

★ Roll Call Number

12-0918

Agenda Item Number

49B

ALTERNATE RESOLUTION

Date June 11, 2012

RESOLUTION **REVERSING** THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO CONDITIONALLY APPROVE A CERTIFICATE OF APPROPRIATENESS FOR THE RETENTION OF A FENCE AT 409 FRANKLIN AVENUE

WHEREAS, on April 18, 2012, the Historic Preservation Commission conditionally approved an application from James Tully for a Certificate of Appropriateness to retain a 6-foot tall fence recently constructed in the east side yard and rear yard of the single-family dwelling at 409 Franklin Avenue, subject to the following conditions:

1. The portion of the fence that faces Franklin Avenue and the southern 8 feet of the east facing fence segment shall be converted to a 4-foot tall picket fence that complies with the following:
  - a. The picket tops shall be cut to match the tops of the existing pickets.
  - b. The pickets shall run between the posts so the posts are fully exposed.
  - c. Spaces shall be provided between pickets that are generally equal to the width of a picket.
  - d. The fence shall step along a grade change at intervals set by the length between the posts and not at variable lengths or with a continuously straight top edge.
  - e. The space between posts shall be uniform, and no less than 4 feet and no greater than 14 feet in distance.
2. All posts shall extend a minimum and uniform distance above the pickets.
3. A fence permit shall be obtained from the City's Permit and Development Center.

WHEREAS, Patrick Duquette, as the tenant of James Tully and resident of the affected property, 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 retain the fence as constructed; and,

WHEREAS, on May 21, 2012, by Roll Call No. 12-0777, it was duly resolved by the City Council that the appeal be set down for hearing on June 11, 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 May 24, 2012, and a copy of the notice was provided to Patrick Duquette; 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,

( continued )

★ Roll Call Number

12.0918

Agenda Item Number

49B

-2-

Date June 11, 2012

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 requiring that the fence be modified to satisfy the three conditions identified above is hereby reversed. A Certificate of Appropriateness is hereby granted for the retention of the fence as constructed, subject to the fence being modified as necessary to conform with the applicable zoning and building codes and to receipt of any required permits.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to require the modification of the fence to satisfy the three conditions identified above was patently arbitrary or capricious for the following reasons:
  - a) The current residents, Patrick and Danielle Duquette, and the property owner, James Tully, agreed in August of 2011, that Mr. Duquette was to construct the fence as payment for that month's rental.
  - b) The River Bend Local Historic District was designated as such by Ordinance No. 15,075, which was published and became effective on February 3, 2012, long after the agreement had been made for the construction of the fence.
  - c) Mr. and Mrs. Duquette have demonstrated a compelling need for the fence to provide for the security of their children.

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

FORM APPROVED:

( Council Communication No. 12- 299 )

*Roger K. Brown*

Roger K. Brown, Assistant City Attorney C:\Rog\Historic\Appeals\Tully\RC Hrg Reverse.doc

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MEYER				
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