

COUNCIL COMMUNICATION

	Number:	23-479	Meeting:	October 23, 2023
	Agenda Item:	73	Roll Call:	23-1495
	Submitted by:	Cody Christensen, Development Services Director		

AGENDA HEADING:

Public hearing on appeal by Riva Walters (owner), represented by Jennifer De Kock (legal counsel), from the conditions imposed by the Historic Preservation Commission (HPC) on the issuance of a Certificate of Appropriateness (COA) for the installation of a fence at 685 20th Street.

- A. Resolution affirming the decision of the Historic Preservation Commission to apply conditions of approval.
- B. Alternate resolution approving the proposed fence without any conditions.

SYNOPSIS:

Riva Walters is appealing the August 16, 2023, decision of the HPC to approve a COA for the installation of an ornamental metal fence in the front yard subject to the fence being set back from the front property line, so that it would not extend past the proposed gate at the top of the front walk steps. The discussion summary, staff report and photographs from the August 16, 2016, HPC meeting, as well as the COA and the appeal filed by the applicant are attached to the roll call. Staff recommends that the City Council uphold the decision of the HPC (Option A).

FISCAL IMPACT: NONE

ADDITIONAL INFORMATION:

- The applicant first sought approval to construct an ornamental fence and other improvements in late 2022. The HPC acted on this request on December 21, 2022, conditionally approving a COA (CAHP-2022-000114). This action allowed the retention of driveway and brick retaining wall improvements that were completed without a COA. It also approved the installation of a six (6)-foot-tall black ornamental fence and gate around the side and rear yards and driveway. The proposed three (3)-foot-tall ornamental metal fence around the front yard was not approved in 2022.
- The applicant indicated during the December 2022 meeting that the front yard fence needed to be placed along the retaining wall to create a large obstacle along the front property line for security purposes. The sentiment of the Commission was that the combined height of the wall and fence had the same impact as a taller fence would have along the front property line. The HPC allowed the wall to be retained since it was already constructed, but it was observed that the wall exceeded the height of the previous retaining wall and was larger in scale than what would typically have been associated with a building of the character as the house at the subject property.

- Following the December 2022 meeting, staff reached out to the applicant to discuss possible changes that could be made to the proposal to address the Commission's concerns, while allowing the fence project to move forward. A site meeting was scheduled for April 21, 2023, which the applicant ended up not attending. A new application was submitted in June for the July meeting. The applicant was not able to attend the July meeting. The HPC continued the request to the August 16, 2023, meeting.
- The applicant presented the fence proposal from 2022 at the August 2023 meeting. During their presentation, they expressed a concern about falling while doing yard work in the space between the retaining wall and the fence, if the fence was setback as staff had recommended. Medical constraints were not noted at the meeting.
- The HPC issued COA CAHP-2023-000071, allowing the installation of a black ornamental fence around the perimeter of the front yard subject to the following conditions: (1) the fence shall be set back from the front property line and align with the gate at the top of the front walkway steps, and (2) compliance with all applicable building codes and the fence shall be constructed in accordance with a fence permit by the Permit and Development Center.
- The following text is from Page 15 of the City's Architectural Guidelines of Building Rehabilitation in Des Moines' Historic Districts: "These site elements can enhance and clarify outdoor areas and, when used as they were used originally, strengthen a neighborhood's character as an integrated historic district. A wall or fence, however, is part of a total image that involves building, landscaping adjacent structures and the neighborhood." This language indicates that the HPC should consider context when evaluating individual site improvement proposals, which they did when they considered the impact of the fence in combination with the retaining wall. The risk described by the applicant at the meeting appeared to be no different than the risk people assume while performing typical home maintenance activities.
- Section 58-31(f) of the Municipal Code states "the city council shall consider whether the commission has exercised its powers and followed the guidelines established by law and ordinance and whether the commission's action was patently arbitrary or capricious" when considering appeals. Staff recommends that the City Council uphold the decision of the HPC as their action was not arbitrary or capricious.

PREVIOUS COUNCIL ACTION(S):

Date: October 2, 2023

Roll Call Number: [23-1378](#) and [23-1379](#)

Action: On requests from Riva Walters (owner), represented by Jennifer De Kock (legal counsel), for the following: ([Council Communication No. 23-430](#))

- (A) [Consideration](#) of an extension of time in which to file an appeal of a conditional approval of a Certificate of Appropriateness on property located at 685 20th Street. Moved by Mandelbaum to receive and file the staff report and comments received and to adopt alternative A, (A) The City Council hereby extends the appeal deadline for a period of 10 additional business days and the submission of the written appeal is deemed timely. Second by Gatto. Motion Carried 6-0.

- (B) Setting date of hearing on an appeal of a conditional approval of a COA on property located at 685 20th Street for the construction of a fence in the front yard, (10-23-23). Moved by Mandelbaum to adopt. Second by Gatto. Motion Carried 6-0.

BOARD/COMMISSION ACTION(S):

Board: Historic Preservation Commission

Date: August 16, 2023

Resolution Number: CAHP-2023-000071

Action: Issuance of a COA subject to the following conditions: (1) the fence shall be set back from the front property line and align with the gate at the top of the front walkway steps, and (2) compliance with all applicable building codes and the fence shall be constructed in accordance with a fence permit by the Permit and Development Center.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS: NONE

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to cityclerk@dmgov.org.