



# United States Department of the Interior

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



July 3, 2012

[REDACTED]

Re: **44, 48, 50, 52-54 Warburton Avenue and 6-8 Wells Avenue, Yonkers, New York**  
Project Numbers: **27747, 27745, 27744, 27743, and 27748**

Dear [REDACTED]:

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), denying certification of the rehabilitation of the properties cited above. 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. I thank [REDACTED] for meeting with me in Washington on May 10, 2013, and for providing a detailed account of the projects.

After careful review of the complete record for these projects, I have determined that the rehabilitations are not consistent with the historic character of the properties and the historic district in which they are located, and that these projects do not meet the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial of these projects issued on March 19, 2013, by TPS is hereby affirmed. However, I have also determined that the rehabilitation of 48 Warburton Avenue could be brought into conformance with the Standards, and thereby be certified, if the corrective measures described below are undertaken.

The properties subject to this review are all located in the Philipse Manor Hall Historic District, which was designated a "registered historic district" by the Secretary of the Interior on August 20, 2012. All four of the properties were certified as contributing to the significance of the district on August 27, 2012 (although there are five addresses, 52-54 Warburton and 6-8 Wells are considered as one structure for purposes of the program). The nearly completed rehabilitation work was found not to meet the Standards owing to the removal of the historic stairs from each of the structures, except for 44 Warburton. The rehabilitation of that structure was denied certification for exterior work. TPS also cited the removal of a skylight from 48 Warburton, the demolition of finishes and trim from 52-54 Warburton and 6-8 Wells,

and the demolition of the historic storefront from 6-8 Wells. In each case, the project work was completed or nearly so when the NPS received the applications. My decisions with respect to each property appear below.

#### **44 Warburton Avenue (Project Number 27747)**

Prior to rehabilitation, this ca. 1890s building had lost its storefront, but it featured a projecting three-sided bay on the second story added ca. 1917. Despite later modifications made to the bay—ca. "1960-70s" according to the information submitted at our meeting—I find that the bay was, as TPS had noted, a character-defining feature of the building. Indeed, since the storefront was missing, the bay was the primary character-defining feature of the entire facade. In the course of the rehabilitation, this prominent feature was removed and the entire second floor facade was rebuilt without a projecting bay. Its demolition, therefore, has caused the rehabilitation not to meet Standards 2, 5, and 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."*

With regard to the rationale that the new second story facade configuration is a restoration of the original facade, based on a 1902 photograph, I note that that configuration was in existence for less than thirty years. By contrast, the projecting bay configuration had been in existence for over ninety years. Consequently, and considering that the projecting bay was the primary remaining historic feature on the entire facade, I find that its removal contravenes Standard 4 as well. Standard 4 states: *"Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved."*

TPS also questioned whether the building retained sufficient historic integrity to be considered a "certified historic structure." I note, however, that at the time 44 Warburton Avenue was determined to be a "certified historic structure" it did retain sufficient historic integrity to be certified as historic. Accordingly I have not considered this issue in my decision.

#### **48 Warburton Avenue (Project Number 27745)**

In this rehabilitation, the historic wooden stair was removed, as was the wainscoting. The staircase, which was the principal means of circulation through the building, was a character-defining feature, and its loss causes the rehabilitation as completed to date not to meet Standard 2, quoted above. Nevertheless, I believe the harm to the building's historic character occasioned by the stair's demolition could largely be remedied if the wainscoting were to be replaced. The stair was enclosed on two sides, and this reduces both its visibility and the impact of its replacement in matching materials on the contribution it made to the building's overall historic character. However, if the wainscoting were to be reinstated, I have determined that historic character of the stair would be suitably recaptured. In addition, you stated at our meeting that you intend to replace the skylight that was removed, a contributing factor in TPS' decision. Consequently the skylight has not entered into my decision.

### **50 Warburton Avenue (Project Number 27744)**

As with the previous structure, the historic main stair in 50 Warburton Avenue (1893 - 1894) was demolished. However, in this case it was replaced with a steel fire stair with concrete treads and pipe railings. Its loss and its replacement with one so incompatible in appearance and materials with this late-nineteenth century building, causes the project to contravene Standard 2, quoted above. The modifications proposed at our meeting—reinstalling wainscoting on the upper floor walls, and installing a new wooden top railing and metal spindles to mimic the historic wooden spindles—would not suffice to remedy for the loss of the historic stair.

With regard to the argument that removing the historic stair and replacing it with a fire stair was required by the Fire Marshall, the regulations 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 §67.7(e)]. Further, if the new use for the building requires such a substantial and disfiguring change, it calls into question whether the rehabilitation is consistent with Standard 1. Standard 1 states, “*A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.*”

### **52-54 Warburton Avenue and 6-8 Wells Avenue (Project Numbers 27743 & 27748)**

The property standing at these addresses has had an unusual history: 52-54 Warburton, built ca. 1873, was joined ca. 1907-1913 to the newly built 6-8 Wells Avenue via a connector containing the main stair servicing both sections of the larger construction. As such, the two elements were properly considered by TPS as a single "certified historic structure" for purposes of the tax incentives program. TPS cited the removal of the storefront from 6-8 Wells, as well as the replacement of the main stair as well as demolition of interior partitions and trim. I understand from our meeting that the elements of the storefront remaining at the start of the rehabilitation were not destroyed, but were removed and will be put back in the original configuration. Consequently, this aspect of the work has not entered into my decision.

However, in the course of the rehabilitation the main stair was removed; its replacement—here again, with a metal fire stair—is incompatible with the known historic character of the structure. Additionally, I have determined that the demolition of the historic trim on the perimeter walls has further diminished that character. As a result, I find that the rehabilitation fails to meet Standards 2, 5, and 6, quoted above.

Again, with regard to the argument that removing the historic stair and replacing it with a fire stair was required by the Fire Marshall, the regulations state that the Standards take precedence over local codes, as noted above. And again, if the new use for the building requires such a substantial and disfiguring change, it calls into question whether the rehabilitation is consistent with Standard 1, quoted above.

### **Conclusion**

With regard to the impact of these rehabilitations on the Phillipse Manor Hall Historic District, I agree that it has been, with the exception of 44 Warburton Avenue, beneficial. However, the regulations give precedence to the impact of the rehabilitation on the individual properties, and I find that the deficiencies in the individual projects described above are not offset by the positive impact of the projects on the historic district. The regulations state, “In situations involving the rehabilitation of a certified historic structure in a historic district, the Secretary will review the rehabilitation project first as it affects the

certified historic structure and second as it affects the district and makes a certification decision accordingly.” [36 C.F.R. §67.6(b)(6)].

Finally, I note, as did TPS, that these projects had progressed quite far before the applications were submitted for review. This is unfortunate, since it is the experience of the National Park Service that solutions can be found to the code-related problems and the other issues discussed at our meeting when TPS has the opportunity to work with owners in advance of project work. As it is, however, that outcome is precluded in these cases, with the exception of 48 Warburton Avenue.

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the March 19, 2013, denial that TPS issued regarding the rehabilitation of 44, 50, and 52-54 Warburton and 6-8 Wells Avenue. With regard to the rehabilitation of 48 Warburton Avenue, if NPS does not receive your written communication within sixty days of the date of this letter, indicating your decision to pursue the remedies discussed herein, then the determination expressed herein will become the final decision without further notice to you. If you choose to pursue the remedial measures described above, please submit a Part 2 amendment describing the proposed changes for review and approval prior to undertaking the work. The Part 2 amendment must be submitted to this office, Attention Mr. Michael Auer, and a copy must be provided to the New York State Historic Preservation Office. I will review the materials as soon as is practicable.

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

cc: SHPO-NY  
IRS