

STATE OF MICHIGAN
MICHIGAN STATE HOUSING DEVELOPMENT AUTHORITY
STATE HISTORIC PRESERVATION REVIEW BOARD

TIM GOSS, GEORGE MEYER CO. AND
MELISSA VAN DAM,
Petitioners,

v

Agency Case No. 13-002-HP
MAHS Docket No. 13-00086-HAL

CITY OF SALINE HISTORIC DISTRICT
COMMISSION,
Respondent.

FINAL DECISION AND ORDER

This matter involves an appeal of a November 27, 2012 written decision of the City of Saline Historic District Commission, which denied a request to issue a Certificate of Appropriateness to install six vinyl windows at the historic home located at 214 North Ann Arbor Street in the North Ann Arbor Historic District in Saline, Michigan.

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

At the request of the Board, the Michigan Administrative Hearing Services (MAHS), which is housed in the Michigan Department of Licensing and Regulatory Affairs, convened an administrative hearing on May 1, 2013. This was a hearing focused on the issue of whether the Commission improperly denied the Petitioners' request for a Certificate of Appropriateness. Presiding at the hearing was MAHS Administrative Law Judge David Cohen.

On May 7, 2013, Judge Cohen issued and entered into the record a Proposal for Decision and true copies of the Proposal for Decision were served on the parties and their legal representatives, if any, pursuant to Section 81(1) of the Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

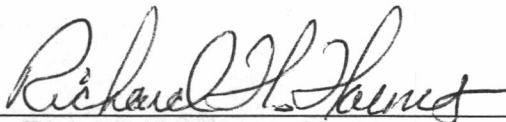
The Board considered this appeal, along with the Proposal for Decision and all post-hearing filings and responses to filings submitted by the parties, at its regularly scheduled meeting conducted on September 13, 2013. After considering the Proposal for Decision and the official record made in this matter, the Board voted 8 to 0, with 0 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter, and to incorporate the Proposal for Decision into this document; and,

Having done so,

IT IS ORDERED that the appeal is DENIED and the case is DISMISSED.

IT IS FURTHER ORDERED that a true copy of this Final Decision and Order shall be served on the parties and their legal representatives, if any, as soon as is practicable.

Dated: 10 October 2013

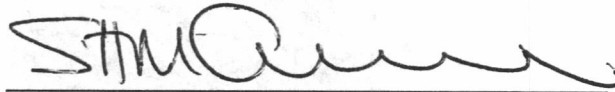


Dr. Richard H. Harms, Chairperson
State Historic Preservation Review Board

NOTE: Section 5(2) of the Local Historic Districts Act provides that an applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date notice of the Board's Final Decision and Order is mailed to the parties.

PROOF OF SERVICE

I hereby certify that a copy of the foregoing Final Decision and Order was served upon all parties named in this matter, their attorneys of record if any, and other appropriate State of Michigan officials and employees, by inter-departmental mail to those persons employed by the State, and by first class United States mail and/or certified mail return receipt requested, to all others at their respective addresses noted below, as disclosed by the official case record, on December 13, 2013.



Scott M. Grammer
Administrative Law Specialist
Legal Affairs – Preservation Office

Melissa VanDam
222 Monroe Street
Saline, MI 48176

Tim Goss
George Meyer Company
3496 Pontiac Trail
Ann Arbor, MI 48105

Mark W. McInerney
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, MI 48226

Scott G. Smith
Clark Hill PLC
200 Ottawa Avenue NW, Suite 500
Grand Rapids, MI 49503

City of Saline Historic District Commission
ATTN: J. Jeffery Fordice, P.E.
100 North Harris Street
Saline, MI 48176

Cynthia Christiansen
City of Saline Historic District Commission
100 North Harris Street
Saline, MI 48176

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 13-000186-HAL

Tim Goss, George Meyer Co. and Melissa
VanDam,
Petitioner

Case No.: 13-002-HP

Agency: History Arts Library

v

Case Type: HAL

City of Saline Historic District Commission,
Respondent

Filing Type: Appeal
Certificate of
Appropriateness

Issued and entered
this 7th day of May, 2013
by: David M. Cohen
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 (Act 169) and 1969 PA 306, as amended, MCL 24.101 *et seq.*, the Administrative Procedures Act.

The purpose of this review is to examine Petitioners' January 2013, appeal from Respondent's November 27, 2012 decision to not approve the installation of six vinyl windows at 214 North Ann Arbor Street. Although approval for the work was not given, the windows were subsequently installed by Petitioner Tim Goss/George Meyer Co.

A February 21, 2013 Notice of Hearing scheduled a hearing for May 1, 2013. On April 10, 2013 Respondent filed a Motion to Dismiss. Petitioners did not file a reply to the Motion. After a brief discussion, I took the Motion to Dismiss under advisement on May 1, 2013, and the hearing proceeded as scheduled. Petitioner Tim Goss appeared on his own behalf and, ostensibly, on behalf of Petitioner George Meyer Co. Petitioner Melissa VanDam did not appear at the hearing. Respondent was represented by Attorney Mark McInerney. Respondent's current chairperson, Cynthia Christiansen and Respondent's Staff Liaison Jeffery Fordice were also present and testified on behalf of Respondent.

Petitioners did not admit any Exhibits at the May 1, 2013 proceeding. The following eight Respondent Exhibits were admitted:

1. A photograph depicting 214 North Ann Arbor Street after the installation of six vinyl windows to the second story of the residence

2. An additional photograph depicting 214 North Ann Arbor Street after the installation of six vinyl windows to the second story of the residence
3. The June 28, 2011 Saline Historic District Commission Regular Meeting Minutes
4. The July 26, 2011 Saline Historic District Commission Regular Meeting Minutes¹
5. The November 27, 2012 Saline Historic District Commission Regular Meeting Minutes
6. A February 2011 photograph depicting work, unapproved by Respondent, being performed to a second story window at 214 North Ann Arbor Street
7. An April 24, 2012 Resolution adopted by Respondent
8. A photograph of 214 North Ann Arbor Street taken circa 1994

ISSUES

1. Do Petitioners Tim Goss and George Meyer Co. have standing to appeal Respondent's decision?
2. Did Respondent act arbitrarily and capriciously in denying Petitioner's retroactive permit application?
3. Did Respondent take action at a meeting in which a quorum was not present?

FINDINGS OF FACT

This case concerns the historic residence located at 214 North Ann Arbor Street, Saline, Michigan. On June 14, 2011, Petitioner Melissa VanDam, the owner of the historic residence located at 214 North Ann Arbor, filed an application for review to replace six second story wood windows at the residence with vinyl windows. It appears the application was submitted, on Ms. VanDam's behalf, by the proposed contractor Petitioner George Meyer Company/Petitioner Tim Goss.

Petitioner VanDam was notified that the matter would be considered at the next

¹ Although indicated as "draft" minutes, the testimony of Staff Liaison Jeffery Fordice indicated that the document represents the minutes which were adopted by Respondent.

Commission meeting. Respondent's next regularly scheduled meeting took place, as scheduled, on June 28, 2011. Neither Petitioner VanDam, nor anyone on her behalf, attended the meeting (Exhibit 3). Rather than deny Petitioner's application, the Commission voted unanimously to table the matter until the next scheduled meeting (Exhibit 3). Five of seven commission members were present at the June 2011 meeting (Exhibit 3).

The next Commission meeting occurred on July 26, 2011. Petitioner VanDam attended the meeting (Exhibit 4). The matter was discussed and a motion was made to issue a certificate of appropriateness. A vote was taken and the motion was denied (Exhibit 4). Five of seven commission members were present at the July 2011 meeting (Exhibit 4). The May 1, 2013 testimony of Staff Liaison Jeffery Fordice indicated that there were concerns that the proposed vinyl replacement windows did not preserve the original/historic wood window features of the home. Petitioners did not appeal the July 2011 decision of the Commission.

On November 9, 2011 Petitioners filed a revised application, and the Commission considered the application at its regularly scheduled November 15, 2011 meeting. This meeting was attended by Petitioner Tim Goss who represented the interests of Petitioner George Meyer Company, the pending contractor on the window project. The May 1, 2013 hearing testimony of Petitioner Goss indicated that he attended the November 2011 meeting to provide specifics and options regarding the proposed window project.

Petitioner Goss, Staff Liaison Jeffery Fordice, and Chairperson Cynthia Christiansen all testified that the revised application was rejected by a majority vote of the commission. Respondent was unable to produce/locate Minutes from the November 2011 meeting and indicated this fact at the May 1, 2013 proceeding. The hearing record establishes that there was no dispute over the representation that the revised application was considered and rejected. Further, it was not disputed that at least four of the seven board members were present at the meeting when the vote was taken. Petitioners did not appeal the November 2011 decision of the Commission.

Although the exact date is not indicated in the hearing record, it is undisputed that sometime after November 2011, Petitioners proceeded to remove six second story wood windows and install six vinyl windows. This action was done without the approval of Respondent.

After learning that the windows had been replaced, the Commission issued an April 24, 2012 Resolution that authorized the Saline Building Inspector and City Attorney to "perform all necessary investigations and take the required actions to enforce the Historic District Ordinance and cause the restoration of the resource as described in Saline City Code Section 2-220(l)" (Exhibit 7).

After a protracted period, where the parties communicated about possible resolution of the window dispute, Petitioners filed a third permit application which was considered at the

Commission's regularly scheduled November 27, 2012 meeting (Exhibit 5). After a discussion was held, the application was unanimously denied (Exhibit 5). Six of seven Commission members were present at the November 2012 meeting (Exhibit 5). It was from this denial that Petitioners filed a January 28, 2013 appeal.

Petitioner Tim Goss testified that he had approximately twenty years of experience in the industry and that on multiple occasions he had worked successfully with Ann Arbor's Historic Commission on similar projects.

Petitioner Goss recalled that the Commission had to wait for a fourth member to arrive before voting on the application at the November 2011 meeting that he attended. Further, Petitioner Goss indicated that the Commission's chairperson at the time indicated support for the project and that the denial was not unanimous.

Petitioner Goss argued, to the effect, that the project was performed with quality workmanship and that the vinyl windows were made to resemble the original wood windows. Petitioner Goss averred that the wood windows could not have been repaired and that they needed to be replaced. Further, Petitioner Goss noted that work had previously been done on the property, and that the rear windows of the residence had been replaced at some point in the past.

CONCLUSIONS OF LAW

Section 5(2) of the Act 169 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 certificate of appropriateness or a notice to proceed. Relief should 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, when a commission has reached a correct decision, relief should not be granted.

Under Michigan law applicable to administrative proceedings, a party who stands in the position of an applicant, an appellant or a petitioner typically bears the burden of proof *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 Petitioners occupy that position in this proceeding and accordingly bear the burden of proof regarding their factual assertions.

Respondent argued that Petitioner Goss and Petitioner George Meyer Co. do not have standing to appeal Respondent's November 2012 Decision. MCL 399.205 (2) provides for appeal of a decision issued by a Historic District Commission. It states in pertinent part:

- (2) An applicant aggrieved by a decision of a commission

concerning a permit application may file an appeal with the state historic preservation review board within the department. The appeal shall be filed 60 days after the decision is furnished to the applicant....

An "applicant" has the right to appeal. Petitioners Tim Goss and George Meyer Co. did file an application which was denied by Respondent on November 27, 2012. Petitioners Tim Goss and George Meyer Co. did not own the property at issue, and the owner of the property, Petitioner Melissa VanDam, did not appear for the hearing. However, MCL 399.205 (1) does not require a permit applicant to be an owner. This provision is much broader:

- (1) A permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district... The person, individual, partnership, firm, corporation, organization, institution, or agency of government proposing to do that work shall file an application for a permit with the inspector of buildings, the commission, or other duly delegated authority....

Since Petitioner Tim Goss and George Meyer Co. did file a permit application with Respondent, these Petitioners can be considered "applicants."

I find that there is a larger issue in that Petitioners could have appealed both the July 2011 application denial and the November 2011 application denial, but did not do so. Still, Respondent agreed to consider and did consider an additional application at its November 2012 meeting. As Petitioners' November 2012 application was considered and denied, I find that Petitioners can appeal the application pursuant to above-quoted language of MCL 399.205 (2).

However, the factual circumstances surrounding the present appeal present additional concern. The language of MCL 399.205 (1) clearly states that "a permit shall be obtained before any work affecting the exterior appearance of a resource is performed within a historic district" {Emphasis added}. Petitioners, by their own admission, do not dispute that they did not comply with the requirements of MCL 399.205(1), and performed work affecting the exterior of the historic residence without obtaining appropriate authorization from the Commission. Petitioner Goss notes that there were Commission members who didn't seem opposed to the work being performed. While there is indication that a minority of the Commission's members would have approved the project, it is axiomatic that it is the majority vote that controls.

Petitioners' January 2013 appeal avers that the Commission took action without a quorum when it denied the application. The May 1, 2013 hearing record indicates that six of the seven Commission members were present when the November 2012 application was discussed and denied.

Petitioner Tim Goss testified that he was concerned with the prior November 2011 application denial as the Commission had to wait for a fourth member to arrive before voting on the issue. I note that the present appeal is of the November 2012 application denial and a quorum was present at that time (Exhibit 5). Further, the presence of four out of seven members would have given the Commission a quorum at its November 2011 meeting. Petitioner Goss acknowledged this during a cross-examination conducted by Respondent's counsel.

The remaining issue is whether Respondent acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial and material error of law. I do not find this to be the case in the present matter.


As Respondent's counsel astutely observed, vinyl is not wood. The testimony of both the Commission's Staff Liaison Jeffery Fordice, and Commission Chairperson Cynthia Christiansen indicated that a majority of the Commission was concerned that the new windows did not retain or preserve the historic character of the home. MCL 399.205(3) requires the Commission to adhere to DOI Standards, and the record establishes that the Commission was fulfilling its responsibility to do so in denying the applications. It was not arbitrary and capricious to require Petitioners to obtain a permit prior to performing the window replacements. Finally, it was not arbitrary or capricious to require Petitioners to restore the historic site to its prior state.

I note that Petitioner Goss testified that he had invited the Commission to come to the site, circa November 2011, to obtain a better understanding of the window project. However, I do not find that the Commission was obligated to tour the site if it believed it had sufficient information to make a determination on the application that was presented.

Additionally, I also note that Petitioner Goss testified that at least some of the second story windows could not be repaired and needed replacement. Accepting this representation does not alleviate Petitioners of their obligation to obtain the appropriate authorization to perform the window work. Staff Liaison Jeffery Fordice noted that if the windows needed to be replaced then the preferred option would have been to replace them with wood models as opposed to vinyl models.

RECOMMENDED DECISION

For the above noted reasons, I recommend the Review Board **DISMISS** Petitioners' appeal. Respondent consistently acted in adherence to the requirements of Act 169.



David M. Cohen
Administrative Law Judge

EXCEPTIONS

If a party chooses to file Exceptions to this Proposal for Decision, the Exceptions must be filed within fifteen (15) days after the Proposal for Decision is issued. If an opposing party chooses to file a Response to the Exceptions, it must be filed within ten (10) days after the Exceptions are filed. All Exceptions and Responses to Exceptions must be filed with the State Historic Preservation Review Board, by submission to the:

**Michigan State Housing Development Authority
Attention: Scott Grammer
702 West Kalamazoo Street
P.O. Box 30740
Lansing, Michigan 48909**

All filings must also be served on all other parties to the proceeding.

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 below this 7th day of May, 2013.



Maria Ardelean

Michigan Administrative Hearing System

Scott M. Grammer
State Historic Preservation Review Board
702 West Kalamazoo Street
Lansing, MI 48909

Scott G. Smith
Clark Hill PLC
200 Ottawa Avenue NW, Suite 500
Grand Rapids, MI 49503

Mark W. McInerney
Clark Hill PLC
500 Woodward Avenue, Suite 3500
Detroit, MI 48226

Cynthia Christiansen
City of Saline Historic District Commission
100 North Harris Street
Saline, MI 48176

City of Saline Historic District Commission
Attn: J. Jeffery Fordice, P.E.
100 North Harris Street
Saline, MI 48176

Tim Goss
George Meyer Company
3496 Pontiac Trail
Ann Arbor, MI 48105

Melissa VanDam
222 Monroe Street
Saline, MI 48176