

AGENDA # 2

City of Madison, Wisconsin

REPORT OF: LANDMARKS COMMISSION

PRESENTED: June 2, 2014

TITLE: Landmarks Ordinance Revisions
(17835)

REFERRED:

REREFERRED:

REPORTED BACK:

AUTHOR: Amy Scanlon, Secretary

ADOPTED:

POF:

DATED: June 2, 2014

ID NUMBER:

Members present were: Stu Levitan, Chair; Erica Fox Gehrig, Vice Chair; Christina Slattery, Jason Fowler, David McLean, Marsha Rummel, and Michael Rosenblum. Fowler and Gehrig left during the discussion of Item 2.

SUMMARY:

Jason Tish, representing Madison Trust for Historic Preservation, registering neither in support nor opposition and wishing to speak. Tish explained that the Madison Trust for Historic Preservation (MTHP) provided comments via email and that he will describe the basics and resubmit comments to incorporate comments about the appeal language.

33.19(4)(f) regarding lot divisions and combinations should be subject to Certificate of Appropriateness review which can be as important as other issues that require a Certificate of Appropriateness.

Tish explained that the current appeal language remains subjective. Tish suggested that the Council review the standards in the Landmarks Ordinance and the record of the Landmarks Commission review only. He explained that historic preservation by purpose and intent statement is already in the public interest and the appeal should have a more specific review criteria.

Levitan asked if the Common Council review of the Landmarks Commission record would make this process unduly formalistic where the Landmarks Commission would be inundated with lawyers, accountants, and lobbyists.

Tish explained that currently during an appeal, the Common Council has to relitigate the entire case instead of reviewing the case made before the Landmarks Commission.

Tish explained that perhaps the Landmarks Commission process would become more burdened, but other cities do have this practice.

Levitan asked about appeal language that the MTHP may support.

Levitan asked if lot size transcends historic preservation concerns and may be more appropriate as a zoning issue.

Tish explained that in historic districts lot sizes are a character defining feature and the Landmarks Commission should treat this issue as a priority that could negatively affect the character of the historic district.

Levitan asked why the Madison Trust recommends a formulaic response to gross volume and height standards instead of language that can be interpreted.

Tish explained that being more specific provides some guidance and definition and removes some aspect of subjectivity. This explained that he recognizes that providing a formula could have alternative effects.

ACA Strange asked if the definition of visual compatibility should be different to respond to the character of each historic district.

Tish agreed that the character of each district may require a specific definition of visual compatibility.

Sue Pastor, registering in opposition and wishing to speak. Pastor explained that she has significant concerns about the process and the staff memo. The draft Ordinance and the staff memo contain concerning technical details that will have implications that are not fully understood. People in each district should provide comments on these changes before this moves forward. The process seems exclusive.

Pastor explained that she is concerned about the draft appeal language and how the public interest is interpreted or defined. She explained that the Ordinance was created because preservation of cultural history is a priority to this community and is in the public interest. She further explained that land division is important to the character of historic districts.

Rummel explained that historic districts have a period of significance that may not easily correspond with more recent social history and that this will need more thought and discussion.

Fred Mohs, registering in opposition. Mohs read the staff memo and explained that the purpose of the Preservation Planner and the Ordinance is to encourage the City to promote historic districts and the benefits of historic districts. Historic districts should compel consistency.

Mohs explained that Margaret Watson's quote that Steve Brown Apartments will "...refocus our efforts to help the City modernize the Guidelines" is similar to the thoughts of others that there are also property owners that believe in the importance of historic districts, but are concerned about the future of their investments.

Mohs objected to the majority of the comments in the staff memo especially the language regarding the Powers and Duties of the Preservation Planner. Mohs explained that having someone solely dedicated to historic preservation purposes as their job provides confidence.

David Mollenhoff, registering in support and wishing to speak. Mollenhoff provided copies of his comments. Mollenhoff explained that this process is moving quickly in response to a very complex technical document. He explained that his comments are divided into general comments and then by section. Mollenhoff explained the Landmarks Commission may need a new name to better express the purpose of the body, that the draft ordinance does not adequately reference archaeology, that terms should be used consistently and be defined, economic hardship should be defined and covered, sections of similar subjects should be consolidated, define and cover demolition by neglect, standards to allow historic districts to maintain patterns of open space, and

consolidate an enforcement section. Regarding the content of the staff memo, Mollenhoff is concerned by the direction the memo takes regarding the role of the Preservation Planner.

Mollenhoff also explained that he is concerned that the proposed recompense fee is a way to encourage owners to allow a building to rot and pay a small penalty to demolish the building.

Levitan asked that ACA Strange discuss Mollenhoff's claim that terms are used interchangeability.

ACA Strange explained that the current ordinance uses and interprets the terms criteria, standards and guidelines interchangeably. As the historic district sections are revised in Phase II the differences between standards and guidelines shall be defined clearly and consistently by each district.

Mollenhoff requested that the definitions be established in this Phase with an implied understanding of hierarchy or precision.

ACA Strange asked if the language of the staff memo on (9) second paragraph "...adopted standards shall apply to every instance of development in an historic district. Adopted guidelines shall serve as a collective set of principles to promote architectural compatibility of new construction and exterior alterations in an historic district." made sense as definitions for those items.

Mollenhoff requested that they be included in definition section.

Levitan explained that (13)(f) relates to demolition by neglect and asked what other concepts Mollenhoff would like to see in the demolition by neglect section.

Mollenhoff requested that demolition by neglect be defined in the ordinance and that maybe an entire section is necessary.

Gehrig asked which cities have model ordinances.

Mollenhoff explained that no place that is a hot seat and that they are spread around the country.

Gehrig agreed that a demolition by neglect section may be necessary in the Ordinance.

Franny Ingebritson, registering in opposition and wishing to speak. Ingebritson explained that she opposes the fast process that the Ordinance revisions are going through. She has never owned a property in a local historic district, but she has witnessed the positive impact that the historic districts have had on the City and neighborhoods. Many people did not get involved in the process to revise the Ordinance years ago because there was confidence that the Preservation Planner and the Landmarks Commission would be able to deliver an appropriate document.

Ingebritson explained that the process has changed and that the Landmarks Commission should slow because most people are not aware of the revisions being made.

Due to the numerous drafts and the staff memo, Ingebritson requested that the Preservation Planner make arrangements for public meetings where the proposed revisions can be discussed. Many members of the public are not aware of the issues before this body and how the City will be affected by the changes.

Levitan asked Cornwell and Cover to discuss the staff memo dated May 29, 2014. Cover explained that they are trying to make the Ordinance better and suggested that they could answer questions related to the memo

Levitan explained that in response to Item (1)1., moving “strengthen the economy of the City” to the enumerated list below seems fine as that is where it exists currently, but the Landmarks Commission moved it to the introductory paragraph to give it more prominence.

For Item (1)2 and the Madison Trust Statement, ACA Strange suggested adding “... improvements of special character, historical interest, cultural value, archaeological significance, and architectural significance.” There was general discussion about this language.

Cornwell suggested that the introductory statement was getting wordy and that providing a definition of significance may keep the introduction more concise.

For Item (1)3., Levitan explained that some reference of the Secretary of the Interior Standards is important to include in the Ordinance, but that there is not consensus on which standards or where they should be referenced. Slattery explained that the specific standards should be referenced to avoid confusion. Staff explained that the standards for rehabilitation are most relevant to the Ordinance. Cornwell explained that there are also standards for preservation planning. Slattery explained that the specific standards should be identified because the standards cover treatments that cover the full range of treatment options. Gehrig explained that having the standards referenced in the Ordinance will provide some legitimacy.

Levitan explained that for Item (2)1., the language change seems fine and for Item (2)2., this concept is an important concept that should be discussed under Phase II. This item notes that the visually related area may be different for each historic district. There was general discussion about the use of the word “homogenous.”

For Item (3)1., Levitan explained that there should be a registered architect in the composition of the Landmarks Commission and that increasing the number of members that meet the Secretary of the Interior’s definitions of qualified preservation professionals may make it very difficult to find members for appointment.

Rummel explained that the definitions seem to reference graduate degrees and specific experience that is quite limiting for average citizens which becomes an equity issue.

The Landmarks Commission agreed that a registered architect should be specifically listed in this section.

Cover explained that this staff memo recommendation really strengthens the Landmarks Commission because the current situation provides the option for two (2) experts in historic preservation and five (5) non-experts.

Cornwell suggested that maybe people working in Madison should be able to serve on this Commission and that if professionals that meet the standards are not available, then she would prefer to have those spaces filled by architects.

Rummel explained that until recently the Preservation Planner was staffed by a non-architect and the Commission composition was as it is in the Ordinance and things ran quite smoothly. The change in composition seems like planning for an outlier project.

Levitan explained that the standards are high bar qualifications and it should be confirmed that it is practical to find appropriate people.

There was general discussion about the language regarding the qualification standards for the Commission composition.

For (4)1., Levitan explained this seemed like a good change. Cornwell explained that this change allows for any issue that adversely affects the landmark and is not limiting.

For (5)1., Levitan explained that as discussed in an earlier meeting with Cornwell, Strange, Scanlon, and Levitan, the language should be changed to:

“The Preservation Planner shall staff the Landmarks Commission, shall administer the Landmarks Ordinance, and exercise such administrative duties as designated by the Landmarks Commission as part of her or his regular duties as a staff member in the Planning Division.”

There was general discussion about the differences between the words “uphold” and “administer.”

Rummel requested that there should be written document of the changes that were discussed at the earlier meeting for reference during this meeting.

Cornwell explained that the Landmarks Commission should expect the Planning Division to uphold the Landmarks Ordinance and be supportive of the Landmarks Commission.

Rummel explained that the Preservation Planner should have discretion to use professional judgment and the Ordinance language should reflect this.

Gehrig explained that it is important for the Principal Planner to be able to represent the Ordinance and the Landmarks Commission even if in the future the Planning Division does not support the Landmarks Commission.

ACA Strange explained that the current draft language and the proposed language will be included for review in the next draft.

For (7)1., staff explained that the application materials for a minor alteration like a handrail would require different information than that for a new building and that the language should allow for flexibility.

Levitan asked if these requirements could be specified by district. Staff explained that a uniform application is desired.

For (7)2., Cornwell explained that staff time to review designations should be covered by a fee.

Zellers explained that designated landmarks are a benefit to the City and the City does not prepare nominations so the work is done by volunteers, which is not a good City policy.

Cover explained that he disagreed and thought that the fee would be reasonable. ACA Strange explained that any fees would have to relate to the actual costs to review the program without being a penalty or an illegal tax.

For (8)1., Cornwell explained this decision should rise to the level of the Planning Director. Staff explained that the landmark designation for the Hotel Washington was rescinded due to loss of building by fire and that this request is rare.

Staff explained that the idea behind this language is that the same process that is used to designate the landmark would be used to rescind the designation.

For (9)1., Levitan explained that the language in the memo would replace the language of the introductory paragraph for 9(b), that further discussion is required. Cornwell explained that the guidelines should have graphics that define acceptable and not acceptable conditions. There was general discussion about standards and guidelines.

For (9)3., Levitan explained that this suggestion assists in cleaning up the Ordinance.

Slattery clarified that "...with which they are visually related" refers back to visually related area definition.

For (9)2., Zellers requested that (9)(b)2 be discussed in more detail. There was a general discussion about traditional adaptations and contemporary styles. It was agreed that the language of (9)(b)2 be changed to "a sensitively designed building in a contemporary style may be appropriate in an historic district.

Gehrig noted that the previous section is saying a similar thing and that the two sections may need to be combined. There was a general discussion about the difference between the sections, and the meaning and the importance of each.

Staff suggested that if these sections which are really related to Zoning and the Secretary of the Interior Standards could be removed from the next draft and held in the margin for review.

For (11)1., Cornwell explained that having the Director name the designee is a formality and shows support for the Ordinance from a higher level.

Levitan read the designee appointment language from the adopted policy document and noted that the current situation seems to have been working.

Cover explained that the language could include "...the Director's designee..."

For (13)1., Levitan noted that the editorial revision is fine.

For (13)2., Cornwell explained that in response to previous comments this provision is not intended to allow a property owner to buy out of their responsibilities to maintain their property. Levitan suggested placeholder language about a recompense fee.

Rummel asked why \$50,000 was used instead of assessed value and if there should be a discussion of the treatment or vacant buildings.

Cornwell explained that \$50,000 is just a number and it needs more consideration. This fee is a way to cultivate a preservation fund.

Levitan asked that ACA Strange revise the Ordinance to make all sign requests come before the Landmarks Commission for a Certificate of Appropriateness. Staff explained that this language will need coordination with the sign ordinance language.

Zellers asked if economic hardship would be included in the Ordinance. There was general discussion about economic hardship and when that issue would be acceptable and how it would fit in the Ordinance. Levitan

suggested that economic hardship be added under the waiver section to follow best practices language from other ordinances.

Mollenhoff explained that this discussion is moving in a favorable direction. Zellers explained that her focus was on the demolition standards and she would have to consider the inclusion of economic hardship in any other section. There as general discussion about where to address economic hardship.

Gehrig explained that adding economic hardship language in the waiver section allows everyone who doesn't want to do something required by this Ordinance to have a pass if they claim economic hardship. There was general discussion that the standards for reviewing economic hardship must be carefully defined or this section will be misused.

Slattery explained that the Landmarks Commission probably already takes economic issues into account without it being specifically addressed in the Ordinance.

There was general discussion regarding requiring Certificates of Appropriateness for lot division and combinations. The Landmarks Commission discussed the changes to the Ordinance to make this change.

In response to the Madison Trust memo, Levitan explained that the suggested language for (7)(a) is quite good, that changing "standards" to "criteria" in (7)(c) is a good catch, and that the changes to the significance criteria are good except that the language for 2 should instead read "Is associated with the lives of important historic persons, or with important event(s) of local, state, or national history."

There was general discussion about the Madison Trust comments on rescission. Tish clarified that the language did not provide an "opt out" for designation.

Levitan explained that at the staff team discussion, Cover suggested that the reference to Pages 50 and 51 in the Downtown Preservation Plan be deleted and that was not noted in the memo. ACA Strange explained that that suggestion was intentionally removed from the memo. Rummel asked if the clause could be removed in its entirety. Rummel explained that she understands that property owners were given the opportunity to opt out during the development of the Downtown Preservation Plan and that is not consistent with how the Landmarks Commission determines what is significant. There was general discussion that this language is no longer timely or beneficial to determining significance.

For the suggestion to change "self-created", ACA Strange explained that "self-created" is a bit more broad for this instance and better captures the intent.

There was general discussion about the appeal language. There was also discussion about Building Inspection enforcement for the failure to maintain properties through Chapter 33.19.

Levitan suggested adding an additional clause to (15)(c)2., which would read "... and shall not reverse or modify the Landmarks Commission decision on the basis of nay deterioration that is self-created by the Owner or Applicant.

There was discussion about how much information has been reviewed recently and how many changes are being contemplated. Levitan explained that he would request an additional meeting from the Ad Hoc Committee.

Zellers requested that Mollenhoff's statement be discussed at the next meeting.

Levitan explained that the changes are approved by consensus and ACA Strange can incorporate changes discussed for the next draft.

ACTION:

No action taken.