STATE OF MICHIGAN
MICHIGAN DEPARTMENT OF HISTORY, ARTS AND LIBRARIES
STATE HISTORIC PRESERVATION REVIEW BOARD

CARLA M. WILSON,
Applicant/Appellant,

v

Docket No. 04-015-HP

DETROIT HISTORIC
DISTRICT COMMISSION,
Commission/Appellee.
_____/

FINAL DECISION AND ORDER

This matter involves an appeal of a decision of the Detroit Historic District Commission, which purportedly denied retroactive permission for a second garage, a driveway/parking pad, stone pillars, a vinyl security fence, brick window detailing over a front bay window, a curb cut, and landscaping changes at the premises known as 19100 Berkeley Road, Detroit, Michigan. The residence is located in Detroit's Sherwood Forest Historic District.

The State Historic Preservation Review Board (the Board) has jurisdiction to consider this appeal under authority of 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, the Office of Regulatory Affairs of the Department of History, Arts and Libraries convened an administrative hearing in this matter on January 13, 2004, for the purpose of receiving evidence and hearing arguments.

A Proposal for Decision was issued on October 11, 2004, and true copies of the Proposal were mailed to the parties and their attorneys of record, if any, pursuant to

Section 81(1) of the Administrative Procedures Act of 1969, as amended, being Section 24.281 of Michigan Compiled Laws.

The Board considered this appeal, along with the Proposal for Decision, the official record made and all materials submitted by the parties, at its regularly scheduled meeting conducted on October 22, 2004.

Having considered the Proposal for Decision and the official record made in this matter, the Board voted 7 to 0, with 1 abstention(s), to ratify, adopt and promulgate the Proposal for Decision as the Final Decision of the Board in this matter, and to incorporate the Proposal into this document, and,

Having done so,

IT IS ORDERED that the Commission's decision of September 10, 2003 is SET ASIDE with respect to landscaping and that the Commission's notice of decision and order of September 12, 2003 is SET ASIDE with respect to the curb cut.

IT IS FURTHER ORDERED that the Commission's decision of September 10, 2003 is AFFIRMED with respect to the new garage, stone pillars, vinyl fence, brick detailing, and concrete pad and driveway.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to each party, and to the party's attorney, if any, as soon as is practicable.

Dated: Oct. 22, 04

Elisabeth Knibbe, Chairperson
State Historic Preservation Review Board

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

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DEPARTMENT OF HISTORY, ARTS AND LIBRARIES

OFFICE OF REGULATORY AFFAIRS

CARLA M. WILSON,
Applicant/Appellant,

v Docket No. 04-015-HP

DETROIT HISTORIC DISTRICT COMMISSION,
Commission/Appellee.
_____/

PROPOSAL FOR DECISION

This matter concerns an appeal of the September 10, 2003 decision of the Detroit Historic District Commission (the Commission), denying a request for retroactive permission to perform certain work, namely: build a second 2½ car garage, put in a concrete driveway and parking pad, make a curb cut, erect seven cobblestone pillars, install a vinyl fence, place brick detailing over the front bay window, and perform certain landscaping at the premises situated at 19100 Berkeley Road, Detroit, Michigan. The property is located in Detroit's Sherwood Forest Historic District (the District).

Procedural History

The appeal was filed under authority of section 5(2) of the Local Historic Districts Act (the LHDA).[1] Section 5(2) provides that a person aggrieved by a decision of a historic district commission may appeal the decision to the State Historic

[1] 1970 PA 169, § 5, MCL 399.205.

Preservation Review Board (the Review Board), which is an agency of the Michigan Department of History, Arts and Libraries (the Department).

Upon receipt of the appeal, the Review Board directed the Department's Office of Regulatory Affairs (ORA) to convene an administrative hearing for the purpose of receiving evidence and hearing arguments. To that end, ORA convened a hearing on January 13, 2004, in the Commission Room, Fifth Floor, Michigan Library and Historical Center, 702 W. Kalamazoo Street, Lansing, Michigan. The hearing was conducted pursuant to procedures prescribed in Chapter 4 of the Administrative Procedures Act of 1969.[2]

The Appellant, Carla M. Wilson, appeared in person at the hearing and represented herself. She was accompanied by her husband, Kenneth Wilson. Angela Bodley Carter, Assistant Corporation Counsel, City of Detroit Law Department, appeared on behalf of the Commission. Nicholas L. Bozen, an Administrative Law Judge assigned to ORA, served as Presiding Officer.

At the conclusion of the administrative hearing, the Wilsons indicated that they wanted to do what was fair. Mr. Wilson stated that he and his wife were willing to modify some of the work that had been completed, so that it would match the historic appearance of their property. He added that what he preferred to do would be to spend money to make corrections rather than expend funds to tear out finished work.

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[2] 1969 PA 306, § 71 *et seq*, MCL 24. 271 *et seq*.

In view of the Wilsons' stated interest in taking corrective action, the Presiding Officer ruled that they would have an opportunity extending to and through June 1, 2004, to modify any non-conforming work at their property and to report back with respect to any issues remaining in this case. However, as of the date of this Proposal for Decision, neither the Appellant nor her husband has submitted any report, letter, samples of new materials or other communication to ORA, to demonstrate that any finished work has been modified or that any issue on appeal herein has been waived, withdrawn or otherwise resolved.

Issues on Appeal

In her November 2003 letter of appeal, the Appellant asked the Review Board to set aside the Commission's decision in its entirety. She listed several reasons why she felt she was entitled to relief, including: 1) there was no curb cut, and the landscape changes were made in April 2001, before the District was designated, 2) most of the other work was contracted for prior to District establishment, 3) the changes at her property were historic in character and in keeping with federal Standard No. 9, 4) the changes enhanced the appearance of her house and gave it a more stately presence, 5) the vinyl fence was necessary in order to provide safety and security, and 6) certain members of the Commission were verbally abusive to her and her husband.

The Commission's position, in brief, was that it properly applied all applicable historic preservation standards and guidelines, and procedures, when it denied the Appellant's request for a new garage, the vinyl fence, and other work.

Summary of Evidence

Under Michigan law, a party who stands in the position of a plaintiff, an applicant, or an 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 *Dept of Social Services*, 186 Mich App 547, 549; 465 NW2d 337 (1990). The Appellant clearly occupies that position in this case and consequently bears the burden of proof with respect to her factual allegations.

A. Appellant's Evidence

Section 5(2) of the LHDA, cited above, indicates that appellants may submit any part or all of their evidence in written form. In that vein, the Appellant submitted seven exhibits in order to substantiate her factual assertions. Her exhibits consisted of: 1) a copy of the ''notice of denial and order'' regarding the Appellant's application; 2) a Kirkland Farms, Inc., invoice dated November 14, 2001 and pertaining to new pillars; 3) a Joeseph David Construction invoice dated July 16, 2001 and pertaining to a 2½ car garage, a concrete driveway with a carport space, and footings for seven stone pillars; 4) a Wayne County Department of Public Services approval notice, dated November 21, 2002, regarding a residential drive approach at 19100 Berkeley; 5) a Wayne County Department of Public services permit, dated January 21, 2003, to construct a residential drive approach at 19100 Berkeley; 6) a parking alert notice indicating

that the first two blocks of Berkeley are posted; and 7) a photograph of the property, dated May 21, 2003.

In addition, the Appellant testified at the hearing. She stated that she and her husband had moved into the house in 1999 and that the neighborhood was nice.

In terms of landscaping, she indicated that shortly after moving in, they had removed big pine trees in the front yard and cut down cherry trees in the rear. She also mentioned seedlings.

Regarding the garage and parking pad, she commented that there was no place to park. She said a friend had received a ticket while visiting. She also mentioned that the outside rearview mirrors had been knocked off a visitor's car.

She commented that there were safety concerns. She stated her house was on a corner lot, that the old wood fence was falling apart, and that its gate would not close. She said the side door was visible and there was no safety wall.

She further mentioned that the contract for the new pillars had been signed in November of 2001, that she thought they looked good, and that the local reverend liked them.

She additionally stated that the new brickwork over the windows matched the bricks below.

The Appellant's husband, Kenneth Wilson, also testified at the hearing.

He reiterated that the contract concerning the material for the pillars had been signed on November 14, 2001. He then stated that some minor ground preparation took place about a week later; however, he acknowledged that another contractor, the one who

actually erected the pillars, did not begin working until July or August 2002 and did not finish the job until September 2002.

Mr. Wilson also reiterated that he had contracted with Joeseph David Construction in July of 2001 to purchase the materials he needed to build his garage. He further acknowledged that construction work did not begin under after July 4, 2002 and that the job was not finished until sometime in August.

He further stated that work on the parking pad was begun and finished in July and August of 2002. He stressed that there was no curb cut, in that the street (Seven Mile Road) was raised and the curbs there were only ¾ of an inch high, so there was no need to make a cut.

Regarding the pillars, he verified that he had contracted with Kirkland Farms in November 2001 to purchase his materials; however, he acknowledged that construction did not begin until September 2002, adding that it took a few days to complete.

He next stated that he wanted to and does own five vehicles and that he therefore needs a second garage.

He further stated that the Commission denied his application because he did not have any sample materials to show the commissioners. He said that this was not fair and that taxpayers must be treated fairly. He then stated that Commissioner Turner was belligerent and he felt the way the Commission handled things was bad.

He added that, being on a corner, there was a need for security and that ''the fence is a must''.

He said his wife had purchased the house.

He also said he thought that the stone pillars were historic.

He added that the changes he and his wife had made were not an eyesore and that they did not look horrible.

He also indicated that the president of the neighborhood association, William Vance, had said his fence was too bright and that Wilson had no choice but to change it. Wilson asserted that Mr. Vance was ''nasty'' and that Vance told him he was in big trouble.

Wilson acknowledged that he himself had a big mouth.

Under cross-examination, Mr. Wilson testified that he and his wife had learned in April of 2002 about the fact that the Sherwood Forest neighborhood was being proposed for designation as a historic district. He said they were made aware of the official designation in May 2002, by reading an article in alocal newspaper.

He also testified that he had applied for building permits when construction started in the summer of 2002. He said he could not get a permit because building officials had insisted on referring his request to the Commission.

He additionally testified that the City had cited his wife for undertaking construction without a permit and that she had received violation letters dated July 31, 2002 and September 6, 2002.

B. Commission's Evidence

The Commission also offered documents and testimony for entry into the official hearing record.

The Commission submitted ten exhibits at the hearing. The Commission's exhibits[3] consisted of: A) a letter dated July 31, 2002 from Sheila Bashiri, Staff, Historic District Commission, to Carla Wilson saying that Wilson needed to file an application pertaining to the exterior changes made to her property at 19100 Berkeley, B) a letter dated September 6, 2002 from Bashiri to Wilson reiterating the need for Wilson to request approval for the exterior changes, C) an application dated July 18, 2003, signed by Wilson, requesting permission to build a 2½ car garage and perform other work at her property, D) Chapter 25 of the Detroit Ordinances, E) the Commission's rules of procedure, F) abbreviated minutes of the Commission meeting of September 10, 2003, G) a staff report regarding Wilson's application, with numerous attachments, including 16 photocopies of photographs, and a letter from William Vance, who serves on the Board of Directors for the Sherwood Forest Association, H) a copy of the LHDA, I) the U.S. Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and J) a notice of denial and order dated September 12, 2003.

The Commission also presented testimony from one witness, Sheila Bashiri. Ms. Bashiri indicated that she is employed by the Commission as a Cultural Resources Specialist 2 and that she holds an master's degree in urban planning.

Ms. Bashiri testified that she participated in the designation of the Sherwood Forest neighborhood as a historic

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[3] The Commission identified its exhibits with letters.

district in April and May 2002 and was familiar with the inclusion of 19100 Berkeley within the District.

Ms. Bashiri also testified that after the District was established, she had received a telephone call regarding the construction of the new garage at the premises and that she did some fieldwork and observed that exterior changes had in fact been made at the property without benefit of a building permit or Commission approval. She said she took photographs of the garage and then sent a violation letter to the Appellant, on July 31, 2002. She said she sent another letter to Wilson, on September 6, 2002, after the pillars were erected.

Bashiri further testified that the Commission received Wilson's application around July 18, 2003 and then met in September to review it. She added that she prepared a staff report regarding the application. She also stated that the Commission asked the Wilsons for garage and site plans but that it never received any such materials. She noted that local design and review guidelines had been adopted for the District.

She additionally stated that there were now two garages on the property. She indicated that the original garage has brick walls and a four-sided roof. She also said the new garage has vinyl siding with a gable roof that differs from the roof on the original garage.

Bashiri further testified that homeowners must obtain permission in order to change their landscaping, and that in the District designation photographs of the property no trees appeared in the front yard. She then pointed out that new trees

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The State Historic Preservation Review Board (the Board) has jurisdiction to consider this appeal under authority of Section 5(2) of the Local Historic Districts Act, as amended, being Section 399.205 of the Michigan Compiled Laws.

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Having done so,

IT IS ORDERED that the Commission's decision of September 10, 2003 is SET ASIDE with respect to landscaping and that the Commission's notice of decision and order of September 12, 2003 is SET ASIDE with respect to the curb cut.

IT IS FURTHER ORDERED that the Commission's decision of September 10, 2003 is AFFIRMED with respect to the new garage, stone pillars, vinyl fence, brick detailing, and concrete pad and driveway.

IT IS FURTHER ORDERED that a copy of this Final Decision and Order shall be transmitted to each party, and to the party's attorney, if any, as soon as is practicable.

Dated: Oct. 22, 04

Elisabeth Knibbe, Chairperson
State Historic Preservation Review Board

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At the conclusion of the administrative hearing, the Wilsons indicated that they wanted to do what was fair. Mr. Wilson stated that he and his wife were willing to modify some of the work that had been completed, so that it would match the historic appearance of their property. He added that what he preferred to do would be to spend money to make corrections rather than expend funds to tear out finished work.

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Issues on Appeal

In her November 2003 letter of appeal, the Appellant asked the Review Board to set aside the Commission's decision in its entirety. She listed several reasons why she felt she was entitled to relief, including: 1) there was no curb cut, and the landscape changes were made in April 2001, before the District was designated, 2) most of the other work was contracted for prior to District establishment, 3) the changes at her property were historic in character and in keeping with federal Standard No. 9, 4) the changes enhanced the appearance of her house and gave it a more stately presence, 5) the vinyl fence was necessary in order to provide safety and security, and 6) certain members of the Commission were verbally abusive to her and her husband.

The Commission's position, in brief, was that it properly applied all applicable historic preservation standards and guidelines, and procedures, when it denied the Appellant's request for a new garage, the vinyl fence, and other work.

Summary of Evidence

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A. Appellant's Evidence

Section 5(2) of the LHDA, cited above, indicates that appellants may submit any part or all of their evidence in written form. In that vein, the Appellant submitted seven exhibits in order to substantiate her factual assertions. Her exhibits consisted of: 1) a copy of the ''notice of denial and order'' regarding the Appellant's application; 2) a Kirkland Farms, Inc., invoice dated November 14, 2001 and pertaining to new pillars; 3) a Joeseph David Construction invoice dated July 16, 2001 and pertaining to a 2½ car garage, a concrete driveway with a carport space, and footings for seven stone pillars; 4) a Wayne County Department of Public Services approval notice, dated November 21, 2002, regarding a residential drive approach at 19100 Berkeley; 5) a Wayne County Department of Public services permit, dated January 21, 2003, to construct a residential drive approach at 19100 Berkeley; 6) a parking alert notice indicating

that the first two blocks of Berkeley are posted; and 7) a photograph of the property, dated May 21, 2003.

In addition, the Appellant testified at the hearing. She stated that she and her husband had moved into the house in 1999 and that the neighborhood was nice.

In terms of landscaping, she indicated that shortly after moving in, they had removed big pine trees in the front yard and cut down cherry trees in the rear. She also mentioned seedlings.

Regarding the garage and parking pad, she commented that there was no place to park. She said a friend had received a ticket while visiting. She also mentioned that the outside rearview mirrors had been knocked off a visitor's car.

She commented that there were safety concerns. She stated her house was on a corner lot, that the old wood fence was falling apart, and that its gate would not close. She said the side door was visible and there was no safety wall.

She further mentioned that the contract for the new pillars had been signed in November of 2001, that she thought they looked good, and that the local reverend liked them.

She additionally stated that the new brickwork over the windows matched the bricks below.

The Appellant's husband, Kenneth Wilson, also testified at the hearing.

He reiterated that the contract concerning the material for the pillars had been signed on November 14, 2001. He then stated that some minor ground preparation took place about a week later; however, he acknowledged that another contractor, the one who

actually erected the pillars, did not begin working until July or August 2002 and did not finish the job until September 2002.

Mr. Wilson also reiterated that he had contracted with Joeseph David Construction in July of 2001 to purchase the materials he needed to build his garage. He further acknowledged that construction work did not begin under after July 4, 2002 and that the job was not finished until sometime in August.

He further stated that work on the parking pad was begun and finished in July and August of 2002. He stressed that there was no curb cut, in that the street (Seven Mile Road) was raised and the curbs there were only ¾ of an inch high, so there was no need to make a cut.

Regarding the pillars, he verified that he had contracted with Kirkland Farms in November 2001 to purchase his materials; however, he acknowledged that construction did not begin until September 2002, adding that it took a few days to complete.

He next stated that he wanted to and does own five vehicles and that he therefore needs a second garage.

He further stated that the Commission denied his application because he did not have any sample materials to show the commissioners. He said that this was not fair and that taxpayers must be treated fairly. He then stated that Commissioner Turner was belligerent and he felt the way the Commission handled things was bad.

He added that, being on a corner, there was a need for security and that ''the fence is a must''.

He said his wife had purchased the house.

He also said he thought that the stone pillars were historic.

He added that the changes he and his wife had made were not an eyesore and that they did not look horrible.

He also indicated that the president of the neighborhood association, William Vance, had said his fence was too bright and that Wilson had no choice but to change it. Wilson asserted that Mr. Vance was ''nasty'' and that Vance told him he was in big trouble.

Wilson acknowledged that he himself had a big mouth.

Under cross-examination, Mr. Wilson testified that he and his wife had learned in April of 2002 about the fact that the Sherwood Forest neighborhood was being proposed for designation as a historic district. He said they were made aware of the official designation in May 2002, by reading an article in alocal newspaper.

He also testified that he had applied for building permits when construction started in the summer of 2002. He said he could not get a permit because building officials had insisted on referring his request to the Commission.

He additionally testified that the City had cited his wife for undertaking construction without a permit and that she had received violation letters dated July 31, 2002 and September 6, 2002.

B. Commission's Evidence

The Commission also offered documents and testimony for entry into the official hearing record.

appeared later and could be seen in subsequent pictures. She affirmed that homeowners must obtain permission before making landscape changes.

She concluded her testimony by indicating that the vinyl fence, the vinyl siding on the new garage, and the remaining work identified on the application all failed to comport with the Secretary's standards. She added that the Commission also felt there was inappropriate differentiation under Standard 9 with respect to the old and the new garage.

Findings of Fact

Based on the evidence introduced into the record at the administrative hearing, the facts of this matter are found to be as follows:

A. Background of Residence

1. The primary structure located at 19100 Berkeley Road in Detroit, Michigan, is a brown brick, English Revival style residence, which is located on the corner of Berkeley and West Seven Mile Roads. Other features at the site include a brick garage with a four-sided roof, as well as a six-foot high wooden, gated fence. (Testimony; Commission Exhibits D and G)

B. Purchase of Residence and Initial Activities

2. Carla Wilson purchased the house at 19100 Berkeley in 1999, and she and her husband moved in at that time. She felt the neighborhood was nice. Her deed of purchase contained restrictions, such as: new fences must made be of woven wire and

the Association must approve fences with respect to corner lots. (Testimony; CE D)

3. Thereafter, the Wilsons did some landscaping. They cut down cherry trees in the rear. They removed big pine trees and planted tree seedlings in the front. (Testimony)

4. They also had visitors. At least one of their visitors parked a car on Berkeley and received a parking ticket. The first two blocks of Berkeley are posted. Street parking is prohibited from 7 a.m. to 6 p.m., seven days a week. Officers from the 12th Precinct patrol the street. Despite such patrols, the car of one of the Wilsons' visitors had its mirrors knocked off. (Testimony; Appellant's Exhibit 6)

5. The Wilsons also wanted to improve their property. In particular, they wanted to build a second garage to house some of Mr. Wilson's five vehicles and they also wanted to enhance security and safety by tearing down the deteriorating wooden fence and erecting a vinyl security wall. (Testimony)

6. On or about July 16, 2001, the Wilsons obtained an invoice from Joeseph David Construction of Detroit, Michigan. The invoice called for constructing a 2½ car garage with a brick front and vinyl siding on the sides and rear. The invoice also called for pouring an eight-inch thick concrete driveway with a carport space leading to Seven Mile Road, without cutting the curb. It additionally called for pouring four-foot deep concrete footings for seven stone pillars, five of which would anchor a new vinyl security fence. The invoice indicated that there would be a deposit of $18,000.00 made at that time, with a balance of

$31,000.00 to be paid upon completion of all work. The invoice also indicated that Kenneth Wilson would work with the contractor on the scheduling and timing of work. (Testimony; AE 3)

7. On or about November 21, 2001, Kenneth Wilson obtained an invoice from Kirkland Farms, Inc., regarding the construction of seven Ohio Cobblefield stone pillars. The invoice indicated that the charge for five six-foot pillars would be $3,000.00 and that the charge for two four-foot pillars would be $800.00. Some minor ground preparation took place about one week later. (Testimony; AE 2)

C. Establishment of Historic District

8. Commission staff member Sheila Bashiri participated in the designation of the Sherwood Forest neighborhood as an official historic district, during April and May of 2002. She became familiar with 19100 Berkeley during her work on establishing the District. (Testimony)

9. Mr. and Mrs. Wilson became aware in April 2002 that their neighborhood was being proposed for designation as a historic district. (Testimony)

10. On April 24, 2002, Detroit City Council passed Ordinance No. 2-02,[4] officially designating a historic district known as the Sherwood Forest Historic District. The district encompassed approximately 225 predominantly English Revival residential structures. (CE D)

11. The District was established at the "conservation" treatment level. This means that owners were encouraged to

[4] Detroit Ordinances, § 25-2-141.

clean, repair or replace worn, cracked, or broken materials with compatible materials. Owners were also encouraged to perform normal maintenance. The ordinance contemplated acceptance of contemporary building methods or materials, provided that they were compatible with the defined elements of design for the District. (CE D)

12. Under the ordinance, the elements of design prescribe that buildings derive from classical precedents, that wood be used for window frames, that slate or slate-like asphalt shingles be used on roofs, that garages correspond in materials to the main dwelling, that garage colors relate to the colors of the main dwelling, that landscape features in the public right-of-way create a sense of continuity, that the width of the driveway correspond to the width of the garage on corner lots, and that replacement trees should be characteristic of the area and period. (CE D)

13. In May 2002, the Wilsons saw an article in a local newspaper, the "Tattle Tale", discussing the fact that the District had officially been established. (Testimony)

D. Construction and Other Activities

14. In July of 2002, the Wilsons began work on the second garage at the premises. This west-facing, 2½ car structure was placed on the north side of the existing garage at the rear of the house. The new garage had beige vinyl siding on three elevations and brick veneer on the west, where a double garage door and a single entry door were located. The side facing gable

appeared later and could be seen in subsequent pictures. She affirmed that homeowners must obtain permission before making landscape changes.

She concluded her testimony by indicating that the vinyl fence, the vinyl siding on the new garage, and the remaining work identified on the application all failed to comport with the Secretary's standards. She added that the Commission also felt there was inappropriate differentiation under Standard 9 with respect to the old and the new garage.

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1. The primary structure located at 19100 Berkeley Road in Detroit, Michigan, is a brown brick, English Revival style residence, which is located on the corner of Berkeley and West Seven Mile Roads. Other features at the site include a brick garage with a four-sided roof, as well as a six-foot high wooden, gated fence. (Testimony; Commission Exhibits D and G)

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the Association must approve fences with respect to corner lots. (Testimony; CE D)

3. Thereafter, the Wilsons did some landscaping. They cut down cherry trees in the rear. They removed big pine trees and planted tree seedlings in the front. (Testimony)

4. They also had visitors. At least one of their visitors parked a car on Berkeley and received a parking ticket. The first two blocks of Berkeley are posted. Street parking is prohibited from 7 a.m. to 6 p.m., seven days a week. Officers from the 12th Precinct patrol the street. Despite such patrols, the car of one of the Wilsons' visitors had its mirrors knocked off. (Testimony; Appellant's Exhibit 6)

5. The Wilsons also wanted to improve their property. In particular, they wanted to build a second garage to house some of Mr. Wilson's five vehicles and they also wanted to enhance security and safety by tearing down the deteriorating wooden fence and erecting a vinyl security wall. (Testimony)

6. On or about July 16, 2001, the Wilsons obtained an invoice from Joeseph David Construction of Detroit, Michigan. The invoice called for constructing a 2½ car garage with a brick front and vinyl siding on the sides and rear. The invoice also called for pouring an eight-inch thick concrete driveway with a carport space leading to Seven Mile Road, without cutting the curb. It additionally called for pouring four-foot deep concrete footings for seven stone pillars, five of which would anchor a new vinyl security fence. The invoice indicated that there would be a deposit of $18,000.00 made at that time, with a balance of

$31,000.00 to be paid upon completion of all work. The invoice also indicated that Kenneth Wilson would work with the contractor on the scheduling and timing of work. (Testimony; AE 3)

7. On or about November 21, 2001, Kenneth Wilson obtained an invoice from Kirkland Farms, Inc., regarding the construction of seven Ohio Cobblefield stone pillars. The invoice indicated that the charge for five six-foot pillars would be $3,000.00 and that the charge for two four-foot pillars would be $800.00. Some minor ground preparation took place about one week later. (Testimony; AE 2)

C. Establishment of Historic District

8. Commission staff member Sheila Bashiri participated in the designation of the Sherwood Forest neighborhood as an official historic district, during April and May of 2002. She became familiar with 19100 Berkeley during her work on establishing the District. (Testimony)

9. Mr. and Mrs. Wilson became aware in April 2002 that their neighborhood was being proposed for designation as a historic district. (Testimony)

10. On April 24, 2002, Detroit City Council passed Ordinance No. 2-02,[4] officially designating a historic district known as the Sherwood Forest Historic District. The district encompassed approximately 225 predominantly English Revival residential structures. (CE D)

11. The District was established at the "conservation" treatment level. This means that owners were encouraged to

[4] Detroit Ordinances, § 25-2-141.

clean, repair or replace worn, cracked, or broken materials with compatible materials. Owners were also encouraged to perform normal maintenance. The ordinance contemplated acceptance of contemporary building methods or materials, provided that they were compatible with the defined elements of design for the District. (CE D)

12. Under the ordinance, the elements of design prescribe that buildings derive from classical precedents, that wood be used for window frames, that slate or slate-like asphalt shingles be used on roofs, that garages correspond in materials to the main dwelling, that garage colors relate to the colors of the main dwelling, that landscape features in the public right-of-way create a sense of continuity, that the width of the driveway correspond to the width of the garage on corner lots, and that replacement trees should be characteristic of the area and period. (CE D)

13. In May 2002, the Wilsons saw an article in a local newspaper, the "Tattle Tale", discussing the fact that the District had officially been established. (Testimony)

D. Construction and Other Activities

14. In July of 2002, the Wilsons began work on the second garage at the premises. This west-facing, 2½ car structure was placed on the north side of the existing garage at the rear of the house. The new garage had beige vinyl siding on three elevations and brick veneer on the west, where a double garage door and a single entry door were located. The side facing gable

roof was light pink in color, as contrasted with the dark red roof of the house and the existing garage. (CE D)

15. On or about July 22, 2002, Sheila Bashiri received a telephone call from one the Wilsons' neighbors. In this call, the neighbor told Bashiri that the Wilsons were erecting a second garage at the premises.

16. William Vance, a member of the Board of Directors of the Sherwood Forest Association, also received a phone call in July 2002 indicating that the Wilsons were building a second garage. He sent a letter to the Wilsons on July 29, 2002 indicating that they were in violation of the Sherwood Forest property restrictions and the Commission's building guidelines. (CE D)

17. On July 31, 2002, Bashiri visited the premises and observed the new garage, which she photographed. She then sent Carla Wilson, who was the property owner of record, a letter indicating that while doing fieldwork, she (Bashiri) observed that changes, those being the new garage, had been made at the premises without Commission approval. Bashiri wrote that to be in compliance with the ordinance, Wilson must immediately submit an application for a building permit along with supporting documents and have the application placed on the agenda for the Commission's next meeting. (Testimony; CE A)

18. In late August or early September 2002, the Wilsons began work on the driveway, parking pad, related concrete work, and the seven cobblestone pillars. The pillars were light colored stone, approximately 18'' x 18'' square, with a hipped concrete

cap on top. The two front pillars were built approximately three feet tall, while the other five pillars were about two feet taller. A new parking pad was placed between the house and the two garages and ran to the street. (Testimony; CE D)

19. On September 6, 2002, Bashiri sent a second letter to Carla Wilson regarding changes at the premises. The letter again indicated that in order to be in compliance, Wilson must immediately submit an application and supporting documents. (CE B)

20. The concrete work and the pillars were all completed by September 18, 2002. (Testimony; CE D)

21. On or about November 1, 2002, Kenneth Wilson sent a drawing to the Wayne County Department of Public Services regarding his newly constructed, concrete drive approach to Seven Mile Road. He received county approval a few weeks later, with the proviso, ''Do not cut curb''. (AE 4 and 5)

22. Early in November 2002, William Vance met with Kenneth Wilson to discuss the changes at the Wilsons' property. (Testimony; CE D)

23. In or about January 14, 2003, the Wilsons installed six or more vinyl fence posts along their property line on the Seven Mile Road border of their property, to support a new vinyl fence. (CE D)

24. By February 7, 2003, the Wilsons had completed installation of a new solid-looking vinyl fence and gate around the rear of their property. The fence was constructed of solid panels of vinyl fencing, starting at the south side front face of

the house and extending southward to one of the taller stone pillars. It was intermittently attached to the stone pillars and the vinyl posts, and also to the southwest corner of the garage. The gate was a ten-foot wide, double gate. (CE D)

25. The Wilsons subsequently added new brick detailing at the top of the bay window on the front of the house. The detailing mimicked stonework found at the bottom of the window and in the seven stone pillars. (CE D)

26. At around this time, seedlings that the Wilsons had planted in their front yard, which altered the appearance of the historic landscape, began to sprout up. (Testimony; AE 7; CE D)

27. A pastor from a nearby church thought the changes looked nice. Other neighbors did not. (Testimony; CE D))

E. Contacts and Commission Review

28. On July 14, 2003, Bashiri received a letter from Carla Wilson, who inquired about complying with the proper guidelines for work on her home. Wilson also wrote that certain repairs would be completed with the monitoring help of Mr. William Vance of the Sherwood Association. (CE D)

29. Bashiri replied to Mr. and Mrs. Wilson on July 16, 2003. She thanked them for responding to her, and she again furnished information to the effect that an application and supporting documentation must be submitted to the Commission regarding the work done at their property. Bashiri's letter also indicated that the application must address the garage, the stone pillars, the vinyl fencing, the paving, and the removal of plantings from the front of the property. She added that samples

of all of the materials listed on the Commission's checklist must accompany the application. (CE D)

30. Carla Wilson subsequently completed an ''application for new construction or additions''. It was dated July 25, 2003. With respect to items mentioned on the ''submittal criteria ckecklist'' and in response to requests for copies of: floor plans, elevations, materials samples, and designs, Wilson wrote, ''Don't have any''. The Commission received the application on August 21, 2003. (CE C and D)

31. Another Commission staff member, Kristine Kidorf, promptly contacted Ms. Wilson via fax. Her communication stressed that the Commission needed the documentation mentioned in the checklist by the close of business on August 25, 2003. (CE D)

32. Bashiri subsequently prepared a staff report for the Commission's use. The report contained several attachments, including 16 photographs. It noted that the applicant had said that she and her husband had constructed the garage without plans and could not furnish any of the documentation Kidorf had requested. The reported commented that the applicant had explained that she and her husband needed the garage because they owned five cars. The report also commented that Wilson had stated that the vinyl fence was replacing an old fence and was needed for security purposes. Bashiri ended her report by recommending that the Commission deny the application and in addition, order the changes reversed, on the basis that the work did not meet the Secretary of the Interior's Standards. (CE D)

33. The Commission met on September 10, 2003 to conduct routine business, including consideration of Carla Wilson's application. Five commissioners were present. Mr. and Mrs. Wilson were also in attendance, as was Mr. Vance. Bashiri read portions of her report during the meeting. (Testimony; CE F)

34. At one point, Commissioner Hamilton moved to table Wilson's application in order to give the owners time to work with staff. The motion proposed that the owners return with a solution to resolve the situation and furnish complete drawings. He later withdrew this motion. (CE F)

35. After further discussion, Commissioner Hamilton moved to deny the application for the new garage, the vinyl fence, the stone pillars, the driveway and concrete pad, the stone trim over the front bay window, and the landscaping, and order the work removed and the landscape returned to its original condition, in that it did not meet Standard No. 9 of the Secretary of the Interior's Standards. Commissioner Turner offered support. The motion carried by a vote of 5 to 0. (CE F)

36. On September 15, 2003, Kidorf, on behalf of the Commission, sent Carla Wilson a notice of denial and order dated September 12, 2003. The notice repeated that the changes made at 19100 Berkeley did not comport with Secretary of the Interior's Standard No. 9. The notice added that Wilson could appeal the Commission's decision to the Review Board within 60 days of receiving the notice. (CE J)

37. Carl Wilson filed her appeal with the Review Board in mid-November 2003.