



United States Department of the Interior

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



June 19, 2020

[REDACTED]

PROPERTY: Empire Building, 1928 1st Avenue North, Birmingham, AL
PROJECT NUMBER: 29775

Dear [REDACTED]

I have reviewed your appeal of the September 12, 2019 Decision of the Technical Preservation Services (TPS), National Park Service, denying certification of the historic rehabilitation of the property cited above (the Decision). You initiated your appeal under the 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, [REDACTED] [REDACTED] for meeting with me on December 10, 2019, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the materials you submitted as part of your appeal and after our appeal meeting, I concur with the September 12, 2019, TPS Decision that the rehabilitation of the Empire Building is not consistent with the historic character of the property, and that the project does not meet the Secretary of the Interior's Standards for Rehabilitation (the Standards).

The Empire Building, designed by William Leslie Welton and completed in 1909 for the Empire Improvement Company, is a 16-story steel-frame skyscraper sheathed on its two street facades with white and polychromed terra cotta and richly decorated with Renaissance Revival Classical ornament. It was the third skyscraper to be erected at what is locally known as the "Heaviest Corner on Earth," four early 20th-century skyscrapers concentrated at a single intersection. The Empire Building was individually listed in the National Register of Historic Places for its significance in architecture and commerce on March 19, 1982. It is also listed as a contributing resource within the Heaviest Corner on Earth Historic District.

The rehabilitation of the Empire Building converted it from office use to a hotel, including a restaurant, guest room floors, conference rooms and a rooftop deck. The Part 2 – Description of Rehabilitation application, dated March 7, 2014, was received by TPS on April 9, 2014. Following a site visit to the property, TPS requested, in a letter dated May 29, 2014, additional description of the remaining historic materials on floors two through sixteen to be able to determine the historic integrity of the character-defining public corridors on each floor and to complete its review of the Part 2 application. The requested information was received on July 14, 2014, and with the more complete information, TPS determined that character-defining features on the interior included the main building lobby at the ground floor, and five of the fifteen upper floor corridors and elevator lobbies which retained varying degrees of historic configuration, features, and finishes. TPS issued a conditional approval of the Part 2 application on August 12, 2014, with seven stipulated conditions. Two of the seven stipulated conditions described treatments to the five corridors and became the basis for the denial issues in the Decision:

6. *Historic corridors that remain on floors 6, 9, and 11 extend beyond the elevator lobbies and must be preserved to a greater extent than currently proposed in the revised plans received July 14, 2014. The full extent of the historic corridors on these 3 floors (from just beyond the mail chute on the south to mid-way between column lines 7 and 8 on the north) must be preserved with all of the extant historic features including marble paneling, plaster ceilings, doors, borrow lights, mail chute, and hardware. Notes on demo plans indicate that historic features are intended to be removed and reinstalled. Such a treatment is not recommended as removal and storage creates the potential for damage and loss. Also, please note that the proposed interior elevation of the elevator lobbies for these floors (SK-2) does not match the historic configuration. The introduction of new door openings within these historic corridors shall be avoided. Historic doorways should be used as hotel room entrances. Photographs showing the preservation of the full extent of these corridors along with extant historic features must be submitted with the Request for Certification of Completed Work.*
7. *Corridors on floors 3 and 4 are in the historic location and extend their full length. Based upon photographs, it appears that historic features such as doors, borrow lights, and possibly marble panels may be concealed behind an added gypsum board surface which stands proud of the historic trim exposed around historic doors. Unless photographs are provided showing that the corridor walls are later and non-historic, then condition #6 above shall apply to floors 3 and 4 as well.*

Amendment 1, dated April 20, 2015 and received by TPS on June 12, 2015, responded to the stipulations of the conditional approval of the Part 2 application and included proposals to meet Conditions 6 and 7 and new information that the 3rd and 4th floor corridors were intact behind later finishes with the exception of the marble paneling. The amendment revised the overall project to retain and preserve the historic 6th, 9th, and 11th floor corridors completely intact including their marble paneling, and the 3rd and 4th floor corridors preserved with plaster/gypsum board walls, historic wood trim, borrow lights, doors, mail chute, hardware, and plaster ceilings.

TPS approved the amended Part 2 application (with one condition relating to the first-floor lobby) on July 13, 2015.

The Part 3 – Request for Certification of Completed Work application, dated September 7, 2017, and received by TPS on October 31, 2017, showed that the Conditions 6 and 7 in the conditional approval of the Part 2 application, and which you agreed to in Amendment 1, were not met. The Part 3 photographs showed that historic features on floors 3, 4, 6, 9, and 11, had been removed and replaced with new features and finishes, corridors walls had been moved, and ceilings had been dropped. During the SHPO review of the Part 3 application—and prior to forwarding their recommendations that the completed work does not meet Standards 2 and 5 and that the completed rehabilitation differs substantially from work previously approved—to TPS, Chloe Mercer of the Alabama Historical Commission asked John Campo of Campo Architects (the project’s architect) about aspects of the completed work. His responses revealed that changes had been made from the work that had been described in the Part 2 application.

Regarding the skylights: *“Per Ascent Hospitality (Ownership), retaining the skylights was structurally infeasible. . . . The City of Birmingham Inspector (Authority Having Jurisdiction – AHJ) required additional structural reinforcing at the rooftop bar. To accommodate the AHJ’s request, the skylight were removed.”*

Regarding the upper floor corridors: *“Per Ascent Hospitality, . . . The City of Birmingham Inspector and Alabama State Fire Marshall (AHJs) mandated the removal of the remaining corridor walls with wood doors, transoms and windows. Hotel Guestroom Corridors are required to maintain a one (1) hour fire resistance rating. The AHJs were concerned that the original walls, even with additional layers of drywall behind, would not provide an adequate fire resistance rating. Additionally, it was structurally infeasible to retain the remaining corridor walls due to the required floor slab penetrations (plumbing/mechanical rough-in) and the new code required egress stair.”*

Regarding changes made during the course of construction, 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)]. In this case, the lack of consultation precluded discussions with the SHPO and TPS about the fire ratings of archaic building materials and assemblies, and the potential applicability of exemptions found in historic building codes.

On November 17, 2017, Kerry Soniat of Campo Architects emailed to TPS architectural drawings of proposed remedial work to the historic corridors on floors 3, 4, 6, 9, and 11. TPS responded via email on December 6, 2017, stating that after review of the Part 3 application and the new drawings of the proposed remedial work, that the proposed remedial work *“does not sufficiently replicate the historic features that were lost,”* and suggested changes that could lead to certification of the overall rehabilitation.

There followed, over the next several months, multiple letters, emails, phone calls, and an in-person meeting with TPS reviewer Jenny Parker, that revealed the full extent of changes to the historic corridors (such as lowering the ceiling heights) and gradually developed a detailed plan for remedial work in those five corridors.

An emailed transmittal from Campo Architects on December 15, 2019, included a cover letter from you which stated, in part, that:

“... Campo Architects has prepared the enclosed informational drawings for your review, which correct the removed elements from the historic corridors on floors 3, 4, 6, 9, and 11.

Floors 3 and 4 will receive “in-kind” wood doors, transoms, sidelites and trim, along with a new gyp board partition that minimizes the applied element profiles.

Floors 6, 9 and 11 will receive “in-kind” marble wall paneling, marble trim, , wood doors, wood transoms, and wood sidelites, along with a new gyp board partition that minimizes the applied element profiles.”

The December 15th drawings were updated on January 3, 2018, and on January 16, 2018, Ms. Parker emailed [REDACTED] of Campo Architects that, *“As long as the work adequately matches the profiles, details, and finishes of the historic features that were removed, then this proposal should result in the overall project minimally meeting the Standards.”*

Mr. Campo emailed Ms. Parker on February 6, 2018, that Campo Architects had been made aware during a site visit that the ceilings in the hallways on either side of the elevators, which had been specified at 9’-0” above finished floor in the contract drawings, had been modified in the field to approximately 8’-0” to accommodate larger ductwork and unforeseen structural beams. Attached to the email were revised copies of the January 3rd drawings, showing where the ceiling heights had been lowered and proposed elevations of those sections of the corridors with the over-door borrow lights eliminated, and eleven page-size photographs of the mock-up of the proposed remedial reconstruction utilizing historic wooden trim, marble, and hardware. Ms. Parker responded on February 26th that the changes—lowering the ceiling heights and eliminating the borrow lights—could not be approved but agreed to meet with Mr. Campo on March 1st, when he would be in Washington.

Ms. Parker summarized the discussions from the March 1, 2018, meeting in an email of the same date.

“[I]f you would like us to consider anything less than the originally approved remedial work, then we will need a justification that essentially shows that similar alterations would have been required even if the demolition of the historic corridors had not taken place. To prove such a case, we expect to see detailed section drawings of what has been installed above the dropped ceiling and information about why these features must be located in that space. Engineer's reports may be required to support your statement about the limitations of the

structural system. Also, if you are able to find any additional areas where the ceilings can be raised to allow the re-installation of the doors with transoms, then that should be provided at this time.”

Campo Architects subsequently submitted Amendment 4, received by TPS on March 19, 2018, which included revised drawings showing those corridor ceiling areas that could be raised, photographs of the structural impediments to raising the ceiling height in other areas, and a letter from the project engineer explaining the structural issues that led to the lowered ceilings. Ms. Parker approved the modified remedial work proposal via email on May 7, 2018:

“By this message, I am approving the most recent proposal for remedial work to the corridors on floors 3, 4, 6, 8, and 11. This is with the understanding that only 2 doorways per floor are impacted by the lower ceiling height. The full/historic ceiling height will be restored elsewhere, and doors, transoms, borrow lights, wood trim (where applicable) and marble wainscot (where applicable) will be installed to match historic conditions.”

TPS received a new Part 3 – Request for Certification of Completed Work application, dated July 24, 2019, on July 26, 2019. After review of the new Part 3 photographs of the completed remedial work, TPS determined that, *“the recently completed work does not match the designs that were approved in 2018. Rather, the work more closely matches the initial proposal for remedial work that included attaching features to the surface of new corridor walls – a scheme that was specifically rejected in December 2017.”*

TPS’s September 12, 2019 Decision included thirteen denial issues regarding the historic conditions and the approved proposed remedial work in the five corridors:

- 1. There is no new wall in which the doors and borrow lights are recessed to provide a realistic profile and three-dimensional quality to the corridor walls.*
- 2. The ceilings at the west ends of the corridors do not appear to have been raised to 9'-1".*
- 3. It does not appear that any salvaged wood doors, transoms, borrow lights, or trim was reinstalled.*
- 4. New wood doors do not match the historic doors. The rails and stiles of the new doors are significantly wider than the historic feature resulting in smaller panels – at both the upper glazed panel and the lower solid panel. There is also a new applied molded trim piece surrounding the two panels.*
- 5. New wood trim surrounding doors and borrow lights does not match the historic trim shown in mock-ups. All trim appears to be wider and flat. In mock-ups, the historic trim is shown to have a three-step molded profile.*
- 6. All trim on floors 3 and 4 is boxed out from the wall in order to provide a minimum offset to hint at inset doors and windows. This creates a deep reveal in relation to the flat wall surface.*
- 7. Borrow lights feature an extra sash frame, reducing the size of the visible glazed area.*

8. *There are no transom bars separating doors and transoms on floors 6, 9, and 11 where the marble paneling was installed.*
9. *It is not clear how much, if any, of the marble was salvaged and reinstalled versus how much is a new substitute material.*
10. *Marble trim pieces and marble panels were installed flat in the same plane whereas the historic condition had trim pieces installed proud of the panels, creating relief and shadow lines that are missing in the remedial work.*
11. *There is a gap between the top of the marble and the ceiling that did not exist historically, making it obvious that these features were simply affixed to the surface of the new corridor wall.*
12. *Some of the large marble panels are divided, made of two separate, smaller pieces of marble.*
13. *In some locations where ceilings were not raised as proposed, the doors and transoms were reduced in size to fit the shorter space.*

In reviewing the original Part 2 application, TPS identified those salient, character-defining features of the property—both on the interior and the exterior, as stipulated in the regulations—that contribute to its significance and warrant preservation in the rehabilitation. In the case of the Empire Building, the character-defining features included the terra cotta clad exterior, the ground floor interior, and the public corridors on five upper floors, all of which were included in the seven stipulated preservation treatment conditions in the TPS approval of the Part 2 application. I note that TPS has been consistent throughout the history of this project that the ground floor and the five corridors which retained historic character-defining features and materials on floors 3, 4, 6, 9, and 11, must substantially be retained in their historic conditions. The other ten floors, which had been modified over time prior to the rehabilitation, could be modified to meet the programmatic needs of the new use. And, I agree with TPS that the remedial work proposed in Amendment 4 and approved by TPS on May 7, 2018, if successfully completed, would have sufficiently replicated the historic character of the five corridors and allowed the overall project to be certified.

However, I have determined that the attempts to remediate the loss of historic features and materials in the five historic character-defining corridors have failed despite the fact that the Part 2 photographs and the mock-up of proposed remedial work provided ample physical, photographic, and documentary evidence to match the missing features. Inexplicably, that evidence was not used. In fact, some of the completed remedial work, such as a short, non-operable door with a head so low that it could not be walked through, are more a caricature than a match of the historic character of the features they are meant to replicate. Consequently, I concur with TPS's assessment of the thirteen denial issues described above.

In the appeal meeting, the presentation by Mr. Sidebottom included the statement that, "*Due to a communication error between the developer, the architect, and the contractor, the borrow light systems were inadvertently destroyed in the demolition phase.*" That statement raises questions about the accuracy of the statement by Mr. Campo (quoted above) that the demolition had been mandated by the City of Birmingham Inspector and the Alabama State Fire Marshall for code compliance, and that it was structurally infeasible to retain the remaining corridor walls. As Mr. Sidebottom noted in the appeal presentation, Amendment 4 specifically addressed remediation of

these losses of historic features. Inadequate project management does not excuse noncompliance with the Standards. Alternatively, addressing Mr. Campo's assertion, I note that the regulations state, "*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)].

Mr. Sidebottom further noted that, "*The owner completed the remediation work based on his understanding of the plans submitted with Amendment #4,*" and "*For some, as yet, undetermined reason, the borrow lights were actually reconstructed according to a second mock-up completed in October 2019 that did not match the historic appearance of the originals.*" I note that the second mock-up is not included in the project record and, after inspecting the drawing and photograph of the October mock-up in the appeal presentation, I am convinced that TPS would not have approved it because—as Mr. Sidebottom admitted—it did not match the historic material that had been removed, a condition of the approval of Amendment 4. And, when TPS did see photographs of the completed work—which followed the designs of the October 2019 mock-up—the work was found to not match the historic materials that were removed and was denied certification. Again, I note that substantive changes in the work must be brought promptly to the attention of TPS.

Regarding the allegation that, "*Rather than offering an opportunity to correct the deficiencies, NPS denied the project,*" I note that after four years of consultations with TPS through numerous letters, emails, phone calls, and an in-person meeting, you received specific guidance on how to avoid deficiencies and comply with the Standards in the Part 2 approval, and specific guidance on how to correct the deficiencies that prevented certification of the project in Amendment 4. Yet, you did not follow that guidance. You had multiple opportunities to comply with the Standards and to remediate the deficiencies but did not. Consequently, I find that the TPS Decision to deny certification was reasonable.

Regarding the argument that the historic corridors on floors 6, 9, and 11 "*were only visible in an altered state,*" I acknowledge that buildings change over time, but note that historic features do not have to be pristine to convey their historic character. TPS determined in its review of the Part 2 application, that these corridors retained sufficient historic character to warrant their preservation in the rehabilitation, a determination you did not dispute at that time. Regarding the argument that the historic corridor features on floors 3 and 4 "*were completely concealed from view by sheetrock,*" a non-historic covering of historic features has no impact on the need to comply with the Standards in preserving those historic features. Historic features are often found intact but abandoned in place behind more recent construction, as was even the case above the dropped ceilings in the elevator lobbies of the Empire Building.

Consequently, I find that the impact of these deficiencies on the completed rehabilitation of the Empire Building has significantly compromised the overall historic character of the property, and thus this project fails to meet the Standards. I hereby affirm TPS's September 12, 2019 Decision.

However, you still can complete the remedial work approved by TPS on May 7, 2018, and potentially bring the overall project into conformance with the Standards. At the appeal meeting,

you presented additional remedial work, different from that described in Amendment 4, to bring the historic corridors closer to their historic appearance. Those proposals are new work not previously reviewed by TPS and thus are beyond the scope of this appeal. However, you can submit the proposals from the appeal presentation in the form of an amendment to the Part 3 application to TPS through the normal process. If TPS were to review and deny certification of a Part 3 amendment, this decision would not preclude an appeal of that potential decision.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the September 12, 2019 Decision that TPS issued regarding rehabilitation certification. 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: SHPO-AL
IRS

[REDACTED]