



## Legislation Details (With Text)

**File #:** AHPC 11-1    **Version:** 2

**Type:** Appeal-HPC    **Status:** Archived  
**In control:** City Council  
**Final action:** 1/4/2012

**Title:** Public hearing to consider the appeal of Shari Wilsey and Susan Foote to a decision of Heritage Preservation Commission Staff for conditionally approving a 78 feet by 34 feet galvanized steel panel fence with cedar posts and top in the front yard at 797 Summit Avenue, House of Hope Presbyterian Church, Hill Historic District. (Public hearing held July 20; laid over from December 21)

**Sponsors:** Melvin Carter III

**Indexes:** Appeal, Fence, Heritage Preservation Commission, Historic Preservation

**Code sections:** Sec. 73.01. - Declaration of public policy and purpose., Sec. 73.06. - Review of permits., Sec. 74.51. - Boundaries of district and legally described property therein., Sec. 74.63. - Intent and purpose., Sec. 74.64. - Restoration and rehabilitation., Sec. 74.65. - New construction.

**Attachments:** 1. 797 Summit, Ground for Appeal, 2. 797 Summit, Certificate of Approval for Work, 3. 797 Summit application materials, 4. SARPA testimony.pdf, 5. AHPC 11-1 Photos 797 Summit.pdf, 6. AHPC 11-1 Staff Repor 797 Summit.pdf, 7. AHPC 11-1 Testimony 797 Summit.pdf, 8. House of Hope public hearing testimony.pdf

| Date       | Ver. | Action By    | Action    | Result |
|------------|------|--------------|-----------|--------|
| 1/4/2012   | 1    | City Council | Granted   | Pass   |
| 12/21/2011 | 1    | City Council | Laid Over | Pass   |
| 11/23/2011 | 1    | City Council | Laid Over | Pass   |
| 11/9/2011  | 1    | City Council | Laid Over | Pass   |
| 10/12/2011 | 1    | City Council | Laid Over | Pass   |
| 9/28/2011  | 1    | City Council | Laid Over | Pass   |
| 9/14/2011  | 1    | City Council | Laid Over | Pass   |
| 8/10/2011  | 1    | City Council | Laid Over | Pass   |
| 7/20/2011  | 1    | City Council | Laid Over | Pass   |

Public hearing to consider the appeal of Shari Wilsey and Susan Foote to a decision of Heritage Preservation Commission Staff for conditionally approving a 78 feet by 34 feet galvanized steel panel fence with cedar posts and top in the front yard at 797 Summit Avenue, House of Hope Presbyterian Church, Hill Historic District. (Public hearing held July 20; laid over from December 21)

WHEREAS, on or about April 22, 2011, House of Hope Presbyterian Church ("Church"), pursuant to Leg. Code § 73.06(d), made application to the Heritage Preservation Commission ("HPC") under HPC File No. 11-137888 for a Design Review for the purpose of constructing a fence to enclose a proposed "community garden" on Church property commonly known as 797 Summit Avenue which is located within the designated Heritage Hill Historic Preservation District; an

WHEREAS, attached to the Church's HPC Design Review Application were: (1) a copy of the Church's Fence Permit Application; (2) a drawing depicting the design of the garden fence; (3) a photo of the Church property showing where the fence was to be installed; and (4) a site plan with elevated drawings; and

WHEREAS, on May 5, 2011, pursuant to Leg. Code § 73.06(e), the design for the proposed fence was approved by HPC staff under a Certificate of Approval for Minor which represented the fence work as follows:

“Install a fence in front of the pre-school to enclose the fruit and vegetable garden. The fence is rectangular, approximately 78 feet by 34 feet and made of galvanized steel welded panels of 4 inch gauge with graduated openings from 2 inches at the base to 6 inches at the top. The top is finished with a cedar trim and cedar posts are spaced every 8 feet. Two panels on the North side are 54 inches and 16 feet wide for trellising taller crops. The remainder of the fence is 36 inches high.”

- the said Certificate approval being based upon the following findings of fact:

1. The below hedge and visually open fence comply with the guideline;
2. The enclosure and landscaping allow visual penetration of the semi-public space and comply with the guideline;
3. The steel and cedar fence are of a more modern design and interpretation of a traditional rabbit fence. A raw metal finish would not comply with the guideline, thus the metal should have a dark finish or be painted black.

- and, as provided under Leg. Code § 73.06(e), the said approval was also “subject to such conditions as may reasonably advance the purposes of this section and the applicable preservation program” which were set forth in the said Certificate as follows:

“The finish of the steel panels shall be either a dark gray or black.”

WHEREAS, on or about May 6, 2011, The City’s Department of Safety and Inspections issued a Fence Permit to the Church to construct the fence which stated an estimated start date of May 16, 2011, and an estimated completion date of June 16, 2011; and

WHEREAS, on or about June 15, 2011, Shari K. Taylor-Wilsey and Susan B. Foote (“Appellants”), filed an appeal of the HPC staff decision allowing the Church’s installation of the fence; and

WHEREAS, Appellants’ basis for appeal stated that HPC staff erred in approving the Church’s fence design because the design did not follow the Historic Hill District’s Guidelines for Design Review under Leg. Code §§ 74.64(a)(1) and (2) entitled “Restoration and Rehabilitation” and Leg. Code § 74.65(f)(2) entitled “New Construction, Landscaping;” and

WHEREAS, pursuant to Legislative Code § 73.06(h), the matter was duly set on for a public hearing before the Saint Paul City Council; and

WHEREAS, on or about July 20, 2011, the Saint Paul City Council conducted a public hearing where all interested parties were afforded an opportunity to be heard; and

WHEREAS, at the said public hearing, HPC staff presented a report dated July 18, 2011. In its report, the HPC staff concluded that the May 5, 2011 Certificate of Approval for Minor Work had been granted in error. The HPC staff conclusion was based upon the following findings:

1. The entire complex is categorized as pivotal the historic and architectural integrity of the Hill Historic District. This classification is used by the staff and HPC when reviewing all applications. It is a variable that is weighed along with all applicable guidelines, the integrity of the property, the nature of the proposal and the history in context of the Historic District.
2. The HPC does not review or regulate plantings, but the Hill Historic District design review guidelines make recommendations regarding plantings in front yards on pages 34 and 35. Both the text and the

illustrations indicate that low and/or visually open plantings are appropriate while tall hedges are not. (Legislative Code § 74.65(f)(2))

3. The HPC reviews and regulates fencing within all the Historic District and this type of request is usually considered minor and typically reviewed and approved by staff. There are certain cases brought before the full HPC for a more formal review. Pages 34 and 35 of the Hill guidelines also provide text and illustrations as to what is appropriate in front yards and what is not. The guidelines address both location and appearance for (design) of appropriate fencing. Appropriate location is depicted as outlining the front yard as a semi-public space and appropriate appearances are low wrought iron fences and painted picket fences. Inappropriate fences are metal cyclone fencing and weathered wood opaque fences. (Legislative Code § 74.65(f)(2))

4. The Certificate of Approval for Minor Work states the following findings or reasons for the approval as:

1. The low hedge and visually open fence comply with the guideline.
2. The enclosure and landscaping allow for visual penetration of the semi-public space and comply with the guideline.
3. The steel and cedar fence are of a more modern design and interpretation of a traditional rabbit fence. A raw metal finish would not comply with the guideline, thus the metal should have a dark finish or be painted black.

5. The staff approval was conditioned on the finish of the steel panels being either a dark grey or black. This condition does not appear to be met.

6. The fence permit that was issued noted that the zoning code allows for a maximum fence height in front yards of 4 feet. This does not appear to be met on the taller trellis section of the fence.

7. The Certificate of Approval took into consideration the height, visual openness and materials, but did not take into consideration location and overall design of the fence given the style and two materials being combined together.

8. In retrospect, staff erred in conditionally approving the fence because (1) the location or placement of the fence did not distinguish the “. . . semi-public space of the front yard by a changing in grade, a low hedge or a visually open fence; (2) the appearance of the fence is not characteristic of most of the Historic Hill area; (3) a condition was made to address the metal finish of the panels but not the unpainted wood of the posts and rail”; and

WHEREAS, following the public hearing testimony, the Council moved to lay the Appellants' appeal over in order to afford Appellants and the Church an opportunity to explore an alternate resolution to the matter before the Council rendered its decision and, accordingly, the Council moved to continue the matter from July 20, 2011 to August 10, 2011; and

WHEREAS, the Appellants and the Church subsequently met to discuss possible resolutions of the matter and, on August 20, 2011, the Council moved to lay the matter over until September 14, 2011. On September 14, 2011, the Council laid the matter over to September 28, 2011. On September 28, 2011, the Council laid the matter over until October 12, 2011. On October 12, 2011, the Council laid the matter over to November 9, 2011. On November 9, 2011, the Council laid the matter over to November 23, 2011. On November 23, 2011, the Council laid the matter over to December 21, 2011. On December 21, 2011, the Council was informed that a mutually acceptable design for the fence had been agreed upon in general and thus the matter was laid over to January 4, 2012, for a motion of intent and ratification of a resolution concluding this matter; NOW, THEREFORE

BE IT RESOLVED, based upon the representations of the Appellants and the Church that a general design

has been agreed to, the Council of the City of Saint Paul, pursuant to Legislative Code § 73.06(h), does hereby

RESOLVE, upon all the testimony and records in this matter, including the HPC staff report dated July 18, 2011, the Council hereby finds:

1. That the garden fence design initially approved by the HPC staff on May 6, 2011 was not in keeping with the design characteristic goals for semi-public spaces in the Historic Hill District as set forth in the July 18, 2011, HPC staff report and the Council hereby adopts the findings of the July 18, 2011 staff report as the basis for this decision.
2. That after extensive discussion, the Church has agreed to modify the shape and design of its garden fence and, accordingly, will prepare a new set of drawings showing the dimensions, details, designs, materials, and finishes for a new garden fence and will submit the same to HPC staff for administrative review to insure that the redesigned garden fence is in keeping with the design characteristics of the District. The Church and HPC staff have discussed and examined various designs and sources of fencing which can meet the design characteristics of the District and the final details of that design need to be formally established.
3. That upon its approval of a redesigned garden fence, HPC staff will re-issue the Certificate of Approval for Minor Work to the Church. This will permit the Church to commence and complete the new garden fence in a reasonable time for the upcoming growing season with the fence to be completed no later than June 1, 2012.
4. That upon a final inspection of the garden fence by DSI staff, by this resolution and with no need for additional action by the Council, this appeal shall be concluded.

AND, BE IT FINALLY RESOLVED, that a copy of this Resolution shall be immediately mailed by the City Clerk to the Appellants, the Church, the HPC and HPC staff, and the Department of Safety and Inspections.