

**STATE OF MICHIGAN**  
**DEPARTMENT OF HISTORY, ARTS AND LIBRARIES**  
**MICHIGAN HISTORICAL CENTER**

In the Matter of:

**TASSOS H. VALTADOROS, ex rel.**  
**614 South First Street, Ann Arbor**

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Admin. File No. 02-129-TC  
Tax Credit Certification Appeal

**FINAL ADMINISTRATIVE DECISION**

This matter involves an appeal of a decision of the Michigan Historical Center (the Center) denying historic preservation tax credit certification with respect to the restoration of a private residence located at 614 South First Street, Ann Arbor, Michigan. The residence is jointly owned by Tassos H. Valtadoros and Wendy Valtadoros (the owners) and is situated within Ann Arbor's Old West Side Historic District (the district).

Tassos H. Valtadoros (the appellant) filed this appeal under rule 9 of the historic preservation certification rules<sup>1</sup> promulgated pursuant to section 266(13) of the Income Tax Act of 1967 (the Income Tax Act).<sup>2</sup> Rule 9 provides that if the Center denies a person's application for any historic preservation certification, the person may appeal the decision to the Center's Chief Appeals Officer.

Upon receipt of the appeal, the Center furnished a copy of its official application file to the Chief Appeals Officer. The Center's official file on the application and the appellant's written submissions, as well as pertinent standards and guidelines and other available information, have been considered in deciding this appeal. Pursuant to rule 9, no administrative hearing was required or conducted. This written decision constitutes

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<sup>1</sup> 2000 MR 5, R 206.159.

<sup>2</sup> MCL 206.266.

an administrative review of the Center's denial in accordance with rule 9, and is issued within the requisite 60-day period prescribed by subrule (4) of rule 9.<sup>3</sup>

### **Issues on Appeal**

#### **A. Center's Determination**

On July 8, 2002, the Center denied the owner's application for historic preservation certification, Part 2. The Center's denial was based on its determination that the work in question, *i.e.*, a new addition to a historic house, did not comport with the U.S. Secretary of the Interior's Standards for Rehabilitation, Nos. 9 and 10. In that regard, the Center found that the new addition was not sufficiently differentiated from the existing historic house and hence could not be easily recognized as a building addition. The Center also found that the new cross-gable bathroom wing protruded significantly from the plane of the original exterior wall on the north side of the house. The Center felt that the new addition to the rear marked a major change to the northwest portion of the house, amounting to a permanent loss of essential form and integrity of the historic resource. Finally, the Center concluded that the plans and work ran contrary to the guidelines for exterior additions to historic buildings, as discussed in detail in the National Park Service's Preservation Brief 14.

#### **B. Appellant's Claims and Responses to Center's Determinations**

The appellant's claim of appeal was dated September 4, 2002. The hard-copy appeal, including attachments, was received September 9, 2002.

In the appeal, the appellant advanced several arguments for reversal of the Center's determination. He first argued that certain features differentiate the new gable addition from the existing house. However, the appellant acknowledged that the drawings he submitted with his Part 2 application may not have made the distinctions readily apparent.

The appellant secondly argued that while the cross-gable wing is a new feature of the north elevation of the house, it nevertheless appears appropriate for his house. The appellant specifically contended that the existing gable wing is higher than the

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<sup>3</sup> This decision was also issued in keeping with the time requirements specified in MCL 8.6.

addition and has a prominent bay window on the ground floor which is a feature that draws a viewer's eye.

The appellant further argued that the change to the northwest corner of the house was not inappropriate for the house. The appellant wrote that the essential form and historic integrity of the house were preserved, because the existing foundation was left in place, making all changes reversible. The appellant added that, in his view, the cross-gable's height, window treatments and siding were also appropriate for the house, in that they met the appellant's own interpretation of the U.S. Secretary of the Interior's Standards for Rehabilitation.

The appellant also argued that the new gable is characteristic of the existing historic house but is sufficiently differentiated to make clear that it is new. He added that a concern was making the addition too different from the existing house. He also wrote that although he wanted to increase living space, he did not want to consume valuable back-yard area.

The appellant additionally argued, as supported by a letter from his architect, Ed Wier, that the Secretary of Interior's Standards for this rehabilitation project were met, once the Ann Arbor Historic District Commission had issued a positive determination for the project.

The appellant lastly argued that the historic character of a historic home should evolve, so that it might comfortably serve a growing 21<sup>st</sup> Century family, with enough flexibility to meet the needs of future inhabitants of this historic house.

**C. Center's Reply to Claims**

In a memorandum dated September 18, 2002, the Center, through Brian D. Conway, State Historic Preservation Officer, replied to the appellant's claims, reiterating the Center's view that the new addition does not comport with the U.S. Secretary of the Interior's Standards. The Center pointed out that the appellant did not include photographs or revised drawings that effectively showed the peak of the gable ridge of the roof addition. The Center further noted that no photographs or drawings showed that the bottom edge of the fascia was significantly lower than the same features on the existing main gable. The Center added that the appellant failed to include any

additional photographs sufficient to prove that the new gable was lower than the main ridgeline. The Center commented that a difference of 6 inches below the main ridge does not represent enough of a height difference to distinguish the addition.

The Center next cited an absence of photographs sufficient to demonstrate the lack of ornament on the new cross-gable wing. This, in the Center's view, made the visual comparison and evaluation of the difference between the existing and the new gable virtually impossible. The Center also argued that appellant's photograph number 6 did not accurately reflect the heights of the roof lines, because the rear wing of the house was also set back further from the wall plane of the front wing of the house. The appellant's drawing of the addition highlighting the south elevation shows the line of the fascia addition to be of the same height as the line of the fascia on the existing front wing.

The Center lastly argued it has made a concerted effort to inform all property owners applying for state tax credits that local district commission approval does not guarantee project approval for state credits. The Center added that every property owner should submit his or her application for certification to the Center before beginning any project work. The Center proffered evidence showing that the Ann Arbor Historic District Commission approved the project on February 14, 2002, but that the Center did not receive the appellant's state tax credit application until May 6, 2002, almost three months later.

#### **Summary of Information and Other Materials**

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

Rule 9(2) requires that:

All information, records, and other materials that the appellant wants considered shall accompany the written appeal.

In addition, rule 9(3) provides:

The [chief appeals] officer shall consider the center's file, all written submissions from the appellant, all pertinent standards and guidelines affecting the historic resource, and any other available information, but shall not conduct a hearing.

The information and other documentary materials submitted by the appellant and otherwise made available for consideration in this case are:

(1) Historic Preservation Certification Application, filed May 6, 2002, consisting of: the Declaration of Location; Part 1 – Evaluation of Eligibility; and Part 2 – Description of Rehabilitation, including:

(a) Six black and white drawings which describe the appellant's property; its foundation plan; its first, second, and third floor plans (existing and proposed); the exterior elevation of the house highlighting the north and west elevation of the new addition, and the expansion of the house to the rear and the new roof; and a new kitchen plan.

(b) Six colored photographs of the existing kitchen labeled as photograph 8 through 14.

(c) The Application for Building Permit, a copy of applicable regulations, as well as a historic architecture survey labeled as pages A-4-2 through A-4-4.

(d) A letter of determination from Ann Arbor's Historic District Commission dated February 15, 2002.

(e) A plan of the property at 614 South First Street.

(f) A map of downtown Ann Arbor, showing the district and 614 South First Street.

(g) A photocopy of a product guide for Andersen 400 series tilt-wash double-hung windows and features.

(2) A Denial of Historic Preservation Certification dated July 8, 2002.

(3) Appellant's written appeal dated September 4, 2002.

(4) Eight total photographs, consisting of six color photographs of the appellant's home, numbered 1 through 6, which accompanied the appellant's written appeal, and

two black and white photographs featuring compatible and incompatible stair tower additions.

(5) A letter from Edwin R. Weir, appellant's architect, dated September 6, 2002.

(6) A letter from H. Scott Diels, Chair of the Ann Arbor Historic District Commission, dated August 29, 2002.

(7) A copy of the Ann Arbor Historic District Commission's determination dated February 15, 2002.

(8) A memorandum from Brian Conway dated September 18, 2002.

(9) Two drawings, one of the first floor plan and the other of the exterior elevation of the subject property.

(10) Photocopies of Preservation Brief 14 and another federal publication, *New Additions to Historic Buildings*.

(11) Copies of various e-mails between staff members of the Center, the appellant, and the City of Ann Arbor's Historic Preservation Coordinator, including an e-mail from the Historic Preservation Coordinator, Heather R. Edwards, MSHP, explaining how the Commission informs property owners about the fact that Commission approval does not guarantee eligibility for state tax credits.

### **Factual Background**

#### **A. Old West Side Historic District**

1. The City of Ann Arbor's "Old West Side" district was listed in the National Register of Historic Places in 1972.<sup>4</sup>

2. The Ann Arbor City Council established the "Old West Side Historic District" under the provisions of Michigan's Local Historic Districts Act in 1978.<sup>5</sup>

3. The district is a very large historic residential area containing some 1500 buildings, primarily single-family houses, dating from the 1830s to the 1930s.<sup>6</sup>

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<sup>4</sup> Old West Side, Historic District Study Committee, Preliminary Report, July 12, 1990, p 3.

<sup>5</sup> id., p 4.

<sup>6</sup> Nomination of Old West Side Historic District for entry in National Register of Historic Places, dated May 24, 1991, section 7, p 1.

4. The most common type of building found in the district is a gable-front house built between the end of the 19<sup>th</sup> Century and the beginning of the 20<sup>th</sup> Century.<sup>7</sup>

5. The houses in the district are mostly vernacular and modest in scale, consisting primarily of gable-fronted, 1½ to 2-story single-family dwellings.<sup>8</sup>

6. The district contains a concentration of well-preserved houses of working-class families of modest means, dating from the 1880s to the 1920s.<sup>9</sup>

7. The district is especially important in architectural terms for its blocks of handsomely preserved modest, uniform-scale workers' houses dating from the mid-19<sup>th</sup> to the early 20<sup>th</sup> Centuries.<sup>10</sup>

8. The district's lots are typically narrow and deep. Its detached single-family dwellings manifest a similarly narrow and deep form, predominated by front-gabled structures.<sup>11</sup>

**B. 614 South First Street**

9. The property designated as 614 South First Street in Ann Arbor is located within the district.<sup>12</sup>

10. The house on the property was built in 1900 and was originally designed for use as a private residence for Andrew E. Dupslaff. The house was first listed in the Ann Arbor City Directory in 1902.<sup>13</sup>

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7 id., section 8, p 8.

8 id., section 7, p 2.

9 id., section 8, p 1.

10 id., section 8, p 8.

11 id., section 8, p 8.

12 Historic Preservation Certification Application, Declaration of Location.

Also, p 139 of the Realty Atlas for Washtenaw County, Michigan published by TRW REDI Property Data, and the map of Ann Arbor Historic Districts, dated June 11, 1997.

13 Historic Preservation Certification Application, Declaration of Location.

Also, p 139 of the Realty Atlas for Washtenaw County, Michigan published by TRW REDI Property Data, and the map of Ann Arbor Historic Districts, dated June 11, 1997.

11. The house features a full-length, wrap-around porch with simple round columns, simple bargeboard trim in gable, and flat window trim.<sup>14</sup>

12. The house's foundation is constructed of stone. The windows are original style, one-over-one double-hung sash.<sup>15</sup>

13. The house style is an example of vernacular Queen Anne architecture.

14. The house is typical of the size and style of the residences built in the district at the turn of the 20<sup>th</sup> Century.<sup>16</sup>

15. Until recently, the interior of the house was largely unaltered from its original configuration, with the exception of its conversion to a 2-unit rental structure in approximately 1937. The 2-unit conversion included the following alterations: a) the addition of a small bathroom off the first floor kitchen, b) constructing stairs to the second story unit, also off the first floor kitchen, c) removal or relocation of at least one wall upstairs, and d) covering the original bevel wood siding with particleboard and asphalt shingle-like tile.<sup>17</sup>

16. The house has been occupied as a single-family residence since about 1998.

17. The house is a contributing historic resource in the district.<sup>18</sup>

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14 Historic Preservation Certification Application, Declaration of Location.

Also, p 139 of the Realty Atlas for Washtenaw County, Michigan published by TRW REDI Property Data, and the map of Ann Arbor Historic Districts, dated June 11, 1997.

15 Historic Preservation Certification Application, Declaration of Location.

Also, p 139 of the Realty Atlas for Washtenaw County, Michigan published by TRW REDI Property Data, and the map of Ann Arbor Historic Districts, dated June 11, 1997.

16 *id.*, Declaration of Location.

17 Historic Preservation Certification Application, Declaration of Location.

Also, p 139 of the Realty Atlas for Washtenaw County, Michigan published by TRW REDI Property Data, and the map of Ann Arbor Historic Districts, dated June 11, 1997.

18 *id.*, Declaration of Location.



18. The house is currently owned and occupied by Tassos H. Valtadoros and Wendy Valtadoros, husband and wife.<sup>19</sup>

**C. Addition to 614 South First Street**

19. In early 2002, the owners hired an architect, Ed Wier, and filed a request with the Ann Arbor Historic District Commission for permission to erect a two-story addition to the rear and north elevation of the existing house.

20. The proposed addition was designed to include a new nook and laundry with a renovated kitchen and bath on the first floor, and a new bath and an expanded bathroom on the second floor. The owners also planned to add a second-story side-gable wing on the north side of the house.

21. Preservation Coordinator Heather Edwards issued a staff report concerning the request on February 5, 2002. The report noted that "staff recommends approval."

22. The Ann Arbor Historic District Commission met and approved the proposed work on February 14, 2002 and sent the owners written confirmation of that approval on February 15, 2002. At about this time, the Commission reiterated to the owners that the Commission's approval did not guarantee eligibility for tax credits.

23. The owners then constructed their desired addition. In the course of doing so, they raised the roof on the rear of the house, changing that portion of the home from a 1½-story to a 2-story wing. They also moved part of the foundation 3 feet.

24. On May 6, 2002, the owners filed a Historic Preservation Certification Application with the Center, including Part 2 which concerns the adequacy of plans and specifications. Part 2 approval is a prerequisite for a taxpayer to claim eligibility for a state income tax credit under section 266 of the Income Tax Act.<sup>20</sup>

25. At the time the application was filed with the Center, all project work had been substantially completed.

26. On July 8, 2002, the Center sent the appellant a written Denial of Tax Credit Certification. This denial stated that the proposed new building addition was not in

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<sup>19</sup> id.

<sup>20</sup> 1967 PA 281, as amended; MCL 206.266.

conformance with federal Standards, and in particular with Standards 9 and 10 of the Secretary of the Interior's Standards for Rehabilitation of historic buildings.<sup>21</sup>

27. Tassos H. Valtadoros subsequently filed a request for review.

#### **Discussion and Conclusions of Law**

Section 266 of the Income Tax Act provides for the possibility of an income tax credit for a portion of a taxpayer's "qualified expenditures" made to rehabilitate a "historic resource". Preconditions for tax credit eligibility are certifications from the Center that rehabilitation plans and rehabilitation work both comport with rehabilitation standards promulgated by the U.S. Secretary of the Interior. Regarding eligibility, section 266(3)(a)(ii) of the Income Tax Act provides:

(3) To be eligible for the credit under this section, the taxpayer shall apply to and receive from the Michigan historical center certification that the historic significance, the rehabilitation plan, and the completed rehabilitation of the historic resource meet the criteria under subsection (6) and either of the following:

(a) All of the following criteria:

(i) The historic resource contributes to the significance of the historic district in which it is located.

(ii) Both the rehabilitation plan and completed rehabilitation of the historic resource meet the federal secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, 36 C.F.R. 67.

(iii) All rehabilitation work has been done to or within the walls, boundaries, or structures of the historic resource or to historic resources located within the property boundaries of the resource.

(b) The taxpayer has received certification from the national park service that the historic resource's significance, the rehabilitation plan, and the completed rehabilitation qualify for the credit allowed under section 47(a)(2) of the internal revenue code.

#### **A. Compliance with Federal Rehabilitation Standards**

Before addressing any of the issues raised by the appellant, it is first useful to consider the threshold question of whether the Center erred by determining that the

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<sup>21</sup> 36 C.F.R. 67.7(b)(9) and (10).

appellant's plans for side gables failed to comport with the Interior Secretary's Standards for Rehabilitation.

In 36 C.F.R. 67.7, subsection (b), the Secretary of the Interior promulgated ten standards to govern the rehabilitation of historic resources. Two of the standards, Nos. 9 and 10, expressly address new additions and 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.

(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.

Also of note is 36 C.F.R. 67.7, subsection (a), which states that the ten standards enumerated in subsection (b) "are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation." Subsection (a) additionally states:

To be certified, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.

Besides the ten standards, it is also important to take note of related guidelines that the U.S. Secretary of the Interior issued to explain and implement the standards. Among those is a set governing "New Additions to Historic Buildings."<sup>22</sup>

The "new additions" guidelines point out that an attached addition may sometimes create a new profile for a historic building which radically changes the building's historic appearance. However, the guidelines go on to state that new additions should not radically change or obscure the character-defining features of a

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<sup>22</sup> The Secretary of the Interior's Standards for Rehabilitation & Illustrated Guidelines for Rehabilitating Historic Buildings, U.S. Department of the Interior (Reprinted 1997), pp 89-93.

historic building. In this regard, the guidelines posit that any new addition should be clearly differentiated from the original historic resource, so that the addition does not appear to be an original part of the resource.

Among the guidelines' more significant "recommendations" are the following:

Constructing a new addition ... so that character-defining features are not obscured, damaged, or destroyed.

Locating the attached exterior addition at the rear or on an inconspicuous side of a historic building; and limiting its size and scale in relationship to the historic building.

Designing new additions in a manner that makes clear what is historic and what is new.<sup>23</sup>

Specifically, the guidelines highly recommend that new additions "always be clearly differentiated from the historic building."<sup>24</sup>

Conversely, the guidelines identify work "not recommended" on historic resources, such as:

Attaching a new addition so that the character-defining features of the historic building are obscured, damaged or destroyed.

Designing a new addition so that its size and scale in relation to the historic building are out of proportion, thus diminishing the historic character.

Using the same wall plane, roof line, cornice height, materials, siding lap, or window type to make additions appear to be a part of the historic building.<sup>25</sup>

Also of note is 36 C.F.R. 67.6(b)(1), which provides:

(1) All elements of the rehabilitation project must meet the Secretary's ten Standards for Rehabilitation (Sec. 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted.

Finally, 36 C.F.R. 67.7(e) indicates in pertinent part that:

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<sup>23</sup> *id.*, p 91.

<sup>24</sup> *id.*, p 92.

<sup>25</sup> *id.*, pp. 91 and 92.

(e) Prior approval by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes.<sup>26</sup>

On July 8, 2002, the Center's staff issued a written determination that the addition to the residence at 614 South First Street failed to comply with Standards 9 and 10 promulgated by the Secretary of the Interior. Based on that determination, the Center denied the Appellant's application for historic preservation certification.

**1. Compliance with Standard 9**

Standard 9 requires that new additions be "differentiated from the old" structure. Standard 9 also requires that new additions be "compatible with the massing, size, scale, and architectural features" of the historic building, in order to "protect the historic integrity of the property and its environment."

The guidelines implementing this standard recommend that new additions be located at the rear or on an inconspicuous side of a historic building. The guidelines also recommend that additions be limited in size and scale in relation to the historic building and that they be constructed in a manner that makes clear what is historic and what is not. Moreover, in order to avoid making a new addition appear to be a part of a historic building, the guidelines indicate that any new addition should not use the same wall plane or roofline as the historic building.

The appellant's rehabilitation project involves a major addition to his historic house. Significantly, the new cross-gable portion of the addition is located on the street side, *i.e.*, on a conspicuous side, of the historic building. Furthermore, the addition, when viewed as a whole, is quite substantial in size and scale in relation to the historic house. And, although the new addition does not use exactly the same wall plane as the historic building, the new addition's height and roofline are deceptively similar to those of the historic building, as seen from the street.

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<sup>26</sup> 36 C.F.R. 67.6(a)(1) provides: "Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk." The rehabilitation project under review was undertaken and virtually completed prior to the adoption of Michigan's Historic Preservation Certification rules, which took effect on April 27, 2000. However, section 266 of the Income Tax Act of 1967, which requires certifications by the Center, became effective on January 19, 1999.

The appellant's failure to follow the guidelines has resulted in making the cross-gable appear to be part of the historic building. In contravention of the guidelines, the new cross-gable has been constructed in a manner that does not make clear what is historic and what is new. Due to its substantial size, the completed addition is incompatible with the simpler massing, size, and scale of the historic building. A historic building of simple mass and modest size has been transformed into a contemporary structure of substantially larger size and more complex mass. The addition has succeeded in turning a historic house into a large modern residence. Although the addition clearly constitutes an improvement to the house, the project did not succeed as a rehabilitation of a historic building, as contemplated by the Secretary of the Interior's Standards for Rehabilitation.

In summary, the completed work contravenes the requirements of Standard 9 of the Interior Secretary's Standards for Rehabilitation.

## **2. Compliance with Standard 10**

Standard 10 expressly requires that "(t)he historic character of a property shall be retained." The standard further requires that new additions and adjacent or related new construction shall be undertaken in such a manner that if removed at some point in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The new addition to the historic house makes a major change to the northwest corner of the building. The owners have added a cross-gable bathroom wing which protrudes significantly from the plane of the original exterior wall on the north side of the house. The raised roof on the rear wing of the house changed it from a 1½-story wing to a 2-story wing, visually changing the relationship between the rear wing of the house and the main house structure, which consists of a 2-story gable front. Moreover, the owners expanded the foundation of the house on the north side by some 3 feet. Thus, the essential form and integrity of the historic resource has been lost due to the completed addition. The addition is not reversible and significantly changed the home's character and visual appearance, as is clearly shown by the submitted site plan, in contravention to Standard 10.

Standard 10 further requires that each rehabilitation project must be consistent not only with the character of a restored historic building but also with the character of the historic district in which the building is located. The district, the Old West Side, is important for its handsomely preserved, modest uniform-scale houses dating from the mid-19<sup>th</sup> to the early 20<sup>th</sup> Centuries. These houses are mostly vernacular and consist primarily of gable-fronted 1½ to 2-story single-family dwellings. The appellant's residence at 614 South First Street has been a contributing resource to the historic character of the district. Prior to the addition, the architectural detail of the appellant's residence and its rich historical heritage blended consistently into the rich historical character of the district. With the addition, this consistency has been lost.

The appellant's project effectively changed the massing, size, and scale of the historic house. A house of simple mass and modest size was transformed into a contemporary structure of substantially larger size and more complex mass. While the restoration project succeeded in updating and upgrading the house as a modern residence, it also succeeded in irreversibly turning an old historic home into a structure with more contemporary style and mass, in contravention to Standard 10 of the Secretary of the Interior's Standards for Rehabilitation.

**B. Appellant's Issues on Appeal**

As indicated earlier in this decision, the appellant advanced several arguments in support of his contention that the Center should have certified his plans for rehabilitating the historic house.

**1. Differentiation of Features**

The appellant first argued that the addition can be visually differentiated from the existing historic house, as evidenced by the fact that the side-gable portion is significantly subordinate to the existing cross-gable. The appellant submitted new photographs to support this contention.

The appellant's initial argument is essentially a counter-argument to the Center's original finding of July 8, 2002. Therein, the Center found that raising the roof on the rear wing of the appellant's house had changed the home's visual aspects significantly, transforming the house from a 1½-story structure to a 2-story structure. Moreover, this

change was not, according to the Center, accomplished with the requisite differentiation between the new work and the original structure. The Center further concluded that the fascia board for the rear wing had become a continuation of the fascia board on the 2-story portion of the house, making the rear wing indistinguishable as an addition to the original structure.

The appellant's first ground for relief must be deemed without merit. As stated previously, parties in the position of an appellant bear the burden of proof in proceedings such as this. The appellant's original drawing, as submitted with his application and as appearing in the appeal record, does not make clear that the new side gable addition is significantly subordinate to the existing cross gable. The appellant admits that this evidence does not support his argument. Thus, the Center correctly concluded in July that differentiation was lacking, based on the available evidence as furnished by the appellant at that time.

In attempting to address this informational deficiency, the appellant has submitted eight new photographs in support of his appeal. He argues that some of these pictures prove that the fascia on the new addition is significantly lower than, and hence can easily be differentiated from, the original historical house. He argued that photograph 1, taken from the viewpoint of an approaching walker from the north side of the house, illustrates this distinction. Unfortunately, this photograph, along with photograph 6, do not effectively show the heights of the rooflines, because the rear wing of the house is set back further from the wall plane of the historic structure, making the new roofline appear lower than what it in fact may be. On the other hand, the photographs highlight the actual massiveness of the addition, making clear that the addition visually competes with the original historic house.

This visual competition runs contrary to the guidelines, as detailed by the Department of Interior in its "Preservation Brief: 14, New Exterior Additions to Historic Buildings." On page 4, the preservation brief indicates:

To meet National Park Service preservation standards, a new addition must be 'compatible with the size, scale, color, material and character' of the building to which it is attached or its particular neighborhood or district....



But an addition that bears no relationship to the proportions or massing of the historic building -- in other words, one that overpowers the historic form and changes the scale will usually compromise the historic character as well.

In this case, the submitted photographs show that the new addition overpowers the historic form of the original historic house. As a result, the appellant's first argument is rejected.

## **2. Addition of Appropriate Cross-Gable Wing**

The appellant next argued that the cross-gable bathroom wing is an appropriate new feature of the north elevation of the house. The appellant contends that the existing cross-gable wing is higher and has a prominent bay window on the ground floor. According to the appellant, this fact makes it a more prominent feature and draws a viewer's eye before the new wing. The Center stated in its determination letter that the new cross wing gable protrudes significantly and inappropriately from the plane of the exterior wall of the house. The Center added that the height and width of the new cross wing gable make it a prominent feature on the north side of the house, rivaling the original historic cross-gable.

The appellant's evidence focuses on the prominence of the bay window feature on the ground floor of the new addition. This very factor undermines the appellant's argument because it shows that the new addition overpowers the historic form of the historical building, contrary to well established Department of Interior guidelines discussed in Preservation Brief 14, quoted above. Appellant's submitted photograph 1 unmistakably depicts the massive structure of the addition, making it clear that the new addition is visually competing with the existing historical structure. This is the very reason the Center denied appellant's application.

The Center's position is well-founded and thus, the appellant's second ground for relief must also be deemed without merit.

## **3. Irreversible Changes**

The appellant additionally claimed that the new addition does not represent irreversible change, because the foundation of the historical home was not altered. As

a result, the appellant argued that all changes to the historical structure are reversible and the essential form and historical integrity of the home have been preserved. This argument is meritless.

First, the evidence submitted on appeal contradicts the appellant's assertion that the foundation of the home was not altered. Both drawing 1, being page A-4-5 of the original application to the Center, as well as the recently submitted photographs, attest to a 3-foot change in a portion of the house's foundation, as well as its essential form and historic integrity. Drawing 1, dated February 1, 2002, clearly shows a change in the outline and hence the foundation of the house. Removal of the addition would unquestionably be a highly problematic undertaking.

Once again, the appellant bears the burden of demonstrating any factual propositions he has asserted. It is his own documentation that shows an alteration in the house's foundational footprint.

Thus, the Center appropriately concluded that the changes to the northwest corner of the building compromised the historical integrity and form of the home. For this reason, the appellant's third argument must also be rejected.

#### **4. Historic Versus New**

The appellant also argued that the changes he made to the existing house make it clearly possible for any viewer to ascertain what makes up the new addition and what is part of the historic home. The Center concluded that the appellant's addition, with its choice of materials and similar elevation to the original structure, confused the authenticity of the historic resource itself.

The appellant's addition to the historic house is problematic. The mass of the new gable addition, and the similarity of the materials used in its construction, makes it difficult if not impossible to ascertain which part is new and which portion is part of the original structure. The appellant chose to expand without a connector to the new addition, clearly compromising the historical integrity of his residence.

The submitted evidence that accompanied the appellant's claim of appeal clearly shows that he contemplated constructing an entirely new wing, and then connect it to the existing house. He decided not to proceed with this option because a connected

new wing would not fit in with the character of the house. This is, however, what the Department of Interior's guideline in Preservation Brief 14, on page 4, contemplate:

...using the same wall plane, roof line, cornice height, materials, siding lap, and window type in an addition can easily make the new work appear to be part of the historic building. If this happens on a visible elevation, it becomes unclear as to which features are historic and which are new, thus confusing the authenticity of the historic resource itself.

The Center appropriately concluded that the new addition's massing, materials, and visual impact compromised the historical authenticity and form of the historic home. It is visually impossible to determine whether the new addition is an original part of the historical home.

For this reason, the appellant's argument must be rejected.

**5. Local District Commission Approval**

The appellant additionally argued that the Ann Arbor's Historic District Commission's determination of approval dated February 15, 2002 and the letter of support authored by the Chair of Ann Arbor's Historic District Commission on August 29, 2002, should warrant that the project is consistent with the Secretary of Interior's Standards for Rehabilitation.

This argument too must be rejected. The primary criteria for tax credit eligibility involve certifications from the Center that both restoration plans and restoration work comport with the U.S. Secretary of the Interior's Standards. As indicated above, section 266(3) of the Income Tax Act provides that to be eligible to receive a credit under the Income Tax Act, the taxpayer must apply to the Michigan Historical Center for three certifications and then receive each of those certifications from that agency. In other words, only the Center is legally authorized to furnish certifications for tax credit purposes.

Significantly, parallel federal regulations support the proposition that the only agency whose judgment will justify tax credit certification is the agency charged with the legal responsibility for making those judgments. Regarding comparable federal income tax credits for historic restoration projects, 36 C.F.R. 67.7(e) advises that:

(a) Prior approval by Federal, State and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes.

In a similar fashion, prior approvals by State and local agencies regarding historic preservation activities do not ensure tax credit certification by the Michigan Historical Center.

Additionally, the Center has made a concerted effort to inform property owners who might some day apply for state tax credits that project approvals from local historic district commissions do not guarantee that plans and work will be approved by the Center. The Center has stressed that all such property owners should submit their applications for certification to the Center, before beginning any project work. The Center proffered uncontroverted evidence, in form of an e-mail from the Commission's Historic Preservation Coordinator, showing that Ann Arbor's Historic District Commission informed the applicant at time of review that its approval does not guarantee state credit. Moreover, the evidence shows that while the Commission considered and approved the project on February 14, 2002, the Center did not receive the appellant's state tax credit application until May 6, 2002, some three months after the project work began.

As a result, the appellant's argument must be rejected.

**6. Incentive for Historic Preservation Credit**

The appellant lastly argued that the Center should have approved his application because Michigan historic income tax credits are designed to motivate property owners to do the right thing with a financial incentive; and more specifically to make thoughtful, characteristic additions to historic resources. He added that his addition and the overall renovation should fulfill the needs of a growing family and will be appreciated even in the next century by future owners of the same historic home.

In 1998, the Legislature passed two bills (SB 105 and 106), each adding a new section of law to the Income Tax Act<sup>27</sup> and the Single Business Tax Act,<sup>28</sup> respectively. According to the Senate Fiscal Agency bill analysis for SB 105 and 106, dated April 22,

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27 1998 PA 535; MCL 206.266.

1998, the purpose of the proposed amendments was to offer the owners of residential and commercial historic structures State tax credits for a portion of qualified restoration expenses, as an incentive to undertake historic restoration work on their properties. The analysis contained the comment that rehabilitation work stimulates local economies, revitalizes local tax bases, preserves historic cultural landmarks, and restores the character of neighborhoods.

Significantly, the analysis went on to say that State tax credits should be made available only "under strict qualification requirements" and that taxpayers, to be eligible for such credits, would have to apply to the Center for (and receive) three certifications:

1) a certification of a structure's historic significance, 2) certification that rehabilitation plans and specifications comport with historic preservation standards promulgated by the U.S. Secretary of the Interior, and 3) certification that all completed work comports with approved plans and specifications.

The structural changes completed by the appellant clearly accomplished the twin goals of ensuring present comfort for a growing family and modernizing the home for future residents. Nevertheless, the project work does not technically (or even approximately) comport with the historic preservation standards promulgated by the Interior Secretary. The fact that the appellant spent money on non-conforming work, that his re-modeling efforts added value to the house, or that residents may feel more comfortable now and in the future, do not in and of themselves bring the project into compliance for State tax credit purposes.

Accordingly, the appellant's last argument for reversal must also be rejected.

#### **Summary of Decision**

Rule 9(5) indicates in pertinent part that:

(5) When considering an appeal, the chief appeals officer shall assess alleged errors in professional judgment and other alleged prejudicial errors of fact or law. The officer may base a decision in whole or in part on matters or factors not addressed in the appealed decision. When rendering a decision, the officer may do 1 of the following:

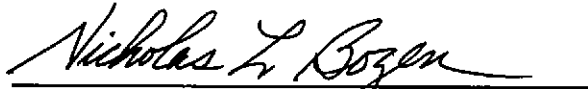
- (a) Reverse the appealed decision.
- (b) Affirm the appealed decision.
- (c) Resubmit the matter for further consideration.<sup>29</sup>

Section 266 of the Income Tax Act, supra, provides a tax credit for "qualified expenditures" made for the rehabilitation of a "historic resource". In order to qualify for the tax credit, the Center must certify that a rehabilitation project comports with the U.S. Secretary of the Interior's Standards for Rehabilitation. The appellant filed an application for historic preservation certification with the Center in order to qualify for the State tax credit. The Center denied certification, determining that the appellant's rehabilitation project contravened Standards 9 and 10.

As authorized by rule 9, the appellant filed an appeal of the Center's denial of certification. The appellant's application for historic preservation certification under the Income Tax Act has been reviewed. Re-examination of appellant's rehabilitation project confirms the Center's finding that the appellant's rehabilitation project contravenes Standards 9 and 10. The Appellant's arguments have all been found to lack substantial merit.

Accordingly, the Center's decision is AFFIRMED.

Dated: November 12, 2002

  
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Nicholas L. Bozen (P11091)  
Chief Appeals Officer

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