



United States Department of the Interior

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





September 4, 2020



Property: **Fraternal Order of Eagles/Buffalo Christian Center, 512 Pearl Street, Buffalo, NY**
Project Number: **32541**

Dear 

I have concluded my review of your appeal of the January 30, 2020 Decision of Technical Preservation Services (TPS), National Park Service, denying certification of the Part 2 – Description of Rehabilitation application for the property cited above (the Decision). 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 and 

 for meeting with me via conference call on June 3, 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, I have determined that the impact of the nearly-complete adjacent new construction on the rehabilitation of the Fraternal Order of Eagles/Buffalo Christian Center is not consistent with the historic character of the property and its site and environment, and hereby affirm the denial of certification issued by TPS in the Decision.

Designed for the Fraternal Order of Eagles – Aerie No. 46 in 1914 by architects Esenwein & Johnson, and with an addition added in 1924 by architects Townsend & McNeil, the Fraternal Order of Eagles building is a three-story, steel-framed, brick and terra cotta clad, Italian

Renaissance Classical Revival style building. The original 1914 block is comprised of the clubhouse lounge, a library on the first floor, a lodge room on the second floor, and a billiards room. As its social and recreational programs expanded, the Aerie constructed an addition to the south in 1924 that housed a large ornate ballroom/auditorium space, a bowling alley in the basement, a new billiards room and gymnasium on the upper floor, and later a pool in the basement of the 1914 section. The 1924 addition was designed to match the beige brick and white terra cotta detailing of the original building and featured a fourth floor hidden from view behind the cornice. The Fraternal Order of Eagles occupied the building until 1952. The Buffalo Christian Center acquired the property in 1958 and did not make significant changes to the building but did cover historic features and materials, and block windows and skylights. They occupied the building until 2014, when the Christian Center determined that the money required for repairs could be better spent in support of their mission and sold it to the current owners. The National Park Service issued a preliminary determination that the building is individually eligible for listing in the National Register of Historic Places on July 2, 2015. It is adjacent to, but not included in, the locally designated Theater Historic Preservation District, across Pearl Street to the east.

The proposed rehabilitation would continue the historic function as assembly and social spaces as described in the Part 2 – Description of Rehabilitation, received by the National Park Service on February 28, 2019, *“to provide support spaces including large meeting rooms, banquet halls, gymnasium, and pool for the new hotel located to the west.”* However, the original Part 2 application did not include information on the new hotel. TPS requested additional information in a letter dated April 19, 2019, noting that online research showed that the work on the Eagles building was substantially complete but that photographs submitted with the application did not show that status, and asked for current photographs to review. TPS also requested information about the new hotel building. After receipt of Amendment #2, TPS sent a second letter on June 25, 2019, requesting additional information on the adjacent new construction. After receipt of the requested information on December 6, 2019, TPS was able to complete its review and determine that, although the work undertaken on the Fraternal Order of Eagles building met the Secretary of the Interior’s Standard for Rehabilitation (the Standards), *“the new construction undertaken as part of the project does not meet the Standards: (1) a large, twelve-story addition that towers over the FOE building and the surrounding neighborhood, and (2) a substantial metal overhead canopy/pedestrian walkway that attaches to and wraps around the south side of the FOE building. The new construction negatively impacts the historic character, appearance, and setting/environment of the historic building and causes the overall project to not meet the Standards,”* specifically Standards 2 and 9. 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.”

In the appeal presentation, you argued that the assembly and social spaces within the building could not generate sufficient income for it to continue in that same function, noting that, “*Without the construction of the adjacent mixed-use hotel building the Fraternal Order of Eagles would likely stand vacant and continue to deteriorate given the repairs needed.*” And, you quoted from the preamble to the Standards that “*The intent of the Standards is to assist the long-term preservation of a property’s significance through the preservation of historic materials and features,*” and illustrated that point with a series of before and after photographs of the completed work on the interior of the building. You concluded that, “*The FOE building, and the extant historic character defining materials, volumes and features have been preserved, consistent with Standard 2.*”

You also quoted from the preamble to the Standards that “*The [following] Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility,*” and stated that “*the historic urban context consisted of buildings of multiple scales and materials,*” illustrating that point with both historic and contemporary photographs of various locations in downtown Buffalo. You stated that, “*The ‘new construction’ is NOT an addition. It is structurally independent and physically distinct from the FOE building. The two buildings could function as distinct entities, without any physical connection. The current relationship is reversible.*” You concluded that, “*Though larger in scale than the FOE and of different material fabric, it is consistent with the urban context and history of multiple scales and materials in the city. . . . From this perspective the rehabilitation meets Standard 9.*”

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)].

Regarding the rehabilitation of the Fraternal Order of Eagles building itself, the work benefited from a great deal of original historic fabric remaining prior to the rehabilitation—albeit with some of the interior features deteriorated, covered or blocked—and a series of historic photographs documenting the original conditions. TPS in its Decision stated that, “*the exterior and interior rehabilitation work undertaken to the FOE building itself appears to be quite distinguished.*” I agree with TPS’s description and further characterize it as more a restoration than a rehabilitation. Consequently, I disagree with TPS that the completed rehabilitation violates Standard 2.

However, the full text of the sentence in the TPS Decision quoted above is, *“While the exterior and interior rehabilitation work undertaken to the FOE building itself appears to be quite distinguished, the cumulative effect of the new construction on the historic character and appearance of the building causes the overall project to not meet the Standards and precludes certification.”* It is the related new construction that is the primary cause for the denial determination.

The Part 2 application described the new use for the property as *“support spaces”* for a new hotel, thus changing the use from an independent fraternal hall and religious center to amenity spaces for a hotel. That subtle but significant change in use from an independent facility into an integrated component of a larger mixed-use complex necessitates a broader assessment of the impact of the overall project on the rehabilitation of the Fraternal Order of Eagles building with respect to its site and environment as noted in 36 C.F.R. § 67.7(a), quoted above. In this case, both Standard 1 and Standard 9 (quoted above) are relevant to that review. Standard 1 states, *“A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.”*

The new mixed-use building includes three hotel floors (10-12), one residential floor (9), two office floors (7-8), and six stories of parking garage (1-6) accessible from both Pearl Street and Franklin Street. The first floor also includes commercial spaces fronting on Tupper and Franklin Streets. The building’s footprint is nearly twice the size of the Fraternal Order of Eagles building and its height, approximately 180 feet, is over three times as high. Each façade has a different fenestration configuration, with three different colors of metal panels, transparent glazing, opaque glazing, precast concrete, brick veneer, and decorative metal screening. The east façade, which covers the west party wall of the Eagles building and rises above it, is a rectangular plane with an inset center section on the hotel floors (10-12) topped by a sloped-top Aloft sign advertising the hotel.

Regarding the new mixed-use building, I agree with your assertion that it is not an addition but is an entirely new building. However, it is adjacent to the Fraternal Order of Eagles building, is attached to its west party wall, and is functionally related by relying on it to provide support spaces for the new hotel. Thus, it is consistent with the Standards to review its impact on the rehabilitation of the much smaller Eagles building. TPS summarized the impact on the new building, stating in the Decision that it, *“significantly impacts the historic character and setting of the FOE building and is out of character with the surrounding neighborhood. The massing, scale, and form of the twelve-story addition overwhelms, and is in extreme contrast to the architectural character of, the three-story historic building, which was once a prominent corner landmark in a much smaller-scaled commercial neighborhood. The much larger new addition towers over the historic building and the surrounding neighborhood and is clad with alternating*

vertical and horizontal pre-cast concrete and metal panels, competing with the visual character, scale, architectural features, and prominence of the historic FOE building.”

The massing of the Fraternal Order of Eagles building is a horizontal rectangular box with two materials on the Pearl and Tupper Street facades, beige brick and terra cotta. The mixed-use building is a tall, rectangular mass, inset in the center of the top three floors, and with a large illuminated sign at its north end that is the equivalent of a billboard to vehicles approaching downtown from the east along the Kensington Expressway. It has nearly twice the footprint and is over three times the height of the Eagles building. Its façade above the Eagles building has three different colors of metal panels, transparent and opaque glazing, precast concrete, brick veneer and decorative metal screening. I acknowledge that the new building is clearly differentiated in scale and materials from the historic building, but I note that its design made no apparent effort to be compatible with the historic building. For instance, there is no setback where the two buildings abut along Tupper Street that could have allowed the cornice return to remain; instead it was simply cut off. There is no reference to the cornice line of the Eagle Building across the Tupper Street façade of the new building or use of a similar material or color. And the façade above the light-colored Eagles building is dark-colored metal panels with irregularly sized and irregularly placed opaque windows at the north end, sections of alternating transparent and opaque curtain wall in the center section and a mixture of precast concrete and metal panels at its south end. None of these materials or opening configurations are compatible with the historic building below. Consequently, I have determined that the new building causes the rehabilitation to contravene Standards 1 and 9, quoted above.

Regarding your assertion that the historic urban context of the Fraternal Order of Eagles building consisted of buildings of multiple scales and materials, I agree that is the case closer to downtown Buffalo. However, in this particular location, the tallest structures in the surrounding neighborhood are the steeple of St. Louis Roman Catholic Church, a block to the north, the steeple of the former Delaware Avenue Methodist Church (now Babeville), a block to the west, the stage house of Shea's Buffalo Theater, a block to the south, and a six-story building directly across Pearl Street to the east. The other surrounding buildings are similar in scale or smaller than the Eagles building. The mass and height of the new building is now the dominant architectural feature of the neighborhood, visible for blocks around, and significantly diminishes the prominence of the Eagles building within its own setting. And, the neighborhood buildings are almost entirely dark-colored brick, not multi-colored metal panels or precast concrete. They have traditional windows with transparent glazing, not transparent and opaque glazed curtain wall windows. Within its historic context, the light-colored mass of the Eagles building had been a prominent feature of its neighborhood, but that is no longer the case. Consequently, I have determined that the new building compromises the site and environment of the Eagles building and causes the rehabilitation to contravene Standards 1 and 9, quoted above.

I also acknowledge that the zoning in the neighborhood is N1-C, mixed use, which could permit an even taller building in this location. However, although the size and massing of the new building may be allowed under Buffalo's zoning code, 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)].

Finally, regarding TPS's determination that the "*substantial metal overhead canopy/pedestrian walkway that attaches to and wraps around the south side of the FOE building . . . negatively impacts the historic character, appearance, and setting/environment of the historic building,*" in general I agree with TPS that it is a denial issue, but note that the canopy is freestanding and is not attached to the south party wall of the Eagles building except for the exit landing at the fire escape door. I have determined that the irregular height canopy along the Pearl Street sidewalk is the only incompatible feature of the canopy, not the canopy section along the south party. Although that incompatibility could be easily remedied, it would not impact my determination that the overall project causes the rehabilitation to fail to meet the Standards.

Although you acquired the Fraternal Order of Eagles property in 2014 and began construction of the adjacent mixed-use building the following year, the Part 2 application for the Eagles building rehabilitation was not received by the National Park Service until June 21, 2019. As a result, the related new construction was substantially complete before TPS had a chance to review the proposed work. 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)].

I also note that, although the New York State Historic Preservation Office recommended that the project meets the Standards, the National Park Service is not bound by SHPO recommendations. The regulations state that, "*Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary, based upon professional review of the application and related information. The decision of the Secretary may differ from the recommendation of the SHPO.*" [36 C.F.R. § 67.1].

Consequently, I have determined that the overall impact of the proposed and substantially complete adjacent, attached and related new construction on the rehabilitation of the Fraternal Order of Eagles/Buffalo Christian Center has significantly compromised the historic character of the property, its site and environment, including the Theater Historic District across Pearl Street to the east, and thus fails to meet the Standards. I hereby affirm TPS's January 30, 2020 Decision.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to TPS's January 30, 2020 Decision 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: NY SHPO
IRS

