

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5950

APPEAL OF RENATA M. GOULD

OPINION OF THE BOARD

(Hearings held February 4, 2004, and February 11, 2004)
(Effective Date of Opinion: January 24, 2008)

Case No. A-5950 is an administrative appeal filed by Renata M. Gould (the "Appellant") from the November 3, 2003 decision of the Historic Preservation Commission (the "HPC") denying the Appellant's application for a Historic Area Work Permit ("HAWP") for an addition to a single-family dwelling located at 9904 Colesville Road, Silver Spring, Maryland 20901 (the "Property").

Pursuant to Sections 24A-7(h), 2-112, and 2A-1 et seq. of the Montgomery County Code, the Board held public hearings on the appeal on February 4 and 11, 2004. The Appellant appeared *pro se*. Associate County Attorney Vicki L. Gaul represented the HPC.

Decision of the Board: Administrative appeal **denied**.

FINDING OF FACT

The Board finds by a preponderance of the evidence that:

1. The Property, known as 9904 Colesville Road, is rectangular in shape and consists of about 7,825 square feet. The Property has 68 feet of frontage on the west side of Colesville Road and is about 115 feet deep. The Property slopes down from front to rear.

The Property is one of five properties designated by the County in 1985 as the "Polychrome Historic District," which consists of single-family dwellings built in 1934-35 by master craftsman John Joseph Early (1881-1945). The homes in the district are outstanding examples of the Art Deco-style of architecture. More

particularly, the facades of the homes are clad with unique “mosaic concrete” panels made from a patented process which exposes brilliantly colored aggregate particles, creating an effect similar to impressionist or pointillist painting. This process was also used in other notable Early-designed projects such as the interior of the Shrine of the Sacred Heart and the ceilings of the Department of Justice in Washington, D.C. Early’s patented structural system led to the widespread use of pre-cast architectural concrete as a major cladding material.

2. The Property is improved with a one-story, six-room house that is centrally located on the lot. The main block of the house is about 46 feet wide and 17.6 feet deep. At the north end of the rear of the house is a 17.7’ wide by 18.4’ deep wing containing a bedroom at the first-floor level and a one-car side entry garage at the basement level. A smaller 17.6’ wide by 8.5’ deep wing extends from the south end of the front of the house. The house has a gabled, shingled roof. The exterior walls of the home are comprised of two-inch thick pre-cast mosaic concrete panels, each four to eight feet wide and nine feet high. The cornices and gables on each side of the house contain ornate, highly decorative details.

Windows and doors are located in metal casement frames, including two porthole windows in the front overlooking an open porch, and another porthole window at the south end of the rear of the home. A low mosaic concrete wall with deep red, decorative geometric inserts surrounds the front porch as well as a small porch and side door on the east side of the house. A concrete patio and a garden are located directly behind the house. The house is accessed via a driveway from Colesville Road that runs to the garage on the north side of the house.

The Property is designated as an “outstanding resource” on the Master Plan for Historic Preservation in Montgomery County.

3. The Appellant proposes to construct a 16.92’ wide by 6.79’ deep, one-story, wood frame bathroom addition onto the rear wing of the house. The addition would be supported on steel columns placed in reinforced concrete footings. The exterior walls of the addition will be painted wood siding and the roof will be covered by asphalt shingles to match the existing roof material. The Appellant proposes to remove the existing steel casement rear window and relocate it at the rear of the addition. The window opening will be converted into a bathroom door.
4. The Appellant submitted an application for a HAWP for the above work to the HPC on August 1, 2003.¹ On September 17, 2003, HPC staff recommended denial of the application. On September 24, 2003, the HPC held a public hearing on the application and, at its conclusion, determined to deny the Appellant’s application. The Appellant timely filed this appeal to the Board of Appeals.

¹ This application is identical to one submitted by the Appellant and denied by the HPC in 2001.

5. John Burns, an architect who has authored a book on Early and the polychrome houses, testified that the concrete panels making up the exterior walls of the home are what give the polychrome homes their unique distinction. He stated that the technology used to fabricate these concrete panels is no longer available.
6. Gwen Marcus Wright, the Historic Preservation Coordinator for the HPC, testified that in her judgment the Appellant's application would require the removal of significant portions of the rear wall of the home. She stated that the decorative gable and cornice at the rear of the home would also likely have to be removed. She stated that the home is unique and significant primarily because of the material and decorative details of the exterior walls, cornices, and gables. She noted that staff had recommended alternatives to the Appellant's design, including locating the bathroom addition at the south end of the rear of the home, which were rejected by the Appellant.
7. The Appellant testified that the rear gable will not be destroyed by the construction of the addition, but will merely be covered over. She stated that only about three feet of the cornice will be removed, and that the rear concrete panels can be saved or reconstructed. She testified that the bathroom addition will increase the value of her home and make it more desirable to live in. She stated that the alternative proposed by HPC staff is unacceptable because it would require the removal of another concrete panel and would destroy a portion of her garden.

CONCLUSIONS OF LAW

1. Section 24A-7(h)(1) of the Montgomery County Code provides that:

“Within 30 days after the Commission makes a public decision on an application, an aggrieved party may appeal the Commission's decision to the Board of Appeals, which must review the decision de novo. The Board of Appeals may affirm, modify, or reverse any order or decision of the Commission.”

Section 2A-8(d) of the County's Administrative Procedure Act, which governs this proceeding, states that “where a governmental agency or an administrative authority is a party, such agency or administrative authority shall have the burden of going forward with the production of evidence at the hearing before the hearing authority.” Section 2A-10(b) further provides that “all recommendations and/or decisions of the hearing authority shall be based upon and supported by a preponderance of the evidence of record.” Consequently, where HPC is a party, it is required to produce evidence to show that its decision is correct. The Board's duty is to determine, by a preponderance of the evidence presented by all of the parties, whether the HPC decision is correct.

2. In reviewing an application for an historic area work permit, we look first to the criteria set out in Section 24A-8 of the Montgomery County Code:

- “(a) The commission shall instruct the director to deny a permit if it finds, based on the evidence and information presented to or before the commission that the alteration for which the permit is sought would be inappropriate, inconsistent with or detrimental to the preservation, enhancement or ultimate protection of the historic site or historic resource within an historic district, and to the purposes of this chapter.

- (b) The commission shall instruct the director to issue a permit, or issue a permit subject to such conditions as are found to be necessary to insure conformity with the purposes and requirements of this chapter, if it finds that:
 - (1) The proposal will not substantially alter the exterior features of an historic site or historic resource within an historic district; or
 - (2) The proposal is compatible in character and nature with the historical, archeological, architectural or cultural features of the historic site or the historic district in which an historic resource is located and would not be detrimental thereto or to the achievement of the purposes of this chapter; or
 - (3) The proposal would enhance or aid in the protection, preservation and public or private utilization of the historic site or historic resource located within an historic district in a manner compatible with the historical, archeological, architectural or cultural value of the historic site or historic district in which an historic resource is located; or
 - (4) The proposal is necessary in order that unsafe conditions or health hazards be remedied; or
 - (5) The proposal is necessary in order that the owner of the subject property not be deprived of reasonable use of the property or suffer undue hardship; or
 - (6) In balancing the interests of the public in preserving the historic site or historic resource located within an historic district, with the interests of the public from the use and benefit of the alternative proposal, the general public welfare is better served by granting the permit.

- (c) It is not the intent of this chapter to limit new construction, alteration or repairs to any 1 period or architectural style.

- (d) In the case of an application for work on an historic resource located within an historic district, the commission shall be lenient in its judgment of plans for structures of little historical or design significance or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding historic resources or would impair the character of the historic district.”

We must also consider the criteria for HAWP approvals set out on the HPC’s regulations, as codified at Section 24A.01.01.1.5 of the Code of Montgomery County Regulations:

- “(a) The Commission shall be guided in their review of Historic Area Work Permit applications by:
 - (1) The criteria in Section 24A-8.
 - (2) The Secretary of the Interior's Standards and Guidelines for Rehabilitation.
 - (3) Pertinent guidance in applicable master plans, sector plans, or functional master plans, including categorization of properties in historic districts by level of significance - if applicable. Such categories will be defined and explained clearly in the applicable plans.
 - (4) Pertinent guidance in historic site or historic district-specific studies. This includes, but is not limited to, the 1992 Long Range Preservation Plans for Kensington, Clarksburg, Hyattstown, and Boyds.
- (b) Where guidance in an applicable master plan, sector plan, or functional master plan is inconsistent with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, the master plan guidance shall take precedence.”

Finally, the pertinent provisions of the Secretary of the Interior's Standards and Guidelines for Rehabilitation are Standards Number 2, 5, 6, and 9, which state:

“The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize the property will be avoided.”

“Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be retained and preserved.”

“New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.”

3. From these regulations and standards, we glean the following guiding principles applicable to the Appellant’s HAWP proposal:
 - We must be strict in our judgment of plans that would seriously impair the historic or architectural value of a significant historic resource, or be detrimental to the preservation or ultimate protection of the historic site or historic resource; conversely, we must be lenient in our review of plans for structures of little historical or design significance.
 - We must be particularly circumspect of plans that propose to substantially alter the exterior features of an historic site or historic resource within an historic district.
 - The removal, alteration, or destruction of distinctive materials, features, finishes, and examples of distinctive construction techniques and craftsmanship should be avoided.
 - We must give consideration to and seek to avoid any “undue hardship” that would result from the denial of the application.
4. Applying these guiding principles to the HAWP application before use, we find that the weight of evidence supports the HPC’s denial of the proposed work. First, there is no doubt that the Owner’s home qualifies as a significant historic resource in the County. It is one of only five homes in the Polychrome Historic District, which is representative of the Art-Deco style of architecture. More importantly, it is a prime example of the craftsmanship of John Joseph Early and his unique “mosaic concrete” system of exterior facades. In addition, the home is distinctive for its ornate, highly decorative cornices and gables. Consequently, we must apply a strict level of scrutiny to the Appellant’s plans.
5. It is also undisputed that the Appellant’s proposed addition will alter the significant exterior features of the home by covering up the concrete wall, cornice and gable of the rear wing. The parties’ positions diverge, however, as to whether the plan will destroy any of those elements. The Appellant asserts that only a small portion of the concrete rear wall and cornice will be removed and that no portion of the gable will be destroyed. In the opinion of the HPC and staff, however, the integrity of the concrete wall will be compromised by the necessity of cutting an opening for the bathroom door. In addition, they believe that the

cornice and a significant amount of the gable will have to be irreparably destroyed.

We note that the Appellant, who bore the burden of proof before the HPC, failed to present testimony or other evidence from an engineer or other professional, either before the HPC or the Board, to indicate that the rear wall, cornice or gable would not be irreparably damaged or destroyed by the proposed construction of the bathroom addition. Moreover, in reviewing the Appellant's own plans, it appears to us inevitable that significant portions of these distinctive features must be cut and removed in order to accommodate the proposed addition. Specifically, on Exhibit 6(e) at page 17, the Appellant's plans show that the finished floor level of the addition will be only 5 feet, 4 5/8 inches below the level of the existing cornice and gable. On page 18 of the same Exhibit, the new bathroom doorway is shown as being 6 feet, 8 inches above the floor level, extending a significant distance above the lower end of the gable. Based upon these drawings, we must conclude that construction of the doorway opening will require significant cutting and removal of not only the mosaic concrete wall, but also the cornice and decorative gable. The destruction of these features would be irreparable given that the technology for reproducing them no longer exists.

6. While we acknowledge that the Appellant's proposed addition would no doubt increase the living space and comfort of her home, we do not think the denial of this application rises to the level of an "undue hardship" within the meaning of Article 24A. This is especially true in light of the fact that HPC staff has proposed reasonable alternatives that would both serve the Appellant's needs for living space and preserve the historic features of the Property. While these alternatives may require the Appellant to make certain sacrifices (such as the removal of a portion of her garden), they would not deprive her of the reasonable use of her property or pose any undue hardship.
7. Consequently, the weight of the evidence persuades us that the Appellant's proposed addition will destroy distinctive materials and features of her home, a significant historic resource. The proposal would therefore be inappropriate and detrimental to the preservation and ultimate protection of the historic resource within an historic district, and to the purposes of Chapter 24A. Accordingly, and pursuant to Section 24A-8(a), we find by a preponderance of the evidence that that the HPC's denial of the requested HAWP was correct and proper. The Appellant's appeal is therefore **DENIED**.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

Chairman Donald H. Spence was necessarily absent from the hearing and did not participate in this Resolution. On a motion by Member Louise L. Mayer, seconded by

Vice Chairman Donna Barron, and Members Angelo Caputo and Allison Ishihara Fultz in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz.
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the Board of Appeals for Montgomery County, Maryland this 24th day of January, 2008.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within ten (10) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 2-A-10(f) of the County Code).

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.