

The concrete driveway being replaced is not original construction. The record indicates it was installed in the 1970's and needs repair.

The Appellant proposes to replace the existing concrete driveway with another driveway and will use the same material as the existing driveway: concrete. Whether or not a concrete driveway from the 1970's is a "distinctive material" that "characterize a property" is beside the point: the Appellant will replace the existing concrete driveway with concrete and this satisfies the secretary of the interior's standard for rehabilitation no. 5 as to materials.

Whether or not the technique of stamping the new concrete driveway to look like bricks is a "distinctive technique" that "characterizes the property" is also beside the point. While there is no evidence that the original driveway was brick, there is equally no evidence that brick was not used at this site. What is clear is that no one knows what material was originally used for the driveway other than the existing driveway from the 1970's was made from concrete. As to the quality of stamped concrete as a building material versus the quality of brick as a building material, this is a valid cost consideration for the Appellant which the HPC should have considered under Leg. Code § 74.63(b) but did not. Finally, the color of materials used in "new construction" is outside the HPC's review under Leg. Code § 74.65(d)(4). For these reasons, I find that HPC Finding No. 3 was in error.

The HPC decisions for findings 4, 5, 6, and 8 are also in error and therefore do not support the decision to deny the Appellant's driveway application for the following reasons:

Finding no. 4: Leg. Code § 74.64(b)(3). States that the original color and texture of masonry surfaces should be retained. This code section deals with "restoration and rehabilitation" of "masonry and foundations." A driveway is not a foundation and whether a poured concrete driveway is masonry is reasonably debatable. A driveway is not a building and Leg. Code § 74.64 is clearly written to address masonry and foundation standards for buildings. Even if a concrete driveway is deemed to be "masonry," and therefore clearly the subject of Leg. Code § 74.64(b)'s standards, the driveway being replaced here is from the 1970's and therefore is not "original" masonry. Finally, as I noted color is not subject to commission approval. I find that HPC finding No. 4 was in error.

Finding no. 5. Citing Leg. Code § 74.65(a) the HPC found that stamped concrete is not typical for the Hill District and is not compatible with the "site design or surrounding character." Leg. Code § 74.65 addresses new construction. The Appellant's driveway proposal is not new construction. The proposal is to replace an existing concrete driveway. The section also appears to be written to apply to new buildings and not replacing an old concrete driveway with a new one. Even if the section did apply, the new driveway is compatible because it replaces an existing driveway with same material and be the same size. The only difference is the new driveway will have a stamped concrete finish which, for the reasons set forth for findings 3 and 4, and under these circumstances is a compatible "site design." I find HPC finding No. 5 was in error.

Finding No. 6. Citing Leg. Code § 74.65(d)(1), the HPC found that the "thread of continuity" provided by the range of materials commonly used by turn-of-the-century builders and the way these materials were used is threatened by the introduction of "new industrial materials." This finding is also in error.

This driveway is not new construction and the material that will be used to replace the 1970's driveway is concrete which is clearly not "a new industrial material."

Finding No. 8. Citing Leg. Code Section 74.65(g)(1), the HPC found that a replacement concrete driveway, stamped with a herringbone patterns and tinted red in color would adversely affect the architectural control of the Hill District. For all the reasons stated above, this finding is also in error. The material used in the replacement driveway is the same as the exiting driveway, the only difference is the use of stamping and color. The HPC's record suggests that color and stamping could set a precedent. However, the use of stamped and colored concrete for a driveway in the district was already approved by HPC staff when it approved the use of stamping and coloring for a portion of the driveway that is clearly visible in slide on page 3 of Attachment No. 5. Extending the use of the same material and construction technique for this particular property does not create a precedent applicable to other properties because the circumstances of a previously approved stamped and tinted concrete driveway or a portion of it, are unique to this property only. Accordingly, finding No. 8 is in error.

For these reasons I move that the HPC erred when it denied the Appellant's application and that the Appellant's application be approved subject to this condition: that the portion of the driveway on city right-of-way is constructed subject to the approval of the department of public works and that the materials used in the right of way shall be constructed and finished to match what is traditionally found in the district as determined by HPC staff.

I would also note that the facts here are unique, especially with respect to the previous approval of the stamped and tinted portion of the driveway. Unless other properties in the District have a similar factual history, my motion is limited to the facts of this case.