

**STATE OF MICHIGAN  
MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES  
STATE HISTORIC PRESERVATION REVIEW BOARD**

In the Matter of:

**DON MOORE,**  
**d/b/a D & D BICYCLES,**  
Applicant/Appellant,

v

Docket No. 04-016-HP

**NORTHVILLE HISTORIC  
DISTRICT COMMISSION,**  
Appellee.

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**FINAL DECISION AND ORDER**

This matter involves an appeal of a decision of the Northville Historic District Commission, denying an application to reconstruct the commercial structure located at 121 N. Center Street, for the purpose of enabling the owner to add two floors. The structure is located in the Northville Historic District.

The State Historic Preservation Review Board (the Board) has jurisdiction to consider this appeal under Section 5(2) of the Local Historic Districts Act, as amended, being Section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, the Office of Regulatory Affairs of the Department of History, Arts and Libraries conducted an administrative hearing on February 12, 2004, for the purpose of receiving evidence and hearing arguments.

A Proposal for Decision was issued on April 16, 2004, and true copies of the Proposal were mailed to all parties and their attorneys pursuant to Section 81(1) of the

Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

The Board considered this appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on May 7, 2004.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 7 to 0, with — abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter, and to incorporate the Proposal into this document, and,

Having done so,

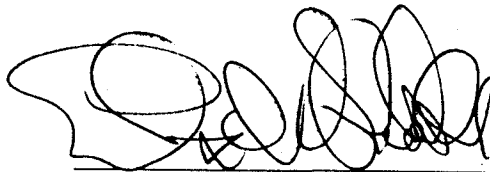
**IT IS ORDERED** that the Commission's decision of September 17, 2003 is **AFFIRMED**.

**IT IS FURTHER ORDERED** that the appeal is **DENIED**.

**IT IS FURTHER ORDERED** that a copy of this Final Decision and Order shall be transmitted to each party, and to his or her attorney of record, as soon as is practicable.

Dated: \_\_\_\_\_

5/7/04



\_\_\_\_\_  
Elisabeth Knibbe, 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 notice of the Board's Final Decision and Order is mailed to the parties.

STATE OF MICHIGAN  
DEPARTMENT OF HISTORY, ARTS AND LIBRARIES  
OFFICE OF REGULATORY AFFAIRS

In the Matter of:

DON MOORE, d/b/a D & D BICYCLES  
Applicant/Appellant,

Docket No. 04-016-HP

v

NORTHVILLE HISTORIC DISTRICT COMMISSION,  
Commission/Appellee.

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PROPOSAL FOR DECISION

This appeal concerns a decision of the Northville Historic District Commission (the Commission), denying an application to reconstruct the commercial structure located at 121 N. Center Street in Northville, Michigan, for the purpose of enabling the owner to add two floors. The one-story building is owned by Don Moore (the Appellant) and is located in the Northville Historic District (the District).

The Appellant filed his Claim of Appeal under the provisions of section 5(2) of the Local Historic Districts Act [(the LHDA), 1970 PA 169, § 5, MCL 399.205]. Section 5(2) provides that applicants aggrieved by decisions of historic district commissions may appeal to the State Historic Preservation Review Board (the Review Board), an agency of the Michigan Department of History, Arts and Libraries (the Department).

On receipt of the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an administrative hearing for the purpose of receiving evidence and hearing arguments. The Office of Regulatory Affairs convened a hearing on February 12, 2004 in the Commission Room, Fifth Floor, Michigan Library and Historical Center, 702 West Kalamazoo Street, Lansing, Michigan. The hearing was held in accordance with procedures set forth in Chapter 4 of the Administrative Procedures Act of 1969 [(the APA), 1969 PA 306, § 71 *et seq.*, MCL 24.271 *et seq.*].

The Appellant was represented at the hearing by Scott E. Munzel, Attorney at Law, of the law firm of Bodman, Longley & Dahling, L.L.P., Ann Arbor, Michigan. James R. Kohl, City Attorney for the City of Northville, of the law firm of James R. Kohl, P.C., Northville, Michigan, appeared for the Commission. Nicholas L. Bozen, an Administrative Law Judge with the Office of Regulatory Affairs, Department of History, Arts and Libraries, presided at the hearing.

#### Issues on Appeal

In his Claim of Appeal, the Appellant asserted that the Commission's denial of his application should be set aside and the Commission should be ordered to issue a certificate of appropriateness, for the following reasons:

1. The Commission failed to follow pertinent ordinances adopted by the Northville City Council.
2. The Commission failed to follow section 5(3) of the LHDA, in that the Commission incorrectly determined

that the proposed new construction would be incompatible with applicable preservation standards.

3. The Commission violated the due process protections set forth in the federal and Michigan constitutions by considering factors irrelevant to the Appellant's application, by failing to follow local ordinances and state law, and by acting in an arbitrary and capricious manner through its approval of other building proposals.
4. The Commission violated equal protection requirements set forth in the federal and Michigan constitutions, in that the rejection of the applicant's request was contrary to recent decisions involving other proposals.
5. The Commission violated the property taking provisions set forth in the federal and Michigan constitutions, in that the rejection of the applicant's request resulted in a deprivation of his private property rights without just compensation.

By way of response, the Commission, in its Answer to Claim of Appeal, denied all of the above allegations. The Commission argued that it had acted properly and rationally on the basis of the information before it when rendering its decision, adding that the height of the proposed new addition was too high. The Commission contended that the Appellant's proposal would more than double the size of the building and would significantly change the character of the building and the surrounding area.

### Summary of Evidence

Under Michigan law, a party who occupies the position of an applicant or appellant in an administrative proceeding typically bears the burden of proof. 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 occupies that position in this proceeding and accordingly has the burden of proof regarding its factual assertions.

#### **A. Appellant's Evidence**

Section 5(2) of the LHDA, cited above, indicates that appellants may submit all or any part of their evidence in written form. In this vein, the Appellant submitted seven exhibits, some consisting of several documents, relative to his appeal of the Commission's decision. Appellant's Exhibit A is a copy of the Denial letter issued by the Commission on September 24, 2004. Appellant's Exhibit B is a copy of a measured drawing that illustrates existing buildings and several proposed construction projects in Downtown Northville, including the proposed two-story addition to 121 N. Center Street. Appellant's Exhibit C consists of four photographs; three photographs depicting the west side of the 100 block of N. Center Street in Downtown Northville, and one photograph depicting the east side of the same block.

Appellant's Exhibit A.1 consists of three photographs depicting the west side of the 100 block of N. Center Street. Appellant's Exhibit B.1 consists of three photographs depicting the east side of the 100 block of N. Center Street, including views of a new two-story building referred to as the "Knickerbocker Building". Appellant's Exhibit C.1 consists of two photographs showing the north and south sides of East Main Street from its intersection with Center Street. Appellant's Exhibit D.1 consists of three photographs of E. Main Street, showing slightly different views of the front elevation of the recently reconstructed three-story building, commonly known as the "Jim Long Building".

Appellant's Exhibit D is a large-scale measured drawing of the front elevation of the proposed reconstruction of the D & D Bicycle shop and a current picture of the shop's front. Appellant's Exhibit E is a large-scale measured drawing of the rear elevation of the proposed reconstruction of the D & D Bicycle shop and a current picture of the shop's rear. Appellant's Exhibit F is a measured drawing that illustrates building height comparisons along the north side of Main Street between Wing Street and Center Street. Appellant's Exhibit G consists of the following: a measured drawing that shows existing buildings and several proposed construction projects on or behind the west side of the 100 block of N. Center Street; an overhead view of the 100 block of the 100 block of N. Center Street; and a picture of the west side of the 100 block of N.

Center Street, containing a superimposed image of the proposed reconstruction of the D & D Bicycle shop.

Besides submitting exhibits, the Appellant also presented testimony from two witnesses. First, the Appellant offered testimony from Daniel Plantis, who is a Vice President of the Garrison Company, with 20 years' experience in the architectural design and construction business, and who functioned as the Chief Designer for the Appellant's proposed reconstruction project. In brief, Plantis testified about the collective efforts of his company, the architectural firm, and Moore to devise a plan that took into account Moore's needs to expand his retail bicycle shop and to add office space, as well as the desire to maintain the building's character, especially its former use as a post office. He described the activities that he undertook in developing reconstruction plans, including visits to the site, visually observing and photographing Moore's bicycle shop and various streetscapes in the downtown area, measuring the overall dimensions of the bicycle shop and other buildings, checking into local building requirements, and designing and redesigning drawings of possible reconstruction work. He also talked about the various architectural styles and sizes of buildings in the immediate vicinity of Moore's shop (noting that many buildings possessed "strong architectural features"), as well as renovation work that Moore made on his shop after he purchased it. He said that the height of the buildings ranged from 12 to 14 feet for one-story structures, and from 36 to 38 feet for three-story buildings.



Plantis indicated that attempts were made to address several concerns raised by the Commission, noting that the original plan was to completely demolish the structure at 121 N. Center Street and to then build a new three-story building, but that the Commission had objected to losing the historic building. Plantis expressed the opinion that the design of the proposed reconstructed three-story building, including its 36-foot height, was entirely compatible with the size and massing of other buildings in the surrounding area and was in harmony with the historic character of the building and the Historic District as a whole. He conceded, however, that the Commission correctly determined that the building's planned 36-foot height was 17% higher than the average height of the surrounding buildings.

The second witness testifying for the Appellant was Don Moore, who is the owner of D & D Bicycles. Mr. Moore testified that he purchased the building in 1988 and that the bicycle shop in Northville is part of his three-store chain in Michigan, with the other two shops located in Leslie and Berkley. He indicated that at the time he was considering buying the building at 121 Center Street, it was being used as a connecting portion of the furniture store next-door. He said that soon after purchase, he had the "front skin" of the building taken off in order to bring back the original facade, as it appeared when it was a post office, and that the rear of the building was completely remodeled. He explained that he decided that enlarging the size of his shop was needed, so he hired a developer to thoroughly

analyze the prospects for change. Moore said that the developer determined that a three-story building, which would increase the retail sales area and would include office space for Moore's business and for other tenants, was appropriate. Moore said the developer informed him that constructing only two stories instead of three stories would not be economically feasible because Moore needed the extra area for tenant office space so that he could achieve sufficient rental income.

Moore also described the events that occurred during the four Commission meetings wherein his proposals to enlarge his bicycle shop were discussed. Moore indicated that his original proposal called for completely tearing down the structure at 121 N. Center Street and replacing it with an attractive three-story building. He said that at the June 18, 2003 Commission meeting the Commissioners objected to the demolition of the historic building, and that he therefore agreed to revise the plans in order to keep the one-story front facade as part of the construction. He indicated that despite attempts to revise construction plans in order to appease concerns raised by Commission members, especially regarding the building's height, the Commissioners refused to approve his proposal. He indicated that Commissioners were extremely concerned about dealing with a separate proposal to construct a three-story parking deck near his property. Some Commissioners said that if they approved Moore's proposal, it would then be practically impossible to reject the parking deck or some other future project that could result in a three-story structure. He added that, based on

comments he heard from his store's patrons, public sentiment was also very much opposed to the parking deck, and that plans for the deck were eventually dropped when voters turned down a ballot request for public funding for its construction.

**B. Commission's Evidence**

The Commission also presented documentary evidence. Regarding exhibits, the Commission submitted the following materials: Commission Exhibit 1 is a copy of the minutes from the Commission meeting of June 18, 2003. Commission Exhibit 2 is a copy of the minutes from the Commission meeting of July 16, 2003. Commission Exhibit 3 is a copy of the minutes from the Commission meeting of August 20, 2003. Commission Exhibit 4 is a copy of the minutes from the Commission meeting of September 17, 2003. Commission Exhibit 5 is a 133-page manual entitled "Historic District Design Standards (for the) City of Northville, Michigan", with attached copies of various applications and other sample forms. Commission Exhibit 6 is a drawing produced during the hearing that is designed to demonstrate the relative proximity of various properties in Northville's downtown area.

The Commission also called a witness, Thomas Swigart, who serves as chairperson of the Commission. Mr. Swigart testified about numerous subjects, including: the Commission's concern over the height of the proposed building during its deliberation on Moore's application; the composition of buildings in the Historic District; and the relevance of preservation standards, including Standard No. 9 of the U.S. Secretary of the Interior's

Standards for Rehabilitation. Swigart asserted that the Commission correctly found that the proposed two-story addition to the bicycle shop would make the building out of proportion in terms of mass and scale within the context of its environment. He pointed out that the Commission must assess the impact proposed work would have on the Historic District as a whole.

Swigart acknowledged that the Commission had approved the recently reconstructed two-story, 38-foot tall Knickerbocker Building (which is located on the other side of the block from Moore's building), but he asserted that Commissioners immediately realized after the Knickerbocker Building was built that its size was much larger, and its actual mass was much greater, than had been envisioned. Swigart believed that the Commission would likely vote differently on approval for the Knickerbocker Building if it could render a decision anew.

Swigart maintained that the Commission considers each application for proposed work on its own merits and that the Commission is required to treat new construction more leniently than it does alteration of an existing historic property. Aside from the Knickerbocker Building, the Commission has not approved adding new floors to an historic building to create a building three stories high. Swigart said that the applicant who had recently submitted a proposal to construct a new three-story Jim Long Building had requested a study session with the Commission, which meant that the application (and any decision by the Commission on the proposed work) was put on hold. He said that, in any event, the Jim Long Building proposal was not similar to

Moore's proposal because the Jim Long Building involved new construction on vacant land.

**Findings of Fact**

Based on the evidence admitted into the official hearing record, the facts of this case are found to be as follows:

**A. Background Regarding the Northville Historic District**

1. The City of Northville began adopting historic district ordinances in the early 1970s. The primary purpose of these laws is to safeguard the heritage of the city by preserving historic districts which reflect elements of the city's cultural, social, economic, political and architectural history. By paralleling the legislative intent espoused in section 2 of the LHDA (1970 PA 169, § 5; MCL 399.202), they are designed to stabilize and improve property values within districts, to foster civic beauty, to strengthen the local economy, and to help promote the use of the district for the education, pleasure and welfare of the citizens of Northville and the residents of the State of Michigan. The Northville Historic District was formally created around 1972, and is currently the lone historic district within the City.

2. The Northville Historic District generally includes the City of Northville's entire central business district and the surrounding residential neighborhood, which encompasses concentrated areas of both commercial structures and residential housing. The District includes buildings built during a period of over 150 years, from about 1835 to the present. Over so long

a period, building styles changed frequently. Just as styles of clothing art and music change, some architectural styles became fashionable, disappeared, and then were revived a few decades later. In addition to historic styles, there are many commercial and residential buildings constructed in the last 30 years that are much more difficult to categorize. Style preferences in recent years have changed frequently and somewhat capriciously. All of these styles - old and new, decorative and plain - are what give the historic district a "sense of place." (Commission Exhibit 5)

3. The Northville Historic District is administered by a seven-member historic district commission. Among the Commission's functions is the duty to consider applications for proposed work on all structures located within the established Historic District. While the Commission has discretion to approve or deny certain applications, the Commission must follow specific preservation standards and guidelines.

**B. Background Regarding the Building**

4. The structure at 121 N. Center Street is a one-story commercial building located in the City of Northville, approximately in the middle of the downtown business district. Architecturally speaking, it is best described as a 20<sup>th</sup> Century Vernacular style and it is situated within the Northville Historic District. Built around 1940, the building first served as a post office. Roughly two decades later, it was converted to a retail store. By the late 1980s, because 121 N. Center Street had become a component of the furniture store next door,

the building's facade had been masked over to blend in with that business.

5. Sometime in or around 1988, Don Moore purchased the property at 121 N. Center Street for the purpose of adding a new retail outlet store to his chain of bicycle shops, D & D Bicycles. Moore was aware that the building was situated in an established historic district. Soon after acquiring the property, Moore removed the exterior facade mask that had been added, so that the original facade was visible. He also had the rear of the building remodeled with the intention of making its appearance compatible with the front.

6. Around the beginning of 2003, Moore felt that he needed to expand the sales area of his bicycle shop. He also wanted more office space for his business, and he believed additional flooring would create even greater office space for potential tenants, which was perceived by Moore as a need that the City sought to have satisfied.

7. Moore hired a developer/contractor to analyze the needs of the bicycle shop and to determine how to accomplish the possible changes. The developer determined that a three-story building was best suited for Moore's property and it would meet his business needs. The developer also informed Moore that constructing only two stories instead of three stories would not be economically feasible because the additional floor area for tenant office space was required in order to get adequate rental income.

8. Next, Moore hired an architect (TPC Design Service of Farmington Hills) and a new contractor (The Garrison Company of Farmington Hills). Building plans were drawn up for a new three-story building, which included extending out beyond the current rear of the building. The building was designed to fit in with various architectural styles of the surrounding buildings.

9. Moore then prepared a Notice to Proceed application and submitted it to the Commission. In his application, Moore asked the Commission for permission to demolish the building at 121 N. Center Street and to replace it with a new three-story building.

C. June 2003 Commission Meeting

10. On or about June 18, 2003, the Commission considered Moore's permit application at its regular meeting. Moore was present, as were representatives of both TPC Design Service and the Garrison Company, including Daniel Plantis. To open the discussion, a representative of TPC Design Service explained that Moore was asking to demolish the building and to rebuild a new bicycle shop with added office/retail space. Representatives of the Garrison Company then asked Commissioners for guidance regarding the demolition standards, as well as information about design criteria. Commission members informed them that, as the first step, the applicant was required to prove that demolition of the building was justified based on one or more of four enumerated grounds; namely, that the structure constituted a hazard to the safety and well-being of the public, that retaining the structure would cause the owner an undue



financial hardship; that keeping the structure was not in the interest of the majority of the community; or that the structure was a deterrent to a major improvement program that would be a substantial benefit to the community. The Commissioners also suggested that the applicant research the historic design standards for examples of standards for new construction within the Historic District.

11. Commissioner Gudritz moved to refer Moore's application seeking permission to demolish the structure back to Moore pending additional information regarding why the structure should be demolished. The motion carried unanimously by a vote of 5 to 0.

12. Based on comments made by some of the Commissioners indicating that the historic structure should not be destroyed, Moore decided to direct a revision of the proposed building plans. Representatives of TPC Design Service and the Garrison Company worked together to revise the building plans to include retaining virtually the entire original one-story front facade, with the two-floor addition designed to be compatible with the first story.

13. Moore then prepared a second application and submitted it to the Commission. In his application, Moore asked the Commission for permission to reconstruct the building at 121 N. Center Street by adding two floors to the existing structure and expanding the back of the building.

D. July 2003 Commission Meeting

14. On or about July 16, 2003, the Commission considered Moore's new permit application at its regular meeting. Moore and Plantis were both present. Plantis began the discussion by stating that the building plans had changed from the prior Commission meeting. He said that Moore, his architect, and his contractor, had decided not to demolish the building, and that they were intent on preserving the existing historical elements of the building. He said that non-historic elements, such as the floor slab, roof and rear elevation, would be removed and the remainder of the building preserved. Plantis indicated that research had shown that the 1940 building was used as a post office until the 1960s, that the Schrader family then bought the building and incorporated it into the Schrader's Furniture store until 1988. At this time, Don Moore purchased the building and restored it back to 1980, and he remodeled the rear of the building.

15. Plantis then provided the Commission with a drawing of the proposed work, which illustrated the expansion as well as the preservation of the existing building. He indicated the development would be for a three-story retail office building, that the height of the new building meets the height requirements of the Central Business District under the zoning ordinance, that it meets the height requirements of the buildings within the 300' radius, and that it is compatible with the proposed three-story parking structure.

16. Moore spoke next. He pointed out that the City's zoning ordinance explicitly allowed for a three-story structure in the Central Business District and that the existing height of his bicycle shop was well below all of its neighboring buildings. Moore asserted that, when approaching from the North or South, the height of the proposed reconstructed building would not be noticed, and he mentioned other three-story buildings in the downtown area. He further maintained that a two-story building is not economically feasible. He asserted that the Zoning Ordinance allows for the proposed three-story parking deck with buildings on either side to be built behind (west) of this project.

17. A discussion then ensued regarding building heights and how they were calculated. A City Building Official advised that technically the parking deck is not a building and also that the deck is a project proposed for the future and should not be considered in the present calculations.

18. Although some of the Commissioners liked the design of the building, some concerns were expressed. At least one Commissioner said that the height of this building would not fit in with the existing street massing. The Commissioners then cited Standard No. 9 of the U.S. Secretary of the Interior's Standards, which requires that new work be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment. The entire text of Standard No. 9 was read aloud.

19. Other comments from Commissioners included: that approval of this project would give license for other existing buildings to add a third story; that approving the height of Moore's building could raise the height of the block; and that, if this building height, which is 5% above the average in a 300' radius, is approved, precedence would be set.

20. Commissioners also mentioned that it was the responsibility of the Historic District Commission to retain the historical culture; and that expansion and growth of the downtown can occur, but not at the expense of the historical perspective. The idea of "stepping back" the second and third levels was discussed.

21. Moore stated that he was sensitive to the preservation of the historical nature of the downtown area and he said that he sincerely wanted another chance to work with the height issue.

22. Commissioner Cryderman then moved to refer Moore's application seeking permission to build a three-story structure back to Moore based on the requirements set forth in Standard No. 9 of the U.S. Secretary of the Interior's Standards, as well as Section 2 (4.17) of the Northville Zoning Ordinance, which addresses the building height in the Central Business District. The height should not exceed 5% of the average height of the buildings within a 300' radius. The motion carried unanimously by a vote of 6 to 0.

**E. August 2003 Commission Meeting**

23. On or about August 20, 2003, the Commission again took up Moore's permit application at its regular meeting. Moore and Mark Tucker, a representative of the Garrison Company, were present. Tucker began the discussion by explaining plans for the addition to the existing D & D Bicycle Shop. He stated that the project had received favorable comments at the August 5, 2003 meeting of the Northville Planning Commission, although the site plan was referred back, pending recommendations. He said that those concerns would be worked out before the Planning Commission's September meeting. Tucker asserted that the height of Moore's project was not such a concern with the Planning Commission because the respective heights of the proposed parking deck and the proposed Jim Long building construction were both higher than Moore's project.

24. Tucker then pointed out that he had been told that Moore's reconstruction proposal would be good for the community, that the proposal had essentially been given the go ahead by the Planning Commission and the Downtown Development Authority, and that the proposal should be acceptable to the Historic District Commission under the "leniency" provisions set forth in the Zoning Ordinance.

25. Tucker acknowledged that the Historic District Commission had legitimate concerns with the building's height, in terms of massing and scale, but he expressed a desire to resolve the issues with the Commissioners. He noted that the zoning ordinance allowed for three-story buildings in the

Central Business District, and he felt that the "mass" of Moore's project would fit in nicely with the N. Center streetscape. Tucker maintained that the average height of the existing buildings within a 500' radius was 32 feet, and that Moore's proposal is to build to 36 feet. He argued that, although the project is out of bounds by 18" or 19", it is "almost" within the 5% rule. Tucker said that Moore was trying to realize the highest economic value to make his project feasible. He then cited examples of other buildings that were over 36 feet high.

26. Commissioners then indicated that the building's height and vertical scale were still issues, and a lively dialogue ensued, centered on the "standard" used to measure height. Several Commissioners said they needed accurate measurements on the building's height before voting on Moore's application. Other comments included statements that the Secretary of Interior's Standards and the Historic District Guidelines address a change of character or massing relative to the remodeling of historic buildings, that consideration to the impact on the streetscape must be given, and that clear and accurate information is important to the completeness of the application.

27. Commissioner Cryderman moved to refer Moore's application seeking permission to build a three-story structure back to Moore pending the accuracy of data relative to the measurement of the height of Moore's project and the massing of the building as it relates to the existing structures located on

the West side of N. Center Street. The motion carried unanimously by a vote of 6 to 0.

**F. September 2003 Commission Meeting and Determination**

28. On or about September 17, 2003, the Commission again took up Moore's permit application at its regular meeting. Moore and Tucker were both present. Tucker began the discussion by stating that he was returning to the Historic District Commission for the third time to address Moore's building plans. He said that the Northville Planning Commission had granted D & D Bicycles both preliminary and final site plan approval, and that he hoped to receive approval from the Historic District Commission.

29. Tucker stated that an elevation study was made regarding the height of the surrounding buildings. Although outside the 5% range of building heights, the building fits within the "proportion rule." He claimed that the proportion is accurately portrayed and depicted in the drawing that was presented to illustrate the surrounding streetscape. Tucker indicated that a brick material would wrap the building on the upper level and that Moore would pay homage to the original building by hanging photos in the new structure. He added that cornice detail and horizontal trim would outline the original structure.

30. When a Commissioner asked about the soundness of the building, Richard Starling, Chief Building Official for the City of Northville, stated that part of the Building Permit process

is for the applicant to submit a set of plans sealed by a structural engineer.

31. Commissioner Cryderman then moved to accept Moore's application for completeness, and this motion carried unanimously by a vote of 6 to 0.

32. Some Commissioners stated that although the proposed building is attractive, it still does not preserve the image of the original building and the unique part of history. They also felt that the mass and height of the building were still issues. Commissioners further opined that the three stories did not fit in with the existing streetscape, and that the project is still 17% higher than the surrounding buildings. Concerns were also expressed about the original building "disappearing" into the renovated structure.

33. Chairman Swigart stated that the charge of the Commission is to preserve the character of the architecture in the Historic District, and that the Commission must follow the Secretary of Interior Standards and the Historic District Guidelines in making its decisions.

34. Moore stated that in seeking approval from the different commissions he was trying to satisfy, in the broadest spectrum, the Planning Commission, the Historic District Commission, the community and the citizens. He still believed the "Guidelines" mean just that.

35. Commissioner Gudritz then moved to deny Moore's application for the expansion of D & D Bicycles at 121 N. Center Street based on Standard No. 9 of the Secretary of Interior's



Standards for Rehabilitation. The motion carried unanimously by a vote of 6 to 0.

36. On or about September 24, 2003, Chairman Swigart sent a letter to Joe Sojkowski, President of TPA Design Services, on behalf of the Commission. The letter pertained to the Commission's action taken at its September 17, 2003 meeting regarding the application to renovate and expand the building located at 121 N. Center Street. Among other matters, Swigart wrote that the Commission had denied the application based on noncompliance with Standard No. 9 of the Secretary of Interior's Standards for Rehabilitation, and he explained the steps for appealing the decision.

#### Conclusions of Law

As previously indicated, section 5(2) of the LHDA, cited above, allows persons aggrieved by decisions of commissions to appeal to the 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 granted.

#### A. Compliance with Historic Preservation Standards

In a case such as this, the criteria that a Commission must use to act on an application concerning rehabilitation work

affecting the exterior of a resource, either by approving or denying a certificate of appropriateness, is set forth in sections 5(3) and 5(4) of the LHDA. Section 5 provides in pertinent part as follows:

Sec. 5. \* \* \*

(3) In reviewing plans, the commission shall follow the United States secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the department. The commission shall also consider all of the following:

(a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.

(b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

(c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.

(d) Other factors, such as aesthetic value, that the commission finds relevant.

(4) The commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the local legislative body or unless interior work will cause visible change to the exterior of the resource. The commission shall not disapprove an application due to considerations not prescribed in subsection (3).

(Emphasis added)

The Commission also indicated in its letter of denial to the Appellant, that granting the Appellant's request to reconstruct the building at 121 N. Center Street would violate at least one of the 10 Standards for Rehabilitation of Historic Properties, as

promulgated by the U.S Secretary of the Interior.<sup>1</sup> The standard cited was Standard No. 9, which provides that:

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

Given the basic legal authority under which the Commission reached its decision to deny the Appellant's reconstruction request, the next matter for consideration is whether the Appellant presented sufficient grounds to justify granting the request for reversal.

**B. Bases for Appeal and Grounds for Reversal**

In his Claim of Appeal in this case, the Appellant advanced five grounds for reversing the Commission's decision.

**1. Failure to Apply Leniency as Required by Ordinance**

The Appellant first argued that the Commission failed to follow Northville's preservation ordinance (Section 42-23 of the Northville Ordinances) which contains the duties and powers of the Commission. Specifically, the Appellant relied on language in Section 42-23(b), which states that:

Section 42-23(b).

\* \* \* It is the intent of this section that the Commission **shall be lenient in its judgment of plans for new construction**, or for all alteration, repair or demolition of structures of little historic value, except where such construction, alteration, repair or demolition **would seriously impair** the historic value and character of surrounding structures or the surrounding areas. (Emphasis added)

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<sup>1</sup> 36 CFR § 67.7.

The Appellant contends that, upon examining the prepared drawings and the photographs of the bicycle shop and surrounding buildings, it shows that the design and height of the proposed "new building" are completely in character with the historic character of Downtown Northville and that the Commission should find the proposed work acceptable under a lenient application of the requirements.

As previously observed, the Appellant bears the burden of proof in establishing the merits of each one of his claims. With respect to the issue of whether or not the Commission failed to apply leniency in evaluating the proposed work and had failed to recognize that the work would not cause serious impairment of the historic value and character of structures in the Historic District, the Appellant offered no compelling evidence to demonstrate that the referenced language in Section 42-23(b) of the Ordinance were germane to Moore's situation.

On the other hand, the Commission asserted that the Appellant incorrectly claims that his proposal represented new construction. Rather than new construction, the Commission argues that the proposal entails attaching a huge addition onto an existing resource that happens to possess significant historic value.

The Appellant's assertions that the Commission was dutibound to apply leniency, and that the proposal would not cause serious impairment to the historic value and character of surrounding structures, are not accurate. Although the Appellant initially sought to have the existing structure demolished and

replaced with a completely new building, the Appellant abandoned such plans upon learning that the Commission required evidence that the loss of the historic resource was justified under one or more of the grounds enumerated in section 5(6) of the LHDA. The Appellant's current proposal involves the partial retention of the historic resource, albeit with substantial alteration. Moreover, the Commission's finding that increasing the height of the bicycle shop from one story to three stories would negatively impact neighboring buildings is supported by the evidence presented, particularly the streetscape photographs.

**2. Failure to Properly Apply Preservation Requirements**

The Appellant next argues that the Commission violated section 5(3) of the LHDA, in that, when it denied the application, the Commission incorrectly determined that the proposal would not comply with Standard No. 9 of the Secretary of Interior's Standards for Rehabilitation. The Appellant asserted that the design for the building, as well as its proposed 36-foot height, were entirely compatible with the styles of other buildings in the downtown business area.

In support of these contentions, the Appellant specifically asserted that: 1) the current one-story height of the Appellant's building was way below its neighbor buildings, 2) genuine efforts were made to make the design of the building compatible with its surroundings, it would make quite an attractive addition to the downtown area, and it would not change the character of the District, 3) numerous photographs and drawings, as well as the opinion testimony of Plantis and Moore, demonstrate that the

massing and scale of the proposed building would be appropriate, 4) three-story buildings are allowable under the Zoning Ordinance, and the Planning Commission had given its final approval for the site plan, 5) and the excess height of the proposed building was close enough to the 5% height rule to be deemed in compliance.

The Commission countered the Appellant's assertion by denying that it had failed to follow section 5(3) of the LHDA and the applicable preservation requirements. The Commission contended that the one-story building has historic value, that adding two additional floors would change the character of the surrounding area, and that approval of the objectionable proposal would set a bad precedent. The Commission suggested that a review of the photographs and drawings clearly reveal the fact that the massing and scale would be incompatible. In addition, Chairperson Swigart testified that the incompatible massing and scale of the proposed building were the precise reasons the Commission denied the application.

As previously mentioned, the Commission denied Moore's application based on a determination that it violated Standard No. 9 of the Secretary of Interior's Standards for Rehabilitation. In essence, the Commission determined that Moore's proposed project was not "compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment". In order to more fully understand the intent of Standard No. 9, it is useful to review written materials that offer studious interpretations.

Commission Exhibit 5, a 133-page manual entitled "Historic District Design Standards (for the) City of Northville, Michigan", sets forth local standards and guidelines that the Commission follows in evaluating applications for proposed work on structures located in the Northville Historic District. The manual provides on page 4-17 as follows:

#### **COMMERICAL STANDARDS**

##### **Height**

Height is the actual dimension from the ground to the top of the building. Historic buildings in Northville are one, two, or three stories. New development of over three stories may be in conflict with the historic character. Actual height and perceived height are sometimes different. A five-story building, not generally considered "high rise" may appear much taller if it is adjacent to one story commercial buildings, or worse, when it is adjacent to residential construction. Conversely, a one-story infill building can be lost between three story buildings in a solid commercial block.

##### **Height Guidelines**

The proposed roof shape and skyline should relate to the existing adjacent structures.

The proposed highest height should be within 5% of the average height of the existing structures within a 300 feet radius.

Retain the horizontal lines of the facades on the block.

Consider the characteristics of the sun and provide a terraced profile to avoid blocking sun.

Provide stepped facades to avoid shading sidewalks and public spaces, and to avoid down-draft and wind tunnel effects.

Taller buildings should be designed to appear to be the same height as their historic neighbors from the pedestrian or street level when viewed. This can sometimes be accomplished by designing incremental transitions in height (steps) between new and existing buildings.

Buildings that are too short are also not compatible.  
(Emphasis added)

It is also instructive to review pertinent publications prepared by the federal agency responsible for interpreting the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. Regarding the effect that a new addition may have to a building's character, the U.S. Department of Interior, National Park Service, Preservation Assistance Division, Technical Preservation Services, issued Preservation Brief No. 14, New Exterior Additions to Historic Buildings: Preservation Concerns (1986). Among the concerns raised, Preservation Brief No. 14 provides at page 4 that:

**Preserving the Historic Character**

To meet National Park Service preservation standards, a new addition must be "compatible with the size, scale, color, material, and character" of the building to which it is attached or its particular neighborhood or district. A new addition will always change the size or actual bulk of the historic building. But an addition that bears no relationship to the proportions and massing of the historic building - in other words, one that over powers the historic form and changes the scale will usually compromise the historic character as well. The appropriate size for a new addition varies from building to building; it could never be stated in a tidy square or cubic footage ratio, but the historic building's existing proportions, site, and setting can help set some general parameters for enlargement. To some extent, there is a predictable relationship between the size of the historic resource and the degree of change a new addition will impose.

For example, in the case of relatively low buildings (small-scale residential or commercial structures) it is difficult, if not impossible, to minimize the impact of adding an entire new floor even if the new addition is set back from the plane of the façade. Alteration of the historic proportions and profile will likely change the building's character. On the other hand, a rooftop addition to an eight story



building in a historic district of other tall buildings might not affect the historic character simply because the new work would not be visible from major streets. A number of methods have been used to help predict the effect of a proposed rooftop addition on the historic building and district, including pedestrian sight lines, three-dimensional schematics and computer-assisted design (CAD). Sometimes a rough full-size mock up of a section or bay of the proposed addition can be constructed using temporary material; the mock-up can then be photographed and evaluated from critical vantage points.

Subsequent to the release of Preservation Brief No. 14, TPS published a report, entitled Rehabilitation Project-TPS REVIEW: Evaluating Rooftop Additions. The report provides, in part, that:

Rooftop additions are seen as a way of increasing the usable floor area of historic buildings. Standard 9 of the Secretary of the Interior's "Standards for Rehabilitation" states that such additions "shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment." The Guidelines recommend that all new additions be designed in a manner that makes clear what is historic and what is new; specifically, that rooftop additions, be set back from the wall plane and be as inconspicuous as possible when viewed from the street. The Guidelines also recommend that rooftop additions be "inconspicuous from the public-right-of-way" and that they not damage or obscure character-defining features. Numerous *Interpreting the Standards* bulletins describe rehabilitation projects with rooftop additions. *Preservation Brief 14* provides guidance as well. The following is intended to amplify and clarify this existing guidance.

**1. Can the historic building accept a rooftop addition at all?**

Adding one or more floors to a two- or three-story building generally will change the massing of the building and result in a change of character. Such additions to buildings that are located in a historic district comprised of low-rise structures or even in districts with buildings of varying heights, can also

have a dramatic, negative impact on the district in which they are located. Adding one or more floors to a high-rise building generally will not have such an impact because the addition is a small proportion of the total architectural expression. One new floor on a 10-story building probably will not affect the building, provided it is set back from the wall plane, **unless** the building's skyline is particularly distinctive and its outline against the sky will be obscured or dramatically changed by the new addition. A two-story addition to a ten-story building, however, would very likely alter the historic character of the building.

**2. Where is it appropriate to evaluate the impact of a rooftop addition?**

A rooftop addition's impact is properly evaluated from any public right of way (street, public park, sidewalk): from the front, sides, and rear. Where it is **not** appropriate to evaluate the new addition is from a privately owned empty but buildable lot across the street or from a high-rise building looking down on the addition. Less emphasis should be placed on the impact of a rooftop addition on non-character-defining side walls (including party walls) and rear walls, provided they are not highly visible.

In addition, from time-to-time, the U.S. Department of Interior, National Park Service, Preservation Assistance Division, Technical Preservation Services has also issued bulletins that interpret one or more of the Secretary of the Interior's standards for rehabilitation in the context of actual projects. TPS Bulletin No. 87-083 dealt with Standard No. 9 in evaluating a rooftop addition that was placed on a four-story apartment building. Bulletin No. 87-083 provides in relevant part, as follows:

Subject: ROOFTOP ADDITIONS

Issue: Rooftop additions are often proposed when there is a need for additional space in a historic building which is located in an urban area where ground floor expansion is not a possibility. There is no specific "formula" for determining when a roof-top addition may be appropriate; because each historic building and

its setting/context is unique, each proposal must be reviewed individually. While it is generally true that smaller buildings, three stories or less, are least suitable for new additions, and that taller buildings may be more likely to lend themselves to a new rooftop addition, there are still notable exceptions. And, it is important to realize that some historic buildings cannot accept rooftop additions at all. A building with a very distinctive cornice, for example, even though eight or nine stories tall, may be just as unsuitable as a smaller building for a rooftop addition, if such an addition would be likely to obscure that character-defining feature. Standard 9 does not discourage rooftop additions if they do not destroy significant historic or architectural fabric, and if their design is compatible in size, scale, color, material and character of the property and the neighborhood. The guidelines recommend that all new additions to historic buildings be designed so it is clear what is new and what is historic, and that rooftop additions in particular be as inconspicuous as possible when viewed from the street, and that generally they be set back from the wall plane.

In the case at hand, the Appellant has proposed adding two floors to a one-story commercial building that has historic value. Even without considering the fact that no set-backs for the additions are contemplated, it is apparent that the additions would overwhelm the historic character of the structure. The change in terms of massing and scale would be dramatic, and it could never be considered inconspicuous under any reasonable perspective. Given the obvious attempt to compliment the original facade, it is also questionable whether the proposed design makes clear what is old and what is new. As one Commissioner put it, upon reviewing of the proposed building plans, it appeared as though the original building would "disappear" into the renovated structure.

In summary, the Appellant has failed to demonstrate that the Commission violated section 5(3) of the LHDA. Simply put, the

official record discloses no evidence to prove that the Commission failed to consider all of the information presented to it or that the Commission improperly applied Standard No. 9. Rather, the record shows that the Commission fully considered the information and arguments advanced by the Appellant but ultimately rejected them for sound reasons, i.e., that the massing and scale of the building were incompatible.

The Appellant's second ground for reversal must therefore be rejected.

**3. Commission Violated Due Process Rights**

The Appellant next argued that the Commission committed error by considering factors irrelevant to rendering a decision on the Appellant's application. The Appellant further claimed that the error violated "due process requirements" set forth in the 5<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution and in Article I, Section 17 of the Michigan Constitution.

In short, the Appellant supported these claims by pointing out that comments made by Commissioners demonstrated that they were influenced by concern over a separate proposal for a three-story parking deck that was also under consideration, and that the Commission had previously approved construction of other three-story buildings in close proximity to 121 N. Center Street, including the 38-foot, two-story Knickerbocker Building (and also contended that the Commission was moving towards giving its approval for the construction of the three-story Jim Long Building). Moore testified that the proposed parking deck had generated wide-spread negative feelings among the general public,

as well as Commission members, and that during their deliberations over the Appellant's application, several Commissioners said that they feared an approval for the Appellant's three-story structure would almost certainly mean they would have to approve the parking deck. The testimony of Plantis showed that there were other three-story structures located in the downtown business district. However, the Appellant offered no case law on the subject of due process rights, which cases might support his claim that the Commission's consideration of extraneous factors represented tacit violations.

The Commission countered that the Commission properly judged the Appellant's application on its own merits; that the height, massing and scale were all legitimate issues that had to be considered; and that the Commissioners were entitled to consider the ramifications which an individual decision will likely have when deciding future applications. The Commission also acknowledged that it had approved the 38-foot, two-story Knickerbocker Building, which involved a new building constructed over a one-story facade, but the Commission maintained that the completed building unfortunately looks differently than was envisioned when the plans were reviewed (i.e., its mass looks significantly larger than anticipated). With respect to the proposed parking deck, the Commission pointed out that it never approved the proposal, as public funding for the project was defeated by the voters.

Chairperson Swigart testified that the Commission as a whole had focused on the obvious massing and scale issues that were

present in Moore's proposal. Regardless of other factors, the Commission properly found that the proposal did not comply with Standard No. 9 of the Secretary of the Interior's Standards, due to incompatibility with the building's massing and scale. Swigart also testified that the Knickerbocker Building had turned out much larger than the Commission had expected, and, based on an understanding of the sentiments of at least the majority of Commissioners, that if Commission had an opportunity to decide on the application again, approval would not be granted. Swigart further testified that the proposed Jim Long Building had not yet been approved, but it was dissimilar from the Appellant's proposal anyway, because the Jim Long Building was to be a new construction on vacant land. Swigart identified other existing three-story buildings as having been constructed long ago, prior to the establishment of the Historic District.

A review of the hearing record supports the proposition that the Appellant failed to prove that the Commission rendered its decision based on irrelevant factors. As analyzed previously with respect to the Appellant's claim that the proposal comported with preservation standards, credible evidence demonstrated that the addition of two floors onto a one-story historic building would violate Standard No. 9 of the Secretary of the Interior's Standards. Under the circumstances, it must be concluded that the Appellant failed to establish that his due process rights were violated.

4. Commission Violated Equal Protection Rights

The fourth basis for relief advanced by the Appellant is that the Commission purportedly erred by denying his application, after having approved buildings of three stories and up to 38 feet in height in the very recent past. The Appellant further claimed that the error violated "equal protection requirements" set forth in the 14<sup>th</sup> Amendment of the United States Constitution and in Article I, Section 2 of the Michigan Constitution.

The evidence relied upon by the Appellant is not persuasive. The only prior approval made by the Commission that was shown to be similar to the Appellant's proposal is the 38-foot tall, two-story Knickerbocker Building. A single instance wherein the Commission has approved a large-scale addition does not establish a clear cut precedent. Here again, the Appellant offered no case law on the subject of equal protection requirements, which cases might support his claim that the Commission was obligated to emulate one or more past decisions. Moreover, it has already been demonstrated that the Commission properly applied the preservation criteria it was required to follow.

If accepted as valid, the Appellant's position could lead to unwanted decisions that are contrary to the purposes of the LHDA. For example, although construction of the Knickerbocker Building was actually approved by the Commission, the Commission has subsequently expressed regret for that decision. Assuming that the Knickerbocker Building was built not in compliance with Standard No. 9 of the Secretary of Interior's Standards, does that mean that the Commission can no longer apply Standard No. 9

when reviewing future applications? In other words, if a commission commits an error by perceiving a proposed massive addition to be compatible with the massing or scale of the original building and the surrounding area, must the error be repeated in deciding prospective proposals? Although a commission should apply preservation standards uniformly, simple logic suggests that the Commission must treat each application on its own merits.

In conclusion, the Appellant's fourth ground for relief must be rejected.

5. Unlawful Taking of Appellant's Property

The Appellant's final purported basis for relief concerns the issue of a possible "unlawful taking" of the Appellant's property rights. The Appellant asserted that the Commission's actions deprived Moore of a valuable property right without just compensation. The Appellant maintains that the denial of his application essentially limited him to the construction of a two-story building, and that an economic analysis has shown that a two-story building is not financially viable for Moore's property. The Appellant further claimed that the Commission's actions violated the "takings" provisions set forth in the 5<sup>th</sup> Amendment of the United States Constitution and in Article X, Section 2 of the Michigan Constitution.

The issue of unlawful taking of private property has generated a plethora of appellate decisions across the country. Among the legal principles that can be gleaned from a recent federal case that scrutinized the LHDA are: 1) In order to



sustain a claim, the property owner must show that the regulation at issue denies him or her "economically viable use" of the property; 2) the property owner must show that the regulation has caused him or her to "sacrifice all economically beneficial uses [and] to leave his [or her] property economically idle"; and 3) conversely, a taking has not occurred where the property "retains any reasonable beneficial use". *Prewitt v Rochester Hills*, 105 F Supp 2d 724, 730 (ED Mich, 2000).

In the present case, the evidence clearly demonstrates that the property at 121 N. Center Street is still usable as a retail store, i.e., a bicycle shop. Thus, even in the event the Commission had determined that any addition to the existing building was not acceptable, a "taking" still would not have occurred.

It is therefore concluded that the Appellant's fifth and final ground for reversal must be rejected.

#### Conclusion

The federal, state and local laws cited above reflect the Legislature's intent to protect, preserve and promote historic districts, buildings, structures, features, homes, open spaces and other historic characteristics. The Appellant's evidence does not demonstrate a legal justification to place a two-story addition on the historic building at 121 N. Center Street, which is located in the City of Northville's Historic District.

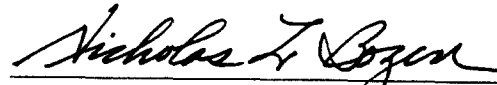
In consideration of the entire official record made in this case, it is concluded that the Appellant did not establish that

the Commission failed to follow the requirements of the City Ordinance. It is further concluded that the building is historic and that the proposed changes would not be compatible with Standard No. 9 of the Secretary of Interior's Standards for Rehabilitation. It is further concluded that the Commission's denial of the Appellant's application did not violate due process rights or equal protection requirements, nor did such action result in an unlawful taking of the Appellant's property.

**Recommendation**

In consideration of the above, it is recommended that the Commission's decision be AFFIRMED.

Dated: April 27, 2004

  
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