

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

In the Matter of:

CRAIG W. TROMBLEY
Applicant/Appellant,

v

Docket No. 94-45-HP

ANN ARBOR HISTORIC DISTRICT COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves appeals of decisions of the Ann Arbor Historic District Commission denying requests for permission to install a deluxe front door and to reconstruct the front porch of the building situated at 512 W. William, which is located in the Old West Side Historic District, in the City of Ann Arbor, Michigan.

The State Historic Preservation Review Board (hereafter "the Review Board") has appellate jurisdiction to consider such appeals 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 Review Board, an administrative hearing was conducted on August 4, 1994, for the purpose of receiving relevant evidence and argument.

A Proposal for Decision was issued on November 29, 1994, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of the Michigan Compiled Laws.

The Review Board fully considered the appeal, along with the Proposal for Decision and all materials submitted by the parties at a board meeting conducted on Friday, June 9, 1995.

Having considered the Proposal for Decision and the official record made

in this matter, the Board voted 5 FOR, 1 ABSTENTION 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,

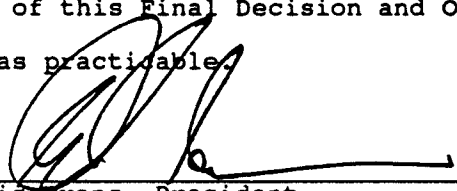
Having done so,

IT IS ORDERED THAT the appealed decisions of the Ann Arbor Historic District Commission are affirmed.

IT IS FURTHER ORDERED THAT the appeals are denied.

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

Dated: 9 JUNE 95



David Evans, President
State Historic Preservation Review Board

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

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

CRAIG W. TROMBLEY,
Applicant/Appellant,

v

Docket No. 94-45-HP

ANN ARBOR HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves appeals of two separate but related decisions of the Ann Arbor Historic District Commission (hereafter, the Commission) regarding a residence located at 512 W. William, in the City of Ann Arbor, Michigan. The principal decision being appealed is the denial of an application submitted by Craig W. Trombley (the Appellant) to replace the pre-existing front door at his residence with a somewhat more elaborate and arguably more attractive wooden door containing an oval shaped, beveled-glass window. The Appellant also appeals a Commission decision denying his subsequent application to remodel the "open" front porch that he constructed at his residence. After the Appellant's door request was denied, the Appellant asked for permission to return his porch to a prior enclosed configuration; however, that request was also denied. Appellant further indicates that if his appeal concerning the front door is granted, he will withdraw his other appeal regarding the reconfiguration of his front porch.

The appeals were both filed under section 5(2) of Michigan's Local Historic Districts Act.¹ Among other things, this section provides that if a person is aggrieved by any decision of an historic district commission, the person may then appeal to the State Historic Preservation Review Board (the Review Board), which is an agency of the Michigan Department of State.

Upon receipt of the Appellant's appeals, the Review Board directed the Michigan Department of State, Hearings Division, to convene an administrative hearing for the purpose of receiving relevant evidence and arguments from the parties. The Hearings Division conducted an administrative hearing on Thursday, August 4, 1994, in Hearing Room No. 121, the Mutual Building, Lansing, Michigan. The hearing was held pursuant to procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.²

Craig W. Trombley, who jointly owns 512 W. William with his wife, Patricia Striho, appeared in person at the hearing and represented himself. Mrs. Striho was also in attendance. The Commission was represented by Stacey M. Washington, Assistant City Attorney, City of Ann Arbor. Nicholas L. Bozen, Administrative law Examiner, Michigan Department of State, Hearings Division, conducted the hearing. Brain Conway, the Architectural Coordinator for the Michigan Department of State, Bureau of History, appeared as an observer on behalf of the Review Board.

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

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

Issues on Appeal

During the administrative hearing in this matter, the Appellant presented arguments concerning why he believes the decisions in question were improper and should be reversed.

With respect to the so-called "elaborate" door, the Appellant asserted that the Commission was in error when it said such a door was in violation of historic preservation standards and guidelines. In that regard, he pointed out that a conglomeration of doors, door styles, and houses currently exists within the boundaries of the historic district where his house is located, and he argued that the door at issue is entirely in keeping with the character of the district and the surrounding neighborhood.

The Appellant also argued that the Commission acted in an arbitrary and capricious manner. With respect to this contention, the Appellant indicated that he had received overwhelming support from the community for his front door project. He also asserted that the Commission had been combative and non-communicative, and had singled him out for an adverse decision. He added that the Commission had acted punitively, denying his door application because he had performed restoration work himself rather than employ local architects, local contractors and other local businesses. In addition, he indicated that the Commission had engaged in selective law enforcement. That is, he asserted that the Commission had attempted to enforce its historic preservation law against him but not against other homeowners who had installed similar doors on other homes throughout the district.

With regard to the porch, the Appellant argued that, technically, the Commission could not deny his request to reconfigure the front porch to an earlier configuration, since he had previously obtained a building permit allowing "repairs" but had never received a final certificate of completion or occupancy.

The Appellant further argued that the Commission had used a flawed procedure when processing his and other requests for exterior work. The Appellant stated that the Commission does not, as a matter of practice, advise people - and did not advise him - that homeowners can simply repair their homes rather than restore them. The Appellant stated that the Commission wants to guide people into making historic renovations, as opposed to repairs.

In its opening statement at the hearing, the Commission responded to the Appellant's charges by contending that historic preservation standards were in fact followed in this case, adding that the door in question was much too ornate for the Appellant's home and clearly was not in keeping with the character of the Appellant's simple residence. The Commission also asserted that community support for an ornate door is not determinative, and that this particular door was installed without permission in any case.

Moreover, the Commission argued that the open porch was also installed without permission, but that the unapproved configuration was mostly in keeping with historic preservation standards and that a subsequent retroactive application was later approved. The Commission said the new porch was more in keeping with preservation standards than the old one and should not be changed back.

Summary of Evidence

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

Section 5(2) of the Local Historic Districts Act, supra, provides that appellants may submit all or any part of their evidence and arguments in written form. In this vein, the Appellant presented 27 exhibits, many of which included multiple pages or photographs. Appellant's Exhibit No's. 1 and 2 consisted of copies of materials pertaining to the appealed decisions, as well as an application for permission to repair certain portions of the residence. Exhibits 3 through 17 consisted of 15 sets of two photographs showing a variety of door styles and door windows on buildings located in the Old West Side Historic District in Ann Arbor. The Appellant also submitted a "temporary" certificate of compliance and occupancy, a brochure depicting 80 doors currently available from a specified vendor, 27 additional photographs depicting the extent of the repairs and improvements he made to his residence, a cardboard sign which had been posted in the front yard of 512 W. William for about two months and which invited passers-by to write down their comments concerning the door at issue, and a

"notice of support" in petition format containing 38 signatures, along with fives letters of support, various supportive letters to the editor, and a favorable newspaper editorial. The Appellant also submitted a survey letter and photographs, a letter from the president of an antique materials shop who wrote that the plain beveled oval glass door used as the front entrance at 512 W. William is not out of character for the architecture of the structure or of the surrounding neighborhood. The Appellant also presented 13 additional photographs showing extensive fire damage to his residence prior to the commencement of restoration work.

Trombley testified in support of his appeals during the administrative hearing. In brief, he stated that after purchasing the house at 512 W. William, he expended a tremendous amount of time, effort, energy, and money to make the house as beautiful as he could. He indicated that when he bought his home, he was unaware that it was located in an historic district. He stated that, overall, the Commission has been difficult to work with, that its members did not understand what he was trying to do, that they were petty with him as an outsider and with others such as the lady who had had difficulty with them regarding her request for replacement windows, and that the Commission had become punitive. He added that he was trying to do the best he could, and he hoped to obtain a favorable ruling from the Review Board.

The Commission also presented evidence during the hearing. In terms of exhibits, the Commission presented a 62-page submission (Commission Exhibit No. 1) consisting of a copy of its file

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regarding the Trombley appeals. The Commission also submitted a copy of the current Ann Arbor Historic Preservation Ordinance (CE 2) and a copy of the Historic District Study Committee Final Report on the Old West Side. (CE 3) The Commission also submitted photographs of the Trombley residence at various stages of restoration, as well as excerpts of all Commission minutes which were relevant to the decisions on appeal. (CE 4 & 5)

The Commission also presented testimony from a single witness, Louisa Pieper, who is the Historic Preservation Coordinator for the City of Ann Arbor and who is currently assigned to the City's Building Department. In brief, Ms. Pieper testified regarding the actions taken by her and by the Commission during its deliberations on Trombley's applications for restoration work and/or repairs. Under cross-examination by Trombley, Pieper testified as to her view that some of Trombley's behavior had been "volatile", that Trombley had not been "singled out", and that the Commission had done its job according to procedures in every respect. (Hearing Transcript, page 81) She also testified that action had not been taken against other homeowners in the district who might now have improper doors because the Commission was waiting for the decision in this case on the issue of whether the Commission could legally enforce its decisions.

Findings of Fact

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

A. Background Information

1. Ann Arbor's Old West Side is a compact neighborhood consisting primarily of 19th Century homes located south and west of the City's downtown. It is bounded on the east by South Main Street and the Ann Arbor Railroad, on the north by West Huron Street and West Park, on the west by Crest, Liberty and Seventh Streets, and on the south by West Madison, Fifth Street, Wurster Park and Kock Street. (CE 3)

2. Between 1848 and 1861, William S. Maynard, known as a pioneer, mayor, successful merchant, and real estate developer, subdivided and added to the village the area bounded roughly by Seventh, Liberty, Ashley, and Mosley and Madison - what is today considered to be the heart of the Old West Side Historic District. The district's lots are still fairly uniform in size - 66 feet wide by 132 feet deep - and the grid pattern of the blocks forms a counterpoint to the rising slope of the land to the southwest. (CE 3)

3. The majority of the buildings in the neighborhood are modest, gable-fronted, clapboard-sided houses, one-and-one-half to two stories tall, with wide front porches and generous side yards. Nearly every Nineteenth and early Twentieth Century architectural style can be found in the district, including small Classic Revival houses from the 1830s and 1840s, Italianate "cubes", examples of Queen Anne from the very simple to the most fanciful, Colonial Revival, Craftsman, and Bungalow. (CE 3)

4. The residence located at 512 W. William is a modest one-and-a-half-story, gable-fronted frame house that was probably built

around 1910 and first appeared in the 1917 City Directory as the home of electrician Alfred A. Graf and his wife Anna. For nearly ten years, this was the only house on this block of W. William, though maps indicate that houses had previously been there from the 1860s through the 1880s. (CE 1, p 13, CE 5) . The home's original porch had been open but was later replaced with an enclosed porch, probably in the 1940s. At some point, Argus Camera used the house as a pay station or accounting office. (HT, p 105)

5. In 1978, the City of Ann Arbor established the Old West Side Historic District, which included the house at 512 W. William. The district was established for the following reasons:

A. Architecturally, the structures within the district are of eclectic revival styles, with related historic associations. They are positioned on their lots in a similar pattern so as collectively to express a particular environmental quality.

B. Conservation and preservation of particular characteristics will protect and enhance the historic environmental quality of the neighborhood.

C. The community as a whole will benefit from district stabilization, from the improved quality of the housing stock, from increasing property values, and from the enhancement of the overall appearance of this neighborhood, as well as from the protection of a major cultural resource. (CE 2, p 33)

6. Subsequent to the establishment of the district, the City of Ann Arbor adopted revised historic preservation standards to govern exterior construction in the district. Among other things, the standards prohibited the total enclosure of front porches in the Old West Side Historic District. (HT, p 30; CE 2, p 36)

7. In 1991, the City of Ann Arbor again revised the local ordinance which governed the Old West Side Historic District. Among its provisions, the ordinance provided that no person shall alter any portion of a building in the district in a manner which affects its exterior appearance visible from a public street without first obtaining permission from the Commission. (CE 2, pp 34 - 35) The ordinance also provided that any alteration in the district shall comply with the Secretary of the Interior's Standards and Guidelines for Rehabilitation, including:

(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.

(3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

* * *

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires the replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

8. During 1992, Trombley began to explore the possibility of purchasing the residence located at 512 W. William. The structure had been severely damaged in a fire which destroyed the roof and damaged the back wall and the upper level floor. Despite the fact that the house had been fire-gutted and was considered an eyesore, Trombley was interested in fixing it, making it into a liveable

family residence, and also making it as beautiful as he could. However, he had no idea that the house was situated in an historic district. (HT, pp 97 - 98; AE 22, pp 25 - 27)

B. The Renovation and Application Process

9. The first notice Trombley received that his new house was part of an historic district was in the summer of 1992, when he applied for a building permit to repair much of the fire damage. Not having any knowledge as to what was involved in historic districts, he completed the forms he was given based on what he intended to repair. (HT, 97; AE 2; CE 1, p 4)

10. Trombley completed a form entitled, "Notice To All Applicants For Building Permits in Historic Districts". The form indicated:

The information below will help city staff determine as quickly as possible whether or not the work proposed is permitted or whether the Historic District Commission's approval is necessary before a permit is issued. * * *

* * *
Please supply drawings and/or photographs adequate to explain work proposed. If work is intended to restore building to an earlier appearance, provide documentation of that appearance either through old photographs of the building or current photographs of similar buildings.

If you have questions, contact the Historic District Commission staff at 996-3008. * * *
(AE 2; CE 1, p 4)

11. In the "Comments" portion of the form, Trombley wrote, "I am repairing fire damage to my home". In the "Work Proposed" portion, he checked boxes to indicate he planned to repair chimney flashing, shingle siding in the rear, windows and the front door, the front porch, and other items. On or about July 23, 1992,

Pieper reviewed, "okayed", and initialled this form. She felt she had authority to do so since Trombley's statements failed to indicate he proposed exterior restoration, as opposed to repairs. After initialling the form, Pieper added, "Repair Only". (HT, 24; AE 2; CE 1, p 4)

12. On or about January 15, 1993, Trombley requested and received permission from the Commission to replace the foundation of his house. (CE 1, p 40)

13. At a meeting convened on March 11, 1993, the Commission approved an additional request from Trombley; namely, a request for permission to raise the level of his house's foundation by 12 inches. The Commission approved the request subject to the proviso that Trombley use plain block with an exterior stucco finish for the above-grade portion. At this same meeting, Trombley was told he would need to return later with plans to rebuild his front porch. When he bought the house, it had a front-gabled, half-front porch with a block foundation, a clapboard base, short square columns, and enclosing windows. Historical photographs show the original porch to have been a full porch with a rock-faced block base and foundation, and short round columns. (HT, 24; CE 1, p 40)

14. On or about May 5, 1993, Trombley requested and received permission from the Commission to replace the rear bathroom window at the house. (CE 1, p 40)

15. Later in May, Trombley took a ten-day vacation. During that time, people who worked for him installed a front porch which was historically inaccurate. When he returned home, he took note

of the obvious fact that his newly rebuilt porch was historically incorrect. (HT, 98)

16. On or about June 2, 1993, the Commission approved requests from Trombley for permission to install a flat skylight, to relocate the rear door, and to add a rear window to his house. These approvals also stated that Commission action would be required for installation of a proposed new front door. (CE 1, p 40)

17. At about this time, Trombley filed two more requests with the Commission. He requested after-the-fact permission to rebuild his front porch and replace the front door. He proposed a new front porch with wood 6 x 6 posts on the corners and at the top of the steps. The requested door would be mahogany with an oval insulated decorative window in the upper two-thirds and square panels below. (CE 1, p 24)

18. On June 3, 1993, Pieper prepared a staff report regarding these requests. In her report, Pieper recommended denial of the porch application, indicating that the Commission should require that the balustrade, steps, and stair handrail be built in a more appropriate design, although the new elements would not duplicate the character of either the original or the later porch. She recommended approval of the proposed new front door because, although it was her opinion that the door would be somewhat fancy for Trombley's simple house, she felt the porch would be deep enough to screen most of the door's impact. (CE 1, p 25)

19. The Commission meet on June 10, 1993 to consider, among

other things, Trombley's request for after-the-fact approval of the changes to his front porch. However, prior to addressing Trombley's request, the Commission dealt with another person regarding a gable door and a double-hung or casement window. During the meeting, Trombley felt that the Commission was being "very petty" in its dealings with her. When it was Trombley's turn to make his presentation, he was already disappointed that the Commission had not been more helpful to this woman with respect to her request for permission to make a home improvement. (HT, 99; CE 1, p 27)

20. During his presentation, Trombley told the Commission that he wanted to build a porch like the one across the street from his house, and he asked the Commission to approve his idea in principle. Eventually, he felt he was getting nowhere and that the Commission was "very, very upset" with him. At one point, Trombley said, "hey, look, I just want to go ahead and get this thing ready so that my family and I can move in". Despite his request, the Commission indicated that Trombley was unprepared; the matter was then tabled and Trombley was asked to return later with detailed plans, including drawings with specific materials and precise dimensions. (HT, 26 - 27, 99 - 100; CE 1, p 27)

21. At that point, Trombley said, "well, what about the door?" The door he had requested was the "Z-1 Standard" model, which was panelled mahogany with an oval leaded glass window. This door appeared in a catalog he had submitted containing 80 different wooden doors. The Commission responded that none of the doors in

the catalog was acceptable, and particularly not the one he had requested. Thereafter, Trombley felt that he and the Commission had become "non-communicative". (HT, p 27, 100; AE 19, CE 1, pp 27 - 30)

22. On or about June 16, 1993, Pieper sent Trombley a letter which reiterated various points made during the June 10th meeting. She advised that the deadline for the submission of documentary materials for Commission consideration on July 8, 1993 was June 28, 1993. She further indicated that the Commission had denied his door request based on the unanimous conclusion that the Z-1 Standard door was not appropriate for the humble style of his house. She added that in denying the request, the Commission was following the Secretary of the Interior's Standard No. 3, which states: "Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken." Pieper also added that to gain a better understanding of the decision, Trombley should look at houses similar to his in the Old West Side District. She further indicated that books on catalog houses indicate the more modest the house, the more modest the door, and that the Commission would favorably consider a request for any door which could be shown to be appropriate. In her concluding paragraph, she wrote that the Commission was well aware of and supported Trombley's efforts to save his house; however, she added that the Commission was bound by law to follow

the historic preservation standards of the Old West Side District and the Secretary of the Interior. She added that she was quite willing to work with Trombley to achieve design solutions which met those standards. (CE 1, pp 27 - 28)

23. Throughout the summer, Trombley and his wife devoted extensive amounts of time, effort and money to prepare, rebuild, and rehabilitate the house. In the course of their work, they installed a new door on the house. (HT 98; AE 22)

24. On or about August 24, 1993, Pieper sent Trombley a letter stating that she had not heard from him in some time. The letter also informed Trombley of the Commission's fall meeting schedule, and it included submission deadlines. She received no reply. (CE 1, pp 31, 40)

25. On or about September 9, 1993, Commission staff showed the Commission slides of Trombley's rebuilt porch, and violation proceedings were begun relative to the porch. (CE 1, p 40)

26. On or about September 23, 1993, Pieper sent a memo to the building director requesting written confirmation that changes had been made to the front porches of four specified buildings, including the residence at 512 W. William, without the issuance of a building permit. She received confirmation regarding 512 W. William on or about September 29, 1993. (CE 1, pp 32, 33, 40)

27. On or about November 5, 1993, Pieper sent Trombley a letter informing him that the Commission would determine at its first meeting in December whether or not the changes to his front porch and the installation of the new front door constituted

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violations of Ann Arbor's Historic District Code. The letter also indicated that the door he had used appeared to be the "Z-0 Deluxe" model listed in the pamphlet submitted along with his request for permission to use the "Z-1 Standard" model, which request was denied. (CE 1, 34)

28. On or about December 3, 1993, Trombley telephoned Pieper and gave her a list of addresses for 11 other buildings in the district which had doors with oval windows that were possibly also in violation of Ann Arbor's Historic District Code. (CE 1, p 37)

29. Trombley appeared at the Commission meeting convened on December 9, 1993. At that time, he apologized for his previous behavior. He stated that he had been in a hurry to move into the house with his family, and he added that he had taken direction from the staff letter which accompanied his earlier request for the Z-1 Standard door. He added that he had been concerned over the length of time it takes to order a door and that the prior door was very insecure after having been kicked in by the fire department. (CE 5)

30. With regard to the porch, he described the dimensions of that structure as rebuilt and said his research indicated it was first reconfigured in 1947. He added that he had tried to duplicate the porches he had seen in his neighborhood, as well as to duplicate what was there at his own house originally. Commissioner Ward asked him about the permit he was working on, and Trombley replied that he had several permits for repairs and for the foundation. Trombley stressed the amount of renovation work he

had done. Commissioner Ward asked why no drawings had been presented. Trombley replied that he had been very frustrated after the June meeting, but he apologized now. Ward pointed out that submitting drawings in advance would have saved him a lot of time and money. Trombley responded that he hoped what he had done would be acceptable. Further discussion ensued. Thereafter, a motion to approve the front porch as rebuilt in its open configuration carried unanimously, with the condition that the two central posts be shortened to a height of 36 inches or less, capped to match the newel posts at the bottom and as meeting the Secretary of the Interior's Standard No. 9. (CE 1, 41; CE 5) Those modifications were in fact made shortly thereafter. (CE 5)

31. In terms of the front door, Trombley said he felt the Z-0 Deluxe door was a good compromise between oval and leaded glass doors, and he stressed the diversity of the doors in the district. Commissioner Schroer pointed out that the staff letter sent to Trombley did not contain anything which authorized Trombley to proceed with the installation of any type of new front door without prior Commission approval. Commissioner Dodd added that installing a standard storm door would do a good job of covering up the new door. Commissioner Culver said she found the new front door completely incompatible with the house and the district, whether it had a storm door in front of it or not. She stated that approving a storm door under these circumstances would set a difficult precedent, particularly since Trombley had already cited another illegal door on Sixth Street. Commissioner Kestenbaum said he had

previously stated that an oval door could be appropriate on this house, but that this particular door was significantly different from others found in the district. He suggested asking Trombley for alternatives. Commissioner Tyler agreed; however, he added that it would be more consistent to find the door unacceptable. The Commission then passed a motion which determined that the front door as installed was in violation of the Historic District Code. The motion also requested that Trombley return by February with one or more alternative proposals. (CE 1, p 41; CE 5)

32. At its February 10, 1994 meeting, the Commission granted Trombley an additional two months to comply with its decision from December. (CE 1, p 48)

33. Trombley subsequently submitted a request to install a new, painted wood storm door to conceal the new front oval glass door. (CE 1, p 49)

34. The Commission considered Trombley's request at its meeting of April 14, 1994. Commissioner Culver said she could not support disguising a violation with another door of any kind. She felt it created a dangerous precedent and would make it impossible to enforce the Code relative to doors. Commissioner Kestenbaum said that any doubts he may have had about the front door's inappropriateness were settled when he actually saw it in place. He concluded that the problem was not so much the oval window, as it was the elaborate panelling. A motion to approve installation of a storm door to conceal the front door was voted down. (CE 5)

35. Trombley subsequently filed a request to reconfigure his

new porch back to its previous enclosed configuration and also to reinstall the fire-damaged door. The Commission met on May 12, 1994 to consider those requests. At that meeting, Trombley said he was very disappointed with the historic district process, that no one had told him why his new front door was so bad, and that other doors which may have been in violation of the Code were not pursued. He said he felt he should be able to return his porch to the enclosed configuration without approval and that no one had ever told him he would not be able to do so. He said he did not understand the Commission's reluctance to accept his storm door proposal. Commissioner Culver replied that she did not understand why Trombley did not understand. Commissioner Tyler pointed out that the porch could not be restored to its previous configuration since the foundation had been elevated. Commissioner King stated that reinstalling the earlier door would be a good solution. Commissioner Kestenbaum stated that no one had expected the situation to go to such an extreme, and he felt the Commission should establish a positive relationship with Trombley. He reiterated that the elaborate moldings on the new door gave it an overall unacceptable appearance. He stated that this was now a "no-win" situation, which he regretted. He stressed that the Commission was not there to "punish" Trombley. Kestenbaum also said he appreciated the time and money Trombley had spent on rehabilitating the property. The Commission then approved a motion to deny Trombley's request to replace the new porch with another porch which would be enclosed. The motion noted that an enclosed

porch would not need meet Interior Secretary Standards, No.s 2, 3 and 6. (CE 1, p 62; CE 5)

36. Trombley filed his appeals on May 18, 1994. (AE 1)

37. An article concerning Trombley's dispute with the Commission appeared in the Ann Arbor News on May 22, 1994. The article was sympathetic to Trombley's position. (AE 22, p 11)

C. Other Pertinent Information

38. Trombley and his family have unquestionably expended considerable time, energy, and money in order to restore the residence located at 512 W. William in Ann Arbor. Everyone agrees that they did in fact do a beautiful job. (HT 97 - 100; AE 20)

39. Trombley has received overwhelming supporting for his efforts from his neighbors and from many other persons in the community. When he posted a placard in his front yard and asked for written comments on his front door project, those comments were overwhelmingly favorable. (AE 22)

40. No fewer than 15 other houses and buildings in an around the Old West Side Historic District have front doors which include oval windows. These windows vary greatly in glass decoration and etching, as does the ornamentation on the doors themselves. (AE 3 - 17)

41. Reynold Lowe, President of Materials Unlimited, which is an antique and architectural materials business, provided a letter to Trombley indicating as follows:

In my experience, there are many examples of houses with typically plain lines that originally were built with front entrances that were more elaborate than the architectural simpli-

city of the structures in which they were used.

It is my feeling that the door with the plain beveled oval glass used as the front entrance at 512 W. William, Ann Arbor, MI is not out of character for the architecture of the structure or the surrounding neighborhood in which it is found. (AE 24)

42. Carol A. Kamm wrote on behalf of the Board of the Old West Side Association as follows:

The Board of Directors of the Old West Side Association has reviewed the records regarding the modifications to 512 W. William St. It is our opinion . . . that the commission is within its jurisdiction in its determination regarding the new front door at the above home.

Furthermore, we would like to reiterate that the board supports the process by which such modifications are approved. The OWS district ordinance was developed with input from the residents in the neighborhood, and the commission has done an excellent job of applying it with the spirit of the neighborhood in mind. The board does not support work done without approval through the appropriate channels or without proper permits. (CE 1, p 61)

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by the decisions of a commission to appeal to the Review Board. Section 5(2) also empowers the Review Board to affirm, modify, or set aside a commission's decision and, where appropriate, to order a commission to issue a certificate of appropriateness or a notice to proceed. Relief should, of course, be granted whenever a commission has exceeded its legal authority, acted in an arbitrary or capricious

manner, or committed some other substantial or material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

A. The Front Door

1. Compliance with City Code and Federal Standards

The Appellant contends the Commission erred by concluding that the new front door he installed at his residence (the Z-0 Deluxe) did not meet the historic rehabilitation criteria prescribed by the Ann Arbor City Code and the Secretary of the Interior's Rehabilitation Standards. The Appellant further argued that his door is in keeping with the historic character of his house and also with the historic character of the neighborhood at large.

During the hearing and in documentation provided to Trombley, the Commission responded that it properly applied Rehabilitation Standard No. 3 in connection with the Appellant's door replacement request. The Standards for Rehabilitation (36 CFR 67) define "rehabilitation" as the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features which are significant to its historic, architectural, and cultural values. More particularly, federal Rehabilitation Standard No. 3 [i.e., 36 CFR 67.7(b)(3)], as well as Ann Arbor Ordinances, Chapter 103, §3:7(3), both provide as follows:

(3) Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

As indicated above, parties who stand in the position of a petitioner or appellant bear the burden of proof in a proceeding such as this.

Again, the Appellant contends that the Commission erred when it concluded that a front door containing a beveled-glass oval window and a moderate degree of wooden ornamentation failed to meet the requirements of the city code and the federal standard. The Appellant attempted to prove this proposition principally by showing that many of the homes and buildings located in the Old West Side Historic District contain oval glassed doors and varying degrees of ornamentation. He presented a letter from a shop owner stating that an ornamental door was in character for his house.

Overall, the Appellant's proofs on this point are not persuasive.

Basically, the Appellant showed only that the doors on the houses and buildings situated in the Old West Side District come in a wide number of variations, including many with oval windows and many with elaborate decoration. Of course, one of the defining characteristics of the Old West Side is the range of architectural styles within the district. Those styles, again, include Classic Revival, Italianate, Queen Anne, Colonial Revival, and Bungalow. However, it does not necessarily follow that an elaborate door which is entirely appropriate for a "fanciful" Queen Anne home within the district is equally appropriate for a modest clapboard-sided house. Thus, the fact that doors which are similar (or even identical) to the Appellant's can be found in the district does not

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establish that the Commission failed to follow the law.

The strongest evidence in the hearing record in support of the Appellant's contention that the "deluxe" door was appropriate to his house (as opposed to the district in general) is Appellant's Exhibit No. 24, the letter from Reynold Lowe, President of Materials Unlimited. In this letter, Mr. Lowe expressed his view that many examples can be found in architecturally simple structures with more elaborate front entrances, and also that the door used by Trombley was not out of character for the architecture of 512 W. William. However, the letter does not contain the reasons for Mr. Lowe's opinion, nor does it reflect the basis or foundation of Mr. Lowe's expertise, other than the fact that he owns a business dealing in antiques and related materials.

On the other hand, the hearing record also shows that the Commission considered the suitability of the door in question during several meetings over a period of many months. The record includes testimony from Louisa Pieper, a professional historic preservation coordinator for the City of Ann Arbor. Ms. Pieper expressed her professional opinion that the deluxe front door was simply too elaborate for the exterior of the Appellant's "humble" home. The record further reflects that Commissioner Culver found the new front door to be completely incompatible with the house. The record also reflects that Commissioner Kestenbaum indicated that any doubts he may have had about the front door's inappropriateness were settled when he actually saw it in place.

A review of local and federal Rehabilitation Standard No. 3 -

purportedly applied by the Commission - indicates that general compliance is not the goal. Rather, application of the standards focuses on individual applications to individual buildings and structures. Where any documentation of a particular historical configuration exists, that documentation (or plan) must be followed, if at all possible. However, the installation of speculative features, such as elaborate decoration which is not documented for a particular building, should be avoided. Indeed, Standard No. 3 expressly states that "adding conjectural features or architectural elements from other buildings, shall not be undertaken."

In view of the hearing record as a whole, it cannot be concluded that the Commission legally erred when it determined that the Appellant's new front door was out-of-character relative to the simple exterior of the Appellant's house. It must also be concluded that the Commission properly applied local and federal rehabilitation standards, i.e., Standard No. 3, during its deliberations in the matter at hand.

2. Arbitrary and Capricious Decision Making

As additional contentions, the Appellant argued that the Commission has acted in an arbitrary and capricious manner. He asserted that the Commission had particularly singled him out for adverse action. He charged that the Commission was being punitive towards him because he had failed to employ local tradespeople. He added that the Commission had engaged in selective law enforcement.

The evidence in the official hearing record does not support

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the Appellant's contentions. In the first place, the evidence plainly shows that the Commission did not single out the Appellant with respect to adverse actions. The evidence shows, for example, that in June of 1993, the request of the property owner who appeared before the Commission immediately prior to the Appellant received extensive scrutiny. An unfavorable decision followed. In September of 1993, the Commission commenced administrative actions against three homeowners besides the Appellant with respect to the installation of allegedly unapproved porches. The totality of the evidence fails to indicate that the Appellant received any unique, unfavorable treatment. Indeed, the record affirmatively shows that the Appellant submitted several requests to the Commission, and all but those at issue here were either immediately or eventually approved.

Also, the evidence in the hearing record does not demonstrate that the Commission was being punitive. On this point, it must be noted that there is simply no evidence in the hearing record to prove that the Appellant employed persons who were not local contractors, electricians, architects, or similar business persons. Even if the Appellant had shown that he employed people from outside the community to assist him with restoration work, there is nothing in the evidentiary record to show that the Commission's decisions were in direct response to the Appellant's hiring practices. Indeed, the most significant evidence in the record on this point was presented by the Commission, and in that regard, the minutes submitted by the Commission indicated that Commissioner

Kestenbaum expressed his regret over the fact that Trombley's final applications had become a "no-win" situation. Kestenbaum stressed that the Commission was not there to punish Trombley, and he reiterated his personal appreciation regarding the time and money Trombley had spent rehabilitating the 512 W. William property.

The Appellant also complained about selective law enforcement. Here, the evidence in the record shows that after the Commission asked Trombley to explain why he had installed a deluxe door following the Commission's denial of his request for permission to install a standard door, Trombley provided Pieper with a list of other property owners in the district who had possibly installed "illegal" doors. He pointed out that Pieper had taken no action against them, and he implied that the Commission should be estopped from pursuing any action against him until enforcement action was commenced against those other homeowners.

The Appellant's argument on this point is not well-taken. Initially, it must be observed that under the facts of this case, there has been no showing of any clear or intentional discrimination against the Appellant. Moreover, Michigan courts have consistently held that given the limitations of governmental resources, the conscious exercise of some selectivity by law enforcement agencies is entirely permissible. Butcher v Dep't of Natural Resources, 158 Mich App 704, 707 - 708; 405 NW2d 149 (1987). Also, at the hearing, Ms. Pieper explained that the Commission intends to initiate enforcement proceedings against the persons allegedly in violation of Ann Arbor's Historic District

Ordinance, provided that the Commission's authority to do is established within the context of this matter.

In light of the facts of this case and the law in Michigan, it must be concluded that the Commission did act within its authority when it pursued actions against the Appellant, and further, that the Commission was not required to cease those actions merely because the Appellant notified the Commission that other property owners in the Old West Side District might also be in violation of the Historic Code.

B. The Front Porch

1. Overriding Authority of Repair Permit

With respect to the porch, the Appellant contended that, as a matter of legal technicality, the Commission lacked legal authority to deny his request to return his porch to its previous enclosed configuration, since he never received a final certificate of completion (or occupancy) from the City Building Department relative to his permit to perform porch "repairs".

This argument is nonpersuasive. In the first place, the Appellant failed to cite any statute, precedent, or other law to support his legal argument that the mere existence of a repair permit would be sufficient authorization to allow him to remove a newly restored porch in order to reinstall a previously removed and less historically accurate enclosed porch. Parties may not leave it to administrative agencies such as the Review Board to search for legal authority necessary to sustain or reject their legal positions. A statement of legal position without any supporting

legal citation is insufficient to effectively bring an issue before a reviewing tribunal. Temborius v Slatkin, 157 Mich App 587, 601; 403 NW2d 821 (1986).

Moreover, as pointed out by at least one commissioner, the previous porch cannot be "repaired" in any case, since the house's foundation was elevated 12 inches following issuance of a permit allowing foundation repairs.

Finally, a straightforward reading of Ann Arbor Ordinances, Chapter 103, §3:3, suggests that the Appellant's legal position is not well-founded in any case. Section 3:3 specifically prohibits the alteration, moving, or demolition of any building or portion of a building within the Old West Side Historic District in a manner which affects an exterior appearance visible from a public street, without first obtaining permission from both the Commission and the Building Department. Since the Appellant has effectively requested permission to alter a portion of his building (i.e., the front porch), Commission approval is now required. Furthermore, the construction of enclosed porches has been absolutely prohibited by ordinance in the Old West Side District for some time. Ann Arbor Ordinances, Chapter 103, §3:4(h).

This portion of the Appellant's appeal must be rejected.

2. Use of Flawed Procedure

The Appellant additionally argues that he should be permitted to return his front porch to its circa 1947 enclosed configuration because the Commission used a flawed procedure when it processed his application. He stated that the Commission failed to inform

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him that he could merely perform repairs and instead encouraged him to begin historic restoration work. He said he was unaware that his home was in an historic district when he purchased it.

A review of the official hearing does not reveal any flaw in the procedures followed by the Commission. It may well be that the Commission encourages the owners of historic properties located in historic districts to restore the buildings on those properties. This is not a flaw in procedure. This is one of the basic functions of a commission under historic district statutes and ordinances.

As for the Commission's supposed failure to advise the Appellant of his right to perform repairs, the Appellant has again failed to identify any law or prior decision to support his legal position. Nothing in the District Act or Ann Arbor Ordinances has been cited to establish any duty on the part of the Commission regarding the need to advise homeowners about their rights to repair their homes. Absent a citation to supporting authority, it cannot be concluded that the Commission acted improperly with respect to advice of rights.

Furthermore, the fact that the Appellant was unaware his new home was situated in an historic district at the time of purchase is also unpersuasive. The fact that the house was located in a district was no secret. The district had been in existence for well over 15 years prior to the Appellant's purchase. Ann Arbor is a city well-known for its historic preservation programs.

It cannot be concluded that the Commission erred procedurally.

C. Hard Work, Community Support, and Aesthetics

One additional issue must be addressed in this case. Without presenting a direct argument on the point, the Appellant implicitly argued throughout these proceedings (and to the Commission as well) that even if his proposed door did not entirely comport with historic preservation standards and guidelines, he should nevertheless be permitted to keep it on the basis of hard work, community support, and the fact that the door looks good. In other words, the Appellant has essentially requested a "variance" from the strict application of historic preservation standards.

There is something to be said for this aspect of the Appellant's presentation. He and his family unquestionably expended considerable time, effort, energy and money on the property. He succeeded in restoring a community eyesore, and he created a beautiful living environment for himself and his family. His neighbors and the community at large, including the media, are overwhelmingly supportive and appreciative of his efforts.

In that context, he asked the Commission (and now the Review Board) for permission (i.e., for retroactive approval) to install an "ornamental" front door which is not in character with the "humble" nature of the exterior of his house.

There are good arguments on both sides of the Appellant's "variance" request. Certainly, the Appellant has worked hard and spent money on his restoration project, and in that sense has arguably "earned" the right to a variance. One can reasonably say that the new door is beautiful and aesthetically pleasing.

Clearly, the door has been popular with the public, and the Ann Arbor media has been very supportive of the Appellant's efforts.

On the other hand, the door does not, in a strict sense, comport with the simple character of the house or with recognized historic preservation standards. Granting a variance could well represent a difficult precedent for the Ann Arbor Commission to reconcile in future cases. Moreover, the Appellant does not come into this forum with entirely "clean hands". That is to say, the Appellant knowingly acted in direct contravention of a Commission order when he installed the deluxe door after having been denied permission to install the standard door. He also ignored Commission requests that he submit detailed plans. And his own request to "rip out" the newly built, historically accurate front porch in order to reinstall a clearly inappropriate enclosed porch can, at least on one level, be characterized as something other than well-intentioned.

The Commission has the responsibility of administering Ann Arbor's historic preservation program. The Commission, with full knowledge of the factors listed above, wrestled with the door issue for over a year's time and rendered its judgment relative to the Appellant's wishes. That judgment is in keeping with historic preservation laws and standards. While another judgment would also be understandable and arguably supportable on the basis of the reasons articulated by the Appellant, it cannot be said that the Commission erred in its decision making.

The Appellant has invited the Review Board to set aside or

reverse the Commission's decision. The Review Board possesses statutory authority to do so. However, generally speaking, appellate bodies will refrain from substituting their judgments for the judgments of agencies under review.

Recommendation

In consideration of the discussion set forth above, it is recommended that the Review Board deny both appeals in their entirety.

Dated: November 29, 1994

Nicholas L. Bozen
Nicholas L. Bozen
Administrative Law Examiner

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