IN RE: 3108 Mount Pleasant St, NW  
HPA #91-302  
Washington, DC 20010  
Square 2596  Lot 640

DECISION AND ORDER

Background

On or about May 1, 1991, the applicant, Ms. Maria Edyth Cuevas of 3108 Mount Pleasant St, NW, Washington, DC 20010 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 sign since the "sign is not consistent with the purposes of D.C. Law 2-144." (Exh #4) On or about May 13, 1991 the applicant filed a notice of appeal and stated as the grounds for her appeal that "...failure to issue it will result in unreasonable economic hardship to me..." (Exh #5) Accordingly, the matter was set for a public hearing by the Mayor's Agent on October 9, 1991 at 10:00 A.M. Notice was provided to the applicant, abutting property owners, affected ANC and those listed on the Historic Preservation Division mailing list. (Exh #7)

10 DCMR 2516.4(a) requires that when an applicant appeals on

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1 10 DCMR 2516.4(a) provides in pertinent part that when the applicant claims 'unreasonable economic hardship', at least twenty (20) days prior to the hearing the applicant shall file

"(a) For all property:

(1) The amount paid for the property; the date of purchase; the party from whom purchased, including a description of the relationship, if any, between the owner and the person from whom the property was purchased;

(continued...)
the basis of 'economic hardship', financial records and statements to substantiate the economic hardship must be submitted at least twenty (20) days prior to the public hearing. Although the applicant failed to do so, the Mayor's Agent determined that since all parties were present, it would be in the interest of 'judicial economy' to proceed with the Public Hearing once the Applicant had represented that the required financial records and statements would be submitted within thirty (30) days. (Tr 11-12) The Applicant was admonished that should the required financial records and statements not be submitted by that time, the matter would be decided on the Record as of October 9, 1991. (Tr 12)

On November 7, 1991, the Applicant, as promised, delivered the financial information required by 10 DCMR 2516.4(a) to substantiate her claim of 'economic hardship.'

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

1(... continued)

(2) The assessed value of the land and improvements on the land according to the two (2) most recent assessments;
(3) The amount of real estate taxes for the previous two (2) years;
(4) The amount of annual debt service, if any, for the previous two (2) years;
(5) All appraisals obtained within the previous two (2) years by the owner or applicant in connection with his or her purchase, financing, or ownership of the property;
(6) Any listing of the property for sale or rent, the price asked and offers received, if any; and
(7) Annual cash flow, if any, for the previous two (2) years.

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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. Mansour Askarinam is the owner of the premises known as 3108 Mount Pleasant St, NW, Washington, DC (hereinafter "premises"). (Tr 13)
2. Ms. Maria Edyth Cuevas, is the tenant of the premises. (Exh #1)
3. Ms. Maria Edyth Cuevas, is the applicant for a permit to install a 'light sign' for the business known as "DISTRIBUIDORA EL SALVADOR DEL MONDO" which she operates at the premises.
4. The premises is within the Historic District known as Mount Pleasant and, therefore, subject to the provisions of D.C. Law 2-144. (Exh #2)
5. The Historic Mount Pleasant, Inc., in a letter dated April 2, 1991 to the Historic Preservation Review Board, noted that while they were dismayed to learn that the appropriate permit protocol was not followed in seeking approval for the sign which was now already installed, they would have welcomed the opportunity to work with the applicant in developing a signage system more appropriate to the character of the building and neighborhood. Without making a recommendation, they then deferred to the judgement of the Historic Preservation Review Board. (Exh #8)
6. The Application for a sign at the above premises was duly considered by the Historic Preservation Review Board at its April 17, 1991 meeting. (Exh #3)
7. The Staff Report and Recommendation of the Historic Preservation Division to the Historic Preservation Review Board was "...against the approval of the permit application for the subject
sign because it is out-of-character with the historic district and not consistent with the purposes of D.C. Law 2-144." (Exh #2)

8. To preserve the historic residential character of the continuous row of three-story brick rowhouses wherein the subject property is located, the Historic Preservation Division recommends the use of small metal or wood plaques, small freestanding signs, or signage behind show windows rather than the large backlit molded plastic sign of approximately 2' x 12' that the applicant has installed. (Exh #2)

9. The Historic Preservation Review Board adopted the staff report and recommendation and refused to order the issuance of the permit for the sign as requested by the Applicant on the grounds that said sign was inconsistent with the purposes of D.C. Law 2-144. (Exh #4)

10. The Applicant requested a Public Hearing before the Mayor's Agent upon the grounds of 'economic hardship.' (Exh #5)

11. On the basis of 'judicial economy', the undersigned determined to proceed with the Public Hearing provided the Applicant submit any documentation required by 10 DCMR 2516.4(a) to determine any 'economic hardship' within thirty (30) days, i.e., by November 7, 1991. (Tr 50)

12. The Applicant was advised on the Record that should she fail to do so, a decision would be made and issued based upon the record as then established, i.e., without any proof of economic hardship. (Tr 11-12)

13. The applicant had previously worked for another business and noticed that a good way to attract people to a walk-in business such as hers is to put up a 'good' sign. (Tr 16)

14. The applicant ordered what she considered a good sign and when it arrived called someone to put it up. (Tr 15)

15. The applicant paid $2,094.78 for the sign, $380 to Selective Construction, Inc. for a site plan, and $300 for the installation for a total of $2,774.78 (Tr 16, Exh #18)

16. As the sign was being installed, the permit was applied
for and at that time it was discovered\(^2\) that the sign was to be erected in an Historic District. (Tr 16)

17. From the time that the issue of the permit in the Historic District first arose, the applicant has been "very cooperative" with the Historic Preservation Division of the Department of Consumer and Regulatory Affairs - Building and Land Regulation Administration. (Tr 18)

18. Antonio de la Cruz and Esterbina W. de la Cruz, the owners of 3106 Mount Pleasant St, NW, Washington, DC, which is next door to the applicant's business, do not object to the sign and represented that it is smaller than some of the commercial signs that are already installed in the neighborhood. (Tr 18 and Exh #19)

19. While Mount Pleasant Street, NW is in the Historic District of Mount Pleasant, it is not the primary street in that area. Columbia Road and Eighteenth Street are the primary streets where the businesses with which the applicant is in competition are located. (Tr 19)

20. The overall evidence introduced during the Public Hearing does not militate against the erection and installation of a sign, but it does militate against the erection and installation of this sign which, in the opinion of the Historic Mount Pleasant, Inc., is out-of-character with the historic district and, therefore, is not consistent with the purposes of D.C. Law 2-144." (Exh #2)

21. At the conclusion of the Public Hearing, the applicant was again instructed that the required financial information was necessary to sustain her burden of proving 'economic hardship.' (Tr 19-23)

22. The Applicant did submit financial information on November 7, 1991 and it is made a part of this record. However, the

\(^2\) The record as established does not determine who discovered that an Historic District was involved. However, taking the record as a whole, such fact is immaterial since it does not affect the ultimate outcome of this action.
financial information submitted is of the applicant's present financial posture, but fails to indicate whether or not the denial of the application will have an adverse financial impact or amounts to the '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 owners." (10 DCMR 2599.1)

23. No evidence was submitted concerning the cost to modify the sign or create a new sign in compliance with the law.

24. Since the applicant paid $380 to Selective Construction, Inc. for a site plan, she should have been on notice through the 'site plan' that the sign was being erected in an 'Historic District.' No specific evidence pertaining to the site plan was introduced.

25. In all other aspects the applicant has abided by the laws of the District of Columbia -

   A. The applicant has a valid 'Certificate of Occupancy', i.e #1900731, issued on August 6, 1990 to operate the business known as EL SALVADOR DEL MONDO in said premises. (Exh #9)

   B. The applicant has a valid Business License, i.e #291222316 for the period of August 8, 1991 to July 31, 1992 to operate the business known as EL SALVADOR DEL MONDO in said premises. (Exh #10)

   c. The applicant has a valid 'Certificate of Registration', i.e #5331-0156801-001, issued by the D.C. Department of Finance and Revenue on August 10, 1990 in compliance with the D.C. Sales and Use Tax Acts for the business known as EL SALVADOR DEL MONDO in said premises. (Exh #11)

26. The Financial Statements prepared by AYALA, OROPEZA & ASSOCIATES and submitted by the applicant for the periods of October - December, 1989, January - June, 1990, and July - December 1990 substantiate the applicant's representation that the business
known as EL SALVADOR DEL MONDO is operating marginally at best. (Exh #12-14)

27. This representation that the business known as EL SALVADOR DEL MONDO is operating marginally is further substantiated by the Federal Tax Returns prepared by the firm of AYALA, OROPEZA & ASSOCIATES and filed by the applicant for the tax years of 1989 and 1990. (Exh #15-16)

28. The applicant has also submitted both personal and business bills indicating her current indebtedness. (Exh #17)

**CONCLUSIONS OF LAW**

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

29. The subject property, 3108 Mount Pleasant St., NW, Washington, DC 20010 is within the Historic District of Mount Pleasant and as such is subject to the provisions of D.C. Law 2-144.

30. The property owner has the burden of proving the alleged 'unreasonable economic hardship' which is the basis for the appeal taken.

31. Unreasonable economic hardship has been 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 owners." (10 DCMR 2599.1)

32. While the applicant, Ms. Cuevas, is not the owner of the real property at issue, she is the owner of the business that occupies the premises and owns the sign at issue. She, therefore, is "the owner" for purposes of determining the 'unreasonable economic hardship' pursuant to 10 DCMR 2599.1.

33. While the applicant has seemingly abided by all the laws and regulations governing the operation of a business in the District of Columbia (cf #25 supra), the only matter before the Mayor's Agent is the issue of whether or not the permit should be
issued for the sign already installed.

34. Further the applicant has submitted extensive financial records which indicate that she is operating marginally at best. However, she has failed to submit any proof required by the statute which would indicate that "...failure to issue a permit would place an onerous and excessive financial burden upon the owners." (10 DCMR 2599.1)

35. The issue is a difficult one in that the applicant seemingly has abided by all the laws and regulations of 'the District of Columbia. Yet she has installed a sign which because it is out-of-character with the Historic District within which the business is located is unacceptable to The Historic Mount Pleasant, Inc., the Historic Preservation Division of DCRA and the Historic Preservation Review Board. None of the Historic Preservationists object to a sign, but they all do to this sign which is out-of-character with the Historic District.

36. Judge Schwelb, writing for the majority of the court in a recent decision\(^3\) for the District of Columbia Court of Appeals, waxed poetic when he said "...Proportionality is of consummate importance in judicious adjudication." In the instant case we must balance the intent of the Historic Landmark and Historic District Protection Act of 1978 against the interest of the applicant who is operating a small business in an Historic District. While the applicant has seemingly abided by all the laws and regulations of the District of Columbia, the Mayor's Agent can take 'judicial notice' that many in the applicant's Historic District have not. However, the violations of others are not at issue in this matter.

37. Residents and businesses located within an Historic District would do well to utilize the services of the Historic Preservationists within their District prior to initiating, any alteration of their property. Otherwise, the objectives of the

\(^3\) Claude Bernard Allen vs. US, DCCA No. 87-1247, Decided February 28, 1992
Historic Landmark and Historic District Protection Act of 1978 are defeated.

38. The fact that the applicant has already spent money to buy and have installed a sign has been considered. However, one cannot do indirectly what they cannot do directly and an application should have been made in the first instance. In the instant case this is compounded by the fact that the applicant had a site plan prepared.

39. The applicant has quite candidly submitted statements which paint the picture of a struggling small business and that has been taken into account. However, as a matter of law, she has failed to sustain her burden of proof that failure to issue the permit "...amounts to the 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 owners," as required by 10 DCMR 2599.1.

40. Therefore, the Mayor's Agent cannot conclude that failure to issue the requested permit for the sign even though the sign is already installed would constitute an 'unreasonable economic hardship' for the applicant.

41. It is suggested that the applicant work with the Historic Mount Pleasant, Inc., which did not make a recommendation either to the Historic Preservation Review Board or at the Public Hearing, to develop a sign which would be "in character" with the Mount Pleasant Historic District.

ORDER

Accordingly, it is this 9th day of March, 1992

ORDERED that the Building and Land Regulation Administration,

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4 Selective Construction, Inc., in assuming responsibility for a site plan, may be liable to the applicant for any defect-in that site plan. Failure to ascertain that the sign was to be erected within an Historic District and that a permit was required may be construed as a site defect.

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DCRA, **not** issue the requested permit for the installation of the sign at the premises known as 3108 Mount Pleasant St, NW, Washington, DC 20010; and it is

**FURTHERED ORDERED** that the application be, and same is hereby, dismissed with prejudice.

[Signature]

Donald J. Scheer
Chief Administrative Law Judge
Mayor's Agent - D.C. Law 2-1114

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