



Date September 26, 2016

RESOLUTION **AFFIRMING** THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO GRANT AN APPLICATION FOR CERTIFICATE OF APPROPRIATENESS SUBJECT TO CONDITIONS FOR PROPERTY AT 826 18<sup>th</sup> STREET.

WHEREAS, on August 11, 2016, in Case Number 20-2017-5.01, the Historic Preservation Commission granted an application from James Conlin for a Certificate of Appropriateness subject to conditions regarding property at 826 18<sup>th</sup> Street in the Sherman Hills Historic Neighborhood District. The Commission's decision granted a certificate to replace 4 wood windows on the south façade of the house, subject to the following conditions:

1. The replacement window shall be constructed of wood with no cladding.
2. The replacement window shall have the same general shape and dimensions as the existing windows.
3. The selected window product shall be reviewed and approved by staff prior to installation.
4. The applicant is encouraged to reuse or allow the reuse of the hardware from the existing windows.

WHEREAS, James Conlin, the owner of the affected property, has appealed the Commission's decision to the City Council pursuant to Section 303.34(3) of the Iowa Code and Section 58-31(f) of the Des Moines Municipal Code and seeks to have the decision reversed, removing the conditions relating to the wood replacement windows; and

WHEREAS, on September 12, 2016, by Roll Call No. 16-1520, it was duly resolved by the City Council that the appeal be set down for hearing on September 26, 2016 at 5:00 p.m. in Council Chambers; and

WHEREAS, due notice of the hearing was published in the Des Moines Register on September 12, 2016 and due notice was provided to the applicant-appellant; and

WHEREAS, in accordance with the notice, those interested in the issuance of the Certificate of Appropriateness, both for and against, have been given an 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 from action of the Historic Preservation Commission, "the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance and whether the commission's action was patently arbitrary or capricious."

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



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1. The public hearing on the appeal is hereby closed.
  
2. The City Council hereby finds that the Commission has exercised its powers and followed the guidelines established by law and ordinance, following both the Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts and the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, including specifically the Department of Interior's Preservation Brief #16.
  
3. The City Council hereby finds that the decision of the Historic Preservation Commission regarding the application for Certificate of Appropriateness for 826 18<sup>th</sup> Street is reasonable, is not patently arbitrary or capricious and should be upheld for the following reasons:
  - (a) The Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts state that "any replacement windows should duplicate the original window in type, size, and material." The Commission was not patently arbitrary and capricious when it required that wood windows be used to replace wood windows because vinyl windows do not duplicate the original wood material.
  
  - (b) Preservation Brief # 16 promulgated by the Secretary of the Interior included as interpretations of its Standards for Rehabilitation, states that substitute materials must be comparable in "composition, design, dimensions, durability, color, texture and visual properties" as the original historic material. The Commission was not patently arbitrary and capricious when it found that vinyl windows are not a comparable and acceptable substitute material for the original wood windows.
  
4. The City Council AFFIRMS the Certificate of Appropriateness granted by the Historic Preservation Commission in Case Number 20-2017-5.01 subject to conditions.



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

(Council Communication No. 16- 563 )

APPROVED AS TO FORM:

*Thomas G. Fisher Jr.*

Thomas G. Fisher Jr.  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
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