

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

In the Matter of:

MARK R. MONSON,
Applicant/Appellant,

v

Docket No. 94-17-HP

FLINT HISTORIC DISTRICT COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Flint Historic District Commission denying a request for a Certificate of Appropriateness to cover the soffits and fascia of the building located at 704 Garland Street, Flint, Michigan, with white aluminum siding.

The State Historic Preservation Review Board (hereinafter "the Board") has appellate jurisdiction to consider such appeals under section 5(2) of the Michigan Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Board, an administrative hearing was held on March 22, 1994, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on May 26, 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 Board fully considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on Friday, June 10, 1994.

The Board agrees the Proposal for Decision is correct in its conclusion that the application substantially complies with federal standards/guidelines.

Having fully considered the Proposal for Decision issued in this matter, the Board voted 6 to 0 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,

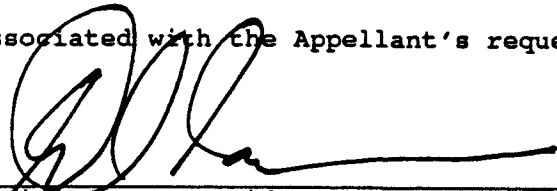
IT IS ORDERED THAT the decision of the Flint Historic District Commission shall be set aside.

IT IS FURTHER ORDERED THAT the Commission shall issue a Certificate of Appropriateness relative to the Appellant's request within 30 days after the mailing of this Final Decision and Order.

IT IS FURTHER ORDERED THAT nothing in this Final Decision and Order shall be construed to prevent the Commission and the Appellant from mutually agreeing upon any necessary details associated with the Appellant's request.

Dated:

10 JUNE 1994



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 ^{Superior} ~~Kent~~ 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:

MARK R. MONSON,

Applicant/Appellant,

v

Docket No. 94-17-HP

FLINT HISTORIC DISTRICT COMMISSION,

Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision rendered by the Flint Historic District Commission (the Commission), denying an application for a certificate of appropriateness to cover the wooden soffits and fascia boards of the building located at 704 Garland Street, Flint, Michigan, with white aluminum siding.

The appeal was filed under section 5(2) of the Local Historic Districts Act.¹ Section 5 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 administrative hearing for the purpose of taking evidence and argument.

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

The Hearings Division conducted a hearing on March 22, 1994, in Hearing Room No. 121, the Mutual Building, Lansing, Michigan. The hearing was held pursuant to procedures set forth in Chapter 4 of the Administrative Procedures Act.²

Mark R. Monson, who, along with his wife, owns the building located at 704 Garland Street, appeared at the administrative hearing and represented himself. Denise Heath, who serves as staffperson to the Commission, was also present. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, served as Presiding Officer and conducted the hearing. Jennifer L. Radcliff, who is a member of the Board, appeared as an observer/representative on behalf of the Board.

Issues on Appeal

In a letter dated December 10, 1993, the Appellant wrote that his appeal is based on the following four items:

1. That covering the building's soffits and fascia will not appreciably change the appearance or historic dignity of the building. In this regard, he points out there is no fancy nor ornamental trim on the building. The soffit is five-inch tongue-and-groove and the fascia is six-inch flat board, both pine.

2. That to remove and replace the fascia and soffits would be cost prohibitive. The wood has deteriorated to the point where it cannot be stripped and repainted. Using aluminum is the best and most cost-effective means of maintaining the structure.

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

3. That aluminum and galvanized steel have been used extensively on approximately 70% of the buildings in the immediate vicinity of the subject property -- three in the past 18 months.

4. That the building was never designated as an historic structure -- nor is there one nearby -- and under the circumstances, the Secretary of the Interior's Guidelines would allow the use of aluminum.

Summary of Evidence

Under Michigan law, a party who occupies the position of a petitioner or an applicant 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 occupies that position in this matter and bears the burden of proof.

Section 5(2) of the Local Historic Districts Act, supra, provides that appellants may submit all or a part of their evidence and arguments in written form. In this vein, the Appellant submitted a nine-page exhibit (Appellant's Exhibit No. 1) which contains four sub-exhibits. Among those is a duplicate Note concerning the property at 704 Garland Street, a duplicate Mortgage concerning the property, and a photocopy of the Minutes of the Commission meeting held on November 4, 1993. The exhibit also articulates the Appellant's primary arguments in this case. In addition, Monson submitted 26 other exhibits, mostly consisting of

photographs. A repair estimate and a map of the vicinity of the Appellant's apartment were included with those exhibits.

Monson testified on his own behalf at the administrative hearing. In essence, he presented background information regarding his property. He also provided information regarding the proposed repairs to the soffits and fascia. He described the exteriors of several structures in the surrounding neighborhood in considerable detail.

The Commission presented four exhibits, those being: the Flint historic district ordinance, City of Flint historic preservation Standards adopted on August 26, 1985, a copy of the November 4, 1993 Commission minutes, and an informational pamphlet describing how citizens can obtain certificates of appropriateness. Staff-person Heath briefly testified about the events surrounding the submission of Monson's request and the Commission's consideration of that request.

Findings of Fact

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

A. Background Information

1. The structure located at 704 Garland Street, Flint, Michigan, is an impressive, three-level, brick building erected after 1917. (Transcript page 32; Appellant's Exhibit Nos. 2 & 3)
2. The building was purchased by Mark R. Monson and his wife in 1976. (Tr 22; AE 1)
3. In 1979, Monson converted the building into an apartment

house. The building now contains three residential units. (Tr 22)

4. Monson has taken steps to keep the building in good condition. He regularly performs routine maintenance and has brought the building up to city code in almost all respects. He endeavors to make repairs promptly. (Tr 25)

5. The apartment units are presently rented to families who are on public assistance or have limited incomes. (Tr 22, 42)

B. Carriage Town Historic District

6. On April 23, 1979, the City of Flint adopted Ordinance No. 2707,³ which established a local historic preservation program for the city. Local historic preservation standards/guidelines were adopted a few years later. (CE 1, 2)

7. The Carriage Town Historic District⁴ was established sometime during 1983. (Tr 39)

8. The apartment building at 704 Garland Street is located within the boundaries of the Carriage Town District. (Tr 21; CE 4)

9. Flint presently has 29 historic districts. Carriage Town is one of the city's largest districts. (Tr 36 - 37; CE 4)

C. Repairs and Request

10. At the present time, the soffits and fascia at 704 Garland Street are, for the most part, open and painted. The width of the overhang is no more than 20 inches. (AE 1)

11. However, the soffits have been damaged, in part, because the building at one point needed roofing repairs. It took Monson

³ Flint Ordinances, § 2-141 et seq.

⁴ Flint Ordinances, § 2-143.

"a long time" to find the money for his reroofing project since the Flint Building Code requires complete roof replacement, rather than "roofing over", in cases where a roof already has two layers of roofing. The 704 Garland building had one coat of roofing over one coat of cedar shakes. This fact made repairing the roof an expensive proposition. (Tr 22)

12. Due to the roofing problem, water was able to seep behind the soffits for an extended period of time. This caused several boards to rot in places. Monson painted the soffits and fascia numerous times, but due to the amount of rotted wood, painting no longer solves his problem. (Tr 22 - 24)

13. Monson has noted that removing the fascia and the soffits, and then putting the whole thing back into original condition, is a large, expensive undertaking. He therefore looked into the possibility of "patching" and spoke with a gentleman who provided a price quote of a little over \$5,000.00 for spot repairs only. Part of the expense stems from the fact that the soffits and fascia are very high off the ground. Prior to the administrative hearing in this case, Monson obtained a repair quote of \$30,000.00 from Arnold's Builder's, Inc., of Davison, Michigan, for the complete repair job. (Tr 24, 31; AE 4)

14. Monson decided that his best approach would be to cover the fascia and soffits with white aluminum siding. He budgeted and expected to spend only \$500.00 for this work. (Tr 20, 22 - 23)

15. Monson commenced work on his fascia and soffit project. When the job was about one-fourth done, Terry Gill, a Commission

member, appeared at the premises and informed Monson that a permit would be needed for the work in question. (Tr 23)

16. At that juncture Monson said, "fine", and he telephoned the Commission staffperson, Heath, pursuing placement of his project on the Commission's next meeting agenda. (Tr 17, 23)

17. The Commission considered Monson's request at its meeting of November 4, 1993. Monson appeared at that meeting and stated that he wanted to cover the soffits and the fascia boards with white aluminum siding. Chairman Hoyt asked if wooden soffits were already there and whether Monson wanted to cover them with aluminum, and Monson answered, "yes". Hoyt stated he thought the Commission had a directive from the Secretary of the Interior not to do that. Hoyt added that the Commission has consistently refused to permit people to install aluminum or vinyl siding. Hoyt stated that it is the Commission's responsibility to maintain the historic dignity of the houses within historic districts and that Monson's house was one of those. Hoyt added that the Commission is permitted some leeway in making decisions, but that the regulations are quite clear about matters such as aluminum and vinyl siding. He added that these were areas where the Commission could not compromise or exercise judgment. Hoyt said it looks like this could fall into that category and that the Commission just did not have any choice, noting that the soffits have existed on the house since the time it was built and that they have been painted many, many times. Monson responded that the soffits had reached the point where they could no longer be repainted. (AE 1; CE 3)

18. At this juncture in the meeting, Heath read the relevant Standards used by the Secretary of the Interior. The related guidelines recommended that wood features which are important in defining a building's historic character, such as siding and cornices, be identified, retained and preserved. Not recommended was removing or radically changing important wood features or covering a wooden facade with new material to achieve an improved appearance. Monson said there was no ornamental woodwork on the house at all. Commissioner Sinclair asked if a J-Channel would be attached against the house? Monson answered, "yes". He said he was only talking about siding the part that was underneath, along with the fascia. Monson added that the overall condition was poor and that it would cost approximately \$5,200.00 to replace the fascia. Commissioner Foote said that the change is visual and that most of the Commissioners maintain the position that homeowners must hold to the original as closely as possible. Commissioner Sinclair asked if the proposed aluminum would be beveled? Monson answered that there would be a series of lines and that the aluminum would be a little wider than the fascia board. Commissioner Hoyt stated that unless anyone had another solution, approving Monson's request was something the Commission was not authorized to do and could not do. Commissioners Hoyt and Foote added that they were housing contractors, and although neither of them could do the work, they would be happy to meet with Monson to help him determine how he should go about making repairs. (AE 1; CE 1)

19. Monson asked about his appeal rights. He filed an appeal

on or about December 10, 1993. (AE 1; CE 1)

D. Aluminum and Galvanized Steel on Nearby Buildings

20. No fewer than 17 buildings in the immediate vicinity of 704 Garland Street have had their wooden soffits and fascia "updated" with aluminum or galvanized steel. (Tr 27, 38; AE 5)

21. There are some notable exceptions. These buildings are, for the most part, "for sale" and have been for sale for some time. A major reason why some of these houses are on the market is that their owners cannot afford to maintain them with significant amounts of wood on them. (Tr 27; AE 5)

22. It is noted that some of the neighborhood houses which never used aluminum or steel have been torn down. (Tr 27)

23. The building immediately to the North of Monson's -- the City of Flint Vista Drop-In Center, 706 Garland Street -- has fascia and soffits similar to those found on Monson's building. They show signs of significant deterioration. They have not been repaired or covered with aluminum, and they presently constitute an eyesore. (Tr 27 - 28; AE 27 & 28⁵)

24. The owner of the house on the Southwest corner of Garland Street and Fourth Avenue invested \$40,000.00 in an attempt to bring his house up to local district standards. This owner has given up and has listed his house for sale. (Tr 28 - 29; AE 22)

25. An historic building -- the Sloan House -- was previously located across the street from Monson's property. The historic house was recently torn down. (Tr 29)

⁵ Appellant's Exhibit No. 28 should have been numbered, No. 26.

26. The City of Flint Women's Crisis Center is situated at 705 Garland Street. That building has been refurbished with galvanized steel trim. (Tr 29; AE 6)

27. Wolverine Collision, at 627 Fourth Avenue, has new aluminum soffits and siding. Some of the trim is constructed with galvanized steel. The trim and the building fit in with the neighborhood. (Tr 29 - 30)

28. The front porch of the house located at 618 Garland Street has been retrimmed with aluminum. (Tr 30)

29. The entire front porch of the City of Flint Fire Station located at the corner of Fourth Avenue and Detroit Street was refurbished and wrapped in aluminum three years ago to match the building. It, too, has a nice appearance, in keeping with the neighborhood. Aluminum eaves and gutters have also been added. (Tr 30; AE 17)

30. The house directly to the East of Monson's -- 116 Fourth Avenue -- has been reskinned in aluminum. (Tr 34; AE 21)

31. Another building across the street from Monson's -- Majelle's Pasties, 725 Garland Street -- has been redone in aluminum and presently has aluminum soffits. (Tr 41; AE 8)

E. Aesthetic and Future Cost Considerations

32. Monson is of the opinion that his building would blend in with neighboring buildings -- rather than stand out -- with the use of aluminum materials. Further, given the height of the soffits above the ground, it would be very hard to distinguish aluminum from wood on the soffit board from the ground. (Tr 31)

33. Monson also points out that aluminum would be a permanent solution, whereas wood replacement will involve an ongoing expense, in that wood will require repainting every year or two. (Tr 31)

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by a decision of a commission to appeal to the State 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 whenever a commission has, among other things, acted in an arbitrary or capricious manner, 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.

A. Adherence to Historic Preservation Standards/Guidelines

The Appellant cites four grounds for reversing the Commission's decision.

Initially, the Appellant argues that covering the soffits and fascia with aluminum materials will neither compromise his building's historic integrity nor appreciably change its appearance. He points out that the building does not have any fancy or ornamental trim and, in any case, the soffits and fascia are high above ground level and are difficult to see.

In the case at hand, the Commission acted under the authority

of section 5 of the Act⁶ when it refused to issue the Certificate of Appropriateness at issue. The Commission also acted pursuant to the historic preservation article of the Flint City Code.⁷ The Code provides in pertinent part as follows:

Sec. 2-146. Historic District Commission - Duties and Powers.

It shall be the duty of the commission to review all plans for new construction, addition, alteration, reconstruction, rehabilitation, repair, restoration or the moving of district resources in a historic district, and it shall have the power to pass upon such plans before a (building) permit for such activity can be granted. The commission may authorize the building official to review certain types of plans involving alteration, addition or repair of district resources in a historic district and to grant permits before review by the commission.

The review of plans shall be based on established and nationally accepted preservation standards known as "the secretary of the interior's standards for rehabilitation" and the guidelines established in the bylaws of the commission. The guidelines developed by the commission shall apply to all historic districts and shall describe the criteria related to the general compatibility of exterior design, structural height, mass arrangement, texture and proposed building materials.

* * *

Until such time as the commission adopts the aforementioned preservation guidelines, its review of plans shall be based on the established and nationally recognized standards known as "the secretary of the interior's standards for rehabilitation"....

The commission shall review only the exterior features of a district resource; interior arrangements shall not be considered unless they negatively impact exterior features. Nor shall the commission disapprove

⁶ See footnote 1.

⁷ Flint Ordinances, § 2-146.

applications except as provided in the previous paragraphs. The district resources to be considered are limited to those within the historic districts described in section 2-143(b). It is the intent of this section that the commission shall act as a facilitator in order to work out feasible design and preservation solutions and shall provide guidance to property owners. The commission shall be lenient in its judgment of plans for new construction, addition, alteration, demolition, reconstruction, rehabilitation, repair, restoration or moving of district resources of little historical, architectural or archaeological value except when the aforementioned activities would seriously impair the historical, architectural or archaeological value and character of the surrounding district resources or the surrounding area. The administration may provide whatever professional assistance the commission may deem necessary to aid in its deliberations.

The commission shall have the power to issue a certificate of appropriateness if it approves of the plans submitted for its review. The city building official shall not issue a building permit except as otherwise noted in this section until such certificate of appropriateness has been issued by the commission.

* * *

In 1985, the Commission adopted "guidelines" for use in reviewing requests for "Certificates of Appropriateness" concerning exterior alterations in historic districts. These guidelines (or standards) were designed to be used in conjunction with the Secretary of the Interior's Standards for Historic Preservation. It was the intent of the local guidelines to ensure that alterations within Flint historic districts are sensitive to historic character and do not compromise significant historic, architectural, or cultural material. Among other things, the guidelines state as follows:

VII ARCHITECTURAL FEATURES

- A. Special architectural details such as verge boards, cornices, brackets, sawed ornaments, ornamented gables, railings, turned columns, balustrades, architraves, and pediments shall not be removed or concealed except for public safety.
- B. The use of unpainted aluminum for doors, including screen and storm doors, garage doors, window and trim is prohibited.

In reviewing the Applicant's request, the Commission endeavored to follow the Secretary of the Interior's Standards and Guidelines, as well as those adopted at the local level. Two Standards⁸ are of relevance here; those being:

Standard 2.

(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.

Standard 6.

(6) Deteriorated historic features shall be repaired rather than be replaced. Where the severity of deterioration requires 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.

It is also clear from the hearing record that the Commission endeavored to apply the federal Historic Preservation Guidelines to Monson's request. In that regard, the Commission utilized the federal "Building Exterior" Guidelines which pertain to wood.

⁸ 36 C.F.R. § 67.7(b)(2) and (6).

Those Guideline indicate as follows:

Wood: Clapboard, weatherboard, shingles, and other wooden siding and decorative elements

Because it can be easily shaped by sawing, planing, carving, and gouging, wood is the most commonly used material for architectural features such as clapboards, cornices, brackets, entablatures, shutters, columns and balustrades. These wooden features -- both functional and decorative -- may be important in defining the historic character of the building and thus their retention, protection, and repair are of particular importance in rehabilitation projects.

Recommended

Identifying, retaining, and preserving wood features that are important in defining the overall historic character of the building such as siding, cornices, brackets, window architraves, and doorway pediments; and their paints, finishes, and colors.

Not Recommended

Removing or radically changing wood features which are important in defining the overall character of the building so that, as a result, the character is diminished.

Removing a major portion of the historic wood from a facade instead of repairing or replacing only the deteriorated wood, then reconstructing the facade with new material in order to achieve a uniform or 'improved' appearance.

The evidence in the administrative hearing record shows that the Commission acted in "good faith" during its deliberations on Monson's request. The evidence demonstrates that Commissioners Hoyt and Foote followed the mandate of Sec. 2-146 of the Flint City Code to function as "facilitator(s)" to work out design and preservation solutions. These commissioners actively looked for alternative solutions, and they offered to work with Monson to ascertain how he could get the work done. They are to be commended for their efforts.

However, it is also clear from the evidence that the Commission believed it lacked the authority to approve Monson's request simply because the request involved the use of aluminum siding. The Commission acted on the basis that using aluminum was something it could not "compromise" on, make a "judgment" about, or exercise "leeway" on. Therefore, the Commission rejected Monson's request, more or less, out of hand.

The Commission was incorrect when it concluded that aluminum materials can never be used anywhere within an historic district. Nothing in the federal Standards or Guidelines cited above absolutely prohibits the use of aluminum siding. The federal Guidelines do recommend against the use of "new materials" to achieve an "improved" appearance, but they do not completely prevent the use of such materials for other purposes. Moreover, the City of Flint guidelines, in prohibiting the use of "unpainted" aluminum for screen and storm doors, garage doors, windows, and trim, strongly suggest the converse proposition, that painted aluminum may appropriately be used in those cases.

All of the federal and local laws cited above reveal a "legislative" intent to protect and preserve significant historic buildings, features and characteristics. At the same time, these laws also provide for "leeway" and/or "leniency" where a proposed repair and/or alteration would involve resources and portions of resources of little historical value or where the repair/alteration would not seriously impair the historical or architectural value and/or character of the surrounding resources in the district.

The building in question -- 704 Garland Street -- is a fairly impressive, brick residential structure. Based on the photographic evidence presented by the Appellant, the building appears to be substantially unaltered as of this time, and, further, it also appears to be a participating, significant historical resource within the Carriage Town Historic District. The Appellant did argue that his building was not historic. However, the Appellant did not demonstrate any expertise in historic preservation, nor did he submit documentation or expert testimony to validate the proposition that his building should not be deemed historically significant. Thus, his argument on this point is rejected.

The building is historic. It is a contributing resource within the historic district. Its significance derives principally from its character as an impressive, brick residential-use structure in a substantially unaltered state.

As indicated above, the Appellant has argued that covering the fascia and soffits with aluminum will not appreciably change the building's appearance nor substantially compromise its historic integrity. The building has no fancy trim, and the soffits and fascia are high above the ground.

The Appellant's argument does have substantial merit. The defining historic characteristics of his building are its brickwork and massiveness. The proposed repair/alteration would not have an adverse impact upon those characteristics. Most of the regulations cited above focus on decorative and ornamental features, such as sawed ornaments, ornamental gables, balustrades and pediments. A

few focus on unique functional features, such as clapboards and shutters. The Appellant's request concerns none of those. Instead, it involves soffits and unadorned facing boards barely visible from the ground. Such a request is not akin to siding an entire building or covering an entire walled surface with aluminum or another new material; rather, the request concerns only an insignificant part of a building's visible surface.


Moreover, this case does not involve a circumstance where the installation of a covering would either facilitate or accelerate the deterioration of the resource. The soffit problem was caused by water seepage through a leaky roof. The Appellant has already repaired the roof. Damaging water will not be captured by any new undercoating of aluminum. Had the Appellant not repaired his roof, his current request would have a serious, practical shortcoming.

In view of the discussion set forth above, it must be concluded that the Appellant's proposal is not prohibited by the applicable historic preservation regulations. It is therefore concluded that the Commission erred when it rejected the Appellant's request out of hand.

Recommendation

Having determined that the Commission erred by rejecting the Appellant's request due to the assumption that all new materials are prohibited in every instance, it is recommended that the Commission's decision in this case be set aside.

Dated: May 26, 1994


Nicholas L. Bozen
Presiding Officer