

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

In the Matter of:  
**PATRICK STARNES,**  
Applicant/Appellant,

v

Docket No. 96-518-HP

**FLINT HISTORIC DISTRICT COMMISSION,**  
Respondent/Appellee.  
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FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Flint Historic District Commission denying an application for approval for the installation of a chain link barbed wire fence on property located at 604 Garland Street, 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 December 6, 1996, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on January 31, 1997, 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 considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on Friday, February 7, 1997.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 6 to 0, with 0 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document, however,

Subsequent to entry of the Final Decision and Order on February 7, 1997, staff discovered that

a one-page exception to the Proposal for Decision filed by Michael A. Kowalko, Attorney at Law, on behalf of the Appellant was not submitted to the Board for use during its deliberations; accordingly,

The Board reconsidered the appeal along with the Proposal for Decision and all materials and the one-page exception submitted on behalf of the Appellant, at its regularly scheduled meeting held on Friday, June 6, 1997.

Having reconsidered the Proposal for Decision and the entire official record made in this matter, the Board voted 6 to 0, with 0 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

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

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

Dated: 6 JUNE 1997



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 7.105 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:

PATRICK STARNES,  
Applicant/Appellant,

v

Docket No. 96-518-HP

FLINT HISTORIC DISTRICT COMMISSION,  
Appellee.

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PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Flint Historic District Commission (the Commission) denying a request for permission to install a chain link fence with barbed wire on commercial property located at 604 Garland Street, Flint, Michigan. The property is situated in Flint's Carriage Town Historic District (the District).

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).<sup>1</sup> This section provides that a person who is aggrieved by a decision of an historic district commission may appeal the decision to the State Historic Preservation Review Board (the 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

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

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

The Appellant/property owner, Patrick Starnes, appeared in person at the hearing. Michael A. Kowalko, Attorney at Law, of the law firm of Tom R. Pabst, P.C., whose offices are located at 2503 S. Linden Road, Flint, Michigan, appeared on behalf of the Appellant. Suzanne Wilcox, a member of the Commission's staff, and John Foote, Chairperson of the Commission, both attended the hearing as representatives of the Commission/Appellee. Kenneth L. Teter, Jr., Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Brian Conway, Architectural Coordinator for the Michigan Department of State, State Historic Preservation Office, attended as an observer/representative on behalf of the Review Board.

#### Issues on Appeal

The Appellant appealed the Commission's decision, which was rendered on June 6, 1996, in a written Claim of Appeal, dated August 9, 1996. (Hearing Officer Exhibit No. 1) Appended to the claim were copies of the minutes of the Commission meeting conducted on June 6, 1996, and the denial letter sent to the

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

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Appellant, dated June 21, 1996. As the basis for the appeal, the claim indicated that the Commission's denial decision "has caused (the Appellant) undue financial hardship and was in error".

At the administrative hearing, the Appellant contended that the appeal should be granted: 1) because a chain link fence is necessary to keep his property secure, 2) because his need outweighs any countervailing historic preservation concerns, 3) because he had been given a building permit by an agency of the City of Flint, that he acted in reliance on the permit authority he was given (i.e., by obtaining fencing materials, renting equipment, and hiring workers for in the project, at significant expense to him), and 4) because the Commission, as a sister agency of the City, should be bound by the action of the building department.

By way of response, the Commission asserted at the administrative hearing that: 1) the building permit the Appellant obtained from the City's Building Division was erroneously issued, 2) installing chain link fencing with barbed wire around the front perimeter of the Appellant's property would not conform to federal and local preservation standards regarding exterior work on structures in historic districts, 3) the Commission's decision was proper in view of the standards and guidelines it was required to follow, 4) allowing a chain link fence would be harmful to the architectural and historical integrity of the District as a whole, 5) other, less-intrusive fence types, which provide adequate security, are permissible, and 6) although the Commission acknowledged regret that the Appellant incurred expenses to erect

a chain link fence after receiving a building permit, the Commission has offered to work with the Appellant to find an acceptable solution and it still remains willing to do so.

Summary of Evidence

Under Michigan law, a party who occupies the position of plaintiff, applicant, or appellant generally has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading and Practice (2d ed), § 60.48, p 176, Lafayette Market and Sales Co v City of Detroit, 43 Mich App 129, 133; 203 NW2d 745 (1972), Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Appellant clearly occupies that position in this matter and consequently bears the burden of proof.

Section 5(2) of the Local Historic Districts Act, supra, indicates that appellants may submit all or any part of their evidence and arguments in written form. In that vein, the Appellant submitted three exhibits to establish his factual assertions. Appellant's Exhibit A is a copy of a Closing Statement, dated May 2, 1996, which concerns the Appellant's acquisition by land contract the property on Garland Street, accompanied by a copy of a cashier's check which was used for the down payment. Appellant's Exhibit B consisted of copies of several documents pertaining to Appellant's purchase of materials and the rental of equipment for the proposed chain link fence installation work, as well as receipts for tools and equipment which were stolen from inside the building on his property. Appellant's Exhibit C was a copy of Building Permit No. 63985, dated May 16, 1996, which

was issued to the Appellant to authorize installation of the chain link.

In addition to exhibits, the Appellant, Patrick Starnes, testified on his own behalf. In brief, he explained that he recently purchased the subject property, intending to turn it into a car repair business, that prior to purchasing the property he was specifically told by staff of the City's building department that he would be able to install a chain link fence with barbed wire, that he requested and obtained a building permit to install such fence, that he purchased materials, rented equipment and hired helpers to complete the work, that he began the installation project by drilling most of the holes needed for the fence posts, that he was then ordered to stop the work, that the property has been frequently vandalized, and that his subsequent request for issuance of a certificate of appropriateness by the Commission was denied.

The Appellee/Commission also presented documentary evidence at the administrative hearing. Commission Exhibit No. 1 was a copy of Article XIX of the Flint City Code,<sup>3</sup> concerning Flint Historic Districts and the Flint Historic District Commission. Commission Exhibit No. 2 was a copy of a map depicting the Carriage Town Historic Neighborhood, showing that 604 Garland Street was located within the District's boundaries. Commission Exhibit No. 3 was a 27-page brochure, entitled "Carriage Town - A Strategic Plan For Revitalization".

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<sup>3</sup> Flint Ordinances, § 2-141 et seq.

In addition, two individuals testified on behalf of the Commission.

Suzanne Wilcox, who presently serves as Commission staff, presented a brief overview of the history of the District. She also discussed the Commission's view that the work proposed in the application failed to comport with historic preservation standards. She additionally stated that an historic preservation association was active in the District, that the building permit provided to Starnes was issued in error, that the Commission has consistently denied applications to install chain link fences on properties in the District and that the Commission tries to work with those applicants to find acceptable alternatives, such as using wood and wrought iron fencing that conform with standards, and that given the visibility of Starnes' property at a major intersection in the District, installing chain link fencing would seriously impair the integrity of the District.

The Commission's Chairperson, John Foote, also testified in support of the Commission's decision. Commissioner Foote reiterated certain statements made by Wilcox, including that the Commission has never approved a chain link fence in the district and that its use in the district was inappropriate. He added that, under the City's zoning laws, chain link fencing with barbed wire is permitted on properties situated outside an historic district only if the property is zoned commercial. He also expressed the view that Starnes should still be able to return most or all of the purchased fencing materials for a full refund, and he maintained



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that other alternatives to chain link (specifically, a six-foot high wood stockade fence) would do an adequate job of providing security for about the same cost as a chain link fence.

#### Findings of Fact

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

#### A. Background of Flint's Preservation Program and Carriage Town

1. On April 23, 1979, the City of Flint adopted Local Ordinance No. 2707,<sup>4</sup> which established a local historic preservation program for the City of Flint. The ordinance was designed to recognize, preserve, and protect historic and architectural sites, buildings, structures, objects, open spaces, and features significant to the heritage of the City of Flint. (Commission Exhibit No. 1)

2. Among other things, the ordinance established a design review process, administered by the Commission, to ensure that all exterior changes to properties within Flint's historic districts would serve to maintain the historic character and value of the districts. (CE 1)

3. The Commission is a group of seven Flint citizen volunteers who share an interest or expertise in architecture, construction, anthropology, archaeology, or history. Commissioners are appointed by Flint's mayor for three-year terms. The Commission is charged with reviewing all building permit applications for properties

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<sup>4</sup> Flint Ordinances, §2-141 et seq; Article XIX of the Flint City Code.

located within Flint's historic districts, if the proposed work would have a major impact on the exterior of a building or a structure. The installation of fencing is considered to be work with a major impact. (CE 1)

4. Twenty-nine local historic districts have been established under Ordinance 2707. Some of these districts consist of only one structure, while others encompass entire neighborhoods, such as Civic Park, Carriage Town, East Street, Manning Street, and Grand Traverse Street. (CE 1)

5. The neighborhood known as Carriage Town has been in existence for well over 100 years. The Carriage Town Historic District was established by ordinance in 1979 and consists of approximately 350 properties, including the property at 604 Garland Street, which sits in the northeastern part of the District. (CE 1 and 3)

**B. Purchase of Property and Attempted Installation**

6. Sometime around the spring of 1996, Patrick Starnes, who resides in Burton, Michigan, and who works for a construction company, began exploring the possibility of opening a vehicle repair facility in the Flint area. Eventually, Starnes became interested in a building located at 604 Garland Street, in Flint, which he felt might be a suitable place to locate his business. The property is situated on the northeastern corner of the intersection of Garland Street and Third Avenue, which are major crossing streets in Carriage Town.

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7. Prior to acquiring the property, Starnes met with agents of the City of Flint, Building & Safety Inspection Division, including Building Inspector Ted Sczepanski, on more than one occasion to discuss whether his plans to operate a car repair business at 604 Garland could be approved. Starnes was advised that the property had a commercial zoning classification (D-2 Neighborhood Business), which meant that his proposed use of the property was permissible. Upon inquiry, Starnes was further told that the installation of a chain link fence with barbed wire could be erected on the property.

8. On or about May 2, 1996, Starnes "closed" on the property at 604 Garland Street, purchasing it for \$26,000.00. He paid slightly more than \$9,000.00 as a down payment with money he had borrowed from his father. (AE A)

9. During the next two weeks, Starnes began "fixing up" the premises to make it acceptable for a car repair business. After vandals broke a window in the building, Starnes decided that the time had come to install a chain link fence around the front sides of the property for protection.

10. On or about May 16, 1996, Starnes went to the Building & Safety Inspection Division offices and requested a building permit to install the fence. Starnes obtained a building permit from Building Inspector Sczepanski. Among other things, Building Permit No. 63985 indicated that the authorized work entailed the installation of a "6' high c(hain)/l(ink) fence - lowest strand of barbed wire 6'6" on owner's property". (AE C)

11. Pursuant to standard procedures for processing building permit requests, staff of the Building & Safety Inspection Division are initially required to inspect a list of designated historic structures to ascertain whether the property is located within an historic district. If the property does appear on the list, the staff must then refer the matter to the Commission, and the Building Division staff is directed to not issue a permit unless the Commission grants the issuance of a certificate of appropriateness. Since 604 Garland is situated in the Carriage Town Historic District and the Commission had not given its approval for the fence work, Building Permit No. 63985 was issued in error.

12. Following issuance of the building permit, Starnes immediately began the fence installation project. He purchased fence materials, including chain link fence, barbed wire, custom-made 10 foot and 12 foot gates, approximately 20 fence posts with caps, and around 20 bags of cement. He paid over \$1,000.00 for those materials. Starnes also rented an air jackhammer and he hired two workers to help him complete the project.

13. As the first step in the project, Starnes and his workers began drilling through concrete in the front of his property to make holes for the fence posts. After they had completed a number of holes, a man drove up in a truck and he asked Starnes what he was doing. Starnes replied that he was erecting a chain link fence. The man then stated that such work could not be done because the property was located in Carriage Town. Starnes

referred to the building permit which he had posted to the front of his building and the man then left the premises. Starnes then continued to drill the 20 or so post holes, completing all but about six of the holes by the time they finished for the day.

14. When Starnes returned to the Garland property the following morning, he discovered a "Stop work Order" attached to the front door of the building. He did not resume work on the fence.

15. After experiencing difficulty in getting answers from city staffers during the next few days, Starnes was told that in order for him to proceed with the fence project he needed to obtain approval from the Commission. Denise Heath, of the Commission's staff, provided Starnes with an application form to request a certificate of appropriateness. He completed the application and submitted it to the Commission.

16. On or about May 22, 1996, vandals entered Starnes' building and stole equipment and other personal property valued at approximately \$15,000.00. By this time, virtually every large exterior window had been broken, making access into the building easy. Also, there was a strong smell of urine inside the building and there were signs that some individuals were using the building as living quarters.

**C. Commission Meeting and Determination**

17. The Commission considered Starnes' permit application at its regular meeting on June 6, 1996. Starnes was in attendance. An explanation of pertinent information about Starnes' request was presented, including his plans for a car repair business, the

vandalism of his building, and the issuance of a building permit. It was also explained that he had purchased materials, commenced work, and was then told to stop.

18. Chairman Foote pointed out that the property was located in an historic district and that the building permit had been issued erroneously. Commissioner Smith stated that she understood Starnes' confusion, and suggested that the Commission work with him on the problem.

19. The meeting was then opened for public comment. Five persons spoke, at least four of whom live in, or own property in, the District. Each individual stated that they were opposed to the issuance of a certificate of appropriateness. Collectively, they felt a chain link fence was completely inappropriate for properties within the District and that allowing its installation would have a harmful affect on the neighborhood. Some of them also expressed sympathy for Starnes' dilemma, but suggested that other alternatives besides a chain link fence could be taken to address the vandalism problem.

20. Following further discussion among Commissioners, during which time alternatives were explored which might help to solve the problem, including the use of wood and metal fences which conform to review standards, the Commission denied Starnes' permit request by a vote of 7 to 0. The Commission advised Starnes that approval for installing the chain link fence was rejected because that type of fence was not in keeping with the neighborhood and was not compatible with other architectural resources in the area.

21. On or about June 21, 1996, Denise Heath sent Starnes a denial letter notifying him that the Commission had denied his application for a certificate of appropriateness.

Conclusions of Law

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

A. Compliance with Historic Preservation Standards

At the outset of the discussion of the issues in this case, it must initially be recognized that there is absolutely no question about whether or not the installation of chain link fencing comports with historic preservation/renovation principles and standards.

In a case such as this, the criteria that a commission must use to act on an application concerning work affecting the exterior of a resource, either by approving or denying a certificate of

appropriateness, is set forth in section 5(3) of the Local Historic Districts Act.<sup>5</sup> The section provides as follows:

Sec. 5. \* \* \*

(3) In reviewing plans, the commission shall follow the U.S. secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the bureau. The commission shall also consider all of the following:

(a) The historic or architectural value and significance of the resource and its relationship to the historic value of the surrounding area.

(b) The relationship of any architectural features of the resource to the rest of the resource and to the surrounding area.

(c) The general compatibility of the design, arrangement, texture, and materials proposed to be used.

(d) Other factors, such as aesthetic value, that the commission finds relevant. (Emphasis added)

The installation of a six-foot chain link fence with barbed wire would clearly violate at least two Standards for Rehabilitation of Historic Properties promulgated by the U.S. Secretary of the Interior.<sup>6</sup> Those standards are 2 and 9. They provide as follows:

(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.

(9) new additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be

<sup>5</sup> See footnote 1.

<sup>6</sup> 36 CFR § 67.7.



compatible with the massing, scale, and architectural features to protect the historic integrity of the property and its environment.

In addition, the Commission asserted that it acted in reliance on the written guidelines prepared by the U.S. Secretary of the Interior which are designed to implement the Standards. The specific guidelines referred to, which are applicable to building site features, including fencing, provide as follows:

Not Recommended

Introducing a new building or site feature that is out of scale or otherwise inappropriate.

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Introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, materials, color and texture or which destroys historic relationships on the site.<sup>7</sup>

As is readily apparent from a review of the hearing record, the installation of a barbed wire, chain link fence would alter the historic character of the District as a whole and would constitute the introduction of a site feature which is inappropriate. The Commission has consistently rejected requests from other applicants seeking to install chain link fencing on properties located in historic districts throughout the City of Flint. Moreover, all of the public comments received at the Commission's June 6, 1996 meeting were opposed to the Appellant's request because the type of fencing proposed would be harmful to the historical character of

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Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior, pp.45, 46, (rev. 1990).

the Carriage Town neighborhood and they felt chain link fencing with barbed wire should not be allowed anywhere in the District.

Under any reasonable application of the aforementioned standards to the Appellant's request for installation of a six-foot high chain link fence with barbed wire, the conclusion must be that the Commission acted properly in rejecting Starnes' application.

Given the basic validity of the Commission's historic renovation analysis, the next matter for consideration here is whether the Appellant has presented other grounds sufficient to require granting of the request for reversal.

**B. Basis for Appeal and Grounds for Reversal**

**1. Fence Needed for Security**

In his appeal, the Appellant first asserted that a chain link fence with barbed wire was necessary for the security of his property. In this vein, Starnes relied on the fact his property had been vandalized repeatedly during the past year he has owned it. Moreover, he contended that the other types of "conforming" fencing sanctioned by the Commission did not offer adequate protection.

On the other hand, the Commission basically conceded that the Appellant had demonstrated a valid purpose for seeking approval of a fence to surround his building for security purposes. Nevertheless, the Commission objected to the use of chain link fencing and asserted that a variety of conforming fence types, both wooden and metal, including wrought iron, would provide just as much protection as a chain link fence with barbed wire.

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Based on the evidence in the record, Appellant's contention that only a chain link fence would do an adequate job of securing his business premises is without merit. Suzanne Wilcox and John Foote (a licensed builder) both testified that conforming fence types, including wood and metal, were being used at other properties located in Carriage Town and that they provide virtually the same level of security as a chain link fence. Foote specifically indicated that a 6' wood stockade fence would provide sufficient protection for the premises. Wilcox further stated that some property owners have taken other security measures, such as installing burglar alarms, and she noted that overall crime in Carriage Town had actually decreased in the past decade. In addition, the Commission has consistently advised Starnes that it would be amenable to him erecting one of the conforming fence types.

As noted above, the Appellant bears the burden of proof in a proceeding such as this. Aside from bare assertions, the Appellant offered no evidence to support his claim that chain link fencing was the only viable option. Thus, it appears that the denial of the use of chain link fence was justified on the basis of security.

**2. Detrimental Reliance on Issued Permit**

The Appellant's second contention was predicated on the fact that the Flint Building & Safety Inspection Division had approved a building permit for the installation of a six-foot high chain link fence with barbed wire, and that Starnes had, to his great hardship and expense, detrimentally relied on the issuance of the

building permit. The Appellant argued that the Commission should be bound by the permit authorization to proceed that was issued by another agency of the City of Flint.

The Appellant's evidence on this issue included his testimony, the Commission's minutes, and additional documentary evidence, and did show that the permit for installing a six-foot high chain link fence with barbed wire had been "issued in error". The Appellant also showed that there was a degree of reliance on his part with respect to the permit issuance; namely, the purchase of fence materials, the rental of an air jackhammer, the hiring of helpers, and the partial completion of work. Further, the Appellant's counsel argued that it was unfair to have Starnes suffer the consequences for an act committed by staff of the City, regardless of whether the issuance of the building permit was made in error or not.

However, the Appellant's evidence on the matter of detrimental reliance is somewhat problematic. While the Appellant did show that expenditures were made, there was nothing further in the hearing record to demonstrate that those actions were truly "detrimental".

As previously noted, the Commission is amenable to allowing the Appellant to erect a conforming fence type. Thus, he should be able to do what he intended to do, protect his property. With respect to financial hardship, it is unclear based on the evidence presented whether the Appellant sustained any economic loss which cannot be recovered. For example, according to the testimony of

Chairman Foote, Starnes may be able to return much or all of the materials he purchased and receive a full refund of the money he paid. In addition, it is possible that Starnes may be entitled to reimbursement from the City of Flint for expenses otherwise unrecoverable. The Building & Safety Inspection Division might well have to honor a request for reimbursement of Starnes' costs due to the erroneously issued permit. If true, there would be no economic hardship in this case, since Starnes would be made economically whole by the Division, or perhaps some other agency of the City. The Division was not here to express its version of the events in question, but it is fair to assume that the City - as is the case with the State - has a mechanism to make its citizens whole when ministerial errors have occurred.

In summary, although the Appellant took some action as a result of the erroneous issuance of the permit, he has yet failed to demonstrate the presence of "detrimental" reliance sufficient to warrant reversal of the Commission's decision, which, again, appears to have been proper under historic preservation law.

As a result, the Appellant's final argument for reversal must be rejected.

**Recommendation**

In consideration of the above, it is recommended that the appeal be denied.

Dated: January 31, 1997

Kenneth L. Teter, Jr.  
 Kenneth L. Teter, Jr. (P23898)  
 Administrative Law Examiner