In re: Application for a Garage and Other Minor Modifications

In the Matter of:
Jonathan Ledecky
1400 34th Street, N.W. H.P.A. No. 04-457
Washington, D.C. O.G. No. 04-273
Square 1246, Lot 800

DECISION AND ORDER

Background

This matter came before Rohulamin Quander, Senior Administrative Judge and Mayor’s Agent for Historic Preservation (the “Mayor’s Agent”) on November 24, 2004, pursuant to the D.C. Administrative Procedure Act, codified at D.C. Official Code § 2-509 et seq. (2001 ed.) (the “Code”), and the D.C. Historic Landmark and Historic District Protection Act (the “Act”), Code § 6-1101 et seq. based on an alteration application submitted by Jonathan Ledecky (the “Applicant”). The hearing was conducted pursuant to the provisions of Title 10A of the District of Columbia Municipal Regulations (DCMR) published July 30, 2004, (51 DCR 7447 et seq. ) (the “Regulations”). The record closed on December 3, 2004, upon the receipt of the post-hearing submissions from persons and parties to the proceeding.

Based on the record taken as a whole, including the testimony and evidence submitted at the hearing, the request of the Applicant, the support of the District of Columbia Office of Planning (“OP”), the staff report of the Historic Preservation Office (“HPO”), and the recommendations of the Old Georgetown Board (“OGB”), the U.S. Commission of Fine Arts (“CFA”), and the Historic Preservation Review Board (“HPRB”), Advisory Neighborhood Commission 2E (the “ANC”), plus the duly registered and noted opposition of the Citizen Association of Georgetown (the “CAG”), the Mayor’s Agent concludes that the application for alteration to install a one-car garage in the stone retaining wall of the Ledecky property is consistent with the purposes of the Act and should be GRANTED.

ISSUE

The sole issue to be decided by the Mayor’s Agent is whether the proposed garage to be located in the stone wall of the Ledecky residence is necessary in the public interest as consistent with the purposes of the Act.
FINDINGS OF FACT

Based upon the entire record of the administrative proceeding before the Mayor’s Agent held on November 24, 2004, including all exhibits submitted, the Mayor’s Agent makes the following findings of fact:

1. The Applicant, Jonathan Ledecky, appeared with legal counsel, Carolyn Brown, Esq., of the law firm Holland & Knight LLP. Richard Foster, of Richard Foster Architects, testified in support of the alteration application. Bruce Brennan, Esq., D.C. Office of Attorney General, appeared as legal counsel on behalf of HPO and OP in support of the application. In attendance on behalf of HPO and OP were Ellen McCarthy, Deputy Director for Development Review, Historic Preservation and Neighborhood Planning, OP; David Maloney, Deputy State Historic Preservation Officer, HPO; and Timothy Dennee, Historic Preservation Planner, HPO. Barbara Zartman, chairperson, Historic Preservation, Planning, and Zoning Committee, Citizens Association of Georgetown, CAG, testified in opposition to the application.

2. The Ledecky residence is a four-story end-unit row house at the northwest corner of 34th and O Streets, N.W., and contributes to the character of the Georgetown Historic District (the “Historic District”). The short side of the house fronts south on O Street, while the long side of the house faces east on 34th Street. The rear yard is located at the north end of the property. A stone retaining wall along 34th Street holds the rear yard in place, which is located one-story above street level. Constructed circa 1865, the house was originally three-stories in height with a below-grade basement until a public works project, presumably at the turn of the 20th Century, regraded several streets in Georgetown. The once below-grade basement of the Ledecky residence then became exposed to the new street level and the house was transformed into a four-story structure. A new entrance was created on 34th Street, allowing the house to align with the new grade of O Street.

3. In 1935, the then-owners of the house obtained a building permit to insert a garage into the O Street elevation of the house. In 1965, major alterations to the house eliminated the garage and replaced the automobile entrance on O Street with a window. A new below-grade basement was excavated and an addition constructed at the rear of the property. The house currently appears much as it did in 1965-66 after those renovations, although the interior has since deteriorated, and the structural integrity of the stone retaining wall is failing in several areas. Its main entrance on 34th Street remains a prominent feature.

4. On March 10, 2004, the Applicant filed conceptual design plans for proposed alterations to his house, including a new curb cut, driveway and two-car garage in the stone retaining wall along the 34th Street side of his property. The D.C. Department of Consumer and Regulatory Affairs ("DCRA") referred the application to OGB, pursuant to § 2 of the Old Georgetown Act and to HPRB pursuant to Code § 6-1105(b). Initially, OGB recommended against the proposed alterations, and CFA, which has jurisdiction over OGB, adopted the OGB recommendation. By letter dated April 16, 2004, CFA made its formal recommendation to the Mayor's Agent to deny the application.
5. The Applicant returned to OGB on June 3, 2004, with a modified conceptual design, identified as OG Case No. 04-186 and HPA Case No. 04-305. The material for the roof deck rail was changed to conform with OGB's previous recommendation and the width of the two-car garage was narrowed to lessen its impact on the stone wall. OGB debated at length the merits of the garage proposal at its meeting with a variety of suggestions from individual Board members, including possible reductions in width or number of garage openings and relocating it entirely to the O Street elevation. OGB noted that previously a garage had been inserted into that elevation from 1935 through 1965. John F. Kennedy and his sister, Eunice, occupied the house from 1949 to 1951 when Kennedy was serving as a second-term Congressman from Boston. Because the only option before them at the time was the stone wall garage proposal, the OGB members were constrained to recommend denial of the concept plan.

6. Immediately thereafter, the Applicant appealed the decision to the CFA, which considered both the stone wall option and the conceptual alternative of the O Street garage proposal, as suggested by OGB at its June 17, 2004, meeting. CFA determined that the re-introduction of a garage to this property was appropriate, given the peculiar development history of this house. The CFA debated which location was preferable, and ultimately concluded that returning the garage to its previous O Street location was an appropriate preservation solution.

7. Based on CFA’s recommendation, the Applicant returned to the OGB for final review of the building permit for the O Street garage in O.G. Case No. 04-273 (HPA Case No. 04-457). OGB recommended approval of the permit drawings for the O Street garage and CFA adopted OGB’s recommendation by letter dated September 22, 2004.

8. Andrew Altman, Director, OP, in his capacity as Mayor’s Agent, received but did not act upon this recommendation. Instead, he agreed to the request of the HPO that the permit also be reviewed by HPRB, pursuant to its concurrent authority under Code § 6-1101 et seq., and its rules and procedures.

9. HPRB reviewed the permit application at its October 28, 2004, monthly meeting, but took a position contrary to that of CFA/OGB. HPRB adopted the HPO staff report, which recommended denial of the permit application for the garage in the O Street elevation of the house.

10. At the direction of HPO, the Applicant requested a hearing before the Mayor's Agent. At the same time, OP representatives also concurrently initiated discussions about resolving the possible uncertainty presented by having two differing recommendations from the advisory bodies, especially in light of the upcoming hearing. OP, considering the deliberations and views of the multiple advisory boards, and after consulting with the preservation staff which it supervises and oversees, determined that it could support the introduction of a garage on the property (as supported by the CFA/OGB deliberations and recommendations) as consistent with

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1 Although Andrew Altman is the Mayor’s Agent for the D.C. Office of Planning, since February 1998, Rohulamin Quander, Senior Administrative Judge, D.C. Government, has been formally designated as the Mayor’s Agent to conduct public administrative proceedings that result in formal orders under the Act.
the purposes of the Act. But it also credited HPRB’s recommendation that the reintroduction of the O Street garage into the original structure would have an adverse impact upon the historic character of the original contributing structure and the unified appearance of it with the adjoining structures. However, OP determined, after consultation with HPO, that a garage through the retaining wall did not implicate the same preservation concerns, since vehicular openings through the type of non-character defining landscape features as the retaining wall herein is more common, with no harm to those character defining elements or structure than would allowing an opening through most historic buildings.

11. Given this unusual and rare circumstance, OP agreed that it would support the construction of a one-car garage through the retaining wall at the scheduled hearing before the Mayor’s Agent. As a result of those discussions, and with the full support of HPO and OP, the Applicant submitted plans to the Mayor’s Agent. In the alternative, the Applicant also requested approval of the O Street garage proposal, consistent with the recommendation of CFA/OGB. OP and HPO continued to oppose this alternate request for the reasons stated at the hearing and in the HPRB decision and HPO staff report.

12. The Applicant testified in support of the compromise scheme before the Mayor’s Agent, stating that he has lived in the house for 17 years and that the garage proposal is part of a larger renovation and rehabilitation project for the house. He noted that his neighbors and ANC 2E supported construction of a garage through the stone wall. Further, he maintained that the proposed garage is compatible with the Historic District and thus consistent with the purposes of the Act.

13. Richard Foster, of Richard Foster Architects, was qualified as an expert in architecture with a specialty in historic preservation. He testified in support of the compromise scheme. Mr. Foster described in detail the exterior renovation work proposed for the house and the compromise garage scheme. It was his professional opinion that locating a one-car garage in the stone wall was appropriate for the contributing structure, and was preferable to locating the garage on O Street, and was likewise compatible with the Historic District. He further opined that the compromise garage scheme was consistent with the purposes of the Act, as it allowed for the adaptation of the house for 21st Century needs for automobile parking. At the same time, the street walls of the historic house would be protected from further alteration. The Mayor’s Agent credits the testimony of the only expert witness in this case, and finds that the proposed alterations for the Ledecky residence, including the garage opening in the stone wall, are compatible with the Historic District.

14. Bruce Brennan, Deputy Attorney General for the District of Columbia, presented a statement from OP in support of the compromise scheme as consistent with the purposes of the Act, as reflected on balance through CFA and HPRB recommendations. He amplified the statement with a proffer noting that OGB and CFA originally considered a variation of the compromise scheme when the Applicant sought permission for a two-car garage to be accessed through the existing stone retaining wall. OP further noted that CFA found that re-introduction of a garage on this property did not present serious preservation questions. Rather, CFA was divided on the question of which location was preferable and ultimately chose re-establishment of the garage in its previous 1935-65 location.
15. Brennan noted that although HPRB had recommended against the O Street garage preferred by the CFA/OGB, instead reiterating its general opposition to introduction of additional curb cuts (with the frequently attendant loss of green space and public space), it had not made recommendations on a garage built through the retaining wall at the rear of the property. OP concluded that, if approved, the compromise one-car garage should be constructed in a manner that minimizes disruption of the stone wall and attendant landscaping. As a condition of approval, OP and HPO recommended that any portions of the wall temporarily dismantled for construction of the garage should be rebuilt to the same appearance using the existing stone.

16. ANC 2E voted to support a two-car garage opening in the stone retaining wall of the Ledecky residence. (Applicant’s Exhibit #4) Letters of support from adjacent neighbors were also submitted to the record. (Applicant’s Exhibits # 1, 2, & 3)

17. Barbara Zartman, Chair of the Historic Preservation, Planning, and Zoning Committee of CAG, testified in opposition to the proposed garage through the retaining wall and further aligned herself with comments in the HPRB staff report recommending denial of the O Street garage proposal. The primary bases of CAG’s opposition are: a) Regardless of how the prior owners managed in the 1930s to obtain permission to insert a garage into the property, such should never be allowed under the current building standards, as either option would require demolition, and deface whatever wall the demolition would dismantle; b) To grant this application, including the approval of a curb cut, would further deplete the amount of parking available to the residents, and likewise give rise to additional requests to do the same; c) The Mayor’s Agent should defer to HPRB’s earlier determination that the proposal is not consistent with the purposes of the Act; and d) The Applicant’s behind-the-scene conduct of seeking executive intervention into the granting of this application undermines due process and the recited purpose of the Act, and denied other interested parties an equal access to the seats of power and influence, and diminishes the professional stature of all staff and persons involved in the process.

DISCUSSION

Both OGB and HPRB discourage the introduction of new curb cuts, driveways, parking pads, and garage openings as generally incompatible with the character of pre-automobile Historic Districts. However, each case must be judged on its own merits when applying the precedents and developments in the District’s preservation laws. In some limited circumstances, curb cuts, driveways and garage openings can be approved. Thus, under the guidance of OGB since passage of the Old Georgetown Act in 1950, a limited number of other garage openings have been approved as appropriately designed to be compatible with the Historic District. Some of these alterations were also approved after the passage of the Act in 1978 with its city-wide applicability, although very few of these have ever been referred to the HPRB or gone before the Mayor’s Agent.

Historically, the Mayor's Agent has generally denied curb cuts, driveways, parking pads, and garage openings where they were incompatible with an historic district. But as he considered
this application, he noted two cases where the issue was raised, both of which are distinguishable from this matter on several grounds. In In the Matter of Gondelman, HPA No. 00-306, November 10, 2000 (Gondelman Residence, 1924 Belmont Road, N.W.), the applicant requested a curb cut, driveway, and garage for his land-locked row house in the Kalorama Triangle Historic District. The property included a large berm and front yard, and was located in the middle of a row of seven houses that had a stepped alignment, with each house set back a little from the immediately adjacent house. This configuration created a distinctive quality to the streetscape and Historic District. The owner sought to create a garage through the lower below-grade walls of the house, to be accessed through a driveway requiring substantial removal of the berm equal to the width of the proposed garage and to the length of the driveway.

The Mayor's Agent denied the alteration application because: a) The driveway would disturb and destroy substantial portions of the berm and landscaped qualities of this street in the Historic District; b) the Comprehensive Plan discourages paving publicly owned, privately maintained green spaces in front of houses for vehicular access and parking; and c) approval would create a negative precedent for this Historic District and others, thus possibly prompting a surge of requests by similarly situated property owners also seeking garages requiring substantial loss of green space and other character defining features or fabric of either the property itself or the Historic District. Further distinguishing the Gondelman decision from this case is the fact that the Gondelman garage was to be introduced into, and required the partial loss of the fabric of the historic structure, rather than into a garden wall. The Mayor's Agent's decision was upheld by the D.C. Court of Appeals in Gondelman v. District of Columbia Department of Consumer and Regulatory Affairs, 789 A.2d 1238 (D.C. 2002).

In In the Matter of Lowe, HPA 02-155 & 01-140, June 17, 2003 (Lowe Residence: 942 P Street, N.W.) the owner sought post-construction approval of an unpermitted parking pad with a curb cut in an Historic District. The Mayor's Agent denied the application, noting the significant loss of both public space and green space (both typical of the district) this entailed, as well as the substantial opposition of the affected ANC and neighbors. That matter was not appealed and the pad has reportedly been removed.

The instant case, however, is distinguishable from both of these decisions in several critical respects. First, unlike in either Gondelman or Lowe, the proposed solution herein for a garage through the retaining wall on the property line and essentially adjacent to the street, requires little or no loss of public space and none of green space, as is made clear from the photographs and plans submitted to the record. What little public space is there is already paved with brick and concrete. In both the Gondelman and Lowe properties, there not only was substantial green space, but the proposed alterations would have required destruction of substantial portions of it. For both properties this was an important characteristic of the neighborhood, and, at least in Gondelman, even a character defining one. That is not the case here.

Second, the Ledecky residence has undergone extensive significant alterations over the years that have changed not only the appearance of the house, but the level of the house exposed to the street and which actually included a garage at one time. Little, if any, of the street level's original fabric appears as it did during the mid- to late-nineteenth century. In contrast, the

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Gondelman residence and adjacent houses were virtually unaltered, while the Lowe house was new construction entirely, designed without a garage, but requesting a curb cut and an exterior parking pad. Further, 34th and O streets have already been altered with curb cuts and driveways, including the Applicant’s long abandoned curb cut on O Street, and his abutting neighbor's curb cut on 34th Street to the north.

Third, unlike in either Gondelman or Lowe, there is support from neighbors, the affected ANC, and OGB/CFA, which has specific jurisdiction over Georgetown cases, for the request to allow a garage on the property. Now, with the support of OP for the retaining wall location, the internal agency debate on the preferred location from a preservation perspective is resolved in favor of the proposal.

Fourth and finally, unlike Gondelman, this garage would not be setting precedent but rather following the precedent already established by OGB and HPRB in Georgetown. Since 1950, a limited number of garages, driveways and curb cuts have been approved in the city's first Historic District, but only when designed appropriately, and further only when the unique circumstances of each case demonstrated that the character of the Historic District would not be impaired and the proposal was compatible with the overall quality of the historic area. Here, because the resulting curb cut, driveway and garage is dependent on the particular and unusual facts in this case, is it unlikely to be even viewed as a precedent encouraging others to seek similar relief. The Mayor’s Agent takes note of OP's commitment to facilitate discussions on preservation policies for curb cuts, driveways and garages between the OGB, CFA and the HPRB so that there is at least greater understanding of each agency's respective position as they undertake their concurrent authority to review projects in Georgetown.

Here, while the introduction of a garage opening in the stone wall would cause some change in the exterior appearance of the property, the contributing nature of the historic structure would be unaffected. Further, the location of the garage at the rear of the property and adjacent to the driveway of the property to the north, appropriately isolates the garage to an area typically reserved for service functions and thus is consistent and more compatible with the Historic District. The other renovations contemplated for the house will retain and enhance the historic character of this contributing building.

The Mayor's Agent finds that the CFA’s deliberations further support the introduction of a garage opening in the stone retaining wall. While CFA ultimately concluded that a garage penetration in its previous location on O Street was preferable, it nevertheless viewed the stone wall proposal as an appropriate preservation solution. The Mayor's Agent further credits the views of HPO and OP on the relative compatibility of the compromise scheme with the Georgetown Historic District and its consistency with the purposes of the Act.

Because the Mayor's Agent finds the stone wall garage proposal for the insertion of the garage on 34th Street to be consistent with the purposes of the Act, there is no need to address the merits of the O Street alternative.

Further, although CAG partially protested the granting of this application on the basis that executive or political pressure has been brought to influence the outcome of this case, the
Mayor’s Agent specifically denies that he has been exposed to any outside ex parte contact, or subjected to any such pressure or influence as he deliberated and considered this application.

CONCLUSIONS OF LAW

The foregoing having been considered, the Mayor's Agent makes the following conclusions of law:

1. Pursuant to Code § 6-1105(f), "[n]o permit [for an alteration] shall be issued unless the Mayor finds that such issuance is necessary in the public interest or that a failure to issue a permit will result in unreasonable economic hardship to the owner." The phrase "necessary in the public interest" means consistent with the purposes of the Act, which are:

   With respect to properties in Historic Districts … to retain and enhance those properties which contribute to the character of the Historic District and to encourage their adaptation for current use; [and] to assure that alterations of existing structures are compatible with the character of the Historic District.


2. Pursuant to the Old Georgetown Act, the Mayor shall refer any alteration permit for a property within the Georgetown Historic District to OGB and CFA for a recommendation(s) to assist him in determining whether the proposed alteration is necessary in the public interest. See Code §§ 6-1201 and 6-1105(b). The Mayor may also refer the application to HPRB for a similar recommendation. In this instance, the alteration permit application was referred to both agencies.

3. Upon due consideration of the record in this case, including recommendations from OGB and HPRB, the Mayor's Agent concludes that the Applicant has sustained its burden of proof and that the granting of the permit for alterations is necessary in the public interest as consistent with the purposes of the Act. The full scope of the project will retain and enhance this contributing building to the Historic District. Further, the introduction of a garage opening in the stone wall is appropriate in this particular instance because the house has undergone numerous alterations since its original construction during the mid-nineteenth century, most significant of which is a change in the street grade that dramatically altered the appearance of the house at the street level. Because of these extensive alterations, the introduction of a garage opening toward the rear of the property in what was typically the service area will not adversely affect the character of the Historic District and is, in fact, compatible with Georgetown.

4. Pursuant to Code § 1-309.10(d)(3)(A), the Mayor's Agent shall give the views of an affected ANC "great weight" consideration during his deliberation on this matter. The Mayor's Agent has reviewed the ANC 2E position not objecting to a two-car garage in the stone wall, but concludes that approval of a one-car garage in the stone wall is likewise consistent with the ANC's views.

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ORDER

Accordingly, it is this 15th day of December, 2004,

ORDERED, that Application H.P.A.04-457 and O.G. 04-273, for alterations to the Ledecky residence at 1400 34th Street, N.W., including construction of a one-car garage through the retaining wall towards the rear of the property, and a curb cut at the site, be GRANTED; and it is

FURTHER ORDERED that the garage shall be constructed in a manner that minimizes disruption of the stone wall and attendant landscaping, and that any portions of the wall temporarily dismantled for construction of the garage shall be rebuilt to the same appearance using the existing stone; and it is

FURTHER ORDERED that pursuant to D.C. Official Code § 6-1112(a), this Order shall take effect fifteen (15) days after issuance.

ROHULAMIN QUANDER
Senior Administrative Law Judge, And
Mayor's Agent For Historic Preservation
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of December, 2004, I mailed by regular first-class mail or electronic mail, or both, a copy of the foregoing Decision and Order to the following persons:

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