

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

In the Matter of:

NICHOLAS SAIDOO,
Applicant/Appellant,

Docket No. 95-170-HP

v

FLINT HISTORIC DISTRICT,
Respondent/Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Flint Historic District Commission denying an application for permission to install vinyl siding and aluminum trim, and to perform other exterior work, on a residential building located at 314 W. 2nd Avenue, Flint, 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 April 6, 1995, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on May 30, 1995, 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, June 9, 1995.


Having considered the Proposal for Decision and the official record made in this matter, the Board voted 5 to 0, with 1 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: 9 JUNE 95



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.

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STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

NICHOLAS SAIDOO,
Applicant/Appellant,

Docket No. 95-170-HP

v

FLINT HISTORIC DISTRICT COMMISSION,
Appellee.

PROPOSAL FOR DECISION

This matter involves the appeal of a decision of the Flint Historic District Commission (the Commission) denying an application to install vinyl siding with aluminum trim on the residence located at 314 W. 2nd Avenue, in Flint, Michigan. The Commission's decision was issued on December 2, 1994. That decision was initially appealed to the Flint Building Code Board of Appeals (BCBA). On December 14, 1994, the BCBA affirmed the decision of the Commission. James LaCross of State Building Company filed this appeal on behalf of Nicholas Saidoo (the Appellant).

The appeal was received on January 31, 1995, and was submitted under section 5(2) of the Local Historic Districts Act (the Act).¹ Section 5(2) provides that a person aggrieved by any decision of an

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

historic district commission may appeal the decision to the State Historic Preservation Review Board (the Review Board), which is an agency of the Michigan Department of State. Upon receipt of the appeal, the Review Board directed the Michigan Department of State, Hearings Division, to convene an administrative hearing for the purpose of receiving relevant evidence and argument. The Hearings Division conducted a hearing on Thursday, April 6, 1995, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures set forth in Chapter 4 of the Administrative Procedures Act² and also in the Administrative Code.³

Gladyce Saidoo, the wife of Nicholas Saidoo, and a joint-owner of the property, appeared at the hearing. James LaCross of State Building Company also attended the hearing, in support of the Appellant. Nicholas Saidoo was ill and unable to attend. David White, chairman of the Commission, appeared on behalf of the Commission. Eric MacDonald, Environmental Review and Designation Coordinator, Michigan Department of State, Michigan Historical Center, appeared as an observer/representative on behalf of the Review Board. Gary W. Brasseur, Administrative Law Examiner, Michigan Department of State, Hearings Division, served as presiding officer.

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

³ 1979 AC, R 11.1 et seq.

Issues on Appeal

In the letter of appeal submitted in support of the Saidoos, James LaCross wrote that this appeal is based on the following grounds:

1. That the Saidoos are "concerned and upset" over the fact that they are being stopped from "repairing" the house they have lived in since the late 1940s, and the Commission should have been more lenient. In this regard, the Saidoos point out that they have worked hard all of their lives, that they raised their family in the house, and that they are still living in the house during their retirement. When most of their neighbors have moved out and let the neighborhood run down, the Saidoos have stayed.

2. That the Saidoos did not attend the meetings which preceded the designation of their neighborhood as historical because they were unaware of the potential for "restrictions and complications" which accompanied such a designation. The house located at 314 W. 2nd Avenue has not been maintained in accordance with historic standards for as long as the Saidoos have lived there, nor was it up to historic standards at the time the neighborhood became an historical area.

3. The installation of vinyl siding would involve only about half of the cost of a wood restoration project but would look like wood. They cannot afford to spend \$80,000 to restore their home like the person across the street.

Summary of Evidence

Under Michigan law, a party who occupies the position of

plaintiff, petitioner, or applicant 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, provides that a party to an appeal may submit all or part of the party's evidence and argument in written form. In this vein, the Appellant presented three exhibits which included many attached documents and photographs. Among the Appellant's exhibits were the following items: the letter of appeal filed by James LaCross; copies of the HomeTech Remodeling and Renovation Cost Estimator Manager's Manual, 1994 29th Annual Edition; a State Building Company Home Solicitation Contract dated November 7, 1994; a 20-photograph composite which includes the residence at 314 W. 2nd Avenue and other homes in the neighborhood; the minutes of the December 14, 1994 meeting of the BCBA; and the minutes of the regular December 2, 1994 meeting of the Commission. After the administrative hearing, James LaCross faxed a copy of the Notice of Violations received by the Saidoos on April 6, 1995. The violations alleged in the Notice were based on an inspection which occurred on March 21, 1995.

Gladyce Saidoo personally testified during the hearing. In brief, she stated that she and her husband were told that their

house was of no historic value. She did not indicate the source of the opinion or when they were told their house had no historic value. She added that her house was getting run down, and she and her husband wanted to do something to fix it up, so they contacted Mr. LaCross about remodeling work. She also stated that she and her husband were both in poor health and lived on a fixed income consisting of social security benefits and a pension. She asserted that they could not afford to repair their home the way the Commission would like them to.

James LaCross testified that he felt the Saidoos were being unjustly forced to fix their house according to Commission desires. He expressed the view that the Saidoos were contesting the decision because compliance would constitute a financial hardship. He added that the Saidoos feel they should not be penalized for having previously installed insul-brick so as to minimize maintenance expenses.

The Commission presented nine exhibits in support of its decision. Those exhibits included the following: a letter from Staffperson Denise Heath to the Saidoos denying the certificate of appropriateness for installation of vinyl siding and trim; a copy of Flint's Historic Districts and Historic District Commission ordinance; a Strategic Plan for Carriage Town Revitalization; the minutes of the regular December 2, 1994 meeting of the Commission; the Carriage Town Advocate for March, 1995; a Historic District of Flint brochure; an April, 1994 letter from David White, Commission Chairman, to property owners within Flint's historic districts; and

photographs of residences located within the Carriage Town Historic District.

Chairman White testified at the hearing. He stated that the Carriage Town District is unique when compared to other historic districts within Flint, in part because it has a very strong neighborhood association. He indicated that the district has received almost \$500,000 for renovation and other activities since 1980. He also indicated that the Carriage Town Neighborhood Association has been very active and supportive of the historic districts ordinance and has worked toward developing a strategic plan for revitalizing the neighborhood.

White further testified that the Saidoo matter is not the first vinyl siding case to have come before the Commission. He asserted that the Commission has consistently taken the view that local guidelines give the commissioners discretion to prohibit certain materials. He pointed out that only once, in 1982, did the Commission even partially approve use of aluminum siding in Flint and that was on a very large building located in another historic district. He added that the Commission does not feel that the use of vinyl or aluminum is consistent with the historic character of the Carriage Town District. White also stated that wood siding is truly a distinctive feature. He pointed out that in the past three years, the Commission has denied every single request from owners in Carriage Town to use vinyl siding.

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 314 W. 2nd Avenue, Flint, Michigan, is a two-story residential building covered with insul-brick. The building does not possess any distinctive architectural or structural features. (Appellant's Exhibit No. 2)

2. The Saidoos were told at some time by someone that their house was of no historical value. The date and source of that opinion was not divulged at the hearing. (Hearing Transcript, page 29)

3. The Saidoos have lived together on 2nd Avenue since they were married in 1947, with the exception of a single year. They raised four children in their home. They are the only persons who still live there.

4. Both of the Saidoos have significant health problems. Mr. Saidoo has had heart surgery, and Mrs. Saidoo has had surgery for colon cancer. (Tr 29)

5. Nicholas Saidoo is 74 years old and receives social security benefits. Gladyce Saidoo is 66 years old and receives a pension from General Motors Corporation and social security benefits. The Saidoos have no other source of income. (Tr 63)

6. Mr. Saidoo did not think much about attending meetings when the Carriage Town neighborhood was designated an historic district. He was unconcerned because, among other things, he thought his house was not historic. He believed that his home would not really be affected by any designation. (Tr 31)

7. When an historic district is established in Flint, at least two public hearings must be conducted first, and, any person who objects to having his or her property become part of a proposed historic district has an opportunity to opt the property out of the historic district at the time of the district's creation. In Carriage Town, only Flint Lumber opted out at the time of the establishment of the Carriage Town Historic District. (Tr 40 - 41)

B. Carriage Town Historic District

8. On April 23, 1979, the City of Flint adopted Ordinance No. 2707,⁴ which established a local historic preservation program for the city. Local historic preservation guidelines were adopted a few years later. (Commission Exhibits, Nos. 2 & 3)

9. The Carriage Town Historic District was formally recognized by Flint city ordinance in 1979.

10. The building at 314 W. 2nd Avenue is located within the boundaries of the Carriage Town District. (Commission Exhibit No. 4)

11. A strategic plan for revitalizing the Carriage Town Historic District was prepared by a Strategic Planning Team composed of members of the Carriage Town Neighborhood Association, staff from the City of Flint, and staff from Flint Community Development Corporation working with a consultant. The plan addresses several topics, including historic considerations. The vision statement within the historic considerations section describes Carriage Town's historic designation as an opportunity to

⁴ Flint Ordinances, §2-141 et seq.

enrich the present by preserving a bit of Flint's past. The statement also articulates an intent to ensure that the neighborhood is revitalized to a design standard which encourages investment, establishes the neighborhood as unique, and builds upon its historic features. (Commission Exhibit No. 4 - Page 16)

12. The Carriage Town Historic Neighborhood Association publishes a monthly newsletter which contains information regarding matters of interest to persons living within the district. (Commission Exhibit No. 6)

13. Flint presently has 29 different historic districts. Carriage Town is one of the city's oldest and largest districts. It is unusual because, among other things, it includes the carriage factory district and the Durant-Dort Office Building, which is a national landmark. (Commission Exhibit No. 7)

C. Request to Replace Roofing and Siding, and Make Porch Repairs

14. The Saidoos signed a home solicitation contract with State Building Company on November 7, 1994. The contract provided for the following: installation of vinyl siding; porch repairs with special dental work; installation of aluminum trim around all windows; installation of foam board on the complete house; and the addition of new aluminum gutters and downspouts. The total contract price was \$12,750. The price was good for 90 days. (Appellant Exhibit No. 1)

15. The Saidoos requested permission to replace their roof, and a permit for the roof repair was issued prior to the Commission meeting on December 2, 1994. (Commission Exhibit No. 5)

16. At the present time, the exterior walls of the Saidoo house are covered with insul-brick. It is unclear when the insul-brick covering was installed. (Appellant's Exhibit No. 2)

17. The Commission considered the Saidoo's request to install new vinyl siding, aluminum trim, and white accent dental molding at its meeting on December 2, 1994. James LaCross appeared at that meeting and stated that his company wanted "to do the job right" and make the Saidoo's house "look authentic", even though the Saidoos did not want to use the original-style wood because the cost of wood would be "ridiculous", and this type of siding would require painting every five years. He informed the Commission that he could not guarantee that his paint jobs might not peel off or deteriorate even earlier than five years. Commissioner Gierrens replied that national standards say not to use vinyl siding. Staffperson Heath indicated that she did not think any house on the Saidoo's block had vinyl or aluminum siding. Commissioner Gierrens asked how the Commission could deny all previous applicants the ability to use vinyl and then later approve it for the Saidoos. Commissioner Sinclair stated that approving the Saidoo's application would establish a bad precedent by permitting entry of vinyl siding into the district. Commissioner Foote stated that a good paint job will last at least ten years. The commissioners voted unanimously to deny issuance of a Certificate of Appropriateness for the vinyl siding with aluminum trim because they believed that such materials did not comply with State law or the local ordinance for historical correctness. (Commission

Exhibit No. 5)

D. Appeal to Building Code Board of Appeals

18. The Saidoos promptly appealed the Commission's decision to the BCBA. At the BCBA hearing held on December 14, 1994, James LaCross appeared on behalf of the Saidoos. Nicholas Saidoo also attended. David White appeared for the Commission. Mark Langbein, owner of the property across the street at 315 W. 2nd Avenue, also appeared at the hearing. LaCross stated that the Saidoos were applying for a permit to put vinyl siding with aluminum trim on their house and that they did not intend to remove the existing insul-brick. White stated that the Commission would prefer to see the insul-brick completely removed and original-style clapboard siding restored. He said that both the city ordinance and the U.S. Department of the Interior's Standards for Historic Preservation required the Commission to oppose the use of vinyl siding with aluminum trim on historic buildings. He also stated that vinyl siding is permissible in some cases but not in this historic district because it has such a good track record of the removal of contemporary siding and the restoration of original-style clapboard siding. He also stated that asbestos siding was recently removed from eight structures within the neighborhood, and original siding was restored to perfect shape at a very low cost. Langbein stated that when he removed asbestos shingles from his house, he replaced approximately 10% of the clapboard and most of that was damaged when his roof was replaced. LaCross stated that from looking at the exposed wood at the Saidoo's house, it appears that more than

scraping and painting would be required to properly repair the surface. (Commission Exhibit No. 3)

E. Use of Vinyl Siding

19. The Commission has taken the view that under Section VI of the local guidelines, it possesses the discretion to prohibit or approve certain materials. Only once since 1979 has the Commission approved even the partial use of aluminum siding. That approval was granted to a widow with a very large house, but only on the barely visible upper-story of the house. (Tr 16)

20. The commissioners have interpreted and applied the Secretary of the Interior's standards such that the historic context of historic districts is to be protected and preserved. The commissioners do not feel that the use of vinyl siding with aluminum trim, or aluminum siding, is consistent with the historic nature of historic structures. The commissioners believe that the standards permit owners to restore and replace material which is damaged but not all of the material on a house. (Tr 25)

21. Over the past three years, the Commission has received eight requests for permission to install new contemporary vinyl siding within the Carriage Town Historic District. These requests were all denied, and the parties were encouraged to restore the surfaces of their houses with original clapboard. (Tr 27; Commission Exhibit No. 10) All of the properties either had insul-brick or asbestos siding. While some repair was required for the restoration of the siding of these properties, the majority of the siding on the exterior surfaces was never involved. In most cases,

the paint was not in "bad shape". (Tr 27)

F. Financial Hardship

22. The Saidoos are elderly retired persons living on a fixed income. They are both in poor health.

23. The estimated cost of installing vinyl siding and completing other contemplated repair work is \$12,750, based upon the home solicitation contract submitted by State Building Company. (Appellant Exhibit No. 1).

24. The actual cost of repairing or replacing the clapboard siding on the Saidoo house and painting it is dependent upon the condition of the original clapboard which is now covered by insul-brick. Because the wood is covered by insul-brick, the cost of restoration to original condition cannot be specifically determined until the surface is exposed and an assessment of the underlying clapboard is made.

25. In 1989 and 1992, funds and volunteer labor were available in the district for the painting and removal of insul-brick. The Saidoos did not take advantage of either of these opportunities. (Tr 45)

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by a decision of any 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

In the case at hand, the Commission acted under the authority of section 5 of the Act when it refused to issue the requested Certificate of Appropriateness. The Commission also acted pursuant to the historic preservation article of the Flint City Code.⁵ The article 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.

⁵ See footnote 4.

* * *

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 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 judgement 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 were designed to be used in conjunction with the Secretary of the

Interior's Standards for Historic Preservation. Among other things, the guidelines indicate as follows:

VI EXTERNAL WALLS

Materials applied over the exterior wall surface of existing structures or new construction within the district shall not differ significantly in scale or texture from the original surface cover. The application of material such as artificial veneer, artificial cut stone, asbestos sidings, masonry board, and wood shingles is prohibited at the discretion of the commission.

Sidings replacing or applied or original clapboard shall have vertical dimensions within one inch of the original material.

Application of siding shall not conceal or destroy original wood details. (Commission Exhibit No. 3)

It is clear from a review of the minutes of the Commission's regular meeting on December 2, 1994, that the Commission was concerned about following the federal standards. The federal "Building Exterior Guidelines" which pertain to wood 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.

There was no reference in the Commission's minutes to specific local or federal standards as a basis for the Commission's decision. Commissioner Gierrens stated that the "Nationals" say not to use vinyl siding. Commissioner Sinclair stated that the problem of approving vinyl siding is that it sets a bad precedent of allowing vinyl siding into the district. Staffperson Heath reported that she did not think any house on the block had vinyl or aluminum siding.

With respect to its December 2, 1994 meeting, the Commission's minutes failed to address whether or not the Commission considered the historic or non-historic value of the Saidoo house. This is significant because if a resource has little or no historical value, the Commission is required by its enabling ordinance, supra, to be "lenient" in its judgment of plans, unless the proposed activity would seriously impair the historical value of the surrounding district resources or the surrounding area. The minutes of the Commission's regular December 2, 1994 meeting state that a Certificate of Appropriateness for siding and trim simply was denied because the application "doesn't comply with the State

or local ordinance for historical correctness".

At the hearing, the Commission's evidence established that it has only once even partially approved the use of aluminum siding in an historic district since the city ordinance passed in 1979. The evidence also establishes that the Commission denied eight requests to install vinyl siding within the Carriage Town Historic District within the past three years. The evidence further established that a comprehensive strategic plan for revitalizing Carriage Town is in place and that funds and human resources have been made available to Carriage Town residents for the repair and renovation of their homes. Moreover, that the Carriage Town Historic Neighborhood Association is a strong organization which is actively involved in informing district residents about activities that are important to residents of the district, is also apparent. Evidence in the record also shows that the district has experienced considerable success in restoring clapboard surfaces covered by insul-brick or asbestos.

It is clear from the hearing record that the Commission felt it was required to deny the Saidoo's request for two reasons: first, because approval would be in violation of historic preservation guidelines; and second, because approving installation of vinyl siding on the Saidoo's house would establish a bad precedent. It is also clear that the Commission did not address the historical or architectural value of the structure. This is apparent because there is no evidence within the hearing record which would or could establish that the building located at 314 W.

2nd Avenue has any special historical or architectural value. On the contrary, the photographs and other evidence submitted tend to support a determination that this particular building has little or no individual historical or architectural value. There is no evidence to establish when the building was constructed or when the insul-brick siding was installed. That being the case, unless the requested activity would seriously impair the historical, architectural, or archaeological value of the surrounding resources or area in the district, the Commission was required to be lenient in its judgment of the Saidoo's plan. Clearly, the Commission was not lenient in this case. Was the Commission required to be lenient or did the Commission act properly by requiring strict adherence to preservation standards?

Evidence within the hearing record clearly establishes that the Commission has been consistent in its interpretation of the standards and guidelines by refusing to approve any request to use artificial siding in the Carriage Town District with particular regard for the bad precedent that would be set if the use of artificial siding were permitted. Although the record establishes that the Commission has denied all requests to install artificial siding, evidence within the record does not establish what criteria the Commission applied in denying those applications. For example, did any or all of the denied requests involve resources of little historical, architectural, or archaeological value?

However, with regard to the use of vinyl siding, Appellant's evidence establishes, at best, that LaCross wanted to make the

Saidoo house look authentic even though original-style wood would not be used, because the cost of wood would be "ridiculous" and would require painting every five years. In addition, the Appellant submitted photographs illustrating the use of vinyl siding.

Although evidence submitted by the parties did not articulately address the impairment, if any, that would be caused to the historical, architectural, or archaeological value and character of the surrounding district resources or the surrounding area by permitting the requested activity, it is clear that permitting the use of vinyl siding would be a novel event and in that sense would contrast with and seriously impair the historical and architectural value and character of surrounding resources. The Commission has always been consistent in its application of the standards and guidelines.

As noted above, the Appellant bears the burden of proof in this matter. Appellant has not met that burden in that the Appellant's evidence fails to demonstrate that permitting the installation vinyl siding, when all other similar applications in the Carriage Town District have been denied, would not seriously impair the historical and architectural integrity of the district as a whole. Evidence within the hearing record suggests that even if 314 W. 2nd Avenue has little or no historical value per se, allowing the Saidoos alone to install vinyl siding when all other residents within the district are using wood materials would seriously impair the historical and architectural resources of the

district.

Inasmuch as the hearing record demonstrates that approving the Saidoo application to use vinyl siding with aluminum trim would seriously impair the historical, architectural, or archaeological value and character of the surrounding district resources, it is concluded that the Commission properly denied the Certificate of Appropriateness requested by the Appellant.

B. Building Should Be Excepted from Historical Standards

The Appellant has asserted that because he lived in his home before the historic district was established, he should not be required to follow the historic standards which apply to other properties in the district. He also contends that he was not aware of, nor was he informed of, all of the "restrictions and complications" associated with doing work on his home in an historical neighborhood. He also insists that his home has never been up to historical standards at any time.

No evidence was submitted by the Appellant or the Commission with regard to 314 W. 2nd Avenue being identified as an historically significant building within the district. Evidence within the official hearing record establishes that the requirements for creating an historic district were followed when the Carriage Town Historic District was created. The Appellant had an opportunity at that time to "opt out" but did not do so. Others who had that opportunity and wanted an exclusion, such as the lumber company, exercised their option. The Appellant's assertion that he was unaware of the restrictions and complications

associated with doing work on his home in an historic district does not relieve him of the provisions of any law relating to the use of his property.

As noted above, 314 W. 2nd Avenue may have little or no historical value; however, even if that is the case, the structure is still situated within the Carriage Town Historic District and is therefore subject to all relevant laws governing repairs and restoration work within the district.

Appellant's argument that his house should be exempt from the historical reviews and historical standards pertaining to all other properties within the district is without merit. The plans for performing work at 314 W. 2nd Avenue were properly subject to review by the Commission.

C. Undue Financial Hardship

Mr. Saidoo lastly contends that requiring him to satisfy the Commission's requirements would cause he and his wife undue financial hardship. In terms of this contention, it should initially be noted that section 5 of the Act⁶ discusses undue financial hardship in terms of whether or not to retain a resource; however, the Act, supra, does not specifically deal with undue financial hardship for renovation or restoration activities. Section 5(6) provides in pertinent part as follows:

(6) Work within a historic district shall be permitted through 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

⁶ See footnote 1.

or correct any of the following conditions:

* * *

(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.

Although the Act, supra, does not per se embrace the concept of undue financial hardship as a consideration in renovation and restoration matters, the Appellant has nevertheless raised the issue on appeal and argued that undue financial hardship applies with regard to the Appellant's application. Therefore, the issue of undue financial hardship must be addressed in this case. In that regard, it should initially be noted that while undue financial hardship is a single issue, two facets must be considered. First, what is the actual cost of complying with Commission's requirements? Second, do the Saidos have the financial ability to comply with the Commission's decision? A related issue is whether other resources are available to provide financial and related assistance.

With regard to actual cost of removing the existing insul-brick, replacing the underlying clapboard and other exposed wood as necessary, and then painting the surface, it is unclear from the Appellant's evidence what that cost would be. LaCross estimated that the cost of vinyl siding would be only half of a wood restoration project. While not offering specifics on cost, the Commission observed that in Carriage Town, the costs of removing