



United States Department of the Interior

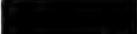
NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240



September 28, 2021



PROPERTY: 938-940 Felicity Street, New Orleans, LA
PROJECT NUMBER: 40612
APPLICATION: Part 2/Part 3
DECISION: Final Appeal Decision

Dear 

I have concluded my review of your appeal of the June 14, 2021 Decision of Technical Preservation Services (TPS), National Park Service, denying certification of the Part 2 –Description of Rehabilitation applications for the properties 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 your representative,  for meeting with me via video conference on July 14, 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 those submitted by Mr. Smith following the appeal meeting, I have determined that the rehabilitation of 938-940 Felicity Street is not consistent with the historic character of the property and the Lower Garden National Register Historic District in which it is located, and hereby affirm the denial of certification issued by TPS in the Decision.

Built in the 1880s, 938-940 Felicity Street is a vernacular two-story double shotgun duplex with two rear additions, both built before 1937, within the period of significance for the historic district which extends to 1940. The duplex originally consisted of two, mirror-image, two-story houses with internal stairs and shared two-story porches on the street facade. The property was certified by the National Park Service as a contributing structure in the Lower Garden Historic District on July 17,

2019. The Part 2 application of proposed work and the Part 3 application showing the completed work were received by the NPS at the same time, but after the rehabilitation was complete.

The proposed rehabilitation would convert the first floor of each half of the property into a one-story residence, with the original second story of each half combined into a single, large apartment. The side door and stair to the second floor of 938 Felicity was removed and replaced with a bathroom in the first-floor unit and a pantry and bathroom in the second-floor unit. The stair in 940 Felicity became access to the new second floor unit through the side door. In its Decision, TPS noted that, *“Prior to the rehabilitation, each unit in this house was the typical two rooms deep at the front (a double parlor) with one additional room beyond the enclosed stair hall. The stair leading to the second level was accessed through a single doorway at the back of the second room, and the plan on the second floor was identical to the first floor”* and that the *“conversion from two to three units has resulted in incompatible changes to the floor plans and circulation within the units.”* TPS determined that the changes to the floor plans significantly alters the building’s historic character—a singular denial issue—contravening Standard 2. 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.”*

TPS determined that the impact of several other interior treatments collectively contributed to the denial Decision, including *“the removal of the coved ceilings and picture rails in the second-floor front rooms, replacement of historic interior doors with modern sliding doors with exposed hardware, and replacement of the historic wood stair railing on the one remaining staircase with an incompatible modern horizontal metal railing,”* contravening Standard 2, cited above, and Standards 5 and 6. Standard 5 states, *“Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.”* 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.”*

On the exterior, TPS determined that the *“massing, roofline, wall planes and exterior materials of the new addition are continued without indication of where the historic building ends and the new addition begins,”* contravening Standard 9. 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.”*

Regarding the changes to the interior, they fundamentally alter the historic double, two-story shotgun configuration that remained extant prior to the rehabilitation and thus severely compromise the historic character of the property. Accordingly, I concur with TPS that the configuration changes are a singular denial issue in violation of Standard 2. You stated in the appeal meeting that TPS was incorrect that this was a duplex converted to a triplex because it had been a triplex prior to the rehabilitation. I agree that the property had been used as a triplex prior to the rehabilitation, the third unit being in the rear addition, but note that TPS was not

primarily concerned with the number of units at the property, but with how their configuration retained the historic character of the units as they existed during the period of significance for the historic district. The floor plans submitted with the Part 2 application show that the characteristic shotgun floor plan of two parlors, the stair and, a third room at the rear, was intact on both floors of each half of the building prior to the rehabilitation, justifying the TPS determination that the historic configuration from the period of significance was substantially intact and potentially retainable under the Secretary of the Interior's Standards.

Regarding the changes to the interior partition walls and materials, the historic openings between parlors on both floors were widened and the historic party wall between the units was breeched on the second floor to create the new full-width unit. The rehabilitation also removed the historic plaster walls, decorative moldings, and door and window surrounds on both floors, all of which were replaced with new materials not matching those removed. I concur with TPS that these treatments contravene Standards 2, 5, and 6, cited above.

Regarding the rear addition, the 1930s addition was severely deteriorated prior to the rehabilitation and was rebuilt and enlarged with a new gable roof unifying the new and rebuilt sections. As noted above, TPS determined that the new section of the addition was not suitably differentiated from the earlier addition, contravening Standard 9. However, the 1930s addition was the same width as the original building and was two stories, albeit with slightly different floor heights. It had several roof types, one a small gable parallel to the gable of the original building, similar siding, and different window sizes. The new gable roof is perpendicular to the gable of the original building with a lower ridge height, so is differentiated from the original roof. The siding in the new section is straight and homogeneous, in contrast to the irregular character of the historic wood siding. A vertical board separates the siding in the rebuilt section of the addition from the siding in the new section, further delineating the new from the old. There are a variety of window types and sizes in the new section of the addition in contrast to the double-hung one over one light sash windows in the original building. Consequently, I have determined that the new section of the addition is reasonably differentiated and compliant with the requirements of Standard 9, cited above, and have dismissed the new section of the addition as a denial issue.

Finally, although you had signed the Part 2 application on October 13, 2019, it was not received by TPS until September 23, 2020. The SHPO review had been hampered by an incomplete application, causing six separate requests for additional information, finally submitted to the SHPO on September 14, 2020, along with a Part 3 application. The Part 3 application was also received by TPS on September 23, 2020. It stated that construction had started on May 1, 2019 and had been completed and the building placed in service on August 1, 2020, making the project complete before TPS received the Part 2 and Part 3 applications. It is unfortunate that the project was not received for review by TPS until after it was complete. 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)].

Consequently, I affirm the June 14, 2021 Decision denying certification of the Part 2 and Part 3 applications.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to the June 14, 2021 Decision 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,

A handwritten signature in blue ink, appearing to read "John A. Burns".

John A. Burns, FAIA, FAPT
Chief Appeals Officer
Cultural Resources

cc: LA SHPO
IRS

