

DATE: April 17, 2015

TO: Madison Common Council – Landmarks Ordinance Review Committee (LORC)

FROM: Ordinance Committee of the Madison Alliance for Historic Preservation

SUBJECT: **Landmarks Ordinance**

The Madison Alliance for Historic Preservation applauds LORC's April 14 decision related to appeals of contested cases. We agree that, when the Common Council hears appeals from Landmarks Commission decisions, it should apply the same ordinance standards that the Landmarks Commission is required to apply (although the Common Council may interpret those standards differently). The Common Council should not act contrary to its own ordinance standards.

We also applaud LORC's tentative decision to allow for administrative "variances" from ordinance standards, rather than "waivers." We hope that LORC will not undo this good work by allowing overly broad variances that could undermine the integrity of the city's historic preservation standards. A variance, even when it grants relief from the literal application of an ordinance standard, should honor the general purpose and intent of the standard. Variances should not just throw preservation standards out the window.

We understand that the City must balance a broad range of land use and policy concerns, including but not limited to historic preservation. But that "balancing" should occur in the City's land use planning process, and in the process of designating landmarks and creating historic districts. Historic preservation standards, adopted by the Common Council by ordinance, already represent a "balancing of interests" and a declaration of City policy. The Landmarks Commission should not throw out that declared City policy, on an *ad hoc* basis, whenever someone proposes a shiny new development project. That would undermine the credibility and public confidence on which the entire historic preservation program depends.

Variance Authority

The current LORC draft will, for the first time, give the Landmarks Commission explicit authority to grant (1) "hardship" variances, (2) "design" variances for building alterations, and (3) "design" variances for new buildings (*see ss. 41.21(4)*). We have previously expressed our concern about the potential scope of the "hardship" variance provision (see our previous comments dated April 10).

The "design" variance provision for new buildings is also quite broad. The latest draft version (March 27) authorizes the Commission to grant a variance if:

"In the case of new construction, the proposed design incorporates elements that are not permitted by the ordinance but which would enhance the quality of the design for the new building or structure, provided that said new building or structure otherwise complies with the criteria for new construction in the Historic District in which the building or structure is proposed to be located and provided further that it would also have a beneficial effect on the historic character of the visually related area."

This provision gives the Commission substantial authority to approve new buildings that do not meet established historic district standards (including, potentially, size standards), provided only that the changes will “enhance the quality of the design,” will meet construction standards *other* than those that are waived, and will have a “beneficial effect on the historic character of the visually related area.”

We think that this variance authority is ample – indeed, it may be *too* ample – and we see no reason to expand it further. We fear that adding a broad “balancing of interests” provision (like the one just removed from the appeals section) could gravely undermine historic district standards, and eliminate any remaining requirement of compatibility.

Demolitions

The “variance” issue affects demolitions, as well as new construction and alterations. When is it OK to demolish a designated landmark? When is it OK to demolish a (non-landmark) building in a historic district? May the Commission grant variances from established demolition standards, just as it may grant variances from construction and alteration standards?

We believe that *landmark* demolitions are different from demolitions of some properties in historic districts. Partly for that reason, we have argued that the ordinance should have separate subchapters for landmarks and historic districts. Separating the treatment of landmarks and historic districts would add clarity, reduce confusion, and allow for greater precision.

We do not believe that it is *ever* appropriate to demolish an entire landmark pursuant to a “certificate of appropriateness.” That is simply a contradiction in terms. A “certificate of appropriateness” certifies that a proposed action appropriately *preserves* (rather than *destroys*) a landmark. If the Landmarks Commission wishes to authorize the complete demolition of a landmark, it should propose to *rescind the landmark designation* according to established rescission standards (which could be modified to some degree). When considering the demolition of a landmark *outside of* a historic district, it is less important to consider the compatibility of the replacement structure with the historic character of the surrounding neighborhood.

Demolitions in historic districts are different, because not all buildings in historic districts are specifically designated as landmarks (or even “historic resources”) in their own right. Some buildings in a historic district may be demolished over time. But before granting a “certificate of appropriateness” for any demolition, the Commission should consider the effect of that demolition on the overall character of the historic district, using standards spelled out in the ordinance. The LORC draft demolition standards under s. 41.20(2) are more appropriate for historic districts than for landmarks. But they are rather vague, and provide little real direction to property owners or the Commission. The ordinance could create more precise standards for demolitions in historic districts – a very strict standard for those buildings that are designated as “historic resources” and a somewhat less restrictive standard for other buildings within the district. Supplemental district-specific standards could add further clarity and locally relevant detail.

In any case, we do not see any reason to grant “variances” from the demolition standards in s. 41.20(2), which are already quite flexible. In *every* case, demolition decisions should consider the nature of the proposed replacement structure, and its compatibility with historic district standards.

Standards vs. “guidelines”

The current draft ordinance refers to historic preservation standards and “guidelines.” But the use of “guidelines” will only lead to confusion and uncertainty. Are “guidelines” enforceable or not? Who decides? May “guidelines” be used *in lieu of* enforceable standards? The ordinance should be clear about what is *required* of property owners (as opposed to merely *suggested*), so they can plan and invest accordingly. An ordinance should deal in *standards*, not “guidelines.” We suggest the following:

Landmark Standards

The U.S. Department of Interior’s *Rehabilitation Standards* (see attached *Appendix A*) are clear, concise and workable. We believe that the ordinance should incorporate them as *enforceable standards for landmarks and landmark sites*. The ordinance should incorporate them directly (not just by reference), for the convenience of readers. The Commission may grant limited waivers or variances (see above) if special circumstances warrant.

Historic District Standards

Historic districts are more complex, because every district is different, and not every property in a historic district is a landmark. But clarity and certainty are fundamentally important for historic districts, just as for landmarks.

The ordinance should avoid “once-size-fits-all” standards for historic districts, because conditions vary within and between districts. However, the ordinance creating each district should create clear, enforceable standards for *that* district. All references to “guidelines” should be deleted. The Commission may publish supplementary “best practice” suggestions for owners of historic properties, but those suggestions should not substitute for (or be confused with) enforceable district standards.

Under our proposal, the ordinance creating a historic district could include standards related to all of the following:

- Compatibility with nearby historic properties.
- 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.

The ordinance should:

- Clarify that district standards (such as building size limitations) may vary within and between historic districts, based on differing local conditions and planning goals. That will allow greater clarity, and more practical and locally relevant specificity.
- Include graphics, where appropriate, to portray the standards in an easily understood way.
- Define key technical terms such as “height” and “gross volume,” to avoid unnecessary confusion and conflict (graphics can help).
- Establish a clear process for neighborhood input into proposed district ordinance standards.

Definitions

The Landmarks Ordinance must be clear and internally consistent, so that readers can readily understand it. Good definitions can help. We think it is especially important to define key technical terms like “height” and “gross volume,” to eliminate unnecessary confusion and conflict (graphics might be useful).

Although judicious use of definitions can improve clarity, poor use of definitions can make the ordinance *more confusing* and *less readable*. Here are some basic questions to consider:

- Is the defined term actually used in the ordinance text? Eliminate definitions of terms that are not actually used.
- How is the defined term actually used in the ordinance text? Make sure that the definition fits consistently, wherever the defined term is used.
- Does the definition add clarity, or not? Eliminate unnecessary definitions.
- Does the definition contain substantive material that more properly belongs in the ordinance text? Move substantive material to the ordinance text, where readers can see it without going “back and forth” to definitions.
- Does the definition duplicate, restate or conflict with substantive text material? Eliminate duplication and conflicts. Keep definitions as concise as possible.
- Which terms in the ordinance text require further definition? Add definitions as needed, but *only* as needed.

We understand that LORC has given the city attorney some latitude to add and modify definitions as needed, subject to LORC review. We think that makes sense. It is hard, as a committee, to “wordsmith” technical ordinance definitions and related text. We welcome the chance to contribute in any way possible.

Managing Madison's historic resources

We believe that Madison should manage its historic resources in a more systematic way. Historic preservation should be an integral part of the City's planning, economic development and program operations, not just an *ad hoc* exercise. A more systematic approach will help minimize conflict, reconcile strategic goals, and get the maximum value from the City's outstanding historic resources. We appreciated LORC's thoughtful discussion of this issue on April 14. We understand that some of these goals can be advanced outside the context of the Landmarks Ordinance itself, and we look forward to further progress.

Statement of "Policy and Intent"

We understand that considerable time and effort has already been invested in the statement of "Policy and Intent." But we fear that this statement, as currently proposed, will confuse rather than clarify ordinance administration. Advocates on one side or the other will cite listed "purposes" to argue for strained interpretations of text provisions that should be clear on their face.

The "Policy" statement can stand on its own, without the subsequent listing of "purposes." We believe that the list of "purposes" should be deleted, and replaced by the following simple sentence: "The purpose of this ordinance is to carry out this policy in a fair and effective manner." The ordinance text should speak for itself.

Redrafting, subject to LORC policy.

The Landmarks Ordinance should be clear and understandable, and should be drafted to modern standards. Much drafting and organizational work remains to be done. LORC should direct the city attorney to undertake a complete ordinance redraft, to modernize ordinance text and organization consistent with LORC's policy decisions.

LORC should not try to "wordsmith" the ordinance text, but should authorize the city attorney to develop draft language for later review and approval by LORC. The city attorney should be authorized to add or modify definitions and other material as needed, provided that the changes are consistent with LORC's policy decisions. LORC naturally retains its authority to review and modify the final product.

Thank you for your consideration. We look forward to continued progress.

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Appendix A
U.S. Department of Interior - Rehabilitation Standards
(for Landmarks and Landmark Sites)

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.