



25 W Main St—5th Floor, Suite 33
Madison, WI 53703

May 5, 2022

Re: Requested Revisions to Proposed Landmarks Ordinance from LORC

Landmarks Commission:

Smart Growth Greater Madison has submitted to you requested revisions to the new Landmarks Ordinance from the Landmarks Ordinance Review Committee (LORC): Smart Growth – Revised Landmark Ordinance(47123848.10). In that document, the LORC changes are highlighted in green text and changes requested by Smart Growth are shown in blue text (for added text) and red text (for deleted text). This letter provides an explanation of the requested revisions.

Smart Growth requests that the Landmarks Commission recommend to the Common Council that the revisions requested by Smart Growth be added to the proposed new Landmarks Ordinance.

But before discussing our requested revisions, Smart Growth wants you to know that we support the approach LORC took in drafting the new Landmarks Ordinance. Having consistent definitions, standards and processes which apply to all of the local historic districts to the greatest extent possible is a laudable achievement.

As you know, Madison has a critical need for additional housing units, including additional affordable housing units. The existing Landmarks Ordinances and the proposed new Landmarks Ordinance inhibit construction of additional housing units in the local historic districts, although the standardization of definitions, standards and processes might make it slightly less hard to construct additional housing units. The new Landmarks Ordinance is NOT intended to make any policy changes, including any policy changes that would make it less hard to construct additional housing units in the local historic districts.

There are parcels within some of the local historic districts that are not occupied by historic resources or designated landmarks, on which additional housing units could be constructed. I request that you consult the document entitled Dates of Construction in LHDs (which also was submitted to you), which shows the dates on which buildings in the local historic district were constructed based on the City Assessor's records. The parcels marked in yellow or orange contain buildings that are more recent than the period of significance, and thus do not qualify as historic resources (unless there was an error in the City Assessor's records). A small number of these parcels contain designated landmarks, such as the apartment building at the southeast corner of Wisconsin Avenue and East Gilman Street. But most of the parcels marked yellow or orange contain neither historic resources nor designated landmarks.

The Common Council has recently enacted more than one ordinance to encourage the construction of more housing units throughout the city. Toward that end, Smart Growth is requesting a number of

modest revisions which would make it somewhat easier to construct additional housing units on parcels in local historic districts that are NOT occupied by historic resources or designated landmarks:

- In several places in the Landmarks Ordinance, a proposed demolition, new building or addition to an existing building must obtain a certificate of appropriateness based on examining only historic resources within 200 feet of the proposed development. Smart Growth requests revisions to make the determination of a certificate of appropriateness based on comparing the proposed project with all of the historic resources in the local historic district. In some of the historic districts, the historic resources come in wide variety of scales, and this requested change would allow for that variety to continue in new buildings within the historic district. In addition, it would allow more projects that contain more housing units to obtain certificates of appropriateness.
- The Landmarks Ordinance requires a certificate of appropriateness for a proposed building project within a local historic district AND a separate certificate of appropriateness for combining small parcels to make the proposed project feasible. In a memo dated June 24, 2019, Preservation Planner Heather Bailey wrote the following: “While the proposal does not appear to meet the criteria for approval, staff believes that the land combination could be approved on the condition that a Certificate of Appropriateness for a new principal structure that meets the First Settlement Historic District Standards be granted.” However, an opinion letter from the City Attorney’s Office concluded that the approach Dr. Bailey suggested was not consistent with the First Settlement Landmarks Ordinance, which required a separate certificate of appropriateness for combining the parcels based on a separate set of standards. As a result of the City Attorney’s opinion, the developer withdrew the proposed project because the project was not feasible without the parcel combination and the parcel combination did not meet the standards for a separate certificate of appropriateness. In addition, developers have not submitted other projects for review where the new building might meet the standards for a certificate of appropriateness but a parcel combination is needed and the separate standards for a parcel combination cannot be met. Smart Growth requests a revision that would exempt a combination of parcels needed for a proposed new building or addition from the requirement for a separate certificate of appropriateness for the parcel combination if the new building or addition meets the standards for a certificate of appropriateness.
- Smart Growth requests a revision that would allow considering the street setbacks of all existing buildings on the block face where a new building is being proposed, not just existing buildings on the block face which are within 200 feet.

It has been noted that the 200-foot radius has been in use in Madison’s local historic districts for decades. The world and the needs of Madison’s residents have changed dramatically in recent years. The fact that a provision has been in Madison ordinances does not mean it still is wise policy today.

Some of Smart Growth’s other requested revisions could be considered technical, rather than policy, in nature. Smart Growth hopes the Landmarks Commission will at least consider recommending adding these provisions to the new Landmarks Ordinance, as they should not be controversial and improve the ordinance:

- Smart Growth requests revising the language in the ordinance about the Landmarks Commission’s using its own initiative to gather information to clarify the Commission’s authority to do so.

- Smart Growth requests a revision to the rescission of a landmark designation so that it can apply to the same things to which a landmark designation can apply: a site, improvement, or site with improvements.
- In the proposed Landmarks Ordinance, anyone can propose that something be designated a landmark (this not a change from the current Landmarks Ordinances). Smart Growth requests a revision that would allow anyone to request to rescind a landmark designation.
- Smart Growth requests revisions to make the process for requesting the rescission of a landmark designation match the process for requesting the designation of a landmark. (This is a response to a comment from the State Historic Preservation Office.)
- Smart Growth requests a revision to codify current practice that if the Preservation Planner declines to issue a certificate of appropriateness, the applicant may submit a formal application for a certificate of appropriateness, which shall be considered by the Landmarks Commission.

Other revisions requested by Smart Growth, which would be characterized as changes in policy, include the following:

- Recognizing that there are important city public policy goals and values with which historic preservation sometimes conflicts, such as creating more affordable housing and promoting inclusivity throughout the city, Smart Growth requests a revision indicating that the Landmarks Commission should consider those other city public policy priorities when applying the Landmarks Ordinance.
- Smart Growth requests that the standards for rescission of a landmark designation include that the designated site, improvement, or sites with improvements no longer qualifies for designation as a landmark for a reason other than its physical appearance. For example, a building might be designated as a landmark to honor an important person who once lived in building, but we might subsequently learn that the person was a virulent racist and no longer want to honor them.

Finally, when someone buys a property that has not been designated as a landmark and is not in a local historic district, they do so based on the existing regulations that apply to the property at the time of the purchase. They usually do not anticipate that their property might later be made subject to restrictions in the Landmarks Ordinance, which increase the cost of ownership and limit what they are able to do with their property. Consequently, Smart Growth is requesting a number of revisions to provide greater procedural due process protections for a property owner whose property is subject to an attempt to designate it as a landmark or to include it in a new local historic district or enlargement of an existing historic district, as well as minor adjustments to some of the standards:

- If someone other than the owner of record of a applies for a property to be designated as a landmark, city staff must send a notice by certified mail to the property owner within 3 days of receiving the application to designate the property as a landmark.
- Notices must be mailed at least 60 days before a hearing instead of 10 days before a hearing.
- The public hearing regarding a proposed creation of a new local historic district or change in the boundaries of an existing historic district must be at least 30 days after the Plan Commission makes its recommendation.
- ~~An owner of record may file a protest petition against an application to designate their property as a landmark, in which case a supermajority vote of the Common Council is required to designate the property as a landmark (mimicking the protest petition process where an application has been filed to re-zone a property over the objection of the property owner).~~

(Smart Growth has withdrawn this requested revision in response to comments from the State Historic Preservation Office.)

- The vote required to approve the designation of a landmark or rescinding the designation of a landmark is a two-thirds affirmative vote of the Common Council. (This requested revision is based on a recently introduced ordinance regarding approval of zoning map amendments, Legistar 71082.)
- ~~An owner of record may file a protest petition against an application to include their property in a new local historic district or in an existing historic district through a change in boundaries, in which case a supermajority vote of the Common Council is required to include the property in the historic (mimicking the protest petition process where an application has been filed to re-zone a property over the objection of the property owner).~~ (Smart Growth has withdrawn this requested revision in response to comments from the State Historic Preservation Office.)
- The vote required to approve a new local historic district or modification of an existing local historic district is a two-thirds affirmative vote of the Common Council. (This requested revision is based on a recently introduced ordinance regarding approval of zoning map amendments, Legistar 71082.)
- In the standards for designating a landmark, the word “significant” is added before "cultural, political, economic or social history of the nation, state or community." This parallels the use of the inclusion of the words "important" and "master" in other standards in the list.

Thank you for considering these requests.

Sincerely,

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