



Date May 4, 2009

**RESOLUTION AFFIRMING THE DECISION OF THE HISTORIC
PRESERVATION COMMISSION
(649 18th Street)**

WHEREAS, Des Moines Municipal Code Section 58-31(a) provides in relevant part that no construction of a structure or alternation of any exterior features of a structure within a historic district shall be undertaken unless a certificate of appropriateness has been granted by the Historic Preservation Commission; and

WHEREAS, on March 18, 2009, the Historic Preservation Commission conditionally approved a certificate of appropriateness for the reconstruction of a retaining wall for Kristen and Edward C. Muelhaupt III at their property located at 649 - 18th Street in the Sherman Hill Historic District; and

WHEREAS, the Commission's review of the reconstructed retaining wall was the result of an enforcement action by staff in response to work completed without a certificate of appropriateness; and

WHEREAS, the Commission's approval was conditioned on Kristen and Edward C. Muelhaupt III altering the work that has been completed without the certificate of appropriateness; and

WHEREAS, Kristen and Edward C. Muelhaupt III have contended that a certificate of appropriateness is not required for the work as they believe the retaining wall was restored as nearly as practical to its condition prior to damage caused by the construction of a detached garage in accordance with §58-27(a) of the Des Moines Municipal Code; and

WHEREAS, Kristen and Edward C. Muelhaupt III have appealed the Commission's decision to the City Council pursuant to §58-31(f) of the Des Moines Municipal Code; and

WHEREAS, on April 20, 2009, by Roll Call No. 09-638, it was duly resolved by the City Council that the appeal be set down for hearing on May 4, 2009, at 5:00 p.m., in the Council Chambers; and

WHEREAS, due notice of the hearing was mailed to the applicant on April 20, 2009 and published in the Des Moines Register on April 23, 2009, setting forth the time and place for the hearing; 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; and



Date May 4, 2009

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, or 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.
2. The Historic Preservation Commission had jurisdiction to review and act upon the conditional grant of a certificate of appropriateness in this instance.
3. The City Council hereby finds that the decision of the Historic Preservation Commission to conditionally grant a certificate of appropriateness for a retaining wall at 649 18th Street is not patently arbitrary or capricious and should be upheld.
4. The City Council hereby makes the following findings in support of this decision:
 - a) The design of the retaining wall as constructed by the applicant is not consistent with the adopted fence guidelines or the historic character of the Sherman Hill Historic District for the reasons set forth in the staff report and recommendation to the Historic Preservation Commission for the Commission meeting of March 18, 2009.
 - b) The following conditions, imposed by the Historic Preservation Commission on the design and construction of the retaining wall are reasonable and consistent with the adopted retaining wall guidelines for retaining walls in the historic districts:
 - Removal of the reconstructed brick wall identified as Section 1 on the attached photograph.
 - Removal of the brick veneer from the concrete wall identified as Section 2 on the attached photograph.
 - Reconstruction of the brick retaining wall segment identified as Section 3 on the attached photograph subject to the following:




Date May 4, 2009

- o The existing historic bricks shall be removed, cleaned and reused.
- o The wall shall be constructed without a bow.
- o The line of the top course of bricks shall match the top of the historic wall to the north.
- o The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
- o The brick shall be "toothed" into the historic wall.

(Council Communication No. 09- 260)

MOVED by _____ to adopt, and affirm the decision of the Historic Preservation Commission to conditionally approve the certificate of appropriateness.

FORM APPROVED:



 Michael F. Kelley
 Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
HENSLEY				
KIERNAN				
MAHAFFEY				
MEYER				
VLASSIS				
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

53A









53A



53AeB

CITY OF DES MOINES
HISTORIC PRESERVATION COMMISSION
MEETING SUMMARY

DATE: March 18, 2009
TIME: 5:30 P.M.
PLACE: City Council Chambers
City Hall, 400 Robert D. Ray Drive

COMMISSIONERS PRESENT: Mary Reavely (Vice Chair), Teresa Weidmaier, Shirley Shaw, York Taenzer, Scotney Fenton, and Sinde Berry.

COMMISSIONERS ABSENT: Susan Holderness (Chair), Elaine Estes, and James Hoff

STAFF PRESENT: Jason Van Essen, Senior City Planner

SUMMARY OF AGENDA ITEM #2

Request from E.C. Muelhaupt (owner) for the reconstruction of a retaining wall along the rear property line at 649 18th Street in the Sherman Hill Historic District. (20-2007-5.03)

Vice Chair Mary Reavely: Read the agenda description for item #2 and noted that it appeared that Mr. Muelhaupt was not in attendance. Asked staff for an opinion on if the Commission should hear the item or continue it to a future meeting.

Jason Van Essen: Recommended that the Commission act on the item. Noted that the item has been continued before due to Mr. Muelhaupt not attending the meeting. Stated that it is unlikely Mr. Muelhaupt will attend a meeting in the near future as he has indicated that his lawyer recommended he not speak in public about the retaining wall. Mr. Muelhaupt has a pending lawsuit against the contractor that started his garage project, which lead to the damage of the retaining wall. Noted that the applicant has the ability to appeal the Commission's decision to the City Council.

Jason Van Essen: Presented the staff report and recommendation.

Vice Chair Reavely: Asked if there was anyone in the audience to speak on the item.

Guy Roberts, 692 17th Street, Des Moines: Voiced his concern regarding the quality and appearance of the retaining wall. Also, noted that the City's Public Works Department recently repaired the ruts in the brick alley that were damaged by the applicant's contractor with asphalt. Asked the Commission to look into issue and determine if the Public Works Department should have obtained a Certificate of Appropriateness for the work.

York Taenzer: Made a motion requesting that staff look into Mr. Roberts' concerns and report back to the Commission.

Sinde Berry: Seconded the motion.

VOTE: A vote of 6-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness				X

S3A+B

Reavely	X	
Berry	X	
Estes		X
Fenton	X	
Hoff		X
Shaw	X	
Taenzer	X	
Weidmaier	X	

Vice Chair Reavely: Asked if there was anyone else in the audience that wished to speak on this item. Noted no one came forward to speak and asked for a motion.

York Taenzer: Moved the staff recommendation.

Sinde Berry: Seconded the motion.

VOTE: A vote of 6-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness				X
Reavely	X			
Berry	X			
Estes				X
Fenton	X			
Hoff				X
Shaw	X			
Taenzer	X			
Weidmaier	X			

ACTION OF THE COMMISSION:

Granting the application subject to the conditions below would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications.

CONDITIONS:

1. Removal of the reconstructed brick wall identified as Section 1 on the attached photograph (Attachment "A").
2. Removal of the brick veneer from the concrete wall identified as Section 2 on the attached photograph (Attachment "A").
3. Reconstruction of the brick retaining wall segment identified as Section 3 on the attached photograph (Attachment "A") subject to the following:
 - a. The existing historic bricks shall be removed, cleaned and reused.
 - b. The wall shall be constructed without a bow.
 - c. The line of the top course of bricks shall match the top of the historic wall to the north.
 - d. The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
 - e. The brick shall be "toothed" into the historic wall.

S3A+B

HISTORIC PRESERVATION COMMISSION
CITY OF DES MOINES
CERTIFICATE OF APPROPRIATENESS
In the Following Matter

This Certificate of Appropriateness is valid for one year from the meeting date

REQUEST FROM:	:	CASE NUMBER: 20-2007-5.03 Amendment
	:	
EDWARD C. MUELHAUPT III	:	
	:	
PROPERTY LOCATION:	:	MEETING DATE: MARCH 18, 2009
	:	
649 18TH STREET	:	

This Decision of the Historic Preservation Commission does not constitute approval of any construction. All necessary permits must be obtained before any construction is commenced upon the Property. A Certificate of Occupancy must be obtained before any structure is occupied or re-occupied after a change of use.

SUBJECT OF THE REQUEST:

Reconstruction of a retaining wall along the rear property line.

FINDING OF THE HISTORIC PRESERVATION COMMISSION:

Granting the application subject to the conditions below would be in harmony with the historic character of the neighborhood and would meet the requirements set out in the Historic District Ordinance, the Secretary of Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, and the City of Des Moines' Standard Specifications.

CONDITIONS:

1. Removal of the reconstructed brick wall identified as Section 1 on the attached photograph (Attachment "A").
2. Removal of the brick veneer from the concrete wall identified as Section 2 on the attached photograph (Attachment "A").
3. Reconstruction of the brick retaining wall segment identified as Section 3 on the attached photograph (Attachment "A") subject to the following:
 - a. The existing historic bricks shall be removed, cleaned and reused.
 - b. The wall shall be constructed without a bow.
 - c. The line of the top course of bricks shall match the top of the historic wall to the north.
 - d. The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
 - e. The brick shall be "toothed" into the historic wall.

S3A+B

Edward C. Muelhaupt III
649 18th Street
20-2007-5.03 Amendment

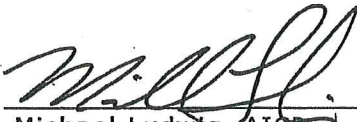
-2-

March 18, 2009

VOTE: A vote of 6-0-0 was registered as follows:

	Aye	Nay	Abstain	Absent
Holderness				X
Estes				X
Hoff				X
Reavely	X			
Shaw	X			
Berry	X			
Fenton	X			
Taenzer	X			
Weidmaier	X			

Approved as to form:



Michael Ludwig, AICP
Planning Administrator



Larry Hulse, AICP
Community Development Director

Date Filed: 3/25/09

Filed By:

JV

ATTACHMENT "A" 20-2007-5.03



**CITY OF DES MOINES HISTORIC PRESERVATION COMMISSION
STAFF REPORT AND RECOMMENDATION
Wednesday, March 18, 2009**

AGENDA ITEM #2

20-2007-5.03

Applicant: Edward C. Muelhaupt (owner).

Location: 649 18th Street (Sherman Hill Historic District).

Requested Action: Reconstruction of a retaining wall along the rear property line.

This item was continued from the November 19, 2008, meeting. On February 18, 2009, the Commission reviewed a communication from the applicant that responded to questions raised by the Commission. The following is a revised staff report.

I. CASE HISTORY

The subject property is adjoined to the east by a north/south alley. This alley contains a brick retaining wall along portions of its western perimeter including the subject property. The portion of the retaining wall that adjoins the subject property was damaged during the construction of the applicant's garage. The applicant was advised that the City Code would allow him to reconstruct the wall without obtaining a Certificate of Appropriateness if the brick was reused, and laid in the same pattern and location as before. Below are the applicable sections of the City Code.

Sec. 58-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) Alteration means any action to change, modify, reconstruct, remove or demolish any exterior features of an existing structure. For the purposes of this article, ordinary maintenance and repair 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 are excluded from the definition of the term "alteration," provided such work does not involve a change in type of building materials. For the purposes of this article, changes made in the type and design of storm windows and in the color of the outer surfaces of a structure are considered to be ordinary maintenance and repair.

Sec. 58-31. Certificate of appropriateness required.

- (a) No individual or corporation shall undertake the construction of a structure within a historic district or the alteration of any exterior features of a structure within a historic district, nor shall the community development department issue a building permit for any such proposed construction or alteration, unless a certificate of appropriateness has been granted by the historic preservation commission.

When the wall was reconstructed it was integrated with the concrete retaining wall and foundation system of the garage. Therefore, the portion of the restored wall that runs along the garage consists of both concrete and brick and is not comprised completely of the original building material type.

The portion of the reconstructed wall to the north of the garage consists solely of brick, but was not restored to its prior design. The City Code allows for some variation if there is practical difficulty in reconstructing the original design. Staff believes that the wall could have been constructed without a bow and that the top line of the historic wall could have been maintained across the reconstructed wall.

Staff has determined that the property owner must obtain a Certificate of Appropriateness given the introduction of a new building material type for the portion of the wall along the garage and for the lack of evidence that they applicant faced a practical difficulty in matching the historic design for the segment of wall to the north of the garage.

II. GENERAL INFORMATION

- 1. Site Description:** The subject property measures 50' x 125' and contains a 2-story single-family dwelling built circa 1885, with a total living area of 1,900 square feet.
- 2. Relevant COA History:** On July 15, 2006, the Historic Preservation Commission conditionally approved the applicant's request to finish reconstructing the front porch. On August 21, 2006, the Historic Preservation Commission conditionally approved the applicant's request to relocate the front door, enclose the rear porch, and construct a garage and a second floor addition. On November 15, 2006, the Commission conditionally approved the construction of a fence along the south property line.

III. APPLICABLE DESIGN GUIDELINES

Architectural Guidelines for Building Rehabilitation (retaining walls):

- a. Retaining walls should not be removed if the removal breaks the continuity of the wall along the block.
- b. Walls in both Sherman Hill and Owl's Head should be constructed of brick, stone or concrete.
- c. Walls should be used to correct drainage or erosion problems, to handle grade changes, to separate public from private, and to buffer parking areas.
- d. Brick retaining walls should be restored and maintained. Brick is appropriate material for new walls.
- e. Repairs to existing retaining walls should be done with materials matching the existing material.
- f. Consider repeating material and details found on the building in the design of the wall in order to relate carefully in scale and style to the building it surrounds

The intact portion of the brick retaining wall was extended to the point that it runs into the concrete retaining wall near the northeast corner of the applicant's property. A brick veneer has been added to the taller portion of the concrete retaining wall. The shorter portion of the concrete retaining wall runs along the side of the garage. A brick wall has been constructed on top of the concrete utilizing brick from the previous brick wall. (see Attachment "A") The applicant has indicated that the brick veneer would be stained to blend with the historic brick, which is darker in color. It is staff's understanding that the brick veneer is not resting on a ledge and is only attached to the side of the concrete wall. Staff believes that the veneer will likely fall off in the near future as this is not a secure way to install brick veneer.

Staff believes that the portion of the retaining wall that contains concrete cannot be modified to the point that it will truly appear integrated with the historic brick wall to the north. Staff further believes that the most appropriate course of action is to clearly identify the brick wall and the concrete wall as separate elements. Staff recommends that the bricks and the brick veneer be removed from the concrete wall system and that the portion of the reconstructed wall to the north of the garage be rebuilt to match the design of the historic brick wall as described in Section IV of this report.

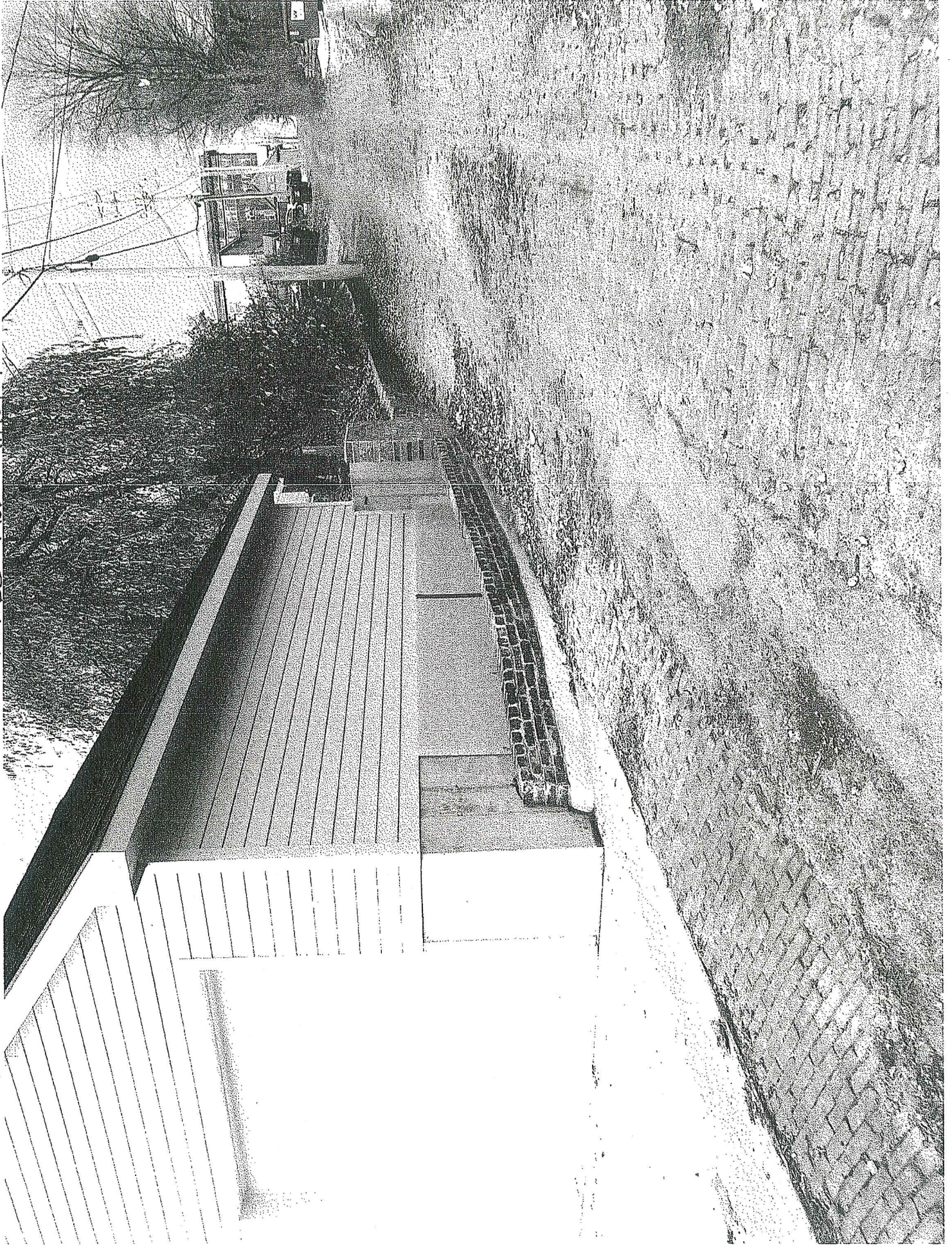
IV. STAFF RECOMMENDATION

Staff recommends approval of the requested Certificate of Appropriateness subject to the following conditions:

1. Removal of the reconstructed brick wall identified as Section 1 in the attached photograph (Attachment "A").
2. Removal of the brick veneer from the concrete wall identified as Section 2 in the attached photograph (Attachment "A").
3. Reconstruction of the brick retaining wall segment identified as Section 3 in the attached photograph (Attachment "A") subject to the following:
 - a. The existing historic bricks shall be removed, cleaned and reused.
 - b. The wall shall be constructed without a bow.
 - c. The line of the top course of bricks shall match the top of the historic wall to the north.
 - d. The joint, mortar strike, and brick pattern from the historic brick wall shall be matched row for row.
 - e. The brick shall be "toothed" into the historic wall.

S3A+B

PICTURE TAKE 11/10/09



S3A+B

PICTURE TAKEN 10/27/08



PICTURE TAKEN 11/10/09

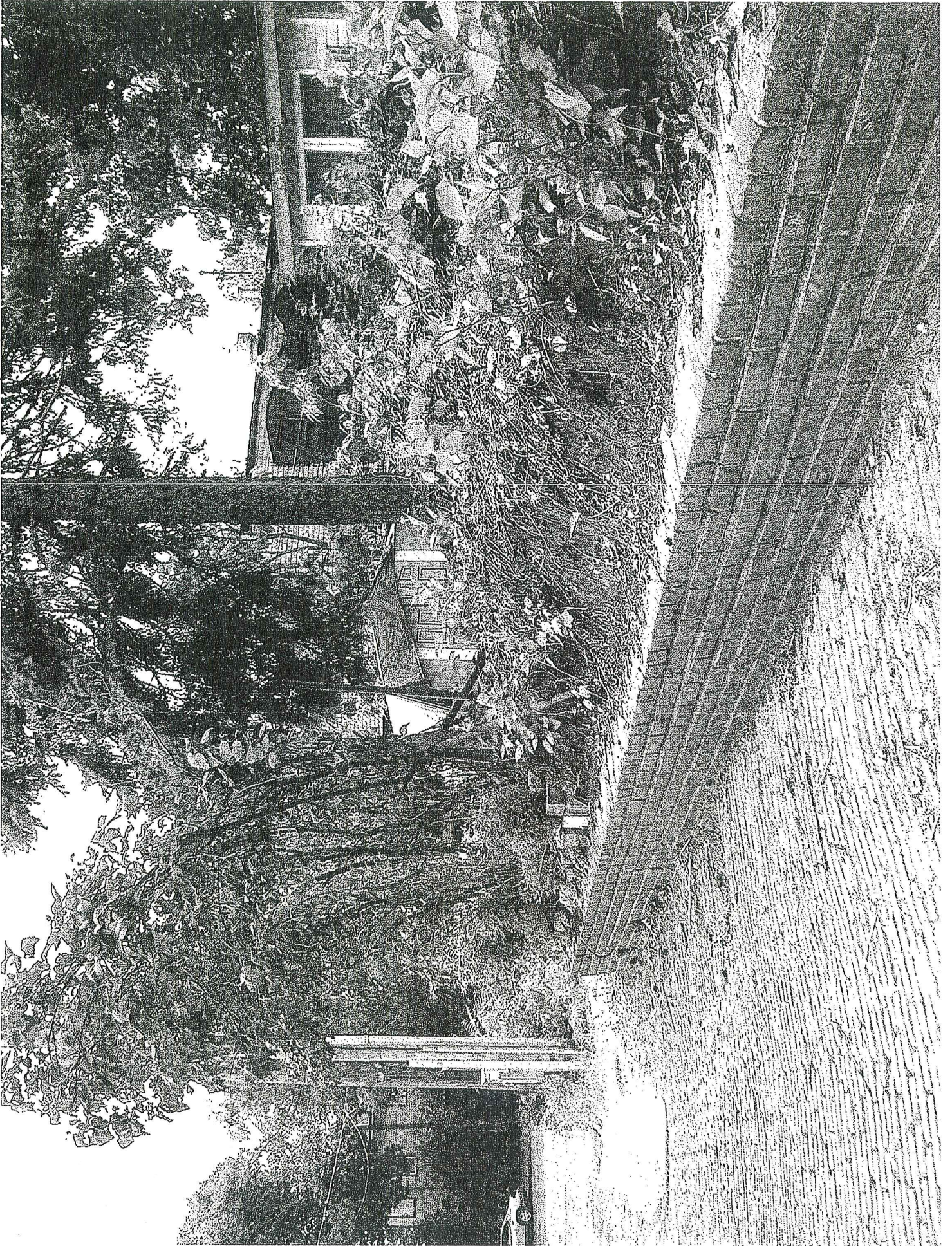


S3A+B

PICTURE TAKEN 11/10/08



PICTURE TAKEN 8/21/04



S3A4B

PICTURE TAKEN 8/21/06

