

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

In the Matter of:

**JERRY E. WILLIAMS,**  
Applicant/Appellant,

v

Docket No. 01-124-HP

**DETROIT HISTORIC DISTRICT COMMISSION,**  
Appellee.

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**FINAL DECISION AND ORDER**

This matter involves an appeal of a decision issued by the Detroit Historic District Commission, conditionally denying a Certificate of Appropriateness to install a satellite dish on the front of the building located at 1718 VanDyke, Detroit, Michigan. The building is situated within Detroit's West Village 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 Department of State's Administrative Law Division conducted an administrative hearing on May 17, 2001, for the purpose of receiving evidence and taking arguments.

A Proposal for Decision was issued on June 29, 2001, 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 July 13, 2001.


Having considered the Proposal for Decision and the official record made in this matter, the Board voted 5 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 appeal be, and the same hereby 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, if any, as soon as is practicable.

Dated: 13 July 2001

  
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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 was mailed to the parties.

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STATE OF MICHIGAN

MICHIGAN DEPARTMENT OF STATE

ADMINISTRATIVE LAW DIVISION

JERRY E. WILLIAMS,  
Applicant/Appellant,

v

Docket No. 01-124-HP

DETROIT HISTORIC DISTRICT COMMISSION,  
Appellee.

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PROPOSAL FOR DECISION

This matter concerns an appeal of a decision of the Detroit Historic District Commission (the Commission). The Commission denied a retroactive application to install a satellite dish on the front of the house located at 1718 Van Dyke in Detroit, but granted permission on the condition that the "dish is moved to a location that is not visible from the street". The property is situated in the City of Detroit's West Village Historic District.

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).<sup>1</sup> Section 5(2) of the Act provides that any person aggrieved by a decision of a 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, Administrative Law Division, to

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<sup>1</sup> 1970 PA 169, §5; MCL 399.205; MSA 5.3407(5).

convene an administrative hearing for the purpose of receiving evidence and taking arguments.

The Administrative Law Division conducted an administrative hearing on Thursday, May 17, 2001, in Hearing Room No. 124, 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 in this case, Jerry E. Williams, appeared at the hearing on his own behalf and without benefit of an attorney. The Commission was represented by Angela M. Bodley, Assistant Corporation Counsel, City of Detroit Law Department. Kenneth L. Teter, Jr., Administrative Law Examiner, Michigan Department of State, Administrative Law Division, presided at the hearing.

#### Issues on Appeal

In his letter of appeal dated March 16, 2001, the Appellant asked the Review Board to set aside the Commission's decision and to direct the Commission to allow him to keep the satellite dish on the front exterior of his house in the place where he had already had it installed.

The Appellant presented two arguments, both in writing and orally during the hearing, in support of his appeal. First, he challenged the Commission's authority to regulate the placement of satellite dish on his home. In a related vein, he expressed his

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

view that the Commission was making a big deal out of a trivial matter.

Second, Williams contended that he was "being picked on". He questioned whether other property owners having satellite dishes in his neighborhood, as well as the city of Detroit as a whole, were also faced with the Commission's objections on satellite dish placement. He asserted he was being "singled out", and that "someone" was "after (him) . . . trying to make it miserable (for him)". Williams therefore argued that the Commission had engaged in arbitrary and capricious conduct and denied him equal treatment, in that other homeowners in the neighborhood had satellite dishes attached to their houses, apparently with impunity. He said it appears that some people simply want to dictate what he may do with his own property.

The Commission disputed Williams' factual and legal allegations, responding that placing the satellite dish on the front of the house at 1718 Van Dyke was neither historically fitting nor proper, nor acceptable under the city's history ordinance; that allowing the dish to remain visible from the street would have an adverse impact on the character of the West Village Historic District; and that the Commission had a duty to protect the integrity of the historic district as a whole. The Commission added that placing antennas and satellite dishes on buildings and structures was a proper subject for consideration under state law and the city's historic district ordinance, and that positioning

the satellite dish on the front was inappropriate for Williams' house.

The Commission further asserted that it had never given any property owner approval to install a satellite dish on the front side of a home and had actively sought enforcement against many property owners who had placed satellite dishes at improper locations. The Commission pointed out that it was not preventing Williams and other property owners from installing and using satellite dishes at their homes. Rather, the Commission was duty bound to enforce preservation standards that deal with dish placement to ensure that dishes are compatible with preservation standards and guidelines.

The Commission lastly asserted that having Williams move the satellite dish to a more suitable location was a reasonable requirement, which task would be relatively easy to complete. The Commission added that, while it was regrettable the Appellant was apparently now facing additional costs to move the dish in order to comply with appropriate preservation standards, any financial hardship he might have to incur would be directly attributable to his own failure to request the Commission's approval prior to installing the dish.

#### Summary of Evidence

Under Michigan law, a party who occupies the position of a plaintiff, petitioner, or appellant typically has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan

Pleading & Practice (2d ed), § 60.48, p 176; Prechel v Dep't of Social Services, 186 Mich App 547, 549; 465 NW2d 337 (1990); Lafayette Market and Sales Co v City of Detroit, 43 Mich App 129, 133; 203 NW2d 745 (1972). The Appellant (Mr. Williams) clearly occupies that position in this matter and consequently bears the burden of proof.

A. Appellant's Evidence

Section 5(2) of the Act, supra, indicates that appellants may submit all or any part of their evidence or argument in written form. In that vein, the Appellant submitted two exhibits to establish his factual assertions. Appellant's Exhibit No. 1 consists of a claim of appeal dated March 16, 2001, as well as copies of the following: a letter dated February 17, 2001, sent from Williams to the Commission demanding an appeal of its decision; a Staff Report concerning Williams' permit application prepared for the Detroit Historic District Commission; and a certificate of appropriateness, dated February 16, 2001, which was issued by the Commission to the Appellant.

Appellant's Exhibit No. 2 is copy of a letter dated August 21, 1989, sent from Williams to members of a local citizens organization, explaining that the house at 1718 Van Dyke had been vandalized and that steel doors, bar gates and extra locks had been installed. Appellant's Exhibit No. 3 is copy of a letter dated July 29, 1996, sent from Williams to his next-door neighbor discussing upkeep issues involving their homes. Appellant's

Exhibit No. 4 consists of two photographs with a view of debris cluttering the yard of the house located next door to 1718 Van Dyke.

Besides submitting documentary evidence, Jerry E. Williams personally testified at the administrative hearing. In brief, Williams discussed his lack of actual knowledge of the need to obtain Commission approval in order to install a satellite dish on his house, that he had previously performed other exterior alterations without a problem, that other homes in the neighborhood had installed dishes which were visible from the street, and that he did not feel that the Commission had the authority to dictate where he put a satellite dish. He indicated that he and his father had moved into the house sometime around 1980, that around the end of 1982 he was forced to replace glass-plated exterior doors with steel doors and he added bar gates and extra locks because of break-ins, that he subsequently installed a front window air conditioner (near where the dish was installed), and that the house next door at 1722 Van Dyke was allowed to let its yard fill up with debris without any objections or action by the Commission.

Williams said that it was legally permissible for anyone to own and use a satellite dish, that other homes in the West Village Historic District and throughout the city of Detroit had dishes attached to their fronts, that the Commission was unfairly picking on him, and that he suspected that the Commission's objection was



instigated by a complaint from his next door neighbor (Janice Hintz), with whom he had had several disputes over the years.

Williams also described how his application had been handled and what had transpired at the Commission's February 14, 2001 meeting regarding a decision on whether to allow him to keep the satellite dish at the place where he had it installed. He indicated that the Commissioners simply ignored evidence that other homes had dishes that were visible from the street and that the current location of his dish was proper due to its close proximity to his television and that stringing cable a long distance through the walls of his home was unacceptable.

**B. Commission's Evidence**

The Commission submitted four exhibits at the administrative hearing. Commission Exhibit No. 1 is a multi-page document consisting of the Commission's answer to the claim of appeal and a supporting brief, and copies of: A) one color photograph of the house located at 1718 Van Dyke, showing the location of the satellite dish on the front of the house, B) a violation letter, dated December 20, 2000, sent by the Commission to Jerry Williams, C) an application for building permit, dated December 26, 2000, submitted by Jerry Williams, to gain approval for the "installation of satellite dish", E) a Notice of Public Hearing and Regular Meeting of the Commission for February 14, 2001, F) Chapter 25 of the Detroit Code dealing with historic districts, G) City of Detroit, Historic District Commission, Rules of Procedure, H) Staff

Report prepared for the February 14, 2001 Commission meeting pertaining to application number 00-360 for work to be performed at 1718 Van Dyke, I) meeting minutes of the February 14, 2001 Commission meeting, J) the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, K) the Local Historic District Act, 1970 PA 169, as amended, L) a Certificate of Appropriateness dated February 16, 2001, for work at 1718 Van Dyke, and M) the Commission's Antenna and Satellite Dish Guidelines.<sup>3</sup>

Commission Exhibit No. 2 is a copy of a list of satellite dish violations pertaining to approximately 87 properties that are located within one of the city of Detroit's historic districts. Commission Exhibit No. 3 is a transcript of the February 14, 2001 Commission meeting pertaining to application number 00-360.

The Commission also presented testimony from one witness, Danielle Hall. Hall holds an advanced degree in architecture and in historic preservation, and she serves as a staff member for the Commission.

With regard to the Williams satellite dish application, Hall testified that on November 22, 2000, she drove by the house at 1718 Van Dyke and observed the satellite dish attached to the front elevation, between the first and second stories; that upon returning to her office, she checked the Commission's records and found that a permit application had not been filed for that work;

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<sup>3</sup> Commission Exhibit No. 1 did not contain a subexhibit "D".

and that on December 20, 2000, she sent a standard violation to the property owner, Williams, indicating that the installation work required approval of the Commission and that an application for a permit must be immediately submitted to the Commission.

Hall also testified that on December 26, 2000, Williams submitted an application to the Commission requesting approval for the satellite dish installation. She also described a conversation she had with Williams wherein he indicated the dish needed to be where it was placed in order to accommodate his video equipment and he was concerned about excessive wiring running through the house.

She also briefly described the history and architectural features of the house at 1718 Van Dyke. Hall also said that Williams' satellite dish was clearly in public view, which was not compatible with the applicable preservation standards and guidelines. She noted that the Commission had consistently denied permission to install a satellite dish on the front side of a home and was still actively pursuing enforcement against numerous property owners who had placed satellite dishes on their respective homes without seeking Commission approval.

Hall further explained that the Commission considered Williams' application at its February 14, 2001 meeting and that the Commission initially reviewed her staff report concerning the appropriate use and placement of the dish. She said that the Commissioners collectively informed Williams that he was permitted to have the dish attached to his property, but that his choice of

location was not acceptable in that it would detract from the historic integrity of the house and the historic district as a whole. She noted that the Commissioners informed Williams that Standard No. 9 of U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the Commission's own guidelines pertaining to the installation of satellite dishes required them to consider the effects the location will have on character defining features and to only allow the attachment at a location that is not visible from public view, such as on a garage or the back of the house.

#### Findings of Fact

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

##### A. Background of West Village Historic District

1. On February 18, 1983, the City of Detroit created the West Village Historic District as one of Detroit's many official historic districts. The District also received historic designations from both federal and state historic preservation agencies. The District boundaries begin at the intersection of the center line of East Jefferson Avenue with the western boundary of the Park Subdivision of the Cook Farm, proceed northerly along the western boundary of the Park Subdivision to the point where it meets the western boundary of the assessor's plat of the addition to Park Subdivision of the Cook Farm, proceed northerly along the western boundary of the assessor's plat to its intersection with

the center line of Kercheval, then westerly along the center line of Kercheval to its intersection with the center line of the north-south alley lying between Seyburn and Baldwin; then southerly along the center line of that alley to its intersection with the center line of Van Dyke Place extended westward, then east along said center line to its intersection with the western boundary of the north-south alley between Seyburn and Van Dyke, then southerly along the western boundary to its intersection with the center line of the alley between Van Dyke Place and Jefferson, then easterly along the center line to its intersection with the center line of Van Dyke Avenue; then southerly along this boundary to its intersection with the center line of East Jefferson Avenue, then easterly to the point of beginning on East Jefferson. (Commission Exhibit No. 1F)

2. In 1983, the City of Detroit adopted Ordinance 547-H,<sup>4</sup> which defined and prescribed the particular "elements of design" which delineate and characterize the West Village Historic District. Among other things, the ordinance expressly addressed the relationship between significant architectural features, materials, façade treatments, and other factors.

3. In 1985, the Detroit Historic District Commission adopted special guidelines which addressed the installation of antennas and satellite dishes on residences in historic districts. The

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<sup>4</sup> Ordinance 547-H, adopted in 1983, amended Detroit Code 1964, §28A-1-39, and is currently codified as Detroit Ordinances, §25-2-92.

guidelines specify that "any type of dish antennas shall not be attached to the facades of residences nor mounted on roofs in such a manner that they are visible from the street". (Commission Exhibit No. 1M)

**B. Dish Installed at 1817 Van Dyke and Submission of Application**

4. Sometime around 1980, Jerry E. Williams, along with his father (now deceased), took possession of 1817 Van Dyke, which is located within the West Village Historic District. The house at this site is a two-story dark-brown colored structure, built in the 1900-era in the "Queen Anne" architectural style. Among other features, the house has a columned porch, dentals, and a cut-away bay. The house sits in a residential neighborhood and there are extant houses on the lots adjacent to its sides.

5. During the fall of 1982, Williams experienced two break-ins of his home. In order to provide greater security for his house, Williams replaced the exterior plate-glass doors with steel doors, and he installed bar gates and extra locks. (App. Exh. 2)

6. On or about July 25, 2000, Williams had a company install a satellite dish on the front elevation near the northeast corner of his house, between the first and second stories. The light-gray colored dish consists of a round disc approximately 12" to 14" in diameter, along with a mounting bracket. Williams had the dish placed near the front window of the room where he kept his television, so that the cable from the dish could be easily hooked up to the television.

7. On or about November 22, 2000, while driving through the West Village Historic District, Danielle Hall, who serves the Commission in a staff capacity, observed that the satellite dish on the house at 11718 Van Dyke was clearly visible from the street. Upon returning to her office, Hall checked the Commission's records and determined that a permit application had neither been filed nor approved for that dish installation.

8. On December 20, 2000, Hall sent a standard violation letter to Williams indicating that the installation of a satellite dish on his house required approval of the Commission and that an application for a permit must be immediately submitted to the Commission. (Comm. Exh. 1B)

9. On or about December 26, 2000, Williams submitted an application to the Commission. In that application, he requested retroactive approval for the "installation of satellite dish" on his house at 1718 Van Dyke. (Comm. Exh. 1C)

10. Soon thereafter, Hall prepared a staff report to assist the Commission in its review of Williams' application. In the report, she wrote that:

This application was submitted in response to a violation letter dated December 20, 2000, the work has been completed. The applicant has installed a satellite dish on the front elevation of his home. The placement was dictated by the location of a window in which to pass the cords through and the location of his television. In a conversation with Mr. Williams, he believes that moving the dish would require a long length of cable to be attached to his house, which could be a safety hazard.

## TREATMENT LEVEL AND ELEMENTS OF DESIGN

West Village Historic District is designated at the conservation treatment level.

There are no applicable elements of design for satellite dishes.

## RECOMMENDATION

The Historic District Commission has had guidelines about the installation of antennas since March of 1985, recently amended in January 2001. These guidelines indicate: a) antennas shall be placed so that they are inconspicuous from the public-right-of-way and do not damage or obscure character defining features; c) any type of dish antenna shall not be attached to the facades of residences nor mounted on roofs in such a manner that they are fully visible from the street.

I recommend the Commission issue a Certificate of Appropriateness for the installation of the satellite dish with the condition that the dish is relocated so that it is not visible from the street, for example, on the rear slope of the roof. The work meets the Detroit Historic District Commission Guidelines for Antenna Installation and "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings" standard number 9, "New additions, exterior alternations, or related new construction shall not destroy historic material that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, scale, and architectural features to protect the historic integrity of the property and its environment." (Comm. Exh. 1H; App. Exh. 1)

### C. Commission Meeting and Decision

11. The Commission considered Williams' application at its February 14, 2001 regular meeting. During the meeting, the Commission reviewed Hall's staff report. In addition, Hall spoke at the meeting to further explain her findings, as well as her recommendation that the Commission grant Williams a certificate of



appropriateness for the satellite dish, with the condition that the dish be moved to a new location so that it was not visible from the street.

12. Williams attended the meeting and he spoke after Hall. He initially said that when he had the satellite dish installed, he did not realize it would be a "problem" and he was unaware of the Commission's existence and its authority. Williams also said that the way the dish is installed, the cable comes from the satellite through his storm door, that he did not want it through his wall to damage the wall, and that the Commission could see from his photographs that lots of cable was used. Williams asserted that if he moved the dish anywhere else, much more cable will be exposed and that it can't be moved anywhere else. He noted that where the television is located was where all his video stuff was at, and that all the other rooms in the house were full. He noted that he had lived in this house for over 30 years, that he had the dish installed back in the summer, and that evidently the Commission needed him more than he needed the Commission because until recently he never knew the Commission existed. Williams then asked, "What am I supposed to do let you tramp through my house?"

13. A Commissioner then replied that no one wanted to trample through his house and that the Commissioners were trying not to be adversaries in the matter.

14. Williams then said that it seemed to him that the matter had become adversarial, that at least two other houses in his

neighborhood had satellite dishes attached to their houses, one upstairs and the other downstairs, that technology had changed, and he reiterated that he had this dish installed not knowing it would be a problem.

15. A Commissioner indicated that the Commission had been active since 1974, that it had a duty to oversee and preserve the historic districts in the city of Detroit, which contain about 5800 homes. The Commissioner explained that a satellite dish is a high tech piece of equipment that is subject to guidelines which require that they not be wholly visible from the street. The Commissioner said that satellite dishes can properly be placed either on garages or on the back of the house.

16. Williams replied that he did not have a garage and couldn't put the dish on the back of his house because of the location of his television room.

17. The Commissioner said that Williams could put the dish on the back of his house and that the cabling can go on the side facing of the house without disturbing any portion of the house.

18. Williams responded that this was his house, that he was being dictated where to put his own property, that he might as well be in a concentration camp or desert, and that the neighborhood the Commission was trying to preserve does not exist anymore.

19. Commissioner Fetzer then made a motion to grant issuance of a Certificate of Appropriateness for the installation of the satellite dish with the condition that the dish is relocated so

that it is not visible from the street. The work meets the Detroit Historic District Commission Guidelines for Antenna Installation and "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings" standard number 9.

20. Before a vote was taken, a Commissioner added that Williams should be given a name and/or telephone number of appropriate installers that could assist in the relocation of the dish so it is not a hardship to him.

21. Commissioner Douglas then supported the motion made by Commissioner Fetzer to issue a Certificate of Appropriateness with the condition on location. By a vote of 5 to 0 in favor of the motion, the Commissioners approved the application.

22. The Commission sent Williams a written notice, dated February 16, 2001, indicating that the Commission had granted his request for a Certificate of Appropriateness. The notice provided that:

Pursuant to Section 5(10) of the Michigan Local Historic District Act, as amended, being MCL 399.205, MSA 5.3407(5)(10) and Section 25-2-20 of the 1984 Detroit City Code, the Detroit Historic District Commission has reviewed the above-referenced application for building permit and has issued a Certificate of Appropriateness effective as of February 17, 2001 provided the following condition is met:

The satellite dish is moved to a location that is not visible from the street.

The work is appropriate for the following reasons:

The re-location of the satellite dish meets the Detroit

Historic District Commission Guidelines for Antenna Installation and "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings" standard number 9, "New additions, exterior alternations, or related new construction shall not destroy historic material that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, scale, and architectural features to protect the historic integrity of the property and its environment." (Comm. Exh. 1L; App. Exh. 1)

#### Conclusions of Law

As indicated earlier in this proposal, section 5(2) of the Act, supra, allows any person aggrieved by a commission's decision to file an appeal with the Review Board. Section 5(2) also provides that the Review Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a Certificate of Appropriateness or a notice to proceed. Relief should, of course, be ordered when 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, where a commission has reached a correct decision, relief should not be granted.

#### A. Pertinent Laws

In reviewing applications such as the one at issue, the Commission is required to follow pertinent federal, state and local law.

1. Federal Law

The U.S. Secretary of the Interior's Standards for Rehabilitation<sup>5</sup> and Guidelines for Rehabilitating Historic Buildings must be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. In its decision to deny the application, the Commission indicated that the proposed placement of the satellite dish on the front elevation of the house did not meet Secretary's Standard Number 9. The Commission further indicated that the placement of a satellite dish on the front must be done in compliance with the guidelines for installing satellite dishes that was established by the Commission. Standard No. 9 provides as follows:

(9) New additions, exterior alternations, or related new construction shall not destroy historic material that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, scale, and architectural features to protect the historic integrity of the property and its environment. (Emphasis added)

2. State Law

With regard to state law, section 5(3) of the Act<sup>6</sup>, which incorporates the federal standards by reference, 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

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<sup>5</sup> 36 C.F.R. part 67.7.

<sup>6</sup> See footnote 1.

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.

### 3. Local Law

As for local law, the city of Detroit has enacted a comprehensive scheme of historic preservation ordinances. This scheme recognizes the importance and value of maintaining and protecting certain elements of design, which embody the character and essence of historic resources.

#### a. The Detroit Code

Section 25-2-92 of the Detroit Code pertains to the West Village Historic District. The ordinance addresses in detail the relationship between architectural features, materials, facade treatments and other factors that must be considered when dealing with matters involving the historic and architectural integrity of properties lying within the Historic District.

#### b. Guidelines for Satellite Dishes

The Commission created and published the Antenna and Satellite Dish Guidelines in 1985. At that time, the Commission recognized

that new technology meant that antennas and satellite dishes were being attached to properties by homeowners. The Commission developed the guidelines to ensure that each installation of this new apparatus was accomplished in a way that would not adversely effect the house's historic character or would not otherwise violate mandated preservation standards and guidelines. The guidelines provide in part as follows:

**Antenna and Satellite Dish Guidelines**

*The Historic District Commission realizes that the installation of antennas on residences in historic districts is an area of concern, which must be addressed. This policy proposed offers a balanced approach to those concerns so that the criteria of the Historic District Ordinance as well as the needs of district residents can be met.*

The placement of radio, television, and other communication antennas on structures in historic districts is work that is regulated by the City of Detroit's Historic District Ordinance No. 161-H. Any proposal for the installation of antennas in a historic district shall meet the following applicable conditions:

A. Antennas shall be placed so that they are inconspicuous from the public right-of-way and do not damage or obscure character defining features.

B. Significant architectural details shall not be removed, damaged or covered by the installation of any antenna.

C. Any type of dish antennas shall not be attached to the facades of residences nor mounted on roofs in such a manner that they are visible from the street. It is recommended that dish-type antennas be placed on other buildings, such as garages or on the surrounding grounds, where their presence can be screened from the street by landscaping. Antennas placed on surrounding grounds shall not occupy front or side yards. When the only alternative available is to mount them on a historic residence, antennas must be out of the line of sight when viewed from the street. (Emphasis added)

B. Authority to Regulate of Satellite Dish Location

As his first basis for appeal, the Appellant challenged the authority of the Commission to place conditions on where he may put his satellite dish. The Appellant asserted that it was lawful for any homeowner to purchase a satellite dish and to install it on his or her house, noting that dish usage was prevalent throughout the city. He further maintained that dish placement was a matter that was too trivial for the Commission to raise objections over.

In support of his contentions, the Appellant presented the testimony of himself. Williams said that he had lived in his house for over 30 years and until the dish problem arose he had never heard of the Commission or its regulatory activities. He indicated that he had completed exterior modifications to his house in late 1982, including the replacement of entry doors, the addition of bar gates and the installation of an air conditioner, without any interference or complaint from the Commission. He also said that most of the old houses in West Village neighborhood had undergone extensive changes over years and that the Commission was futilely trying to save historic integrity that no longer exists.

The Appellant also presented color photographs of a house located at 1722 Van Dyke, which is situated next door to his house. The photographs show debris strewn about the yard. The Appellant indicated that a lack of action in permitting the debris to



accumulate and remain demonstrates that trivial matters are not subject to the city's enforcement efforts.

In response, the Commission argued that it became an officially established body in 1975, that it was mandated to apply special standards and guidelines to properties lying in one of the city's historic districts, and that the installation of a satellite dish was significant work that is subject to its review and approval process. Focusing in on Standard No. 9 of the Secretary of the Interior's Standards for Rehabilitation and the implementing guidelines, as well as local guidelines which address the placement of antennas and satellite dishes on residential houses, the Commission said it was faced with determining whether Williams' requested location of the dish was appropriate in relationship with character-defining features and the historic integrity of the property at 1718 Van Dyke and the West Village Historic District as a whole. The Commission maintained that its decision to require Williams to move the dish was proper because he had attached it to the front of the house in plain view from the street.

To support its position, the Commission submitted written copies of the provisions of law and guidelines which it relied upon, including Standard No. 9 of Secretary of the Interior's Standards for Rehabilitation and the implementing guidelines, portions of Chapter 25 of the Detroit Code, Commission's Antenna and Satellite Dish Guidelines. Moreover, the Commission pointed out that it had in fact permitted the Appellant to have a dish and

that the condition requiring that the dish be moved to a suitable location was reasonable and proper.

The Commission also presented the testimony of a professional preservationist, Danielle Hall. Hall testified regarding how the pertinent standards and guidelines are to be applied in determining whether or not Williams' requested dish location was permissible. She said that every proposed dish installation project required the homeowner to submit a permit application with the Commission. Although Williams had actually installed the dish prior to Commission review, the Commission was still required to follow prescribed preservation standards and guidelines in determining the appropriateness of the dish's location.

Hall acknowledged that other homes in the city's historic districts had satellite dishes installed at improper locations. However, she said that the Commission had not approved their placement and that the Commission had taken steps to enforce the preservation standards whenever the Commission became aware of a violation. She further indicated that the West Village Historic District was not created by city ordinance until 1983 and that exterior work performed prior to then, including work that Williams indicated was done on his house in late 1982, would not be subject to the Commission's purview.

Hall said that in order to maintain historic character and integrity, each applicant must show that the dish will be installed so that it is not readily visible from the street. In the case of

dish Williams had installed, Hall testified that that it was clearly visible from the street, as shown by a photograph (Comm. Exh. 1B), and that the location proposed by Williams violated the applicable standards and guidelines.

Upon an consideration of the arguments advanced by the two parties, it is clear that the Commission's position is more persuasive. A review of Antenna and Satellite Dish Guidelines shows that the Commission recognized the need to address the installation of satellite dishes on homes and therefore developed a comprehensive scheme for all Detroit historic districts, including West Village. The Commission's scheme would be negated and the Satellite Dish Guidelines meaningless if property owners residing in historic districts were allowed to substitute their personal tastes and inclinations in place of the Guidelines.

The Commission adequately demonstrated that Standard 9 of the Secretary of the Interior's Standards for Rehabilitation and the local guidelines were relevant to satellite dish installation work, and that those standards and guidelines were properly applied. The Commission further established (primarily through the testimony of Hall and presentation of the Antenna and Satellite Dish Guidelines) that allowing the placement of the dish on the front of the house would represent an impermissible change in the historic character of Williams' house and other properties in West Village. Although the dish is not as large as some satellite dishes used by many homeowners, upon reviewing photographs of the house, it is a

readily noticeable feature, even from a distance. To permit the dish to remain where it is currently located would diminish and adversely impact the character defining features of the house, as well as the District's historic fabric.

In light of the above, the Appellant's contention that the Commission's decision lacked legal authority, that the placement of a satellite dish was trivial and beyond the scope of the Commission's purview, and that he should be allowed to keep the dish wherever he wants, is found to be without merit. Rather, it is concluded that the Commission was legally authorized to take the action it took and that the Commission did follow the correct provisions of law.

**C. Arbitrary Action**

The Appellant's final basis for appeal is the argument that he was being unfairly "picked on", that other property owners were permitted to place a satellite dish on the front of their respective houses, and that Commission had arbitrarily decided to dictate what he could do with his property.

In support of this contention, the Appellant testified that he had observed several houses located in West Village and other historic districts in the city which have a satellite dish attached to the house that is visible from the street. He indicated that it seemed apparent that the Commission permitted those property owners to put their dishes wherever they desired; yet the Commission had singled Williams out for a violation. He also expressed the view

that the only reason the Commission had raised an objection about his dish was because his next door neighbor had complained about Williams.

The Commission countered that it had not singled out Williams for punishment, that all satellite dish work that comes to the Commission's attention is treated exactly the same, and that the Commission is in the process of resolving other nonconforming dish installations with other property owners. The Commission presented a list of antenna and satellite dish violations containing some 87 addresses, including 1718 Van Dyke. Hall testified that the Commission had actively pursued violators, that some homeowners have already come into compliance, while others were in various stages of resolution. Hall said that in no instance had the Commission approved the placement of a satellite dish on the front facade of a house. Moreover, Hall testified that the Commission's action against Williams dish installation originated when she drove by the house and observed the dish in an improper location.

Unfortunately, aside from making self-serving conclusory statements, Williams offered no supporting evidence with respect to the Commission's purported failure to pursue action against other property owners. To the contrary, the entire record demonstrates that the Commission was taking appropriate steps to resolve all known violations, regardless of who owns the property. Furthermore, it was shown that the Commission applied the

appropriate standards and guidelines governing satellite dishes on an even-handed basis, particularly in the case of 1718 Van Dyke.

Based on a review of the applicable law and the facts established in this record, it is determined that the Appellant has failed to prove that the Commission acted arbitrarily or had failed to give him equal treatment.

#### Conclusion

The federal, state and local laws cited above reflect legislative intent to protect, preserve and promote significant historic districts, buildings, structures, features, open spaces and characteristics. The Appellant's evidence did not demonstrate legal justification to retain the satellite dish at the front elevation of his house at 1718 Van Dyke, which is located in the West Village Historic District.

In consideration of the entire official hearing record made in this case, it is concluded that the Appellant has failed to establish that the Commission erred when it concluded that the requested satellite dish placement on the Appellant's house did not comport with current federal and local historic preservation standards and guidelines. It is further concluded that the Commission did not act arbitrarily or capriciously, did not violate state or local law, and did not act improperly under the City of Detroit Ordinance in denying the application at issue.

Recommendation

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

Dated: June 29, 2001

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Administrative Law Examiner