

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

HPA No. 11-488

IN THE MATTER OF:

House of God, Inc.
1310 East Capitol Street, NE
Washington, D.C. 20003
Square 1035, Lot 70

DECISION AND ORDER

This is an application by Church of God, Inc. to demolish a carriage house adjoining a public alley behind the church in the Capitol Hill Historic District. The Historic Preservation Review Board (HPRB), at its meeting of October 27, 2011, unanimously adopted the staff recommendation that the application should not be approved because the proposed work is inconsistent with the purposes of the Historic Landmark and Historic District Protection Act. The Church then made this application to the Mayor's Agent, arguing that denying the permit imposes an unreasonable economic hardship, within the meaning of D.C. Code § 5-1002(14). For the reasons explained below, the permit must be DENIED.¹

The Church is housed in a former rowhouse constructed in 1908. At the rear of the lot, facing the alley, is a masonry, two-story carriage house dating from around the same time. The Church purchased the property in 1986 from another church. At that time both the church building and the carriage house were included within the Capitol Hill Historic District. The carriage house has deteriorated over the years, and its roof collapsed during a snowstorm in 2010. The Church applied to the HPRB in May 2010 to demolish the carriage house and install a parking pad. The HRPB unanimously recommended against the application as inconsistent with the purposes of the Act and urged the Church to seek other solutions for the carriage house through consultation with community organizations.

Subsequently, the Department of Consumer and Regulatory Affairs issued an order to the Church to make the carriage house safe through stabilization or removal. In May 2011, the Church again applied for a demolition permit. The staff of the Historic Preservation Office (HPO) met with Church leaders and cleared another application for a permit to remove an unsafe wall. But the staff recommended to the HPRB that it not recommend approval of the application to demolish the remaining parts of the carriage house. While it admitted that the building needed extensive work, including a new roof, the HPRB stated that the building still maintained its integrity, conveyed its origins as stable, and contributed to the character of the public alley on which it stood. Church members testified about their worries about the safety of the structure and their need for parking. The HPRB voted unanimously, eight votes to zero, to recommend denial of the

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).

application, agreeing with the staff that the carriage house continued to contribute to the historic character of the neighborhood, so that demolition would not be consistent with the purposes of the Act.

The Mayor's Agent held a hearing on the Church's application on February 10, 2012. The church's pastor, Ella Thornton, and some members argued that stabilizing the carriage house was too economically burdensome for a small congregation, most of whose members are retired and on fixed incomes. Several neighbors appeared to oppose the application, including representatives of Advisory Neighborhood Commission (ANC) 6A, the Capitol Hill Restoration Society, and the North Lincoln Park Neighborhood Association. They testified that the carriage house conveys significant aspects of local history, because a viewer can see its origins as a stable. Several also argued that the Church had allowed the building to deteriorate and should not be rewarded by now being permitted to demolish the building.

A permit to demolish a contributing building in a historic district cannot be granted unless the applicant meets the burden of proof showing either that granting the permit is "necessary in the public interest" or "that failure to issue a permit will result in unreasonable economic hardship to the owner." D.C. Code § 6-1104(e). Here, the Church has argued only for a finding of unreasonable economic hardship, which the Act limits to circumstances where "failure to issue a permit would amount to a taking of the owner's property without just compensation." *Id.* § 6-1102(14). The statutory definition thus incorporates the judicially crafted standard for a regulatory taking under the Fifth Amendment of the United States Constitution. The most frequently followed articulation of that standard is found in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), a historic preservation case. The opinion established an *ad hoc* balancing of the diminution in value from the regulation, particularly when it frustrates reasonable, investment-backed expectations, in light of the character and purpose of the government action. Moreover, the decision-maker must consider the property as a whole. Thus, the carriage house cannot be considered separately from the entire Church property on East Capitol Street. Our Court of Appeals has interpreted unreasonable economic hardship provision to mean that the Mayor's Agent must inquire "whether *any* reasonable economic use exists for the property." *900 G Street Associates v. Department of Consumer and Regulatory Affairs*, 430 A.2d 1387, 1391 (D.C. 1981) (emphasis in original). The court elaborated:

We thus need only to consider in the instant case whether there is any other reasonable economic use for the Building. If there is, there has been neither a constitutional taking nor an unreasonable economic hardship imposed by the decision of the Mayor's Agent in this case. Petitioner had the burden of proof in the hearing to establish that no other reasonable economic use for the Building existed.

Id. The Act also requires the applicant to submit information designed to clarify the economic effect of the preservation laws, including attempts to sell or rent the property and consideration of "profitable adaptive uses." D.C. Code § 1104(g)(1)(A)(vi) & (vii). *See also* 10C D.C.M.R. §402.7.

The evidence presented at the hearing indicates that, while preserving the carriage house may be an economic burden to the church, it is not an unreasonable economic hardship within the meaning of the Act.² The church bought its entire property in 1986 for \$50,000; the District assessed the property for tax purposes in 2011 at \$624,740. Memorandum from House of God, Inc. to Office of Planning, January 19, 2012, at 2. The ANC representative offered testimony that surrounding properties had been appraised at around \$1,000,000. Mayor's Agent Hearing Transcript at 26. There is no debt service on the Church's property. Although the Church has few members, it runs surpluses in its modest annual budget. Pastor Thornton testified that these surpluses were being saved for a new roof for the main church building. *Id.* at 46-47. The Church introduced a report from a structural engineer who described the current condition of the carriage house and recommended that it be demolished. Memorandum from King Architects to Pastor Thornton, January 16, 2012. The report did not provide an estimate of the cost of stabilizing the walls of the carriage house. A Church member testified that, based on discussions with the engineer, the cost would be a minimum of \$30,000. Amanda Molson of the HPO testified that the staff believed that rehabilitation of the carriage house is feasible and consistent with other preservation projects around the District. *Id.* at 23.

The evidence does not establish that the Church could not afford to stabilize the carriage house walls. It owns a valuable property that can provide collateral for a loan at current low interest rates, and it enjoys a positive cash flow. The Church has not shown that it cannot afford such debt payments while keeping a roof over its head. Such an effort might be challenging for a small congregation but hardly imposes costs amounting to a taking. Moreover, the Church never had a reasonable expectation that it could demolish the carriage house. The Church, after all, purchased a building complex already under historic district protection and allowed the carriage house to deteriorate to the point where significant stabilization expenditures are required for safety.³ The record supports a finding that the increased costs for stabilization or rehabilitation are attributable to the Church's failure to maintain the building. Granting a demolition permit under these circumstances would reward poor stewardship and provide an incentive to others to do likewise.⁴

Moreover, under *900 G Street Associates*, reasonable alternative uses include sale of the property as long as it would be not be at an unconscionable loss. 430 A.2d at 392. The Church has not seriously considered selling the entire property and relocating, which it seems it could do at a profit.⁵ No evidence was offered that the Church's mission is tied to its current Lincoln Park

² The Mayor's Agent applies the preservation law and cannot decide disputes based on general principles. "[T]he Mayor's Agent under the Preservation Act has no authority to order the demolition of a historic landmark in the interest of the health, safety, and welfare of the community. While such factors are of unquestionable public importance, there is no statutory basis for a Mayor's Agent appointed under the Preservation Act to consider them." *District of Columbia Preservation League v. Department of Consumer and Regulatory Affairs*, 646 A.2d 984, 991 (D.C. 1994).

³ The testimony indicates that some Church members have long wanted to demolish the carriage house to provide parking spaces. HPRB Transcript, at 7.

⁴ Although some opponents argued that the Church is guilty of demolition by neglect under D.C. Code § 6-1104.02, no proceeding has been commenced against the Church and the issue is not before the Mayor's Agent. The Church does have a legal duty to maintain and protect the carriage house under D.C. Code § 6-1104.01, as well as according to the Property Maintenance Code, Title 12G DCMR.

⁵ Pastor Thornton testified: "We've thought about it, but it goes back to membership. We can sell. We can get a nicer place with -- with a lot of parking, but are you able to keep that place if you don't have the monies coming in?"

location nor that its members live nearby. This makes the case different from *Third Church of Christ, Scientist*, where the Mayor's Agent found that a church could not address economic hardship through sale because its mission was tied to its downtown location, and no alternative locations nearby could be found.⁶ No analogous claim has been made here.

While the law seems clear that the Church has not made out a case for unreasonable economic hardship, requiring the Mayor's Agent to deny the demolition permit, the result hardly seems satisfactory. The Church now has a duty to stabilize the carriage house to address safety concerns, consistent with the order from DCRA. Merely prohibiting the demolition of the carriage house, however, will not restore it to beneficial use. HPRB urged the Church and local community groups to cooperate to stabilize and save the carriage house and share expenses, which seems highly desirable. The Church has not explored any adaptive reuse or conveyance of the carriage house through sale or lease. Indeed the Church expressed unwillingness even to consider leasing the carriage house.⁷ The Church feels beleaguered and lacks knowledge of real estate and preservation. Community groups ought to approach the Church with alternatives for restoring the carriage house. A renovated carriage house could generate additional income for the Church through rental of space. Our preservation law prohibits unwarranted demolition but seeks constructive solutions.

ACCORDINGLY, the demolition permit is DENIED.

October 17, 2012



J. Peter Byrne
Mayor's Agent Hearing Officer

Confirmed:



Harriet Tregoning
Director, Office of Planning
October 19, 2012

If you don't have the people coming and if you don't have the monies coming in... then you don't have anything but a lost piece of property." MA Transcript, at 64-65. Given the value of the Church's current property, this pessimistic projection, unsupported by any market data, is unpersuasive.

⁶ "It is the unique relationship between the Church and its location that differentiates this case from [others]. Under the circumstances presented here, the Church need not prove efforts to sell its building in order to relocate, because relocation is not a viable option." HPA No. 08-141, at 25 (May 12, 2009), at http://www.law.georgetown.edu/library/collections/histpres/get-document.cfm?id_no=215&display=text.

⁷ Pastor Thornton testified: "When you have someone else on your property, leasing your property, they can do whatever they choose to do. I think they can because they're leasing it.... And we have a church there. It's a church service that goes on there. So to have someone coming -- and we don't work on Sabbath. So, to have someone on our premises there leasing our property on Sabbath would be a violation for us." Transcript 48. A lease or a deed with a covenant can specify that the occupant may not work in the property at designated times.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Decision and Order was served this 22nd day of October, 2012 by mailing a copy of the same *via* electronic mail or first-class, United States Postal Service mail, postage prepaid, to the following:

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Certifying Officer