



United States Department of the Interior

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



November 13, 2020

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

Property: **1625 McLendon Avenue, Atlanta, GA**
Project Number: **33659**

Dear [REDACTED]

I have concluded my review of your appeal of the February 3, 2020 Decision of Technical Preservation Services (TPS), National Park Service, revoking certification of the Part 3 – Request for Certification of Completed Work application for the property cited above (the Decision). Consequently, the completed rehabilitation is no longer a "certified rehabilitation" for the purposes of the 20-percent tax credit. The appeal was initiated and conducted in accordance with Department of the Interior regulations [36 C.F.R. part 67] governing certifications for federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you for meeting with me via conference call on June 25, 2020, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the materials presented as part of your appeal and my research in City of Atlanta public records, I have determined that the impact of the already completed adjacent new construction on the rehabilitation of 1625 McLendon Avenue is not consistent with the historic character of the property and the Candler Park Historic District in which it is located, and hereby affirm the revocation of certification issued by TPS in the Decision.

The Part 2 - Description of Rehabilitation application noted a potential subdivision of the double lot into two sections but did not provide information about any planned construction on the new lot. In its Part 2 conditional approval letter of June 20, 2016, TPS stated that "*any construction on the subdivided lot could be subject to review as part of this project if the new owner has any legal connection with the current owner through any common owner organization whatsoever.*"

After completion of the rehabilitation and a review of the Part 3 – Request for Certification of Completed Work application, TPS determined that the completed work met the Secretary of the Interior’s Standards for Rehabilitation (the Standards) and designated the property a “certified rehabilitation” on December 16, 2016.

City of Atlanta public records show that a permit application for a new 3-story duplex at 1625 McLendon Avenue was filed on January 26, 2018. On August 1, 2018, TPS received a post-Part 3 certification amendment for a new 3-story mixed-use building on the corner of the historic double lot on the portion that was previously wooded land adjacent to the historic building. Google Street View photographs from September 2018 show the that building’s shell was already constructed and December 2018 Google Street View photographs show that the building was substantially complete, albeit lacking some exterior finishes.

TPS subsequently determined that the new construction violated Standard 2 by compromising the historic character of the historic property and the historic district, and Standard 9 by not being compatible with the massing size, scale and architectural features of the historic building and the historic district. 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 9 states, "*New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.*" Consequently, TPS revoked the Final Certification of Completed Work (Part 3) that had been issued on December 16, 2016.

In my review, I considered the overall impact of the rehabilitation in the context of the scope of review described in the preamble to the Standards, which states in part that reviews will, "*encompass the exterior and the interior of historic buildings . . . and the building’s site and environment, as well as attached, adjacent, or related new construction.*" [36 C.F.R. § 67.7(a)].

I acknowledge that your Part 2 – Description of Rehabilitation application indicated that the original lot would be subdivided. And, I note that the zoning in the neighborhood at the time of the rehabilitation of 1625 McLendon was R-4, which requires a 35-foot front setback and which effectively made the proposed new lot unbuildable. However, on June 28, 2016, six months

before TPS designated 1625 McLendon a “certified rehabilitation,” you applied for a zoning amendment for the new lot from the R-4 (Single Family Residential) District to the PD-MU (Planned Development-Mixed Use) District. PD-MU zoning allows for significantly more intensive development than is allowed under R-4 zoning, for instance allowing commercial uses and requiring no front setback. The Zoning amendment was certified on February 20, 2017. Although the use, size, and placement of the new building may be allowed under Atlanta’s PD-MU zoning, the regulations state that, “*The Secretary’s Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.*” [36 C.F.R. § 67.7(e)].

Despite the TPS caution about new construction on the subdivided lot, you proceeded with the rezoning, design, permit application, and began construction on the lot prior to submitting the new work for TPS review. The Regulations state, “*Once a proposed or ongoing project has been approved, substantive changes in the work as described in the application must be brought promptly to the attention of the Secretary by written statement through the SHPO to ensure continued conformance to the Standards.*” [36 C.F.R. § 67.6(d)]. As a result, the related new construction was substantially underway before TPS had a chance to review the new work. The regulations also 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)].

Regarding the TPS analysis of the cumulative impact of the new building on the historic character of the “certified historic structure” (the original building) and the surrounding Candler Park Historic District, it is comprehensive and convincing. TPS summarized its analysis in the Decision by stating, “*The massing, size, and location of the new construction has a significant impact on the historic character and appearance of the historic building, its site, and setting/environment, as well as that of the historic district of which it is a part. The new construction does not meet Standard 2, which requires that the historic character of the property (i.e., the building and the district) be preserved; and Standard 9, which requires that new construction be compatible with the massing, size, scale, and architectural features of the historic property and its setting.*”

Regarding your assertion that there are other similar instances of commercial uses and larger-scaled buildings in the historic district, the issue at hand is the impact of the related and adjacent new construction on this particular “certified historic structure.” The regulations state that “. . . *the circumstances of each rehabilitation project are unique to the particular certified historic structure involved.*” [36 C.F.R. 67.6(a)(1)]. Consequently, I concur with the TPS Decision that the overall impact of the adjacent and related new construction on the rehabilitation of 1625 McLendon Avenue has significantly compromised the historic character of the property, its site

and environment, and thus fails to meet the Standards. I hereby affirm TPS's February 3, 2020 Decision.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to TPS's February 3, 2020 Decision revoking the designation of 1625 McLendon Avenue as a "certified rehabilitation." A copy of this decision will be provided to the Internal Revenue Service. Questions concerning 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.

Sincerely,



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

cc: GA SHPO
IRS

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