

1. Standards for New Construction

Each of the public meetings spoke to a couple of controversial projects that made their way to a Common Council appeal, thus resulting in the Council deciding it was time to update the ordinance. It is significant that both matters involved the visual compatibility of new construction. One was an appeal of the Edgewater, one was appeal of Landmarks failure to act on two demolition permits for 123 and 127 W. Gilman. Both cases involved "visual compatibility:" for the W. Gilman properties, Landmarks found that the gross volume of the proposed project was not visually compatible; for the Edgewater, the tower was too large.

What does the proposed ordinance do to fix this perceived problem? Nothing. The proposed ordinance continues the same use of "visual compatibility."

It is worth noting that LORC 1 found a way to fix the problem. LORC 1 changed the ordinance, MGO 41.11(2)(g):

"Gross volume, height, and other quantitative measurements of the proposed structure shall be sensitive to similar quantitative measurements of historic resources within two hundred (200) feet of the proposed structure."

The Office of the City Attorney's memorandum, prepared by ACA Strange (Drafter's analysis for substitute ordinance creating Chapter 41, Historic Preservation, and repealing and recreating Sec. 33.19, Landmarks Commission), explained this change:

"LORC recognized that a shortcoming of the current ordinance is that it suggests using gross volume (an objective measure) and height (also an objective measure) within the context of visual compatibility (a subjective measure). LORC believed this, and the lack of definitions for both gross volume and height, were a possible source of confusion surrounding the standard. Thus, LORC decided to remove gross volume and height from the visual compatibility standard. Instead of removing them from the ordinance altogether, LORC defined both terms using strict mathematical definitions and created a separate standard (found in Sec. 41.11(2)(g)) that allows those and other similar objective measurements to be compared to the same objective measurements of neighboring buildings. LORC believes this will allow a more apples to apples comparison (comparing two objective measurements) than did the previous standard. In doing so, however, LORC signaled that the Commission should not apply a strict cubic foot to cubic foot comparison when reviewing a proposed project. In other words, a building that is, for example, 10 cubic feet larger than its neighbors should not automatically be rejected just because it is mathematically larger. Instead, the Commission must make the decision whether the measurements being compared are sensitive to one another. This provides another tool for the Commission to exercise its judgment, discretion and expertise to determine whether a proposed building compliments its surroundings."
(emphasis added)

This issue could be easily resolved by two simple steps.

- (1) Delete 41.35(1)3., a provision that addresses visual size (except for “street presence”).
3. Visual Size. When determining visual compatibility for visual size, the Landmarks Commission shall consider factors such as massing, building height in feet and stories, the gross area of the front elevation (i.e., all walls facing the street), street presence, and the dominant proportion of width to height in the façade.
- (2) Add a new 41.35(1)6.:
“Massing, building height in feet and stories, the gross area of the front elevation (i.e., all walls facing the street), the dominant proportion of width to height in the façade, gross volume, and other quantitative measurements of the proposed structure shall be sensitive to similar quantitative measurements of historic resources within two hundred (200) feet of the proposed structure.”

It is worth noting that, in the past, Landmarks and LORC voiced concerns about “visual compatibility.”

- King commented on the issues with visual compatibility and volume. Staff agreed that the current language, although improved, is still difficult to use in the decision-making process for the Landmarks Commission. (9/14/17 LORC meeting minutes)
- At the beginning of this rewrite process, the consultant sought comments from the Landmarks Commissioners. Those comments included:
 - Vagueness or difficulty to understand the current standards requirements for new construction - mass, rhythm, solid to void, height issues
 - Current historic district standards contradict/do not dovetail with zoning, particularly in Third Lake Ridge where because zoning allows for taller buildings that the HP ordinance does
 - Compatible building heights, particularly in Third Lake Ridge
 - Incompatibility of tall building heights in historic districts
 - Old derelict houses being torn down and replaced with mixed use buildings on Williamson Street in Third Lake Ridge

https://www.cityofmadison.com/dpced/planning/documents/LC_Summary_Meeting_Outcomes%26Findings.pdf

It is also worth noting that “visual compatibility” does not provide any measure of clarity. This standard often causes contention and often entails a significant expenditure of time – time spent by neighborhood association, its preservation & development committee, residents, developers, staff, and the Landmarks Commission. For example, the developer of 817 Williamson submitted 5 versions of the plans before receiving Landmarks approval at the third Landmarks meeting on the project (and then had to make additional changes to obtain Plan Commission approval).

2. Definitions

Two definitions have been changed: “development” and “height.”

- Neither was discussed by LORC at its 12/21/21 meeting (the only meeting after the changes were made).
- Both of these changed definitions are wholesale incorporations of Zoning Code language.

- The Comprehensive Plan calls for the Zoning Code to be “modified as needed to ensure that the provisions of the code are consistent with ... the historic preservation ordinance.” It does not call for the historic preservation ordinance to be made consistent with the Zoning Code.

Development

Current language:

“Development means any improvement or alteration to an existing improvement.”

Proposed language:

“Development means any human-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.”

“Development” is used once in the ordinance under the definition of “Standard:”

Standard means a rule that is required. Under this ordinance, all standards adopted in a historic district must be complied with in every instance of development in that district.

It would be better to just delete the definition of “development” and change the definition of “standard” to just use the first sentence (since the second sentence does not add anything).

What is lost by the new definition? Improvements other than structures may not be adequately addressed. An “improvement” also includes “landscape feature or object intended to enhance the value or utility of a property.” Listed as examples of objects are fountains, monuments, and sculptures.

What actions will now be required to comply with the standards that currently is not? Adding a rain garden could come under ditching or lagooning. Repaving a driveway could come under paving, as could adding a walkway. Yet there are no standards that address these items.

Height

Current language:

“Height (of a building) means the vertical distance in feet measured from the arithmetic mean ground level adjoining the structure to the highest point of the roof or parapet of a building, whichever is higher, or to the top of a structure.”

Proposed Language:

“Height (of a Building) Means the following:

- (a) For accessory buildings and structures, height is measured from the average elevation of the approved grade at the front of the building to the highest point of the roof in the case of a flat roof, to the deck line of a mansard roof, and to the midpoint of the ridge of a gable, hip, or gambrel roof. The average height shall be calculated by using the highest ridge and its attendant eave. The eave point used shall be where the roof line crosses the side wall.
- (b) For principal buildings and structures, height is the average of the height of all building facades. For each facade, height is measured from the midpoint of the existing grade to the highest point on the roof of the building or structure. No

individual facade shall be more than fifteen percent (15%) higher than the maximum height of the zoning district.

- (c) For new buildings, alterations, additions, or replacement of existing buildings, height shall be measured from the natural grade prior to redevelopment. Natural grade shall be determined by reference to a survey or other information as determined by the Zoning Administrator.
- (d) Height in the DC, UOR, UMX, DR1 and DR2 districts shall be measured from the highest point along a building setback line paralleling any street adjacent to the site. In these districts accessible roofs, including the minimum structure necessary to provide access, shall not be counted as a story. However, this provision shall not be applied in violation of the Capitol View Preservation Section 28.134(3)."

"Height" is only used once under new construction: "When determining visual compatibility for visual size, the Landmarks Commission shall consider factors such as massing, building height in feet and stories, the gross area of the front elevation (i.e., all walls facing the street), street presence, and the dominant proportion of width to height in the façade."

This seems like an awful lot of calculations for a standard that currently only needs to be "visually compatible." Even if the ordinance is changed as I proposed above (quantitative measurements of a proposed structure shall be sensitive to similar quantitative measurements of historic resources), a detailed calculation of height as expressed in the draft ordinance is not needed. The historic ordinance, unlike the Zoning Code, does not have an absolute cut-off height.

What is lost under the new definition is the height of parapets. Landmarks has always considered parapets in determining whether the height of a project was visually compatible. Even the Plan Commission thought parapets should be included in calculating height in historic districts.

Architectural Feature

"Architectural Feature" is defined as "the distinguishing exterior elements of a building or structure including shape, size, design, style, fenestration, materials and decorative details." That phrase is used twice in the draft ordinance.

In contrast, "historic features" is used 8 times and is not defined. Is "historic feature" synonymous with "architectural feature?" If so, should just one phrase be used? If not, should historic feature be defined? ("Feature" is also often used without any qualifier.)

3. Staff report on proposed edits

Lead paint

It is unclear whether a window just needs to test positive for lead or needs to test positive for lead paint (e.g., leaded glass and/or lead came can test positive for lead).

Is there a reason that details such as profiles, dimensions, configuration, and photos are needed when replacing a window due to lead but not when replacing due to deterioration?

Is only exterior lead paint reason enough to replace a window?

What of windows that are not just standard multi-light windows? Can those windows also be replaced due to lead? The ordinance says: "Original decorative windows shall be repaired and retained." However, that could conflict with the right to replace due to a positive lead test. A few examples are: (1) a fixed window that is not in reach of children; (2) a window with unusual muntins; and, (3) a window with leaded glass at the top.



Color

There remain several places to remove the word "color." For example, requiring storm doors to be "in the same color as the entrance door or trim."

Alternative Materials & Materials Costs

The staff report states that "and the ordinance specifies that alternative materials are allowable."

The use of alternative materials is clear under the Standards for Repair: "Compatible substitute materials shall be similar in design, color, scale, architectural appearance, and other visual qualities." There is no comparable language under Standards for Alterations (except under replacing decorative metal features). One could argue that any material could be used in an alteration since that language is lacking, e.g., cheap vinyl could be used for residing.

Nonconformities

The staff report states that the "building code requires areas undergoing work to become compliant with current building code." This is not entirely accurate. Wis. Stats, §101.121 is the State historic building code. The purpose of this statute is to provide alternative standards which, in part, "facilitate the restoration of historic buildings so as to preserve their original or restored architectural elements and features." With a few exceptions, the owner of any qualified historic building may elect to be subject to the historic building code. For example, porch railings may not have to be 3' high.

I am mystified by this staff statement:

A recent project in the district wanted to demolish an unsympathetic front porch addition and replace it with one that was more period appropriate. They used historic porches within 200 feet to serve as the model of an appropriate porch, and the project was approved. The draft ordinance would also allow for this type of project, even when a porch had not been there previously.

A Marquette Bungalows porch that was approved in 2021 was one of the case studies. The case study said: "While open porches are found on other structures in the district, this structure did not have this feature and introducing it would be creating a conjectural architectural feature without historic precedent on this building." The staff recommendation for that case study said: "Staff believes that the standards for granting a Certificate of Appropriateness are not met and recommends the Landmarks Commission deny the project as proposed. The front stoop should be maintained and not replaced with a conjectural open porch."

The staff report says: "There were concerns that the ordinance would require previous unsympathetic alterations to be removed." The concern is also whether an unsympathetic alteration can be replaced. Could that homeowner with an unsympathetic front porch replace it with a duplicate unsympathetic front porch?

4. Historic Resources in Historic Districts will be more tightly regulated than City landmarks.

The fact that resources in historic districts would be more tightly regulated is best illustrated by an example. 101 N Hamilton, a City Landmark, received a Certificate of Appropriateness in August, 2021. Changes were permitted to this landmark that would not be permitted for historic resources in historic districts.



- The bottom arched windows are wood, replaced with aluminum. There was no discussion about whether the windows could be repaired, or even needed repair. Rather, the applicant said, per the minutes, that it is not ideal to put wood windows in a commercial building.
 - The draft ordinance would not permit this for HDs: "Only when original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details." (Or, perhaps with the revision, due to lead.)
- The front planter/landing area is built up and obscures the base of the building.
 - It is questionable whether the draft ordinance would permit this for HDs: "New site features (such as parking areas, access ramps, trash or mechanical equipment enclosures) shall be designed so that they are as unobtrusive as possible, *retain the historic relationship between the building and the landscape ...*" (emphasis added)





- Two large first-floor windows were added on the stone structure. The second floor of the stone structure added two new window openings (the one closest to “signage” was removed) - one of these is a former door, one is new. A new window opening was added to the left of the door on the brick structure.
 - The draft ordinance would not permit this for HDs: “New window openings may be added to elevations *not visible from the developed public right-of-way.*”
- (1) A belt band was added on the side of the stone structure, (2) a signage band was added on the brick structure, and (3) a cornice was added on the brick structure (the brick structure is a separate building to the right in the illustration immediately above).
 - The draft ordinance would not permit this for HDs: “The introduction of conjectural architectural features without historic precedent on the building is prohibited.”
- A parge coat was permitted above the door on the brick structure and to the easterly side. (There is an existing parge coat to the westerly side.)
 - The draft ordinance would not permit this for HDs: “Masonry not previously covered shall not be covered with stucco, exterior insulation and finish systems (EIFS), paint, or other covering.”



- A limestone base was added, which replaces the sandstone base. Per the letter of intent: "We are also proposing an added limestone base on the East Mifflin facade to cover up existing damage that has occurred to the base of the sandstone and also prevent future damage."
 - There was no evidence that the sandstone base could not be repaired or even needed repair. The draft ordinance states: "Materials and features shall be repaired by patching, splicing, consolidating, or otherwise reinforcing using recognized conservation and preservation methods for the material or feature needing repair."
 - And, if too deteriorated to repair: "Existing features shall be replaced in-kind if they are too deteriorated to repair."
 - The sandstone base has a profile that protrudes from the face of the stone building. The draft ordinance states: "The removal of historic features on elevations visible from the developed public right-of-way is prohibited."

5. Respecting the historic building and district character versus creation of museums

The proposed ordinance changes the historical approach of protecting the historic district's character, and instead protects each individual structure.

These examples illustrate how the ordinance has been applied up until now:

- A 2012 staff report (Legistar 27280, adding a small back porch) said: "Removing historic wall materials to convert an original window to a doorway adversely affects the window as an architectural feature. In this case; however, converting a window to a door is a logical progression of change that respects the historic building while allowing it to be slightly altered to address current day needs. Staff believes the intent of the Ordinance is to allow controlled and logical changes that respect the character of landmark structures." (The structure, though also a landmark, was analyzed using the TLR criteria.)
- Another 2012 staff report (Legistar 25289, an addition to the back of the house plus a two-car garage) said: "It is not the purpose of the Ordinance to create a museum setting for the buildings in a historic district. Instead, the Ordinance is supposed to allow for change in a guided historically logical way."

And a State Historical Society article says:

The good news is that historic preservation “best practices” recognize that buildings must evolve with the people who use them and with their changing needs.

<https://www.wisconsinhistory.org/Records/Article/CS4227>

The following are examples of changes that have been made to historic resources, changes that were found to respect the historic resource and to be in keeping with district character, but which would no longer be permitted if the draft ordinance is adopted.

1. Front Porch



This front porch was approved in 2021. This porch would not be approved under the draft ordinance. At the December 21, 2021 LORC meeting, the Preservation Planner said (minute 49):

“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 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.”

2. Side porch



This side porch (facing a side yard and visible from the street) on Jenifer was approved in 2012, and included changing a window into a door. Although at the back, the draft ordinance's prohibition on introducing conjectural architectural features is not limited by location.

3. First and second story front porch.



The two story front porch was approved in 1995. In 2019, the owner sought to move the center window on the second story and replace it with a door in order to access the second floor porch (Legistar 55997).

- The first story porch would likely not comply with the proposed ordinance: "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.” This porch has brackets and dentil frieze which could be deemed to not be a simple design.

- The second story porch is conjectural since no evidence existed for a second story porch and, thus, would be prohibited.
- The second story decorative window likely would not have been able to be turned into a door. The draft ordinance says: “Original decorative windows shall be repaired and retained” and “The removal of historic features on elevations visible from the developed public right-of-way is prohibited.”

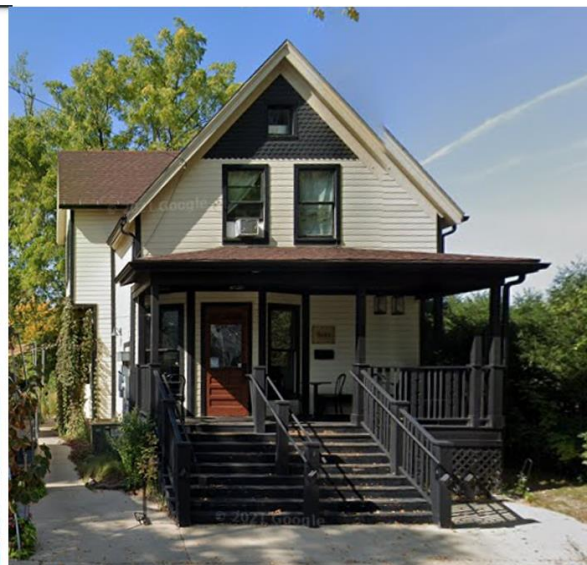
4. Chimneys

Two historic districts prohibit removal of chimneys (Marquette Bungalows and First Settlement). When a homeowner removed a chimney without prior approval in TLR (Legistar 24990, 2012), staff said: “On numerous occasions, Staff has denied administrative approval to remove chimneys and the property owners have decided not to send the issues to the Landmarks Commission for review. ... While the Third Lake Ridge section of the Ordinance does not specifically address the retention of chimneys, Staff interprets the intent of the Ordinance to retain/preserve character defining features. ... [staff] believes that the loss of the chimney, although unfortunate, is not detrimental to the overall integrity of the Third Lake Ridge Historic District at this time.” The Landmarks Commission required the chimney to be reconstructed.

Yet, further back into the past, chimney removal was administratively approved. And even the Secretary of the Interior (the federal regulator for National Historic Districts) recognizes that chimneys are not a character defining feature of *all* historic buildings: “The roof—with its form; features such as cresting, dormers, cupolas, and chimneys; and the size, color, and patterning of the roofing material—is *an important design element of many* historic buildings.” (emphasis added)

5. Adaptive reuse

1380 Williamson, Gib’s Bar



Note: Much of this project was started without a Certificate of Appropriateness. Thus, Landmarks may or may not have approved had an application been timely made.

- The front door was moved to the center opening of the bay on the first floor, and the original placement of the front door filled in. The draft ordinance would not permit this: "A limited number of openings in walls above the foundation not visible from the developed public right-of-way may be filled in a manner that retains the original opening pattern and size, and is similar in design, color, scale, architectural appearance, and other visual qualities of the surrounding wall."
- Moving the door lost the original leaded glass window at the center of the bay. The draft ordinance likely would not permit this: "Original decorative windows shall be repaired and retained."
- Second floor replacement windows are wider than the original windows. The draft ordinance likely would not permit this: "Only when original windows are too deteriorated to repair may they be replaced with new windows that replicate all design details." No evidence was submitted regarding "too deteriorated." Nothing in the draft ordinance explicitly prohibits bigger windows.
- The steps were moved and approximately doubled in width. The draft ordinance would not permit this: "A historic entrance or porch shall be retained in all instances, including change of use or space function."

A historic preservation attorney, William J. Cook, provided an opinion on the draft ordinance. See page 41 of document #64 of Legistar 56918. He said the following:

- ... the City of Madison should adopt an approach that allows for a core set of standards with district-specific differentiation and interpretive guidelines ... 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.
- 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.
- 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.

Respectfully Submitted,
Linda Lehnertz