



## United States Department of the Interior

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



May 6, 2021

**PROPERTY: Peery Apartments, 2461 Adams Avenue, Ogden, UT**  
**PROJECT NUMBER: 34272**

Dear

I have concluded my review of your appeal of the September 9, 2020 Decision of Technical Preservation Services (TPS), National Park Service, denying certification of the Part 3 – Request for Certification of Completed Work 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  
for meeting with me via videoconference on December 9, 2020, 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 the additional information submitted at my request, I have determined that the rehabilitation of the Peery Apartments is not consistent with the historic character of the property and that the project does not meet the Secretary of the Interior's Standards for Rehabilitation (the Standards). I hereby affirm the denial of certification of the Part 3 – Request for Certification of Completed Work application issued in the TPS Decision of September 9, 2020.

The Peery Apartments, built in 1910, is a three-story, brick on a sandstone foundation, Prairie Style building designed by Leslie Hodgson of the Ogden architectural firm Smith & Hodgson.

The building's Prairie Style features include a flat roof with projecting eaves across the front and short returns on the side elevations, and horizontal strings of terracotta marking floor levels. There are two entrances set back from the two end sections with enclosed sun porches and the wider central section with shared open balconies. The sun porches feature vertical jig-sawn wooden accents under the windowsills and similar jig-sawn slats form the balcony railings. The windows on the front façade were primarily tall double-hung six-over-one-light sash and some smaller single nine-light sash. Most windows were originally casements but some had been replaced by double-hung sash. The side elevations had a variety of window sizes and groupings but were consistent with the multi-light over single light sash and single multi-light sash found on the front façade. However, prior to the rehabilitation, it appeared that all the exterior and interior mullions and trim were still extant on the three primary elevations of the building. The windows on the west (rear) elevation were non-historic aluminum double hung sash. The unit interiors retained a significant amount of original stained wooden trim (some later painted white), including two-panel doors, door and window surrounds, pocket doors and fireplace mantels in some units, picture moldings, and baseboards. The two main stairs were also stained wood, with jig-sawn slat railings similar to those on the exterior balconies. The property was individually listed in the National Register of Historic Places in December 1987.

The proposed work described in the Part 2 – Description of Rehabilitation application included general cleaning and repair to the exterior of the building, replacing the original windows, retention of original interior lath and plaster walls and ceilings, restoring the pocket doors, and installing new wood flooring over the damaged original floors. Technical Preservation Services issued a conditional approval of the Part 2 – Description of Rehabilitation application on June 6, 2016. The conditional approval included stipulations regarding the windows and HVAC system. A subsequent amendment, approved on September 2, 2016, stipulated that the windows on the three primary facades would be retained and repaired, and those requiring replacement would be *“wood framed and match the existing windows in design and function.”* The existing radiators would be retained to provide heat and a ductless split HVAC system installed for air conditioning.

The Part 3 application was received by TPS on December 2, 2019, and was placed on hold in a letter dated December 20, 2019, due to lack of information regarding aspects of the completed work that differed substantially from what had been approved in the amended Part 2 application, including 1) replacing rather than retaining the historic windows, 2) installing new wall furring, 3) removing interior trim and replacing it with trim that does not match the original trim, and 4) modifying the rear exit stair enclosures from what had been approved.

On May 13, 2020, TPS received a Part 3 amendment dated April 28, 2020, with additional information on the windows, interior trim, wall furring out, and the rear stair enclosures. The amendment noted that there had been a fire on November 26, 2017, and explained how the fire

precipitated the changes from the proposed work in the amended Part 2 application. After reviewing the additional information in the amendment, TPS determined that the rehabilitation work as completed is not consistent with the historic character of the property and thus does not meet the Standards and issued the Decision denying certification on September 9, 2020. The denial issues included:

1. Replacing the windows without adequate justification and installing replacement windows that do not match the depth and profiles of the historic mullions or the trim profiles removed, consequently altering their historic appearance on both the exterior and the interior.
2. Removing all the interior trim (window trim, door trim (including the pocket doors), picture moldings and baseboard and replacing with trim that does not match, and in the case of the picture moldings, not replacing them at all.
3. Replacing the fireplace mantles with ones that do not match the ones removed,
4. Removing all the plaster and lath wall finishes and replacing with drywall.
5. Furring out the interior face of the exterior walls to add insulation.
6. Installing vinyl flooring instead of the proposed wood flooring.
7. Although the rear elevation is a secondary feature and its windows were not historic, installing windows that are undersized for the masonry openings and installed off-center, requiring wide panning to cover the resulting gaps.
8. Although the stair enclosures are on the secondary rear elevation, the multi-colored painting scheme is prominently visible from both side elevations and is not compatible with historic character the building.

During the appeal meeting you stated that the changes from the approved design were necessary—in some cases mandated by local building code officials—in response to the impact of the November 2017 fire. Although the regulations require that substantial changes to the work as described in the Part 2 application be submitted to TPS for review, you did not submit any of those changes to TPS for review. Nevertheless, I agreed to review additional information related to the fire damage before making a final decision on the appeal. The materials you subsequently submitted included fire marshal reports on the fire and its cause, an environmental report on lead found in the interior finishes, cut sheets and bid comparisons for the replacement windows, drawings of the wall furring, copies of both the 2016 and 2019 permit drawings, and a photograph of the label on a box of flooring.

Since you claimed the November 26, 2017, fire necessitated changes to the project, I first reviewed the Ogden Fire Department Incident Report compiled by Deputy Fire Marshal Theron Williams. Williams reported that the fire origin was an electrical fault in a basement bathroom and spread upward through the basement ceiling and walls to four apartments on the north end of the building. All damage was confined to the north half of the building. Fire damage on the

exterior was only noted as visible above one bathroom window on the rear elevation. A 360 degree walk around determined that all the windows and doors were sound. Neither the Incident Report nor the National Fire Incident Reporting System (NFIRS) report documented breaking windows to vent smoke, although the NFIRS report stated that the fire department called a board up company to secure the building after the fire was extinguished (the electric door locks were no longer functional after power was cut off). However, the Carbon Architects post-fire evaluation report stated that windows had been broken in fighting the fire.

Regarding Denial Issue 1, comparing the Part 2 photographs with ones taken after the fire, the post-fire interior photographs that you submitted showed broken glass and muntins in many of the windows, but fire damage was visible in only two. And, the window trim was intact in all but the fire-damaged windows and, where visible in the photographs, the baseboards and picture moldings were intact. The damage visible in the photographs was primarily to the individual sash lights and those could have been replaced with new wood sash to match the undamaged lights without replacing the entire historic window frames and trim. In addition, Google Street View photographs from August 2018 show that the historic windows on the south elevation and south of the north stairwell on the east elevation were substantially intact and undamaged. Consequently, I do not see a significant impact from the fire other than broken glass and muntins on the north half of the building or adequate justification to replace all the windows. Regarding the replacement windows, I agree with TPS that the new windows have a flat profile when compared to the windows they are supposed to match and thus lack the shadow lines and dimensionality of the historic windows on both the exterior and the interior.

Regarding Denial Issue 2, the environmental report found lead in fifteen of thirty-three test locations in four units, eleven of which were in kitchens and bathrooms, all secondary interior spaces. In secondary spaces such as these, it is reasonable to remove and replace lead-contaminated trim. However, the other four locations were in living rooms, primary interior spaces. Three were the baseboard, door and window trim in the living room of Unit 2 and the fourth was a window in the living room of Unit 5. In addition, the trim in all four tested units had been painted white; none retained the original stained wood trim finishes, thus none of the remaining original trim in other units was tested for lead contamination. Consequently, it is not possible to determine from this report if the stained wood finishes were lead-contaminated. Although it may have been possible to abate the lead paint in primary spaces and remove and replace the lead-contaminated trim in secondary spaces, TPS did not have the opportunity to provide input into the decision to remove all interior trim and replace it. And, even if you had been able to demonstrate that the only reasonable option was to remove and replace all interior trim, the replacement trim would need to comply with Standard 6, which requires that replacement materials “*shall match the old in design, color, texture, and other visual qualities and, where possible, materials.*” Comparing the Part 2 and Part 3 photographs shows that the replacement MDF trim does not match the profiles of the removed trim, nor is MDF (a

homogeneous material that must be painted, not stained) capable of replicating the characteristic grain pattern and color of the original stained wood trim.

Regarding Denial Issue 3, the Part 3 photographs showed that some mantels had been removed and replaced with mantels that do not match the ones removed. You stated in the April 28, 2020, amendment that it is not possible to provide post-rehabilitation photographs of all the mantels because the units are occupied and (more recently) because of COVID restrictions. As a result, there is not sufficient information in the record to make a definitive determination regarding the mantels. Consequently, although this denial issue cannot be resolved, I note that if the fireplace mantels had been retained, they would be the only retained historic trim in any of the units since the rehabilitation removed and replaced all other interior materials and finishes.

Regarding Denial Issues 4 and 5, in the April 28, 2020 amendment, you stated that since the fire was electrical in origin, Ogden City building officials required that all wiring in the building must be compliant with the National Electrical Code. You chose to inspect the existing wiring by removing all the historic lath and plaster from the partition walls and ceilings despite the Part 2 description that *"walls that are original (1910) will remain with minor modifications to accommodate new electrical."* And the amendment stated that, *"The interior sides of the exterior walls had to be furred out to allow the new electrical wiring to be installed per code."* That could have been accomplished without a significant change in the depth of the window reveals. However, the Part 3 photographs show significantly deeper window reveals than would have been required to accommodate electrical wiring. The drawing in the amendment confirmed that the deep window reveals are the result of adding insulation to the exterior walls, work not described in the Part 2. It would have been possible to add high performance insulation to reduce the depth of the furring and window reveals, but TPS did not have the opportunity to comment and provide guidance before the work was completed. Consequently, no historic features remain in the individual units; all the materials and finishes in the apartments are new. And, the new window reveals are significantly deeper than the historic reveals.

Regarding Denial Issue 6, the photograph of the label from a box of flooring you submitted with the new information, a Google search revealed that the label is for Molveno Woods Luxury Vinyl Flooring, 7<sup>3</sup>/<sub>4</sub>" wide, color Toasty, manufactured by the Mohawk Group. However, the Part 2 application stated that compatible new wood flooring would be installed over the historic flooring. I also note that the plank width is significantly wider than the historic flooring. Consequently, I agree with TPS that the new flooring does not match the material and width of the original flooring.

Regarding Denial Issue 7, the Part 3 amendment photographs show that some of the new windows on the west (rear) elevation are undersized in relation to the masonry openings and are installed off-center, requiring wide and visually prominent panning to cover the gap. Because

this is a secondary elevation, the undersized windows are not a singular denial issue, but they are a contributing factor. The visual prominence of the wide panning could have been reduced by painting it the same color as the adjacent brick.

Regarding Denial Issue 8, I agree with TPS that the multi-colored painting scheme on the rear stairs is incompatible with the historic character of the property. Again, because this is a secondary elevation, the painting scheme is only a contributing—but easily remedied—denial issue.

After completing my review of the entire record for the project, I have determined that there are two singular denial issues that alone cause the overall project to fail to meet the Standards. First is gutting the historic apartment interiors back to the wall studs and floor joists and installing all new materials, contravening Standards 2 and 5. And, despite having physical evidence, the new replacement materials and features do not match those removed, contravening Standard 6. Second is replacing all the windows in the building without adequate justification that it was necessary, contravening Standards 2 and 5, and replacing them with new windows that do not match the physical characteristics of those removed, contravening Standard 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 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.”*

I have also determined that the fire had a minimal impact on the decisions made that caused the project to fail to meet the Standards. I acknowledge that substantial rehabilitations will require compliance with current building codes, but in this case code compliance does not justify the aggressive treatments you chose. Further, with regard to code compliance, the regulations state, *“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 C.F.R. § 67.7(e)].” In this case, the lead paint could have been abated without having to remove and discard the historic trim; the historic windows could have been retained and damaged individual sash could have been replaced to match; and high performance insulation could have reduced the depth of the added insulation. With regard to the extensive changes from the approved work, the regulations state, *“Once a proposed or ongoing project has been approved, substantive changes*

*in the work as described in the application must be brought promptly to the attention of the Secretary by written statement through the SHPO to ensure continued conformance to the Standards.” [36 C.F.R § 67.6(d)]. It is unfortunate that changes to the work described in the approved Part 2 application, and additional work not described in the Part 2, were not submitted to TPS for review and approval before completing the work. 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 concur with the summary paragraph in the TPS Decision:

*The cumulative effect of the completed rehabilitation has resulted in the loss of significant historic features and finishes and has altered the historic character and appearance of the building. The removal and replacement of these features and finishes with incompatible new ones and other alterations to the historic character and appearance of the building are not consistent with the Secretary of the Interior's Standards for Rehabilitation.*

Accordingly, I affirm the Part 3 denial of certification issued by TPS in its September 9, 2020 Decision.

As the Department of the Interior regulations state, my decision is the final administrative decision with respect to TPS’s September 9, 2020 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: UT SHPO  
IRS