



Roll Call Number

12-0629

Agenda Item Number

37A

Date April 23, 2012

RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A CERTIFICATE OF APPROPRIATENESS FOR THE REPLACEMENT OF TEN WINDOWS IN THE MULTIPLE-FAMILY DWELLING AT 826 18TH STREET

WHEREAS, on November 30, 2011, the Historic Preservation Commission conditionally approved an application from Conlin Properties for a Certificate of Appropriateness for the replacement of ten first floor windows in the multiple-family dwelling at 826 18th Street, subject to the following conditions:

- 1. The windows shall be constructed of wood with no metal cladding.
2. The windows shall be of the same general style, shape and dimensions as the existing windows.
3. Review and approval of the selected window product by staff prior to installation.

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has appealed the conditions imposed by the Historic Preservation Commission and seeks to be allowed to use vinyl windows of the type that have already been installed in 5 of the windows to be replaced; and

WHEREAS, on January 23, 2012, by Roll Call No. 12-0084, it was duly resolved by the City Council that the appeal be set down for hearing on February 13, 2012, 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 26, 2012, and a copy of the notice was provided to the attorney for Conlin Properties; and,

WHEREAS, on February 13, 2012, by Roll Call No. 12-0239, and on March 12, 2012, by Roll Call No. 12-0420, and on April 9, 2012, by Roll Call No. 12-0552, the City Council continued the public hearing until April 23, 2012, at 5:00 p.m., at the request of Conlin Properties; 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, 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; 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.

(continued)



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2. The City Council hereby finds that the decision of the Historic Preservation Commission approving a Certificate of Appropriateness for the replacement of ten windows in the multiple-family dwelling at 826 18th Street is not arbitrary or capricious and should be upheld.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to require the replacement windows to satisfy the three conditions identified above was NOT patently arbitrary or capricious for the following reasons:
 - a) The conditions of approval are consistent with the *Architectural Guidelines for Building Rehabilitation in Des Moines' Historic Districts* and are consistent with past actions of the Commission for both investor-owned and owner-occupied properties.
 - b) The guidelines state that "any replacement windows should duplicate the original window in type, size and material." Design guidelines by nature eliminate some design and material options that may be lower in cost.
 - c) Although the City has ordered the repair or replacement of portions of the windows in question, that order did not excuse the applicant from repairing or replacing the windows in a manner that conforms with the requirements of Article II - Historic Districts, in Chapter 58 - Historical Preservation, in the City Code and the guidelines identified above.

MOVED by Hensley to refer back to the Historic Preservation Commission to review the new information presented.

FORM APPROVED:

Roger K Brown

Roger K. Brown, Assistant City Attorney

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COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN	✓			
GRIESS	✓			
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

T. M. Franklin 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