

resident of the Capitol House Condominium and manager of the Capitol House Condominium Unitowners Association, and Mr. Henry Wrona, a resident of the Capitol House Condominium and vice president in charge of operations of the condominium board. The applicant called Mr. Henry McCall as a witness. In addition, the Mayor's Agent called two (2) witnesses: Mr. Stephen Raiche, Chief of the Historic Preservation Division of the Building and Land Regulation Administration, department of Consumer and Regulatory Affairs and Mr. Stephen Callcott, architectural historian at the Historic Preservation Division of the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs.

The hearing was concluded on February 15, 1995. The record was held open for the Applicant to submit to the Mayor's Agent its proposed findings of fact and conclusions of law. The Applicant filed its proposed findings of fact and conclusions of law on March 16, 1995.

Jurisdiction

Pursuant to D.C. Code Section 5-1005 (1994 Repl. Vol.), before the Mayor may issue a permit to alter the exterior of a historic landmark or of a building or structure in the 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 for a public space permit.

Pursuant to 10 DCMR Section 2508.7, the Applicant, on November 29, 1994, requested a hearing before the Mayor's Agent. Pursuant to Administrative Issuance 2-543, dated December 16, 1994, Patricia Elam Ruff, Acting Chief Administrative Law Judge at the Office of Adjudication, Department of Consumer and Regulatory Affairs, recused herself and re delegated her authority to conduct the hearing as the Mayor's Agent to James C. Harmon, Administrative Law Judge, Office of Adjudication, Department of Consumer and Regulatory Affairs.

Findings of Fact

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

1. The premises at 305 C Street, N.E., Washington, D.C. is owned by the Capitol House Condominium Unitowners Association (Application dated June 15, 1995 in Historic Preservation Review Board's file).

2. On June 15, 1994, the applicant, through Elaine Foster, manager of the Capitol House Condominium Unitowners Association, applied for a public space permit to install a concrete pad and construct a seven-foot high wooden fence to enclose a dumpster and recycling bins at the Department of Consumer and Regulatory Affairs (Tr. 12; Applicant's Exh. 2; and Application dated June 15, 1994 in Historic Preservation Review Board's file).

3. The premises is within the Historic District known as the Capitol Hill Historic District and, therefore, is subject to the provisions of D.C. Law 2-144 (Historic Preservation and Review Board's file).

4. On November 17, 1994, the applicant appeared before the Historic Preservation Review Board. In a vote of two (2) for, one (1) against and one (1) abstention, the Review Board voted to adopt a staff report and recommendation that "the Review Board deny the proposal for the construction of an enclosure within the public space as inconsistent with the purposes of D.C. Law 2-144, and direct the applicant to locate their trash storage behind the building." (Tr. 36; Staff Report and Recommendation; Historic Preservation Review Board's file).

5. Mr. Stephen Callcott, who is an architectural historian at the Historic Preservation Division of the Building and Land Regulation Administration, Department of Consumer and Regulatory Affairs, stated that "the use of the public space for the storage was not consistent with the purposes of the Historic Preservation Law". Prior to issuing his staff report in November 1994 to the Historic Preservation Review Board, Mr. Callcott made a site

visit to 305 C Street, N.E., Washington, D.C. (Tr. 36, 48).

6. With respect to how the failure of granting the permit will result in an unreasonable economic hardship, Elaine Foster, a resident-owner and manager of the Unitowners Association at the Capitol House Condominium, stated that the cost of purchasing existing parking spaces to place the trash dumpster "would be prohibitive," and that cutting an opening in the back of the building to store the dumpster was "not [a] viable solution." When asked whether the applicant had "explored other possibilities of . . . trash removal," Ms. Foster stated that she had "no idea what other possibility would exist." (Tr. 14, 15).

7. With respect to the applicant's project being one of special merit, Ms. Foster stated that she thought "that any beautification of the neighborhood would have special merit," and that such beautification "would be within keeping of the architectural theme in that district." (Tr. 17).

8. Mr. Henry McCall, who resides at 219 - 3rd Street, N.E., and a neighbor of Capitol House Condominium, stated that the proposed space for the dumpster on public space would be approximately nine (9) to ten (10) feet from his residence. Mr. McCall further stated that "one of the problems that [he] is most concerned about is the vagrants that come and get in the dumpster," and that by placing a stockade fence around the dumpster and putting a lock on the gate, there would not be a vagrancy problem. Mr. McCall supports the applicant's application and believes that the idea of a fence around the dumpster improves the neighborhood (Tr. 25, 26).

9. Mr. Henry Wrona, who is a resident of the Capitol House Condominium and vice president in charge of operations on the condominium board, stated that the placement of a fence around the dumpster and removing the dumpster from the driveway at the Capitol House Condominium would improve the area. Mr. Wrona further stated that he fully supported the testimony of Elaine Foster (Tr. 30, 31).

10. By letter dated November 29, 1994, the applicant

requested a public hearing before the Mayor's Agent, and set forth three (3) bases of its claim, to wit: (1) the proposed alteration is necessary to construct a project of special merit; (2) failure to issue a permit will result in an unreasonable economic hardship to the applicant; and (3) the proposed alteration is consistent with the purposes of Section 2(b) of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978 (Applicant's Exh. 6).

Conclusions of Law

Based upon the Record as established before the Mayor's Agent, the following Conclusions of Law are made:

1. Pursuant to D.C. Code Section 5-1005(f) (1994 Repl. Vol.), no alteration permit may 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.

2. D.C. Code Section 5-1002(10) (1994 Repl. Vol.) defines "necessary in the public interest" as "consistent with the purposes of [the Act] as set forth in Section 5-1001(b) or necessary to allow the construction of a project of special merit."

3. The purposes of the Act as set forth in D.C. Code Section 5-1001(b) (1994 Repl. Vol.) with respect to properties in historic districts are 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 subdivisions of lots in an historic district are compatible with the character of the historic district.

4. The proposed alteration is not consistent with Section 2(b)(1) (A) of D.C. Law 2-144. While the applicant is to be

commended in proposing what it believes to be architecturally-sensitive changes to the property, the stockade fence that would surround the dumpster and recycling bins does not contribute to the character of the historic district. Indeed, the approval of such a project would establish a precedent for legally permitting others to place, on a permanent basis, dumpsters and recycling bins on public space throughout historic districts. This scenario is not consistent with the intent of the Act.

5. For the reasons stated above, the proposed alteration is not consistent with Section 2(b)(1)(B) of D.C. Law 2-144, which requires that alterations of existing structures be compatible with the character of the historic district.

6. D.C. Code Section 5-1002(14) (1994 Repl. Vol.) defines "unreasonable economic hardship" as the "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(s) as determined by the Mayor, failure to issue a permit would place an onerous and excessive financial burden upon such owner(s)."

7. Pursuant to 10 DCMR Section 2516.4, in cases involving a claim by the applicant of unreasonable economic hardship, the applicant is required to file an affidavit with the Mayor's Agent setting forth the following information:

- (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;
 - (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) Any consideration by the owner as to profitable adaptive uses for the property.

(b) For income-producing property;

- (1) The amount of annual gross income from the property from the previous two (2) years;
- (2) Itemized operating and maintenance expenses from the previous two (2) years; and
- (3) Annual cash flow, if any, for the previous two (2) years.

(c) For low income owners, a statement of present household income and the number of persons in the household.

8. The applicant has failed to submit financial information to the Mayor's Agent, as required by 10 DCMR Section 2516.4, to demonstrate that a failure to issue a permit would result in unreasonable economic hardship. Further, the applicant has neither presented evidence which could be interpreted as the "taking of the owner's property without just compensation" nor evidence that it is a low-income owner of property, and that a failure to issue a permit would "place an onerous and excessive financial burden" upon such low-income owner.

9. D.C. Code Section 5-1002(11) defines "special merit" as "a plan or building having significant benefits in the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services."

10. Pursuant to 10 DCMR Section 2516.3, if the applicant intends to make a claim that the alteration is necessary to construct a project of special merit, the applicant is required

to provide the following information to the Mayor's Agent within twenty (20) days prior to the hearing:

- (a) A written statement setting forth the grounds upon which the applicant bases his or her claim of special merit; and
- (b) If the claim is based on "exemplary architecture," architectural drawings of sufficient completeness to indicate the exterior design of the building or structure.

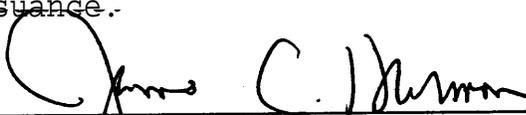
11. The applicant has failed to sustain its burden of showing that its proposed plan is of "special merit" within the meaning of D.C. Code Section 5-1002(11), in that the applicant's plan to build a seven-foot high wooden fence to enclose a dumpster and recycling bins does not have significant benefits to the community because of its display of exemplary architecture. Neither does the applicant's plan to enclose the dumpster with the wooden fence demonstrate specific features of land planning or have any social or other benefits of a high priority to the community.

ORDER

ACCORDINGLY, it is this 23rd day of June, 1995,

ORDERED that for the reasons stated above, the Applicant's request, number H.P.A. 95-10, for a public space permit be, and the same is hereby **DENIED**; and it is

FURTHER ORDERED that pursuant to D.C. Code Section 5-1012(a), this Decision and Order shall not become final until fifteen (15) days after its issuance.

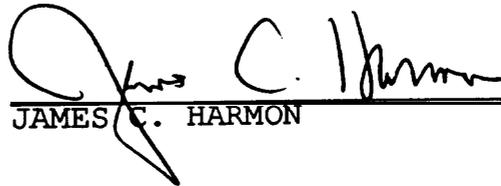


 JAMES C. HARMON
 Administrative Law Judge, D.C.
 Mayor's Agent - D.C. Law 2-144

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Order was mailed, postage prepaid, to the following on this 23rd day of June, 1995:

1. Elaine M. Foster
305 C Street, N.E.
#408
Washington, D.-C. 20002
2. Mr. Henry Wrona
305 C Street, N.E.
Washington, D.C. 20002



JAMES C. HARMON