



PREPARED FOR THE LANDMARKS COMMISSION

Project Address: 7-11 N Pinckney Street
Legistar File ID # [60204](#)
Prepared By: Heather Bailey, Preservation Planner
Date Prepared: May 1 2020

Background

On April 27, 2020, Urban Land Interests submitted to the Planning Division a response to the Landmarks Commissions staff report. This is included for the commission’s consideration. Additionally, staff is including the memos from Assistant City Attorney John Strange regarding the process for creating this variance standard.

This category of variance was introduced as part of the Landmarks Ordinance Review Committee’s first round of revisions to the Historic Preservation Ordinance, which the City adopted in 2015. This is the first time that the Landmarks Commission has heard a Public Interest Variance request. The committee wanted to create a provision to allow for approval of a project that had great public interest but did not meet the standards of the Historic Preservation Ordinance. Additionally, they wanted that provision to not weaken or undermine the standards in the ordinance. The intent was for approval of an exemplary project that provided high priority community benefits and services, when there was no reasonable alternatives for the project. The resulting discussion created the standards we are using for this project review.

Finally, the drafter’s analysis for the 2015 ordinance revision is attached. On page 6 is a discussion of the variance process. Attorney Strange had this to say about the Public Interest Variance:

The public interest variance is found on Secs. 41.19(1)(d) and (7). After extensive discussion, the LORC decided it wanted to consider for a variance that could allow for projects providing unique benefits to the public. LORC discussion centered around two basic concerns. On the one hand, committee members expressed concern about doing anything that would weaken or undermine the public interest in preserving historic resources. On the other hand, committee members expressed concern about eliminating the possibility of approving a project of great public interest and value where that project does not satisfy all of the standards of the ordinance. Thus, the challenge was to provide the City with a relief valve for projects providing unique, high priority benefits to the public without creating a loophole that could be abused to undermine the ordinance. Moreover, LORC did not want this to be something only the Common Council could consider. Instead, they wanted it to be a variance that the Landmarks Commission could also consider.

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 17, 2015

MEMORANDUM

TO: Landmarks Ordinance Review Committee
Stuart Levitan, Chairman of the Landmarks Commission
Amy Scanlon, Preservation Planner

FROM: John W. Strange, Assistant City Attorney

RE: Requested draft changes to balancing test language.

At its April 14, 2015 meeting, the Landmarks Ordinance Review Committee (LORC) voted to remove subsection 41.22(4)(b) relating to the balancing test language in the appeal section. LORC then asked me to draft language for consideration in either section 41.20 (standards) or section 41.21 (variances) that might still give the City an escape valve to approve a project of important public interest, even if that project does not comply with the standards of the Landmarks Ordinance.

The LORC discussion of this request centered around two basic concerns. On the one hand, committee members expressed concern about doing anything that would weaken, or undermine, the standards of the ordinance or the public interest in preserving historic resources. On the other hand, committee members expressed concern about eliminating the possibility of approving a project of great public interest where that project does not satisfy all of the standards of the ordinance.

Thus, the challenge is to provide the City with an escape valve, without creating a loophole that will be abused to undermine the ordinance.

From my review, few preservation ordinances contain a specific escape valve. The most notable ordinance containing such an exception is from Washington D.C. In Washington, D.C., this is known as the special merit exception. Much has been written about the pros and cons of the special merit exception. A number of decisions granting or denying an application for special merit have been litigated. Thus, in considering similar language, Madison has the advantage of seeing what has worked (and not worked) under the D.C. law.

The draft language below borrow, in part, from Washington D.C.'s ordinance. I have expanded on the definitions of what is "necessary in the public interest" and what constitutes "special merit" to try and provide additional safeguards so that, if adopted, these provisions are not abused. As requested, I've included this language in both the standards and variance sections so that LORC can consider which section, if any, is most appropriate for such a provision.

Here is a footnotes guide to the changes:

1. The elimination of 41.22(4)(b) (the balancing test) left 41.22(4)(a) all alone and without a clear standard of review. Thus, I combined 41.22(4)(a) with 41.22(3) and provided a standard for the Council to use when reviewing a LC decision. Under this standard, the Common Council can reverse or modify the LC decision if it finds LC

decision to be contrary to the applicable standards contained in the ordinance.

2. I added a public interest standard to the demolition and removal standards, and a public interest component to the variance provision.
3. I added a definition for “necessary for the public interest” and “special merit”. These definitions are key to the incorporation of the balancing test concept previously contained in the appeal language. These definitions borrow. In part, from definitions in the D.C. ordinance.
4. Key changes and additions are in bold red type face below for ease of reference.

SUBCHAPTER F: CERTIFICATE OF APPROPRIATENESS – PROJECTS ON LANDMARKS, LANDMARK SITES AND IN HISTORIC DISTRICTS

41.18 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;
- (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;
or
- (6) Land divisions and combinations involving a landmark site or in an historic district.

41.19 PROCESS.

- (1) Application. The owner of a property may apply for a Certificate of Appropriateness. 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:
 - (a) Completed Application document.
 - (b) Narrative Description of the project.
 - (c) Scalable drawing set reduced to 11” x 17” which includes floor plans, elevations and details to convey relevant information.
 - (d) Any other information requested by the Preservation Planner to convey the aspects of the project.
 - (e) Signature of the property owner.
- (2) 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:
 - (a) Demolition or removal of all or part of a landmark;
 - (b) Demolition or removal of a structure in an historic district;
 - (c) Construction of a new principal structure in an historic district;
 - (d) 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;
- (e) Land divisions and combinations; and
 - (f) 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.
- (3) 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.
- (4) Issuance of Certificate of Appropriateness. The Landmarks Commission shall approve or deny a Certificate of Appropriateness, based upon the applicable standards in subsection (12) 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. A Certificate of Appropriateness shall expire two (2) years from the date of issuance unless a building permit is obtained within such period.

41.20 STANDARDS.

- (1) For Exterior Alteration or Construction. 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 an 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.
- (2) 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:
- (a) 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;
 - (b) 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;
 - (c) 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;
- (d) Whether the structure is of such old and unusual or uncommon design, method of construction, or material that it could not be reproduced or be reproduced only with great difficulty and/or expense;
 - (e) 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;
 - (f) Whether demolition or removal is necessary for the public interest.**
 - (g) The condition of the property, provided that any deterioration of the property which is self-created or which is the result of demolition by neglect under sub. 10(e) of this ordinance cannot qualify as a basis for the issuance of a Certificate of Appropriateness for demolition or removal;
 - (h) 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,
 - (i) 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.
- (3) For Signs. The commission shall approve a Certificate of Appropriateness for signs, unless it finds that the size or design of the sign(s) would adversely affect the historic fabric of the structure or 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.
 - (4) 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.
 - (5) For Land Divisions and Combinations. The commission shall approve a Certificate of Appropriateness for a land divisions, combinations, and subdivision plats of landmarks sites and properties in historic districts, unless it finds that the proposed lot sizes adversely impact the historic character or significance of a landmark, are incompatible with adjacent lot sizes, or fail to maintain the general lot size pattern of the historic district.

41.21 VARIANCE.

- (1) When Allowed. The Landmarks Commission may vary one or more standards for review for a Certificate of Appropriateness under Section (12) above.
- (2) Request for Variance. Upon the filing of an Application for Certificate of Appropriateness under Sec. (11)(b) above, a property owner may also submit a variance request on a separate form approved by the Commission. The form shall accompany the property owner's Application for Certificate of Appropriateness and

include all of the following:

- (a) The name and address of the property owner.
 - (b) The location of the property to which the request pertains.
 - (c) The specific standard or standards under Sec. (12) from which the property owner requests a variance.
 - (d) The conditions and supporting evidence that justify the Variance.
- (3) Hearing. The request for variance shall be heard at the same time as the proposed Certificate of Appropriateness, and shall be separately listed on the notice of hearing and meeting agenda.
- (4) Standards for Variance. The Landmarks Commission shall approve a variance only if one or more of the following conditions is met:
- (a) The strict application of the standards in this ordinance would result in economic hardship upon the owner of the property, provided that the alleged economic hardship was not created by the failure to maintain the property as required by this ordinance. To prove the existence of economic hardship, the applicant shall demonstrate to the commission that: (1) the applicant cannot realize a reasonable return if compliance with the commission's decision is required, provided, however, that the lack of reasonable return is proven by the applicant to be substantial as demonstrated by competent financial evidence; (2) that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the historic district or historic resources within the visually related area of the subject property; and (3) that the requested relief, if granted, will not alter the historic character of the historic district or historic resources within the visually related area of the subject property.
 - (b) In the case of the alteration of an existing building, the proposed design would incorporate elements not permitted by the ordinance but which can be documented by photographs, architectural or archaeological research or other suitable evidence to have been used on other buildings of a similar vintage and style in the Historic District in which the building is located, provided that the project will not destroy significant architectural features on the building.
 - (c) 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.
 - (d) In the case of new construction, alteration of an existing historic resource, or demolition or removal of a historic resource, whether a variance is necessary for the public interest.**
- (5) Commission Decision. The Commission shall grant or deny a Variance Request in conjunction with its decision to grant or deny the Certificate of Appropriateness. If the Commission denies a Variance Request, it shall also deny the accompanying request for Certificate of Appropriateness, unless the requesting property owner indicates a desire to proceed with the proposed project in full compliance with the standards and guidelines of this ordinance, and waives any right to appeal.
- (6) Appeal to Common Council. Unless waived under Subsection (13)(e), appeal of the

approval or denial of a Variance request shall be taken as provided in Section (14) of this Ordinance.

41.22 APPEAL.

- (1) An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness or Variance Request may be taken to the Common Council by the applicant, the Alderperson of the district in which the subject property is located, or by the owners of twenty percent (20%) of the number of parcels of property within two hundred (200) feet of the subject property.
- (2) Such appeal shall be initiated by filing a petition to appeal, which shall include the identity and address of the petitioners, specify the grounds for appeal, and be filed with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. The Council shall hold a public hearing with Class 1 public notice.
- (3) **The Council may, by favorable vote of two-thirds (2/3) of its members, reverse or modify the decision of the Landmarks Commission, with or without conditions, or refer the matter back to the Commission with or without instructions, if it finds that the Commission's decision is contrary to the applicable standards under s. 41.18, 41.19, 41.20, 41.22, or any district-specific standards contained in Subchapter G.**

New definitions:

Necessary for the Public Interest: A project that is necessary to allow the construction of a project of special merit. A project is necessary only if there are no reasonable alternatives to the project that would preserve the historic resource in question.

Special Merit: A building, object, site or structure having significant benefits to the City of Madison or to the community by virtue of exemplary architecture, specific features of land use planning, or social or other benefits having high priority for community services. A project has special merit only if the benefits to the City of Madison or to the community substantially outweigh the strong public interest in preserving historic resources expressed in this ordinance.

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: June 30, 2015

MEMORANDUM

TO: Landmarks Ordinance Review Committee
Stuart Levitan, Chairman of the Landmarks Commission
Amy Scanlon, Preservation Planner

FROM: John W. Strange, Assistant City Attorney

RE: Summary of Historic Preservation ordinance draft.

At its June 25, 2015 meeting, the Landmarks Ordinance Review Committee (LORC) suggested the following changes to the draft ordinance:

- I. Add the word "preservation" to **sec. 41.01**.
- II. Revise the definition of "historic resource" to match the language in **sec. 41.01**.
- III. Delete the definitions of gross volume, necessary for the public interest, and special merit (see further explanation below).
- IV. Add transition rule to **sec. 41.03**.
- V. Revise **sec. 41.06** to allow for newspaper publication or others as allowed by law.
- VI. Delete provision prohibiting re-designation of a landmark in **sec. 41.08**.
- VII. Replace "gross volume" with "scale and proportion" in **sec. 41.11**. (see further explanation below).
- VIII. Restructure and revise **sec. 41.19**, variances (see further explanation below).

Of the suggested revisions listed below, replacing "gross volume" with "scale and proportion" in secs. 41.02 and 41.11(1), and restructuring and revising sec. 41.19 garnered the most discussion and attention.

1. Replacing "gross volume" with "scale and proportion" in sec. 41.11.

By way of background, sec. 41.11 provides a list of suggested guidelines and criteria that the Landmarks Commission should consider when creating or amending a historic district ordinance. This list is neither mandatory nor not exclusive, meaning that historic district ordinances do not have to contain any of these items, and could contain items that are not on this list. Moreover, the items in this list are not standards or guidelines themselves. They become standards or guidelines only if they are included in a specific historic district ordinance.

The issue regarding "gross volume" arose when the public suggested that the term needed its own definition. This issue has been in the parking lot for LORC to consider. I explained that I did not include a standard mathematical definition of gross volume in the most recent draft because I needed direction from LORC on whether the definition should

follow the standard mathematical definition, or take into account the perception of a building, given that the entire list of items is predicated on the concept that the listed items must be “visually compatible” with their surroundings.

Rather than defining “gross volume”, LORC recommended replacing “gross volume” with “scale and proportion” in sec. 41.11. LORC’s rationale for this recommendation was primarily that the strict mathematical definition of gross volume was not necessarily congruent with how one perceives whether a building is too big. LORC felt the phrase “scale and proportion” was more representative than the strict mathematical definition of gross volume when trying to determine (e.g., whether it is visually compatible) if a proposed building would visually overwhelm or dwarf its surroundings.

Importantly, LORC did not recommend removing “gross volume” from the entire ordinance. For example, two of the five historic district ordinances employ the concept of gross volume, and LORC made it clear that it did not intend to remove the term from those ordinances. Nor did LORC recommend that future historic district ordinances could not include a “gross volume” standard or guideline.

2. Restructuring and revising sec. 41.19, Variances.

Input from the Alliance suggested that the structure of sec. 41.19 was difficult to follow, the description of each possible variance was confusing, and the public interest variance was awkward because required the reader to refer to the definition section to understand the terms necessary in the public interest and special merit. Moreover, the Alliance suggested removal of references to architecture and land use planning because they were too broad. They also recommended replacing the concept of special merit with public facility.

The alliance provided an variance section, which LORC reviewed and considered. LORC recommended that I attempt to redraft sec. 41.19(4)(d) to focus the standard on projects of unique, high priority benefit, but keep the substance and intent of the public interest variance previously created. In doing so, LORC suggested that specific reference to architecture and land use planning could be removed, but that this did not necessarily mean that architecture and land use planning could not be considered, in some fashion, when considering the public benefits of a proposed project. Finally, LORC rejected the “public facility” concept contained in the Alliance alternative, but suggested that I incorporate the substance of the definitions of “necessary for the public interest” and “special merit” into the text of the variance itself.

In this draft, sec. 41.19(7) has been re-titled as “Public Interest variance”. Rather than relying on definitions of the terms special merit and necessary in the public interest, the revised section incorporates the concept of special merit (a project high priority benefit to the public) in to the text of the variance. It also removes specific reference to architecture and land use planning. Finally, it maintains, in sub. (7)(b) and (c), the safeguards LORC built in to the previous definitions of special merit and necessary in the public interest. With these revisions, it became unnecessary to use the phrase “special merit” or have a separate definition of necessary for the public interest, thus eliminating the need of the reader to use the definition section to understand this variance.

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: July 21, 2015

MEMORANDUM

TO: City of Madison Common Council

FROM: John W. Strange, Assistant City Attorney

RE: Drafter's analysis for substitute ordinance creating Chapter 41, Historic Preservation, and repealing and recreating Sec. 33.19, Landmarks Commission. (Legistar #34577)

In 1971, the City of Madison passed the landmarks ordinance, which created the Landmarks Commission and set out the policies and procedures to designate landmarks and create historic districts. The City currently has 182 designated landmarks and landmark sites. The City also has five historic districts: Mansion Hill (created in 1976), Third Lake Ridge (created in 1979), University Heights (created in 1985), Marquette Bungalows (created in 1993) and First Settlement (created in 2002).

Over the years, the Common Council amended certain provisions of the landmarks ordinance, but never considered a comprehensive revision. Approximately four years ago, the Landmarks Commission started work on a comprehensive revision. In May 2014, the Commission forwarded its draft of the ordinance to the Landmarks Ordinance Review Committee (LORC), an ad hoc committee consisting of 5 Alders (Shiva Bidar-Sielaff, Mark Clear, Steve King, Marsha Rummel, and Chris Schmidt) created by the Common Council for the sole purpose of reviewing and further revising the Commission's draft ordinance.

The work of the LORC is happening in two stages. The ordinance before the Council tonight represents Phase I of the revision process and primarily affects proposed subchapters A-F. Phase II will address each of the historic district ordinances contained in subchapter G. The transition rule explaining both phases can be found in Sec. 41.03(6) of the proposed ordinance.

Led by Alder Schmidt as chair, the LORC met 20 times between May 2014 and July 2015 to address revisions pertaining to Phase I. At each meeting, members of the public, organized groups representing the preservation and development communities, interested Alders, members of the Commission and others provided insight to the LORC and city staff. The ordinance before the Council tonight represents the culmination of the work of the Landmarks Commission and LORC to completely revise the landmarks ordinance.

The proposed ordinance contains massive structural, grammatical and organizational revisions. It would be difficult to highlight each of those changes. Thus, the purpose of this memorandum is to walk the Common Council through each new

subchapter and section of the Historic Preservation ordinance, explaining and highlighting key textual and policy changes along the way.

I. Organization

The current ordinance is contained entirely in Sec. 33.19 of the Madison general ordinances. The LORC recommended splitting the ordinance. LORC moved the substantive provisions of the ordinance into a stand-alone Chapter 41, Historic Preservation. LORC left the authority for creating and empowering the Landmarks Commission in Sec. 33.19. The purpose of this change is to give the Historic Preservation ordinance its own chapter so that affected property owners can easily find and access regulations that are pertinent to their property.

To further ease access to the ordinance, LORC broke Chapter 41 into subchapters that will be accompanied by a table of contents. Furthermore, within each section, the Commission and LORC made extensive structural and grammatical edits in an attempt to more clearly state the regulations and processes that apply in each case. The goal of these revisions is to provide, for example, a person who owns a landmark or building in a historic district, or is considering purchasing such a building, easy access to and understanding of the regulations that might pertain to the property in question.

II. Specific Sections

a. Policy and Purpose (Sec. 41.01)

While the proposed ordinance contains many of the same basic policies contained in Sec. 33.19, LORC revised this section to emphasize three key policy points.

First, that preservation and maintenance of the City's historic resources is of great public interest and importance, not just to the City's citizens, but to its economy and visitors.

Second, that the City should vigorously enforce the historic preservation ordinance in order to further that public interest.

Finally, that the intent of the historic preservation ordinance is not to prevent new construction in the City's historic districts, but to ensure that when new construction happens it complies with the standards of the ordinance and compliments the city's historic resources.

Throughout LORC's deliberations, these key policy points served as the basis for many of the changes it recommended.

b. Definitions (Sec. 41.02)

The current ordinance contains 12 definitions. The proposed ordinance contains 38. LORC added definitions for the purpose of providing clarity and certainty to the ordinance, especially for words or phrases that led to confusion in the past. Additionally, where the ordinance introduces new concepts, new words and phrases have been added and defined.

Examples of new or revised definitions added to the proposed ordinance include:

- Building
- Bulk
- Demolition by Neglect
- Guideline
- Gross Volume
- Height
- Historic Resource
- Improvement
- Landmark site
- Landscape
- Owner
- Preservation
- Site
- Standard
- Structure

c. *General Administrative Provisions (Sec. 41.03)*

The proposed ordinance groups important administrative provisions that apply throughout the ordinance.

One particularly important general administrative provision added to the proposed ordinance explains how to measure 200 feet around the boundaries of properties. In the current ordinance, measuring around properties is described through the definitions for “visually related area.” At times, that concept was confusing and difficult to administer. For example, VRA actually has two separate definitions, depending on where the measurement is being taken (e.g., from a corner lot, or non-corner lot).

The proposed ordinance removes VRA from the entire ordinance. Instead, it incorporates the 200 foot requirement into the text of each section where it is relevant. Examples of how this was done can be found in Sec. 44.11 and throughout the historic district specific ordinances (e.g., Mansion Hill, Sec. 44.22). Sec. 41.03 then provides a single clear method for measuring around the boundaries of a property, no matter what type of property is being considered.

d. Landmarks Commission (Subchapter B)

Secs. 41.04, 41.05 and 41.06 provide for the basic structure and operation of the Landmarks Commission. These sections provide information regarding the duties of the commission (as a supplement to what will remain in Sec. 33.19) and the preservation planner. This subchapter also provides a section pertaining to public hearings and hearing notices that is referred to throughout the ordinance whenever a hearing is required.

e. Landmarks (Subchapter C)

Secs. 41.07 and 41.08 outline the process for the Common Council to designate landmarks and rescind landmark designations. Sec. 41.09 clearly sets out when a certificate of appropriateness is required for a project on a designated landmark. LORC revised each of these sections to more clearly state the process and requirement for each action with the hope of making it easier for property owners to understand what regulations pertained to their property.

f. Historic Districts (Subchapter D)

Like Secs. 41.07 and 41.08 do for landmarks, Secs. 41.10, 41.11, and 41.12 outline the process and regulations that apply to structures in historic districts. The most significant change to this subchapter occurred in Sec. 41.11.

By way of background, under both the current ordinance and proposed Sec. 41.11, any time the Common Council designates a historic district it must also adopt a historic district ordinance implementing that designation. These historic ordinances are found in subchapter G.

Sec. 41.11 provides guidance for what historic district ordinances must contain, including a list of possible standards or guidelines the Commission should consider when creating each ordinance. This list is neither mandatory nor exclusive. LORC recognized that just as each historic district is different, district-specific standards might also be different.

The proposed ordinance makes key changes to the visual compatibility standard contained in Sec. 42.11(2)(a). LORC recognized that a shortcoming of the current ordinance is that it suggests using gross volume (an objective measure) and height (also an objective measure) within the context of visual compatibility (a subjective measure). LORC believed this, and the lack of definitions for both gross volume and height, were a possible source of confusion surrounding the standard.

Thus, LORC decided to remove gross volume and height from the visual compatibility standard. Instead of removing them from the ordinance altogether, LORC defined both terms using strict mathematical definitions and created a separate standard (found in Sec. 41.11(2)(g)) that allows those and other similar objective measurements to be compared to the same objective measurements of neighboring buildings. LORC believes this will allow a more apples to apples comparison (comparing two objective measurements) than did the previous standard. In doing so, however, LORC signaled that the Commission should not apply a strict cubic foot to cubic foot comparison when reviewing a proposed project. In other words, a building that is, for example, 10 cubic feet larger than its neighbors should not automatically be rejected just because it is mathematically larger. Instead, the Commission must make the decision whether the measurements being compared are sensitive to one another. This provides another tool for the Commission to exercise its judgment, discretion and expertise to determine whether a proposed building compliments its surroundings.

g. Maintaining landmarks, landmark sites, and structures in historic districts (Subchapter E)

The current ordinance includes maintenance obligations for landmarks and structures in historic districts. However, the provisions are not very clear and do not spell out the consequences for failing to maintain a historic resource. Moreover, penalties resulting from failing to maintain a historic resource have been described as weak and ineffective.

Subchapter E creates a clear and affirmative obligation on property owners to maintain the city's historic resources. It also defines and prohibits demolition by neglect and provides enhanced penalties for those who violate the ordinance.

One significant addition to this part of ordinance is the introduction of the concept of demolition by neglect. Sec. 41.02 defines demolition by neglect as the process whereby a property owner lets a property fall into such disrepair that it requires demolition. Sec. 41.15 prohibits demolition by neglect, sets out a formal process for determining when demolition by neglect is occurring and provides remedies when a demolition by neglect finding is made, including the possibility of increased fines in municipal court, summary abatement and condemnation.

LORC believes these more clearly defined and enhanced penalties, coupled with its intention found in Sec. 41.13 that they be vigorously enforced, provide the city with greater means to address decaying historic resources.

h. Certificates of Appropriateness (Subchapter F)

Certificates of Appropriateness (“COAs”) are the official form issued by the Landmarks Commission to allow work on a landmark or building in a historic district may occur. Subchapter F describes when COAs are required and outlines the process and standards for obtaining them. The proposed ordinance does not measurably change the types of projects that require a certificate of appropriateness. Nor does it measurably change the standards used by the Commission in evaluating requests for COAs. Under the proposed ordinance, the only new action requiring a COA is the installation of signs.

The most significant change in this section relates to the availability of variances. Under the proposed ordinance, property owners may apply for variances on the basis of economic hardship, historic design, alternative design, and projects which are necessary in the public interest. Of these, variances based on economic hardship and projects that are necessary in the public interest are new to the Landmarks Commission and Common Council.

The economic hardship variance is found in Secs. 41.19(1)(a) and (4). This variance may apply if the strict application of the ordinance would result in an economic hardship on the owner, provided that the hardship was not caused by the owner’s failure to maintain their property. Furthermore, this section outlines what an owner must show in order to establish economic hardship.

The public interest variance is found on Secs. 41.19(1)(d) and (7). After extensive discussion, the LORC decided it wanted to consider for a variance that could allow for projects providing unique benefits to the public. LORC discussion centered around two basic concerns. On the one hand, committee members expressed concern about doing anything that would weaken or undermine the public interest in preserving historic resources. On the other hand, committee members expressed concern about eliminating the possibility of approving a project of great public interest and value where that project does not satisfy all of the standards of the ordinance. Thus, the challenge was to provide the City with a relief valve for projects providing unique, high priority benefits to the public without creating a loophole that could be abused to undermine the ordinance. Moreover, LORC did not want this to be something only the Common Council could consider. Instead, they wanted it to be a variance that the Landmarks Commission could also consider.

Sec. 41.19(7) thus provides that the Commission or Common Council may grant a variance for projects with unique, high priority benefits to receive a variance as long as (1) the public benefits substantially outweigh the public interest expressed in the ordinance for preserving historic

resources, and (2) there were no reasonable alternatives to constructing the project in the city that did not require a variance from the ordinance.

In reviewing public interest variances in other preservation ordinances around the country, Madison's, if adopted, would be the only such provision containing the additional safeguards listed above. Furthermore, by including this in the variance section, and not a separate component of the appeal, the LORC ensured that the Commission and Council would always be considering the same standards.

i. Appeal (Sec. 41.20)

The appeal language in the current ordinance, contained in Sec. 33.19(5)(f), has long been considered confusing. Moreover, as pointed out above, its language contains several words and phrases that do not appear in the standards considered by the Landmarks Commission, such as the interest of the public, special conditions pertaining to the property, reasonable use of the property and self-created hardship.

LORC sought to simplify the appeal standard by first, as described above, ensuring that the Commission and Council were considering the same standards. With that as a basis, LORC then greatly simplified the appeal language to simply state that the Common Council may reverse or modify the Landmarks Commission decision if it finds the Commission's decision contrary to the applicable standards. The proposed appeal language maintains the 2/3 favorable vote standard.

j. Designated Historic Districts (Subchapter G)

As pointed out above, subchapter G addresses each specific historic district ordinance. This ordinance does not substantively change the historic district standards. It does, however, add sections to each Historic District identifying historic resources and incorporates the 200 foot visually related area concept into the text of the standards, as well as makes other technical edits to make sure internal references remained consistent. A comprehensive revision of each historic district ordinance will take place during Phase II of LORC's work.

III. Sec. 33.19, Landmarks Commission

As pointed out above, Sec. 33.19, now only includes the authority to create and empower the Landmarks Commission. The only significant substantive change to this provision is to slightly alter the composition of the Landmarks Commission by requiring that, of the three citizen members, at least one must have expertise in construction. LORC felt that this requirement was important to make sure the Commission included members who can further assist the Commission in grappling with complicated construction related issues.