FINDINGS AND DECISION

OF THE HEARING EXAMINER FOR THE CITY OF SEATTLE

In the Matter of the Appeal of

ERV OLSSEN AND LEE VENNES FILE NO. LP-86-001

from a decision of the Landmarks Preservation Board

Introduction

Erv Olssen and Lee Vennes appeal the denial of a certificate of approval for certain changes to property addressed as 815 East Prospect, Seattle.

The appellants exercised their right to appeal pursuant to Chapters 25.12 and 25.22, Seattle Municipal Code.

Parties to the proceedings were: appellants, represented by Jim Doros, for Chris L. Matson, attorney at law; and the Landmarks Preservation Board represented by James E. Fearn, Jr., assistant city attorney.

The hearing was held before the Hearing Examiner on March 6, 1986. The record remained open to March 10, 1986 for supplementation.

After due consideration of the evidence elicited during the public hearing, the following shall constitute the Findings of Fact, Conclusions and Decision of the Hearing Examiner on this appeal.

Findings of Fact

1. The subject property is located in the Harvard-Belmont Landmark District at 815 East Prospect Street. The structure itself, known as Cecil Bacon Mansion, was built around 1910.

2. In 1973, after leasing the property for five years, Lee Vennes and Erv Olssen exercised the option and purchased the subject property.

3. Olssen and Vennes rented the property on a month-month basis to two tenants.

4. On February 18, 1984, the structure caught fire and the entire west end of the third story was destroyed. According to one witness the Seattle Fire Department "chopped off" the entire west side roof. The Fire Department Incident Report, Exhibit 8, indicates that there were nine fire related injuries; and that the home had been occupied by approximately 20 people at the time of the fire. Although the damage was extensive, only the third floor exterior walls were destroyed. The structure was not razed by the fire.

5. A third floor "ballroom" had been located beneath the "chopped up" roof. See photo Exhibit 6.

6. The fire blew out approximately 90% of the structure's windows. Appellants secured an estimate that replacement of the five dining room windows in their genuine mollion style would cost approximately $2475. By extrapolation, appellants extimated that the cost of replacing the 125 windows would approximate $75,000 ($500 per window).

7. In April 1984, appellants replaced the windows with thermo-pane windows that had a "mollion look". Since the new window square separators do not extend through the window but are encased within the glass, appellant Olssen explained, they can be cleaned with a standard window cleaner. The installed windows were also markedly cheaper.

8. At their meeting of May 16, 1984, the Landmarks Preservation Board reviewed and approved plans for alteration of the structure. The May 18, 1984, Certificate of Approval stated in relevant part:

> ...Approval of new roof and material to include double coursing; location and size of dormer additions; and location, size and railing of porch. The owner will return for approval for planned changes that include: window pattern, stucco pattern and half-timbering on dormer, driveway, retaining wall and landscaping...

The Landmarks Board Action principally echoed the recommendation of the Harvard-Belmont Neighborhood Review Committee. Ex. 17.

9. After issuance of the Certificate of Approval, appellants applied to DCLU for the designated permits. DCLU subsequently issued permits for repair of interior fire damage (Ex. 11A) and to "change roof line, alter dormers and balcony per plan". Ex. 11B.

10. On Septmenber 24, 1984, DCLU building inspector Hanson had noted that it was "Ok to to cover" the building. Ex. 11A, 11B.

11. October 5, 1984 DCLU issued an order for appellants to discontinue all exterior construction work related to the building's exterior design "except work that is absolutely necessary to protect the interior of the structure from weather damage". Ex. 16. The Stop Work Notice declared that exterior work required design approval by the Landmarks Board. Appellant Olssen testified that they then completed the work in deference to the stop work order.

12. A Second Stop Work Order was posted on the subject property May 7, 1985.

13. Next, appellants submitted application to the Landmarks Preservation Board January 7, 1986, for approval of the previously completed work. The Landmarks Preservation Board denied approval by Denial dated January 16, 1986, and appellants submitted this appeal.

14. By the time of their 1986 Landmarks Preservation Board request appellants had completed the third floor former ballroom area with a dormer structure offering higher walls and a reduced roof pitch that is dissimilar to that of the eastern parallel. The third floor western addition also shows smaller windows that are squarer in shape than the eastern parrallel's windows. Above the porch on the east elevation appellants had installed glazed dormer windows. The timbering in the new addition is thinner and is of a readily noticeable different patterning. See Exhibit 5A. Appellants had feathered-in the stucco after the stop work order. The Board's architect-witness testified credibly that the changes were noticeably inconsistent. Appellant Olssen credibly testfied that after contacting DCLU he did not think that a permit was needed for the roughly $1800 stucco contract. Regarding the roofline, Olssen testified that the Landmarks Preservation Board had approved a 2-feet to 6-feet new roofline, and that subsequently DCLU approved a 10-12 roof pitch. Olssen also reported that DCLU had closely monitored the project at least to the date of the stop work order.

15. Appellants have developed on site parking for the rear of the structure which they intend to have screened by landscaping.

16. Neighbors testified that the structure in its present repaired state unquestionably enhances the neighborhood. One witness from the neighborhood opined that the west neighbor's garden enjoys more privacy. Another noted that the former ballroom area is now more functional.

17. There is a rich mixture of architectural styles in the Harvard-Belmont District.

Conclusions

1. The Hearing Examiner has jurisdiction of challenges to Landmarks Preservation Board actions pursuant to Ch. 25.22 and 25.12, Seattle Municipal Code.

2. In reviewing appeals of the Landmarks Preservation Board the Hearing Examiner is to consider the purposes of the chapter; specified criteria; promulgated guidelines; the historical and architectural or landscape value and significance; landscape type or design; the arrangement, texture, and material of the structure; the relationship of building features to similar features within the District, and the relative position of the building. Seattle Municipal Code Section 25.22.110.

3. In addition, consistency with the provisions of the Landmarks Preservation Ordinance is required to be analyzed. Seattle Municipal Code Section 25.22.130, reference 25.12.570.

4. Neither section provides a relative scale for considering or balancing the myriad factors. Nor does the Code provide a specific weight to be accorded the Landmarks Preservation Board decision.

5. The essence of appellants' argument is succintly stated in their letter of appeal. First, they urge that the Board failed to consider all of the purposes of the Harvard-Belmont District Ordinance. Those purposes are enumerated at Seattle Municipal Code Section 25.22.010, and include the preservation of the architectural and historic heritage. The Board's action is consistent with that purpose. The present finished product is not in harmony with the pre-existing timbering, fenestration, and roof elements. Similarly, the appellants' present building is not consistent with the District purpose of fostering community pride in the past (architectural) accomplishments; nor does the building stabilize or improve "the historic authenticity, economic vitality, and aesthetic value of the district (emphasis added)." On the other hand appellants are persuasive that the improvements made would encourage continued private ownership, particularly with respect to the cost of true mollions vs. mock thermo-pane windows. On balance, however, the Hearing Examiner must conclude with the great weight of the evidence that the District purposes would be violated by approval of appellants' "as-builts." The same conclusion results from a review of the "specific features and characteristics" purposes of Ch. 25.12, Seattle Municipal Code.

6. The Board action is also consistent with the architectural and historical criteria for District designation. Seattle Municipal Code Sections 25.22.060, 25.22.040. To the degree that the sociological criteria encourage a mixture of scale and economics, Seattle Municipal Code Section 25.22.050, the Board action is less consistent.

7. The Harvard-Belmont District Development and Design

Review Guidelines (April, 1984) state as one primary quality the respect of nearby properties' privacy. The added windows were not shown to be in conflict with this item. However, the additions in general conflict with the desire that Category 1 buildings "retain the intrinsic historic values recognized when the district was formed." Guidlines, II, Criteria and Value.

8. Regarding individual buildings, the Guidelines "strongly" discourage imitation of historic styles and notes that exterior materials used for additions should be "finished in ways that are consistent with the original building." Guidelines, III, Criteria. It does appear that appellants' siting of parking along with planned landscaping may be consistent with the Guidelines' provisions on parking.

9. The record is not persuasive that the Board is required to give individual notice of District wide designation or of Guideline internal, e.g Category I, designations. The subject district was established by Ordinance 109388(Section 3, 1980), Seattle Municipal Code Section 25.22.030. From that establishment, the Board is to promulgate guidelines. Regarding those guidelines, the code simply provides that notice of a hearing on them shall be in accord with Landmarks Board rules. The code does not state that the precise method used for a different ordinance covering specific, individual properties, should be applied to establishment of a district.

10. The Board has also adopted for its guidelines the Secretary of the Interior's Standards for Rehabilitation. Those standards provide in relevant part that "new material should match the material being replaced in composition, design, color, texture..." Standard 6, and that contemporary design for alterations are permissible when they "do not destroy significant historical, architectural or cultural material..." Standard 9. The Board's witness, a practing renovation architect, expressed his view that the changes made by appellants are visually and substantially different from those of the original building.

11. The Examiner has been directed to no authority for the appellants' inherent suggestion that expediency and finances should waive compliance with established and adopted district criteria.

12. The appellant's actions were not in accord with the May 18, 1984, Certificate of approval which specified that the owners return for approval regarding the dormer window pattern, stucco pattern and half-timbering, and as well for approval of the driveway, retaining wall and landscape features. The code does not indicate that the Board may delegate to DCLU the responsibility of approving wall and roof peak features of a Category I, Landmark District building. Therefore, any reliance by appellants on DCLU's seeming approval may not be cited for approval before the Hearing Examiner. In accord with the foregoing conclusions, the Certificate of Denial is affirmed.

Decision

The decision of the Landmarks Preservation Board is affirmed.

Entered this 24th day of March, 1986

Leroy McCullough
Hearing Examiner

Concerning Further Review

Except as provided by Seattle Municipal Section 25.12.780, the decision of the Hearing Examiner in this case is the final administrative determination by the City, and is not subject to reconsideration except to correct errors on the ground of fraud, mistake, or irregularity in vital matters. Any request for judicial review must be filed with the Superior Court pursuant to Chapter 7.16, RCW, within fourteen days of the date of this decision. Should such request be filed instructions for preparation of a verbatim transcript are available at the Office of Hearing Examiner. The appellant must initially bear the cost of the transcript but will be reimbursed by the City if the appellant is successful in court. Instructions for preparation of the transcript are available from the Office of Hearing Examiner, 400 Yesler Building, Seattle, Washington 98104.