May 20 '04

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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 RE: DARRIN PHILLIPS, et al — **H.P.A. No. 03-480, No. 03-481**[1]

On Behalf of Gtown 32nd LLC, Property Owner

(Application for New Construction – Request for Approval of Revised Site Plan in Compliance with the Condition in the Decision and Order dated December 24, 2003)

Location:

1515 and 1517 32nd Street, N.W. (Lots 74 and 75 in Square 1270)

MODIFIED DECISION AND ORDER

Background

On December 24, 2003, the Mayor's Agent issued a Decision and Order that approved the above-noted applications for new construction of two new houses, subject to the condition, "that the Applicant is directed to work with HPRB staff, D.C. Office of Planning, to create a design that will accommodate both an appropriate sidewalk, to protect the safety and welfare of the residents of the Historic District, and sufficient protection, saving, and nurturing for the mature trees that are located on the east side of the 1500 block of 32nd Street, N.W." In an effort to comply with the condition, the Applicant met at the site in early February 2004 with Tim Dennee, Architectural Historian, of the Historic Preservation Office, D.C. Office of Planning, to assess the available options that would enable Applicant to comply with the condition and to revise the project to be in accord with the condition.

By request dated April 2, 2004, Counsel for the Applicant in the above-referenced applications requested approval of the modified site plan for the houses at 1515 and 1517 32nd Street, N.W., as consistent with the condition in the Mayor's Agent's Decision and Order.

FINDINGS OF FACT

Based upon that meeting, and as stated in a letter, dated February 20, 2004, that Dennee wrote to Anne H. Adams, Applicant's Architectural Historian, he set forth several conclusions about the site, which he determined rendered it not possible to both preserve the mature trees and also to install a sidewalk. He noted that, from a preservation point of view, preservation of the trees would serve as a continuous buffer for the property owners on the west side of 32nd Street, and would likewise help to preserve much of the present character of the street.

He noted as well that, conversely, the installation of a sidewalk on the east side of 32nd Street, would be a wholly new installation, since: a) there apparently has never been a sidewalk on that side of the street, based upon a review of old photographs, which indicate that the old carriage house that previously stood at the location was built right down to the front property line; b) due to the root system of the mature trees, and the fact that the trees have been there for more than 50 years, the size of the trees preclude the laying of a sidewalk between the trees and

[1] HPA 03-482 & and HPA 03-483 were withdrawn prior to the Mayor's Agent hearing.

BZA
Case No. 17387
Exhibit No. 16

Board of Zoning Adjustment
District of Columbia
CASE NO. 17387
EXHIBIT NO. 16

the curb line; c) even if some type of a walkway could be laid down, it would be less than the Americans With Disabilities Act (the "ADA") requirement for a three-foot width for passage, and well less than the District of Columbia's five-foot width standard; and d) any newly created sidewalk would abruptly end at the north end of the two G'town 32nd Street, LLC properties, as currently there is not now and still would not be a sidewalk leading up to Q Street.

Having assessed the efforts of the Applicant to adhere to the condition stated in my Decision and Order of December 24, 2003, including meeting with Historic Preservation staff on site to evaluate the options as part of the effort to comply with the Mayor's Agent's directive, I find that Applicant has made a reasonable effort to come into compliance. After the limited options of either keeping the mature trees or removing them to install a sidewalk have been evaluated, I find that only one viable option remains, i.e., to take all reasonable steps to protect, save, and nurture the trees, rather than to remove the trees for installation of the sidewalk.

Therefore, based on the site conditions, the Mayor's Agent finds that the Applicant has complied with the limiting condition of the Decision and Order, insofar as the condition, fairly read, required that Applicant work with the HPRB staff in an effort to create a design that would accommodate both the trees and a sidewalk. Such a good faith effort has been made by the Applicant, resulting in the realization that it is not physically possible to achieve both goals.

The Mayor's Agent further finds that the Applicant's revised site plan, providing for the retention of the trees along the east side of the 1500 block of 32nd Street, N.W., only one of which is adjacent to the houses in question, meets and sufficiently satisfies the limiting condition of the Decision and Order, and shall be substituted for the original site plan included in the plans associated with the subject applications. Once that substitution has occurred, the HPRB staff may approve the pending applications for permits, and construction on 1515 and 1517 32nd Streets, N.W., may commence.

Finally, the Mayor's Agent finds that because the condition required that only the Applicant and HPRB staff work together to create a design, and does not provide for review of the condition's resolution by other parties, further review of the revised site plan is not required. The implementation of an administrative order's condition(s) is appropriately left solely to the Applicant and the relevant governmental review entities, in this case the HPRB staff.

CONCLUSIONS OF LAW

The foregoing having been considered, I conclude, as a matter of law, that Applicant has made a reasonable effort to meet the limiting condition of the Mayor's Agent's Decision and Order of December 24, 2003, and that Applicant's request for approval of the revised site plan is in compliance with that Order.

ORDER

ACCORDINGLY, it is this **20th day of May, 2004,**

ORDERED that the Applicant's request for approval of the revised site plan is in compliance with the condition in the Decision and Order dated December 24, 2003, as amended herein, and as such, is **GRANTED**; and it is

FURTHER ORDERED that the staff of the HPRB shall approve the subject applications incorporating the revised site plan.

ROHULAMIN QUANDER
SENIOR ADMINISTRATIVE JUDGE, AND
MAYOR'S AGENT FOR HISTORIC PRESERVATION

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Modified Decision & Order was served this 20th day of May, 2004, by mailing a copy of the same via e mail or U.S. Mail, postage prepaid, or both, to the following:

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