IN THE MATTER OF:
DUPONT CIRCLE HISTORIC DISTRICT:
1612 18TH STREET, NW:
DR. ELLA TOMBS:

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IN THE MATTER OF:
DUPONT CIRCLE HISTORIC DISTRICT:
1612 18TH STREET, NW:
DR. ELLA TOMBS:

DECISION AND ORDER

A hearing pursuant to the historic Landmark and Historic District Protection Act of 1978 D.C. Law 2-144 was held before Sharon T. Nelson, Senior Administrative Law Judge on September 28, 1994 (transcript of this hearing is referred to as "MA Tr."). Present at the hearing were: Cheryl Chapman, Esquire, of Chapman and Chapman, on behalf of the Applicant; Dr. Ella Tombs, the Applicant; Suzanne Ganschinietz, Staff Historian of the D.C. Historic Preservation Review Board (Board), and Sheila J. Bennett, staff of the Board.

The main issue involved in this matter concerns the right to create a curb cut and accompanying driveway in a historic district.

FINDINGS OF FACT
Based on the evidence presented and the record as a whole the following findings of fact are made -

Background and Procedural History

1. On June 5 or 6 of 1994, the Applicant purchased the single family house located at 1612 18th Street, Northwest, Washington, District of Columbia, Lot 815 Square 134 ("property"). The Applicant purchased the property with the intent of making it her home and medical (Dermatology) office as permitted by its zoning. (MA Tr. 11-12)

2. The property which is located within the DuPont Circle Historic District, at the corner of Corcoran Street and 18th Street, faces across a small grassy park triangle to the 1600 block of New Hampshire Avenue. One other building shares the 18th Street block with the property before the street turns the corner becoming a continuation of New Hampshire Avenue. The Applicant submitted photographs and testimony concerning the properties two blocks

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north and two blocks south on 18th street (from P Street to Riggs Place) and a block and a half north and south on New Hampshire Avenue (from Q Street to Riggs Place). (These blocks on the two streets described by Applicant hereinafter are referred to as the "two streets").

3. These two streets are filled with mainly old grand buildings, now housed by embassies, institutes (architectural institute, psychiatric institute, etc.) lawyers and physicians, or relatively modern high-rise condominiums or high-rise apartment buildings. If the Applicant moves into her property as she plans, it will be the only building on these two streets occupied as a single family dwelling. (MA Tr. 13)

4. In deciding whether to purchase the property, the Applicant met with Anthony Downing, chief of Public Space at the property. Mr. Downing explained that he saw no problems with the curb cut. (MA Tr. 59-60 & 74-75)

5. On June 7, 1994, within a day or two of her purchase of the property, the Applicant filed for a permit to construct a red brick driveway and curb cut on the property. (Gov. Ex. 1)

6. The Applicant presently lives in the LeDroit Park Historic District at 216 Elm Street, Northwest, Washington, District of Columbia ("residence"). On July 9, 1992, the Applicant applied for and obtained a permit for a curb cut for her residence. There were no curb cuts within the two block square radius of her residence.

7. Ms. Ganschinietz, Staff Historian of the Board, explained that when applications are not contested, Ms. Pat Montgomery, as the Acting Administrator of the Building and Land Regulation Administration of Department of Consumer and Regulatory Affairs ("DCRA"), is designated the Mayor's Agent and approves such applications. (Claimant's Ex. 32 & MA Tr. 69-73)

8. The Applicant testified that she intends to rent out her residence and move into the property. She further claims that she has not yet rented her residence because she finds parking such a problem near the property. (MA Tr. 51)

9. The Applicant submitted evidence that the vast majority of the structures on the two streets have visible parking on the property (some located on the side streets). However, the two continuous properties south of Applicant's properties (1610 18th and 1608 New Hampshire) have no parking. In addition the middle property of the three properties on New Hampshire Avenue across from Applicant's property has no parking. Some of the existing driveways appear to be old carriage driveways that have been paved. (Photographs Ex. 1-25, 28-30 & Claimant's Ex. 26)
10. The Staff of the Board has continuously maintained the position, with respect to the DuPont Circle Historic District, of opposing all curb cuts as inconsistent with the Historic District. Many of the curb cuts in that area were made before the area was designated an Historic District. (MA Tr. 64)

11. Ms. Ganschinietz testified that the designation of an area as a historic district is often to stop the erosion of certain historic characteristics of the district.

12. No testimony was given concerning the use or parking facilities of all the buildings facing on the side streets of Church Street, Q Street, Corcoran Street, or R Street, which are in the immediate area of the property. However, the Applicant did submit an August 6, 1994, petition from her Corcoran Street neighbors (adjoining her property on the west) supporting her desire to construct a driveway and curb cut. (Claimant's Ex. 31) In addition, she submitted evidence that 1525, 1527 and 1529 18th Street have a curb cut and joint parking lot on the beginning portion of Church Street. (MA Tr. 26) Further she submitted evidence that 1533 New Hampshire Avenue has its parking on Q Street. (MA Tr. 28)

13. The Applicant has arranged that if her patients have difficulty parking on the street they can park at a parking garage on the 1500 block of New Hampshire Avenue and Applicant reimburses them the $5.00 an hour they are charged. Most of her patients are in the office for less than an hour. (MA Tr. 76-77)

14. The Staff's June 1994, Report and Recommendation to the Board with respect to this Application is as follows:

The new driveway would be to the south of the house on 18th Street. In order to achieve a parking space for the car, the applicant would have to demolish a brick wall located between her house and the house to the south.

A large elm tree is located in the public space in front of property. The tree and especially the roots may be destroyed if a driveway is constructed in close proximity.

It has been the practice of the staff to recommend denial of curb cuts in most cases because they take away from the green yard area and because they allow for cars to be parked in a visible manner on the property. In this case, the car would be visible from the public space. It also establishes a precedent to allow other curb cuts in the area.

The staff recommends that the Review board deny the application for a driveway and curb cut because it is inconsistent with the purposes of the law. The construction of the driveway mandates the removal of the open yard space.
associated with the residential row house character of the historic district. The addition of parked automobiles into this space detracts from the historic character. (Government Exhibit 5.)

15. At its June 16, 1994, meeting the Board recommended against construction of a driveway and curb cut at the subject property on the grounds that the project is not consistent with purposes of the Act.

16. The Applicant's original plan was to destroy the brick wall so that her car could be hidden from the street. Now the plan is not to destroy the brick wall, but only to repair the wall and to increase the size of the existing 30 inch wide door to 36 inch width to accommodate her wheel chaired patients. (MA Tr. 46) Ms. Ganschinietz testified that while the destruction of the wall does not require a demolition permit the change of the door size would require a permit.

17. The Applicant testified that parking is difficult in the area. She can only obtain the parking spot in front of her building if she arrives there at 6:30 a.m. Otherwise, she has difficulty finding parking. Her car, when not parked in front of her property, has been vandalized. (MA Tr. 51-53)

18. The affected ANC did not submit any position on this application, nor was the Applicant invited to attend any ANC meeting on her application.

19. The DuPont Circle Conservancy testified at the Board meeting in full support of the Board's Staff's position. They are concerned about the view of another car on the lot, and other cars parking on the driveway. In addition, members were very concerned about the tree that would be killed by this construction.

CONCLUSIONS OF LAW

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

Jurisdiction

20. Pursuant to D.C. Code §5-1005, before the Mayor may issue a permit to alter the exterior of an historic district, the Mayor shall review the application in accordance with this section. The first review step is by the Board.

21. The Board after reviewing the evidence at its June 16, 1994 meeting, denied the application as inconsistent with the purposes of D.C. Law.

22. If the application is denied, as in this case, then the Applicant can appeal that decision to the Mayor's Agent.
Mayor's Agent shall consider any recommendation by the Board. (D.C. Code §5-1005)

23. Administrative Issuance 2-54D, dated August 2, 1994, 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 then Chief Administrative Law Judge Donald J. Sheehy. On September 7, 1994, Judge Sheehy recused himself with respect to this case and redelegated his authority as Mayor's Agent to the undersigned.

Necessary in the Public Interest

24. Pursuant to D.C. Code 5-1005(f) "No permit shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner."

25. The Applicant has made no claim of unreasonable economic hardship. Therefore the issue before the Mayor's Agent is whether the issuance of the Application is "necessary in the public interest".

26. D.C. Code §5-1002(10) defines "necessary in the public interest" to mean consistent with the purposes of this subchapter as set forth in §5-1001(b) or necessary to allow the construction of a project of special merit. (emphasis added)

27. The Applicant has made no claim that her curb cut or parking lot would be a project of special merit. Therefore we look to the purposes set forth in D.C. Code §5-1001(b)(1) which defines "necessary in the public interest" with respect to properties in historic districts as follows:
   (A) To retain and enhance those properties which contribute to the character of the historic district and to encourage their adaptation for current use;
   (B) To assure that alterations of existing structures are compatible with the character of the historic district; and
   (C) To assure that new construction and subdivision of lots in an historic district are compatible with the character of the historic district.

28. The Applicant relies on subsection (A) and (B) of the definition.
29. The Applicant argues that a driveway is not only compatible with the character of the historic district but it also does not detract at all from the District. To bolster this argument she provided evidence that the vast majority of the buildings on the two streets already have parking, and many have curb cuts. (MA. Tr. 77)

30. To accept the Applicant's argument is to grant curb cuts to the remaining properties on the two blocks as well as to those on adjoining blocks where there may already be curb cuts. The Applicant would have the character of the historical district measured not in terms of the basis on which the area was deemed historic but rather on its present standard measured against the non-historic erosions of the district. Such a standard would nullify the purpose of the act.

31. The Applicant also argues that the granting of this Application would enhance the property and encourage its "adaptation for current use." To support this argument, Applicant claims that she has been unable to reside at the property because of the parking problems. Furthermore, she will be reviving the residential nature of this district which is now all but gone on the two streets. (MA. Tr. 79)

32. Again, the Applicant's argument, that parking is difficult in the inner city, could be used by virtually any owner in the DuPont Circle Historic District as the basis for the grant

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1 The Applicant also argues that her plan is to increase the number of flagstones and that would not significantly change the design of the landscape of the property's historic nature. However, 11 DCMR 2117.10 requires that driveways be paved in "all-weather impervious surface, and which is at least four inches (4") in thickness."

2 The Applicant also argues that granting this application will not open the flood gates of requests for curb cuts and parking pads, because her property is the only retaining single family dwelling. However, she does not mention the properties surrounding her that do not yet have parking.

3 The Applicant also argues that her design for the driveway will be unobtrusive as she will just be expanding the flagstones that are already there. However, 11 DCMR 2117.10 requires that all driveways be constructed of "all-weather impervious surface, and which is at least four inches (4") in thickness."
of a curb cut and private driveway. The Applicant however has testified that she is able to supply parking for her patients. Further, while parking is difficult, it is available in the area. The Applicant has failed to show why her case is unique.

33. The Applicant's arguments fail to meet the test to reverse the decisions of the Board, its Staff, and the DuPont Circle Conservancy which held that Applicant's curb cut and driveway is not compatible with the historic district and is not consistent with purposes of the Act.

ORDER

ACCORDINGLY, it is this 13th day of December 1994

ORDERED that the application HPA #94-401 for a curb cut and construct of a driveway at 1612 18th St, NW (Lot 815, Square 134) be, and the same is hereby, DENIED.

Sharon T. Nelson
Senior Administrative Law Judge
Mayor's Agent - D.C. Law 2-144

Judicial notice is taken of the often cited fact that a curb cut eliminates two if not three street parking spaces.

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