

 <p style="text-align: center;">Council Communication Office of the City Manager</p>	Date:	September 10, 2012
	Agenda Item No.	34
	Roll Call No.	<u>12-1453</u>
	Communication No.	<u>12-489</u>
	Submitted by:	Phillip Delafield, Community Development Director

AGENDA HEADING:

Public hearing regarding request from Conlin Properties to appeal the decision of the Historic Preservation Commission conditionally approving a Certificate of Appropriateness for the replacement of ten windows in the multiple-family dwelling at 826 18th Street.

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

SYNOPSIS:

Conlin Properties is appealing the May 16, 2012 decision of the Historic Preservation Commission to conditionally approve a Certificate of Appropriateness (COA) for the replacement of ten (10) wood windows at 826 18th Street in the Sherman Hill Local Historic District. The applicant believes the conditions of approval are unreasonable, as they may require use of a more expensive product than originally proposed. Staff believes the conditions of approval are consistent with the Architectural Guidelines for Building Rehabilitation in Des Moines’ Historic Districts and are consistent with past actions of the Commission for both, investor-owned and owner-occupied properties. This request was originally heard by the Commission on November 30, 2011, and appealed to the City Council. On April 23, 2012, the City Council referred the request back to the Historic Preservation Commission to allow new information to be submitted by the applicant for consideration.

On July 9, 2012, the City Council requested a review of the City’s design guidelines and an evaluation of the appropriate use of synthetic materials. A review was conducted by a committee of representatives from the Historic Preservation Commission, the Urban Design Review Board, the Iowa Department of Cultural Affairs and staff. The committee’s findings were presented at the August 27, 2012 Council Workshop. No substantive changes are proposed to the guidelines as they currently allow the Historic Preservation Commission to approve substitute materials when appropriate. Staff intends to move forward with the updates that were discussed at the workshop including the addition of a statement clarifying the criteria for evaluating replacement materials.

The staff report, photographs and meeting summary from the May 16, 2012 Historic Preservation Commission meeting and the appeal by Conlin Properties are attached. Also, attached is a letter from the Sherman Hill Association and additional information submitted by interested Sherman Hill residents. Staff recommends that the City Council uphold the decision of the Historic Preservation Commission.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

Conlin Properties is appealing the May 16, 2012, decision of the Historic Preservation Commission to conditionally grant a Certificate of Appropriateness (COA) for the replacement of ten (10) wood windows at 826 18th Street in the Sherman Hill Local Historic District. The Commission approved the staff recommendation by a vote of 9-0 and found that the replacement of the ten (10) windows 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 replacement windows comply with the following conditions.

1. The windows shall be constructed of wood with no metal cladding.
2. The windows shall be of the same general style, shape and dimensions as the existing windows.
3. Review and approval of the selected window product by staff prior to installation.

This request was originally heard by the Commission on November 30, 2011. The Commission approved the request at that time subject to the same conditions listed above. The applicant appealed the decision to the City Council. On the April 23, 2012, the City Council referred the item back to the Commission to allow the applicant to submit additional information for consideration. New information submitted included bid documents, a letter from an appraiser, vinyl window specifications and testing information, and information from the National Park Service. This information was reviewed by staff and the Commission, and taken into consideration during the hearing.

On July 9, 2012, the City Council requested a review of the City's design guidelines and an evaluation of the appropriate use of synthetic materials. A review was conducted by a committee of representatives from the Historic Preservation Commission, the Urban Design Review Board, the Iowa Department of Cultural Affairs and staff. The committee's findings were presented at the August 27, 2012 Council Workshop. No substantive changes are proposed to the guidelines as they currently allow the Historic Preservation Commission to approve substitute materials when appropriate. Staff intends to move forward with the updates that were discussed at the workshop as follows:

1. Update National Park Service Preservation Briefs references
2. Update Building Code references
3. Add River Bend Historic District references
4. Add the following statement to clarify the criteria used in reviewing replacement materials.
"Deteriorated architectural features should be repaired rather than replaced, wherever possible. In the event that replacement is necessary, the new material should have a comparable composition and match the design, dimensions, durability, color, texture, and other visual properties of the original feature."

Conlin Properties believes that it is unreasonable to require a property owner to incur higher cost in replacing windows by requiring the use of wood windows that generally match the design of the existing wood windows. The appeal indicates that ten (10) wood replacement windows would cost \$12,763, whereas, the proposed vinyl replacement windows would cost \$6,275. The appeal suggests that the Commission did not take into consideration the purpose of the Historic Preservation Ordinance as defined by Section 58-26, or the criteria for reviewing applications as established by Section 58-31. The appeal notes that the ten (10) windows are located in a later addition that has little historical significance and that the house has metal siding. Applicable Municipal Code sections are as follows:

Sec. 58-26. Purpose.

It is declared as a matter of public policy that the protection, enhancement and perpetuation of districts of historical and cultural significance is required in the interest of the health, prosperity, safety and welfare of the public. The purpose of this article is to:

- (1) Promote the educational, cultural, economic and general welfare of the public through the protection, enhancement and perpetuation of districts of historical and cultural significance;
- (2) Safeguard the heritage of the city by preserving districts in the city which reflect the elements of its cultural, social, economic, political, historical, aesthetic and architectural significance;
- (3) Stabilize and improve property values and the equity held by the citizens in their property;
- (4) Foster civic beauty and pride and enhance civic design;
- (5) Protect and enhance the city's attraction to tourists and visitors;
- (6) Strengthen the economy of the city;
- (7) Facilitate the rehabilitation and revitalization of certain older neighborhoods; and
- (8) Provide for a variety of living experiences within the city for both old and new residents.

Sec. 58-31. Certificate of appropriateness required.

(c) All applications received before the closing date, to be established by the commission, shall be considered by the commission at its next regularly scheduled meeting. In acting upon each application, the commission shall consider the following:

- (1) Design guidelines, standards and criteria developed by the commission and approved by the city council, pursuant to subsection 58-30(e)(2) of this article.
- (2) Standards for rehabilitation promulgated by the Secretary of the Interior.
- (3) The relationship of proposed changes to exterior features of structures in the neighborhood.

Furthermore, it is the intent of this article that the commission shall be reasonable in its judgments and shall endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value, except when such a proposal would seriously impair the historical values and character of the surrounding area. Also, the commission shall be sympathetic to proposals utilizing energy saving modifications, such as solar panels.

Staff believes the Commission's action followed the purpose and procedures established in the Historic Preservation Ordinance. The Commission was "reasonable in its judgment" and approved the replacement of windows subject to conditions. In requiring the replacement windows be constructed of wood and be of the style, shape, and dimension as the existing windows, the Commission followed the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts, as approved by the City Council. The guidelines state that "any replacement windows should duplicate the original window in type, size and material." Design guidelines by nature eliminate some design and material options that may be lower in cost. Bid information for a less expensive Windsor brand wood window was submitted for consideration by Rob McCammon, 821 16th Street, Des Moines, a Sherman Hill property owner. Mr. McCammon also submitted a comparable bid for a Marvin brand window. The bid submitted by Conlin Properties for a wood window is for a Marvin product. The Marvin brand bids, from Mr. McCammon and Conlin Properties, generally show the same unit price. The bid from Mr. McCammon for the Windsor brand product shows that it sells for approximately half the unit price as the Marvin product.

The appeal references two (2) sets of guideline documents prepared by the National Park Service. The first being The Secretary of the Interior's Standards for the Treatment of Historic Properties with

Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings. Page 82 of this document includes the following statement “Recommended - Replacing in kind an entire window that is too deteriorated to repair using the same sash and pane configuration and other design details. If using the same kind of material is not technically or economically feasible when replacing windows deteriorated beyond repair, then a compatible substitute material may be considered.” The appeal focuses on the second sentence of this guideline and fails to address the first sentence, which states that replacement windows need to have the same design details as the existing window. The proposed vinyl windows generally fit in the existing window openings, but do not have the same profile and sash frame dimensions as a historic wood window.

The second document submitted is The Secretary of the Interior’s Standard for Rehabilitation and Illustrated Guidelines on Sustainability for Rehabilitating Historic Buildings. Page 5 of this document includes the following statement “Recommended – Installing compatible and energy-efficient replacement windows that match the appearance, size, design, proportions and profile of the existing historic windows and that are also, durable, repairable and recyclable, when existing windows are too deteriorated to repair.” The proposed vinyl windows do not match the appearance, proportions and profile of the existing windows. No reference to material is made on Page 5. These two documents are prepared by the National Park Service to supplement the long established Secretary of the Interior’s Standards for Rehabilitation. The Standards for Rehabilitation consists of 10 broad guidelines that are not specific to individual architectural elements. These documents are not intended to supersede locally adopted design guidelines or the authority of a locally appointed Commission to make decisions that are in the best interest of a local historic district.

Maintenance of the subject property impacts the historic integrity and value of the district as a collective, which impacts all property owners within the district. The Historic Preservation Commission reviews a substantial number of requests that involve window restoration or replacement. The November 2011 staff report noted that over the previous twelve months the Commission had reviewed eight (8) cases similar to this case and in all instances the Commission either required the existing wood windows to be repaired or replaced with wood windows. The eight (8) properties consisted of four (4) multiple-family residential properties and four (4) owner-occupied, single-family dwellings. Copies of the staff reports and COAs for these cases were provided to the applicant’s legal representatives.

The appeal notes that the subject building is sided with metal and that the windows are located in a later addition. The windows are located in an addition that was constructed sometime between the 1920 and 1957. The original portion of the building was built 1888 according to the Polk County Assessor’s web page. The Commission’s action took into consideration the alterations to the property as they found that requiring the existing wood windows to be repaired and retained was not warranted. Cover up siding, such as metal or “depression brick” is not a material or architectural element of significance in the Sherman Hill Historic District. The Architectural Guidelines for Building Rehabilitation in Des Moines’ Historic Districts state “artificial and cover-up siding should be removed and the original siding restored.” Removal of the siding was not proposed by the applicant or required by the Commission.

Section 58-27(a) of the Historic Preservation Ordinance states that the replacement of storm windows are ordinary maintenance and do not require a Certificate of Appropriateness. The appeal suggests that because the replacement of storm windows is not reviewed that a property owner could install vinyl storm windows and due to this vinyl should be considered an allowed material for other purposes. Storm windows are generally short term elements in comparison to the life of a building and in most cases are not considered a character defining element as are primary windows.

The appeal documents include a letter from Gene Nelsen, Nelsen Appraisal Associates, Inc., 10580 Justin Drive, Urbandale, Iowa. Mr. Nelsen is a State licensed appraiser. The letter from the applicant's attorney states that Mr. Nelsen believes that the property "does not appear to have any significant historical value." No credentials have been provided that suggest Mr. Nelsen has expertise in evaluating historical significance, such as a degree in historic preservation, a degree in architecture, or substantial experience as a professional historian. In fact, in his letter to Conlin Properties, Mr. Nelsen states "it is not our intent to comment whether the windows are conforming or not. Rather, you have asked that we provide an opinion as to whether the installation of vinyl windows at this property would have an effect on value of the surrounding properties."

The appeal states that Conlin Properties received a notice from the City that mandated the replacement of the ten (10) windows. This statement is not correct. Unit 1 of the subject property was inspected by the Housing Services Department for compliance with Section 8 Program requirements on September 7, 2011. As a result of this inspection, the application was advised to repair or replace missing and damaged storm windows, to repair or replace damaged window sills, and to repair windows so that they will remain open without the use of props. The entire building was last inspected by the Neighborhood Inspection Divisions on June 16, 2010. No violations of the Rental Code were found during this inspection. The applicant was issued a rental certificate on June 24, 2010, which is valid until June 27, 2013. Replacement of windows was not required by the Housing Services Department or the Neighborhood Inspection Division. The repair or replacement of storm windows is not subject to review by the Commission as it is defined as ordinary maintenance by the Historic Preservation Ordinance.

Conlin Properties has owned the subject property since 1989. Conlin Properties owns a second property in the Sherman Hill Local Historic District located at 677 16th Street. This property contains "The Harrington" apartment building. In 2006 and in 2007, Conlin Properties submitted applications for review by the Historic Preservation Commission. Work that was approved by the Commission included the replacement of windows.

PREVIOUS COUNCIL ACTION(S):

Date: July 9, 2012

Roll Call Number: [12-1123](#)

Action: ALTERNATE RESOLUTION: Continue the hearing. Moved by Hensley to continue the hearing until September 10, 2012, at 5:00 PM in the Council Chambers; refer to the City Manager and Historic District Commission to review the requirements and appropriateness of materials used, and to hold a Council Workshop in August. Motion Carried 7-0.

Date: June 25, 2012

Roll Call Number: [12-0980](#)

Action: [On](#) appeal by Conlin Properties from the decision of the Historic Preservation Commission regarding property at 826-18th Street, (7-9-12). Moved by Hensley to adopt. Motion Carried 7-0.

Date: April 23, 2012

Roll Call Number: [12-0629](#)

Action: [Affirming](#) decision to conditionally approve. Moved by Hensley to refer back to the Historic Preservation Commission to review the new information presented. Motion Carried 7-0.

Date: April 9, 2012

Roll Call Number: [12-0552](#)

Action: [ALTERNATE](#) RESOLUTION: Continue the hearing until April 23, 2012 at 5:00 PM. Moved by Hensley to receive and file the communication from Douglas Gross and to continue the hearing on this matter until 5:00 PM on April 23, 2012. Motion Carried 7-0.

Date: March 12, 2012

Roll Call Number: [12-0420](#)

Action: [ALTERNATE](#) RESOLUTION: Continue the hearing until April 9, 2012 at 5:00 PM. Moved by Hensley to receive and file the communication from Douglas Gross, and to continue the hearing on this matter until 5:00 PM on April 9, 2012. Motion Carried 7-0.

Date: February 13, 2012

Roll Call Number: [12-0239](#)

Action: [ALTERNATE](#) RESOLUTION 2: Continue the hearing. Moved by Hensley to receive and file the communication from Douglas Gross, and to continue the hearing on this matter until 5:00 PM on March 12, 2012. Motion Carried 7-0.

Date: January 23, 2012

Roll Call Number: [12-0084](#)

Action: [On](#) appeal by Conlin Properties of decision by the Historic Preservation Commission regarding replacement of windows at 826 18th Street, (2-13-12). Moved by Hensley to adopt. Motion Carried 7-0.

BOARD/COMMISSION ACTION(S):

Board: Historic Preservation Commission

Date: May 16, 2012

Resolution Number: N/A.

Action: Historic Preservation Commission voted 9-0 to approve a Certificate of Appropriateness with conditions regarding the replacement of 10 windows.

Board: Historic Preservation Commission

Date: November 30, 2011

Resolution Number: N/A.

Action: Historic Preservation Commission voted 8-0 to approve a Certificate of Appropriateness with conditions regarding the replacement of 10 windows.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Enforcement of the Certificate of Appropriateness depending on the action taken by the City Council. City Council review of updates to the design guidelines as discussed at the July 27, 2012 workshop following a public hearing on the matter by the Historic Preservation Commission.

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