

Changes to Legislative File Number 06956 (version 1) "amending Section 28.04(22) of the Madison General Ordinances to change various provisions of the ordinance regulating the demolition of buildings," proposed by the Madison Landmarks Commission

- (22) line 1 Do not delete the words "Razing, Removal, or Wrecking".
- (22) (a) lines 6-16 Do not delete the list of purposes.
- line 8 Add at end of sentence "and discourage demolition by neglect."
- (b) 1. lines 2 and 4 Do not delete words "razed, "" removed or wrecked" and replace crossed off words "moving or wrecking" with "moving and".
- line 12 After crossed off "wrecking" add the words "demolition" and delete the wording "and a plan for recycling materials from the building(s)." *explanation – the recycling plan is discussed later in this section*
- line 13 Delete the new underlined words "the documented age of the building(s)".
- (b) 2. Strike all proposed wording and replace with:
- "At least sixty (60) days prior to filing an application for a removal or demolition permit, the applicant shall notify the Alderperson, the neighborhood association registered with the City, and any business association, that serve the area where the removal or demolition is proposed; the staff of the Landmarks Commission; any person registered with the Department of Planning and Community and Economic Development to receive notices of proposed removals or demolitions; and all property owners and tenants within 200 feet of the property(ies) where demolition or removal is proposed. Notification shall be by mail or electronic mail, with a copy to the Director of the Department of Planning and Community and Economic

Development. Failure to provide such notification shall not invalidate any action on the application taken by the Plan Commission or Common Council but may delay consideration of the application. Also, at least sixty (60) days before application, the applicant shall post a sign, obtained from the Department of Planning and Community and Economic Development, on the property(ies) on which the moving or demolition(s) will occur."

(c) 1. b. lines 4-6

Replace new underlined wording with "Furthermore, the proposed future use must be consistent with the character, massing, and density of the neighborhood, or, in cases in which the Comprehensive Plan or an adopted neighborhood plan address a neighborhood's character, massing, and density, projects shall comply with these plans."

(c) 1. d.

Replace new underlined wording with "The Preservation Planner shall submit a report regarding the historic value of the property to the Landmarks Commission. If the Landmarks Commission determines that the property has historic value, it may submit an advisory report to the Plan Commission for its consideration."

(c) 1. e.

Replace with "If a demolition permit is approved, it shall not be issued until a recycling plan is approved by the Recycling Coordinator."

(c) 2.

Add to end of proposed new wording "the Plan Commission may also approve a demolition permit with no proposed use when it has concluded that the existing zoning of the property relative to the use, scale, massing and overall site design is adequate to ensure that the development of the property will occur in conformance with the City's adopted plans."

(d) 2.

Retain crossed-off wording for demolitions of City-owned buildings that have been approved by the Common Council.

**NOTE TO LANDMARKS COMMISSION  
PROPOSED DRAFT REVISIONS TO MADISON GENERAL ORDINANCES  
REGARDING DEMOLITION**

**Background**

The Landmarks Commission has been asked for its input on proposed ordinance changes to the City's demolition review procedures. The proposed revisions have been prepared by a subcommittee of the Plan Commission. It appears that the most substantive issues that the subcommittee has addressed are:

- \* Timely public notice of demolitions, and
- \* Ensuring the careful consideration of the demolition of potentially historic buildings.

Most major cities in the country have established historic preservation commissions to address the loss of historic buildings. Madison's ordinance is one of the strongest in the country in this regard. Most cities, however, like Madison, do not have the staff or fiscal resources to identify and designate all historic buildings and districts that are worthy of this protection. As Julia Miller states "it is virtually impossible for a community to identify all buildings that should be protected under a historic preservation ordinance in advance" (see enclosed article by Miller entitled *Protecting Potential Landmarks through Demolition Review*).

In the mid 1970s in Madison a building that was clearly of historical importance but was not a designated landmark was demolished to make way for a parking lot. At that time, a property owner wishing to receive a demolition permit had only to appear at the building inspection counter, pay a fee and receive the permit. The building was the Levitan building, a 1925 two-story commercial building on the square with a marvelous Art Deco terra cotta façade using Egyptian design motifs. The response to this demolition was swift. The City soon thereafter passed an ordinance requiring almost all demolitions to be considered and approved by the Plan Commission. This review and approval authority was one of the first in the country to address the demolition of historic buildings that had not yet been designated as landmarks.

The City of Madison at present has the power to delay or deny demolitions of historically important buildings that are not yet designated as landmarks. However, the process almost always creates controversy. Due to the pressures for redevelopment of downtown property, developers continue to present proposals for demolition and redevelopment of potentially historic buildings. Most developers do discuss their proposals with City staff and have some idea if their property involves an historic building, but developers typically believe that the benefit to the City of redevelopment will outweigh the value of saving the historic building. The citizenry generally is unaware of these proposals until after the developers have made significant efforts and incurred significant costs in preparing plans for redevelopment, with the result that conflict often ensues. Finding ways to make this process work more smoothly is not easy but worth the effort.

## Current practice

Here are the procedures the City currently uses in regard to typical demolitions:

- \* When someone proposes to demolish a building they must apply for a permit. Permits are only issued without review if the building is an accessory building or in a condition dangerous to the general public.
- \* If the property is a landmark or in a local historic district, the Landmarks Commission must review and approve a Certificate of Appropriateness for the demolition. Staff notifies all owners within 200 feet and publishes notices in the newspaper for all demolitions (except for non-historic accessory buildings) and a public hearing is held. The Landmarks Commission procedure occurs prior to the Plan Commission public hearing because if the Landmarks Commission denies the application, the project cannot proceed.
- \* For all other buildings, the following applies:
  - \* City staff receives an application for demolition and schedules a public hearing to be held by the Plan Commission. The Alderperson and all owners within 200 feet are notified and notices are published in the newspaper. This process typically takes about 4-6 weeks. Most, but not all, projects in which a demolition is proposed also require conditional use or rezonings for the new building(s). In those cases, the Alderperson and the neighborhood association is given 30-days notice prior to the application being submitted. The Alderperson may or may not hold a public meeting, at the Alder's discretion. The Alderperson also has the power to waive the 30-day notice if he/she believes there are strong reasons to proceed more quickly.
  - \* For all items that are considered by the Plan Commission (not just demolitions), Planning staff reviews the project to determine if staff believe, and/or citizens have informed them, that there might be a destructive or adverse impact on a potential landmark or potential historic district. Those issues are referred by Planning staff to the Landmarks Commission. The reason that the referral is made by staff is that it can save time for an applicant, who otherwise might have to wait until the date of the Plan Commission so that the Plan Commission could refer the issue to the Landmarks Commission, thus creating a delay in the normal review process.
  - \* The Plan Commission holds a public hearing (conditional uses or rezonings for the project are considered at the same time as the demolition).
  - \* At the same meeting, the ordinance requires that the Plan Commission:
    - ... shall consider and may give decisive weight to any relevant facts including but not limited to the effects the proposed demolition and proposed use of the subject property would have on the normal and

orderly development and improvement of surrounding properties, the reasonableness of efforts to relocate the building, including but not limited to the costs of relocation, the structural soundness of the building, and the limits that the location of the building would place on efforts to relocate it, and the availability of affordable housing after giving due consideration to the adopted master plan.

\* Then the Plan Commission uses these criteria to decide whether or not to approve the demolition, delay the request or refer the decision for more information. If a concern about potential historical significance is first raised at the Plan Commission, the Plan Commission has the authority to refer the issue to the Landmarks Commission for its advisory opinion.

### **Recent changes to demolition review**

In its work with the Plan Commission subcommittee, staff has developed and adopted methods to increase public awareness of pending demolitions:

\* In the past, for items that required a rezoning or conditional use, a specific note that a demolition was involved may or may not have been included on the Plan Commission agendas. Now, all demolitions are noted in the agendas.

\* Secondly, the Plan Commission has developed a series of new ways to notify the citizenry, including posting pending projects on the City's website. All known pending demolition proposals are noted here, including any information submitted regarding the structures proposed to be demolished.

\* Signs that by ordinance are required for rezonings and conditional uses are also posted for demolitions.

\* The Preservation Planner prepares a short report and photograph of every building considered for demolition and submits them to the Landmarks Commission for its information.

\* Finally, we have just determined that for all future demolitions of potential landmarks or buildings in potential historic districts, Landmarks staff or a member of the Landmarks Commission will attend the Plan Commission meeting to advise them of the Landmarks Commission's opinion and to answer questions.

### **Major ordinance revisions proposed by Plan Commission subcommittee**

#### ***Public Notice***

The first of the two substantive changes proposed in the draft revisions to the demolition ordinance *Sec.(22)(b)* is to address the need for the citizenry to be made

aware of pending demolitions in a timely fashion. The revisions require a property owner to notify various people, such as the Alder, neighborhood assn., etc., including also a list of people or groups who have asked to be notified of all demolitions. This notice is to be given at least 30 days prior to the Plan Commission review of the project. This is about the same amount of waiting time as applicants have now, given that it takes about 30 days or more after submittal of an application for the Plan Commission to consider a project. The revisions to the ordinances would require the property owner to be responsible for all notifications, a provision that is used in various places in our ordinances, which saves staff time and postage costs.

### *Recommendation re Public Notice*

The Landmarks Commission has voted to change the proposed 30-day notice to a 60-day notice. In my opinion, the benefits to the citizens of this extra time would far outweigh any potential delay for the applicant. I believe that almost all applicants will have a pretty good idea at least 60 days before the Plan Commission consideration that they intend to request approval for a demolition, resulting in no real delay for nearly all project applicants. A 60-day notice would allow enough time for a neighborhood association and other groups, such as the Madison Trust for Historic Preservation, to schedule and hold a meeting before the Plan Commission meets and for other groups or people, such as the alderperson, to seek input from interested citizens. When you consider the advance notice required for a meeting of any sort, and that many groups have monthly meeting dates determined in advance, 30 days is often a very short time frame for a group of people to get together and form an official opinion on a project.

To further increase notice to the citizenry I recommend that the surrounding property owners and tenants also be included in the 30- or 60-day notice, rather than the ten day (minimum) notice before the Plan Commission meeting, as is done now.

In addition, I recommend that the ordinances reiterate current practice that a sign be posted on the property for all demolitions. The sign should be installed at the same time as the requirement for the owner to notify various parties (30-60 days), rather than the approximately 2-week posting currently required for conditional uses and rezonings.

### *Staff report on historical significance*

The second substantial proposed change (22)(c) 1.d. would require that the Preservation Planner submit a report to the Plan Commission for buildings proposed to be demolished that are more than 50 years old, and/or that are listed in the National Register or the State Register.

There are several administrative problems with the proposed wording:

\* No reference to Landmarks Commission review is included in the proposed changes. The assistance of the Landmarks Commission is crucial to the Plan Commission's deliberations on the loss of potentially historic buildings.

\* Determining the date of construction can present a problem. In my experience, most property owners do not know the date of construction of a building, especially in those cases where a developer has recently purchased a property for redevelopment. The assessor lists a date of construction for most buildings in the city, but this date is just a guesstimate and cannot be considered accurate.

\* The other concern with the wording is the use of databases not maintained by the City. The Wisconsin Historical Society is the body that maintains a list of buildings in the State Register. The National Register list, which is essentially a subset of the State Register, is maintained by the Dept. of Interior, is easy to access, and is generally up-to-date. But the State Register is only accessible from a database that the historical society requires licenses for, at the cost of \$2000 per year. In addition, due to pressures on staff time, the historical society's list of State Register properties is not updated in a timely fashion.

The Wisconsin Historical Society has sent me a paper copy of their most up-to-date list, and all of those sites are included in our inventory of historic places. We have approximate or exact dates for all of the 5700 buildings listed in our inventory of historic places. Given the comprehensive nature of our inventory, it is unlikely that our survey does not include a site potentially eligible for the State or National Registers. I would not recommend linking the staff reporting on demolitions to the inventory, however, because, due to grant requirements, the survey only covered buildings erected prior to World War II. In addition, there are large areas of the City that have been annexed since the survey was completed.

#### Recommendation re Staff Report

I recommend the following changes:

\* The Landmarks Commission staff should be included in the list of people and committees that receive prior notices, whether it be 30 or 60 days. In this way, notice of demolitions would go to the public body most concerned about the demolition of potentially historic properties in the same time frame as all other parties.

\* Applicants for all proposed demolitions should be required to send notices, thus eliminating the problem of determining what is or is not 50 years old and what is or is not in existing inventories.

\* Landmarks staff should prepare a short report to the Landmarks Commission on every building proposed for demolition, no matter how new or old, as we have been

doing informally for the Landmarks Commission for some time. So far, this has not been unduly consumptive of staff time.

With the added safeguard of timely notification to interested parties of all pending demolitions, including the Landmarks Commission, as proposed, the current practice that staff make the referral to the Landmarks Commission for its advice could then proceed as it does now.

### **Other changes in the proposed revisions**

There are several other proposed changes, which will be addressed as they appear in the document:

#### **Recommendation for Sec. (22), title, and elsewhere**

In several places the words "razing," and "wrecking" have been deleted. The rationale for this is unknown. I recommend not removing these terms, because more words mean less chance of arguments about terminology (similar to the reason that multiple words are often used in legal documents). The staff at the permit counters concur. The director of the Neighborhood Preservation and Inspection Division says that he believes the proper word is "raze." Rather than worrying about precise definitions I think it makes sense to leave the ordinance as is. We should also find out what the reason was for deleting the term "removing," which covers moving of a building off of a property, which should require the same review and approval process as a demolition.

#### **Recommendation for (22)(b) 2.**

It is unclear to me what the purpose would be of allowing the notice to be waived by certain parties, since notice to other interested parties is still required.

#### **Recommendation for (22)(c) 1.e.**

This is an incomplete sentence.

#### **Other recommendations**

Please see attached memo from Brad Murphy to Plan Commission for other recommendations regarding the proposed revisions.

#### **Other issues**

#### ***Definition of the word "demolition"***



The issue has been raised that the definition of the word "demolition" should be made more precise. Concern has particularly been raised over defining "partial demolitions." In some cities in which the building inspectors and the Landmarks Commission are at odds with each other, or in which demolitions are approved as of right, this could be a problem. But we and the building inspection staff have not encountered difficulties with partial demolitions. The inspection staff has the power to determine when a project involves so much removal of original materials as to be in essence either a prelude to demolition or the actual demolition of an entire structure. Because the City requires complete plans for any project before a permit can be issued, these items are usually caught before work begins. In fact, there have been a couple of recent incidents (not involving potentially historic buildings) in which owners have applied for alteration permits and been required to apply for demolition permits instead. The problem with the demolition of the building at 127 S. Butler Street was not a problem with the definition of demolition but a problem with a building contractor doing work for which he had not received approval. The revised ordinance includes the added deterrent of stronger fines, which is the only practicable way of stopping someone who is contemplating violating the law.

### *Longer Demolition Delays*

It has been suggested that a delay of up to 180 days should be imposed for demolitions of potentially historic buildings, with the purpose of having time for the City to consider landmarking the property or to develop alternatives to the demolition. Madison has had experience with demolition delays. Originally the Landmarks Commission did not have the authority to deny a demolition of a landmark or a building in an historic district, but only to delay it for up to one year. In the early 1980s three buildings were proposed for demolition for a parking lot in the Mansion Hill historic district. The Landmarks Commission imposed a delay of one year for the purpose of working with the property owner to determine alternatives to demolition. The City appointed a committee of interested persons (the Block 92 Task Force) to work with the owner. The property owner did engage in limited efforts to compromise, which were not well received by the committee, the neighborhood or the City; then they stopped negotiations. The buildings continued to deteriorate and be abused by vandals. As the year of delay was coming to an end without a good resolution to the issue, the Alderperson for the district introduced an ordinance to permit the Landmarks Commission to deny demolition, which the Common Council adopted. Only then did the owner enter into serious negotiations on the future of the property. However, the buildings by then were in serious disrepair and eventually were demolished. Despite extensive City and citizen efforts to preserve the houses, the delay of demolition had no affect on the preservation of the existing houses.

The National Trust for Historic Preservation's publication by Julia Miller called "Protecting Potential Landmarks Through Demolition Review" (mentioned on page 1) has good advice when considering demolition delay ordinances. Miller notes that most communities that adopt demolition delay ordinances do not have other means

for the public to be involved in demolitions. In those communities, typically an owner can apply for a demolition permit as of right without any review or approval by a public body. Demolition review and delay then becomes the only alternative to demolition.

Madison, however, does currently have public review of demolitions and the authority to deny or delay demolitions if they are in the public interest. The Plan Commission recently imposed such a delay for a house in the Highlands proposed for demolition. In some instances, such as this, a demolition delay may actually help to preserve the building. But in general it will do little. In 1993, in answer to concerns about the rampant rise in demolition in Chicago by developers and by the City itself, a 90-day demolition delay for buildings identified in their comprehensive survey as potential landmarks was adopted. About a year later a *Chicago Tribune* investigation concluded that the demolition delay did almost nothing to effect the historic preservation of significant structures.

In Madison, the Plan Commission already has the power to delay demolitions. They also can deny them outright. A demolition delay specifically included in the ordinances, I am afraid, will encourage the Plan Commission to use this tool more frequently as a compromise decision, without careful regard as to how effective a delay may be, with the end result being the loss of historically significant buildings, rather than their preservation. Adding a statement about delaying demolitions to the Madison ordinances, a power which the Plan Commission already has, will not be an effective method to protect historic buildings or give developers more direction in their consideration of redevelopment proposals.

## **Conclusion**

There is no easy solution for those times in which an historic building that has not been designated a landmark is proposed for demolition. However, steps can be taken to address this dilemma.

### ***Steps we have already taken***

\* We have conducted a Comprehensive Inventory of Historic Places, with 5700 buildings in the database. The database will be available on line in 2008.

\* In 1997 the City adopted the Downtown Historic Preservation Plan as part of the Comprehensive Master Plan, which identifies potential historic districts and landmarks in the downtown. At the time, the City notified all property owners of identified properties and received a grant from the Wisconsin Historical Society to designate 17 of those properties as local landmarks and nominate those eligible to the National Register of Historic Places.

\* Draft reports on the important historical trends and events, the works of important architects, and architectural styles have been completed. The document on architectural styles is being finalized for publication. These documents have already proved useful in preserving historically important buildings.

*Recommended future steps*

\* Comprehensively survey buildings and neighborhoods constructed after World War II, and annexed to the City since 1980.

\* The Madison Trust for Historic Preservation has begun a study of ways to streamline the documentation process for potential landmarks, such as using photographic documentation to supplant some of the written descriptions in landmark nominations.

\* Encourage neighborhoods to use the database to assess their historic buildings systematically and determine which of those buildings they believe are worthy of preservation, and to identify and protect those areas of their neighborhoods that would benefit from either historic district or conservation district status.

\* Preservation should be a major component of the Downtown Plan that will soon be initiated.

**Attachments**

Planning staff comments to Plan Commission  
*Protecting Potential Landmarks Through Demolition Review*