

Economic Development Committee
Meeting of April 20, 2022
Agenda item #2, Legistar #70641

I have concerns with this proposed ordinance, but none are within the scope of the Economic Development Committee's mission. Thus, I will limit my comments to Bill Connors' submissions.

Bill Connors could have addressed all of his concerns with the Ad Hoc Landmarks Ordinance Review Committee. He did not. Instead, he attempts to do an end run by using the Economic Development Committee. He told the Ad Hoc Landmarks Ordinance Review Committee at its March 2 meeting: "The ordinances allow NIMBYs to stop worthwhile development projects just because they oppose change and it enables them to fence out any new affordable housing units."

Those alleged NIMBYs are not motivated "to stop worthwhile development projects just because they oppose change." Rather they are motivated to preserve the historic resources and character, which supports this Comprehensive Plan strategy: Preserve historic and special places that tell the story of Madison and reflect racially and ethnically diverse cultures and histories. The Comprehensive Plan also recognizes that the "preservation of a city's historic and cultural resources can have significant economic benefits to a community" and that the rehabilitation of existing housing stock helps achieve the City's sustainability goals. Historic preservation is a goal of the Comprehensive Plan, and historic districts cover less than .54% of the City's land.

Those alleged NIMBYs are not trying to fence out any new affordable housing units. Four City-recognized isthmus-area neighborhood associations recently adopted a resolution that calls for the creation of affordable housing in these neighborhoods. These neighborhood associations represent four of the five historic districts.

Following are specific comments made by Bill Connors in his letter to the EDC (*italicized*), with my comments following.

- *Recognizing that there are important city public policy goals and values with which historic preservation sometimes conflicts, such as creating more affordable housing and promoting inclusivity throughout the city, Smart Growth requests a revision indicating that the Landmarks Commission should consider those other city public policy priorities when applying the Landmarks Ordinance.*

The ordinance language proposed by Bill Connors is: "Ensure all decisions regarding the public policy announced in this chapter consider and respect the City's other policy goals and values including the promotion of housing affordability and inclusivity throughout the City."

It is not within the scope of the Landmarks Commission's powers and duties to consider these broader policy goals. See MGO 33.19. Landmarks' powers and duties are all based upon identifying and promoting historic resources, and educating owners and the public.

Further, the Landmarks Commission composition is defined by MGO 33.19: a historian; a licensed architect; a licensed real estate professional; an Alder; and three resident members, at least one of whom has expertise in construction. What special expertise does this group of individuals have with respect to broad City policies as defined in the Comprehensive Plan? An applicant can always appeal a denial to the Council, the City body that has the authority to balance competing interests.

Further, the statement that "historic preservation sometimes conflicts [with public policy goals], such as creating more affordable housing and promoting inclusivity throughout the city" is merely a conclusory talking point. Since 2010, Census Block Group 3 (roughly the area bounded by Blair, E Washington and Ingersoll) has grown from 863 housing units to approximately 1,150 – or a 33% increase in the number of housing units. All of these additional housing units were constructed within the Third Lake Ridge Historic District and all are rental housing - the number of rental units has increased by almost 50% since 2010. None of that increase in rental housing has created more affordable housing. None of that rental housing promoted inclusivity.

Further, the historic districts are not against inclusivity - they are working to promote inclusivity. For example, the neighborhood association resolution calling for the creation of affordable housing in the isthmus neighborhoods. Or, for example, the 2004 BUILD II (Design Guidelines & Criteria for Preservation Williamson Street, 600-1100 Blocks) which provided additional heights in some areas for developments that included affordable housing.

- *Smart Growth requests a revision to the rescission of a landmark designation so that it can apply to the same things to which a landmark designation can apply: a site, improvement, or site with improvements.*
- *In the proposed Landmarks Ordinance, anyone can propose that something be designated a landmark (this not a change from the current Landmarks Ordinances). Smart Growth requests a revision that would allow anyone to request rescission of a landmark.*
- *Smart Growth requests that the standards for rescission of a landmark designation include that the designated site, improvement, or sites with improvements no longer qualifies for designation as a landmark for a reason other than its physical appearance. For example, a building might be designated as a landmark to honor an important person who once lived in building, but we might subsequently learn that the person was a virulent racist and no longer want to honor them.*
- *Smart Growth requests revising the language in the ordinance about the Landmarks Commission's using its own initiative to gather information to clarify the Commission's authority to do so. [The proposed language is under MGO 41.07 Designating Landmarks.]*

The Ad Hoc Landmarks Ordinance Review Committee has not considered any changes to provisions for landmarked properties. The purpose of the Phase 2 (as called in the authorizing resolution) process is to address specific historic district criteria.

- *In several places in the Landmarks Ordinance, a proposed demolition, new building or addition to an existing building must obtain a certificate of appropriateness based on examining only historic resources within 200 feet of the proposed development, and if the proposed development is located at the edge of a local historic district, historic resources within 200 feet but outside of the historic district are ignored. Smart Growth requests*

revisions to make the determination of a certificate of appropriateness based on all of the historic resources in the local historic district AND the historic resources within 200 feet, including historic resources within 200 feet but outside of the historic district.

“Historic resources” include landmarks and properties within historic districts. Under the ordinance’s definition, a “historic resource” could exist outside of those two categories. But to be a “historic resource”, the building, structure, sign, feature, improvement, site, or area must have “significant architectural, archaeological, anthropological, historical, or cultural value.” Essentially, Bill Connors is requesting that old buildings outside the historic district which are not landmarked, be deemed equivalent to landmarked properties. This would remarkably complicate Landmarks’ review of projects at the edge of a district: it would need to determine whether each old building within 200 feet, but outside the district, had significant value.

Further, although Bill Connors’ letter limits comparisons of new construction to just historic resources, the actual proposed ordinance language would include comparisons to all buildings, not just to old buildings: *“The intention of this subsection is to clarify that decisions are to be based upon a full review of the entire built environment within such two hundred (200) feet radius from the subject property.”*

The Ad Hoc Landmarks Ordinance Review Committee often discussed what should be the comparison for new construction – should it be historic resources within 200 feet or should it be the entire historic district? In most cases, a decision was made to look at historic resources within 200 feet, but there are exceptions (e.g., garage doors on new additions are compared to visual qualities prevalent within the historic district).

- *It used to be the practice of the Landmarks Commission to find that the standards for a certificate of appropriateness for combining parcels were met if the combination of parcels was needed for a proposed new building or addition and the new building or addition met the standards for a certificate of appropriateness. However, a recent opinion letter from the City Attorney’s Office halted this practice. Smart Growth requests a revision that would exempt a combination of parcels needed for a proposed new building or addition from the separate requirement for certificate of appropriateness if the new building or addition meets the standards for a certificate of appropriateness.*

It was not a recent opinion letter that halted this practice: the standard changed when the first set of ordinance revisions was adopted in 2015. The “recent” opinion letter is from 2019. In that memorandum, ACA Strange said, in part: “...the trouble I see with conditioning the approval of a land combination COA on the approval of a new construction COA is that there is no guarantee that the approved structure will ultimately be built. If that happened, the land will have already been divided or combined, perhaps to the ultimate detriment of the district in a way that is contrary to the purpose of the Landmarks Ordinance.”

In 2020, Landmarks approved three lot combinations: (1) 817-821 Williamson; (2) 909-915 Jenifer; and (3) 1 N Pinckney St, 5 N Pinckney St, 7 N Pinckney St, 15 N Pinckney St, 19 N Pinckney St, 120 E Washington Ave, and 22 N Webster St.

- *Smart Growth requests a revision that would allow considering the street setbacks of all existing buildings on the block face where a new building is being proposed, not just existing buildings on the block face which are within 200 feet.*

The Landmarks Commission must consider “factors such as the average setback of historic resources on the same block face within two hundred (200) feet, and the setback of adjacent structures.” Landmarks is not prohibited from also considering the street setbacks of all existing buildings on the block face where a new building is being proposed, it could certainly do so if it chose.

- *... Smart Growth is requesting a number of revisions to provide greater procedural due process protections for a property owner whose property is subject to an attempt to designate it as a landmark or to include it in a new local historic district or enlargement of an existing historic district, as well as minor adjustments to some of the standards:*

Once again, this is not within the scope of the Ad Hoc Landmarks Commission’s charge. Further, it does not have a lot of relevance since the most recent new landmark dates back to 2013 and the most recent new historic district dates back to 2002 (the other four were approved in 1976-1993).

Respectfully Submitted,
Linda Lehnertz