



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

JAN 23 2009

Re: **Joseph S. Russell Building / Sloppy Joe's Annex, 506 Greene St., Key West, Florida**
Project Number: **14950**

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, _____ and _____ for meeting with me in Washington on November 18, 2008, 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 Joseph S. Russell 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, 3, and 9 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on April 14, 2008, 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.

Built ca. 1889, the Joseph S. Russell Building is located in the Key West Historic District, and was certified as contributing to the significance of the district on November 10, 2004. (An adjacent structure, Sloppy Joe's Bar, was listed individually in the National Register of Historic Places, on November 1, 2006. The Joseph S. Russell Building was connected to this building in recent years and serves as an "Annex" to it. For purposes of the Federal historic preservation tax incentives program, they are considered separate properties. TPS reviewed a separate historic preservation application describing the proposed rehabilitation of Sloppy Joe's Bar, and issued a preliminary determination on April 14, 2008, that the proposed rehabilitation "meets the Secretary of the Interior's Standards for Rehabilitation." That decision has no bearing in the matter under review here.)

The virtually completed rehabilitation of the Joseph S. Russell Building was found not to meet the Standards for Rehabilitation owing to the construction of a new addition (also referred to in the record as a "connector/link"), the construction of a new balcony/stair, the elevator overrun, the placement of new exhaust equipment on the roof, and the modification of window and door openings..

I agree with TPS that the new addition and balcony/stair impair the historic character of the Joseph S. Russell Building. The new two-story, windowless, link replaces a one-story entrance and link to the adjacent Sloppy Joe's Bar; this new connector is both taller and more noticeable than the one it replaces. Although covered in siding to match that on the Joseph S. Russell Building, it is not compatible in

massing, size, scale, or fenestration pattern, with the historic structure and thus does not meet the requirements of 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."*

Similarly, the new balcony and exit stair on the side of the building, constructed of unpainted pressure-treated lumber, adds a contemporary, suburban note that is out of character with this late-nineteenth century structure, in contrast to Standard 9, cited above.

In addition, at the rear of the new addition, the elevator overrun features a mock balustrade resembling a widow's walk. This new, historicized element strikes a false note that causes this aspect of the completed project not to meet Standard 3, which states: *"Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken."*

Taken together, these alterations adversely affect the overall historic character of the building and cause it to contravene 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."*

I do not agree that the other treatments cited by TPS as contributing to the denial have further diminished the building's historic character. The new exhaust equipment on the roof consists of three elements; the two near the front of the building are relatively small; the third, while much larger, is set back sufficiently so as not to be readily visible. And while the changes to the window openings on the side elevation are not recommended, the number and location of openings have been retained. Consequently, these issues have played no role in my decision.

While the rehabilitation of the building as completed cannot be approved for the reasons set forth above, it can be brought into conformance with the Standards for Rehabilitation, and thereby achieve the requested certification, if the following measures were to be undertaken. As noted previously, the addition to the Russell Building is actually a new connector to the adjacent Sloppy Joe's Bar. In this instance, while the addition is incompatible with the Russell Building, fortuitously its massing and lack of fenestration are compatible with the façade of Sloppy Joe's. Accordingly, I have determined that if the siding on the Russell Building addition were to be replaced with a material compatible with the planar masonry qualities of Sloppy Joe's, the addition would become sufficiently differentiated from the Russell Building to become approvable, and sufficiently compatible with Sloppy Joe's to not affect its prior approval. In addition, the siding on the elevator enclosure and other rooftop structures on the addition must be replaced. The faux balustrade atop the elevator overrun must be removed. Finally, the new side balcony and stair must be painted to match the balcony on the front of the building.

In making this decision, I have also considered the other matters you raised at our meeting and set forth in the "Appeal of Disapproval" (hereafter "Appeal") dated November 11, 2008.

With respect to the suggestion that review and approval of particular elements of the project by local and state officials mandates approval of the same elements for certification purposes, I note that Department of the Interior regulations governing the program clearly state that approval by state and local agencies "does not ensure certification by the Secretary for Federal tax purposes." [36 CFR Part 67.7].

With respect to the assertion that modifications to the structure "were made only where necessary to comply with mandatory accessibility or health and safety requirements, [Appeal, page 1], I note that it is

the experience of the National Park Service over the past 30-plus years of administering the Historic Preservation Tax Incentives Program that problems encountered in rehabilitating historic buildings, including those encountered in meeting contemporary building codes, can almost always be solved in a way that both maintains a building's historic character and meets the applicable code requirements. And, even if it were not possible to meet these other requirements and codes, Department of the Interior regulations governing the program 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 CFR Part 67.7].

I believe in this connection, that the corrective actions proposed here demonstrate that this particular rehabilitation can meet the life-safety, health, or accessibility codes, and the Secretary's Standards.

Finally, I have examined the review process accorded this application, and believe that there has been no procedural error by the TPS in its review

If you choose to proceed with the corrective measures stipulated above, please submit a Part 2 Amendment describing the proposed changes prior to undertaking the remedial work to Technical Preservation Services, National Park Service, Attention: _____ with a copy to the Florida State Division of Historical Resources. 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,



John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

Enclosure

cc: SHPO-FL
IRS