



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

AUG 16 2007

Re: Pierce Building, 651-661 Main Street, Buffalo, New York
Project Number: 18906
Taxpayer's Identification Number:

Dear

My review of your appeal of the decision of Technical Preservation Services, National Park Service, denying certification of the rehabilitation of the property cited above is concluded. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. Thank you for meeting with me in Washington on July 17, 2007, 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 Pierce Building 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 6 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on May 7, 2007, by Technical Preservation Services (TPS) is hereby affirmed. However, I have further determined that the project could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

The Pierce Building, built in 1921, is located in the Theater Historic District; this historic district was certified by the Secretary of the Interior, and is thus a "registered historic district" for purposes of Section 47 of the Internal Revenue Code. TPS certified the building as contributing to the significance of the district on September 19, 2006. Upon receipt of the Part 2 application describing a project that was already well underway, TPS determined that it could not evaluate the project because the application lacked photographs showing the building's interior prior to the start of project work. It therefore issued a denial of certification based on the lack of information, as provided in Department of the Interior regulations governing the program. [36 CFR Part 67.6(a)(1)].

Based on the photographs of the project in progress and following completion, TPS cited several treatments as likely to have led it to deny certification had that office been able to complete its evaluation. These included the possible removal of the storefronts, the insertion of new windows in the second floor openings, and the evident removal of finishes from walls in the first floor commercial spaces to expose the brick.

As matters stood prior to our meeting, I concur with TPS that the file did not contain adequate information concerning the work undertaken on the interior. However, at our meeting you presented three letters from parties familiar with the interior in its pre-rehabilitation condition. These corroborate the 2001 report filed by the Buffalo Police Department, a copy of which was previously provided to TPS.

The new letters go into more detail concerning the layout and condition of the interior. This material, supplemented by your own statements at our meeting, satisfy me that the upper floor had been so thoroughly altered over the years that its historic integrity had been lost in this portion of the building. I am convinced that upon your acquisition of the building its historic character was conveyed by the exterior of the building and by the ground floor retail spaces.

However, I do not concur with TPS that the storefront and second floor window treatments preclude certification of the completed project. As for the storefronts, the historic windows and frames were removed, as TPS suspected, but the marble bulkheads obscured by non-historic material were uncovered, and missing marble pieces were replaced to match where needed. Non-historic panels covering the storefront transoms were removed, revealing the original leaded glass lights, which were retained and repaired where necessary. Additionally, the configuration of the storefronts was retained. Consequently, although replacing the display windows and historic framing elements with new ones that do not match exactly is never a recommended treatment, and can in certain circumstances cause a project not to meet the Standards for Rehabilitation, I find that in this case the overall treatment of this character-defining feature generally meets the requirements of Standards 2 and 6. 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."*

TPS stated that the new windows with decorative muntins installed on the second floor are not compatible with the historic style and character of the building. Because the windows existing at the start of the rehabilitation were not historic, several acceptable options were available to you: to retain the existing windows unaltered, to replace them with windows matching those shown in historic photographs, or to install new windows that are nonetheless compatible with the building. In this last event, the requirements of Standard 9 would govern. 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."* While the new windows do not match the windows visible in historic photographs (double-hung with operable transom above), I find that that their design is sufficiently differentiated from the old but not sufficiently incompatible to cause the overall project to fail to meet the Standards.

Such is not the case with the ground floor commercial spaces. Although these spaces were historically finished with plaster or other finishes such as paneling over the plaster, these finishes were removed in the course of this rehabilitation to expose the brick walls. In the process, the project imposed a new and unfinished character that is at odds with the known historic character of this structure. As a result, the finished work does not meet Standards 2 and 6, cited above.

Although the overall rehabilitation of the Pierce Building cannot be approved in its current state, I believe the deficiencies cited here can be corrected fairly easily. To do so, it would be necessary to cover the exposed brick in the commercial spaces with plaster or drywall. This treatment would permit the overall project to receive the requisite certification for Federal income tax purposes.

If you choose to proceed with the corrective measures described above, you may secure certification of the rehabilitation by filling out the enclosed Request for Certification of Completed Work and submitting it with photographs of the completed work through the New York State Historic Preservation Office to Technical Preservation Services, National Park Service, Attention: Note that this project

will remain ineligible for the tax incentives until it is designated a "certified rehabilitation" following completion of the overall project.

As Department of the Interior regulations state, my decision is the final administrative 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,

A handwritten signature in black ink, appearing to read "John A. Burns". The signature is fluid and cursive, with a long horizontal stroke at the end.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

Enclosure

cc: SHPO-NY

IRS