In the Matter of

PERMIT - ALTERATION
HISTORIC DISTRICT - DUPONT CIRCLE

1312 21st STREET, N.W.
WASHINGTON, D.C.
Square 69 Lot 139

DECISION AND ORDER

Parties present at the Hearing before the Mayor's Agent:
Christopher H. Collins, Esq. of Wilkes, Artis, Hedrick & Lane, Chartered represented the Applicant; Paul Reneau, the Applicant; Richard Friedman, representing the DuPont Circle Conservancy; Jacqueline Prior, representing the D.C. Preservation League.

At its March 18, 1992, meeting the Historic Preservation Review Board (HPRB) recommended that the Mayor's agent not approve the Applicant's request for a rooftop addition - Application #92-104 because it was inconsistent with the purposes of D.C. Law 2-144. On July 17, 1992, the Board made a similar finding on Applicant's request for a third floor rear deck - Application #92-369. The Applicant requested a hearing before the Mayor's agent on the denied portions of both permit applications, claiming that the project is consistent with purposes of DC. Law 2-144.

FINDINGS OF FACT

Based on the evidence present and the record as a whole the following findings of fact are made -

1. Paul Reneau, the Applicant, is the owner of a townhouse at 1312 21st Street, N.W. Washington D.C. (premises or townhouse). He has been a resident of Historic DuPont Circle District for the
past 15 years but not a resident of the premises at issue. (Transcript of HPRB February 19, 1992 meeting (1st Tr.) 77)

2. By early 1991 the Applicant decided to turn the three story townhouse into four condominium units: one unit on the lower level (below front grade) with its own separate entrance; and one unit on each of the three higher floors. The third floor unit was intended be the largest unit with additional space on a newly created fourth floor reachable by an internal spiral staircase. The fourth floor addition was to also have its own deck on the roof. (1st Tr. 80)

3. The Applicant employed an architect and a construction firm to take this project forward. The Applicant claims he only wrote the checks and had been told by his agents that they had the necessary permits. The permits were posted on the front windows. (1st Tr. 76)

4. The permits obtained for the premises only included interior work. Nothing in the permits was for the fourth floor addition, decks or other exterior work.

5. In May of 1991 Applicant began to build the fourth floor addition to the three story townhouse. (1st Tr. 109)

6. Renovation work to the townhouse began to be viewable from the outside. The fourth floor addition on the roof, as well as its deck were begun. The metal chimneys were installed on the top and a deck in the back was begun.

7. Sometime in the Summer of 1991, several neighbors of the premises brought their concerns about unpermitted work on the premises to Pamela Taylor, elected representative of the affected single-member ANC 2B06. Ms. Taylor alerted individuals of the Historic Preservation Review Board Staff.

8. The District issued a stop work order on the premises.

9. Thereafter Applicant applied for the various permits required for the external renovation. Since the property is in the Historic DuPont Circle District, an application for the exterior
work was sent to the Historic Preservation Review Board (HPRB). (HPA 92-104)

10. The HPRB's Staff (Staff) prepared the following Report and Recommendation dated February 19, 1992 on application HPA 92-104:

This application involves a number of alterations to a rowhouse in the DuPont Circle Historic District. Many of these alterations were done without a permit, and have become the subject of controversy.

The roof was raised approximately eight feet to accommodate another story. This roofline slopes back with matching shingles. The builder installed three skylights on the face of the new roof and three aluminum chimney flues.
The rear facade was also altered. At the back of the new addition at the top, three sliding glass doors have been installed and lead out to a roof deck. At the first story level, the builder proposes to install a conservatory of glass doors and transoms with a deck on top leading out from the second story. This has not been constructed.

A new deck has been constructed at the first floor level. The area beneath has been excavated in order to create new rooms at the rear of the house as well as a terrace. The plans now call for a brick wall with windows to be created where new French doors were installed.
The garage roof will be razed, and the area used as a parking pad. No changes are proposed for the front entrance steps and steps leading to the basement, the front berm or front windows on grade.  

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1 This conservatory has now been completed and was not an issue before the Mayor's Agent.

2 The garage roof has been razed and is not an issue before the Mayor's Agent.
Although the staff regrets the amount of building that was conducted at this site without a building permit, certain elements of the project are consistent with other alterations approved for the DuPont Circle neighborhood, and would probably have been approved. Some of the alterations are either not visible or have limited visibility from the historic district. Some of the alterations are not compatible with either the character of the house or the historic district.

The alterations below grade and at the first floor level are simply not visible from the rear alley and thus have no impact on the historic district. They have no impact on those qualities that qualify DuPont Circle for listing in the National Register of Historic Places. The staff recommends that those alterations in the rear which are not visible or minimally from public space be approved.

The proposed conservatory with multi-paned glass windows and a roof deck opening out from the second floor is consistent with other alterations approved in this area. The railing, however, should be of pickets and not ornamental ironwork.

The front facade has been altered by adding a story and installing skylights and chimney flues. The skylights and chimney flues are discordant elements and interfere with the visual integrity of the roofline. These elements should be eliminated or redesigned to be less intrusive.

There is an established precedent for the approval of top floor additions. However, the HPRB and the staff have been very strict in requiring that the design not interfere with the visual integrity of the roofline, and that it not be visible from the front facade.

The staff therefore recommends that the Review Board find that the top story addition be redesigned so that it sloped back and set back in such a manner so it is not visible and does
not intrude on the roofline as perceived from the front facade. The skylight and chimneys should not be included on any new design. The deck at the rear on the top story should be removed. The staff recommends that the Review Board find that the other decks and additions on the rear are consistent with the purposes of the law and with other approved additions and decks in the DuPont Circle Historic District. (Tab 11) 

11. The HPRB considered the application at its regular monthly meeting on February 19, 1992. (transcript of this meeting = 1st Tr.) At that meeting the Applicant acknowledged, that although he had believed that proper permits had been taken, it was his mistake and "supported the staff report totally."³ (1st Tr. 76)

12. The application included a request for two permits. The first one considered was the removal of the garage roof, and the redesignation of the garage structure as a parking pad/terrace. The second was to approve the unpermitted work with some modifications. (1st Tr. 80)

13. The ANC representative noted at the HPRB meeting that while approving the Staff's recommendation that the fourth floor be redesigned, the ANC2-B objected to the Staff's limited concern about how it was visible from the immediate front of the building. The ANC voted that the fourth floor addition should not be visible from any public space.⁴ (1st Tr. pg. 51) Furthermore the ANC was

³ The Applicant also noted that the problem was caused in part because his then architect was extremely physically ill. The Applicant employed a new architect who was present at the hearing. By the time the Applicant reached the hearing before the Mayor's Agent, he had employed at least his third architect for this project.

⁴ ANC 2-B (DuPont Circle) voted unanimously that it: [S]trongly urges the Historic Preservation Review Board to consider the application from 1312 21st Street, Northwest, as a new application to be considered solely on its merits, (continued...)

1312 21st Street, N.W.
HPA 92-104 & 92-369
Page 5 of 14 Pages
also concerned that any rear deck that was visible from Newport Place be denied. (1st Tr. pg. 51)

14. The DuPont Circle Conservancy's position was identical to that of the ANC. (1st Tr. 114-117) The Conservancy specifically noted its problem with the lack of specific drawings of the proposed project by the Applicant during the review process.

15. The HPRB found at that February hearing that much of what was being proposed by the Applicant was inconsistent with the plans that the Applicant had provided. (1st Tr. 85-94, 125-135) The Board was frustrated and decided it needed more accurate drawing and that both the garage issue and the total renovation was to be determined together.

16. The transcript of the Board's hearing reveals confusion over exactly what else was being determined. The Board clearly voted not to approve the garage roof demolition and ruled that the Applicant had to submit accurate drawings to the Board for its review in compliance with the Staff's report. However, while there is some language about the Staff's Report being approved it is unclear what the Board meant by that approval. (1st Tr. 85-94, 125-135; Transcript HPRB March 18, 1992 Meeting (2nd Tr.) 8)

17. Within a month the Applicant submitted new drawings to the Staff. The Staff found that:
"Although the applicant has increased the slant of the roof slope which will undoubtedly result in reduced visibility, he

\[...\]
has not sufficiently stepped back the rooftop addition, nor has he provided the photos or drawings to support his case... (2nd Tr. 13)

18. Again the Staff found that the Applicant had failed to supply sufficient documentation to demonstrate that its new proposed plan "sufficiently mitigates the visibility and intrusiveness of the current addition." (2nd Tr. 13)

19. The Applicant asked that while the staff was unable to make a determination based on incomplete documentation, that the Board make a determination at its March 18, 1992 regular meeting. (2nd Tr. 14)

20. The new drawings submitted by the Applicant demonstrated that a "normal height person" standing across the street somewhere on the sidewalk looking up would not see the addition. (2nd Tr. 16 Ex. 8) The Applicant acknowledged that the fourth floor addition would be seen by those walking up and down the street in front of the premises and on the side street (Newport Place). The addition would be hidden only to the "average heighted" (or shorter) person when standing exactly in front or across the street on the sidewalk. (2nd Tr. 22, 28)

21. The Applicant also submitted drawings comparing three stages of the exterior of the premises: the original exterior; its supposed condition at the time of the hearing (with the unpermitted work); and how it would look if its permits were granted. The proposed rear view did not include the solarium or a third floor deck. (Plans marked "Reviewed March '92 by HPRB")

22. The Applicant, at the March 1992 HPRB meeting, proposed to remove some of the things that "impede" on the structure: the prefabricated metal chimney flues, skylights, changing the slope of the top loft floor ('the cap on the top') and remove the unpermitted back deck and return the rear to the original profile. (2nd Tr. 16-20)
23. The Board on March 18, 1992 voted to allow the Applicant (HPA 92-103) to remove the roof of the garage (2nd Tr. 61) but denied the Applicant (HPA 92-104) to retain any of the unpermitted work even as conceptually proposed to be modified. (2nd Tr. 50-51)

24. Mr. David Caney in the DCRA - Building & Land Regulation Administration told the Applicant that until the fourth floor deck was removed there would be no order issued to remove the "stop work" order issued to the premises. (Transcript of HPRB's July 15, 1992 meeting (4th Tr.) 155)

25. The Applicant returned to the Board at its April 1992 meeting and proposed to remove the fourth floor addition. The Board approved that proposal.

26. The Applicant then noticed that another builder was granted approval for a rooftop deck in the DuPont Circle area. (4th Tr. 155-6)

27. On April 25, 1992, the Applicant filed for a new construction permit for the following work:
   Revision to permit No's B350809 and B372791, to modify the loft design, instead of complete removal. To set back the loft 22' from the front facade, to have 5' height above original roofline, and a set back of 24' from rear, the Loft could not be seen from front facade. Per recommendation of Historic Review Board Staff Report dated Feb. 92, which was adopted by HPRB on Feb-19-92. Also adding a third floor deck in rear on top of already approved second floor deck. All as per plan herewith submitted.

28. The Staff reviewed the new application (HPA 92-369 - Tab 7) and determined:

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5 The Applicant described the proposed work in Application 92-104 as follows:
Modification to attic and roof, as well as decks per plan, and first floor conservatory addition as per plan, here with submitted. Plus modifying fire escape into a fire stair per plan and other necessary construction elements per plan.
The Staff does not object to the installation of another deck. However, the record of the Review Board is clear as regards the rooftop. The Board has stated the application should be denied and that the addition should be removed. (Tab 6)

29. The Applicant appeared before the HPRB at its July 15, 1992 meeting. The Applicant asked that the Board only consider the third floor deck. (4th Tr. 148) He determined to take the Board's earlier denial of the fourth floor directly to the Mayor's Agent. (4th Tr. 150)

30. The Applicant made an agreement with his neighbor to his immediate north. The Applicant agreed to open a window on the neighbor's property to make up for some of the light that would be lost by the addition of the second floor deck. (4th Tr. 144, 149-150)

31. The ANC 2B considered the new application and voted unanimously to "oppose a new deck on the rear third floor of this building because such construction would be visible from public space, especially Newport Place, Northwest." (4th Tr. 145)

32. The DuPont Circle Conservancy continued to oppose the permits until the fourth floor addition had been removed. (4th Tr. 145)

33. The Board voted unanimously on July 15, 1992 to deny application HPA 92-369 for a third floor deck. (4th Tr. 161)

34. On July 27, 1992 the Applicant requested a public hearing before the Major's Agent with respect to the Board's denial of the rooftop addition and the third floor rear deck claiming that the applications are "consistent with the purposes of Section 2(b) of D.C. Law 2-144, Historic Landmark and Historic District Protection Act of 1978". (Tab 4)
35. The Hearing before the Mayor's Agent was held on September 28, 1992. (The hearing before the Mayor's Agent is referred to as '5th Tr.') The DuPont Circle Conservancy and the DC Preservation League were granted party status to the proceeding. Both organizations noted that their respective positions remained constant and asked that the applications be denied.

36. At the time of the hearing before the Mayor's Agent all elements of the renovation project to the premises either were approved or withdrawn except for the rooftop addition and the third-floor deck. (5th Tr. 11) (The unpermitted rooftop addition had not been removed and the third floor deck and not been built.)

37. ANC 2B supported the HPRB's position and asked that the Applicant's applications be denied, in part to send the message that illegal construction will not be tolerated in the District. (5th Tr. 56)

CONCLUSIONS OF LAW

Based on the foregoing findings of fact the following conclusions of law are made:

Jurisdiction

38. Pursuant to D.C. Code 55-1005, before the Mayor may issue a permit to alter the exterior of a historic district, the Mayor shall review the application in accordance with this section. The Historic Preservation Review Board, after reviewing the evidence at its March 18, 1992 meeting, denied certain aspects of the application as inconsistent with the purposes of D.C. Law 2-144. On July 17, 1992, the Board made a similar finding on certain aspects of application #92-369. 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 (the "Act") to the undersigned.

39. The standard for review for a permit for alteration in an historic district is D.C. Code §5-1005(f), which requires that no permit shall be issued unless the Mayor's Agent finds that the issuance is "necessary in the public interest."

40. The term "necessary in the public interest" is defined as consistent with the purposes of the Act, as set forth in §5-1001(b) or necessary to allow "a project of special merit".

41. The Applicant acknowledged that his project is not of "special merit". Rather the Applicant believes that his project should be approved as consistent with the purposes of the Act. The standards for determination of consistency under the Act are set forth in Section 5-1001(b)(1)(A) and (B).

(A) to retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use, and

(B) to assure that alterations of existing structures are compatible with the character of the historic district.

42. The Applicant argues that the HPRB recommendation is based on a false premise that there is a requirement that any addition be obscured from the street.

43. The Applicant is clearly correct that visibility in and of itself is not grounds for denial of a permit. Rather, the issue is how that visibility effects the surrounding ambience, i.e., is compatible with the character of the historic district. The easy case is where an addition is invisible...set back so as not to be visible... and therefore unable to effect its surrounding character.

44. Having acknowledged that an addition may be visible if it does not negatively effect its surrounding ambience, the question then arises as to which "surrounding character" is to be considered in determining the effect of the additions.
45. While claiming that its visibility is compatible with the Historic District, the Applicant claims that its same additions are invisible from the most important spot... immediately in front and across the street by an average heighted person on the sidewalk.

46. There is no question that the street vista standing in front of an historic building is important. However, there is nothing in the Act to limit the compatibility test to that sole spot. Rather the Act clearly states that the test is "compatible with the character of the historic district". D.C. Code §5-1001(b)

47. Therefore the test of compatibility must be measured not just from the view immediately in front of a structure but from the entire historic district.

48. However it should be noted that the character in some neighborhoods may only be effected by a change in visibility from directly across the front facades. But the neighbors of this community, as well as presumably the majority of most Historic neighborhoods, are concerned about their views from all streets.

49. Thus as with any proposed changes in views from any street and angles, the Applicant has the burden to demonstrate that his proposed changes are compatible with the historic character of the neighborhood where the change is being proposed. In this case, the Applicant has the burden of demonstrating that the additions, i.e., the fourth floor or the third floor deck, are compatible with all the vistas it effects.

50. To support his case, the Applicant has submitted photographs of additions that are visible from vistas within the DuPont Circle Historic District. The reality that some additions are visible has nothing to do with the compatibility of the additions at issue.\(^8\) Rather, the issue is the impact of the

\(^8\) Each addition must be viewed within its own vista. The Record is devoid of when these visible additions were built thereby also leaving open the question of whether some of these additions were added before the area was granted Historic District status.
additions being proposed on the vistas being effected and there is no question that the effect on those vistas is not positive.

51. Furthermore, the issue of compatibility is just part of the two prong test. The second part requires the Applicant to show that the proposed changes are necessary to "encourage their adaptation for current use." The Applicant has failed to show that such changes were at all necessary to encourage the adaptation of the structure for current use.

52. The Applicant also argued that just because he (or his agents) improperly built the fourth floor addition should not be a reason to disapprove it. (5th Tr. 53) The ANC 2B took the reverse position, that just because it has been built is not a reason to approve it. 9

53. The applications were considered and denied as if they had not been built and no weight was given to the reality that some of it had already been built. Thus we never had to reach the point of considering whether to reverse the old adage that it is easier to plea for forgiveness than beg for approval.

54. The Applicant has failed to meet his burden of proof that his project is consistent with the purposes of the Act.

ACCORDINGLY, it is this 1st day of June, 1993
ORDERED that for the reasons stated above, the permit be, and same is hereby, DENIED; and it is
FURTHER ORDERED that the application be, and the same is hereby, DISMISSED WITH PREJUDICE; and it is

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9 The Applicant also argued that just because he (or his agents) improperly built the fourth floor addition should not be a reason to disapprove it. (5th Tr. 53) The ANC 2B took the position, that just because it has been built is not a reason to approve it. It comes down to debating whether it is easier to plea for forgiveness or beg for approval. However, since the applications have been denied on the issue of their incompatibility with the Historic District, there is no reason to spend time on this moot issue.
FURTHER ORDERED that pursuant to D.C. Code §5-1012(a) this Decision and Order shall not become final until fifteen (15) days after issuance.

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