



United States Department of the Interior

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



June 25, 2021

PROPERTY: 77 Lander Street, Newburgh, NY
PROJECT NUMBER: 41785

Dear

I have concluded my review of your appeal of the November 20, 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 for meeting with me via videoconference on March 22, 2021, 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 the additional photographs you submitted at my request, I have determined that the rehabilitation of 77 Lander Street 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). I hereby affirm the denial of certification of the Part 2 – Description of Rehabilitation application issued in the TPS Decision of November 20, 2020.

The building at 77 Lander Street is one of a row of four identical 2½-story, three-bay brick residences on raised basements, and is the end unit at the intersection of Campbell Street. As such, it has two primary street facades. Constructed between 1858 and 1860, the building is a

contributing resource in the East End Historic District, which was listed on the National Register of Historic Places in 1985.

Prior to the rehabilitation, the brick walls had suffered damage from water infiltration and had been painted, two of the arched brownstone window heads had cracked and the bracketed eaves were significantly deteriorated. The remaining windows were a mixture of six-over-six light double-hung sash and two-over-two light, arched-top, double hung sash. Historic window and door surrounds also remained. The interior had been altered multiple times, and a prior rehabilitation had removed most interior plaster finishes with the exception of the historic stairs from the basement level to the second floor. The initial work you submitted to the City of Newburgh Architectural Review Commission (ARC) included repointing the brick, repairing the cornices and porch, replacing all the windows, and adding two new windows. The application was approved by the ARC on December 11, 2018. I note that the authority of the ARC is limited to *“the approval or disapproval for exterior changes to an historic property designated under local law”* (emphasis added) [City of Newburgh, Title VI, Section 300-40].

The Part 1 – Evaluation of Significance application was received by TPS on March 16, 2020. It described the work already completed on the exterior, including the two added windows, consistent with the plans approved by the ARC in December 2018. Already-completed work in the interior was also described, included underpinning the longitudinal bearing wall, replacing the collapsed basement floor structure and flooring, and unspecified “clearing out” of the other floors. TPS designated the property a “certified historic structure” on April 13, 2020.

TPS received the Part 2 – Description of Rehabilitation application on June 24, 2020. In its Decision, TPS noted that the primary causes for the denial—removing all the partitions on the second and third floors and entire third floor structure to create a single large two-story loft-like volume, and inserting two new oversized windows on the Campbell Street façade—had been completed prior to receipt of the Part 2 application. TPS determined that the changes to the second and third floors compromised the historic character of the property and violated Standards 2 and 6 of 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 6 states, *“Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.”* Although TPS stated that the new oversized windows violate Standard 6, the Decision text quotes from Standard 9, which 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 my review, I compared the claims in your appeal letter with documents in the project record. In your appeal letter, you stated that, *“upon receiving funding for the project in the fall of 2019, it was imperative to move ahead immediately with certain aspects of the construction, simply to stabilize and weatherproof it for the coming winter.”* However, the floor plans in the architectural drawings submitted with the Part 2 application are dated July 2018 and all twenty drawings in the set are dated prior to the ARC meeting of December 18, 2018. Clearly, there was time between the December 2018 ARC approval and starting construction in October 2019 to submit a Part 2 application to the New York SHPO and receive an initial review by the SHPO even if the application did not reach TPS before commencing construction. Although applicants may start construction at any time, 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)].

You also stated in the appeal letter that, *“the item that NPS has most clearly objected to - the removal of the attic level - was structurally necessary from the very beginning.”* I note that the removal of the attic was evident in the floor plans dated July 2018, so I acknowledge that was your intent from the beginning. However, the May 4, 2020, engineer’s report you submitted presented two options regarding the deteriorated attic floor structure: repair with substantial replacement of joists and strengthened ties to the masonry bearing walls or remove the attic floor but add intermediate bracing. You chose the second option and installed lateral bracing (the mezzanine) along the exterior walls at the level of the removed floor joists to provide lateral stability to the exterior walls. The result of that choice was to create a two-story open-plan space where there had been two habitable floors with partition walls defining individual rooms. TPS determined that creating the two-story open-plan space violated Standards 2 and 6 and I concur with their determination.

Regarding your argument that the level of deterioration of the third-floor structure necessitated its removal, the engineer’s report outlined repair remedies that could have avoided the wholesale removal of the third floor and the stair from the second floor. Regarding the potential costs and construction delays of repairing the third floor structure, I note that you had to engineer and construct structural diaphragms (the mezzanine) to replace the lateral bracing the third floor had previously provided, so the decision to remove the third floor was not without its own costs and delays. Regarding the New York code requirement to provide sprinklers in buildings with more than two habitable stories above grade, 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)].”

In addition, although the existing condition floor plans, dated March 29, 2020, do not show existing partition walls on any floor, the accompanying pre-rehabilitation photographs from 2018 show remaining partition walls, albeit without plaster, and remaining door and window trim, and clearly demonstrate that every floor was gutted in the course of the rehabilitation. Although TPS did not include the demolition of the historic partition walls on the basement and first floor levels as denial issues in its Decision, I have determined that their removal also violates Standards 2 and 6. The regulations state, “*The Chief Appeals Officer may base his decision in whole or part on matters or factors not discussed in the decision appealed from.*” [36 C.F.R. 67.10(c)].

Consequently, the wholesale removal of all the interior partition walls and the remaining door and window trim on every floor and their replacement with open-plan floor plans and new door and window trim not matching the historic trim removed is a singular denial issue that by itself causes the overall impact of the rehabilitation work on the historic character of the property to not meet the Standards.

Regarding the new windows inserted in the Campbell Street façade, you characterized the rehabilitation as, “*a project that is, on the whole, a highly sensitive and carefully built exterior restoration.*” I agree with that assessment, but I also agree with TPS’ observation that the newly inserted windows are oversized in relation to the other windows and lack meeting rails. However, Standard 9 requires new work to be differentiated from the old yet also be compatible with adjacent architectural features. In this case, the window head and sill details and the multi-light sash are compatible features and the size and fixed sash differentiate these two windows from the adjacent historic windows. Consequently, the overall impact of two new windows is both compatible with and differentiated from the historic character of the property and thus compliant with Standard 9. Accordingly, I have dismissed the newly inserted windows as a denial issue.

I am aware of the City of Newburgh’s ongoing efforts to revitalize its large but deteriorated stock of nineteenth-century residential buildings in the East End Historic district, of which your building is a part. And, I acknowledge the challenges described in your appeal letter to accomplish that work. Your rehabilitation project has two distinct aspects, the thoughtful and well-executed work on the exterior, which is closer to restoration rather than rehabilitation, and the gutting of the interior to create contemporary open-plan apartments, one a loft-style apartment. The dichotomy between the interior and exterior treatments does not comply with the requirement in the regulations that, “*A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as determined by the Secretary, as well as related demolition, new*

construction or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure(s)." [36 C.F.R. § 67.6(b)].

Further, although the completed rehabilitation enhances the historic district and is a success from an economic redevelopment perspective, the impact of the work on the district is secondary to the impact on the building. The regulations state, "*In situations involving the rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the certified historic structure and second as it affects the district and makes a certification decision accordingly.*" [36 C.F.R. §67.6(b)(6)]. The determining question with regard to the Federal preservation tax incentives is whether or not the rehabilitation work respected and protected the historic character of the property sufficient to comply with the Secretary of the Interior's Standards for Rehabilitation. In the case of 77 Lander Street, TPS found that work did not meet the Standards, and I concur with that determination.

Accordingly, I affirm the Part 2 denial of certification issued by TPS in its November 20, 2020 Decision.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to TPS's November 20, 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