

December 6, 2018

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

King County Courthouse
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Seattle, Washington 98104
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**REPORT AND RECOMMENDATION TO THE
METROPOLITAN KING COUNTY COUNCIL**

SUBJECT: Department of Natural Resources and Parks file no. **COA1813**
Proposed ordinance no.: **2018-0507**

VASHON HARDWARE STORE
Certificate of Appropriateness Appeal

Location: 17601 Vashon Highway SW, Vashon

Appellant: **Melinda Powers**
16630 86th Place SW
Vashon, WA 98070
Telephone: (206) 579-1141
Email: melinda@thsrestaurant.com

King County: Department of Natural Resources and Parks
represented by **Jennifer Meisner**
201 S Jackson Street, 7th Floor
Seattle, WA 98104
Telephone: (206) 477-0384
Email: jennifer.meisner@kingcounty.gov

SUMMARY OF RECOMMENDATIONS:

Department's Recommendation: Deny appeal
Examiner's Recommendation: Deny appeal

EXAMINER PROCEEDINGS:

Hearing Opened: November 20, 2018
Hearing Closed: November 20, 2018

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available from the Hearing Examiner’s Office.

FINDINGS AND CONCLUSIONS:

Overview

1. Melinda Powers owns two adjacent, landmark-protected buildings on Vashon Island. She applied to the King County Landmarks Commission (Commission) for a certificate of appropriateness (Certificate) to legalize changes she made to the buildings’ face. The Commission denied her application. She appealed to us. Although her work is stylish, and although the Commission failed to make specific findings on four of the five required criteria, our independent assessment of the record, under the controlling legal standard, leads us to deny her appeal.

Background

2. As described in the King County Register of Historic Places nomination form, the subject property was constructed, circa-1890s as two separate buildings—a main building and a smaller building. In approximately 1935, the then-owner constructed a unitary façade across the face of both buildings. The façade was “characteristic of the Moderne style in its horizontal emphasis and use of curved elements.” And “[e]choing the lines of the false front is a flat roof porch with white fascia;” along with other features this “reinforced the horizontal line that is a hallmark of the [Moderne] style.” The building had (as of its July 1986 nomination) remained the same since the 1930s, with a hardware store in the main building and a saw-sharpening business in the smaller building. With the exception of some window mullions (bars between the panes of glass), “the building looks almost as it did when remodeled in the 1930s.” Ex. 1.
3. In August 1986, the Commission found that the structure “possesses architectural characteristics of Moderne style.” The Commission declared the “entire exteriors of the street facing [north and east] facades” to be features of significance. It designated the property as a King County Landmark by a 7–0 vote. Ex. 2. In 2000, the property was added to the National Register. Ex. 9 at 005.
4. In 2003, Ms. Powers took over the buildings. She legally changed the use of the main building from a hardware store to a restaurant. After renting out the smaller building to five different, unsuccessful businesses, she recently took that space over and put in her own cooking school. Wanting to differentiate the smaller storefront from the restaurant, and misunderstanding the landmark designation as applying only to the main building, Ms. Powers added some cedar siding to the front exterior of the small building. She also painted its window mullions a different color from the main building’s mullions. Exs. 6, 9, 15.

5. In May 2018, King County Historic Preservation Program staff discovered the alteration and notified Ms. Powers that a Certificate was required. Ms. Powers duly submitted an application. Exs. 16, 4, 5.
6. The Commission’s Design Review Committee (Committee) met on June 14. The Committee agreed that it would have recommended against approval if Ms. Powers had requested a Certificate before doing the work. One commissioner stated that removing the siding and using different colored paint would be a better, less permanent, option. Another commissioner found the siding not compatible with historic materials for the scale of the façade. The Committee recommended disapproval. Ex. 8.
7. The Committee report to the full Commission focused on the siding having covered up the historical material, and having impacted the unitary, horizontal character of the façade. The report concluded that the work was not compatible with the remainder of the façade in terms of scale, proportion, and materials. The Committee recommended denial. Ex. 9.
8. At the full Commission meeting on June 28, one commissioner described the building as one long façade and opined that the siding addition was a “big departure”—nice-looking, but not using appropriate materials for the building exterior. A second stated that it should be sufficient to paint the window frames a different color and add additional signage, and opined that the siding did not meet the guidelines. A third suggested a sign above the canopy, a vertical break between the storefronts, and potted plants. A fourth agreed that a successful business is important, but felt the siding was incompatible and that it was the texture, more than any change in color, that was problematic. The Commission denied the certificate that evening by a 6–0 vote. Ex. 13.
9. In its July 9 written decision, the Commission explained that by covering up the historic material, the siding:
 - had impacted the horizontal character of the 1935 façade;
 - was incompatible in scale, proportion of board width, material, and texture; and
 - created the appearance of two separate, distinct façades, rather than the single long façade that was one of the landmark’s primary features. Ex. 14.
10. Ms. Powers timely appealed. She wrote that, during her 2004 change of use permitting process to convert the hardware store to a restaurant, she had fought hard to keep the historic frontage intact, incurring additional expense to locate an ADA-required access on the side. She had rented out the small building to five different businesses that failed because there is no visual distinction showing the business is separate from the restaurant. After taking over the space herself and putting in a cooking school, she sought to rectify the lack of visual distinction with the cedar siding (as well as painting the door and window trim a different color). She explained why she chose the materials and design, and why she concluded she should be allowed to keep the siding. Ex. 15.

Legal Standard

11. We have jurisdiction to hear appeals of denials (or approvals) of Certificates. KCC 20.22.060.E. The moving party (here, Ms. Powers) bears the burden of proof. Exam. R. XV.E.3. The examiner does not grant substantial weight or otherwise accord deference to items such as the Commission’s determination here. Exam. R. XV.F.3. Ours is a true *de novo* hearing. Three sources—the code, the Commission’s rules, and federal standards—provide the substantive legal standards for our review.
12. KCC 20.62.080 sets out the basic requirement that a Certificate must be obtained from the Commission before any alterations may be made to a landmark’s significant features. It also defines the categories for such Certificates, the pertinent one being “Type II,” defined as “alterations in appearance, replacement of historic materials and new construction.”
13. Part VI of the Commission’s Rules and Regulations (Rules) sets the relevant standards for issuing or denying Certificates.¹ In our Type II context, Certificate applications shall be reviewed in accordance with five criteria:
 - a. The degree to which the proposed project complies with The Secretary of the Interior’s Standards for the Treatment of Historic Properties (as amended 1996)
 - b. The extent to which the proposed project would adversely affect the features of significance identified in the latest of the preliminary determination of significance, if any, or the designation report
 - c. The reasonableness or lack thereof of the proposed project in light of other alternatives available to achieve the objectives of the owner and the applicant
 - d. The extent to which the proposed project may be necessary to meet the requirements of any other law, statute, ordinance, regulation, code or ordinance
 - e. The extent to which the proposed project is necessary or appropriate to achieving for the owner or applicant a reasonable return on the landmark property taking into consideration factors specified in KCC 20.62.080 and Part VII of these Rules and Regulations and the economic consequences of denial.
14. The Interior’s Standards pertinent to today’s case are:

¹ Adopted via KCC 20.62.160 and chapter 2.98. Available at <https://www.kingcounty.gov/~media/services/home-property/historic-preservation/documents/KCLC/RulesRegulationsAmended2018.ashx?la=en>.

9. 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.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.²

Analysis

15. Ms. Powers has worked hard to save the buildings and to create space for the community to gather around for nice food. In her circa-2004 remodeling efforts, she took extra steps to maintain the historic exterior. As to the interior, she preserved the original fir floors and reused some of the hardware store’s items, like nail bins. She only failed to seek pre-project approval because of an honest misunderstanding that the historic designation covered only the main building and not the small building. Staff agreed at hearing that Ms. Powers was a “dedicated” owner who had invested so much in the building. We add that she brings an interior designer background, so it is no surprise that the cedar siding installation is so tasteful. All the above is true, yet our inquiry is not a referendum on Ms. Powers’ overall stewardship, but instead whether the cedar siding meets the controlling legal criteria.
16. We tackle the two Rule criteria the project clearly does not meet, before turning to the three that are in play. First, the (d) necessary-to-meet-the-requirements-of-any-other-law would have been a factor, for example, in discussion about making changes in 2004 related to ADA access requirements. There is no argument that she added the siding to meet some legal requirement.
17. Second, the (e) lack-of-reasonable-economic-return requires that an applicant “shall” (meaning mandatory) submit evidence establishing, among many other items: annual gross and net income; itemized operating and maintenance expenses; depreciation deductions and annual cash flow before and after debt service; remaining mortgage balance; and taxes. KCC 20.62.100.B. None of those are in the record. That does not mean economics are irrelevant—we discuss them below under (c)—but the (e) lack-of-reasonable-economic-return criteria is not met here.
18. The (a) degree-of-compliance-with-Interior’s-Standards turns on the two Interior provisions quoted above. As to (10), the Commission agreed with Ms. Powers that her project would, if removed in the future, not impair the historic property’s essential form and integrity. But as to (9), the Commission found that the exterior alteration:
 - impacted the horizontal character of the 1935 façade;

² Available at <https://www.nps.gov/tps/standards/rehabilitation/rehab/stand.htm>.

- was incompatible in scale, proportion of board width, and material texture; and
- created the appearance of two separate, distinct façades, rather than the single long façade that was one of the landmark’s primary features.

From this, the Commission concluded that the work failed to meet (9), because it was not “compatible with the massing, size, scale, and architectural features.”

19. We agree with the Commission on (a). The Commission granted landmark status to the buildings in 1986 because of the Moderne style of its entire exteriors, a style characterized by curving forms and long horizontal lines. Chunking off a portion of it with narrow-board cedar siding was not compatible, no matter how attractive the siding is as a standalone item. It is noticeable, which was the entire point—that would-be customers would see the distinction and understand that it is a different business. It functionally replaces a Moderne style with a modern style. As to the degree of incompatibility, Ms. Powers is correct that the siding only impacts a small area of the building.
20. The Commission denied Ms. Powers’ application because the project did not meet that Interior standard. That was a legally incomplete analysis. Failing to meet one criteria is not dispositive. Per the Commission’s own Rules, a Certificate “shall be reviewed”—meaning that review is mandatory—under five criteria. Ex. 10 at 013. The (a) degree of compatibility with Interior Standards is but one of those five. The Commission failed to enter any findings on the other four criteria. Conversely, Ms. Power’s appeal correctly pointed to other criteria as also relevant. Ex. 15 at 001.
21. The Commission’s error is not fatal here, because ours is a *de novo* appeal. Our question is whether, given the record made in our proceeding, we conclude that Ms. Powers has met her burden. We explained above that (d) was inapplicable and that Ms. Powers did not submit the mandatory information necessary to support an (e) finding. We now turn to (b) and (c).
22. As to (b)—whether and to what extent her project adversely affected the features of significance—this criterion is substantively similar to the particular Interior standard (9) in play here. Thus our analysis is substantively similar. The Commission granted landmark status to the buildings in 1986 because of the Moderne style of its entire exteriors, a style characterized by curving forms and long horizontal lines. Chunking off a portion of it with narrow-board cedar siding adversely affected the feature, no matter how attractive the siding is as a standalone item. It is noticeable, which is the entire point—that would-be customers see the distinction and understand that is a different business. It functionally replaces a Moderne style with a modern style. As to the extent of adverse impact, Ms. Powers is correct that the siding only impacts a small area of the building.
23. The final criteria is (c), the reasonableness of the project in light of other alternatives available to achieve the applicant’s objective. Ms. Powers’ objective was to have a viable

business (her own, or a tenant's) occupying the smaller building. She believed that part of the reason the other businesses failed was that, at the street level, would-be customers did not even see it was a separate business. The Committee, and later the full Commission, agreed with her objective to differentiate the two businesses.

24. Real discussion turned on (c)'s requirement to compare the project with other alternatives. The dispute is largely over whether cedar siding detracts from the historical presentation more than a different color of paint would. The Commission felt that painting the cooking school's wall a different color than the restaurant's wall (in addition to the mullions she had already re-painted) would be a less intrusive option than covering up the wall with siding. It focused on the discrepancy in materials (between the modern cedar siding and the historic, plywood façade), a discrepancy a different paint shade would not cause. It pointed to the options for additional signage and potted (street) plants. Conversely, Ms. Powers felt that the siding was *less* obtrusive than a different paint color. She did not think signs would work, because they would not be noticed from the sidewalk; she maintained the differentiation (between establishments) needs to be at eye level to matter. And she stated that past businesses had tried potted plants, to no avail.
25. Criteria (c) is a close call. Either covering up the cooking school wall with cedar siding or slapping a distinctive paint color on it negatively impacts the horizontal character of the overall 1935 façade to some degree. Deciding which (cedar siding versus a different wall color) is more obstructive is a subjective determination, coming down to individual taste as much as to any truly objective standard. In the end, we think the Commission has the *slightly* better argument on (c).
26. Even if we leaned the other way on (c), the pertinent Rule does not say that if an applicant meets any one of the five criteria, the Certificate should be approved. (It also does not say an applicant has to meet all five criteria to obtain a Certificate.) Instead, the language bespeaks a balancing *between* criteria to arrive at a result. Thus, no single item is written as a thumbs up thumbs/down on whether a project:
 - complies with Interior's Standards, but rather the "degree" to which it does;
 - would adversely affect the significant features, but rather the "extent" to which it does;
 - achieve the owner's objectives, but rather its reasonableness in light of other alternatives;
 - is necessary to meet other legal requirements, but rather the "extent" to which it does; and
 - is necessary or appropriate to achieve a reasonable return, but rather the "extent" to which it is.

27. Again, we do not find that Ms. Powers meets any of the individual criteria. She comes closest to meeting (c). Yet even if we had made a different finding on (c) and tipped (c) slightly in her favor, when balanced against the four criteria she does not meet, the outcome would be the same.
28. We thus deny Ms. Powers' appeal. She will need to remove the siding and work with the Commission to come up with another alternative or mixture of alternatives.³

RECOMMENDATION:

1. Ms. Powers' appeal is DENIED.
2. In future Type II Certificate applications, the Commission shall ensure that it reviews and makes findings on each of the five criteria, and then reaches its final determination based on all those findings.

DATED December 6, 2018.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

A person appeals an Examiner recommendation by following the steps described in KCC 20.22.230, including filing with the Clerk of the Council a sufficient appeal statement and a \$250 appeal fee (check payable to the King County FBOD), and providing copies of the appeal statement to the Examiner and to any named parties listed on the front page of the Examiner's recommendation. Please consult KCC 20.22.230 for exact requirements.

Prior to the close of business (4:30 p.m.) on **December 31, 2018**, an electronic copy of the appeal statement must be sent to Clerk.Council@kingcounty.gov and a paper copy of the appeal statement must be delivered to the Clerk of the Council's Office, Room 1200, King County Courthouse, 516 Third Avenue, Seattle, Washington 98104. Prior mailing is not sufficient if the Clerk does not actually receive the fee and the appeal statement within the applicable time period.

Unless the appeal requirements of KCC 20.22.230 are met, the Clerk of the Council will place on the agenda of the next available Council meeting a proposed ordinance implementing the Examiner's recommended action.

³ In addition to the paint discussed above, a sign below the awning, on street level, is the type of thing the Commission has approved. Ex. 9 at 009. Also, a "COOKING SCHOOL" sign above the awning—matching the same font as "THE HARDWARE STORE" on the east side and "RESTAURANT" on the north side—would be an example of advertising that would not adversely affect a significant feature or be incompatible with what is already there.

If the appeal requirements of KCC 20.22.230 are met, the Examiner will notify parties and interested persons and will provide information about “next steps.”

**MINUTES OF THE NOVEMBER 20, 2018, HEARING ON THE APPEAL OF
VASHON HARDWARE STORE, DEPARTMENT OF NATURAL RESOURCES
AND PARKS FILE NO. COA1813**

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Jennifer Meisner and Melinda Powers

The following exhibits were offered and entered into the record:

- | | |
|----------------|---|
| Exhibit no. 1 | Register of historic places nomination form, dated July 1986 |
| Exhibit no. 2 | Landmarks Commission designation report, dated August 22, 1986 |
| Exhibit no. 3 | Certificates of appropriateness technical paper no. 20, revised February 2018 |
| Exhibit no. 4 | Letter from Department of Natural Resources and Parks to Today’s Special So Is Tomorrow LLC with landmark code non-compliance, dated May 8, 2018 |
| Exhibit no. 5 | Certificate of appropriateness application |
| Exhibit no. 6 | Photograph of present building front |
| Exhibit no. 7 | Design Review Committee meeting agenda, dated June 14, 2018 |
| Exhibit no. 8 | Design Review Committee minutes, dated June 14, 2018 |
| Exhibit no. 9 | Design Review Committee report to Landmarks Commission no. COA1812, dated June 25, 2018 |
| Exhibit no. 10 | Landmarks Commission rules and regulations, adopted March 22, 2018 |
| Exhibit no. 11 | Secretary of the interior’s standards for rehabilitation |
| Exhibit no. 12 | Landmarks Commission meeting agenda, dated June 28, 2018 |
| Exhibit no. 13 | Landmarks Commission meeting minutes, dated June 28, 2018 |
| Exhibit no. 14 | Landmarks Commission decision no. COA1813, dated July 9, 2018 |
| Exhibit no. 15 | Appeal, dated July 27, 2018 <ul style="list-style-type: none"> a. Photograph of present building b. Photograph of present building front c. Photograph of present building front |
| Exhibit no. 16 | DNRP staff report to the Hearing Examiner for file no. COA1813 |
| Exhibit no. 17 | Photograph of historic building front |

DS/ld

December 6, 2018

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CERTIFICATE OF SERVICE

SUBJECT: Department of Natural Resources and Parks file no. **COA1813**
Proposed ordinance no.: **2018-0507**

VASHON HARDWARE STORE
Certificate of Appropriateness Appeal

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED December 6, 2018.

Vonetta Mangaoang

Vonetta Mangaoang
Senior Administrator

Meisner, Jennifer

Department of Natural Resources and Parks

Pedroza, Melani

Metropolitan King County Council

Powers, Melinda

Hardcopy