



United States Department of the Interior

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



February 28, 2014

PROPERTY: Tobacco Warehouse, 39-41 Water Street, Brooklyn, New York
PROJECT NUMBER: 29041

Dear

I have concluded my review of your appeal of the decision of the National Register of Historic Places (NRHP), National Park Service (NPS), denying the Historic Preservation Certification Application—Part I, Evaluation of Significance, for the property cited above. 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
for meeting with
me in Washington on November 13, 2013, and for providing a detailed account of the property.

After carefully considering the complete record of the project, including the information provided as part of your appeal, I have determined that, at the time of your application for certification of significance, the Tobacco Warehouse does contribute to the significance of the Fulton Ferry Historic District, in which it is located. Accordingly, the opinion issued by the NRHP on August 14, 2013, denying certification of historic significance for this building, is hereby reversed.

The NRHP, in its assessment of the property, cited 36 C.F.R. §67.5(a)(2), which states that, “*A building not contributing to the historic significance of a district is one which does not add to the district’s sense of time and place and historical development; or one where the location, design, setting, materials, workmanship, feeling and association have been so altered or have so deteriorated that the overall integrity of the building has been irretrievably lost.*” The NRHP determined that,

“The Tobacco Warehouse no longer retains sufficient integrity in terms of design, materials, workmanship, feeling and association to be a contributing building to the district due to extensive alterations and demolition of the roof and all interior features and structural components. These features, lost in their entirety, are essential for the property—a two-story tobacco warehouse—to represent its significance as a contributing building.”

However, the Standards for Evaluating Significance Within Registered Historic Districts, incorporated in the NPS regulations at 36 C.F.R. §67.5(a)(1) (the Standards), define a building which contributes to the significance of a district as “. . . *one which by location, design, setting, materials, workmanship, feeling and association adds to the district's sense of time and place and historical development.*” Further, the Standards are sufficiently flexible to allow damaged or deteriorated buildings to be certified as “contributing” so long as those physical and historic characteristics that convey significance still survive.

I have determined that the extant physical characteristics of the Tobacco Warehouse that contribute to the significance of the Fulton Ferry Historic District include its location and setting, design, massing and materials, and workmanship, as well as the intangible attributes of feeling and association. Brooklyn's waterfront along the East River was historically dominated by massive, utilitarian, brick warehouses, the Tobacco Warehouse among them. Within the historic district, the location and setting is virtually unchanged today; this property is the western anchor of a remaining row of these structures. Their predominant features are thick, solid brick walls required to carry the heavy loads of the warehoused goods, punctured by large, unglazed openings with iron shutters, creating a strong rhythm of solid and void. Those characteristics remain intact, despite the loss of the iron shutters on many of the warehouses. Standing alongside these buildings, one can feel a powerful sense of history. It is easy to imagine the horses, wagons and carts of the late 19th and early 20th centuries instead of today's trucks and tourists. Consequently, I find that the Tobacco Warehouse contributes to the significance of the Fulton Ferry Historic District, and, thus, I disagree with the NRHP determination.

The NRHP also questioned whether the Tobacco warehouse could be considered a “building.”

“We note also that the property, in its present condition, would no longer be considered a “building” according to National Register historic resource classification guidance: “A building, such as a house, barn, church, hotel, or similar construction, is created principally to shelter any form of human activity. . . . If a building has lost any of its basic structural elements, it is usually considered a ‘ruin’ and is categorized as a ‘site.’” (National Register Bulletin 15)”

Although I do not question the NRHP guidance on what constitutes a building, again I note that the Standards are sufficiently flexible to allow the certification of severely deteriorated or damaged buildings. In this regard, under long-standing guidance, if a building has more than 75% of its external walls intact, it may qualify if it otherwise meets the Standards. I note that the Tobacco Warehouse retains 100% of its external walls intact and structurally sound, and as discussed above, meets the Standards. Consequently, in this case, I find that the Tobacco Warehouse is a building for the purpose of designation as a “certified historic structure.” However, I will caution that the Tobacco Warehouse, in its current condition, is an

extremely fragile structure and that the treatment of its extant historic fabric is critical to the potential success of the proposed development as a rehabilitation project.

As the Department of Interior regulations provide, my decision is the final administrative decision with respect to the August 14, 2013, denial the NRHP issued regarding certification of significance. A copy of this decision will be provided to the Internal Revenue Service. Please note that pursuant to 36 C.F.R. §67.1(d), "Any certification made by the Secretary pursuant to this part shall not be considered as binding upon the Internal Revenue Service or the Secretary of the Treasury with respect to tax consequences under the Internal Revenue Code." If you have any questions concerning specific tax consequences of this decision, including interpretations of the Internal Revenue Code with respect to damaged or deteriorated buildings, they should be addressed to the appropriate office of the Internal Revenue Service prior to the Part 2 Historic Preservation Certification Application.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Burns". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO- NY
IRS