

★ Roll Call Number  
12-1121

Agenda Item Number  
34 A

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 appealed the conditions imposed by the Historic Preservation Commission and sought 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 April 23, 2012, after public notice and hearing, the City Council referred the matter back to the Historic Preservation Commission to review new information presented by Conlin Properties; and,

WHEREAS, on May 16, 2012, the Historic Preservation Commission reaffirmed its prior decision and conditionally approved the application for a Certificate of Appropriateness upon the same three conditions identified above; and,

WHEREAS, pursuant to §58-31(f) of the Des Moines Municipal Code, Conlin Properties has again appealed the conditions imposed by the Historic Preservation Commission; and

WHEREAS, on April 23, 2012, by Roll Call No. 12-0629, it was duly resolved by the City Council that the appeal be set down for hearing on July 9, 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 June 29, 2012, and a copy of the notice was provided to the attorney for 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,

( continued )

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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 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.

( Council Communication No. 12- 379 )

MOVED by \_\_\_\_\_ to adopt, and affirm the decision of the Historic Preservation Commission.

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				
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