

**STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
STATE HISTORIC PRESERVATION REVIEW BOARD**

COPY

In the Matter of:

ROBERT AND BRENDA DOCKINS
Applicants/Appellants,

v

Docket No. 02-013-HP

KALAMAZOO HISTORIC DISTRICT COMM'N
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission, denying a retroactive application to install two metal doors and associated wood trim on the residence located at 516 West Walnut Street, Kalamazoo, Michigan. The residence is situated in the Vine Area Historic District.

The State Historic Preservation Review Board (the 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 direction of the Board, the Office of Regulatory Affairs of the Department of History, Arts and Libraries conducted an administrative hearing on December 27, 2001, for the purpose of receiving evidence and hearing arguments.

A Proposal for Decision was issued on March 18, 2002, and copies of the Proposal 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 this appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on April 12, 2002.

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 in this matter, and to incorporate the Proposal into this document, and,

Having done so,


IT IS ORDERED that the Commission's decision issued on August 1, 2001 is **AFFIRMED**.

IT IS FURTHER ORDERED that the appeal is **DENIED**.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to each party, and to his or her attorney of record, as soon as is practicable.

Dated:

April 12, 2002


Richard H. Harms, 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 notice of the Board's Final Decision and Order is mailed to the parties.

STATE OF MICHIGAN

DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

OFFICE OF REGULATORY AFFAIRS

In the Matter of:

ROBERT AND BRENDA DOCKINS,
Applicants/Appellants,

v

Docket No.02-013-HP

KALAMAZOO HISTORIC DISTRICT COMMISSION,
Commission/Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission (the Commission). In the decision, the Commission denied retroactive approval for installation of new front and side doors at the residence located at 516 West Walnut, Kalamazoo, Michigan. The residence is owned by the Appellants, Robert and Brenda Dockins, and is located in Kalamazoo's Vine Area Historic District.

Appellants filed their appeal on or about October 8, 2001, pursuant to section 5(2) of the Local Historic Districts Act (the LHDA); 1970 PA 169, § 5; MCL 399.205. Section 5(2) provides that applicants aggrieved by decisions of historic district commissions may appeal to the State Historic Preservation Review Board (the Review Board or Board), an agency of the Michigan Department of History, Arts and Libraries (the Department).

On receiving the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an

STATE OF MICHIGAN

DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

OFFICE OF REGULATORY AFFAIRS

In the Matter of:

ROBERT AND BRENDA DOCKINS,
Applicants/Appellants,

v

Docket No. 02-013-HP

DETROIT HISTORIC DISTRICT COMMISSION,
Commission/Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the Kalamazoo Historic District Commission (the Commission). In the decision, the Commission denied retroactive approval for installation of new front and side doors at the residence located at 516 West Walnut, Kalamazoo, Michigan. The residence is owned by the Appellants, Robert and Brenda Dockins, and is located in Kalamazoo's Vine Area Historic District.

Appellants filed their appeal on or about October 8, 2001, pursuant to section 5(2) of the Local Historic Districts Act (the LHDA); 1970 PA 169, § 5; MCL 399.205. Section 5(2) provides that applicants aggrieved by decisions of historic district commissions may appeal to the State Historic Preservation Review Board (the Review Board or Board), an agency of the Michigan Department of History, Arts and Libraries (the Department).

On receiving the appeal, the Review Board directed the Department's Office of Regulatory Affairs to hold an

administrative hearing, as authorized by section 5(2). The Office of Regulatory Affairs convened that hearing on Thursday, December 27, 2001, in the Board Room, Fifth Floor, Michigan Library and Historical Center, 717 West Allegan Street, Lansing, Michigan. The parties were given an opportunity to present evidence and arguments at that time. The hearing was held in accordance with procedures set forth in Chapter 4 of the Administrative Procedures Act of 1969, 1969 PA 306, § 71 et seq.; MCL 24.271 et seq.

The pro se Appellants appeared in person at the hearing. Sharon R. Ferraro, Historic Preservation Coordinator, Community Development Division, City of Kalamazoo, attended the hearing as a representative of the Commission. Nicholas L. Bozen, an Administrative Law Judge assigned to the Department's Office of Regulatory Affairs, presided at the hearing.

Issues on Appeal

In their appeal letter, the Appellants asked the Review Board to reverse the Commission's decision and approve the two exterior doors they purchased and had installed. They made three arguments in support of their request.

The Appellants first argued the Commission erred by failing to approve the doors and related trim, as installed.

They next argued it would be a hardship for them to pay some \$500 above and beyond what they had already paid for the installation of the two doors.

The Appellants lastly argued they received disparate treatment from the Commission, since there are other houses in their neighborhood with similar doors.

Summary of Evidence

Under Michigan law, a party who occupies the position of a plaintiff, applicant, or appellant 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 Appellants occupy that position in this case and accordingly bear the burden of proof regarding their factual assertions.

A. Appellant's Evidence

Section 5(2) of the LHDA, cited above, indicates that appellants may submit any part or all of their evidence in written form. In that vein, the Appellants attached one exhibit to their appeal letter; namely, a copy of the notice of denial they received from the Commission.

Besides filing that exhibit, Mrs. Dockins testified at the hearing. She specifically testified about the issue of hardship, and in that regard stated there was the issue of expense, since every wood door she and her husband had seen when they were looking at doors cost more than \$500. She acknowledged, however, that she and her husband had obtained a home equity

loan for \$40,000, in order to complete the remodeling of their home.

Mrs. Dockins additionally testified that after the two doors were installed, Commission staff person Larry Burns knocked on her door and told her that the trim work was wrong and the doors were not acceptable.

Mrs. Dockins also testified she had seen about 20 doors in the Vine neighborhood with fanlight windows and none of those doors was new. She acknowledged she did not know whether the Commission had approved installation of any of them.

B. Commission's Evidence

The Commission also presented evidence at the hearing.

Regarding exhibits, the Commission submitted a single exhibit (Commission Exhibit No. 1), which contained several separate exhibits. Among those were: photographs of the house and both doors, Standards for Windows and Doors in Kalamazoo Historic Districts, the Appellants' application for project review, partial minutes of the Commission meeting of July 17, 2001, and the U.S. Secretary of the Interior's Standards for Rehabilitation.

Sharon Ferraro testified on behalf of the Commission. She expressed her opinion that the design of both doors is inappropriate to the age and style of the residence, adding that the Commission had never allowed installation of a metal door on the front of a historic home. She also stated that while some fanlight doors are present on some historic homes in the district, none of those doors was installed earlier than

1930. She stressed that the Commission's decision to deny was due both to federal rehabilitation Standards 6 and 9, and also due to local standards and guidelines. She said the Commission treated the Appellants like all other residents in the neighborhood.

Ms. Ferraro also testified about a second application the Appellants filed, concerning a rear deck at their residence.

Ms. Ferraro additionally testified about the historic significance of the residence, the character of the historic district, and the trim around the building's windows and doors.

Findings of Fact

Based on the evidence admitted into the official hearing record, the facts of this case are found to be as follows:

A. The House and the Historic Area

1. The house at 516 West Walnut, Kalamazoo, is a two story, wood framed, American Foursquare Arts and Crafts residence with three hipped-roof dormers, built sometime around 1910. The house is sheathed in stucco and has bay windows on both the west side and the rear of the east side. The original porch is intact, with a vestibule entry to the left of center. The stucco is in excellent shape. The building retains a high degree of integrity.

2. The house was moved to its current site from a prior location about half a block away on Lovell Street, by Habitat for Humanity, in the late 1980s.

3. The house is presently located in a residential area with few commercial buildings. The area now constitutes part

of Kalamazoo's Vine Area Historic District, which was established in the 1990s. The District contains about 1,400 properties, most of which are middle class homes built between 1890 and 1920. While some of the homes have fanlight windows in front and side doors, none of those doors was installed before 1932. The house is a contributing resource in the district.

B. New Doors and Other Work

4. The Appellants purchased the house at 516 West Walnut in the early 1990s. At that time, the house had simple hollow metal doors, at least one of which included a peephole. The side door had a straight flat surface.

5. From time to time, the Appellants made home improvements. In 1992, they added a screen door to the front entrance.

6. The Appellants sometimes saved money to make these improvements. They also obtained a substantial home equity loan from Old Kent Bank to do house remodeling work. The loan is repayable at the rate of \$600 per month.

7. In March or early April of 2001, the Appellants decided to remove and replace the front and side entrance doors to their home. They priced wood replacement doors at about \$400 and steel doors at between \$120 and \$250. Mrs. Dockins noticed other homes in the neighborhood with nice fan windows and she decided to copy those. She and her husband eventually went to Menards and purchased a side steel door that contained a semi-circular window with fan spokes, and a front steel door that also included a fan window.

8. Their next-door neighbor installed both doors for them, at a labor charge of \$50 for the front and \$75 or \$80 for the side. In the course of performing that work, the neighbor reduced the width of the original wood trim molding around both doors from 6" to only 3".

9. At about this time, the Appellants filed an application with the Commission seeking permission to add a new deck to their house, at the rear of the property, as well as removing the east bay window and replacing some stucco. When Mrs. Dockins appeared before the Commission on the deck application time, she informed the Commission that the front and side doors had recently been replaced with metal doors containing fanlights. The Commission approved the deck application, and two contractors performed the deck work. The cost of materials was \$1,000, and the labor charge was \$1,400.

10. Shortly after the Commission's April meeting, the Appellants received a visit from the Commission's staff person, Larry Burns, who looked at the newly installed doors and indicated that the new trim dimension was wrong for an Arts and Crafts house, that steel doors were unacceptable, and that the Appellants should file an application with the Commission for retroactive approval of the doors and trim.

C. Application for Retroactive Approval

11. On May 18, 2001, the Commission received an application from the Appellants (No. 01-158) for approval of their newly installed front and side doors.

12. The Commission considered the application at its regular meeting of July 17, 2001. Mrs. Dockins attended that meeting. She stated that she chose metal doors as a security measure due to numerous burglaries in the neighborhood. The Commission responded that many of her home's windows, as well as wood moldings around the outsides of doorframes, could also provide easy access for burglars.

13. Commissioner Houghton commented that the Commission's decisions are based upon explicit preservation standards and guidelines established by the United States Secretary of the Interior, and upon local guidelines intended to maintain the historical nature of structures in districts.

14. Commissioner Chamberlin, supported by Commissioner Snyder, moved to deny retroactive approval of the front and side doors based upon Secretary of the Interior's Standards, Nos. 6 and 9. The motion carried unanimously.

15. Commissioner Chamberlin then stated that although the front door would need to be replaced as quickly as possible, the Commission would be willing to allow the Appellants additional time to replace the side door, on the condition that they remained in contact with the Commission regarding the time frame of that work.

16. On August 1, 2001, the Commission issued a written notice denying the Appellants' application for retroactive approval to install front and side metal doors. This notice documented that the denial was based on existing historic preservation standards and guidelines, and in particular, on

federal Standards 6 and 9. The notice also advised the Appellants of their right to file an appeal with the Review Board. The Commission mailed the notice of denial to Mr. Dockins on August 2, 2001.

17. On October 19, 2001, the Board received the Appellants' letter of appeal, which was dated October 8, 2001.

D. Other Properties with Fanlight Windows

18. Other houses in the historic district also have fanlight windows in various doors. None of those was installed before 1932.

19. A fanlight window is an inappropriate window style for door in a Foursquare Arts and Crafts house.

Conclusions of Law

As indicated above, section 5(2) of the LHDA allows persons aggrieved by commission decisions to appeal to the Review Board. Section 5(2) also provides that the Board may affirm, modify, or set aside a commission decision and may order a commission to issue a certificate of appropriateness. Relief should, of course, be granted when a commission has exceeded its legal authority, acted in an arbitrary or capricious manner, or committed some other substantial and material error of law. Conversely, when a commission has reached a correct decision, relief should not be given.

A. Compliance with Historic Preservation Standards

The Appellants' first challenge concerns whether the Commission properly applied federal and local historic

preservation standards and guidelines. In other words, the Appellants believe the Commission erred when concluding that the installed doors and trim do not comply with historic preservation principles. The Appellants observed that other homes in their neighborhood have doors with fanlight windows.

The Commission took issue with the Appellants' first challenge, arguing that it had properly applied the U.S. Secretary of the Interior's Standards for Rehabilitation, as required by the LHDA. The Commission also argued it properly applied local historic preservation standards and guidelines.

1. Federal Historic Preservation Standards

Commissions, when deciding whether to approve or deny requests to perform work in historic districts, must apply state, federal and local historic preservation laws. In this regard, section 5(3) of the LHDA; MCL 399.205, provides:

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.

Also of note is section 5(4) of the LHDA; MCL 399.205, which indicates:

Sec. 5. * * *

(4) The commission shall review and act upon only exterior features of a resource and shall not review and act upon interior arrangements unless specifically authorized to do so by the local legislative body or unless interior work will cause visible change to the exterior of the resource. The commission shall not disapprove an application due to considerations not prescribed in subsection (3).

The Secretary of the Interior promulgated rehabilitation standards at 36 CFR 67.7(b). The federal regulations at issue state:

(b) The following standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. * * *

(6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of the deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

* * *

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

The Commission concluded that the doors and trim did not meet Standards 6 or 9 of the Interior Secretary's Rehabilitation Standards. Standard 6, in particular, expressly provides that where the severity of deterioration requires replacement rather than repair, the new material shall match the old in design, color, texture, and other visual qualities,

and where possible, materials.

In the case at hand, a new steel front door, with a fanlight, was installed to replace an existing front door. Although the hearing record lacks specificity as to the need to replace (rather than to repair) the front door, the record is clear that no steel door installed in 2001 matches a wood door dating from 1910 in terms of material. Nor will a fanlight door match any 1910 door in terms of design, inasmuch as fanlights did not appear in doors in the area until the 1930s.

Standard 9 addresses new materials and their compatibility with the massing, size, size, and architectural features of historic properties, to protect the historic character and integrity of those properties and the surrounding environment.

The Commission determined that the two metal doors, each of which contained 1930's style fanlight windows, were incompatible, and thus, inappropriate for the Appellants' Foursquare Arts and Crafts style house. Moreover, the reduction in molding width from 6" to 3", i.e., a 50% reduction in width, further validates the Commission's determination that the work was inappropriate in terms of size and scale.

In conclusion, the evidence viewed as a whole shows that the two new doors and trim fail to substantially comply with the Interior Secretary's Standards 6 and 9, and that the Commission was correct in its decision.

2. Local Historic Preservation Guidelines

Besides the federal standards, the Commission also referred to and applied long-established local standards and guidelines for work within Kalamazoo's historic district. As it happens, the Commission has adopted specific Standards and Guidelines for Windows, Doors, Porches and Exterior Woodwork in Kalamazoo's Historic Districts.

In general, the standards and guidelines are applicable whenever homeowners are planning to undertake work on windows, doors, and exterior woodwork on buildings in any of Kalamazoo's five historic districts. The standards and guidelines provide that no exterior doors or woodwork may be altered, removed, relocated, or added without Commission approval, and that all variances from the guidelines must receive prior Commission approval.

Regarding a home's primary door, the guidelines indicate that because front doors are the focal point of entry into a house, the Commission will determine the appropriateness of every replacement front door. The guidelines further state that whenever possible, a salvaged door of approximate age and style should be used (rather than a new door) and that in every case the primary front door must be wood.

Regarding exterior decorative woodwork and other wood trim, the guidelines provide that no exterior trim of any kind can be removed without Commission approval.

In reviewing the evidence for Commission error on this issue, none is readily apparent. The guidelines require

installation of wood replacement doors at the entryway of homes whenever replacements are needed. The style of the door the Appellants installed is not appropriate for the age of the house. Finally, wood trim was removed and the remainder was modified without Commission approval.

It is therefore determined that the replacement metal doors and surrounding wood trim violate local historic preservation standards and guidelines.

In summary, the doors and trim as installed violate both local and federal standards and guidelines, and the Appellants are therefore not entitled to relief based on their first assignment of error.

B. Alleged Hardship

Appellants next argued that it would be a hardship for them to pay some \$500 over and above what they have already paid for the two doors. They contended they cannot afford to pay \$500 a second time. Mrs. Dockins asserted the reason for this hardship is that her husband receives Social Security Disability and she works only part time.

As indicated above in this proposal, those persons who occupy the position of the moving parties in administrative proceedings, such as the Appellants in this case, bear the burden of proof with regard to the facts they allege. Here, the Appellants alleged they have limited economic means and therefore should be excused from removing and replacing the inappropriate metal doors.

Regarding this argument, it must be noted that they

presented no evidence whatsoever to show they are in fact unable to find \$500 to spend on installing historically accurate doors and trim. They presented no documents to show their actual annual income, no documents to show their expenditures, and no documents to show their cash flow, although there was testimony that they make \$600 monthly payments on a home improvement loan.

It must also be observed that any economic problem in this case, real or otherwise, was created by the Appellants. The Appellants undertook work in a historic district without benefit of Commission approval or input. Such work was strictly prohibited. Appellants blame the Commission for not informing them of their legal duties. Such an argument is baseless. It has long been axiomatic, in Michigan and elsewhere, that "ignorance of the law is no excuse." *GF Sanborn v Alston*, 153 Mich 456, 459; 116 NW 1099 (1908).

In conclusion, the Appellants' second contention, that the Commission's decision should be reversed due to hardship, is rejected.

C. Purported Disparate Treatment

As a final argument, the Appellants asserted the Commission unfairly allowed other homeowners to install or use doors with fanlight windows. They argued their house should be accorded the same treatment as other homes. On this point, Mrs. Dockins testified she had seen 20 or so doors with fanlights in the district.

Once again, the Appellants have the burden of proof. Mrs. Dockins did testify to seeing fanlights on doors in other houses. Ms. Ferraro acknowledged that fanlights are present in the district. However, Ms. Ferraro went on to say that fanlights did not come into vogue anywhere in the district until the 1930s, some 20 years after the Dockins' house was built. Ms. Ferraro stated, as a historic preservation expert, that fanlights are inappropriate to the age and design of the Dockins home.

The Appellants presented no evidence to rebut Ms. Ferraro's expert testimony. Without additional proof, the fact that a few other homes in a 1,400-property district have fanlights, does not, in and of itself, entitle the Appellants to use such configurations as well. The Appellants failed to submit any evidence showing the dates when the fanlight doors were installed at the other district houses. More significantly, they failed to present any proof supporting the proposition that the Commission allowed those installations. As a result, the Appellants in no way proved that their home received disparate treatment from the Commission.

In conclusion, Appellants failed to show the Commission treated them differently from other homeowners or that the Commission acted in an arbitrary or capricious manner, as defined by law. *Roseland Inn, Inc v McClain*, 118 Mich App 724, 728; 325 NW2d 551 (1982). To summarize, the Commission's determination regarding the requested retroactive approval was in no way disparate, arbitrary, capricious, or biased.

Conclusion

In consideration of the official record as a whole, it is concluded the Appellants failed to show: 1) that the Commission improperly applied historic preservation standards and guidelines, 2) that installing historically accurate doors and trim would constitute a hardship for them, or 3) that they were accorded unfair, arbitrary, or disparate treatment by the Commission.

Recommendation

It is therefore recommended the appeal be denied and the Commission's decision be affirmed.

Dated:

March 18, 2002

Nicholas L. Bozen

Nicholas L. Bozen (P11091)
Administrative Law Judge
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Note: Section 5(2) of the LHDA provides that a permit applicant aggrieved by a decision of the 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.

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