

Date..... January 22, 2007

RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC
PRESERVATION COMMISSION

WHEREAS, on November 15, 2006, the Historic Preservation Commission conditionally approved an application from Edward C. Muelhaupt III for a Certificate of Appropriateness for the construction of a fence on his property at 649 18th Street; and,

WHEREAS, the Commission's approval of the Certificate of Appropriateness is subject to a limitations on the height and design of the fence; and,

WHEREAS, Edward C. Muelhaupt III has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code; and,

WHEREAS, on December 18, 2006, by Roll Call No. 06-2643, it was duly resolved by the City Council that the appeal be set down for hearing on January 8, 2007, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was mailed to the applicant on December 20, 2006, and published in the Des Moines Register on December 28, 2006; and,

WHEREAS, on January 8, 2007, by Roll Call No. 07-066, the City Council continued the public hearing on the appeal until January 22, 2007, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, in accordance with the published notice, those interested in the issuance of the Certificate of Appropriateness, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, Section 303.34(3) of the Iowa Code and Section 58-31(f) of the Des Moines Municipal Code provide that on an appeal such as this, the City Council shall consider whether the Historic Preservation Commission has exercised its powers and followed the guidelines established by the law and ordinance, and whether the Commission's decision was patently arbitrary or capricious; NOW THEREFORE,

BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The public hearing on the appeal is hereby closed.
2. The City Council hereby finds that the decision of the Historic Preservation Commission requiring as a condition of approval of a Certificate of Appropriateness for a privacy fence at 649 18th Street, that the fence satisfy the conditions identified below, is not arbitrary or capricious and should be upheld.

(continued)

Date..... January 22, 2007

3. The City Council hereby makes the following findings in support of this decision:

- a) The design of the privacy fence proposed by the applicant is not consistent with the adopted fence guidelines or the historic character of the Sherman Hill Historic District, for the reasons set forth in the Staff Report and Recommendation to the Historic Preservation Commission for the Commission meeting of November 15, 2006.
- b) The following conditions, imposed by the Historic Preservation Commission on the design and construction of the privacy fence are reasonable and consistent with the adopted fence guidelines for fences in the Historic Districts:
 - The front yard segment of fence is limited to 3' in height with no lattice element on top of the pickets.
 - The rear and side yard segments of fence are limited to 6' in height.
 - Pickets on both sides of the fence are placed back-to-back and not alternating.
 - Use of 4"x4" posts that are exposed and include a base and cap in the front and side yards.
 - Post cap element may be similar in design to porch spindles.
 - Application of the same stain or paint finish on all sections of the fence.
 - Provision of a pointed top or other appropriate picket top design, not including "dog eared" style tops, along the entire length of the fence.
 - Review and approval of post base and cap design and picket top design by staff.

(Council Communication No. 06-)

MOVED by _____ to adopt, and affirm the decision of the Historic Preservation Commission to conditionally approve the Certificate of Appropriateness.

FORM APPROVED:

Roger K. Brown
 Roger K. Brown, Assistant City Attorney
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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				

MOTION CARRIED

APPROVED

 Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

 City Clerk

40 A

December 4, 2006

Mayor and City Council Members, City of Des Moines
400 Robert D Ray Drive
Des Moines, IA 50309

Dear Mr. Mayor and City Council Members,

I am writing to appeal a decision made on November 15, 2006 by the Historic Preservation Commission on Certificate of Appropriateness Case Number 20-2007-5.03 for a privacy fence at 649 18th Street.

I am appealing the following elements of the Historic Preservation Commission's decision:

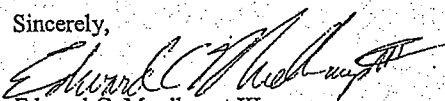
- Size of gaps
- Design of top
- Height in rear yard
- Exposure of posts
- Paint or stain required

The Historic Preservation Commission approved a motion that modified my proposed design for a privacy fence, although my proposal is aligned with the Des Moines ordinance for fences. My proposal for the design of the privacy fence is also consistent with existing fences in Sherman Hill with regard to all of the elements listed above. There are fences in Sherman Hill that have gaps smaller than 1/4", have dog ear shaped tops in the side and front yard, are taller than 6' in the rear yard, do not have exposed posts, and are not painted or stained. The special situation with an abnormally high volume and frequency of noise pollution coming from the Beacon of Life to the south of 649 18th Street is the primary reason the fence needs to be 8' in the rear yard. It is cost prohibitive to custom cut the tops of the fence boards as it would approximately triple the cost of the fence.

A copy of my proposed design for a privacy fence on the south side of 649 18th Street is attached.

Thank you for your consideration.

Sincerely,


Edward C. Muelhaupt III
649 18th Street

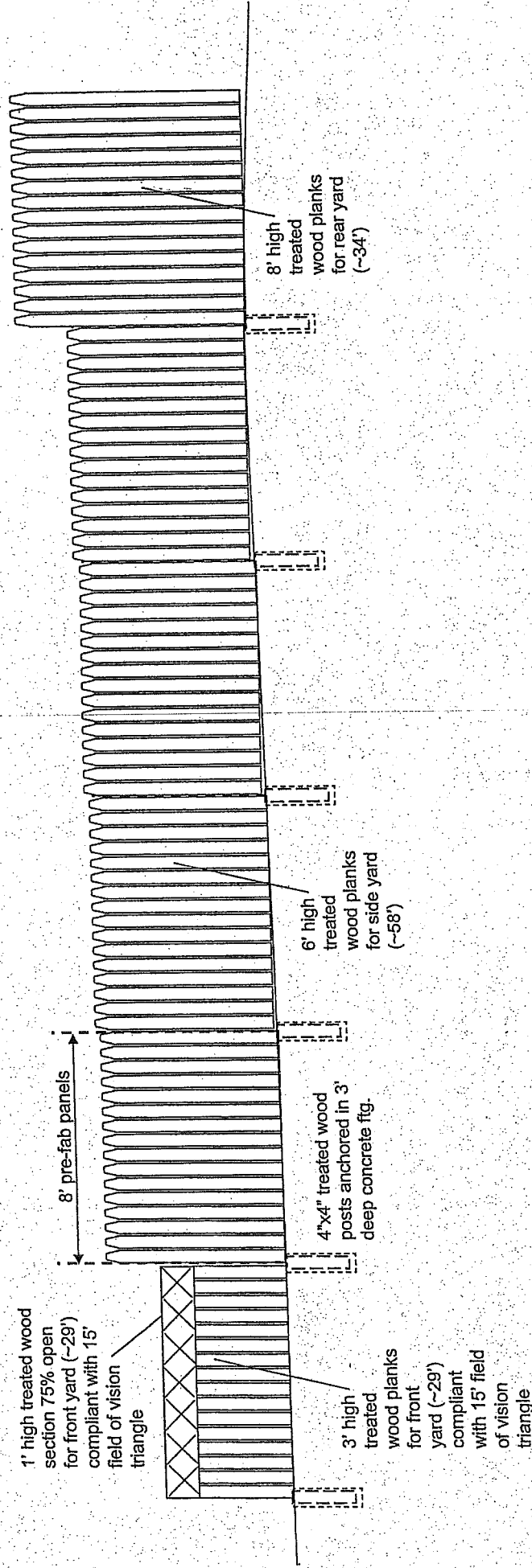
ecm@DMColdStorage.com
515-283-8050

2006 DEC - 5 PM 1:58
CITY CLERK
DES MOINES, IOWA

FILED

FENCE DIAGRAM FOR 649 18TH STREET

9-20-06



• Pickets facing out on both sides with connecting 2"x4"x8' in between

• Step along grade

• Planks ~5 1/2" wide by ~1/2" thick

• May have caps similar to spindles on porch

• If stained or painted, it will be consistent for all sections of fence.

FENCE ELEVATION

1/4" = 1'0"

CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION
STAFF REPORT AND RECOMMENDATION
Wednesday, November 15, 2006

AGENDA ITEM #1

20-2007-5.03

Applicant: Edward C. Muelhaupt (owner).

Location: 649 18th Street (Sherman Hill Historic District).

Requested Action: Construction of a fence along the south property line with the west 29' of the fence being 3' in height with a 1 foot 75% open extension, the middle 58' of the fence being 6' in height and the east 34' of the fence being 8' in height.

****This item was continued from the August 21, 2006, Special Historic Preservation Commission meeting to allow time for the applicant to prepare an alternative fence design. The applicant's proposal to construct a proposed fence along the south property line was first consider by the Commission on July 15, 2006.*

I. GENERAL INFORMATION

1. **Purpose of Request:** Construction of a privacy fence along the south property line.
2. **Site Description:** The subject property measures 50' x 125' and contains a 2-story single-family dwelling built circa 1885, with a total living area of 1,900 square feet.
3. **Sanborn Map:** The 1901, 1920 and 1957 maps generally show the house as it is today without the 1990's addition. The 1901 map shows a 1½-story carriage house in the southeast corner of the lot and the 1920 and 1957 maps show a single-story garage generally in the same location.
4. **Relevant COA History:** On July 15, 2006, the Historic Preservation Commission conditionally approved the applicant's request to finish reconstructing the front porch. On August 21, 2006, the Historic Preservation Commission conditionally approved the applicant's request the relocated the front door, enclose the rear porch, construct a garage and a second floor addition. The applicant's request to construct a fence along the south property line was continued at the August 21, 2006 meeting to allow the applicant time to submit a fence design that meets the Fence Design Guidelines.

The applicant's initial fence proposal consisted of a 16'-long, 6'-tall section to the west and a 72'-long, 12'-tall section to the east. The applicant submitted a revised fence design in August that consisted of a 16'-long, 6'-tall section to the west and a 72'-long, 9'-tall section to the east.

II. APPLICABLE DESIGN GUIDELINES

Fence Guidelines:

- a. The rear yard fence, both open and solid, should be a maximum of six feet in height.

The proposed fence would consist of a 29'- long, 4'-tall section; a 58'-long, 6'-tall section; and a 34'-long, 8'-tall section. The proposed 8'-tall section does not meet this guideline. The Zoning Ordinance does allow fences to be 8' in height in the rear yard.

Staff believes that 8' is not appropriate in this case because the fence would sit on top of a retaining wall that is generally 4' in height. Staff recommends that the proposed 8'-tall section of fence be reduced to 6' in height.

- b. The spacing between posts should be approximately 4 to 14 feet, depending on the design.
- c. The fence should step along a grade change at intervals set by the length between posts rather than at variable lengths or with a continuously straight top edge.

The submitted design indicates that the posts are spaced 8' apart and that the fence sections will step along the grade.

- d. The post and rail side should be facing the homeowner's yard while the picket side should face the street, neighbor or alley. Pickets on both sides of the fence are acceptable if the pickets are placed back-to-back and not alternating, which is generally referred to as a shadow-box fence.

The submitted drawing includes a note stating that the fence will include pickets on both sides of the fence. The pickets are prefabricated 8'-long panels. It is likely that they will naturally line up, however, staff recommends that meeting this guideline be a condition of approval.

- e. Most fences are made of three elements: post, rail and picket. The rail is typically the only horizontal element. The rails should be placed between or on the back side of the posts not the front.
- f. Posts are typically built with four equal sides with a base and a cap, and are slightly taller than the pickets. Six to 12 inch squares are common for a prominent post. The minimum width should be the height of the post in feet translated to the equivalent width in inches.
- g. Posts are a very important visual part of a fence and should not be hidden by the pickets.
- h. Picket fences in the front and side yards should be placed between the posts and not run continuously in front of the posts.

The applicant is proposing 4" x 4" posts that are obscured from view by the pickets. These guidelines indicate that posts should be exposed and should

include a base and cap in the front and side yards. Staff recommends meeting these guidelines be a condition of approval.

- i. Pickets should be $\frac{3}{4}$ to one inch thick and one to six inches wide.
- j. The tops of most pickets should be cut to some design. Dog-eared fences are acceptable in rear yards only.
- k. Lattice can be used on the top of a fence to add height without the visual weight of a board fence.

The proposed pickets are $\frac{1}{2}$ " thick and $5\frac{1}{2}$ " wide with a dog-eared style top. The pickets of the front yard section of the fence have a flat top with a 1'-tall section of lattice above. The Zoning Ordinance (Sec 134-1296) limits the height of fences in the front yard to 3' or 4' if the entire fence or the top 1' of the fence is 75% open.

The thickness and width of the pickets meet these guidelines but the style of the pickets do not. These guidelines indicate that dog-eared fences are acceptable in rear yards only. Staff also believes that the use of lattice to extend the height of a fence in the front yard is not appropriate. Staff believes the intent of the guideline that allows lattice to be used above pickets is for side and rear yards, which are generally thought as the private portions of the yard and are less visible from the street.

Staff recommends that the provision of pointed-top pickets or another appropriate picket design be provided in the front, side, and rear yards. This will provide design consistence along the entire length of the fence.

- l. The spacing between pickets should be approximately equal to the width of the picket in front and side yards.
- m. When privacy is a concern, the boards maybe spaced closer together, however, it is encouraged to keep the height of the fence as low as possible and to provide at least the thickness of a board ($\frac{3}{4}$ " to 1") between the pickets.

The submitted drawing indicates that a limited amount of space would be provided between the pickets. Staff recommends that the provision of a $\frac{3}{4}$ " gap between the pickets be a condition of approval to ensure compliance with the guidelines.

- n. Painted fences are preferred in the front and side yards. Stains and unpainted wood are not recommended in historic neighborhoods.

The submitted information indicates that the fence would be constructed of treated wood but does not indicate if the fence would be painted. Staff believes that all section of the fence should be painted, stained or left exposed for consistency.

III. STAFF RECOMMENDATION

Staff recommends approval of the proposed fence subject to the following conditions:

1. The fence in the rear and side yards is limited to 6' in height.
2. Pickets on both sides of the fence are place back-to-back and not alternating.
3. Posts are exposed and include a base and cap in the front and side yards.
4. Provision of a ¾" gap between the pickets.
5. Application of the same finish on all sections of the fence.

HISTORIC PRESERVATION COMMISSION
CITY OF DES MOINES
CERTIFICATE OF APPROPRIATENESS
In the Following Matter

This Certificate of Appropriateness is valid for one year from the meeting date

REQUEST FROM:	:	CASE NUMBER: 20-2007-5.03 Amendment
	:	
EDWARD C. MUELHAUPT III	:	
	:	
PROPERTY LOCATION:	:	MEETING DATE: November 15, 2006
	:	
649 18TH STREET	:	

This Decision of the Historic Preservation Commission does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

SUBJECT OF THE REQUEST:

Construction of a fence along the south property line with the west 29' of the fence being 3' in height with a 1 foot 75% open extension, the middle 58' of the fence being 6' in height and the east 34' of the fence being 8' in height.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

Granting the application as presented subject to the conditions listed below would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications. **The property owner must obtain permits and the completed work must comply with construction codes.**

CONDITIONS:

- The front yard segment of fence is limited to 3' in height with no lattice element on top of the pickets.
- The rear and side yard segments of fence are limited to 6' in height.
- Pickets on both sides of the fence are placed back-to-back and not alternating.
- Use of 4"x4" posts that are exposed and include a base and cap in the front and side yards.
- Post cap element may be similar in design to porch spindles.
- Provision of a 3/4" gap between the pickets.
- Application of the same stain or paint finish on all sections of the fence.
- Provision of a pointed top or other appropriate picket top design, not including "dog eared" style tops, along the entire length of the fence.
- Review and approval of post base and cap design and picket top design by staff.

Edward C. Muelhaupt III
649 18th Street
20-2007-5.03

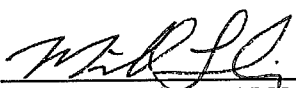
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November 15, 2006

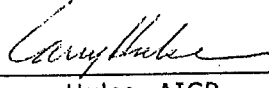
VOTE: A vote of 7-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness	X			
Estes	X			
Reavely				X
Stamps				X
Shaw	X			
Berry	X			
Fenton	X			
Schneider	X			
Taenzer	X			

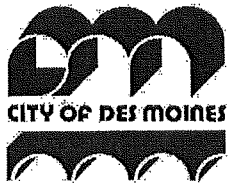
Approved as to form:



Michael Ludwig, AICP
Planning Administrator



Larry Hulse, AICP
Director, Community Development



Council Communication

Office of the City Manager

Date

January 8, 2007

Agenda Item No.

Roll Call No. 07-

Communication No. 07-

Submitted by: Larry D. Hulse, Community
Development Director

AGENDA HEADING:

Appeal of the Historic Preservation Commission action regarding restrictions of fencing at 649 18th Street located in Sherman Hill Local Historic District (E.C. Muelhaupt, owner).

SYNOPSIS:

Staff recommends that the City Council uphold the decision of the Historic Preservation Commission.

FISCAL IMPACT:

Amount: N/A

Funding Source: N/A

ADDITIONAL INFORMATION:

E.C. Muelhaupt is appealing the November 15, 2006 decision of the Historic Preservation Commission to conditionally grant a Certificate of Appropriateness for fencing at 649 18th Street.

Mr. Muelhaupt requests to construct a fence along his south lot line. The fence would be a 3 foot high, solid fence with an additional 1-foot of wood lattice on top within the front yard setback; a 6-foot high, solid, dog-eared picket fence within the side yard; and an 8-foot high, solid, dog eared fence within the rear yard. In his presentation before the Historic Preservation Commission, Mr. Muelhaupt noted that the additional fence height in the front and rear yard was necessary to provide privacy from the adjoining property to the south (Beacon of Life).

The Commission voted 7-0 that Mr. Muelhaupt's request would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications, subject to the following conditions and modifications:

1. The front yard segment of fence is limited to 3' in height with no lattice element on top of the pickets.
2. The rear and side yard segments of fence are limited to 6' in height.
3. Pickets on both sides of the fence are placed back-to-back and not alternating.
4. Use of 4"x4" posts that are exposed and include a base and cap in the front and side yards.

5. Post cap element may be similar in design to porch spindles.
6. Provision of a $\frac{3}{4}$ " gap between the pickets.
7. Application of the same stain or paint finish on all sections of the fence.
8. Provision of a pointed top or other appropriate picket top design, not including "dog eared" style tops, along the entire length of the fence.
9. Review and approval of post base and cap design and picket top design by staff.

The Chair of the Historic Preservation Commission specifically expressed concern about the additional fence height requested, as the fence will sit on top of a retaining wall between the two properties. Mr. Muelhaupt also allegedly reached agreement with surrounding neighbors to limit the height of the fence to 6-feet in exchange for their support for his application for a Certificate of Appropriateness for a detached garage that was approved in August of 2006.

Mr. Muelhaupt notes in his appeal that "there are fences in Sherman Hill that have gaps smaller than $\frac{3}{4}$ ", have dog ear shaped tops in the side and front yard, are taller than 6' in the rear yard, do not have exposed posts, and are not painted or stained."

Mr. Muelhaupt did not cite specific properties nor are such properties the subject of this appeal. While there may be examples of improvements in the Sherman Hill Historic District that do not meet the Architectural Guidelines, staff believes that their presence is due to one of the following:

- The improvements were constructed prior to establishment of the Sherman Hill Local Historic District and are "grandfathered";
- The improvements were constructed without a Certificate of Appropriateness and the alleged violations have not been brought to staff's attention for enforcement;
- The improvements were constructed or altered in violation of conditions of a Certificate of Appropriateness and the alleged violations have not be brought to staff's attention for enforcement; or
- The improvements were constructed in compliance with a Certificate of Appropriateness where the Historic Preservation Commission authorized variance to portions of the Architectural Guidelines based upon a unique set of circumstances for a specific application.

The application, staff report and meeting summary from the November 15, 2006 Historic Preservation Commission meeting and Mr. Muelhaupt's appeal are attached.

PREVIOUS COUNCIL ACTION(S):

Date: December 18, 2006

Roll Call Number: 06-2463

Action: Set date of hearing on the appeal for January 8, 2007.

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BOARD/COMMISSION ACTION(S):

Date: November 15, 2006

Roll Call Number: N/A

Action: Historic Preservation Commission voted 7-0 to approve a Certificate of Appropriateness with conditions regarding the design of the fence.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

None.