

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date: June 11, 2012
	Agenda Item No. 49 Roll Call No. <u>12-0917</u> Communication No. <u>12-299</u> Submitted by: Phillip Delafield, Community Development Director

AGENDA HEADING:

Public hearing regarding request from James Tully to appeal the decision of the Historic Preservation Commission conditionally approving a Certificate of Appropriateness for the retention of a fence at 409 Franklin Avenue.

- A. Resolution affirming the decision of the Historic Preservation Commission
- B. Alternate resolution reversing the decision of the Historic Preservation Commission

SYNOPSIS:

Mr. James Tully, represented by Mr. Patrick Duquette (tenant) is appealing the April 18, 2012 decision of the Historic Preservation Commission to conditionally approve a Certificate of Appropriateness (COA) for the retention of a six (6) foot tall wood privacy fence at 409 Franklin Avenue in the River Bend Local Historic District. The Commission’s decision would require modifications to a fence that was originally constructed without a required fence permit and required Certificate of Appropriateness. Modifications include reducing the height of portions of the fence from six (6) feet to four (4) feet and altering the design of the fence. Mr. Duquette contends that the fence was designed (but not constructed) prior to establishment of the Riverbend Historic District on February 3, 2012 and the current height of the fence is necessary for the safety of Mr. Duquette’s children. Staff contends that a private agreement to construct a fence is not a substitute for obtaining required permits. Had Mr. Duquette obtained the required permit prior to construction of the fence, he would have been aware of the height limitations and unique design requirements of a local historic district. Staff recommends that the City Council uphold the decision of the Historic Preservation Commission.

FISCAL IMPACT: NONE

Amount: N/A.

Funding Source: N/A.

ADDITIONAL INFORMATION:

On April 18, 2012 the Historic Preservation Commission voted 6-0-1 to conditionally approve a Certificate of Appropriateness (COA) for retention of a six (6) foot tall wood privacy fence at 409 Franklin Avenue in the River Bend Local Historic District. The Commission found that the fence would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic Preservation Ordinance, the Secretary of Interior’s Standards for Rehabilitation

and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications so long as the fence was modified to comply with the following conditions.

1. The portion of the fence that faces Franklin Avenue and the southern eight (8) feet of the east facing fence segment shall be converted to a four (4) foot tall picket fence that complies with the following:
 - a. The picket tops shall be cut to match the tops of the existing pickets.
 - b. The pickets shall run between the posts so the posts are fully exposed.
 - c. Spaces shall be provided between pickets that are generally equal to the width of a picket.
 - d. The fence shall step along a grade change at intervals set by the length between posts and not at variable lengths or with a continuously straight top edge.
 - e. The space between posts shall be uniform, and no less than four (4) feet and no greater than 14 feet in distance.
2. All posts shall extend a minimal and uniform distance above the pickets.
3. A fence permit shall be obtained from the City's Permit and Development Center.

The fence encloses the east side yard and rear yard. It was constructed in late March/early April 2012 without a permit from the Permit and Development Center. Staff received a complaint and found that the fence had been constructed. Mr. Duquette was advised by staff of the City Code violations and the need to obtain a COA and fence permit to address these violations. Staff also understands that Mr. Duquette was informed by Michael Hildebrand, River Bend Neighborhood Association President and by Breann Bye, Des Moines Historic Preservation Commission Member that a COA was required prior to starting construction. Mr. Duquette submitted an application for a COA on April 4, 2012. The appeal of the Commission's decision was submitted on May 14, 2012.

The appeal contends that the fence was to be built in lieu of Mr. Duquette's August 2011 rent payment and therefore was planned prior to the establishment of the District on February 3, 2012. Anyone that obtained a permit for work in the River Bend Local Historic District from the Permit and Development Center prior to February 3, 2012 is allowed to complete the work approved by that permit without a COA throughout the life of that permit. While the appellant contends that their rental contract required them to build the fence and that it was agreed to prior to the establishment of the District, staff does not believe that such an agreement is a substitute for obtaining an official approval to proceed from the City (i.e. a building permit). All projects go through planning phases that often include private party agreements but permits are still required before commencing that work. Staff is also resolving the fact that a rental certificate has not been issued for this property.

The conditions of approval require the southern portion of the fence be converted to a four (4) foot tall open picket fence. The appeal suggests that this portion of the fence needs to remain a six (6) foot tall privacy fence in order to provide adequate security for Mr. Duquette's children. The southern portion of the fence is flush with the front wall of the house and is visually a part of the front yard. The design guidelines for Des Moines local historic districts suggest fences should be visually open and that the space between pickets should be approximately equal to the width of the picket in front and side yards. Reducing the height of the fence or moving it north so that it was setback from the front of the house were options that were discussed at the Commission meeting as ways to bring the fence into conformance with the design guidelines. During the meeting, Mr. Duquette offered to reduce the height of a portion of the fence in lieu of having to move the fence to the north as recommended by staff to the Commission.

Staff believes that the Commission was “reasonable in its judgment” and found a design solution that was consistent with the Architectural Guidelines for Building Rehabilitation in Des Moines’ Historic Districts and the Fence Guidelines in Des Moines’ Historic Districts and reasonably met the needs of the applicant. The staff report, photographs and meeting summary from the April 18, 2012 Historic Preservation Commission meeting and the appeal by Mr. Duquette are attached.

PREVIOUS COUNCIL ACTION(S):

Date: May 21, 2012

Roll Call Number: [12-0777](#)

Action: Set date of hearing on appeal by James Tully from decision of The Historic Preservation Commission regarding the property at 409 Franklin Avenue, (6-11-12). Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Historic Preservation Commission

Date: April 18, 2012

Resolution Number: 20-2012-9.04

Action: Approval of a Certificate of Appropriateness (COA) for the retention of a six (6) foot tall wood privacy fence at 409 Franklin Avenue in the River Bend Local Historic District subject to the following conditions:

1. The portion of the fence that faces Franklin Avenue and the southern eight (8) feet of the east facing fence segment shall be converted to a four (4) foot tall picket fence that complies with the following:
 - a. The picket tops shall be cut to match the tops of the existing pickets.
 - b. The pickets shall run between the posts so the posts are fully exposed.
 - c. Spaces shall be provided between pickets that are generally equal to the width of a picket.
 - d. The fence shall step along a grade change at intervals set by the length between posts and not at variable lengths or with a continuously straight top edge.
 - e. The space between posts shall be uniform, and no less than four (4) feet and no greater than 14 feet in distance.
2. All posts shall extend a minimal and uniform distance above the pickets.
3. A fence permit shall be obtained from the City’s Permit and Development Center.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

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