

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

In the Matter of:

MARY ROBINSON and THOMAS SIMMONS,
Applicants/Appellants,

v

Docket No. 94-24-HP

GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Grand Rapids Historic Preservation Commission denying an application for permission to relocate a backyard fence and to construct new fencing behind the residence situated at 220 Union Avenue, S.E., Grand Rapids, Michigan.

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

At the direction of the Board, an administrative hearing was held on April 7, 1994, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on May 10, 1994, and copies were mailed to all parties pursuant to section 81 of the Administrative Procedures Act, as amended, being section 24.281 of the Michigan Compiled Laws.

The Appellants submitted "exceptions to the proposal", which exceptions were dated June 2, 1994.

The Board fully considered the appeal, along with the Proposal for Decision and all materials submitted by the parties, at its regularly scheduled meeting conducted on Friday, June 10, 1994.

The Board agrees that the Proposal for Decision is correct in its conclusion that the application at issue substantially complies with federal standards and guidelines.

Having fully considered the Proposal for Decision and the exceptions thereto filed in this matter, the Board voted to ratify, adopt, and promulgate the Proposal for Decision as the Final Decision of the Board, incorporating it herein, with the condition that it be modified as suggested in the written exceptions filed by Robinson and Simmons on or about June 2, 1994; and,

Having done so,

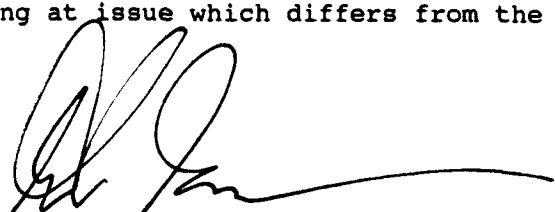
IT IS ORDERED that the decision of the Grand Rapids Historic Preservation Commission shall be reversed and modified as follows; that the application of Mary Robinson and Thomas Simmons shall be approved with respect to the north side fence and that their south side fence request shall also be approved, provided that the short section of the south side fence shall abut the Appellants' carriage house 20 feet east of the southwest corner of the carriage house.

IT IS FURTHER ORDERED that the Commission shall issue a Notice to Proceed consistent with this Final Decision and Order within 30 days after the mailing of this Final Decision and Order.

IT IS FURTHER ORDERED that nothing in this Final Decision and Order shall be construed to prevent the Commission and the Appellants from mutually agreeing upon a placement of the fencing at issue which differs from the placement ordered herein.

Dated: _____

20 JUNE 94



David Evans, President
State Historic Preservation Review Board

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STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

In the Matter of:

MARY ROBINSON and THOMAS SIMMONS,
Applicants/Appellants,

v

Docket No. 94-24-HP

GRAND RAPIDS HISTORIC
PRESERVATION COMMISSION,

Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision rendered by the Grand Rapids Historic Preservation Commission (the Commission), denying an application for a permit to relocate a backyard fence and construct new fencing behind the residence situated at 220 Union Avenue, S.E., Grand Rapids, Michigan.

The appeal was filed under section 5(2) of the Local Historic Districts Act.¹ Section 5 provides that persons who are aggrieved by a decision of an historic district commission may appeal the decision 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 evidence and argument.

¹ 1970 PA 169, § 5, as amended by 1992 PA 96; MCL 399.205; MSA 5.3407(5).

The Hearings Division conducted a hearing on April 7, 1994, in Hearing Room No. 121, the Mutual Building, Lansing, Michigan. The hearing was held pursuant to procedures set forth in Chapter 4 of the Administrative Procedures Act.²

Mary Robinson and Thomas Simmons, who are married and jointly own the property located at 220 Union Avenue, S.E., both appeared at the administrative hearing and represented themselves. The Commission/Appellee was represented by Stanley Bakita, Esq., Assistant City Attorney, City of Grand Rapids. Nicholas L. Bozen, Administrative Law Examiner, Michigan Department of State, Hearings Division, served as Presiding Officer and conducted the hearing. Laura Ashlee, State Register Coordinator for the Michigan Department of State, Bureau of Michigan History, appeared as an observer/representative on behalf of the Board.

Issues on Appeal

In a letter dated February 3, 1994, the Appellants wrote that they were filing their appeal for the following reasons:

1. That the proposed fence does, in actuality, comport with historic preservation and rehabilitation standards and guidelines prescribed by the U.S. Department of the Interior.

2. That a backyard fence is necessary for the Appellant's security and lifestyle with small children. The Appellants further point out that backyard fences are overwhelmingly prevalent in the Heritage Hills Historic District.

3. That the Commission is being extremely inconsistent with

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

its rulings, in that in the fall of 1992 the Commission approved the installation of a fence at 217 Madison Avenue, S.E., that fence being almost identical to the Appellants' proposed fence.

4. That in any case, the Commission's stated reason for the denial is extremely vague in that no specific problems nor inconsistencies were noted.

Summary of Evidence

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

Section 5(2) of the Local Historic Districts Act, supra, provides that appellants may submit all or a part of their evidence and arguments in written form. In that vein, the Appellants submitted an eight-page exhibit (Appellant's Exhibit No. 1) which contained several sub-exhibits. Among those were four photographs of the property at 220 Union Avenue, two photographs of the property at 217 Madison Avenue, and a certificate of survey for the property at 220 Union Avenue, including a map. The exhibit also articulated the Appellants primary arguments in this case. In addition, Robinson and Simmons both testified at the hearing.

The Commission also made an evidentiary presentation. The

Commission submitted a multi-document exhibit (Commission Exhibit No. 1), as well as the portion of the Grand Rapids City Code which pertains to historic preservation (CE 2) and a copy of the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (CE 3). The Commission's initial exhibit included a record of citizen complaint, two Polaroid photographs of structures at 220 Union and a neighboring parcel, correspondence to and from a Commission staffperson and Appellant Simmons, an Application for Historic Preservation Code Approval, Commission minutes, a Notice of Denial, a premises map, and two survey certificates with maps.

The Commission offered testimony from a single witness, its staffperson, Michael J. Page. Page testified about the contents of CE 1, and he also described the events surrounding the submission of the application at issue and the Commission's consideration of that application.

Findings of Fact

Based upon the evidence presented by the parties in this case, the facts of this matter are found to be as follows:

A. Background Information

1. The parcel at 220 Union Avenue, S.E., Grand Rapids, Michigan, is 50 feet wide by 132 feet deep. A two-story frame house is situated in the center portion of the lot, facing Union Avenue to the west. The property is located in a predominantly residential neighborhood. (AE 1)

2. On April 24, 1973, the City of Grand Rapids adopted

Ordinance No. 73-25,³ thereby creating the Heritage Hills Historic District. The district contained several hundred properties. The parcel at 220 Union Avenue was included within the district. The house is considered historic, as is the house to the north. (CE 1)

3. Mary Robinson and Thomas Simmons, husband and wife, purchased 220 Union Avenue as their home in 1987. At that time, a deteriorated wooden stockade fence was located along their east property line at the rear of the property. (Transcript pages 36, 40)

4. Also at that time, the three parcels situated behind and to the northeast of the Union Avenue property (and fronting James Avenue) were all vacant lots. These lots were not encompassed within the Heritage Hills Historic District. (Tr 36)

5. Shortly after purchasing their house, Robinson and Simmons decided to purchase the vacant lot immediately behind their property, with the intention of eventually building a carriage house on the site. Since they anticipated building this structure, they also planned to remove the stockade fence in the rear of the Union Avenue parcel and build a relocated, new rear fence. (Tr 36, 37)

6. In 1989, Robinson and Simmons, and their neighbors to the south, decided to jointly install a wooden fence between their two properties (i.e., on the south side of Robinson's Union Avenue parcel), to provide for privacy and security. This fence was 5'4" high and was constructed of solid cedar with a 12" lattice top.

³ Grand Rapids Ordinances, Ch. 68, § 5.411.

Installation occurred without Commission comment. (Tr 36; AE 1)

7. Robinson and Simmons eventually purchased the James Avenue parcel behind their home. When they did so, their total property consisted of a new parcel 50 feet wide and 264 feet long, with street frontage along both Union and James Avenues. (AE 1)

8. In 1991, Robinson and Simmons began to work with an architect to prepare plans for the construction of a carriage house on their James Avenue property. After talking to their James Avenue neighbors, they modified their original plan with respect to carriage house orientation and turned the structure. This decision necessitated the purchase of additional land; namely, the south half of the vacant James Avenue lot immediately to the north of the Robinson/Simmons James Avenue parcel. After this purchase, their property included 75 feet of James Avenue street frontage. (Tr 37; AE 1)

9. The Grand Rapids Zoning Appeals Board granted approval of a variance for the carriage house in June of 1992. (Tr 37)

B. Fencing at 217 Madison Avenue, S.E.

10. On September 19, 1992, the Commission approved the construction of a sideyard fence at 217 Madison Avenue, S.E., which is located within the Heritage Hills Historic District. This fence is very similar to the fence constructed by Robinson and Simmons on their Union Avenue parcel, as well as the one proposed for construction in this case. The fence on Madison Avenue stands in the side and rear yards less than 30 feet from the street and abuts the house along its side more than two-thirds of the way towards

the front. In approving the fence, the Commission noted that the fence would "give the owner a greater degree of privacy and security " and that "the fence design is in keeping with the older style". (Tr 24, 25; AE 1)

C. Construction of Carriage House and Fencing

11. Construction of the carriage house, a two-story structure, began in November of 1992. Construction was essentially completed in April of 1993. Some painting and siding work remained for completion after that point. (Tr 37, 38)

12. In June of 1993, the Commission established an interim historic district in the "Cherry Hill" neighborhood, which included both of the James Avenue parcels purchased by Robinson and Simmons. Thus, the Union Avenue portion of the Robinson/Simmons property is situated in the Heritage Hills Historic District, whereas the James Avenue portion is situated in the proposed Carriage Hills Historic District. (Tr 37)

13. Robinson and Simmons started constructing a new rear fence on their enlarged property in August of 1993, north of the carriage house. They used the same type of wooden fencing that they previously used when they built the fence between their house and the house of their southside neighbor on Union Avenue. They consider the new fence to be a part of their total "project in process". (Tr 38; AE 1)

14. About 24 feet of fencing was constructed, along a north/south line (i.e., on the east side), on the north side of their carriage house. It began at one projecting corner of the

mid-point of the carriage house, which is L-shaped. This portion of fence also included a car-sized gate. The fence was situated about 80 feet from James Avenue. (Tr 40, 44)

15. At about this time, the neighbors to the north (Pat and Dale Emmins) also constructed a matching fence some 75 feet in length, along a north/south line, through the vacant lots on James Avenue, to abut the new rear fence built by Robinson and Simmons. (Tr 17, 44, 45)

16. Robinson and Simmons also built another section of fence on the north side of their James Avenue parcel. This section was slightly more than 30 feet in length and met the 24-foot section at its north end. The 30-foot section is not visible from either James Avenue or Union Avenue. (Tr 44, 45)

17. The Robinson/Simmons building plan also calls for the construction of about 40 feet of fencing on the south side of the James parcel, to abut the existing southside fence already constructed on their Union Avenue parcel. An eight-foot section (more or less) joining the carriage house and the southside fence is also planned. These two sections have not yet been built. (Tr 44, 45)

D. The Application

18. On August 30, 1993, the Commission staff person, Page, received a complaint alleging that a wooden fence had been erected behind 220 Union Avenue without Commission approval. (Tr 14)

19. On October 19, 1993, Page inspected the premises owned by Robinson and Simmons. He noted that wooden fencing had in fact

been constructed on the north side of the carriage house. He took two Polaroid photographs evidencing what he was observing. One of the photos shows the Robinson/Simmons 24-foot fence and the connected Emmins 75-foot fence. However, Page did not know where the property line was located, and he did not know who owned various sections of the fence. (Tr 14, 15, 51; CE 1)

20. On October 29, 1993, Page sent Simmons a letter informing him that a permit must be obtained before any exterior work is undertaken in an historic district. He enclosed a permit application, and he indicated that November 9, 1993 was the filing deadline for the consideration of items at the November 17, 1993 Commission meeting. (Tr 19; CE 1)

21. Robinson and Simmons promptly completed and signed an Application for Historic Preservation Code Approval. This document described their proposed property improvement as follows:

To continue enclosure of back yard with fence. This project was begun in 1989 before HPC was ruling on fences. This is just a continuation to complete the enclosure of our back yard. The fence run approximately 32 feet east and approximately 25 feet south to meet the edge of our carriage house. It would also run from (near) the south east corner of the carriage house to the property line and then west to our existing fence.

The fence will match our existing fence. It is a solid cedar panel with a lattice border at the top. The height of the fence is 5 ft. 4"

22. On or about November 22, 1993, Simmons transmitted the application to Page. (Tr 19, 38; CE 1)

23. One or more Commission members subsequently conducted a site inspection. (CE 1)

24. The Commission met on December 1, 1993 to consider, among other things, the Robinson/Simmons application. Robinson was present. After a lengthy discussion during which two commissioners expressed problems with the proposed fence, Commissioner Nemitz moved to table further consideration of the application, in order to allow for another site inspection prior to the next scheduled Commission meeting. In addition, Robinson was informed that she would be contacted before that meeting so that a resolution could be worked out. (Tr 19, 38; CE 1)

25. Robinson telephoned Page on the morning of December 15, 1993. She was worried about the fact that she had not heard from anyone representing the Commission, and she was concerned that her application might again come up for consideration that evening. Page responded that the Commission had made another visit to the site, and he also said her application would probably be on the Commission's agenda. She questioned how that could happen since no one had contacted her. She then told Page it was impossible for her to be at that evening's meeting because her children were ill. She asked if the Commission could please table the issue until its next meeting. (Tr 38, 39)

26. The Commission met on December 15, 1993, and 220 Union Avenue was on the agenda. Four of the seven commissioners were in attendance. Page related Robinson's request to have the Commission table her application because she could not be there, but the commissioners refused. During the discussions which followed, various commissioners expressed concern about the overall effect of

this fence and the other fence installed at the same time (i.e., the Emmins' fence) on the James Avenue streetscape. Eventually, Commissioner Middleton moved to deny the installation of the proposed fence on the south side and the currently installed fencing on the north side of the carriage house "due to inconsistencies with the Secretary of Interior's Standards for Rehabilitation⁴ and Guidelines for Rehabilitating Historic Buildings regarding building site(s)⁵ and district/neighborhood street scapes".⁶ The motion carried by a vote of 3 to 1. (Tr 19, 20, 22, 23, 39; CE 1)

27. Page sent Simmons a Notice of Denial dated December 27, 1993. Robinson and Simmons filed their appeal in February of 1994. (CE 1; AE 1)

E. Additional Information

28. Robinson and Simmons have two children. The children are five and two years of age. Robinson and Simmons also have a dog. They would like to have an enclosed backyard so that their children and pet will have a safe and secure place to play. (Tr 41, 46)

29. The traffic on Union Avenue is light. However, Union

⁴ At the hearing, Page indicated that the Commission based its decision, in part, on inconsistency with Standard (1).

⁵ Page testified that the Commission felt the application violated the Building Site Guideline recommending retention of the historic relationship between buildings, landscape features, and open space.

⁶ Page also testified that the Commission felt the proposal was inconsistent with the District/Neighborhood Guidelines recommending retention of streetscape and landscape features which are important in defining the overall historic character of the district, and retention of the historic relationship between buildings, and streetscape and landscape features.

Avenue is one of the few streets going north and south through the district, and therefore traffic moves along it at a relatively high rate of speed. Cars frequently travel at 45 to 50 miles per hour. Robinson has sent letters to the police asking that they check this out and that an officer be stationed in the area. This situation has not been a police priority. (Tr 47, 50)

30. Also, a health clinic is located on Union Avenue across the street from Robinson's house. Consequently, there is a great deal of coming and going, and parking. (Tr 48)

31. Besides vehicles, the area also has considerable "pass through" traffic on foot. According to Robinson, some people think that it is too far to walk around the block, so they cut through Robinson's backyard since there is no fence. (Tr 47)

32. When deciding upon a proposed placement for the fence on the south side of the carriage house, Simmons wanted the fence to abut the southwest corner of the carriage house. However, his wife wanted more backyard space for gardening. Eventually, they decided between themselves to abut the fence against the carriage house about 20 feet from the southeast corner, in part to provide room for gardening and in part to meet a fence proposed by their neighbor to the south. (Tr 47, 48; AE 1)

33. Page has not yet contacted the neighbors to the north (i.e., Mr. and Mrs. Emmins) with respect to their newly constructed 75-foot fence. Page plans to do so after this matter is concluded. (Tr 51, 52)

Conclusions of Law

As previously indicated, section 5(2) of the Local Historic Districts Act, supra, allows persons aggrieved by a decision of a commission to appeal to the State 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, of course, be granted whenever a commission has, among other things, acted in an arbitrary or capricious manner, exceeded its legal authority, or committed some other substantial or material error of law. Conversely, when a commission has reached a correct decision, relief should not be granted.

A. Adherence to Department of the Interior Guidelines

The Appellants cite a number of reasons why they feel the Commission's decision is improper and should be reversed.

Initially, the Appellants point out that although the Commission's decision mentioned "inconsistencies" with the Department of the Interior's Guidelines regarding building sites and district/neighborhood streetscapes, no specific inconsistencies were cited. The Appellants state that they have carefully read the Guidelines and have concluded that their proposed fence does adhere to the recommendations contained within the Guidelines. The Appellants go on to indicate that:

1. The guidelines recommend replacing a feature of a building site that is too deteriorated to repair. The stockade fence that is to be replaced by the proposed fence has deteriorated

and was not original to the property in any case. The new fence is made of wood, is of quality construction, and blends well with other fences in the area. Plus, since it is only 5'4" high - the top 12" being lattice - it provides for security without being overwhelming in size.

2. The guidelines recommend retaining the historic relationship between buildings and related streetscape and landscape features. The proposed new fence is over 80 feet from James Avenue. It will be only about 24 feet long on the north side of the carriage house and only about 8 feet long on the south side of the carriage house. It will meet the carriage house itself approximately halfway along the north side of the building. The Appellants intend to have it meet the south wall of the carriage house approximately 20 feet west of its southeast corner in order to meet with a backyard fence a neighbor proposes to construct. Since the carriage house itself is new construction on a previously vacant lot, it was designed to be and is compatible with the appearance of their home and the houses along James Avenue.

In the case at hand, the Commission acted under the authority of section 5 of the Act⁷ when it rendered the Order of Denial at issue. The Commission also acted under the authority of a comparable local law (Ordinance No. 93-21)⁸ which substantially conforms to section 5. This ordinance provides in pertinent part as follows:

⁷ See footnote 1.

⁸ Grand Rapids Ordinances, Ch. 68, § 5.395.

Sec. 5.395. Permits.

(1) A permit shall be obtained before any work affecting the exterior appearance of a (historic or nonhistoric) resource is performed within a historic district. . . . The person . . . proposing to do that work shall file an application for a permit with the inspector of buildings, the Commission, or other duly delegated authority. * * *

* * *

(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 (of history of the Michigan department of state). The Commission shall also consider all of the following:

(a) The historic and 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.

The hearing record indicates that the Commission applied the following Standard and Guidelines concerning rehabilitation:

Standard (1).⁹

(1) A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

⁹ 36 C.F.R. § 67.7(b)(1).

BUILDING SITE GUIDELINES.

The relationship between a historic building or buildings and landscape features within a property's boundaries -- or the building site -- helps to define the historic character and should be considered an integral part of overall planning for rehabilitation project work.

Recommended

Retaining the historic relationship between buildings, landscape features, and open space.

Not Recommended

Removing or relocating historic buildings or landscape features, thus destroying the historic relationship between buildings, landscape features, and open space.

Removing or relocating historic buildings on a site or in a complex of related historic structures -- such as a mill complex or farm -- thus diminishing the historic character of the site or complex.

Moving buildings onto the site, thus creating a false historical appearance.

Lowering the grade level adjacent to a building to permit development of a formerly below-grade area such as a basement. . . .

DISTRICT/NEIGHBORHOOD GUIDELINES.

The relationship between historic buildings, and streetscape and landscape features within a historic district or neighborhood helps to define the historic character and therefore should always be a part of the rehabilitation plan.

Recommended

Identifying, retaining, and preserving buildings, and streetscape, and landscape features which are important in defining the overall character of the district or neighborhood. Such features can include streets, alleys, paving, walkways, street lights, signs, benches, parks and gardens, and trees.

Not Recommended

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

Recommended

Retaining the historic relationship between buildings, and streetscape and landscape features such as a town square comprised of row houses and stores surrounding a communal park or open space.

Not Recommended

Destroying streetscape and landscape features by widening existing streets, changing paving material, or introducing inappropriately located new streets or parking lots.

Removing or relocating historic buildings, or features of the streetscape and landscape, thus destroying the historic relationship between buildings, features and open space.

In applying the Standard and Guidelines cited by the Commission and the Appellants, it must initially be observed that the materials and design of the fence associated with 220 Union Avenue do not, from an historic preservation perspective, compromise the integrity of the historic house or the expanded site on which the house now stands. Everyone agrees that the fence design and materials are appropriate. In addition, the fence, as proposed, cannot be seen from the public right-of-way along Union Avenue. A portion of the proposed fence is visible from James Avenue, which is in the proposed Cherry Hill Historic District. Rather than strictly considering how the fence relates to 220 Union Avenue, it is more appropriate to consider how it relates to the buildings and structures along and streetscape of James Avenue.

The Appellants' carriage house is visible from James Avenue, as is part of the proposed fence. The Appellants' fence, as proposed, connects on the north side to a much longer neighbor's fence, creating approximately 100 feet of total fence line. Obviously, this collective expanse of fence gave the Commission

pause and problems.

There is an appropriate solution to this quandary, short of denying the Appellants' application in its entirety. Traditionally, fence lines are consistent with the rear corners of houses. By moving the 8-foot and 24-foot sections of the proposed fence back to the southwest and northwest corners of the carriage house, respectively, the Appellants' proposed fence would be consistent with historical practice, and the Appellants would also have the benefit of a secure and private, enclosed backyard. In addition, this setback would break up the fortress-like wall of fencing created by the connection with the northside neighbor's fence.

B. Additional Matters

The actions of the Commission regarding the application at issue do not reflect a sincere desire on the part of the Commission to work with the Appellants to resolve this matter at the local level. The Appellants' application for a permit was denied at the December 15th meeting, despite the fact that Robinson was unable to attend and had asked that consideration of her application be tabled. It is the responsibility of historic preservation commissions to work with property owners to develop rehabilitation plans which are consistent with federal standards and guidelines.

Also of note is the fact that the Commission's Order of Denial failed to specify the "inconsistencies" mentioned in the Order. Section 5(8) of the Act,¹⁰ as well as the Grand Rapids Ordinances, Ch. 68, § 5.395(8), requires the Commission to make and keep a

¹⁰ See footnote 1.

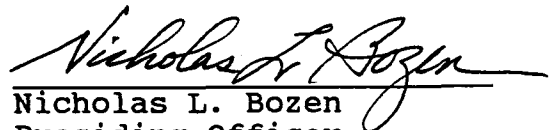
record of its resolutions, proceedings, and actions. Implicit in that requirement is that such records have sufficient detail to communicate what is being said and done. It is suggested that the Commission consider tape-recording its meetings, or have a stenographer on hand, so that detailed minutes can be generated and that the basis for decisions can be communicated to applicants in writing. Such minutes should be furnished to applicants upon request.

Having decided that the Appellants' proposed fence essentially comports with federal rehabilitation standards and guidelines, the Appellants' final three assignments of error need not be addressed in this proposal.

Recommendation

In consideration of the discussion set forth above, it is recommended that the Commission's decision be modified from denial to approval with conditions.

Dated: May 10, 1994


Nicholas L. Bozen
Presiding Officer