

★ Roll Call Number

Agenda Item Number

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Date March 24, 2008

Communication from Denny Marchand, Des Moines, requesting permission to speak regarding 651 27<sup>th</sup> Street.

Moved by \_\_\_\_\_ to receive and file comments.

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLISSIS				
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

**Rauh, Diane I.**

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**From:** services@mycityhall.net  
**Sent:** Tuesday, March 18, 2008 10:06 PM  
**To:** Rauh, Diane I.  
**Cc:** gbconst@gumballexpress.com  
**Subject:** Registration Form to Speak at City Council Meeting

**Registration Form to Speak at City Council Meeting.**

**To:** The Honorable Mayor and Members of the City Council  
City of Des Moines, IA  
C/O City Clerk

**I/We Denny Marchand, General Manager of GB Construction , hereby request permission to speak at the Des Moines City Council meeting of March 24th, 2008 , regarding**  
To the Honorable Mayor and Members of the City Council: I, Denny Marchand, General Manager of GB Construction, hereby request permission to speak at the Des Moines City Council meeting on March 24th, 2008, regarding being unreasonably denied and detained from building a new single family dwelling at the empty lot, locally known as 651 27th Street. History: We purchased this empty lot listed by Iowa Realty in November of 2007. We were misled into believing that our only restriction was that we had to build a 4-square, 2-story, single- family dwelling. Based upon this criterion, we designed such a home with 3 bedrooms and 2 1/2 baths with 1,352 square feet (SF) and cement board lap and single siding. The price of this house would have been in the \$145,000 to \$155,000 range. After designing this, we found out the covenant as laid out by the realtor was false. Instead we are required to adhere to the following: 1. Any house built upon this lot can only be occupied by person(s) who own it. (i.e. It cannot be rented.) 2. The house built must be "compatible with and complementary to" other houses in the area. The design is to be approved by the Neighborhood Association in which the lot is located. Approval cannot be "unreasonably withheld." 3. These covenants are in effect until May 25th, 2011. We brought our original design before the Woodland Heights Neighborhood Association in compliance with the Restrictive Covenant placed on the lot by the city of Des Moines. During our meeting with the association, many good suggestions were made as to the design of the structure. Expensive requests to change our original siding plans were made. We also asked that the Restrictive Covenant's clause on allowing only owner occupants be relaxed due to current market conditions. The association agreed to allow us to rent the property after it had been on the market for 60 days. These were agreeable and we left with the expectation of a letter confirming this fact so we could begin excavating and building our winter project. That letter never came. We tried to contact Doug McBride, the president of the association but never heard from him again. We then began contacting members of the city, including council members to get some help. Both Larry Hulse, the Community Development Director, and Christine Hensley made several attempts on our behalf to contact the Association. Finally, 3 months later, on February 27th, 2008, the Community Development Department received a letter from Mr. McBride stating that they would not allow the property to be rented. We then carefully read the restrictive covenants and conducted exhaustive research of the neighborhood. Our research yielded the following based on Polk County Records and having a neighborhood geographically determined by the city of Des Moines and designated as being north to Interstate #235, east to MLK Parkway, south to Ingersoll Avenue, and west to 30th Street: There are approximately 410 single family dwellings. 81.3% of these were built between 1900 and 1929. 55.6% being built between 1910 and 1919. 42.7% of the single family dwellings in the area are 1 story. 52.9% of these 1 story dwellings are between 700 and 900 SF. Another 25.0% are between 900 and 1,100 SF. We also did not find any dwellings with cement board siding, but an enormous amount with vinyl siding. The average sales price in the past 12 months of all single family dwellings was

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\$82,000. As the market is in bad shape and undeniably regressing, we decided to build a dwelling more in line with the neighborhood. Although the original 2 story we wanted to build would have been a much nicer house, the sales price would have placed it at the top of the market and probably caused it to sit on the market for a lengthy amount of time. Without being able to rent it if need be to alleviate the financial burden until it sold, we found ourselves forced to scrap this original plan. Armed with this new found research we then pulled up all properties that fell into this category. We met with Rick Clark, the city manager. He instructed us to contact Roger Brown, the city attorney who had designed the lot's restrictive covenant. Mr. Brown seemed to think that our plan to build a 900-1000 SF one story with vinyl siding appeared to be in line with the research we had conducted and he set up a meeting for us to sit down with Jason Van Essen of the Community Development Department. We sent Jason pictures of these types of dwellings from the neighborhood and he came back with some that he thought would be more appropriate than others. Based on this meeting we sent Mr. Van Essen the new basic elevations, and he confirmed that he and the others involved at the Community Development Department agreed with our plans. Our problem is that since then, Ms. Hensley has tried unsuccessfully to contact the Association again. The Association had made it very clear that they did not want 1-story, vinyl houses. However, that is the predominant housing structure in the Woodland Heights neighborhood! Not only is it unrealistic to place restrictions upon us that are nowhere near what the restrictive covenants stipulate, the Association has no right to impose financial hardship upon us for months and stop us from building within the guidelines set forth by the city of Des Moines and the restrictive covenants. In a time when the economy can be best described as bad, and the building industry is even worse, wouldn't it make sense to not stifle growth and embrace all those courageous enough to build and not wanting to perpetuate a recession? So at the moment and especially through this winter, our excavator did not get this work, nor our foundation crew, concrete contractor, plumber, sewer installer, framers, electricians, hvac contractors, siding contractors, insulation crew, drywallers, painters, trim carpenters, flooring installers, landscaping crews and not to mention the local material suppliers. We leave you with the last sentence in the restrictive covenant...The elevations and exterior materials of the dwelling shall be subject to review and approval by the Community Development Director at the time of issuance of the building permit, which approval shall NOT be unreasonably withheld. It is my strong opinion that we passed the point of reasonability about 3 1/2 months ago. Please let us build! Please let us start this month. We need to get moving.

**Name:** Denny Marchand

**Address:** P.O. Box 31091, Des Moines, IA 50310

**Daytime Phone:** 515 - 314 - 2255

**Your Email:** gbconst@gumballexpress.com

### **Procedural Rules of Des Moines City Council:**

#### Part III. Agenda

##### Rule 16. Citizen Agenda Requests.

Any citizen may request the right to have an item placed on the Agenda (including a request to speak) by filing such request in writing with the City Clerk prior to noon on the Wednesday preceding the Council meetin.

#### Part V. Citizen Participation

##### Rule 27. Citizen's Right to Address Council.

Persons other than Council Members shall be permitted to address the Council only upon specific Agenda Items.

##### Rule 28. Manner of Addressing Council.

A person desiring to address the Council shall step to the podium, state his or her

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name, address, and group affiliation (if any) and speak clearly into the microphone.

Rule 29. Time Limit on Citizen's Remarks.

Citizens shall be limited to five minutes speaking time per item, unless additional time is granted by the presiding officer. Total citizen input on any subject under Council consideration can be limited to a fixed period by the presiding officer. A majority vote of the Council may extend the time limitations of this rule.