

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
STATE HISTORIC PRESERVATION REVIEW BOARD

In the Matter of:

ROBERT L. FINCH
Applicant/Appellant,

v

Docket No. 94-18-HP

GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission granting an application for permission to reconstruct the rear porch of the building situated at 334 State Street, S.E., and a related decision denying permission to construct a new exterior door on the rear (i.e., the east side) of the same premises, which is located in the Heritage Hills Historic District, Grand Rapids, Michigan.

The State Historic Preservation Review Board (hereafter "the Board") has appellate jurisdiction to consider such appeals under section 5(2) of the Michigan Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was held on March 10, 1994, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on April 25, 1994, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of the Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on Friday, June 10, 1994.

Having fully considered the Proposal for Decision issued in this matter, the Board voted 6 to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

IT IS ORDERED THAT the decision of the Grand Rapids Historic Preservation Commission is affirmed.

IT IS FURTHER ORDERED THAT the appeal is denied.

IT IS FURTHER ORDERED THAT nothing in this Final Decision and Order shall be construed to prevent the Appellant from submitting a new application to the Commission for an exterior rear door, provided that the Appellant has obtained approval from the Grand Rapids Board of Zoning Appeals to use the premises in question as a two-family dwelling.

IT IS LASTLY ORDERED THAT a copy of this Final Decision and Order shall be transmitted to both parties as soon as practicable.

Dated: 10 JUNE 1994



David Evans, President
State Historic Preservation Review Board

Note: Under section 5(2) of the Local Historic Districts Act, this Final Decision and Order may be appealed to the Kent County Circuit Court. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the court within 60 days after the date of mailing notice of the Final Decision and Order of the Board.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

ROBERT L. FINCH,

Applicant/Appellant,

v

Docket No. 94-18-HP

**GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,**

Appellee.

_____ /

PROPOSAL FOR DECISION

This matter involves an appeal of a portion of a two-part decision issued by the Grand Rapids Historic Preservation Commission (the Commission). The decision approved in part and disapproved in part an application submitted by the Appellant, Robert L. Finch, for a permit to install a new door in the rear wall of the building located at 334 State Street, S.E., Grand Rapids, Michigan, and also to rebuild the "stoop and steps" attached to the rear wall of the building. The decision approved, with conditions, the portion of the application which involved the reconstruction of the stoop and steps (i.e., the back porch and guardrail); however, it denied the portion of the application which involved the installation of the new rear door, on the grounds of: 1) "inconsistency" with the Secretary of the Interior's Standards for Rehabilitation, and 2) "no exhibited need" for this means of egress under the Grand Rapids Fire Code.

The appeal was filed under section 5(2) of Michigan's Local Historic Districts Act.¹ Section 5(2) provides that a person who is aggrieved by a decision of an historic district commission may appeal the decision to the State Historic Preservation Review Board (the Board), which is an agency of the Michigan Department of State.

Upon receipt of the appeal, the Board directed the Michigan Department of State, Hearings Division, to conduct an administrative hearing for the purpose of receiving relevant evidence and argument. The Hearings Division convened a hearing in this matter on Thursday, March 10, 1994, in Hearing Room No. 121, the Mutual Building, Lansing, Michigan. The hearing was held pursuant to procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.²

Robert L. Finch, who owns the property at 334 State Street, S.E., Grand Rapids, Michigan, appeared in person at the hearing and represented himself. The Commission/Appellee was represented by Michael D. McGuire, Assistant City Attorney, City of Grand Rapids. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, convened the hearing and served as presiding officer.

¹ 1970 PA 169, § 5, as amended by 1992 PA 96; MCL 399.205; MSA 5.3407(5).

² 1969 PA 306, § 71 et seq; MCL 24.271 et seq; MSA 3.560(171) et seq.

Issue on Appeal

During the administrative hearing in this matter, the Appellant presented the following issue on appeal:

I am sure that if there should be a fire in my home I would want the people upstairs to have a safe way to exit. I feel the commission failed to cite a specific section of the standards for rehabilitation which makes me in violation of the entire standards. I am suffering hardship from the commissions prejudice (sic) decision of denial. Please consider my above plea for approval.

By way of a response, the Commission asserted that it fully and fairly considered the evidence presented by the Appellant in his application and in accompanying documents, that it gave him an extension of time in order to present additional information, that it properly applied applicable federal rehabilitation standards, that there were no unusual or mitigating circumstances, and that the application for a new door was properly denied.

Summary of Evidence

Under Michigan law, a party who occupies the position of a petitioner or applicant bears the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading & Practice (2d ed), § 60.48, p 176; Lafayette Market and Sales Co v City of Detroit, 43 Mich App 129, 133; 203 NW2d 745 (1972); Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Appellant occupies that position in this matter and therefore has the burden of proof.

Section 5(2) of the Local Historic Districts Act, supra, provides that appellants may submit all or a part of their evidence

and arguments in written form. In that vein, Finch presented a ten-page exhibit (Appellant's Exhibit No. 1) which included several sub-exhibits. Among those were four photographs of the structure at 334 State Street S.E., as well as two letters from the Commission, a letter from the Grand Rapids Fire Department, a copy of Finch's deed of purchase, a city plat record of the property along with an attached photograph dating from 1937, and a scale-drawing of the property. The exhibit also articulated the Appellant's main arguments in this case. In addition, Finch testified at the hearing.

The Commission also presented evidence at the hearing. The Commission submitted a single, multi-document exhibit. (Commission Exhibit No. 1). That exhibit contained a record of a citizen's complaint, four photographs of the residential structure at 334 State Street S.E., Finch's application for approval, partial minutes of two Commission meetings, decisional documents, a letter from the Grand Rapids Fire Department dated January 10, 1994, BOCA National Building Code provisions, correspondence involving zoning issues, and an enlargement of the 1937 photograph of Finch's home.

The Commission offered testimony from two witnesses. In that regard, Michael J. Page, who serves as staffperson to the Commission, testified about the contents of the Commission's exhibit and described the events surrounding the submission of Finch's application and the Commission's review of same. In addition, David Middleton, who is Vice-Chair of the Commission, testified about the basis of the Commission's decision.

Findings of Fact

Based upon the evidence presented by both parties during the administrative hearing, the facts of this case are found to be as follows:

A. Background Information

1. The residential structure located at 334 State Street S.E. in Grand Rapids, Michigan, is a two-story, late Victorian brick house constructed during the 1870s. It contains 14 rooms - seven on each level - and each floor is capable of functioning as a self-contained residential unit. The house originally encompassed slightly less than 1,600 square feet of living area.

2. The house has a single exit, which is located in the front. Staircases in the front and rear connect both floors of the house. The rear staircase leads to a landing on the first floor and then enters into a bathroom. The bathroom includes an oversized window facing the rear of the house. At one point, stairs were added to the outside of the house in the rear, just below the bathroom window.

3. Around 1940, a commercial structure (340 State Street) was added to the house, raising total floor space of the expanded building to about 7,000 square feet. At present, another commercial building (330 State Street) is situated next to the structure on the side opposite from the commercial addition.

4. Robert L. Finch purchased the property at 334 State Street S.E. on September 21, 1971. He and his wife moved into the residential portion of the building. They used the commercial

portion as an appliance parts distributor business. The property is presently zoned "C-2", which permits residential living only on a single-family basis.

5. When Finch purchased the property, the Fire Marshal told him the house would need a new door from the rear stairs to the outside, in order to make a second means of egress in case of fire.

6. Over the years, Finch's children and their families have on occasion lived on the second floor of house, and at such times the two floors have functioned as separate living units. At one time, close family friends lived on the second floor. In most cases, rent was paid. Finch did not see any need to construct a separate exit for any of these "tenants", since they were either family members or close family friends. However, when his daughter moved out in early November of 1993, Finch decided that his upstairs apartment could be rented to strangers.

B. Construction Activity

7. Given that he was contemplating an arms-length rental arrangement, Finch decided it was time to construct a second means of egress. He saw two obvious choices. One was to convert the window in his bathroom into an exterior door, so that the exit would run through his bathroom; and the second was to construct a fully functioning door by cutting an opening in the rear wall next to the bathroom window. This would also require the removal of the steps below the window and the construction of a new "stoop" and modified steps. Finch began that work in November.

8. At about that time, a citizen complained to the Commission

about unapproved exterior construction at 334 State Street S.E. The complaint was referred to the Commission's staffperson, Michael J. Page, for investigation.

9. On November 19, 1993, Page went to the premises at 334 State Street S.E. and observed that work was in progress on the rear (i.e., the east side) of the house. A new porch, stairway and roof had already been built, and workmen had started to cut a new door opening into the brick of the rear wall. Inasmuch as the Commission had not approved such work, Page nailed a "stop work" notice to the steps. He also took four photographs of the premises, and he then spoke with Finch about the situation. Page gave Finch an Application for Historic Preservation Code Approval and told him to file it by November 23, 1993, so that Commission could consider it at the meeting scheduled for December 1, 1993.

10. Finch completed and submitted the application shortly after he received it. In that document, he requested approval for a new fire exit door and for the stoop and steps. He indicated that the work would match the original materials and design.

C. Consideration of Application

11. The Commission met on December 1, 1993. Finch attended the meeting. The Commission considered a number of agenda items. After a lengthy discussion concerning Finch's application, Commissioner Beckwith moved to table its consideration in order to allow Finch time to check with the Fire Marshal with respect to current fire codes and to verify whether a new door was required as a second means of egress from the upper-level apartment. The

Commission also asked Finch to check with the Zoning Office to see if the house could properly be used in a two-apartment configuration. Finch received written confirmation of the Commission's action on or about December 10, 1993.

12. Finch promptly asked the Fire Marshal to conduct a building inspection; however, because the Fire Marshal's Office was busy and certain staff members were ill, site inspection was delayed for several weeks.

13. The Commission met again on December 15, 1993. Finch was present. At that time, alternatives were discussed. One board member suggested that a tenant living on the second floor could exit the building via a second story window and then cross the roof to find a safe route to the ground. Two other possibilities were removing the heavy-oak, stained-glass door and replacing it with a fire-rated door, and converting the over-sized first floor bathroom window into an exterior fire exit. Eventually, the Commission approved the "stoop and steps" portion of Finch's application, subject to certain conditions; but, based on the motion of Vice-Chair Middleton, the Commission denied the portion of the application involving installation of the new rear door due to "inconsistency" with the Secretary of the Interior's Standards for Rehabilitation and "no exhibited need" for this means of egress as presented by the fire code. (CE 1)

14. On or about December 16, 1993, Finch sent the Review Board a letter appealing the Commission's decision.

15. Finch received written confirmation of the Commission's

decision on or about December 28, 1993.

16. On January 4, 1994, Page sent Finch a copy of the Secretary of the Interior's "Standards for Rehabilitation", along with a copy of the "Guidelines for Rehabilitating Historic Buildings" (revised 1990).

17. The Commission held another meeting on January 5, 1994. At that time, Page advised the Commission that the Fire Marshal's Office was planning to inspect the property and that Finch might have to go before the Board of Zoning Appeals to request a variance for the two-family use of his home. Finch, who was present at the meeting, asked if the Commission had changed its decision regarding his request for installation of a new door. Another individual (Walt Bagby) inquired on behalf of Finch whether the Commission would reconsider its decision if the Zoning Board and Fire Marshal provided favorable determinations. Since there was no application before it, the Commission decided not to take any action until after the Fire Marshal had completed his inspection and the Zoning Board had acted.

18. On or about January 10, 1994, Finch received a letter from R. Barry Tate of the Fire Hazard Inspection Unit of the Grand Rapids Fire Department, with a carbon copy to Larry L. Wood, Acting Fire Marshal. Tate wrote:

In response to your request as to whether your present means of egress at the above address is in compliance with the current BOCA Building Code, Section 816.9.2, Ex #5 - The code requires that multi-family units be constructed with a one hour rating on a means of egress. Your present front first floor entrance is constructed of wood and glass

which does not meet these requirements.

Therefore, if this type of construction is going to be retained when the second floor unit is occupied, we would call for a separate, remote, rated means of egress to be constructed serving the second floor unit.

19. On January 28, 1994, following an inspection, Ronald J. Merizon, Fire Hazard Inspector for the Grand Rapids Fire Department, wrote to Finch and indicated in relevant part:

Per our meeting and inspection at the above mentioned address (334 State St. S.E.), the following items will be required on the rear stairway to comply as a second means of egress for the proposed second floor apartment;

1. All openings must be properly sealed between the stairway and the downstairs apartment.

2. Provide an egress door directly to the exterior from the stairway.

20. At its meeting of February 16, 1994, the Commission asked Page to request written determinations from the Fire and Zoning Departments regarding the 334 State Street rear door request.

21. In response to the Commission's request, the Fire Marshal's Office promptly furnished a photocopy of the January 10, 1994 letter it had previously sent to Finch.

22. At the time of transmittal to the Commission, the letter contained the following handwritten notation:

This opinion in response to Mr. Finch was based on 1987 BOCA Code Sec. 804.0 (&) 809.3

23. Section 804.0 of the BOCA Code states in pertinent part:

804.2 Unsafe means of egress: In any existing building or structure not provided with exit facilities as herein prescribed for new buildings and in which the exits are deemed inadequate for safety by the code

official, additional provisions shall be made for safe egress as the code official shall order.

24. Section 809.3 of the BOCA Code concerns the fire ratings of exterior doors in buildings with only one exit.

25. On March 2, 1994, Susan Thompson, Zoning Investigator, wrote to the Commission regarding the Finch matter. In her letter, she stated:

The owner of this property came into our office to discuss the legality of a two family use. He indicated that the property was occupied by his family members exclusively in the past. He stated that there was a separate dwelling unit upstairs where his daughter lived.

I told Mr. Finch that creating a separate family dwelling area within a single family home for family members did not constitute a legal two-family use. Mother-in-law apartments are often found in single family homes. They may only be occupied by members of the family and not be rented as separate dwelling units.

The dwelling at 334 State SE has never been registered with Housing Inspection as a two-family dwelling as required by City code. It is assessed as a single family dwelling along with commercial use.

This is a C-2 zoned property as it presently stands and is non-conforming due to its single family residential use, inadequate parking, and insufficient lot size and setbacks. Nonconforming uses may continue but may not be expanded, enlarged, or altered unless it is changed to a use that conforms with the zone district. (Article 5, section 5.45).

The Board of Zoning Appeals would have to grant a variance to allow an additional apartment in this dwelling.

26. At the administrative hearing on March 10, 1994, Finch presented further details concerning his application as follows:

The rear side where the door will be

placed will be 90 feet from the nearest street scape and not be seen from any other view. Because the commercial building was built attached to the house it has diminished the value of the house as a historic site and I am sure the addition of a fire escape door in the rear side of the house will not reduce the value of the property. This home is the only residential (sic) home in the C-2 area of Heritage Hill District and doesn't enjoy the prestige, or distinction of a show place. The property has been my home for many years now and I hope to live a few years yet to enjoy retirement here. I am very proud of our home but know it has very little effect on property values. * * *

27. There are approximately 1,500 structures in the Heritage Hills Historic District. The Commission has in the past approved applications for the installation of exterior exits when no other alternative was deemed feasible.

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by a decision of a commission to appeal to the State Board. Section 5(2) also provides that the Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of appropriateness or a notice to proceed. Relief should, of course, be granted whenever a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

In the case at hand, the Appellant asked the Commission to approve the installation of a new exterior door at the rear of an

historic home located in the Grand Rapids Heritage Hills Historic District. The door was desired in order to facilitate the rental of the upstairs apartment in the Appellant's home. The Grand Rapids Fire Department indicated that a sealed off, second means of egress is necessary for two-family occupancy. That indication, however, was not presented to the Commission during its initial consideration of the application. A zoning official has since indicated that a variance is necessary for two-family occupancy, and that such a variance would have to be granted by the Zoning Board of Appeals. Federal historic preservation standards clearly apply to alterations of the exterior of the building.

Upon review of the official hearing record as a whole, it must be concluded that the Commission's decision of December 15, 1993 was supportable as of that date. As of that time, Finch had the burden of furnishing information which was sufficient to show that his application should be granted. Questions had been raised some two weeks earlier about whether the house was properly zoned for two-family occupancy, and if so, whether local fire codes then required a second means of egress. Consideration of Finch's application was tabled to give Finch an opportunity to obtain and present such information. He was not able to do so. In the absence of the additional information, the Commission acted to disapprove Finch's request for a new door.

Having said as much, the facts of this case warrant further discussion. It appears from the hearing record that Finch was unable to obtain fire code information due to the Fire Department's

heavy workload, illness among Fire Department staff members, and probably due to the time of year (i.e., mid-December). The hearing record also shows that Finch contacted local zoning officials at some point in time. The reasons for their lack of response to him and for his failure to submit zoning information to the Commission were not presented during the appeal proceeding.

It is clear from the hearing record that the Commission rendered its decision in December of 1993 knowing it lacked important information about fire code requirements and zoning regulations. This is not to say that the Commission itself had the burden of obtaining such information, even though the local Zoning and Fire Departments (like the Historical Department) were all parts of city government. Yet, with the benefit of hindsight, it appears that fire code information would in fact become available sometime in early January. Had Finch's request been tabled a second time, more information would have been available and a more thorough review might have been possible. Also, a second postponement might have precipitated a prompt resolution of the zoning/two-family use question.

In addition, the hearing record is somewhat troubling with respect to the "historical integrity" aspects of this case. On this point, the written decision of the Commission (issued on December 27, 1993) failed to cite any particular federal rehabilitation standard or guideline, or city ordinance, which would independently justify the denial of the application were fire and zoning code compliance both to be established. Moreover, of

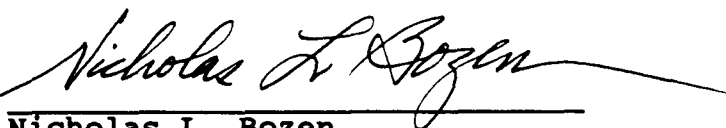
the four means of egress described in the hearing record, the presence of the proposed new doorway may well be the least intrusive, under federal rehabilitation standards, to the building's historic integrity. Of course, that aspect of the case was not particularly well-developed, since the primary focus of the appeal hearing concerned fire and zoning approvals.

In summary, then, the Appellant (Finch) had the burden of demonstrating to the Commission (and to the Board) that his home was (and is) legally zoned for use as a two-family dwelling, that the applicable fire code mandates a separate means of egress, and that his proposed solution is suitable and appropriate in light of federal historic preservation standards. It must be observed that Finch failed to prove to the Commission (and has similarly failed to demonstrate in this proceeding) that his dwelling is properly zoned for the rental of the second floor as a residence. Without such a showing, the fire code does not mandate a second exit, and thus, the historic preservation standards prohibit installation of same.

Recommendation

In light of the discussion here, it is recommended that the appeal be denied.

Dated: April 25, 1994



Nicholas L. Bozen
Presiding Officer