

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

In the Matter of:

**ERIC A. OFFERDAHL**  
Applicant/Appellant,

v

Docket No. 94-57-HP

**GRAND RAPIDS HISTORIC  
PRESERVATION COMMISSION,**  
Appellee.

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**FINAL DECISION AND ORDER**

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission denying an application for permission to install steel overhead and service doors on a new garage constructed at 420 Morris, S.E., which is located in the Heritage Hills Historic District, Grand Rapids, Michigan.

The State Historic Preservation Review Board (hereafter "the Review Board") has appellate jurisdiction to consider such appeals under section 5(2) of the Michigan Local Historic Districts Act, as amended, being section 399.205 of the Michigan Compiled Laws.

At the direction of the Review Board, an administrative hearing was held on September 13, 1994 for the purpose of receiving evidence and arguments.

A Proposal for Decision was issued on December 27, 1994, and copies were mailed to the parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of the Michigan Compiled Laws.

The Review Board fully considered the appeal, along with the Proposal for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled Review Board meeting conducted on Friday, February 24, 1995.

Having fully considered the Proposal for Decision, as well as all other submissions, the Review Board voted 6 to 0, with 0 abstention(s), to ratify, adopt, and promulgate the Proposal for Decision issued in this matter as the Final Decision of the Board and to incorporate the Proposal into this document; and,

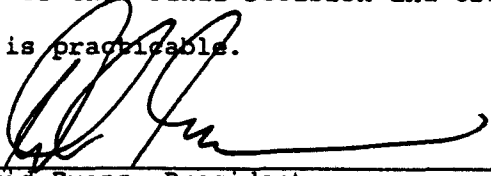
Having done so,

IT IS ORDERED that the appeal is granted.

IT IS FURTHER ORDERED that the appealed decision of the Grand Rapids Historic Preservation Commission is therefore set aside and, further, that the Commission shall issue a Certificate of Appropriateness to the Appellant with respect to the Appellant's application to install steel overhead and service doors on his new garage.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be served upon both parties as soon as is practicable.

Dated: 24 FEB 95

  
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David Evans, President  
State Historic Preservation Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a permit applicant aggrieved by a decision of the State Historic Preservation Review Board may appeal the Board's decision to the circuit court having jurisdiction over the commission whose decision was appealed to the Board. Under section 104(1) of the Administrative Procedures Act, such appeals must be filed with the circuit court within 60 days after the date of the mailing of notice of the Final Decision and Order of the Board. In addition, MCR 2.105(G) and 7.205 may prescribe other special 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:

**ERIC A. OFFERDAHL**  
Applicant/Appellant

Docket No. 94-57-HP

v

**GRAND RAPIDS HISTORIC PRESERVATION COMMISSION,**  
Appellee.

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**PROPOSAL FOR DECISION**

This matter involves the appeal of a decision of the Grand Rapids Historic Preservation Commission (the Commission) denying an application to install a steel overhead garage door, along with a steel service door, on a newly constructed garage located on the premises at 420 Morris S.E., in Grand Rapids, Michigan. The Commission's decision was issued on July 11, 1994, and Eric A. Offerdahl (the Appellant) filed his appeal on or about July 28, 1994.

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

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 399.5; MSA 5.3407(5).

administrative hearing for the purpose of taking relevant evidence and receiving arguments. The Hearings Division conducted a hearing on Tuesday, September 13, 1994, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures set forth in Chapter 4 of the Administrative Procedures Act<sup>2</sup> and also in the Michigan Administrative Code.<sup>3</sup>

Eric A. Offerdahl, the Appellant/property owner, appeared at the hearing on his own behalf. No one appeared on behalf of the Commission.<sup>4</sup> Kristine Wilson, Environmental Review Coordinator, Michigan Department of State, Bureau of History, appeared as an observer/representative on behalf of the Review Board. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, served as Presiding Officer.

#### Issues on Appeal

In his letter of appeal dated July 28, 1994, the Appellant stated that his appeal was based on the following grounds:

1. That the proposed design of his new garage, with steel doors, is compatible with the historic integrity of the site and adheres to federal historic preservation standards and also with historic preservation guidelines prescribed both by the U.S. Secretary of the Interior and by the Commission.

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

<sup>3</sup> 1979 AC, R 11.1 et seq.

<sup>4</sup> Shortly after the hearing, Michael J. Page, staff person to the Commission, advised the Presiding Officer by telephone that he had been unable to attend due to a sudden illness and that the assigned assistant city attorney was unable to attend because of other pressing business.

2. That recent decisions of the Commission reflect approvals of similar applications and warrant consistency of action.

3. That the designs and materials of the doors are practical and contemporary manifestations of the cost, quality and maintainability of the visual appearance and use of the new structure.

Summary of Evidence

Under Michigan law, a party who occupies the position of a plaintiff or petitioner has the burden of proof in an administrative proceeding. 8 Callaghan's Michigan Pleading & 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 such a position in this matter and consequently bears the burden of proof.

Section 5(2) of the Local Historic Districts Act, supra, provides that appellants may submit all or any part of their evidence and arguments in written form. In this vein, the Appellant presented 14 exhibits, many of which included multiple pages or photographs. Appellant's Exhibit No. 1 consisted of his letter of appeal, along with copies of materials pertaining to the appealed decision, such as the Notice of Denial at issue, the Appellant's Deed, and a photocopy of a Buy And Sell Agreement concerning the subject premises. Appellant's Exhibit No. 2 included two photographs of the primary residence located at 420 Morris S.E. Appellant's Exhibit 3 was a "blueprint" of the garage. Exhibits 4 and 5 consisted of a Certificate Of Appropriateness and a Tabled Meeting Notice. Exhibit 6 was a copy of a letter in which

outlined the reasons why the Appellant felt the Commission had erred in denying his application and which the Appellant had sent to the Commission. Exhibit 7 was a list which reflected all garage door decisions rendered by the Commission since December of 1991, including outcomes. Exhibits 8 and 9 consisted of a memorandum prepared by a Commission member in response to the Appellant's letter (AE 6), as well as draft Grand Rapids historic preservation guidelines governing doors on garages and carriage houses. The next exhibit was a second letter outlining additional arguments advanced by the Appellant. Exhibit 10 consisted of copies of unapproved minutes of various Commission meetings convened between December 18, 1991 and April 6, 1994. The remaining exhibits consisted of photographs showing various views of the new garage.

Offerdahl personally testified at the administrative hearing. In brief, he described his garage construction project, he discussed a compromise regarding certain aspects of his building project, and he explained his attempts to obtain Commission approval for the two steel doors even after the Commission's initial rejection of his application.

The Commission itself did not submit any evidence in support of its position in this case.

#### Findings of Fact

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

##### A. Background Information

1. The parcel at 420 Morris, S.E., Grand Rapids, Michigan, was purchased by Eric A. Offerdahl during the summer of 1992. At

that time, the premises contained a single, residential dwelling. The premises had previously included a garage or carriage house; however, that structure had been completely removed at some indeterminate time in the past. The parcel is situated in the Grand Rapids Heritage Hills Historic District. (Appellant Exhibits, Nos. 1 & 2)

2. Between December 18, 1991 and May 15, 1994, the Commission reviewed approximately 32 applications concerning the replacement or the installation of overhead doors, and/or service or entry doors, on garages and carriage houses located in the Heritage Hills Historic District. Since April of 1993, the Commission has reviewed ten such applications pertaining to "new" construction. Of those, the Commission approved three which involved garages with wooden doors; one was approved without door information; one was denied due to a service door being flush with an exterior wall; one was tabled; another was denied; and three were approved with respect to steel overhead doors. (AE 7)

**B. The Application and Commission Review**

3. During the spring of 1994, Offerdahl requested Commission approval for the construction of a new garage in the rear of the parcel at 420 Morris, S.E. The application included detailed "blueprints" or drawings, which were prepared by Kim David Destigter, A.I.A., specifically for Historic Commission review. The garage was to be situated 113 feet from the front of the lot and would not be readily visible from the street. (AE 7, 11 - 13)

4. The Commission considered Offerdahl's proposal at a Commission meeting convened on June 15, 1994. Some modifications

were made to Offerdahl's plans. For example, his original proposal to use clapboard was changed to provide for the use of cedar shakes identical to those found on his residence. Offerdahl also agreed that a "flush" service door was inappropriate, and he therefore accepted a proposal to set his service door in about three inches. Overall, the Commission liked the design of the proposed new structure; however, a dispute arose concerning the material to be used for the doors. The Commission wanted wood. Offerdahl wanted steel. Among other things, Offerdahl was worried about possible "rot" involved with pressed wood, panel doors.

5. On June 20, 1994, the Commission issued a Certificate Of Appropriateness which indicated that Offerdahl's application had been approved, except for the portion regarding the steel garage door and the flush steel side door. (AE 4) The Commission also sent Offerdahl a notice indicating that the portion of his application regarding the overhead, raised-panel, steel garage door and the flush, steel side door had been tabled to permit him the opportunity to submit product literature and to consider "a more authentic wood material instead of steel". (AE 5)

6. Offerdahl subsequently obtained the requested "literature" and submitted same to the Commission on or about July 1, 1994. This literature indicated that a steel panel door could be purchased for about \$600.00, that a pressed panel door would cost about \$850.00, and that a hardwood panel door would cost around \$1,200.00.

7. The Commission considered Offerdahl's request to use steel doors at its meeting of July 6, 1994. The request was discussed at



length; however, the Commission refused to consider such factors as security or cost. The Commission eventually voted to deny Offerdahl's application to install steel doors.

8. On July 11, 1994, the Commission issued a Notice Of Denial regarding the request at issue. The notice indicated that Offerdahl's application to use steel was denied on the basis of "the Secretary of Interior Guidelines for wood and the HPC's guidelines for garage and carriage house doors." (AE 1)

9. As of late July of 1994, the Commission had not as yet officially adopted specific preservation "guidelines" for garage and carriage house doors. However, the Commission had developed "draft" guidelines which indicated, among other things, that:

\* \* \* Steel, vinyl or fiberglass doors seldom match the appearance of wood, and they do not lend themselves to the application of added detailing. Wood should be used unless the specific alternative product is approved by the Commission. (AE 8 & 9)

10. After his "final appeal" to the Commission, Offerdahl asked for a more detailed explanation of the Commission's decision. As a result, he received a copy of a memorandum prepared by Commission member James G. O'Connor. (AE 9) This memo was dated July 20, 1994 and was addressed to the Commission. At the outset, it asserted that the Secretary of the Interior's Standards do not address the replacement of garage doors directly. The memo further asserted that a number of federal guidelines, when taken together, support the Commission's position. The memo also indicated that the draft Commission guidelines require the use of wood unless the proposed alternative material has been approved by the Commission. (AE 9 & 9A)

**Conclusions of Law**

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

**A. Adherence To Federal And Local Preservation Guidelines**

The Appellant contends the Commission erred when it concluded that his proposal to use steel doors on his new garage does not adhere to federal historic preservation standards and the preservation guidelines of the U.S. Secretary of the Interior. The Appellant also argues that the Commission erred by concluding that his doors do not conform to the Commission's own draft historic preservation guidelines.

As indicated above, one of the commissioners prepared a memorandum, dated July 20, 1994, which articulated some of the Commission's thinking on the use of steel doors on garages located in historic districts in Grand Rapids. The memo notes that neither the federal Standards For Rehabilitation (36 CFR 67) nor the federal guidelines which further implement those standards address the replacement of garage doors directly. The memo goes on to

state that, nevertheless, the federal guidelines do contain several sections which, taken together, support the Commission's position.

The memo expressly states that in the discussion section of the Secretary's Guidelines For Rehabilitating Historic Buildings, in an introductory provision on Replacements, the guidelines provide that, "Like the guidance for repair, the preferred option is always replacement of the entire feature in kind, that is, with the same material." (Bold in memo)

The memo additionally indicates that under the section which governs the Design For Missing Historic Features, the guidelines indicate that:

\* \* \* (A) second acceptable option for the replacement feature is a new design that is compatible with the remaining character-defining features of the historic building. The new design should always take into account the size, scale, and **material** of the historic building itself and, most importantly, should be clearly differentiated so that a false historical appearance is not created. (Underline in guidelines; bold in memo)

The memo further indicates that in the section headed Alterations/Additions To Historic Buildings, the guidelines state:

Some exterior and interior alterations to the historic building are generally needed to assure its continued use, but it is most important that such alterations do not radically change, obscure, or destroy character-defining spaces, **materials**, features, or finishes. (Bold in memo)

The memo adds that the guidelines section on Wood elements includes an entry on Replacing wood features. The section recommends as follows:

Replacing **in kind** an entire wood feature, that is too deteriorated to repair -- if the overall form and detailing are still evident -- using the physical evidence to guide the new work. \* \* \* If using the same kind of material is not technically or economically

feasible, then a compatible substitute material may be considered. (Bold in memo)

The memo adds that "not recommended" is:

Removing an entire wood feature that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the **same visual appearance**. (Bold in memo)

The memo goes on to state that in the section on Building Site(s), not recommended is:

Removing a feature of the building or site that is unrepairable and not replacing it; or replacing it with a new feature that does not convey the **same visual appearance**. (Bold in memo)

The memo further provides that in the Building Site section on Alterations/Additions For The New Use, not recommended is:

Introducing new construction onto the building site which is visually incompatible in terms of size, scale, design, **materials**, color and **texture** or which destroys the historic relationships of the site. (Bold in memo)

The memo also indicates that the section on New Additions To Historic Buildings notes that such additions should always be clearly differentiated from the historic building and be compatible in terms of mass, **materials**, relationship of solids to voids, and color. (Bold in memo)

The memo concludes with the statement that the Commission's draft guidelines on garage doors indicate that steel doors seldom match the appearance of wood, and wood should be used unless the alternative is approved by the Commission.

The U.S. Secretary of the Interior's Standards For Rehabilitation are the fundamental groundwork upon which historic preservation activity occurs today at federal, state and local levels. The standards are the basis for all preservation de-

cisions, and the federal guidelines have been adopted to assist with administration of the standards.

A review of the federal standards reveals that for the most part, the standards are designed to address issues associated with the preservation, rehabilitation and restoration of existing historic resources. For example, Standard No. 6<sup>5</sup> indicates that deteriorated historic features shall be repaired rather than replaced. Standard No. 7<sup>6</sup> provides that chemical or physical treatments which may cause damage (for example, sandblasting) shall not be used for purposes of surface cleaning.

However, two of the standards (Nos. 9 and 10<sup>7</sup>) expressly deal with "new" construction. These standards are clearly applicable to the "new" garage proposed by the Appellant, and they provide as follows:

(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. (Bold added)**

(10) **New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired. (Bold added)**

The commissioner's memo, while correct in pointing out that the federal standards do not mention garages per se, was incorrect in its implication that none of the standards was especially relevant to the Commission's consideration of the Appellant's

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<sup>5</sup> 36 CFR 67.7(b)(6).

<sup>6</sup> 36 CFR 67.7(b)(7).

<sup>7</sup> 36 CFR 67.7(b)(9)&(10).

application. Inasmuch as the Appellant's proposed new garage can be properly characterized as "new construction", as contrasted with a repair or restoration project, the two cited standards were and are applicable and should have been brought to bear in the Commission's decision-making process.

In that regard, it should also be observed that many of the above-cited federal guidelines primarily and specifically apply to repairs and restorations concerning existing structures, as opposed to entirely new, free-standing structures. The cited guidelines which pertain primarily to restoration work are: 1) the Replacement guideline, which addresses the replacement or restoration of existing "character-defining" features such as cornices, interior staircases, and complete porches; 2) the Design For Missing (Interior Or Exterior) Historic Features guideline; 3) the Alterations/Additions To Historic Buildings guideline; 4) the guideline on Building Site Replacements; and 5) all of the guidelines pertaining to the repairs of wood features on existing structures. In that these particular guidelines address repairs and restoration work relative to existing structures, rather than new construction at an historic site, they cannot properly serve as the basis for the Commission's decision.

Nonetheless, one of the above-cited guidelines does apply. That is, the Building Site guideline pertaining to Alterations And Additions For The New Use at the site. Again, this guideline provides that the introduction of any new construction which is visually incompatible in terms of size, scale, design, materials, color and texture, is not recommended.

When applying this guideline to the Appellant's proposal, it must initially be observed that overall, the proposed garage is clearly compatible with the existing residence in terms of size, scale, design and color. A question follows as to whether steel may represent compatibility relative to "materials" and "texture".

However, in that regard, reference must again be made to Standard 9. This standard indicates, among other things, that "new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features" of the old. It is significant that nowhere in the hearing record is there any suggestion that the Commission made any attempt to ensure that there was some possibility of differentiating the new garage, as a new garage, from any garage which might have existed at the site decades ago or from the present residence. The record shows that Offerdahl did not remove an existing garage and then replace it with an historical replicate. Nothing in the hearing file suggests that records of the earlier garage are available. The proposed garage does, however, maintain overall compatibility of all structures located within the historic site. Indeed, the new garage will be hard to differentiate from the existing residence.

It appears that the Commission was concerned about the fact that steel was not an historic material, did not afford the proper texture potential, and therefore was not a "compatible" material. On the other hand, the steel certainly afforded the opportunity for differentiation between the existing residence and the new garage. In this regard, it must be noted that the "shall" mandate in Standard 9 is two-fold. That is, with respect to "new" construc-

tion, commissions must not only concern themselves with "compatibility"; they must also address the need for "differentiation".

In terms of this case, the Appellant's proposed use of steel would set the new construction apart from the old and would address the standard's first requirement that any new structure be somehow differentiated from older construction. Moreover, with respect to the issue of compatibility, the Appellant indicates that he can use panel steel, as opposed to flat or unworked steel, thereby ensuring a degree of compatibility. Textural concerns can be addressed through paint types and the painting of the doors themselves.

In light of this discussion, it is determined that in this case, the use of steel garage doors is consistent with the Secretary of the Interior's standards and guidelines, and that the Commission erred by concluding otherwise.

As for import of the Commission's draft guidelines on Garage And Carriage House Doors, said guidelines have not yet received the requisite approvals, are not yet in effect, and therefore are inapplicable to the matter at hand.

**B. Arbitrary/Capricious Decision-Making And Cost Considerations**

Inasmuch as it has already been determined that the proposal at issue adheres to historic preservation standards and guidelines, the remaining issues on appeal need not be addressed.

**Recommendation**

In consideration of the discussion set forth above, it is recommended that the Review Board grant the appeal.

Dated: December 27, 1994

Nicholas L. Bozen  
Nicholas L. Bozen  
Administrative Law Examiner