

Date April 20, 2009

WHEREAS, on March 18, 2009, the Historic Preservation Commission conditionally approved a Certificate of Appropriateness for the reconstruction of a retaining wall for Kristen and Edward C. Muelhaupt III at their property located at 649 - 18th Street in the Sherman Hill Historic District; and,

WHEREAS, the Commission's review of the reconstructed retaining wall was the result of an enforcement action by staff in response to work completed without a Certificate of Appropriateness; and,

WHEREAS, the Commission's approval was conditioned on Kristen and Edward C. Muelhaupt III altering the work that has been completed; and,

WHEREAS, Kristen and Edward C. Muelhaupt III contended that a Certificate of Appropriateness is not required for the work as they believe the retaining wall was restored as nearly as practical to its condition prior to damage caused by the construction of a detached garage in accordance with §58-27(a) of the Des Moines Municipal Code; and,


WHEREAS, Kristen and 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; NOW THEREFORE,

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

1. The appeal of Edward C. Muelhaupt III is hereby down set for a public hearing before the City Council on May 4, 2009, at 5:00 p.m., in the Council Chambers, City Hall, Des Moines, Iowa.
2. The City Clerk is hereby authorized and directed to publish notice of said hearing in the form hereto attached all in accordance with §362.3 of the Iowa Code.

) MOVED by _____ to adopt.

FORM APPROVED:



 Michael F. Kelley, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
TOTAL				
MOTION CARRIED			APPROVED	

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.

 Mayor

 City Clerk

April 7, 2009

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,

We are writing to appeal a decision made on March 18, 2009 by the Historic Preservation Commission regarding Certificate of Appropriateness Case Number 20-2007-5.03 Amendment for repairing a retaining wall at 649 18th Street.

A Certificate of Appropriateness is not required for the retaining wall repair under Sec. 58-27 of the Municipal Code, since the wall was restored as nearly as practicable to its condition prior to damage. Please see attachment.

Furthermore, the retaining wall as it has been repaired is in compliance with the "Architectural Guidelines for Building Rehabilitation (retaining wall)." Please see attachment.

You will also find attached the Historic Preservation Commission's questions and our responses regarding the repairs to the retaining wall.

Thank you for your consideration.

Sincerely,



Kristin & Edward C. Muelhaupt III
649 18th Street

ecm@DMColdStorage.com
515-283-8050

CITY CLERK
DES MOINES, IOWA

2009 APR -8 PM 2:04

FILED

December 16, 2008

Mr. Edward C. Muelhaupt III
649 18th Street
Des Moines, IA 50314

RE: 649 18th Street – Retaining Wall – East Property Line
Certificate of Appropriateness (Case # 20-2007-5.03)

Dear Mr. Muelhaupt:


As we discussed on the phone, the work completed on the retaining wall is considered reconstruction and requires a Certificate of Appropriateness in accordance with Section 58-31 of the City Code.

On November 19, 2008 the Historic Preservation Commission reviewed the work that has been completed and developed the attached list of questions. The Commission agreed to continue the item so you could respond to the questions in written given the status of your lawsuit against your former contractor.

Please submit a written response that addresses each question by January 23, 2009. Failure to respond will result in the initiation of enforcement action in accordance with Section 58-35 and Section 1-15 of the City Code.

Please contact me at 283-4147 or at jmvanessen@dmgov.org if you have any questions.

Sincerely,



Jason Van Essen, AICP
Senior City Planner

cc: Michael Kelly, Assistant City Attorney
Michael Ludwig, Planning Administrator



HISTORIC DISTRICT COMMISSION
ARMORY BUILDING
602 EAST FIRST STREET
DES MOINES, IOWA 50309-1881
(515) 283-4192

ALL-AMERICA CITY 1949, 1976, 1981

Attachment

649 18th Street – Retaining Wall – East Property Line

Questions from the Historic Preservation Commission

1. Is there any remaining brick left from the original wall that was not used in the work that has been completed?
2. The completed brick and mortar work has an irregular appearance and appears to be subpar. Please discuss the feasibility of relaying the brick.
3. What are your plans for the space between the east side of the garage the retaining wall?
4. The garage's east foundation wall in conjunction with the retaining wall is visually obtrusive. Lap siding, brick veneer and/or plantings could be used to soften the impact of the foundation wall. What are your thoughts on these solutions?
5.
 - a. Can the taller portion of the concrete retaining wall be reduced in height where it exceeds the height of the grade to the north?
 - b. If this segment can not be reduced in its entirety can the east facing portion be reduced?
 - c. If the east facing segment has to be kept at full height for support purposes can it be replaced by a support wall that is flush along the garage?

Please consult your structural engineer prior to responding to these questions.

January 16, 2009

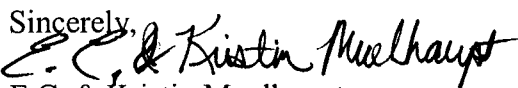
Dear Historic Preservation Commissioners:

We apologize for the misunderstanding regarding our brick retaining wall near the alley at 649 18th Street. We did not request a Certificate of Appropriateness (COA) to repair our brick retaining wall, since we are not required to under Sec. 58-27 of the Municipal Code. When our contractor and I spoke to the City of Des Moines we were both told that the repairs did not need a COA. If we had been informed that we needed a COA then we would have obtained one, just as in the past. We appreciate your understanding in this situation. We volunteer the answers to your questions below:

1. The contractor said there was no remaining brick left from the original wall and we did not see any leftover. (Please see attached email from the contractor.)
2. It is not feasible to change the layout of the brick retaining wall since it was restored as nearly as practicable to its condition prior to damage, the work has been completed, the people who we were told should review the wall did review it, and the money has already been paid to the contractor who performed the work.
3. We plan to have the space between the east side of the garage filled with pea gravel at the bottom part and some plantings on the top part and brick or stone veneer to hide the insulation and make it more beautiful.
4. We agree that your ideas for the garage's east foundation are good potential solutions. We plan to have brick or stone veneer installed and/or plantings placed there to soften the impact of the east foundation wall.
5. Per the engineer, the east most section of the concrete retaining wall is required as constructed to maintain the stability of the north retaining wall, the soil, and the alley. (Please see attached letter from the engineer.)

My wife and I will continue to make Sherman Hill more beautiful!

We understand and appreciate that you are trying to do the same!

Sincerely,

E.C. & Kristin Muelhaupt

649 18th Street

Municipal Code

Sec. 58-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure. For the purposes of this article, ordinary maintenance and repair to correct any deterioration, decay or damage to a structure and to restore the structure as nearly as practicable to its condition prior to such deterioration, decay or damage are excluded from the definition of the term "alteration," provided such work does not involve a change in type of building materials. For the purposes of this article, changes made in the type and design of storm windows and in the color of the outer surfaces of a structure are considered to be ordinary maintenance and repair.

Structure means anything constructed or erected with a fixed location on the ground or attached to something with a fixed location on the ground. Among other things, structures include buildings, walls, fences, gates, towers, mobile homes, billboards, poster panels, utility poles, streets, sidewalks, alleys and hard-surfaced parking areas. For the purposes of this article, freestanding flagpoles and yard lights are excluded from the definition of the term "structure." (C79, § 2-205.44; O.9937; C91, § 2-205.44; O.14,231)

Cross references: Definitions generally, § 1-2.

Sec. 58-31. Certificate of appropriateness required.

(a) No individual or corporation shall undertake the construction of a structure within a historic district or the alteration of any exterior features of a structure within a historic district, nor shall the community development department issue a building permit for any such proposed construction or alteration, unless a certificate of appropriateness has been granted by the historic preservation commission.

(b) Application for a certificate of appropriateness shall be filed with the community development department. Each application shall include plans showing the proposed appearance, texture, materials, shapes and sizes of the work to be done and such additional information as deemed necessary by the historic preservation commission. An application may include a plan of preservation and, if a certificate of appropriateness is granted based on such plan, it shall be valid for one year and renewable for one additional year with the approval of the commission. Before an application may be filed with the community development department, the applicant shall pay to the city treasurer a fee of \$10.00 to be credited to the general fund of the city; provided, however, that if the application is for work also requiring a building permit, the fee shall not be 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

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Edward C. Muelhaupt

From: Ray Hay [rayhay3@hotmail.com]
Sent: Wednesday, January 07, 2009 4:22 PM
To: ecm@dmcoldstorage.com
Subject: RE: Any left over brick from retaining wall?

Ed, There was no left over bricks. We used them all on the retaining wall. Thank you Ray

From: ECM@DMColdStorage.com
To: rayhay3@hotmail.com
Subject: Any left over brick from retaining wall?
Date: Wed, 7 Jan 2009 08:32:40 -0600

Ray,
Was there any remaining brick left from the original wall that was not used in the work you completed at 649 18th Street?

I hope you had a Merry Christmas. I hope you have a happy, safe and prosperous year in 2009 and beyond.

Best regards,
E.C.

Windows LiveTM: Keep your life in sync. [Check it out.](#)

ADVANCED ENGINEERING INC.

Efficiency In Engineering

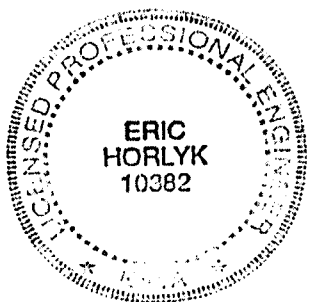
23

15 January 2009

Mr. E. C. Muelhaupt
649 18th Street
Des Moines, Iowa 50314
Attn.: Mr. Muelhaupt
Ref: Retaining wall at garage

Dear Mr. Muelhaupt:

According to your request we are verifying that the east most section of the retaining wall at 649 18th Street was required as is located and constructed to maintain the stability of the north foundation wall, the soil to the north of the garage and the west side of alley. It was also a requirement of the City of Des Moines Building Department. Please call me if you have any questions.



Sincerely,

A handwritten signature in black ink that reads "Eric F. Horlyk".

Eric F. Horlyk P.E.

EFH/ro

When the wall was reconstructed it was integrated with the concrete retaining wall and foundation system of the garage. Therefore, the portion of the restored wall that runs along the garage consists of both concrete and brick and is not comprised completely of the original building material type.

The portion of the reconstructed wall to the north of the garage consists solely of brick, but was not restored to its prior design. The City Code allows for some variation if there is practical difficulty in reconstructing the original design. Staff believes that the wall could have been constructed without a bow and that the top line of the historic wall could have been maintained across the reconstructed wall.

Staff has determined that the property owner must obtain a Certificate of Appropriateness given the introduction of a new building material type for the portion of the wall along the garage and for the lack of evidence that they applicant faced a practical difficulty in matching the historic design for the segment of wall to the north of the garage.

II. GENERAL INFORMATION

1. **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.
2. **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 to relocate the front door, enclose the rear porch, and construct a garage and a second floor addition. On November 15, 2006, the Commission conditionally approved the construction of a fence along the south property line.

III. APPLICABLE DESIGN GUIDELINES

Architectural Guidelines for Building Rehabilitation (retaining walls):

- a. Retaining walls should not be removed if the removal breaks the continuity of the wall along the block.
- b. Walls in both Sherman Hill and Owl's Head should be constructed of brick, stone or concrete.
- c. Walls should be used to correct drainage or erosion problems, to handle grade changes, to separate public from private, and to buffer parking areas.
- d. Brick retaining walls should be restored and maintained. Brick is appropriate material for new walls.
- e. Repairs to existing retaining walls should be done with materials matching the existing material.
- f. Consider repeating material and details found on the building in the design of the wall in order to relate carefully in scale and style to the building it surrounds

**CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION
STAFF REPORT AND RECOMMENDATION
Wednesday, March 18, 2009**

AGENDA ITEM #2 **20-2007-5.03**

Applicant: Edward C. Muelhaupt (owner).
Location: 649 18th Street (Sherman Hill Historic District).
Requested Action: Reconstruction of a retaining wall along the rear property line.

This item was continued from the November 19, 2008, meeting. On February 18, 2009, the Commission reviewed a communication from the applicant that responded to questions raised by the Commission. The following is a revised staff report.

I. CASE HISTORY

The subject property is adjoined to the east by a north/south alley. This alley contains a brick retaining wall along portions of its western perimeter including the subject property. The portion of the retaining wall that adjoins the subject property was damaged during the construction of the applicant's garage. The applicant was advised that the City Code would allow him to reconstruct the wall without obtaining a Certificate of Appropriateness if the brick was reused, and laid in the same pattern and location as before. Below are the applicable sections of the City Code.

Sec. 58-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) Alteration means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure. For the purposes of this article, ordinary maintenance and repair to correct any deterioration, decay or damage to a structure and to restore the structure as nearly as practicable to its condition prior to such deterioration, decay or damage are excluded from the definition of the term "alteration," provided such work does not involve a change in type of building materials. For the purposes of this article, changes made in the type and design of storm windows and in the color of the outer surfaces of a structure are considered to be ordinary maintenance and repair.

Sec. 58-31. Certificate of appropriateness required.

- (a) No individual or corporation shall undertake the construction of a structure within a historic district or the alteration of any exterior features of a structure within a historic district, nor shall the community development department issue a building permit for any such proposed construction or alteration, unless a certificate of appropriateness has been granted by the historic preservation commission.

When the wall was reconstructed it was integrated with the concrete retaining wall and foundation system of the garage. Therefore, the portion of the restored wall that runs along the garage consists of both concrete and brick and is not comprised completely of the original building material type.

The portion of the reconstructed wall to the north of the garage consists solely of brick, but was not restored to its prior design. The City Code allows for some variation if there is practical difficulty in reconstructing the original design. Staff believes that the wall could have been constructed without a bow and that the top line of the historic wall could have been maintained across the reconstructed wall.

Staff has determined that the property owner must obtain a Certificate of Appropriateness given the introduction of a new building material type for the portion of the wall along the garage and for the lack of evidence that they applicant faced a practical difficulty in matching the historic design for the segment of wall to the north of the garage.

II. GENERAL INFORMATION

1. **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.
2. **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 to relocate the front door, enclose the rear porch, and construct a garage and a second floor addition. On November 15, 2006, the Commission conditionally approved the construction of a fence along the south property line.

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- a. Retaining walls should not be removed if the removal breaks the continuity of the wall along the block.
- b. Walls in both Sherman Hill and Owl's Head should be constructed of brick, stone or concrete.
- c. Walls should be used to correct drainage or erosion problems, to handle grade changes, to separate public from private, and to buffer parking areas.
- d. Brick retaining walls should be restored and maintained. Brick is appropriate material for new walls.
- e. Repairs to existing retaining walls should be done with materials matching the existing material.
- f. Consider repeating material and details found on the building in the design of the wall in order to relate carefully in scale and style to the building it surrounds

The intact portion of the brick retaining wall was extended to the point that it runs into the concrete retaining wall near the northeast corner of the applicant's property. A brick veneer has been added to the taller portion of the concrete retaining wall. The shorter portion of the concrete retaining wall runs along the side of the garage. A brick wall has been constructed on top of the concrete utilizing brick from the previous brick wall. (see Attachment "A") The applicant has indicated that the brick veneer would be stained to blend with the historic brick, which is darker in color. It is staff's understanding that the brick veneer is not resting on a ledge and is only attached to the side of the concrete wall. Staff believes that the veneer will likely fall off in the near future as this is not a secure way to install brick veneer.

Staff believes that the portion of the retaining wall that contains concrete cannot be modified to the point that it will truly appear integrated with the historic brick wall to the north. Staff further believes that the most appropriate course of action is to clearly identify the brick wall and the concrete wall as separate elements. Staff recommends that the bricks and the brick veneer be removed from the concrete wall system and that the portion of the reconstructed wall to the north of the garage be rebuilt to match the design of the historic brick wall as described in Section IV of this report.

IV. STAFF RECOMMENDATION

Staff recommends approval of the requested Certificate of Appropriateness subject to the following conditions:

1. Removal of the reconstructed brick wall identified as Section 1 in the attached photograph (Attachment "A").
2. Removal of the brick veneer from the concrete wall identified as Section 2 in the attached photograph (Attachment "A").
3. Reconstruction of the brick retaining wall segment identified as Section 3 in the attached photograph (Attachment "A") subject to the following:
 - a. The existing historic bricks shall be removed, cleaned and reused.
 - b. The wall shall be constructed without a bow.
 - c. The line of the top course of bricks shall match the top of the historic wall to the north.
 - d. The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
 - e. The brick shall be "toothed" into the historic wall.

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: MARCH 18, 2009
	:	
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:

Reconstruction of a retaining wall along the rear property line.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

Granting the application subject to the conditions 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.

CONDITIONS:

1. Removal of the reconstructed brick wall identified as Section 1 on the attached photograph (Attachment "A").
2. Removal of the brick veneer from the concrete wall identified as Section 2 on the attached photograph (Attachment "A").
3. Reconstruction of the brick retaining wall segment identified as Section 3 on the attached photograph (Attachment "A") subject to the following:
 - a. The existing historic bricks shall be removed, cleaned and reused.
 - b. The wall shall be constructed without a bow.
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 - d. The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
 - e. The brick shall be "toothed" into the historic wall.

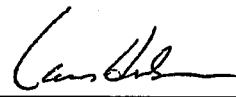
VOTE: A vote of 6-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness				X
Estes				X
Hoff				X
Reavely	X			
Shaw	X			
Berry	X			
Fenton	X			
Taenzer	X			
Weidmaier	X			

Approved as to form:



Michael Ludwig, AICP
Planning Administrator



Larry Hulse, AICP
Community Development Director

Date Filed: 3/25/09

Filed By: JV



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: **MARCH 18, 2009**
: :
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.

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 - e. The brick shall be "toothed" into the historic wall.

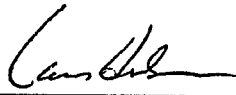
VOTE: A vote of 6-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness				X
Estes				X
Hoff				X
Reavely	X			
Shaw	X			
Berry	X			
Fenton	X			
Taenzer	X			
Weidmaier	X			

Approved as to form:



Michael Ludwig, AICP
Planning Administrator



Larry Hulse, AICP
Community Development Director

Date Filed: 3/25/09

Filed By: JV

