



Date January 14, 2013

RESOLUTION **AFFIRMING** THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO DENY A CERTIFICATE OF APPROPRIATENESS TO RETAIN METAL TRIM COVERING AND WINDOW COVERING INSTALLATION ON A 6-UNIT APARTMENT BUILDING AT 1308 9TH STREET IN THE RIVER BEND HISTORIC DISTRICT

WHEREAS, on October 17, 2012, the Historic Preservation Commission recommended denial of an application from Kenneth Downing for a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9th Street in the River Bend Local Historic District (the Property); and

WHEREAS, pursuant to Section 58-31(f) of the Des Moines Municipal Code, Kenneth Downing has appealed the decision by the Historic Preservation Commission and seeks to retain the metal trim covering and plexiglass window covering installed on the Property; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1934, it was duly resolved by the City Council that the appeal be set down for hearing on January 14, 2013 at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on January 3, 2013, as provided by law, setting forth the time and place for hearing and was sent to applicant's attorney on November 29, 2012; 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; and

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.

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

1. The public hearing on this appeal is hereby closed.



Roll Call Number

Agenda Item Number

48A

Date January 14, 2013

2. The City Council hereby finds that the decision of the Historic Preservation Commission denying a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9th Street in the River Bend Local Historic District followed the guidelines established by Iowa Code Section 303.34(3) and Section 58-31(f) of the Des Moines Municipal Code because Applicant's work is "alteration" within the meaning of Section 58-27(a) of the Historic Preservation ordinance contained in the Des Moines Municipal Code. "Alteration" means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure whereas "alteration" does not encompass ordinary maintenance and repair, which does not require a certificate of appropriateness, and is meant to correct any deterioration, decay or damage to a structure and to restore the structure, as nearly as practicable, to its condition prior to such deterioration, decay or damage provided the work does not involve a change in type of building materials.
3. The October 17, 2012 Historic Preservation Commission's denial of a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9th Street is hereby AFFIRMED.

(Council Communication No. 13- 007 Attached)

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

APPROVED AS TO FORM:



Michael F. Kelley
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
MOORE				
TOTAL				
MOTION CARRIED		APPROVED		

CERTIFICATE

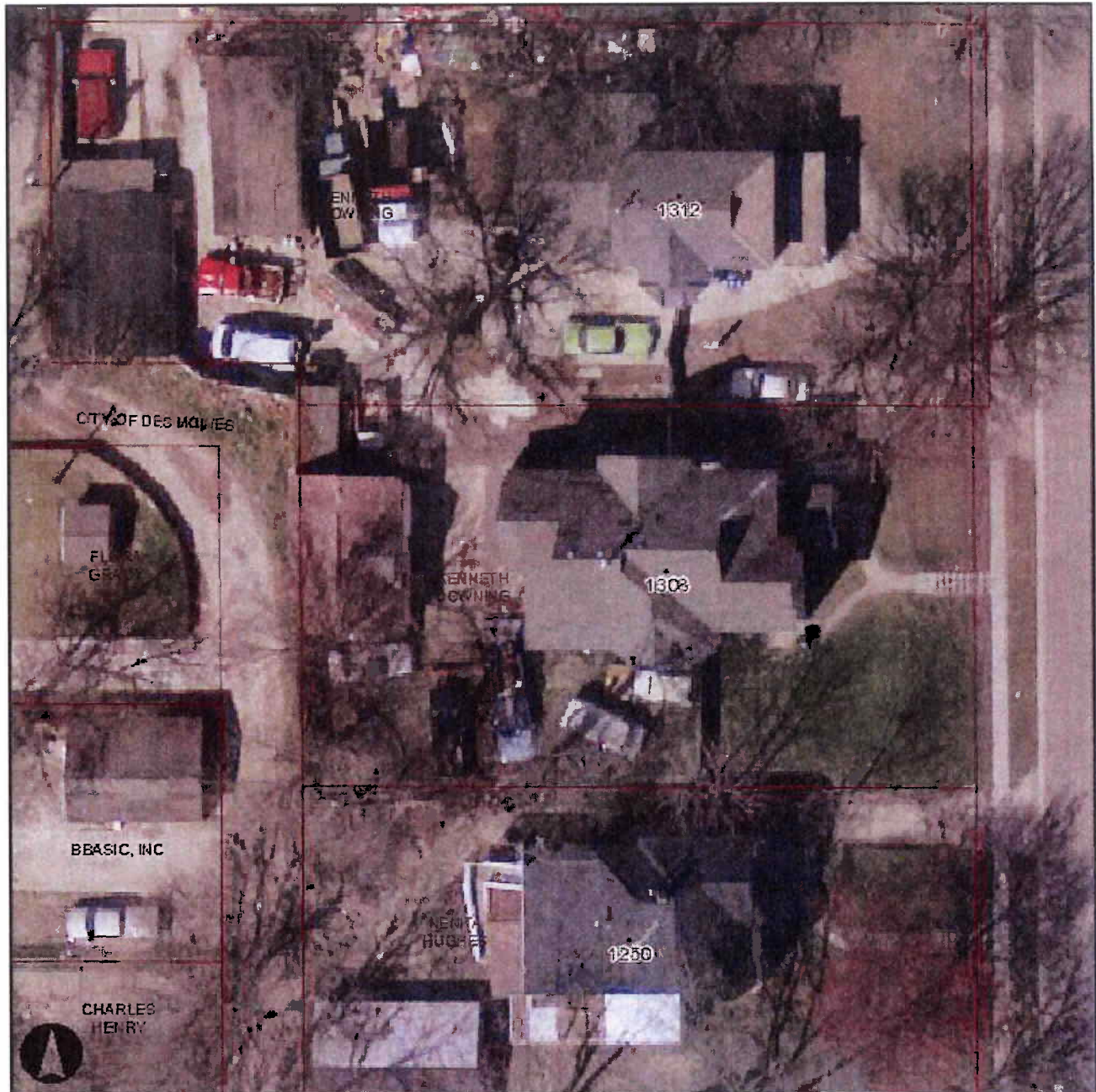
I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

Zoning Map



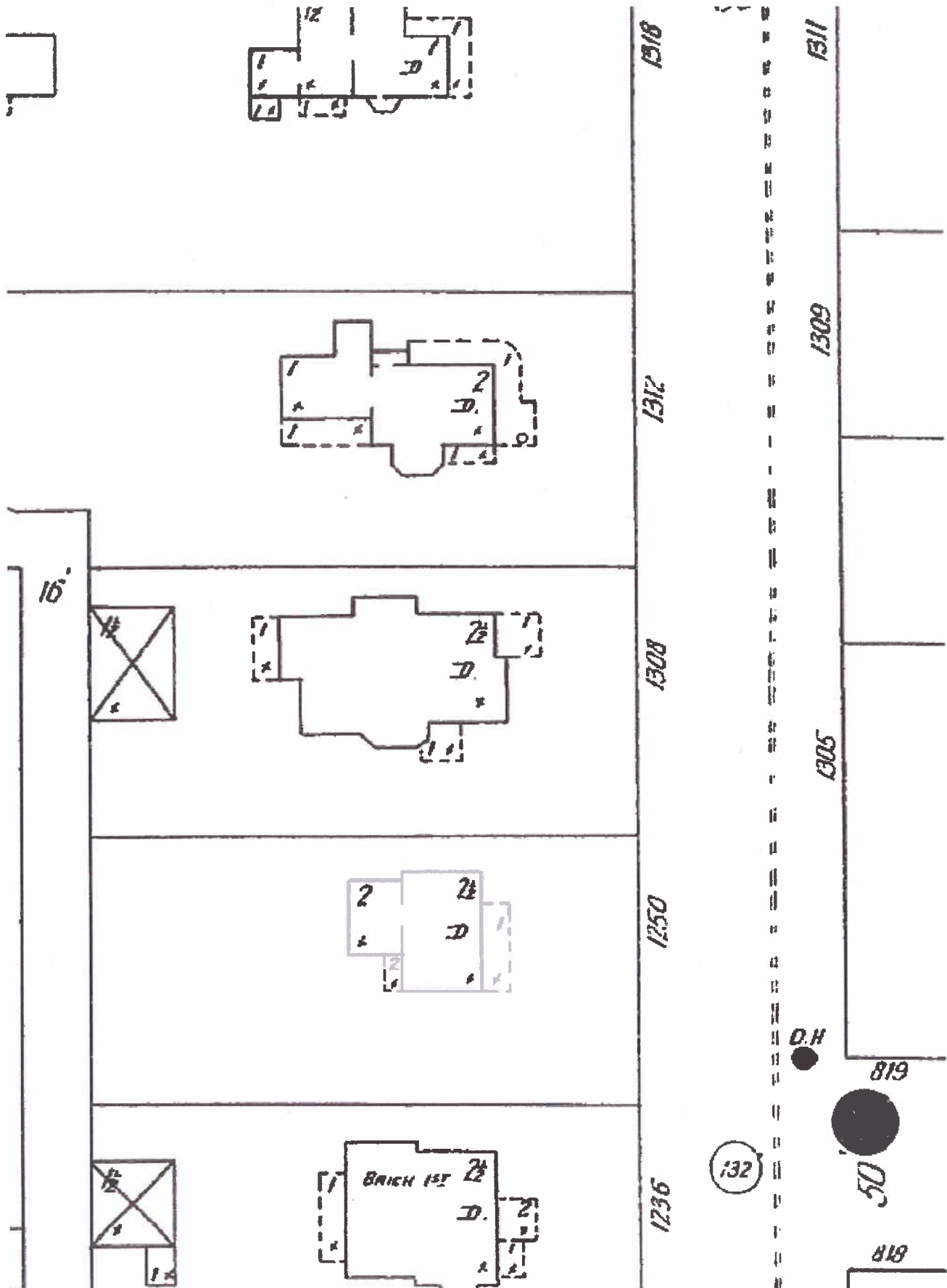
Disclaimer

It is understood that while the City of Des Moines' Geographical Information Systems Division has no indication and reason to believe that there are inaccuracies in information incorporated in the base map, the GIS personnel make no warranty or representation, either expressed or implied, with respect to the information, or data displayed.

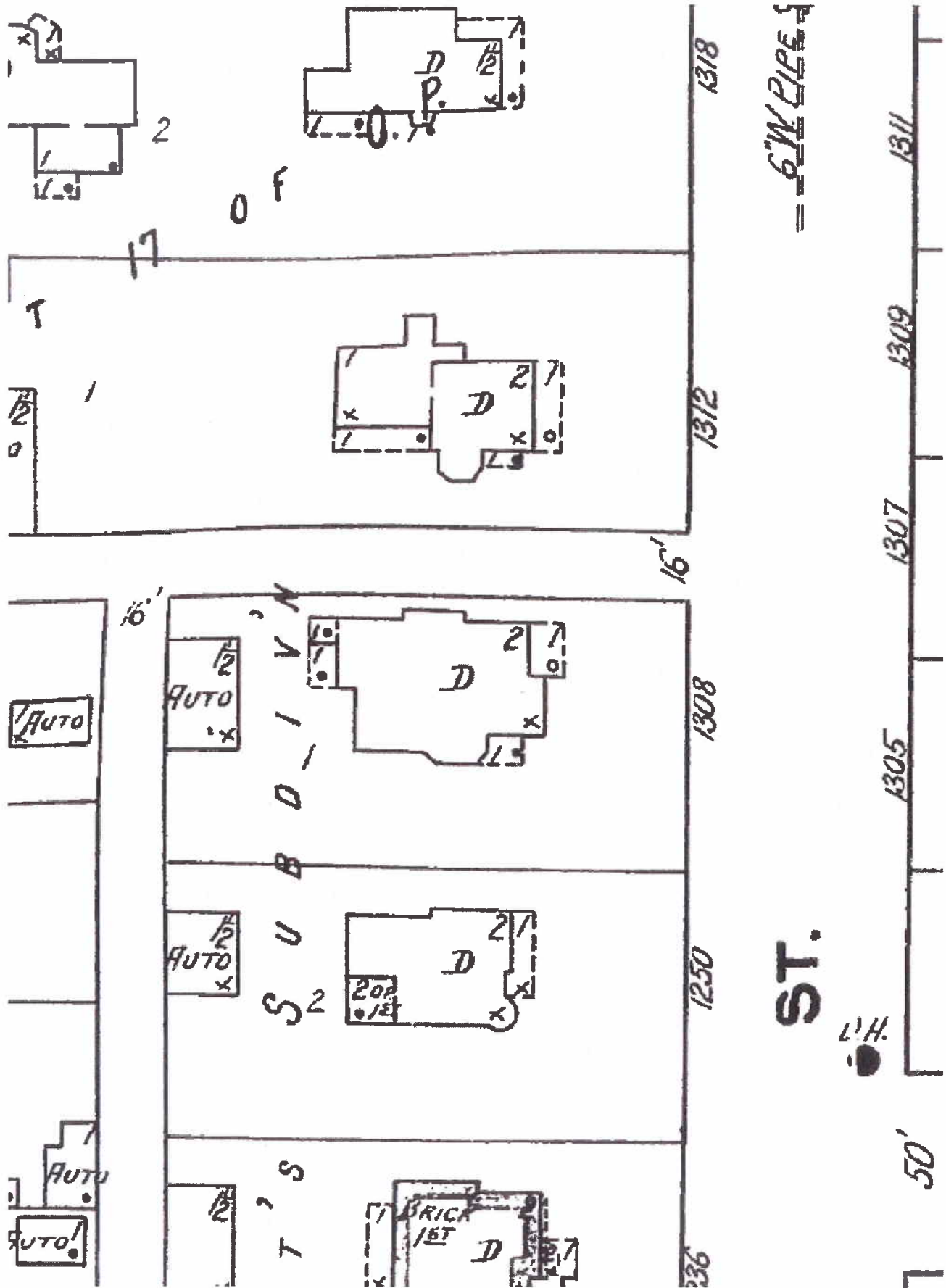
Note: Public property represented on this map is not intended to be inclusive.

For information about Zoning data: please contact the City of Des Moines' Community Development Department.

1308 9th St. YR: 1901

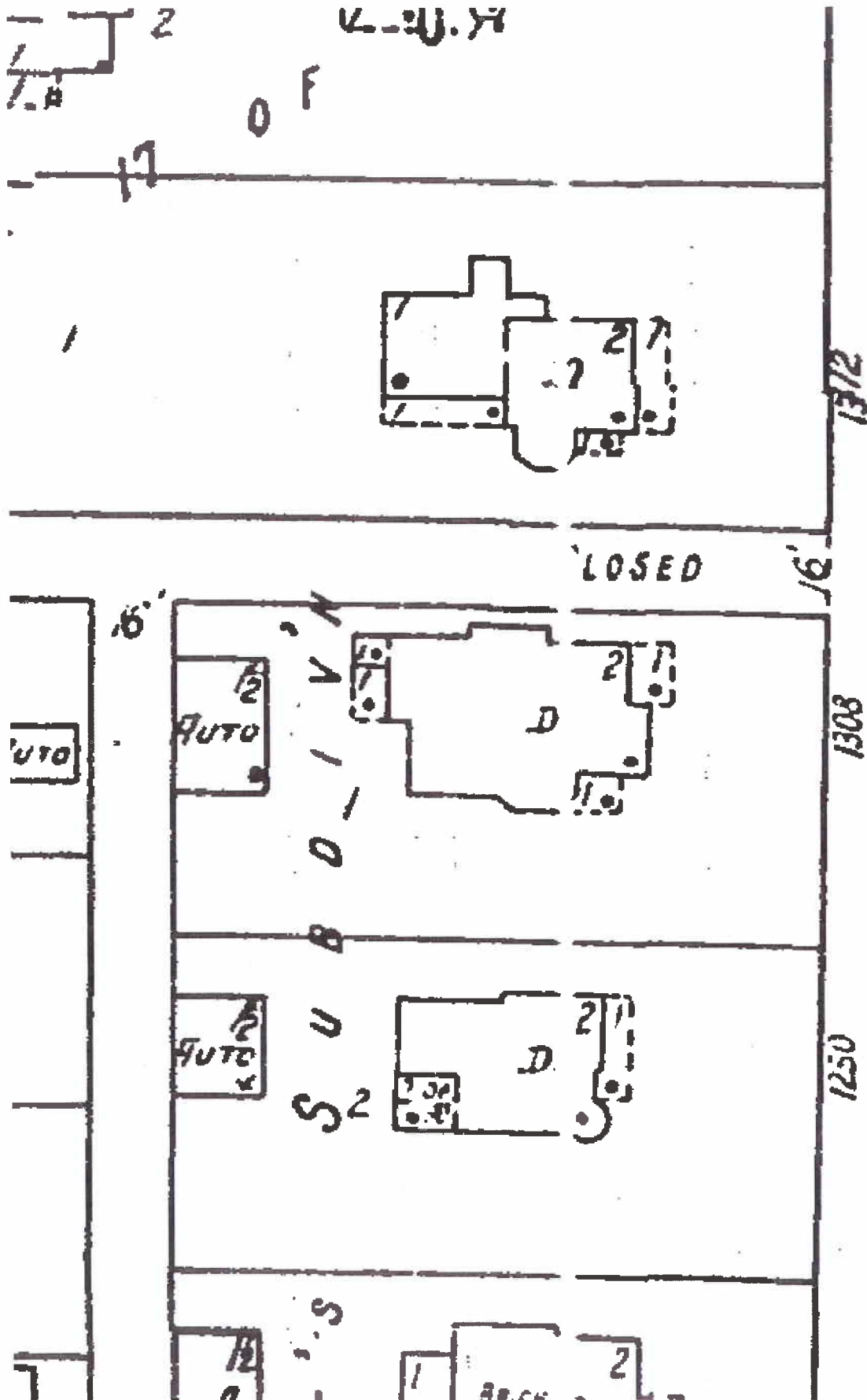


Page 1 of 1



1308 9th St. YR: 1957

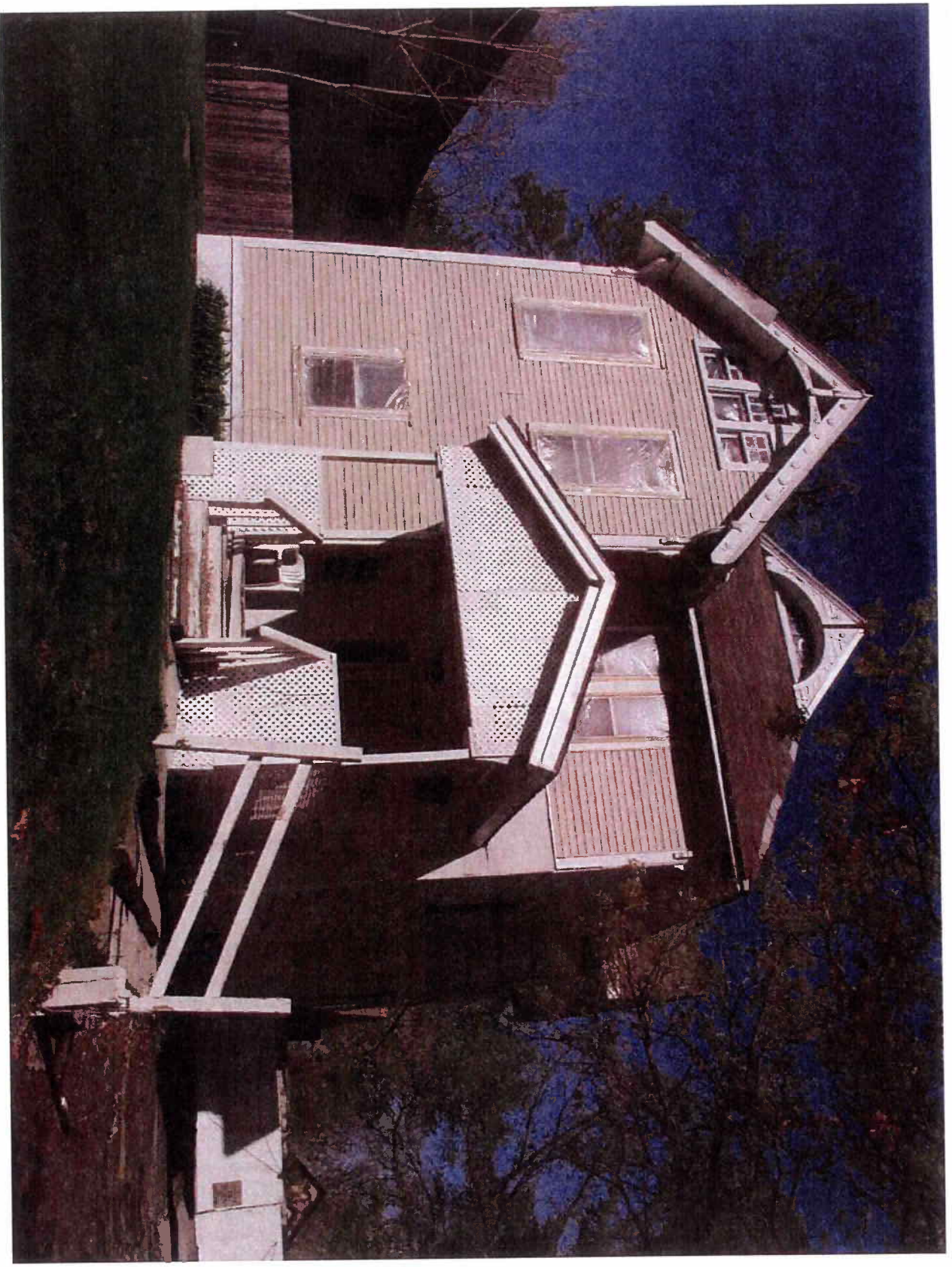
Page 1 of 1



1308

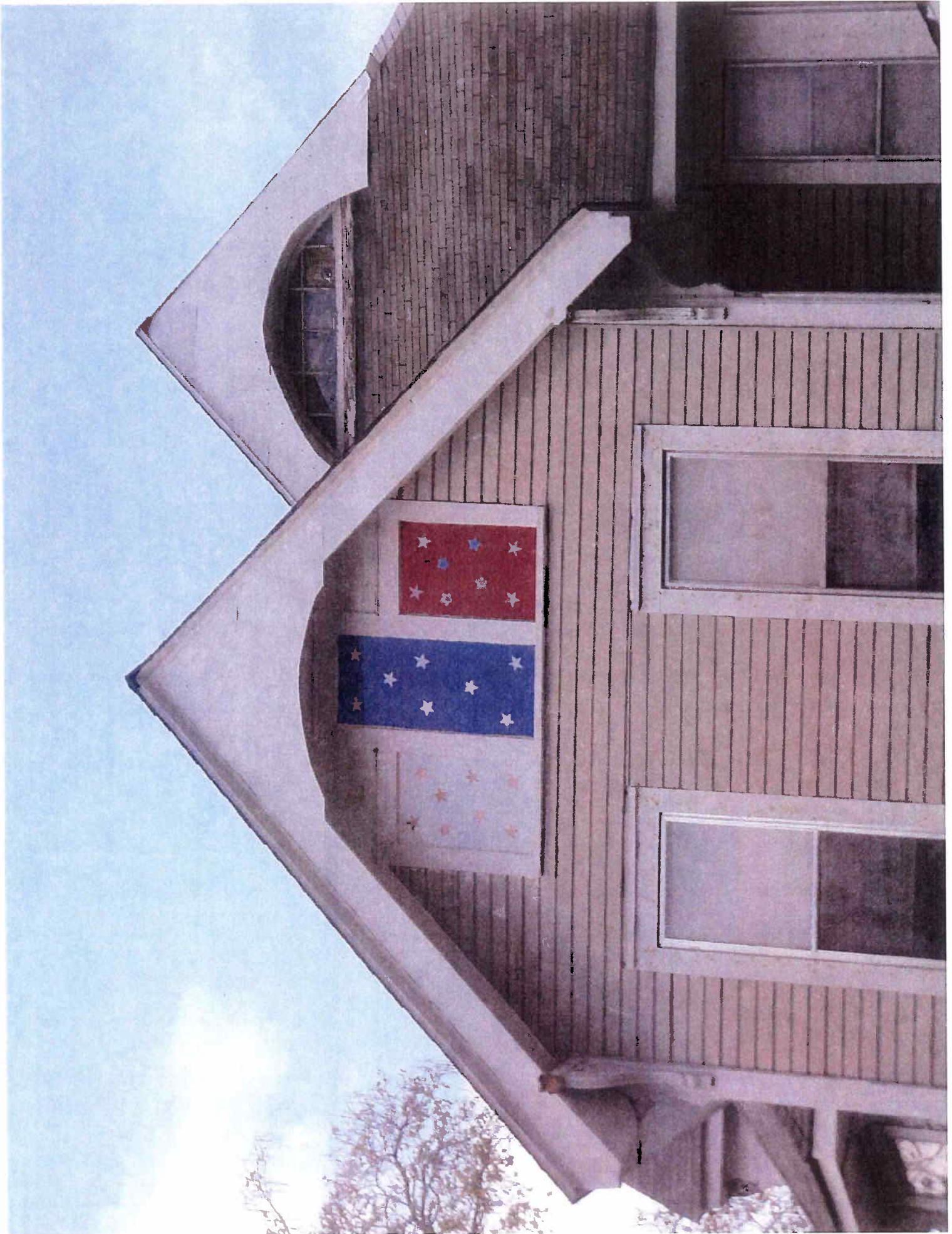
ST.

1308 9th Street – Polk County Assessor Website Photograph – April 21, 2006









48

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
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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 9th Street
Des Moines, Iowa 50314-2708

Dear Ms. Rauh:

I am writing on behalf of my client, Kenneth Downing, who lives at 1318 9th 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

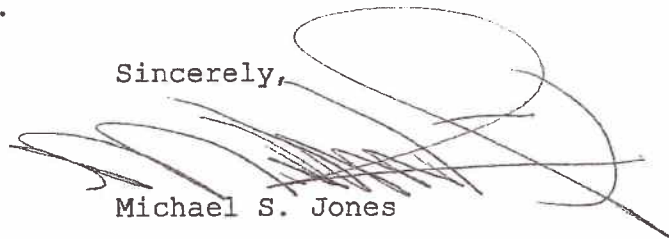
November 16, 2012

Page 2

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 9th 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 dark ink, appearing to be "Michael S. Jones", written over a large, loopy flourish that extends to the right.

Michael S. Jones

MSJ/rl

Enclosures

cc: Jason Van Essen



November 5, 2012

Kenneth Downing
1318 9th Street
Des Moines, IA 50314

RE: Request to retain metal trim covering and plexiglass window covers at 1308 9th 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 if you have any questions.

Sincerely,

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

Jason Van Essen, AICP
Senior City Planner

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

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 9th 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
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Jeffrey A. Boehlert

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

September 5, 2012

HAND DELIVERED

Jason Van Essen, AICP
Senior City Planner
City of Des Moines
602 Robert D. Ray Drive
Des Moines, IA 50309-1881

Re: Kenneth E. Downing
1308 9th Street
Des Moines, Iowa 50314-2708

Dear Mr. Van Essen:

Pursuant to your letter of August 3, 2012, enclosed you will find my client's Application for Certificate of Appropriateness along with \$10 for the filing fee. It is my understanding the application will be brought before the September 19, 2012 Historic Preservation Commission.

If you have any questions or concerns, please feel free to contact me.

Sincerely,



Michael S. Jones

MSJ/rl

Enclosures

APPLICATION FOR CERTIFICATE OF APPROPRIATENESS
CITY OF DES MOINES
HISTORIC PRESERVATION COMMISSION

(To be filled out by the applicant)

File Number 20- 2013- 9.08

Address of the Property 308 9TH

Owner of the Property Annabeth Downing

Owner's Phone Number: Home 243 7872 Work _____

Applicant's Name, Address and Phone Number (if different from owner)

Current use of the property Restol

Approximate date structure was built if known 1883

Note the year any major alterations were completed and indicate source of data

Annabeth Downing
 Applicant's Signature

8/24/12
 Date

To be filled out by staff:

Date of Historic Preservation Commission meeting 9/19/12

Received by [Signature] Date 9/5/12

Your application will be placed on the agenda for the next Commission meeting if it is received two weeks prior to the next regularly scheduled meeting date. Meetings are scheduled for the third Wednesday of each month.

NOTE: You are hereby advised that no work should commence on the above property until such time as the Historic Preservation Commission has issued a Certificate of Appropriateness

To be filled out by the Applicant

Separately describe each job to be performed on the exterior of the structure and/or property.

1a. What is being done? 1b. What materials are being used? 1c. What changes in appearance will there be?

Thirteen years ago we covered trim with tin to abate lead base paint. Over the years some has blown off. On April 24, 2012, we were reattaching what had blown off.

The windows were in need of some repair so we covered them with some patriotic designs which did not alter the original structure in any way.

2a. What is being done? 2b. What materials are being used? 2c. What changes in appearance will there be?

In 1983 I bought an apartment house at 1308 9th Street. I did not buy a restoration project.

Income property needs to be maintained as effeciently as possible.

Third floor painting is dangerous and expensive. My concerns are to meet rental certificate qualifications and regulations to keep my certificate current.

3a. What is being done? 3b. What materials are being used? 3c. What changes in appearance will there be?

Attach drawings as described on page 2 to illustrate above described changes.



August 3, 2012

Michael Jones
Patterson Law Firm, LLP
505 Fifth Avenue, Suite 729
Des Moines, IA 50309-2390

RE: 1308 9th Street – Kenneth Downing – River Bend Local Historic District

Dear Mr. Jones:

Thank you for your letter on behalf of Kenneth Downing dated July 17, 2012. Your client's property at 1308 9th Street is located in the River Bend Local Historic District and is subject to the City's Historic Preservation Ordinance. On April 24, 2012, a stop-work order was posted as metal was being applied to the exterior of the primary building. The metal generally covers trim and the front gables of the building. The front gable windows have also been covered with an undetermined material. This work constitutes an "alteration" to the building as defined by Section 58-27 of the Municipal Code. Alterations must be made in accordance with a Certificate of Appropriateness as approved by the Historic Preservation Commission.

Mr. Downing was present when the stop-work order was posted and was advised that he needed to apply for a Certificate of Appropriateness. Mr. Downing did not contract staff or submit an application. Therefore, a violation notice was mailed to him on July 11, 2012.

To abate this violation, a Certificate of Appropriateness must be obtained from the Historic Preservation Commission. Your client may also seek to abate the violation by removing the metal and gable window covering. If no materials were removed or damaged during the installation of these materials and its removal does not cause any substantive damage, then no Certificate of Appropriateness would be required to return the building to its previous state.

Attached are copies of the Certificate of Appropriateness application packet and the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts. These guidelines are utilized as the basis for reviewing applications. Pages 4 and 5 of the application packet must be filled out and submitted with the \$10 filing fee by the September 5, 2012 deadline for the September 19, 2012 meeting of the Commission. If an application is not submitted, the City will file a case with the District Court seeking correction of the violation in accordance with Section 58-35 and Section 1-15 of the Municipal Code.

Please contact me at 515-283-4147 or at jmvanessen@dmgov.org if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Van Essen", written over a horizontal line.

Jason Van Essen, AICP
Senior City Planner

cc: Michael Kelley, Assistant City Attorney
Michael Ludwig, Planning Administrator

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(Retired)

July 17, 2012

Jason Van Essen, AICP
Senior City Planner
City of Des Moines
602 Robert D. Ray Drive
Des Moines, IA 50309-1881

Re: Kenneth E. Downing
1308 9th Street
Des Moines, Iowa 50314-2708

Dear Mr. Van Essen:

I am writing on behalf of my client, Kenneth Downing. He received a notice dated July 11, 2012 which, according to the information on the envelope, was mailed July 12, 2012. The letter asks for a response directed to your attention within five business days. On July 17, 2012, I called you at 283-4147 and left a message. The notice alleges that there is a violation of Section 58-31 of the Municipal Code of the City of Des Moines. The notice states that it relates to property at 1308 9th Street in Des Moines. On behalf of Mr. Downing, I hereby deny that there has been a violation of Section 58-31 of the Municipal Code.

Sincerely,



Michael S. Jones

MSJ/rl



**CITY OF DES MOINES
DEVELOPMENT ZONING DIVISION
NOTICE OF VIOLATION OF MUNICIPAL CODE**

Date of Notice:
7/11/12

Date of Inspection:
4/24/12

Address of Subject Property:
1308 9th Street
Des Moines, IA

Kenneth E. Downing
1308 9th Street
Des Moines, Iowa 50314-2708

Upon inspection of the Subject Property located at the address identified above, there was found a violation of Section 58-31 of the Municipal Code of the City of Des Moines, Iowa, which requires that a Certificate of Appropriateness be obtained for the construction of any structure and any alteration of the exterior features of an existing structure within an historic district, and that any new structure or alteration to an existing structure within an historic district conform to the Certificate of Appropriateness obtained for that purpose. Below is a listing of the violation(s) existing as of the date of the inspection and a recommendation as to the action required to abate the condition, which creates the violation. Please contact staff within **5 business days** of the date of this notice to discuss the actions necessary to eliminate the violation.

Staff Contact: Jason Van Essen, AICP
Senior City Planner
Planning & Urban Design Division
(515) 283-4147

If staff is not contacted within **5 business days** of the date of this notice the City may take the appropriate legal action to obtain a court order directing that the violation(s) be abated. If the City takes legal action a civil suit will be filed in Polk County District Court, pursuant to Section 58-31 of the Municipal Code of the City of Des Moines, Iowa. The City may seek a civil penalty and/or an order which will enjoin you from allowing the real estate to be in violation in the future and any other relief the court may deem reasonable to insure compliance with the Municipal Code of the City of Des Moines, Iowa. The City will also ask that the Court order all costs of the court action, fines, and the costs incurred by the City to abate the violation be entered against you as a personal judgment. The City may further ask that the court enter a fine for each day that the Court finds the violations exists.

Below is a listing of the violations existing on the date of the inspection and a recommendation as to the remedial action required to correct such violations.

CODE LOCATION AND VIOLATION

Code Location

Section 58-31. Certificate of appropriateness required.

- (a) No individual or corporation shall undertake the construction of a structure within a historic district or the alteration of any exterior features of a structure within a historic district, nor shall the community development department issue a building permit for any such proposed construction or alteration, unless a certificate of appropriateness has been granted by the historic preservation commission.

Sec. 58-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alteration means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure. For the purposes of this article, ordinary maintenance and repair to correct any deterioration, decay or damage to a structure and to restore the structure as nearly as practicable to its condition prior to such deterioration, decay or damage are excluded from the definition of the term "alteration," provided such work does not involve a change in type of building materials. For the purposes of this article, changes made in the type and design of storm windows and in the color of the outer surfaces of a structure are considered to be ordinary maintenance and repair.

Structure means anything constructed or erected with a fixed location on the ground or attached to something with a fixed location on the ground. Among other things, structures include buildings, walls, fences, gates, towers, mobile homes, billboards, poster panels, utility poles, streets, sidewalks, alleys and hard-surfaced parking areas. For the purposes of this article, freestanding flagpoles and yard lights are excluded from the definition of the term "structure."

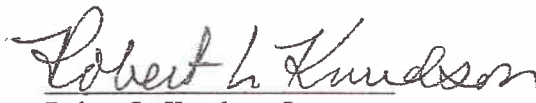
Code Violation

Installing metal over upper level trim of dwelling

REMEDIAL ACTION

Obtainment of a Certificate of Appropriateness from the Historic Preservation Commission.

Issued by:


Robert L. Knudson, Inspector
Development Zoning Division
(515) 237-1412

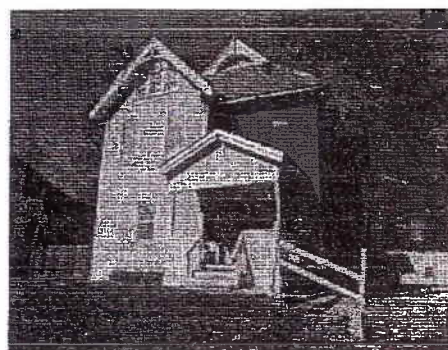
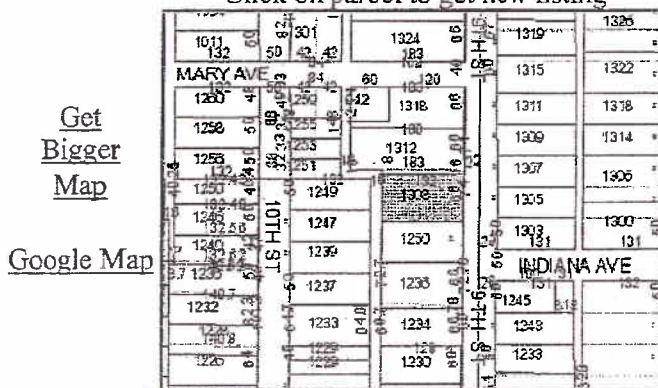
DATE MAILED: 7/11/12, 2011 BY: RLK

Polk County Assessor 

[[Home](#)] [[General Query](#)] [[Legal Query](#)] [[HomeOwner Query](#)] [[Book/Page Query](#)] [[Commercial Query](#)] [[Res Sales Query](#)] [[Comm Sales Query](#)] [[Help](#)]

District/Parcel	GeoParcel	Map	Nbhd	Jurisdiction	Status
080/02810-000-000	7924-34-383-017	0146	DM76/Z	DES MOINES	ACTIVE
School District	Tax Increment Finance District	Bond/Fire/Sewer/Cemetery			
1/Des Moines					
Street Address			City State Zipcode		
1308 9TH ST			DES MOINES IA 50314-2762		

Click on parcel to get new listing



Approximate date of photo 04/21/2006

Mailing Address						
KENNETH E DOWNING 1318 9TH ST DES MOINES, IA 50314-2708						
Legal Description						
S 1/2 E 132F OF ALLEY N OF & ADJ & ALL LOT 1 HALLETTS SUB DIV						
Ownership	Name	Recorded	Book/Page	RevStamps		
Title Holder #1	DOWNING, KENNETH E	1999-01-20	8120/110			
Assessment	Class	Kind	Land	Bldg	AgBd	Total
Current	Commercial Multiple	Full	6,500	102,500	0	109,000
Estimate Taxes Polk County Treasurer Tax Information Pay Taxes						