



Roll Call Number

13-0065

Agenda Item Number

48A

Date January 14, 2013

**RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC PRESERVATION COMMISSION TO DENY A CERTIFICATE OF APPROPRIATENESS TO RETAIN METAL TRIM COVERING AND WINDOW COVERING INSTALLATION ON A 6-UNIT APARTMENT BUILDING AT 1308 9<sup>TH</sup> STREET IN THE RIVER BEND HISTORIC DISTRICT**

WHEREAS, on October 17, 2012, the Historic Preservation Commission recommended denial of an application from Kenneth Downing for a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9<sup>th</sup> Street in the River Bend Local Historic District (the Property); and

WHEREAS, pursuant to Section 58-31(f) of the Des Moines Municipal Code, Kenneth Downing has appealed the decision by the Historic Preservation Commission and seeks to retain the metal trim covering and plexiglass window covering installed on the Property; and

WHEREAS, on December 17, 2012, by Roll Call No. 12-1934, it was duly resolved by the City Council that the appeal be set down for hearing on January 14, 2013 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 3, 2013, as provided by law, setting forth the time and place for hearing and was sent to applicant's attorney on November 29, 2012; 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; 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.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, as follows:

1. The public hearing on this appeal is hereby closed.



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- The City Council hereby finds that the decision of the Historic Preservation Commission denying a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9<sup>th</sup> Street in the River Bend Local Historic District followed the guidelines established by Iowa Code Section 303.34(3) and Section 58-31(f) of the Des Moines Municipal Code because Applicant's work is "alteration" within the meaning of Section 58-27(a) of the Historic Preservation ordinance contained in the Des Moines Municipal Code. "Alteration" means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure whereas "alteration" does not encompass ordinary maintenance and repair, which does not require a certificate of appropriateness, and is meant to correct any deterioration, decay or damage to a structure and to restore the structure, as nearly as practicable, to its condition prior to such deterioration, decay or damage provided the work does not involve a change in type of building materials.
- The October 17, 2012 Historic Preservation Commission's denial of a Certificate of Appropriateness for the retention of metal trim covering and plexiglass window covering at 1308 9<sup>th</sup> Street is hereby AFFIRMED.

(Council Communication No. 13- 007 Attached)

Moved by Hensley to adopt, and affirm the decision of the Historic Preservation Commission.

Previous motion to reverse in part the decision FAILED. YEAS: Coleman, Griess, Moore NAYS: Cownie, Hensley, Meyer, Mahaffey

APPROVED AS TO FORM:

Michael F. Kelley  
Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
COLEMAN		✓		
GRIESS		✓		
HENSLEY	✓			
MAHAFFEY	✓			
MEYER	✓			
MOORE		✓		
TOTAL	4	3		

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.

T. M. Franklin Cownie  
Mayor

Diane Rauh  
City Clerk