



Project Name & Address: 310-312 N Prospect Avenue

Application Type(s): Certificate of Appropriateness for exterior alterations in the University Heights historic district

Legistar File ID # [64874](#)

Prepared By: Heather Bailey, Preservation Planner, Planning Division

Date Prepared: April 13, 2021

Summary

Project Applicant/Contact: Karen Lee Weidig, Freiburger Consulting

Requested Action: The Applicant is requesting that the Landmarks Commission approve a Certificate of Appropriateness for the replacement of one window.

Background Information

Parcel Location/Information: The subject site is located in the University Heights Historic District.

Relevant State Statute Section:

Wisc SS 62.23(7)(em)2m. In the repair or replacement of a property that is designated as a historic landmark or included within a historic district or neighborhood conservation district under this paragraph, a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.

Relevant Ordinance Sections:

- 41.18 STANDARDS FOR GRANTING A CERTIFICATE OF APPROPRIATENESS.** A certificate of appropriateness shall be granted only if the proposed project complies with this chapter, including all of the following standards that apply.
- (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.
- 41.24 UNIVERSITY HEIGHTS HISTORIC DISTRICT.**
- (6) Standards for the Review of Exterior Alterations and Repairs in the TR-VI, TR-V2, TR-U1, TR-U2, NMX, TSS and LMX Zoning Districts.

- (a) Height. No alterations shall be higher than the existing structure; however, if the existing structure is already nonconforming, no alteration shall be made thereto except in accordance with Sec. 28.192, MGO. In addition, all alterations, including alterations to the top of a structure, shall conform to the height restrictions for the zoning district in which the structure is located.
- (b) Alterations. Alterations shall be compatible in scale, materials and texture with the existing structure.
- (c) Repairs. Materials used in repairs shall harmonize with the existing materials in texture, color and architectural detail.
- (d) Re-Siding. The standards for the review of re-siding are the same as the standards for review of re-siding in the TR-C2, TR-C3 and TR-C4 Zoning Districts set forth in Sec. 41.24(5)e.
- (e) Roof Shape. Roof alterations to provide additional windows, headroom or area are prohibited unless permitted under Chapter 28, or otherwise approved pursuant thereto as a variance or as part of a conditional use. In addition, all roof alterations shall be visually compatible with the architectural design of the structure.
- (f) Roof Materials. All repairs shall match in appearance the existing roofing materials; however, when a roof is covered or replaced, roofing materials shall duplicate as closely as practicable the appearance of the original materials. Thick wood shakes, French method, interlock and Dutch lap shingles are prohibited. Rolled roofing, tar and gravel and other similar roof materials are also prohibited except on flat or slightly sloped roofs which are not visible from the street.
- (g) Parking Lots. No new parking lots will be approved unless they are accessory to and on the same zoning lot as a commercial structure or multiple family dwelling.

Analysis and Conclusion

The applicant is requesting a Certificate of Appropriateness to replace one bathroom window with a new fiberglass window as part of a bathroom remodel. The multi-unit building is historically known as the A.E. Apartment Building, and was constructed in 1911, and housed faculty at UW and staff at the Forest Products Lab. It is within the period of significance for the local historic district and a contributing part of the associated National Register Historic District. As such, interior and exterior remodeling could potentially be eligible for preservation tax credits through application to the Wisconsin Historical Society.

The historic window proposed for replacement is on the third floor and visible from the street. Staff recommended installation of an interior storm window as a means of retaining the historic window while addressing the new interior conditions created by the interior remodel. This is an approach that has been used in other administrative approvals. The applicant is proceeding with a request to the Landmarks Commission to replace the window with a fiberglass window. The commission has only approved fiberglass windows to replace failed foundation-level windows or in areas not visible from the public right-of-way. Otherwise this has not been a window material that adequately replicates the appearance of historic wood windows.

As this is not a request related to a window in need of repair, the applicant has not sought an evaluation from a 3rd party window repair contractor. In 2018, the applicant received an administrative approval for a similar project at this property by an interim preservation planner, who was not aware of the precedent of these types of projects with the Landmarks Commission or the guidance from the City Attorney's Office on retention of historic windows.

A discussion of the relevant ordinance sections follows:

41.18 STANDARDS FOR GRANTING A CERTIFICATE OF APPROPRIATENESS. A certificate of appropriateness shall be granted only if the proposed project complies with this chapter, including all of the following standards that apply.

- (1) New construction or exterior alteration. The Landmarks Commission shall approve a certificate of appropriateness for exterior alteration or construction only if:
 - (a) N/A
 - (b) N/A
 - (c) As this property is located within the University Heights local historic district, it must comply with those standards.
 - (d) Following the guidance from the City Attorney’s Office per the 2017 Window Memorandum (see attached), the proposed replacement of a historic window when it can be retained by installation of an interior storm window would frustrate the public interest expressed in this ordinance for protecting, promoting, conserving, and using the City’s historic resources.

41.24 UNIVERSITY HEIGHTS HISTORIC DISTRICT.

- (6) Standards for the Review of Exterior Alterations and Repairs in the TR-VI, TR-V2, TR-U1, TR-U2, NMX, TSS and LMX Zoning Districts.
 - (a) Height. N/A
 - (b) Alterations. The proposed fiberglass material does not adequately replicate the appearance of the historic wood windows on the structure.
 - (c) Repairs. N/A
 - (d) Re-Siding. N/A
 - (e) Roof Shape. N/A
 - (f) Roof Materials. N/A
 - (g) Parking Lots. N/A

Recommendation

Staff believes that the standards for granting a Certificate of Appropriateness are not met and recommends the Landmarks Commission deny the project as proposed.

**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.