



United States Department of the Interior

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



May 19, 2025

[REDACTED]
[REDACTED]
[REDACTED]

Property: **Disbrow Building, 1201 Nicholas St, Omaha, NE**
Project Number: **47297 Part 1**
Appeal Number: **1704**
Action: **Final Administrative Decision**

Dear [REDACTED]

I have concluded my review of your appeal of the February 13, 2025 Decision of Technical Preservation Services (TPS), National Park Service, denying certification of the Part 1 –Evaluation of Significance 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 the Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank [REDACTED] and you for your participation in the appeal meeting on April 10, 2025, 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, I am denying your request for a certification of significance for rehabilitation of just the Disbrow Building and excluding the remainder of its functionally related complex. Therefore, I affirm the National Park Service's February 13, 2025 Decision.

The Disbrow Building is one of four structures that were listed in the National Register of Historic Places as the M.A. Disbrow & Company Buildings in 2008. The four buildings that comprise the property are 1201 Nicholas Street (North Building/Disbrow Building), 1206 Izard Street (Mule Barn), 1218 Izard Street (South Building), and 1224 Izard Street (Behlen Building.) The historic property is equivalent to a city block bound by Nicholas, Izard, 12th and 13th Streets in Omaha. The property was listed individually for its significance to local commerce and industry, and it is also included within the Nicholas

Street Historic District. Since the property was listed, a previous owner demolished the Behlen Building at 1224 Iward Street.

Program regulations require applications to include the entire historic property including all buildings that are “*functionally related historically to serve an overall purpose*” [36 CFR 67.4 (e)] as well as any “*related demolition, new construction, or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of certified historic structures.*” [36 CFR 67.6 (b)] In addition, owners are generally not held responsible for work that is “*not part of the current project, or rehabilitation work that was undertaken by previous owners or third parties.*” [36 CFR 67.6 (b)(1)]

In May of 2018, Smith Block, LLC purchased the entire historic complex that included the three remaining historic buildings. Over the next several years, various factors including the COVID pandemic influenced the direction of the renovation project planned for the property. It was determined that a residential use for most of the block was desired, and the historic Disbrow Building footprint is not conducive to residential use. A decision was made by Smith Block, LLC, which is under your control, to divide the property according to intended future use with most of the site transferring to the ownership of Dizzy Mule, LLC in December 2022, while the building footprint with a small buffer around the Disbrow Building remained under the ownership of Smith Block, LLC. Work began in early 2023 to develop the residential use under Dizzy Mule, and as part of that development, the historic Mule Barn at 1206 Iward Street was demolished and new construction was built to fill the open portions of the block. In another transaction that has either occurred very recently or is imminent, the parcel with the Disbrow Building will transfer to Disbrow Omaha, LLC.

Each of these limited liability companies is partially owned by you, Paul Smith. You provided documentation to demonstrate that you are not the decision-maker or driver of project decisions for the portion of the property controlled by Dizzy Mule, LLC. I note, however, that there is not an owner of Dizzy Mule, LLC who owns a larger portion of the company than you do. While day-to-day decisions may be made by the managing member, you still benefit from the success of that project and no other owner will benefit more than you. In the other companies involved, you are both an owner and managing member either as an individual or through another company that you own of both Smith Block, LLC and Disbrow Omaha, LLC, although you intend to reduce your percentage of ownership and level of control with Disbrow Omaha.

As part of the appeal, your team noted that this program lacks a clear definition of “beneficial owner” as used in 36 CFR 67.6 (b)(2),

“Factors to be taken into account...[to determine the scope of review] include, but are not limited to, the facts and circumstance of each application and (i) whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and (ii) whether property conveyances, reconfigurations, ostensible ownership transfers or other

transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the Secretary without substantially altering beneficial ownership or control of the property.”

Your team suggests that the historic tax credit program adopt a similar definition to other federal programs that address beneficial ownership. Yet, I have determined that such definitions, tailored for different types of programs, are not an appropriate fit here. One of the primary goals of this program is to preserve historic properties by providing an economic incentive to renovate them and a disincentive to demolish them. This goal is unique and necessitates different requirements from the other programs cited (Low-Income Housing Tax Credits and Opportunity Zones), such as extensive architectural design review through a three-part application process. For this program, there are serious consequences to certifying partial projects with broad overlapping beneficial ownership in any percentage that could allow applicants to cause substantial damage or destruction to the historic resources that this program was expressly created to help preserve. Thus, I do not find the definitions of “beneficial owner” as used by other Federal programs to be relevant.

Instead, I consider questions of ownership and mutual benefit on a case-by-case basis in light of all known circumstances around the design and development process and the intent behind any decisions made as a part of that process. Your involvement in both projects that comprise the Disbrow & Company Buildings is evident. Your company Smith Block, LLC purchased the entire complex and you acted as the managing member of that group through Black Dog Management. You stated that your plan was to develop the entire block as mixed-use, multi-family residential with commercial office space in the Disbrow Building, but the COVID pandemic made plans for commercial office space impractical before work could begin. This setback caused a division in the approach to the whole site. The concept of multi-family residential use was still viable, and you entered into a partnership with Bluestone Development to see that part of the project through as a 28% owner of the development of the south and west sides of the block. As you state in the information submitted as part of this appeal, “The development of a property like M.A. Disbrow & Company Block takes years from planning to completion.” The fact that construction began quickly after purchase by Dizzy Mule, LLC in December 2022 implies that the plans made by Smith Block were, to some extent, adopted by Dizzy Mule, which is further implied by the relatively short timeframe from Bluestone Development’s expression of interest in 2021 to the finalization of construction drawings in January 2022 for a massive 172-unit apartment complex consisting of extensive new construction, the adaptive reuse of the South Building at 1218 Izard, and the demolition of the Mule Barn at 1206 Izard Street.

You and Annette Smith are publicly acknowledged as the leaders and driving forces behind the redevelopment of the entire neighborhood known as Millwork Commons, as noted in the May 5, 2022 Nebraska Examiner article, “The \$34.5 million Dizzy Mule is headed to downtown Omaha.” The article also notes that your partnership with Bluestone Development is a renewal of a previous partnership within the neighborhood. When asked about your role in the neighborhood redevelopment at our meeting, you described the transformation your team has managed through multiple, diverse projects in Millwork

Commons. While your involvement in the broader neighborhood development in and of itself is not a determining factor, it does indicate a certain level of visioning and interest that contributes to the full picture of your involvement and influence related to these specific projects.

Finally, the site plan drawings for this project further indicate the conjoined planning and design of this complex as a whole. The same architecture firm appears to have been used for both projects, and the title of several drawings within the Disbrow package read, “Bluestone Development Millwork Hotel” which indicates a level of design influence across both projects by Bluestone Development, who is the acknowledged lead and managing member of the Dizzy Mule project. The site design including walks, ramps, and stairs leading to both properties is integrated and was clearly designed without respect to parcel boundaries or in any attempt to create separation between the two developments. While the asset class, timing, property management companies, debt providers, and general contractors may be unique to each of these projects, the design is cohesive and, considering the issue at hand relates to the scope of design review, such collaboration and coordination must carry some weight in my determination. Again, this information alone is not in and of itself conclusive, but it adds to the overall impression of interconnection between these projects.

In light of these circumstances, I must conclude that the project undertaken by Dizzy Mule, LLC is not a separate project or one that is being undertaken by a third party. The indications of leadership, coordination, and beneficial ownership across the larger complex are too clear in this case to find otherwise. Therefore, the appropriate scope of review for this project includes the entire historic property consisting of the full city block bound by Nicholas, Izard, 12th and 13th Streets.

As Department of the Interior regulations provide, my decision is the final administrative decision regarding certifications of significance for the Federal income tax incentives for historic preservation. 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,

JENNIFER PARKER

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Jennifer Parker
Chief Appeals Officer
Cultural Resources, Partnerships, and Science Directorate

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