

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
Office of Adjudication
614 H STREET, N.W., #619
P.O. Box 37140
WASHINGTON, D.C. 20013**

IN THE MATTER OF:

**LOTS 1189 AND 1190 -- SQUARE 1320
3905 Mansion Drive, N.W.**

**Application for Theoretical
Subdivision of the
Hillandale Mansion, an Historic
Landmark.**

**HPA No. #98-186/
S.O. #981**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Background

Ricardo and Isabel Ernst and Hillandale Mansion, L.L.C. (the Applicants) filed an application for a theoretical subdivision into two lots for the historic Hillandale mansion and the mansion lot. The property site is identified for legal purpose as lots 1189 and 1190 (formerly Lot 1130) in Square 1320, with a single large residential premises address of 3905 Mansion Drive, N.W. in Washington, D.C.

The Applicants were referred to the Historic Preservation Review Board (the HPRB) for its recommendation, pursuant to D.C. Code, Sec. 5-1006(b). At its public meeting held on March 26, 1998, the Board voted to adopt the Staff Report of the Historic Preservation Division of DCRA, Building and Land Regulation Administration, and recommended to the Mayor's Agent that this subdivision be approved as consistent with the requirements of D.C. Law 2-144, the Historic Landmark and Historic District Protection Act of 1978, (the Act), codified at D.C. Code, Sec. 5-1001, et seq. The administrative hearing was conducted consistent with the requirements of District of Columbia Municipal Regulations (DCMR) Title 10, Chapter 25, and in accordance with the D.C. Administrative Procedures Act, D.C. Code Sec. 1-1501 et seq.

Pursuant to D.C. Code, Sec. 5-1006(c), Subdivisions, a public hearing was held on May 19, 1998, before Rohulamin Quander, the Mayor's Agent for Historic Preservation. Notice of the public hearing was published in the D.C. Register. The Applicant was represented by the Law Offices of Greenstein DeLorme and Luchs, P.C., with Jeannine

In Re Hillandale Mansion, HPA #98-186/S.O #981

Rustad, Esquire, and Jacques B. DePuy, Esquire, as co- counsel.

The Applicant tendered a comprehensive pre-hearing submission, titled, "Statement of Reasons in Support of Application for a Theoretical Lot Subdivision for the Hillandale Mansion" (Exhibit 16), complemented with fifteen (15) exhibit classifications, some of which were several pages unto themselves. The pre-hearing submissions included: lot surveys and plats; illustrated current layout of the mansion; before and after photographs¹; assorted news articles about the history of the mansion; brochures, newspaper advertisements, and other prior unsuccessful efforts to sell the mansion as a single family residence; a structural survey; and a Declaration of Covenants and Restrictions of the Hillandale Mansion Properties. The latter document was recorded on March 30, 1998, to assure that, if the subdivision is approved by the Mayor's Agent, particular terms and conditions will be observed, including a requirement that the property cannot be divided, subdivided or separated into smaller lots by the current or any future owners.

Since the subdivision involves a property which is individually designated in the District of Columbia Inventory of Historic Sites, pursuant to D.C. Code, Sec. 5-1006, no subdivision can be recorded without approval by the Mayor's Agent following a public hearing. It is the contention of the Applicants that the proposed subdivision is necessary and in the public interest as consistent with the preservation purposes of the Act.

The record was officially closed on June 2, 1998, upon receipt of the Applicants' Proposed Findings of Fact, Conclusions of Law, and Order. The requested theoretical subdivision would permit the Hillandale mansion to be used as two single-family, semi-detached houses (House "A" and House "B"). For the reasons that follow, the application for a theoretical subdivision is **GRANTED**.

FINDINGS OF FACT

Based upon the total record herein, and the sworn testimony and evidence received during the administrative hearing, the Mayor's Agent for Historic Preservation, now makes the following Findings of Fact:

Background

1. The Hillandale mansion is a part of a planned unit development (PUD) which was established by Zoning Order No. 305 on January 10, 1980. Pursuant to Zoning Order No. 305, the Hillandale mansion was to be used as a single family residence and/or club-type

¹ The "before" photographs were a cross-section of photographs assembled from various sources which depicted how the mansion used to look during its occupied phase, while the "after" photographs were generally as it looks today in its seriously deteriorated condition.

facilities for the PUD. (Exhibit 16)

2. In 1989, SUR Developers/Builders (SUR) filed an application (Z.C. Case No. 89-10M/79-14F) with the Zoning Commission to modify the PUD, proposing to raze the mansion and develop the mansion site with 13 detached single-family houses and to rezone the site from R-1-B to R-4. By Zoning Order No. 658, issued on April 16, 1990, the Zoning Commission approved the SUR application. However, no razing of the mansion or redevelopment of the site occurred at that time. (Exhibit 16)

3. On June 20, 1990, the mansion was designated by HPRB as a D.C. Historic Landmark, and was nominated for the D.C. Inventory of Historic Sites and recommended for nomination to the National Register of Historic Places. (Exhibit 16)

4. In September 1992, Shalom Baranes Associates, Architects, received conceptual approval from HPRB to convert the mansion to condominiums and to develop townhouses on the mansion site. However, no townhouse conversion ever occurred. (Exhibit 16)

5. On January 22, 1998, HPRB approved in concept an application to divide the historic landmark into two single-family houses. This action by HPRB authorized the establishment of a new front door for House "A" and a new entryway for House "B", the establishment of a new driveway for House "A", the construction of retaining walls for the driveway and a paved circular turnaround and the repair and replacement of portions of the terra cotta tile roof. (Exhibit 16)

6. In February 1998, the Applicants obtained a division of the site for tax and assessment purposes. The Applicants also obtained approval from the Zoning Commission for a modification of an approved PUD to establish two semi-detached dwellings in the mansion (Zoning Commission Case No. 98-7M/89-10M). (Exhibits 1, 8 and 16)

Application for Theoretical Subdivision

7. On March 26, 1998, the HPRB took favorable action to recommend that the theoretical lot subdivision is not inconsistent with the purposes of the historic preservation law and referred the matter to the Mayor's Agent for Historic Preservation for a public hearing. (Exhibit 16)

8. A public hearing was held before the Mayor's Agent on May 19, 1998. At the hearing, the following witnesses testified in support of the application: Isabel Ernst, Susan Walters, Richard Ward, and Emily Hotaling Eig.

9. Isabel Ernst, the current owner of House "A", testified that:

a) She and her husband, Ricardo Ernst, purchased House "A", known as Lot 1189 in Square 1320, on March 20, 1998. They had extensively researched the mansion, including its history and architecture, prior to purchasing House "A".

b) It was their intention to restore the mansion to its original state and, upon completion, to use House "A" as their primary residence.

c) A Declaration of Covenants and Restrictions had been recorded against the property to ensure that the mansion retains its character and will not be further subdivided. (Exhibit 15)

10. Susan Walters testified that:

a) She is a principal of Hillandale Mansion, L.L.C., owner of House "B" and previous owner of the entire mansion, as well as a real estate agent with Pardoe Real Estate, Inc., who has marketed the property.

b) Dating back as far as 1980, all prior efforts by Pardoe Realty or any other realtor, to market the property as both a single family home (Exhibit 10) or as two semi-detached, single family homes (Exhibit 11) proved unsuccessful due to: (1) the close proximity of the townhouses surrounding the mansion; (2) the fact that the mansion did not have its own private entrance; and (3) the size (over 22,000 square feet) and deteriorated condition of the mansion.

c) The Declaration of Covenants recorded against the property, specifies that the Declaration would: (1) keep the historic facade of the mansion uniform between Houses A & B; (2) provide access to both residences; and (3) ensure that no future division of the property would occur.

d) The damage and deterioration to the mansion, which has been vacant since 1978, was extensively due to the elements and vandalism. (Exhibit 4, photographs 9a-22)

e) That the property has been split into two Assessment and Taxation Lots (Exhibit 1) and that the Zoning Commission has approved the application to modify the PUD to allow the subdivision of the mansion.

11. Richard Ward, a building contractor who specializes in historical preservation restoration, testified that:

a) He became involved with the mansion in October 1997, and is now under

a contract with the Ernsts (Applicants) to restore and renovate House "A", including the interior and exterior, all construction and landscaping.

b) He has also contracted with Hillandale Mansion, L.L.C. to restore the exterior of House "B".

c) An engineering condition analysis was performed revealing that the mansion is structurally sound, (Exhibit 14); a party wall will be constructed to divide the mansion into two single-family homes, (Exhibit 2); and he has worked closely with the owners of the mansion, the surrounding neighbors, the Advisory Neighborhood Commission (ANC), Zoning Commissioner, HPRB staff, and the District of Columbia structural engineering personnel.

12. Emily Hotaling Eig, President, EHT Traceries, Inc., and architectural historian, was called as the Applicants' expert witness and was qualified as an expert in architectural history. Ms. Eig submitted a prepared statement, which was accepted as Exhibit 17. According to her prepared statement and sworn testimony:

a) She has been involved with the preparation of this landmark application since 1990, a copy of which was submitted and accepted as Exhibit 18.

b) Although the act of subdivision typically is an inappropriate action, in the case at hand, where the historic building has been abandoned and suffered extensive damage and deterioration, it is the only means to re-instate the mansion to its intended use.

c) The original Hillandale estate has already been divided into more than 200 separate lots, upon which many townhouses, semi-attached and single-family dwellings have been built. The now proposed subdivision to divide the mansion at an appropriate point and the mitigation of the impact of the proposed subdivision will be achieved by the Applicants with good planning.

d) The mansion would be protected from further subdivision by the Declaration of Covenants. Further, the Declaration required the review and approval of the D.C. HPRB prior to any action that would affect the exterior of the mansion.

13. Jonda McFarlane, Chair, Advisory Neighborhood Commission 2E, submitted a letter, dated May 6, 1998, in support of the proposed subdivision. In the letter it was stated that at ANC 2E's regularly scheduled meeting, held on May 5, 1998, a comprehensive resolution was unanimously adopted to allow the Hillandale mansion site to be subdivided into two theoretical lots, provided that there is compliance with the terms and conditions of

the PUD Order, the exterior construction restrictions and covenants of record, and there is compliance with the terms of an Agreement entered into between the Ernst Family and the Hillandale Homeowners Association. (Exhibit 19)

14. There was no testimony or other evidence in opposition to this application.

CONCLUSIONS OF LAW

The Mayor's Agent, after carefully reviewing the entire record filed herein, and taking into consideration the existing law governing this issue, now reaches the following Conclusions of Law. Under D.C. Code, Sec. 1-1509(b), the burden of proof is on the applicant requesting a theoretical subdivision. The issue 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 1978). Specifically, D.C. Code, Sec. 5-1001 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 adaption 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, Sec. 1-261(d) and Wolf v. District of Columbia Board of Zoning Adjustment, 397 A.2d 936 (1979).

1. For the reasons that follow, the Mayor's Agent concludes that the Applicants have met their burden of proof.

2. Despite numerous efforts to market the Hillandale mansion as a single-family home, the mansion has stood vacant for approximately twenty years. Consequently, it has severely deteriorated and is in poor condition. The Mayor's Agent further concludes that the proposed subdivision will accommodate the restoration and renovation of the mansion for use as two semi-detached, single family homes.

3. The Applicants have shown that the use of the mansion as a single family residence has proven infeasible. All attempts to market the property as a single family home since 1980 have failed. The only specific previous plans for the mansion have included a development of a multi-family use of the mansion and further development of the mansion property, or the outright demolition (i.e., razing) of the mansion. The Mayor's

Agent further concludes that this option, although it did not materialize, was both infeasible and inappropriate in light of the Act.

4. The Mayor's Agent further concludes that the Declaration of Covenants recorded against the property will ensure that (a) the mansion is preserved as a single family home and (b) no further subdivision of the property will occur. The Declaration of Covenants further requires review and approval of the D.C. HPRB prior to any action that would affect the exterior of the mansion.

5. The Mayor's Agent further concludes that the theoretical subdivision of the lots and the mansion is appropriate and consistent with the purposes of the Historic Landmark and Historic District Protection Act of 1978, and should be approved at this time.

ORDER

Accordingly, it is as of this **11th day of June, 1998,**

ORDERED that, for the reasons set forth in the foregoing Findings of Fact and Conclusions of Law, the Application for Theoretical Subdivision of Lots 1189 and 1190 (formerly Lot 1130), Square 1320 be, and the same is hereby, **GRANTED**, and it is

FURTHER ORDERED that pursuant to D.C. Code An. Section 5-102(a), the Decision and Order shall not become final until fifteen (15) days after issuance.

ROHULAMIN QUANDER
ADMINISTRATIVE LAW JUDGE,
AND MAYOR'S AGENT FOR HISTORIC
PRESERVATION FOR THE DISTRICT OF
COLUMBIA

Copies to:

Mr. and Mrs. Ricardo Ernst,
 Property Owners, House "A"
 c/o Jeannine Rustad, Esquire
 Jacques B. DePuy, Esq.
 Greenstein DeLorme and Luchs, P.C.
 1620 L Street, N.W., Suite #900
 Washington, D.C. 20036-5605

Hillandale Mansion, LLC
 Property Owners, House "B"

c/o Susan M. Walters, Principle
4640 Charleston Terrace, N.W.
Washington, D.C. 20007

Stephen J. Raiche, Chief
Historic Preservation Division
DCRA, Room #305
Washington, D.C. 20001