

**STATE OF MICHIGAN**  
**MICHIGAN DEPARTMENT OF STATE**  
**HEARINGS DIVISION**

**MAX AND CLEO BAILEY,**  
Applicants/Appellants,

v

Docket No. 95-440-HP

**ADRIAN STATE STREET - DENNIS STREET**  
**HISTORIC DISTRICT COMMISSION,**  
Appellee.

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**FINAL DECISION AND ORDER**

This matter involves an appeal of a decision of the Adrian State Street - Dennis Street Historic District Commission denying an application to install vinyl siding on the dwelling at 304 Dennis Street, Adrian, Michigan.

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

At the direction of the Board, an administrative hearing was held on November 1, 1995, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on May 16, 1996, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of Michigan Compiled Laws.

The Board fully considered the appeal, along with the Proposal

for Decision and all materials and any exceptions submitted by the parties, at its regularly scheduled meeting conducted on Friday, June 7, 1996.

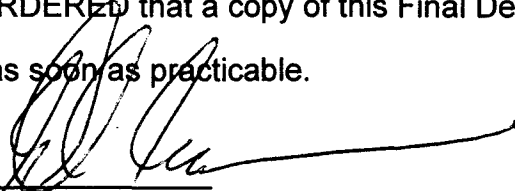
Having considered the Proposal for Decision and the official record made in this matter, the Board voted 3 to 0, with 1 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board, and to incorporate the Proposal into this document; and,

Having done so,

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

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

Dated: 6/7/96

  
David Evans, President  
State Historic Preservation  
Review Board

Note: Section 5(2) of the Local Historic Districts Act provides that a person 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 mailing notice of the Final Decision and Order. In addition, MCR 2.105(G) and 7.205 may prescribe other applicable rules with respect to appeal of decisions of administrative agencies.

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Appellee.**

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**PROPOSAL FOR DECISION**

This matter involves an appeal of a decision of the Adrian State Street - Dennis Street Historic District Commission (the Commission) denying an application to install vinyl siding on the dwelling at 304 Dennis Street, Adrian, Michigan. The property is located within the confines of the Adrian State Street - Dennis Street Local Historic District (the District).

The appeal was filed 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 to the State Historic Preservation Review Board (the Board), which is an agency of the Michigan Department of State.

Upon receipt of the appeal, the Board directed the Michigan Department of State, Hearings Division, to convene an administrative hearing for the purpose of taking relevant evidence and argument. The Hearings Division conducted a hearing on Wednesday, November 1, 1995, in Hearing Room No. 123, the Mutual

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<sup>1</sup> 1970 PA 160, Section 5, as amended by 1992 PA 96; MCL 399.205; MSA 5.3407(5).

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>

The Appellants, Max and Cleo Bailey, personally appeared at the hearing. John D. Baker, Attorney at Law, of the Baker and Glaser law firm of Adrian, Michigan, appeared on behalf of the Appellants. The Commission/Appellee was represented by Dane C. Nelson, Attorney at Law, of the law firm of Baker, Durst, Nelson, Benz and Baldwin of Adrian, Michigan. Gary W. Brasseur, Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Brian Conway, Architectural Coordinator, State Historic Preservation Office, Michigan Historical Center, appeared as an observer/representative on behalf of the Board.

#### Issues on Appeal

By letter dated August 21, 1995, the Appellants appealed a decision of the Commission rendered on June 21, 1995. The decision denied the Baileys' application to install vinyl siding on their home at 304 Dennis Street, Adrian.

Appellants advanced three grounds for their appeal. They first asserted that the Commission's decision should be set aside because the Commission did not thoughtfully consider their application in accordance with historic rehabilitation standards set forth in the Act. The Appellants further argued that vinyl

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

siding has been installed on several other homes in the District, that the integrity of the historic district would not be compromised by permitting the installation of vinyl siding on their home, and that they should be entitled to the same treatment as the other homes. Appellants lastly asserted that it would be an undue financial hardship to require them either to maintain their home with wood surfaces, or in the alternative, to replace all of the home's exterior surfaces with new wood.

#### Summary of Evidence

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

Section 5(2) of the Act, supra, indicates that appellants may submit all or part of their evidence and argument in written or documentary form. In that vein, the Appellants submitted five multi-part exhibits. Appellants offered 13 photographs which showed views of various parts of their home at 304 Dennis Street and depicted the condition of exterior surfaces; 17 photographs depicting buildings before and after a home improvement company, Michigan Building Specialities, had installed vinyl siding; a photograph of the church located at 229 Dennis Street; photographs

of four vinyl-sided homes located on Dennis Street and one vinyl-sided home on State Street; and two paint samples (chips) taken from the exterior surfaces of the Baileys' residence.

The Appellants also presented testimony from three witnesses. Barry Garrow of Michigan Building Specialities testified that he conducted an inspection of the Baileys' home. He said he prepared an estimate concerning the work they wanted done. Garrow stated that he was familiar with the District. Garrow further testified that painting the Baileys' home was an option; however, painting would first require extensive wood repair. Garrow indicated that a general estimate for repair of the wood and painting would be \$60,000 to \$70,000 or about double the final cost for installing vinyl siding. Garrow took several photographs of the Baileys' residence. Using the photographs as a reference, Garrow generally described the extent of damage and decay to the structure. In Garrow's opinion, repairing the wood surfaces and painting the repaired house involved much more than just replacing a few boards and applying one coat of paint.

Although Garrow prepared three different estimates for the Baileys, the estimate that he recommended provided for keeping the structure architecturally correct but called for using manufactured products (vinyl) and painting the other areas. Garrow pointed out that the Baileys were very much concerned with maintaining the structure's appearance, including matching its current color. Garrow also indicated that when he made his presentation to the Commission at its June 21, 1995 meeting, he stressed that the

Baileys' home needed much more than just a coat of paint. Garrow's proposal provided for maintaining the integrity of the structure and would also give the Baileys a low maintenance home. Garrow estimated that the cost to install vinyl siding was \$35,000, plus additional money to cover any unforeseen difficulties.

Garrow indicated that he is not familiar with the U.S. Secretary of the Interior's Standards and Guidelines pertaining to wood exteriors. He asserted that wood was rarely used in restoration projects because of the costs. He felt that by using templates designed by manufacturers, he could reproduce the rosettes on the Baileys' home. Garrow also indicated that while vinyl is not as textured as wood, it does look like wood after the first coat of paint has been applied. Garrow stated that the Commission rejected his proposal based on its interpretation of the City ordinance. When Garrow offered to show the Commission photographs of other homes where vinyl siding had been installed, he said that the Commission's position was that it would not be influenced by what had been done using vinyl on other homes.

Garrow stated that he never gave the Baileys a formal estimate to repair and replace damaged wood surfaces and then apply the necessary coats of paint. Garrow also stated that when damaged wood surfaces are covered with vinyl, they do not deteriorate further because the surfaces are first covered with a perforated underlay which allows the wood to breathe.

James Brielmaier, the owner of Michigan Building Specialties, also testified on behalf of the Appellants. Brielmaier indicated

that he was familiar with the Baileys' restoration project and that he was also quite familiar with the District because he lived on State Street in Adrian between 1963 to 1968. Brielmaier further indicated that Michigan Building Specialties installed the vinyl siding on the Christian Science Church located at 229 Dennis Street. Brielmaier testified that based upon his experience, when wood is covered with vinyl or aluminum, there is very little value left to the wood underneath. He further testified that from a distance of 30 feet, no one can tell the difference between wood and vinyl siding. Brielmaier stated that if only a portion of the wood siding were replaced, it would be noticeable.

Brielmaier testified further that as far as he was concerned, the District could be divided into three sections which include: Dennis Street, State Street at the beginning of the District, and then everything else to the south. In Brielmaier's opinion, many buildings in the District were not well maintained because their owners did not have enough money for proper upkeep. It was Brielmaier's observation that since the area was designated as an historic district, the value of the homes in the District had increased.

Brielmaier testified further that he was not familiar with Secretary of the Interior's Standards. Brielmaier also indicated that although he did not prepare the actual estimates for the Baileys' project, he knew that manufactured siding can be obtained that will match the color and width of the current wood.

Cleo Bailey testified on her own behalf and said that before



the Commission meeting held in June of 1995, she went from neighbor to neighbor telling them about a plan to install vinyl siding on her home. She said that everyone on Dennis Street was in favor of her plan. Bailey stated that at the June Commission meeting, she told the commissioners that all of her neighbors had approved of her plan to install vinyl siding, although Dr. McGrath was the only neighbor who actually appeared at the meeting and spoke on her behalf.

Bailey testified further that rather than pay \$7600 every three years to have her house scraped, power washed and painted, she considered installing vinyl siding as an alternative. She stated that at the present time you can pull paint off her house, and when the paint comes off, the wood comes off too. She also stated that she has seen vinyl siding and considers it to be "neat and nice".

Bailey testified further that when she discussed installing vinyl, she focused on covering the entire house with vinyl. She indicated that she would not be interested in just re-siding the back part of her house with vinyl.

Bailey also testified that because the estimate to completely replace the existing wood with new wood would be \$60,000 to \$70,000, this would create a financial hardship for her and her husband because they are now in their late 70s and retired. Bailey testified that she wants the house to stay in her family.

The Commission submitted two exhibits in support of its decision. Those exhibits included: 1) a photo album containing 29

photographs of homes located in the District, including the Baileys' home at 304 Dennis Street, as well as five additional photographs of the Baileys' home; and 2) a copy of the Historic District Ordinance for the City of Adrian.<sup>3</sup>

The Commission also presented testimony from three witnesses. Cecilia Eldredge, Commission Chairperson, testified that she has lived in the District since 1977, has served three or four terms on the Commission, and has been the Commission's Chairperson since 1994. Eldredge stated that the District is composed of some "very grand homes" and some "modest" Greek revival houses. Eldredge briefly described the backgrounds of the persons currently serving on the Commission. She also related her view of what transpired during the Commission meeting held on June 21, 1995, when the Baileys' request to install vinyl siding was considered.

Eldredge described the Baileys' home as "the lead-off home" in the District, "a treasure", located within a few hundred feet of City Hall. Eldredge also described a few instances when installation of vinyl siding was permitted in the District. Additionally, Eldredge testified that no specific consideration was given to national standards when the Baileys' request was reviewed. As far as the Commission was concerned, the ordinance spelled out what was allowed.

Eldredge indicated that it was the "consensus" of the Commission to deny the Baileys' application to install vinyl

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<sup>3</sup> City of Adrian Ordinance 77-18.

siding. Eldredge pointed out that although Michigan Building Specialities estimated it would cost approximately \$80,000 to replace the wood siding on the entire house, when restoring an historic structure the rule is always that you never repair or replace any more material than is necessary.

With regard to the installation of vinyl siding on the house next door to the Baileys', i.e. 312 Dennis Street, which was once owned by First Federal Bank, Eldredge indicated that this house had a problem with formaldehyde contamination in the insulation. The exterior walls of the structure were removed to correct the problem, and when the walls were replaced the surface was covered with vinyl siding. She added that the final decision to permit installation of vinyl siding at 312 Dennis Street was decided by City Hall and First Federal Bank, not by the Commission. Eldredge also indicated that many things happened at City Hall that were beyond the control of the Commission.

With regard to the Major Bird House located at 450 Dennis Street, Eldredge stated that installation of vinyl siding was finally approved despite the initial general consensus of the Commission that vinyl siding was not appropriate. Eldredge related that Commissioner Clarke Baldwin made a persuasive appeal to allow vinyl siding with wood trim and eventually convinced the Commission to approve Bird's application.

Eldredge conceded that vinyl siding would make the Baileys' home essentially maintenance free; however, she added that vinyl siding would still not be appropriate. She also related how Dr.

Michael McGrath had appeared at the June 21, 1995 meeting and spoke on the Baileys' behalf about the virtues of the new vinyl materials. Eldredge stated that the Commission was told that as to color, just as with paint, matching can occur and that vinyl siding could be manufactured for the Baileys effectively matching the color currently on their home.

Eldredge also testified that as far as she knew, the church at 229 Dennis Street was not within the District. She indicated that not every home within the geographic confines of the District is a landmark and that Dennis Street includes a few real eyesores and also some rental units. Eldredge finished her testimony by stating that during the last few months, the Commission has become more aware of the Secretary of the Interior's Standards, and she asserted that whether the Commission considered the Baileys' application under the local ordinance or under the Secretary of the Interior's Standards, the decision would have been the same.

Patricia Cooper testified that she has resided in the District at 433 State Street, which is in the District, since 1983 and has been a member of the Commission for five years. Cooper stated that the District is an important part of the city. She also stated that a reference to the District can be found in AAA's literature.

With regard to the Baileys' application, Cooper stated that when the possibility of installing vinyl siding only on the back side of the house was discussed, Ms. Bailey's position was that vinyl would be installed on the whole house, or not at all.

Cooper indicated that she became aware of the federal

guidelines sometime after 1992. Cooper thought that the Commission did discuss those guidelines when the Baileys' application was considered. In her opinion, following the guidelines or the local ordinance amounted to the same thing. Cooper indicated that since 1992, she thought the state statute preempted the local ordinance. Cooper stated finally that the commissioners did the best they could.

Cleo Bailey was called as a Commission witness for the purpose of cross-examination. Bailey testified that she has lived at 304 Dennis Street for 57 years. At the meeting held on June 21, 1995, the Commission was told that the cost for repairing the wood siding would be \$60,000 and that the cost for vinyl siding would be \$38,000. Bailey said that she told the Commission that she had obtained permission from all of her neighbors on Dennis Street to install vinyl siding although only one neighbor, Dr. McGrath, actually attended the meeting. Bailey stated that she and her husband were tired of taking care of their old house. Regarding the cost, she said that they could afford to maintain their home but it hurt their budget. Bailey said that she wants the house to remain in the family, and she plans to eventually give it to her daughter.

#### **Findings of Fact**

Based upon the evidence submitted at the November 1, 1995 hearing, the facts of this matter are found to be as follows:

##### **A. Background Information**

1. The residence located at 304 Dennis Street, Adrian,

Michigan, is an impressive, ornate three-story structure.  
(Commission Exhibit No. 1)

2. Cleo Bailey, a co-owner of the property with her husband, Max Bailey, has lived at 304 Dennis Street for 57 years. She is 78 years old and is retired. Max Bailey is 79 years old and is also retired.

**B. The Adrian State Street - Dennis Street Historic District**

3. The Adrian State Street - Dennis Street Historic District was established sometime during 1977. The District contains 89 properties. Some of the properties contain multi-unit dwellings.

4. The District circumscribes a two-block area of homes, each with a center carriage house road. The District is bounded by Union Street on the north, railroad tracks on the south, State Street on the east, and Dennis Street on the west. Also included in the District is a building previously occupied by the Adrian Schools Board of Education.

5. With the exception of one property which has an East Church Street address, the remaining 88 properties in the District are located on either State Street (38 properties) or on Dennis Street (50 properties). Approximately two-thirds of the properties in the District are owner-occupied. Since the time the District was established, the value of its homes has increased.

6. The residence at 304 Dennis Street is located within the boundaries of the District. (Hearing Officer Exhibit Nos. 5 and 6)

7. The District consists of some very grand homes, some modest homes, and some structures that are "eyesores".

8. The Appellants' home at 304 Dennis Street has been well maintained and is clearly one of the finest homes in the District. (Commission Exhibit No. 1)

C. Cost of Maintenance Versus Cost of Repairs or Replacement

9. The cost to paint the exterior of the residence at 304 Dennis Street in 1992 was \$7600.

10. The estimated cost to cover the exterior surfaces of 304 Dennis Street with a manufactured vinyl product is \$38,000.

11. The estimated cost to replace all of the wood siding on the residence at 304 Dennis with new wood siding and repair or replace other exterior features as needed is approximately \$60,000 to \$70,000.

12. The estimated cost to repair and replace only those exterior surfaces of the residence at 304 Dennis that need repair or replacement and then apply the required coats of paint has not been determined.

13. The Baileys would not consider replacing only the wood siding on the back side of the house with vinyl. It was the Baileys' position that all of the wood siding would be replaced with vinyl, or none would be replaced.

14. Even though the residence at 304 Dennis Street has been well maintained, when viewed closely, the exterior wood surfaces are visibly in poor condition. Seepage has caused rot in the corner posts from the foundation up. There is decay where the vertical members and the horizontal belt line meet. (Appellants' Exhibit Nos. 1A - 1M)

15. Because the cost and effort required to maintain the exterior wood surfaces has been substantial, the Baileys considered installing manufactured vinyl products as an alternative.

**D. Vinyl Siding on Structures Within the District**

16. Since the District was established, vinyl siding has been installed on District residences located at 312 Dennis Street (Appellants' Exhibit No. 5E, Commission Exhibit No. 1, #2), 450 Dennis Street (Appellants' Exhibit No. 5D, Commission Exhibit No. 1, #11), 502 Dennis Street (Appellants' Exhibit No. 5B), 517 State Street (Commission Exhibit No. 1, #27) and also on the Christian Science Church located at 229 Dennis Street (Appellants' Exhibit No. 3).

17. A problem with contaminated insulation in the residence at 312 Dennis Street required removal of the exterior walls. When the exterior walls were replaced, the final decision to permit covering the exterior surfaces with vinyl siding was made by City officials and the building's owner, First Federal Bank, with little or no involvement by the Commission. The Commission was opposed to the installation of vinyl siding.

18. Although it was initially the consensus of the Commission that installing vinyl siding on the Bird residence at 450 Dennis Street should not be permitted, Commissioner Clarke Baldwin persuaded the Commission to approve Bird's application. The Commission approved vinyl siding on the basis of hardship.

19. The Commission initially disapproved Lester Elliott's application to install vinyl siding on his home at 517 State



Street. After Elliott "appealed" the denial to City Hall, City Hall returned Elliott's application to the Commission for reconsideration. Dr. Linguist subsequently made some inquiries about vinyl siding in Ann Arbor, and Elliott's application was then approved.

20. Over a period of several years the owners experienced a problem with getting paint to adhere to the exterior stucco walls of the Christian Science Church located at 229 Dennis Street. The Church was eventually permitted to install vinyl siding which was done by Michigan Building Specialities.

**E. Commission Meeting - June 21, 1995**

21. At its meeting of June 21, 1995, the Commission considered the Baileys' application to install vinyl siding on their home at 304 Dennis Street. This application was the only item on the agenda. The minutes stated in pertinent part as follows:

June 21, 1995

\* \* \*

New business consisted of a request by Mr. and Mrs. Bailey that they be allowed to have vinyl siding put on their home at 304 Dennis St., Adrian. They said the wood was deteriorating badly, and it seemed hopeless to try to continue painting the wood. Mr. Garrow is from Michigan Building Specialties, and he was in attendance to discuss the proposal which they had made to the Baileys in regard to their house. First, he agreed that the wood was in very bad shape. You could put your finger through some of it, he said. It would be possible to paint the house, he said, but first some of the wood would have to be replaced. After that several coats of paint would have to be applied before his firm would feel confident enough to guarantee their work.

With that in mind, he said that he had also looked into the possibility of re-siding the house with vinyl. He said there were sources now that would allow them to replace or duplicate all the decorative work on the house

as well as the main body of the siding. He said the detail would be no problem, and it would even be possible to duplicate with the vinyl the color, coral pink, which the Baileys so like on their house.

At this point a motion was made by Michael Adams that the request of the Baileys be denied. This was seconded by Mrs. Cooper. Many more questions and discussion followed this motion. In the midst of the discussion Mr. Adams had to leave because of another commitment.

Eventually, a vote was taken, and the motion to deny the request by the Baileys was approved 4-1 (Eldredge, Eldredge, Cooper, Linquist for; Baldwin against).

**F. Adherence to Federal Guidelines/Standards**

22. While reviewing the Appellants' application to install vinyl siding on their residence, the Commission did not specifically rely upon the United States Secretary of the Interior's Standards for rehabilitation and guidelines for rehabilitating historic buildings as set forth in C.F.R. part 67.

23. In denying the Appellants' application, the Commission relied upon unspecified provisions contained in its local ordinance.

24. The Commission provided the Appellants with a copy of the minutes of its June 21, 1995 meeting. The Commission did not transmit a separate written statement to the Appellants indicating the reasons for denying their application.

**Conclusions of Law**

As indicated above, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by a decision of a commission to appeal to the Board. Section 5(2) also provides that the Board may affirm, modify, or set aside a commission's decision and may order a commission to issue a certificate of

appropriateness or a notice to proceed. Relief should be granted whenever a commission has acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial or material error of law. Conversely, when a commission has rendered an appropriate decision, relief should not be granted.

A. Failure to Thoughtfully Follow Federal Historic Preservation Standards/Guidelines

The Appellants initially argued that the Commission did not thoughtfully consider their application in accordance with historic rehabilitation and restoration standards contained in the Act.

Section 5 of the Act, supra, sets forth the minimum procedure every commission must follow when considering an application to alter the exterior of an historic structure. The section specifically mandates that commissions must utilize federal standards for rehabilitation, as well as related federal guidelines, in reviewing such applications. However, commissions are allowed to follow standards and guidelines that are equivalent to the Secretary of the Interior's, if the standards and guidelines are approved by the Michigan Historical Center. The Michigan Historical Center was formerly named the Bureau of History, Michigan Department of State. Section 5 provides in pertinent part as follows:

Sec. 5. \* \* \*

(3) In reviewing plans, the commission shall follow the U.S. secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings, as set forth in 36 C.F.R. part 67. Design review standards and guidelines that address special design characteristics of historic districts administered

by the commission may be followed if they are equivalent in guidance to the secretary of interior's standards and guidelines and are established or approved by the bureau.

The Commission shall also consider all of the following:

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

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

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

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

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

(5) If an application is for work that will adversely affect the exterior of a resource the commission considers valuable to the local unit, state, or nation, and the commission determines that the alteration or loss of that resource will adversely affect the public purpose of the local unit, state, or nation, the commission shall attempt to establish with the owner of the resource an economically feasible plan for preservation of the resource.

(6) Work within a historic district shall be permitted through the issuance of a notice to proceed by the commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the commission to be necessary to substantially improve or correct any of the following conditions:

(a) The resource constitutes a hazard to the safety of the public or to the structure's occupants.

(b) The resource is a deterrent to a major improvement program that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing, and environmental clearances.

(c) Retaining the resource will cause undue financial hardship to the owner when a governmental action, an act of God, or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and

exhausted by the owner.

(d) Retaining the resource is not in the interest of the majority of the community. (Emphasis added)

The federal "Building Exterior Guidelines" which pertain to wood indicate as follows:

**Wood: Clapboard, weatherboard, shingles, and other wooden siding and decorative elements.**

Because it can be easily shaped by sawing, planing, carving, and gouging, wood is the most commonly used material for architectural features such as clapboards, cornices, brackets, entablatures, shutters, columns and balustrades. These wooden features -- both functional and decorative -- may be important in defining the historic character of the building and thus their retention, protection, and repair are of particular importance in rehabilitation projects.

Recommended

Identifying, retaining, and preserving wood features that are important in defining the overall historic character of the building such as siding, cornices, brackets, window architraves, and doorway pediments; and their paints, finishes, and colors.

Not Recommended

Removing or radically changing wood features which are important in defining the overall character of the building so that, as a result, the character is diminished.

Removing a major portion of the historic wood from a facade instead of repairing or replacing only the deteriorated wood, then reconstructing the facade with new material in order to achieve a uniform or 'improved' appearance.

Some of the duties, powers and responsibilities of local commissions set forth in the Act, are reiterated in Adrian's Historic District Ordinance. The Ordinance contains the following provisions:

C. HISTORIC DISTRICT COMMISSION

\* \* \*

(3) Duties and Powers of the Commission.

It shall be the duty of the Commission to reviewing all plans for the conception, alteration, repair, moving, or demolition of structures in the Historic District, and shall have the power to pass upon such plans before permit for such activity can be granted. In reviewing

the plans, the Commission shall given consideration to (a) the historical or architectural value and significance of the structure and its relationship to the historical value of the surrounding area; (b) the relationship of the exterior architectural features of such structure to the rest of the structures and to the surrounding area; (c) the general compatibility of exterior design, arrangement, texture, and materials proposed to be used; and (d) any other factor, including aesthetic, which it deems to be pertinent.

The Commission shall have the power to call in experts to aid in its deliberations as deemed to be necessary.

The Commission shall pass only on exterior features of a structure and shall not consider interior arrangements, nor shall it disapprove applications except in regard to the considerations as set forth in the previous paragraph.

In the case of an application for repair or alterations affecting exterior appearance of a structure, or for the moving or demolition of a structure which the Commission deems so valuable to the City of Adrian, State of Michigan, or nation, that the loss thereof will adversely the public purpose of the City of Adrian, State of Michigan, or nation, the Commission shall endeavor to work out with the owner an economically feasible plan for preservation of the structure.

An application for repair or alteration affecting the exterior of a historic structure or for its moving or demolition, shall be approved by the City if any of the following conditions prevail, and if in the opinion of the Commission, the proposed changes will materially improve or correct these conditions: (a) the structure constitutes a hazard to the safety of the public or occupants; (b) the structure is deterrent to a major improvement program which will be of substantial benefit to the community; (c) retention of the structure would cause undue financial hardship to the owner; or (d) retention of the structure would not be in interest of the majority of the community.

\* \* \*

#### D. PROCEDURE FOR THE REVIEW OF PLANS

Application for a building permit to construct, alter, repair, move, or demolish any structure in the Historic District shall be made to the building inspector. Plans shall be submitted showing the structure in question and also showing its relation to the adjacent structures.

Upon the filing of such application, the building inspector shall immediately notify the Historic District Commission of the receipt of such application and shall transmit it, together with the accompanying plans and

other information, to the Commission.

\* \* \*

If the Commission disapproves of such plans, it shall state its reasons for doing so, shall transmit a record of such action and reasons therefor in writing to the building inspector and to the applicant. The Commission may advise that it is proper if it disapproves of the plan submitted.

Although the Commission did not specifically refer to the federal standards and guidelines when reviewing the Baileys' application, evidence in the hearing record established that the Commission was clearly aware that retention of the wood siding was important to defining the overall historic character of the Baileys' home. Chairperson Eldredge demonstrated her knowledge of preservation standards when she testified that while performing historic restoration work, only the minimum amount of material necessary to complete the restoration should be repaired, or when necessary, replaced. While the minutes of the June 1995 meeting did not contain a detailed account of the Commission's review of the Baileys' application, it is obvious that the Commission entertained several questions and also that there was discussion before a vote was taken on the motion of Commissioner Adams to deny the Baileys' request.

With regard to working with the Baileys to achieve an economically feasible plan for preserving the defining overall character of the structure, evidence in the hearing record established that when the Commission attempted to discuss installing vinyl siding on only the back side of the house, Ms. Bailey's position was that vinyl siding would be installed on the entire house, or not at all. The Baileys' fortified their position

by only obtaining one "solid" cost estimate from Michigan Building Specialities which was to cover all of the wood siding with vinyl.

All of the federal and local laws cited above reveal a "legislative" intent to protect and preserve significant historic buildings, features and characteristics. Although the Appellants' evidence established that vinyl siding would reduce the long term cost of maintaining their home and additionally that the cost for vinyl siding is about one-half that of wood, their evidence did not establish a compelling need to install vinyl siding.

The evidence in the hearing record showed that even though the Commission did not specifically refer to the federal standards and guidelines in reviewing the Baileys' application, it clearly possessed a good understanding of its own ordinance and historic preservation principles, and applied its ordinance and those principles in denying the Baileys' request. The Commissioners, like all public officials, are presumed to act in accordance with the law. American LeFrance & Foamite Industries, Inc v Village of Clifford, 267 Mich 326, 330; 255 NW 217 (1934), West Shore Community College v Manistee County Board of Commissioners, 389 Mich 287, 302; 205 NW2d 441 (1973).

Based on the evidence submitted, the Appellants have failed to establish that the Commission did not thoughtfully review their application in accordance with the standards set forth in the Act.

**B. Vinyl Siding on Structures within the District**

The Appellants secondly argued that vinyl siding has been installed on several homes in the District, that the integrity of



the District would not be compromised by granting their application, and that they were denied equal treatment under law by the rejection of their application.

The Appellants' evidence established that approval was given to install vinyl siding on other buildings located within the District. Included on the list was the residence next door at 312 Dennis Street, which was owned by First Federal Bank at the time permission to install vinyl siding was granted. The reason given by Eldredge for approving the installation of vinyl siding at 312 Dennis Street was that there was a problem with contaminated insulation which had to be removed and could only be accessed through the outside walls. When the walls were replaced, even though the Commission was opposed to vinyl siding, approval was given by City Hall. Eldredge's explanation was that the decision was made by City Hall and the bank.

With regard to Bird's house located at 450 Dennis Street, the explanation for approval was that Commissioner Baldwin made a strong appeal on behalf of the property owner and convinced the Commission that vinyl siding should be permitted on a hardship basis.

As for the Christian Science Church located at 229 Dennis Street, Eldredge thought the church was located outside of the District, even though the list of properties in the District includes the Christian Science Church at 229 Dennis Street. (Hearing Officer Exhibit No. 6) Garrow's explanation concerning the church was that after experiencing paint adherence problems

over a period of several years, the church was eventually given permission to install vinyl siding.

Concerning the Elliott house at 517 State Street, the application was initially denied. After Commissioner Lindquist made some inquiries about vinyl siding in Ann Arbor, Elliott's application was approved.

It must initially be noted that evidence in the hearing record, particularly the photographic evidence, established that the Baileys' home is a more significant structure by far than any of the structures in the District where vinyl siding was eventually installed. The evidence also established that the circumstances where vinyl siding was used were clearly distinguishable from the Baileys' situation.

The Appellants' evidence did not establish that it was necessary to remove and replace the outside walls, as was the case with 312 Dennis Street. The Appellants did not establish that there was any particular problem getting paint to adhere to the wood surfaces, as was the case with the church at 229 Dennis Street. Their only complaint with regard to paint was the costs involved in painting the house every three years or so. The Appellants' evidence failed to establish any condition peculiar to their house which required the extraordinary action of covering all of the wood siding with vinyl. As discussed below, the Appellants' evidence failed to establish that maintaining the wood siding on their home would create an undue financial hardship. In essence, the Appellants' claim is that they no longer wish to expend the

effort and bear the expense of maintaining their home in accordance with historic preservation standards and guidelines.

The Appellants' failed to establish that they received disparate treatment by the Commission when their application was denied. Because the Appellants' home is clearly one of the most (and perhaps the most) significant structure in the District, the Appellants had the burden to establish that installing vinyl siding on their impressive home would not compromise the integrity of the entire District. Unlike the situation involving less contributing structures where vinyl was used, evidence in the record established that approving vinyl for the Baileys' home would compromise the character on the District. If the Commission approved vinyl siding for the Baileys merely because they wanted a low-maintenance home, on what basis could the Commission deny any application to install vinyl siding?

Evidence in the hearing record established that the Baileys' application was clearly distinguishable from other cases in the District where requests to install vinyl siding were approved.

**C. Undue Financial Hardship**

Although the Appellants did not argue this point vigorously, or submit significant evidence concerning undue financial hardship, they did contend that the denial of their application would cause an undue financial hardship.

In terms of this contention, it should be noted that section 5(6) of the Act, supra, addresses undue financial hardship in relation to whether or not an historic resource should be retained

or demolished; however, the Act does not specifically deal with undue financial hardship in connection with renovation or restoration activities.

Although the Act does not per se embrace the concept of undue financial hardship as a consideration in renovation and restoration matters, since the Appellants have raised the issue it will be addressed.

With regard to actual costs for removing and replacing all of the existing wood siding, or in the alternative, repairing and replacing wood as needed and then painting the surfaces, it is unclear from the Appellant's evidence what those costs would be. Brielmaier estimated that the cost of vinyl siding is approximately one-half the cost of wood siding. Moreover, with the exception of the estimate of approximately \$35,000 to complete the entire project using manufactured vinyl products, the Appellants' evidence did not establish with any degree of certainty what the actual costs would be to simply repair and replace the wood as needed and then apply the necessary coats of paint or to replace all of the wood with new wood.

In addition, the Baileys failed to present evidence establishing the extent of their financial resources. In other words, the Appellants did not provide any specific information with regard to their actual income or economic assets or ability or inability to bear the costs associated with maintaining, repairing or replacing wood siding. Without such evidence, administrative tribunals cannot determine the presence or absence of financial

"hardship", and if present, whether or not such "hardship" would be "undue" or not.

Although there are apparently no published Michigan court cases discussing what constitutes undue financial hardship in relation to historic rehabilitation projects, there is an unpublished Court of Appeals decision which discusses a somewhat related question. In that case, the question before the court was: In the face of a \$30,000 project cost, whether the Ypsilanti Historic District Commission could order the owner of an historic building within a district to paint an historic building. The Court, in Ypsilanti v Kircher (No. 128107, July 24, 1992), reasoned as follows:

Defendant's first argument on appeal is that neither the city building code nor the ordinances creating the historic district provides the plaintiff with the authority to require the defendant to paint the building. Statutory interpretation is a question of law for the court. Coddington v Robertson, 160 Mich App 406, 410; 407 NW2d 666 (1987). Appellate review of a trial court's conclusions of law is independent, and is not subject to the clearly erroneous standard. Beason v Beason, 435 Mich 791, 804; 460 NW2d 207 (1990).

We agree with the trial court that the plaintiff may require the defendant to keep his building painted. The court cited Ypsilanti Ordinance § 5.336(1), which provides that every person in charge of a landmark or structure in the historic district shall keep its interior and exterior in good repair. Moreover, Ypsilanti Ordinance § 5.324 provides that the purpose of creating the historic district is to stabilize and improve property values and to foster civic beauty and pride.

Having decided that the plaintiff has the authority to require the defendant to paint the building, we next review the trial court's decision that the plaintiff reasonably required the defendant to paint the building. A zoning ordinance is a valid exercise of police power, but if in its application it is unreasonable and confiscatory, it cannot be sustained. Burrell v City of Midland, 365 Mich 136, 141; 111 Mich NW2d 884 (1961).

The (US) Supreme Court has held that financial burdens may be imposed upon a property owner to preserve historic landmarks. Penn Central Transportation Co v City of New York, 438 US 104; 98 S Ct 2646; 57 Law Ed 2d 198 (1978). The financial burden of abating a public nuisance is properly imposed on the property owner, rather than on the public. Moore v City of Detroit (On Remand), 159 Mich App 199, 203; 406 NW2d 488 (1987).

The unrefuted evidence presented at trial supports the court's finding that the building is an eyesore. The approximate cost of painting the building is \$30,000, including the necessary low pressure water cleaning. Requiring the defendant to paint the building is reasonable under the ordinances, and is not a confiscatory taking. Burrell. Further, it is reasonable under the ordinances for the historic district commission to have input into a determination of the color of the building. (Slip Op., pp 1-2)

In view of the Court's decision in Kircher, it must be concluded that expenditures as high as \$30,000 do not, on their face, represent undue financial hardships under Michigan's historic districts law.

Based on the evidence in the hearing record, the Appellants have clearly failed to establish that denial of their application to install vinyl siding on their home constitutes an undue financial hardship.

#### Conclusion

In consideration of the entire hearing record in this case, it must be concluded that the Appellants have not shown that the Commission failed to thoughtfully review their application in accordance with historic preservation standards and guidelines when it denied their request to install vinyl siding on the house situated at 304 Dennis Street; that they should be permitted to install vinyl siding as has been permitted with other less significant structures in the District; that the integrity of the

historic district would not be compromised by approving their application; and that requiring them to maintain their home in accordance with historic preservation standards and guidelines would cause them to incur undue financial hardship. It is further concluded that the Commission did not act arbitrarily or capriciously, did not violate either state or local law, and did not act improperly under the Local Historic Districts Act, and the Adrian Ordinance, in denying the application at issue.

**Recommendation**

It is recommended that the appeal be denied.

Dated: May 16, 1996

  
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Gary W. Brasseur (P11137)  
Presiding Officer