



Date June 11, 2012

RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A CERTIFICATE OF APPROPRIATENESS FOR THE RETENTION OF A FENCE 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, Patrick Duquette, as the tenant of James Tully and resident of the affected property, 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; and,

WHEREAS, on May 21, 2012, by Roll Call No. 12-0777, it was duly resolved by the City Council that the appeal be set down for hearing on June 11, 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 May 24, 2012, and a copy of the notice was provided to Patrick Duquette; 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



Date June 11, 2012

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 approving a Certificate of Appropriateness for the retention of the fence at 409 Franklin Avenue subject to compliance with the conditions identified above, 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 modification of the fence to satisfy the three conditions identified above was not patently arbitrary or capricious for the following reasons:
a) The River Bend Local Historic District was designated as such by Ordinance No. 15,075, which was published and became effective on February 3, 2012, before the construction of the fence was started.
b) The fence was constructed without benefit of the required building permit. Had the required building permit been sought, the modifications to the design of the fence necessary to qualify for a Certificate of Appropriateness would have been determined before the construction started.

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

FORM APPROVED:

(Council Communication No. 12- 299)

Roger K. Brown

Roger K. Brown, Assistant City Attorney

C:\Rog\Historic\Appeals\Tully\RC Hrg Affirm.doc

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, and 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

FILED

49A

409 Franklin Ave
Des Moines IA 50314

2012 MAY 14 AM 8:30

CITY CLERK
DES MOINES

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

49A



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 if you have any questions or would like to discuss an alternative timeline.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jason Van Essen". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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

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

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:

- 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.
 - 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 minimal and uniform distance above the pickets.
3. A fence permit shall be obtained from the City’s Permit and Development Center.

VOTE: A vote of 6-0-1 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

DECISION 2 – Part B

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. All repairs and replacement of materials shall be done with matching materials of a matching design including, but not limited to fascia, posts, balusters, railing and brick piers.
2. All new porch flooring shall be tongue-and-groove style and constructed of wood.
3. A round black metal bar may be installed above the balustrade if the City's Permit and Development Center determines that a railing is required that is taller than the historic balustrade.
4. Wooden steps with railing that matches the porch balustrade may be constructed to the north of the porch.
5. Compliance with the building code and obtainment of all necessary permits for construction.

⁶⁻⁰⁻¹ *JV*
VOTE: A vote of ~~7-0-0~~ was registered as follows:

	Aye	Nay	Abstain	Absent
Barry	X			
Bye				X
Griffin	X			
Holdermess	X			
Estes	X			
Fenton				X
Marchand	X		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

49A

CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION
STAFF REPORT AND RECOMMENDATION
Wednesday, April 18, 2012

AGENDA ITEMS #4

20-2012-9.04

Applicant: James Tully (owner) represented by Patrick Duquette.

Location: 409 Franklin Avenue (River Bend Historic District).

Requested Action: A) Retention of a 6-foot tall fence in the east side and rear yards.

B) Repair of the rear porch as needed.

I. GENERAL INFORMATION

- 1. Site Description:** The subject property is irregularly shaped. It measures 13,072 square feet and contains a 2½-story building built circa 1896.
- 2. Sanborn Map:** The 1901, 1920 and 1957 maps show the general footprint of the subject house including an open, full width front porch and the rear porch.
- 3. COA History:** None.

II. APPLICABLE DESIGN GUIDELINES

1. Architectural Guidelines for Building Rehabilitation and Fence Design Guidelines (wood fence):

- a. The character of the fence should be in keeping with the character of the building. Large, ornate buildings require fencing material and design of a substantial and elaborate type. A simple building may require a picket or woven wire fence.
- b. The scale of the fence, posts and gates should be appropriate to the building.
- c. Visually open fences should be used.

The existing fence is located in the rear and the east side yard. The southern portion of the fence is flush with the front wall plane of the house. Typically, the Commission has required 6-foot tall privacy fences to be setback from the front wall plane to clearly separate them from the front yard and lessen their impact on the overall visual quality of the district. In some cases, shrubs have been required as well to obscure privacy fences from street view. Staff recommends that the south segment of the fence be moved north to a point past the second basement window on the east façade. If the Commission finds that moving the fence back is not warranted then staff recommends that shrub plantings along the south perimeter of the fence be required.

- d. The rear yard fence, both open and solid, should be a maximum of six feet in height.

The fence is 6 feet tall.

- e. A gate is recommended from an enclosed back yard to an alley or another back yard.
- f. A gate is recommended between two side yards when the fence runs the entire length of the front and back yard.

The fence has a gate that faces the front yard. The applicant intends to add a second gate to the western portion of the fence in the rear yard. The gates match the appearance of the fence.

- g. The fence should step along a grade change at intervals set by the length between posts (rather than at variable lengths or with a continuously straight top edge).
- h. The post and rail side should be facing the homeowner's yard while the picket side should face the street, neighbor or alley.

The existing fence complies with these guidelines.

- i. Posts are typically built with four equal sides with a base and a cap, and are slightly taller than the pickets. Six to 12 inch squares are common for a prominent post. The minimum width should be the height of the post in feet translated to the equivalent width in inches, e.g., if the post is four feet tall, the width should be at least four inches wide.
- j. Pickets should be 3/4 to one inch thick and one to six inches wide (if wider pickets are used, a pattern should be cut into the center of the boards to minimize the wide appearance).
- k. Most fences are made of three elements: post, rail and picket. The rail is typically the only horizontal element. The rails should be placed between or on the back side of the posts not the front.
- l. The pickets on fences in the front and side yards should be placed between the posts (not run continuously in front of the posts).
- m. Posts are a very important visual part of a fence and should not be hidden by the pickets.
- n. The spacing between posts should be approximately 4 to 14 feet, depending on the design.
- o. The space between pickets should be approximately equal to the width of the picket in front and side yards.
- p. When privacy is a concern, the boards may be spaced closer together, however, it is encouraged to keep the height of the fence as low as possible and to provide at least the thickness of a board (3/4 to one inch) between the pickets.

