

.....  
**Date** September 22, 2014

**RESOLUTION REVERSING IN PART THE DECISION OF THE HISTORIC  
PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A  
CERTIFICATE OF APPROPRIATENESS FOR THE REPLACEMENT OF WINDOWS  
AT 1414 9th STREET**

WHEREAS, on July 16, 2014, the Historic Preservation Commission conditionally approved an application from Daniel Chavez for a Certificate of Appropriateness to allow the replacement of all windows and lap siding on the dwelling at 1414 9<sup>th</sup> Street in the River Bend Historic District; and,

WHEREAS, the Commission's approval was conditioned on the use of wood double-hung replacement windows as reviewed and approved by staff; and,

WHEREAS, Daniel Chavez 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 replace all the windows with vinyl double-hung windows.

WHEREAS, on September 8, 2014, by Roll Call No. 14-1368, it was duly resolved by the City Council that the appeal be set down for hearing on September 22, 2014, at 5:00 p.m., in the Council Chambers; and,

WHEREAS, due notice of the hearing was published in the Des Moines Register on September 11, 2014, and a copy of the notice was provided to Daniel Chavez; and,

WHEREAS, in accordance with the said notice, those interested in the issuance of the Certificate of Appropriateness, both for and against, have been given opportunity to be heard with respect thereto and have presented their views to the City Council; and,

WHEREAS, the appeal was not timely filed within 10 days after the Commission's decision was filed as required by Section 58-31(f) of the City Code, and this appeal may be heard by the City Council only upon a finding a good and sufficient cause for the applicant's failure to timely file the appeal; 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, if timely filed, 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 portion of the decision of the Historic Preservation Commission conditioning approval of the replacement windows upon the conditions identified above is hereby reversed. A Certificate of Appropriateness is hereby granted for the replacement of the windows at 1414

( continued )

Date September 22, 2014

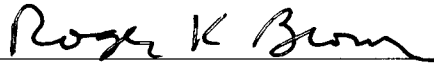
9th Street with the vinyl windows as proposed, subject to conformance with the applicable building codes and to receipt of any required permits.

3. The City Council hereby makes the following findings of fact in support of its decision above:
  - a) David Chavez has shown good and sufficient cause for his delay in filing this appeal.
  - b) The difference in the appearance between the wood replacement windows required by the Commission and the proposed vinyl windows will not be noticeable from the street.
  - c) Other historic homes in the immediate area have been renovated with vinyl windows.
  - d) The replacement of the windows and siding as proposed by Mr. Chavez is necessary and appropriate for the maintenance and preservation of the dwelling

(Council Communication No. 14- )

MOVED by \_\_\_\_\_ to adopt, and reverse in part the decision of the Historic Preservation Commission as identified above.

FORM APPROVED:



Roger K. Brown, Assistant City Attorney  
G:\USERS\RKBrown\Rog Docs\Historic\Appeals\Chavez\RC Hrg Reverse.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
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