



5 December, 2014

Ad Hoc Landmarks Ordinance Review Committee

Comments from Madison Trust for Historic Preservation

RE: draft ordinance dated 06-24-2014 (Sections 11-12)

General comments

Wholesale revision: “building” v. “structure”

The terms “building” and “structure” are differentiated in 33.19(7)(a), but “structure” is used synonymously with “building” through the rest of the ordinance. The two terms should be differentiated throughout the ordinance. The ordinance should adopt the definitions of the federal historic preservation program to clarify the difference:

- **Buildings shelter human activity** - A building is construction created principally to shelter any form of human activity. Examples include: house, garage, church, school, hotel, courthouse, library, store, train station.
- **Structures are utilitarian, and not principally for sheltering human activity** - The term "structure" is used to distinguish functional constructions from buildings made for purposes other than creating human shelter. Examples include: dam, effigy mound, fence, pergola, silo, dock, walking path, roadway

Wholesale revision: “Demolition by Neglect”

This term is antagonistic. "Neglect" (declining to do needed repairs or routine maintenance to the point where it is detrimental to the structure of the building) *should* be prevented by provisions of this ordinance, but it does not constitute "demolition" until it has been going on for so long that the building partially collapses. We have a definition of “demolition” in Ch. 28 (Zoning Code). Neglected maintenance like deteriorating shingles does not meet the definition, therefore this ordinance should not call it “demolition” until it actually is. To call intentional neglect "demolition" before the walls/roof actually collapse is inaccurate and potentially inflammatory. Convert all instances of “demolition by neglect” to either “deliberate neglect” or “deleterious neglect.”

Specific comments relative to (11), (12)

(11) Certificate of Appropriateness.

(a) Certificate of Appropriateness Required. A Certificate of Appropriateness, approved by the Landmarks Commission, is required for the following:

1. Exterior alteration of a designated landmark or structure within an historic district.
2. Construction of new structure on a landmark site or in an historic district.
- x. Relocation of a building or structure from, to, or within an historic district
- x. Relocation of a designated Landmark building or structure
3. Demolition or removal of all or part of a landmark or structure in an historic district.
4. Erecting or affixing a sign on a landmark site or in an historic district.
5. Alteration of part of a landmark designated as an Additional Preservation Restriction.
6. Land divisions and combinations involving a landmark site or in an historic district.
7. Sandblasting or other types of cleaning methods using abrasive or corrosive products of any exterior surface of an improvement on a landmark site or in an historic district.

(b) Permits. The Director of the Building Inspection Division shall not issue a permit allowing alteration, construction, demolition, removal, or for any other action for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission and issued by the Preservation Planner or designee.

(c) Prohibition. No owner, operator, or person in charge of a landmark, landmark site or structure within an historic district shall cause or permit any painting of signs, alteration, construction, demolition or removal for which a Certificate of Appropriateness is required unless such Certificate has been approved by the Commission.

(d) Administrative Approval. The Landmarks Commission may authorize the Preservation Planner, or other designee(s) to approve certain projects, provided that the Commission shall first adopt written policies establishing which projects can be administratively approved, and the process to be followed.

(e) Application. An application for a Certificate of Appropriateness shall be filed with the Planning Department, c/o the Preservation Planner. The application shall be considered filed when it is stamped "accepted" by the Preservation Planner. The timelines applicable in subsection (g) below shall not begin until an application is filed. Every application shall include at least the following information unless otherwise indicated by the Preservation Planner:

1. Completed Application document.
2. Narrative Description of the project.
3. Scalable drawing set reduced to 11" x 17" which includes floor plans, elevations and details to convey relevant information.
4. Any other information requested by the Preservation Planner to convey the aspects of the project.

(f) Public Hearings. The Commission shall hold a Public Hearing and provide Class 2 Notice according to subsection (6) of this ordinance for applications involving the following:

1. Demolition or removal of all or part of a landmark;
2. Demolition or removal of a structure in an historic district;
- x. Relocation of a building or structure from, to, or within an historic district
- x. Relocation of a designated Landmark building or structure
3. Construction of a new principal structure in an historic district;
4. Construction of an accessory structure with a footprint larger than one hundred (100) square feet, not including decks and open porches, in an historic district; and
5. Exterior alteration of a structure in an historic district that increases the footprint of the structure more than one hundred (100) square feet, not including decks and open porches.

(g) Issuance of Certificate of Appropriateness. The Landmarks Commission shall approve or deny a Certificate of Appropriateness, based upon the applicable standards in subsections (12), (13) or (14) of this ordinance, within sixty (60) days of the filing of an accepted application. Failure to approve a Certificate of Appropriateness within sixty (60) days shall be deemed a denial, effective on the last day of the determination period. The determination period may be extended an additional sixty (60) days by written agreement of the applicant. Upon approval of the Certificate by the Commission, the Preservation Planner or designee shall issue a Certificate of Appropriateness.

(h) Penalty for Work Done Without, or in Violation of, a Certificate of Appropriateness. In addition to any other penalty provided in this section, the Landmarks Commission may order the removal or modification of any alteration, construction or other work that was performed without a required Certificate of Appropriateness, or that was not performed in compliance with the conditions of a lawfully issued Certificate of Appropriateness, when such work does not meet the applicable standards for a Certificate under subsections (12), (13), or (14) of this ordinance, or under the Additional Preservation Restriction specific to that landmark. Alternatively, the Commission may order renovation to make such work comply with those standards.

(i) Two-Year Deadline. A Certificate of Appropriateness shall expire two (2) years from the date of issuance unless a building permit is obtained within such period.

(12) Standards for Certificate of Appropriateness

(a) For Exterior Alteration or Construction. The Landmarks Commission shall approve a Certificate of Appropriateness for exterior alteration of a landmark or a structure within an historic district, or for construction on a landmark site or in an historic district, only if:

1. In the case of a designated landmark the proposed work would not destroy or adversely affect any **significant exterior character-defining** architectural feature of the improvement upon which said work is to be done, or significantly degrade the historic fabric of the landmark; and
 2. In the case of construction, **relocation**, or alteration of a new structure upon a landmark site, the exterior of such improvement would not adversely affect or fail to harmonize with the external appearance of other neighboring improvements on such site, evaluated using the standards in subsection (9)(c) of this ordinance; and *[The standards in (9)(c) are only “considerations” for the Landmarks Commission to use “in adopting Standards and Guidelines for each historic district.” Can they be applied as “standards” here? Or should there be a set of standards in the “adopted standards for said district” (in 3 below)]*
 3. In the case of any property located in an historic district, the proposed new structure or exterior alteration conforms to the adopted standards for said district.
- (b) For Demolition or Removal. In determining whether to approve a Certificate of Appropriateness for any demolition or removal of any landmark or structure within an historic district, the Landmarks Commission shall consider and may give decisive weight to any or all of the following:
1. Whether the structure is of such architectural or historic significance that its demolition or removal would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;
 2. Whether the structure, although not itself a landmark structure, contributes to the distinctive architectural or historic character of the historic district as a whole and therefore should be preserved for the benefit of the people of the City and the State;
 3. Whether demolition or removal of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and/or to the objectives of the historic preservation plan for the applicable historic district as duly adopted by the Common Council;
 4. Whether the structure is of such old and unusual or uncommon design, **method of construction, texture and/or material** that it could not be reproduced or be reproduced only with great difficulty and/or expense;
 5. Whether retention of the structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;
 6. The condition of the property, provided that any deterioration of the property which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness for demolition or removal;
 7. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the structures and environment of the historic district in which the subject property is located, or if outside a historic district, compatible with the mass and scale of buildings within two hundred (200) feet of the boundary of the landmark site; and,
 8. Documentation of demolished structures. Prior to approving a Certificate of Appropriateness for demolition, the Landmarks Commission may require the applicant to provide documentation of the structure. Documentation shall be in the form required by the Commission.
- (c) For Signs. The commission shall approve a Certificate of Appropriateness for signs, unless it finds that the size, number, design, or placement of the sign(s) would adversely affect a significant architectural feature of the structure or degrade the historic fabric of the district; that the sign(s) fails to comply with Chapter 31 of the Madison General Ordinances; or that the sign(s) fails to comply with specific Standards or Guidelines for signs adopted in each historic district under this ordinance.
- (d) For Alterations under Additional Preservation Restriction. The commission shall approve a Certificate of Appropriateness for an alteration under an additional historic preservation restriction unless it finds the alteration would adversely affect a significant architectural feature of the structure.
- (e) For Land Divisions and Combinations. The commission shall approve a Certificate of Appropriateness for a land division or combination involving a landmark site or in an historic district unless it finds that the action would adversely affect a significant architectural feature of the structure, or degrade **the historic fabric of the district, the integrity of the rhythm and character of the streetscape derived from the historic pattern of development in a historic district.**
- (f) For Abrasive Cleaning Methods. The commission may approve the use of abrasive cleaning methods on a landmark or in an historic district only if it finds the action would not adversely affect the structure or degrade the historic fabric of the district.