

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

TO: Alder Marsha Rummel

FROM: John W. Strange, Assistant City Attorney

RE: Certificate of Appropriateness -- Window Removal

Date: March 9, 2017

You have asked for my opinion regarding the standard for granting a Certificate of Appropriateness under Sec. 41.18(1), MGO, when the applicant wants to remove windows from a structure located in a historic district.

Sec. 41.18(1) states:

- (1) New Construction or Exterior Alteration. The Landmarks Commission shall approve a certificate of appropriateness for exterior alteration or construction only if:
 - (a) In the case of exterior alteration to a designated landmark, the proposed work would meet the Secretary of the Interior's Standards for Rehabilitation.
 - (b) In the case of exterior alteration or construction of a structure on a landmark site, the proposed work would meet the Secretary of the Interior's Standards for Rehabilitation.
 - (c) In the case of exterior alteration or construction on any property located in a historic district, the proposed exterior alteration or construction meets the adopted standards and guidelines for that district.
 - (d) In the case of any exterior alteration or construction for which a certificate of appropriateness is required, the proposed work will not frustrate the public interest expressed in this ordinance for protecting, promoting, conserving, and using the City's historic resources.

Under this provision, the Landmarks Commission must approve a Certificate of Appropriateness for an exterior alteration (such as a window removal or replacement),

but only if the applicant meets all of the standards listed in (a)-(d).

Most relevant to the issue of removing windows from a structure in a historic district are subs. (c) and (d).

First, sub. (c) states that the applicant must meet all of the standards and guidelines contained in each district specific ordinance. For windows, some districts specifically address the removal of windows and some do not. *Compare* Sec. 41.25(5)(f) (Marquette Bungalows) *and* Sec. 41.22 (Mansion Hill). When considering an application for the removal of windows in a district that provides standards for the removal of windows, the Landmarks Commission, pursuant to sub. (c), may not grant a certificate of appropriateness if those standards have not been met.

However, even if a historic district ordinance has no standards related to window removal, or if the Landmarks Commission determines that a historic district ordinance's standards for window removal have been met, the Landmarks Commission may not automatically grant the Certificate of Appropriateness for window removal. It still must ensure that the standard in sub. (d) has been met. Specifically, the Landmarks Commission must find that the proposed window removal will not "frustrate the public interest in protecting, promoting, and conserving the City's historic resources."

The Historic Preservation Ordinance states a strong public interest in identifying, protecting, preserving, promoting, conserving, and using historic resources within the city. Sec. 41.02 defines Historic Resource as "any building, structure, sign, feature, improvement, site, or area having significant architectural, archaeological, anthropological, historical, or cultural value. Historic Resources include properties designated as...historic resources in historic districts." Each historic district ordinance defines historic resource as a Landmark, Landmark Site, or property constructed during the period of significance. Thus, the Historic Preservation Ordinance sets a strong public interest against destroying any feature of a historic resource.

Certainly, a window that is original to a structure constructed during the period of significance is the type of "feature" of a "historic resource" that the Historic Preservation Ordinance is designed to protect. Thus, if someone proposes the removal of an original window from a historic resource, then I think the ordinance creates a strong presumption that Landmarks Commission should determine that the removal of that window would frustrate the public interest in protecting historic resources, and deny the Certificate of Appropriateness pursuant to sub. (d).

If you believe that sub. (d) does not provide enough protection for windows in the historic districts, then each historic district ordinance would need be amended to replace any current standards and guidelines related to windows with a prohibition on window removal. This is something that could be addressed now or during Phase II of the Landmarks Ordinance Review Committee process.