



United States Department of the Interior

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



September 13, 2012

Re: **749 – 751 St. Charles Avenue, New Orleans, Louisiana**
Project Number: **26711**

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), National Park Service (NPS), denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67, hereinafter “Part 67 regulations”) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you, .
for meeting with me in Washington on July 19, 2012,
and for providing a detailed account of the project.

After careful review of the complete record for this project, I have determined that the rehabilitation of the property at 749 - 751 St. Charles Avenue is not consistent with the historic character of the property and the historic district in which it is located, and that the project does not meet Standards 2 and 9 of the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued by TPS on January 26, 2012, is hereby affirmed.

The property at 749 - 751 St. Charles Avenue has had a complex history. The Part 1 application states that the property was constructed in stages, beginning with a two-story structure at 749 St. Charles Avenue that was built prior to 1885 and enlarged to three stories at an indeterminate time, but probably in the first quarter of the twentieth century. Additions at the rear were also made, again probably in the early twentieth century. The documentation on the adjoining and connected two-story structure at 751 St. Charles is more sparse than for 749 St. Charles. The Part 1 application dates this portion as “possibly 1920s,” while the “State Historic Preservation Office [SHPO] Review & Recommendation Sheet” (dated November 22, 2011), offers the comment that 751 St. Charles was built “sometime during the last fifty years.” In any event, the overall property was certified by TPS as contributing to the significance of the Upper Central Business District on December 12, 2011.

The proposed rehabilitation of this "certified historic structure" was found by TPS not to meet the Standards owing principally to the proposed demolition of the 751 St. Charles building and the construction of a new building on the site that would extend above and over the 749 St. Charles building. TPS also cited the proposed introduction of exposed ductwork in the interior of 749 St. Charles as further grounds for denial of certification.

With regard to the amount of demolition of historic fabric proposed in the overall rehabilitation, it is extensive. The Part 2 application states that the entire building at 751 St. Charles will be demolished. Although the Part 2 application does not explicitly state the full extent of demolition proposed for 749 St. Charles, the demolition drawings indicate that every interior partition will be removed on all three floors. Further, the engineering report dated November 11, 2011, makes it clear that 749 St. Charles is so structurally inadequate that only the front facade can be saved and incorporated into the project. Thus, after the project is complete, the principal remaining historic fabric of the two buildings will be the front facade of 749 St. Charles. And, that one remaining element will have a new fenestration pattern on the first floor and an altered entrance stoop. Consequently, I find that the proposed extensive demolition of historic fabric contravenes Standard 2, which 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.*"

With regard to the proposed new construction on the site of 751 St. Charles, the street facade will be forty-five feet high, with balconies projecting out over the sidewalk at the second through fifth floor levels. A fifth and sixth floor will be set back from the plane of the facade, with a seventh floor for mechanical equipment bringing the total building height to seventy feet, twice the height of the historic parapet at 749 St. Charles. The new construction will be built to the property line, approximately three feet forward of the historic facade, which currently aligns with the facade of 749 St. Charles. Thus, the new construction will sit in front of 749 St. Charles, and will be taller than 749 St. Charles and the adjacent building on the opposite side, which is only one story high. Additionally, a fourth floor will be added to the roof of 749 St. Charles, set back by less than ten feet from the street facade. Consequently, I have determined that the scale, massing, and architectural details, of the proposed new construction will diminish the primacy of 749 St. Charles in its environment. Accordingly, I find that the proposed design contravenes 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.*"

Although my review of the impact of demolition of historic fabric determined that it is more substantial and damaging to the overall historic character of the property than described by the TPS in its January 26, 2012, decision, the Part 67 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 CFR § 67.10(c).] Moreover, I have also determined that, even if the rehabilitation of 749 St. Charles will not require as much demolition of historic fabric as the engineering report suggests, the demolition of 751 St. Charles combined with the new construction proposed for its site, which contravene Standards 2 and 9 respectively, will suffice to render the overall project ineligible for certification.

Also in regard to Standard 9, I note, as did TPS, that the neighboring buildings in the historic district are predominantly two or three stories, with the one immediately to the south of 751 St. Charles only one story high. Consequently, I have determined that proposed new construction would also impair the historic character of the surrounding district in contravention of Standard 9, quoted above. The Part 67 regulations provide that, "*In situations involving 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 make a certification decision accordingly." [36 CFR § 67.6(b)(6).] Although consideration of the impact of the rehabilitation on the surrounding historic district is secondary, it nevertheless is a contributing factor in my decision.

With regard to the treatment of the first floor interior of 749 St. Charles, I find that the proposal to insert exposed HVAC ducting would introduce a new element more characteristic of an industrial building than that of a commercial one dating from the early decades of the twentieth century. Consequently, although this is a minor and easily corrected issue, it also contravenes Standard 2, quoted above, and is a contributing factor in my decision.

At our meeting, you stated your willingness to modify the proposed new construction in several respects. They include removing the balconies from the facade of the new four-story portion at 751 St. Charles, and setting the rooftop addition farther back from the facade of 749 St. Charles. However, these modifications would not remedy the principal objection to the new construction, which is that it would tower over and dominate 749 St. Charles, and cause the physical destruction of portions of that historic structure.

As you stated during our meeting, the proposed rehabilitation received the approval of the New Orleans Historic District Landmarks Commission. Although I respect the opinion of the landmarks commission, I note that the enabling legislation for the commission states that, "*The Commission shall not consider interior arrangement or use.... In all instances the Commission shall regulate those outside surfaces of a building that can be viewed from a public right of way or street.*" [New Orleans, La., Ordinance 5992, § VI.B (Feb. 19, 1976, as amended Aug. 21, 1980).] Please note that the Part 67 regulations governing this program require a holistic review of rehabilitation projects, including work on both the interior and exterior. The Part 67 regulations state 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*" [36 CFR §67.6(b).] Please further note that the Part 67 regulations state that, "*Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. 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 CFR § 67.7(e).] Accordingly, for the reasons set forth above, the decision of the Historic District Landmarks Commission did not enter into my decision.

You also stated at the meeting that the SHPO approved the project. I note that the "State Historic Preservation Office Review & Recommendation Sheet" for the Part 2 application, dated November 22, 2011, stipulated that the project "meets the Standards *only* if the attached conditions are met." There follows a page of comments on the proposed work, including concerns about some of the proposed work, and four stipulated conditions. Two of the four conditions bear on the issues discussed here. One states: "Mock up photographs of the new rooftop addition, showing where the addition begins and how tall it will be, must be submitted prior to construction." The other states: "More information must be submitted concerning the location of the exposed ducting in the bar area prior to installation." These conditions leave open the possibility that the information to be supplied would not justify the treatments proposed as meeting the Standards, and in general fall short of an unqualified endorsement of the project. But even if the recommendation were to be read as an endorsement of the project, I would have to disagree respectfully.

I have also reviewed the "State Historic Preservation Office Review & Recommendation Sheet" for the Part 1 application, also dated November 22, 2011. The comments appended to this latter document include statements regarding 751 St. Charles that, "it is clear that this building was built sometime during the last fifty years [i.e., after 1961]," and that, "while connected to the historic [749 St. Charles] building,

[it] is not an architecturally significant structure and is in danger of collapsing on a daily basis.” I find that these comments probably had great bearing on the subsequent SHPO recommendations on the Part 2 application.

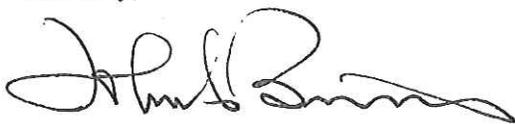
However, I have determined that these SHPO comments are not convincing about the age and significance of 751 St. Charles. The 1940 Sanborn map in the record shows that 751 St. Charles was already complete by that date, with internal openings between it and 749 St. Charles. In addition, the 1951 Sanborn map confirms that the two buildings were functionally related in an annotation written diagonally across both buildings: “HOTEL – 2 & 3.” Further, I note that the Part 1 application states that 751 St. Charles “shares the continuous painted stucco façade with the 749 building,” and “a pediment detail on the façade matches the roofline of the main building.” This information does not support the determination by the SHPO that, 1) 751 St. Charles is recent and, by implication, not historically significant, and, 2) the architectural features that 751 St. Charles shares with 749 St. Charles do not impart equivalent architectural significance as that accorded to the latter building. I also note that TPS determined, in a letter dated December 12, 2011, that, “for purposes of the Federal Historic Preservation Tax Incentives Program for rehabilitating historic buildings, 749 and 751 St. Charles Avenue constitute one building, which, in its entirety, contributes to the significance of the Upper Central Business District National Register Historic District. Because the structure at 751 St. Charles Avenue is an addition to 749 St. Charles Avenue it must be included in your rehabilitation project.”

After considering these facts, and after my review of the overall impact of the rehabilitation on the historic character of the property, I find that the proposed work falls considerably short of complying with the Standards, and I must respectfully disagree with the recommendation of the SHPO. Please note that the Part 67 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 CFR § 67.1(c)(1).]

I reach this decision with regret, given your family's deep roots in New Orleans and long-term connection with this particular property. However, the circumstances of the matter permit me to reach no other conclusion.

As the Part 67 regulations state, my decision is the final administrative decision with respect to the January 26, 2012, denial 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
Chief Appeals Officer
Cultural Resources

cc: SHPO-LA
IRS