

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

In the Matter of:

CHERYL E. SCHUPPLER,
Applicant/Appellant,

v

Docket No. 97-008-HP

FLINT HISTORIC DISTRICT COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Flint Historic District Commission denying an application seeking approval for the installation of vinyl siding on a residence located at 721 Martin Luther King Avenue, Flint, Michigan.

The State Historic Preservation Review Board (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 November 21, 1996, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on January 24, 1997, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled meeting conducted on Friday, February 7, 1997.

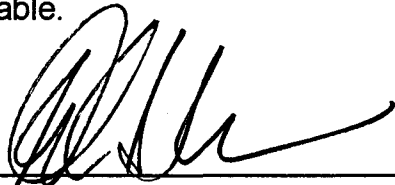
Having considered the Proposal for Decision and the official hearing record made in this matter, the Board voted 6 to 0, with 0 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

IT IS ORDERED that the appeal be and the same is hereby denied.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to all parties as soon as practicable.

Dated: 7 Feb 97



David Evans, President
State Historic Preservation Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order of the Board. MCR 7.105 and 2.105(G) may prescribe other applicable rules with respect to appeals from administrative agencies in contested cases.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

CHERYL E. SCHUPPLER,
Applicant/Appellant,

v

Docket No. 97-08-HP

FLINT HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Flint Historic District Commission (the Commission) denying a request for permission to install vinyl siding on the residence located at 721 Martin Luther King Avenue, Flint, Michigan. The property is situated in Flint's Carriage Town Historic District (the District).

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).¹ This section 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 Review Board), which is an agency of the Michigan Department of State.

Upon receipt of the appeal, the Review Board directed the Michigan Department of State, Hearings Division, to convene an administrative hearing for the purpose of taking relevant evidence

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

and argument. The Hearings Division conducted a hearing on November 21, 1996, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.²

The Appellant/property owner, Cheryl E. Schuppler, appeared in person at the hearing. Terry R. Bankert, Attorney at Law, Room 300 Atwood Building, Flint, Michigan, appeared on behalf of the Appellant. Suzanne Wilcox, Historic District Commission Staff, attended the hearing as a representative of the Commission/Appellee. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Kristine Kidorf, Environmental Review Coordinator for the Michigan Department of State, State Historic Preservation Office, attended as an observer/representative on behalf of the Review Board.

Issues on Appeal

The Appellant appealed the Commission's decision, which was rendered on August 1, 1996, in a written claim of appeal dated September 27, 1996. As the basis for the appeal, the claim listed the following grounds:

1. That requiring the Appellant to replace and repaint the site's existing wooden siding would cause the Appellant an undue financial hardship.

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

2. That maintaining the exterior of the resource without vinyl siding would not be in the best interest of the majority of the community.

3. That the Commission, in rendering its decision, failed to consider all relevant factors, including:

- a. The Appellant's medical condition.
- b. The great deterioration of the site.

4. That the Commission acted arbitrarily in denying the application at issue, as evidenced by the fact that the Commission had previously granted permission to demolish the "IMA" Building (Auto World).

5. That because the City of Flint Building Inspection Department approved a building permit to install vinyl siding and the Appellant subsequently installed insulation at the site, the Appellant had detrimentally relied upon city authorization, to her great expense.

By way of response, the Commission's representative asserted:

1. That the installation of vinyl siding on the Appellant's house would not conform to federal and local preservation standards regarding exterior work on structures in historic districts.

2. That the Commission had acted properly in view of the information before it.

3. That the value of the "improvement" at issue was questionable.

4. That granting the Appellant's application would seriously impair the architectural and historical integrity of the District.

Summary of Evidence

Under Michigan law, a party who occupies the position of plaintiff, applicant, or appellant generally has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading and 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 clearly occupies that position in this matter and consequently bears the burden of proof.

A. The Appellant's Evidence

Section 5(2) of the Local Historic Districts Act, supra, indicates that appellants may submit all or any part of their evidence and arguments in written form. In that vein, the Appellant submitted four exhibits to establish her factual assertions. Appellant's Exhibit No. 1 was the Appellant's claim of appeal, dated September 27, 1996. Appended to that exhibit was a copy of the minutes of the Commission meeting conducted on August 1, 1996. Appellant's Exhibit No. 2 was a follow-up letter, dated October 7, 1996. Three documents were attached to this exhibit, those being: a Denial Certificate of Appropriateness, a transmittal letter, and the deed for 721 Martin Luther King Avenue. The Appellant's third exhibit contained Appellant/Applicant Argument, a City of Flint Building Permit dated June 11, 1996, a Certificate of Appropriateness Application form, a second copy of the Commission minutes for the meeting held on August 1, 1996, a letter from Paul H. Musson, M.D., dated August 19, 1996, and a newspaper

article from the Flint Journal dated September 19, 1996. Appellant's Exhibit No. 4 consisted of a City of Flint Notice of Violation dated May 21, 1996.

In addition to exhibits, the Appellant, Cheryl Schuppler, testified on her own behalf. In brief, she explained the reasons for her recent return to the City of Flint and her initial contacts with city officials. She stated that she returned to the Flint area to be near her mother, and she wanted to purchase property where she could operate a business on the first floor and have a home on the second floor.

Schuppler specifically testified that she was unaware that the house she bought was located in an historic district when she purchased it, adding that she would have purchased elsewhere had she known about the historic designation in advance. She also said that her sales agent never told her that the house was located in an historic district. She additionally stated that when she contacted city zoning officials about operating a business in the house, she was advised to contact the Commission Chairperson, David White, for information about obtaining a rehabilitation loan.

Schuppler further indicated that she did telephone Mr. White and that he sent her a brochure on how to apply for such a loan. She added that she also spoke with the official responsible for loans and was later informed that she was ineligible for loan assistance.

Schuppler also testified that she wanted to improve her property, and after receiving a notice of violation with regard to

the exterior of her building, she contacted Vinyl Sash of Flint Inc. (Vinyl Sash), with which she had done business in the past, and contracted for the installation of vinyl siding. She indicated that Vinyl Sash had sent one of its employees, as her agent, to the Flint Building Department to obtain a permit to install the vinyl siding. She also stated that sometime later, she spoke with the Building Department employee who had issued the permit, and he said that he reviewed the historic building list before issuance, that there was a record keeping problem, and that her building was not on the list.

Schuppler further testified that she had spent over \$8,000.00 on home improvements, not counting the money she had spent on a new roof, new windows, and new vinyl siding. She indicated that after she had purchased the vinyl siding and insulation, and after the insulation had been stapled over her old wooden siding, someone from the city had come to her house, had taped a Stop Work order on her front door, and then had quickly driven away.

She additionally stated that she had a medical condition, COPL, which stands for Chronic Obstructive Pulmonary Disease. She testified that she is also a severe asthmatic and is in the beginning stages of emphysema. She further indicated that she has been a patient of Dr. Paul H. Musson, since 1990. She read from a letter dated August 19, 1996, in which Dr. Musson wrote:

"Cheryl Schuppler has been a patient of my practice since October 1990. Throughout this period of time I have treated ms. (sic) Schuppler for Chronic Obstructive Airway disease (sic) and Bronchial Asthma. Her condition is often aggravated by inhalation of fumes, gases and natural allergens. It is my recommendation that ms.

(sic) Schuppler not be exposed to inhalation of paints or strippers necessary to refurbish her newly purchased property."

She added that her medical condition played a factor in her decision whether or not to repaint the exterior of her property or to install vinyl siding. She testified that she had been hospitalized for seven out of 12 months during 1994.

Schuppler also testified that she attended the Commission meeting at which her application was considered and that she believed her medical condition was not really considered by the Commission. She further stated that at that meeting, Commissioner Foote said that the building permit had been issued in error, that Commissioner Greer said she might have to seek reimbursement from the Building Department, and that Commissioner Crawley said he was tired of cleaning up the Building Department's errors.

Schuppler additionally testified that a lot of the wood on her house was dry rotted and not paintable. She concluded her testimony by indicating that she told the commissioners that people who are getting ready to buy a property located in the District should be receiving some type of disclosure from the Commission.

B. The Commission's Evidence

The Appellee/Commission also presented documentary evidence at the administrative hearing.

Commission Exhibit No. 1 was a copy of Article XIX of the Flint City Code,³ concerning Flint Historic Districts and the Flint Historic District Commission. Commission Exhibit No. 2 was a City

³ Flint Ordinances, § 2-141 et seq.

of Flint brochure entitled "Historic Districts". Commission Exhibit 3 was the Affidavit of David White, dated November 20, 1996. In this affidavit, Mr. White indicated that Schuppler had contacted him prior to purchasing her home regarding information about Carriage Town and financing programs available to her as a resident, that he had informed her that 721 Martin Luther King Avenue was in fact located in Carriage Town, and that he had sent her a copy of a brochure on Flint Historic Districts. Commission Exhibit No. 4 was a map of the Carriage Town Historic District showing that 721 Martin Luther King Avenue was located within the District's boundaries. Exhibit No. 5 consisted of six Polaroid photographs showing various views of the house in question, including one picture showing both the house and a Carriage Town Historic District sign in the same scene. Exhibit No. 6 was a reprint of the Standards for Historic Preservation in Local Historic Districts, City of Flint, Michigan (July 1985), and Exhibit No. 7 was the Carriage Town Strategic Plan for Revitalization. Exhibit No. 8 was a third copy of the minutes of the Commission meeting held on August 1, 1996, and the final two exhibits were house survey forms with photographs.

Two individuals testified on behalf of the Commission.

Suzanne Wilcox, who presently serves as Commission staff, presented a brief overview of the history of the house and of the District. She also discussed the Commission's view that the work proposed in the application failed to comport with historic preservation standards. She additionally stated that an historic

preservation association was active in the District, that the Commission has consistently denied applications to install vinyl and aluminum siding on properties in the District, that the Commission had denied eight such requests in the past three years alone, that there was only one approval (in 1982) for a portion of a structure on the second story level, and that given the visibility of Schuppler's property near the boundary of the District, installing vinyl siding would seriously impair the integrity of the District.

Commission Chairperson, John Foote, also testified in support of the Commission's decision. Commissioner Foote indicated that he was aware of and understood Ms. Schuppler's health problem when she attended the Commission meeting in August. He stated that he even inquired about her health and immediately suggested that perhaps she could take a vacation while her house was being painted.

Foote also addressed the matter of the demolition of the IMA Building, indicating that Auto World was demolished for reasons bearing no relation whatsoever to Schuppler's application to install vinyl siding.

Findings of Fact

Based on the evidence presented at the administrative hearing, the facts of this matter are found to be as follows:

A. Background of Flint's Preservation Program and Carriage Town

1. On April 23, 1979, the City of Flint adopted Local Ordinance No. 2707,⁴ which established a local historic

⁴ See footnote 3.

preservation program for the City of Flint. The ordinance was designed to recognize, preserve, and protect historic and architectural sites, buildings, structures, objects, open spaces, and features significant to the heritage of the City of Flint. (Commission Exhibit No. 1 & No. 2)

2. Among other things, the ordinance established a design review process, administered by the Commission, to ensure that all exterior changes to properties within Flint's historic districts would serve to maintain the historic character and value of the districts. It was believed that while each individual building within a district may not have major significance, each structure played a small but important role in shaping the unique and distinctive character of each district. It was also believed that a building's individual character could be destroyed by inappropriate alterations, which would not only affect that building's individual value, but the overall value of neighboring properties as well. (CE 2)

3. The Commission is a group of seven Flint citizen volunteers who share an interest or expertise in architecture, construction, anthropology, archaeology, or history. Commissioners are appointed by Flint's mayor for three-year terms. The Commission is charged with reviewing all building permit applications for properties located within Flint's historic districts, if proposed work would have a major impact on the exterior of a building or a structure. The replacement of siding is considered to be work with major impact. The Commission frequently develops "solutions" which take

into account historic features, modern-day needs, and costs. (CE 2)

4. Twenty-nine local historic districts have been established under Ordinance 2707. Some of these districts consist of only one structure, while others encompass entire neighborhoods. The larger districts include Civic park, Carriage Town, East Street, Manning Street, and Grand Traverse Street. (CE 2)

5. The neighborhood known as Carriage Town has been in existence for well over 100 years. The Carriage Town Historic District was established by ordinance in 1979 and consists of 350 properties. Geographically, the District is the point of origin for the City of Flint. The name, Carriage Town, describes the majority of the extant houses built when Flint was the Carriage Capital of the United States. Such housing sheltered workers in this original walk-to-work neighborhood. (CE 7)

6. A strategic plan for the District's revitalization was prepared in 1982. The strategic planning team was composed of members of the Carriage Town Historic Neighborhood Association, staff from the City of Flint, and staff from the Flint City Development Association. The team also worked with a consultant. The plan contained a vision statement, which was to revitalize Carriage Town as a desirable, quality residential neighborhood. Further, the plan called for the use of consistent approaches to assess future growth and development, with the aim of capitalizing on the District's historic character and presenting the neighborhood as attractive, cohesive, and unique. The plan also

called for attracting new residents, and businesses, who shared the vision of living in a quality neighborhood, thereby improving stability by increasing home ownership and developing an environment receptive to business. Organizations such as Flint 2000, Flint West Village Association, the Urban Investment Plan, University Park, FCDC, and the Atwood Stadium Task Force, have collaborated with the District to bring about the development of a safe, interesting, high-quality urban environment in Carriage Town.

(CE 7)

B. Purchase of Residence and Attempted Installation

7. Sometime in January of 1995, Cheryl E. Schuppler decided to return to the Flint area to be near her mother. Schuppler wanted to purchase a residence where she could operate a business on the first floor and reside on the second level.

8. Her first step was to contact a realtor, who eventually directed her attention to 721 Martin Luther King Avenue.

9. Schuppler next contacted the Flint Zoning Department to discuss the possibility of operating a business at the 721 Martin Luther King Avenue location. Either the realtor or an employee from the zoning office stated, among other things, that Schuppler should contact David White, who chaired the Commission, because that house might be eligible for a rehabilitation loan since it was located in an historic district.

10. Sometime during April of 1995, Schuppler telephoned White, to obtain information available on Carriage Town, as well as information on financing programs which might be available to her

as a resident of a district. He advised her that 721 Martin Luther King Avenue was indeed in the District, and he also sent her literature regarding historic rehabilitation. (CE 3)

11. On February 21, 1996, an agent of the City of Flint, Building & Safety Inspection Division, conducted an inspection of 721 Martin Luther King Avenue. The inspection revealed that both the house and garage roofs were leaking and had missing shingles and rotted deck boards; that the exterior surfaces of the house and garage had weathered and/or loose and flaking paint; that the house and garage siding was damaged in places; that the eaves trough system was incomplete; that the bedroom windows were inoperable; that the guardrail on the front porch was missing; and that other problems were present. (Appellant's Exhibit No. 4)

12. On March 13, 1996, Schuppler "closed" on the property at 721 Martin Luther King Avenue, purchasing it "as is". She paid \$35,000.00 for the house. The sale was subject to the seller arranging for city inspection. (AE 2)

13. On or about May 21, 1996, Schuppler received a multi-point Notice of Violation from the City of Flint, Division of Building & Safety Inspection. The notice indicated that the property was in violation of the Flint City Code, Chapter 24. It also indicated, in part, that all exterior house surfaces which were normally painted shall be properly scraped and painted, or else recovered with a suitable weather-proof material. It further indicated that repairs to the siding must be made and that painting shall occur as necessary. (AE 4)

14. After receiving the violation notice, Schuppler took corrective action. She had various windows in the house replaced. She also spent about \$8,000.00 on other renovations. Altogether, she estimated that overall renovations could cost her as much as \$48,000.00. (AE 3)

15. On or about June 11, 1996, Schuppler contacted Vinyl Sash of Flint Inc., with whom she had done business in the past. One of the firm's employees proceeded to the City Building Department and requested a building permit to install vinyl siding on Schuppler's residence, as well as replace the roof. A city employee first inspected a list of designated historic structures, but did not find "721 Martin Luther King Avenue" entered on that list. He then issued the building permit to Schuppler's agent. (AE 3)

16. Prior to being designated "Martin Luther King Avenue", the thoroughfare on which Schuppler's house was situated was known as "Detroit Street". Certain city records (e.g., survey cards) carried the property's "Detroit Street" designation as recently as December of 1994. (CE 9 & 10)

17. Following issuance of the building permit, workers from Vinyl Sash went to Schuppler's house and started stapling insulation to the lower half of the exterior of the dwelling, over the existing wooden siding. (CE 5) When they had completed about 85% of that work, someone appeared and taped a "Stop work" order on the front door, and then promptly left the premises.

18. The next day, Schuppler herself went to the Building Department to get to the bottom of the problem. She was informed

that there had been a mistake and that she would have to submit an application to the Commission.

C. Submission and Consideration of Application

19. On July 26, 1996, Schuppler filed an application for a certificate of appropriateness. In her application, she requested permission to install insulation and new vinyl siding on her house. She wrote that the basis for her request was "health reasons of property owner". She added that replacement with vinyl will be based on "historic appearance", as moldings and trimmings will reflect an historical appearance. (AE 3)

20. The Commission met to consider Schuppler's request on August 1, 1996. All seven commissioners were present. Schuppler also attended the meeting. After approval of previous minutes, Schuppler's request was the first order of business, and Schuppler asked for permission to install vinyl siding to her residence. She stated that when she purchased her home, she was unaware that it was located in an historic district. She stated that because of a serious asthmatic condition, she was not able to tolerate paint fumes and therefore wanted to install vinyl siding instead of having the existing siding painted. She indicated that she had purchased new vinyl siding and had already installed insulation on the lower level of the first floor of her house. She said the City of Flint, Division of Building & Safety Inspection, had issued a permit for that work. (AE 1 & 3; CE 8)

21. With respect to the health issue, Commissioner John Foote, who chaired the Commission, asked about Schuppler's health

problem. He felt he understood her problem, and he suggested, almost immediately, that perhaps she could paint her house if she took a vacation while that work proceeded.

22. Commissioner Foote was also aware that Schuppler had devoted considerable money to rehabilitating her house. He was additionally aware that this particular renovation project, overall, involved substantial amounts of money, time, and other resources.

23. Commissioner Foote then explained that vinyl siding was not allowed in the District and that the building permit had been issued in error. Commissioner Greer told Schuppler that she might have to approach the City of Flint to ask for reimbursement of her costs because the permit had been issued in error. (AE 1 & 3; CE 8)

24. The Commission has in fact consistently denied applications for the installation of vinyl siding on homes located in the District. Eight such applications have been denied in the past three years.

25. The IMA (Auto World) demolition request received Commission approval for reasons having no relationship to Schuppler's application.

26. After discussion, a motion was made to deny Schuppler's application because the work she had applied for was not in keeping with the historic character of the District. A roll call vote on approval of the motion to deny passed unanimously. The Schuppler portion of the meeting lasted about 30 minutes. (AE 1 & 3; CE 8)

27. Schuppler received written notice of the denial, on or about August 22, 1996. This notification advised her that she could appeal the Commission's decision to the Review Board. (AE 2)

28. On or about September 27, 1996, Schuppler's attorney sent her claim of appeal to the Review Board. The appeal was received on October 3, 1996. (AE 1)

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by decisions of commissions to appeal to the State Historic Preservation Review 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 where 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, where a commission has reached a correct decision, relief should not be ordered.

A. Compliance with Historic Preservation Standards

At the outset of the discussion of the issues in this case, it must initially be recognized that there is absolutely no question about whether or not the installation of vinyl siding comports with historic preservation/renovation principles and standards.

The installation clearly violated three Standards for Rehabilitation of Historic Properties promulgated by the U.S.

Secretary of the Interior.⁵ Those standards are 2, 5, and 6. They provide as follows:

(2) The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

(5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize an historic property shall be preserved.

(6) Deteriorated historic features shall be repaired rather than replaced. ***

As is readily apparent from a review of the hearing record, the installation of vinyl siding would alter the historic character of the house and the District, would fail to preserve historic finishes and construction techniques, and would constitute the replacement (rather than the repair) of deteriorated wooden siding.

Moreover, the proposed installation violated the Standards for Historic Preservation in Local Historic Districts, City of Flint, Michigan (July, 1985), which provide in part that:

* * * These standards, when used in conjunction with the Secretary of Interior's Standards for Historic Preservation, should provide the commission the necessary guidelines to preserve the local historic districts.

* * *

VI EXTERNAL WALLS

Materials applied over the exterior wall surface of existing structures * * * within the district shall not differ significantly in scale or texture from the original surface cover. The application of material such as artificial veneer, artificial cut stone, asbestos sidings, masonry board, and wood shingles is prohibited at the discretion of the commission.

⁵ 36 CFR § 67.7.

Sidings replaced or applied or original clapboard shall have vertical dimensions within one inch of the original material.

Application of siding shall not conceal or destroy the original wood details. (CE 6)

Under any reasonable application of the aforementioned standards to the Appellant's request for installation of vinyl siding, the conclusion must be that the Commission acted properly in rejecting Schuppler's application.

Given the basic validity of the Commission's historic renovation analysis, the next matter for consideration here is whether the Appellant has presented other grounds sufficient to require granting of the request for reversal.

B. Basis for Appeal and Grounds for Reversal

1. Repairing of Siding Would Cause Undue Financial Burden

In her appeal, the Appellant/owner first argued that repairing the wooden siding on her home, and repainting same, would cause her an undue financial hardship and that all feasible alternatives had been exhausted.

With respect to this initial reason for reversal, a review of the hearing record fails to disclose any evidence to prove the presence of any financial hardship to Schuppler, if rotted wooden siding were repaired and then the exterior of the residence were scraped and repainted. In point of fact, the Appellant paid \$35,000.00 for the property, had spent \$8,000.00 on home improvements which did not include money spent on vinyl siding, and anticipated spending up to \$48,000.00 for structural improvements to the building, garage, and yard. Schuppler testified that she

had no trouble paying for her new home and, in addition, that, due to the extent of her financial resources, she was ineligible for a rehabilitation loan to further improve the property. Moreover, no evidence was presented to show what Schuppler paid for the siding, nor was evidence presented to show the estimated cost of replacing and repainting the existing wood. Therefore, there is no reason to assume that the replacement and repainting of wood might result in any higher cost to Schuppler than the amount, as yet unspecified, that she paid to Vinyl Sash for the insulation and vinyl siding.

In short, the evidentiary record is devoid of proofs showing the presence of financial hardship. It must therefore be concluded that the Appellant's first ground for reversal should be rejected.

2. Retaining Wood Siding Not in Interest of Community

The Appellant next argued that maintaining her new home without vinyl siding would not be in the interests of the majority of the community.

Once again, a review of the evidence in the official hearing record fails to reveal any evidentiary support for the Appellant's contention.

To the contrary, the hearing record contains a detailed strategic plan for the revitalization of the Carriage Town Historic District. (CE 7) This plan, as well as the testimony of the Commission's staff representative, indicate that there is an active and dynamic neighborhood association functioning within the District, partnering with numerous groups and organizations, such as Flint 2000 and the Urban Investment Plan, to redevelop the

District in accordance with historic preservation practices and principles.

Indeed, the preponderance of the evidence in the official hearing record indicates that the retention and replacement of wood, rather than the substitution of modern or contemporary materials (e.g., vinyl), is in the majority community interest.

Thus, Appellant's second averment must be rejected.

3. **Failure to Consider All Relevant Factors**

The Appellant next argued that the Commission's decision should be reversed because the Commission failed to consider all of the relevant factors before it.

A. **Failure to Consider Health Factor**

With respect to this contention, the Appellant specifically asserted that the Commission gave no consideration to the factor of her health condition.

In support of this proposition, Schuppler, at the administrative hearing, testified that she believed the Commission did not consider her health when it voted to deny her application. However, other evidence in the hearing record tends to suggest that just the opposite was the case.

First, the meeting minutes themselves reflect that Schuppler told the Commission she had a "serious asthmatic condition" and could not "tolerate paint fumes". However, the Appellant, who bears the burden of proof in this proceeding, offered no explanation as to why she could not absent herself from the premises for a short time.

Second, as indicated above, Chairman Foote also appeared at the administrative hearing and testified on this point. He stated under oath that he was aware of Schuppler's health problem and even inquired about it. He further indicated that he himself had suggested to Schuppler that perhaps she could take a short vacation while her house was being painted.

On balance, the evidentiary record does not support the Appellant's allegation that the Commission failed to consider her health. Rather, the evidence suggests that the commissioners did in fact consider this issue and, after deliberating, simply rejected the proposition that Schuppler's particular health condition was sufficient to necessitate the use of vinyl siding.

Moreover, it is noteworthy that any replacement and painting of wooden siding at the premises would be taking place on the outside (as opposed to the inside) of the residence in question, and therefore the impact of fumes on occupants would be minimal.

Finally, the Appellant clearly planned to spend as much as \$48,000.00 to make exterior improvements at this property. The Appellant's evidence also demonstrates the presence of an interior conversion plan calling for converting the first floor of the residence into a place of business and the second floor into a self-contained residential unit, presumably with new plumbing, electrical service, etc. It seems reasonable to assume that, in all of that, some painting, wall papering, and/or similar processes would be likely to occur, and that whatever the Appellant did to

protect herself during such work, she would also do in the event of exterior painting.

Inasmuch as the Commission did consider the Appellant's health issue, this basis for reversal must also be rejected.

B. Failure to Consider Deterioration Factor

The Appellant further argued that the Commission failed to consider the "great deterioration" at the site.

In terms of evidence on this contention, Schuppler testified that "a lot of the wood" on her house was dry rotted and not paintable. The Notice of Violation (AE 4), which was also presented by the Appellant, indicated that the exterior surface of the house had weathered and/or loose and flaking paint, and that the wood siding was damaged in places. It is also apparent that insulation has been stapled around much of the house.

Nevertheless, the Appellant's evidence, when viewed as whole, fails to establish the proposition that there was "great deterioration" at the site. Schuppler's testimony on dry rot was non-quantified. That is, it failed to indicate how much of the existing wooden siding had actually rotted. The violation notice merely indicated that damage was "present in places". Nowhere in the evidentiary record is there any indication that the exterior of the residence was in such poor shape that the only reasonable and prudent course of action, with respect to rehabilitating the exterior surface of the structure, would be to cover the wood, in an unrepaired condition, with new vinyl siding.

Finally, the fact that there may now be (or are) staple holes in the existing wooden siding does not demonstrate "great deterioration", to the extent that those holes cannot be filled or otherwise repaired.

Inasmuch as the Appellant has failed to prove either the "extent" or "greatness" of the exterior "deterioration", it cannot be concluded that the Commission erred by not considering same.

4. Acting in Arbitrary Manner

The Appellant next argued that the Commission acted on her application in an arbitrary manner, citing as an example the fact that the Commission had recently approved the demolition of the IMA Auditorium located within one block of the Schuppler property.

With respect to the assertion of Commission arbitrariness, it must first be noted that the Appellant presented no evidence whatsoever on this issue. That is, the Appellant submitted no proofs regarding whether or not the IMA Auditorium had or had not been torn down with or without Commission approval.

Interestingly, the only evidence about the IMA situation came as a result of the testimony of Commissioner Foote. He, of course, pointed out the obvious - that the IMA matter involved demolition rather than alteration. He added that the circumstances of the two Commission reviews were in no way comparable and bore no relationship to each other.

More to the point, the Commission also presented testimony to the effect that the Commission had received eight applications for

the installation of vinyl siding during the past three years and had rejected each and every one of them.

On balance, the evidentiary record does not reflect arbitrary or capricious decision-making on the part of the Commission. Rather, it suggests the uniform and consistent application of the principle that new materials (such as vinyl) should not be introduced into the District, absent some compelling and permissible reason.

5. Detrimental Reliance on Issued Permit

The Appellant's fifth and final contention was predicated on the fact that the Flint Division of Building & Safety Inspection had approved a building permit for the installation of vinyl siding at the site, and that Schuppler had, to her great hardship and expense, detrimentally relied on the issuance of the building permit, as authorization from the "City of Flint" to proceed.

The Appellant's evidence on this issue included her testimony, the Commission's minutes, and additional documentary evidence (viz. AE 3, newspaper article), and did show that the permit for vinyl siding had been "issued in error". The Appellant also showed that there was a degree of reliance on her part with respect to the permit issuance; namely, the purchase of insulation and vinyl siding. Further, the Appellant's counsel argued that the most unfair aspect of this case appeared to be that Schuppler had been caught in an ongoing dispute between the City of Flint's Division of Building & Safety Inspections, and the City's Historic District Commission. Counsel contended that similar mistakes had occurred

in the past and that those mistakes had been corrected by Commission approvals.

However, on this last point - that other "mistakes" had been corrected by Commission approvals - it must first be observed that no evidence was presented by anyone. That is, neither the Appellant, who bears the burden of proof, nor the Commission, submitted any evidence whatsoever tending to show that any past mistakes had somehow been corrected by Commission approvals of otherwise impermissible permit requests.

Also, it is noteworthy that the Appellant's evidence on the matter of detrimental reliance is somewhat problematic. While the Appellant did show that insulation had been installed over part of her house and that vinyl siding was purchased, there was nothing further in the hearing record to demonstrate that those actions were truly "detrimental" to her, or caused her any "hardship", economic or otherwise.

For example, the Appellant did not submit her work order from Vinyl Sash, or any payment receipt, or any written Vinyl Sash policy to the effect that the firm would not take the entirely the unused siding back. It is unclear how much, or how little, she spent on that material.

Of even more significance, one of the commissioners stated that the Building & Safety Inspection Division might well have to honor a request for reimbursement of Schuppler's costs due to the erroneously issued permit. If true, there would be no economic hardship in this case, since Schuppler would be made economically

whole by the Division, or perhaps some other agency of the City. The Division was not here to express its version of the events in question, but it is fair to assume that the City - as is the case with the State - has a mechanism to make its citizens whole when ministerial errors have occurred.


In summary, although the Appellant took some action as a result of the erroneous issuance of the permit, she has yet failed to demonstrate the presence of "detrimental" reliance sufficient to warrant reversal of the Commission's decision, which, again, appears to have been proper under historic preservation law.

As a result, the Appellant's final argument for reversal must be rejected.

Recommendation

In consideration of the above, it is recommended that the appeal be denied.

Dated: January 24, 1997


Nicholas L. Bozen (PL1091)
Presiding Officer
Hearings Division