

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:

1927 Kenyon St, NW
Washington, DC
Lot 152 - Square 2604

HPA Case #91-543

DECISION AND ORDER

Background

On or about July 31, 1991, Tom Joe and Cheryl Rogers, titled owners of 1927 Kenyon St, NW, Washington, DC applied for a Construction Permit to alter the above premises located in an Historic District by removing the front porch overhang and footings. In support of their application, Cheryl Rogers submitted a signed written statement which states in pertinent part -

"...The existing geological formation combined with the location of slip soil and underground springs have caused continual shifting of the house foundation and footings. This has resulted in repeated costly maintenance and repair. Moreover, the existing front porch overhang and related components are sinking and shifting at different rates than the house...

"...The cost of this repair, according to two estimates, will range from \$2400 to \$3000. We feel this expense is unjustified, given the history of shifting in this area. Since the cause of the problem is the foundation movement, and since this movement will recur even after it is repaired again, we are unwilling to spend this amount of money to repair the overhang. Moreover, the existing structure, since it is not a roof, serves no

function. It does not keep water off the porch or the house. Therefore, we see no advantage to spending thousands of dollars to rebuild a cosmetic overhang..."

(Exh #3)

The Staff Report and Recommendation of the Historic Preservation Review Board, prepared by Mr. Glen Leiner, confirms the above problem when it states in pertinent part:

"...The property is situated on land that is unstable due, in part, to the action of underground water. Foundation faults and other signs of settlement are visible on several rowhouses in the immediate area..."

(Exh. #2)

However because the front porches of Mount Pleasant significantly add to the character of the historic district and often are the defining elements of the individual rowhouses, "...the staff recommends against the removal of the porch because it is inconsistent with the purposes of D.C. Law 2-144 and encourages the applicant to return with a proposal that would stabilize and preserve the subject porch."(Exh #2)

At its Public Hearing held on August 21, 1991, the Historic Preservation Review Board adopted and approved the staff recommendation thus denying the applicants' proposed alteration to the above premises. (Exh #3)

On or about August 21, 1991, the Chief of the Historic Preservation Division provided formal notice to Ms. Rogers that the permit for her proposed application would not be issued since her proposal "...is inconsistent with the purposes of D.C. Law 2-144." (Exh #4)

By letter dated August 30, 1991, Cheryl Rogers requested a public hearing pursuant to on the basis that failure to issue a permit will result in unreasonable economic hardship. (Exh #5)

By notice dated September 27, 1991, the Applicant and all interested parties were notified that a Public Hearing would be

held before the Mayor's Agent on Wednesday, November 6, 1991. (Exh #6)

By signed letter dated November 6, 1991, Alice Kelly, Chair for ANC-1E, the Mount Pleasant Advisory Neighborhood Commission advised the Mayor's Agent that after viewing photographs and hearing of neighbors' support for the applicants' desire to remove the supporting columns and the slated porch roof, the above Commission at its regularly scheduled meeting held on November 5, 1991, voted to approve the applicants' claim that failure to issue a permit will result in unreasonable economic hardship stating that "...this is not a problem which is correctable in the long term, and continued repair would present an economic hardship." (Exh #8)

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 hearing 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.

Findings of Fact

Based upon the Record as a whole, including the testimony and evidence introduced during the Public Hearing held on November 6, 1991, I make the following Findings of Fact -

1. The premises known as 1927 Kenyon Street, NW, Washington, DC is located within an historic district known as Mount Pleasant.
2. The front porches of Mount Pleasant significantly add to the character of the historic district and often are the defining elements of individual rowhouses. (Exh #2)

3. The removal of the pillars and roof of the porch located at the above premises will substantially alter the character of the premises known as 1927 Kenyon St, NW. (Exh #2)

4. The above property is situated on land that is unstable due, in part, to the action of underground water. Foundation faults and other signs of settlement are visible on several rowhouses in the immediate area. (Exh #2 & Test. G. Leiner)

5. It is the uncontroverted testimony in the Record that because of the underground water and its unpredictable character, any repairs including restoration of the porch would be temporary at best necessitating future expenditures of money for additional temporary repairs. (Exh #2 & #3 & Test. C. Rogers)

6. It is also the uncontroverted testimony in the Record that there are several other houses, retaining walls and other things in the immediate area of the above premises which have suffered similar damage because of this geological fault in this particular area. (Test. G. Leiner)

7. From the above Findings it logically follows that this instability is not unique to the above premises.

8. The ANC recommended that I approve the applicants' claim since failure to issue a permit will result in unreasonable economic hardship stating that "...this is not a problem which is correctable in the long term, and continued repair would present an economic hardship." (Exh #8)

Conclusions of Law

From the above Findings I make the following Conclusions of Law -

9. The damage necessitating the removal of the overhang and footings to the porch on the above premises and replacing it with a molding strip across the front of the house is in no way due to the negligence or other fault of the owners of the premises.

10. The damage necessitating the removal of the overhang and footings to the porch on the above premises and replacing it with a molding strip across the front of the house is due to a

geological fault of the area.

11. It is unconscionable to require the owners of the above premises to expend thousands of dollars to resupport the porch when admittedly such resupporting would at best be temporary and for an undefined period of time, particularly when no alternative solution was proffered.

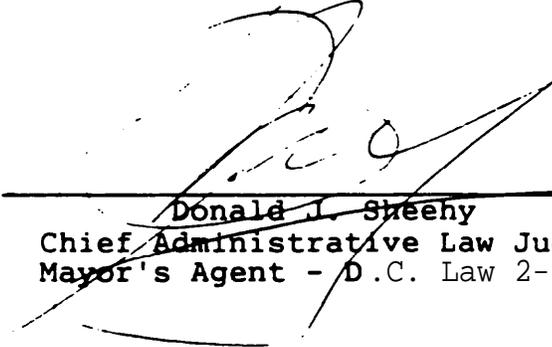
12. From all of the above, I conclude that failure to issue the required permit will result in an unreasonable economic hardship to the owners of the above premises.

ORDER

Accordingly, it is this **9th** day of **December 1991**

ORDERED that the application of the owners of 1927 Kenyon St, NW, Washington, DC for "removal of the front porch overhand and footings" be, and the same is hereby, **APPROVED**; and it is

FURTHER ORDERED that the Building and Land Regulation Administration issue the required permit within ten (10) days of the date of this Order.



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