

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE  
801 NORTH CAPITOL STREET, N.E., THIRD FLOOR  
WASHINGTON, D.C. 20002**

**In the Matter of:**

**HPA: 00-564**

**Barbara J. Bedford  
3142 Military Road, N.W.  
Washington, D.C. 20015**

**Location:  
942 Westminster Street, N.W.  
Washington, D.C.**

**DECISION AND ORDER**

**Background**

This matter came before Rohulamin Quander, Senior Administrative Judge and Mayor's Agent for Historic Preservation on June 4, 2003, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Official Code, § 2-509 (2001 ed), and the D.C. Historic Landmark and Historic District Protection Act of 1978 (the Act), D.C. Law 2-144, codified at D.C. Official Code, § 6-1101, *et seq.*, and upon the request for an administrative hearing filed by Barbara J. Bedford, homeowner and Applicant (the Applicant).

The Applicant seeks approval for the already completed installation of approximately 20 vinyl-type replacement windows on the front of her home located within the Greater U Street Historic District (the Historic District), which residential building contributes to the significance of the Historic District. By letter, dated October 29, 2000, the Applicant requested an administrative hearing before the Mayor's Agent, after the Historic Preservation Review Board (HPRB or the Board) determined, at its monthly meeting held on September 28, 2000, that the alteration window installation was incompatible with the architectural significance of the Applicant's structure. Further, the HPRB adopted the staff report, which concluded that the application was inconsistent with the purposes of the historic preservation law, and likewise incompatible with the character of the Greater U Street Historic District. Because the Applicant failed to appear for the requested hearing, which convened on January 3, 2001, the Mayor's Agent entered a default against the Applicant and issued a Decision and Order on March 1, 2001, upholding the recommendations of the HPRB. He likewise adopted the staff report, dated September 28, 2000.

The Applicant, who owns the realty as rental property but resides elsewhere, has requested reconsideration of the Decision and Order, noting that because the notice of hearing was sent to the rental property and not to her registered address of record at 3142 Military Road, N.W., Washington, D.C., she never received the notice for the initial hearing. Further, she has not been accorded an opportunity to present her case to the Mayor's Agent, including setting forth evidence to support the key issue of her case, i.e., a claim of unreasonable economic hardship, as a legally sufficient justification for not having to change the already installed windows. For good cause shown regarding whether the Applicant received proper prior notice of the Mayor's Agent's hearing, the Mayor's Agent vacated the default Decision and Order and

ordered that another hearing be set for June 4, 2003, at which time this matter was heard on the merits.

In addition to the testimony of the Applicant, a representative from the Westminster Neighborhood Association (WNA), an incorporated 501(c)(3) District of Columbia non-profit association representing approximately 150 households, testified in opposition to the application, as did Philip C. Spalding, Advisory Neighborhood Commissioner for ANC 1-B, in which district the property is located.

### **Summary of the Evidence**

The Applicant purchased this home from a family member in May 1995 for approximately \$38,000.00, and since then has continuously rented it out, primarily to college students. Applicant completed a major renovation to the property in 2000, which included replacing 20 wooden windows (front and rear) with vinyl windows at a recited cost of \$7,983.00.

Because the house and window replacements were completed in Historic District, the Applicant received a civil citation on or about August 1, 2000, at which time HPRB staff from the D.C. Office of Planning (DCOP) informed her that her window replacement installation lacked the prerequisite and mandatory construction permit, and was otherwise not in compliance with the law and regulations which govern the replacement of windows in houses located in the Historic District. The Applicant is now asserting a claim of unreasonable economic hardship as the basis for seeking a favorable ruling from the Mayor's Agent.

### **FINDINGS OF FACT**

Based upon the entire record established in this matter, the Mayor's Agent makes the following Findings of Fact:

1. Barbara J. Bedford, the Applicant, purchased from a family member the premises known as 942 Westminster Street, N.W., Washington, D.C., in May 1995, at an approximate cost of \$38,000.00. All the houses on this street, which is only one block long, were built in the late 19<sup>th</sup> Century and generally contain similar physical characteristics, including three stories in the height, with a multi-story protruding bay area. The windows on the front of each house are all typically constructed in the bay area, some facing towards the front, and others to the sides of the protruding bay. The subject property is no different from the rest of the houses, all of which are premises under the control of the renovation provisions of the Act.
2. On or about June 5, 2000, the Applicant contracted with A U.S. Windows Corporation to replace all the windows in the property with vinyl windows. At least fourteen (14) of those windows face the front of the street. The cost of the replacement was \$7,983.00.<sup>1</sup> (Applicant's Exhibits #1 and #2)

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<sup>1</sup> Although the recited cost for the window replacements was \$7,983.00, the three installment payments do not add up to \$7,983.00, suggesting that perhaps some adjustments were made in the contract price during the process. Further, the paperwork is unclear regarding the exact number of windows that were located on the front and on the rear of the premises. However, this

3. Although the preprinted contract form specifically recites, “Furnish and install vinyl replacement windows for the above home . . .”, when contractor’s representative checked off the window tally on the form, said person inserted the tally at the location immediately adjacent to “wood” as the type of material to be used for the new windows. This indication was clerical error, as both Applicant and contractor knew and intended that the replacement windows were to be made solely of vinyl, and not wood.

4. This contract is silent as to which party was required to secure the necessary installation permits. However, pursuant to the Act in particular and D.C. law in general, the ultimate obligation to secure the relevant construction permit rests upon the homeowner. In certain instances that obligation can be specifically contracted away to the installing contractor as a part of the services to be provided under the contract.

5. Numerous owners of residential properties in this immediate community have renovated their houses within the last couple of years, and have generally met the requirements of the Act, including adhering to the window standard guidelines issued by HPRB.<sup>2</sup>

6. WNA submitted numerous photographs of the 900 block of Westminster Street, which included close-ups of the windows of both 940 and 944, the immediately adjacent houses, as well as a number of other properties under renovation in the immediate area. All the photographs reviewed appear to show that all of these properties contain recently installed windows which are in compliance with the Historic District’s requirements for replacement window installations.<sup>3</sup>

7. Barbara J. Bedford, the Applicant, testified and based upon her testimony, the Mayor’s Agent finds the following facts:

- a) The Applicant is retired and lives on a combination of her retirement income and net proceeds from two rental properties, including the one which is the subject of this proceeding. She resides at 3142 Military Road, N.W., which home is titled in both her and her husband’s name. The tax-assessed value of this property is \$447,000.00. While the original mortgage is fully paid, she has a home equity loan on her residence with an approximate principal balance of \$7,000.00. The monthly payment on this mortgage is approximately \$100.00 per month.
- b) The Applicant’s gross rental income from the subject property at 942 Westminster Street is \$1,600/month.

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Mayor’s Agent decision is only concerned with those windows located on the front of the building.

<sup>2</sup> See *Rules Relating to the Repair and Replacement of Windows in Historic Landmarks and Historic Districts*, formally adopted by the HPRB on January 25, 2001, but used widely as a window standard guideline for a number of years before the *Rules* were adopted.

<sup>3</sup> See WNA Opposition to Application regarding 942 Westminster Street, N.W.

- c) The Applicant's gross rental income from the four-unit apartment at 1246 Hobart Terrace, N.E., which she purchased in 1989, is \$3,200.00/month, with a current mortgage balance of approximately \$90,000.00. She pays monthly mortgage payments of approximately \$800.00.
- d) The Applicant is a hands-on landlord, coming to the property often to inspect and to clean.

8. The historic designation status of the Greater U Street Historic District has been a matter of public record since 1998. The historic status has been widely promoted by both individuals in the community and several community organizations, including the WNA, through both its monthly meetings and newsletters.

9. The Applicant, as a property owner, has a duty to be aware of the laws and regulations affecting her property, and to likewise take all relevant steps to be in compliance with said laws. If a property owner has any doubts about what is required before an installation or construction can be undertaken, an inquiry to the D.C. Department of Consumer and Regulatory Affairs, prior to undertaking the replacement of the windows in question, would have made her aware of these historic restrictions.

10. The subject property carries a proposed assessed value for tax purposes of \$349,500.00 for fiscal year 2004, which represents an increase of \$132,000.00 from the prior fiscal year. Most habitable real properties in this immediate area are currently selling in the range of \$500,000.00 to \$600,000.00.

11. Within just the last few years, numerous owners of properties in this community have renovated their houses, and most owners have generally met the Act's requirements, including adhering to the window standard guidelines adopted by the Board.<sup>4</sup> As well, the government has an ongoing compliance effort, which includes working with homeowners to secure their voluntary cooperation, and bringing civil actions and imposing civil penalties upon those who are uncooperative or who refuse to abate the violations when directed to do so.

12. While it is generally not necessary to obtain a construction permit to install replacement windows on most buildings in this jurisdiction, whenever exterior renovations are performed, including the replacement of windows or roofs in a historic district, a permit is required, and the underlying application for the permit must have been reviewed and approved by the Historic Preservation Office, prior to the issuance of the permit.

13. Phil Spalding, the Advisory Neighborhood Commissioner for 1B02, the relevant area, testified in his personal capacity against the Application and in support of the HPRB Decision of June 27, 2002, which declined the Applicant's request. He requested that the record be left open briefly for receipt of a letter from ANC Commission 1B. On June 7, 2003, the Commission filed a letter, but took no official position whether this Application should be granted or denied, noting further that neither the Applicant nor the opponents had appeared before the ANC at its regular meeting to present their respective positions. Instead, the letter, which was co-signed by Deborah R. Thomas, Chair, and Philip C. Spalding, Secretary, reiterated the Commission's

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<sup>4</sup> See *Rules Relating to the Repair and Replacement of Windows in Historic Landmarks and Historic Districts*, adopted by the HPRB on January 25, 2001.

established position of being on record in support of the D.C. Historic Preservation Office's guidelines for window repair and replacement in historic districts.

14. Lynn Johnson, a representative of the Westminster Neighborhood Association (WNA), presented several photographs and documents for the record, and on behalf of the association, also testified in opposition to the granting of this Application as inconsistent with the Act and governing regulations, as well as the recognized *Guidelines* and *Standards* that govern the installation of replacement windows in the Historic District.

15. Most single family houses in this area, in moderate but not majorly renovated condition, are currently selling in the \$500,000.00 to \$600,000.00 range. Based upon photographs submitted to the Mayor's Agent, Applicant's property appears to be the size of most other large single family homes in the immediate area. If Applicant elected to sell at the current market rate, it is reasonable to assume that the property would sell at market value, and gross in the above-noted dollar range.

### DISCUSSION

In 1997, the Board adopted the District of Columbia Historic Preservation Guidelines, including a documented titled, *Windows and Doors For Historic Buildings* (the *Guidelines*). It was not long before the Board realized that the *Guidelines* were quite strict, and did not accord much room for deviation. The Board determined that flexibility needed to be incorporated into the *Guidelines*, but that with regard to the principal facades, most typically located on the front of the buildings, it would adhere to a strict policy of mandating that those windows must be in full compliance with the *Guidelines*.

Under the *Guidelines*, window replacements must reasonably match the prior historic windows in all respects – configuration, method of operation, profile, dimension, material, and finish. Adherence to this policy has been the procedure by which the Board has consistently assessed window replacement applications in historic districts in the District of Columbia.

While a more flexible window replacement policy was known within the historic preservation community, and already being followed for a few years by the Board, it was not until January 25, 2001, that the Board formally adopted the standards for window replacement, which carried the title of *Rules Relating to the Repair and Replacement of Windows in Historic Landmarks and Historic Districts* (the *Standards*). The public notice announcing the Board meeting at which the *Standards* were to be considered for final approval, stated:

These *Standards*, represent a refinement and more precise codification of the principles articulated in the *District of Columbia Historic Preservation Guidelines: Windows and Doors for Historic Buildings*, adopted by the Board in 1997. When approved by the HPRB, the *Standards* will establish rules for repair, maintenance, and replacement of windows in historic landmarks and contributing buildings within historic districts. The *Standards* will also guide the staff and applicants in the approval of certain window replacement projects under the authority delegated by the Board.

At its monthly meeting held on September 28, 2000, the Board adopted the staff report, which concluded that this Applicant's application to install vinyl windows on the front façade of

the above-noted property was not consistent with the purposes of the Act, as the alternation did not adhere to the windows replacement policy for the primary facades of row buildings located in historic districts. In this action, the Board followed its own 1997 *Guidelines* and the pending *Standards* for principal facades.<sup>5</sup>

The Applicant filed a timely request on October 29, 2000, for a hearing before the Mayor's Agent, asserting that to replace the newly installed vinyl windows with wooden windows would impose an unreasonable economic hardship, from which circumstance she requested the Mayor's Agent to grant her relief. In support of the economic hardship claim, the Applicant submitted several documents related to the purchase and operation of the realty located in the Historic District and her financial situation, including: the price she paid, the monthly mortgage obligation, the current assessed valuation, documentation of her own income, and the contract, but no estimates for the replacement costs for windows which would be in compliance.

Unreasonable Economic Hardship is defined as circumstances where 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 or owners, as determined by the Mayor, when failure to issue a permit would place an onerous and excessive financial burden upon the owner(s).<sup>6</sup> Based upon the record herein, and despite her personal financial circumstances at this moment, the Applicant had not claimed that she is a low income owner.

Despite Applicant's claim of a lack of knowledge of the historic preservation regulations governing the replacement of these windows, her ignorance of the law cannot be permitted to rise to the level of a valid legal defense. Such a defense, if permitted, would undermine and eventually destroy the effectiveness of the law and regulations. There has been significant renovation in this neighborhood during the last few years, with most property owners having voluntarily complied with the requirements for replacement of windows. Accepting a lack of knowledge defense, as posed by the Applicant, would encourage other property owners to attempt to circumvent not only these window replacement requirements and then use this defense if caught in violation, but would also lead to area-wide disobedience of laws that were adopted for legitimate reasons.

The Mayor's Agent has carefully examined all documents submitted, and assessed each aspect of this present situation, including the claim of unreasonable economic hardship, and is of the opinion that such hardship, although asserted, has not been established. That the Applicant has sustained a significant inconvenience, which will cost her a financial outlay to correct, cannot be denied. But the Applicant's unilateral voluntary actions of June 2000, likewise cannot be condoned. The Applicant must still abate the violation, and come into legal compliance with the Act, the regulations, and the policy regarding appropriate standards for replacing windows in the historic district.

The implementation of this Mayor's Agent's ruling does not impose an impermissible taking upon the Applicant, as the desired end result will be a substantially improved residential

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<sup>5</sup> See the *Standards*, Sec. V, Item I, 2(a).

<sup>6</sup> See 10 DCMR 2599, Definitions.

property, with a concomitant increase in its net worth, by reason of being in compliance with the law and regulations previously adopted for the Historic District. If necessary, Applicant can sell the property, as the value will be enhanced by the presence of windows which are in compliance with the law.

### CONCLUSIONS OF LAW

The foregoing having been considered, the Mayor's Agent now makes the following Conclusions of Law:

1. The Applicant, who bears the burden of proving that the window alterations that she unilaterally implemented in 2000 were consistent with the purposes of the Act, has not met that burden by the preponderance of the evidence presented to the Mayor's Agent.
2. The vinyl windows were installed without the Applicant's first having obtained a construction permit. The Mayor's Agent will not condone this course of conduct.
3. The HPRB, consistent with the law and its established regulations and polices, including the *Guidelines* and *Standards*, was correct when it adopted the staff report and denied the Applicant's request to retain the non conforming windows on the primary façade. The Mayor's Agent adopts the Board's position as that of the Mayor's Agent.
4. The Applicant has asserted that a denial of her request by the Mayor's Agent will impose an unreasonable financial hardship upon her. However, the Applicant has failed to present sufficient evidence showing what the cost of replacement of the windows would be. Further, the Mayor's Agent, while not unmindful of the financial inconvenience that an order to replace these almost new windows will impose, concludes that unreasonable economic hardship has not been established. Nor can the Mayor's Agent ignore the effect that permitting Applicant to keep these windows will have on other property owners in this area who spent the additional costs necessary to comply with the historic preservation restrictions with respect to window replacement.
5. The Mayor's Agent further concludes that Applicant must replace all of the windows which are visible from Westminster Street, which number is at least 14 windows, but that all other vinyl windows, notably those installed on the rear of the property, may remain in place.
6. The Applicant is neither without a remedy, nor has she been deprived of her property by a regulatory taking. The regulations have a sound basis for why they were adopted, and the Applicant's election to voluntarily own a property in the Historic District subjects her to abide by the law, regulations, and standards that govern the exterior of the premises located in the Historic District. If the Applicant does not wish to abide by these standards, and given the value of real property located in the Historic District, there is a great likelihood that she can sell the realty and realize a sales price return far greater than the \$38,000.00 she initially paid in 1995, plus any incidental costs incurred to renovate the property to maintain and upgrade its habitability.
7. The Mayor's Agent concludes that, for the foregoing reasons noted above, this Application for a permit to install non-conforming windows on the façade of this contributing building located in the Greater U Street Historic District must be denied.

**ORDER**

**ACCORDINGLY**, it is this **8<sup>th</sup> day of August, 2003**:

**ORDERED** that the Application of the Applicant for a construction permit that would allow her to retain the non-conforming windows on the façade of the contributing building, located at 942 Westminster Street, N.W., is **DENIED**, and that the claim of unreasonable economic hardship is likewise rejected; and it is

**FURTHER ORDERED** that the Applicant is directed to remove all of the vinyl windows which can be seen from Westminster Street. Such removal and replacement installation shall occur within one hundred and twenty (120) days of the date when this Order becomes effective. In their place new wooden windows are to be installed that are compatible with the character of the Historic District, and likewise in compliance with the Act, the regulations, and the current *Standards* which address and govern the installation of windows in the Historic District; and it is

**FURTHER ORDERED** that any extensions of time for such removal and installation may be given to Applicant by the D.C. Office of Planning, Historic Preservation Office staff. To the extent that Applicant does not remove and install the windows within the time as stated herein, or any extensions thereof, she shall then be immediately subject to the imposition of a civil infraction for construction without a permit in a historic district, which infraction carries a civil penalty of \$500.00 for each citation issued; and, it is

**FURTHER ORDERED** that the Applicant is directed to work with the D.C. Office of Planning, Historic Preservation Office staff, either by amending the initial construction permit application or by filing a new application for window installation, which application must comply with all of the historic district guidelines, in order to come into full compliance with the Act. Further, the staff may well be able to recommend compatible windows, which are less expensive than the Applicant's resources indicate and it is

**FURTHER ORDERED** that, pursuant to 10 DCMR 2523.4, this Order will take effect fifteen (15) days from the date of its service as evidenced by the following Certificate of Service, pursuant to 10 DCMR 2503(c).

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**ROHULAMIN QUANDER,**  
**Senior Administrative Judge, D.C. And**  
**Mayor's Agent For Historic Preservation**

**CERTIFICATE OF SERVICE**

I hereby certify that on the **8<sup>th</sup> day of August 2003**, a copy of the foregoing Decision and Order was sent via first class, postage prepaid, via U.S. mail, or via e mail or both, to the following:

Barbara J. Bedford, *pro se*  
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Washington, D.C. 20015  
Applicant

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**Certifying Officer**