cuts, reflect no common policy on Capitol Hill and or in other historic districts. (Testimony of Anne H. Adams, Exhibits A-A, A-G, A-H and A-I)

8. The Applicant has enhanced the property and the neighborhood by restoring the property. (Testimony of Applicant and Anne H. Adams)

9. The property's side lot is unique within the block in which the property is located. (Testimony of Anne H. Adams)

10. The Advisory Neighborhood Commission 6B (hereinafter ANC) carefully considered the Applicant's request, listened to supporting testimony, observed that there was no community opposition, and voted "to endorse application HPA #95-281, which proposes an alteration (curb cut) on 312 4th Street SE." (Exhibit A-B, testimony of Mr. Wells)

11. The ANC, in fulfilling its duty as a neighborhood representative body, considered the impact of the proposed alteration on the residents of the ANC's urban community, and found none. The ANC did not base its determination on the statutory requirements of the Act, but rather on the level of support or opposition of community groups and residents. (Testimony of Mr. Wells)

12. The neighbors on either side of the property support the Applicant's application. (Exhibits A-C and A-D)

13. The Applicant collected approximately 60 signatures of residents in

and around the Capitol Hill Historic District on petitions (Exhibit A-E) that read as follows:

We, the residents of the Capitol Hill Historic District, have been informed of the plans of the Timmeny family regarding their curb cut application. We believe the proposed alteration is appropriate for the historic district and consistent with the purposes of the historic preservation law.

14. The Act does not provide for a popular referendum as a test for a finding of "necessary in the public interest."

15. The property is currently being used as residential property in a manner consistent and compatible with the character of the historic district. (Testimony of Anne H. Adams)

16. The applicant owns a unique property with space to place a driveway between the applicant's house and the neighboring house. Applicable zoning allows the proposed driveway. The available space, along with the planned gate and fencing, would allow a vehicle parked there to be out of sight beyond the greenspace and public sidewalk and beyond the front plane of the house. (Permit Application and testimony of Applicant)

17. The Order of April 25, 1997 failed to give great weight to the position of the Advisory Neighborhood Commission or to address the reasons for differing from that position; and failed to appropriately consider expert testimony presented at the hearing.

Conclusions of Law

Based on the foregoing Findings of Fact, the following Conclusions of Law are made:

18. The proposed construction would cause a change in the exterior appearance of a building or structure or its site, and is thus an alteration pursuant to D.C. Code Ann. §5-1002(1).

19. D.C. Code Ann. §5-1005(f) states that "No 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."

20. "Necessary in the public interest" means consistent with the purposes of the Act which are, "with respect to properties in historic districts, to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use; [and] to assure that alterations of existing structures are compatible with the character of the historic district...." See D.C. Code Ann. §5-1002(10) and §5-1001(b).

21. The issuance of the permit to alter the exterior and site of the property in the historic district is consistent with the purposes of the Act in that the alteration would retain and enhance the property which contributes to the character of the historic district in its restored state. In addition, the alteration would encourage and further its adaption for current use, and would be compatible with the character of the historic district.

22. The issuance of the permit to alter the exterior and site of this property will provide for the adaptation of the property's unique characteristics by placing a parking area beyond the plane of the front wall of the house, completely off the public space and the greenspace which delineates the public space from the private structures.

23. The proposed alteration is consistent with the purposes of the Act, and thereby is considered as necessary in the public interest as required by D.C. Code Ann. §5-1005(f).

24. The official position of the ANC does not present any particular issues or concerns regarding the alteration to be addressed herein. The advice offered by the ANC is the wholehearted endorsement of the application, without reservation.

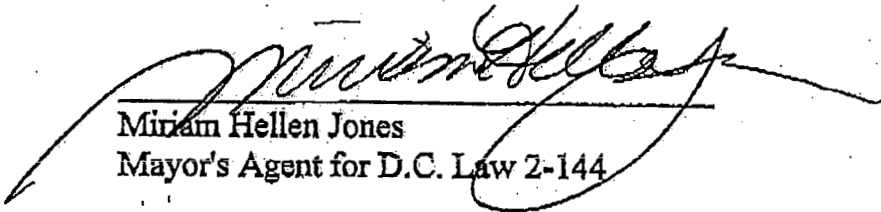
25. Applicant has met the burden of showing that the proposed alteration is consistent with the purposes of the Act.

ORDER

Accordingly, it is this 3rd day of July, 1997,

ORDERED that, upon reconsideration, the application of the Applicant for a construction permit be, and is hereby, **GRANTED**; and it is

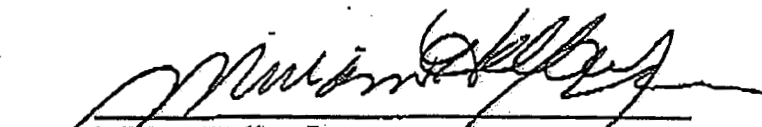
FURTHER ORDERED that pursuant to D.C. Code Ann. §5-1012(a), this Decision and Order shall not become final until fifteen (15) days after issuance.



Miriam Hellen Jones
Mayor's Agent for D.C. Law 2-144

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order was mailed, postage prepaid, on this 3rd day of July, 1997, to John T. Epting, Esq., Wilkes, Artis, Hedrick & Lane, 1666 K Street, N.W., Suite 1100, Washington, D.C. 20006-2897.



Miriam Hellen Jones
Mayor's Agent for D.C. Law 2-144