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Date April 9, 2012

RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A CERTIFICATE OF APPROPRIATENESS FOR THE REPLACEMENT OF TEN WINDOWS IN THE MULTIPLE-FAMILY DWELLING AT 826 18TH STREET

WHEREAS, on November 30, 2011, the Historic Preservation Commission conditionally approved an application from Conlin Properties for a Certificate of Appropriateness for the replacement of ten first floor windows in the multiple-family dwelling at 826 18th Street, subject to 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.

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has appealed the conditions imposed by the Historic Preservation Commission and seeks to be allowed to use vinyl windows of the type that have already been installed in 5 of the windows to be replaced; and

WHEREAS, on January 23, 2012, by Roll Call No. 12-0084, it was duly resolved by the City Council that the appeal be set down for hearing on February 13, 2012, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on January 26, 2012, and a copy of the notice was provided to the attorney for Conlin Properties; and,

WHEREAS, on February 13, 2012, by Roll Call No. 12-0239, and on March 12, 2012, by Roll Call No. 12-0420, the City Council continued the public hearing until April 9, 2012, at 5:00 p.m., at the request of Conlin Properties; 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.

Date April 9, 2012

2. The City Council hereby finds that the decision of the Historic Preservation Commission approving a Certificate of Appropriateness for the replacement of ten windows in the multiple-family dwelling at 826 18th Street is not arbitrary or capricious and should be upheld.

3. The City Council hereby finds that the decision of the Historic Preservation Commission to require the replacement windows to satisfy the three conditions identified above was NOT patently arbitrary or capricious for the following reasons:
 - a) 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.
 - b) 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.
 - c) Although the City has ordered the repair or replacement of portions of the windows in question, that order did not excuse the applicant from repairing or replacing the windows in a manner that conforms with the requirements of Article II - Historic Districts, in Chapter 58 - Historical Preservation, in the City Code and the guidelines identified above.

(Council Communication No. 12-)

MOVED by _____ to adopt, and affirm the decision of the Historic Preservation Commission.

FORM APPROVED:


 Roger K. Brown, Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
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.

MOTION CARRIED APPROVED

 Mayor

 City Clerk



Brown, Winick, Graves, Gross,
Baskerville and Schoenebaum, P.L.C.

666 Grand Avenue, Suite 2000
Ruan Center, Des Moines, IA 50309-2510

December 16, 2011

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direct fax: 515-323-8510
email: gross@brownwinick.com

Via Hand Delivery

Honorable Frank Cownie
Des Moines City Council Members
City Hall
400 East 1st Street
Des Moines, IA 50309

**Re: Appeal from December 5, 2011 Historic Preservation Commission Filing
Certificate of Appropriateness; Case Number 20-2012-5.14**

Dear Mayor Cownie & Des Moines City Council Members:

BrownWinick represents the interests of Conlin Properties with regard to the property located at 826 18th Street, Des Moines, Iowa (hereinafter the "Home"). Conlin Properties hereby formally appeals the December 5, 2011 decision ("Decision") of the Historic Preservation Commission ("Commission") that unreasonably requires Conlin Properties to incur twice the cost for replacing non-original windows in the steel-sided Home. A copy of the Commission's Decision is attached as Exhibit 1.

BACKGROUND FACTS

This appeal arises from the City of Des Moines issuing a notice requiring Conlin Properties to replace certain windows in the Home and the Commission's subsequent Decision that doubles the cost of complying with the City's requirement. The subject windows are indisputably non-original and decaying windows that are located in a newer addition to the steel-sided Home. After receiving notice from the City of Des Moines that the non-original windows needed replacement, Conlin Properties arranged for and began investing over \$6,000.00 in the Home and neighborhood to replace the single-paned, single-locked, non-original windows with double-paned, double-locked, energy-efficient windows to create a safe, secure, and energy efficient Home. After replacing five (5) of the ten (10) non-original windows, the Department of Building posted a "Stop Work" Order citing the "Historic District Guidelines," at which point Conlin Properties immediately ceased replacing the windows. Conlin Properties was unaware of the requirement to apply for a certificate of appropriateness.

Conlin Properties promptly filed an application for a certificate of appropriateness ("Application"). The Application seeks to replace 10 of 54 windows in the Home and explains the replacement windows are thermal-pane windows. On November 30, 2011, the Commission

reviewed Conlin Properties' Application and heard argument on the issues. Thereafter, on or about December 5, 2011, the Commission filed its Decision granting the Application subject to three 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; and (3) Review and approval of the selected windows product by staff prior to installation. *See* Exhibit 1.

On appeal, the City Council is required to consider several criteria. For example, "the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance..." Des Moines Municipal Code § 58-31. Further, "the city council shall consider ... whether the commission's action was patently arbitrary or capricious." *Id.* The Commission's Decision requiring wood windows fails to satisfy these important requirements and the condition should be waived.

THE COMMISSION'S DECISION WAS IMPROPER

The non-original and decaying windows, located in a newer addition of the steel-sided Home, do not have any historical, architectural or cultural value. Indeed, during the November 30, 2011 staff presentation, Mr. Jason Van Essen, a Senior City Planner with the City of Des Moines, explained that the Home has been "substantially altered" from its original configuration and that the subject windows are not the original windows. Mr. Van Essen further explained that the small portion of the steel-sided Home at issue was constructed around 1957 - long after the 1880s Victorian period that the Historic District was formed to preserve. Staff's admissions that the steel-sided Home was "substantially altered" and reconstructed around 1957 - nearly eighty (80) years *after* the 1880s era that the District seeks to preserve - and that the windows are not original confirms the lack of historical, architectural and cultural value. Tellingly, the Commission's Decision is void of any finding that the subject windows hold any such value. When a proposal, such as Conlin Properties' proposal, seeks alteration of items having "little" historical, architectural, or cultural value the Commission must endeavor to approve the proposal, which the Commission did not do here.

The Des Moines Municipal Code governs Historic Districts and states the purpose is to serve "Public Policy" concerns. Des Moines Municipal Code § 58-26. To this end, the Municipal Code requires the Commission to "be reasonable in its judgments" and "endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value." *Id.* § 58-31(c). Here, instead of being reasonable and endeavoring to approve a proposal to replace non-original windows with no historical, architectural or cultural value, the Commission arbitrarily, capriciously, and unreasonably rejected the proposal and imposed a cost-prohibitive condition: requiring the windows to be constructed of wood with no metal cladding.

On November 30, 2011, Conlin Properties explained to the Commission that imposing the condition would be unreasonable and undermine the public policy of the Municipal Code. As

explained to the Commission, replacing the non-original windows on this steel-sided Home with wood windows would cost over \$12,000.00 - nearly twice the \$6,275.74 cost of the double-paned, double-locked, energy-efficient windows that Conlin Properties seeks to install. Conlin Properties explained to the Commission that in these tough economic times where home prices are plummeting and the City of Des Moines itself is striving to reduce costs, it is patently unreasonable and violates all public policy concerns to mandate Homeowners incur double the cost for repairs and maintenance. This is especially true when the proposed windows are safer, more secure, and more energy efficient than the current windows and where, as here, the windows being replaced are not original and have no historic value whatsoever.

The Commission arbitrarily and capriciously ignored Conlin Properties' arguments regarding the excessive cost of using wood windows. In fact, during the November 30, 2011 meeting, the Commission made it abundantly clear that it does not consider cost: "We don't care how much [the windows] cost, its not our problem." The Commission's admitted position of turning a blind eye to cost, a fundamental element of any maintenance or repair, is not only unreasonable but it is arbitrary and capricious. The City Council should reconsider the Commission's unreasonable Decision and waive the condition requiring use of wood.

The foregoing is just one of the many items that the Commission failed to consider when it arbitrarily and capriciously imposed the condition of requiring wood windows. In addition to ignoring cost, the Commission also unreasonably ignored Conlin Properties' arguments regarding energy efficiency, safety, and city-approved guidelines that permit the use of vinyl in Sherman Hill. Conlin Properties will further explain these issues to the City Council when this Appeal is heard.

In short, the intent and purpose of replacing the non-original windows on the steel-sided Home is to provide a safer, more secure, and energy efficient living environment - fundamental ideals that undoubtedly promote public policy and should not be ignored. Granting Conlin Properties' Application, as submitted, serves the public policy concerns that the Municipal Code was adopted to advance. Conlin Properties respectfully requests that the City Council waive the requirement of using wood windows and permit the installation of windows as requested within Conlin Properties' Application.

Very truly yours,



Douglas E. Gross

Enclosure
cc: Conlin Properties

00181625

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: 20-2012-5.14
CONLIN PROPERTIES	:	
PROPERTY LOCATION:	:	MEETING DATE: NOVEMBER 30, 2011
826 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:

Replacement of 10 first floor windows.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

Granting the application as presented 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. 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.

EXHIBIT 1

VOTE: A vote of 8-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Barry	X			
Griffin	X			
Holderness	X			
Estes				X
Fenton	X			
Marchand	X			
Shaw	X			
Taenzer	X			
Weidmaler	X			

Approved as to form:



Michael Ludwig, AICP
Planning Administrator



Phil Delafield
Community Development Director

Date Filed: 12/5/11

Filed By: JV

CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION
STAFF REPORT AND RECOMMENDATION
Wednesday, November 30, 2011

AGENDA ITEMS #3

20-2012-5-14

Applicant: Conlin Properties (owner).
Location: 826 18th Street (Sherman Hill Historic District).
Requested Action: Replacement of 10 first floor windows.

I. GENERAL INFORMATION

- 1. Site Description:** The subject property measures 60 feet by 125 feet and contains a 2½-story building built circa 1888. The building was originally constructed as a single-family dwelling but has been converted to a 7-unit apartment building.
- 2. Sanborn Map:** The 1901 and 1920 maps identify the building as a single-family dwelling. The footprints shown on these maps are different than the current footprint. The 1901 map show a front porch limited to around the front door area. The 1920 map shows that the building had a full front porch. The 1957 map shows the current footprint of the building and indicates apartment use.
- 3. Relevant COA History:** None.

II. APPLICABLE DESIGN GUIDELINES

- 1. Architectural Guidelines for Building Rehabilitation (windows):**
 - a. Existing windows should be retained, reconditioned and well maintained to be energy sound.
 - b. Any replacement windows should duplicate the original window in type, size, and material. The shape of the original window subdivisions should not be changed. New muntin bars and mullions should duplicate the original in size and profile shape
 - c. Windows with true divided lights should be used in places where this type of window was used originally. Snap in muntin bars should not be used.
 - d. The original size of all door and window openings should be restored and replacement windows should match the shape of the original openings.
 - e. Existing door and window openings should not be blocked down to accommodate stock sizes.
 - f. Air conditioners should not be put in the windows of any primary façade.
 - g. When original doors or windows of some merit are removed and replaced with new, they should be kept in dry storage for a future owner who may be interested in a complete restoration.

The applicant is proposing to replace 10 first floor apartment windows including the 6 southernmost windows on the front facade and the 4 easternmost windows on the south facade. Five of these windows were replaced with a vinyl window product before a stop work order was issued. The applicant wishes to retain these windows and to replace the remaining windows with the same vinyl product.

The Sanborn Fire Insurances Maps indicate that much of the current front façade consists of additions that were constructed between 1920 and 1957. The subject windows are located in an area that appears to be an addition. The 1920 map shows this general portion of the building as an open porch. The windows may have been relocated from the original exterior walls or they may have been brought to the property when the additions were constructed.

On Monday, November 21, 2011, a tour was held for those Commissioners that were able to attend. The remaining 5 windows are in varying condition but most appear to be repairable. However, staff believes that the level of repair necessary is not reasonable given the modifications that have occurred to the building. The windows are located in an addition and some, if not all of the windows are not original to the property.

The proposed vinyl windows do not comply with the design guidelines, specifically guideline "b" listed above, which states replacement windows should duplicate the original windows in type, size, and material. The Commission has consistently required the use of wood windows when replacement has been approved including the applicant's property at 677 16th Street in 2006. During the past 12 months the Commission has reviewed 8 cases similar to this request and required the applicant to repair the windows and/or replace them with wood windows. Staff recommends approval of replacing the 10 windows subject to the windows being constructed of wood with no cladding.

III. STAFF RECOMMENDATION

Staff recommends approval subject to 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.

