

FYI No. 7

A P P E A L S

for National Park Service decisions denying certification to
federal certified historic rehabilitation projects

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Property owners whose federal certified historic rehabilitation projects are denied certification by the National Park Service can request an appeal hearing. An appeal hearing can be requested upon denial of Part 1, Part 2, or the Request for Certification of Completed Work.

Appeal hearings are not judicial proceedings. They are, rather, an administrative forum for the reconsideration of difficult decisions. The appeals process insures that property owners are not denied certification of their projects without due consideration. There is no charge for an appeal hearing.

Mr. Blaine Cliver of the National Park Service and his staff review each appeal on a case-by-case basis. When a property owner desires, the appeal can include a meeting with Mr. Cliver. All hearings are held at the Department of the Interior Building, 11th and L streets, Washington, D.C.

Property owners whose applications have been denied and who desire an appeal may request an appeal by writing:

Blaine Cliver, Chief Appeals Officer
National Park Service
Preservation Assistance Division
P.O. Box 37127
Washington, D.C. 20013-7127

The request should specify the property address and the National Park Service's project number. Mr. Cliver's office will contact the property owner to confirm receipt of the request and to schedule a date for the hearing. If the property owner requests a meeting with Mr. Cliver and his staff, a mutually convenient date and time will be arranged. Requests for appeals must be made within thirty days from receipt of the National Park Service denial letter.

For each appeal hearing, the National Park Service forwards the complete project file to Mr. Cliver and his staff. The hearings consider possible errors in professional judgement, possible

prejudicial procedural errors, and any further information on the project that the appellant can provide. An appellant may present an argument for certification in writing, through a consultant, in person, or in any combination of these routes. While an appellant is not obliged to request a meeting, such personal meetings with the property owners are well received, and generally work to the benefit of the appellant. Participation of consultants and local government officials is also welcome.

Appellants should be familiar with all aspects of the rehabilitation project. They should study the recommendations of the Virginia Department of Historic Resources, the decision of the Mid-Atlantic Regional Office, and the specific application of *The Secretary of the Interior's Standards for Rehabilitation*. Arguments of economic necessity or demonstrations of political support for a project will not influence a decision; Mr. Cliver is charged solely with the interpretation of the *Standards* as they apply to each project.

The appeal hearings proceed in a flexible and informal manner. They are not judicial proceedings, with lawyers presenting evidence and cross-examining witnesses; they are, rather, simple round-table discussions, including a summary of the relevant aspects of the project, clarification of all elements, and consideration of the *Standards* as they may apply.

The Virginia Department of Historic Resources does not routinely participate in the appeal hearings. The Department's formal recommendation on each project, as submitted to the National Park Service with the Historic Preservation Certification Application, constitutes the Department's position in an appeal. In some cases, when the Department's position is at odds with the National Park Service's decision, the Department may elect to prepare a letter of support for the project and submit it to Mr. Cliver.

Decisions are not rendered at the hearings. A decision is reached after a period of two to four weeks, and the appellant is notified by mail. Mr. Cliver has the options of overruling a denial and certifying a project; or sustaining a denial; or re-submitting the project to the National Park Service for further consideration at that level; or of sustaining a denial, while identifying how a project might be revised to comply with the *Standards*.

The decision of the Chief Appeals Officer is the final administrative decision within the Department of the Interior. No person shall be considered to have exhausted his or her administrative remedies with respect to the certification of a building or a rehabilitation until the Chief Appeals Officer has issued a decision.

As of June 1994, appeal hearings have been held on forty-two Virginia rehabilitation projects. Sixteen of these appeals have resulted in the overruling of National Park Service denials. Seven further appeals have sustained denials, but specified how the projects might be revised to comply with the Standards; and six of these projects have subsequently been certified after the corrective work. The remaining nineteen projects have had denials sustained.

The Department of Historic Resources can answer further questions on the appeals procedures. Contact Susan Smead at (804) 367-2323 if you desire further information.