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| <b>2011-COA-450B<br/>(HMP)</b>  | <p style="text-align: center;"><b>INDIANAPOLIS HISTORIC PRESERVATION<br/>COMMISSION</b></p> <p style="text-align: center;"><b>STAFF REPORT</b></p> | Hearing Date<br><b>NOVEMBER 2,<br/>2011</b>   |
| <p style="text-align: center;"><b>2140 N. PENNSYLVANIA STREET<br/>HERRON-MORTON PLACE</b></p>   |  | <p style="text-align: center;">New Case</p><br><br><br><br><br><br><br><br><br><br><p style="text-align: center;">Center Township<br/>Council District: 15<br/>Doris Minton-McNeill</p> |
| <p><b>Applicant</b> SCOTT CUNNINGHAM<br/>mailing address: 2140 N. Pennsylvania Street<br/>Indianapolis, IN 46202</p>  |  |   |
| <p><b>Owner:</b> Scott Cunningham &amp; Denise McFadden<br/>2140 N. Pennsylvania Street<br/>Indianapolis, IN 46202</p>  |  |   |
| <p style="text-align: center;"><b>VIOLATION CASE</b></p>  |  |   |
| <p><b>IHPC COA: 2011-COA-450B (HMP)</b></p> <ul style="list-style-type: none"> <li>• Retain wood-grained fiber-cement siding installed on north and south sides, but not compliant with a COA.</li> <li>• Finish installation of non-compliant siding on the south side.</li> </ul> |  |   |
| <p style="text-align: center;"><b>STAFF RECOMMENDATION: Denial of Applicant’s Request, or<br/>Approval of a Cert. of Authorization for Staff’s Recommendation</b></p>   |  |   |

**Background of the Property**

John Lowe, a sculptor and designer, built this house between 1890 and 1898 (it appears on the 1898 Sanborn Map.) The 2-story frame house has a hip-and-gable roof, 2 front gables with decorative half cove shingles and sunburst detailing, and a hipped roof front porch. There is an oriel window on the south façade and a bay window on the north façade.

When Herron-Morton Place was designated in 1986, most of the original wood clapboard siding on this house was covered with insul-brick (asphalt “brick” siding). Previous owners removed the insul-brick from the front and rear façades, after which they repaired and replaced the uncovered original wood siding with wood siding to match. Previous owners also restored the front porch.

The 1956 Sanborn labels the property as a “Rest Home,” although City Directory research suggests that it has always been a single-family house.

**Background of the Violation**

- June 3, 2011 The previous owner applied for a COA to:
- remove present siding on north and south side of house
  - repair/replace siding & window trim as needed
- July 1, 2011 Staff granted a COA to the previous owner to undertake the above work. The COA includes the following stipulations:
- *“All replacement materials shall match the original materials for which they replace.*
  - *All new materials shall have the same color, surface texture, and method of construction.*
  - *Any deviation from this approach shall be approved by IHPC staff prior to construction.”*
- Sept. 2011 The property was sold to the present owners, Scott Cunningham and Denise McFadden. The previous owners did not do the work for which they got approval, but gave the COA to the new owners.

- ± Oct. 1, 2011 Staff received a complaint that siding was being replaced at this address. The complainant was told that a COA had been granted in July for siding repair and replacement.
- Oct. 6, 2011 Staff received another complaint, this time questioning the installation of fiber-cement siding. Staff investigated and confirmed that fiber-cement was indeed being installed. A stop-work-order was posted on the house to make sure work did not proceed further.
- Oct. 7, 2011 Staff met the new owner, Mr. Cunningham, at the site. He told staff:
  - The previous owner had given him the July 1 COA.
  - He was familiar with the HMP Plan and thought only appearance mattered.
  - He believes he complied with the stipulation to “match the original material” because he believes the look of fiber-cement siding matches the look of real wood siding.
  - He further contends that fiber-cement contains wood materials, and thus is similar to wood siding.
  - He also contends that the faux wood grain surface on the fiber-cement makes it look even more like wood.
  - Lastly, he contends his house was built in 1945, and should not be subject to the same standard as a “historic” house.

### **Is the House “Historic?”**

Sanborn Map research, City Directory research, aerial photograph research and physical inspection of the building all convincingly support staff’s belief that the house existing today is the one that is depicted on the 1898 Sanborn Map.

To support his claim, Mr. Cunningham submitted a Marion County Tax Report from the Assessor’s Office, which states “Year Built: 1945.” Staff pointed out that Assessor’s Office records are notoriously inaccurate in reporting correct construction dates of historic properties. Staff shared with Mr. Cunningham all the reasons we believe the house dates from the 1890’s. To date, Mr. Cunningham has not conceded his belief that the house was built in 1945.

### **Was Wood Siding Stipulated?**

Although the wording of the stipulation could have been even more specific, staff believes the COA wording is adequate for the following reasons:

- First The COA approved “repair/replace siding,” which clearly conveys the fact that staff believed there would be a mix of repairs to existing siding and replacement where needed. This is what the previous owner asked to do, and what he had done in the past on front and rear façades.
- Second Staff believes it is reasonable to expect a person to understand that a matching material means the “same” material, and that man-made fiber-cement is not the same thing as real wood.
- Third It was stipulated that the new material shall have the “same” surface texture. Staff believes that Mr. Cunningham’s own house provides compelling evidence that the surface texture on real wood siding (the front of his house) and faux wood grain fiber-cement siding (the side of his house) is not the same, but rather very different.
- Fourth The COA makes it clear that “any deviation from this approach” requires staff approval.
- Lastly Mr. Cunningham alleges to having looked at the HMP Plan and finding support for his position. However, if the Plan is consulted, the most obvious place to look for such guidance would be in the Plan’s Renovation Guidelines for Wood Siding. If he looked there, he would have seen the following unambiguous cautions (complete guidelines attached to this report):
  - ***“Retain all of the sound original wood siding.”***
  - ***“Replacement of original siding is generally justified only by documented problems.”***
  - ***“Avoid removing original siding.”***

- *“If it is covered with insul-brick..., do not assume the original siding will need total replacement”*
- *“If replacement of siding is justified (partial or total) avoid using any material other than real wood... with finish to match the original.”*
- *“Hardboard,... or other synthetic or unnaturally composed materials do not look, feel, wear or age like the original and therefore should be avoided.”*

### **Compromise Offered**

After the administrator visited the site, talked with the owner and staff and reviewed all the documentation, he offered a compromise to resolve the matter without having to seek a certificate of Authorization from the IHPC or having to turn the case over to the City Prosecutor. The administrator determined a reasonable compromise was justified because some of the circumstances could legitimately lead to a misunderstanding:

1. Mr. Cunningham was not the one who applied for the July 1 COA and could not reasonably be expected to know what was in the previous owner’s mind when he applied for the COA.
2. Although the COA contains adequate language to warn against installing non-matching materials and to contact IHPC staff if considering any deviation, the wording of the stipulation is not as specific as is usually used when staff adds stipulations for this type of siding approval.

The administrator also took into consideration Mr. Cunningham’s concern about weather damage to his house with over half the siding removed from the south side for an extended period. The administrator saw this as a valid concern and offered the compromise, in part, as a way for Mr. Cunningham to get back to work on the house immediately.

Given the above circumstances, the administrator suggested that Mr. Cunningham consider the following compromise:

#### **North Side**

- Retain the fiber-cement siding on the completed north side. This side happens to be closer to the neighboring house and is somewhat less visible from the street than is the south side.
- Apply Elastomeric Patching Compound, or something similar, to the surface before painting in order to reduce the visual effect of the faux graining. The IHPC approved this method in two instances where smooth fiber-cement siding was stipulated for new construction, but the faux wood grain version was installed instead.

#### **South Side**

- Remove all the fiber-cement from the south side, which is less than half completed and more visible from the street.
- Install real wood siding with a smooth finish on the south side.

### **Compromise Rejected**

After considering the compromise, Mr. Cunningham decided to reject it. Instead, he wants to ask the IHPC to grant him approval to leave the fiber-cement siding as-is and complete the project as he planned.

### **Certificate of Authorization – Justified with the Compromise**

Because the use of any artificial siding on historic HMP properties is not permitted under the Plan, staff believes any resolution of this matter approved by the IHPC should be done with a certificate of “Authorization.” Staff does not believe a Certificate of Authorization to permit the siding to remain as-is is justified. Staff believes that one is justified for the compromise. In order to grant Authorization, the IHPC must find one of the following:

1. **Substantial Hardship**: While the wording of the COA and its stipulation may have caused Mr. Cunningham to have to give some thought to its meaning, it was his choice to interpret it without

consulting the staff that wrote it. He admits to having access to a HMP Plan and having consulted it, but either missed or ignored the obvious and unambiguous guidelines that apply to his situation. Mr. Cunningham had access to, and was aware of, all the resources he needed to clarify any confusion he had, and chose to not use them. Staff believes any hardship is largely self-created. In any event, any hardship is not “substantial,” especially with the suggested compromise.

2. Deprivation of Use: Staff does not believe any decision by the commission would result in depriving the owner of all reasonable use and benefit of the property.
3. Insubstantial Effect. Staff believes the use of an artificial siding does result in a substantial effect on the character of this historic property and the immediate surrounding area. However, if the north side facade is treated to reduce the visibility of the faux graining, and if the more visible (and less than half completed) south side is re-sided in real-wood smooth-surfaced siding, then staff believes the overall effect to the historic character of this house and its surrounding will be reduced to the point where it can be considered “insubstantial.”

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| <b>STAFF RECOMMENDED MOTION</b> |
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**2011-COA-450B (HMP):**

**To Approve a Certificate of Authorization to retain the non-compliant fiber-cement siding installed on the north façade as per documentation submitted and subject to the following stipulations:**

**South Side Facade**

1. All fiber-cement siding must be removed from south façade, and replaced with real wood siding in compliance with the approved COA.
2. New wood siding and trim must have the same profile, dimensions and reveal as on the front of the house. Its surface texture must be smooth and any knots or surface imperfections shall be filled to achieve a smooth appearance. Rough-sawn finishes are not permitted.
3. All exposed wood shall be primed and painted to match the rest of the house.

**North Side Facade**

4. Fiber-cement siding retained on the north façade must be treated with an elastomeric patching compound, or similar, to create a smooth finish, and be painted to match the remainder of the house. A test patch must first be approved by IHPC staff before the entire façade is treated.

*Approved* \_\_\_\_\_ *Date* \_\_\_\_\_

5. All corner boards and trim must be real wood with a smooth surface (rough sawn finishes are not permitted.)

**Entire Project**

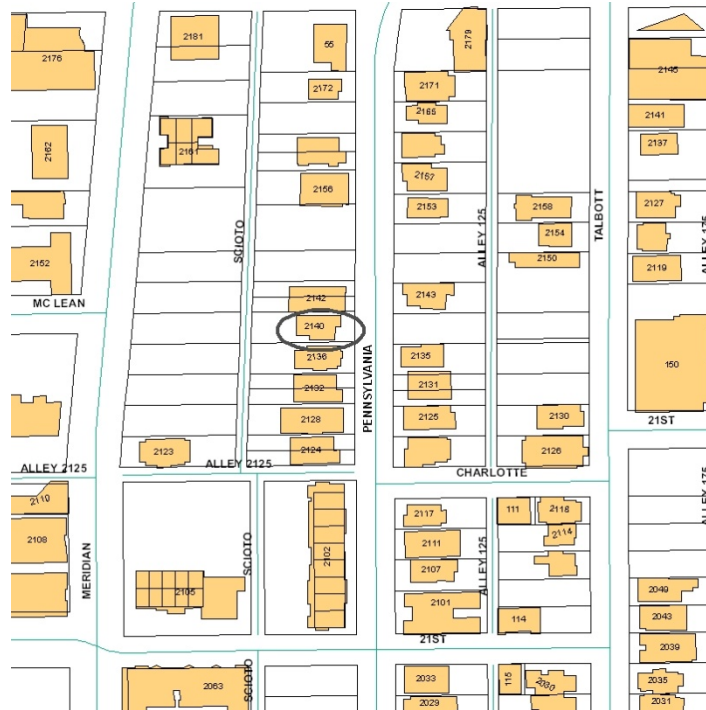
6. No changes to the proposed design, location, configuration, or method of installation are permitted without prior consultation with IHPC staff.
7. The owner must comply with all stipulations by December 31, 2011 in order to resolve the violation.

**OR, if the owner does not agree to the above:**

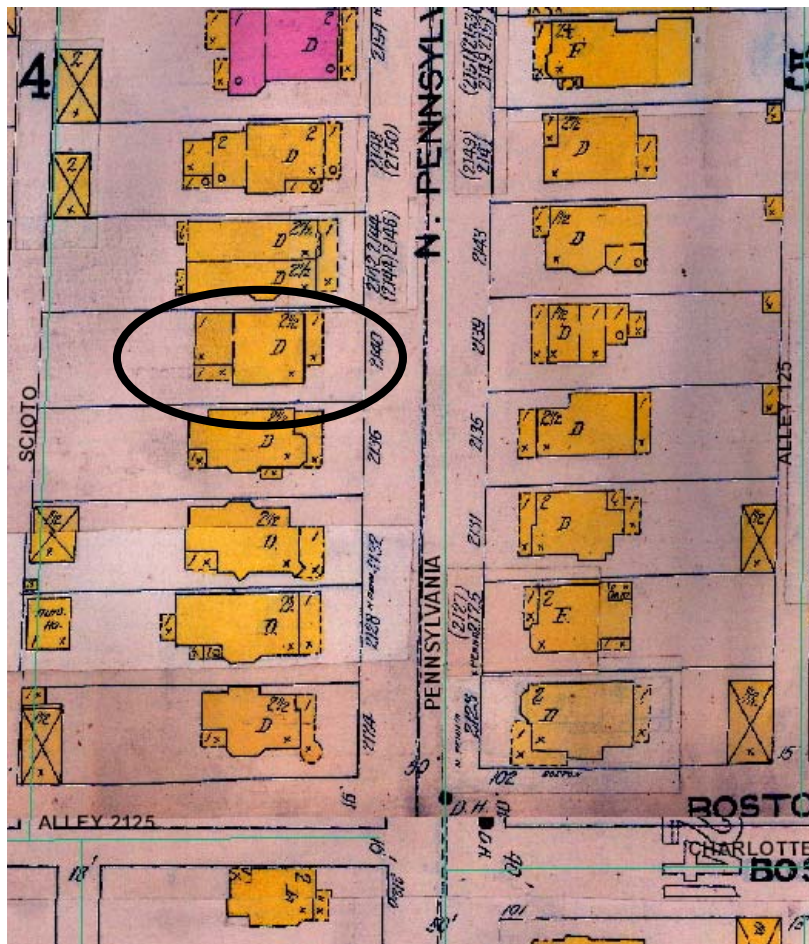
**To deny a Certificate of Appropriateness or Authorization to retain fiber-cement siding installed without approval.**

**NOTE: If the unapproved fiber-cement siding is not removed and replaced with real wood, smooth-surfaced siding (in conformance with 2011-COA-217) by December 31, 2011, this case will be forwarded to the City Prosecutor for enforcement.**

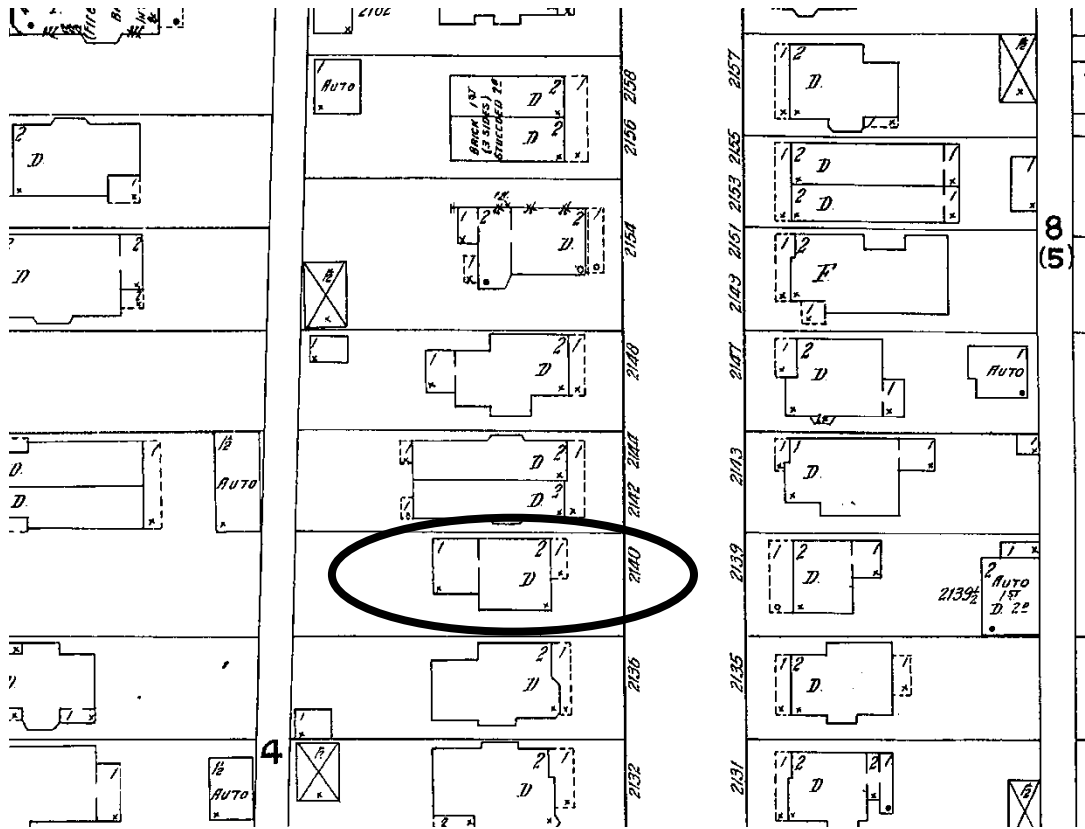
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| <b>Staff Reviewer:</b> David Baker |
|------------------------------------|



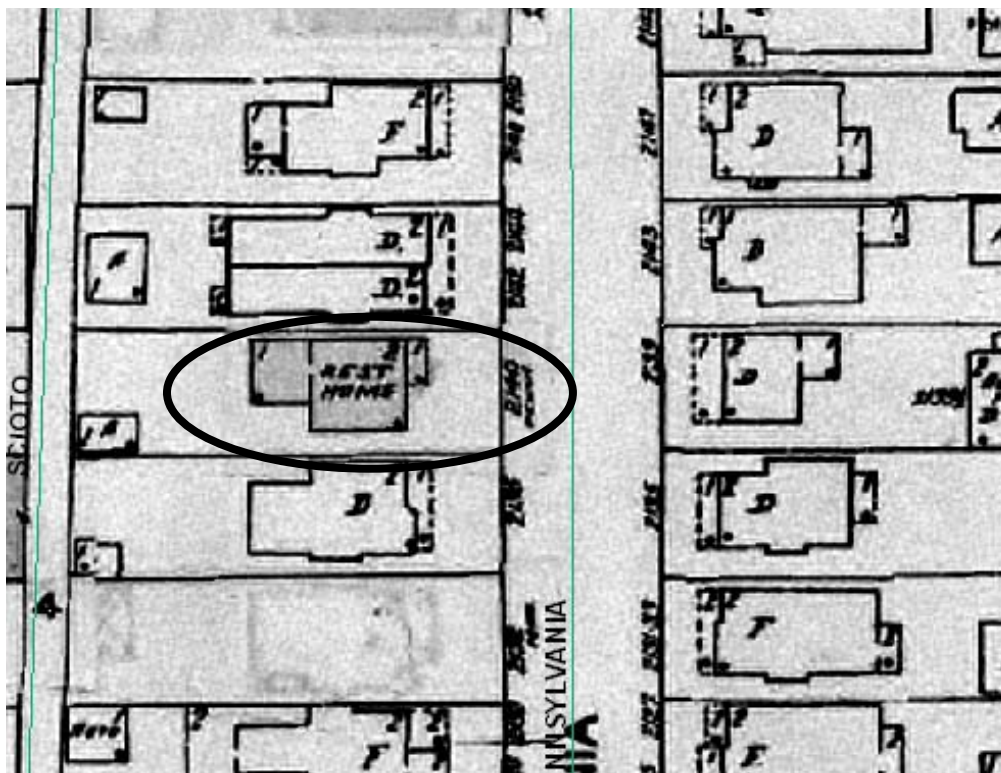
Map of subject property



1898 Sanborn map



1914-1915 Sanborn



1956 Sanborn, labeling the property as a "Rest Home"



**2140 N. Pennsylvania, partially completed siding work visible on the south façade**



**View of north façade with siding work completed**



**South façade**



**Insulbrick and original wood siding visible on south façade**



**View of siding texture – north façade**



**View of siding with and without Elastomeric Patching Compound on similar property in St. Joseph Historic District approved in November 2002**

Meg Burnside

|             |   |                                  |
|-------------|---|----------------------------------|
| <b>IHPC</b> | <b>Application for Certificate of Appropriateness</b>   | File No. <u>2011-COR 217 HMP</u> |
|             | Indianapolis Historic Preservation Commission<br>200 E. Washington Street, Suite 1801<br>Indianapolis, IN 46204<br>Ph: 317-327-4406 Fax: 317-327-4407 | IHPC Hearing                     |
|             |   | Hearing Officer                  |
|             |   | Staff Approval <u>X</u>          |
|             |   | Hearing Date:                    |

1. Address of Property Where Work is to be Done (Indicate Address or Legal Description):  
2140 N. Pennsylvania

2. Applicant's Name: Jacob EMS  
 Address: 6514 Navilleton Rd Zip Code: 47119  
 Home Phone: 812-923-5784 Work Phone: X  
 Cell Phone: 812-736-6136 Fax: X

Owner's Name: Jacob EMS  
 Address: 6514 Navilleton Rd / Zip Code: 47119  
 Home Phone: 812-923-5784 Work Phone: X  
 Cell Phone: 812-736-6136 Fax: X

3. Present Use of the Property: rental

4. Description of Work to Be Done (Use Additional Sheets if Necessary):  
remove present siding on N+S of house;  
repair/replace siding & window trim as  
needed; paint siding & window trim same  
as rest of house. Same for garage

5. Contact Person: Tony Turk Phone: 317-417-3219

6. Estimated Cost of Project: \$10,000.00 E-mail: N/A

7. Documentation Submitted:
- Site Plan
  - Building Plans/Elevations
  - Samples/Swatches
  - Drawings/Sketches
  - Photographs
  - Other: \_\_\_\_\_

8. Signature of the Applicant: Jacob EMS Susan EMS Date: 6/3/11

**RECEIVED**  
 JUN 03 2011  
 INDIANAPOLIS HISTORIC  
 PRESERVATION COMMISSION

Application for siding work from the previous owner

INDIANAPOLIS HISTORIC PRESERVATION COMMISSION

**CERTIFICATE  
OF  
APPROPRIATENESS**

APPROVED

JUL 01 2011

INDIANAPOLIS HISTORIC  
PRESERVATION COMMISSION

FILE NUMBER: 2011COA217

DATE ISSUED: July 01, 2011

HISTORIC AREA: Herron-Morton  
Place

FOR WORK TO BE DONE AT: 2140 N. PENNSYLVANIA ST

APPLICANT: EMS, MICHAEL JOSEPH

ADDRESS: 6514 NAVILLETON RD

CITY/STATE: FLOYDS KNOBS, IN

ZIP CODE: 471199597

**TYPE OF WORK APPROVED UNDER THIS CERTIFICATE:**

Approval of a Certificate of Appropriateness to remove current siding on the north & south side of house, repair/replace siding, window trim, paint siding & window trim the same as rest of the house & garage.; per submitted documentation and subject to the following stipulations:

All replacement materials shall match the original materials for which they replace. All new materials shall have the same color, surface texture, and method of construction. Any deviation from this approach shall be approved by IHPC staff prior to construction.

**General Note:** Permits are required for some work. Please contact the Permits office at 1200 Madison Ave, (317) 327-8700, to acquire all applicable permits prior to starting any project.

BY:

Emily Jarzen, Sr. Architectural Reviewer

IHPC HEARING

ADMINISTRATIVE HEARING

STAFF APPROVAL

**NOTICE: THIS CERTIFICATE WILL BECOME VOID AFTER: 7/1/2012.  
CONTACT THE IHPC OFFICE IF AN EXTENSION OF THE EXPIRATION DATE IS NEEDED.**

THIS CERTIFICATE IS A PREREQUISITE TO THE ISSUANCE OF ANY BUILDING OR DEMOLITION PERMITS, IMPROVEMENT LOCATION PERMITS, WHEN REQUIRED, AND TO THE GRANTING OF ANY USE VARIANCES OR REZONINGS IN ALL DESIGNATED HISTORIC AREAS OF MARION COUNTY, INDIANA.

**INDIANA CODE 36-7 CHAPTER 11.1**

THIS CERTIFICATE IS NOT IN AND OF ITSELF PROOF THAT THE MATERIALS AND DOCUMENTS PRESENTED TO OBTAIN A BUILDING, DEMOLITION, IMPROVEMENT LOCATION, OR OTHER PERMITS REFLECT THE SCOPE OF WORK APPROVED BY THE IHPC, UNLESS SAID MATERIALS OR DOCUMENTS BEAR AN APPROVAL STAMP AND DATE FROM THE INDIANAPOLIS HISTORIC PRESERVATION COMMISSION.

RECORDS

BUILDING FILE

APPLICANT

**COA granted to previous owner for siding work**