In the Matter of: Woodley Park Guest House  
C/o Raymond and Laura Saba, co-owners, pro se  
2647 Woodley Road, N.W.  
Washington, D.C. 20008

Applicants

DECISION AND ORDER

Background

This matter came before Rohulamin Quander, Administrative Judge and Mayor’s Agent for Historic Preservation (the Mayor’s Agent) on June 25, 2002, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Code, Sec. 2-509 et seq. (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. Code, Sec. 6-1101, et seq., and upon the request for an administrative hearing filed by Raymond Saba, Managing Partner of the Woodley Park Guest House, and Applicants (Applicants). The guesthouse is located in the Woodley Park Historic District (historic district).

Applicants seek the Mayor’s Agent’s after-the-fact approval of window installation work completed in 2001, including ordering the issuance of a post-completion construction permit. On March 28, 2002, the Historic Preservation Review Board (the Board) conducted its monthly meeting and considered the application. The Historic Preservation Office staff (the staff) recommended that the Board adopt the staff report, which recognized that Applicants had completed virtually all of the work, even though some of it was not consistent with the issued permit or approved permit drawings. Further, pursuant to the staff report, the Board voted to reject the replacement windows as neither consistent with the original windows nor with the Board’s prior window-related directive issued in 2000.¹

On April 18 2002, Applicants requested an administrative hearing before the Mayor’s Agent, asserting that the window replacements were consistent with the purposes of the Act, particularly with regard to the law’s intent “to retain and enhance

¹ The Mayor’s Agent was not privy to the Board’s 2000 decision rejecting Applicants’ window proposal. However, during the hearing the government’s witness testified that the Board rejected Applicants’ proposal at that time, on the basis that it was inconsistent with the building’s architectural style.
those properties which contribute to the character of the historic district and to encourage their adaptation for current use”, and that a failure to issue a permit would result in unreasonable economic hardship to Applicants.

**Summary of the Evidence**

In April 2000, Raymond and Laura Saba, husband and wife, purchased an operating 15-room guesthouse and business, located in what had initially been a large single-family dwelling. Although open for businesses at the time of purchase, the 50-year operation had become very rundown and business was slow, primarily due to neglect of the physical facilities, which severely reduced patronage. Although situated in the historic district, the prior owner maintained the physical facility in a random manner, which was inappropriately out of compliance with the expectations of the historic district. The guesthouse is located directly across the street from the Marriott Wardman Park Hotel and almost diagonally adjacent to the elevator entrance of the Woodley Park-National Zoo Metro Station.

The former condition of the premises did not endear referrals from either the Marriott or most of the local hotels. As well, there was much concern from the residents of the area that the presence of such a seedy appearing guesthouse might attract the wrong type of patronage, which was inconsistent with the character of the neighborhood. Many of the same residents who were historically concerned about the future of the then unimproved guest house, were also signatories on a petition Applicants filed at the hearing, which urged the Mayor’s Agent to approve the completed window replacements.

Applicants closed the guesthouse in September 2000, and for eight to nine months undertook a comprehensive renovation at a cost of at least $250,000.00, reopening in May 2001.

**FINDINGS OF FACT**

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

1. Raymond and Laura Saba (Applicants) purchased a 50-year ongoing 15-room guesthouse business premises located at 2647 Woodley Road, N.W., Washington, D.C., in April, 2000, at a cost of $600,000.00. The business currently operates under the name “Woodley Park Guest House”. The realty, a three-story Colonial Revival (1890s-1930s era) structure with a large basement and a rear addition, is located within the Woodley Park Historic District. As such, exterior renovation work on the premises is subject to the renovation provisions of D.C. Law 2-144.

2. Applicants closed the guesthouse for approximately eight to nine months between 2000 and 2001, and undertook and completed a comprehensive interior and exterior renovation of the premises. The upgraded facility rendered the premises more esthetically pleasing, and allayed the concerns of the neighbors, who, for the prior several years, had been alarmed by the seedy appearance of the guesthouse, as well as the questionable quality of customers who were being attracted to staying there. Further,
many of the unseemly appearing guests were also suspected of engaging in criminal activity.

3. Primary among the exterior renovations made were the restoration of the two level front porch, removal of the yellow paint on the bricks, relaying of certain portions of the concrete driveway and parking areas, and replacement of all of the façade windows.

4. Although there were certain issues raised during the renovation process about whether Applicants fully adhered to the Board and staff’s expectations and the approved renovation plans during the renovation process, this matter currently before the Mayor’s Agent is restricted to the appropriateness of the 25-window Applicants installed on the front façade of the premises and the three window small bay area located on the exposed right side, towards the front of the structure.²

5. At the time Applicants purchased the guesthouse, it was discovered that several of the windows, some of which were made of Plexiglas, were inoperable for a variety of reasons – haphazardly some were nailed or screwed shut; some had bars; some were stuck shut; some were badly deteriorated and falling out. As well, several windows were partially blocked with unsightly individual window air conditioning units, which were secured to the window frames by a variety of different methods.

6. The cost of the comprehensive Phase I renovation project is well in excess of $250,000.00, $45,857.00 of which was spent on the removal and installation of 25 windows, all of which were either on the front façade or the side bay area towards the front of the building. Included in that price were several usual and unusual components, which were required to prepare the existing window openings to receive the new windows. Among the preparations required prior to installation of the new windows were the following: a) removal of rotted windows; b) exterior repair to existing masonry openings; c) installation of wood framing for windows; d) exterior and interior caulking and trim; e) motor and electrical installations for the operable transoms at certain window locations; and f) removal and reinstallation of drywall, sills, and trim at certain window openings.³

7. The final 25-window project, which appears to be an Italianate style, included a combination of: a) oversized fixed panes (4); b) fixed panes (4); c) operable transoms (5); transom motors (5); d) fixed transoms (3); and e) casement egress (4).

8. During the period that the guesthouse was closed for renovation, Applicants worked quickly to complete the renovations, intending and seeking to reopen as quickly as possible, to restore and significantly expand upon the cash flow that existed

² Laura Saba testified that where other windows needed to be replaced, they were replaced in kind, and are not a part of this Mayor’s Agent proceeding.

³ In an effort to meet several suggestions from the Board about how to further restore the premises to be more compatible with the historic district, a Phase II renovation is being planned for a date in the near future, depending upon the cash flow. The most visible change on the front area will be the removal of the fire escape from the third level, when a second egress is installed in the rear of the premises.

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
prior to the premises being closed. As part of this process, they interacted with both the Board and staff, generally in a spirit of cooperation. Prior to purchasing the guesthouse, Applicants had neither an understanding of, nor an appreciation for the expectations and requirements of the historic preservation process.

9. Towards the end of the staff's oversight and review cycle, and with much work already completed or in the process of being reviewed and approved by Board and/or staff, Applicants became initially frustrated and later frightened by the entire process. The delays incidental to completing the process, i.e., getting formal window approval and obtaining a certificate of occupancy and guesthouse license, all conditions precedent to being able to reopen, posed both a significant financial drain upon their almost totally exhausted resources and a sense of uncertainty about whether Applicants would be able to successfully complete the process and restore the only revenue stream that they had available.

10. Further, Applicants had previously presented their plans for the window replacements to Historic Preservation Office, D.C. Office of Planning, staff in 2000. The plans were rejected as not being compatible with the existing architecture of the building. Although the Mayor's Agent was not privy to exactly what window replacement plans were previously presented for consideration and rejected, he is aware that Applicants proposed wooden windows that would: a) allow removal of barrier bars from all of the windows; b) replace those few Plexiglas windows with real glass; and c) replace several of the double hung windows with a large oversized fixed lower pane and either an operable or fixed multi-pane transom on the upper portion of the opening. Where operable transom windows were preferred, guestroom ventilation and increased guest security would be achieved by electrically opening the upper transom, while leaving the oversized fixed lower pane in place.

11. Two of the oversized front façade wooden windows, one located on the lower left and the other located in the second floor bay, already had a large fixed single lower pane, with an upper manually operated transom. Since these two windows were already in place, Applicants elected to replace them in kind, and to install the other new façade windows, using the same style as inspired by those two original windows. The main difference, however, is that both the single transom pane previously located on the

---

4 Although the government referred to the window style as "Italianate", it is unclear whether the style of windows actually installed in late 2001, were the same style as Applicants initially proposed in 2000, which the Board rejected.

5 Applicants Raymond and Laura Saba separately testified that their main concern for selecting the windows types installed related to guest security and potential liability to Applicants if care was not taken to assure guest safety. The amount of business and house burglary crimes in the immediate neighborhood had increased significantly, as indicated by the Metropolitan Police Report runs presented at the hearing for the Mayor's Agent's review. They emphasized the transient nature of their business, and that guest safety was an integral component of the guesthouse. Further, if the larger window portion of the windows did not open, guests could still achieve personal room ventilation by opening the upper transoms. As well, when guests check out or go out for the day, they frequently and unwittingly leave a window open or unlocked. However, by removing the burglar bars, installing fixed lower panes, installing upper operable transom windows, and installing central air conditioning, the entire security and safety for both the guests and the premises would be greatly enhanced.

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
lower left window and the art glass set in a metal framework transom located on the second floor bay, were both replaced by an 18-pane transom glass.

12. In an effort to preserve and reinstall a portion of that which was removed, Applicants hired a window glass consultant from the Smithsonian Institution. As a result, four components of leaded window glass were reused in the new windows – the three components for the side bay window and art glass set in a metal framework, which was incorporated into the new wooden window located on the right end of the restored front porch.

13. When Applicants reopened the guesthouse in May 2001, there was virtually no business since Applicants were hesitant to book guests in advance of knowing when they would reopen for business. As Applicants slowly worked to rebuild its business and to attract a different type clientele than had been patronizing the business in the recent past, the tragic incidents of September 11, 2001, occurred, and with it the immediate and lasting negative effects it impacted upon the tourist industry.

14. Applicants were unable to woo or attract back the small one to two night stay guest, the small groups that had been much of its mainstay, and the overflow from certain hotels, which were themselves scrambling to fill their own vacant rooms. As well, Applicants were unable to lower their rates very much, and could not compete effectively against the established hotels, motels, and guesthouses that had experienced no extended closure due to extensive renovations.

15. Consistent with the guidelines of 10 DCMR 2516.4, Applicants presented detailed and substantial documentation in support of their claim that if the Mayor's Agent denies Applicants the relief sought, an unreasonable economic hardship would result. Further, the comprehensive nature of the submission was likewise consistent with the requirements of the Act with regard to presenting a case for a claim of unreasonable economic hardship.

16. Tim Dennee, Architectural Historian, D.C. Office of Planning, represented the government. Although he complimented Applicants for their overall efforts to restore the guesthouse premises, he criticized Applicants’ self-help election to replace the windows with what they considered to be “matching the neighborhood” windows, but which end result both totally disregarded the Board rejection of the proposal as well as replacement in kind of the Early 20th Century Revival windows that were previously in place. Further, he noted that: a) staff never had the opportunity to consult with and attempt to assist Applicants in finding an appropriate window solution after the Board rejected the windows Applicants initially proposed; b) the Board has adopted specific window standards for historic districts in the District of Columbia, which Applicants chose to ignore; c) the preservation of the historic district is based upon a set of standards designed to stem the cumulative loss of the district’s character over time, and retention of appropriate window styles is an important component of that preservation; and d) despite the inconvenience of having to wait until the appropriate windows were approved by the Board, Applicants voluntarily placed themselves into this position, and now wish to be rewarded for their inappropriate behavior by being allowed to retain the fruits of their illegal conduct.

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
DISCUSSION

In 1997, the Board adopted the District of Columbia Historic Preservation Guidelines, including a documented titled, Windows and Doors For Historic Buildings. 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, and with regard to the principal facades, most typically located on the front of the buildings, decided that it would adhere to a strict policy of mandating that those windows must be in full compliance with the guidelines.

If a window replacement was deemed necessary, it 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 assessed window replacement applications in historic districts in the District of Columbia. The Board further determined that, with regard to secondary elevations, it would allow applicants to install non-compatible windows on the rear or side of buildings located in historic districts.

Although the policy was known within the historic preservation community, and already being followed for a few years by the Board, it was not adopted until January 25, 2001, two months after Applicants had already contracted to replace the windows. The new standards carried the title, Rules Relating to the Repair and Replacement of Windows in Historic Landmarks and Historic Districts. 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 March 28, 2002, the Board adopted the staff report, which concluded that this Applicants' already completed window installation was inappropriate, and that the belated application for approval should be rejected as not consistent with the purposes of the Act, and likewise did not adhere to the window replacement standards for the primary facades of buildings located in historic districts.

The Applicants filed a timely request for a hearing before the Mayor's Agent, asserting that their small guesthouse business was being subjected to an unreasonable economic hardship as a result of the Board's prior determination, from which circumstance they requested the Mayor's Agent to grant them relief. As well, Applicants asserted that the effects of the September 11, 2001, tragedy virtually destroyed their business, the success of which is directly and immediately affected by any adverse

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
impacts upon the local tourist industry. Following the directives of 10 DCMR 2516.4, Applicants submitted a plethora of detailed documents related to the purchase of the building and business, including the price they paid, the monthly mortgage obligation, the current assessed valuation, documentation of their own income, the window installation contract, and other relevant information.

The sole determination to now be made by the Mayor's Agent is whether Applicants' assertion of unreasonable economic hardship, coupled with Applicants' election to self-help and install non-conforming windows at a cost of approximately $45,000.00, trumps the requirements of the law regarding replacement of windows on buildings located in the historic district. Pursuant to 10 DCMR 2599, 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)."

The issue of unreasonable economic hardship is not new to this Mayor's Agent, and was most recently raised in the matter of the Education and Research Institute, HPA #01-571. In that case, the Mayor's Agent ruled that, based upon the record created by the applicant, economic hardship had not been established, despite the significant inconvenience and financial outlay, the latter of which would admittedly be costly to correct. In a prior case, Application for the Demolition of Webster School and for New Construction, HPA #00-462, the same issue was raised, and the same result obtained, i.e., no unreasonable economic hardship was found.

The unreasonable economic hardship test under the Act is whether the Applicants can establish that there was no other reasonable economic uses for the building as it existed prior to the renovations, with the primary emphasis in the current matter being the selected new windows, and that the Board's actions violated the constitutional "regulatory takings" standard. However, Applicants' burden is a difficult one to meet, because if a reasonable economic use does exist, there is no unreasonable economic hardship from the denial of the construction permit, no matter how diminished the property may become in value if the permit is denied, and even if a more beneficial use of the property has been found. See 900 G Street Associates v. Department of Housing & Community Development, 430 A.2d 1387, 1390 (D.C. App. 1981). The U.S. Supreme Court has set out several factors that have particular significance in determining whether a regulation effects a taking. See Penn Central Transportation Co. v. New York City (Penn Central) 438 U.S. 104, 124. These factors are: (1) the character of the government action; (2) the extent to which the regulation interferes with distinct, investment-backed expectations; and (3) the economic impact of the regulation. See also Loveladies Harbor, Inc. v. United States (Loveladies), 28 F.3d 1171, 1179 (Fed. Cir. 1994).

Measured against the above-referred standard, the Mayor's Agent is of the opinion that the Applicants have failed to demonstrate that a denial of their application would upset any legitimate investment-backed expectations, in that the government's regulatory restraint interfered with the Applicants' investment-backed expectations in a manner that requires the government to compensate the claimant. See Good v. United States (Good), 189 F.3d 1355, 1360 (Fed. Cir. 1995). Further, recovery is limited to

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
owners who are able to demonstrate that they bought property "in reliance on the non-existence of the challenged regulation." See Creppel v. United States (Creppel), 41 F.3d 627, 632 (Fed. Cir. 1994) ("One who buys with knowledge of a restraint assumes the risk of economic loss."). These expectations must be reasonable. See Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005-1006 (1984).

Like the plaintiff in Good, "in view of the regulatory climate that existed" when the Applicants acquired the subject property, the Applicants could not have had a reasonable expectation that they would obtain approval to install the particular windows selected, especially in light of having specifically been told by the Board and/or staff, that the preferred windows did not comply with either the law or Window Standards for the historic district. See Good, 189 F.3d at 1361. See also District Intown Props. Limited. Partnership v. District of Columbia, 198 F.3d 874, 877 (DC Cir. 1999) (holding that the appellants -- a real estate partnership, "could not have had any reasonable investment-backed expectations of development given the background regulatory structure" at the time the appellants sought to subdivide their property, which was designated as a landmark after the development plans were revealed.) In the matter at bar, it is irrelevant whether Applicants actually knew at the time of purchase in April 2000, that the building and the business were located in the historic district, as the overlay applied to every property owner, regardless of how they came to be individually informed.

The Mayor's Agent is not unmindful that Applicants apparently did not understand or fully appreciate the fact that the location of the guesthouse in the historic district would definitely impose a mandatory regulatory framework within which they must operate. However, the Mayor's Agent will not condone Applicants' impermissible actions, by granting an after-the-fact approval, which would also be viewed by many as rewarding Applicants' bad, although perhaps equally misguided, conduct with an approval.

Despite the obviously adverse financial impact that Applicants sustained as a result of the September 11, 2001, related gross drop off in the tourist industry, much of that initial loss has, presumably, been restored as the industry gradually makes its way back to center stage. Further, there is no evidence in the record that either the guesthouse building or the business are valueless, that the Applicants cannot sell the building or the business, or that a new owner could not have a reasonable, beneficial use if the windows were removed and the appropriate windows installed in their place. It is well understood that the standard is not whether the present owner can profitably use the building/business to secure a return on their investment, since the takings clause has never been understood as a guarantee of the profitability of an investment. Instead, if the owner can use the property for some economic purpose, or can sell the property in an arms-length transaction to some purchaser, then the property has some value.

Additionally, 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 Applicants have sustained a significant inconvenience, which will cost them a financial outlay to correct, cannot be denied. But the Applicants'
unilateral voluntary actions of approximately November 2000, when they contracted to replace the windows, cannot be condoned. The Applicants must still abate the violation, and come into legal compliance with the Act, the regulations, and appropriate standards for replacing windows in the historic district.

The end result of the implementation of this Mayor's Agent's ruling will be a substantially improved commercial property, with a concomitant increase in its net worth, by reason of being in compliance with the window standards previously adopted for the historic district.

CONCLUSIONS OF LAW

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

1. Applicants, who bear the burden of proving that the window alterations that they unilaterally implemented in 2000 were consistent with the purposes of the Act, have not met that burden by the preponderance of the evidence presented to the Mayor's Agent.

2. The windows were installed without Applicants first having obtained a correct construction permit for the Woodley Park Historic District, as required by the law, when installations of this nature are made in a historic district. The Mayor's Agent will not condone this course of conduct.

3. The Board, consistent with the Act, regulations, and standards governing window installations in historic districts, was correct when it initially declined to allow Applicants to install non-conforming windows on the primary façade.

4. The Mayor's Agent, while not unmindful of the financial inconvenience that an order to replace these almost new windows will impose, concludes that, despite the considerable inconvenience to Applicants and financial outlay that will be required to correct the problem, unreasonable economic hardship as defined by the Act and discussed in detail by certain relevant court rulings, has not been established.

5. The Mayor's Agent will not condone Applicants' voluntary conduct, the effect of which blatantly ignored the law, window standard regulations and policies, and the Board's prior directives to Applicants concerning appropriate window replacements in this historic district.

6. Despite the financial inconvenience sustained in this matter, Applicants are neither without a remedy, nor have they been deprived of their property by a regulatory taking. The regulations have a sound basis for why they were adopted, and Applicants' election to voluntarily relocate to the historic district subjects them to abide by the law, regulations, and standards that govern the exterior of the premises located in the district. If Applicants do not wish to abide by these standards, and given the value of real property located the historic district, there is a great likelihood that they can sell the realty and business, and realize a sales price greater than their total gross investment.

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
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 principal façade of this contributing building located in the Mount Pleasant Historic District, must be denied.

ORDER

ACCORDINGLY, it is this 7th day of November, 2002,

ORDERED, that the application for a construction permit that would allow Applicants to retain the non conforming windows on the principal façade of the contributing building is DENIED; and, it is

FURTHER ORDERED, that Applicants' assertion that to deny their application on the basis of unreasonable economic hardship is likewise DENIED; and, it is

FURTHER ORDERED, that Applicants are directed to work with the Historic Preservation Review Board and its staff, to find an appropriate solution to correcting the non conformance of the windows in question, and that every reasonable option towards a solution should be considered, including the ultimate option of removing all of the illegal windows that were installed on the principal façade of 2647 Woodley Road, N.W., Washington, D.C. Any new windows that are to be installed must be compatible with the character of the historic district, and likewise in compliance with the Act, the regulations, and the Standards which address and govern the installation of windows in the historic district; and it is

FURTHER ORDERED, that Applicants are directed to work with the 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. The staff may well be able to recommend compatible windows, which are less expensive than Applicants 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).

ROHULAMIN QUANDER,
Administrative Judge, D.C., and
Mayor's Agent For Historic Preservation

In the Matter of 2647 Woodley Road, N.E., HPA #02-241
Certificate of Service

I hereby certify that on 7th day of November, 2002, that a copy of the foregoing Decision and Order was sent via either first class, postage prepaid U.S. mail or via e-mail to the following:

Raymond and Laura Saba, pro se
Woodley Park Guest House
2647 Woodley Road, N.W.
Washington, D.C. 20008
Applicants

Tersh Boasberg, Chair
Historic Preservation Review Board
Via e-mail to:
tershboasberg@aol.com

David Maloney
Acting Program Manager
D.C. Office of Planning
Historic Preservation Office
801 North Capitol Street, N.E., #3000
Washington, D.C. 20002
Applicants

Bruce Brennan, Esq.
Assistant Corporation Counsel
Via e-mail to:
bruce.brennan@dc.gov

Andrew Altman, Director
D.C. Office of Planning
801 North Capitol St., N.E., Suite #4000
Washington, D.C. 20002
Applicants

Janette Anderson
Associate Director for Technical Ser.
Georgetown Univ. Law Center
Via e-mail to:
anderjan@law.georgetown.edu

In the Matter of 2647 Woodley Road, N.E., HPA #02-241