

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

Date: March 27, 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: Draft Changes to Sec. 41.21 and 41.22, Landmarks Ordinance

At its March 19, 2015 meeting, the Landmarks Ordinance Review Committee (LORC) suggested several changes to Secs. 41.21 and 41.22. Since the meeting, I have received a request to see what general changes were suggested, and how they might fit in with the current draft of the ordinance. Below is my preliminary draft of suggested changes to these sections made my LORC thus far. They include: (1) adding language relative to proving economic hardship in Sec. 41.21, and (2) changing the word "consider" to "apply" in Sec. 41.22. I anticipate LORC continuing to discuss these suggested changes at future meetings.

Sec. 41.21

- (4) Standards for Waiver. The Landmarks Commission shall approve a waiver 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; (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; and (4) that the alleged hardship is not the result of failure to maintain the property in accordance with this ordinance.
 - (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.

- (5) Commission Decision. The Commission shall grant or deny a Waiver Request in conjunction with its decision to grant or deny the Certificate of Appropriateness. If the Commission denies a Waiver 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 waiver request shall be taken as provided in Section (14) of this Ordinance.

Sec. 41.22

- (1) An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness or Waiver 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.
- (4) In making its determination under (c), the Council shall:
 - (a) Apply the Standards and Guidelines specified in this ordinance, and the application of those Standards and Guidelines by the Commission; and,
 - (b) Balance the public interest in preserving historic resources expressed in this ordinance with the public interest in approving or denying the Certificate of Appropriateness or Waiver Request. In balancing the public interests, the Council shall take into account whether the owner or applicant has failed to meet requirements to maintain the property in accordance with this ordinance.