

COPY

STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

STATE HISTORIC PRESERVATION REVIEW BOARD

GLEN ANN PLACE, LLC and  
JOSEPH FREED & ASSOCIATES,  
Petitioners,

v

ANN ARBOR HISTORIC DISTRICT  
COMMISSION,  
Respondent.

HAL Case No. 06-012-HP  
SOAHR Docket No. 2005-897

FINAL DECISION AND ORDER

Glen Ann Place, LLC and Joseph Freed & Associates (Petitioners) appeal from an adverse decision of the Ann Arbor Historic District Commission (Respondent or Commission). On September 8, 2005, the Commission denied the Petitioners' application to demolish two "single family houses"<sup>1</sup> located at 213 and 215 Glen Avenue, Ann Arbor, Michigan. The houses are situated in Ann Arbor's Old Fourth Ward Historic District (District).

This appeal is brought under Section 5(2) of the Local Historic Districts Act (LHDA).<sup>2</sup> Section 5(2) provides that applicants aggrieved by a commission's decision may appeal to the State Historic Preservation Review Board (Review Board or Board), an agency of the Michigan Department of History, Arts and Libraries.

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<sup>1</sup> Although the two houses were originally built as single-family dwellings, at the time of the administrative hearing in this case they were rented as apartment dwellings to a family and students.

<sup>2</sup> 1970 PA 169, § 5, MCL 399.205.

original historic material, are situated within a duly established local historic district, and contribute to and complement the historic character of that historic district.

We commend the Commission for its decision and conclude that the denial was consistent with the goals of historic preservation and in keeping with the public interest.

**Final Order**

In view of the record as a whole, including all pleadings and other submissions, and in light of the competent, material and substantial evidence admitted into the official record, and for the reasons articulated above in this Final Decision, we, the Review Board, hereby:

**ORDER** that the appeal submitted by Petitioners, Glen Ann Place, LLC and Joseph Freed & Associates, is **DENIED** and that the decision of the Respondent, Ann Arbor Historic District Commission, is **AFFIRMED**.

**IT IS FURTHER ORDERED** that all proposed and draft decisions and orders, including the Proposal for Decision issued on August 21, 2006 and its recommendation, are rejected and rescinded in favor of this, the Review Board's Final Decision and Order in this matter.

**IT IS LASTLY ORDERED** that true copies of this Final Decision and Order shall be mailed or otherwise delivered to all parties and to their respective attorneys of record, immediately, or in any event, as soon as is practicable.

Dated: 1/19/07

By: *Lynn L.M. Evans*  
Dr. Lynn L.M. Evans, President  
State Historic Preservation Review Board

**NOTE:** Section 5(2) of the LHDA 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. Section 104(1) of the APA provides that such appeals must be filed with the circuit court within 60 days after the date that the Board's Final Decision and Order is mailed.

STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

APR 18 2006

In the matter of

Docket No. 2005-897

Glen Ann Place, LLC and  
Joseph Freed & Associates,  
Petitioners

Agency No. 06-012-HP

Agency: History, Arts & Libraries

v

Ann Arbor Historic District  
Commission,  
Respondent

Case Type: Appeal

Issued and entered  
this 13<sup>th</sup> day of April, 2006  
by Peter L. Plummer  
Executive Director

**ORDER REASSIGNING CASE**

The Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCL 24.201 et seq., provides, among other things, that when it is impracticable for a presiding officer to continue the hearing, another presiding officer may be assigned to continue with the case. [MCL 24.279]. Due to unforeseen circumstances, it is impracticable for Administrative Law Judge Dennis Matulewicz to continue with this case and, therefore, another Administrative Law Judge must be assigned to complete it.

**NOW THEREFORE, IT IS ORDERED** that Administrative Law Judge Carole Engle is assigned to this case.

  
Peter L. Plummer  
Executive Director

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed by the file on the 13<sup>th</sup> day of April, 2006.



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STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

In the matter of

Glen Ann Place, LLC and  
Joseph Freed & Associates,  
Petitioners

v

Ann Arbor Historic District  
Commission,  
Respondent

Docket No. 2005-897

Agency No. 06-012-HP

Agency: History, Arts & Libraries

Case Type: Appeal

Issued and entered  
this 21<sup>st</sup> day of August, 2006  
by Carole H. Engle  
Administrative Law Judge

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

This is a proceeding held pursuant to the authority granted in Section 5(2) of 1970 PA 169, as amended, MCL 399.205(2), the Local Historic Districts Act (LHDA) and 1969 PA 306, as amended, MCL 24.101 *et seq.*, the Administrative Procedures Act (APA).

The purpose of this review is to examine Petitioner's November 23, 2005 appeal of an adverse Respondent decision. Respondent issued a September 27, 2005 decision denying Petitioner's application to demolish two residential structures at 213-215 Glen Avenue, Ann Arbor, Michigan. A hearing was originally scheduled for January 24, 2006, was continued to April 11, 2006, and adjourned to May 2, 2006. The hearing was held as scheduled on May 2, 2006. Extensive briefs and exhibits were filed prior to the hearing and are considered to be part of the record. Susan Friedlander, Attorney at

Law represented Petitioner. Stephen Postema, Attorney at Law represented Respondent. The record closed June 3, 2006 after receipt of the transcript.

On July 12, 2006, Petitioner filed a Motion to Submit Newly Discovered Evidence and Authority. On July 18, 2006, Respondent filed a Response. On July 19, 2006, the undersigned Administrative Law Judge received an unsolicited *ex parte* email communication from Petitioner's counsel's assistant regarding Respondent's Response. A telephone conference with legal counsel for both parties was held on July 19, 2006 to disclose the communication and allow either party to request disqualification of the Administrative Law Judge. Both parties affirmatively stated that they did not want the judge to be disqualified. The parties were informed that Petitioner's Motion would be addressed in the Proposal for Decision.

### ISSUE

Whether Respondent's decision denying Petitioner's Application for Demolition should be affirmed, modified or set aside.

### SUMMARY OF EVIDENCE

Laith Hermiz testified that he is the Managing Director for Michigan Operations of Joseph Freed & Associates, the developers for Glen Ann Place LLC. Glen Ann Place is designed as a ten-story urban, mixed-use development. Three levels of parking are underground. The first and second stories would contain office and retail space and the upper levels would contain apartments. The proposed location for the development is at the corner of Glen Avenue and Ann Street on the eastern edge of the Old Fourth Ward Historic District in Ann Arbor, Michigan. Five parcels of land have been assembled for the project, and are owned by Petitioner. One parcel contains a

pizza parlor; one is a defunct gas station/towing service; two contain the houses Petitioner requested to demolish; one is a parking lot; and adjacent to the two houses is a five-story apartment building. Of the five parcels, only the two houses come under the jurisdiction of the local historic commission. Demolition of the other buildings would not require historic commission approval.

According to Mr. Hermiz, the substantial improvements to the area, all being paid for by the developer, include streetscape improvements; overhead electrical wires being put underground; brick pavers in the area; and a bus stop in front of the development. Additionally, the proposal includes retaining storm water management and, at its own cost of over \$1 million, the developer would remediate the site of the gas station, including any contaminated soils. According to Mr. Hermiz, this is particularly important because the site of the proposed project sits about 50' higher than the river basin and there have been concerns that the contamination could enter the river basin. According to Mr. Hermiz, the Department of Environmental Quality has approved the baseline environmental assessment. Finally, Mr. Hermiz testified to the substantial tax increase for the project. According to Mr. Hermiz, the current property taxes are approximately \$15,000. After completion of the project, and full assessment, Ann Arbor's portion of the taxes would be approximately \$300,000 and the total contribution to the city and county would be over \$1 million.

Mr. Hermiz testified that he or other members of the development team met with the Planning Commission and Historic District Commission (HDC) on this project on a number of occasions. At no time was Petitioner told that they needed HDC approval prior to Planning Commission approval.

In November 2004, there was a working session with the HDC. At that time, there was no concern about the height of the building, but the HDC wanted the two houses at issue moved. According to Mr. Hermiz, the HDC told Petitioner that if they relocated the houses, there would be no issue with the location. Also according to Mr. Hermiz, the two houses at issue are currently rented, but are in terrible condition. Petitioners attempted to find a location to move the houses, but there was no available space in the Old Fourth Ward. Petitioners next attempted to find someone who wanted the houses, but received few responses. Petitioner also contacted Habitat for Humanity and Avalon Housing, offering to move the houses to any available property.

In December 2004, the first public hearing on the development was held with the Ann Arbor Planning Commission. In January 2005, another working session was held with members of the HDC present. Again, the main focus of the meeting was moving the houses. In April 2005, after lengthy discussion about the architecture, the height, the massing and other components of the project, the Planning Commission recommended approval of the project and forwarded the proposal to the Ann Arbor City Council for approval. In July 2005, the City Council approved the project, meaning they granted rezoning for a Planned Unit Development (PUD) including supplemental regulations defining what was to go on the site, standards of architectural design and requiring that Petitioner obtain a demolition permit from the HDC and make a \$1.8 million contribution to the Affordable Housing Fund. Additionally, the City required a \$64,000 park contribution and 25 drain disconnects. Petitioner agreed to all conditions.



In July 2005, after the City Council approval, Petitioner filed an application for demolition of the houses located at 213-215 Glen Avenue. According to Mr. Hermiz, the HDC held a hearing on the proposed demolition on August 11, 2005. The HDC wanted to table the application and see the site plans for the proposed development. At the request of the HDC, Petitioner withdrew its application and then resubmitted the same application for consideration at the next HDC meeting. According to Mr. Hermiz, Petitioner did not ask the HDC to review the new building.

At another working session with the HDC in August 2005, Petitioner walked through concerns regarding the building with the HDC. Mr. Hermiz testified that, at that time, the HDC said it would not approve a ten-story building; that it wanted a five- or six -story building instead. Moving the houses was also discussed at the working session, but the focus had changed to the size of the building. According to Mr. Hermiz, Petitioner made changes to the façade of the building that were requested by the HDC, but the HDC still denied the application. Mr. Hermiz testified that the HDC didn't know what to do and that they never went over the application. It was Mr. Hermiz's belief that there was conflict between City Council and the HDC because City Council had approved the project without requiring Petitioner to get HDC approval first.

Mr. Hermiz testified that financing was not an issue, nor were environmental clearances or planning or zoning clearances. According to Mr. Hermiz, there was absolutely no way that Joseph Freed & Associates would not be

able to complete financing once the development agreement was executed, and that they had received their turn sheet from the bank. In fact, Mr. Hermiz testified that a bank will not give final financing until there is a signed, executed development plan. According to Mr. Hermiz, Petitioner signed the development agreement and submitted it to the City of Ann Arbor, but it was not signed and returned from the City.

Donna Franklin Johnson testified that she is a planner with the City of Ann Arbor and is the Interim Historic Preservation Coordinator. In her capacity as Interim Historic Preservation Coordinator, she is responsible for accepting and reviewing applications with the chairman of the HDC for placement on the HDC agenda. She is also responsible for reviewing the applications for compliance with the Ann Arbor City Code and Secretary of Interior standards.

Ms. Johnson testified that until recently, it has been the option of the person filing the application whether to go through the planning process with the Planning Commission or going first to the HDC. She testified that she did inform the Petitioner of the option, but did not advise them either way.

After City Council approved Petitioner's project, Ms. Johnson and the chairman of the HDC reviewed Petitioner's application to the HDC for demolition of the two buildings. According to Ms. Johnson, she and the chairman determined that the application was complete and had sufficient information to place it on the HDC agenda. Ms. Johnson then wrote the staff report, including the finding that, "The two existing houses are classified as complementary in the Old Fourth Ward Historic

District, are the sole remnants of residential houses on the east edge of the District, are surrounded by contemporary structures, and are no longer within the context of a historic residential block." (Respondent's Exhibit 7, page A-4 and Petitioner's Exhibit F, page 2). Ms. Johnson also testified that the two houses at issue are classified as complementary structures that add to the flavor of the historic district, but agreed that the two structures are surrounded by contemporary structures.

Ms. Johnson testified that at the August 2005 HDC meeting, Petitioners were asked if they would withdraw their application until such time as they could bring plans for the new building. At the September 2005 HDC meeting, the HDC decided that the proposed structure (the new building) was not in keeping with the Old Fourth Ward Historic District and was not an appropriate design. The HDC decided not to approve the new building. The HDC then decided that they would not allow the demolition of the two buildings because the replacement was not appropriate. Ms. Johnson testified that the HCD made no determinations as to benefit, financing, approval or environmental clearances. After the September HDC meeting, Ms. Johnson issued a Notification of Determination to Petitioners saying that application for demolition was denied because it did not meet the requirements for demolition. (Respondent's Exhibit 4) The Notice of Determination was accompanied by a letter, however, explaining that "the Commission found that although the proposed demolition would allow construction of a new building providing benefits to the City at large, the structure proposed to replace the two buildings in question was not consistent with the historic architecture of the Old

Fourth Ward Historic District ... and therefore, the demolition of the existing buildings is not appropriate." (Respondent's Exhibit 5).

### FINDINGS OF FACT

Based on the evidence submitted and presented at the administrative hearing, the following findings of fact are made:

1. The two structures at issue are located side by side at 213-215 Glen Avenue on the eastern edge of the Old Fourth Ward Historic District in Ann Arbor, Michigan. They are currently rental units for student housing with certificates of occupancy ending in 2006 and 2007. The houses are in a bad state of disrepair with significant issues in the basements and roofs. As of January 2005, it was estimated that renovation to make each house marketable would cost \$332,000, for a total of \$664,000. Although Petitioner attempted to find some way to move the houses, no one was interested in them, and Petitioner questioned whether they would even survive a move.
2. The two houses are classified as complementary structures in the historic district. The Interim Historic Preservation Coordinator described them as "vernacular" meaning a "mish-mash" of different styles. They are surrounded by commercial property, including a pizza parlor, a defunct and leaching gas station, a parking lot and a five-story apartment building, all of which are owned by Joseph Freed &

Associates. None of the surrounding properties require approval by the HDC for demolition.

3. Petitioner initially began working on the project known as Glen Ann Place, LLC in 2000. A number of meetings were held between Petitioners and the mayor of Ann Arbor, members of City Council, the Planning Commission, neighborhood groups and the HDC.
4. The Glen Ann Place project is a proposed story building with three levels of parking underground. Retail stores and offices are on the first and second floor with apartments on the upper levels. This area is close to the University of Michigan Medical Center and part of a major thoroughfare into the City.
5. Petitioner will improve the area through streetscape improvements including the use of brick pavers, overhead electrical wires being put underground and a bus stop.
6. Petitioner will remediate the site of the gas station, including any contaminated soil. Contamination has already leached into the ground of the southernmost house.
7. Petitioner has received environmental clearances from the Department of Environmental Quality.
8. The tax basis for the City of Ann Arbor will be significantly increased to approximately \$300,000 with the total contribution to the city and county being over \$1 million.

9. Petitioner agreed to make a \$1.8 million contribution to the Ann Arbor Affordable Housing Fund.
10. Petitioner agreed to a \$64,000 park contribution and 25 drain disconnects.
11. In April 2005, the Ann Arbor Planning Commission recommended approval of the project and forwarded the proposal to the City Council. City Council approved the project in July 2005, granting rezoning for a Planned Unit Development and requiring Petitioner to obtain a demolition permit from the HDC and to make the contribution to the Affordable Housing Fund.
12. Petitioner signed the development agreement and submitted it to the City, but the City did not sign and return the agreement.
13. Petitioner obtained its turn sheet from the bank, but is unable to obtain final financing without a fully executed development agreement.
14. In July 2005, Petitioner filed an application with the HDC for demolition of the two houses. The chair of the HDC and the Interim Historic Preservation Coordinator reviewed the application and determined that the application was complete and had sufficient information to place it on the HDC agenda.
15. The Interim Historic Preservation Coordinator prepared a staff report for the HDC describing the houses and noting that they "are no longer within the context of a historic residential block, ... do not meet a number of building codes....[and] demolition of the structures and a

determination of appropriateness for a new structure will allow construction of a mixed use building containing neighborhood retail and services, offices and apartments (*sic*) units and the clean up of an environmentally contaminated site." (Respondent's Exhibit 12)

16. On August 11, 2005, the HDC held its meeting. Extensive discussion regarding the Glen Ann Place project was held. Despite review by the HDC chair and his determination that there was sufficient information to place Petitioner's application on the agenda, the HDC chair asked if Petitioner would be willing to withdraw the application for demolition of the two buildings until plans for the final development were presented to the HDC. Petitioner agreed to withdraw the application.
17. On August 22, 2005, Petitioner resubmitted the same application for demolition. No application for new construction was ever submitted to the HDC.
18. The Interim Historic Preservation Coordinator again authored a staff report, this time finding that the exterior design, arrangement, texture and materials [for the new building] were compatible with those used elsewhere in the surrounding Historic District and the building facades provide architectural detail, complementary design details and exterior building materials that incorporate elements required by the PUD supplementary regulations. (Respondent's Exhibit 7)
19. At the September 8, 2006 HDC meeting, the HDC was strongly split about the manner in which to proceed and several members requested

that the HDC gain legal advice on how to proceed. That request was denied and a voice vote was taken on the motion to approve demolition of the houses. The minutes of the meeting do not reflect the final vote, only that there were two abstentions and the motion to approve failed.

20. Despite the fact that Petitioner had never filed an application to build a new building, on September 27, 2005, the Interim Historic Preservation Coordinator issued a Determination denying the application to erect a new, ten-story mixed-use building on the west side of Glen.

21. Also on September 27, 2005 a Determination was issued denying Petitioner's application to demolish 213-215 Glen Avenue.

22. Accompanying the two determinations was a letter explaining the reasons for the denials. Specifically, the Commission found that although the proposed demolition would allow construction of a new building providing benefits to the City at large, the structure proposed to replace the two buildings was not consistent with the historic architecture of the Old Fourth Ward Historic District.

23. On November 23, 2005 Petitioner filed a Claim of Appeal on the Denial of Demolition of 213-215 Glen Avenue.

### **CONCLUSIONS OF LAW**

Section 5(2) of the LHDA allows persons aggrieved by decisions of commissions to appeal to the Review Board. Section 5(2) also provides that the



Review Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a notice to proceed. Relief should be given where a commission has among other things, acted in an arbitrary or capricious manner, has exceeded its legal authority, or committed some other substantial or material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

Before addressing the Petitioner's specific arguments for reversal, Petitioner's Motion to Submit Newly Discovered Evidence must be addressed. On July 12, 2006, Petitioner filed its Motion to Submit Newly Discovered Evidence, that evidence being a letter dated March 21, 2006 from the State Historic Preservation Officer, Brian Conway, to Donna Franklin, Respondent's Interim Historic Preservation Coordinator, and a witness at the administrative hearing on May 2, 2006. The letter acknowledges information that the City of Ann Arbor intended to hire a consultant to revise its historic district ordinance. The enclosure to the letter contains staff comments and suggestions from the State Historic Preservation Office regarding Ann Arbor's historic district ordinance.

Respondent responded to the Motion on July 18, 2006, asserting that the City was under no obligation to disclose the letter, and that in any event, the letter was irrelevant "because it does not alter any of the previous arguments and facts presented in this case".

The Michigan Rules of Evidence define Relevant Evidence as "evidence having any tendency to make the existence of any fact that is of

consequence to the determination of the action more probable or less probable than it would be without the evidence." (MRE 401). It is inconceivable that a letter from the State Historic Preservation Officer to the Ann Arbor Interim Historic Preservation Coordinator and a witness in this case, about the very ordinances upon which Respondent apparently based its decision, is not relevant. However, as Respondent noted in its brief, the letter is merely advisory, and therefore its weight is somewhat limited.

Thus, Petitioner's Motion to Submit Newly Discovered Evidence is GRANTED.

The matter at issue in this case is the application for the demolition of two houses located at 213-215 Glen Avenue, Ann Arbor, Michigan. Contrary to the attempted actions of Respondent, the issue is not an application for approval of a new building because no application for a new building was ever submitted.

The Local Historic Districts Act (LHDA) is the enabling statute for local historic preservation in Michigan. Thus, all local historic districts must comply with the LHDA. Section 5(6) of the LHDA provides the following mandatory language:

(6) Work within a historic district **shall** be permitted through the issuance of a notice to proceed by the commission if **any** of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

- (a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

- (b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.
- (c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
- (d) Retaining the resource is not in the interest of the majority of the community. (Emphasis added)

Petitioner in this matter filed an application for demolition of two houses on the edge of the Old Fourth Ward Historic District. The houses are complementary structures, of no particular architectural style, and are surrounded by commercial property. As recognized by the City Of Ann Arbor's Interim Historic Preservation Coordinator, the houses are no longer "within the context of a historic residential block." The houses are in disrepair and do not meet current building codes. They have Certificates of Occupancy that expire in 2006 and 2007. The cost to rehabilitate each house would exceed \$300,000.

After receiving planning and zoning approvals from the City, preliminary financing assurances and approvals from the Department of Environmental Quality, Petitioner filed an application for demolition of the two houses citing section 5(6)(b) and (d) as the basis for the issuance of a notice to proceed. Rather than address the components of either subsection, the HDC chair

asked Petitioner to withdraw its application until such time as they could bring plans for the new building. (The withdrawal was necessary for the HDC because of a 60-day automatic approval clause contained in its by-laws.) Petitioner agreed to withdraw its demolition application.

Petitioner resubmitted the same application for demolition to the HDC in August 2005. Despite the fact that the plans for a new building were not before the HDC for approval (there being only an application for demolition) the Interim Historic Reservation Coordinator noted in her staff report that "the exterior design, arrangement, texture and materials [for the new building] were compatible with those used elsewhere in the surrounding Historic District and the building facades provide architectural detail, complementary design details and exterior building materials that incorporate elements required by the PUD supplementary regulations." At the September 2005 HDC meeting, the HDC totally disregarded the staff report, again did not address the components of Section 5(6), and ignoring the requests of several HDC members to obtain legal counsel, voted that they did not like the new building and therefore denied the application for demolition. The letter accompanying the denial indicated that the HDC did find that construction of a new building at the site would provide benefits to the City at large.

During the administrative hearing in this matter, Petitioner established that the resource (the two houses) was a deterrent to a major development program (Glen Ann Place) that will be of substantial benefit to the community through neighborhood services including retail, office space and apartments to encourage a

neighborhood community, improved aesthetic improvement to the area, cleanup of contaminated environmental site, increased property taxes and a contribution of over \$1 million to the City of Ann Arbor Affordable Housing Fund. Petitioner also established that it had obtained the necessary planning and zoning approvals, and environmental clearances. To the extent possible, Petitioner had secured financing, but was unable to show finalization of financing because of the City of Ann Arbor's failure to sign and return the development agreement. It was clear from the testimony and the evidence submitted that the HDC was disgruntled because Petitioner had, in fact, obtained planning and zoning clearances from the City of Ann Arbor without first getting permission for the project from the HDC, although there is no requirement that the HDC provide first approval.

Petitioner also established that retaining the resource is not in the interest of the majority of the community. The two houses are currently used as student housing. They are in poor repair, and while technically contained at the edge of a historic district, they are not part of a residential area. They are in fact, surrounded by commercial property and a contaminated environmental site. The HDC did determine that the new project would provide benefits to the City at large. The Old Fourth Ward Historic District is completely contained within the City of Ann Arbor. If the project benefits the City at large, it clearly benefits the majority of the community.

### CONCLUSION

The Local Historic District Act reflects legislative intent to protect, preserve and promote historic districts and buildings while balancing the rights of individual property owners. That balance is reflected in Section 5(6) which requires, through the use of the mandatory word "shall", a local historic district commission to issue a notice to proceed when any of four conditions are met. In this case, the Petitioner established by a preponderance of the evidence, that not one, but two of the four conditions existed. Petitioners did establish legal justification to demolish the houses at 213-215 Glen Avenue, in Ann Arbor's Old Fourth Ward District.

Based on the record as a whole, Petitioner has established that the HDC erred when it determined that the demolition of the two houses should be denied.

### RECOMMENDATION

It is recommended that the Ann Arbor Historic District Commission's be SET ASIDE and that a Notice to Proceed for demolition of two houses located at 213-215 Glen Avenue, Ann Arbor, Michigan be ISSUED.

### EXCEPTIONS

If a party chooses to file Exceptions to this Recommended Decision, they must be filed within 15 days after this Recommended Decision is issued. If an opposing party chooses to file a Response to the Exceptions, it must be filed within 10 days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Bureau at the Department of History, Arts

and Libraries, Office of Regulatory Affairs, 702 West Kalamazoo Street, P.O. Box  
30738, Lansing, Michigan 48909; Attention: Nicholas L. Bozen.



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**Carole H. Engle**  
**Administrative Law Judge**