

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
613 G Street, N.W. - Seventh Floor
P.O. Box 37140
Washington, D.C. 20013-7200
(202) 727-7900

IN RE:

2910 through 2980
Connecticut Ave, NW # 89-395 through
Sequence 2106: Lots 107, 89-402
108, 109, 110, 111, 112,
113 and 114

DECISION AND ORDER

Background

The Historic Preservation Board after providing the Applicant with a Hearing on July 19, 1989, determined that the construction of the proposed eight (8) new townhouses on the open space would impact on the landmark and its intended open space and accordingly denied the application. On July 31, 1989 the applicant, pursuant to 10 DCMR 2510.7 requested a Public Hearing before the Mayor's Agent.

In support of its request for a Public Hearing, the Applicant represented that (1) it would suffer unreasonable economic hardship if the applications for the new construction were not granted and (2) the design of the new construction of the eight (8) new townhouses is consistent and compatible with the character of the historic landmark. The Public Hearing was set for September 28, 1989 at 9:30 A.M. in the Carnegie Library.

The Record indicated that Applicant's Attorney wrote a letter dated September 12, 1989 and had a meeting with the Administrator of the Building and Land Regulation Administration (hereinafter BLRA) on September 14, 1989. On September 18, 1989, the Administrator of BLRA advised the Applicant's attorney that the Public Hearing would be held at 1:00 P.M. on September 28, 1989. On

or about September 19, 1989 the Cathedral Mansions South Tenants Association filed a Motion To Permit Them To Participate as a Party. No ruling was ever made on this Motion. On or about September 19, 1989, the Applicant represented that it had not received the Notice of the Hearing until September 11, 1989 which pursuant to the Rules of Procedure is insufficient notice of the Public Hearing. Accordingly on or about October 28, 1989, the Public Hearing was set for 9:30 A.M. on December 13, 1989.

On or about October 31, 1989, Applicant's attorney filed a letter in which he represented that December 13, 1989 was not an acceptable date noting that his client had other projects requiring his attention and that an alternate hearing date would not be required except for the faulty notice of the September 28, 1989 date. Applicant's attorney then requested that BLRA seek a written opinion from the Corporation Counsel regarding the legal consequences or legal impediments to his seeking an indefinite postponement since he had noted a timely appeal from the DC Historic Preservation Review Board.

Since October 1989 the matter has lain dormant with no rulings until today although several Motions have been filed, namely, Motion To Dismiss and Opposition to Indefinite Postponement of Hearing, Opposition to Motion To Dismiss for Failure To Prosecute and Opposition to Indefinite Postponement of Hearing, Reply to Opposition to Motion To Dismiss, Request for Hearing Before the Mayor's Agent, Opposition to Request for Hearing Before Mayor's Agent, Applicant's Follow-up Request for Hearing before the Mayor's Agent, and Opposition to Applicant's Follow-up Request for Hearing before the Mayor's Agent.'

Jurisdiction

Pursuant to D.C. Code §5-1005, before the Mayor may issue a permit to alter the exterior of an historic landmark or of a

¹ Also as of July 18, 1991 there is a new Mayor's Agent.

building or structure in an historic district, the Mayor shall review the application in accordance with this section. The Historic Preservation Review Board, after hearing the evidence denied the application. Pursuant to 10 DCMR 2508.7, Applicant requested a Hearing before the Mayor's Agent. Administrative Issuance 2-54A, dated July 18, 1991, delegated 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 District Protection Act of 1978 to the undersigned.

Motions To Participate as Parties

On or about September 19, 1989, Cathedral Mansions South Tenants' Association filed a request pursuant to 10 DCMR 2517.1 to participate as a party in the above-captioned matter. There being no opposition filed and the requirements of 10 DCMR 2517.1 having been duly met, the Motion of the Cathedral Mansions South Tenants' Association requesting that it be permitted to participate as a party is, and same is hereby, **GRANTED**.

**Applicant's Demand That Application
Be Renoticed & Other Motions**

By letter of Applicant's attorney, dated September 19, 1989, Applicant demanded that this matter be renoticed. In support of this demand, the representation was made by counsel that "...The Department's flagrant disregard of [his] client's rights in this matter has caused extreme hardship not only on [his] client but to the experts and other individuals whose assistance it seeks in putting its case together."

Unfortunately the record as it is established does not reflect a "flagrant" disregard for his client's rights. It does indicate that his client did not have technically sufficient notice as required by the statute for the Public Hearing. However, it must be noted that by letter dated October 31, 1989, counsel acknowledged that the new date was discussed with him although not

'approved' by his client. The Record is also clear that the Notice of the Public Hearing was published in the D.C. Register in sufficient time, and was received by other interested individuals in sufficient time. However, it is undisputed that the Applicant's Notice was not received in sufficient time.

There were subsequent attempts to reschedule the Public Hearing but the dates on which the hearing was scheduled were not acceptable to the Applicant, who eventually inquired of the possibility of having the matter continued "...indefinitely..."

Applicant and his counsel should consult D.C. Code §5-1001(a) which states in pertinent part -

"...It is hereby declared as a matter of public policy that the protection, enhancement and perpetuation of properties of historical, cultural and esthetic merit are in the interests of the health, prosperity and welfare of the people of the District of Columbia. Therefore this subchapter is intended to:

(5) Promote the use of landmarks and historic districts for the education, pleasure and welfare of the people of the District of Columbia...."

In other words, D.C. Law 2-144 is for all the people of the District of Columbia including the Applicant.

There is absolutely no requirement that the date for any Public Hearing be 'approved' by an applicant. It may be in the interest of judicial economy and convenience to set a mutually acceptable date so that continuances are avoided. But the interest of judicial economy and the convenience of the parties must be balanced with the interests of the 'people of the District of Columbia'. Parties to an action are entitled to an early resolution of their differences and this very definitely is not accomplished through continuing a matter indefinitely.

All Motions, Oppositions thereto, Replies, Requests, etc. reflect excellent research on the part of the respective counsel,

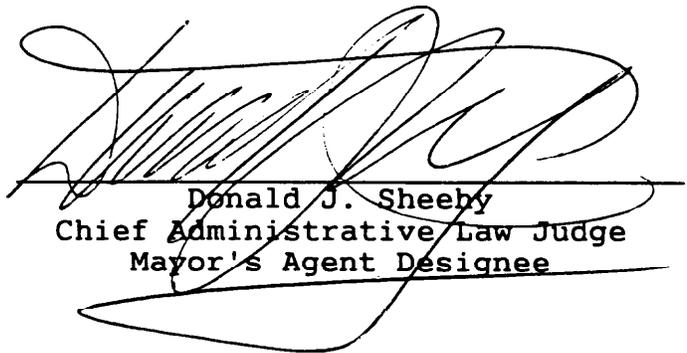
but taken as a whole in the context of reality, the matter for whatever reason has simply languished too long.

Accordingly, all Motions To Dismiss, Opposition thereto, Replies thereto, Requests, subsequent Opposition are, and the same are hereby, **DENIED**.

After examining the Record on the above entitled matter, I am convinced that the ends of justice and the interests of all parties are best met by dismissing the matter without prejudice, thereby providing the applicant with the opportunity to submit a new application. However, all parties are on notice that any future requests for a Public Hearing before this Mayor's Agent will be scheduled expeditiously and all parties will be provided with a timely resolution of their differences.

ACCORDINGLY, it is this **20th** day of **December**, **1991**

ORDERED that for the reasons stated above, this matter is, and the same is hereby, **DISMISSED WITHOUT PREJUDICE**.



Donald J. Sheehy
Chief Administrative Law Judge
Mayor's Agent Designee