

Date September 10, 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 appealed the conditions imposed by the Historic Preservation Commission and sought 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 April 23, 2012, after public notice and hearing, the City Council referred the matter back to the Historic Preservation Commission to review new information presented by Conlin Properties; and,

WHEREAS, on May 16, 2012, the Historic Preservation Commission reaffirmed its prior decision and conditionally approved the application for a Certificate of Appropriateness upon the same three conditions identified above; and,

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has again appealed the conditions imposed by the Historic Preservation Commission; and

WHEREAS, on April 23, 2012, by Roll Call No. 12-0629, it was duly resolved by the City Council that the appeal be set down for hearing on July 9, 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 June 29, 2012, and a copy of the notice was provided to the attorney for Conlin Properties; and,

WHEREAS, on July 9, 2012, by Roll Call No. 12-1123, the City Council continued the hearing until September 10, 2012, at 5:00 p.m., and referred to the City Manager and Historic District commission to review the requirements and appropriateness of the materials; and,

Date September 10, 2012

WHEREAS, in accordance with the published 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 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- 489)



Roll Call Number

Agenda Item Number

34A

Date September 10, 2012

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

FORM APPROVED:

Roger K. Brown

Assistant City Attorney

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

| 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

The entire record of the proceedings before the Historic Preservation Commission on this matter and all documents provided by Conlin Properties in support of its appeal are on file and available for review in the office of the City Clerk. A portion of those documents has been copied and is attached hereto for the convenience of the City Council.

34A



April 23, 2012

Mayor and City Council of Des Moines
c/o Honorable Christine Hensley

RE: Conlin Properties/826 18th Street in Sherman Hill

Dear City Council and Mayor,

This letter is on behalf of the Sherman Hill Association, Inc. ("SHA"). SHA Board of Directors voted unanimously in favor of the Historic Preservation Commission ("HPC") position on the above appeal by Conlin Properties. In other words, we do not support Conlin's appeal to put in plastic windows in the historic district and ask that they adhere to the HPC's recommendation. There is no basis for treating this property any differently than the rest of the property owners in the City's historic districts and this is not the first property owner to request window replacements.

Further, the letter from Mr. Gross is factually inaccurate in at least two ways: the exaggerated cost of the proper windows and Conlin Properties' knowledge of the Historic Preservation Commission process. These assertions do not appear to be made in good faith.

Thank you for your consideration of the SHA's input on this and other development related to Sherman Hill. Please let me know if you have any questions regarding this letter of support for the HPC.

Sincerely,

Ryan P. Howell
Sherman Hill Association, Inc.
President 2012
(515) 447-4718 (work)
(434) 409-3474 (mobile)
rhowell@faegre.com

fb us.8257727.01

Sherman Hill Association, Inc. • 1620 Pleasant Street, Suite 204 • Des Moines, IA 50314

March 6, 2012

Via email delivery

Honorable Frank Cownie
Des Moines City Council Members
Historic Municipal Building
400 Robert D. Ray Drive
Des Moines, IA 50309

**RE: APPEAL FROM DECEMBER 5, 2011 HISTORIC PRESERVATION
COMMISSION RULING CERTIFICATE OF APPROPRIATENESS;
CASE NUMBER 20-2012-5.14**

Dear Mayor Cownie and Members of the Des Moines City Council:

I write in support of the action taken by the Des Moines Historic Preservation Commission related to their request to make Conlin Properties install appropriate replacement windows in their property located at 826 18th Street.

I am the person who informed the City Staff of what appeared to be work on a neighboring house and did not believe the owner had received a Certificate of Appropriateness. The action I observed was the replacement of existing windows. At that time, I was not aware the replacement windows were vinyl.

I support the action of the Historic District Commission for two reasons.

One, the Commission was exercising their responsibility as directed in Municipal Ordinance 58.30 (e)(2) which states the following:

“The commission shall adopt the rules and regulations necessary to carry out its powers, duties and responsibilities. These shall include the adoption of the 1983 or later revised edition of the **Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings** and the establishment of additional design guidelines, standards and criteria for reviewing and approving applications for certificates of appropriateness, pursuant to section 58-31 of this article, provided that all such design guidelines, standards and criteria shall be approved by the city council and shall be copied and made available to property owners within each historic district.”

The Secretary of the Interior's Standards for Rehabilitation states the following:

6. “Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.”

The Commission acted appropriately and accurately in this matter.

Two, *The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* provides direction in retaining existing windows and evaluating proposed replacement windows.

Recommended rehabilitation of existing window state:

“Identifying, retaining, and preserving windows – and their functional and decorative features – that are important in defining the overall historic character of the building. Such features can include frames, sash, muntin, glazing, sills, heads, hoodmolds, paneled or decorative jambs and moldings, and interior shutters or blinds.”

Not Recommended replacement windows state:

“Changing the historic appearance of windows through the use of inappropriate designs, materials, finishes, or colors which radically change the sash, depth of reveal, and muntin configuration; the reflectivity and color of the glazing; or the appearance of the frame.”

Further, the Guidelines provide direction for evaluating new work as it relates to the adjoining historic neighborhood. They state the following:

Not Recommended:

“...New work should be compatible with the historic character of the district or neighborhood in terms of size, scale, design, material, color, and texture.”

This means introducing non-historically appropriate material such as vinyl replacement windows on the primary façade of structures within a historic district is not a good idea.

My support of the action taken by the Historic District Commission is based on the fact the Commission acted appropriately and my opinion the installation of vinyl replacement windows is not appropriate in a historic district such as the Sherman Hill Historic District. I ask the Mayor and Members of the Des Moines City Council to deny the appeal of Conlin Properties and to direct Conlin Properties to work with city staff and Commission members to evaluate whether the existing windows can be repaired, if not repairable, to assist with selecting appropriate wood replacement windows that meet *The Secretary of the Interior's Standards for Rehabilitation*.

I thank you for your consideration.

Sincerely,



Jack C. Porter
815 18th Street
Des Moines, IA 50314



Historic Preservation Tax Incentives Program

Technical Preservation Services
National Park Service

Replacement Windows that Meet the Standards

The decision-making process for selecting replacement windows divides into two tracks depending on whether historic windows remain in place or no historic windows survive.

Replacement of Existing Historic Windows

When historic windows exist, they should be repaired when possible. When they are too deteriorated to repair, selection of the replacement windows must be guided by Standard 6. Design, visual qualities, and materials are specific criteria provided by the Standard that are pertinent to evaluating the match of a replacement window. Evaluating the adequacy of the match of the replacement window involves the consideration of multiple issues.

How accurate does the match need to be?

The more important a window is in defining the historic character of a building the more critical it is to have a close match for its replacement. Location is a key factor in two ways. It is usually a consideration in determining the relative importance of a building's various parts. For example, the street-facing facade is likely to be more important than an obscured rear elevation. The more important the elevation, feature or space of which the window is a part, the more important the window is likely to be, and thus, the more critical that its replacement be a very accurate match. Secondly, the location of the window can affect how much of the window's features and details are visible. This will affect the nature of an acceptable replacement. For example, windows at or near ground level present a different case from windows in the upper stories of a tall building.

Using the hierarchy of a building's features and taking into account the window's visibility, some general guidance can be drawn:

- Replacement windows on primary, street-facing or any highly visible elevations of buildings of three stories or less must match the historic windows in all their details and in material (wood for wood and metal for metal).
- Replacement windows on the primary, street-facing or any highly visible elevations that are part of the base of high-rise buildings must match the historic windows in all their details and in material (wood for wood and metal for metal). The base may vary in the number of stories, but is generally defined by massing or architectural detailing.
- Replacement windows on the primary, street-facing or highly visible elevations of tall buildings above a distinct base must match the historic windows in size, design and all details that can be perceived from ground level. Substitute materials can be considered to the extent that they do not compromise other important visual qualities.

- Replacement windows on secondary elevations that have limited visibility must match the historic windows in size, configuration and general characteristics, though finer details may not need to be duplicated and substitute materials may be considered
- Replacement windows whose interior components are a significant part of the interior historic finishes must have interior profiles and finishes that are compatible with the surrounding historic materials. However, in most cases, the match of the exterior of a replacement window will take precedence over the interior appearance.
- Replacement windows in buildings or parts of buildings that do not fit into any of the above categories must generally match the historic windows in all their details and in material (wood for wood and metal for metal). Variations in the details and the use of substitute materials can be considered in individual cases where these differences result in only minimal change to the appearance of the window and in **no** change to the historic character of the overall building.

How well does the new window need to match the old?

The evaluation of the match of a replacement window depends primarily on its visual qualities. Dimensions, profiles, finish, and placement are all perceived in relative terms. For example, an eighth of an inch variation in the size of an element that measures a few inches across may be imperceptible, yet it could be more noticeable on the appearance of an element that is only half an inch in size. The depth of a muntin or the relative complexity of a brick mold profile are more often made visually apparent through the shadows they create. Thus, while comparable drawings are the typical basis for evaluating a replacement window, a three-dimensional sample or mock-up provides the most definitive test of an effective visual match.

The way a historic window operates is an important factor in its design and appearance. A replacement window, however, need not operate in the same manner as the historic window or need not operate at all as long as the change in operation does not change the form and appearance of the window to the point that it does not match the historic window or otherwise impair the appearance and character of the building.

Factors to consider in evaluating the match of a replacement window:

- **Window unit placement** in relation to the wall plane; the degree to which the window is recessed into the wall.
 - The location of the window affects the three-dimensional appearance of the wall.
- **Window frame size and shape.** For example, with a wood window, this would include the brick mold, blind stop, and sill.
 - The specific profile of the brick mold is usually less critical than its overall complexity and general shape, such as stepped or curved.
 - Typical sight lines reduce the importance of the size and profile of the sill on windows high above ground level, especially when the windows are deeply set in the wall.
 - Though a blind stop is a small element of the overall window assembly, it is a noticeable part of the frame profile and it is an important part of the transition between wall and glass.

- Steel windows that were installed as a building's walls were constructed have so little of their outer frame exposed that any replacement window will necessitate some addition to this dimension, but it must be minimal.
- **Glass size and divisions.**
 - Muntins reproduced as simulated divided lights – consisting of a three-dimensional exterior grid, between-the-glass spacers, and an interior grid – may provide an adequate match when the dimensions and profile of the exterior grid are equivalent to the historic muntin and the grid is permanently affixed tight to the glass.
- **Sash elements width and depth.** For example with a wood window, this would include the rails, stiles and muntins; with a steel window, this would include the operator frame and muntins.
 - The depth of the sash in a double-hung window, or its thickness, affects the depth of the offset at the meeting rail of a hung window. This depth is perceived through the shadow that it creates.
 - Because of its small size, even slight differences in the dimension of a muntin will have a noticeable effect on the overall character of a window. Shape, as well as depth, is important to the visual effect of a muntin.
 - The stiles of double-hung historic windows align vertically and are the same width at the upper and lower sashes. The use of single-hung windows as replacements may alter this relationship with varying effects on the appearance of a window. In particular, when the distinction between the frame and the sash is blurred, details such as lugs may be impossible to accurately reproduce.
 - Meeting rails of historic windows were sometimes too narrow to be structurally sound. Reproducing a structurally-inadequate condition is not required.
 - The operating sash of a steel window is usually wider than the overall muntin grid of the window. In addition, the frame of the operating sash often has slight projections or overlaps that vary from the profile of the surrounding muntins. The shadow lines the muntins create add another important layer to the three-dimensional appearance of the window.
- **Materials and finish.**
 - While it may be theoretically possible to match all the significant characteristics of a historic window in a substitute material, in actuality, finish, profiles, dimensions and details are all affected by a change in material.
 - In addition to the surface characteristics, vinyl-clad or enameled aluminum-clad windows may have joints in the cladding that can make them look very different from a painted wood window.
 - Secondary window elements that do not match the finish or color of the window can also diminish the match. Examples include white vinyl tracks on dark-painted wood windows or wide, black, glazing gaskets on white aluminum windows.

- **Glass characteristics.**

- Insulated glass is generally acceptable for new windows as long as it does not compromise other important aspects of the match.
- The clarity and reflectivity of standard clear window glass are significant characteristics of most windows. Because these characteristics are often diminished for old glass, new glass equivalent to the original should be the basis for evaluating the glazing proposed for new windows. Color should only be a noticeable characteristic of the new glass where it was historically, and any coating added must not perceptibly increase the reflectivity of the glass.
- Where the glazing is predominantly obscure glass, it may be replaced with clear glass, but some evidence of the historic glazing must be retained, either in parts of windows or in selected window units.

Replacement Windows Where No Historic Windows Remain

Replacement windows for missing or non-historic windows must be compatible with the historic appearance and character of the building. Although replacement windows may be based on physical or pictorial documentation, if available, recreation of the missing historic windows is not required to meet the Standards. Replacement of missing or non-historic windows must, however, always fill the original window openings and must be compatible with the overall historic character of the building. The general type of window – industrial steel, wood double-hung, etc. – that is appropriate can usually be determined from the proportions of the openings, and the period and historic function of the building. The appearance of the replacement windows must be consistent with the general characteristics of a historic window of the type and period, but need not replicate the missing historic window. In many cases, this may be accomplished using substitute materials. There may be some additional flexibility with regard to the details of windows on secondary elevations that are not highly visible, consistent with the approach outlined for replacing existing historic windows. Replacing existing incompatible, non-historic windows with similarly incompatible new windows does not meet the Standards.

December 2007.

— Submitted by Jack Porter —
5/16/12



Historic Preservation Tax Incentives Program

Technical Preservation Services
National Park Service

Documentation Requirements for Proposed Window Replacement

Property owners are encouraged to repair and retain existing historic windows. Yet, there are projects where replacement of the existing windows is an appropriate treatment. In order to review proposed replacement windows for conformance with the Secretary of the Interior's Standards for Rehabilitation, the State Historic Preservation Office and the National Park need the following minimum documentation:

- Clear photographs of existing windows. When windows are boarded over, remove boards from typical windows in order to take photographs.
- Drawings showing the elevation and horizontal and vertical sections of existing historic windows. Include muntins, mullions, transoms, and other window components. For historic steel industrial windows that contain operable units, drawings must include this feature.
- Drawings showing the elevation and horizontal and vertical sections of proposed replacement windows. In the case of a hung window, provide section drawings of both the upper and lower sash, including meeting rail. For replacement steel windows, include sections of both operable and fixed units. See note below regarding manufacturers' standard cut sheets.

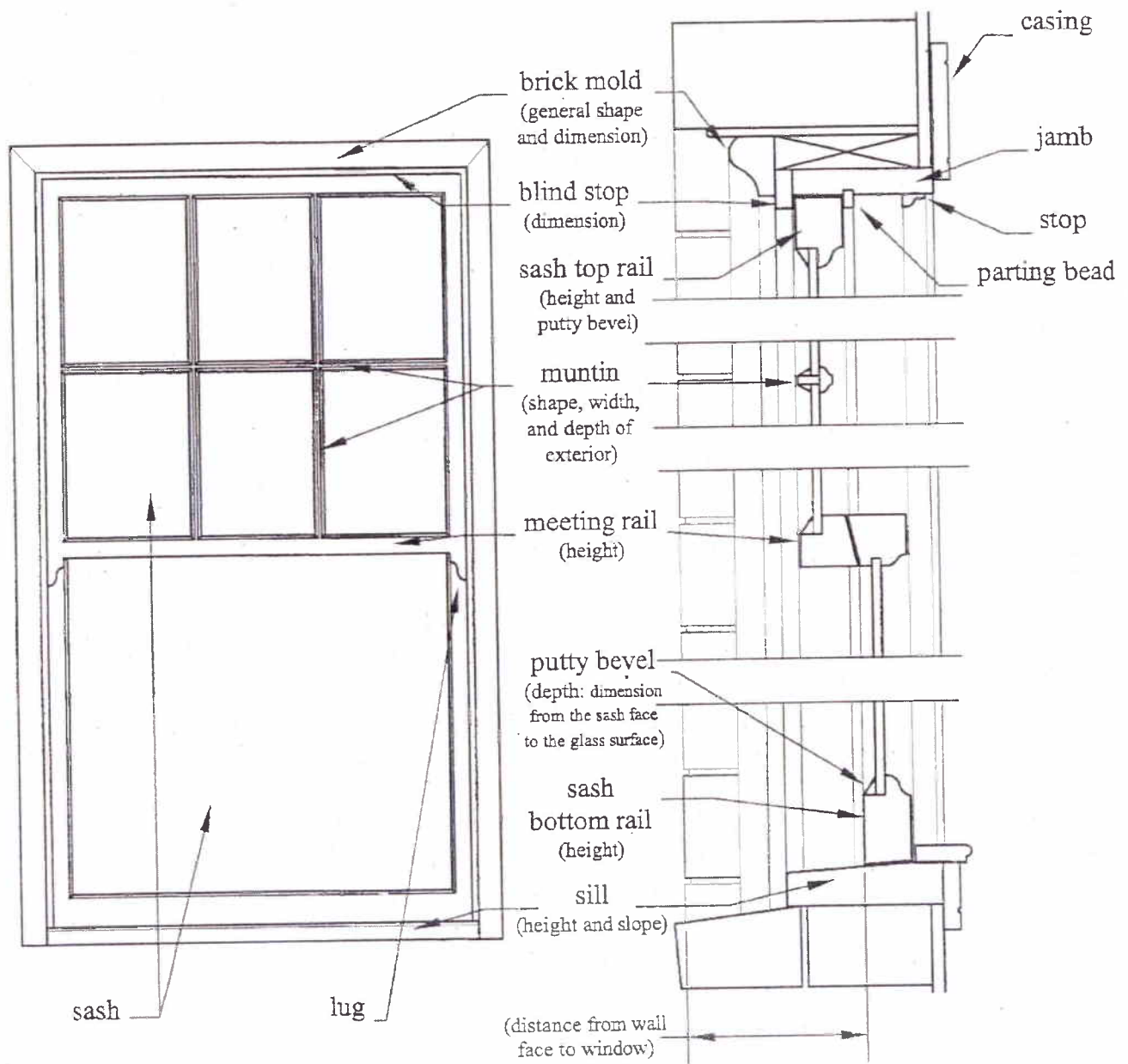
Drawings should be at the same scale and large enough to clearly show construction details. Scale should be provided, measurements noted, and materials indicated for the main components of the window. Drawings of the existing historic window should be accurate, based on field measurements. Examples of window drawings are provided on pages 2 and 3.

Replacement windows must accurately replicate the appearance of existing historic windows. Manufacturers' standard cut sheets usually are not an adequate substitute for detailed drawings since they are not drawn specifically for the proposed window replacement and do not show custom applications or installation details required for the project. In small projects where windows are being replaced and the historic or existing window is simple in design, manufacturers' standard cut sheets may be substituted for actual section drawings of the proposed window provided there is sufficient detail for review.

Window sections must show the profiles of muntins, meeting rails, sash, frames, moldings, and other features. Construction details must be apparent, including joinery. For all projects, the window's relationship to the existing wall plane must also be provided for both the existing historic windows, when present, and the proposed replacement window.

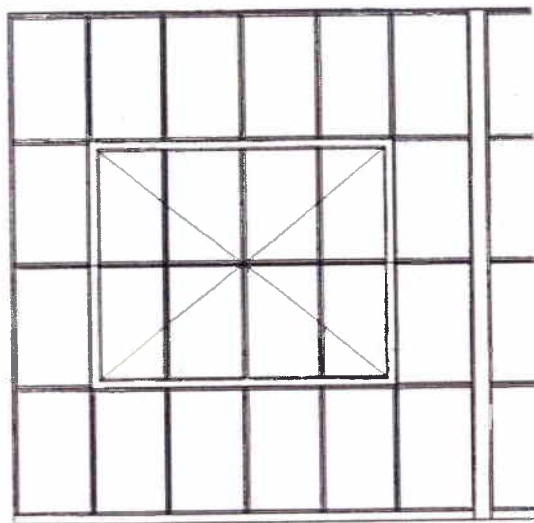
Wood Windows

The drawings below show the details required to document existing historic windows and any replacement windows. The specific information needed about each element is noted in parentheses. Note that the section drawing on the right shows the relationship of the window sash to the exterior wall plane.



Industrial Steel Windows

These drawings show the details required to document existing historic windows and any replacement windows. The specific information needed about each element is noted in parentheses. For replacement windows, be sure to show not only the typical muntin dimensions, but also any variations within the unit, such as wider pieces that support the operable sash.



Elevation

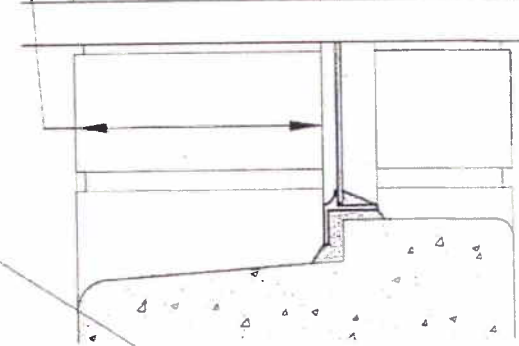
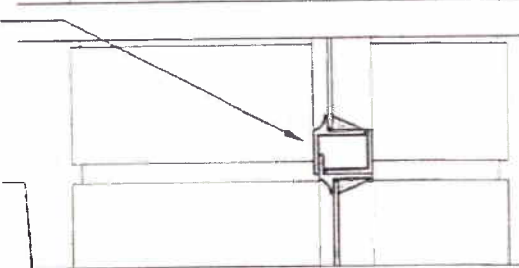
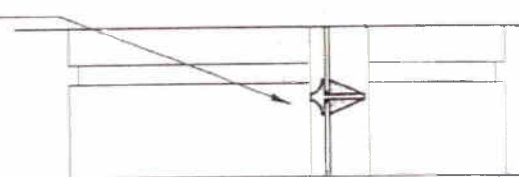
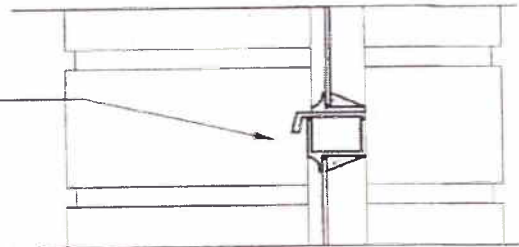
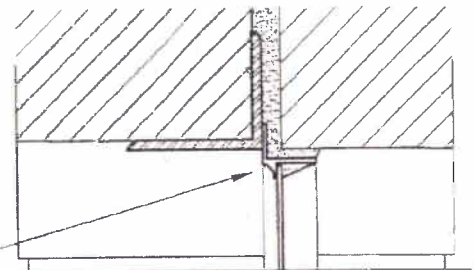
perimeter frame
(width)

top frame of
operating sash
(profile and width)

muntin
(shape, width, and
depth of exterior)

bottom frame of
operating sash
(profile and width)

(distance from wall
face to window)



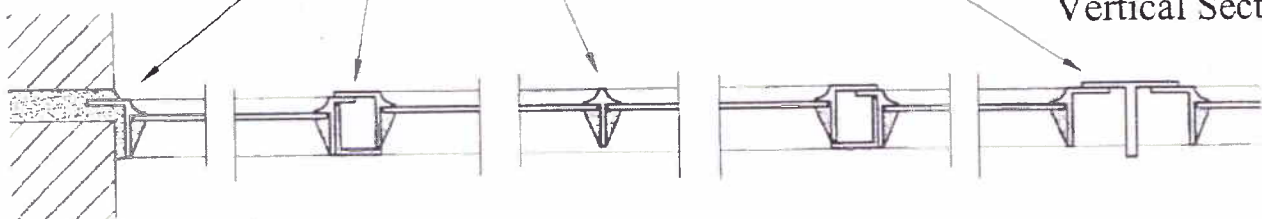
Vertical Section

mullion
(profile & width)

muntin
(shape, width, and depth of exterior)

operating sash & frame
(profile and width)

perimeter frame
(width)



Horizontal Section

PROVIDED BY: BOB McCAMMON

34A

Version 8.12

MARVIN WINDOW QUOTE

02/16/12

*** CAUTION: IT IS RECOMMENDED THAT A MINIMUM OF 1/4 INCH BE ADDED ***
*** TO THE ROUGH OPENING HEIGHT WHEN USING MARVIN SILLGUARD ***

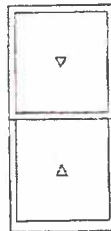
*** UNIT AVAILABILITY AND PRICE SUBJECT TO CHANGE ***
*** LIST PRICE (in USD) ***

PROJECT: MCCAMMON 2-16-2012

QUOTE: 00000001

QTY: 16 MARK UNIT -

| | | |
|------------------|---------------|------------------|
| W DHTP | 602.00 | 9,632.00 |
| SO 29" X 62 1/2" | | |
| IG - 1 LITE | | |
| CLEAR | 0.00 | 0.00 |
| STANDARD BEVEL | 0.00 | 0.00 |
| TP SASH LOCK | 0.00 | 0.00 |
| BA PINE INTERIOR | 0.00 | 0.00 |
| PR PINE EXTERIOR | 27.00 | 432.00 |
| | <u>629.00</u> | <u>10,064.00</u> |
| TOTAL LIST PRICE | 629.00 | 10,064.00 |



AS VIEWED FROM THE EXTERIOR

| | | |
|--|---------------------------|------------------|
| | SUB TOTAL: | 10,064.00 |
| | 6.000% SALES TAX: | 603.84 |
| | | <u>10,667.84</u> |
| | PROJECT TOTAL LIST PRICE: | 10,667.84 |

34A



WINDSOR
WINDOWS & DOORS
A Woodgrath Millwork Company

Dealer: GILCREST JEWETT LUMBER CO
1100 ALICES RD
PO BOX 1000
WAUKEE
Phone: 515-987-3600
Fax: 1-515-987-7194

IA 50263-1000
Fax: 1-515-987-7194

Customer Information:

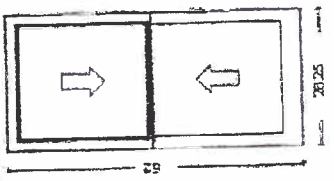
Delivery Information:

Phone: Fax:

Phone: Fax:

Quote Comments:

| | | | | | | | |
|---------|------------|---------------|-----------|--------------|----------|---------|------------|
| Quote # | TBD 166673 | Customer Name | SASH PACS | Project Name | MCCAMMON | Created | 11/16/2010 |
| Room ID | | Customer Name | SASH PACS | Project Name | MCCAMMON | Created | 11/16/2010 |
| Room ID | | Customer Name | SASH PACS | Project Name | MCCAMMON | Created | 11/16/2010 |



100 PINE INT.
Overall RO:
29" X 62 1/2"
Overall Frame:
28.25" X 62"

[PRODUCT] Pinnacle Wood: Sash Pac Kit [CALL SIZE]
Custom Custom
[PROD TYPE] Unit Type: Complete Unit - All [SET-UP] Sill/Sash
Bevel: 10 Degree - All
Finish Options: Int Fin: Pine - All [GLASS] LoE 366 IG - All
[HARDWARE]

\$286.96 2 \$573.92

NOTE: Overall Unit dimensions reflect Sash Opening on quotes - Rough Opening dimensions are not applicable to this product line

Windsor Windows and Doors

Provided By: Bob McCAMMON

34A

CITY OF DES MOINES
HISTORIC PRESERVATION COMMISSION
MEETING SUMMARY

DATE: May 16, 2012
TIME: 5:30 P.M.
PLACE: City Council Chambers
City Hall, 400 Robert D. Ray Drive

COMMISSIONERS PRESENT: Susan Holderness (Chair), York Taenzer (Vice Chair), Patricia "Pat" Barry, Breann Bye, Robert "Bob" Griffin, Scotney Fenton, Denny Marchand, David Sweet and Teresa Weidmaier.

COMMISSIONERS ABSENT: Elaine Estes and Shirley Shaw

STAFF PRESENT: Jason Van Essen, Senior City Planner.

DISCUSSION SUMMARY OF AGENDA ITEM #1

City Council initiated reconsideration of COA 20-2012-5.14 to allow new information to be submitted for review regarding the replacement of 10 windows at 826 18th Street in the Sherman Hill Historic District. The property is owned by Conlin Properties.

Chair Susan Holderness: Read the agenda description for item #1.

Jason Van Essen: Stated on November 30, 2011 the Commission approved the replacement of the subject windows at this property. Noted that a stop work order was issued as some of the windows were in the process of being replaced before an application was submitted. Stated some of the Commissioners toured the property prior to the November 30th meeting. Noted that the Commission's approval was subject to the windows being constructed of wood with no metal cladding; the windows being of the same general style, shape and dimensions as the existing windows; and the review and approval of the selected window product by staff prior to installation.

Stated the Commission's decision to apply conditions was appealed to the City Council and that the hearing of the appeal was continued a few times. At the April hearing the applicant had additional information they wanted the City Council to consider. The City Attorney would not allow the new information to be submitted as the Council's decision needed to be made on the existing record. Stated this information with other background information was included in the Commission's packet. Noted they received a copy of the November 2011 staff report and recommendation; a copy of the City Council Communication dated February 13, 2012, which contains staff's summary of the case, rationale and recommendation to the City Council; and the information submitted by the applicant, which includes copies of their bids. Noted that bid documents were not provided at the first meeting of the Commission. At that time the applicant stated that wood windows would cost over \$12,000 and that vinyl windows would cost approximately \$6,000.

Stated the applicant has submitted bids for two Marvin Window products. One is for windows with insulated glass and is showing \$11,763.36 for ten windows including labor. The other Marvin quote is for the same window with standard glass and it shows a cost of \$11,113.36.

Stated the quote for the proposed vinyl product is \$6,275.74. Noted the applicant also submitted a letter from an appraiser. Clarified that the letter is a general opinion and not an appraisal. Indicated the Commission's packet also includes a letter from the Sherman Hill Association expressing support for the Commission's decision and a letter from Jack Porter, a neighbor, expressing support for the Commission's decision. Noted that during the time the item was being appealed staff received communication from Rob McCammom, who is a Sherman Hill resident that has done a lot of projects throughout the district. He provided two bids for wood window products he has used. At the time he provided this information we did not have any bid documentation from the applicant. The bid information from Rob is for similarly sized windows. The unit price from Rob's bid for a Marvin window is generally the same as the unit price noted on the applicant's bid. Rob also submitted a bid for a less expensive wood window product that has been used in the district. This bid shows that the unit cost of this product is about half the cost as the Marvin product.

Stated the packet also includes testing information for the vinyl window product submitted by the applicant. There is also information from Moehl Millwork on U-value and R-value, and a flyer from the vinyl window manufacture. The applicant also submitted copies of the Section 8 housing inspection report and Rental Code inspection certificates. Stated that as a result of these inspections the property owner was directed to address issues identified by the inspectors. Noted that rental inspectors tell you to address issues but from their standpoint it does not matter if it is done by repair or replacement. Stated that the packet also included a copy of the discussion summary from the November 30, 2012 Commission meeting.

Noted that photographs and Sanborn Fire Insurance Maps were also included in the packet. Stated staff has reviewed the new information submitted by the applicant and it did not change staff's opinion. Staff recommends that the Commission uphold the November 30, 2012 decision for the reasons that are discussed in the original staff report and for the rational in the communication that was sent to the City Council. Read the following quote from the February 13, 2012 communication to the City Council.

"Staff believes that the Commission's action followed the purpose and procedures established in the Historic Preservation Ordinance. The Commission was reasonable in its judgment and approved the replacement of windows subject to conditions. In requiring the replacement windows be constructed of wood the Commission followed the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts as approved by the City Council. 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.

Maintenance of the subject property impacts the collective value and historic integrity of the district, which impacts all property owners within the district. The Historic Preservation Commission reviews a substantial number of requests that involve window restoration or replacement. The November 2011 staff report noted that over the previous twelve months the Commission had reviewed eight cases similar to this case and in all instances the Commission either required the existing wood windows to be repaired or replaced with wood windows. The eight properties consisted of four multiple-family residential properties and four owner-occupied, single-family dwellings. Copies of the staff reports and COAs for these cases were provided to the applicant's legal representatives.

The appeal notes that the subject building is sided with metal and that the windows are located in a later addition. The windows are located in an addition that was constructed sometime between 1920 and 1957. The original portion of the building was built 1888 according to the Polk County Assessor's web page. The Commission's action took into consideration that alterations to the property as they found that requiring the existing wood windows to be repaired and retained was not warranted. Cover up siding, such as metal or depression brick is not a material or architectural element of significance in the Sherman Hill Historic District. The Architectural Guidelines of Building Rehabilitation in Des Moines' Historic Districts state artificial and cover-up siding should be removed and the original siding restored.

Noted there has been discussion in the past about storm windows and clarified that the Historic Preservation Ordinance specifically identifies storm windows as an item that does not require review. Storm windows are thought as a maintenance issue and not thought as a character defining element of a building.

Chair Holderness: Stated her opinion that it is not the Commission's purview to make decision based on cost and asked staff for an opinion on how the Commission should view the bid information.

Jason Van Essen: Noted that it is part of the information submitted by the applicant. Stated there is not anything that states the Commission should not consider cost. Noted that in the past when people have tried to discredit the suggestions of the Commission or the design guidelines that the first thing they mention is often cost. We have consistently advised people that our job is to enforce these design guidelines and the Historic Preservation Ordinance and by nature that is contrary to basing your decision solely on cost. There is nothing written but it is implied by the fact that you are directed to base decisions on Secretary of Interior Standards and the locally adopted design guidelines.

Pat Berry: Asked if the Commission should consider the window related information from the National Park Service that was provided by Jack Porter during the public comment portion of the agenda in reviewing this case.

Jason Van Essen: Stated the handouts stem from the Secretary of Interior Standards which we are already obligated to consider as reference in the Historic Preservation Ordinance.

Chair Holderness: Asked if the Commission had any more questions for staff. Hearing none she asked for the applicant to come forward.

Matthew McKinney (*BrownWinick P.L.C., 666 Grand Avenue, Suite 2000, Des Moines*): Indicated that he was representing the applicant. Stated he had a rendering of the proposed windows. Stated that Mr. Van Essen articulately went through the information in the file but there was one thing that was not mentioned that he would like to point out. Noted they provided a colored rendering of the building showing the windows. They are a reinforced vinyl window, with two panes of glass with argon gas between the glass panes. This helps promote energy efficiency. Suggested that the proposed windows are the same size, shape and profile of the existing windows and are going to be a uniform color with the windows throughout the building. Showed the rendering of the house next to a current picture of the house. Stated the rendering showed that you would not be able to notice the difference between the subject windows and the other windows in the building.

Stated that Conlin Properties received a notice from the Section 8 housing inspector that the windows needed to be replaced, which is why a copy of the notice was submitted. Stated that Conlin Properties did not volunteer to replace the windows, but rather they were told they had to do it. When Conlin Properties received that notice they immediately sought to replace the ten windows. They did not realize that work on this mid-century apartment complex with steel siding would need a Certificate of Appropriateness. So they started installing the windows. They received a stop-work order and immediately stopped and applied for a Certificate of Appropriateness.

Stated that Section 58-31 of the Municipal Code states the Commission shall be reasonable in its judgment and shall endeavor to approve proposals for alterations to structures of little historical, architectural and cultural value. Except when a proposal would impair the historical value and character of the surrounding area. It also states that the Commission should be sympathetic to proposals that utilize energy saving modifications.

Stated he would like to touch on four different things, the first being historic value. Stated that one of the things that the Commission is required to consider is whether or not this proposal impacts something with historical, architectural or cultural value. These windows are not original windows. Stated that the structure was reconstructed sometime between 1920 and 1957. Expressed his belief that there is no evidence before the Commission that the windows have any historical value. Noted the building has steel siding and that it was not a wood or brick sided building. Expressed his belief that no one would be able to tell the difference between vinyl windows and the wood windows that were replaced.

Stated his belief that the design guidelines specifically carve out mid-century apartment buildings from the historic district. Noted that the guidelines state that the resources of Sherman Hill with the exception of mid-20th century apartment complexes date almost exclusively from the late Victorian periods. Reiterated his belief that this text from the design guidelines creates an exception for mid-20th century apartment buildings. Stated that this historic district was not created to save buildings like this one with steel siding. It was created to preserve buildings that are from the 1880's through the early 1900's. Noted that the building was significantly altered sometime between 1920 and 1957 and does not fit in that timeframe.

Noted they have provided the Commission with an opinion from Gene Nelsen, who is a MAI certified appraiser. Stated that he has reviewed the situation and come to the opinion based on his knowledge, training and experience that this particular structure does not appear to have any significant historical value. Suggested that all of the evidence before the Commission indicates that this structure has no historical value and under the Code when that is the case the Commission is to endeavor to approve the proposal.

Stated the second thing to consider is whether or not the proposal will seriously impair the value of neighboring properties. Referred to Mr. Nelsen's letter that indicates that adding these vinyl windows with a uniform color across the front of the property would not blight or reduce the value of any property in the neighborhood. Stated the third point he would like to make is that these windows are energy efficient. Noted that they have submitted laboratory tests that demonstrated that the proposed windows are more energy efficient and stronger than the current windows or wood replacement windows. They are proposing to put in higher quality windows and under the Code the Commission is supposed to be sympathetic to proposals that are for energy efficient purposes.

Stated it is their position that cost should be considered. Indicated that there is nothing in the Commission's guidelines or the Secretary of the Interior requirements that say cost should not be considered. The Code requires the Commission to be reasonable and we would submit that when the Commission is asked to consider rehabilitation or reconstruction of different properties one of the key questions is how much does it cost. Stated to ignoring cost is unreasonable. Stated that the quote they submitted for wood windows, including the cost to paint them, is for \$12,763.36 as compared to the \$6,275.74 it would cost to install vinyl windows. Suggested that to require double the cost, especially when the City has mandated that the windows be replaced in an economic time like the present, where housing prices are dropping, is unreasonable and not reasonable as required by the Code.

Noted there has been discussion about vinyl as a material and its use in Sherman Hill. Stated that he understood the concern but suggested the Commission consider the guidelines. Stated that vinyl storm windows are permitted and that there is no language in the architectural guidelines that specifically prohibits the use of vinyl.

Stated they reviewed the 1995 Secretary of Interior Standards for the Treatment of Historic Properties and found no language that specifically prohibits vinyl. Noted there are portions of the standards that talk about repairing windows and replacing windows. Stated the Commission has agreed that these windows could be replaced and that when replacing an entire window these standards state that if using the same kind of material is not technically or economically feasible when replacing windows deteriorated beyond repair, then a compatible substitute material may be considered. So, under the guidelines of the Secretary of the Interior Standards they are requiring the Commission to consider economic feasibility. Expressed his belief that the proposed vinyl windows are a compatible substitute material for this property.

Stated last year the Secretary of the Interior published Standards for Rehabilitation and Illustrated Guidelines on Sustainability for Rehabilitation of Historic Buildings. These guidelines have procedures for both repairing and replacing windows. He read the following from this publication, "installing compatible and energy-efficient replacement windows that match the appearance, size, design, proportions, and profile of the existing historic windows and that are also durable, repairable and recyclable, when existing windows are too deteriorated to repair." Expressed his belief that the proposed windows satisfy this standard as he believes their size, profile and proportions are the same and that they are durable.

Noted that the National Park Service has published a series of briefs on how to preserve historic properties. Stated that no brief regarding windows has been prepared but there is a brief that discusses siding. Indicated that it mentions that vinyl may be used as a siding material and that in this case we are only talking about a couple of inches of vinyl around a few windows. Stated that according to this brief aluminum and vinyl siding is permissible.

Stated that when you consider the cost and energy efficiency and the requirements of the Des Moines Municipal Code we believe that these windows are proper and we request that the Commission approve the proposal to install vinyl windows. We believe that if the Commission denies the request that such a denial would constitute inverse condemnation of the property and perhaps other constitutional violations. Stated that he would be happy to answer any questions the Commission might have.

Jason Van Essen: Asked if the applicant was amending their application to replace all windows in the building or all windows on the front façade as suggested by their rendering.

Matthew McKinney: Replied that they are not and that the only windows to be replaced are the 10 windows that have been discussed. But that they are proposing to paint all of the windows the same color so that they all match.

York Taenzer: Asked if they believe they can find paint that is going to adhere to vinyl for 20 years.

Matthew McKinney: Replied yes. Noted that all of the windows will be uniform in color and they will match the color of the building's trim and will compliment the roof as shown in their rendering.

York Taenzer: Asked for verification that the applicant was proposing to leave the existing vinyl windows and that they plan to paint them to look more similar to what I would consider, historic, more original windows that are currently in the building.

Matthew McKinney: Replied yes that is correct.

York Taenzer: Stated he wanted to go over some of the points that have been made. Asked what year the house was built.

Matthew McKinney: Replied 1888.

York Taenzer: Stated we think that the footprint of the building was altered sometime between 1920 and 1957 but originally this was a single-family home not a mid-century apartment building that was built in the neighborhood in the mid-century as there are many of those. This is an original structure with wood, double-hung windows. This is not a built as apartment building constructed in the mid century. It is a historic structure constructed in 1888. Yes, it has been altered but it could be restored. Asked if the applicant knows what the siding material is under the steel.

Matthew McKinney: Replied that he did not.

York Taenzer: Asked if he thought there might be wood siding underneath the steel.

Matthew McKinney: Stated that he did not know.

York Taenzer: Asked for verification that there are a total of 10 windows to be replaced.

Matthew McKinney: Indicated that is correct but noted that 5 of the 10 windows have already been replaced with vinyl windows.

York Taenzer: Asked if all 10 windows had already been purchased.

Matthew McKinney: Replied yes that is correct.

Breann Bye: Asked if all 10 windows are white right now.

Matthew McKinney: Stated they are and that all of the windows in the building are white.

York Taenzer: Asked if any of the contractor or architect members of the Commission have had any luck painting vinyl.

Denny Marchand: Replied no.

David Sweet: Stated it has been a miserable failure every time he has tried.

Matthew McKinney: Stated he talked to the supplier of the windows and that the paint they would use is paint specific for vinyl and is not a general paint you would pick up at a store. Stated his understanding is that traditional wood and paint generally last 10 years and this product for vinyl has a 10 to 12 year life.

Breann Bye: Asked if the extra cost of the paint was included in their price quote.

Matthew McKinney: Stated the \$6,275 bid is the cost.

Teresa Weidmaier: Stated she would like to address some of the comments Mr. McKinney has made. Expressed agreement with York Taenzer that this is not a mid-century apartment building but rather an 1880's structure. Stated when Sherman Hill was listed on the National Register in 1976 this property was identified as a contributing structure to the district. Noted that Gene Nelson's letter states this property does not have any historical significance. Stated Mr. Nelson is an appraiser and is not trained to assess the historical value of a property. Rather he is trained to assess the current market value of a property.

Matthew McKinney: Stated Mr. Nelson's credentials are in the information submitted.

Teresa Weidmaier: Stated she understood that he does not have a degree in historic preservation or is an architect and is not able to determine the historic value of properties. Expressed disagreement with his opinion that it is not economically feasible for the building to be worked on and converted back to a single-family house. Noted that this happens frequently in Sherman Hill. Stated that if every landlord that has come before the Commission since 1982 when this local district was established and said this is just an apartment building, you have got to let me use vinyl because it is cost effective. We would have a neighborhood full of vinyl windows, and metal and vinyl siding.

Matthew McKinney: Stated each case is unique and the Commission is required to consider each case individually. We are looking at a building that was substantially reconstructed. A building that may not have been substantially reconstructed and where there was no dispute that the windows were actually the original windows would be an entirely different case. Expressed his belief that the Commission was not opening themselves up to allowing vinyl for everyone by approving this request.

Teresa Weidmaier: Noted that vinyl is not allowed on new outbuildings and questioned why vinyl would be allowed on an 1888 structure.

Matthew McKinney: Stated he understood that mindset but that the requirements are clear in the Code. Noted that vinyl storm windows could be installed without review. Suggested that

the Secretary of Interior Standards allow vinyl siding and that the Commission is suppose to follow these standards.

Teresa Weidmaier: Noted that the information from the National Park Service that was passed out by Jack Porter at the beginning of the meeting talks about replacement windows and how accurate of a match they need to be. Noted that it includes the statement that replacement windows on primary, street-facing or any highly visible elevation of buildings of three stories or less must match the historic windows in all their details and in material, wood for wood and metal for metal.

Matthew McKinney: Stated that he has not seen that information, but would take a look at it.

York Taenzer: Noted that Conlin Properties owns multiple properties in the neighborhood and prior to this there was a long restoration of a property on 16th Street and the knowledge and awareness of the neighborhood and the necessity to not only approach the Commission but also that project involved the State Historical Preservation Office. Recalled that J.B. Conlin and a woman that worked for Conlin Properties attended a Commission meeting and worked though the process. Wondered how Conlin Properties was not aware of the need for a Certificate of Appropriateness after going through that process. The Commission should have reviewed this before windows were purchased. Noted there is a significantly lower priced wood window option that the Commission would approve and that could have been considered initially. Considering the similar level of cost of vinyl windows and the lower cost wood windows I would have suggested we approve, a wood window with appropriate spacing as opposed to a vinyl window. Expressed his belief that the vinyl is not going to hold paint very well.

Jim Conlin (2900 Southern Hills Circle, Des Moines): Stated they only own one other property in Sherman Hill and that he was not personally involved in that process until it got the National Park Service in Washington D.C. We were being required to restore the existing windows in the building, which would have cost \$821,000. Noted that he became involved with the project and that is why he has such heartburn about this whole situation. Stated he hired a lobbyist in Washington D.C. and resolved the problem for \$121,000. Stated he had no idea that this historic circumstance would affect this property and that he was not trying to run an end around the Commission for a simple, trivial matter like this. Stated that he will never buy a property or recommend to anyone that they buy a property in a historical district because this is ridiculous.

Denny Marchand: Stated it is more complicated when a property is located in a local historic district but the idea is to keep the historical value intact. This is a building that was built in the late 1800's not the 1950's. Expressed strong disagreement with their appraiser's opinion. Stated that if this property was converted back to single-family that the values of the properties around it are likely to go up. Noted that vinyl is one of the cheapest materials you can put in. If we allow vinyl windows and vinyl siding then at some point the building just becomes a box. Reiterated that he strong disagrees with the applicant's appraiser. Noted that he is a certified appraiser. Stated that if this property is restored it would have a positive impact on the values of the other properties around it. As opposed to taking small steps that continue to reduce the historic value of the property. Noted there is a less expensive wood window option that he thought the Commission would approve.

Teresa Weidmaier: Noted that part of the issue is that the proposed vinyl windows are already here and partially installed. Expressed her belief that this is why the applicant was still seeking to use vinyl windows. If the case would have come before the Commission before the windows were purchased it would have been easier to suggest the applicant explore alternatives and seek additional bids. Stated that the Commission is sensitive to cost and safety but that their purview, what they have been charged with, is to protect the historic value of these neighborhoods and that the Commission takes that directive very seriously. This district is greater than the sum of its parts, it is the entire thing. This property is a contributing structure to the district. Stated she sees a second life for this building someday, being converted back to single-family.

Breann Bye: Stated the materials used on a multiple-family building matter as much as the materials used on a single-family building.

Matthew McKinney: Stated we could get into a lot of hypothetical discussion about what might happen in 5 or 10 years from now but what the hard facts are, are the facts that have been presented. Yes, a lot of things could happen in 20 years. Stated the question for consideration is, is this proposal consistent with what the Commission is charged with following. Expressed his belief that it is consistent. Stated if different circumstances present themselves down the road 15 or 50 years from now then maybe we consider those but to sit here today and make a decision based upon something that might happen, I do not believe would be in compliance with the guidelines.

Chair Holderness: Noted that design guideline "b" states that replacement windows should duplicate the original windows in type, size and material.

Matthew McKinney: Asked for clarification as to where that guideline was from.

Jason Van Essen: Stated that it is a design guideline under window replacement and listed in the staff report.

Matthew McKinney: Asked if this guideline was from the Code.

Jason Van Essen: Stated it is from the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts that were adopted by the City Council and provided to the Commission. Stated he thought the applicant had presented their position and reminded the Commission that time needs to be allowed for public comment. Stated that he was confident that the applicant was not going to be persuaded to change their position and if the applicant feels they have done their job trying to persuade you then we should move forward with public comment, if not then give the applicant a little more time. Otherwise, we do have other people here tonight that have requests that need to be heard.

Jim Conlin: Stated as you know we are talking about cost and the City of Des Moines has had to reduce its budget by \$7 million and layoff people. The most recognized study on property values throughout the United States is done by (inaudible name of organization). Stated that residential values have decreased 34% and 12.8% of properties in Des Moines are in foreclosure and another 8% do not have sufficient equity to sell their properties. That affects 50,000 people in your city and it is only reasonable to take cost into consideration. Stated as a business person, if he does not then he will go out of business. Noted there have been developers who have filed for bankruptcy of \$1 billion in the Des Moines market.

Denny Marchand: Stated Mr. Conlin you keep bring up cost. Asked if 6 months ago you would have put in wood windows how much would have it cost you at that point versus what you have spent in legal fees since then.

Teresa Weidmaier: Stated it is also not fare to put the cost back on us when the problem is that the windows have already been purchased. Cost would not have been an issue as there are less expensive wood window options.

Jim Conlin: Stated they are building 200 new units a year and use vinyl windows in every unit except for the one property on 16th Street but we did reduce that cost by \$700,000.

Denny Marchand: Asked what he did to reduce that cost.

Jim Conlin: Replied that he hired a lobbyist in Washington so he could talk to people that were reasonable.

Denny Marchand: Noted that vinyl windows were not put in that property.

Jim Conlin: Replied that times are changing.

York Taenzer: Stated these vinyl windows will need to be replaced in 20 years.

Breann Bye: Stated the Commission cares about the long term value of properties.

York Taenzer: Asked Mr. Conlin if he has considered selling the property.

Jim Conlin: Stated no one would buy it.

York Taenzer: Asked if he has put it on the market.

Jim Conlin: Stated he has told people that he would donate the property.

Matthew McKinney: Asked the Commission to follow the guidelines. Noted that a lot of hypothetical situations have been discussed, a lot of if this happens or if we would have done this in the beginning. Stated those things are not valid and asked the Commission to not jump to a decision if the Commission was not prepared to make a decision. Stated the Commission has the evidence before it that they and Mr. Van Essen presented and that they would be more than happy to provide any additional information the Commission might need.

Denny Marchand: Stated that everything that you have discussed about vinyl siding and vinyl windows being something that is acceptable is contrary to every guideline he has ever read.

York Taenzer: Asked Jason to take a closer look at the material from the Secretary of the Interior Standards that the applicant referred to.

Jason Van Essen: Stated we certainly can review it and see how it relates in this context. Noted that we have not gotten to public comment yet and that he knows that Jack Porter is in attendance and is well versed in the Secretary of the Interior Standards. Stated the Commission also needs to remember that there are a lot of suggestions on how to do things

that the Park Service has put together and published to be a resource. But then there is the actual Secretary of Interior Standards. On top of that we have our own design guidelines that have been adopted. They are more specific than the Secretary of the Interior Standards and the point of doing that is to create something to help the Commission make decisions that reflect local values and opinions beyond general perimeters that have been issued at the national level. Stated a second purpose of having more specific design guidelines is to help property owners understand what is expected of them. It also allows for consistency in decision making and that is why we prepare staff reports we also look at past cases. In this case we brought up past cases where we have seen window replacement proposed.

Chair Holderness: Asked if there was anyone in the audience that wished to speak on the item.

Jack Porter (815 18th Street, Des Moines): Stated that he lives near the subject property and that he was the neighbor that called the City when he saw the windows being replaced to verify if the work had been approved. Noted that the Commission has a copy of the letter that he addressed to the City Council in support of the Commission's November 2011 decision. Asked the Commission to reaffirm that decision. Stated that as a property owner of a historic resource, he has not seen his property value go down, rather his assessed value seems to keep going up, which is likely due to the work that they have put in to their property.

Stated his observation as a State Historic Preservation Office staff member has been that maintaining and retaining as much historic fabric as possible has the greatest economical value and return. Noted that they have seen numerous articles about how replacement windows can have a 30 to 40 year payback because of the little amount of energy they actually save. Whereas, repairing existing historic windows or wood windows with weather stripping by far has the greatest return of investment. Noted that if these windows are from the 1950's then they have been there 60 plus years and warranties on most new windows are in the 10 to 20 year range. Stated they receive frequent calls about aluminum and vinyl replacement windows that were installed in the 1980's that need to be replaced because they have failed. They have material failure. The insulated glass has failed and they are fogging over. They have seen vinyl windows in Des Moines that are cracked and warped. Stated they come apart and that is fact.

Chair Holderness: Asked if there was anyone else in the audience that wished to speak on the item. *No one came forward.* Asked if there were any more comments or a motion.

York Taenzer: Moved approval of the staff recommendation.

Denny Marchand: Seconded the motion.

VOTE: A vote of 9-0-0 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 | |

ACTION OF THE COMMISSION:

The Commission approved a motion to uphold their previous decision based on the rationale described in the November 30, 2012 staff report to the Commission and in the February 13, 2012 staff communication to the Mayor and City Council.

On November 30, 2011 the Commission found that 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.

Date _____

34A



Brown, Winick, Graves, Gross, 666 Grand Avenue, Suite 2000
Baskerville and Schoenebaum, P.L.C. Ruan Center, Des Moines, IA 50309-2510

June 14, 2012

direct phone: 515-242-2410
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Via Hand Delivery

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

**Re: Appeal from May 16, 2012 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 apartment building located at 826 18th Street, Des Moines, Iowa (hereinafter the "Apartment Building"). Conlin Properties hereby formally appeals the May 16, 2012 decision ("Decision") of the Historic Preservation Commission ("Commission") that requires Conlin Properties incur twice the cost for replacing non-original windows in the steel-sided Apartment Building. A copy of the Commission's Decision is attached as Exhibit 1.

BACKGROUND FACTS

This appeal stems from the City of Des Moines issuing a notice that mandates Conlin Properties replace multiple windows in the Apartment Building and the Commission's subsequent Decision that doubles the cost of complying with the City's mandate. It is undisputed that the subject windows are non-original, decaying windows that are located in an Apartment Building that was completely renovated in the mid-twentieth century. Upon receiving notice from the City that the non-original windows must be replaced, Conlin Properties arranged for and began investing over \$6,000.00 in the Apartment Building and neighborhood to replace the decaying, single-paned, single-locked, non-original windows. Conlin Properties sought to replace the decaying windows with double-paned, double-locked, energy-efficient windows, which create a safer, quieter, more secure and energy efficient Apartment Building. Importantly, the proposed windows share the same size, shape, style, profile, location, and color as the non-original windows.¹ After replacing five (5) of the ten (10) non-original windows, the

¹ Attached as Exhibit 2 is a rendering of the proposed windows. As depicted in Exhibit 2, the proposed windows will be indistinguishable from the remaining wood windows and the appearance of the Apartment Building from the sidewalk and street will be uniform.

Department of Building posted a "Stop Work" Order on the Apartment Building and Conlin Properties immediately ceased replacing the windows. Conlin Properties was unaware a certificate of appropriateness was required to replace windows on the mid-twentieth century Apartment Building.

Conlin Properties promptly filed an application for a certificate of appropriateness ("Application"). The Application seeks to replace 10 of 54 windows in the Apartment Building and explains the replacement windows are thermal-pane windows. On May 16, 2012, the Commission reviewed and reheard argument on the Application. Thereafter, on or about May 31, 2012, the Commission filed its Decision granting the Application subject to a cost-prohibitive condition: that the windows shall be constructed of wood with no metal cladding. See Exhibit 1. As a result of the Commission's Decision, Conlin Properties filed this Appeal.

APPEAL STANDARD

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.* As explained below, the Commission's Decision requiring wood windows fails to satisfy these important requirements and the requirement to use wood should be waived.

THE COMMISSION'S DECISION IS IMPROPER

The non-original and decaying windows, located in an Apartment Building that was completely renovated in the mid-twentieth century, do not have any historical, architectural or cultural value. Indeed, during the November 30, 2011 and May 16, 2012 staff presentations, Mr. Jason Van Essen, a Senior City Planner with the City of Des Moines, explained that the Apartment Building has been "substantially altered" from its original configuration and that the subject windows are not the original windows. Mr. Van Essen further explained the steel-sided Apartment Building was substantially reconstructed around 1957 - long after the 1880s Victorian period that the Historic District was formed to preserve. Staff's admissions that the steel-sided Apartment Building was "substantially altered" in the mid-twentieth century - nearly eighty (80) years *after* the 1880s era that the District was created to preserve - and that the windows are not original confirms the lack of historical, architectural and cultural value. Consistent with Staff's statements, the Commission was presented with the opinion of Mr. Gene F. Nelsen, an MAI and CCIM certified and licensed Iowa appraiser, who opined: "...the subject property does not appear to have any significant historical value." See Report, attached as Exhibit 3. Tellingly, the City failed to present any evidence contrary to Mr. Nelsen's report or that otherwise demonstrated the windows at issue hold any such value. And the Commission's Decision is void of any finding that the subject windows hold historical, architectural, or cultural value. Pursuant to the Des Moines Municipal Code, 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 even attempt to 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 that have no historical, architectural or cultural value, the Commission arbitrarily, capriciously, and unreasonably rejected the proposal and imposed a cost-prohibitive condition: requiring the use of only wood windows.

On November 30, 2011 and May 16, 2012, 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 Apartment Building 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 require homeowners incur double the cost for repairs and maintenance on matters the City mandates must be replaced. This is especially true when the windows being replaced are not original and have no historic value and where the proposed windows share the same size, shape, style, profile, location, and color as the non-original windows and the proposed windows are more energy efficient, quieter, and safer than the non-original windows.

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, it’s not our problem.” Again, on May 16, 2012, reconfirming it does not believe cost should be considered, the Commission asked Staff if it was okay to disregard cost. Staff responded and stated, in part, that while there’s “nothing written,” “it’s implied” that the Commission should disregard cost “by the fact that we’re directed to make decisions based [not upon cost, but] on secretary of interior standards and then the Des Moines adopted design guidelines.” The Commission’s admitted position and Staff’s recommendation of turning a blind eye to cost,² a fundamental element of any maintenance or repair, is not only unreasonable but it is arbitrary and capricious.³ The City Council should reconsider the

² During the May 16, 2012 meeting, statements were made about using lower cost, lower quality, wood windows; however, those statements were based upon an unauthenticated and outdated bid for windows that are not the same size and shape as the windows being replaced.

³ The Decision is also contrary to the Secretary of Interior Standards, which Conlin Properties explained to the Commission state that when replacing a window, “[i]f using the same kind of material is not technically or

Mayor Cownie & Des Moines City Council Members
June 14, 2012
Page 4

Commission's unreasonable Decision to disregard cost and require the 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 and the lack of historical value, 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.⁴ 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 Apartment Building 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 amended, serves the public policy concerns that the Municipal Code was adopted to advance. Conlin Properties respectfully requests that the City Council waive the requirement⁰ of using wood windows and permit the installation of windows as requested.

Very truly yours,



Douglas E. Gross

Enclosure

cc: Conlin Properties
00326315

economically feasible when replacing windows deteriorated beyond repair, then a compatible substitute material may be considered." THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES, U.S. Department of the Interior, National Park Service, 1995, p. 82, attached as Exhibit 4; *see also* THE SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION & ILLUSTRATED GUIDELINES ON SUSTAINABILITY FOR REHABILITATING HISTORIC BUILDINGS, U.S. Department of the Interior, National Park Service, 2011, p. 5, attached as Exhibit 5. Conlin Properties explained to the Commission that requiring wood is not economically feasible and that the proposed vinyl is a compatible substitute. Further, Conlin Properties invited the Commission to ask any question or seek further input from Conlin Properties or any expert on any issue before reaching a decision, which is expressly permitted under the Des Moines Municipal Code. *See* Des Moines Municipal Code § 58-30(e)(6). The Commission declined this invitation.

⁴ Conlin Properties also informed the Commission that requiring the use of wood windows would be unconstitutional because, among other things, it would constitute inverse condemnation.



May 31, 2012

James Conlin
Conlin Properties
319 7th Street
Des Moines, IA 50309

RE: 826 18th Street – COA #20-2012-5.14

Dear Mr. Conlin:

On May 16, 2012, the Historic Preservation Commission reheard your request as directed by the City Council to allow new information to be presented for consideration. At that meeting the Commission approved a motion to uphold their previous decision. Attached is an updated Certificate of Appropriateness reflecting the May 16, 2012 action of the Commission.

Please note that the five (5) vinyl windows that were previously installed must be replaced with windows that 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 staff.

If you believe that the Commission's action was arbitrary or capricious you may appeal their May 16, 2012 decision to the City Council. An appeal 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 May 31, 2012. An appeal must be submitted no later than June 14, 2012.

If no appeal is received you will have 90 days to replace the five vinyl windows 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 September 13, 2012. The five windows yet to be replaced can be replaced 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.

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".

Jason Van Essen, AICP
Senior City Planner

cc: Phil Delafield, Community Development Director
Michael Ludwig, Planning Administrator
Roger Brown, Assistant City Attorney

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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: 20-2012-5.14 REHEARING |
| | : | |
| CONLIN PROPERTIES | : | |
| | : | |
| PROPERTY LOCATION: | : | MEETING DATE: MAY 16, 2012 |
| | : | |
| 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:

City Council initiated reconsideration of COA 20-2012-5.14 to allow new information to be submitted for consideration regarding the replacement of 10 first floor windows.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

The Commission approved a motion to uphold their previous decision based on the rationale described in the November 30, 2012 staff report to the Commission and in the February 13, 2012 staff communication to the Mayor and City Council (see attachments).

On November 30, 2011 the Commission found that 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.

Conlin Properties
826 18th Street
20-2012-5.14 REHEARING

-2-

May 16, 2012

VOTE: A vote of 9-0-0 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: 5/31/12

Filed By: JV

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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.

34A

| | |
|--|---|
|  <p style="text-align: center;">Council Communication Office of the City Manager</p> | Date: February 13, 2012 |
| | Agenda Item No. 56 |
| | Roll Call No. <input type="text"/> |
| | Communication No. <u>12-055</u> |
| Submitted by: Phillip DeLafield, Community Development Director | |

AGENDA HEADING:

Public hearing regarding request from Conlin Properties to appeal the decision of the Historic Preservation Commission conditionally approving a Certificate of Appropriateness for the replacement of ten windows in the multiple-family dwelling at 826 18th Street

- A. Resolution affirming the decision of the Historic Preservation Commission
- B. Alternate resolution reversing the decision of the Historic Preservation Commission

SYNOPSIS:

Conlin Properties is appealing the November 30, 2011 decision of the Historic Preservation Commission to conditionally approve a Certificate of Appropriateness (COA) for the replacement of ten wood windows at 826 18th Street in the Sherman Hill Local Historic District. The applicant believes the conditions of approval are unreasonable as they will require use of a more expensive product than originally proposed. 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.

The staff report, photographs and meeting summary from the November 30, 2011 Historic Preservation Commission meeting and the appeal by Conlin Properties are attached. Staff recommends that the City Council uphold the decision of the Historic Preservation Commission.

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

Conlin Properties is appealing the November 30, 2011 decision of the Historic Preservation Commission to conditionally grant a Certificate of Appropriateness (COA) for the replacement of ten wood windows at 826 18th Street in the Sherman Hill Local Historic District. The Commission approved the staff recommendation by a vote of 8-0 and found that the replacement of the ten windows would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic Preservation Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications so long as the replacement windows comply with 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.

Conlin Properties believes that it is unreasonable to require a property owner to incur higher cost in replacing windows by requiring the use of wood windows that generally match the design of the existing wood windows. The appeal indicates that ten wood replacement windows would cost over \$12,000 whereas, the proposed vinyl replacement windows would cost \$6,275. Bid documentation has not been submitted to support these figures. It is also not clear if the \$12,000 figure includes the cost of the five vinyl windows that have already been installed. The appeal suggests that the Commission did not take into consideration the purpose of the Historic Preservation Ordinance as defined by Section 58-26 or the criteria for reviewing applications as established by Section 58-31. The appeal notes that the ten windows are located in a later addition that has little historical significance and that the house has metal siding. Applicable Municipal Code sections are as follows:

Sec. 58-26. Purpose.

It is declared as a matter of public policy that the protection, enhancement and perpetuation of districts of historical and cultural significance is required in the interest of the health, prosperity, safety and welfare of the public. The purpose of this article is to:

- (1) Promote the educational, cultural, economic and general welfare of the public through the protection, enhancement and perpetuation of districts of historical and cultural significance;
- (2) Safeguard the heritage of the city by preserving districts in the city which reflect the elements of its cultural, social, economic, political, historical, aesthetic and architectural significance;
- (3) Stabilize and improve property values and the equity held by the citizens in their property;
- (4) Foster civic beauty and pride and enhance civic design;
- (5) Protect and enhance the city's attraction to tourists and visitors;
- (6) Strengthen the economy of the city;
- (7) Facilitate the rehabilitation and revitalization of certain older neighborhoods; and
- (8) Provide for a variety of living experiences within the city for both old and new residents.

Sec. 58-31. Certificate of appropriateness 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 scheduled meeting. In acting upon each application, the commission shall consider the following:

- (1) Design guidelines, standards and criteria developed by the commission and approved by the city council, pursuant to subsection 58-30(e)(2) of this article.
- (2) Standards for rehabilitation promulgated by the Secretary of the Interior.
- (3) The relationship of proposed changes to exterior features of structures in the neighborhood.

Furthermore, it is the intent of this article that the commission shall be reasonable in its judgments and shall endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value, except when such a proposal would seriously impair the historical values and character of the surrounding area. Also, the commission shall be sympathetic to proposals utilizing energy saving modifications, such as solar panels.

Staff believes the Commission's action followed the purpose and procedures established in the Historic Preservation Ordinance. The Commission was "reasonable in its judgment" and approved the replacement of windows subject to conditions. In requiring the replacement windows be constructed of wood the Commission followed the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts as approved by the City Council. 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.

Maintenance of the subject property impacts the collective value and historic integrity of the district, which impacts all property owners within the district. The Historic Preservation Commission reviews a substantial number of requests that involve window restoration or replacement. The November 2011 staff report noted that over the previous twelve month the Commission had reviewed eight cases similar to this case and in all instances the Commission either required the existing wood windows to be repaired or replaced with wood windows. The eight properties consisted of four multiple-family residential properties and four owner-occupied, single-family dwellings. Copies of the staff reports and COAs for these cases were provided to the applicant's legal representatives.

The appeal notes that the subject building is sided with metal and that the windows are located in a later addition. The windows are located in an addition that was constructed sometime between the 1920 and 1957. The original portion of the building was built 1888 according to the Polk County Assessor's web page. The Commission's action took into consideration the alternations to the property as they found that requiring the existing wood windows to be repaired and retained was not warranted. Cover up siding, such as metal or "depression brick" is not a material or architectural element of significance in the Sherman Hill Historic District. The Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts state "artificial and cover-up siding should be removed and the original siding restored." Removal of the siding was not proposed by the applicant or required by the Commission.

During the Commission meeting, the applicant implied that the windows needed to be replaced in response to findings made by City inspectors. Unit 1 of the subject property was inspected by the Housing Services Department for compliance with Section 8 Program requirements on September 7, 2011. As a result of this inspection the application was advised to repair or replace missing and damaged storm windows, to repair or replace damaged window sills, and to repair windows so that they will remain open without the use of props. The entire building was last inspected by the Neighborhood Inspection Divisions on June 16, 2010. No violations of the Rental Code were found during this inspection. The applicant was issued a rental certificate on June 24, 2010, which is valid until June 27, 2013. Replacement of windows was not required by the Housing Services Department or the Neighborhood Inspection Division. The repair or replacement of storm windows is not subject to review by the Commission as it is defined as ordinary maintenance by the Historic Preservation Ordinance.

Conlin Properties has owned the subject property since 1989. Conlin Properties owns a second property in the Sherman Hill Local Historic District located at 677 16th Street. This property contains "The Harrington" apartment building. In 2006 and in 2007 Conlin Properties submitted applications for review by the Historic Preservation Commission. Work that was approved by the Commission included the replacement of windows.

PREVIOUS COUNCIL ACTION(S):

Date: January 23, 2012

Roll Call Number: 12-0084

Action: On setting the date for the appeal by Conlin Properties of decision by the Historic Preservation Commission regarding replacement of windows at 826 18th Street, (2-13-12). Moved by Hensley to adopt. Motion Carried 7-0.

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BOARD/COMMISSION ACTION(S):

Board: Historic Preservation Commission
Date: November 30, 2011

Resolution Number: 20-2012-5.14

Action: Historic Preservation Commission voted 8-0 to approve a Certificate of Appropriateness with conditions regarding the replacement of 10 windows.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

Enforcement of the Certificate of Appropriateness by staff depending on the action taken by the City Council.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the second floor of City Hall, 400 Robert D. Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org

34A



EXHIBIT 2

Item 34A
Toll Call # _____

10580 Justin Drive
Urbandale, IA 50322



Nelsen Appraisal Associates, Inc.

(Bus) 515-276-0021
(Fax) 515-276-9303

April 5, 2012

Mr. James Conlin
Conlin Properties, Inc.
500 Griffin Building
319 - 7th Street
Des Moines, Iowa 50309

Re: Apartment Building
826 18th Street, Des Moines, Iowa

Dear Mr. Conlin:

From our discussion yesterday, it is our understanding that you intend to replace windows in the apartment building at the above-described address. This property is located in the Sherman Hills Historic District for which there are covenants that apply to the properties within the district.

We have briefly perused the covenants and are of the mind that, due to previous renovations completed over the past 100+ years of the existence of the property at 826 18th Street, the improvements do not exhibit the characteristics desired by the historical district designation. This is evidenced by the several post-construction additions and the metal siding.

The non-conforming modifications that have occurred in the past to this and other properties have been "grandfathered" in beyond the establishment of the historical district designation and preceded the restrictive covenants now in existence.

According to our conversation, it appears the opinion of the neighbors within the district is that the proposed vinyl windows would not conform to the requirements of the covenants. In fact, it is their allegation that the addition of the vinyl windows would have a blighting influence on neighboring property values as a result of their installation.

It is not our intent to comment whether the windows are conforming or not. Rather, you have asked that we provide an opinion as to whether the installation of vinyl windows at this property would have an effect on value of the surrounding properties.

In light of the fact that the Sherman Hills Historical District has numerous properties that do not also conform to the current restrictive covenants, the neighborhood is far from being a

EXHIBIT 3

Mr. James Conlin
April 5, 2012 May 7, 2012
Page 2

cohesive, uniform development. While well-meaning, the restrictive covenants may simply not apply to all situations.

In this case, the subject has metal siding, non-conforming additions, and is otherwise not in conformance with the restrictive covenants. Any "blighting" influence on surrounding property values has occurred years ago. Therefore, as long as the windows blend well with the current color scheme of the subject building, and do not present an obvious change to the structure, they will not cause an additional blighting influence on the values of surrounding properties.

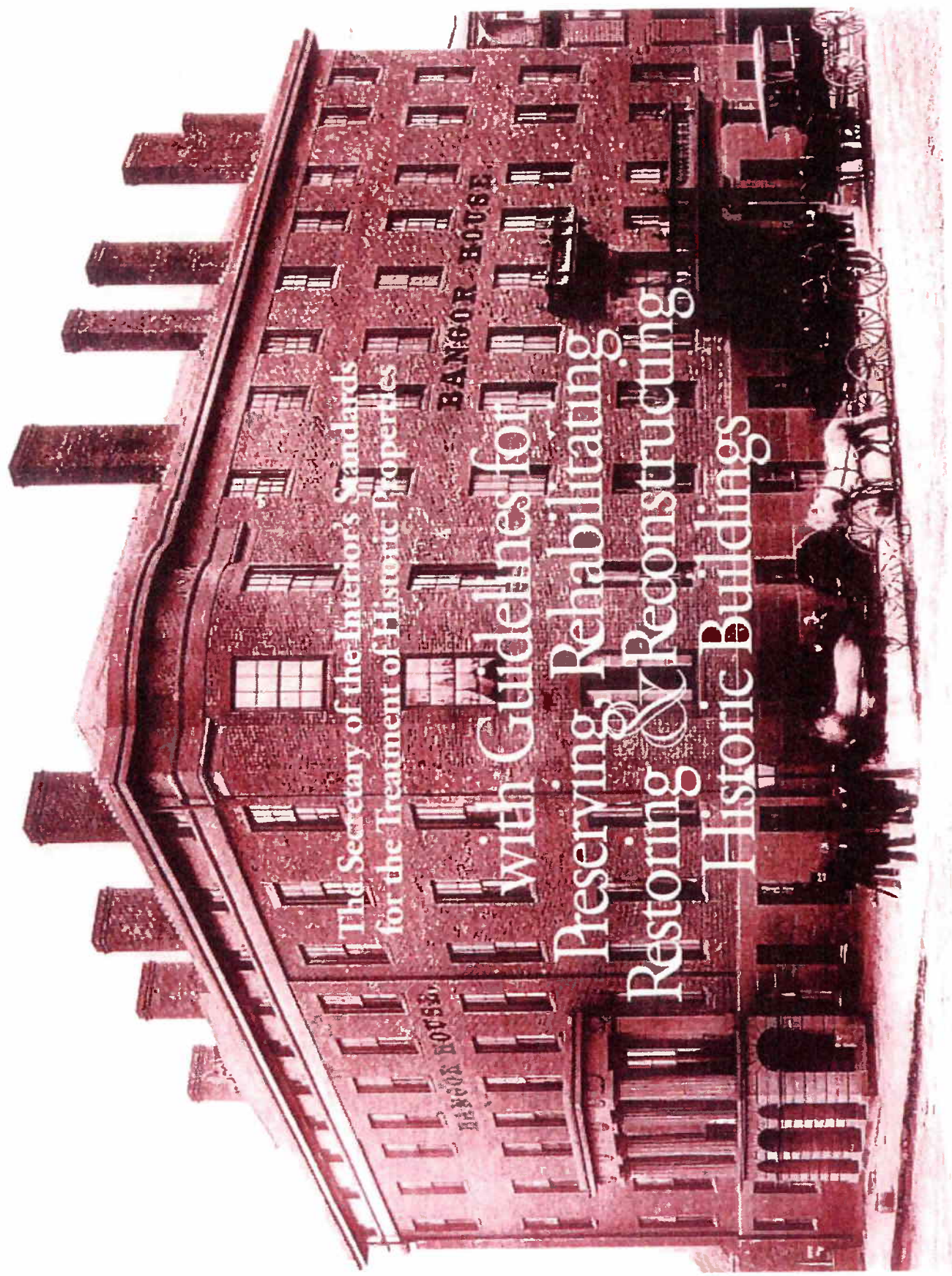
As currently configured with metal siding and porch additions that have occurred over the years, the subject property does not appear to have any significant historical value. Any attempts to reclaim historical significance through complete renovation, including removal of the metal siding, replacing damaged or rotting original siding, removing the non-conforming porches and reconstructing the exterior to original design, would certainly NOT be economically feasible. The cost to complete these tasks, following all of the rules involved with such a task, would far exceed the resulting market value of the property.

In contrast, replacing the existing rotting windows with energy-efficient, structurally sound windows will result in lower energy costs to the owner and, thus, an increased value overall.

Thank you for the opportunity to provide this service to you.



Gene F. Nelsen, MAI, CCIM
President
Certified General Real Property Appraiser
Iowa License CG01034
License Expiration Date: 6/30/2013



The Secretary of the Interior's Standards
for the Treatment of Historic Properties

with Guidelines for
Preserving, Rehabilitating,
Restoring & Reconstructing
Historic Buildings

The Secretary of the Interior is responsible for establishing professional standards and providing advice on the preservation and protection of all cultural resources listed in or eligible for listing in the National Register of Historic Places. The Secretary of the Interior's Standards for the Treatment of Historic Properties apply to all proposed development grant-in-aid projects assisted through the National Historic Preservation Fund, and are intended to be applied to a wide variety of resource types, including buildings, sites, structures, objects, and districts. They address four treatments: Preservation, Rehabilitation, Restoration, and Reconstruction. The treatment Standards, developed in 1992, were codified as 36 CFR Part 68 in the July 12, 1995 *Federal Register* (Vol. 60, No. 133). They replace the 1978 and 1983 versions of 36 CFR 68 entitled, "The Secretary of the Interior's Standards for Historic Preservation Projects." The Guidelines in this book also replace the Guidelines that were published in 1979 to accompany the earlier Standards.

Please note that The Secretary of the Interior's Standards for the Treatment of Historic Properties are only regulatory for projects receiving federal grant-in-aid funds; otherwise, the Standards and Guidelines are intended only as general guidance for work on any historic building.

Finally, another regulation, 36 CFR Part 67, focuses on "certified historic structures" as defined by the IRS Code of 1986. The "Standards for Rehabilitation" cited in 36 CFR 67 should always be used when property owners are seeking certification for Federal tax benefits.

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Kay D. Weeks and Anne E. Grimmer.

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The Secretary of the Interior's Standards
for the Treatment of Historic Properties

with Guidelines for
Preserving, Rehabilitating,
Restoring & Reconstructing
Historic Buildings

Kay D. Weeks and Anne E. Grimmer

U.S. Department of the Interior
National Park Service
Cultural Resource Stewardship and Partnerships
Heritage Preservation Services
Washington, D.C.
1995

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Rehabilitation

Recommended

Evaluating the overall condition of materials to determine whether more than protection and maintenance are required, i.e. if repairs to windows and window features will be required.

Repairing window frames and sash by patching, splicing, consolidating or otherwise reinforcing. Such repair may also include replacement in kind—or with compatible substitute material—of those parts that are either extensively deteriorated or are missing when there are surviving prototypes such as architraves, hoodmolds, sash, sills, and interior or exterior shutters and blinds.

Replacing in kind an entire window that is too deteriorated to repair using the same sash and pane configuration and other design details. If using the same kind of material is not technically or economically feasible when replacing windows deteriorated beyond repair, then a compatible substitute material may be considered.

Not Recommended

Failing to undertake adequate measures to assure the protection of historic windows.

Replacing an entire window when repair of materials and limited replacement of deteriorated or missing parts are appropriate.

Failing to reuse serviceable window hardware such as brass sash lifts and sash locks.

Using substitute material for the replacement part that does not convey the visual appearance of the surviving parts of the window or that is physically or chemically incompatible.

Removing a character-defining window that is unrepairable and blocking it in; or replacing it with a new window that does not convey the same visual appearance.

THE SECRETARY
OF THE INTERIOR'S
STANDARDS FOR
REHABILITATION &

ILLUSTRATED
GUIDELINES ON
SUSTAINABILITY
FOR
REHABILITATING
HISTORIC
BUILDINGS

U.S. Department of the Interior
National Park Service
Technical Preservation Services



Cover Photo: Green roof at the U.S. Department of the Interior, Washington, D.C.

THE SECRETARY OF THE INTERIOR'S
STANDARDS FOR REHABILITATION &

ILLUSTRATED GUIDELINES ON SUSTAINABILITY
FOR REHABILITATING HISTORIC BUILDINGS

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U.S. Department of the Interior
National Park Service
Technical Preservation Services
Washington, D.C.

2011

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WINDOWS

RECOMMENDED

Installing compatible and energy-efficient replacement windows that match the appearance, size, design, proportion and profile of the existing historic windows and that are also durable, repairable and recyclable, when existing windows are too deteriorated to repair.

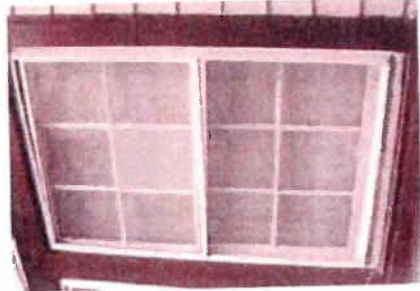
Replacing missing windows with new, energy-efficient windows that are appropriate to the style of historic building and that are also durable, repairable and recyclable.

Retrofitting historic windows with high-performance glazing or clear film, when possible, and only if the historic character can be maintained.

NOT RECOMMENDED

Installing incompatible or inefficient replacement window units that are not durable, recyclable or repairable when existing windows are deteriorated beyond repair or missing.

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Not Recommended: [31-32] Ill-fitting exterior aluminum storm windows viewed from both inside and outside are clearly not energy efficient.

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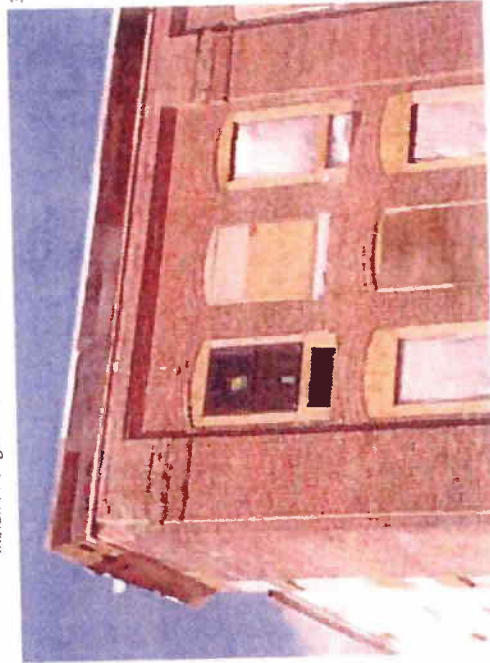
Recommended: [28-29] These exterior storm windows match the pane configuration of the historic interior windows in a residence and in a multi-story hotel building.



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Not Recommended: [30] Not only have incompatible windows that do not fit the size and shape of the historic window openings been installed, but the original openings have also been shortened to install through-the-wall HVAC units.

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S8 INSPECTION SUMMARY REPORT



Des Moines Municipal Housing Agency
100 E. Euclid - Suite 101 - Des Moines, IA 50313

826 18TH ST APT 1
DES MOINES IA 50314-1157

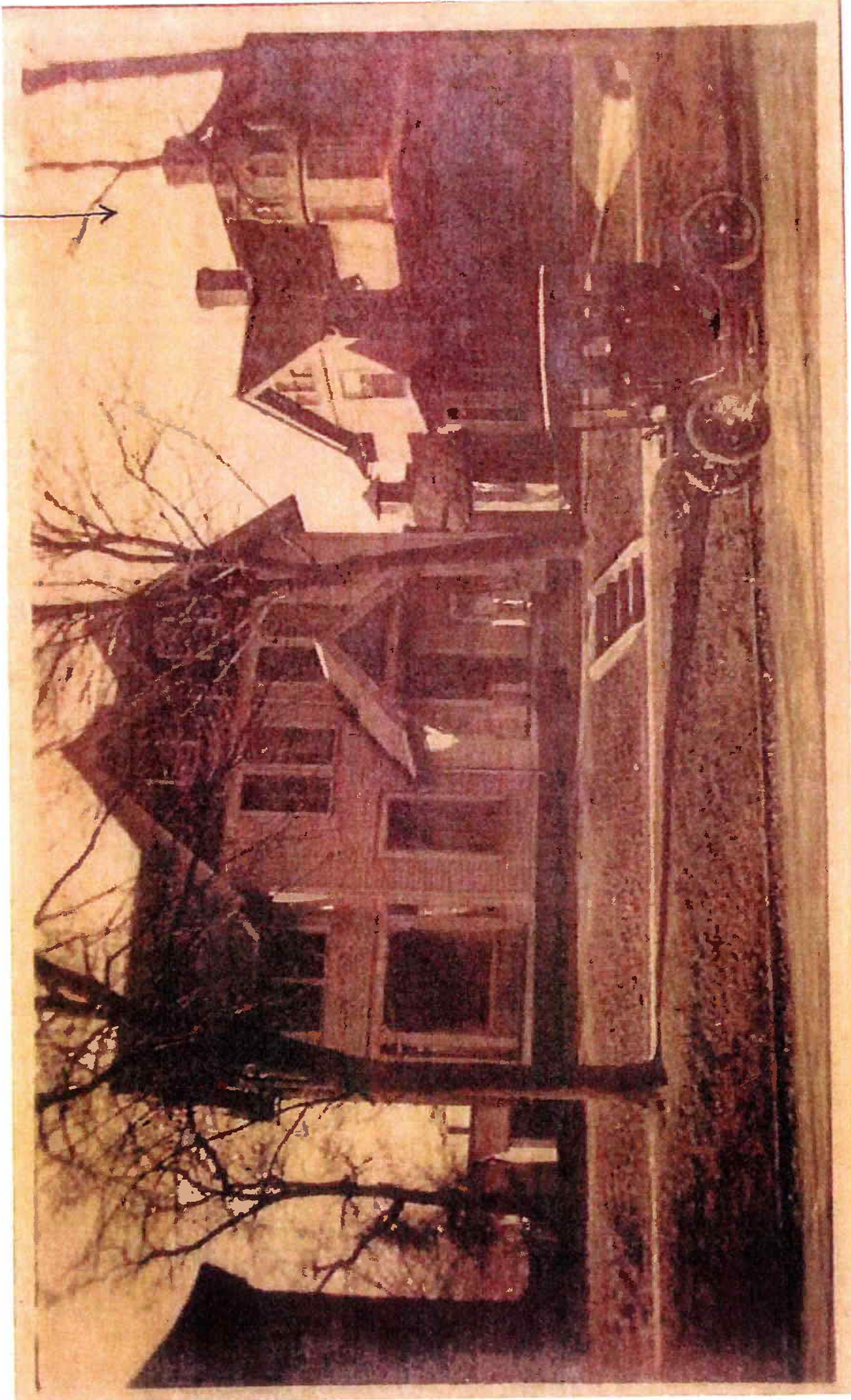
Inspection Number: 49975
Inspection Date: September 07, 2011
Inspector: David Bettis

Unit ID: 1009725
Inspection Type: ANNUAL
Overall Status: 1ST FAIL

ANY DEFICIENCY LISTED BELOW THAT IS NOT MARKED "PASS" IN THE ITEM STATUS COLUMN MUST PASS RE-INSPECTION WITHIN 28 DAYS OF THE ORIGINAL INSPECTION.

| ROOM | FLOOR | LOCATION | DEFICIENCY | ITEM STATUS | RESPONSIBLE PARTY | COMMENTS |
|---------------------------------|-------|---------------|---------------------------------------|-------------|-------------------|---|
| Bedroom <i>Bob</i> | 1 | Left Rear | WINDOW CONDITION | 1ST FAIL | OWNER | REPAIR/REPLACE MISSING, DAMAGED, BROKEN STORM WINDOWS AND FRAMES |
| Bathroom <i>Don</i> | 1 | Center Center | SEIZING CONDITION | 1ST FAIL | OWNER | REPLACE WATER DAMAGED AND OR DAMAGED TILES |
| Bathroom <i>Don</i> | 1 | Center Center | FLUSH TOILET IN ENCLOSED ROOM IN UNIT | 1ST FAIL | OWNER | SECURE TOILET SEAT |
| Bathroom <i>Don</i> | 1 | Center Center | SECURITY | 1ST FAIL | OWNER | REPAIR/REPLACE/ADJUST DOOR TO OPERATE AS DESIGNED |
| Building Exterior <i>Bob</i> | 1 | Center Rear | CONDITION OF EXTERIOR SURFACES | 1ST FAIL | OWNER | REPAIR/REPLACE ROTTED WINDOW SILLS ON THE EXTERIOR OF THE BEDROOM WINDOWS |
| Living Room <i>Bob</i> | 1 | Center Front | WINDOW CONDITION | 1ST FAIL | OWNER | REPAIR WINDOW(S) TO REMIAN OPEN WITHOUT USE OF PROPS |
| Living Room <i>Don</i> | 1 | Center Front | SECURITY | 1ST FAIL | OWNER | REPAIR/REPLACE ENTRY DOOR OF APARTMENT TO LATCH AS DESIGNED |

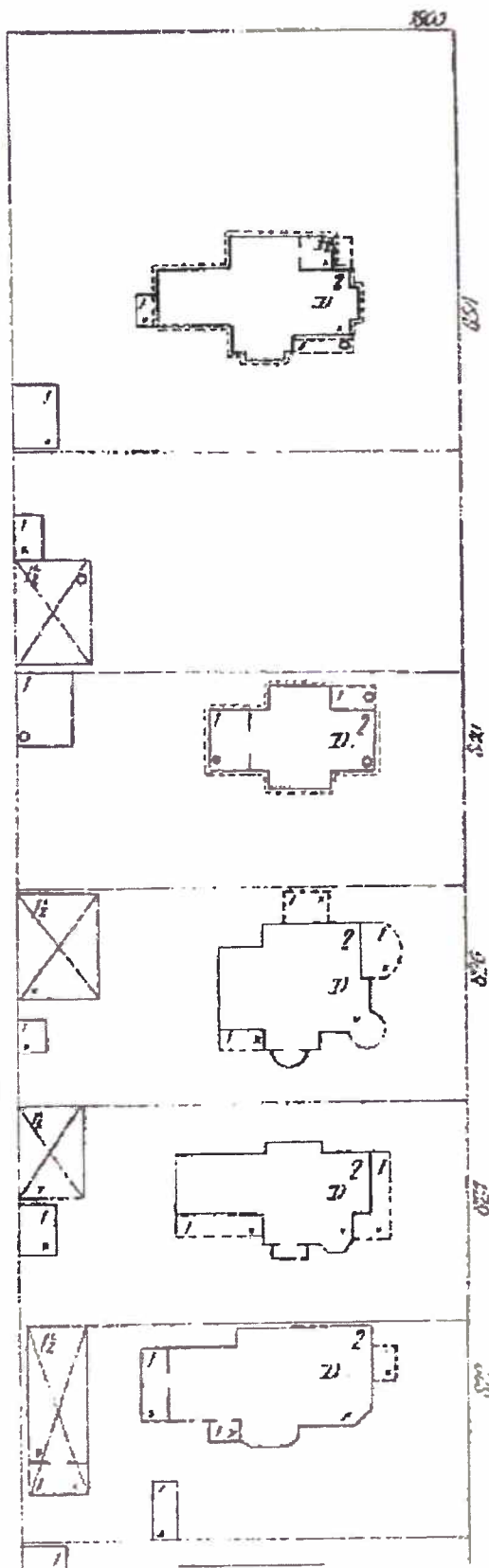
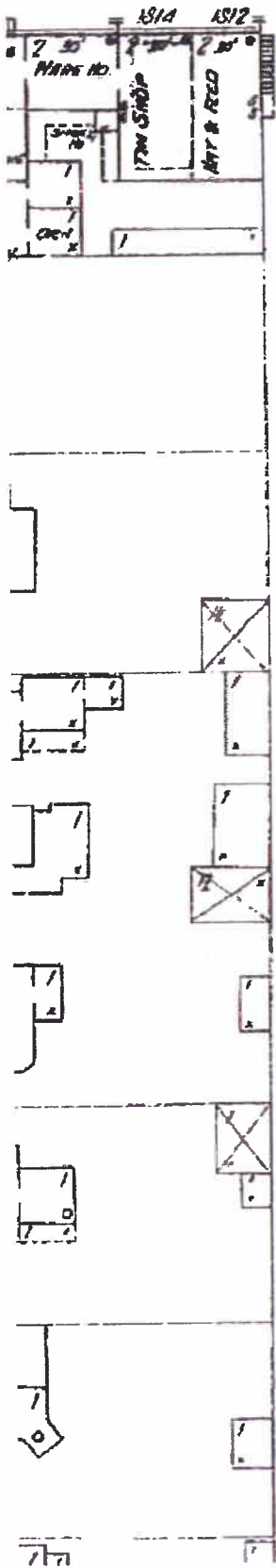
824 18th ST.



824 + 826 18th ST. CIRCA 1910

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826 18th ST. YR: 1901

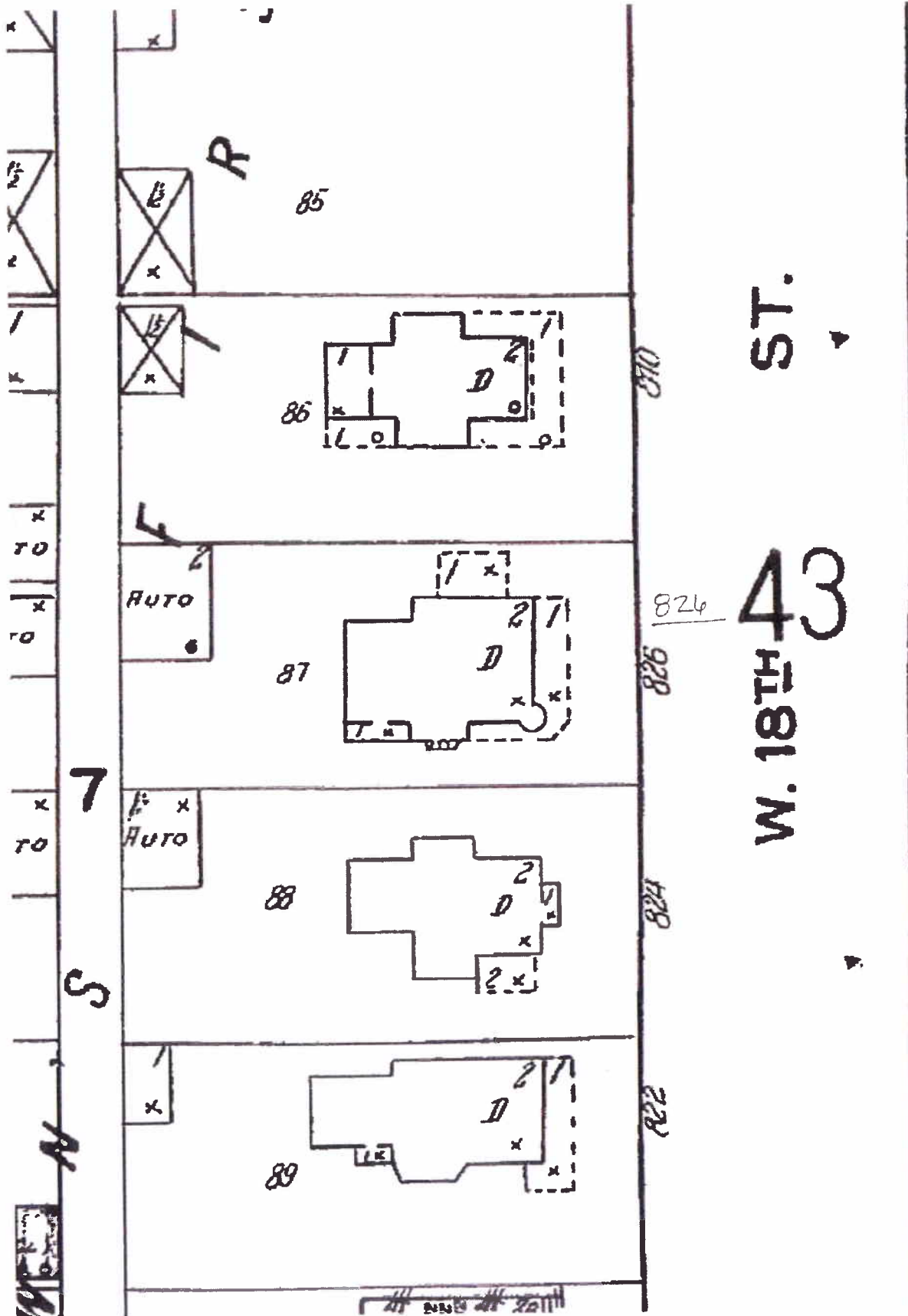


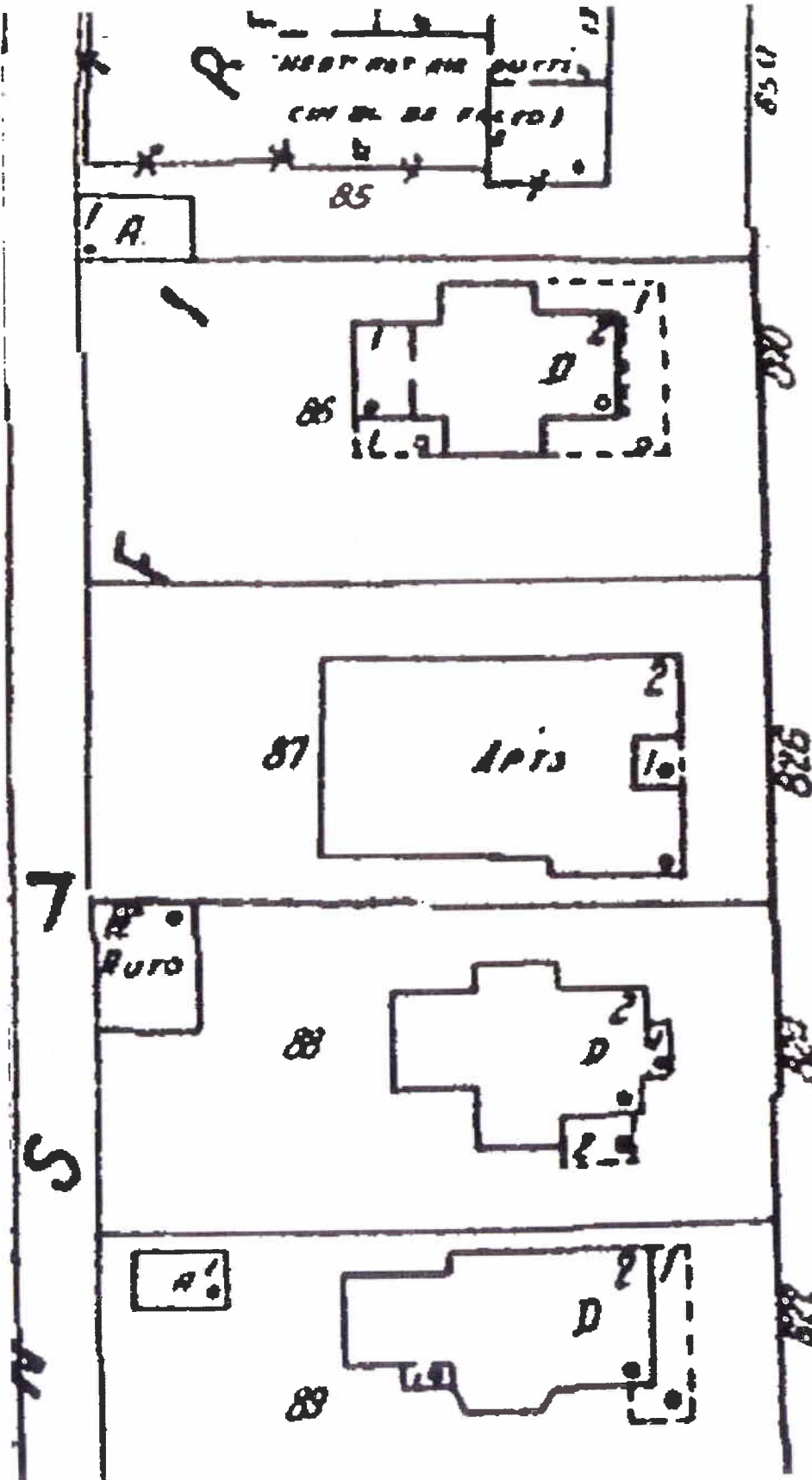
18TH (N.W.) ST. G.M. PIPE

826

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826 18th ST. YR: 1920





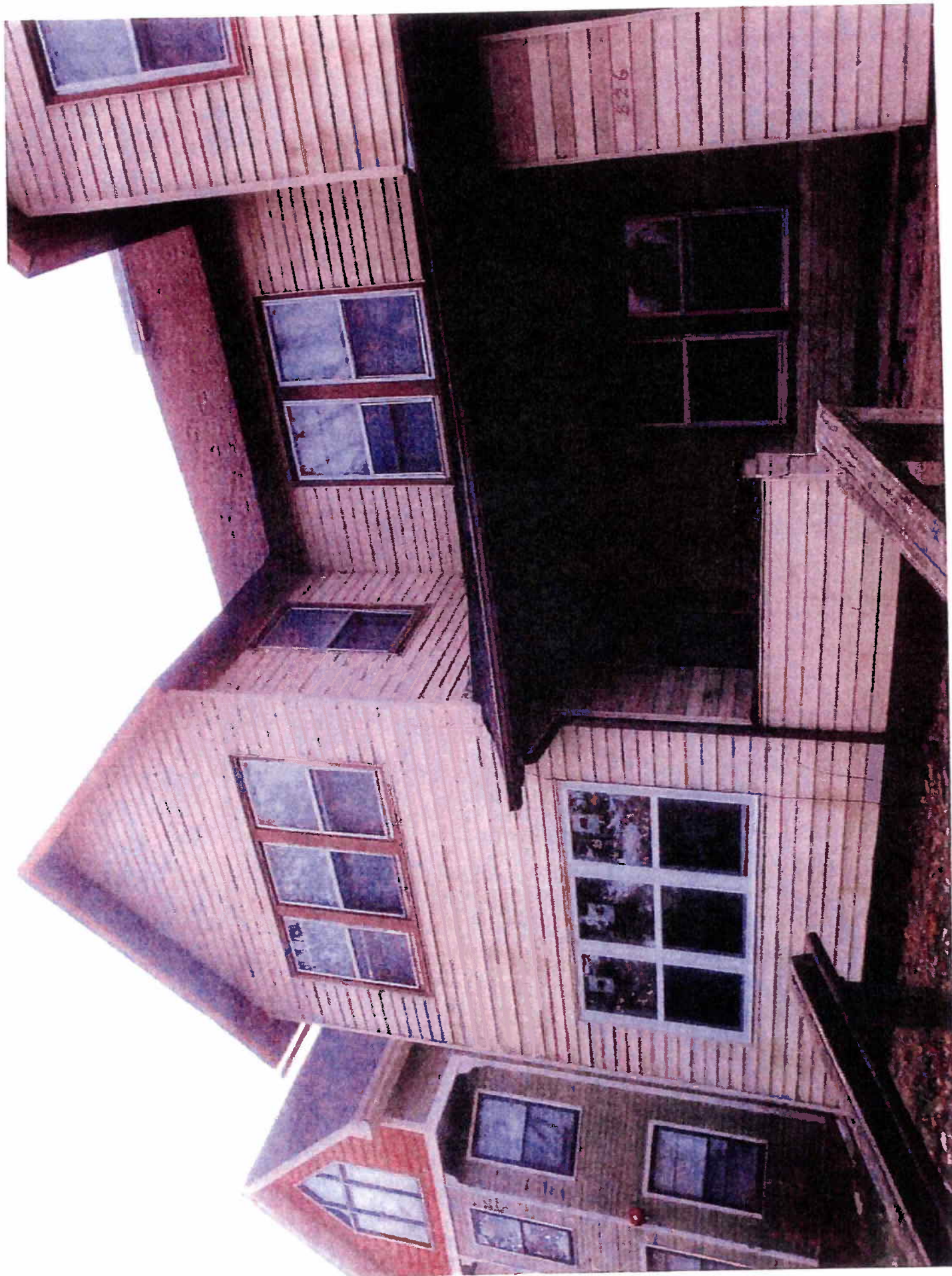
ST.
43

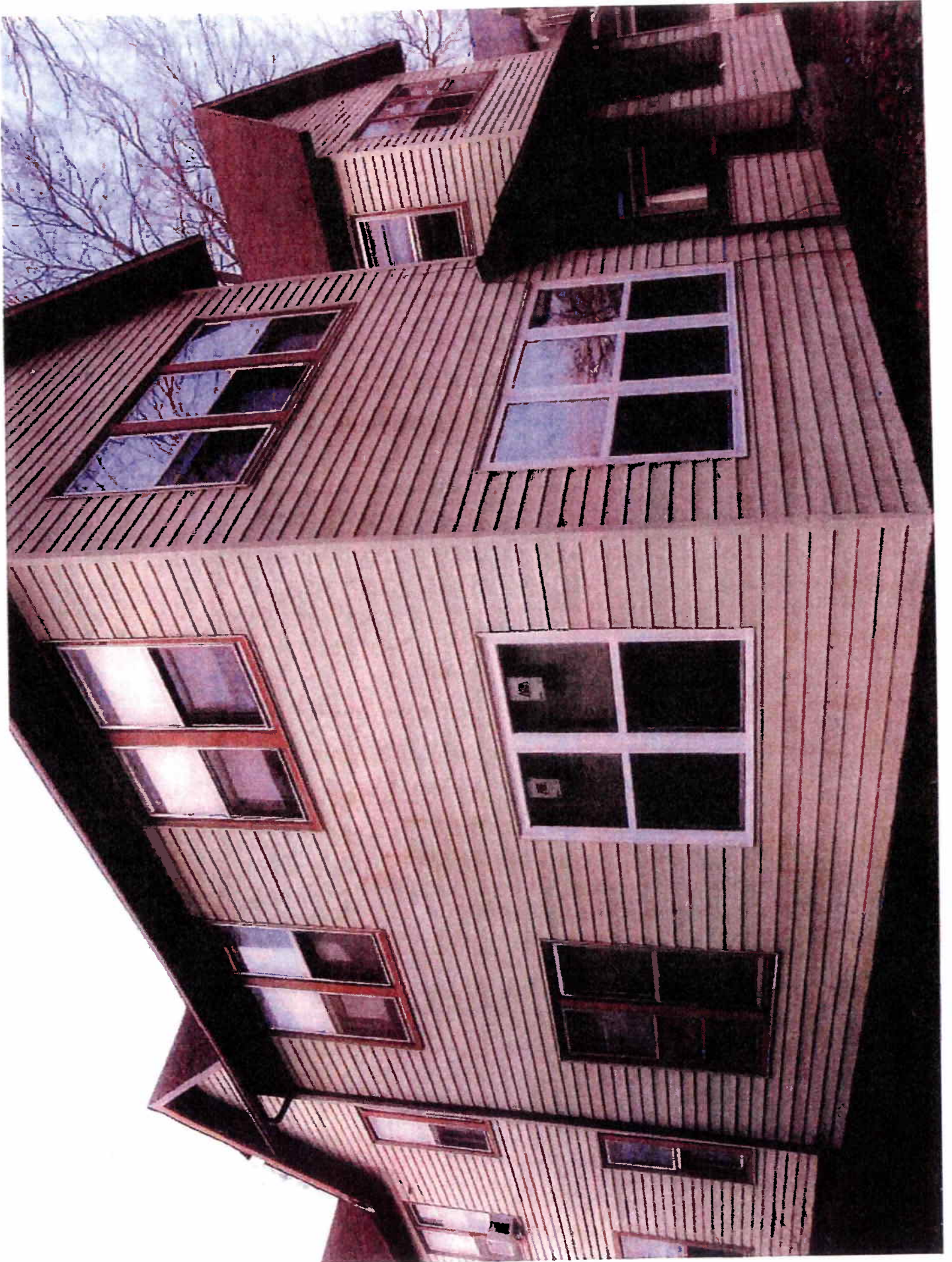
824

826 18th Street – Photograph Prior to Work – Polk Co Assessor 1/24/2004

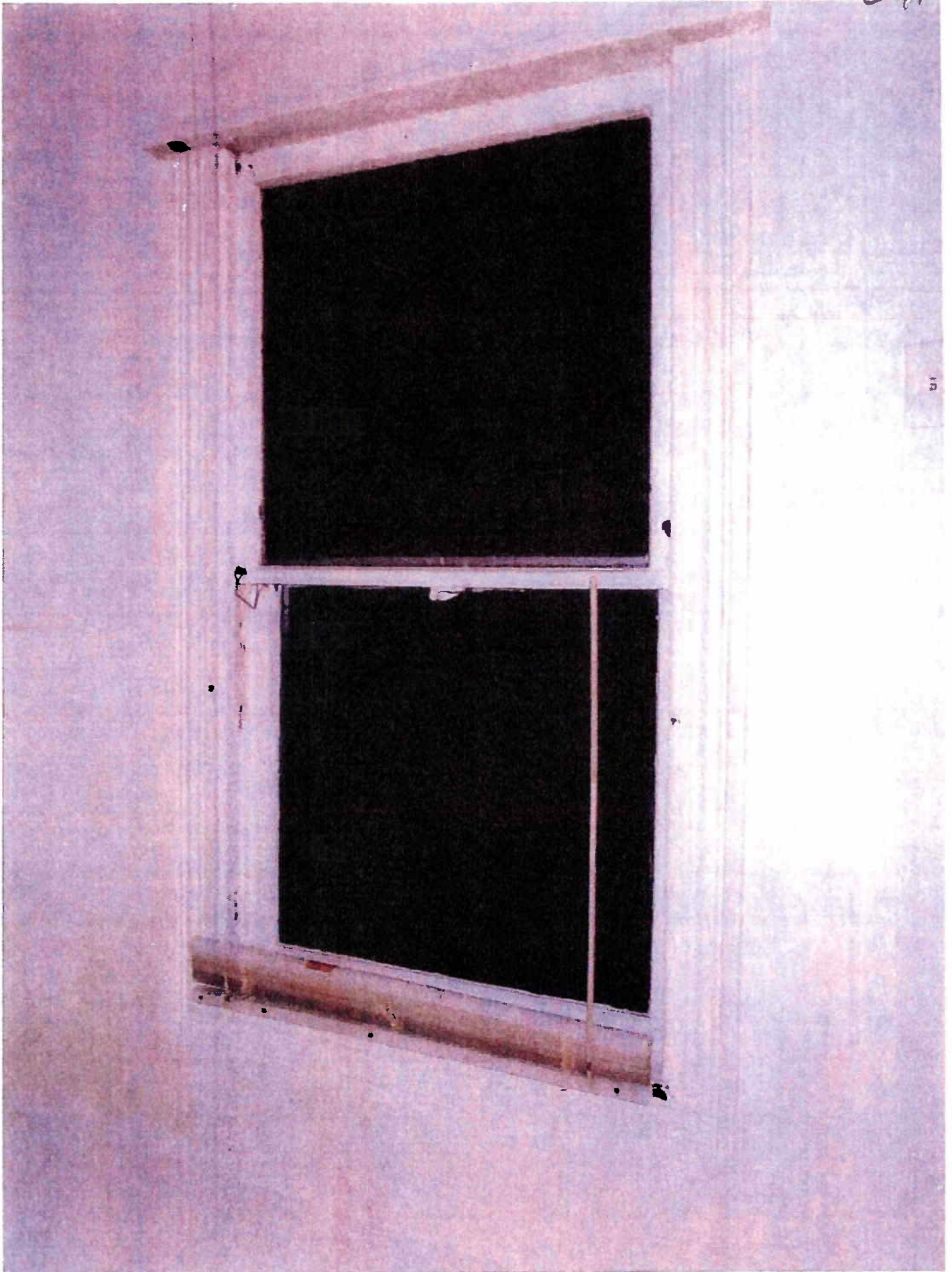


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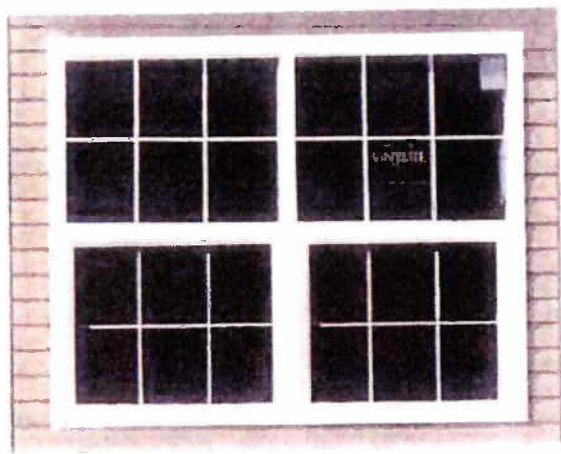


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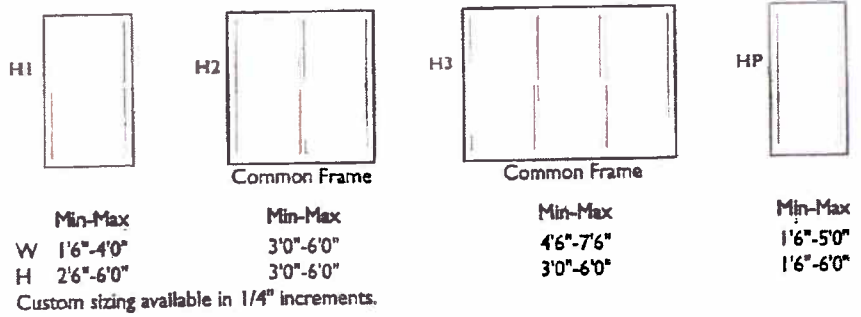
VINYLITE SINGLE HUNG WINDOWS



Vinylite Single Hung windows are a popular standard and are built to last a lifetime. They open and close with ease due to their heavy duty block and tackle system. These windows come in a wide range of sizes and configurations and can be combined with geometric shapes and radius units to create a sophisticated, custom look to fit any home.

FEATURES AND BENEFITS

- Double wall thickness for exceptional strength and durability
 - Fusion welded main frame and sash for enhanced performance
 - 3/4" warm-edge insulated glass standard
 - Low-E with Argon available
 - Easily removable screen standard on all operating units
 - Removable side load sash for easy cleaning
 - Easy operating block and tackle balances
 - Full sash perimeter fin and pile weatherstrip
 - Integral lift handle located on checkrail for easy operation
 - Internal grilles available
 - Continuous head and sill on multiple units up to 7'6" width
 - Metal reinforced check rail
 - Choice of three colors - white, almond, and clay
 - Color coordinated sash locks and keepers
 - Available oak, pine, white or almond vinyl veneered extension jambs
 - Custom sizing available
 - Full complement of special shapes
 - Limited lifetime warranty*
- * see warranty for details



"Vinylite products are tested to American Architectural Manufacturers Association (AAMA) and National Fenestration Rating Council (NFRC) standards. Specific performance information is available in the technical section of our dealer specifications catalog."