



Date December 17, 2012

RESOLUTION SCHEDULING HEARING ON APPEAL BY KENNETH DOWNING FROM DECISION OF THE HISTORIC PRESERVATION COMMISSION REGARDING THE PROPERTY AT 1308 9TH STREET (RIVER BEND HISTORIC DISTRICT)

WHEREAS, on October 17, 2012, the Historic Preservation Commission denied an application from Kenneth Downing for a Certificate of Appropriateness to retain metal trim covering and window covering installed on a 6-unit apartment building at 1308 9th Street in the River Bend Historic District; and

WHEREAS, Kenneth Downing has appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code, and seeks to be allowed to retain the metal trim and window covering as installed.

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

- 1. The appeal by Kenneth Downing is hereby set down for a public hearing before the City Council on January 14, 2013 at 5:00 p.m., in the Council Chambers at City Hall, Des Moines, Iowa.
2. The City Clerk is hereby authorized and directed to publish notice of the hearing in the form hereto attached all in accordance with §362.3 of the Iowa Code.

APPROVED AS TO FORM:

Moved by \_\_\_\_\_ to adopt.

[Signature]

Michael F. Kelley
Assistant City Attorney

APPDATA\LEGAL\LAWYERS\MFK\ROLL CALLS\Downing - Historic Preservation - Set Hearing.docx

Table with columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, COLEMAN, GRIESS, HENSLEY, MAHAFFEY, MEYER, MOORE, TOTAL, MOTION CARRIED, APPROVED, Mayor.

CERTIFICATE
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.
City Clerk

**CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION  
STAFF REPORT AND RECOMMENDATION  
Wednesday, October 17, 2012**

**AGENDA ITEMS #2** **20-2012-9.04**

**Applicant:** Request from Kenneth Downing (owner) represented by Michael Jones, Patterson Law Firm.

**Location:** 1308 9<sup>th</sup> Street (River Bend Historic District).

**Requested Action:** A) Retention of metal trim covering.  
B) Retention of window covering.

**I. GENERAL INFORMATION**

1. **Site Description:** The subject property measures 74 feet by 132 feet and contains a 6-unit apartment building and detached garage. The building was original constructed as a single-family dwelling circa 1880.
2. **Sanborn Map:** The 1901, 1920 and 1957 maps show that the footprint of the building has generally stayed the same over the years.
3. **Relevant COA History:** None.

**II. APPLICABLE DESIGN GUIDELINES**

1. **Architectural Guidelines for Building Rehabilitation:**
  - a. Artificial and cover-up siding should be removed and the original siding restored.
  - b. Resurfacing the sides of a building with other than original materials such as stone or brick veneer, cedar shakes, asphalt shingles, masonite, aluminum, steel, vinyl or diagonal wood or wide board lap siding is not permitted.
  - c. Gable ends, back porches, lean-tos and other small original structures should be resurfaced in material that is the same as the original material.
  - d. Existing windows should be retained, reconditioned and well maintained to be energy sound.
  - e. 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
  - f. 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.
  - g. Existing door and window openings should not be blocked down to accommodate stock sizes.
  - h. Air conditioners should not be put in the windows of any primary façade.

- i. 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.

*On April 24, 2012, a stop-work order was issued as metal was being applied to the exterior of the primary building. The metal generally covers the trim and the front gables of the building. The front gable windows have also been covered with an undetermined material. These alternations were made without a Certificate of Appropriateness. A violation notice was mailed to the applicant on July 11, 2012 since an application for a Certificate was not submitted.*

*An application has now been submitted. It indicates that the owner covered the trim approximately 13 years ago with tin to abate lead based paint but over the years the tin had blown off. The application also states that the windows are in need of repair so they were covered.*

*Attached to this staff report is a picture from the Polk County Assessor's webpage of the building that was taken on April 21, 2006. The picture shows most of the gable trim working being exposed with a small segment of tin wrap on the primary gable. The picture also demonstrates that the house has ornate trim work that are character defining details.*

*The application states that the owner wishes to maintain the property as efficiently as possible as it is an income property and notes that third floor painting is dangerous and expensive. Wrapping wood material can trap moisture and cause deterioration. The wrap does not appear to be a long-term solution and is no less challenging to apply than performing typical maintenance, such as painting.*

*The subject work does not comply with the Architectural Guidelines for Building Rehabilitation*

### **III. STAFF RECOMMENDATION**

Staff recommends denial of the requested Certificate of Appropriateness. The applicant may perform general maintenance such as replacing window sills with matching wood or applying wood epoxies without a Certificate.

# PATTERSON LAW FIRM, L.L.P.

Gary D. Ordway  
Robin L. Hermann  
Harry Perkins III  
Gregory J. Wilson  
Jeffrey A. Boehlert

Douglas A. Haag  
Patrick V. Waldron  
Michael S. Jones  
Gregory A. Witke  
Martin C. Sprock

Ryan M. Clark  
Fred M. Haskins  
Mark A. King  
Cory D. Abbas  
Jason W. Miller

Michael J. Miller  
Benjamin R. Merrill  
Julie C. Gray  
Jeffrey R. Edgar

G.O. Patterson  
(1914-1982)  
Michael F. Lacey, Jr.  
(1943-2012)  
James A. Lorentzen  
Roy M. Irish  
(Retired)

November 16, 2012

**SENT BY FAX AND ORDINARY MAIL**

Diane Rauh, City Clerk  
City Hall  
400 Robert D Ray Drive  
1st Floor  
Des Moines, IA 50309

Re: Case # 20-2012-9.04  
Kenneth E. Downing  
1308 9<sup>th</sup> Street  
Des Moines, Iowa 50314-2708

NOV 19 PM 1:11  
PATTERSON LAW FIRM

Dear Ms. Rauh:

I am writing on behalf of my client, Kenneth Downing, who lives at 1318 9<sup>th</sup> Street, Des Moines, IA 50314. Please consider this to be the written notice of appeal to the Des Moines City Council of the decision of the City of Des Moines Historic Preservation Commission, described in the attached copy of the November 5, 2012 decision of Jason Van Essen.

The Des Moines Historic Preservation Commission exceeded its authority and acted arbitrarily and capriciously by demanding that Mr. Downing remove the metal trim covering and plexiglass window covers. The metal trim and plexiglass window inserts do not constitute an alteration of any exterior features of the structure. Furthermore, both items involve ordinary maintenance and repair to correct deterioration, decay, or damage to the dwelling. The work performed by Mr. Downing was to restore the structure to its condition prior to wind damage which caused the previously installed metal trim to, in part, come free from the structure. The use of these materials did not change the type of building materials. Furthermore, changes in the type and design of windows and in the color of the outer surfaces of a

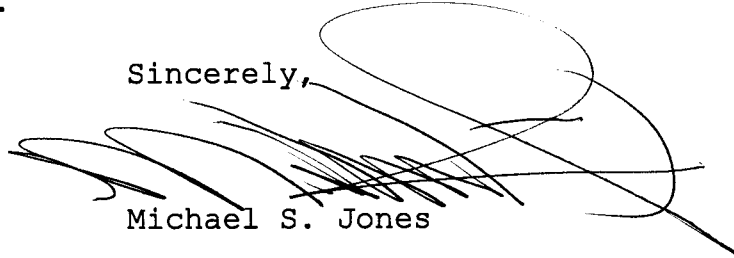
November 16, 2012

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structure are considered to be ordinary maintenance and repair, and therefore are not alterations.

Wherefore, Kenneth E. Downing, as owner of the property at 1308 9<sup>th</sup> Street in Des Moines requests that the City Council overrule and reverse the actions of the City of Des Moines Historic Preservation Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Jones", is written over the word "Sincerely,". The signature is stylized and somewhat illegible due to overlapping lines.

Michael S. Jones

MSJ/rl

Enclosures

cc: Jason Van Essen



November 5, 2012

Kenneth Downing  
1318 9<sup>th</sup> Street  
Des Moines, IA 50314

RE: Request to retain metal trim covering and plexiglass window covers at 1308 9<sup>th</sup> Street in the River Bend Local Historic District (Case # 20-2012-9.04)

Dear Mr. Downing:

On October 17, 2012, the City of Des Moines Historic Preservation Commission voted 9-0 to deny your request to retain the metal trim covering and plexiglass window covers that were installed earlier this year. As a result they must be removed in order to bring the property into conformance with Chapter 58 of the City Code. In cases where work is necessary to abate a violation, the work must be completed in 90 days unless a mutually agreeable timeline is reached between the property owner and City staff.

If you believe the Commission's action was arbitrary or capricious, you may appeal their decision to the City Council. Appeals must be in writing and filed with the City Clerk no later than ten business days after the filing of the above-mentioned decision. The date of this letter serves as the filing date. An appeal must be submitted no later than November 20, 2012.

If no appeal is received you will have 90 days to remove the metal trim covering and plexiglass window covers unless a mutually agreeable timeline is reached between you and City 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 February 18, 2013. This timeframe does 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.

You may perform maintenance activities such as painting, caulking, applying wood epoxies or replacing damaged window sills with matching wood as needed once the cover-up material has been removed. This level of work does not require a Certificate of Appropriateness since it is considered ordinary maintenance by the Historic Preservation Ordinance.

Please contact me at 515-283-4147 or at [jmvanessen@dmgov.org](mailto:jmvanessen@dmgov.org) if you have any questions.

Sincerely,

Jason Van Essen, AICP  
Senior City Planner

cc: Michael Jones, Attorney - Patterson Law Firm  
Michael Kelley, Assistant City Attorney  
Michael Ludwig, Planning Administrator