

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

In the Matter of:

SCORE PROPERTIES, INC.,
Applicant/Appellant,

v

Docket No. 96-520-HP

EAST LANSING HISTORIC DISTRICT COMMISSION,
Appellee.

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the East Lansing Historic District Commission denying an application seeking approval for the moving of an existing garage on the property located at 130 Oakhill, East Lansing, Michigan.

The State Historic Preservation Review Board (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 October 9, 1996, for the purpose of receiving evidence and argument.

A Proposal for Decision was issued on January 29, 1997, 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, February 7, 1997.

Having considered the Proposal for Decision and the official hearing record made in this matter, the Board voted 6 to 0, with 0 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,

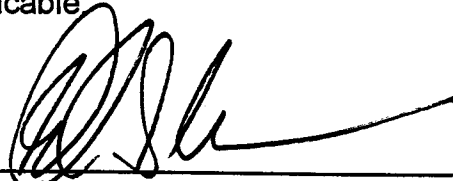
Having done so,

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

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

Dated: _____

7 FEB 97



David Evans, President
State Historic Preservation Review Board

STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF STATE
HEARINGS DIVISION

SCORE PROPERTIES, INC.,
Applicant/Appellant,

v

Docket No. 96-520-HP

EAST LANSING HISTORIC
DISTRICT COMMISSION
Appellee.

PROPOSAL FOR DECISION

This matter involves an appeal of a decision of the East Lansing Historic District Commission (the Commission) denying an application for a certificate of appropriateness to move the existing garage on the property located at 130 Oakhill Avenue, East Lansing, Michigan. The application sought to move the garage approximately eight inches to the southwest away from the side and rear property lot lines. The property is situated within the boundaries of East Lansing's Oakwood Historic District (the District).

The appeal was filed under section 5(2) of the Local Historic Districts Act (the Act).¹ 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.

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

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, October 9, 1996, in Hearing Room No. 121, the Mutual Building, 208 N. Capitol Avenue, Lansing, Michigan. The hearing was held pursuant to the procedures set forth in Chapter 4 of the Administrative Procedures Act.²

The Appellant/property owner, Score Properties, Inc. (Score or the Appellant), was represented at the hearing by Scott A. Chappelle, Attorney at Law, of East Lansing, Michigan. The Commission/Appellee was represented by Dennis E. McGinty, Attorney at Law, of the law firm of McGinty, Jububiak, Frankland, Hitch & Henderson of East Lansing, Michigan. Richard Wright, Chairperson of the Commission, and Ronald K. Springer, staff liaison, attended as agents/representatives of the Commission. Darcel F. Smith, Administrative Law Examiner, Michigan Department of State, Hearings Division, presided at the hearing. Jane Busch, Certified Local Government Coordinator and Historic Preservation Planner, State Historic Preservation Office appeared as an observer/representative on behalf of the Board.

Issues on Appeal

In a written submission dated August 13, 1996, the Appellant, through its attorney, appealed a decision of the Commission

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

rendered on August 8, 1996, asking that the decision be reversed.

The Appellant provided a brief statement of the purported facts of this case and presented several grounds in support of the appeal. From a factual perspective, the Appellant asserted that the house at 130 Oakhill was located approximately two city blocks from Michigan State University, that this dwelling had previously been owner-occupied, and that the Appellant had purchased the property to convert it to rental use. The Appellant further asserted that the City of East Lansing had taken the position of discouraging the conversion of single family dwellings into rental properties. The Appellant also asserted that the City adopted a number of ordinances to make it difficult to convert property from owner-occupied to rental use. If a dwelling fails to comply with an ordinance, a rental "license" can only be issued for two unrelated individuals or a family.

The Appellant further posited that one of the City's ordinances requires that a dwelling, its ancillary structures, and improvements be constructed and maintained at least three feet from any property line. The Appellant indicated that the garage at 130 Oakhill was situated within two-and-one-half feet of the north and east property lot lines. The Appellant said it sought a variance to permit the renting of the dwelling to four unrelated individuals despite the noncompliance and that this request was denied by the City of East Lansing, Zoning Board of Appeals, on June 5, 1996. The Appellant asserted that its only other course of action was to move the entire garage approximately eight inches so as to comply

with the ordinance. The Appellant stated that it subsequently filed an application for a certificate of appropriateness to move the garage eight inches. Further, the Appellant asserted that the acting chairperson of the East Lansing Housing Commission met with the chairperson of the Commission and asked that the application be denied because granting the certificate would result in another rental dwelling.

At the administrative hearing in this case, the Appellant, through his attorney, again asserted that the Commission had based its denial on a consideration outside the limited purview of historic preservation law and that the Commission had not specified any reason which would properly support its decision. The Appellant additionally asserted that the Commission's action was nothing more than a deliberate and malicious attempt to prevent the property owner from converting the dwelling to rental use. Finally, the Appellant asserted that the Commission had openly operated in bad faith and with complete and total disregard of the limited scope of its authority.

By way of response, the Commission asserted that it was not preventing the property from being used for rental purposes, inasmuch as the property was currently eligible for rental to a family or to two unrelated individuals. Rather, the Commission argued that it had denied the application because it had considered the effect that granting a certificate would have on the surrounding area. The Commission noted that if the application were approved, then the property would comply with zoning

ordinances permitting the dwelling to be used for rental to more than two unrelated individuals. The Commission said it was particularly concerned that approval of the application could destroy the character of the neighborhood, which historically had been single family dwellings. Finally, the Commission asserted that it had considered the effect that approving the movement of the garage would have on the "aesthetic value" of the property, along with the potential for increased noise and traffic. In essence, the Commission asserted that denial of the application was appropriate to maintain the "historic use" of the neighborhood.

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 Appellant clearly occupies that position in this matter and consequently bears 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 Appellant submitted seven exhibits. Appellant's Exhibit No. 1 was a copy of the deed, dated March 22, 1996, conveying the property commonly known as 130

Oakhill, East Lansing, Michigan, to Gordon G. Hunsaker³. Appellant's Exhibit No. 2 was a multi-document exhibit consisting of an application for a certificate of appropriateness, a mortgage survey, and a staff report. Appellant's Exhibits Nos. 3 and 4 were notices to the prior property owner of violations of the East Lansing City Code, dated November 21, 1995 and January 11, 1996, respectively. Appellant's Exhibit No. 5 was a Temporary Rental Housing License and Notice of Public Review Hearing on Ownership Change, dated July 31, 1996. The Appellant submitted the affidavit of Evert Kramer, Jr., dated September 18, 1996, as Appellant Exhibit No. 6. Appellant's Exhibit No. 7 consisted of four photographs of the garage at 130 Oakhill.

Appellant's proposed Exhibit No. 8 was a copy of the Notice of Appeal with supporting documents dated August 6, 1996, in the case of Hunsaker v City of East Lansing, MDOS Docket No. 96-519-HP. That matter involved a separate but similar appeal of a denial of a certificate of appropriateness concerning a property located at 542 Evergreen Avenue in East Lansing. The Appellant argued that the Evergreen appeal involved acts of Commission misconduct similar to acts which are present in the case of the property at issue. Official notice was taken of the pending case; however, Appellant's Exhibit No. 8 was not admitted into the hearing record nor considered in this decision.

The Commission submitted one multi-document exhibit in support

³ The Appellant, through its attorney, indicated that Gordon G. Hunsaker had purchased the property and that Hunsaker is an owner of Score Properties, Inc.

of its decision. The exhibit contained the following items: 1) City of East Lansing Historic District Study Committee Final Report, March 1988; 2) City of East Lansing, Chapter 104, Historic Preservation Code, adopted July 18, 1989, as amended; 3) an application for certificate of appropriateness and mortgage survey report, received July 9, 1996; 4) an Historic District Commission staff report, received July 9, 1996; 5) minutes of the East Lansing Historic District Commission meeting, held on August 8, 1996; and 6) a letter from Ronald K. Springer, dated August 13, 1996, advising that the motion to approve the certificate of appropriateness had failed.

The Commission also presented testimony from two witnesses. Ronald K. Springer, Historic Preservation Officer for the City of East Lansing, who had prepared the staff report (Commission Exhibit No. 1), testified about the use of residences in the Oakwood Historical District for rentals to single families and to unrelated individuals. Richard Wright, Commission chair, testified regarding the concerns expressed at the Commission's August 8, 1996 meeting. He said that during that meeting, the negative impact rental properties had on surrounding neighborhoods was discussed in detail by Commission members and other persons.

Findings of Fact

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

A. The Oakwood Historic District

1. The City of East Lansing has adopted several historic

district ordinances since the late 1980's. The primary purpose of these laws⁴ has been to safeguard the heritage of the city by establishing and preserving historic districts which reflect elements of East Lansing's cultural, social, economic, political, and architectural history. Additional purposes were to improve and stabilize property values within districts, to strengthen the local economy, to foster civic beauty, and to promote uses of the district for the education, pleasure and welfare of the citizens of East Lansing and the State of Michigan.

2. On or about July 18, 1989, the City of East Lansing adopted Ordinance No. 710. This ordinance established eight historic districts, including the Oakwood Historic District.⁵ The Oakwood District presently encompasses approximately 150 properties, including the property at 130 Oakhill Avenue.

3. The Oakwood Historic District, and the other districts within the city, are administered by a seven-member historic district commission. Among the Commission's functions is the duty to consider applications for certificates of appropriateness dealing with new construction, demolition or moving, and exterior additions to district resources within an historic district.⁶ (Emphasis added) When making a decision to approve or deny a request to move a building or structure, the Commission must follow

⁴ East Lansing Ordinances, Ch. 104, §8.501 et seq., which is referred to as the "Historic Preservation Code of the City of East Lansing".

⁵ East Lansing Ordinances, Ch. 104, §8.511(1).

⁶ East Lansing Ordinances, Ch. 104, §8.520(2).

the Standards for Historic Rehabilitation promulgated by the U.S. Secretary of the Interior, as well as the East Lansing Historic Preservation Code.

4. The adopted historic district ordinances include preservation guidelines that in general are applied to the street facade and sides of buildings and structures which affect the streetscape, and any district resource which has a visual impact on the streetscape.⁷ Changes to structures or other district resources deemed to have nominal historical, architectural or cultural significance - structures less than 50 years old are generally considered to have nominal historical significance - are reviewed with respect to general compatibility and impact of the proposed change on the surrounding structures, the streetscape, and the historic district as a whole.⁸ The ordinances are also designed to promote the adaptive use of residential structures within the commercial historic district while maintaining the overall historic character of the structures, the streetscape, and the historic district. A commercial use must be authorized under the City's Zoning Code.⁹

B. Background Information Regarding Property

5. The property known as 130 Oakhill Avenue, East Lansing, Michigan is located in the Oakwood Historic District. On March 22,

⁷ East Lansing Ordinances, Ch. 104, §8.504(1)(a).

⁸ East Lansing Ordinances, Ch. 104, §8.504(4).

⁹ East Lansing Ordinances, Ch. 104, §8.504(5).

1996, the property was purchased by Gordon G. Hunsaker.¹⁰ The property had been owner-occupied prior to its purchase by Hunsaker. It is now being converted to rental use.

6. As currently zoned, the property can legally be rented to two unrelated individuals or to a family. In order for the property to be legally rented to more than two unrelated individuals, the property must comply with the City of East Lansing's zoning ordinances.

7. One of East Lansing's zoning ordinances has a requirement that all dwellings, ancillary structures, and improvements be constructed and maintained at least three feet from the property lines. Situated on the property at 130 Oakhill is a detached garage. The Historic District Commission staff report prepared in conjunction with the application for certificate of appropriateness indicated that according to "city records" that the house was constructed in 1925 and further stated that the "garage appears to have been constructed around the same time as the house".

8. Evert Kramer, Jr., a licensed residential builder with extensive experience in evaluating, renovating, and restoring residential dwellings originally constructed before 1930, personally inspected the detached two car garage ancillary to the dwelling known as 130 Oakhill on September 13, 1996.

9. Kramer observed that the garage included an insulated fiberglass, two-car overhead door with a keyless remote-control

¹⁰ See footnote 3.

door opener system (typical of contemporary construction standards), original wiring (typical of 1950's construction), concrete block over poured cement footings (typical of post 1950's construction), and original wood studs which appear newer than the materials used in the construction of the adjacent dwelling.

10. Based on his in-depth on-site review of the structure and the records pertaining to same, Kramer determined that the garage was originally constructed sometime between 1952 and 1958.

11. The garage is located approximately two-and-one-half feet from the rear and side property lines. The garage's location does not comply with the zoning setback requirement. In order for the property to be legally rented to more than two unrelated individuals, either a variance must be approved by the Zoning Board of Appeals (ZBA) or the garage must be moved.

12. Score requested a variance from the zoning setback requirement at the ZBA's meeting on June 5, 1996. At that meeting, Score indicated that its intent was to meet the zoning code requirement which would allow Score to legally rent the property to four individuals. In denying the variance request, the ZBA stated that "a variance cannot be granted which would result in increased financial return to the applicant".

C. Application for Certificate of Appropriateness

13. An application for certificate of appropriateness was received on July 9, 1996 by the Planning & Community Development agency, City of East Lansing, for the property known as 130 Oakhill. The application identified the owner of the property as

Score Properties, Inc., and briefly described the proposed "work". The application requested approval to "move garage 8" west", with the reason for the work stated as "to comply with current zoning requirements". Attached to the application was a mortgage report which noted that the "garage to be moved 8" without any change to structure".

14. At its regular Commission meeting on August 8, 1996, the Commission, among other things, considered the application for a certificate of appropriateness regarding the proposed move of the garage. The chairperson and three commissioners were present at that meeting.

15. Brad Pryce, Director of Planning & Community Development for East Lansing, presented a staff report and several slides of the property and surrounding neighborhood. Scott Chappelle, representing the Applicant, Score, indicated that it was the Applicant's intent to rent the property to four occupants. Discussion by the Commission Chairperson (Wright) and two of the Commissioners present (Schwab and Thompson) focused on the current ownership of the property, whether a homestead exemption affidavit had been filed, and whether the property would be rented to a family. It was also noted that new concrete had been poured for a driveway, in anticipation of meeting the requirements of the City Zoning Ordinance.

16. During the public comment portion of the hearing, Beth Schwarze, Vice Chair of the Commission on Housing and Community Development and President of the Glencairn Neighborhood

Association, indicated that inconsistencies were present in the documents submitted. Schwarze advised that Score had submitted an application for a rental housing license on February 21, 1996. Schwarze questioned how an application claiming a homestead property tax exemption could be filed relative to a house intended for rental usage.

17. Commissioner Schwab also indicated that there was confusion in the records regarding this property. Schwab challenged whether increases in occupancy or monetary gain were valid reasons for granting a certificate of appropriateness.

18. Commissioner McCallum went over the standards set forth in Section 8.520 of the Historic Preservation Ordinance and after reviewing items (a) through (e) of this section, stated that the request did not meet any of these standards.

19. Chairperson Wright and Staff Member Pryce commented on the provisions of the Zoning Ordinance as it pertained to occupancy for rental use. Wright advised that the "R-2" zoning classifications allowed rentals for single family dwellings. Wright further indicated that the task of the Commission was to preserve neighborhoods for the enjoyment of the people who lived in them, that these neighborhoods were originally intended for family occupancy, and that they were not intended to be a collection of rental units. Staff Member Pryce felt that Wright was correct with regard to the historical use of the "R-1" and "R-2" classifications. However, Pryce agreed with Chappelle's assessment that the Zoning Ordinance permitted occupancy of up to four unrelated individuals.

20. Ross McFarland and Grant Davison, of Sigma Nu Fraternity, offered comments. McFarland stated that it seemed silly to have to move the garage eight inches. Davidson expressed his support for a neighbor, Janice Pfeifer, who did not want rental property next to her property. Following public comment and discussion, the Commission denied Score's request by a vote of 3 to 1.

21. On or about August 13, 1996, Ronald K. Springer, sent a notice of denial to Score. The notice cited sections 8.528 and 8.520(1a-e) and noted that nothing contained in these sections showed that Score's request was appropriate. The notice also described Score's right to appeal the Commission's decision to the Board.

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. Laws Governing East Lansing's Historic Districts

In a case such as this, the criteria that a Commission uses to

act on an application to move a building or structure, either by approving or denying a certificate of appropriateness, are identified in section 5 of the Local Historic Districts Act.¹¹ This statute provides in relevant 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). (Emphasis added)

The Commission also acted under authority of a parallel local law (i.e., a municipal ordinance) which substantially conformed to the mandates of section 5(3). That law is East Lansing Ordinances, Chapter 104, Historic Preservation, §8.520, which provides that:

Sec. 8.520.

(1) In reviewing proposals, the Commission shall consider each of the guidelines stated in

¹¹ See footnote 1.

Section 8.528, and as further promulgated by the Commission. In addition to the guidelines, the following shall be considered in rendering decisions on applications, and the Commission shall not disapprove an application due to considerations not prescribed in this subsection:

(a) The historical or architectural value and significance of the district resource under consideration and its relationship to the historical value of the streetscape and the surrounding area.

(b) The exterior design, arrangement, texture and materials proposed to be used and the effect and compatibility of the proposal on the rest of the structure, the streetscape and the surrounding area.

(c) Other factors, including cultural value, historic association and architectural style, which the Commission considers pertinent.

(d) Possible ways of mitigating a proposal's potentially negative impact on district resources.

(e) Recommendations from the Building Official, the Design Assistance Team, and the applicable heritage neighborhood committee, if any.
(Emphasis added)

B. Grounds for Appeal and Reversal

The Appellant has asserted that the Commission based its decision on a consideration outside the limited purview of historic preservation law. That is, the Appellant charged that the denial was rendered only to prevent a potential increase in occupancy in rental property.

In its written denial notice, the Commission cited sections 8.528 and 8.520(1a-e) of the City Code and noted that nothing listed in these provisions indicated that the request to move the garage was appropriate. The issue to be decided is: Was the Commission's reliance upon the absence of specific provisions in section 8.528 and 8.520(1)(a-e) to justify its decision misplaced?

At the administrative hearing, the Commission pointed to the

criterion in section 8.520(1)(b) which permits it to consider the effect and compatibility of the proposal on the rest of the structure, the streetscape, and the surrounding areas. The Commission indicated that its primary concern regarding the Appellant's request to move the garage was with the potential impact that increased occupancy would have on the "character" of the neighborhood (i.e., traffic and parking).

Evidence presented at the hearing identified a longstanding presence of rental properties in the areas comprising East Lansing's historic districts. The Commission meeting minutes, dated August 8, 1996, and the testimony of Wright and Springer at the administrative hearing, identified that the current Zoning Ordinances permit the rental of properties in the Oakwood District, including the dwelling at 130 Oakhill, to a family or to two unrelated individuals. The City of East Lansing Historic District Study Committee Final Report (Commission Exhibit No. 1) also identified the historical development of the districts. According to this report, the two historic districts in closest proximity to the Oakwood District (i.e., Collegeville and College Grove Districts) contained subdivisions that had been originally developed in anticipation of a need for off-campus housing. In particular, the report identified that the College Grove Historic District in its beginning was demographically mixed, with boarding houses for students and homes for faculty. This occurred as the City's leaders expressed strong opposition to the construction of any more dormitories on campus and claimed that all students could

be accommodated in homes off-campus.

Section 5(3) of the Act, supra, and sections 8.520 and 8.528 of East Lansing's Historic Preservation Code, supra, clearly and unambiguously prescribe the guidelines the Commission was required to follow. Nowhere in these laws can authority be found which allowed the Commission to consider the potential negative impact that approving the permit would have on the community by making the dwelling eligible for increased occupancy. Under the rules of statutory construction, a legislative body is presumed to have intended the meaning expressed by the language it has chosen. Arrigo's Fleet Service, Inc v State of Michigan, 125 Mich App 790, 792; 337 NW2d 731 (1988). When the language is clear and unambiguous, no further interpretation is necessary. Owendale-Gagetown School Dist v State Bd of Education, 413 Mich 1, 8; 317 NW2d 529 (1982). In deciding whether to approve or deny the Appellant's application, the Commission was constrained to apply only historic preservation law. By considering the matter of occupancy, particularly when couched in "potential" terms, as the basis for its decision, the Commission used a factor not germane to determining whether a proposal is acceptable under the criteria specified in section 5 of the Act, supra, nor for that matter, under the provisions of sections 8.520(1a-e) or 8.528 of the East Lansing's Historic Preservation Code. Therefore, the Commission lacked authority to deny the Appellant's application for a non-historic preservation reason.

Even assuming that the occupancy issue was subject to

consideration by a commission, no evidence presented at the administrative hearing established that an increase in the rental occupancy of the dwelling would have a negative impact on the neighborhood. Therefore, evidence in the hearing record supports the Appellant's view that the Commission in denying the application, acted outside the legal framework applicable to the regulation of properties in historic districts. The Commission's decision to deny permission to move the garage was not justified and should be reversed.


Conclusion

In deciding whether to approve or deny the Appellant's application, the Commission was constrained to apply only historic preservation law. Section 5(3) of the Act, supra, and sections 8.520 and 8.528 of East Lansing's Historic Preservation Code, supra, clearly and unambiguously describe the guidelines the Commission was required to follow. Nowhere in these laws can authority be found which allowed the Commission to consider the potential negative impact that approving the permit would have on the community by making the dwelling eligible for increased occupancy. Therefore, the Commission lacked authority to deny the Appellant's application for a non-historic preservation reason. Simply stated, this case represents the misuse of historic preservation law as justification for regulating the occupancy of rental dwellings in historic districts.

Recommendation

It is recommended that the appeal be granted.

Dated: Jan 29 1997


Darcel F. Smith (P40168)
Presiding Officer
Hearings Division

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