

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

In the Matter of:
ALBERTA SNYDER,
Applicant/Appellant,

v

Docket No. 96-304-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Respondent/Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission denying an application seeking retroactive approval for construction of a chain link fence in the front yard of a house located at 615 Forest Street, Kalamazoo, Michigan.

The State Historic Preservation Review Board (the 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 Board, an administrative hearing was held on July 18, 1996, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on September 9, 1996, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled meeting

conducted on Friday, October 4, 1996.


Having considered the Proposal for Decision and the official record made in this matter, the Board voted 5 to 0, with 0 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

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

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

Dated: 4 Oct 1996



David Evans, President
State Historic Preservation Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order of the Board. In addition, MCR 2.105(G) and 7.205 may prescribe other applicable rules with respect to appeals of decisions of administrative agencies.

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

ALBERTA SNYDER,
Applicant/Appellant,

v

Docket No. 96-306-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission (the Commission) denying retroactive approval to construct a chain link fence in the front yard of a house located at 615 Forest Street, Kalamazoo, Michigan. The property is located in the Vine Area Historic District (the District).

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

Upon receipt of the appeal, the Board directed the Michigan Department of State, Hearings Division, to convene an adminis-

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

trative hearing for the purpose of taking relevant evidence and argument. The Hearings Division conducted a hearing on July 18, 1996, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures prescribed in Chapter 4 of the Administrative Procedures Act.²

Alberta Lee Snyder, the Appellant/property owner, appeared in person at the hearing and was not represented by legal counsel. Robbert McKay, Historic Preservation Coordinator, City of Kalamazoo, attended as an agent of the Commission/Appellee. Kenneth L. Teter, Jr., Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Brian Conway, Architectural Coordinator for the Michigan Department of State, Michigan Historical Center, State Historic Preservation Office, attended as an observer/representative on behalf of the Board.

Issues on Appeal

In her written request for review dated March 20, 1996, the Appellant asked that the decision of the Commission be reversed. She set forth several grounds in support of her appeal and request for the issuance of a fence installation permit. More particularly, the Appellant asserted that without a fence protecting her house, a "hazard to occupant's safety" would exist. She added that removing the fence would "cause undue financial

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

hardship to the owner when all feasible alternatives to eliminate the financial hardship has been exhausted". She alleged that the Commission had failed to consider "all relevant factors", such as police records showing assaults, and the theft and the malicious damage of her property. She further claimed that she received "unfair treatment" because there are five other properties in the area with the same type fence as the type installed on her property.

At the hearing, the Appellant again asserted that a chain link fence was necessary to provide adequate security, that the police department approved the installation of the fence, that her neighbors were "on her side", that to remove and replace the fence would be very costly, that at least five other chain link fences had been installed at properties located in the historic district, and that the stance taken by the Commission and its staff was simply a matter of them "being petty" and "going overboard" in carrying out their duties.

By way of response, the Commission filed a written reply, dated July 17, 1996, along with attachments, and presented oral argument at the hearing to dispute the claims advanced by the Appellant. Among its averments, the Commission asserted that the fence installed at 615 Forest St. did "not constitute a significant improvement in the security of the front yard" because the ends connecting the sides of the yard to the front were left open, and that by leaving the ends open, "any individual wishing to gain entry to the front yard area need only walk around the end of the

fence". The Commission further asserted that Snyder's 48-inch high chain link fence was "no more secure than a comparable height wooden fence, a type permitted in front yards"; that the Commission has routinely approved "front yard fence installation in a variety of designs, both metal and wood"; that chain link fencing was "reserved for utilitarian application in the rear half of lots"; that such matters would have been brought to Appellant's attention if she had contacted the Commission prior to installing the fence; and that while the Commission recognized that Appellant made a significant investment in the fence and regretted the hardship removal may cause, any financial hardship was entirely the result of the actions of Appellant and not the Commission.

With regard to the five other chain link fences at issue, the Commission acknowledged their presence but pointed out that the evidence clearly demonstrated that all five fences were installed long before 1990, when the area became a local historic district. The Commission asserted that because it lacked the legal authority to review conditions existing prior to the establishment of a district, the five property owners could not be required to remove the fences. The Commission noted, however, that if any significant repair or replacement of any of those fences ever became necessary, the property owners would need to comply with existing historic district standards and guidelines.

Finally, the Commission contended that the Appellant's claim that it had not considered all relevant factors was unfounded. In contrast, the Commission argued the relevant factors were that: 1)

the fence was installed without a permit even though the Appellant was familiar with the permit process requirement; 2) the fence did not conform to the Standards and Guidelines for Kalamazoo's Historic District or the Secretary of Interior's Standards; 3) the fence did not significantly improve security for the yard; and 4) Snyder made it clear she intended to retain the fence.

Summary of Evidence

Under Michigan law, a party who occupies the position of plaintiff, applicant, or appellant generally has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading and Practice (2d ed), § 60.48, p 176, Lafayette Market and Sales Co v City of Detroit, 43 Mich App 129, 133; 203 NW2d 745 (1972), Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Appellant clearly occupies that position in this matter and consequently bears the burden of proof. Section 5(2) of the Local Historic Districts Act, supra, indicates that appellants may submit all or part of their evidence and argument in written form. In that vein, the Appellant submitted a single exhibit consisting of a compilation of several documents pertaining to the property located at 615 Forest St., in Kalamazoo. (Appellant's Exhibit No. 1) The exhibit included, among other items, copies of the following: five letters from the City of Kalamazoo to Alberta Snyder, along with related documents, pertaining to the need for Commission approval for the installation of the fence, and the Commission meeting of January 16, 1996, during which approval was considered; an Application for a

Certificate of Appropriateness, dated "12/27/95", concerning installation of the front yard fence; a Notice of Denial, dated January 26, 1996, indicating that retroactive approval of the fence installation had been denied; an Application for a Certificate of Appropriateness, dated "2/03/96", concerning replacement of front porch steps and two front windows; a certified survey of the property, dated September 14, 1988, and a land contract, dated June 16, 1980; numerous police reports and related records which pertain to disputes between the Snyders and their next door neighbors (some involving allegations of assault) and to the theft and damage of property at 615 Forest Street; and 13 color photographs depicting the fence and lawn ornaments at 615 Forest Street.

In addition, the Appellant/Applicant, Alberta Snyder, testified at the hearing on her own behalf. In brief, she described the problems she had encountered over the last decade with vandalism of lawn ornaments displayed in her front yard and with assaults against her person at her property. She explained that her insurance company had threatened to cancel her policy because of her frequent claims, unless she installed a fence. She further stated that a chain link fence provided the best security for her property, whereas the fence types allowed by the Commission all would be inadequate.

Snyder additionally testified that she had telephoned the City of Kalamazoo Building Department and that she had received a verbal approval to place a fence on her property. She added that when she hired the contractor, Mid-Michigan Fence Co., to install

her fence, representatives of the company told her that they would obtain the permit. Snyder explained that she was living on a small fixed income, that her health was poor, and that she could not afford to remove the fence and replace it with one acceptable to the Commission.

The Appellee/Commission also presented written evidence at the hearing. Commission Exhibit No. 1 consisted of several documents pertaining to Snyder's request for retroactive approval for the installation of a chain link fence in the front yard of the house located at 615 Forest Road. Among the documents were copies of the following: a site plan drawing of the property at 615 Forest, which includes a depiction of the fence, as installed; maps showing the Vine Area Historic District, and nine color photographs showing chain link fences erected at five other properties in the district; Historic District Ordinances of the City of Kalamazoo; excerpts of the minutes of a Commission meeting held on August 15, 1995, and related documents, pertaining to the denial of approval to erect "a fence that does not meet commission standards" at 903 W. Lovell; an Application for a Certificate of Appropriateness submitted by Alberta Snyder, which is dated "8/31/93", which sought permission to replace inoperable windows on enclosed front porch, and which work was approved by the Commission on "9/02/93"; excerpts from the Standards and Guidelines for Kalamazoo's Historic Districts regarding the installation of fences; a letter, dated July 16, 1996, from Lynn Smith Houghton, the Commission's current Chairperson, to the members of the Board, which sets forth the

Commission's reasons for denying Snyder's request for approval; and a letter, dated January 23, 1996, from Barbara Gordon, Director of the Department of Development Services for the City of Kalamazoo, to Alberta Snyder, which explains various actions that were taken by the Commission at its meeting on January 16, 1996.

The Commission also presented the testimony from the City of Kalamazoo's Historic Preservation Coordinator, Robbert McKay. McKay described the events surrounding Snyder's attempt to gain Commission approval of the chain link fence, including contacts he had had with Snyder and the presentation that was made at the Commission's January 16, 1996 meeting. He also explained in some detail that the applicable standards for historic districts prohibit chain link fences in the front of houses, but that they are permissible around back yards. He stated that the Commission does share the concern held by homeowners about security of their properties and that the Commission has approved front yard fences, but only when they were of a type which conform with the established standards and guidelines.

McKay additionally described the inspections he had made of the five properties having chain link fences alluded to by Snyder. Based on his observations, he stated that all of the fences appeared to have been erected well before the district was established in 1990. He further declared that the Commission had never approved the erection of a front yard chain link fence, but it had given approval for back yard fences.

Findings of Fact

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

A. Background Information

1. The property situated at 615 Forest Street contains a single-family residential house with an unattached garage located behind the house. The property shares a common driveway with the house located immediately to the east (i.e., 611 Forest).

2. On or about June 16, 1980, Ronald D. Snyder and Alberta Snyder, husband and wife, purchased the property at 615 Forest Street for approximately \$17,500.00 under a land contract. Ronald Snyder is now deceased.

3. Over the years, Alberta Snyder has acquired a large number of lawn ornaments and monuments of various types and materials which are displayed in her front yard. The ornaments include such items as a wishing well, a bird bath, pelicans, and gnomes. In addition, she routinely set out seasonal decorations in the front yard. These included lighted candy canes and Mr. and Mrs. Santa Clauses. All of these items were displayed within a large plant garden, along with several potted plants hanging from poles. Those were located between the front sidewalk and the front porch.

4. On or about August 31, 1993, Alberta Snyder submitted to the Commission an Application for a Certificate of Appropriateness, seeking permission to replace inoperable windows on the enclosed front porch of her home. On or about September 2, 1993, Snyder's request was approved by the Commission.

B. The Vine Area Historic District

5. The City of Kalamazoo has adopted several historic district ordinances since the early 1970s. The primary purpose of these laws³ was 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. Additional purposes were to stabilize and improve property values within districts, to foster civic beauty, to strengthen the local economy, and to promote uses of the district for the education, pleasure and welfare of the citizens of Kalamazoo and the State of Michigan.

6. On September 10, 1990, the City of Kalamazoo adopted Ordinance No. 1502,⁴ thereby establishing its fifth historic district, the Vine Area Historic District. This district presently encompasses over 900 properties, comprised primarily of residential housing, including Snyder's home at 615 Forest Street.

7. The Vine Area Historic District, as well as others within the city, is administered by a seven-member historic district commission. Among the Commission's functions is the duty to consider applications for repairs (other than routine maintenance) to fences and new construction of fences on properties located within an established historic district.⁵ When making a decision to approve or deny a request to perform fence work, the Commission

³ Kalamazoo Adm. Code, § A229.1; Kalamazoo Ordinances, § 16-2.

⁴ Kalamazoo Ordinances, § 16-8.

⁵ Kalamazoo Ordinances, § 16-28.

must follow the Standards of the U.S. Secretary of the Interior, as well as the Commission's own standards and guidelines.

C. Installation of Chain Link Fence at 615 Forest

8. Beginning in the mid-1980s, vandals occasionally stole and/or damaged many of the lawn ornaments in the front yard of 615 Forest Street. Some of the ornaments were expensive and had been anchored to the ground by metal rods. Many of them were considered family heirlooms, and their total estimated value exceeded \$1,000.00.

9. Around this same time, Snyder (and before his death, Snyder's husband) had numerous run-ins with their next door neighbors, who resided at 611 Forest. Most of these incidents occurred in or around the common driveway which both households shared. The police were frequently called to respond to complaints of trespass and/or assault.

10. Due to frequent payments for claims of loss submitted by Snyder, her homeowner's insurance carrier advised her in late 1994 or early 1995 that her insurance policy would not be continued, unless a fence were erected in her front yard to protect her property from vandalism.

11. Sometime in the spring of 1995, Snyder contacted the building department of the City of Kalamazoo to inquire about the possibility of constructing a fence on her property. Snyder was told that fences were permissible.

12. In the fall of 1995, Snyder hired Mid-Michigan Fence Company to construct a chain link fence in her front yard. Prior

to the installation of the fence, representatives of the fence company told Snyder that they would "get the permit". The fence was placed along the entire front sidewalk, with two short fence pieces extended at right angles from the sidewalk down each side of the yard. However, wide areas along the sides towards the house were left open. No application for a permit was submitted to the City of Kalamazoo prior to construction.

13. On or about December 14, 1995, Robbert McKay, Historic Preservation Coordinator for the Development Services Department of the City of Kalamazoo, sent a letter to Alberta Snyder at her residence (i.e., 615 Forest St.). McKay indicated in his letter that "it has been reported . . . that an unapproved fence installation has been performed" at Snyder's property, that such work required "both a building permit and a Certificate of Appropriateness", and that the City's records indicated neither was obtained. McKay requested that Snyder contact him by telephone "to determine what course you propose to correct this violation".

14. On or about December 21, 1995, following a discussion of the fence installation matter, McKay sent Snyder another letter, accompanied by a Certificate of Appropriateness application form. McKay indicated in the letter that if Snyder completed the application and returned it to him on or before January 6, 1996, the matter could be placed on the agenda of the Commission's next meeting, which was scheduled for January 16, 1996.

15. On or about December 27, 1995, Snyder returned the completed permit application to the City of Kalamazoo for action by

the Commission. In her application, Snyder described the change to the property as follows:

Chain link fence installed by Mid-Michigan Fence in front for security reasons due to over \$100 worth of property stolen by college students, plus (the fence) also improves the property.

D. Commission Meeting and Determination

16. The Commission considered Snyder's permit application at its regular meeting on Tuesday, January 16, 1996. Pictures of Snyder's property, including views of the fence, were circulated among the members of the Commission. Snyder was present at the meeting and explained the reasons why she had installed the chain link fence. She also stated that she had no intention of removing the fence.

17. Following a brief discussion, Commissioner McCall made a motion to deny retroactive approval of the fence installation. The motion carried by a vote of 6 to 0.

18. On or about January 26, 1996, the Commission sent Snyder a Notice of Denial concerning her permit application. Among other things, the Notice indicated as follows:

At the January 16, 1996 meeting of the Historic District Commission your request for retroactive approval of front yard fence installation was denied:

The installation was determined not to be in compliance with the Standards and Guidelines for Kalamazoo's Historic Districts. Further it was determined that the installation was not in compliance with the Secretary of Interior's Standard 9.

The owner is hereby instructed to remove the nonconforming fence. (Bold print in original)

Conclusions of Law

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

A. Laws Governing Kalamazoo's Historic Districts

In a case such as this, the criteria that a Commission must use to act on an application concerning work affecting the exterior of a resource, either by approving or denying a certificate of appropriateness, is set forth in section 5(3) of the Local Historic Districts Act.⁶ The section provides as follows:

Sec. 5. * * *

(3) In reviewing plans, the commission shall follow the U.S. 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 bureau. The commission shall also consider all of the following:

⁶ See footnote 1.

(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.

The Commission also acted under authority of a parallel local law (i.e., a municipal ordinance) which substantially conforms to the mandates of section 5(3). That law is Kalamazoo Ordinances, Chapter 16, Historic Districts, §16-23, which provides that:

Sec. 16-23.

(a) The building official shall refer each application for a permit for any construction, alteration or repair affecting the exterior appearance of a structure governed by this chapter together with plans pertaining thereto, to the Historic District Coordinator.

(b) In reviewing plans, the Historic District Coordinator shall consider and apply relevant Design Standards established by the Historic District Commission and adopted by resolution of the city commission and may approve proposed work which complies with the standards, as adopted.

(c) If the proposed work is not addressed by the Design Standards, then that proposal shall be referred to the Historic District Commission.

(d) When reviewing plans, the Historic District Commission shall consider:

- (1) The Secretary of the Interior's "Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings; and
- (2) Local design guidelines, as they are officially adopted by the city commission; and
- (3) The historic or architectural value and significance of the structure and its

- relationship to the historic value of the surrounding area; and
- (4) The relationship of any architectural features of such structure to the rest of the structure and to the surrounding area; and
 - (5) The general compatibility of exterior design arrangement, texture and materials proposed to be used; and
 - (6) Any other factor, including aesthetic, which it deems relevant.

Another ordinance provision of relevance, is §16-28, which provides:

16-28.

If a structure is governed by this chapter, and the work to be done includes one (1) or more items on the following list of improvements, which improvements do not otherwise require a building or other permit from the Department of Neighborhood and Community Development, then the procedures of Article II of this chapter (requiring Commission approval) shall apply to said improvement:

* * *

- (a) Fences: repairs and/or new construction;

In support of its decision to deny Snyder's fencing request, the Commission relied on Secretary of the Interior's Standards 2 and 9. Standards 2 and 9 provide that:

2. The distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

9. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant historical, architectural or cultural material, and such design is compatible with the size, scale, color, material, and character of the property, neighborhood or environment.

In order to effectively regulate design features, the City of Kalamazoo adopted written Standards and Guidelines for Kalamazoo's Historic Districts. The Standards and Guidelines, under the heading Fencing, state in relevant part that:

General

Fences and gates are an extension of the architecture of a home. They should be compatible in style and material. They should be appropriate to the size and scale of the home.

Sometimes it is necessary to use fencing for other than decorative purposes, such as marking boundaries, privacy, screening unsightly areas or security. Fencing for utilitarian purposes sometimes requires fencing materials which are not of the period or character of the house. Non-conforming fencing materials may be considered for use in the back of the home.

Fence Guidelines

* * *

4. Chain-link and similar utilitarian fencing, such as industrial fencing, wire mesh and barbed wire, is not permitted in the front of a home. (Emphasis added)

B. Grounds For Appeal

1. Fence Needed for Security

In her appeal, the Appellant first asserted that the chain link fence constructed on her property was necessary for security. In this vein, she relied on the fact her property had been vandalized repeatedly over the years. Moreover, she contended that the other types of fencing sanctioned by the Commission did not offer adequate protection.

On the other hand, the Commission conceded that the Appellant had demonstrated a valid purpose for seeking approval of a fence

for her front yard. Nevertheless, the Commission objected to the use of chain link fencing and asserted that a variety of conforming fence types, both wooden and metal, would provide just as much protection as a chain link fence.

Based on the evidence in the record, Appellant's contention that only a chain link fence would do an adequate job is without merit. Robbert McKay, the Historic Preservation Coordinator for Kalamazoo, testified that conforming fence types, including wood and metal, used at other properties provide the same security as a chain link fence, and that the Commission would be amenable to Snyder using one of the conforming fence types.

As noted above, the Appellant bears the burden of proof in a proceeding such as this. Thus, it appears that the denial of the use of chain link fence was justified on the basis of security.

2. Other Properties Having Chain Link Fences

The Appellant additionally claimed that she should be allowed to retain her chain link fence because at least five other properties in the Vine Area Historic District have existing chain link fences in their front yards. As it happens, the Commission introduced photographs of each of those properties. This evidence supported Snyder's assertion.

Here again, the Commission conceded the facts on this issue, i.e., that the fences did exist on those properties. However, the Commission claimed that those fences had been erected prior to the establishment of the District in 1990. The Commission's position as to the time when the fences were constructed was supported by

the testimony of Robbert McKay, someone familiar with assessing construction materials. McKay specifically stated that the Commission had never approved the installation of a chain link fence in the front yard of a home.

Since provisions of the Act and Ordinance on Historic Districts did not expressly give Commission the authority to regulate conditions which existed before a district is created, the Commission cannot demand compliance with current legal requirements, such as the need to obtain approval for the five property owners. On the other hand, the Commission's treatment of the existing fence at 615 Forest presents an entirely different picture, in that it was constructed in 1995, after the District was created. That being the case it appears that Snyder's request for approval received equal treatment vis-a-vis similarly situated applicants.

3. Unjust Decision

In her final argument, Snyder claimed that the Commission simply did not make the right decision in her case and that the Commission and its staff were merely "being petty" and had "gone overboard" in carrying out the duties and responsibilities connected with reviewing and approving her request for retroactive approval.

In response, the Commission indicated that its decision to deny the request was well founded on the facts and in accordance with all legal requirements, particularly the Secretary of the

Interior's Standards and the Standards and Guidelines for Kalamazoo's Historic Districts.

The record made in this matter supports the Commission's view that it had acted within the legal framework applicable to the regulation of properties lying in an historic district. When viewed together, Standards 2 and 9 of the Secretary of the Interior's Standards for Rehabilitation provide support for the determination that a chain link fence should not be permitted because it is not in keeping with the character of the property and the district as a whole, and it is not compatible with the house due to its size, scale and materials.

Also, the Commission was obligated by ordinance to apply the appropriate provisions of the Standards and Guidelines for Kalamazoo's Historic Districts. A review of pertinent passages dealing with fences indicates that chain link fencing can be approved for usage in the back yard of a home, but that type is absolutely prohibited for use in the front of a home. Other utilitarian types of fencing are specifically allowable for front yards, but not chain link.

Inasmuch as the chain link fence erected at 615 Forest Street was placed in the front yard, the Commission's decision to disapprove of its construction was legally justified and proper.

Conclusion

In consideration of the entire hearing record developed in this case, it is concluded that the Appellant has failed to show the following: that the house situated at 615 Forest Street

required a chain link fence for the owner's safety and security; and that the Commission did not follow appropriate guidelines in determining that the construction of the Appellant's fence should not be retroactively approved. It is further concluded that the Commission did not act arbitrarily or capriciously, did not violate either state or local law, and did act properly under section 5(3) of the Local Historic Districts Act, supra, and sections 16.23 and 16.28 of the Kalamazoo Ordinances, supra, in denying the Appellant's request to retain the chain link fence at her house.

Recommendation

It is recommended that the appeal be denied.

Dated: September 9, 1996

Kenneth L. Teter Jr.
Kenneth L. Teter, Jr.
Administrative Law Examiner

* * *