

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
614 H STREET, N.W.  
WASHINGTON, D.C. 20001**

<b>IN THE MATTER OF:</b>	}	
	}	
<b>LOT 3 - SQUARE 2224</b>	}	
<b>2325 Porter Street, N.W.</b>	}	
	}	<b>HPA No. 96-307</b>
<b>Application to Subdivide an</b>	}	
<b>GREYSTONE, an Historic Landmark</b>	}	
<b>Located in a Rural Enclave</b>	}	
	}	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Introduction**

This case came for hearing before the Mayor's Agent on January 14, 1997, January 27, 1997, and February 4, 1997, regarding a request to subdivide land designated as part of an historic landmark, that is Lot 3 in Square 2224, known as part of Greystone, 2325 Porter Street, N. W. in Washington, D.C. For reasons that follow, the application for subdivision is denied.

**FACTS**

**Background**

1. On June 21, 1989, the Historic Preservation Review Board ("HPRB"), pursuant to the recommendation of its staff, designated four separate properties (Greystone, Linnean

Hill -- already designated an historic landmark, Gearing Bungalow and Pine Crest Manor) as a single historic landmark (“historic enclave”). The historic enclave is between Quebec and Porter Streets, N. W., abutting Rock Creek Park and Rock Creek Parkway, near Connecticut Avenue. See Exhibits 26/O and 3/O.<sup>1/</sup> The designation stated in relevant part:

“This landmark reflects an unusual relationship of each structure to its site and within this context, an overall dynamic relationship between the four structures that simultaneously respects each house and site while allowing the group to function as an harmonious rural enclave within the metropolitan boundaries of Washington.” (emphasis added)

The historic enclave is listed under “Estate and Country Houses” in the District of Columbia Inventory of Historic Sites, 1995 Edition. Exh. 4/O.

2. It is undisputed by the parties that the historic enclave is the only residential rural enclave with multiple dwellings so designated in the District of Columbia. (Testimony of experts, Emily Eig and Anne Adams.)

3. In 1991, the HPRB approved the staff report supporting the general siting of three houses and a turn-around (four lots in all) in a proposed theoretical subdivision of the unimproved portion of the Greystone property (Lot 3, Square 2224). Greystone itself (the house) is sited on Lot 4, Square 2224). See Exhibit 14/O.

4. The 1991 application for conceptual design approval was made by Greystone Associates, a limited partnership that owned Greystone that was comprised of the following partners:

Wetton Corporation, N .W .  
Sami Atallah  
Can-Am Investment Management, Inc.

Exhs. 2/O and 14/O.

5. Apparently, the Board’s decision to grant conceptual design approval was prompted by the deteriorating condition of three of the homes which comprised the historic enclave -- Linnean Hill and Pine Crest Manor (both of which were also vacant) and Greystone. Moreover, the then owner of Pine Crest was also seeking to subdivide his property. (Testimony of Michael Marshall and Emily Eig and Exh. 13/O.)

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” Exhibits ending in an "O" represent those exhibits presented by the opponents of the subdivision and those ending in an “A” represent those exhibits presented by the applicants for a subdivision.

6. Soon after the HPRB's approval of the staff report supporting conceptual design approval, significant changes took place in the historic enclave. One, Pine Crest Manor was sold and the new owners renovated it, including the clearing of kudzu and fallen trees on their land adjacent to the Manor. Second, the owners of Greystone renovated Greystone. Third, the National Park Service renovated and occupied Linnean Hill. (Testimony of Marshall and Eig; Exh. 7/O.) (Multiple slides from 1 through 44.)

7. In 1994, a new general partnership, Greystone Partnership II, was formed. The partners were Steve McClain and Greystone Associates Limited Partnership. (Exh. 16A) Greystone Partnership II, under the guise of Greystone Associates, sought further conceptual design, subdivision and new construction approval of the three houses and turn-around on Lot 3. The staff report, again recommending approval, believed the applicant still to be Greystone Associates. (Exh. 5/O)

8. In 1995, after extensive hearings and site inspection, the HPRB rescinded its earlier affirmation supporting conceptual design approval and declared that no development should take place, given the nature of the designation of the historic enclave, Exhibit 15/O, stating:

[Chairman] Cassell: What we're saying is, a vote has been taken to deny a subdivision. It has been expressed that development on this site is detrimental to the reason that the site was declared a landmark to begin with. (Page 40)

9. In 1996, again under the guise of Greystone Associates, the HPRB was asked to rescind its 1995 order and reinstate its 1991 order approving conceptual design approval. Exh. 5/O. In fact, the request was made by yet another partnership, the GS Partnership, composed of Steve McClain and one of the new Greystone owners (both Lots 3 and 4), Thomas Gibion. (Exh. 1/O and 15A) Mr. Gibion's wife, Christina G. Grady, was the other new owner of Greystone. (Exh. 1/O) Any interest in the Greystone property held by either Greystone Associates, L.P. or Greystone Partnership II ceased to exist at this point in time. Believing that the Board's first decision granting conceptual design approval should not be overturned because of potential economic "chaos" to Greystone Associates, them HPRB voted to overturn its 1996 decision and reinstate its 1995 decision. Minutes of the Meeting of HPRB, July 25, 1996 at 4:

[Boardmember] Mitchell: believes Board must give credence to its prior decision-making [referring to 1991 decision], to avoid "chaos".

[Boardmember] Robertson: associates with Mitchell. Applicants must rely on Board's prior action. (See Exhibit D-1 to the Prehearing Brief in Opposition to the Request for Subdivision).

## Mayor's Agent Hearing Process

10. In filing the application for subdivision review with the Surveyor's office, Anne Adams, who is associated with the law firm of Wilkes, Artis, Hedrick & Lane, counsel to applicants, signed as agent for the owner but did not reveal the name of the applicants or the change in ownership on the application. (Exh. 14A)

11. In September of 1996, again believing that it was dealing with Greystone Associates, the HPRB voted to approve the staff recommendation in favor of the subdivision of Greystone. (Exh. 5/O)

12. The Mayor's Agent hearings followed. At the hearings, the following witnesses testified in support of the application: Steven McClain, Douglas Cannada, Brian Katen, and Anne Adams.

13. Steve McClain testified that he was one of the partners in the application and had spent approximately \$147,000 in an effort to subdivide Greystone for construction of the three homes and turn-around. He stated it was unfair and unreasonable for the HPRB to reverse its position in 1995. However, neither his oral nor written testimony revealed the identity of the applicant. (Exh. 13A) Upon cross examination by counsel for Mr. Marshall, it was revealed that Mr. McClain and Mr. Gibion, partners in the GS Partnership, were indeed the applicants and not Greystone Associates, L.P.

14. Dudley Cannada, the applicant's architect, who was not the architect (Don Hawkins) retained by Greystone Associates, L.P. (Exhs. 5/O and 14/O), testified in support of the application for subdivision, and was qualified as an expert in his field, but not with special expertise in historic properties. Mr. Cannada testified that based upon his review of Mr. Katen's and Mr. Hawkins' landscape drawings and information obtained from Anne Adams, the proposed subdivision was in keeping with the integrity of the historic enclave.

Mr. Cannada did not submit a written report, did not identify any treatises to support his testimony including a reputable source for his definition of a rural enclave, and testified that he hoped to be retained by the applicant for architectural services if the subdivision was granted.

15. Brian Katen testified in support of the application for subdivision and was qualified as an expert landscape architect. Mr. Katen steadfastly maintained that the proposed subdivision would not intrude on the integrity of the historic enclave. Like Mr. Cannada, however, Mr. Katen had no written report, failed to identify any treatises to support his oral report, including a reputable source for his definition of a rural enclave, and admitted and then denied that he was retained by the applicant for landscaping the proposed subdivision.

Mr. Katen relied upon various drawings and a three-dimensional model to support his testimony. (Exh. 1A and Exh. 4A through 7A) However, upon cross examination, he stated that he did not know who prepared the model and whether the model was accurate and to scale. He also admitted that several of the drawings indicated the architect to be Don Hawkins for Greystone Associates when he, in fact, had prepared them.

16. Anne Adams was called as the applicant's last witness and qualified as an expert architectural historian. Ms. Adams submitted no written report. In presenting her testimony, she relied on the nature of the historic enclave, the siting of the existing and proposed homes in the historic enclave, consistency with D.C. Law 2-144, and the National Register Bulletin. Exh. 20/O. On rebuttal, she withdrew her reliance on the criteria set forth in the National Register Bulletin. Ms. Adams also pointed to examples of other subdivisions involving historic landmarks, principally, the Woodley Maret School (Exhs. 3/A-69 through 71) and the Tregaron Washington International School (Exhs. 3/A-64 through 68), as well as various subdivisions of the historic enclave itself. However, it is clear that the two other landmarks cited were part of a campus plan for educational institutions, and adapted for that use.

17. A neighbor adjacent to the historic enclave, Mr. John Holman, testified in support of the application on the grounds that development was complementary with the surrounding neighborhood. He admitted, however, that he did not know it was the only rural enclave in D.C. of historic dimensions. He also stated that Ulysses Auger, II, another neighbor with property contiguous to the historic enclave, was in support of the subdivision.

18. The applicant submitted as part of the record a letter from the D.C. Preservation League ("DCPL") dated September 26, 1996, to the HPRB indicating concerns over site development "because the rural nature of the enclave was a major contributing factor in its designation for the D.C. Inventory of Historic Sites" and offered suggestions on lessening the impact of the proposed development. The DCPL did not testify or submit written comment to the Mayor's Agent as part of the hearing.

19. The applicant also submitted an undated letter from William Shields, an employee of the National Park Service (Exh. 20/A), stating, that based upon a meeting with Mr. McClain and Brian Katen, his concerns for the design of the houses and protection of existing trees were satisfied. However, Mr. Shields did not appear before the Mayor's Agent and it is unknown what Mr. McClain or Mr. Katen stated to him regarding the proposed site development.

20. ANC 3C, through its representative, Peter Espenschied, testified in opposition to the proposed subdivision, based on a resolution of ANC 3C passed in July of 1996, also stating its concern as to the true identity of the applicant and whether the HPRB had been misled in reversing its 1995 decision which disallowed conceptual design approval and subdivision of Greystone. ANC 3C noted that the proposed subdivision and subsequent construction would

destroy the essence of the landmark properties by substantially altering the relationship of the landmarked buildings on the site.

21. In opposition to the proposed subdivision, Michael and Lydia Marshall, the owners of Pine Crest Manor, presented three witnesses: Michael Marshall himself and two other experts, Martha Donnelly and Emily Eig.

22. Michael Marshall, a practicing architect, displayed before and after slides to indicate the renovations to the Manor and grounds that he undertook at great expense (approximately \$200,000) in 1991 to preserve its rural setting. He also discussed and displayed slides indicating the changes to Greystone and Linnean Hill that occurred about the same time (1991 and after). Exhs. 7/O, 1-44. Mr. Marshall also presented aerial photographs (Exh. 8/O) and site plans (9/O) to demonstrate how the historic enclave retained its rural surroundings since World War II, while adjacent properties were continually subdivided. His slides demonstrated that the historic enclave maintained a distinct rural setting in an urban atmosphere.

Mr. Marshall also testified that the proposed subdivision and construction would impair the site lines between the four homes within the historic enclave, and produced the only floor elevation diagram during the course of the hearings. (Exh. 11/O)

Mr. Marshall's slides and diagrams also indicated the substantial intrusion into the historic enclave that would be caused by the proposed subdivision, especially the turn-around. (EA. 12/O)

23. Martha Donnelly also testified for Mr. Marshall in opposition to the subdivision and was qualified as an expert in landscape architecture. She demonstrated that she has been providing landscape planning and design services for two large projects for the Department of Public Works and Transportation for Montgomery County, Maryland, for several years. Ms. Donnelly submitted a written report (Exh. 17/O) and diagrams with photographs (Exh. 18/O) to support her position that the proposed subdivision would destroy the rural essence of the historic enclave. Like Ms. Adams, she also relied on the Guidelines for Evaluating and Documenting Rural Historic Landscapes (Exh. 20/O) in reaching her conclusions, as well as many other treatises which she identified.

Ms. Donnelly stated that it is essential that this "landmark remain distinct from its surroundings - as an enclave in foreign territory - so that it retains its integrity." She concludes that the proposed subdivision does not display any historic design principle that acts in support of the evolving styles of the four residences located within the landmark area and the subdivision destroys the function of the central bowl that provides necessary spatial volume and creates spatial dynamic between the residences. Further, she states that the dynamic relation of the whole is lost through the visual interruption of the proposed houses. She also adds that the proposed buildings will subjugate the rolling quality which results from the

sparse population of the rural landscape and the addition of trees and shrubs in addition to buildings and tree removal will destroy the overall simplicity of the rural scene. (Exh. 17/O)

Ms. Donnelly testified that she had no business dealings with Mr. Marshall that would affect her ability to testify as an impartial expert witness. Ms. Donnelly's detailed criteria for rejecting the proposed subdivision based on the National Bulletin are attached hereto as Exhibit A and incorporated herein by reference.

24. Emily Eig also testified as a witness for Mr. Marshall in opposition to the proposed subdivision. She was qualified as an expert architectural historian. Like Ms. Donnelly, she testified that she had no business dealings in Mr. Marshall that would affect her ability to give impartial expert testimony.

Ms. Eig submitted a meticulously detailed written report tracing the history of the historic enclave including the importance of the architects of the homes within the enclave. (Exh. 25/O) In reaching her conclusions, Ms. Eig relied on National Register Bulletins Nos. 18 (Exh. 33/O) and 30 (Exh. 20/O).

Ms. Eig reiterated that the four residences within the landmark area comprise an enclave which contains excellent, important and contributing examples of evolving styles of American architecture. Linnean Hill was built by Joshua Pierce, a noted horticulturist who supplied the first ornamental plantings for the White House, the Capitol and Lafayette Square. Linnean Hill is described as forming a center of a landscape that uses nature to form its composition. Greystone was designed by Waddy Wood. Mr. Wood is noted for his design expertise with country estates, and Greystone is considered an example of the concept that house and gardens cannot be separated and must be taken as a whole because it is a whole design composed of many elements. The Gearing Bungalow was designed by N.R. Grimm and represents the Romantic Arts and Crafts style -- a style in which the house relates to the site through the nature of materials and picturesque manipulations of natural elements. Pine Crest Manor was built by Gordon MacNeil, the chief architect for builders W.C. and A.N. Miller Company, who earned a reputation for designing suburban developments. The home is cited as an example of the environment influencing the form of the house, and it was designed to accommodate the surrounding landscape and to be perceived as an intrinsic element. Exh. 25/O.

Ms. Eig concluded that the proposed subdivision was not consistent with the purposes of D.C. Law 2-144 to enhance the landmark, since it would destroy the connection, association and legal relationship of the four individual properties comprising the landmark:

The landmark... is, a unique merging of natural and man-made features into an exceptional enclave.  
\* \* \* \* \*

The geometric relationship that was established in the 19th century and reinforced in the early 20th, continues a link so strong that it distinguishes the whole from its surroundings, whether they be urban, suburban, or natural. (Report at 19).

She also noted that with the exception of the mid-1980's subdivision of one property next to Gearing Bungalow which led, in part, to the designation of the historic enclave, there had been no subdivision which led to new construction within the historic enclave since 1929.

**25.** Letters in opposition from the owner of Gearing Bungalow, Dr. Jonathan Pincus (21/O), and abutting property owners, Marion and Daryll Green (Exh. 22/O) and Jutta Lewis (Exh. 23/O), indicated that the proposed subdivision would make a mockery of the historic designation and was inconsistent with the purpose of D.C. Law 2-144 to enhance and restore a landmark.

**26.** The Friends of the Earth also submitted a letter dated December 5, 1996, in opposition to the subdivision noting the loss of valuable open space and detracting from the historic landmark designation.

**27.** The opponents also submitted a letter from Mr. Auger to the Board of Zoning Adjustment in 1995 which contradicted his letter to the Mayor's Agent that he was in favor of the subdivision. Exh. 24/O.

## CONCLUSIONS OF LAW

Under D.C. Code § 1-1509(b), the burden of proof is on the applicant requesting the subdivision. All parties agree that the key question in this case is whether the proposed subdivision is consistent with D.C. Law 2-144 (the Historic Landmark and Historic District Protection Act of 1928). Specifically, D.C. Code § 5-100.1 provides as follows:

“(b) It is further declared that the purposes of this subchapter are:

(2) With respect to historic landmarks:

(A) To retain and enhance historic landmarks in the District of Columbia and to encourage their adaptation for current use; and

(B) To encourage the restoration of historic landmarks.”

Moreover, the Mayor's agent must give great weight to the recommendation of the ANC. D.C. Code § 1-261(d) and *Wolf v. District of Columbia Board of Zoning Adjustment*, 397 A.2d 936 (1979).

In *Reneau v. D.C.*, 676, A.2d 913 (1996), the D.C. Court of Appeals upheld a Mayor's Agent's decision denying a request for a permit for an addition to improved property in an historic district where the effect on all vistas was not positive. Hence, the threshold for denying the request sought by the applicant is a low one. In *District Intown Properties, Ltd. v. DCRA*, the D.C. Court of Appeals declined to review an order of the Mayor's Agent denying the applicant's request for permits to erect eight townhouses on the lawn of an apartment building. The eight lots comprising the lawn had been designated an historic landmark. 680 A.2d 1373 (1996), a copy of which is attached as Exhibit B.

For the reasons that follow, the applicant has failed to meet its burden of proof. Moreover, the Application was reviewed throughout the process prior to the hearing before the Mayor's Agent without the HPRB or the staff understanding who the Applicant is, as a legal entity.

1. It is clear from the evidence presented that the 1996 HPRB was persuaded to reverse its 1995 decision and reinstate its 1991 decision because of the potential chaos on the original applicant (Greystone Associates, L.P.) . The HPRB did not realize, however, that the original applicant (Greystone Associates, L.P.) was not the applicant then before it (GS Partnership). Indeed, it was even unclear who the applicant was requesting the subdivision from the Mayor's Agent and Surveyor's office. What is evident is that the Board and the staff thought it was dealing with Greystone Associates, L. P., when it was not. It is noted that the 1996 HPRB did not visit the historic enclave, did not allow Mr. Marshall to present any exhibits or all of his witnesses in support of his case, and based its ruling on the precedent set by its 1991 ruling and not consistency with D.C. Law 2-144. Therefore, the reasoning provided by the HPRB recommending the approval of the subdivision is given very little weight.

Greystone Associates, L.P., is not the partnership processing this request. The GS Partnership was identified by the Mayor's Agent as the proper party to bring the application for subdivision. What impact the failure of the Applicant to properly identify itself at the onset of the process is uncalculatable, and this Decision and Or&r does not assume the HPRB would decide one way or the other if presented with an accurate understanding of the legal entity of the Applicant.

2. Some weight is accorded the HPRB's 1995 decision, where the Board inspected the site, allowed all parties to make their presentations, and, after careful deliberation and consideration of the context of the rural enclave, voted against the design approval and subdivision.

3. However, the Application fails primarily for the following reasons:

A. The Applicant and the Applicant's witnesses credibility is strained. Mr. McClain failed to disclose the true identity of the applicant, since the HPRB's decisions to allow the project to go forward were based on the false premise that it involved financial loss to the original applicant, Greystone Associates, L.P. Moreover, his testimony related solely to economic hardship, which was not listed as a reason for subdivision, as all parties agree, and is, therefore, irrelevant to the decision in this case. Both Messrs. Cannada and Katen testified that they were engaged as architects for the project, and Ms. Adams is associated with the law firm representing the applicant. The applicant called no independent expert witnesses to support its case. Accordingly, their testimony is given little or no weight.

B. The opponents to the subdivision, including ANC 3C, correctly pointed out that the criteria established in the National Bulletin for documenting rural historic landscapes, which are consistent with the purposes of D.C. Law 2-144 to retain and enhance historic landmarks, have not been met by the applicant. Specifically, the applicant has failed to show that the widening and resurfacing of historic gravel roadways, diminution in the size and shape of open space, the erasure of boundary demarcations, the flattening of land contours, the loss of trees and vegetation, the construction of new structures that are not accessory in nature, and the loss of views and rural setting enhances or restores the historic enclave. Exh. 20/O at 23. Indeed, the very designation of the historic enclave by the 1989 Board indicated:

“This landmark reflects an unusual relationship of each structure to its site and within this context, an overall dynamic relationship between the four structures that simultaneously respects each house and site while allowing the group to function as an harmonious rural enclave within the metropolitan boundaries of Washington.”  
(emphasis added)

C. While a clear definition of “rural enclave” in the context of D.C. Law 2-144 was not produced during the hearing by any witness, the intent of the 1989 designation by the HPRB is clear. The HPRB bound four properties together in a manner akin to one historic landmark, and the granting of this application for subdivision would not retain that historic landmark as a rural enclave.

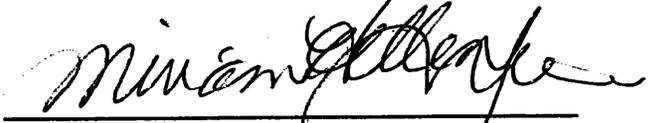
D. The matters presented by Advisory Neighborhood Commission 3C in the hearing before the Mayor's Agent, including standing of the Applicant, concern regarding the affect of development on the rural enclave and the ANC's recommendation against the approval of the subdivision have been given great weight.

**ORDER**

Accordingly, it is as of this 30th day of December, 1997,

**ORDERED** that, for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Application for Subdivision of Lot 3, Square 2224 be, and is hereby, **DENIED**; and it is

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

  
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**Miriam Hellen Jones**  
**Mayor's Agent for D.C. Law 2-144**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the Decision and Or&r was mailed, postage prepaid, on this 10<sup>th</sup> day of Feb, 1998, to Richard L. Aguglia, Hunton & Williams, 1900 K Street, N.W., Washington, D.C. 20006-1500; and to Christopher H. Collins, Wilkes, Artis, Hedrick & Lane, 1666 K Street, N.W., Washington, D.C. 20006-2897; and to Advisory Neighborhood Commission 3C, Attn: Peter Espenschied, 2737 Devonshire Place, N.W., Washington, D.C. 20008.



Recita Miles  
Recita Miles, Program Assistant for  
Mayor's Agent