



United States Department of the Interior

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



May 12, 2022

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

Property: **Fraternal Order of Eagles/Buffalo Christian Center, 512 Pearl Street, Buffalo, NY**
Project Number: **32541, Part 2 - Amendment 3**
Appeal Number: **1651**
Action: **Final Administrative Decision**

Dear [REDACTED]

I have concluded my review of your appeal of the October 19, 2021 Decision of Technical Preservation Services (TPS), National Park Service, denying certification of Amendment 3 to 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 [REDACTED] for meeting with me via conference call on February 14, 2022, and for providing a detailed account of the project.

This is the second appeal regarding the Part 2 application for this property, in this case for the TPS denial of Amendment 3. The proposed (but substantially complete at the time) rehabilitation had been previously denied certification by TPS on January 30, 2020, and the denial affirmed on appeal in a final administrative decision issued on September 4, 2020. Subsequently, you submitted Amendment 3 to TPS through the normal process, describing proposed remedial work to the now completed work to bring the overall project into conformance with the Secretary of the Interior’s Standards for Rehabilitation (the Standards).

TPS reviewed Amendment 3 and determined that it did not propose changes sufficient to bring the overall project into conformance with the Standards and denied certification of the amendment in its October 19, 2021 Decision.

After careful review of the complete record for this project, including the materials presented at our February 14, 2022, appeal meeting, I have determined that the impact of the proposed remedial work to the adjacent new construction is not adequate to bring the overall rehabilitation of the Fraternal Order of Eagles/Buffalo Christian Center (FOE building) into compliance with the Standards, and I hereby affirm the denial of certification of Amendment 3 issued by TPS in its October 19, 2021 Decision, thus leaving in place the September 4, 2020 appeal decision affirming the original January 30, 2020 TPS denial decision.

The January 30, 2020, TPS decision denying certification of the Part 2 application determined that the new building:

“Contrary to Standards 2 and 9, the new addition 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.”

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.”*

Amendment 3 repeats two arguments that had been presented in the first appeal and that I had reviewed and responded to in my September 4, 2020, appeal decision. These arguments focus on the new building’s structural independence from the FOE building and on the urban context of the new building.

As to the relationship of the buildings, research on the Aloft Hotel website reveals that most of the amenity spaces for the hotel are in the FOE building, including photographs of the lounge,

the banquet hall, the pool, the bowling alley, and various meeting rooms. Thus, whether or not they are structurally independent, these photographs confirm that the FOE building and the new building are attached, adjacent, and functionally related, and are thus subject to review as a single project under the Standards pursuant to 36 C.F.R. § 67.7(a), quoted above. Further, the regulations state, “*All elements of the rehabilitation project must meet the Secretary’s ten Standards for Rehabilitation (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted.*” [36 C.F.R. § 67.6(b)(1)]. Accordingly, my review must look at the entire project, which includes both the FOE building and the new building. The FOE building cannot be reviewed in isolation.

As to the urban context of the project, Google Street View photographs dated May 2021 confirm that the urban context has not changed (although there appear to be sites under construction in the vicinity of this property). Consequently, the basis for this argument remains unchanged since my last review, and my conclusions as to its relevance remain the same.

The newly presented remedial work in Amendment 3 includes four options to change the metal panel fenestration on three levels of the parking garage of the new building, adjacent to the Tupper Street façade of the historic building and wrapping a short distance onto Franklin Street, made in response to a comment in the September 4, 2021, appeal decision that “. . . *its design made no apparent effort to be compatible with the historic building.*” Option 1 would add two horizontal bands, one aligned with the belt course of the historic building and a larger band aligned with its cornice. Option 2 would have the same two bands as Option 1 and add a tall, solid band aligned with the height of the banquet hall windows in the historic building. Option 3 would be the same as Option 2, but with vertical elements spaced to reference the four banquet hall windows. Option 4 would be similar to Option 3 but add arch-top elements to more closely reference the arch-top windows of the banquet hall.

I appreciate that these proposed architectural features are an attempt to make the new building compatible with the old, but the reality is that they are cosmetic changes to a small area of the new building’s facades and will have no effect on the new building’s fundamental incompatibility with the massing, size, and scale of the FOE building. Consequently, even if the proposed remedial work is completed, the overall project will still fail to meet Standard 9, quoted above.

Consequently, the remedial work proposed in Amendment 3 will not change the prior determination that the impact of the adjacent, attached, and related new construction on the rehabilitation of the Fraternal Order of Eagles/Buffalo Christian Center has significantly compromised the character of the historic property, its site and environment, including the Theater Historic District across Pearl Street to the east, and thus causes the overall project to fail

to meet the Standards. I hereby affirm TPS's October 19, 2021 Decision denying Amendment 3, thus leaving in place my September 4, 2020 appeal decision.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to TPS's October 19, 2021 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

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