

From: [Jim Murphy](#)
To: [Bailey, Heather](#)
Cc: [Stouder, Heather](#); [Jim Murphy - Retired](#)
Subject: Re: Jim Murphy's PERSONAL comments on Chapter 41 draft
Date: Tuesday, February 1, 2022 10:27:19 AM

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One of my neighbors just saw my comment on the reason for enclosing under a porch. Was pointed out that keeps it from becoming a hot house. Opps, dudn think of that. I retract my comment, if I may.

My only experience in this neighborhood on under porch enclosure is my own original brick porch and it completely enclosed with brick.

Jim Murphy

My wireless bird in the sky sent you this message.

On Feb 1, 2022, at 9:22 AM, Bailey, Heather <HBailey@cityofmadison.com> wrote:

Jim,

Thank you for your comments, they will be added to the record.



Heather L. Bailey, Ph.D. *(she/her)*

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From: Jim Murphy <murphyjim1948@gmail.com>

Sent: Tuesday, February 1, 2022 8:38 AM

To: Martin, Arvina <district11@cityofmadison.com>; Furman, Keith <district19@cityofmadison.com>; Heck, Patrick <district2@cityofmadison.com>; Vidaver, Regina <district5@cityofmadison.com>; Evers, Tag <district13@cityofmadison.com>; Fruhling, William <WFruhling@cityofmadison.com>; Bailey, Heather <HBailey@cityofmadison.com>; Smith, Kate <kmsmith@cityofmadison.com>; LORC Resident Member - Marsha Rummel

<marsha.rummel@gmail.com>; Benford, Brian <district6@cityofmadison.com>; Anna Andrzejewski <avandrzejews@wisc.edu>; Stouder, Heather <HStouder@cityofmadison.com>

Cc: Jim Murphy - Retired <murphyjim1948@gmail.com>

Subject: Jim Murphy's PERSONAL comments on Chapter 41 draft

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Good Morning City Leaders,

Please find enclosed personal comments from Jim Murphy in relation to the January 2022 Draft Ordinance.

While my neighbors produced a more compact, succinct, tightly focused letter that I sent on their behalf on January 31, 2022, since these are my own personal comments I was able to expand with additional detail from the 10,000 foot level as well as tiny details such as the use of hyphens in the term: right-of-way (or with no hyphens).

I hope you will also read the three attachments. Two are about the advantages of mitigating lead paint dust with better methods than repair, as would be required by the new code. These are strong statements - one from a neighbor homeowner and the other from an expert in lead dust. Mr. Schirmer's letter and extensive credentials as a State of Wisconsin expert on lead removal are powerful. If a window with lead paint is "too deteriorated to repair" it is already dangerous, children and the City's legal liability could be at jeopardy, and that language needs to be revisited.

The third attachment is a letter from Will Cook, a national historic expert, on why a district specific ordinance is a better choice than just one ordinance for all five districts. His extensive CV is part of his letter. To my knowledge, LORC has never discussed his letter and I am at a loss to explain why that has never occurred.

As you will see, I suggest you get another cup of coffee or a stiff drink, put your feet up, and take a little time to review my comments. Yes it is lengthy and wordy. Take two drinks.

Happy to answer any questions.

Jim

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JIM MURPHY
1500 RUTLEDGE ST
MADISON, WI 53703

February 1, 2022

Landmarks Ordinance Review Committee:

Alder Keith Furman - District 19 – district19@cityofmadison.com

Alder Patrick Heck - District 2 – district2@cityofmadison.com

Alder Arvina Martin - District 11 - district11@cityofmadison.com

Alder Regina Vidaver - District 5 – district5@cityofmadison.com

Alder Tag Evers - District 13 - district13@cityofmadison.com

LORC member scheduled to attend the Feb 3 Bungalows breakout session

Marsha Rummel, Resident Member – marsha.rummel@gmail.com

Marquette Bungalows Historic District Alder:

Brian Benford - District 6 - district6@cityofmadison.com

Chair of Madison Landmarks Commission

Anna Andrzejewski - avandrzejews@wisc.edu

Staff person scheduled to attend the Feb 3 Bungalows breakout session

Heather Stouder, Planning Director - hstouder@cityofmadison.com

Staff:

Bill Fruhling, Principal Planner - bfruhling@cityofmadison.com

Kate Smith, Assistant City Attorney – ksmith@cityofmadison.com

Hello,

The following are personal comments from Jim Murphy in response to the January 2022 draft ordinance. Thank you for the opportunity to respond.

Jim Murphy

1500 Rutledge St.

Madison, WI 53703

608 [REDACTED]

murphyjim1948@gmail.com

All comments are Jim Murphy's personal remarks. To develop my perspective and comments on the draft January 2022 ordinance, I wish to extend my appreciation to my neighbors in the Marquette Bungalows Neighbors Group for asking the needed questions and to provide guidance in my understanding of the implications of the new ordinance. I have also been in contact with homeowners in the other historic districts, the Madison Alliance for Historical Preservation, experts in residential lead hazard control via window replacement and other advisors. I thank them all.

My comments are referred to as "Jim Murphy comment:" and are presented in purple text. This color gives me more clarity on the computer screen and is easier for me to read copies printed on a black and white printer by differentiating between black colored draft ordinance language and my purple-colored comments. Such is the joy of my old eyes and small sized text. This letter is lengthy but given the issues, I have a lot to say, and I felt it was necessary. Grab another cup of coffee or a stiff drink, put up your feet and dig in. Or ya, two drinks.

"PP" refers to the Preservation Planner and/or the Landmarks Commission.

GENERAL COMMENTS:

Short Notice with Little Chance to Review & Comment - With the first public engagement meeting on February 3, it is imperative that you allow additional time for public engagement.

One of the stated goals of the City of Madison's Historic Preservation Project is to "[e]nsure an actively inclusive engagement process." LORC 1 and now LORC 2 have worked for multiple years and many long hours to craft the January 2022 draft ordinance. However, there has been little notice by the public that the years of work are now concluding, and that the ordinance could go to the city council in just a few short months. While you may argue that residents had the opportunity to follow LORC, few people follow the intricacies of LORC meetings but hundreds of Madisonians will be impacted by the new ordinance in the five historic districts. Slow the process down.

While I acknowledge the public engagement process you have embarked on per your postcard, electronic notice and website, I feel it is too little, too late. Some of us did receive electronic notification on January 14, 2022. But I suggest that most of the residents in these districts were not even aware that the new ordinance is now out for review until they began to receive the postcard which did not start arriving in my neighborhood until Tuesday, January 18. That is just slightly more than 2 weeks before the February 3rd 90-minute virtual meeting. And it is the only one scheduled meeting for all historic districts and the general public (*as well as the later 90 minutes for development professionals & contractors, and another 90 minutes in a later presentation for new construction*). I do appreciate the planned 60-minute breakout by historic district. Because I can only attend one breakout, I would like to request minutes or other information on the discussion in the other 4 sessions as well as the notes from the other two 90-minute public sessions. I assume you plan to post comments from all of these on Legistar. Yes? Thank you in advance.

There is little chance to have serious discussions with LORC and staff about the implications of the new ordinance. While I appreciate the survey and other ways to provide comments as listed on your website, I feel you are doing LORC, staff and yourself a great disservice with only these few meetings. By limiting active public engagement to just these three meetings, many stakeholders will not have their voices heard. Many - if not most - in the historic districts are going to be quite surprised, in spite of a discussion I had with the PP months ago when she mentioned that most owners she talked with know the rewrite is coming. That has not been - and continues to not be - my experience. I strongly suggest that you should provide time for additional public comment and vigorous discussion, much like staff and LORC have done for over three years.

You all have had three years - how can you expect stakeholders to respond in less than three weeks? This ordinance is of interest to you, for us, it is our home. Again, slow the process down.

One Size Fits None - I strongly disagree that there should be only one ordinance for all five current historic districts. While I appreciate that this makes it easier for staff and the Landmarks Committee, my own bungalow neighbors formulated our ordinance in 1993 to meet the needs of our 2-block historic district. Much of the flavor that makes our district unique is lost in the model of only one ordinance.

As a member of the Madison Alliance for Historic Preservation, I would like to make reference to the 9-tab notebook we gave to LORC in July 2021 on the advantages of a district specific ordinance. Specifically, I refer you to comments in Tab 8 made by William J Cook of Cultural Heritage Partners in Washington, DC. He is an acknowledged expert in historic preservation. He provides strong arguments on why Madison should provide "a more tailored approach that addresses the specific needs of each historic district and enhances flexibility" rather than "a one size fits all approach" ... "that would not necessarily be considered as best practice today." This is so fundamental to the discussion on the new ordinance that I have attached his entire July 16, 2021 letter & extensive vita to demonstrate his reasoning and his expertise.

"Rather than employing a one-size-fits-all approach to historic preservation, communities across the country are increasingly pursuing ordinances that combine core standards with an appropriate level of

district-specific nuance. This has been done in various ways; but the Alliance proposal is one of the better approaches that I have seen, and it seems appropriate for a city of Madison's size and historic preservation context."

"This approach would place Madison squarely within the approach recommended by the National Park Service, and by national, state and local preservation advocacy groups throughout the country. If Madison adopts the Alliance's approach, it can reasonably expect to realize increased community support for historic preservation, (and) greater equity among historic districts ..."

The entire Alliance notebook has been a part of the public record since July 2021. It is document #64 of Legistar #56918 on 7/22/21. William Cook's letter can be found starting on page 41. To my knowledge, this letter has never been discussed at a LORC meeting. It should be - and that is why I am also attaching it to my comments.

In addition, this entire draft code only mentions two district exceptions:

- 1) Additions, (1) General, (d) Exceptions (1) "Additions to structures in Marquette Bungalows Historic District shall be no taller than the existing historic resource". And,
- 2) New Structures, (1) General, (c) Exceptions: "New principal structures in the Marquette Bungalows Historic District shall be no taller than the existing historic resources in the district. "

Are there really no unique needs in the other districts? Please allow for more district specific criteria. I provide examples below but only for my Bungalows district. I expect, of course, the other districts will request specific district exceptions too.

Comments from 2018 - On December 26, 2018, the Marquette Bungalows Neighbors Group presented extensive written comments to LORC on the draft then under consideration and I will make reference throughout this document on those 2018 comments. Many of the issues we raised then are still issues now. I am happy to provide that document to anyone upon request.

Homes We Live In - Our homes are not static museums. They are the structures we live in and the regulations have to make it feasible for real people to repair and maintain them on limited budgets. As we have been saying in written comments and testimony for so many years, many of the owners are retired and on fixed incomes - even more now. It is bad policy to regulate us to the extent that we must sell our homes because we can't afford them. I have heard this fear from our neighbors for three plus years. Allow for flexibility to increase livability affordably - examples follow.

Repairs - Marquette Bungalows standards currently include the phrase "repairs must be compatible with the historic character of the structure and the Marquette Bungalows Historic District." We, as bungalow homeowners, have not operated under the assumption that we need advance approval for simple repairs such as replacing a rotted windowsill or using wood filler to fill in a small section of rotted wood.

However, 41.30 of the proposed ordinance clearly contemplates prior approval for repairs ("The Preservation Planner or designee can administratively approve Repair ..."). My questions are:

1. Will we need prior approval for every repair, or are there simple repairs that will be excluded?
2. What is the approval process for repairs? Will we need to follow the process under 41.17 and file an application for a CoA (including a potential wait of up to 60 days after the application is deemed complete) - a process that is lengthy and cumbersome, especially for a simple repair? Or, if a formal application is not required, do we just call the Preservation Planner?
3. What standards will be applied in granting or denying approval of a repair? 41.18, which lists the standards for granting a CoA, has 4 categories of standards that vary depending upon the type of project, but none address the standards that will apply to repairs. In fact, I do not see the word "repair" in 41.18.
 - For example, proposed 41.32(1)(a)1 says materials can be repaired by patching. Will we need to get approval for the type of product we use to fill in a hole in the siding?

- Or, for example, if a homeowner has a piece of cedar siding at a corner that is very soft (rotting) for a stretch of over a foot and wishes to splice in a new piece of cedar siding, what standards will be considered in granting/denying approval? Will the Preservation Planner be able to say that the rot isn't bad enough and wood hardener should be used? Will the Preservation Planner have authority to determine that the homeowner needs to replace a full 10-foot board rather than splicing in a 4-foot section?

I will have additional comments in the Repairs Section later in the document.

Grandfathering - There is no reference to grandfathering anywhere. One of the most common questions I hear from my neighbors is replacement of windows and other features that were installed before the beginning of the historic district, e.g., skylights, storm windows, other types of windows, etc. These need to be replaced from time to time and cannot conform to the proposed draft standards because they were originally installed before these standards. For example, windows were replaced from time to time between the 1960s and the original ordinance of 1993 that have no historical significance but remain today. How is this addressed in the ordinances?

There is substantial concern from some of my neighbors that they will need to retroactively meet the new regulations. Please add text in the ordinance that the new ordinance only applies to changes made after the effective date of this ordinance. While I have explained that to a number of neighbors, their concern continues as the ordinance does not specifically allow grandfathering. I recommend that it should.

Guidelines – The yet to be fully drafted “Guidelines” also appear to be heavily borrowed from federal guidelines, and it’s not clear how PP and LORC decided to keep some of them true Guidelines while making other requirements by using the words “shall be” or “is prohibited” where they do not presently exist.

How will a homeowner reading this ordinance know that there will indeed also be Guidelines? There is no language that I can see that references them since you removed them from the draft LORC labeled 90% ordinance. Even if they are mentioned at the three virtual presentations in February 2022, most stakeholders will not be aware of them. While it is my understanding that PP and Landmarks will eventually develop them, I feel they should be finalized at the same time as this ordinance. It makes for more clarity of use for all stakeholders.

If that is not possible, at least a reference to them in the ordinance is worthwhile. I understand you do not want to put an active link in the ordinance as links often change. At the minimum add language on what they are, how they are useful to stakeholders and where to find them; this would be useful and encourage better understanding by the stakeholders. Your intent with the Guidelines, I believe, is to provide additional information to homeowners to better understand using the regulations so it is imperative they know they exist as a useful tool. Otherwise, why is so much time and energy being devoted to developing them?

Also, please provide the plan and timeline for public engagement on the Draft Guidelines - hopefully with more public notice than for the Draft Ordinance review. I have comments - some in the document below - on the 10/6/21 Draft Guidelines. I expect other stakeholders will also once they become aware of them.

Health and Safety - The ordinance does not appear to take into account health and safety considerations (though federal guidelines as described below do) despite requests by my neighbor homeowners and others in 2018 with extensive verbal and written testimony.

Examples include:

- Standards for Alterations: 41.33(5)(c)1. and 2. Original windows “shall be” repaired and retained and “[o]nly when original windows are too deteriorated to repair may they be replaced. . .” What about windows that may have lead-based applications that pose a significant health hazard, especially to children? Can they not be replaced? See my other comments and attachment in relation to lead.
- Standards for Alterations: 41.33(6)(a)2. “A historic entrance or porch **shall be retained in all instances**, including change of use or space function.” (*Jim Murphy emphasis*). Stoops/entrance stairs built decades

ago could be narrow, of short depth, and steep, posing a risk of slipping backwards off the top stoop when opening the outer door. Railings and pickets may also be short and wide respectively, also posing risks for falls and injuries. Do these have to be retained as is?

More Restrictive Than the Federal government - The proposed ordinance again seems to borrow heavily from federal guidelines used to interpret standards for rehabilitation and standards for treatment of historic properties. But the proposed ordinance uses words like “shall be” and “is prohibited”; this language does not appear in the same manner within the guidelines. As [stated by the National Park Service](#), the “Guidelines are advisory, not regulatory.” They intentionally use a “Recommended” and “Not Recommended” framework, and specifically state that they provide guidance only and are “not meant to give case-specific advice or address exceptions or unusual conditions. ... They cannot, in and of themselves, be used to make essential decisions about which features of the historic building should be saved and which can be changed.”

I have concerns that, if adopted, the PP & Landmark’s Commission will be applying a more restrictive preservation framework on homeowners than even the federal government uses.

Repair-First Model - In 2018, the Marquette Bungalows Neighbors Group asked that the then new ordinance address the repair-first model in light of economic feasibility. As an example, federal regulations state that standards for rehabilitation “are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.” 36 CFR § 67.7(b)). This entire proposed ordinance uses economic feasibility only **once**, in that section on repair of windows. See Standards for Repair, 41.32(5)(a)2. The section on alterations, confusingly, allows for replacement of windows only when original windows are too deteriorated to repair with no reference to economic feasibility. See Standards for Alterations, 41.33(5)(c)1. and 2. For clarity, this section should similarly include “or are not economically feasible to repair.”

If LORC is going to implement something similar to this draft, it is my opinion that the same technical and economic feasibility language should be applied to all sections – maintenance, repairs, alterations, additions – to permit homeowners to replace materials or features too deteriorated to repair or when repair is not technically or economically feasible so long as consistent with state law, under which “a city shall allow an owner to use materials that are similar in design, color, scale, architectural appearance, and other visual qualities.” § 62.23(7)(em)2m, Wis. Stats.

As noted in the Marquette Bungalows Neighbor’s Group 2018 letter, the difference in cost between repairing and replacing can be significant, and there are fewer craftsmen today with the skills necessary, driving up the cost of repairs even further. Implementation of a mandatory repair-first hierarchy could result in unintended, even destructive, consequences. Homeowners who would otherwise be willing to replace or restore features on their homes using visually compatible materials (e.g., removing vinyl siding and replacing it with smooth cement fiber siding that is far more affordable than wood - see other comments) could be forced to forego alterations that would dramatically enhance the character of the Marquette Bungalows Historic District, as well as the comfort and enjoyment by homeowners of their property.

SPECIFIC COMMENTS ON THE CODE LANGUAGE ITSELF

Jim Murphy comment: I only retained the sections of the January 2022 Draft Ordinance that I comment on and I deleted the rest of the code not addressed to make this letter a little less lengthy. (As if!)

Jim Murphy comment: There are some formatting changes made by importing LORCs PDF document into MS Word to provide aid in my review. Mostly bold, some inserted/deleted lines and some larger font. There are no changes from the actual January 2022 text of the draft ordinance that I am aware of. If there are, it is inadvertent, and I apologize.

41.03 GENERAL ADMINISTRATIVE PROVISIONS

(5) Measuring 200 Feet Around Properties. Certain provisions of this chapter reference properties that are within two hundred (200) feet of a subject property. Under this chapter, measurements around properties shall be taken from the lot lines of the subject property two hundred (200) feet in all directions. In the case of landmark properties, measurements shall take into account all historic resources within the 200 foot measurement. In the case of historic districts, measurements shall take into account all historic resources within 200 feet that are contained within the district.

Jim Murphy comment: Agreed. More neighborhood involvement, while sometimes difficult, is good and I support the expansion to consider all historic resources not just principal structures.

41.30 SPECTRUM OF REVIEW

1. Property owners should conduct Maintenance activities in compliance with the historic district Standards for Maintenance. When a project only involves Maintenance work, it does not require a Certificate of Appropriateness.

Jim Murphy Comment: Agree, a Certificate of Appropriateness (CoA) is not required for maintenance.

2. Staff can administratively approve Repair and Alterations proposals in conformance with the Landmarks Commission Policy Manual, or may refer the application to the Landmarks Commission for their review.

Jim Murphy comment: As mentioned above, I feel this means a CoA is required for Repairs. Is this a correct interpretation? See Standards for Repair section below for additional comment – repairs should not require a CoA. A CoA for Alterations is okey dokey with me.

41.31 STANDARDS FOR MAINTENANCE

(3) Exterior Walls

(d) Vegetation

1. Growing new vegetation directly on building walls and roofs is prohibited.

Jim Murphy comment: Draft Guidelines of 10/6/21 in Maintenance say: “New vegetation supported by trellises may be approved.” I find this confusing as it may contradict this language. Please clarify.

2. Pre-existing vegetation shall be maintained to ensure exterior building surfaces remain undamaged.

Jim Murphy comment: The historic code should not control landscaping, even as far as maintenance for a structure is concerned. Tastes change, conditions such as heat, shading, etc change over time, so landscaping and vegetation will too. Perhaps: “Pre-existing vegetation is encouraged to be maintained ...:”

41.32 STANDARDS FOR REPAIRS

Jim Murphy comment: It is my interpretation that the language in 41.30 Spectrum of Review: (2) “The Preservation Planner of designee can administratively approve Repair and Alterations proposals in conformance with the Landmarks Commission Policy Manual, or may refer the application to the Landmarks Commission for their review” means that such an application is an application for a Certificate of Appropriateness (CoA). Is this indeed the case? Different homeowners I have chatted with understand this differently, please clarify.

It is my understanding that if PP “can administratively approve Repair... proposals”, it is a CoA. A CoA is permission from the City, whether through Landmarks or staff.

Do you really expect a homeowner/contractor repairing one piece of siding or repairing rot in one window frame to seek a CoA for a repair? I believe it just sets up homeowners and contractors to ignore that regulation, either on purpose or inadvertently. This will dramatically increase PP staff workload, and when emergency repairs are required, PP will be overloaded with requests for minor trivial repairs, slowing the need for quick turnaround approval for emergency approval from PP. Will the type of product used to patch a small section of rotted wood be subject to CoA approval?

If this requirement does go forward, how quickly can PP respond to a CoA? I am concerned that with the increased workload for the PP, there will be a substantial time delay in response, slowing down even simple repairs, much less emergency repairs. Will additional staff be needed? What process is in place to expedite requests and how will PP triage them? Please describe this process.

Remove the requirement to have Repairs require a CoA.

(1) General

(5) Windows and Doors

(a) Windows & Doors

1. Deteriorated or broken components or features shall be repaired.
2. Replacement in kind or with a compatible substitute materials shall be used when materials or features are missing or are physically beyond repair and/or are not economically feasible to repair.

Jim Murphy comment: It is imperative that the homeowner, not the PP determine if a feature is “physically beyond repair and/or are not economically feasible to repair.” The PP cannot possibly know the homeowner’s financial circumstance or if they have the skill or resources to repair it based on a determination by the PP. Allow the homeowner to make this determination.

This is at the heart of many of earlier comments and testimony over the last three + years from the Marquette Bungalows Neighbors Group. There is genuine fear by some in our neighborhood that an owner will be priced out of their own home based on the PP/Landmarks determination of Repairs & Alterations. I suggest LORC members who were not part of LORC 1 read the testimony from the 15 neighborhood meetings in 2018. It was a major issue. I am happy to send you earlier Marquette Bungalows Neighbors Group testimony and document submittals upon request.

41.33 STANDARDS FOR ALTERATIONS

(1) General

(b) Materials and Features

1. Alterations shall be in keeping with the original design and character of the building.
2. The removal of historic features on elevations visible from the developed public right-of-way is prohibited.
3. The introduction of conjectural features without historic precedent on the building is prohibited.

Jim Murphy comment: Previous language for 3, including Draft Ordinance 10/27/21 used “.... shall be avoided.” As you will see throughout this document, I make a case to remove “... is prohibited” and revert to the original language “. . . shall be avoided.” Refer to my opening comments that this code is more restrictive than the Federal Government.

Jim Murphy comment: The Preservation Planner at the 12/21/2021 LORC meeting said: “Actually when Landmarks Commission reviewed that project, I had to talk them through that even though adding a conjectural

feature on the front façade of a structure is contrary to established preservation practice, that it is specifically allowed in Marquette Bungalows, even though it is a National Register District as well and that modification would not meet the Secretary of the Interior’s standards, that this was something that was allowed in Marquette Bungalows. The new standards would fall in line with preservation practice as opposed to this unique feature with the standards for Marquette Bungalows. And I think that is a good thing. Adding conjectural features on the front of these structures reduces the historic integrity for these structures and would make it challenging for property owners to secure the preservation tax credits in the future. It’s not a good thing.” *(If there is an error transcribing this quote, it is inadvertent. It began at minute 49.)*

The Preservation Planner was using as a case study the porch at 1514 Rutledge in our Bungalows historic district where a beautiful, street friendly porch was added in 2021 but would not be allowed in 2022 because the owner could find no photos or documentation etc of a slightly larger original porch.

That refusal is a travesty and contrary to the use of street interaction, a major part of our bungalow neighborhood which has a great deal of pedestrian traffic. Neighborhood interaction - and front porches – are an element of why we love this friendly neighborhood even if documentation cannot be secured. On behalf of the future character of our neighborhood, delete that requirement.

Our neighbors *(some of whom are still in the neighborhood)* felt when they developed current ordinance language in 1993 with the then current PP - and still feel strongly - allowing adding conjectural features to enhance our historic character. Allow this at least in the bungalow district - and at least for porches if nothing else. It seems to me that the tax credit is an issue for the homeowner, not the character of our neighborhood.

There is no clarity if this prohibition is for the whole home or only for the front of the building. The PP above implied it was only the front view by saying “Adding conjectural features on the front *(Jim Murphy emphasis)* of these structures reduces ...” that it was only the front of the structure. I suggest that comment would allow changes on non front parts of the home. Please clarify.

(b) Replacement

1. Existing features shall be replaced in-kind if they are too deteriorated to repair

Jim Murphy comment: While this is admirable, it is not always feasible. For example, one of my neighbors is unable to afford to replace damaged original round gutters with cost effective box gutters, thus not channeling water away from the house, which is not good maintenance.

In addition, will gutter guards be approved as they are not original but do keep gutters unclogged? It is my understanding that gutter guards are only designed for box gutters, and some would require complete replacement of the gutter. Will this be allowed? One edge of a gutter guard is often visible from the developed public right-of-way so would it even be allowed? Seems to me city support to allow whatever means is possible to remove water away from the home is to be encouraged.

(c) Accessibility

- (2) Barrier-free access requirements shall be complied with in such a manner that the historic building’s character-defining exterior features and features of the site and setting are preserved or impacted as little as possible.

Jim Murphy comment: the 10/6/21 Draft Guidelines provide an option that I feel should also be presented in the ordinance for clarity: “A gradual slope or grade to the sidewalk may be added to access the entrance rather than installing a ramp that would be more intrusive to the historic character of the building.”

Both me and some of my aging neighbors are concerned that this language will not allow them to put up a wooden or metal wheelchair ramp to the front door, which are often quite a ways from ground level. They are concerned that PP will determine if it has not “impacted as little as possible” and not permit the ramp. I again argue for livability.

(2) Building Site

(a) General

1. Fences and retaining walls in the front yard shall be in character with the style of fences or retaining walls historically found in the district or in keeping with the materials and character of historic resources in the district.

Jim Murphy comment: Do you mean the “front yard” or the developed public right-of-way? Do fences and retaining walls not visible in the developed public right of way have to meet this requirement? Please clarify.

(3) Exterior Walls

(a) Masonry

- 2 Removing a chimney visible from the developed public right-of-way or altering its appearance is prohibited.

Jim Murphy comment: Our current bungalow ordinance and this draft requires chimneys to be repaired not removed. That made sense when chimneys were a functioning component of fireplaces, furnaces and hot water heaters. Many of these furnaces and hot water heaters now use direct vents out of the side of the home and no longer need a functioning chimney. To be required to repair and tuckpoint a non-functioning chimney that is not a critical historic addition given the distance from the developed public right-of-way is an expensive overzealous regulatory requirement. Chimney repair should be encouraged, but not required, at least within the bungalow district. I suggest: “ 2. Removing a chimney visible from the developed public right-of-way or alternating its appearance is discouraged, but not prohibited if the chimney is purely decorative and not functional.” *(How’s that for a novel idea?)*

And for another novel idea: if you can craft language to require repair and not removal on a fireplace that is an integral part of the exterior wall, like mine is at 1500 Rutledge, I would support the concept. I argue that like most chimneys in our district that protrude just a few feet from the top of the roof line, it is much less an historic element than my own chimney which dominates my west wall from the ground to above the roof line. I would support repairing and not removing a chimney like mine. I cannot speak to how my neighbors feel about this.

3. Replacement brick units shall be of a similar dimension, color, and permeability as the historic bricks.

Jim Murphy comment: Are replacement bricks as described above required for the entire home or just the developed public right-of-way? This is especially critical of what is viewable from that vantage point, as discussed earlier, when much of the brick on a great portion of a bungalow may not be visible.

(b) Wood

1. Replacement siding shall imitate the original siding within inch of historic exposure/reveal.

Jim Murphy comment: I assume you noticed that the January 2022 Draft Ordinance left out either the text that says “one” inch or whatever it was meant to say. The 10/27/21 version says “1 inch”. Typos are easy to make. (I should know.)

Jim Murphy comment: If there is discussion about alternate wood siding products such as cement board, etc in this ordinance, or the January 2022 Draft Guidelines, I do not see it. I maintain that these new products provide the historic look as well as dramatically reduce maintenance costs. Provide clarity in these regs. Also, unlike the Standards for Repair section, the Standards for Alterations do not include the state law language: “Compatible substitute materials shall be similar in design, color, scale, architectural appearance, and other visual qualities” and I think that should be added here also. You may think it is repetition, but I suggest most owners will only read the sections they think will apply to them at the time they need it. While new products will be available in the future,

write language to allow for future synthetic materials. I appreciate the state law, but more guidance on what that means for the average homeowner will help everyone.

In addition, will vinyl siding and similar materials be permitted? Guidelines of 10/6/21 also restate state law: “Compatible substitute materials should be similar in design, color, scale, architectural appearance and other visual qualities”; this ordinance needs to address what general class of siding is allowed and what is not. Again, this will provide ease of use by the homeowners and less work for PP - and you know this issue will arise in historic districts in Madison.

(4) Roofs

(c) Skylights

1. Skylights visible from the developed public right-of-way shall be flat, parallel to the slope of the roof, and have the frame painted to match the roof material, and be located least twelve (12) feet back from the front edge of the roof

Jim Murphy comment: I see this as clearly allowing skylights visible with the stated criteria in the developed public right-of-way, but some of my neighbors read this differently so I said I would ask. Please clarify: are new skylights that meet the criteria above allowed on street facing roof slopes? If so, I agree. For existing skylights, refer to my comments above.

2. Other forms of skylights are allowed on elevations not visible from the developed public right-of-way.

Jim Murphy comment: I agree. But for clarification is “not visible” in reference to the elevation or the skylight itself? I suggest there are homes, mine included, that the rear elevation would not be visible but a bubble type skylight might be. I suggest retaining the elevation language, but with an understanding that the sight line issue is the elevation, not the skylight itself.

(d) Chimneys

3. Removing a chimney visible from the developed public right-of-way or altering its appearance, is prohibited.

Jim Murphy comment: See comments above about allowing removal of non-functioning chimneys.

(5). Windows and Doors

(c) Windows

1. Original decorative windows shall be repaired and retained.
2. Only when original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details.

Jim Murphy comment: The homeowner, not the PP, should determine if the window is too deteriorated to repair and should be replaced.

This is especially true if the homeowner is concerned about the dangers of lead paint. I feel that if any owner wishes to replace windows due to lead paint dust exposure there is automatic approval, regardless of its deteriorated status. I strongly recommend something like: “Window replacement due to lead paint dust concerns of a property owner will be automatically approved by the Preservation Planner and is encouraged to do so to reduce lead poisoning in children.” You will see in the following paragraphs why I recommend such language. If you don’t add such language to save children, do it to limit potential enormous city legal exposure. Details below.

There was expert testimony a few years ago to LORC from the Public Health Madison & Dane County about the danger of lead paint. Please review that testimony if you do not allow some version of this above

recommended language or ask him to testify again. I am happy to arrange it like I did last time.

I am quite aware that many of you have an alternate viewpoint about the ability to mitigate the danger of lead dust with repair and not replacement. I respect - but do not agree with - that viewpoint. Because of its importance, both the Marquette Bungalows Neighbors Group and I have attached the January 1, 2019 neighbor's powerful testimony (with her permission) analyzing this issue to provide perspective and the importance of replacement and not just mitigation, and I encourage you to read it. Moving wooden parts like windows after mitigation continue to give off lead dust.

In addition, I have attached a letter from Mr. Joe Schirmer about the advisability of replacement of windows with lead paint, rather than repairs.

“If the City adopts as an ordinance ‘Only when the original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details’ this will result in increased exposure to the lead paint debris and lead dust commonly created by windows in homes built before 1978. In addition to causing unnecessary lead exposure risks, adopting such language would create an enormous legal liability for the City because such a policy could be shown to result in increased probability for lead exposures to any child who occupies or is a frequent visitor to a dwelling where windows were required to deteriorate before replacement were permitted.”

“The State of Wisconsin was one of 12 communities participating in a multiyear national evaluation of methods of lead hazard control. In that study, funded by the US Department of Housing and Urban Development, we in Wisconsin chose window replacement (*Jim Murphy emphasis*) to address the lead hazards found on windows while other (state) grantees often used interim controls such as repainting windows. As we studied the effectiveness of these interventions in these dwellings and in the families and children that occupied them over a period of several years, we found that Wisconsin was the grantee whose choice of methods best protected children from increases in blood lead (*Jim Murphy emphasis*) that occurred elsewhere following the interventions to control lead hazards.”

Joe’s letter and extensive credentials as a State of Wisconsin expert on lead removal are attached to this document. If a window with lead paint is “too deteriorated to repair” it is already dangerous, and that language needs to be revisited.

Jim Murphy comment: And I feel strongly that the threshold “too deteriorated to repair” is too restrictive. If a homeowner wishes to replace a window, for whatever reason, and meets the criteria in 3, 4, and 5 below, they should be allowed to do so. You already define what an appropriate window can be and thus accept the fact that such a window is acceptable. Why not allow it before it is too deteriorated if that is the homeowner’s wish? You already agree that the new window design meeting the criteria is close enough visually to be accepted in the historic district. I do not agree with your basic premise on this -I know you do not agree with me.

3. Replacement multi-light windows shall use true divided lights or simulated divided lights with window grids on the exterior and interior with spacer bars between the panes of glass.

4. A historic single-glazed sash may be modified to accommodate insulated glass when it will not jeopardize the soundness of the sash or significantly alter appearance of the window.

5. Incompatible, non-historic windows may be replaced with new windows compatible with the historic character of the building.

Jim Murphy comment: Thank you for putting into code to allow simulated divided lights, to allow insulated glass replacement and to allow non-historic windows to be replaced. I understand that 3 and 4 above will require proof it is too deteriorated to repair. And you know how I feel that should be the homeowner’s and not the PP’s decision. And they should be allowed to replace them if they wish. However, does 5 have to meet “too deteriorated to repair” criteria before they can be replaced?

6. Storm windows shall have a matching or a one-over-one pane configuration that will not obscure the characteristics of the historic windows and have frames and trim painted or otherwise coated to match the color of the window beneath.

Jim Murphy comment: Is pane configuration the case only in the public right-of-way or also applicable in non-street facades? Please clarify. Some of my neighbors need assurance that current storm windows are grandfathered in and do not need to be replaced, though I have tried to reassure them.

You have seen my comment on requiring colors a number of times in this document - I suggest storm window frames be painted but NOT be required to be painted to match the window beneath. Alternate color can be very enhancing of the details. Since most of the windows I see in our neighborhood are white, that means the storm windows must be white. Eliminate that requirement. To be clear, if I painted my storm windows white to match the white windows beneath, I would have a huge fight with my spouse as we have specific, deliberate use of color to highlight the trim features of our bungalow. Eliminate the color requirement.

(d) Pedestrian Doors

3. Storm doors shall be full-light or full-view, wood or aluminum, in the same color as the entrance door or trim, and shall be compatible with the entrance door and the overall design of the building.

Jim Murphy comment: Steel is a common material on higher end custom storm doors. Also allow steel if painted, color notwithstanding. I again make the argument that there is no reason to dictate color choice, especially when a contrasting color can enhance the details.

Jim Murphy comment: In the current bungalows ordinance my neighbors decided, with the PP in 1993, that colors were items that could change with different homeowner preferences and should not be regulated by ordinance. I feel that the owner should decide the color of walls, doors and windows. Remove that requirement.

(e) Garage Doors

1. Garage doors shall be similar in design, color, scale, architectural appearance, and other visual qualities prevalent within the historic district.

Jim Murphy comment: Are all materials acceptable? While we all like wood garage doors, they are very expensive and difficult, almost impossible, to get. Please clarify. See my comments just above on any color requirements.

(6) Entrances, Porches, Balconies and Decks

(a) Replacement

1. An entire entrance or porch that is too deteriorated to repair shall be replaced using any available physical evidence or historic documentation as a model to reproduce the porch features.
2. A historic entrance or porch shall be retained in all instances, including change of use or space function.

(b) Porch Elements

1. Where physical evidence of the overall historic form and detailing are not evident, porch elements shall be of a simple design found on similar historic resources within the district.

Jim Murphy comment: The case study noted above for 1514 Rutledge is a simple design, but still would not be allowed in the new code.

I bring this to your attention based on 41.33 Standards for Alterations (1) (b) 3. "The introduction of conjectural architectural features without historic precedent **on the building** (*Jim Murphy emphasis*) is prohibited." And the PP comments in that section on a neighborhood porch Landmarks allowed in 2021 but

would not be allowed in the new code indicates that conjectural features would not be allowed as noted earlier: “Adding conjectural features on the front of these structures reduces the historic integrity for these structures and would make it challenging for property owners to secure the preservation tax credits in the future. It’s not a good thing.”

It is unclear to me that by not allowing “conjectural features without historic precedent on the building,” that seems to be contrary to “shall be a simple design found on similar historic resources within the district.” I make the argument that if similar porch designs exist in the district, that would be allowed for a similar porch.

I suggest that using such language as: “... replacement that meets the historic character of the neighborhood, even without physical evidence...” solves this dilemma in the contradiction I described above and allows for additional historic character - and more livability - in the neighborhood.

I also strongly recommend allowing and specifically mentioning that artificial deck and step material be allowed, so it is clear to the homeowner and PP. There has been quite a lot of confusion. Such material is more expensive initially but is maintenance free (and thus much less expensive over years, see my previous comments on cost of Maintenance). And more importantly it is not slippery on steps or porches like painted wood is. Specifically allow this in the regs. Every time I help out my neighbors and shovel their wooden steps, I have to be extra cautious on the wooden steps. A fall at my age is not a good idea!

2. Accessible graspable railings may be added to stair railings and should be painted to match the associated railing.

Jim Murphy comment: Also allow stained railings, as well as painted.

3. Spaces beneath porches and stairs shall be enclosed with a framed lattice of crisscross design, narrow vertical boards, or other approved openwork design to allow ventilation.

Jim Murphy comment: Ventilation seems to be the issue with this item but I do not see why. And I have concerns that an openwork design may not keep out rodents and vermin. Please explain the reasoning behind this requirement.

(c) Enclosing Porches

Jim Murphy comment on (1) “... shall match the color ...”
You already know how I feel about dictating color choices.

- (2) Enclosing porches visible from the developed public right-of-way with solid walls is prohibited.

Jim Murphy comment: Our current bungalow code reads: “Porches may be enclosed with windows or screens provided that new windows be casements or double-hung units similar in proportion to other windows on the structure.” I read that windows can be fitted into a wall, and not just full screens/storms on the inside of the porch rail are currently allowed. Allow these solid walls too on porches to improve 3 or 4 season livability while maintaining historic character. At least allow this for the Bungalows district.

(d) Balconies and Decks

1. Rear yard decks and balconies shall have simple railings in keeping with the character of the structure.
2. All parts of the deck shall be painted or opaquely stained

Jim Murphy comment: See note above about artificial material. Change this to read: “(7) All wood parts of the deck shall be painted or opaquely stained.” This matches that exact language in Additions, (6) Entrances, Porches, Balconies and Decks, (b) Porch Elements” (4) All wood on exterior porches, shall be painted or opaquely stained.”

If viewing from the edge with artificial materials is an issue for the PP, write language in the ordinance. For clarity of homeowners, this should be in the Ordinance, not just in Guidelines.

(7) Building Systems

(b) Solar

1. Roof-mounted solar arrays on sloped roofs shall be flat, parallel to the slope of the roof, and arranged in a pattern or grid parallel to the roof's ridge and eaves.
2. Roof-mounted solar arrays on flat roofs shall be installed so as to be minimally visible from the developed public right-of-way.

Jim Murphy comment: Appreciated the clarity. There are more solar panels coming. Since you must allow solar systems, this is a fair regulation from my viewpoint.

(c) Lighting and Electrical Systems

3. Exterior mounted conduit on elevations visible from the developed public right-of-way is prohibited.

Jim Murphy comment: There will be instances when this is the only location to bring power into a home. Just walk around any of the historic districts and see conduit visible. Since LORC clearly sees this as an issue, we suggest something like: "Exterior mounted conduit on elevations visible from the developed public right-of-way is discouraged." Or at the least match the language in Additions (7) Building Systems (a) Mechanical Systems, (3) "... unless technically infeasible." The location of power feeds is ultimately determined by the power service provider.

41.34 STANDARDS FOR ADDITIONS

(1) General

(d) Exceptions

4. Additions to structures in Marquette Bungalows Historic District shall be no taller than the existing historic resource.

Jim Murphy comment: I agree. As mentioned, there should be other exceptions. Probably for all the other historic districts, but certainly for the bungalow district as detailed in this document.

(6) Entrances, Porches, Balconies and Decks

(a) Porch Elements

1. The style of porch posts, balusters and rails shall be compatible with the overall design of the historic porch but, in most cases, not duplicate the historic features.
2. Spaces beneath porches and stairs shall be enclosed with a framed lattice of crisscross design, narrow vertical boards, or other openwork design.
3. All wood on exterior porches, shall be painted or opaquely stained.

Jim Murphy comment: As noted before, provide language that allows artificial material that looks like wood. (Yes, please prevent aluminum decking!) Safety is a huge issue with painted wood porches and steps that get slippery when wet.

In this section you require that all "wood on exterior porches shall be painted or opaquely stained" which means stairs also. However, in (b) (3) just below you require: "All parts of the deck or balcony, except the flooring and steps, shall be painted or opaquely stained in a color to blend with the colors on the structure." I think the point of that is to have flooring and steps not be painted at all, and not just a color match. And I suggest it is in conflict with (a) (3) above that all wood be so treated. I again suggest that you not require steps to be painted at

all. Do you know how I feel about color requirements yet?

(b) Balconies and Decks

1. Rear yard decks shall be constructed so that they are not visible from the developed public right-of-way to which the building is oriented.
2. Spaces beneath decks and stairs visible from the developed public right-of-way shall be screened.

Jim Murphy comment: Replace “shall be constructed” to “... are encouraged to be constructed...” Given the limitations of lot size in all five historic districts, to not allow the use of front, side and back yards if a deck is visible from the developed public right-of-way for neighborhood interaction in the inner city is short sighted. While LORC focuses only on the historical aspect of a district, I and my neighbors also focus on the livability of our own homes. Our neighborhood uses our decks for many family & neighbor interactions and rear decks expand use the space, visible from the right of way or not.

(7) Building Systems

(b) Solar

- 1 Roof-mounted solar arrays on sloped roofs shall be flat, parallel to the slope of the roof, and arranged in a pattern or grid parallel to the roof's ridge and eaves.
2. Roof-mounted solar arrays on flat roofs shall be installed so as to be minimally visible from the developed public right-of-way.

Jim Murphy comment: The Marquette Bungalows Neighbors Group December 2018 letter requested a focus on sustainability and permitting solar panels is a step in that direction. I am happy to send that letter upon request.

(c) Lighting and Electrical Systems

3. Exterior mounted conduit on elevations visible from the developed public right-of-way is prohibited.

Jim Murphy comment: As mentioned before please use “... conduit on elevations visible from the developed public right-of-way is discouraged.” Or “... unless technically infeasible.” You can argue that new additions have more flexibility on power feeds, but there may be places even in a new addition where that is just not feasible. In that case, discourage it. Even additions are beholden to the location of power feeds by the power service provider.

But even with buried lines, often electrical meters and connecting conduit are visible on many homes. Does this regulation prohibit that too, both with Alterations and New Structures?

I personally would love to see all power lines buried. As you may know, my part of the neighborhood was offered to have their power lines buried, I expect over 30 years ago, and as I understand it at no cost to the homeowner. I am lucky the previous owner did so. And they even ran 200 amp service into the meter - amazing they did that all those years ago. (BTW, the meter is visible from the public right-of-way.)

41.35 STANDARDS FOR NEW STRUCTURES

(1) General

(a) Primary Structures

The design for a new structure in a historic district shall be visually compatible with other historic resources within two hundred (200) feet in the following ways:

Jim Murphy comment: While there is currently only one empty lot in our entire district, it is inevitable that some homeowner will wish to demolish their home and rebuild from scratch. I do care about this issue for our neighborhood, but mostly for the other districts that will have a lot of new construction.

(c) Exceptions

1. New principal structures in Marquette Bungalows Historic District shall be no taller than the existing historic resources in the district.

Jim Murphy comment: I feel strongly there should be additional language to ensure any new or replacement structure in our bungalow district be of bungalow design, not necessarily from other designs in the period of significance, 1924-1930. I suggest “New principal structures in Marquette Bungalows Historic District shall be of bungalow design and shall be no taller than the existing historic resources in the district.”

Jim Murphy (Almost) Final Comment: Thank you for allowing me to provide comments. As you saw at the beginning of this document, my #1 request is to delay final approval of this draft by LORC to allow for more stakeholder response. I believe that this longer timeframe is absolutely necessary to allow as many stakeholders as possible to respond to the proposed changes, thus giving LORC the opportunity to consider them and craft an ordinance that historical district residents and city staff can all understand and support.

You want “buy-in” from as many district-wide homeowners & city-wide stakeholders as possible - consider all the comments made in the next few weeks and delay the final document.

OK, Jim Murphy Final Final Comment: I know Chapter 41 will be reviewed for consistency. Writing an ordinance this complicated means that most things are presented correctly, but sometimes a few things may escape notice. Minor things:

- 1) In Definitions 41.02 “Developed **Public Right of Way** means any human-made change to a public thoroughfare or easement granted for the purpose of public access, including but not limited to paved or unpaved highways, streets, bicycle/pedestrian/multi-use paths, or sidewalks. This does not include alleys.” **This does not use hyphens.**

But in the code itself from 41.31 to the end in 41.34, it is written as “**right-of-way.**” The text **has hyphens.** In this document, I chose to use the hyphen model from the code text, not the definition.

Is public right of way (with hyphens or not) always in lowercase text in the ordinance, even though it refers to a title, the definition of “Developed Public Right of Way”? The text is in lower case throughout the January 2022 draft so I assume that is the intent.

I leave it to your grammarians to decide which to use, my old English teacher chops are pretty faded to determine which is correct.

- 2) Please also be consistent with using the word “developed” in conjunction with the term public right of way (*or is it public right-of-way?*) as “developed” is sometimes used and sometimes not used prior to that phrase. Seems to be it should always be used.

Yup, they are minor things, but we all strive for consistency. Thanks for reading this far.

Time for a nap. For us all.

January 30, 2022

City of Madison

Dear Friends:

As a concerned resident and Madison property owner, I am very disturbed by the language in the proposed city historic ordinance:

41.33 STANDARDS FOR ALTERATIONS

5. Windows and Doors

(c) Windows

1. Original decorative windows shall be repaired and retained.
2. Only when original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details.

If the City adopts as an ordinance “Only when the original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details” this will result in increased exposure to the lead paint debris and lead dust commonly created by windows in homes built before 1978.

A national survey of US housing found lead hazards in 25% of all homes, while 81% of homes built before 1940 had lead hazards such as deteriorated lead paint or elevated lead in dust. Also window trough surfaces show the highest lead dust levels of all building components in housing.¹

In addition to causing unnecessary lead exposure risks, adopting this language would create an enormous legal liability for the City because such a policy could be shown to result in increased probability for lead exposures to any child who occupies or is a frequent visitor to a dwelling where windows were required to deteriorate before replacements were permitted.

These assertions are supported by several sources of evidence.

1. The source of lead that contributes most to childhood lead exposure is lead in dust.² This lead in dust comes primarily from deteriorated lead coated surfaces and secondarily from lead that is tracked in from contaminated soil.
2. Windows, because they are often painted with lead paint and because they are subject to friction from use and to frequent extreme fluctuations of temperature and moisture, are the building component with the largest available reservoir of lead dust in US homes (as measured by dust loading on window troughs, the horizontal surface that lies between the interior sash and the exterior storm window). For example, a national survey of lead in housing found average dust lead loadings in window troughs were 146 times greater than

¹ Jacobs DE, et al. The prevalence of lead-based paint hazards in US housing. Environmental Health Perspectives, Volume 110, number 10. October 2002.

² https://www.atsdr.cdc.gov/csem/leadtoxicity/who_at_risk.html (ATSDR, Who is at risk of lead exposure, 2017)

lead dust on floors while geometric mean dust lead loadings in window troughs were 90 times greater than geometric mean dust lead loadings on floors.³

3. As lead based paint deteriorates, it creates lead dust hazards. So for example, the same national survey found that homes with deteriorated lead based paint were twice as likely to have lead dust hazards as homes with lead paint in good condition.⁴ So, should the City adopt an ordinance that requires windows in older homes to become so deteriorated as to be beyond repair before they can be replaced, this would deliberately put children in harm's way from a lead poisoning prevention perspective.
4. Replacing rather than repairing windows significantly reduces lead paint hazards and lead dust in dwellings. This has been demonstrated by multiple repeated testing measures comparing dwellings where windows were replaced with those that were repaired.⁵ This trend holds true over decades, so even after 12 years, homes where all windows were replaced had significantly lower dust lead levels than homes where windows were repaired.⁶ Thus, window replacement reduces lead dust exposure risks to children.
5. Personally as a public health professional for Wisconsin Division of Public Health from 1985 to 2015, I am proud that we in Wisconsin contributed to the above research. In relation to the proposed ordinance, I managed a research grant program funded by US HUD to deliberately and painstakingly research and evaluate various methods of lead hazard control. Through this research grant program, grantees across the US compared various methods of controlling lead paint hazards. In Wisconsin, we deliberately replaced windows rather than repaired them while other grant recipients in the program selected window repair more often to address the lead hazards found in windows. As stated above, this research demonstrated that window replacement was more effective than window repair at reducing lead paint and dust hazards.

Window replacement was also more effective at protecting children from lead as measured by children's blood lead levels before and after the work was done. A 1998 report showed that only Wisconsin's lead hazard control program protected children from the substantial increases in blood lead levels found elsewhere six months after the lead hazard control work was completed.⁷ This result may have been caused by many factors, including careful work by Wisconsin risk assessors and contractors, but Wisconsin's aggressive determination to replace windows in all instances where lead was found was no doubt also at least partly responsible for this finding.

³ Jacobs DE, et al. The prevalence of lead-based paint hazards in US housing. *Environmental Health Perspectives*, Volume 110, number 10. October 2002.

⁴ Ibid, page A603

⁵ Dixon S., et al. Effectiveness of lead-hazard control interventions on dust lead loadings: findings from the evaluation of the HUD Lead-Based Paint Hazard Control Grant Program. *Environ Res* 2005 Jul;98(3):303-14.

⁶ Dixon, SL, et al. Window replacement and residential lead paint hazard control 12 years later. *Environmental Research* 2012 Feb;113-20.

⁷ National Center for Lead-Safe Housing and the University of Cincinnati Department of Environmental Health. Evaluation of the HUD Lead-Based Paint Hazard Control Grant Program, Fifth Interim Report, p 92. March 1998.

6. Finally, window replacement, when combined with paint stabilization of other lead painted surfaces, provides other long term benefits including reducing the suffering and social expenses associated with childhood lead exposure such as increased costs for special education, juvenile delinquency, and crime as well as helping owners to save energy and raise property values.^{8 9}

Please do not adopt the proposed ordinance as written. The proposed language would endanger children, frustrate responsible property owners, and burden the City of Madison with serious legal liabilities.

Thank you for the opportunity to review the proposed ordinance and to share my concerns. I would welcome the opportunity to continue to discuss these issues.

Sincerely,

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Madison, WI 53704
jschirmer48@gmail.com

⁸ Nevin R. et al. Monetary benefits of preventing childhood lead poisoning with lead-safe window replacement. Environmental Research 2008 March;106(3) 410-9.

⁹ Gould E. Childhood lead poisoning: conservative estimates of the social and economic benefits of lead hazard control. Environmental Health Perspectives, 2009 July;117(7):1162-7.

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Experience

Wisconsin Department of Health 1985-2015

- Develop and implement programs to prevent childhood lead poisoning.
- Provide public education and communicate with interested parties, including parents, health care providers, property owners, legislators and policy makers.
- Develop policies, write rules, coordinate local public health agencies in all 72 Wisconsin counties for lead poisoning prevention programs, conduct risk assessments to identify lead hazards, teach local public health agency staff methods to evaluate and control lead hazards including both technical measures and legal strategies to secure safe dwelling environments for children.
- Seek and write grants to secure funds from various sources including CDC, HUD and EPA for programs and research to identify, evaluate and control lead hazards and distribute funds to health and housing agencies.
- Seek funds and provide programming support for HUD grants to UW Madison for Healthy Homes to control and prevent childhood asthma, injuries and lead poisoning.
- Secure and manage multimillion dollar, multiyear US HUD funded grant programs to evaluate and control lead hazards in housing.
- Develop programs for surveillance of occupational/environmental diseases including pneumoconiosis, asthma and lead poisoning.

National Center for Lead Safe Housing,

US Department Of Housing and Urban Development

Review: "Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing" and 'Lead Paint Safety Field Guide" and Consult to establish Healthy Homes Program criteria and standards.

New Jersey Health Department, Occupational Health Program, 1981-1985

Conduct industrial hygiene evaluations of various occupations such as firefighting, printing, manufacturing of electronics, automotive brakes, pharmaceuticals, oil refineries, garages, offices and motor vehicle inspection facilities both for the State of New Jersey and for the National Institute for Occupational Safety and Health.

Author: Fire Fighting in New Jersey: Hazards and Methods of Control, This publication recommended policies that were then adopted by the NJ Legislature including establishing a Public Employee Occupational Safety and Health Program and ensuring that the Public and Firefighters were informed about the locations, identities (CAS number) and toxicity of chemicals stored in workplaces, or "Right to Know" legislation.

Develop policies and regulations to Control Asbestos Exposure and to Establish Public Employee Health and Safety Programs.

Supervisor, Asbestos Training Project: write and implement rules governing training of asbestos workers, including developing curriculum and testing criteria. Develop specifications for abatement projects. Edit EPA asbestos training materials.

Occupational Health Consultant and Trainer

1979-1980

International Brotherhood of Boilermakers, Local 802, Chester PA; International Chemical Workers Union, Akron OH; Philadelphia Area Project on Safety and Health,

Certifications: Certified in Comprehensive Practice of Industrial Hygiene, by the American Board of Industrial Hygiene, 1987, Certification number 3822. Current Lead Safe Worker and Owner of Lead Safe Company certified by Wisconsin DHS

Education:

1984: Master of Science in Environmental Health, University of Cincinnati, Cincinnati, OH

1977: Bachelor of Science, Magna Cum Laude, Urban Affairs, Boston University, Boston MA

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[Nursing injury rates and negative patient outcomes--connecting the dots.](#)

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Hatfield PM, Staresinic AG, Sorkness CA, Peterson NM, **Schirmer J**, Katcher ML. Inj Prev. 2006 Feb;12(1):52-7.

[Mesothelioma among employees with likely contact with in-place asbestos-containing building materials.](#)

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Joseph Schirmer, Health and Safety Hazards of Shiftwork: Implications for Health Care Workers and Strategies for Prevention. Essentials of Modern Hospital Safety, Volume II, 1993, Chelsea, Michigan, Lewis Publishers, Inc.

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Joseph Schirmer and William Charney, Editors, Essentials of Modern Hospital Safety, Volume I, 1990, Chelsea, Michigan, Lewis Publishers, Inc.

To: Madison Alliance for Historic Preservation
From: William J. Cook, Special Counsel
Date: July 16, 2021
Re: Madison's Historic Preservation Ordinance Revisions

As the City of Madison considers the future direction of its historic preservation ordinance, the Madison Alliance for Historic Preservation has asked me to share my research and perspectives about the pros and cons of a preservation ordinance that applies the same standards city-wide—a one-size-fits-all approach—versus a more tailored approach that addresses the specific needs of each historic district and enhances flexibility. For the reasons discussed below, the City of Madison should adopt an approach that allows for a core set of standards with district-specific differentiation and interpretive guidelines, in line with the Alliance's proposed ordinance revisions. Adopting such an ordinance would place Madison at the forefront of historic preservation regulation and provide a model for other communities to follow. In addition, it would allow Madison to increase community support for preservation not only for its five existing historic districts, but also for future districts.

Professional background. My observations and opinions are based on my knowledge, training, and experience as a historic preservation attorney, serving currently as Special Counsel to Cultural Heritage Partners, PLLC, a law and policy firm with offices in Washington, D.C., New York City, and Richmond, Virginia, that focuses almost exclusively on historic preservation and cultural heritage law. Previously, I served for eight years as Associate General Counsel in the Law Division of the National Trust for Historic Preservation, the nation's leading historic preservation advocacy group, which Congress chartered in 1949. I have also taught as a full-time law professor in the areas of property law, constitutional law, appellate advocacy, and historic preservation law. Since leaving full-time law teaching, I have continued to teach courses in historic preservation law at Columbia University's Graduate School of Architecture, Planning, and Preservation and lecture to national audiences. I also provide training in local preservation law and best practices to local historic preservation commissions through the National Alliance of Preservation Commissions and have been qualified as an expert witness in the area of historic preservation, property, zoning, and land use law. My C.V. is attached for review.

Ordinance purposes. "Clarity and consistency" are important regulatory goals, but should not be the only ones used in drafting a historic preservation ordinance, especially given the individual needs of different historic districts whether in Madison or any other municipality. Effectiveness is a key touchstone. Although many preservation ordinances have used a one-size-fits-all approach in the past, that should not be necessarily be considered as a best practice today, but rather results from most local governments having adopted model ordinances decades ago without considering the needs of individual historic districts or the property owners within those districts.

Increasingly, communities are re-evaluating this approach in a variety of ways, for reasons of effectiveness, flexibility, and social equity, with great success.¹ Not every historic district is the same, nor is it realistic to expect that property owners within those districts—who bear the duty and cost of maintenance—have the same expectations concerning what historic preservation regulation should achieve. For example, treating every present and future historic district in Madison as if it were a museum setting in Colonial Williamsburg would be neither reasonable in terms of affordability for most people nor realistic in terms of what that degree of regulation could be expected to achieve. This type of “top down” approach is not considered a best practice today.

Benefits of the Alliance Approach. The thoughtful, unified approach proposed by the Alliance is consistent with guidance from the National Park Service, which administers the federal historic preservation program, including the National Register of Historic Places, and plays a vital role in providing financial incentives for historic preservation.

The National Park Service has identified the following benefits that a balanced approach can provide:

- A basis for making fair decisions;
- Consistency in design review;
- Incentives for investment;
- Property value enhancements; and
- Tools for education.²

Rather than employing a one-size-fits-all approach to historic preservation, communities across the country are increasingly pursuing ordinances that combine core standards with an appropriate level of district-specific nuance. This has been done in various ways; but the Alliance proposal is one of the better approaches that I have seen, and it seems appropriate for a city of Madison’s size and historic preservation context.

Representative examples of cities from across the country that employ comparable approaches to preservation regulation include the following: Aspen, CO; Atlanta, GA; Baltimore, MD; Charleston, SC; Chicago, IL; Columbia, SC; Dallas, TX; Los Angeles, CA; New Orleans, LA; Ontario, CA; Palm Springs, CA; San Francisco, CA; Savannah, GA; St. Paul, MN; Dallas, TX; Staunton, VA; and Washington, DC. This list is not exhaustive.

In reviewing the Alliance’s proposal, I have considered not only differences among Madison’s five existing historic districts, but also considered the possibility that Madison may create future districts, especially if Madison adopted an approach that would allow for greater flexibility and fairness in the way its preservation ordinance is administered. The Alliance proposal strikes an appropriate balance. It addresses the need for uniformity and clarity by adopting core standards that apply to new construction, addition, alternations, and maintenance in all historic districts, therefore improving ease of administration and

¹ Stephanie K. Meeks, former president of the National Trust for Historic Preservation, discussed these trends in her book, *THE PAST AND FUTURE CITY: HOW HISTORIC PRESERVATION IS REVIVING AMERICA’S COMMUNITIES* (2016).

² National Park Service, “Creating and Using Design Guidelines: Working on the Past in Local Historic Districts,” available at <https://www.nps.gov/tps/education/workingonthePast/roletheyplay.htm>.

certainty about outcomes for city officials as well as property owners and developers. At the same time, it accommodates district-specific concerns and nuances, in recognition of the fact that not all historic properties are the same. This approach would place Madison squarely within the approach recommended by the National Park Service, and by national, state, and local preservation advocacy groups throughout the country. If Madison adopts the Alliance's approach, it can reasonably expect to realize increased community support for historic preservation, greater equity among historic districts—whether presently designated or designated in the future—and lower litigation risk by promoting more objective decisions by the Landmarks Commission.

If I can assist with your deliberations or answer questions about my research or opinions, please let me know.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William J. Cook". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

William J. Cook

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EXPERIENCE **Cultural Heritage Partners, PLLC; Washington, DC.**

Special Counsel. Advise clients on issues related to historic preservation legal advocacy, including federal, state, and local law. Lecture regularly to national audiences on current trends and preservation issues. August 2019 to present.

National Trust for Historic Preservation; Washington, DC

Associate General Counsel. Supervised national nonprofit litigation advocacy efforts involving federal, state, and local preservation laws and corporate law matters. Lectured regularly to national audiences on current trends and preservation issues. May 2011 to March 2019.

Columbia University; New York, NY

Visiting Professor. Teach preservation law within the Graduate School of Architecture, Planning & Preservation. September 2013 to present.

Charleston School of Law; Charleston, South Carolina

Assistant Professor. Taught property law, constitutional law, historic preservation law, art & cultural heritage law, and appellate practice. Co-founder and organizer of the Law & Society Series, an annual legal symposium. Faculty Advisor to the CHARLESTON LAW REVIEW. August 2006 to May 2011.

Phillips, de Pury & Luxembourg, Ltd.; New York, New York

General Counsel's Office. Provided transactional and litigation oversight of art law issues to the Office of General Counsel of an international auction house. October 2001 to October 2003.

Ness, Motley, Loadholt, Richardson & Poole, P.A. (later DBA Motley Rice LLC); Charleston, South Carolina. *Attorney.* Assisted managing partner with trial and appellate litigation, including products liability, commercial litigation, and securities fraud. July 1998 to August 2000.

South Carolina Court of Appeals; Columbia, South Carolina

Judicial Clerk. August 1996 to July 1998.

EDUCATION **University of South Carolina School of Law; Columbia, South Carolina**
J.D., May 1996

Honors and Activities

Associate Editor, *South Carolina Environmental Law Journal*
Constitutional Law Research Assistant, Professor James L. Underwood
U.S.C. School of Law *Pro Bono* Board Member
American Jurisprudence Award, International Environmental Law

Furman University; Greenville, South Carolina

B.A., *cum laude*, Political Science, May 1991

Honors and Activities

Michael C. Ulmer Political Science Medal
Charles A. Dana Teaching Fellow, Constitutional Law
Furman University Student Service Award
Varsity Tennis, 1987-1988

Sotheby's Institute, American Arts Course; New York, New York
Certificate, May 2001

LICENSES

Bar of the Supreme Court of South Carolina
Bar of the United States District Court for the District of South Carolina
Bar of the United States Court of Appeals for the Fourth Circuit
Bar of the United States Court of Appeals for the First Circuit
Bar of the United States District Court for the District of Puerto Rico
Bar of the United States District Court for the Ninth Circuit

PUBLICATIONS

PRESERVING NATIVE AMERICAN PLACES: A GUIDE TO FEDERAL LAW AND
POLICIES THAT HELP PROTECT CULTURAL RESOURCES AND SACRED SITES
(2014).

Why Legal Archives are So Important for Future Advocacy, New York
Preservation Archive Project Winter Newsletter (Jan. 2020)

Shifting the Paradigm from Deconstruction to Reuse: New Tools,
PRESERVATION LEADERSHIP FORUM (Feb. 16, 2017) (co-authored with
Tom Mayes, Esq.).

Through A Legal Lens, New York Preservation Archive Project Spring
Newsletter (May 4, 2017)

Recognizing the Grand Canyon as a Traditional Cultural Property (co-
authored with Brian R. Turner, Esq.). Paper presented at *Sharing Cultures*
2017: 5th International Conference on Intangible Heritage. Barcelo,
Portugal (Sept. 2017).

How Preservation Law Lays the Groundwork for a “Movement of Yes,” FORUM JOURNAL (Winter 2016).

New York City’s Landmarks Commission Wins Important Takings Lawsuit, PRESERVATION LEADERSHIP FORUM, Jan. 22, 2016.

Collaborating with the Army Corps to Save the Village of Zoar, FORUM JOURNAL (Winter 2015).

Saving Historic Places from Unregulated Cruise Tourism: Setting the Record Straight, PRESERVATION LEADERSHIP FORUM, Feb. 6, 2015.

A Step Forward in Protecting Blair Mountain, PRESERVATION LEADERSHIP FORUM; Sept. 8, 2014.

Proposed Tower Threatens Palisades, PRESERVATION LEADERSHIP FORUM; April 18, 2014.

Preservationists Claim Major Victory in Fight to Protect Mount Taylor, PRESERVATION LEADERSHIP FORUM; Feb. 20, 2014.

Chicago Landmarks Ordinance Upheld, PRESERVATION LEADERSHIP FORUM; Oct. 11, 2013.

Preservation Victory Over Charleston Cruise Ship Terminal, PRESERVATION LEADERSHIP FORUM; Sept. 26, 2013.

Recognizing Historic Sites that Remain Culturally Significant, PRESERVATION LEADERSHIP FORUM; March 13, 2013.

Positive News for Charleston Lawsuit, PRESERVATION LEADERSHIP FORUM; Jan. 11, 2013.

Seeing the Forest for the Trees: An Important Win for Local Preservationists, PRESERVATIONNATION; Oct. 4, 2011.

Chicago Preservationists Win Legal Victory, PRESERVATIONNATION; June 20, 2012.

The Impact of Interstates on Historic Preservation Law, PRESERVATION PROGRESS (Spring 2009).

A New Frontier Called Interior Easements, PRESERVATION PROGRESS (Spring 2005).

Reflections on Preservation’s Continuously Evolving Goals, PRESERVATION PROGRESS (Fall 2004).

Supreme Court Announces New Standard for Takings Claims, 3 S.C. ENVTL. L.J.196 (1994) (Best Case Note Award).

EDITORIAL BOARDS

Co-Editor, Law Professors Network, Land Use Blog

CHIEF JUSTICE JEAN HOEFER TOAL, APPELLATE PRACTICE IN SOUTH CAROLINA (1999)

PUBLIC LECTURES & PRESENTATIONS

Presenter, *Palm Beach's Historic Preservation Ordinance: Baseline Review of Current Strengths, Opportunities for Further Study*, Historic District Educational Symposium, Town of Palm Beach & Preservation Foundation of Palm Beach (Palm Beach, FL; Dec. 2019)

Presenter, *Preservation Law Update*, PastForward, National Trust for Historic Preservation Annual Conference, (San Francisco, CA; Nov. 2018)

Presenter, *New Urbanism and Historic Preservation*, Historic Preservation in the 21st Century: Protecting Built and Natural Environments, VIRGINIA ENVIRONMENTAL LAW JOURNAL (Charlottesville, VA; Nov. 2, 2018)

Moderator, *Through the Legal Lens: Lawyers Who Shaped NYC's Landmarks Law Explore its Past, Present, and Future*, New York Landmarks Conservancy, New York Preservation Archive Project, and Historic Districts Council (New York, NY; Nov. 9, 2017)

Keynote Speaker, *A Baseline Review of Philadelphia's Local Preservation Ordinance*, Mayor's Historic Preservation Task Force Public Meeting (Philadelphia, PA; Oct. 19, 2017)

Keynote Speaker, *From Charleston to the Grand Canyon: Using Preservation Law to Protect Historic Places and Cultural Landscapes*, Drayton Hall Distinguished Speaker Series (Charleston, SC; Mar. 21, 2017)

Co-Presenter, *The Landscape of the Dakota Access Pipeline in Standing Rock Sioux Tribe vs. U.S. Army Corps of Engineers* (Oct. 25, 2016 | National Trust Forum Webinar)

Keynote Speaker, *From Annapolis to Charleston: Protecting Cultural Heritage through Local Law*, Legal Symposium: Creating, Defending, & Enforcing a Strong Historic Preservation Ordinance; Maryland

Association of Historic District Commissions (Annapolis, MD; June 11, 2016)

Panelist, National Practices, *History in the Making: New York City's Landmarks Law at 50*, NYC Landmarks Commission & Harvard University Graduate School of Design (New York, NY; Oct. 26, 2015)

Presenter, *Creative Approaches to Using Law to Protect Historic Places*, in *Beyond the Five Boroughs: International Preservation Insights*, The Fitch Forum, Columbia University Graduate School of Architecture, Planning & Preservation (New York, NY; Oct. 17, 2015)

Moderator, *Through Fresh Eyes: Emerging Heritage Professionals from Five Continents on Five Preservation Questions*; US/ICOMOS Final Program Symposium (Washington, D.C.; Aug. 12, 2015)

Presenter, *What is the Value of Historic Preservation: Assessing Preservation Tax Credits in the U.S. & Abroad*, American Bar Association Art & Cultural Heritage Law Committee, Section of International Law 2015 Spring Meeting (Washington, D.C.; May 1, 2015)

Presenter, *From Savannah to Syria: Protecting Cultural Heritage Through Law*, University of Georgia School of Law & College of Environment & Design (Athens, GA; April 16, 2015)

Presenter, *The Adverse Effects of Unregulated Cruise Tourism and the Venice and Charleston Experience*, National Trust for Historic Preservation and Georgetown University Law Center 2015 National Preservation Law Conference (Washington, D.C.; Feb. 25, 2015)

Presenter, *The Legal Framework for Preserving the Pacific's World War II-Era Past*, The Lawyers' Committee for Cultural Heritage Preservation Annual Conference (New Orleans, LA; Oct. 2, 2014)

Visiting Professor, *Federal Preservation Law*, University of New Mexico, Southwest Summer Institute for Preservation and Regionalism (June 2014)

Presenter, *The State of Preservation Law—A National Perspective*; Preservation Law & Policy: Crises of Legitimacy (University of Pennsylvania School of Design; Philadelphia, PA; Nov. 8, 2013)

Presenter, *Regulatory Takings Law and Historic Preservation*, University of Pennsylvania School of Design Historic Preservation Program (Philadelphia, PA; March 2, 2013)

Moderator & Presenter, Policy Tools Panel, *Harboring Tourism: A Symposium on Cruise Ships in Historic Port Communities*; World

Monuments Fund, National Trust for Historic Preservation, & Preservation Society of Charleston (Charleston, SC; Feb. 6, 2013)

Presenter, *The Legal Framework for Preserving the Pacific's World War II-Era Past*, The Lawyers' Committee for Cultural Heritage Preservation Annual Conference (Washington, DC; Nov. 9, 2012)

Visiting Professor, *Federal Preservation Law*, University of New Mexico, Southwest Summer Institute for Preservation and Regionalism (June 2012)

Presenter, *Regulatory Takings Law and Historic Preservation*, University of Pennsylvania School of Design Historic Preservation Program (Philadelphia, PA; March 2, 2012)

Presenter, *Recent Developments in Preservation Law*, Preservation Law Workshop, Preservation Delaware and Widener University School of Law (Dover, DE; Mar. 28, 2012)

Panelist, Property Law Discussion Group, Southeastern Association of Law Schools 63rd Annual Meeting (Hilton Head Island, SC; Aug. 2011)

Presenter, *Sources of Historic Preservation Law* (Columbia University; New York, NY; Apr. 2011)

Presenter, *Federalism and Preservation Law: A Call for Local Reform*, Association for Law, Property, and Society 2nd Annual Meeting (Washington, D.C.; Mar. 2011)

Presenter, *Integrating Form-Based Codes in Historic Preservation Districts*, Southeastern Legal Scholars Program (Charleston, SC; Oct. 2010)

Presenter, *Emerging Patterns in Cultural Property Law*, New Scholar Colloquia, Southeastern Association of Law Schools 62nd Annual Meeting (Palm Beach, FL; Aug. 2010)

Presenter, *The Effects of Smart Growth on the Preservation of Historic Resources*, Session on Managing the American Dream: Land Use and the Politics of Growth after the Mortgage Crisis, Law and Society Association Annual Meeting (Chicago, IL; May 28, 2010)

Presenter, *A Whole New Land Use Law: Teaching New Urbanism, Smart Growth, Green Building, and the Laws that Govern Them*, 61st Annual Meeting, Southeastern Association of Law Schools (Palm Beach, FL; Aug. 5, 2009)

Panelist, *Challenges to Historic Districts in Today's Environments*,
Preservation Legal Action Trust, New Bern, NC (June 12, 2009)

Presenter, *Evolution of Historic Preservation Law in Charleston*, Rotary
Club of Charleston (April 10, 2009)

Moderator & Presenter, *Law of Easements: Legal Issues and Practical
Considerations*; Continuing Legal Education Program (Charleston, SC;
Jan. 21, 2009)

Presenter, *Zoning, Subdivision, and Land Development Law in South
Carolina*; Continuing Legal Education Program (Mt. Pleasant, SC; Nov.
19, 2008)

Presenter, *The Meaning of Civility in the Practice of Law*, Charleston
County Bar, Young Lawyers Division Leadership Academy (Charleston,
SC; May 16, 2008)

Presenter, *Historic Preservation Law in Charleston*, Terry Carey Inn of
Court (Charleston, SC; April 24, 2008)

Presenter, *South Carolina Appellate Law Update*, Fidelity National Title
Insurance Company, Ninth Annual Underwriting Seminar and Continuing
Legal Education Program (Columbia, SC; Mar. 15, 2008)

Moderator & Presenter, *Zoning, Subdivision & Land Development*
Continuing Legal Education Program (Charleston, SC; Nov. 29, 2007)

Presenter, *Legal Issues Affecting Heirs' Property*
Continuing Legal Education Program (Charleston, SC; Oct. 12, 2007)

EXPERT QUALIFICATIONS

- Historic Preservation & Land Use Law (*Historic Charleston Foundation v. City of Charleston*, March 2009)
- Interpretation of Colonial Deeds & Land Grants (*Grant v. State of South Carolina*, April 2009)

AWARDS & RECOGNITION

- Loeb Fellow Finalist (2018)
- Nominee, Professor of the Year (2007 to 2008)
- Luce Scholars Program, National Finalist (1997)
- Rotary International Scholar; Strasbourg, FRANCE (1991 to 1992)

COMMUNITY SERVICE

- President, Stamford House Historic Preservation Foundation, Inc., Nov. 2019 to present)
- Vice-President, New York Preservation Archive Project (Sept. 2017 to present)
- Secretary & Treasurer, Lawyers Committee for Cultural Heritage Preservation (February 2012 to present)
- Member, Regulatory Subcommittee, City of Philadelphia Historic Preservation Task Force (Sept. 2017 to March 2019)
- Board Member, Maryland Center for History and Culture (June 2021 to present)
- Board Member, Valleys Planning Council (May 2017 to present)
- Board Member, Ladew Topiary Gardens (April 2019 to present)
- Board Member, Historic Preservation & Education Fund of the Racquet Club of Philadelphia (August 2016 to present)
- Vestry Member, St. John's Western Run Parish (Winter 2018 to present)
- House & Ground Committee Member, The Walters Art Museum (Sept. 2017 to present)
- House Committee Member, Ladew Topiary Gardens (April 2017 to present)
- Board Member, National Preservation Institute (Sept. 2017 to Sept. 2018)
- Board Member, The Preservation Society of Charleston (2004 to 2010)
- Committee Member, Music in the Valley, St. John's Western Run Episcopal Church (Sept. 2017 to present)

LANGUAGES Fluent in French.



MARQUETTE BUNGALOWS NEIGHBORS GROUP

January 31, 2022

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Alder Patrick Heck - District 2 – district2@cityofmadison.com
Alder Arvina Martin - District 11 - district11@cityofmadison.com
Alder Regina Vidaver - District 5 – district5@cityofmadison.com
Alder Tag Evers - District 13 - district13@cityofmadison.com
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LORC member scheduled to attend the Feb 3 Bungalows breakout session

Mayor's office

Mayor Satya Rhodes-Conway - mayor@cityofmadison.com

Marquette Bungalows Historic District Alder:

Brian Benford - District 6 - district6@cityofmadison.com

Chair of Madison Landmarks Commission

Anna Andrzejewski - avandrzejews@wisc.edu

Staff

Bill Fruhling, Principal Planner - bfruhling@cityofmadison.com
Kate Smith, Assistant City Attorney – ksmith@cityofmadison.com
Staff member scheduled to attend the Feb 3 Bungalows breakout session

Dear Ms. Bailey, Ms. Mayor, LORC, Alders and Staff:

Thank you for the opportunity to comment on proposed changes to Subchapter 41G, Historic District Ordinance. In addition, we send our thanks to LORC and staff and to those who have been working to revise the ordinance on behalf of the citizens of the City of Madison. Many of us in the Marquette Bungalows Historic District have been following this extensive process over the last few years. We are aware of how complicated it is to weigh many – sometimes conflicting – views to protect the historic integrity of the five historic districts while balancing the interests of property owners.

The ordinance is policy for the City. For us, these are our homes. Our homes are not museums. They are the structures we live in; the regulations must make it feasible for owners to maintain their homes on limited budgets. The ordinance should allow changes that respect the historic building while allowing it to be slightly altered to address current needs.

We have provided written comments and testified many times over the last number of years. Having reviewed the January 2022 draft ordinance, we are pleased to offer our comments on the following pages.

For additional information, contact:

Chuck Mitchell
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Madison, WI 53703
608-██████████

Email communication should be addressed to both chmitche1514@gmail.com and murphyjim1948@gmail.com

INTRODUCTION

We are generally pleased with the January 2022 Draft Ordinance. We support the historic qualities of our neighborhood, and naturally we have concerns. They will be summarized here and addressed with reference to specific sections of the Draft Ordinance in the pages following this introduction.

GENERAL POINTS

1. Time frame- Little time has been allowed to respond at the virtual meeting on February 3. We urge you to allow for the option of additional district-specific sessions for each of the five districts. Most of us became aware of this final time frame only in the last week or so when LORC began electronic notifications (which have not gone to everyone in the district). Your postcards began to arrive just 16 days before the first session. We expected (and deserve) more notice.
2. Lead paint abatement is a major concern in these homes. We are aware of many means to control flaking lead (with barrier paint, professional removal, etc.), but items that move such as windows and doors will always be subject to lead paint dust becoming airborne. Some residents have tried abatement to find that follow-up tests still showed lead. We request that lead abatement be a no-questions-asked reason to replace windows, with the caveat that the replacements meet the specifications of the Windows Section under Alterations. For further information please see the attached letter from a Bungalows owner regarding her family's experience with lead abatement. The letter was sent to the Preservation Planner (PP) and copied to LORC in January 2019.
3. Approval processes are confusing. We need clarity on who decides if something on a house can be repaired or needs to be replaced. We agree that repair should generally be the preference over replacement, but there are situations in which repair is not feasible and replacement is called for. Can we or our contractors make this decision, or must we always get approval from the PP? We are happy to seek approval for replacement choices.
4. Color choice should be the owner's prerogative. There may have been traditions for color, but we doubt original owners were regulated in color choice. We want to continue that history. Color is temporary, and please, let us choose.
5. Approved (substitute) materials- We are pleased to see many references to new materials that are allowed for repair, but we have some confusion. These are specified in our notes referring to specific sections of the Draft Ordinance, but we would like the PP or the Landmarks Commission to have a standard list of allowed substitute materials in areas such as decking, siding, doors, garage doors, etc. and that this list be updated as new materials become available in the future. Brand names would be useful, and we know that you would not be endorsing any specific product. This list would not be part of the Ordinance, but should be updatable by the PP.
6. Grandfathered items-We would like language in the ordinance that non-conforming items we now have will not have to be replaced as a result of passing this Draft Ordinance.
7. Vantage Point- It's often confusing from what perspective these standards should apply. Is it only from the front of the house? The definition of the Developed Public Right of Way does not specify. It seems to be any person at any time from any angle in any season to view the property is the intent of that definition. Is that correct? We do not think such a broad interpretation is appropriate. Since one of the purposes of the Ordinance is to provide visual connection to the historical character of our homes, the Definition of the Developed Public Right of Way needs to be reasonable from which vantage point such a perspective is

viewed, and we recommend the definition be revised. This becomes quite important with window replacement, for example. The detailed comments on the Draft Ordinance below expand on this question.

SECTION BY SECTION COMMENTS

41.03 GENERAL ADMINISTRATIVE PROVISIONS

(6) We support the expansion of the 200' rule to include any improvements in such lots. This increases the range to notify neighbors for more transparency.

41.31 STANDARDS FOR MAINTENANCE

In general, we are satisfied with this section. Specifics:

1. We are pleased a CoA is not required for maintenance. We submit that what defines maintenance should be up to the owner to decide. We as owners have a vested interest in maintaining our properties.
2. The 10/6/21 Draft Guidelines in the maintenance section state that vegetation supported by trellises may be approved. The Draft Guidelines seem to be inconsistent with the Draft Ordinance.
3. In general, we strongly feel that landscaping should not be covered by the Ordinance.

41.32 STANDARDS FOR REPAIRS

We strongly feel that a CoA should not be required for repairs. A repair is an action that maintains the look and function of what is there, and prevents further problems, such as rot or leaking. Repair actions need to be taken on a timely basis, and it is not feasible to wait for a CoA. Some owners hire professionals to help us make these decisions.

1. We support the Standards stated here regarding repairs.

41.33 STANDARDS FOR ALTERATIONS

We understand the imperative to maintain the historical appearance of the buildings in a historic district, but at times owners want to make an alteration that has no historic documentation available. Consider the case of replacing a porch, door or window that is obviously not original, but for which no documentation of the original exists. Such is often the case with the Marquette Bungalows. In addition, we would like to be able to make alterations that are consistent with the style of houses in our district even if they were not part of the original home. For example, a porch or dormer - added where none currently exists - could be modeled after other porches or dormers in the district. Specific comments follow. The underlined reference refers to the specific section of the January 2022 Ordinance.

1. # 1b (General, Materials and Features)
 - a. We do not support the change from the former language that if no historical precedent on the building could be found, that it is now "prohibited", not just "shall be avoided." Revert to "shall be avoided."
2. # 1c (General, Replacement)
 - a. Existing features shall be replaced in-kind if unrepairable, but some in-kind replacements are simply too expensive. As an example: round gutters were often the norm originally but are much more expensive than the now common "box" gutters that most of the Bungalows now have. Are gutter guards allowed? They are not historic, and one edge is visible from the Public Right of Way but provide the same essential function - directing water away from the house.
 - b. #1d (Accessibility): Barrier-free access that meets ADA will always be in conflict with these standards. The height from the ground of entrances means ramps would require considerable

space and will drastically affect the look. While many owners may not want ramps, we believe ADA has priority over historic standards. We also believe the draft 10/6/21 Guidelines addressed this issue, at least in part, by allowing sloped sidewalks which will help in some cases.

3. #2a (Building Site, General):
 - a. Please clarify if this refers to the front yard, as stated, or the Developed Public Right of Way. Are backyard fences visible from the street exempt here?
4. #3a,2&3 (Exterior Walls, Chimneys)
 - a. Most houses do not use chimneys anymore. Many chimneys in the Marquette Bungalow District have already been removed. Even when still present, they are often purely ornamental. Most that remain are not functioning since modern vented appliances (e.g furnaces and gas water heaters) can be vented much more safely through the sidewalls of our houses.
 - b. Chimney maintenance and repair is expensive yet does not usually hit the threshold for tax credits.
 - c. We would like to see the language to discourage rather than prohibit chimney removal.
5. #3a, (Exterior Walls, replacement brick)
 - a. Are replacement bricks as described here required for the entire home or just the Developed Public Right of Way view?
 - b. Replacement bricks of the same dimensions and texture are hard to find. Sometimes masons have had to remove bricks from the rear of a house to repair the front walls and put other bricks in the rear - adding significantly to the time and cost of projects. Suggested language for #3: "Owners and contractors should attempt to use brick units of similar dimension, color and permeability as the historic bricks."
6. #3b (Exterior Walls, Wood)
 - a. #1 here seems to say products other than cedar siding that have the appearance of cedar siding are acceptable. Is this interpretation correct? If it is, we believe it is extremely important to be more specific about the definition of the term "appearance of" as many siding products are manufactured with either a smooth or wood-grained face to imitate the appearance of cedar. Among these are cement fiberboard, engineered wood and vinyl.
 - b. Cedar siding is getting extremely difficult to get, lasts less long than it used to, and is inordinately expensive.
 - c. As new products become available, the Ordinance should allow them without requiring amendment. Again, a list of acceptable materials would help as we feel that the standards apply to how these alternative materials look from the regulatory vantage point.
 - d. Is flat-surfaced vinyl siding allowed? This is unclear. Many of the Bungalows are now vinyl sided.
7. #4,c, 1&2 (Exterior, Roofs, Skylights)
 - a. Are skylights on the street-facing side of a house allowed (if they are of the low-profile design)? May existing skylights be replaced in kind, and without regard to profile, when they need replacement?
 - b. The 12' back rule appears to apply to roofs that slope down toward the front of the house. What about roofs that slope down toward the sides or rear but are still in the public view per that definition?
8. #5,c (Windows and Doors, Windows)
 - a. Are owners and their contractors permitted to make determinations regarding "too deteriorated," or does PP make that decision?
 - b. We are pleased with # 3 and 4 in this section, which allow us to have current window technology in a historic building.
 - c. Window replacement because of the need for lead abatement should receive automatic approval. Requirements for replacement windows in these cases should be the same as for any other historic district window replacement project (e.g., matching the style of the house.) Refer to the comment at the start of this letter and the attachment regarding lead. The fifth paragraph of this letter cites a U.S. Department of Housing and Urban Development's Office of Lead Hazard Control and Healthy Homes study that justifies and advocates for replacing rather than treating windows and doors where lead is an issue.

- d. Are windows that are not viewable from the Developed Public Right of Way required to have divided lights or can they be of a simpler layout?
 - e. Are existing aluminum storms grandfathered in or must they be replaced? When they deteriorate, can they be replaced with similar units?
 - f. In a few cases bungalows have bump-out windows on the front or side; owners wonder if, when they wear out, a bump-out replacement similar to the current design would be permitted.
9. #5,d,3 (Pedestrian Doors)
- a. We appreciate the ability to use wood or aluminum for a storm door. Would a good quality steel door be acceptable? If so, we suggest changing the word “aluminum” to the word “metal.”
 - b. We object strongly to the requirement that storm doors be required to be painted to match either the trim or the main door. Refer to our opening comments on color requirements.
10. #5,e (Garage Doors)
- a. Are paneled metal garage doors acceptable? Many garage doors in the district have already been replaced with paneled metal garage doors. Replacement wood doors are extremely expensive and often hard to get. Further, they require more maintenance, and are harder to open and close.
11. #6,b,1&2 (Entrances, Porches, Balconies and Decks)
- a. We like the reference to a simple design.
 - b. We strongly feel railings should be allowed to be stained instead of only painted, especially since the porch itself is allowed to be stained. We also note that this is the way the Additions section reads.
 - c. Are synthetic decking materials allowed providing they have the appearance of wood (from the Public Right of Way) and have their end grain concealed? We believe they should be as they are generally high-quality products, are much more durable than wood and are far less expensive to maintain.
12. #6,d (Balconies and Decks)
- a. Please also specifically allow synthetic materials, particularly for balconies and decks not in the public view.
 - b. Indicate if board ends may be exposed when structure is not in public view. We think it should be permitted.
13. #7,c3 (Building Systems, Lighting and Electrical)
- a. Owners have virtually no control on the location of conduit and wiring entrance positions on a house. Utilities determine that. This line should be struck or changed to say “... conduit on elevations visible from the Developed Public Right of Way is to be avoided when possible.”

41.34 STANDARDS FOR ADDITIONS and 41.35 STANDARDS FOR NEW STRUCTURES

In general, comments we have made under the Alterations and Repairs sections apply to both sections. In our bungalow district, we are strongly in favor of requiring new construction to conform to the style of the other bungalows in the District.

.....

Sincerely,

Signed electronically by the following neighbors residing in the Marquette Bungalows Historic District, representing 74 individuals from 42 of the 48 homes in the district, as well as unanimous approval by the Marquette Neighborhood Association on January 24, 2022.

Signatures follow

#	NAME	STREET ADDRESS
	The Marquette Neighborhood Association unanimously approved this letter on January 24, 2022.	
1	Chuck Mitchell <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1514 Rutledge Street
2	Sally Weidemann <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1514 Rutledge Street
3	Richard B. Seguin <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1440 Rutledge Street
4	Greg Conniff <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1426 Rutledge Street
5	Dorothy Conniff <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1426 Rutledge Street
6	Guy Somers <ul style="list-style-type: none"> member of 1993 workgroup that helped draft the Marquette Bungalows ordinance 	1427 Spaight Street
7	Megan Barrow	1520 Rutledge Street
8	Rob Barrow	1520 Rutledge Street
9	Ken Baun	1512 Rutledge Street
10	Douglas Endres	1506 Rutledge Street
11	Marsha Poburka-Endres	1506 Rutledge Street
12	Jim Murphy	1500 Rutledge Street
13	Rosa Garner	1500 Rutledge Street
14	Bertie Donovan	1450 Rutledge Street
15	Ralph Johnson	1446 Rutledge Street
16	Nancy Westphal-Johnson	1446 Rutledge Street
17	Rob A. Van Nevel	1438 Rutledge Street
18	Anton S. Jamieson	1438 Rutledge Street
19	Lisa Wilson	1434 Rutledge Street
20	John Krause	1434 Rutledge Street
21	Sally Behr	1430 Rutledge Street
22	Bob McDonald	1430 Rutledge Street
23	Dave Holton	1428 Rutledge Street
24	Tori Gross	1428 Rutledge Street
25	Linda Kastein Puls	1424 Rutledge Street
26	Michael Puls	1424 Rutledge Street

27	Gale Bender	1422 Rutledge Street
28	Ben Griffiths	1418 Rutledge Street
29	Katie Mead Griffiths	1418 Rutledge Street
30	Tammy Schreiter	1402 Rutledge Street
31	Michael Gustavson	1402 Rutledge Street
32	Devan McGlenn	1521/23 Spaight Street
33	Katie McGlenn	1521/23 Spaight Street
34	Boyd McGlenn	1521/23 Spaight Street
35	Maggie McGlenn	1521/23 Spaight Street
36	Morris Young	1519 Spaight Street
37	Molly Krochalk	1519 Spaight Street
38	Tim Elfenbein	1515 Spaight Street
39	Dawn Elfenbein	1515 Spaight Street
40	Grace Van Berkel	1507 Spaight Street
41	Tony Van Berkel	1507 Spaight Street
42	Gordon M. Malaise	1447 Spaight Street
43	Donna M. Malaise	1447 Spaight Street
44	Jim Bertolacini	1443 Spaight Street
45	Ann Sexton	1443 Spaight Street
46	Jordan Petchenik	1439/41 Spaight Street
47	Susan Churchill	1433 Spaight Street
48	William Gilmore	1433 Spaight Street
49	Sharon Rickords	1433 Spaight Street #2
50	Gavin Macaulay	1431 Spaight Street
51	Thomas J. McSweeney	1423 Spaight Street
52	Randall Wiggins	1419 Spaight Street
53	Denise Wiggins	1419 Spaight Street
54	Susan E. Morrison	1415 Spaight Street
55	Kelly B. Miess	1415 Spaight Street
56	Mary Morgan	1411 Spaight Street
57	Egor Korneev	615 S. Dickinson Street
58	Kent M. Elbow	611 S. Dickinson Street
59	Paul West	605 S. Dickinson Street

60	Avicia West	605 S. Dickinson Street
61	Jennifer Perfitti	601 S. Dickinson Street
62	Tim Livingston	609 Rogers Street
63	Jenifer Livingston	609 Rogers Street
64	RJ Auner	613 Rogers Street
65	Lois Bergerson	613 Rogers Street
66	Trish Prosise	612 Rogers Street
67	Kira Loehr	612 Rogers Street
68	Erin Jonaitis	604 Rogers Street
69	Graham Jonaitis	604 Rogers Street
70	Brian Stoltenberg	612 S. Thornton Ave
71	Erin Powell	612 S. Thornton Ave
72	Robert Batyko	606 S. Thornton Ave
73	Lorie Docken	606 S. Thornton Ave
74	Rolf Rodefald	602 S. Thornton Ave

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January 1, 2019

Amy Loewenstein Scanlon, Registered Architect
Department of Public Works
Engineering Division
City County Building, Room 115
210 Martin Luther King, Jr. Blvd.
Madison WI 53703-3342

Via Email: AScanlon@cityofmadison.com
historicpreservation@cityofmadison.com

Cc: Landmarks Ordinance Review Committee:
Alder Amanda Hall: district3@cityofmadison.com
Alder Ledell Zellers: district2@cityofmadison.com
Alder Marsha Rummel: district6@cityofmadison.com
Alder Shiva Bidar-Sielaff: district5@cityofmadison.com
Alder Steve King: district7@cityofmadison.com
Jennifer Lehrke, Legacy Architecture: info@legacy-architecture.com

Dear Ms. Scanlon:

On December 10 I attended a neighborhood meeting to discuss the proposed changes to the ordinance governing Madison's historic districts. As a resident of the Bungalows district, I am concerned about lead exposure in our community, which is always a risk in homes built before 1950, when lead was a common additive in paint. I would like the revised ordinance to make it easier for homeowners to preserve their properties in ways that prioritize community safety. At this meeting, it became clear to me that the Landmarks Commission has been working with limited information about childhood lead poisoning and effective techniques for preventing it. I am writing to provide a fuller picture.

Lead exposure is a significant cause of childhood disability¹. High exposure can result in injury to renal, circulatory, and central nervous systems. Lead encephalopathy, if untreated, is often fatal. Further, low exposure has been associated with cognitive impairments, behavioral problems, and problems in school². Several research groups, using different cohorts and different study designs, have consistently estimated that each 10 to 15 µg increase in blood lead level corresponds to an average 2 to 4 point drop in IQ, with no safe lower threshold observed¹. Further, the deleterious effects of lead on cognitive performance may be even larger in lower-achieving children, placing them doubly at risk³. The behavioral problems are more insidious, and perhaps more serious. A recent investigative article in *Mother Jones* laid out the case that decadal changes in population-level criminal activity may be linked to the rise and fall of lead as an additive in gasoline⁴.

Children are at elevated risk of lead exposure for two reasons. First, the oral behaviors of young children lead them to chew on objects that may be coated in lead paint or lead-contaminated dust. For instance, a child who crawls on the floor of an older home and then places her hand in her mouth may be exposed via the dust on the floor. Second, whereas adults sequester 94% of their lead burden in their bones, the constant bone remodeling that takes place during childhood skeletal development causes lead to circulate in the blood for longer periods⁵.

Although there are many environmental sources of lead that can produce toxicity, the primary source of risk for young children is deteriorating lead paint². Windows in older homes, such as those in our historic districts, are a primary source of lead dust⁶⁷. When a window sash is raised, friction with the jamb disturbs the paint on both surfaces, creating dust. This dust accumulates on sills and floors, where it can be disturbed and ingested by small children exploring the home.

The good news is that lead-related disabilities are preventable. According to David Jacobs, former director of the U.S. Department of Housing and Urban Development's Office of Lead Hazard Control and Healthy Homes, and his colleagues, lead-safe window replacement is a preventive measure that could ultimately save the United States as much as \$67 billion, with benefits including improved lifetime earnings of those in older homes, reduced expenditures on childhood attention disorders and other medical problems, and reduced crime in adulthood⁸. In particular, window replacement has been shown to be a more effective long-term solution to environmental lead dust than are other, temporary lead control measures such as specialized cleaning and paint stabilization, with replacement leading to reductions in floor and sill dust of approximately 40 and 50 percent, respectively, relative to homes in which only temporary measures were used⁹.

In 2014, the Department of Health Services issued a report on the lead poisoning in the state of Wisconsin, in which they noted that Wisconsin children are at higher risk of lead poisoning than are those in most other states¹⁰. Madison in particular has a number of census tracts with high proportion of homes built before 1950, presumably including many or most of the historic districts. The report notes specifically that **"Repainting is less effective for controlling lead exposure from surfaces subject to weather, impact, or friction such as exterior walls, doors, or windows"** (page 22) and recommends replacement of deteriorated windows and doors, when finances permit.

Against this evidential background, it is of great concern to me that the proposed ordinance governing our historic districts does not take into account the public health relevance of window replacement in older homes. When the issue of lead abatement was raised at the neighborhood meeting I attended, the city's consultant, Jennifer Lehrke, stated that under the proposed plan, deteriorating paint would not be considered an acceptable justification for window replacement. This rule would in essence prioritize historic preservation over the life, health, and safety of our youngest and most vulnerable residents. This is simply unacceptable. In fact, one could even make the case that replacement of windows in older homes should be supported by city subsidies in much the same manner, and with the same justification, as it subsidizes homeowners in replacing lead-containing water service lines:

ultimately, healthy residents make for a more prosperous city. Absent such subsidies, the City of Madison should at least have the grace to allow homeowners who are concerned about the health and safety of their own children to use their own money on reasonable precautions against lead poisoning. The revised ordinance must contain language permitting homeowners who have evidence that their windows are contaminated with deteriorating lead paint to replace them.

On a final note, it was also concerning to me that, as a professional specializing in historic homes, Ms. Lehrke appeared to be unaware of existing research on common lead exposure routes for children. At the meeting I attended, she expressed both disbelief that windows with deteriorating lead paint are a primary source and dismissal of the utility of window replacement as a preventive measure. It is critical that our representatives be fully informed of the potential public health implications of the restrictions on homeowners that have been proposed.

Sincerely,

Erin Jonaitis

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8. Nevin R, Jacobs DE, Berg M, Cohen J. Monetary benefits of preventing childhood lead poisoning with lead-safe window replacement. *Environ Res*. 2008;106(3):410-419. doi:10.1016/j.envres.2007.09.003
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January 30, 2022

To: Ad Hoc Landmarks Ordinance Review Committee Landmarks Commission

Subject: Draft Historic District Ordinance Revisions

Dear Committee Members:

The Marquette Neighborhood Association has two historic districts – Third Lake Ridge (established 1979) and Marquette Bungalows (established 1994). Close to 75% of our residential area is in one of these historic districts. Thus, the historic district ordinance is of importance to us. We understand that the Ad Hoc Landmarks Ordinance Review Committee may vote on this ordinance in mid-late February and would like to have the comments in this letter included in the discussion.

We appreciate the time and effort that has gone into revising the ordinance, however we have some concerns. First, the timeline for public discussion and commentary is extremely short. **The MNA requests the LORC delay the vote until at least early March 2022 to accommodate fair and due process.**

Next, we would like to provide five general comments for the LORC to consider.

1. Maintain consent to make current day changes that respect a historic building

When our districts signed on to be historic districts, there was district determination of the characteristics to be preserved. Residents have been permitted to make changes that address current day needs, while still respecting their historic building. The proposed ordinance would no longer permit those types of changes. (For example, a new porch could not be added unless “historic precedent on the building” exists. Almost every home in the districts has a porch or a stoop. Third Lake Ridge has been in existence since 1979 and has not experienced many, if any, changes that negatively affect neighborhood character. The process has worked well, due in most part to guidance from staff and Landmarks review.

Additionally, we believe the character of each district should continue to be protected, and that character may well vary between districts.

2. Allow for a distinction between landmarks and buildings in historic districts.

Landmarks have singular importance, while buildings in historic districts contribute to the distinctive architectural or historic character of the district as a whole. We do not believe that each building in our historic district should be held to the same standard required for landmarks.

In the revised ordinance, city historic districts would be more tightly regulated than City landmarks, reversing the hierarchy of importance that has existed to date. Landmarks have been required to

comply, and will continue to comply, with the Secretary of the Interior's Standards for Rehabilitation, currently 10 standards. Now historic districts will essentially have to also comply with those standards through all the detail involved in this ordinance. Historic district homeowners will also have new requirements, such as not allowing new ivy to grow on walls.

3. Continue to allow general repairs without a Certificate of Appropriateness.

We agree that a CoA is appropriate for repairs that "materially alter the exterior of an existing structure." We do not believe that general repairs should require a Certificate.

4. Clarify "visually compatible" language related to new construction standards

New construction standards continue to use the same "visually compatible" language that has been in effect since the creation of Third Lake Ridge. This standard often causes contention in the neighborhood and entails a significant expenditure of stakeholder (MNA, P&D committee, residents, developers, staff, LORC, etc) to debate/decide. Our most recent mixed-use development went through five iterations and three Landmarks meeting before being approved!

We recognize that developing more specific or detailed standards could be a difficult process, but in the end, it will add clarity for all stakeholders.

5. Finalize design guidelines concurrent with ordinance approval.

Design Guidelines will be drafted at some point and approved by the Landmarks Commission. Whether these guidelines are used by residents to help them meet and understand the standards, or whether they are used by the Landmarks Commission to help apply the standards, the guidelines seem to be integral to fully understanding and applying the ordinance. They should be finalized along with the ordinance.

Thank you for considering the Marquette Neighborhood Association's request for a process delay as well as the five comments provided here. Attached is a letter from the Marquette Bungalows Historic District which is also seeking a delay and adjustments to the revisions.

Respectfully Submitted,

Jen Plants
MNA President

Marlisa Kopenski Condon
MNA Preservation & Development Committee Chair

Cc: Alder Brian Benford

Attachments: Marquette Bungalows Historic District letter



MARQUETTE BUNGALOWS NEIGHBORS GROUP

January 19, 2022

Marquette Neighborhood Association,

As requested at the January 11, 2022, Planning and Development (P&D) Committee of the Marquette Neighborhood Association (MNA), the Marquette Bungalows Neighborhood Group is happy to provide a letter of support for MNA's letter to Landmarks Review Ordinance Committee (LORC) in relation to the draft historic district ordinance now out for review. Our group is composed of 69 owners of the 47 homes in our district. This letter was reviewed by this group.

The Marquette Bungalow District was established in the early 1990's and includes only the two blocks between Dickinson, Thornton, Spaight and Rutledge Streets. All houses were built by the same development company. But each house is unique and there are many common bungalow factors, as is evident in a walk through the district.

We strongly support MNA's efforts to seek a delay in the approval of the draft revision of the Landmarks Ordinance by the City of Madison Landmarks Ordinance Review Commission (and subsequently the Common Council). Please refer to the MNA's letter to LORC for greater specificity.

In addition, we have for a long time felt that LORC has not responded to the many impassioned requests for changes to the draft ordinance that would provide specific standards for each district in addition to the general standards that would apply to all districts. The specific standards could address unique features that differentiate the five districts. The current January 2022 draft ordinance allows only two exceptions and does not begin to reflect the differences and needs of the property owners in each of the 5 districts.

We would like more time to again press for including specific standards as well as changes in the ordinance.

Thank you for your support in this effort!

For additional information, contact:

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