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August 11, 2016

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VIA HAND DELIVERY TO CITY CLERK

Mayor T.M. Franklin Cownie
Councilperson Bill Gray
Councilperson Linda Westergaard
Councilperson Christine Hensley
Councilperson Joe Gatto
Councilperson Christopher Coleman
Councilperson Skip Moore
City of Des Moines Administration Building
400 East Court Avenue
Des Moines, IA 50309

**Re: Appeal from Historic Preservation Commission
Certificate of Appropriateness, Case No. 20-2017-5.01
Appellant: James Conlin
Property Address: 826-18th Street, Des Moines, IA 50314**

Dear Mayor Cownie and Councilpersons Gray, Westergaard, Hensley, Gatto, Coleman and Moore:

This letter serves as Mr. James Conlin's appeal of a Certificate of Appropriateness issued by the Historic Preservation Commission ("Commission") for the property located at 826-18th Street, Des Moines, Iowa. The Certificate of Appropriateness was filed on August 2, 2016 and thus, this appeal is timely under Des Moines' Code of Ordinances ("the Code"), Ch. 58, Art. II, section 58-31(f).

The Certificate of Appropriateness filed on August 2, 2016 allows for Mr. Conlin to install windows in the property requested, but it places restrictions on the type of windows Mr. Conlin may install. Mr. Conlin's Application sought to install vinyl windows, but the filed Certificate of Appropriateness requests that the windows be constructed of wood, that they be of the same "general style, shape and dimensions" as existing windows, and that the windows be reviewed and approved by staff prior to installation. The Certificate of Appropriateness also encourages Mr. Conlin to "reuse or allow the reuse of hardware from the existing windows." See Certificate of Appropriateness, enclosed herewith as Exhibit FF.

Standard of Review

Under the Code, in deciding this appeal, you “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.” Code, § 58-31(f). The Commission’s decision can be reversed if it failed to follow the guidelines established by law and ordinance *or* if its action was patently arbitrary and capricious. In short, either basis can serve as a reason for reversal. An action is “arbitrary and capricious” if it is taken without regard to the law or facts of the case. See Dawson v. Iowa Board of Medical Examiners, 654 N.W.2d 514, 519 (Iowa 2002).

On behalf of Mr. Conlin, we submit that the Commission did not follow the law and the Certificate of Appropriateness filed on August 2, 2016 was patently arbitrary or capricious. The remainder of this letter will provide the supporting documents and information to support the City Council’s reversal of the Certificate of Appropriateness.

Applicable Code

Section 58-31(c) of the Code provides the standards that the Commission is to apply when reviewing an Application for a Certificate of Appropriateness:

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 Interior.
- (3) The relationship of the 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 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.

(emphasis added).

Background Information

On or about May 31, 2016, Mr. Conlin submitted an Application for Certificate of Appropriateness. The Application was accompanied by Exhibits A through AA. The Application described the project and the property as follows:

Applicant seeks to replace four windows on the south side of the property. The current windows are painted double-hung windows with an aluminum storm covering, and they are not able to be repaired. A photo of the four windows sought to be replaced are attached hereto as Exhibit A. The windows being replaced do not have any historical significance and are located in the part of the property that was an addition sometime between 1920 and 1957. See Exhibit C (1901, 1920 and 1957 maps showing building footprints). The new windows will be a vinyl replacement window made by Vector (formerly known as Vinylite) that are the same shape and size of the opening of the current windows. Similar Vector windows have been installed in other parts of the property and thus, the new window will exactly match many of the other windows in the property. See Exhibit B, showing the newer windows already installed. There will be no change in appearance from the current window other than in the color of the window, but color is not one of the items that the Commission is to consider in its review of an Application for Certificate of Appropriateness. Copies of information regarding the Vector windows sought to be installed are attached hereto as Exhibits D and E. Exhibits E and F provide supporting information for the energy efficiency of the Vector windows. Under City Ordinance section 58-31(c), the Commission is required to be "sympathetic to proposals using energy saving modifications."

The property at 826-18th Street underwent significant changes prior to Applicant's ownership of the property and prior to the designation of Sherman Hill as a historic district. The property no longer holds any historic significance due to these significant changes. The footprint was substantially altered, including a significant addition prior to 1957 which substantially changed the look of the property and removed essentially all of its historic value. See Exhibit C. Prior to Applicant's ownership of the property, the entire house was sided with steel siding which remains on the house today. Such siding further removed any historic value the property may have. According to Des Moines City Code section 58-31(c), the Commission "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." There is no evidence that the installation of vinyl windows in the non-original, steel-sided portion of this property would "seriously impair" the surrounding area. In fact, the prior installed vinyl windows in the property have had no impact on the historical values and character of the surrounding area. See Exhibit G - Opinion Letter of Nelsen Appraisal Associates, Inc.

The values and character of the surrounding area would not be impacted, because there are a number of properties in Sherman Hill that have or appear to have vinyl windows or other window materials that are not wood. This includes, but is not limited to, the following properties:

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Exhibit No.	Property Address	Description
H	755-20 th Street	Large white vinyl window on side porch
I	717-17 th Street (Pleasant Court Apts.)	White vinyl windows throughout
J	737, 727 and 707-18 th Street (Sherman Hill Coop Housing Ass'n)	White vinyl windows at least on basement level
K	840-17 th Street	Vinyl windows
L	1939 Leyner	Vinyl windows
M	919-18 th Street	Vinyl windows
N	920-18 th Street	Vinyl windows
O	736-20 th Street	Vinyl or metal windows
P	840-18 th Street	Vinyl windows
Q	714-20 th Street	White vinyl windows in garage built in 2008
R	718-18 th Street	White vinyl windows
S	846-19 th Street	Metal windows on front porch area
T	824-18 th Street	Metal windows
U	1718 Crocker Street	Metal windows
V	611 - 16 th Street (Murillo Flats)	Vinyl windows (white in some locations)

This list does not include the properties where the Commission directly approved and issued a Certificate of Appropriateness for vinyl windows. The properties that were given a Certificate to install vinyl windows were also multi-family properties:

Exhibit No.	Property Address	Description
W	1913 Pleasant Street	Granted Certificate on September 17, 2003 to replace several windows with vinyl; replacement windows were white vinyl
X	1917 Pleasant Street	Granted Certificate on September 17, 2003 to replace several windows with vinyl; replacement windows were white vinyl

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Exhibit No.	Property Address	Description
Y	713-20 th Street	Granted Certificate on September 17, 2003 to replace several windows with vinyl; replacement windows were white vinyl
Z	649-651 - 20 th Street	Granted Certificate on May 12, 2005 to replace 9 of 40 windows with vinyl to match existing 31 windows that were already replaced with vinyl

The fact that the value of this property or surrounding properties would not be adversely impacted by the installation of vinyl windows is bolstered by the fact that all of these homes have not decreased in value since the installation of the vinyl windows. Rather, it is properties in Sherman Hill that are dilapidated and not being cared for or updated at all (regardless of whether the windows are wood or vinyl) that adversely impact property values. There are a number of properties in Sherman Hill that drive down property values due to their unkempt nature. See Exhibit AA.

In addition, there is no prohibition against the use of vinyl in a historic district. In fact, in Preservation Brief No. 8, the National Park Service indicated that it would be acceptable to cover an entire historic residential building in aluminum or vinyl siding if (1) the existing siding is so deteriorated or damaged that it cannot be repaired; (2) the substitute material can be installed without reversibly damaging or obscuring the architectural features and trim of the building; and (3) the substitute material can match the historic material in size, profile and finish. The Brief goes on to state that if the aluminum or vinyl is being used to replace non-historic siding, then only the first two conditions need to be met to proceed with the new aluminum or vinyl siding. Although this Brief deals with siding, it would be non-sensical to say that an entire house could be covered in aluminum or vinyl under certain circumstances, but windows could not be replaced with vinyl under those same conditions. The windows sought to be replaced in this application are not original, historic windows, and they meet the first two conditions identified in the Brief. First, the existing windows are so damaged or deteriorated that they cannot be repaired. Second, the windows can be installed without reversibly damaging or obscuring the architectural features and trim of the building. The portion of the property where the windows are being installed does not have any architectural features and thus, the replacement of the windows are not damaging or obscuring such features. Accordingly, there is nothing in the design guidelines or Standards for Rehabilitation that prohibits the installation of vinyl windows in

Sherman Hill. This is further bolstered by the fact that under these same guidelines and Standards, this Commission previously affirmatively approved the installation of vinyl windows. See Exhibits W-Z.

See Application with Exhibits A-AA enclosed herewith. On or about June 23, 2016, City Staff requested an inspection of the windows in order to confirm that the windows are not able to be repaired. The requested inspection was conducted by Jason Van Essen on or about July 6, 2016. Mr. Van Essen took a number of photographs of the property and the windows at issue, copies of which are attached hereto as Exhibit BB. At the inspection, Mr. Conlin's representative provided a report from Koester Construction to Mr. Van Essen. A copy of that report is attached hereto as Exhibit CC. The report from Koester Construction confirmed that the windows at issue could no longer be repaired. The report also confirmed that at least one of the two sets of windows had its jamb stops removed and aluminum sash sides installed so that it could no longer be considered original.

The Commission considered the Application at its meeting on July 20, 2016. On or about July 15, 2016 (before the July 20 meeting), City Staff issued its Staff Report and Recommendation. A copy of the Staff Report and Recommendation is attached hereto as Exhibit DD. Mr. Van Essen provided the photographs he took during the inspection (Exhibit BB) as well as a map of a portion of the Sherman Hill neighborhood (Exhibit EE) with his report.¹

The Staff Report and Recommendation agreed that repairing the existing windows is not reasonable "given the modifications that have occurred to the building and their location in the addition." Exhibit DD, p. 6. Accordingly, there is no dispute that the windows should be replaced instead of repaired. The only dispute is the type of windows that can be used to replace the existing windows.

The Commission's decision should be reversed and a Certificate of Appropriateness granted to Conlin allowing the installation of vinyl windows as requested. Reversal is supported by the following reasons:

- One of the items that the Commission "shall consider" is the "relationship of the proposed changes to exterior features of structures in the neighborhood." See Code § 58-31(c). Conlin presented evidence that there are four other properties that were explicitly approved by the Commission or City Staff to install vinyl windows throughout their entire building. See Exhibits W-Z. City Staff tried to downplay this information by claiming that it is "staff's opinion that the vinyl windows that were installed do not appear to comply with the City's Architectural Guidelines for Building Rehabilitation...." See Exhibit DD, p. 5. This opinion, however, is directly contrary to what the Commission and prior City Staff found when they approved the installation of the vinyl windows and stated that such vinyl windows "would be in harmony with the

¹ It is our understanding that the Application, Exhibits A through AA and the Koester Construction report (Exhibit CC) were also provided to the Commission.

historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings and the City of Des Moines' Standard Specifications."² See Certificates of Appropriateness within Exhibits W-Z. In addition, the Commission ignored the fact that there are at least 13³ other properties containing vinyl or non-wood windows in the Sherman Hill Historic District. Accordingly, the installation of four more vinyl windows in the neighborhood is consistent with the exterior features in the neighborhood. Rather than comparing this Application with the neighborhood, one Commission member commented that he had traveled around the country and looked at historic neighborhoods, and none have vinyl. The Commission's duty is to consider the neighborhood at issue – not neighborhoods around the country - which clearly and admittedly contains vinyl or non-wood windows in at least **17 properties** (not including this property). There have been no viable reasons given for why some properties were allowed to install vinyl, while Mr. Conlin was not allowed to do so.

- Under the Architectural Guidelines set forth on pages 5 and 6 of the Staff Report and Recommendation, replacement windows are to “duplicate *the original window....*” This is consistent with the purpose of the Commission, which is to safeguard historic districts by “*preserving...elements of its cultural, social, economic, political, historical, aesthetic and architectural significance.*” See Code, § 58-26(2) (emphasis added). Here, the windows at issue are not original to the property, and they do not have any historical, aesthetic or architectural significance. Thus, there is no reason to protect them through repair or through “duplication” by a new window. City Staff is unable to confirm that they are original to the home. At best, City Staff claims they “may” have been relocated from the original exterior walls to this addition, but there is certainly no evidence that this is the case. Exhibit DD, p. 6. The report from Koester Construction confirms that the changes that have been made to at least one of the windows over the years such that it can no longer be considered original. See Exhibit CC. In fact, if one looks at the photos of the windows taken by City Staff (see Exhibit BB), they clearly show that the windows have a spring mechanism for opening them. Metal springs replaced the sash cord and weights systems in windows after World War II.⁴ See Gibbs & Smith, Bungalow Details: Interior, p. 96. Clearly, then, these windows were either not original to the home (built in approximately 1888) and/or have been changed so much that they are no longer the original windows. When this issue was raised to the Commission, its members then

² The applicable Code, Standards and guidelines have not changed since the properties located at 1913 Pleasant Street, 1917 Pleasant Street, 713-20th Street and 649-651-20th Street were issued Certificates of Appropriateness to install vinyl windows.

³ City Staff claim that two of fifteen the properties identified in Conlin's Application are outside the Sherman Hill Local Historic District. See Exhibit DD, pp. 3-4. Conlin disagrees with this claim, as both properties fall within the area designated on available maps. City Staff did not detail on a map that these properties are outside the Historic District. City Staff did not disagree that the other 13 properties have vinyl or non-wood windows and are in the Sherman Hill Historic District. See Exhibit DD, pp. 3-4.

⁴ World War II ended in September, 1945.

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asserted that “anything over 50 years old is historic.” Such statement is not supported by any reputable source, and it is non-sensical. Under that theory, the steel siding on the property at issue (which was installed prior to the early 1980s), will become historic in just a few years.

- The Code states that the Commission “shall endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value, except when such proposal would seriously impair the historical values and character of the surrounding area.” Code, § 58-31(c). As stated above, the structure at issue here – which has been significantly altered over the years prior to Mr. Conlin’s ownership – has little historical, architectural or cultural value. Thus, under this Code provision, the Commission is required to approve such proposals, unless the proposal “would seriously impair the historical values and character of the surrounding area.” There is absolutely no evidence that the installation of four vinyl windows in this property would “seriously impair” the neighborhood’s values and character. As noted above, there are at least 17 other properties that already have vinyl windows. Furthermore, Mr. Conlin provided an expert opinion that the installation of vinyl would *not* seriously impair the surrounding area. Exhibit G. The Commission and City Staff have never provided nor been presented any information to the contrary.
- There is no prohibition against using vinyl in a historic district. The Secretary of Interior issues “Preservation Briefs” to provide further guidance as to its Standards. One of these Briefs – Preservation Brief #8 – specifically indicates that vinyl siding is an acceptable alternative in an historic district, even in a building that has historic features and qualities. Clearly, then, vinyl is not prohibited like the Commission assumes. In this property, the windows that are being replaced do not even have historic features or qualities and thus, the use of vinyl is certainly an acceptable alternative.

The Commission and Staff created a precedent in 2003 and 2005 when they specifically allowed four properties to install vinyl windows throughout the entire properties and held that the installation of such windows was consistent with the standards and guidelines that still exist today. Furthermore, the City and the Commission supported these decisions by implicitly allowing others who did not apply for approval to replace their windows with vinyl or other-non wood materials. There is no viable reason for straying from those decisions, especially in the case of this property where the windows at issue are in a steel-sided building, in an addition to the house, are not original, are not historic and have no architectural features.

Accordingly, Conlin requests that the Certificate of Appropriateness entered by the Commission be reversed and that the Council issue a Certificate of Appropriateness that allows Conlin to install the vinyl windows described in the Application. Thank you.

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Very truly yours,

Rebecca A. Brommel

A large, stylized handwritten signature in black ink, appearing to read 'Rebecca A. Brommel', with a long, sweeping flourish extending to the right.

RAB:hs

Enclosures

cc: James Conlin (via email, without enclosures)

Thomas G. Fisher, Jr., City of Des Moines (via hand delivery)