

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

Date: June 30, 2015

**MEMORANDUM**

TO: Landmarks Ordinance Review Committee  
Stuart Levitan, Chairman of the Landmarks Commission  
Amy Scanlon, Preservation Planner

FROM: John W. Strange, Assistant City Attorney

RE: Summary of Historic Preservation ordinance draft.

At its June 25, 2015 meeting, the Landmarks Ordinance Review Committee (LORC) suggested the following changes to the draft ordinance:

- I. Add the word “preservation” to **sec. 41.01**.
- II. Revise the definition of “historic resource” to match the language in **sec. 41.01**.
- III. Delete the definitions of gross volume, necessary for the public interest, and special merit (see further explanation below).
- IV. Add transition rule to **sec. 41.03**.
- V. Revise **sec. 41.06** to allow for newspaper publication or others as allowed by law.
- VI. Delete provision prohibiting re-designation of a landmark in **sec. 41.08**.
- VII. Replace “gross volume” with “scale and proportion” in **sec. 41.11**. (see further explanation below).
- VIII. Restructure and revise **sec. 41.19**, variances (see further explanation below).

Of the suggested revisions listed below, replacing “gross volume” with “scale and proportion” in secs. 41.02 and 41.11(1), and restructuring and revising sec. 41.19 garnered the most discussion and attention.

**1. Replacing “gross volume” with “scale and proportion” in sec. 41.11.**

By way of background, sec. 41.11 provides a list of suggested guidelines and criteria that the Landmarks Commission should consider when creating or amending a historic district ordinance. This list is neither mandatory nor not exclusive, meaning that historic district ordinances do not have to contain any of these items, and could contain items that are not on this list. Moreover, the items in this list are not standards or guidelines themselves. They become standards or guidelines only if they are included in a specific historic district ordinance.

The issue regarding “gross volume” arose when the public suggested that the term needed its own definition. This issue has been in the parking lot for LORC to consider. I explained that I did not include a standard mathematical definition of gross volume in the most recent draft because I needed direction from LORC on whether the definition should

follow the standard mathematical definition, or take into account the perception of a building, given that the entire list of items is predicated on the concept that the listed items must be “visually compatible” with their surroundings.

Rather than defining “gross volume”, LORC recommended replacing “gross volume” with “scale and proportion” in sec. 41.11. LORC’s rationale for this recommendation was primarily that the strict mathematical definition of gross volume was not necessarily congruent with how one perceives whether a building is too big. LORC felt the phrase “scale and proportion” was more representative than the strict mathematical definition of gross volume when trying to determine (e.g., whether it is visually compatible) if a proposed building would visually overwhelm or dwarf its surroundings.

Importantly, LORC did not recommend removing “gross volume” from the entire ordinance. For example, two of the five historic district ordinances employ the concept of gross volume, and LORC made it clear that it did not intend to remove the term from those ordinances. Nor did LORC recommend that future historic district ordinances could not include a “gross volume” standard or guideline.

## **2. Restructuring and revising sec. 41.19, Variances.**

Input from the Alliance suggested that the structure of sec. 41.19 was difficult to follow, the description of each possible variance was confusing, and the public interest variance was awkward because required the reader to refer to the definition section to understand the terms necessary in the public interest and special merit. Moreover, the Alliance suggested removal of references to architecture and land use planning because they were too broad. They also recommended replacing the concept of special merit with public facility.

The alliance provided an variance section, which LORC reviewed and considered. LORC recommended that I attempt to redraft sec. 41.19(4)(d) to focus the standard on projects of unique, high priority benefit, but keep the substance and intent of the public interest variance previously created. In doing so, LORC suggested that specific reference to architecture and land use planning could be removed, but that this did not necessarily mean that architecture and land use planning could not be considered, in some fashion, when considering the public benefits of a proposed project. Finally, LORC rejected the “public facility” concept contained in the Alliance alternative, but suggested that I incorporate the substance of the definitions of “necessary for the public interest” and “special merit” into the text of the variance itself.

In this draft, sec. 41.19(7) has been re-titled as “Public Interest variance”. Rather than relying on definitions of the terms special merit and necessary in the public interest, the revised section incorporates the concept of special merit (a project high priority benefit to the public) in to the text of the variance. It also removes specific reference to architecture and land use planning. Finally, it maintains, in sub. (7)(b) and (c), the safeguards LORC built in to the previous definitions of special merit and necessary in the public interest. With these revisions, it became unnecessary to use the phrase “special merit” or have a separate definition of necessary for the public interest, thus eliminating the need of the reader to use the definition section to understand this variance.