



Roll Call Number

09-771

Agenda Item Number

53A

Date May 4, 2009

**RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC  
PRESERVATION COMMISSION  
(649 18<sup>th</sup> Street)**

WHEREAS, Des Moines Municipal Code Section 58-31(a) provides in relevant part that no construction of a structure or alternation of any exterior features of a structure within a historic district shall be undertaken unless a certificate of appropriateness has been granted by the Historic Preservation Commission; and

WHEREAS, on March 18, 2009, the Historic Preservation Commission conditionally approved a certificate of appropriateness for the reconstruction of a retaining wall for Kristen and Edward C. Muelhaupt III at their property located at 649 - 18th Street in the Sherman Hill Historic District; and

WHEREAS, the Commission's review of the reconstructed retaining wall was the result of an enforcement action by staff in response to work completed without a certificate of appropriateness; and

WHEREAS, the Commission's approval was conditioned on Kristen and Edward C. Muelhaupt III altering the work that has been completed without the certificate of appropriateness; and

WHEREAS, Kristen and Edward C. Muelhaupt III have contended that a certificate of appropriateness is not required for the work as they believe the retaining wall was restored as nearly as practical to its condition prior to damage caused by the construction of a detached garage in accordance with §58-27(a) of the Des Moines Municipal Code; and

WHEREAS, Kristen and Edward C. Muelhaupt III have appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code; and

WHEREAS, on April 20, 2009, by Roll Call No. 09-638, it was duly resolved by the City Council that the appeal be set down for hearing on May 4, 2009, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of the hearing was mailed to the applicant on April 20, 2009 and published in the Des Moines Register on April 23, 2009, setting forth the time and place for the hearing; 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; and



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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, or 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 Historic Preservation Commission had jurisdiction to review and act upon the conditional grant of a certificate of appropriateness in this instance.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to conditionally grant a certificate of appropriateness for a retaining wall at 649 18<sup>th</sup> Street is not patently arbitrary or capricious and should be upheld.
4. The City Council hereby makes the following findings in support of this decision:
  - a) The design of the retaining wall as constructed by the applicant is not consistent with the adopted fence guidelines or the historic character of the Sherman Hill Historic District for the reasons set forth in the staff report and recommendation to the Historic Preservation Commission for the Commission meeting of March 18, 2009.
  - b) The following conditions, imposed by the Historic Preservation Commission on the design and construction of the retaining wall are reasonable and consistent with the adopted retaining wall guidelines for retaining walls in the historic districts:
    - Removal of the reconstructed brick wall identified as Section 1 on the attached photograph.
    - Removal of the brick veneer from the concrete wall identified as Section 2 on the attached photograph.
    - Reconstruction of the brick retaining wall segment identified as Section 3 on the attached photograph subject to the following:



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- The existing historic bricks shall be removed, cleaned and reused.
- The wall shall be constructed without a bow.
- The line of the top course of bricks shall match the top of the historic wall to the north.
- The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
- The brick shall be "toothed" into the historic wall.

(Council Communication No. 09- 260 )

MOVED by Hensley to adopt, and affirm the decision of the Historic Preservation Commission to conditionally approve the certificate of appropriateness.

FORM APPROVED:

Michael F. Kelley Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN		✓		
HENSLEY	✓			
KIERNAN	✓			
MAHAFFEY	✓			
MEYER	✓			
VLASSIS		✓		
TOTAL	5	2		
MOTION CARRIED				APPROVED

Y. M. Franklin Council 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.

Diane Rauh City Clerk