IN RE:

517 2nd Street, SE
Washington, DC 20003
Square 136 Lot 736

HPA #90-418

DECISION AND ORDER

Background

On or about June 20, 1991, the applicant, Ms. Toni Aluisi of 517 - 2nd Street, SE, Washington, DC 20003, was advised by Stephen J. Raiche, Chief, Historic Preservation Division, that the Historic Preservation Review Board at its public hearing had determined not to issue the requested permit for her alteration since the "alteration is not consistent with the purposes of D.C. Law 2-144." (Exh #4) On June 26, 1991 the applicant filed a notice of appeal and stated as the grounds for her appeal that "...failure to issue a permit to me will result in an onerous and excessive financial burden." (Exh #5) Accordingly, the matter was set for a public hearing by the Mayor's Agent on September 11, 1991 at 10:00 A.M. (Exh #6) Notice was provided to the applicant, abutting property owners, affected ANC and those listed on the Historic Preservation Division mailing list. (Exh #7) On September 11, 1991, the Applicant's Motion for a Continuance was granted and the matter was reset for October 30, 1991 at 10:00 A.M. (#1 Tr 9-11)

The Applicant's basis of appeal was amended from 'economic hardship' to, pursuant to 10 DCMR 2508.7, "the proposed alteration

1 Since there was a transcript of the Hearing on September 11, 1991 as well as the full Hearing on October 30, 1991, the September transcript is referred to as '#1 Tr.' For simplification since the majority of the testimony is contained in the October transcript, that one is referred to simply as 'Tr.'
is consistent with the purposes of the Act as set forth in 52(b) of the Act."

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 building or structure in an historic district, the Mayor shall review the application in accordance with this section. The Historic Preservation Review Board, after reviewing 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.

Finding of Fact

ACCORDINGLY, based upon the Record as established and taken as a whole, the following Findings of Fact are made -

1. The premises known as 517 - 2nd Street, SE Washington, DC (hereinafter "the premises") is owned by Toni Lee Aluisi. (Exh #1 & Tr 8-9)

2. Ms. Toni Lee Aluisi, is the applicant for a permit to replace front double hung windows on both floors with vinyl replacement windows at the premises. The historic woodwork framing surrounding the windows was not to be changed. (Exh #1 & Tr 7-18)

3. The premises is within the Historic District known as Capitol Hill Historic District and, therefore, subject to the provisions of D.C. Law 2-144. (Exh #2)

4. The Staff Report and Recommendation of the Historic Preservation Division to the Historic Preservation Review Board was against the issuance of the permit on the grounds that it found the application (for completed work) to be inconsistent with the purposes of D.C. Law 2-144. The replacement windows are not compatible with the date and style of the house. The sash windows
removed were wood replacements installed prior to the designation of the area as an Historic District. (Exh #2)

5. ANC-6B by letter dated June 18, 1991 to the Chairman of the Historic Preservation Review Board stated that it was taking no position – official or otherwise.

6. The Application for a permit to replace the windows at the premises was duly considered by the Historic Preservation Review Board at its June 19, 1991 meeting. (Exh #3)

7. The Historic Preservation Review Board refused to order the issuance of the permit as requested by the Applicant on the grounds that said alteration was not consistent with the purposes of D.C. Law 2-144. (Exh #4)

8. The Applicant requested a Public Hearing before the Mayor's Agent upon the grounds of 'economic hardship,' stating that "...failure to issue a permit will result in an onerous and excessive financial burden..." (Exh #5)

9. The Public Hearing before the undersigned Mayor's Agent was scheduled for September 11, 1991. (Exh #6)

10. At the Public Hearing on September 11, 1991, the Applicant's Motion for a Continuance was granted and the matter was reset for October 30, 1991 at 10:00 A.M. (Tr of October 30, 1991 9-11)

11. The Applicant's basis of appeal was amended so that the basis was no longer 'economic hardship' but rather, "the proposed alteration is consistent with the purposes of the Act as set forth in § 2(b) of the Act."²

12. Hector J. Alvarez and John W. Buckalew, owners of 515 Second St, SE, Washington, DC, next door to the premises strongly objected to the installation of vinyl-clad windows at the premises. (Exh #10)

13. Karen S. Walker, Chair of ANC-6B by letter dated June 18, 1991 stated that ANC-6B offered no position trusting that the

² 10 DCMR 2508.7
Historic Preservation Review Board would accord the application its full and complete review. (Exh #11)

14. The Capitol Hill Restoration Society did not recommend the installation of vinyl windows as being simply not in keeping with the historic houses on Capitol Hill. (Exh #12)

15. During the Public Hearing, thirteen (13) letters from architects were offered and received into evidence indicating that the vinyl windows as installed at the premises leaving the surrounding historic wooden frame intact was acceptable and in no way detracted from the house. (Supp Exh #5)

16. The applicant submitted a petition signed by sixty-four (64) owners/residents of Capitol Hill approving of the installation of the vinyl windows as they were installed at the premises. (SUPP Exh #6)

17. In the 500 Block of Second Street, twenty-two (22) of the thirty (30) houses have some form of vinyl windows installed. (Supp Exh #14)

18. The Capitol Hill Restoration Society is firmly against the use and installation of vinyl windows and deems them unacceptable in an Historic District although contractors continue to promote their use.

19. Vinyl windows are absolutely unacceptable in any restoration in the Historic District of Capitol Hill.

20. The cost of vinyl versus wooden windows is similar initially, but over time vinyl becomes more expensive. Although wooden windows require painting regularly, the vinyl wears out faster. (Tr 62)

21. The Capitol Hill Restoration Society opposed the use of vinyl windows before both the Historic Preservation Review Board and the Mayor's Agent.

22. However, when the Mayor's Agent asked Patricia A. Schauer, Chair of the Capitol Hill Restoration Society Historic District Committee, for a recommendation in this particular case, she very candidly informed the Mayor's Agent that while opposed to
the use of the vinyl replacement windows because of so many mitigating circumstances in the instant case, to wit, the applicant was not provided with the proper information by the permit office, the police did not perform properly, and in this case since it takes a discriminating eye to see the difference between the vinyl and wooden windows, she was willing to allow the applicant to keep her windows. This change of position, namely, the willingness to permit the use of vinyl windows in this one particular case, was never conveyed to the Historic Preservation Review Board during its hearing. (Tr 68)

CONCLUSIONS OF LAW

Based upon the Record as established and taken as a whole, the following Conclusions of Law are made -

23. The premises is within the Historic District of Capitol Hill and as such is subject to the provisions of D.C. Law 2-144.

24. The property owner has the burden of proving that the proposed alteration is consistent with the purposes of the Act as set forth in §2(b) of the Act.

25. That the applicant proceeded to replace the windows of the premises without first obtaining a permit cannot be condoned.

26. That vinyl windows were used as replacement windows in premises located within the Historic District cannot be condoned.

27. That the sash windows removed were wood replacements installed prior to the designation of the area as an Historic District does not relieve the applicant from the obligation to install appropriate replacement sash now.

28. Where a contractor or salesman represents that vinyl is acceptable, a complaint should be filed with the Office of Compliance of DCRA against such a contractor or salesman. The misrepresentations of contractors or salesmen to the unsuspecting consumer public cannot be tolerated.

29. It is strongly suggested that in the future, the applicant work 'hand in glove' with the Capitol Hill Restoration Society in planning any alterations to the premises.
30. In the instant case, based upon the totality of the evidence, particularly the ANC's not taking a position and the willingness of the Capitol Hill Restoration Society while opposed to vinyl windows in the Capitol Hill Historic District to permit them in this one instance for the reasons stated in paragraph #22 supra, it appears that the historic, aesthetic and cultural heritage of the Historic District is preserved.

   **ACCORDINGLY, it is this 10th day of March, 1992**

   **ORDERED** that for the reasons stated above, the permit be issued.

   [Signature]

   Donald J. Sheehy
   Chief Administrative Law Judge, D.C.
   Mayor's Agent - D.C. Law 2-144