

### Section 33.19(13) Appeal *compared to* section 41.19

Prepared by the Ordinance Committee of the Madison Alliance for Historic Preservation, December 5, 2014

Section 33.19(13) Appeal	Section 41.19 Appeal to the Common Council	Comments
<p>33.19(13)(a) An appeal from the decision of the Landmarks Commission to approve or deny a Certificate of Appropriateness may be taken to the Common Council by the applicant for the Certificate, the Alderperson of the district in which the subject property is located, or by the owners of twenty percent (20%) of the parcels of property within two hundred (200) feet of the subject property.</p>	<p><b>41.19(1) Who may appeal; decisions appealable.</b> Any of the following persons may appeal to the Common Council, asking the Common Council to reverse or modify a Commission decision under s. 41.15(6) related to a proposed certificate of appropriateness, or under s. 41.18(7) related to a requested variance:</p> <p>(a) The person who applied for the certificate, or who requested the variance.</p> <p>(b) The Alder for the district in which the subject property is located.</p> <p>(c) The owner of a tax parcel located within 200 feet of a tax parcel on which all or part of the subject property is located.</p>	<p><i>Appeals must be understood in a larger context:</i></p> <p><i>Under section 33.19:</i></p> <ul style="list-style-type: none"> <li>• <i>The Landmarks Commission may do any of the following:</i> <ul style="list-style-type: none"> <li>▪ <i>Grant or deny “certificates of appropriateness [s. 33.19(13)].</i></li> <li>▪ <i>Grant or deny “waivers” of ordinance standards related to “certificates of appropriateness” [s.33.19(15)].</i></li> </ul> </li> <li>• <i>Affected persons may appeal “certificate of appropriateness” decisions to the Common Council [s. 33.19(13)], but may NOT appeal “waiver” decisions.</i></li> <li>• <i>On appeal, the Common Council has sweeping authority to change the Commission’s decision, regardless of existing ordinance standards.</i></li> </ul> <p><i>Chapter 41 is different:</i></p> <ul style="list-style-type: none"> <li>• <i>It uses the term “variance” rather than “waiver,” because “variance” has a more specific and less sweeping connotation.</i></li> <li>• <i>It spells out clear standards for issuing “variances.”</i></li> <li>• <i>It clarifies that affected persons may appeal “variance” decisions as well as “certificate of appropriateness” decisions to the Common Council.</i></li> <li>• <i>It requires the Common Council, when hearing an appeal, to use the same ordinance standards that apply to the Commission (although the Council may substitute its interpretation for that of the Commission).</i></li> </ul> <p><i>The Chapter 41 approach is clearer and fairer. It provides greater predictability and certainty to persons affected. It gives greater weight to Commission decisions, and it is less likely to produce a flood of contentious appeals to the Common Council.</i></p>

33.19(13)(b) Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, 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.

33.19(13)(c) 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.

(d) In making its determination under (c), the Council shall:

1. Consider the Standards and Guidelines specified in this ordinance, and the application of those Standards and Guidelines by the Commission; and,
2. Balance the public interest in preserving the subject property with the public interest in approving or denying the Certificate of Appropriateness. 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.

**(2) Filing an appeal.** A person may initiate an appeal under sub. (1) by filing a petition with the City Clerk within 10 days after the date on which the Commission issued the decision that the person is appealing. The petition shall clearly specify petitioner’s identity and address, the petitioner’s qualification under sub. (1) to appeal the Commission’s decision, the grounds for the appeal, and the relief requested from the Common Council consistent with sub. (4). Appeals of directly related decisions under ss. 41.15(6) and 41.18(7) may be consolidated in a single appeal. The City Clerk shall file each appeal petition with the Common Council.

**(3) Public hearing.** The Common Council shall hold a public hearing on each appeal filed under sub. (2). The hearing shall be preceded by a class 1 public notice.

**(4) Common Council decision.** The Common Council may, by favorable vote of two-thirds of all members, reverse or modify the decision of the Commission if it finds that the Commission’s decision is inconsistent with applicable standards under s. 41.16, 41.17 or 41.18, or represents an inappropriate exercise of discretion by the Commission.

- *Under s. 41.19(1), any owner of a tax parcel within 200 feet of the tax parcel on which the subject property is located may appeal the Commission’s decision. Section 33.19(13) requires the owners of 20% of parcels to join in the appeal (it is not clear what kinds of “parcels” these might be, or whether the 20% is calculated by area or number of parcels).*
- *Section 41.19(2) clarifies what must be included in an appeal petition.*
- *Section 41.19(4), like section 31.19(3)(c), requires a 2/3 majority of the entire Common Council to overturn a Commission decision on appeal. Commission members have special expertise and experience, as well as direct access to the evidence, so their decisions should not be lightly overturned. A supermajority of the Common Council is also required to override recommendations from the Plan Commission and the Board of Estimates. This supermajority requirement is widely considered to be a best practice for historic preservation ordinances, and should not be changed.*
- *Section 33.19(13)(d) would give the Common Council almost unlimited authority to reverse the Commission’s decision on the vague ground of “public interest,” regardless of existing ordinance standards. We think that is a very bad idea. Our proposed s. 41.19(4) would require the Common Council to use the same ordinance standards that apply to the Commission (although the Council may interpret them differently).*

		<ul style="list-style-type: none"> <li>• <i>By giving the Common Council almost unlimited authority to reverse Commission decisions on the vague ground of “public interest,” regardless of existing ordinance standards, section 33.19(13)(d) would:</i> <ul style="list-style-type: none"> <li>▪ <i>Undermine the authority of the Commission.</i></li> <li>▪ <i>Invite a flood of appeals to the Common Council.</i></li> <li>▪ <i>Undermine the credibility of existing ordinance standards.</i></li> <li>▪ <i>Deprive property owners and investors of the clarity, consistency, and predictability they need.</i></li> <li>▪ <i>Undermine the entire structure of historic preservation.</i></li> </ul> </li>   <li>• <i>Appeals should be decided on the basis of existing ordinance standards. They should not become vehicles for open-ended assaults on existing standards, nor should they undermine the consistent application of existing standards. If experience reveals problems with existing standards, those standards can be amended by the open, deliberate process provided in ch. 41.</i></li>   <li>• <i>Chapter 41 eliminates references to Commission “guidelines” for historic districts [see reference to “guidelines” is s. 33.19(13)(d)1]. A sound historic preservation ordinance should deal in enforceable land use standards, not unenforceable “guidelines.” The ordinances that established Madison’s 5 existing historic districts all use enforceable standards, not “guidelines.” Standards are widely considered to be a best practice.</i></li> </ul>
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