

Date..... September 24, 2007

Alternate Resolution

RESOLUTION REVERSING THE DECISION OF THE HISTORIC  
PRESERVATION COMMISSION

WHEREAS, by a decision entered on July 27, 2007, the Historic Preservation Commission conditionally approved an application from Trafalgar Holdings, L.C., represented by Mark Jesse, Manager, for a Certificate of Appropriateness for a two-car garage in the vicinity of 1520 Center Street in the Sherman Hill Historic District; and,

WHEREAS, Sherman Hill Association, Inc., represented by Jim Quilty, President, on its own behalf and on behalf of several named individuals, has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code;

WHEREAS, on August 6, 2007, by Roll Call No.07-1518, it was duly resolved by the City Council that the appeal be set down for hearing on August 20, 2007, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was mailed to Trafalgar Holdings, L.C., and to the Sherman Hiss Association on August 3, 2007, and published in the Des Moines Register on August 9, 2007; and,

WHEREAS, on August 20, 2007, by Roll Call No. 07-1647, and on September 10, 2007, by Roll Call No. 07-1759, the City Council continued the hearing until September 24, 2007, at 5:00 p.m.; and,

WHEREAS, in accordance with the said 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 to deny the Certificate of Appropriateness was patently arbitrary or capricious for the following reasons:

( continued )

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- a) The Architectural Guidelines for New Construction in Des Moines' Historic Districts states the following:
    - New outbuildings should be set along the alley or as close to the alley at the current city codes will allow.
    - The Sanborn maps should be consulted to determine the historical placement of outbuildings before considering any new construction.
    - The typical placement pattern of outbuildings historically established in the neighborhood should be continued in any new construction.
    - Additional curb cuts should be kept to a minimum and whenever possible avoided.
  - b) The proposed garage could be constructed in better conformance with the above guidelines if the Owner were to swap land with the apartment building to the south, and construct the garage to the south of the principal dwelling and with access to the alley.
  - c) The decision of the Historic Preservation to allow the garage as proposed by the applicant, when a more conforming garage could be constructed by requiring a land swap with the neighbor, was arbitrary and capricious.
3. The decision of the Historic Preservation Commission to grant a Certificate of Appropriateness for the proposed garage is hereby reversed, and the Certificate of Appropriateness is hereby denied.

MOVED by \_\_\_\_\_ to adopt and reverse the decision of the Historic Preservation Commission.

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				

**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

MOTION CARRIED

APPROVED

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Mayor