GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING, HISTORIC PRESERVATION OFFICE
1100 4th Street, SW, Suite E 650, Washington, D.C. 20024

HPA No. 11-490

IN THE MATTER OF:

Application of Douglas McFadden
1566 33rd Street, NW
Washington, D.C.
Square 1273, Lot 840

DECISION AND ORDER

Douglas McFadden brought this application before the Mayor's Agent, seeking an after- the-fact permit for the installation of vinyl windows on the front of his single-family house in the Georgetown Historic District. He argues that this is a project of special merit. The permit must be denied as there is nothing either special or meritorious about the applicant's failure to comply with the Old Georgetown Act and the District of Columbia Landmark and Historic District Protection Act. [1]

In the summer of 2009, the applicant engaged a Virginia contractor to replace wooden windows in his house and left town for the summer. The applicant did not seek a permit for alteration of the exterior of a building in a historic district. The contractor installed vinyl windows. On August 17, Ms. Toni Cherry, a building inspector for the Historic Preservation Office, served a Stop Work Order on the house for the failure to obtain the necessary permits. Upon his return to the District, the applicant, a lawyer, contacted the District of Columbia Department of Consumer and Regulatory Affairs and entered into a settlement with that agency regarding his Stop Work Order. The settlement agreement, a copy of which the applicant submitted to the Mayor's Agent, does not describe the infractions it is settling, but appears to address only the failure to obtain permits before undertaking work. DCRA, of course, does not have sole authority to approve alterations to the façade of a contributing building in a historic district.[2] The new vinyl windows now having been installed, Ms. Cherry subsequently served two Notices of Infraction on the house for the failure to obtain historic preservation clearance and a permit, although the record does not disclose the exact dates.

In September 2011, the applicant finally sought a permit authorizing alteration of the exterior of his historic house *after the fact*. A meeting was held by the Old Georgetown Board of the Commission of Fine Arts on October 6. The Board unanimously recommended to the Commission the denial of the permit. The Commission, at its October 21 hearing, accepted the recommendation of the Board and recommended to the Mayor's Agent the denial of the permit.

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[1] This opinion will constitute the findings and fact and conclusions of law required for decision in a contested case under the D.C. Administrative Procedure Act, D.C. Code § 2-509(e).
[2] The applicant informed the Mayor's Agent that litigation about the lease is pending in the District of Columbia Court of Appeals.

The recommendation letter, dated October 21, 2011, states that "vinyl windows on [the] front façade … are not consistent with the original character of the building or the Old Georgetown historic district in general because the material and profiles are not consistent with the historic wood detailing."

The applicant then sought a hearing before the Mayor's Agent, arguing that this is a project of special merit, because 1) the settlement with DCRA essentially approved his windows; 2) vinyl windows were installed in the Georgetown Recreation Center in recent years; and 3) the cost to replace the windows would be $8,000, an economic hardship. The Mayor's Agent held a hearing on March 16, 2012. The applicant testified on his own behalf, elaborating on his complaints but without specificity. He expressed frustration that the settlement with DCRA had not concluded the matter.

Nothing in the record begins to suggest that this is a project of special merit, which the Act defines as "a plan or building having significant benefits to the District of Columbia or to the community by virtue of exemplary architecture, specific features of land planning, or social or other benefits having a high priority for community services." D.C. Code § 6-102(11). The applicant made no effort to address these statutory standards. The arguments he did advance are meritless. The release from DCRA did not and could not permit him to install windows without a historic preservation clearance and incompatible with established regulations and guidelines. The applicant did not introduce any evidence other than his assertion about the character of the windows on the Recreation Center (a non-contributing building located in the middle of a park and not on the street), but they have little relevance in any case, given the consistent rejection of replacing wooden windows with vinyl windows on the *fronts* of Georgetown residential buildings by the Old Georgetown Board, the Commission of Fine Arts and the Historic Preservation Office. (Transcript of Hearing, 31, 44).

The District of Columbia's *Window Repair and Replacement Guidelines* state that: "Vinyl windows … are not appropriate replacements for windows on primary elevations of historic property." (Guidelines, 10). But even for properties that postdate a historic district's period of significance, and thus are considered "noncontributing" or not historic in themselves, including Mr. McFadden's property, the District's window regulations for historic districts state that: "For replacement windows in a non-contributing building within an historic district, a permit shall be issued if the windows are appropriate for the building and compatible with the historic district." (10A DCMR 2310.1) The testimony of both the Historic Preservation Office staff and Commission of Fine Arts staff indicates that, exercising its Congressionally mandated responsibility for review within Georgetown, a National Historic Landmark district, the Commission of Fine Arts has sought to maintain an appropriately high standard of review and has consistently found that vinyl windows are not compatible with the historic district when used on building fronts, because they differ from the windows generally found in the historic districts in more than one important respect. Not only do they have a finish that is different from traditional wood and metal windows, they also have profiles and dimensions of constituent parts that differ. Among these parts are often false, relatively flat, vinyl window muntins, as installed at the applicant's property, which are placed behind the exterior glass, rather than effectively simulating traditional muntins, which actually held the glass and projected beyond it. If vinyl window products were eventually developed that sufficiently replicate the important

characteristics of traditional windows, they could conceivably be approved. (Transcript of Hearing, 37-38, 40-41, 45, 47).

Any economic burden to the applicant from replacing the windows cannot make this a project of special merit. He has failed to present the kind of evidence required to make out a case of economic hardship under D.C. Code 6-1104(g). Moreover, any such burden is self-induced, because the applicant unjustifiably failed to seek the necessary historic district review before installing the inappropriate windows.

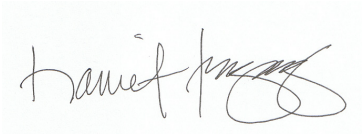
In a recent case, the Mayor's Agent wrote: "[I]t would set a destructive precedent to issue a permit for an alteration after the fact that never would have been granted before the fact. The District's preservation system depends primarily on property owners requesting permits for new work, which set in motion historic preservation reviews for designated properties. The Mayor's Agent cannot positively reward the unexcused failure to request a permit without undermining a crucial lynchpin in the protection of our historic districts." *In the Matter of Robert and Sofia Bassman*, HPA No. 11-400, at 3 (May 22, 2012). No equities have been shown here which would justify departure from this necessary stance.

ACCORDINGLY, the permit is DENIED. Applicant shall have 75 days to replace the unpermitted windows with compatible windows installed pursuant to appropriate permit.

Date: August 20, 2012

J. Peter Byrne
Mayor's Agent Hearing Officer

Confirmed: September 5, 2012



Harriet Tregoning
Director, Office of Planning

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Decision and Order was served this 5th day of September, 2012 by mailing a copy of the same *via* electronic mail or first-class, United States Postal Service mail, postage prepaid, to the following:

Douglas McFadden
McFadden & Shoreman
1050 Connecticut Avenue, NW, Suite 1000
Washington, D.C. 20036
dbmf@juno.com

Thomas Luebke, Secretary
United States Commission of Fine Arts
401 F Street, NW, Suite 312
Washington, DC 20001-2728
tluebke@cfa.gov

David J. Maloney
District of Columbia State Historic Preservation Officer
david.maloney@dc.gov

Catherine Buell, Esq.
Chair
Historic Preservation Review Board
cbuell220@yahoo.com

Carol Campbell
Digital Collections Assistant
Georgetown University Law Center Library
cms299@law.georgetown.edu

Certifying Officer