



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240



May 8, 2019

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: **First National Building, 660 Woodward Avenue, Detroit, Michigan**
Project Number: **26677**

Dear [REDACTED]:

I have concluded my review of your appeal of the June 5, 2018, decision of Technical Preservation Services (TPS), National Park Service, denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank your representatives, [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], for meeting with me in Washington on November 15, 2018, and for providing a detailed account of the project.

In its denial decision, TPS stated that the most significant factors in the denial included, “. . . a large sidewalk seating enclosure and canopy, new exterior signs, improper repair work to the historic decorative plaster ceilings in the west lobby, and the interior tenant build-out on the ground floor as well as floors 20-23.” These factors caused the rehabilitation to contravene Standards 2 and 5 of the Secretary of the Interior’s Standards for Rehabilitation (the Standards). Standard 2 states, “*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*” Standard 5 states, “*Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.*”

TPS also noted that most of the work had been completed without prior review and approval. The regulations state, “*Owners are strongly encouraged to submit part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk.*” [36 C.F.R. 67.6(a)(1)].

At the appeal meeting, your presentation included additional information on exterior signage, the outdoor dining area, ceiling treatments in the historic lobby and two retail spaces on the first floor, and the corridors on floors 20-23, as well as proposed changes in response to the denial issues identified by TPS.

Following discussions during the meeting, I requested additional information concerning the denial issues and the proposed changes to address the denial issues. ■■■■■ submitted those materials on March 22, 2019.

After a thorough review of the entire record for this project, including all the materials submitted to date, I have determined that the rehabilitation of the First National Building is not consistent with the historic character of the property and the historic district in which it is located, and that the project does not meet the Standards. Therefore, the denial issued on June 5, 2018, by TPS is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

The First National Building, designed by Albert Kahn, is a limestone and granite-clad twenty-six story building, built in two phases. The original 1922 structure stands at the corner of Woodward Avenue and Cadillac Square. A major enlargement of the original building was constructed in 1928, following the design of the original building and using the same exterior cladding materials. In the 1950s, the ground level underwent extensive modifications. New floors were inserted into the barrel-vaulted banking hall and a new lobby was created. Further alterations were undertaken during the 1980s.

At the time of acquisition in May of 2011, the building was over one-third vacant; existing leases dictate that the rehabilitation work will be accomplished in phases. Although the regulations accommodate phased projects, final certification of a project is based upon the overall impact of the completed rehabilitation on the historic character of the building. Thus, each phase of a project contributes to the overall impact of the rehabilitation and must be planned, reviewed and approved, and executed, with that goal in mind. An earlier phase of the First National Building rehabilitation had been the subject of a previous appeal in 2012, and I have determined that the findings and conditions stipulated in the May 4, 2012, appeal decision are relevant to this denial and appeal.

With regard to the new Central Kitchen sidewalk dining enclosure on the Cadillac Square façade of the building, I agree with TPS that it creates a prominent new feature on the primary street façade of the building. The dining enclosure, as constructed, is continuous across four bays of the façade, with a tall black band at the top of the enclosure that creates a strong horizontal emphasis where there was none historically. In the appeal, you showed an historic photograph with awnings over the storefront windows on the Cadillac Square façade, and proposed a new enclosure design with four individual awnings, similar to the historic awnings but projecting much further out over the sidewalk. ■■■■■ provided additional drawings of the new design after the appeal meeting. I have determined that these changes proposed to the outdoor dining area for the Central Kitchen are new conceptual designs without a great deal of architectural detail. The new designs were not previously reviewed and acted upon by TPS, and thus beyond the scope of this appeal. Accordingly, the new designs must be submitted to TPS in the form of an amendment through the normal process. If, in the future, TPS were to review and deny certification of a new amendment, this decision would not preclude an appeal of that potential decision.

With regard to the interior of the Central Kitchen, you presented additional information on the restaurant storefront changes and interior, as completed. I have determined that the storefront changes to three bays of the façade, adding doors to two and making the entire window operable in the third, are acceptable treatments compliant with the Standards. You also proposed to reconfigure the new HVAC ductwork to reveal more of the historic ceiling above it. I have determined that these changes, if completed as proposed, will bring the interior of the Central Kitchen into compliance with the Standards.

With regard to the exterior signage for the Shake Shack restaurant, although TPS determined that the various signs for the retail spaces on the first floor “. . . create an incompatible visual clutter that is not consistent with the sober, unified appearance of the Neoclassical building,” I have determined that the

signage represents the brand of each retail enterprise and that their size is reasonable given the height of the signage band under the giant order columns above the first floor. I also note that their graphic design is clearly contemporary and thus suitably differentiated from the surrounding Neoclassical building. Accordingly, I find that the Shake Shack signage is acceptable.

With regard to the Shake Shack interior, TPS determined that the black-painted, exposed ceiling structure and ductwork has an industrial character and is not compatible with the historic finished character of the building. You proposed to install rigid acoustical panels below the primary MEP systems, but above the window heads, to recreate a planar ceiling finish. I have determined that if installed as proposed, the new ceiling treatment will comply with the Standards.

With regard to the remaining portions of the historic decorative ceiling above the west lobby, revealed when a non-historic suspended ceiling was removed, TPS determined that “*the historic plaster ceilings show multiple areas of inappropriate repairs.*” I note that over time the lobby has been altered multiple times, with the most intrusive alteration being the insertion of a stairway that removed a whole section of the ceiling in the middle of the lobby. The sculptural ceiling treatment approved in Amendment 2 is meant to hide that scar and the crude repairs to adjacent areas of plaster that were probably damaged when the stair was constructed. However, some of the crude repairs remain visible after the current rehabilitation work was completed. I agree with TPS that sections of the historic ceilings had inappropriate repairs, but I also agree with your argument that the crude repairs were as-found conditions when the suspended ceiling was removed. The regulations state, “*In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners or third parties.*” [36 C.F.R. 67.6(b)(1)]. Thus, although it would have been nice to restore all of the remaining historic plaster to match the original designs, you are not under an obligation to do so. Accordingly, I have dismissed the lobby ceiling as a denial issue.

With regard to the corridors on floors 20-23, TPS determined that the work “*further removes any vestige of the original corridor system,*” and noted that changes to corridors on other floors had been the basis for the 2012 Part 2 denial. In my May 4, 2012, appeal decision for that denial, I wrote, “*In reviewing the submitted existing-condition plans, I determined that eight of those twenty-two typical office floors appear to have a high degree of integrity of their historic configuration of small offices flanking a double-loaded central corridor (floors 9, 11, 14, 20, 21, 22, 23, and 24).*” Thus, from the existing condition floor plans, the corridors on floors 20-23 appeared to be intact. However, photographs you presented showed that the corridors were intact in plan only. All of their finishes were recent; their only remaining character-defining feature was their double-loaded configuration. Consequently, I have determined that they no longer convey the historic character of a 1920s office building. Although TPS guidance is that historic corridors should be retained, in this case, given that the historic integrity of the corridors has already been significantly compromised, I have determined that creating open office spaces by removing some of the corridor walls is marginally compliant with the Standards.

Although I concur with TPS that the rehabilitation as completed cannot be approved, I have dismissed the Shake Shack signage and lobby ceiling as denial issues, and have marginally accepted the modifications to the corridors on floors 20-23, but have determined that there are three specific aspects of the project that together cause the project to contravene the Standards. In this case, it is the ceiling in the Central Kitchen and Shake Shack retail spaces, and the outdoor dining enclosure for the Central Kitchen. However, I have identified remedial measures that could bring the overall project into minimal conformance with the Standards.

1. As you offered in the appeal presentation, in the Central Kitchen interior, reconfigure the HVAC ductwork to reveal more of the historic plaster ceiling finishes by reducing the number of ducts from three to two, and moving the ducts to less intrusive locations.
2. As you offered in the appeal presentation, in the Shake Shack interior, install rigid acoustical panels below the new MEP utilities but above the window heads to recreate a planar ceiling.
3. In the appeal presentation, you proposed a new conceptual design for the Central Kitchen outdoor dining enclosure. Although I find the proposed new design to be an improvement over the design TPS denied, the proposal lacks detail and is significantly different from the design TPS reviewed, which causes it to be beyond the scope of this appeal. Consequently, you will need to submit the proposed changes in the form of an amendment to TPS through the normal process.

The first two remedial changes will satisfactorily re-establish the historic character of the Central Kitchen and Shake Shack interiors and bring that aspect of the overall project into conformance with the Standards. However, the third remedial change—for the outdoor dining enclosure—will require review and approval of an amendment showing the revised design by the SHPO and TPS.

If you wish to pursue certification by performing all of the remedial measures described above, then please advise me in writing of that fact within 30 days after your receipt of this letter, at the same time providing me with a schedule for the timely completion of the work. Since mail to our offices is irradiated, delaying mail deliveries, I strongly recommend that you email me your response to assure it is timely filed (my email address is: john_a_burns@nps.gov). Email submissions are permissible under 36 C.F.R. 67.10(a)(1)(i).

You must also submit to TPS, after you complete all of the remedial work, an amended Part 3 application, including photographs of the newly completed work. Please also provide the SHPO with a copy of your amended Part 3 application. Approval of the amended Part 3 application, designating the property a "certified rehabilitation" will effectively reverse the TPS denial of certification and I will issue the final administrative decision regarding this appeal.

Questions concerning the specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

If you have any questions about this letter, please call me at (202) 354-2118.

Sincerely,



John A. Burns, FAIA, FAPT
Chief Appeals Officer
Cultural Resources

cc: SHPO-MI
IRS

[Redacted]