

From: [James Matson](#)
To: [Scanlon, Amy](#)
Cc: [Strange, John](#); [Stu Levitan](#)
Subject: Landmarks Ordinance
Date: Monday, January 26, 2015 12:36:02 PM
Attachments: [Ordinance Criteria \(1-26-15\).pdf](#)
[ATT00001.htm](#)
[Plain Language Summary.pdf](#)
[ATT00002.htm](#)
[Section 33.19\(13\). Appeal compared to Section 41.19.pdf](#)
[ATT00003.htm](#)
[Section 33.19\(15\). Waivers compared to Section 41.18 Variances.pdf](#)
[ATT00004.htm](#)
[33.19 \(13\) redline.pdf](#)
[ATT00005.htm](#)
[33.19\(15\) Redline.pdf](#)
[ATT00006.htm](#)

Hi Amy:

On behalf of the Ordinance Committee of the Madison Alliance for Historic Preservation, I am submitting the following materials for the Ad Hoc Landmarks Ordinance Review Committee Meeting on January 31, 2015:

- Criteria for a Fair and Effective Landmarks Ordinance (Summary Memo).
- "Plain Language Summary" of our proposed Ch. 41.
- Side-by-Side Analyses of sections 33.19(13) Appeals, and 33.19(15) Waivers, showing our alternative language and why we believe it is better.
- Our proposed changes to s. 33.19(13) and (15) in strikeout/underline form (somewhat difficult because of the current awkward format of 33.19).

We understand that you will forward these materials to LORC members.

Thank you, as always.

Jim Matson

DATE: January 26, 2015

TO: Madison Common Council, Ad Hoc Committee on Landmarks Ordinance Revision

FROM: James Matson, Ordinance Committee of the Madison Alliance for Historic Preservation

SUBJECT: **Criteria for a Fair and Effective Landmarks Ordinance**

Over the past months, our citizen committee has tried to assist your Committee in developing a fair and effective Landmarks Ordinance for the City of Madison. This is a hard task, involving many complicated legal, policy and drafting issues. But we believe that there is a clear path forward, based on the following basic principles:

- 1. The Ordinance should provide a clear mandate, and a clear ongoing process, for identifying and protecting Madison's important historic resources.** Our historic resources tell the unique story of our community, and set us apart from an increasingly generic world. They are valuable community assets, and they occupy less than 1% of the city's land area. Once lost, they cannot be recovered. They should not be sacrificed to neglect, short-term thinking, or a rush of unplanned development.
- 2. Historic preservation should be an integral part of the City's land use planning, zoning, and building approval process.** Historic districts should be carefully designed, based on thoughtful land use plans. Preservation standards should provide clear, effective, reliable protection for historic resources that the City plans to preserve. Historic preservation can coexist with well-planned, sensitive development. It can also add value to that development.
- 3. The Common Council should establish clear preservation standards for each historic district that it establishes.** District-specific standards should be adopted by ordinance, with input from the Landmarks Commission and the public. The standards should be carefully designed and drafted, so they can be applied in a consistent and predictable way. The Landmarks Commission should faithfully apply the standards as written. Decisions on individual projects should be based on clear and consistent legal standards, not vague "guidelines" or unfettered administrative discretion. People should know what to expect.
- 4. The standard-setting process should be flexible.** The general Ordinance should *not* try to spell out detailed, "one-size-fits all" standards for all historic districts, because every district is different. The Common Council should be free to craft nuanced ordinance standards that vary within and between districts, to address different local conditions and planning goals. The Council should also be free to amend district-specific standards, as conditions warrant.
- 5. The standard-setting process should be forward-looking and transparent.** Standards should be designed with the future in mind. A thoughtful standard-setting process, informed by sound planning, citizen input and Landmarks Commission recommendations, will promote public confidence, and facilitate consistent and efficient administration. It will also avoid arbitrary and capricious decisions, and help prevent costly and divisive "train wrecks."
- 6. Standards should provide reasonable certainty.** Property owners, neighborhood residents, developers and investors need reasonable consistency and predictability as they plan and invest for the future. They should not be at the mercy of hopelessly vague language, or arbitrary and unfettered administrative discretion.

7. **Standards, once established, should be honored.** People should not have to guess whether standards “really” apply, or whether they will be enforced. If experience reveals problems with existing standards, the Common Council can amend those standards by ordinance. But standards should not be ignored, and compliance should not be optional.
8. **The Ordinance should clearly distinguish between the treatment of *landmarks* and *historic districts* (which are often confused):**
 - A. ***Landmarks*** are individual properties that the Common Council specifically designates as historic landmarks. A landmark may be located anywhere in the city (not just in a historic district). Landmarks must be maintained to certain basic standards. A landmark may not be demolished, by action or neglect, while its landmark designation remains in effect. The Common Council may rescind a landmark designation only for certain limited reasons. Landmark alterations require a “certificate of appropriateness” from the Landmarks Commission.
 - B. ***Historic districts*** are local areas or groups of properties that the Common Council, by ordinance, designates for preservation. Historic districts may vary in size and focus. A historic district may include a substantial number and variety of individual properties (which may or may not include *landmark* properties). The properties within a historic district may vary in historic importance, but the goal is to preserve key properties *and* the overall historic character of the district. All properties in the district must be maintained to certain basic standards. Some development is typically allowed, and some (less historically important) properties may conceivably be demolished and replaced over time – provided that development is consistent with district standards. Development standards are set by the Common Council, and may vary within and between historic districts. (For example, the Council might establish different building height or style restrictions for different districts, or for different parts of a single district.) Properties may not be substantially altered or demolished without a “certificate of appropriateness” certifying that the action complies with applicable district-specific standards.
9. **The Ordinance should allow the Landmarks Commission to grant limited variances from preservation standards.** Variances should be allowed when strict literal application of a standard would cause unreasonable and unnecessary hardship, or would unreasonably restrict superior design alternatives (provided that the variance is consistent with the purpose of the standard). Variances should meet specific Ordinance criteria, and should be based on unique conditions applicable to specific properties, so as not to undermine overall preservation standards. Sweeping “waivers” of established standards (a “worst practice,” according to the National Trust for Historic Preservation) should be avoided.
10. **Landmarks Commission decisions should be appealable to the Common Council, but the scope of review should be carefully defined.** The Council should use the same ordinance standards that apply to Commission decisions, and a 2/3 vote should be required to overturn the Commission. Appeals should not become vehicles for unfettered “waivers” of preservation standards (a “worst practice” that could undermine the expert role of the Commission, prompt a flood of contentious appeals, and threaten the entire structure of historic preservation).

- 11. The Ordinance should clarify the Landmarks Commission’s role, and encourage a more coordinated City approach to historic preservation.** The Ordinance should spell out clear administrative procedures, and clear remedies for ordinance violations. It should clarify the enforcement responsibilities of the Landmarks Commission and the Building Inspection Division, and should direct other City departments to take supportive steps within their jurisdiction.

- 12. The Ordinance should be created as a new chapter of the Madison General Ordinances.** The current Ordinance is shoe-horned into a single obscure ordinance section. A new chapter would provide greater visibility, and a more adequate platform for this important program. The Ordinance should be reorganized and re-drafted to modern standards, to ensure greater clarity, readability, transparency, internal consistency and ease of reference.

We have offered you a complete draft Ordinance that reflects these basic principles (see “Plain Language Summary” attached). We believe that this “state of the art” Ordinance would improve historic preservation, facilitate sound planning and development, and reduce unnecessary conflict and uncertainty. Madison deserves nothing less. We hope that you will look to this draft Ordinance as a model, on matters of form *and* substance, as you move forward.

Cc: Amy Scanlon
John Strange
Stu Levitan

Proposed Landmarks Ordinance

Plain Language Summary

This ordinance repeals and recreates Madison's current landmarks ordinance, creating a new chapter 41 of the Madison General Ordinance entitled "Historic Preservation." It reorganizes and re-formats the current ordinance, and updates current ordinance language to provide greater clarity, readability and ease of reference. It also makes several substantive changes. The new chapter is designed to provide greater transparency, predictability and certainty for all those affected by the ordinance, including property owners and investors.

The new chapter is divided into subchapters, and provides section headings and cross-references so that readers can more easily find and integrate relevant ordinance provisions. It includes subchapters related to the Landmarks Commission; Landmarks; Historic Districts; Certificates of Appropriateness; Enforcement and Penalties; and Planning, Coordination and Promotion. The new ordinance simplifies the current statement of Policy and Purpose, to avoid confusion and potential conflicts with ordinance text. It also simplifies and clarifies current definitions, to avoid confusion and potential conflicts with ordinance text.

Landmarks Commission

The Landmarks Commission ("Commission") is a 7-member commission that administers the City's historic preservation program. The Common Council designates landmarks and historic districts after considering Commission recommendations. Certain Commission decisions may be appealed to the Common Council. This ordinance clarifies, but does not significantly alter, the current roles of the Commission and the Common Council.

The Mayor appoints Commission members for staggered 3-year terms, subject to confirmation by the Common Council. This ordinance makes slight changes to current Commission membership requirements. Under this ordinance, one member must be a historian; one member must be a licensed architect; one member must be a licensed real estate professional; one member must be an alderperson; and 3 members must be citizen members, at least one of which must have expertise in construction. Each member must have, to the highest extent practicable, a known interest in historic preservation. At least 2 members must have professional historic preservation qualifications set by the United States Secretary of the Interior.

Under this ordinance, as under the current ordinance, the Commission may delegate certain functions to a Preservation Planner named by the City Planning Division, subject to Commission oversight. This ordinance clarifies, but does not significantly alter, the role and responsibilities of the Preservation Planner. This ordinance also clarifies, but does not significantly alter, current requirements related to Commission hearings and hearing notices.

Landmarks

Designating landmarks

Under this ordinance, as under the current ordinance, the Common Council designates landmarks based on Commission recommendations. Any person may nominate a property for landmark designation. The person must submit the nomination to the Preservation Planner, on a form approved by the Commission. The nomination must document the basis for the proposed landmark designation. When the Preservation Planner finds that the nomination is complete, the Preservation Planner refers the nomination to the Commission.

The Commission must hold a public hearing on a proposed landmark designation. Following public hearing, the Commission *may* recommend designation if the proposed landmark meets at least one of the following standards (this ordinance does not significantly alter current standards):

- It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
- It is associated with important events or the lives of important persons in national, state or local history.
- It has important archaeological or anthropological significance.
- It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.
- It is representative of the work of a master builder, designer or architect.

The Commission must refer its recommendation to the Common Council, and must publish a public notice of the referral. The Common Council, after considering the Commission's recommendation, *may* designate a landmark by a favorable vote of a majority of members present. If the Common Council votes to designate a landmark:

- The City Clerk must notify the City Building Inspection Division and the City Assessor, and must record the landmark designation at City expense with the Dane County Register of Deeds.
- The Commission must place a landmark plaque on the landmark, to inform the public about the landmark.

Rescinding landmark designations

This ordinance modifies current ordinance provisions related to the rescission of landmark designations. Under the current ordinance, the Common Council may rescind a landmark designation after considering the Commission's recommendation. A landmark designation may currently be rescinded if one of the following standards is met:

- The landmark owner is unable (despite diligent effort) to sell the landmark (at a fair market price), solely because of its landmark status.
- There has been a substantial change in the appearance (or condition) of the landmark due to causes beyond the owner's control, such that it no longer reasonably qualifies for landmark status.

This ordinance clarifies the current grounds for rescission (see parenthetical language above), and creates one new ground. Under this ordinance, a landmark designation may also be rescinded if the landmark owner has been deprived of a reasonable return on the owner's reasonable investment in the landmark property, solely as a result of the landmark designation. A landmark owner is not deprived of a reasonable return merely because the owner is prevented from making a higher rate of return.

Under this ordinance, the landmark owner must provide clear, credible, and persuasive evidence to show that at least one of these rescission standards is met. Unlike the current ordinance, this ordinance does not try to list the specific kinds of evidence required, because relevant evidence may vary from case to case. However, this ordinance authorizes the Commission to issue evidentiary guidelines to assist landmark owners and help ensure adequate documentation.

This ordinance clarifies the procedure for rescinding a landmark designation. The landmark owner must file a written request with the Preservation Planner, on a form approved by the Commission. The request must document that the proposed rescission meets one of the applicable standards. The Preservation Planner reviews each request for completeness (but not for evidentiary strength), and refers each complete request to the Commission. The Commission must then review and hold a public hearing on the request.

Within 90 days after the Commission receives a complete request, it must refer a written recommendation to the Common Council (the deadline may be extended with the agreement of the landmark owner) and publish a public notice of the referral. The Commission may recommend rescission if the request meets at least one of the 3 alternative rescission standards. After reviewing the Commission's recommendation, the Common Council may grant or deny the rescission request.

The Common Council may rescind a landmark designation according to the Commission's recommendation by a favorable vote of a majority of members present. But the Common Council may not rescind a landmark designation against the Commission's recommendation, except by a favorable vote of two-thirds of all members. A landmark designation, once rescinded, may not be reinstated for at least 5 years except with the agreement of the landmark owner.

Maintaining landmarks

This ordinance clarifies, but does not significantly alter, current landmark maintenance standards. Under this ordinance, persons who own or control a landmark must do all of the following:

- Protect the landmark against exterior decay, deterioration and reasonably foreseeable damage.
- Keep the landmark free of structural defects.
- Maintain interior portions of the landmark that, if not maintained, may create a casualty risk to the landmark or cause exterior portions of the landmark to fall into disrepair.
- Comply with applicable provisions of ch. 18 (plumbing code), ch. 27 (minimum housing and property maintenance code), ch. 29 (building code), ch. 30 (heating, ventilating and air conditioning code) and ch. 31 (sign control) of the Madison general ordinances.

Altering landmarks

"Certificate of appropriateness" required

This ordinance clarifies, but does not significantly alter, current ordinance provisions related to the alteration of landmarks. This ordinance prohibits a person from doing any of the following without a "certificate of appropriateness" from the Commission (unless the alteration is ordered by a government agency or court, to address an imminent hazard):

- Materially altering the exterior of a landmark.
- Adding a new structure to a landmark site.
- Moving a landmark, or a material portion of a landmark, to a different location.
- Installing a sign on the exterior of a landmark, or on a landmark site.
- Using a cleaning method on an exterior landmark surface that is susceptible to being damaged or degraded by that cleaning method.
- Dividing any tax parcel comprising all or part of a landmark site, or voluntarily granting any easement on that tax parcel if the easement may impair the preservation, maintenance, exterior appearance or historic character of the landmark.

A "certificate of appropriateness" is different from a building permit, sign permit or zoning permit, and is not a substitute for those permits. A "certificate of appropriateness" merely certifies that a proposed action is acceptable from a landmark preservation standpoint. This ordinance spells out the procedure for obtaining a "certificate of appropriateness" (see below).

The City may not issue a building permit, sign permit or zoning permit for an action requiring a "certificate of appropriateness" until the Commission issues that certificate. If a person alters a landmark or landmark site without a required "certificate of appropriateness," the Commission may order the person to restore the landmark or landmark site as nearly as possible to its pre-alteration state (this remedy is in addition to other penalties and remedies that may apply).

Standards for issuing certificate

This ordinance modifies current standards for issuing “certificates of appropriateness” related to landmarks. Under this ordinance, the Commission *must issue* a “certificate of appropriateness” for a proposed action affecting a landmark if the proposed action meets all of the following standards that apply. But the Commission *must deny* a “certificate of appropriateness” if the proposed action fails to meet any applicable standard, unless the Commission grants a “variance” from that standard (see below).

- *Exterior alteration of a landmark.* The exterior alteration of a landmark may not destroy or adversely affect any significant feature of the landmark, or significantly degrade or alter the historic character or fabric of the landmark. Surface structures, materials and features must be consistent in style and appearance with the historic character of the landmark.
- *Construction on a landmark site.* No construction or exterior alteration of a structure on a landmark site may detract from, or fail to harmonize with, the appearance or historic character of the landmark.
- *Signs on a landmark or landmark site.* Signs installed on a landmark or landmark site may not detract from, or fail to harmonize with, the appearance or historic character of the landmark. Signs must also comply with the City sign ordinance.
- *Landmark site divisions and easements.* Landmark site divisions and voluntarily granted easements may not threaten or impair the preservation, maintenance, exterior appearance or historic character of the landmark.
- *Cleaning methods.* A person may not use a cleaning method on an exterior landmark surface that is susceptible to damage or degradation from that cleaning method.
- *Moving a landmark.* A landmark may not be moved if its location is important to its historic significance, the movement presents a material risk of damage to the landmark, or the movement will materially detract from the historic character or fabric of the landmark. This does not prohibit a temporary movement incidental to repair or maintenance, or a movement that is essential to protect a landmark from damage or destruction from causes outside the control of the landmark owner.

Demolishing landmarks

This ordinance changes current ordinance provisions related to the demolition of landmarks. This ordinance prohibits the intentional demolition of a landmark, by action or neglect, while its landmark designation remains in effect. A landmark is presumed to be demolished by neglect if the owner intentionally fails to take legally required action within the owner’s control to prevent it from decaying, deteriorating, becoming structurally defective, or otherwise falling into serious disrepair, regardless of whether the owner has been specifically warned of that failure. The City Building Inspection Division must promptly notify the Commission whenever it finds conditions that may constitute, or may imminently result in, the demolition of a landmark by neglect.

The City may not issue a demolition permit for a designated landmark while its landmark designation remains in effect. If a person illegally demolishes a designated landmark, the Landmarks Commission may order that person to restore the landmark as nearly as possible to its pre-demolition state (this remedy is in addition to any other penalties and remedies that may apply). A repair or alteration made pursuant to a “certificate of appropriateness” does not constitute a demolition.

This ordinance does not authorize the Commission to issue a “certificate of appropriateness” for demolition of a designated landmark, because that would pose an inherent contradiction (destroying a landmark to preserve its historic character). An owner who wishes to demolish a landmark must instead seek rescission of the landmark designation (see above).

Historic Districts; General

Designating and Amending Historic Districts

The Common Council may currently designate historic districts after considering the recommendations of the Landmarks Commission and the City Plan Commission. Historic districts are individually designated by ordinance. To date, the Common Council has designated 5 historic districts (Mansion Hill, Third Lake Ridge, University Heights, Marquette Bungalows and First Settlement). This ordinance incorporates those current historic districts without change, but provides that the Common Council may amend an existing historic district by the same process used under this ordinance to designate a new historic district.

This ordinance clarifies current standards and procedures for the designation of historic districts, and makes minor substantive changes. An ordinance designating or amending a historic district must briefly recite the basis for that designation or amendment. A historic district must be an area of particular historic, architectural, or cultural significance to the City of Madison, and must meet at least one of the following standards:

- It is associated with broad patterns of cultural, political, economic or social history of the nation, state or community.
- It is associated with important events or the lives of important persons in national, state or local history.
- It is an area of particular archaeological or anthropological significance.
- It embodies the distinguishing characteristics of an architectural type inherently valuable for its reflection of a period, style, or method of construction, or for its reflection of indigenous materials or craftsmanship.
- It is representative of the work of a master builder, designer or architect.

The ordinance designating a historic district must specify district boundaries (this ordinance clarifies that the boundaries must be reasonably drawn in relation to the historic resources that the district is intended to preserve). It must also spell out standards for development within the district (new construction, as well as alteration or demolition of existing structures). Development standards for each district must be designed to preserve the historic character of the district, but standards may vary within and between districts (this ordinance does not establish "one-size-fits-all" standards for historic districts). This ordinance clarifies that the Common Council may amend historic district boundaries and development standards by the same process used to designate a historic district.

Under this ordinance, any person may request a historic district designation or amendment. The Landmarks Commission must review and hold a public hearing on each complete request. After the Commission completes its review, it must recommend approval or disapproval. The Commission may recommend approval subject to modifications recommended by the Commission.

If the Landmarks Commission recommends approval, it must prepare a proposed ordinance to implement that recommendation. The Commission must refer its draft recommendation and proposed ordinance for review by the City Plan Commission before submitting its final recommendation and proposed ordinance to the Common Council. The City Plan Commission has 90 days to review and make a recommendation on the Landmarks Commission proposal. The Landmarks Commission must include, with its final recommendation to the Common Council, the City Plan Commission's recommendation and its own response.

The Common Council must hold its own public hearing on the proposed historic district ordinance, after receiving the recommendations of the Landmarks Commission and the City Plan Commission. The Common Council may adopt the proposed ordinance by a favorable vote of a majority of members present. The Common Council may adopt the proposed ordinance subject to modifications that are consistent with this general ordinance.

Development standards for historic districts

An ordinance creating a historic district must include development standards for that district. The standards must be designed to ensure that new structures and alterations to existing structures within that district are compatible with the purpose of the district; that they are compatible with nearby structures (other than nearby “intrusive” structures, identified in the district ordinance, which are located in the district but are not consistent with the district’s historic character); that they are compatible with the overall historic character of the district; and that they do not diminish the historic character of the district. Development standards, designed according to these general criteria, may vary within and between districts. District-specific development standards may spell out clear-cut measures of compatibility (such as specific height or style limitations) that are appropriate for that district.

The Commission must propose district-specific development standards as part of its proposed ordinance designating a historic district. The Commission must develop the proposed standards in consultation with an *ad hoc* advisory committee appointed by the Commission. The advisory committee must consist of interested and knowledgeable persons, a majority of whom must be residents of the proposed district.

District-specific development standards take effect only when incorporated into a final district-specific ordinance adopted by the Common Council (the Common Council may modify standards proposed by the Commission). A district-specific ordinance *may* include standards related to any of the following:

- Architectural features.
- Height, scale and gross volume.
- Width and height proportions of publicly visible facades.
- Proportions and relationships between doors and windows in publicly visible facades.
- The rhythm of solids to voids, created by openings in and between publicly visible facades.
- Textures and materials used on publicly visible facades.
- Roof configurations.
- Landscape treatments.
- The amounts, shapes, and patterns of open spaces and setbacks.
- The directional expression of publicly visible facades.
- The demolition, movement or removal of structures.
- Other matters that the Commission and Common Council deem appropriate to protect the character and assets of the historic district, consistent with this general ordinance.

This ordinance deletes current references to Commission “guidelines” governing historic districts. However, the Commission may still publish voluntary “best practices” for preservation of historic properties throughout the City. The Commission may also consider U.S. Department of Interior guidelines when developing proposed district-specific standards for historic districts.

Maintaining structures in historic districts

This ordinance clarifies, but does not significantly alter, current maintenance standards for structures in historic districts. Under this ordinance, persons who own or control a structure in a historic district must do all of the following:

- Protect the structure against exterior decay, deterioration and reasonably foreseeable damage.
- Keep the structure free of structural defects.
- Maintain interior portions of the structure that, if not maintained, may create a casualty risk to the structure or cause exterior portions of the structure to fall into disrepair.
- Comply with applicable provisions of ch. 18 (plumbing code), ch. 27 (minimum housing and property maintenance code), ch. 29 (building code), ch. 30 (heating, ventilating and air conditioning code) and ch. 31 (sign control) of the Madison general ordinances.

Constructing, altering, relocating or demolishing properties in historic districts

“Certificate of appropriateness” required

This ordinance clarifies current provisions related to the construction, alteration, relocation or demolition of properties in historic districts. This ordinance prohibits a person from doing any of the following in a historic district without a “certificate of appropriateness” from the Commission (unless the action is ordered by a government agency or court, to address an imminent hazard):

- Building a new structure.
- Materially altering the exterior of an existing structure.
- Demolishing or relocating an existing structure.
- Installing a sign.
- Dividing any tax parcel, consolidating any tax parcels, or voluntarily granting any easement on a tax parcel if the easement may detract from the historic character of the district.

A “certificate of appropriateness” is different from a building permit, demolition permit, sign permit or zoning permit, and is not a substitute for those permits. A “certificate of appropriateness” merely certifies that the proposed action is acceptable from a historic district preservation standpoint. This ordinance spells out the procedure for obtaining a “certificate of appropriateness” (see below).

The City may not issue a building permit, demolition permit, sign permit or zoning permit for an action requiring a “certificate of appropriateness” until the Commission issues that certificate. If a person builds, alters or demolishes a structure without a required “certificate of appropriateness,” the Commission may order the person to restore the structure or site as nearly as possible to its pre-alteration state (this remedy is in addition to other penalties and remedies that may apply).

Standards for issuing certificates

This ordinance clarifies current standards for issuing “certificates of appropriateness” in historic districts. Under this ordinance:

- The Commission *must issue* a “certificate of appropriateness” for a proposed action that meets applicable district-specific standards (see above). Applicable standards may vary within and between historic districts.
- The Commission *must deny* a certificate for a proposed action that fails to meet an applicable district-specific standard, unless the Commission grants a “variance” from that standard (see below).
- The Commission may issue a “certificate of appropriateness” subject to reasonable terms and conditions specified by the Commission.
- If the proposed action involves the demolition or removal of an existing structure, the proposed replacement structure must also comply with applicable district-specific standards. The Commission may not authorize a demolition based solely on conditions caused by the owner’s malfeasance or neglect.

Obtaining a Certificate of Appropriateness

Procedure

A property owner who wishes to obtain a “certificate of appropriateness” must submit a written application to the Preservation Planner, on a form approved by the Commission. The application must clearly describe the proposed action for which a “certificate of appropriateness” is sought, and must include documentation to support the application. When the Preservation Planner determines that the application is complete, the Preservation Planner must do one of the following:

- Refer the complete application to the Commission.

- Grant or deny the complete application, if the Preservation Planner is authorized to do so. (The Commission may authorize the Preservation Planner to grant or deny certificates for minor actions that do not require a public hearing.) The Preservation Planner must make the decision as soon as reasonably possible, and within 60 days after receiving a complete application. The Preservation Planner's decision may be appealed to the Commission.

"Certificates of appropriateness" for more significant actions require a public hearing (this ordinance clarifies, but does not significantly alter, the types of actions for which a hearing is required). Only the Commission (not the Preservation Planner) may grant or deny a "certificate of appropriateness" for an action that requires a public hearing.

The Commission must grant or deny a "certificate of appropriateness" application within 60 days after the Preservation Planner finds that the application is complete (deadline may be extended if the applicant agrees). Decisions must be based on clear and credible documentation (the Commission may publish documentation guidelines to assist applicants, and help ensure well-documented decisions). The Commission may issue a certificate subject to reasonable terms and conditions prescribed by the Commission. If the Commission denies an application, the decision must specify the reasons and must include a notice of appeal rights.

Variances

The Commission may grant a "variance" from a "certificate of appropriateness" standard (see above) if all the following conditions are met:

- Strict application of the standard would unreasonably and unnecessarily do any of the following:
 - Prevent the use of the subject property for an otherwise permitted purpose.
 - Deny the property owner a reasonable return on the owner's reasonable property investment. (An ordinance standard does not deny a property owner a reasonable return merely because it prevents the owner from achieving a higher return.)
 - Preclude a superior design or construction method that is consistent with the purpose of the standard.
- The "variance" applies to a specifically identified landmark or landmark site, or a specifically identified property in a historic district.
- The property owner files a "variance" request for the purpose of obtaining a "certificate of appropriateness." The property owner must explain why the "variance" is justified, and must provide supporting evidence.
- The Commission holds a public hearing on the requested "variance" (possibly as part of the hearing on the proposed "certificate of appropriateness" to which it pertains).
- The conditions justifying the "variance" are all of the following:
 - Unique to the property for which the "variance" is granted, and not typical of other landmarks or other properties in the same historic district.
 - Not caused by the malfeasance or neglect of the property owner.
 - Documented by clear, credible and persuasive evidence. The property owner has the burden of providing financial records or other relevant documentation to justify the "variance" request. This ordinance does not try to list the specific types of evidence required, because relevant evidence may vary from case to case. However, it does authorize the Commission to adopt evidentiary guidelines to assist applicants and help ensure adequate documentation.
- The "variance" meets all of the following requirements:
 - It is consistent with the general purpose of the ordinance standard to which it pertains.
 - It preserves or enhances the historic character and ambience of the landmark or historic district.

- It will not have a significant adverse effect on any property located on a tax parcel that is within 200 feet of the tax parcel on which the subject property is located.
- It is no broader than reasonably necessary, based on the conditions that justify the “variance.”

The Commission must grant a “variance” in writing. The “variance” must identify the specific ordinance standard(s) to which it pertains, and may specify any limiting terms and conditions. The Commission may require the property owner to meet with the Commission, the Preservation Planner, or other expert or affected persons, to discuss possible “variance” terms, conditions and alternatives.

The Commission must grant or deny a “variance” request within 60 days after the Preservation Planner determines that the request is complete (deadline may be extended if property owner agrees). If the Commission denies a “variance” request, its decision must include the reasons for denial and a notice of appeal rights.

Appeal to Common Council

Under this ordinance, any of the following persons may ask the Common Council to reverse or modify a Commission decision granting or denying a “certificate of appropriateness” or “variance:”

- The person who applied for the “certificate of appropriateness” or “variance.”
- The Alder for the district in which the subject property is located.
- The owner of a tax parcel located within 200 feet of the tax parcel on which the subject property is located.

The person must file the appeal with the City Clerk within 10 days after the date on which the Commission issues its decision. The appeal petition must state the grounds for appeal. The Common Council must hold a public hearing on the appeal.

The Common Council may, by a favorable vote of two-thirds of all members, reverse or modify the Commission’s decision if it finds that the decision is inconsistent with ordinance standards, or represents an inappropriate exercise of discretion by the Commission.

Enforcement and Penalties

This ordinance reorganizes and clarifies current provisions related to ordinance enforcement and penalties (it does not significantly alter current penalties). This ordinance also clarifies and coordinates the enforcement responsibilities of the Commission and the City Building Inspection Division. This ordinance adds a provision authorizing the City to seek a court injunction to halt continuing violations. It also strengthens and clarifies the Commission’s current authority to issue remedial orders for properties altered without a required “certificate of appropriateness” (see above).

A person who violates this ordinance or a lawful order issued under this ordinance is subject to a court-ordered forfeiture of not less than \$250 nor more than \$500 per violation; except that a violation committed within 36 months after an initial forfeiture judgment is subject to a forfeiture of not less than \$500 nor more than \$1,000 per violation, and a violation committed within 36 months after a second forfeiture judgment is subject to a forfeiture of at least \$1,000 per violation. Each day of violation, and each violation of a separate provision of this ordinance, constitutes a separate violation.

Under this ordinance, the City Attorney on behalf of the Commission may petition a court of competent jurisdiction to issue an injunction prohibiting a continuing violation of this ordinance or a lawful order issued under this ordinance. The City Attorney may petition the court to issue an *ex parte* restraining order or temporary injunction pending the issuance of a permanent injunction, and may ask the court to grant other relief as appropriate.

Planning, Coordinating and Promoting Historic Preservation

This ordinance creates a new subchapter entitled “Planning, Coordinating and Promoting Historic Preservation,” and consolidates several existing ordinance provisions in that new subchapter. This

ordinance also creates several new provisions in the same subchapter, to encourage a more robust planning, coordination and promotional effort related to historic preservation.

Under this ordinance, the Commission is directed to do all of the following:

- Promote and facilitate historic preservation in the City of Madison. The Commission may accept gifts and grants for the purpose of historic preservation, and must deposit those gifts and grants to a City fund specifically designated for that purpose. (This ordinance deletes current ordinance provisions that authorize the Commission to engage in active lobbying and fund solicitation.)
- Work with others to promote public information, education and tourism related to the historic heritage of the City.
- Prepare, implement and periodically update historic preservation plans, surveys and inventories.
- Compile, organize and maintain records of historic resources within the City.
- Work with other City agencies to install signs identifying designated historic districts.
- Work with state officials representing National Register of Historic Places to promote historic preservation, and to facilitate the designation of Madison landmarks as national landmarks when appropriate.
- Provide information and assistance related to the preservation of historic properties throughout the City. This may include suggestions related to voluntary preservation practices, and available sources of funding and technical assistance.

This ordinance directs the Landmarks Commission, the City Plan Commission, the Urban Design Commission and relevant City departments to coordinate their activities in order to do all of the following:

- Ensure effective administration and enforcement of this ordinance.
- Ensure that historic preservation is an integral consideration in city planning, zoning and operating practice.
- Identify and preserve important historic resources.
- Call public attention to designated landmarks and historic districts.
- Preserve and where possible enhance the historic character and ambience of designated landmarks and historic districts.

Existing Historic Districts

This ordinance incorporates current historic districts (including existing boundaries and district-specific development standards) without change; but it provides that the Common Council may amend an existing historic district by the same process used under this ordinance to designate a new historic district. The City contemplates a planning effort to provide the groundwork for possible updates to existing historic districts.

Section 33.19(13) Appeal *compared to* section 41.19

Submitted by the Ordinance Committee of the Madison Alliance for Historic Preservation, January 26, 2015

Section 33.19(13) Appeal	Section 41.19 Appeal to the Common Council	Comments
<p>33.19(13)(a) An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness may be taken to the Common Council by the applicant for the Certificate, the Alderperson of the district in which the subject property is located, or by the owners of twenty percent (20%) of the parcels of property within two hundred (200) feet of the subject property.</p>	<p>41.19(1) Who may appeal; decisions appealable. Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify a Commission decision under s. 41.15(6) related to a proposed certificate of appropriateness, or under s. 41.18(7) related to a requested variance:</p> <p>(a) The person who applied for the certificate, or who requested the variance.</p> <p>(b) The Alder for the district in which the subject property is located.</p> <p>(c) The owner of a tax parcel located within 200 feet of a tax parcel on which all or part of the subject property is located.</p>	<p><i>Appeal provisions must be compared in a larger context:</i></p> <p><i>Under section 33.19:</i></p> <ul style="list-style-type: none"> • <i>The Landmarks Commission may do any of the following:</i> <ul style="list-style-type: none"> ▪ <i>Grant or deny “certificates of appropriateness [s. 33.19(13)].</i> ▪ <i>Grant or deny “waivers” of ordinance standards related to “certificates of appropriateness” [s.33.19(15)]. The standards for granting “waivers” are not clear.</i> • <i>Affected persons may appeal “certificate of appropriateness” decisions to the Common Council [s. 33.19(13)], but may NOT appeal “waiver” decisions.</i> • <i>On appeal, the Common Council has sweeping authority to change the Commission’s decision, regardless of existing ordinance standards.</i> <p><i>Chapter 41 is different:</i></p> <ul style="list-style-type: none"> • <i>It uses the term “variance” rather than “waiver,” because “variance” has a more specific and less sweeping connotation.</i> • <i>It spells out clear standards for issuing “variances.”</i> • <i>It clarifies that affected persons may appeal “variance” decisions as well as “certificate of appropriateness” decisions to the Common Council.</i> • <i>It requires the Common Council, when hearing an appeal, to use the same ordinance standards that apply to the Commission (although the Council may substitute its interpretation for that of the Commission).</i> <p><i>The Chapter 41 approach is clearer and fairer. It provides greater predictability and certainty to persons affected. It gives greater weight to Commission decisions, and it is less likely to produce a flood of contentious appeals to the Common Council.</i></p>

33.19(13)(b) Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. The Council shall hold a public hearing with Class 1 public notice.

33.19(13)(c) The Council may, by favorable vote of two-thirds (2/3) of its members, reverse or modify the decision of the Landmarks Commission, with or without conditions, or refer the matter back to the Commission with or without instructions.

(2) Filing an appeal. A person may initiate an appeal under sub. (1) by filing a petition with the City Clerk within 10 days after the date on which the Commission issued the decision that the person is appealing. The petition shall clearly specify petitioner’s identity and address, the petitioner’s qualification under sub. (1) to appeal the Commission’s decision, the grounds for the appeal, and the relief requested from the Common Council consistent with sub. (4). Appeals of directly related decisions under ss. 41.15(6) and 41.18(7) may be consolidated in a single appeal. The City Clerk shall file each appeal petition with the Common Council.

(3) Public hearing. The Common Council shall hold a public hearing on each appeal filed under sub. (2). The hearing shall be preceded by a class 1 public notice.

(4) Common Council decision. The Common Council may, by favorable vote of two-thirds of all members, reverse or modify the decision of the Commission if it finds that the Commission’s decision is inconsistent with applicable standards under s. 41.16, 41.17 or 41.18, or represents an inappropriate exercise of discretion by the Commission.

- *Under s. 41.19(1), any owner of a tax parcel within 200 feet of the tax parcel on which the subject property is located may appeal the Commission’s decision. By contrast, section 33.19(13) precludes appeals by affected neighbors unless the owners of at least 20% of parcels within 200 feet of the subject parcel join in the appeal (it is not clear what kinds of “parcels” these might be, or whether the 20% is calculated by area or number of parcels).*
- *Section 41.19(2) clarifies what must be included in an appeal petition.*
- *Section 41.19(4), like section 31.19(3)(c), requires a 2/3 majority of the entire Common Council to overturn a Commission decision on appeal. Commission members have special expertise and experience, as well as direct access to the evidence, so their decisions should not be lightly overturned. A supermajority of the Common Council is also required to override recommendations from the Plan Commission and the Board of Estimates. This supermajority requirement is widely considered to be a best practice for historic preservation ordinances, and should not be changed.*

<p>(d) In making its determination under (c), the Council shall:</p> <ol style="list-style-type: none">1. Consider the Standards and Guidelines specified in this ordinance, and the application of those Standards and Guidelines by the Commission; and,2. Balance the public interest in preserving the subject property with the public interest in approving or denying the Certificate of Appropriateness. In balancing the public interests, the Council shall take into account whether the owner or applicant has failed to meet requirements to maintain the property in accordance with this ordinance.		<ul style="list-style-type: none">• <i>Section 33.19(13)(d) would give the Common Council almost unlimited authority to reverse the Commission’s decision on the vague ground of “public interest,” regardless of existing ordinance standards. We think that is a very bad idea.</i>• <i>Our proposed s. 41.19(4) [see above] would require the Common Council to use the same ordinance standards that apply to the Commission (although the Council may interpret them differently).</i>• <i>By giving the Common Council almost unlimited authority to reverse Commission decisions on the vague ground of “public interest,” regardless of existing ordinance standards, section 33.19(13)(d) would:</i><ul style="list-style-type: none">▪ <i>Undermine the authority of the Commission.</i>▪ <i>Invite a flood of appeals to the Common Council.</i>▪ <i>Undermine the credibility of existing ordinance standards.</i>▪ <i>Deprive property owners and investors of the clarity, consistency, and predictability they need.</i>▪ <i>Undermine the entire structure of historic preservation.</i>• <i>Appeals should be decided on the basis of existing ordinance standards. They should not become vehicles for open-ended assaults on existing standards, nor should they undermine the consistent application of existing standards. If experience reveals problems with existing standards, those standards can be amended by the open, deliberate process provided in ch. 41.</i>• <i>Chapter 41 eliminates references to development “guidelines” for historic districts [see reference to “guidelines” is s. 33.19(13)(d)1]. A sound historic preservation ordinance should deal in enforceable development standards, not unenforceable “guidelines.” The ordinances that established Madison’s existing historic districts all use enforceable standards, not “guidelines.” Standards are widely considered to be a best practice.</i>
---	--	---

Section 33.19(15) Waivers *compared to* section 41.18 Variances

Submitted by the Ordinance Committee of the Madison Alliance for Historic Preservation, January 26, 2015.

Section 33.19(15) Waivers	Section 41.18 Variances	Comments
<p>33.19(15) Waivers.</p> <p>(a) <u>Authority</u>. Under (b) or (c) below, the Landmarks Commission may waive one or more standards for review for a Certificate of Appropriateness only upon its determination that doing so will not destroy a significant architectural feature of an existing structure or adversely affect the historic character of the visual related area.</p> <p>(b) <u>Waiver for Economic Hardship of Income Property</u>. In determining whether to grant a waiver due to undue economic hardship regarding an income property, the commission shall hold a public hearing to consider evidence of:</p> <ol style="list-style-type: none"> 1. The property's current level of economic return; 2. The property's marketability; 3. Options for economically valid alternative uses for the property; 4. The condition of the property, and the cost for compliance with the standards for review; 5. Whether the property was subject to neglect or inadequate maintenance; 6. The availability of economic incentives for full compliance. <p>For the purposes of this provision, income property does not include income property that is owner-occupied.</p> <p>(c) <u>Waiver for Alternative Design</u>. The commission may waive the standards of this ordinance in favor of alternative designs for alterations or new structures.</p> <p>(d) The commission shall adopt policies defining the evidence to be provided under (b) and (c).</p>	<p>41.18 VARIANCES.</p> <p>(1) Commission may grant. At the request of a property owner, and for the purpose of issuing a certificate of appropriateness under s. 41.15(1), the Commission may grant a variance from a standard under s. 41.16 or 41.17 if strict application of the standard would unreasonably and unnecessarily do any of the following:</p> <ol style="list-style-type: none"> (a) Prevent the owner's use of the property for an otherwise permitted purpose. (b) Deny the property owner a reasonable return on the owner's reasonable investment in the property. A standard under s. 41.16 or 41.17 does not deny a property owner a reasonable return on investment merely because it prevents the owner from achieving a higher return. (3) Preclude a superior design or construction method that is consistent with the general purpose and intent of the standard. <p>(2) Variance standards. The Commission may not grant a variance under sub. (1) unless all of the following standards are met:</p> <ol style="list-style-type: none"> (a) The proposed variance applies to a specifically identified landmark or landmark site, or a specifically identified property in a historic district. (b) The owner of the property under par. (a) files a variance request under sub. (6) for the purpose of obtaining a certificate of appropriateness under s. 41.15(1) related to that property. (c) The Commission holds a public hearing on the variance request. The hearing may be held as part of a hearing on the proposed certificate of appropriateness, provided that the proposed variance is separately identified as a hearing topic. The hearing shall be preceded by notice as provided in s. 41.06. (d) The conditions justifying the variance under sub. (1) are all of the following: <ol style="list-style-type: none"> 1. Unique to the property for which the variance is granted, and not typical of other landmarks or other properties in a historic district. 2. Not caused by the property owner's malfeasance or neglect. 3. Documented by clear, credible and persuasive evidence. (e) The variance is consistent with the general purpose and intent of the standard under s. 41.16 or 41.17 to which it pertains. 	<ul style="list-style-type: none"> • <i>Section 41.18 provides a much more clearly defined "variance" procedure, rather than a vague and open-ended "waiver" procedure under s. 33.19(15) that could systematically undermine ordinance standards.</i> • <i>Section 41.18 uses the term "variance" rather than "waiver," because "variance" connotes a limited action based on conditions unique to the subject property, rather than a sweeping generic "waiver" of ordinance standards. An open-ended "waiver" procedure invites abuse, and could lead to a flood of contentious appeals.</i> • <i>The "hardship" waiver provision under s. 33.19(15)(b) is limited to income properties, whereas the "hardship" variance provisions under s. 41.18(1)(a) and (b) apply to all types of properties.</i>

	<p>(f) The variance preserves or enhances the historic character and ambience of the landmark or historic district.</p> <p>(g) The variance will not have a significant adverse effect on any property located on a tax parcel that is within 200 feet of any tax parcel on which the subject property is located.</p> <p>(h) The variance is no broader than reasonably necessary, based on the conditions that justify the variance.</p> <p>(3) Evidence. The Commission may publish evidentiary guidelines to assist applicants and ensure adequate documentation for Commission findings under subs. (1) and (2). The guidelines may suggest specific kinds of information that may constitute clear, credible and persuasive evidence under sub. (2)(d)3.</p> <p>(4) Variance shall be in writing. A variance under sub. (1) shall be granted in writing. The variance shall clearly identify the subject property and certificate of appropriateness to which it pertains, the specific standards under s. 41.16 or 41.17 from which the variance is granted, and any variance terms and conditions under sub. (5).</p> <p>(5) Variance terms and conditions. The Commission may grant a variance under sub. (1) subject to reasonable terms and conditions specified by the Commission. The Commission may require the requesters to meet with the Commission, the Preservation Planner, or other expert or affected persons, to discuss possible variance terms, conditions and alternatives.</p> <p>(6) Request for variance. (a) A property owner shall submit a variance request under sub. (1) to the City Planning Department, to the attention of the Preservation Planner, on a form approved by the Commission. The request shall include all of the following:</p> <ol style="list-style-type: none">1. The name and address of the property owner.2. The location of the property to which the request pertains.3. The specific standard or standards under s. 41.16 or 41.17 from which the property owner seeks a variance.4. The conditions and supporting evidence that justify the variance. <p>(b) As soon as reasonably possible, but no later than 30 days after the Preservation Planner receives a request under par. (a), the Preservation Planner shall either refer the request to the Commission or deny the request for lack of completeness. The Preservation Planner shall not evaluate the strength of the requester's supporting evidence under par. (a)4. when determining completeness, but shall leave that evaluation to the Commission.</p>	
--	--	--

	<p>(7) Commission decision. The Commission shall grant or deny a variance request within 60 days after it receives the request under sub. (6)(b), except that the Commission may extend that deadline with the written agreement of the requester. If the Commission denies a variance request, its decision shall include the reasons for denial and a notice of appeal rights under s. 41.19.</p>	
--	--	--

**Submitted by the Ordinance Committee of the Madison Alliance For Historic Preservation
Proposed Revisions to Section 33.19(13) Appeal
January 27, 2015**

33.19(3)

(a) Who may appeal; decisions appealable. ~~Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify a Commission decision related to a proposed certificate of appropriateness, or related to a requested variance:~~

~~An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness may be taken to the Common Council by~~

- ~~1. The person applicant who applied for the Certificate, or who requested the variance;~~
- ~~2. The Alder Alderperson for of the district in which the subject property is located;~~
- ~~3. or by Tthe owners of twenty percent (20%) of the a tax parcels of property located within two hundred (200) feet of the a tax parcel on which all or part of the subject property: is located.~~

(b) Filing an appeal. ~~A Person may initiate an appeal. Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days after of the date on which the Commission issued the decision that the person is appealing. the final decision of the Landmarks Commission is made. The petition shall clearly specify petitioner's identify and address, the petitioner's qualification to appeal the Commission's decision, the grounds for the appeal, and the relief requested from the Common Council. Appeals of directly related decisions may be consolidated in a single appeal. The City Clerk shall file each the appeal petition to appeal with the Common Council. The Council shall hold a public hearing with Class 1 public notice.~~

(c) Public hearing. ~~The Council shall hold a public hearing on with each appeal filed. The hearing shall be preceded by a Class 1 public notice.~~

(d)e) Common Council decision. ~~The Council may, by favorable vote of two-thirds (2/3) of its members, reverse or modify the decision of the Landmarks Commission; if it finds that the Commission's decision is inconsistent with applicable standards or represents an inappropriate exercise of discretion by the Commission. with or without conditions, or refer the matter back to the Commission with or without instructions.~~

~~(e)~~ **(d)** In making its determination under (c), the Council shall:

- ~~1. Consider the Standards and Guidelines specified in this ordinance, and the application of those Standards and Guidelines by the Commission; and,~~
- ~~2. Balance the public interest in preserving the subject property with the public interest in approving or denying the Certificate of Appropriateness. In balancing the public interests, the Council shall take into account whether the owner or applicant has failed to meet requirements to maintain the property in accordance with this ordinance.~~

Prepared by F. Ingebritson

**Submitted by the Ordinance Committee of the Madison Alliance For Historic Preservation
Proposed Revisions to 33.19(15): Waivers
January 27, 2015**

33.19(15) VARIANCES. ~~Waivers.~~

(a) Commission may grant. ~~Authority.~~

At the request of a property owner, and for the purpose of issuing a certificate of appropriateness the commission may grant a variance from a standard if strict application of the standard would unreasonably and unnecessarily do any of the following:

1. Prevent the owner's use of the property for an otherwise permitted purpose.
2. Deny the property owner a reasonable return of the owner's reasonable investment in the property. A standard does not deny a property owner a reasonable return on investment merely because it prevents the owner from achieving a higher return.
3. Preclude a superior design or construction method that is consistent with the general purpose and intent of the standard.

~~Under (b) or (c) below, the Landmarks Commission may waive one or more standards for review for a Certificate of Appropriateness only upon its determination that doing so will not destroy a significant architectural feature of an existing structure or adversely affect the historic character of the visual related area.~~

(b) Variance standards. ~~Waiver for Economic Hardship of Income Property.~~ The Commission may not grant a variance unless all of the following standards are met:

1. The proposed variance applies to a specifically identified landmark or landmark site, or a specifically identified property in a historic district.
2. The owner of the property files a variance request for the purpose of obtaining a certificate of appropriateness related to the property.

3. The Commission holds a public hearing on the variance request. The hearing may be held as part of a hearing on the proposed certificate of appropriateness, provided that the proposed variance is separately identified as a hearing topic. The hearing shall be preceded by notice as provided in 33.19(6).

4. The conditions justifying the variance are all of the following:

- a. Unique to the property for which the variance is granted, and not typical of other landmarks or other properties in a historic district.
- b. Not caused by the property owner's malfeasance or neglect.
- c. Documented by clear, credible and persuasive evidence.

5. The variance is consistent with the general purpose and intent of the standard to which it pertains.

6. The variance preserves or enhances the historic character and ambience of the landmark or historic district.

7. The variance will not have a significant adverse effect on any property located on a tax parcel that is within 200 feet of any tax parcel on which the subject property is located.

8. The variance is no broader than reasonably necessary, based on the conditions that justify the variance.

~~In determining whether to grant waiver due to undue economic hardship regarding an income property, the commission shall hold a public hearing to consider evidence of:~~

- ~~1. The property's current level of economic return;~~
- ~~2. The property's marketability;~~
- ~~3. Options for economically valid alternative uses for the property;~~

~~4. The condition of the property, and the cost for compliance with the standards for review;~~

~~5. Whether the property was subject to demolition by neglect or inadequate maintenance;~~

~~6. The availability of economic incentives for full compliance.~~

~~For the purposes of this provision, income property does not include income property that is owner-occupied.~~

~~(c) Waiver for Alternative Design. The commission may waive the standards of this ordinance in favor of alternative designs for alterations or new structures. (Moved to **(a)3**: Preclude a superior design or construction method that is consistent with the general purpose and intent of the standard.)~~

~~(d) The commission shall adopt policies defining the evidence to be provided under (b) and (c).~~

~~**(c) Evidence.** The Commission may publish evidentiary guidelines to assist applicants and ensure adequate documentation for Commission findings. The guidelines may suggest specific kinds of information that may constitute clear, credible and persuasive evidence.~~

~~**(d) Variance shall be in writing.** A variance shall be granted in writing. The variance shall clearly identify the subject property and certificate of appropriateness to which it pertains, the specific standards from which the variance is granted, and any variance terms and conditions.~~

~~**(e) Variance terms and conditions.** The Commission may grant a variance subject to reasonable terms and conditions specified by the Commission. The Commission may require the requesters to meet with the Commission, the Preservation Planner, or other expert or affected persons, to discuss possible variance terms, conditions and alternatives.~~

(f) Request For Variance

1. A property owner shall submit a variance request to the City Planning Department, to the attention of the Preservation Planner, on a form approved by the Commission. The request shall include all of the following:

- a. The name and address of the property owner.
- b. The location of the property to which the request pertains.
- c. The specific standard or standards from which the property owner seeks a variance.
- d. The conditions and supporting evidence that justify the variance.

2. As soon as reasonably possible, but no later than 30 days after the Preservation Planner receives a request the Preservation Planner shall either refer the request to the Commission or deny the request for lack of completeness. The Preservation Planner shall not evaluate the strength of the requester's supporting evidence when determining completeness, but shall leave that evaluation to the Commission.

(g) Commission decision. The Commission shall grant or deny a variance request within 60 days after it receives the request except that the Commission may extend that deadline with the written agreement of the requester. If the Commission denies a variance request, its decision shall include the reasons for denial and a notice of appeal rights.