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**Date** May 21, 2012.....

RESOLUTION SCHEDULING HEARING ON APPEAL BY JAMES TULLY  
FROM DECISION OF THE HISTORIC PRESERVATION COMMISSION  
REGARDING THE PROPERTY AT 409 FRANKLIN AVENUE

WHEREAS, on April 18, 2012, the Historic Preservation Commission conditionally approved an application from James Tully for a Certificate of Appropriateness to retain a 6-foot tall fence recently constructed in the east side yard and rear yard of the single-family dwelling at 409 Franklin Avenue, subject to the following conditions:

1. The portion of the fence that faces Franklin Avenue and the southern 8 feet of the east facing fence segment shall be converted to a 4-foot tall picket fence that complies with the following:
  - a. The picket tops shall be cut to match the tops of the existing pickets.
  - b. The pickets shall run between the posts so the posts are fully exposed.
  - c. Spaces shall be provided between pickets that are generally equal to the width of a picket.
  - d. The fence shall step along a grade change at intervals set by the length between the posts and not at variable lengths or with a continuously straight top edge.
  - e. The space between posts shall be uniform, and no less than 4 feet and no greater than 14 feet in distance.
2. All posts shall extend a minimum and uniform distance above the pickets.
3. A fence permit shall be obtained from the City's Permit and Development Center.

WHEREAS, James Tully has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code, and seeks to be allowed to retain the fence as constructed.

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

1. The appeal by James Tully is hereby down set for a public hearing before the City Council on June 11, 2012, at 5:00 p.m., in the Council Chambers, at 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.

★ **Roll Call Number**

**Agenda Item Number**

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-2-

Date May 21, 2012

FORM APPROVED:

*Roger K. Brown*

Roger K. Brown

Assistant City Attorney

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

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FILED

2012 MAY 14 AM 8:30

CITY CLERK  
DES MOINES

409 Franklin Ave  
Des Moines IA 50314

Owner: James Tully  
Case Number: 20-2012-9.04  
Meeting Date: April 18, 2012

*May 13, 2012*

To whom it may concern:

This letter is an appeal to the Certificate of Appropriateness issued by the Historic Preservation Commission for the City of Des Moines. The case number and address in question are listed above.

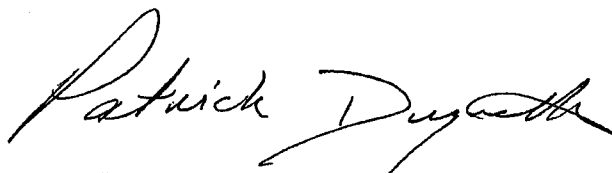
It was recently concluded that the retention of a 6-foot tall fence in the front of the property does not comply with the guidelines set forth by the Historic Commission. Revisions were suggested.

We are appealing the decision based on two circumstances, which we feel should require an exemption to the guidelines of the Historic Commission.

1. As of August, 2011, homeowner James Tully, and current residents, Patrick and Danielle Duquette, agreed that a fence should be erected around the property as payment for the August rent. This agreement was formed prior to the formation of the Historic Commission. Therefore, this agreement should supersede the certificate of appropriateness.
2. The location of the property is in a neighborhood, which historically, has been less than secure. The lower economic status of a number of the residents of the neighborhood, as well as the location of the Shop and Save on the corner of 6th Ave and Franklin, generates a great deal of pedestrian traffic in front of the property. Prior to the construction of the fence, our oldest daughter was threatened with her life while in the front yard. Also, there have been occurrences of drug activity next door. For reasons of security, we feel that the changes proposed by the Historic Commission should be overruled.

We believe that the fence complies with the building and zoning codes of the City of Des Moines. If it determined that it does not, further revisions will be considered.

Sincerely,



Patrick Duquette

*563-210-5547*



April 30, 2012

Patrick Duquette  
409 Franklin Avenue  
Des Moines, IA 50314-3322

RE: 409 Franklin Avenue – COA #20-2012-9.04

Dear Mr. Duquette:

A copy of Certificate of Appropriateness #20-2012-9.04 is attached. Please note that the modifications to the fence must be made for the fence to comply with the conditions of approval. Typically, work approved by the Commission can be performed on a schedule of the applicant's choosing so long as the Certificate has not expired. In cases where work is necessary to abate a violation, the work must be completed in 90 days unless a mutually agreeable timeline is reached between the property owner and City staff.

If you believe that the Commission's action was arbitrary or capricious, you may appeal their decision to the City Council. Appeals must be in writing and filed with the City Clerk no later than ten business days after the filing of the above-mentioned decision. Your Certificate was filed on April 30, 2012. An appeal must be submitted no later than May 14, 2012.

In no appeal is received, you will have 90 days to bring the fence into compliance with the conditions of approval unless a mutually agreeable timeline is reached between you and staff. A case will be filed with the District Court in accordance with Section 58-35 and Section 1-15 of the City Code if the work is not completed in accordance with the Certificate by August 12, 2012. The approved porch work can be done at a time of your choosing so long as your Certificate has not expired. These timeframes do not supersede any obligation you may have to make improvements sooner in order to comply with the Building Code, Rental Code or other applicable regulations. This includes the obtainment of a fence permit from the City's Permit and Development Center.

Please contact me at 283-4147 or at [jmvanessen@dmgov.org](mailto:jmvanessen@dmgov.org) if you have any questions or would like to discuss an alternative timeline.

Sincerely,

Jason Van Essen, AICP  
Senior City Planner

- cc: Phil Delafield, Community Development Director
- Michael Ludwig, Planning Administrator
- SuAnn Donovan, Neighborhood Inspection Administrator
- Bob Reynolds, Neighborhood Inspector
- Bob Knudson, Zoning Enforcement Inspector

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

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REQUEST FROM: : CASE NUMBER: **20-2012-9.04**  
: :  
**JAMES TULLY** : :  
: :  
PROPERTY LOCATION: : MEETING DATE: **APRIL 18, 2012**  
: :  
**409 FRANKLIN AVENUE** : :

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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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SUBJECT OF THE REQUEST:

- A) Retention of a 6-foot tall fence in the east side and rear yards. (see decision 1)
- B) Repair of the rear porch as needed. (see decision 2)

**DECISION 1 – Part A**

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 portion of the fence that faces Franklin Avenue and the southern 8 feet of the east facing fence segment shall be converted to a 4-foot tall picket fence that complies with the following:
  - a. The picket tops shall be cut to match the tops of the existing pickets.
  - b. The pickets shall run between the posts so the posts are fully exposed.
  - c. Spaces shall be provided between pickets that are generally equal to the width of a picket.
  - d. The fence shall step along a grade change at intervals set by the length between posts and not at variable lengths or with a continuously straight top edge.
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James Tully  
409 Franklin Avenue  
20-2012-9.04

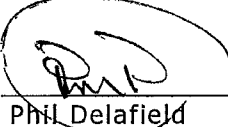
April 18, 2012

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

	Aye	Nay	Abstain	Absent
Barry	X			
Bye				X
Griffin	X			
Holderness	X			
Estes	X			
Fenton				X
Marchand	X			
Shaw				X
Sweet	X			
Taenzer	X			
Weidmaier				X

Approved as to form:

  
 \_\_\_\_\_  
 Michael Ludwig, AICP  
 Planning Administrator

  
 \_\_\_\_\_  
 Phil Delafield  
 Community Development Director

Date Filed: 4/30/12

Filed By: JV