



**Council
Communication**
Office of the City Manager

Date

July 24, 2006

Agenda Item No. 62

Roll Call No. 06-

Communication No. 06-476

Submitted by: Larry D. Hulse, Community
Development Director

AGENDA HEADING:

Hearing on appeal of the Historic Preservation Commission action regarding a Certificate of Appropriateness for the property at 817 17th Street (James and Sandra Quilty, owners) located in Sherman Hill Local Historic District.

SYNOPSIS:

Recommend approval to overturn the portion of the Historic Preservation Commission's decision (Certificate of Appropriateness No. 20-2006-5.49) that requires the proposed carriage house be built on the 50'-wide parcel the Quilty's currently own and located 3' north of the south property line. This recommendation is based on new information that became available after the original staff recommendation to the Historic Preservation Commission.

FISCAL IMPACT: NONE

Amount:

Funding Source:

ADDITIONAL INFORMATION:

James and Sandra Quilty are appealing the portion of the Historic Preservation Commission's decision that requires the proposed carriage house be built on the 50'-wide parcel they currently own located 3' north of the south property line. Staff has confirmed with Mr. Quilty that he is not appealing the condition that the carriage house be construction 10' east of the west property line. Section 58-31(f) of the City Code states that decisions of the Historic Preservation Commission may be appealed to the City Council. The Code further states that "in deciding such appeal, the City Council shall consider whether the Commission has exercised its powers and followed the guidelines established by law and ordinance and whether the Commission's action was patently arbitrary or capricious."

On April 19, 2006, the Historic Preservation Commission considered the Quilty's request to replace the bathroom window sashes with glass block and to construct a 24' x 28' 1½-story carriage house. The Commission approved the replacement of the window sashes with glass block on the condition that a storm window be installed that matches existing storm windows and that the sashes are stored for future use. The Commission also approved the proposed carriage house on the condition that it be built on the parcel currently owned by the applicant and located 3' north of the south (side) property line and 10' east of the west (rear) property line.

The Commission's decision was based on the staff report, which found the proposed location to not be in compliance with the City's *Architectural Guidelines for New Construction in Des Moines' Historic Districts* guidelines regarding placement of outbuildings. Staff also noted in the report that the construction of the carriage house on the vacant lot would likely ensure that it would never be available for infill development regardless of ownership, which would not be in harmony with the City's Comprehensive Plan. The Sherman Hill Neighborhood Plan was approved by the City Council on July 26, 1999, becoming an amendment to the Comprehensive Plan. The neighborhood plan identifies the construction of new housing or moved houses on available and buildable vacant lots as a goal. Over the past 15 years, staff is aware of 10 houses that have been moved into the Sherman Hill Neighborhood. An additional 3 houses are scheduled to be moved this month. During this period, five new single family and multi-family structures have been built in the neighborhood.

After the staff report was distributed, Mr. Quilty informed staff of a restrictive covenant on the parcel he is proposing to purchase that prohibits the construction of residential or commercial structures. The covenant and affidavits submitted by Mr. Quilty with his appeal were not available for the Historic Preservation Commission's consideration.

It should be noted that the restrictive covenant may have expired. Pursuant to Iowa Code Sec. 614.24, any restriction on the use of land arising from a deed, will or contract (including a declaration of covenants) expires 21 years after the restriction is recorded, unless a claim is filed by the benefited party within that time.

The abstract pages provided by Mr. Quilty identify that restrictive covenants were imposed by an Offer and Acceptance recorded on June 18, 1979, and by a Special Warranty Deed recorded on July 19, 1979. Unless a claim was filed by one of the benefited parties prior to July 18, 2000, those restrictive covenants have lapsed. If this is the case, the current or a future owner could record a new restrictive covenant if they choose.

Staff believes that, given the additional information submitted by Mr. Quilty, it is not likely that the adjoining vacant lot will be available in the foreseeable future. If the carriage house is built within 10' of the rear property line, staff believes it would be in substantial conformance with the City's *Architectural Guidelines for New Construction in Des Moines' Historic Districts*.

PREVIOUS COUNCIL ACTION(S):

Date: July 10, 2006

Roll Call Number: 06-1338

Action: Setting date of hearing [on](#) appeal from James and Sandra Quilty regarding the decision of the Historic Preservation Commission for 814 17th Street in the Sherman Hill Historic District, (7-24-06). Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Date: June 21, 2006

Roll Call Number: N/A

Action: Historic Preservation Commission approved Certificate of Appropriateness No. 20-2006-5.49 for the replacement of the window sashes with glass block on the condition that a storm window be installed that matches existing storm windows and that the sashes are stored for future use. The Commission also approved the proposed carriage house on the condition that it be built on the parcel currently owned by the applicant and located 3' north of the south (side) property line and 10' east of the west (rear) property line.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE