



Date October 2, 2023

**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**

**WHEREAS**, on August 16, 2023, after notice, the Historic Preservation Commission (“HPC”) considered a request from Riva Walters, owner, to install a new black ornamental fence in the front yard of 685 20<sup>th</sup> Street, Des Moines; and

**WHEREAS**, the HPC issued a decision granting approval of a certificate of appropriateness for the proposed fencing, subject 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 as issued by the Permit and Development Center; and

**WHEREAS**, Municipal Code 58-62(e)(2) provides that any party aggrieved to such a decision of the HPC must file a written appeal with the City Clerk within 10 business days of the HPC resolution; and

**WHEREAS**, on September 6, 2023, Jennifer De Kock, legal counsel for Riva Walters, requested an extension of said appeal deadline by 10 additional business days due to said legal counsel’s exposure and recovery from COVID-19, so legal counsel could speak with neighbors and gather evidence in support of the appeal; and

**WHEREAS**, on September 20, 2023, ten business days after submitting the request for extension, Jennifer De Kock, filed a written appeal with the City Clerk on behalf of her client; and

**WHEREAS**, City staff are supportive of extending the appeal deadline as requested.

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

**ALTERNATIVE RESOLUTIONS**

- A The City Council hereby extends the appeal deadline for a period of ten additional business days and the submission of the written appeal is deemed timely.
- B The City Council declines to extend the appeal deadline. The decision of the HPC is final, as no appeal was timely filed.



**Roll Call Number**

**Agenda Item Number**

74A

**Date** October 2, 2023

(Council Communication No. 23-430)

MOVED by \_\_\_\_\_ to receive and file the staff report and comments received, and to adopt alternative \_\_\_\_\_, above.

SECOND by \_\_\_\_\_.

FORM APPROVED:

                                /s/ Lisa A. Wieland                                  
Lisa A. Wieland  
Assistant City Attorney

| COUNCIL ACTION | YEAS | NAYS | PASS     | ABSENT |
|----------------|------|------|----------|--------|
| COWNIE         |      |      |          |        |
| BOESEN         |      |      |          |        |
| GATTO          |      |      |          |        |
| MANDELBAUM     |      |      |          |        |
| VOSS           |      |      |          |        |
| WESTERGAARD    |      |      |          |        |
| TOTAL          |      |      |          |        |
| MOTION CARRIED |      |      | APPROVED |        |
| _____ Mayor    |      |      |          |        |

**CERTIFICATE**

I, LAURA BAUMGARTNER, 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

74A



**COPPOLA HOCKENBERG**  
A PROFESSIONAL CORPORATION

CHRISTOPHER B. COPPOLA  
HARLAN D. HOCKENBERG  
JENNIFER H. DE KOCK, Associate  

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September 20, 2023

**VIA EMAIL**  
[CityClerk@dmgov.org](mailto:CityClerk@dmgov.org)

Des Moines City Council  
c/o the City Clerk of Des Moines  
City of Des Moines Administration Building  
400 East Court Avenue  
Des Moines, IA 50309

**Re:** Appeal from Historic Preservation Commission  
Certificate of Appropriateness - CAHP-2023-000071  
Appellant: Riva L. Walters  
Property Address: 685 20th Street, Des Moines, Iowa, 50314

Dear Mayor Cownie and Council Members Voss, Boesen, Sheumaker, Westergaard, Mandelbaum, and Gatto:

This letter serves as Ms. Riva I. Walters' appeal from the Certificate of Appropriateness issued by the Historic Preservation Commission ("Commission") for the property located at 685 20th Street, Des Moines, Iowa. The Certificate of Appropriateness ("Certificate") was filed on August 23, 2023, and a request for a ten (10) day extension for time to appeal was made and granted on September 6, 2023, so this request is timely under the Des Moines Municipal Code, Chapter 58, Article II, section 58-31(f) ("the Code").

The Certificate of Appropriateness filed on August 23, 2023 allows for Ms. Walters to "install a new black ornamental fence in the front yard" but only under the condition that "the fence shall be set back from the front property line and align with the gate at the top of the front walkway steps." See Certificate of Appropriateness attached hereto as Exhibit A (emphasis added).

**Standard of Review**

In deciding this appeal, the Code directs that you, "shall consider whether the commission has exercised its powers and follow the guidelines established by law and ordinance, and whether the Commission's action was patently, arbitrary or capricious." Code section 58-31 (F). The Commission's decision can be reversed if it failed to follow the guidelines established by law and



ordinance, or if its action was patently, arbitrary, and capricious. Either ground may serve as grounds for reversal. An action is “arbitrary and capricious“ if it is taken without regard to the law or facts of the case. *Dawson v. Iowa Board Of Medical Examiners*, 654 N.W.2d 514, 519 (Iowa, 2002).

### **Applicable Code**

Section 58-3 l(c) of the Code provides the standards that the Commission is to apply when reviewing an Application for a Certificate of Appropriateness:

In acting upon each application, the commission shall consider the following:

- (1) Design guidelines, standards and criteria developed by the commission and approved by the city council pursuant to subsection 58-30(e)(2) of this article.
- (2) Standards for rehabilitation promulgated by the Secretary of Interior.
- (3) The relationship of the proposed changes to exterior features of structures in the neighborhood.

Furthermore, it is the intent of this article that the commission shall be reasonable in its judgments and shall endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value, except when such proposal would seriously impair the historical values and character of the surrounding area. Also, the commission shall be sympathetic to proposals utilizing energy saving modifications, such as solar panels.

(emphasis added).

### **Background Information**

Ms. Walters purchased the subject property as her home in 2022. At the time, the home had an existing brick retaining wall that was between three (3) feet and forty-two (42) inches high<sup>1</sup> facing the front of the property:



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<sup>1</sup> The subject property is not entirely level, and the height of the retaining wall increases as 20<sup>th</sup> Street slopes down to the south in order to maintain the level top of the wall.

Ms. Walters proposed to install a three (3) foot ornamental metal fence and gate in the front yard. The fence would be in line and behind the retaining wall in existence when she purchased the property. The entire structure was in line with and the same height as her north neighbors' gate and fence (above). The subject property retaining wall is in line with and south neighbor's retaining wall (below) and the proposed fence posts shown below are set below the retaining wall to minimize visual impact.



Ms. Walters consulted with her south and north neighbors, and both agreed to and approved her fence proposal.

As noted in the July 19, 2023 City of Des Moines Historic Preservation Commission Staff Report and Recommendation, “four to six feet in height is typical for long stretches of land.” See Staff Report and Recommendation attached hereto as Exhibit B. Here, the total height of the retaining wall and fence would be six (6) feet with the fence post tops slightly higher. The primary concern noted in the Report and Recommendation was that “the location of the fence against the existing retaining wall created an imposing and overly large design at the sidewalk” and that “the applicant has not provided substantive reasons...as to why the fencing must be in this location.” *Id.* Consequently, the staff recommended, and the Commission approved the fence with the caveat that it be set back from the front property line and “align with the gate at the top of the front walkway steps.” See Exhibit A (emphasis added).

As shown in the video attached hereto as Exhibit C, Ms. Walters is approximately 5' 7" tall. She is not tall enough to perform raking and trimming yardwork over the side of the retaining wall without actually climbing on the wall. If the fence is installed as proposed by Ms. Walters, she can perform all necessary yardwork from the level grass behind the wall.



## Request for Reversal

The Commission's decision should be reversed, and a Certificate of Appropriateness granted to Ms. Walters allowing the proposed fencing in line with the retaining wall existing when she purchased the property. Reversal is supported by the following reasons:

1. One of the items that the Commission "shall consider" is the "relationship of the proposed changes to exterior features of structures in the neighborhood." See Code § 58-31(c). A survey of Ms. Walters' block and the surrounding neighborhood shows that most fencing is flush with the property line or entirely against the sidewalk. In addition, many lots have established trees and shrubbery that are "imposing" and "overly large...at the sidewalk" including on the lot owned by Ms. Walters' neighbors to her north, shown on page 1 herein.



See also the following property lines:



2. The Code also states that the Commission "shall endeavor to approve proposals for alteration of structures of little historical, architectural and cultural value, except when such proposal would seriously impair the historical values and character of the surrounding area." Code, § 58-31(c). Here, the retaining wall has little historical, architectural or

cultural value. Consequently, under this Code provision, the Commission is required to approve such proposals, unless the proposal "would seriously impair the historical values and character of the surrounding area." As shown by the photos above, there is no evidence that the proposed fence location would "seriously impair" the neighborhood's values and character. In fact the proposed fence location has been proposed to and approved by the neighbors as in line with Sherman Hill's values and character.

3. Finally, Ms. Walters is a breast cancer survivor. She has an ongoing disability, namely Addison's Disease<sup>2</sup> and neuropathy<sup>3</sup> caused by medically necessary chemotherapy to treat her breast cancer. The symptoms of Addison's Disease and neuropathy that impact Ms. Walters' activities of daily living, including climbing and balancing include, but are not limited to:

- Extreme fatigue
- Low blood pressure, even fainting
- Low blood sugar, also called hypoglycemia
- Abdominal pain
- Muscle and joint pain
- Gradual onset of numbness, prickling, or tingling in feet or hands that can spread upward into legs and arms.
- Sharp, jabbing, throbbing or burning pain.
- Pain during activities that shouldn't cause pain, foot pain when putting weight on them
- Lack of coordination and falling.
- Muscle weakness.
- Inability to move if motor nerves are affected.
- Drops in blood pressure, causing dizziness or lightheadedness.

Given that the fence is not of historical significance itself and does not "seriously impair the historical values and character of the surrounding area," Ms. Walters requests that the Certificate of Appropriateness entered by the Commission be reversed and that the Council issue a Certificate of Appropriateness that allows her to proceed with the fence installation as planned and proposed. Ms. Walters additionally requests that the Council consider her disability and the undue burden that upholding the Certificate of Appropriateness would have on her safety and her ability to care for her property without risk of injury and falling. Thank you.

Yours very truly,  
COPPOLA HOCKENBERG, P.C.



Jennifer H. De Kock  
Attorney at Law

Attachments via DropBox link

cc (via email with attachments): Jason Van Essen, Jacob T. Coupee, Stacey R. Hanley, Bert A. Drost, Riva L. Walters

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<sup>2</sup> <https://www.mayoclinic.org/diseases-conditions/addisons-disease/symptoms-causes/syc-20350293#:~:text=Addison's%20disease%2C%20also%20called%20adrenal,little%20of%20another%20hormone%2C%20aldosterone.>

<sup>3</sup> <https://www.mayoclinic.org/diseases-conditions/peripheral-neuropathy/symptoms-causes/syc-20352061>