

Zoning Ordinance

SUBCHAPTER 28A: INTRODUCTORY PROVISIONS**28.001 TITLE.**

This ordinance shall be known, cited and referred to as the Madison Zoning Code, or "this ordinance." For purposes of this Section, the phrase "this ordinance" refers to this Chapter of the Madison General Ordinances (MGO) or any condition imposed pursuant to this Chapter.

28.002 INTENT AND PURPOSE.

- (1) This ordinance is adopted for the following purposes:
- (a) To promote land uses and development patterns that are consistent with the city's comprehensive plan and of adopted neighborhood, corridor or special area plans.
 - (b) To promote and protect the public health, safety and general welfare of the City.
 - (c) To secure safety from fire, flooding, pollution, contamination and other dangers.
 - (d) To maintain and promote safe pedestrian and vehicular circulation.
 - (e) To minimize congestion in the public rights-of-way through the regulation of off-street parking, maneuvering, loading and signage.
 - (f) To ensure the provision of adequate open space for light, air, fire safety and recreation.
 - (g) To protect environmentally sensitive areas.
 - (h) To address and mitigate the effects of climate change.
 - (i) To remove obstacles and provide incentives for energy conservation and renewable energy.
 - (j) To promote and restore the conservation, protection, restoration and enhancement of historic resources.
 - (k) To facilitate the adequate, efficient and cost-effective provision of infrastructure and other public services and facilities.
 - (l) To preserve the natural scenic beauty of the City and to enhance the aesthetic desirability of the environment as well as the design of buildings.
 - (m) To encourage reinvestment in established urban neighborhoods while protecting their unique characteristics.
 - (n) To stabilize, protect, and enhance property values.
 - (o) To preserve productive agricultural land and provide opportunities for local food production.
 - (p) To encourage innovative project design in the city, including developments that incorporate mixed uses.
 - (q) To encourage the creation, promotion, sale, and enjoyment of art.
 - (r) To create a sense of place.
 - (s) To encourage pedestrian-oriented development.
 - (t) To promote the orderly development and economic vitality of the City.
 - (u) To provide an adequate variety of housing and commercial building types to satisfy the city's social and economic goals.

28.003 RELATIONSHIP TO COMPREHENSIVE PLAN.

The Madison Comprehensive Plan establishes the goals, objectives and strategies that serve as a basis for this zoning code. All regulations or amendments adopted pursuant to this ordinance shall be generally consistent with the Comprehensive Plan as adopted and revised or updated.

28.004 INTERPRETATION.

This ordinance applies to all land and land development within the jurisdictional limits of the City of Madison, Wisconsin.

- (1) In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare.
- (2) Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.
- (3) This ordinance is not intended to abrogate any easement, covenant or other private agreement. However, this ordinance applies if it is more restrictive or imposes higher standards or requirements than an easement, covenant or other private agreement.
- (4) Any use, building, structure, or lot that is lawfully existing at the time of the adoption of this ordinance, or any subsequent amendment(s), may be continued, subject to the provisions in Subchapter 28N, Nonconformities.
- (5) A building, structure or use that was unlawful when this Chapter was adopted does not become lawful solely by reason of the adoption of this Chapter. To the extent that the unlawful building, structure or use conflicts with this Chapter, the building, structure or use remains unlawful under this Chapter.
- (6) In their interpretation and application, the provisions of this ordinance shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Wis. Admin. Code ch. NR 116 or NR 117, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 116 or NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

28.005 ZONING OF ANNEXED LAND.

- (1) Pursuant to Wis. Stat. § 66.0217(8), all property annexed to the City of Madison and previously not zoned under this ordinance shall be hereby declared to be in a temporary zoning district until otherwise changed by amendment. Prior to the issuance of any permits for new construction, a permanent zoning district classification must be obtained pursuant to Sec. 28.182 of this ordinance. The following requirements also apply to annexed land:
 - (a) The Dane County floodplain zoning provisions in effect on the date lands are annexed to the City of Madison shall remain in effect and shall be enforced for all annexed lands until the City adopts and enforces an ordinance that meets the requirements of NR 116, Wis. Adm. Code and the National Flood Insurance Program. County floodplain provisions are incorporated by reference for the purpose of administering this subdivision and are on file in the office of the Zoning Administrator.
 - (b) All lands annexed to the City of Madison after May 7, 1982 shall be subject to the Dane County Shoreland Zoning Ordinance in effect at the time of annexation.

28.006 SCOPE OF REGULATIONS.

All buildings erected hereafter, all uses of land or buildings established hereafter, all structural alteration or relocation of existing buildings occurring hereafter, and all enlargements of or additions to existing uses occurring hereafter shall be subject to all regulations of this ordinance which are applicable to the zoning districts in which such buildings, uses or land shall be located. (See Transition Rules below.)

- (1) All new building sites shall meet the requirements of this ordinance unless, prior to the effective date of this ordinance a building permit was issued and is still valid; and provided construction is

28.077 DOWNTOWN RESIDENTIAL DISTRICTS.**(1) Statement of Purpose.**

These districts are intended to recognize historic Downtown neighborhoods comprised of predominantly residential uses with some non-residential uses. The districts are also intended to:

- (a) Facilitate the preservation, development or redevelopment goals of the comprehensive plan and of adopted neighborhood, corridor or special area plans.
- (b) Promote the preservation and conservation of historic buildings and districts while allowing selective infill and redevelopment based on the recommendations of adopted City plans.
- (c) Ensure that new buildings and additions to existing buildings are designed with sensitivity to their context in terms of scale and rhythm, building placement, facade width, height and proportions, garage and driveway placement, landscaping and similar design features.

28.078 DOWNTOWN RESIDENTIAL 1 DISTRICT.**(1) Permitted and Conditional Uses.**

See Table 28E-2 for a complete list of allowed uses within the downtown and urban districts.

(2) Dimensional Standards.

Standards represent minimums unless otherwise noted. Dimensions are in feet unless otherwise noted.

Downtown Residential 1 District	
Lot area (sq. ft.)	3,000
Lot width	1, 2, and 3-unit dwellings: 30 >3-unit dwellings, and non-residential and mixed-use buildings: 40
Front yard setback	15 See (a) below
Side yard setback	5 Lot width <40: 10% lot width
Rear yard setback	20% of lot depth, but at least 30 See (b) below
Maximum lot coverage	75%
Maximum height	See Downtown Height Map
Stepback	See Downtown Stepback Map
Usable open space	40 sq. ft. per bedroom See (c) below

- (a) Front yard setbacks may be designated on the zoning map as a specific location (build to line), a minimum, or a range.
- (b) Underground parking may extend into the rear yard setback if located completely below grade.
- (c) Usable open space may take the form of at-grade open space, porches, balconies, roof decks, green roofs or other above-ground amenities.

(3) Residential Point System.

To ensure a variety of housing types in the downtown area, the following point values are established:

Type of Dwelling Unit	Point Value
Studio/efficiency unit	0.75
One-bedroom unit	1
Two-bedroom unit	2
Three or more bedroom unit	3

In any development site except for the Residential - Group Living category (see Table 28E-2) the average point value for all dwelling units must be at least 1.25.

(4) Building Standards.

The following standards are applicable to new buildings and additions, within any ten- (10) year period, exceeding fifty percent (50%) of existing building's floor area.

- (a) Maximum Building Width. The maximum width of any building fronting the primary abutting street shall not exceed sixty (60) feet.
- (b) Through-lot Development. Development of through lots shall be designed with buildings oriented to each street and with a minimum distance of sixty (60) feet between rear facades of above-ground building elements. Underground parking may extend into this shared rear yard area if located completely below grade.

28.079 DOWNTOWN RESIDENTIAL 2 DISTRICT.(1) Permitted and Conditional Uses.

See Table 28E-2 for a complete list of allowed uses within the downtown and urban districts.

(2) Dimensional Standards.

Standards represent minimums unless otherwise noted. Dimensions are in feet unless otherwise noted.

Downtown Residential 2 District	
Lot area	3,000 sq. ft.
Lot width	30 for 1, 2, and 3-unit buildings 40 for 4-unit buildings and higher, and for non-residential and mixed-use buildings
Front yard setback	10 See (a) below
Side yard setback	5 Lot width <40: 10%
Rear yard setback	20% of lot depth, but no less than 20 See (b) below
Maximum lot coverage	80%
Minimum height	2 stories
Maximum height	See Downtown Height Map
Stepbacks	See Downtown Stepback Map
Usable open space	20 sq. ft. per bedroom See (c) below

- (a) Front yard setbacks may be designated on the zoning map as a specific location (build to line), minimum, or a range.

Landmarks Ordinance

33.19 LANDMARKS COMMISSION.

- (1) Purpose and Intent. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. The purpose of this section is to:
- (a) Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political and architectural history.
 - (b) Safeguard the City's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.
 - (c) Stabilize and improve property values.
 - (d) Foster civic pride in the beauty and noble accomplishments of the past.
 - (e) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.
 - (f) Strengthen the economy of the City.
 - (g) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City.

- (2) Definitions. In this section, unless the context clearly requires otherwise:

Commission means the landmarks preservation commission created under this section.

Historic district is an area designated by the commission with the consent of the Common Council which contains one or more landmarks or landmark sites, as well as those abutting improvement parcels which the commission determines should fall under the provisions of this section to assure that their appearance and development is harmonious with such landmarks or landmark sites.

Improvement means any building, structure, place, work of art or other object constituting a physical betterment of real property, or any part of such betterment.

Improvement parcel is the unit of property which includes a physical betterment constituting an improvement and the land embracing the site thereof, and is treated as a single entity for the purpose of levying real estate taxes. Provided, however that the term "improvement parcel" shall also include any unimproved area of land which is treated as a single entity for such tax purposes.

Landmark means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the City, state or nation and which has been designated as a landmark pursuant to the provisions of this chapter.

Landmark site means any parcel of land of historic significance due to a substantial value in tracing the history of aboriginal man, or upon which an historic event has occurred, and which has been designated as a landmark site under this section, or an improvement parcel, or part thereof, on which is situated a landmark and any abutting improvement parcel, or part thereof, used as and constituting part of the premises on which the landmark is situated.

Person means any individual, association, corporation or business entity. For purposes of repeated violations of the provisions of this chapter, any association, corporation or business entity is considered the same as another association, corporation or business entity if they share at least one (1) officer.

Visually related area for a corner parcel shall be defined as the area described by a circle drawn on a two hundred (200) foot radius, the center being the center of the corner parcel, i.e. the intersection of diagonals from the principal corners of that parcel. (Am. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)

Visually related area for a parcel within a block (not a corner parcel) shall be defined as the area described by a two hundred (200) foot circle drawn from the centerpoint of the streetside (front) lot line. (Am. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)

Zoned for Commercial Use shall be defined as the application of zoning categories NMX, UMX, TSS, CCT, LMX to an improvement parcel regardless of current use.

Zoned for Employment Use shall be defined as the application of zoning categories IL, IG and TE to an improvement parcel regardless of current use.

Zoned for Residential Use shall be defined as the application of zoning categories TR-V1, TR-V2, TR-U1, TR-C1, TR-C2, TR-C3, TR-C4 to an improvement parcel regardless of current use.

(Sec. 33.01(2) Am. by Ord. 6470, 1-9-79; ORD-13-00087, 5-29-13)

- (3) Landmarks Commission Composition and Terms. A Landmarks Commission is hereby created, consisting of seven (7) members. Of the membership, one shall be a registered architect; one shall be an historian qualified in the field of historic preservation; one shall be a licensed real estate broker; one shall be an alderperson; and three shall be citizen members. Each member shall have, to the highest extent practicable, a known interest in landmarks preservation. The Mayor shall appoint the commissioners subject to confirmation by the Common Council. Of the initial members so appointed, two shall serve a term of one year, two shall serve a term of two years, and three shall serve a term of three years. Thereafter the term for each member shall be three years. (Am. by ORD-09-00147, 11-6-09)
- (4) Landmarks and Landmark Sites Designation Criteria.
- (a) For purposes of this ordinance, a landmark or landmark site designation may be placed on any site, natural or improved, including any building, improvement or structure located thereon, or any area of particular historic, architectural or cultural significance to the City of Madison, such as historic structures or sites which:
1. Exemplify or reflect the broad cultural, political, economic or social history of the nation, state or community; or
 2. Are identified with historic personages or with important events in national, state or local history; or
 3. Embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship or
 4. Are representative of the notable work of a master builder, designer or architect whose individual genius influences his age.
- (b) The commission may adopt specific operating guidelines for landmark and landmark site designation providing such are in conformance with the provisions of this paragraph.
- (5) Powers and Duties.
- (a) Designation. The commission shall have the power subject to subsection (6) hereunder, to recommend to the Common Council the designation of landmarks, landmark sites and historic districts within the City limits of Madison. Such designations shall be made by the Common Council based upon subsection (4) hereof. Once designated by the Common Council such landmarks, landmark sites and historic districts shall be subject to all the provisions of this ordinance. (Am. by Ord. 11,983, 12-12-97)

(b) Regulation of Construction, Reconstruction and Exterior Alteration.

1. Any application for a permit from the Director of the Building Inspection Division involving the exterior of a designated landmark, landmark site or structure within an Historic District shall be filed with the Landmarks Commission. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
2. No owner or person in charge of a landmark, landmark site or structure within an Historic District shall reconstruct or alter all or any part of the exterior of such property or construct any improvement upon such designated property or properties within an Historic District or cause or permit any such work to be performed upon such property unless a Certificate of Appropriateness has been granted by the Landmarks Commission or its designee(s) as hereinafter provided. The Landmarks Commission may appoint a designee or designees to approve certain projects that will have little effect on the appearance of the exterior of such properties, provided that the Landmarks Commission shall first adopt a written policy on the types of projects which can be approved by its designee(s). Unless such certificate has been granted by the commission or its designee(s), the Director of the Building Inspection Division shall not issue a permit for any such work. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
3. Whenever, under Paragraph 2. above, the Landmarks Commission receives an application for a project in the University Heights Historic District which proposes to erect a new primary building, an accessory building over 100 square feet in size or an addition over 100 square feet in size to the footprint of an existing building, not including decks and open porches, the Landmarks Commission shall hold a public hearing. The Commission may establish rules and procedures for the conduct of such hearings and shall see to it that a record of the proceedings is made and preserved.

Notice of the time, place and purpose of such hearing shall be given by publication as a Class 2 Notice under the Wisconsin Statutes in the official City paper. Notice of the time, place and purpose of such public hearing shall also be sent by the City Clerk to the applicant, the Director of the Planning Division, the alderperson of the district in which the property affected is located, and the owners of record, as listed in the office of the City Assessor, of property in whole or in part situated within two hundred (200) feet of the boundaries of the properties affected, said notice to be sent at least ten (10) days prior to the date of such public hearing. The applicant shall immediately post a copy of such notice in a conspicuous manner in a common or central location of each rental building where all residents/occupants are likely to see the notice or mail a copy of the notice to each rental unit within the area entitled to notice. The applicant has the option of making the required mailing and may use labels purchased from the City or the applicant may pay the City to do the mailing. Failure to post the notice at least forty-eight (48) hours before the scheduled hearing or to mail a copy of the notice to each rental unit at least five (5) days before the scheduled hearing shall subject the applicant to a forfeiture of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100). Failure to post or mail such notices shall not affect the validity of the action taken on the application. (Cr. by Ord. 11,070, 12-6-94)

4. Upon filing of any application with the Landmarks Commission, the Landmarks Commission shall determine:
 - a. Whether, in the case of a designated landmark or landmark site, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done; and
 - b. Whether, in the case of the construction of a new improvement upon a landmark site, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site; and
 - c. Whether, in the case of any property located in an Historic District designated pursuant to the terms of Subsection (6)(d) hereunder, the proposed construction, reconstruction or exterior alteration does not conform to the objectives and design criteria of the historic preservation plan for said district as duly adopted by the Common Council.

(Sec. 33.01(4)(b)3. Renumbered to 4. by Ord. 11,070, 12-6-94)
 5. If the commission determines Subparagraphs a., b. and c. of Paragraph 4. above in the negative, it shall issue the Certificate of Appropriateness. Upon the issuance of such certificate, the building permit shall then be issued by the Director of the Building Inspection Division. The commission shall make this decision within sixty (60) days of the filing of the application. Should the commission fail to issue a Certificate of Appropriateness due to the failure of the proposal to conform to the above guidelines, the applicant may appeal such decision to the Common Council. In addition, if the commission fails to issue a Certificate of Appropriateness, the commission shall, at the request of the applicant, cooperate and work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this ordinance. (Am. by Ord. 11,648, 8-20 & 8-26-96; ORD-08-00109, 10-7-08)
 6. In addition to any other penalty provided in this section, should an owner or person in charge of a landmark, landmark site or structure within an Historic District reconstruct or alter all or any part of the exterior of such property or construct any improvement upon such designated property or properties within an Historic District or cause or permit any such work to be performed upon such property without first obtaining a Certificate of Appropriateness from the Landmarks Commission or its designee or should such reconstruction, alteration or other work be performed in violation of the conditions of a lawfully granted Certificate of Appropriateness, the Landmarks Commission, after reviewing such reconstruction, alteration or other work, may order it removed if it does not comply with the requirements of Section 33.19(5)(b)4. above or may order such renovation as is necessary to make it comply with Section 33.19(5)(b)4. (Am. by Ord. 11,648, 8-20 & 8-26-96)
- (c) Regulation of Demolition. No permit to demolish all or part of a landmark, or improvement in an Historic District, shall be granted by the Director of the Building Inspection Division except as follows: (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)
1. Scope.
Any application for a permit to demolish or remove all or part of a landmark or improvement in an Historic District shall be filed with the Landmarks Commission. Such application shall be made in all cases, both when demolition or removal is planned as an isolated event and when said demolition or removal is considered in conjunction with a special development plan, a rezoning plan or

a conditional use plan. No owner or operator of a landmark, or improvement in an Historic district, shall be granted a permit to demolish or remove such property unless a Certificate of Appropriateness therefor has been granted by the Landmarks Commission. (Am. by Ord. 8117, 10-3-83)

2.

Procedure.

The Landmarks Commission shall hold a public hearing on each application for a wrecking or removal permit and shall follow the procedures required for other hearings by Madison General Ordinance Section 28.183. Thereafter, the Landmarks Commission may decide to grant a Certificate of Appropriateness, refuse to grant such Certificate or suspend action on same for a period not to exceed one (1) year from the date of application for said permit. Failure to issue a Certificate of Appropriateness or to issue a written determination to suspend action on the application within thirty (30) days of the application date shall be deemed a refusal to grant a Certificate of Appropriateness for the demolition or removal, provided that the determination period may be extended an additional thirty (30) days by written stipulation of the applicant and the Landmarks Commission. If the Landmarks Commission determines to suspend action on the application, the Commission and the applicant shall undertake serious and continuing discussions for the purpose of finding a mutually agreeable method of saving the subject property. Furthermore, during this time the owner shall take whatever steps are necessary to prevent further deterioration of the building. At the end of the one-year period the Landmarks Commission shall act on the suspended application by either granting or refusing to grant a Certificate of Appropriateness for the proposed demolition or removal. (Am. by Ord. 9085, 1-29-87; ORD-12-00134, 1-2-13)

3.

Standards.

In determining whether to issue a Certificate of Appropriateness for any demolition, the Landmarks Commission shall consider and may give decisive weight to any or all of the following:

- a. Whether the building or structure is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;
- b. Whether the building or structure, although not itself a landmark building, contributes to the distinctive architectural or historic character of the District as a whole and therefore should be preserved for the benefit of the people of the City and the State;
- c. Whether demolition of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and to the objectives of the historic preservation plan for the applicable district as duly adopted by the Common Council;
- d. Whether the building or structure is of such old and unusual or uncommon design, texture and/or material that it could not be reproduced or be reproduced only with great difficulty and/or expense;
- e. Whether retention of the building or structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;

- f. Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it, provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness;
 - g. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the buildings and environment of the district in which the subject property is located.
- 4. (R. by Ord. 11,070, 12-6-94)
(Sec. 33.01(5)(c) Am. by Ord. 7027, 6-27-80)
- (d) Regulation of Painting Signs on Brick Buildings. No permit to paint a sign on a brick building shall be granted by the Director of the Building Inspection Division except as follows: (Am. by ORD-08-00109, 10-7-08)
 - 1. A Certificate of Appropriateness must be issued by Landmarks Commission. To qualify For a Certificate of Appropriateness:
 - a. the building must be designated a landmark or be in a locally-designated historic district.
 - b. the brick surface must have been painted previously.
 - c. the building must have been built in whole or in part for commercial or industrial use.
 - d. the sign must be an identification sign for a tenant of the building.
 - e. the sign shall not be illuminated.
 - f. the proposed sign must be of a size, style, and location that blends with the historic character of the building and/or historic district.
 - 2. The permittee must comply with the provisions of Chapter 31, Madison General Ordinances.
(Cr. by Ord. 12,313, 2-1-99)
- (e) Restoration of Painted Signs on Brick Buildings. No permit to restore a painted sign of a brick building shall be granted by the Director of the Building Inspection Division except as follows: (Am. by ORD-08-00109, 10-7-08)
 - 1. A Certificate of Appropriateness must be issued by the Landmarks Commission. To qualify for a Certificate of Appropriateness:
 - a. the building must be a landmark or be in a locally-designated historic district.
 - b. the building must have been built in whole or in part for commercial or industrial use.
 - c. the owner must be able to document the existence and appearance of the sign to be restored.
 - d. the original sign must predate 1950.
 - e. the restored sign must be the same size and in the same location as the original sign.
 - f. the restored sign must be in the same colors, if known, as the original sign.
 - g. the restored sign shall not be illuminated.
 - h. the lettering style of the restored sign shall match as closely as possible the original lettering style of the original sign, however, new words may be used.
 - 2. The permittee must comply with the provisions of Chapter 31, Madison General Ordinances.
(Cr. by Ord. 12,364, 3-30-99)

- (f) **Appeal.** An appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness under Subsection (5)(b) and (c) may be taken to the Common Council by the applicant for the permit. In addition, an appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness for any building or demolition project requiring a public hearing, whether this determination is made upon receipt of the application for a demolition permit or at the end of the one-year period in a case where action on the application has been suspended, or to suspend action on a demolition application, may also be taken to the Common Council by the Alderperson of the district in which the subject property is located, or by 20% of the property owners within 200 feet of the subject property.

Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. After a public hearing, the Council may, by favorable vote of two-thirds (2/3) of its members, based on the standards contained in this ordinance, reverse or modify the decision of the Landmarks Commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission's decision.

(Am. by Ord. 11,983, 12-12-97)

- (g) **Recognition Of Landmarks And Landmark Sites.** At such time as a landmark or landmark site has been properly designated in accordance with subsections (4) and (6) hereof, the commission shall cause to be prepared and erected on such property at City expense, a suitable plaque declaring that such property is a landmark or landmark site. Such plaque shall be so placed as to be easily visible to passing pedestrians. In the case of a landmark, the plaque shall state the accepted name of the landmark, the date of its construction, and other information deemed proper by the commission. In the case of a landmark site which is not the site of a landmark building, such plaque shall state the common name of the site, and such other information deemed appropriate by the commission. (Renumbered by Ord. 11,070, 12-6-94)

- (h) **Sale Of Landmarks And Landmark Sites.** Any party who is listed as the owner of record of a landmark site at the time of its designation, who can demonstrate to the Common Council that by virtue of such designation he is unable to find a buyer willing to preserve such landmark or landmark site, even though he has made reasonable attempts in good faith to find and attract such a buyer, may petition the commission for a rescission of its designation. Following the filing of such petition with the secretary of the commission:

1. The owner and the commission shall work together in good faith to locate a buyer for the subject property who is willing to abide by its designation.
2. If, at the end of a period not exceeding six (6) months from the date of such petition, no such buyer can be found, and if the owner still desires to obtain such rescission, the Common Council shall rescind its designation of the subject property.
3. In the event of such rescission, the City Clerk shall notify the Director of the Building Inspection Division and the City Assessor of same, and shall cause the same to be recorded in the office of the Dane County Register of Deeds. (Am. by ORD-08-00109, 10-7-08)
4. Following any such rescission, the Common Council may not redesignate the subject property a landmark or landmark site for a period of not less than five (5) years following the date of rescission.

(Am. by Ord. 11,983, 12-12-97)

(i) Other Duties. In addition to those duties already specified in this section, the commission shall:

1. Review proposed land divisions and subdivision plats of landmark sites and properties in Historic Districts to determine whether the proposed lot sizes negatively impact the historic character or significance of a landmark or landmark site and whether the proposed lot sizes are compatible with adjacent lot sizes and maintain the general lot size pattern of the Historic District. The Landmarks Commission review shall be advisory to the Plan Commission.

(Cr. by ORD-11-00123, 9-12-11)

2. Actively work for the passage of enabling legislation which would permit the granting of full or partial tax exemptions to properties it has designated under the provisions of this section in order to encourage landmark owners to assist in carrying out the intent of this ordinance.
3. Work closely with the State of Wisconsin liaison officer and the Governor's liaison committee for the National Register of Historic Places of the United States National Park Service in attempting to include such properties hereunder designated as landmarks or landmark sites on the Federal Register.
4. Work for the continuing education of the citizens of Madison about the historic heritage of this City and the landmarks and landmark sites designated under the provisions of this section.
5. As it deems advisable, receive and solicit funds for the purpose of landmarks preservation in the City of Madison. Such funds shall be placed in a special City account for such purpose.

(Renumbered by Ord. 11,070, 12-6-94; ORD-11-00123, 9-12-11)

(6) Procedures.

- (a) Designation Of Landmarks and Landmark Sites. The Landmarks Commission and the Common Council may consider nominations for landmark status. An individual or group may nominate a property for consideration. If a complete, accurate application is submitted and the Commission decides to consider the nomination, a public hearing shall be scheduled. At least ten (10) days prior to such hearing, the commission shall notify the owners of record, as listed in the office of the City Assessor, who are owners of property in whole or in part situated within two hundred (200) feet of the boundaries of the property affected. Notice of such hearing shall also be published as a Class 1 Notice, under the Wisconsin Statutes. The commission shall also notify the following: Department of Public Works, Parks Division, Fire and Police Departments, Health Division, Department of Planning and Community and Economic Development and Plan Commission. Each such department shall respond to the commission within thirty (30) days of notification with its comments on the proposed designation or rescission. The commission shall then conduct such public hearing and, in addition to the notified persons, may hear expert witnesses, and shall have the power to subpoena such witnesses and records as it deems necessary. The commission may conduct an independent investigation into the proposed designation or rescission. Within ten (10) days after the close of the public hearing, and after application of the criteria in Subsection (4), above, the commission may recommend the designation of the property as either a landmark or a landmark site or recommend the rescission of such designation. After such recommendation has been made, notification shall be sent to the property owner or owners. The commission shall report its recommendation, along with the reasons for it, to the Common Council. After considering the commission's report, and considering the standards contained in this ordinance, the Common Council may designate the property as either a landmark or a landmark site or rescind such designation. The City Clerk shall notify the Director of the Building Inspection Division and the City Assessor. The City

Clerk shall cause such designation or rescission to be recorded, at City expense, in the Dane County Register of Deeds office.

If the Commission decides not to consider a nomination, the property owner or alderperson may request that the Common Council consider the nomination. The Common Council shall then refer the nomination to the Landmarks Commission for a recommendation.

(Am. by Ord. 11,983, 12-12-97; Ord. 12,302, 1-15-99; ORD-08-00109, 10-7-08)

- (b) For those properties listed on pages 50 and 51 of the Downtown Historic Preservation Plan, the procedure to designate a property as a landmark cannot be initiated once a completed application for a conditional use, demolition permit or zoning map amendment has been submitted. (Cr. by Ord. 12,302, 1-15-99)
- (c) Voluntary Restrictive Covenants. The owner of any landmark or landmark site may, at any time following such designation of his property, enter into a restrictive covenant on the subject property after negotiation with the commission. The commission may assist the owner in preparing such covenant in the interest of preserving the landmark or landmark site and the owner shall record such covenant in the Dane County Register of Deeds office, and shall notify the City Assessor of such covenant and the conditions thereof. (Subdiv. (b) R. and (c) Renumbered to (b) by Ord. 11,070, 12-6-94)
- (d) Creation of Historic Districts.

- 1. For preservation purposes, the Landmarks Commission shall select geographically defined areas within the City of Madison to be designated as Historic Districts and shall, with the assistance of the City Department of Planning and Community and Economic Development, prepare an historic preservation plan in ordinance form for each area. An Historic District may be designated for any geographic area of particular historic, architectural, or cultural significance to the City of Madison which:

- a. Exemplifies or reflects the broad cultural, political, economic or social history of the nation, state or community; or
- b. Is identified with historic personages or with important events in national, state or local history; or
- c. Embodies the distinguishing characteristics of architectural type specimens inherently valuable for the study of a period or periods, styles, methods or construction, indigenous materials or craftsmanship; or
- d. Is representative of the notable works of master builders, designers, or architects who influenced their age.

Each historic preservation plan prepared for or by the Landmarks Commission shall include a cultural and architectural analysis supporting the historic significance of the area, the specific guidelines for development and a statement of preservation objectives.

- 2. Guideline criteria to be considered in the development of Historic District plans are as follows:
 - a. All new structures shall be constructed to a height visually compatible with the buildings and environment with which they are visually related.
 - b. The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.
 - c. In the street elevation(s) of a building, the proportion between the width and height in the facade(s) should be visually compatible with the buildings and environment with which it is visually related.
 - d. The proportions and relationships between doors and windows in the street facade(s) should be visually compatible with the buildings and environment with which it is visually related.

- e. The rhythm of solids to voids, created by openings in the facade, should be visually compatible with the buildings and environment with which it is visually related.
 - f. The existing rhythm created by existing building masses and spaces between them should be preserved.
 - g. The materials used in the final facade(s) should be visually compatible with the buildings and environment with which it is visually related.
 - h. The texture inherent in the facade should be visually compatible with the buildings and environment with which it is visually related.
 - i. Colors and patterns used on the facade (especially trim) should be visually compatible with the buildings and environment with which it is visually related.
 - j. The design of the roof should be visually compatible with the buildings and environment with which it is visually related.
 - k. The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related.
 - l. All street facade(s) should blend with other buildings via directional expression. When adjacent buildings have a dominant horizontal or vertical expression, this expression should be carried over and reflected.
 - m. Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area.
3. The guideline criteria for construction of and alterations and additions to buildings and structures in historic districts are designed to provide an understandable set of standards to ensure that alterations to the exterior of existing buildings and the creation of new buildings will be done in a manner sensitive to the character of each historic district. It is not the intent of this ordinance to discourage contemporary architectural expression that is visually compatible with its environment and otherwise meets the standards in the ordinance, to encourage the rote emulation of existing building styles or to prevent the prior lawful conforming use of buildings that are reconstructed following destruction by fire or other natural disaster. A sensitively designed building in a contemporary style may better preserve and enhance the inherent characteristics of a historic district than a mediocre adaptation of a more traditional style. (Cr. by Ord. 8690, 10-10-85 & 11-14-85; Am. by Ord. 13,001, 2-8-02)
4. Review and Adoption Procedure.
- a. Landmarks Commission. The Landmarks Commission shall hold a public hearing when considering the plan for an Historic District. Notice of the time, place and purpose of such hearing shall be given by publication as a Class 2 Notice under the Wisconsin Statutes in the official City paper. Notice of the time, place and purpose of such public hearing shall also be sent by the City Clerk to the Alder of the Aldermanic District or Districts in which the Historic District is located, and the owners of record, as listed in the office of the City Assessor, who are owners of property situated in whole or in part within the Historic

District, or situated in whole or in part within two hundred (200) feet of the boundaries of the Historic District. Said notice is to be sent at least ten (10) days prior to the date of such public hearing. Following the public hearing, the Landmarks Commission shall vote to recommend, reject or withhold action on the plan. This recommendation shall be forwarded to the City Plan Commission and the Common Council. (Am. by ORD-09-00147, 11-6-09)

- b. The City Plan Commission. The Plan Commission shall review the Historic District plan and make a recommendation to the Common Council. The Plan Commission shall make its recommendation on the Historic District plan within thirty (30) days.
- c. The Common Council. The Common Council, upon receipt of the recommendations from the Landmarks Commission and Plan Commission, shall hold a public hearing, notice to be given as noted in Subparagraph a. above, and shall following said public hearing either designate or reject the Historic District. Designation of the Historic District shall constitute adoption of the plan in ordinance form prepared for that district and direct the implementation of said plan.

(33.01(6)(d) Renumbered to (c) by Ord. 11,070, 12-6-94)

- (7) Conformance With Regulations. Every person in charge of any landmark, landmark site or improvement in an Historic District shall maintain same or cause or permit it to be maintained in a condition consistent with the provisions of this section.

- (8) Maintenance of Landmarks, Landmark Sites and Historic Districts.

- (a) Every person in charge of an improvement on a landmark site or in an Historic District shall keep in good repair all of the exterior portions of such improvement and all interior portions thereof which, if not so maintained, may cause or tend to cause the exterior portions of such improvement to fall into a state of disrepair. This provision shall be in addition to all other provisions of law requiring such improvement to be kept in good repair.

- (b) Insofar as they are applicable to a landmark, landmark site or improvement in an Historic District, designated under this section, any provision of Chapters 18 (Plumbing Code), 27 (Minimum Housing and Property Maintenance Code), 29 (Building Code), 30 (Heating, Ventilating and Air Conditioning Code) and 31 (Outdoor Signs and Outdoor Advertising Structures) of the Madison General Ordinances may be varied or waived, on application, by the appropriate board having such jurisdiction over such chapter or, in the absence of such board, by the Director of the Building Inspection Division, provided such variance or waiver does not endanger public health or safety. (Am. by Ord. 8081, 7-29-83; ORD-08-00109, 10-7-08)

- (c) Notwithstanding subdivision (a) above, sandblasting of any exterior surface of an improvement on a landmark site or in an historic district is prohibited. Other types of abrasive exterior cleaning, including but not limited to waterblasting with a sand additive, or corrosive cleaning, including but not limited to muriatic acid wash, are also prohibited unless specifically approved prior to work by the Landmarks Commission. The Landmarks Commission shall approve exterior surface cleaning projects using abrasive or corrosive cleaning methods only if the project will not adversely affect the exterior fabric of the building. (Cr. by Ord. 7923, 1-27-83)

- (9) Conditions Dangerous to Life, Health or Property. Nothing contained in this section shall prohibit the making of necessary construction, reconstruction, alteration or demolition of any improvement on a landmark site or in an Historic District pursuant to order of any governmental agency or pursuant to any court judgment, for the purpose of remedying emergency conditions determined to be dangerous to life, health or property. In such case, no approval from the commission shall be required.

(10) Mansion Hill Historic District.(a) Purpose and Intent.

It is hereby declared a matter of public policy that a specific area of the City be identified, designated, and protected because of its special character and historical interest. This area, to be called the Mansion Hill Historic District, shall be described in general by the map and specifically by the legal description on file in the City Clerk's office. The purpose and intent of this ordinance shall be to designate this area according to the creation and review and adoption procedures in Sections 33.19(6)(d)1. through 4., Landmarks Commission, of the Madison General Ordinances. (Am. by Ord. 8690, 10-10-85 & 11-14-85)

(b) (R. by Ord. 6470, 1-9-79)

(c) Criteria for Creation of Mansion Hill Historic District. In that the Mansion Hill Historic District reflects a pattern in the broad social history of Madison and in the State and the Nation, and in that elements within the District meet the other three designation criteria, namely that many of the buildings in the District:

1. Are identified with historic personages or with important events in national, state or local history;
2. Embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship;
3. Are representative of the notable work of a master builder, designer or architect whose individual genius influences his age;

The area described by the map and legal description shall be designated an historic district.

(d) Regulation of Construction, Reconstruction, Exterior Alteration and Demolition.

The Commission shall act in these matters specifically as they regard the Mansion Hill Historic District in the manner specified by Madison General Ordinance, Sections 33.19(5)(b) and (c).

(e) Guideline Criteria for new Development in the Mansion Hill Historic District.

1. The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
2. In the street elevation(s) of a new building, the proportion between the width and the height in the facade(s) shall be visually compatible with the buildings and the environment with which it is visually related (visually related area).
3. The proportions and relationships between width and height of the doors and windows in new street facade(s) shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
4. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with the buildings and environment with which it is visually related (visually related area).
5. All new street facades should blend with other buildings via directional expression. When adjacent buildings have a dominant vertical or horizontal expression, this expression should be carried over and reflected.

(f) Conformance With Regulations; Maintenance of the District; Conditions Dangerous to Life, Health and Property; Penalties for Violations; Separability.

The Mansion Hill Historic District shall be subject to the public policy guidelines established in Sections 33.19(7) through (9), and (15) and (16) of the Madison General Ordinances in all of these matters. (Am. by Ord. 10,871, Adopted 3-15-94)

(g) Reference to Plan.

The public policy guidelines in this section derive from a plan entitled "The Mansion Hill Historic Preservation Plan and Development Handbook", City Planning Department, 1975.

(Sec. 33.01(10) Cr. by Ord. 5527, 8-4-76)

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 3, 2014

MEMORANDUM

TO: Mayor Paul Soglin
All Alders

FROM: Michael P. May, City Attorney
John W. Strange, Assistant City Attorney

RE: Appeal of Landmarks Commission Certificates of Appropriateness:
121, 123, and 127 West Gilman Street, Legistar 33474, 33275

These matters are on the agenda for the April 8, 2014 meeting. Mayor Soglin requested a written opinion regarding the relative applicability of the maximum height provisions of the Zoning Ordinance, Chapter 28, MGO, and the gross volume and visual compatibility provision of the Landmarks Ordinance, Chapter 33, MGO.

Madison has many layers of land use regulation, starting with the base zoning district. In some areas there are additional regulations created by historic districts, urban design districts, wellhead protection districts, wetland overlay districts, and floodplain overlay districts, among others. Under the zoning code, all of these regulations apply in any given district.

The West Gilman Street properties are an example of this layered regulation; the official zoning for these properties is Downtown Residential 1 (DR1), Mansion Hill Historic District (HIST-MH). This Memorandum will lay out the relevant layers of land use regulation for this project, and then provide legal analysis regarding applicability to this project.

The Layers of Zoning Regulations Applicable to the Gilman Street Project.

The base layer of zoning for this project is DR1. The zoning requirements for DR1 are found in the general provisions for Downtown and Urban Districts, and in the specific provisions for DR1 found in Secs 28.071, 28.077, and 28.078, MGO (see attached). Relevant to this memorandum, these ordinances reference the downtown height map in setting the maximum allowable building height of five (5) stories (by way of reference, this is the same maximum building height allowed for these properties under the old zoning code).

In addition to the base zoning requirements for DR1, the properties on Gilman Street are also subject to additional zoning requirements because they are in the Mansion Hill Historic District. Sec. 28.146, MGO (see attached). Sec. 28.146(3) states:

The HIST-MH suffix applies to all zoning lots located within the Mansion Hill Historic District and the owners of such zoning lots are notified that any improvements thereon, whether present or proposed, *shall be constructed, maintained, altered and demolished or reconstructed in accordance with the applicable general provisions of Sec. 33.19 and the specific provisions of Sec. 33.19(10), in addition to the applicable requirements of the Zoning Code.* (Emphasis added).

These provisions make clear that the provisions of both the base zoning code and the Landmarks Ordinance apply to building projects in the Mansion Hill Historic District (this section says that the Landmarks Ordinance applies "in addition" to the zoning code). Relevant to this memorandum, Sec. 33.19, MGO (see attached) sets out the criteria for new development in the Mansion Hill District, including that the "gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related." Sec. 33.19(10)(e)1.

Legal Analysis Regarding the Relevant Applicability of the Zoning Code's DR1 maximum height provision and the Landmarks Ordinance's Gross Volume Provision.

The project at Gilman Street is proposed to be five (5) stories. Even though buildings in DR1 are allowed to be built up to five (5) stories, the Landmarks Commission denied the Certificate of Appropriateness for Construction because it found that the gross volume of the proposed building was not visually compatible with the buildings and environment with which it would be visually related. Thus, the legal issue is: because the zoning code clearly states that both provisions apply, which one prevails if one operates to limit the other?

At the outset, it is worth noting that these two provisions will not necessarily always interact in this way. For example, it is certainly possible that the Landmarks Commission could approve a project in the Mansion Hill District that is five stories tall, but of lesser gross volume and greater visual compatibility. In this instance, however, the gross volume provision in the Landmarks Ordinance is being applied in a more stringent manner than the zoning code, that is, it is being applied to limit the maximum allowable height provision in the zoning code. Fortunately, the zoning code addresses what to do when something like this happens.

Sec. 28.004(1), MGO states that "the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare." Sec. 28.004(2), MGO goes on to say that where the conditions imposed by the zoning ordinance ("this ordinance") are either more or less restrictive than regulations in "other" ordinances or laws, *"the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted."* (emphasis added). Thus, unless an exception is specifically noted, the more restrictive ordinance (or provisions thereof)

applies.

There is nothing inherent in the gross volume/visual compatibility standard of sec. 33.19(1)(e)1, MGO, that means it will in all cases be more restrictive than the zoning code's height limit. As noted above, perhaps a five story building of a different nature would be found by the Landmarks Commission to be compatible. Perhaps a six story building in some other part of the Mansion Hill District would be found to be compatible with the surrounding buildings. In the latter case, if the zoning code prescribed a five story limit, then it would be the zoning code, not the Landmarks Ordinance which was more restrictive and would apply to the development.

The point is that the zoning code's height limit and the Landmarks ordinance's gross volume/visual compatibility standard are two *different* standards or tests. The City's ordinances make it clear that both apply to this development, and whichever one is more restrictive is the one which limits the development.

In this instance, the gross volume and visual compatibility provision of the Landmarks Ordinance was applied by the Landmarks Commission to be more restrictive than the maximum building height allowed by the base zoning code. Nothing in the zoning code excepts the Landmarks Ordinance from the general rule stated in MGO 28.004(2) that the more restrictive provision applies. Thus, I conclude that, in this instance, it was legally proper for the Landmarks Commission to apply the Landmarks Ordinance in a way that denied approval of a building that fell within the height limit of the zoning code. Whether that application will be upheld is now before the Council on appeal.

The legal requirement that both standards and the most restrictive of them apply to the development does not mean that a party could not make a somewhat different policy argument: that the Landmarks Commission ought to inform its application of the gross volume/visual compatibility standard by what the zoning code says. That is a policy question for the Commission and ultimately this Council. Legally, the city's ordinances are clear that both standards apply and that which is more restrictive is what limits the development.

Some have suggested that because the Zoning Code was enacted after the Landmarks Ordinance, the Zoning Code repealed the Landmarks ordinance. I disagree. As illustrated above, the zoning code went to considerable length to specifically incorporate the Landmarks Ordinance into the land use regulation for properties in the Mansion Hill Historic District. If the Council had intended for the zoning code to repeal the Landmarks Ordinance, it would have said so.

CC: Steve Cover
Katherine Cornwell
Amy Scanlon
Richard Yde
William White

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: April 3, 2014

MEMORANDUM

TO: Alder Ledell Zellers

FROM: John W. Strange, Assistant City Attorney

RE: 121, 123, and 127 West Gilman Street, Legistar 33472, 33275

You asked me the following questions regarding the proposed project at 121, 123, and 127 West Gilman Street and asked that my answers be placed in a formal written opinion. This Memorandum answers those questions.

Question.1

Ordinance 33.19(10)(g) says "The public policy guidelines in this section derive from a plan entitled "The Mansion Hill Historic Preservation Plan and Development Handbook", City Planning Department, 1975."

- a. Does this reference to the 1975 plan give the content of that plan the weight of ordinance?
- b. Some of the content of "The Mansion Hill Historic Preservation Plan and Development Handbook" is reproduced word for word in the ordinance. In the plan there are illustrations showing the intent of the words. What standing would these illustrations have in interpreting how the words of the ordinance should be applied?
- c. There is reference in "The Mansion Hill Historic Preservation Plan and Development Handbook" to a "Core" and "Buffer" area. This concept is not included in the ordinance, unlike the visually related area concept which is included verbatim. What legal weight do the portions of the handbook subsequently included in the ordinance carry versus those not included?

Answer.1

- a. No. The Landmarks Ordinance does not specifically adopt the plan or incorporate it by reference. Therefore, the content of the plan does not carry the weight of an ordinance.
- b. If the language of the ordinance is ambiguous, the plan (including

illustrations) could be used to help interpret the meaning of the ordinance. The same would be true of any other relevant legislative history of the ordinance.

- c. Any part of the plan that has been reproduced as part of the ordinance carries the weight of law; any part of the plan that has not been included in the ordinance does not. It can, as noted, be used to interpret ambiguous language in the ordinance.

Question.2

In Sec. 33.19(5)(f), MGO, what does the "and/or" mean? Must the failure to grant a COA both preclude all reasonable use of the property AND cause a non-self-created serious hardship? Alternatively must the failure to grant a COA preclude all reasonable use of the property OR cause a non-self-created serious hardship?

Answer.2

The and/or is there to provide alternatives. As such, what it really means is a or b, or both. So, I think the Council must decide whether the failure to grant the COA would preclude all reasonable use of the property, or cause serious hardship for the owner. Put another way, the Council could vote to reverse or modify the Landmarks Commission decision if the Council finds either of those conditions present.

Question.3

There are several clauses in 33.19(5)(f), second paragraph, third sentence (which is the portion of the subsection which describes the basis on which the Council should make its decision). Is there an order in which each determination should be made to make the best/most legal decision?

Answer.3

I do not think there is an order of determination that would make Council's decision the "best or most legal." The Council's decision will be legally defensible if it considers the factors set out in the ordinance, and ultimately makes the finding required by the ordinance based on those factors. The ordinance reads that the Landmark Commission's decision may be reversed or modified "if...the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner..." This is the ultimate finding that the Council must make.

The rest of the clauses in this section represent what the Council must consider in making its finding. Thus, Council will have to consider "the standards contained in the ordinance"; balance "the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes"; decide what constitutes any and all "reasonable use of the property"; and determine whether "undue hardship" exists and, if so, whether it was "self-created". Legally, the order and degree to which Council considers these factors is not important. The important thing is that its finding be based

on these factors.

The actual order and degree to which Council considers these factors might be influenced by information provided and arguments made by the applicant or by others providing testimony, or information provided by City staff. In any event, the key is that in order to reverse or modify the Landmarks Commission, the Council must make the finding outlined above, and base its finding on the factors listed above.

We are providing a copy of the memorandum to relevant City staff. Please let us know if we should also provide a copy to the attorneys representing the applicant and opponents of the proposed development, and whether you desire to have it distributed to other alders and the Mayor.

CC: Steve Cover
Katherine Cornwell
Amy Scanlon
Michael P. May

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: March 5, 2014

MEMORANDUM

TO: Steve Cover, Director of DPCED
Katherine Cornwell, Planning Director

FROM: Michael P. May, City Attorney
John Strange, Assistant City Attorney

RE: The Gilman Street Proposal: Sec. 33.19(5)(c), MGO, the Landmarks
Commission, and Appeals to the Common Council

You requested my legal opinion on language in sec. 33.19(5)(c), MGO, and its application to a pending application for redevelopment on Gilman Street in the Mansion Hill Historic District (Legistar Items 32027 and 32076).

In order for the development to proceed, the applicant must obtain two Certificates of Appropriateness (COA) from the City's Landmarks Commission (Landmarks). The first is a COA for construction of the new buildings, sec. 33.19(5)(b), MGO. The second is a COA for the demolition of existing buildings, including moving one building, sec. 33.19(5)(c), MGO. The applicant originally asked for these approvals some months ago in 2013, and they have been pending before Landmarks for some time. At a meeting on February 17, 2014, Landmarks voted to deny the COA for construction of new buildings. At the same meeting, Landmarks took no action on the application for a COA for demolitions, adopting a motion to refer further action to its first meeting after the Common Council considered any appeal from Landmarks' action on the construction COA.

The applicant has now appealed the denial of the construction COA to the Common Council. The question you asked are:

1. What is the legal status of the demolitions COA, and is there any method of having all approvals/appeals necessary for the development to be heard by the Council at the same time?
2. How should the City treat the applicant's request, in the appeal of the construction COA, that the appeal be referred to the Plan Commission and Urban Design Commission (UDC)?

Brief Answers

1. While I believe there is a procedure to bring both COAs before the Council at the same time, which I will explain below, it is not obvious or clear under the ordinances. Our office has noted some of the difficulties with the Landmarks ordinance, and urged an effort to address those issues. I understand that the Landmarks Commission and City staff have been drafting revisions to the Landmarks ordinance to clear up some of the vagaries and inconsistencies. I recommend we try to accelerate this process. I also urge the Landmarks Commission to follow the procedures for approval or delaying approval set forth in sec. 33.19(5), MGO, and in any revised ordinance the Common Council may ultimately pass.

2. Plan Commission and UDC have no jurisdiction on the appeal of the Landmarks COA decision. While the Council theoretically may refer any matter to any committee for a recommendation, I would caution against seeking advisory opinions from bodies without legal authority, and on matters where the standards and duties are imposed on the Council, under procedures that do not contemplate such referrals. In addition, referral to these bodies which might have to take future action on zoning or design questions might raise an issue of bias. This question raises another perennial issue on which our office has urged the Council to take action: there is little or no guidance on the City's referral process.

Relevant Ordinance Language

Sec. 33.19(5)(b), MGO, governs the granting of a COA for construction by Landmarks. After setting out the standards to be applied, the ordinance provides in 33.19(5)(b)5:

If the commission determines Subparagraphs a., b. and c. of Paragraph 4. above in the negative, it shall issue the Certificate of Appropriateness. Upon the issuance of such certificate, the building permit shall then be issued by the Director of the Building Inspection Division. The commission shall make this decision within sixty (60) days of the filing of the application. Should the commission fail to issue a Certificate of Appropriateness due to the failure of the proposal to conform to the above guidelines, the applicant may appeal such decision to the Common Council. In addition, if the commission fails to issue a Certificate of Appropriateness, the commission shall, at the request of the applicant, cooperate and work with the applicant in an attempt to obtain a Certificate of Appropriateness within the guidelines of this ordinance.

The ordinance does not state what happens if the Landmarks Commission fails to issue the construction COA within the 60 day deadline in this subsection, but it appears that an appeal may only be taken when the COA is denied "due to the failure of the proposal to conform to the above guidelines ..."

Sec. 33.19(5)(c), MGO, governs the issuance of a demolition COA. In addition to setting out standards to be applied, the ordinance provides in 33.19(5)(c)2 (emphasis added):

Procedure.

The Landmarks Commission shall hold a public hearing on each application for a wrecking or removal permit and shall follow the procedures required for other hearings by Madison General Ordinance Section 28.183. *Thereafter, the Landmarks Commission may decide to grant a Certificate of Appropriateness, refuse to grant such Certificate or suspend action on same for a period not to exceed one (1) year from the date of application for said permit. Failure to issue a Certificate of Appropriateness or to issue a written determination to suspend action on the application within thirty (30) days of the application date shall be deemed a refusal to grant a Certificate of Appropriateness for the demolition or removal, provided that the determination period may be extended an additional thirty (30) days by written stipulation of the applicant and the Landmarks Commission.* If the Landmarks Commission determines to suspend action on the application, the Commission and the applicant shall undertake serious and continuing discussions for the purpose of finding a mutually agreeable method of saving the subject property. Furthermore, during this time the owner shall take whatever steps are necessary to prevent further deterioration of the building. At the end of the one-year period the Landmarks Commission shall act on the suspended application by either granting or refusing to grant a Certificate of Appropriateness for the proposed demolition or removal.

As noted above, in this instance, Landmarks did not take any of the three actions specified in the ordinance; it did not issue the demolitions COA; it did not suspend action for one year (a suspension that requires a "written determination" to so suspend); it did not "refuse to grant" the COA. Rather, it determined that since the Commission did not have an appropriate project to review, an action on the demolitions COA was not appropriate. After a series of motions, the Commission voted to refer the action to the first Landmarks Commission meeting following a final determination by the Common Council on the construction COA. This raises the question as to whether the action by Landmarks will be deemed a refusal to issue the COA because more than 30 days will pass after the application for the COA.

Sec. 33.19(5)(f), MGO, governs appeals from action or inaction by Landmarks, on either construction COAs or demolition COAs, to the Common Council. It reads (emphasis added):

Appeal. An appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness under Subsection (5)(b) and (c) may be taken to the Common Council by the applicant for the permit. In addition, an appeal from the decision of the Landmarks Commission to grant or deny a Certificate of Appropriateness for any building or demolition project requiring a public hearing, whether this determination is made upon receipt of the application for a demolition permit or at the end of the one-year period in a case where action on the application has been suspended, or to suspend action on a demolition

application, may also be taken to the Common Council by the Alderperson of the district in which the subject property is located, or by 20% of the property owners within 200 feet of the subject property.

Such appeal shall be initiated by filing a petition to appeal, specifying the grounds therefore, with the City Clerk within ten (10) days of the date the final decision of the Landmarks Commission is made. The City Clerk shall file the petition to appeal with the Common Council. After a public hearing, the Council may, by favorable vote of two-thirds (2/3) of its members, based on the standards contained in this ordinance, reverse or modify the decision of the Landmarks Commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission's decision.

This subsection giving 10 days to file an appeal means that the denial on February 17 of the construction COA must be appealed by February 28, 2014 (this appeal has been timely filed). An appeal by that date means that the first date the appeal could be heard by the Council would be the meeting of March 18, 2014. The question is whether any appeal of the demolitions COA could be brought before the Council at that time. This will be discussed below in the Legal Analysis.

Landmarks Commission Practice

I confirmed both with you, other staff, and the long-time chair of the Landmarks Commission, that Landmarks at times refers requests for COAs, both demolition and otherwise, to later meetings. Landmarks does not make a formal finding of "suspension" as the ordinance requires, nor does it seek agreement with the applicant for an extension.

This practice, under the strict reading of the ordinance that "[f]ailure to issue a Certificate of Appropriateness or to issue a written determination to suspend action on the application within thirty (30) days of the application date shall be deemed a refusal to grant a Certificate of Appropriateness", means the failure to act on a demolition COA within 30 days of the application is deemed a refusal. This also means that applications that were simply referred to later meetings probably should have been deemed refused, subjecting them to appeal within 30 days. But in the past, neither the applicants nor Landmarks has treated a series of referrals in this manner.

If the applicant, another party, or the Landmarks Commission failed to object (as appears to be the case in such referrals), one could argue that this practice amounted to the continual submittal of a new application, although that seems a stretch under the

ordinance. Or perhaps one could argue that it was series of de facto 30 day extensions, which again is contrary to the ordinance which requires such extensions to be in writing. One also could argue it is the effective equivalent of a determination to suspend, but that also flies in the face of the ordinance requiring a "written" determination of suspension. Obviously, if the end result of this practice was the issuance of a COA, then the actions of the applicant, Landmarks and the Council would amount legally to a ratification of the process in the past.

For the future, I urge the Landmarks Commission and related staff to pay much closer attention to these procedural rules (or, as noted above, revise them – explicitly allowing referral for a period of time without it being deemed a denial may be a wise change to the ordinance). If the Commission is not able to approve a demolition permit within 30 days, it should issue a formal written suspension to give itself more time, or get a written agreement with the applicant to extend the time by 30 days.

None of which is much help in this instance. Let us turn to applying the ordinance to the current set of facts.

Legal Analysis

1. Can the Demolitions COA catch up to the Construction COA?

Since the applicant has appealed the determination of Landmarks on the construction COA, the question is whether or if the applicant could also appeal the failure to approve the demolitions COA.

Since Landmarks did not take any other action such as extending the time or suspending the time to act on the application, the failure to grant the COA within 30 days of application constitutes a refusal. The applicant must appeal to the Council within 10 days of that refusal.

What was the date of application?

The original application was sometime in 2013, so Landmarks' failure to act on that within 30 days also constituted a refusal. However, all parties continued to treat the application as if it were a live, pending application. This treatment raises sticky legal issues, but they are issues we need not face at this time. Based upon feedback from Landmarks during public meetings, the applicant filed a revised application on February 12, 2014. When an application is revised significantly as was done here, the correct treatment is to have the 30 days begin to run from the new or revised application.

I conclude that, for purposes of the application of the 30 day rule in sec. 33.19(5)(c)2, MGO, the application was filed on February 12, 2014. Failure of Landmarks to approve the application by March 14 constitutes a refusal of the application, making it subject to appeal to the Council. The applicant could file the appeal anytime thereafter, up to March 24. Because the Council meets on March 18, it is unlikely that an appeal, even if

filed on March 14, would be on the agenda for March 18, the first date that an appeal of the construction COA could be heard. However, the Council could easily refer the initial COA appeal and set the public hearing for both appeals for the April 8, 2014, meeting of the Council, or at the discretion of Council leadership, simply schedule the entire matter to be heard on April 8.

The Landmarks ordinance does not suggest any specific time during which an appeal must be heard by the Council. Nothing would prevent the Council from having the public hearings and consideration of the appeal(s) occur at the April 8th meeting of the Council.

2. Referral of the Appeal to other Bodies.

The applicant, in its appeal of the decision of Landmarks to deny the construction COA, asks that the matter be referred to the Plan Commission and UDC. This is an unusual request.

The standards for the Landmarks Commission to approve the construction COA are set forth in sec. 33.19(5)(b)4, MGO:

Whether, in the case of any property located in an Historic District designated pursuant to the terms of Subsection (6)(d) hereunder, the proposed construction, reconstruction or exterior alteration does not conform to the objectives and design criteria of the historic preservation plan for said district as duly adopted by the Common Council.

The objectives and design criteria for the Mansion Hill District are in sec. 33.19(10)(e), MGO:

Guideline Criteria for new Development in the Mansion Hill Historic District.

1. The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
2. In the street elevation(s) of a new building, the proportion between the width and the height in the facade(s) shall be visually compatible with the buildings and the environment with which it is visually related (visually related area).
3. The proportions and relationships between width and height of the doors and windows in new street facade(s) shall be visually compatible with the buildings and environment with which it is visually related (visually related area).
4. The rhythm of solids to voids created by openings in the facade of the new structure should be visually compatible with the buildings and environment with which it is visually related (visually related area).
5. All new street facades should blend with other buildings via directional expression. When adjacent buildings have a dominant vertical or horizontal expression, this expression should be carried over and reflected.

And, when the appeal gets to the Council, a slightly different test applies, in that the Council must apply these same criteria, but then is required to balance the interests of the public in preservation of the property against the owner's interest in development, sec. 33.19(5)(f), MGO (emphasis added):

After a public hearing, the Council may, by favorable vote of two-thirds (2/3) of its members, based on the standards contained in this ordinance, reverse or modify the decision of the Landmarks Commission if, *after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the Council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the Certificate of Appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner*, provided that any self-created hardship shall not be a basis for reversal or modification of the Landmark Commission's decision.

The Plan Commission's duties under State law and City ordinance, ch. 28, MGO, do not include review of the standards to be applied by the Landmarks Commission or the Council under the Landmarks ordinance. The same is true of the duties of the UDC set out in sec. 33.24, MGO.

If Landmarks or the Council issues the COAs needed for the development, then it is obvious that Plan Commission and the UDC may have obligations with respect to any construction on the site. Referring these applications to Plan or UDC raises the specter that any action by those bodies would be considered a "pre-judging" of the future applications for zoning and design approval. This specific issue of risk of bias was discussed at length in my Formal Opinion 007-003:

<http://www.cityofmadison.com/attorney/documents/2007opinions/07-003.pdf>

The Council does not, however, have any standing rules on the referral of items. Matters before the Council sometimes get referred to numerous bodies (a recent report on demographic change, Legistar 32670, was referred to 13 different committees and commissions). Although our office has urged adoption of some rules or procedures governing referrals, at the present time, there are none. So, from a theoretical legal perspective, the Council could refer the Appeal anywhere it wishes.

I urge caution, however, in referring items to committees that have no authority over the matter referred. Such a referral could be considered dilatory under Robert's Rules, (RONR, page 172, I. 20-25), and may create confusion. Particularly in the land use area, Landmarks, Plan, and UDC have specific roles that should not be intermingled. For example, if the Council thinks it can refer an appeal from a Landmarks COA determination to Plan to get an advisory opinion, then it might just as well refer a standard zoning map or text amendment to Landmarks, or to Ped/Bike, for that matter.

And, as noted above, such a referral may create the impermissible risk of bias discussed in Formal Opinion 007-003.

I spoke briefly with the attorney for the applicant. He indicated that he requested referral to Plan Commission and UDC because of what he saw as inconsistent action by the Landmarks Commission in light of the newly adopted zoning code. He stated to me that the zoning code explicitly allows buildings of five stories in the Mansion Hill District. Yet, the rationale for denying the construction COA was that five stories was too high. He stated he was told that a four story building would likely be approved. While that is an interesting argument, it does not change the fact that we are operating under the Landmarks ordinance, under which the Common Council delegated certain duties to that body. The ordinance is adopted pursuant to a state law that allows additional considerations beyond the zoning code in landmark districts, see sec. 62.23(7)(em), Wis. Stats. The applicant is certainly free to make that same argument to the Common Council upon appeal of the COAs, but I do not see any legal impediment to enforcement of both the zoning code and the Landmarks ordinance.

I recommend that the Council stay away from the potential problems that might result from referrals to bodies that do not have jurisdiction over the matter being considered.

Conclusion

The Council may schedule public hearings on the appeal of the Landmarks construction COA to coincide with a potential appeal of the demolitions COA. The Council should avoid dilatory referrals.

CC: Mayor Soglin
All Alders
Amy Scanlon
Stuart Levitan
Bill White
Dick Yde
John Strange
Anne Monks

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: January 8, 2014

MEMORANDUM

TO: Katherine Cornwell

FROM: Maureen O'Brien, Assistant City Attorney

RE: Review of Demolition by Building Inspection and Landmarks Commission

You asked me to provide you some background on the building located at 127 N. Gilman Street, and to explain the differences between the Landmarks Commission demolition approval process and a Building Inspection prosecution.

In summary, the Landmarks ordinance found in MGO 33.19 outlines specific factors for the Commission to consider when reviewing a demolition request. These factors are unique to the Landmarks ordinance. The Commission should be careful to make its determination based on the factors in the ordinance, and not the actions of the Building Inspection Division.

1. Background

According to the City Assessor's website, the building's current owner is Gilman Lodge LLC. The property, along with two adjoining parcels, was purchased by Steven D. Brown in 1994. The entire combined parcel was sold to Gilman Lodge LLC in 2001. The property is in the Mansion Hill historic district, and is zoned Downtown Residential 1 (DR1). The property owner has requested approval to demolish the structure.

There are at least three separate sets of City of Madison Ordinances that regulate repair, demolition, and use of this property. First, all properties in the City are required to comply with the City's minimum housing and property maintenance code, which is found in Chapter 27. This code regulates property so that it does not become "dilapidated, unsafe, dangerous, unhygienic, overcrowded, inadequately maintained or lacking in basic equipment or facilities, light, ventilation and heating so as to constitute a menace to the health, safety and general welfare of the people." MGO 27.02(2).

Second, all properties in the City are required to comply with the zoning code, Chapter 28. The zoning code regulates the use of land to, among other things, stabilize and protect property values, protect environmentally sensitive areas, promote the conservation of historic resources, provide an adequate variety of housing types to satisfy the City's social and economic goals, and promote orderly development and economic vitality of the City. MGO 28.002(1). In addition to the general zoning rules, the DR1 zoning district provides regulations that apply within the district.

Finally, this property is in the Mansion Hill historic district. This district was established by the City's Landmarks ordinance, MGO 33.19. The Landmarks ordinance regulates construction, demolition, and repair of landmarks and properties in historic districts. Among other things, this ordinance is designed to protect, enhance, and perpetuate the use of structures of historical interest and safeguard the City's historic and cultural heritage. MGO 33.19(1).

While each set of regulations deals with the demolition request for this property, each has its own purpose, process, and rules. Each process must proceed according to its own rules and considerations.

2. Landmarks Commission Approval Standards

The Landmarks ordinance prohibits demolition of a property in an historic district unless the Landmarks Commission has granted a Certificate of Appropriateness. MGO 33.19(5)(c). When considering a request for demolition, the "Landmarks Commission shall consider and *may give decisive weight* to any or all of the following:

- a. Whether the building or structure is of such architectural or historic significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the City and the State;
- b. Whether the building or structure, although not itself a landmark building; contributes to the distinctive architectural or historic character of the District as a whole and therefore should be preserved for the benefit of the people of the City and the State;
- c. Whether demolition of the subject property would be contrary to the purpose and intent of this chapter as set forth in Sec. 33.19 and to the objectives of the historic preservation plan for the applicable district as duly adopted by the Common Council;
- d. Whether the building or structure is of such old and unusual or uncommon design, texture and/or material that it could not

- be reproduced or be reproduced only with great difficulty and/or expense;
- e. Whether retention of the building or structure would promote the general welfare of the people of the City and the State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage;
 - f. Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it, provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness;
 - g. Whether any new structure proposed to be constructed or change in use proposed to be made is compatible with the buildings and environment of the district in which the subject property is located."

MGO 33.19(5)(c)3. (*Emphasis added.*) While the Landmarks Commission is required to consider all of the listed standards, it has the flexibility to determine which standard (or standards) it finds most important. It may give decisive weight to any, or all, of them.

For example, the Commission has the authority to base its decision on standard d., the uniqueness of the building. After considering the other standards, it may give decisive weight to the fact that a structure is not of a very old, unusual, or uncommon design and its reproduction would be relatively easy or inexpensive.

Alternatively, the Commission may focus on demolition by neglect. After considering the other standards, it may give decisive weight to the fact that standard f. has not been met, because the deteriorated condition of a property is a result of the owner's failure to maintain it in good repair.

As another example, the Commission could choose to focus on the proposed new structure, under standard g. After considering the other standards, it could find that the proposed structure is compatible with the buildings and environment in the district in which the subject property is located, and give decisive weight to that factor.

3. Building Inspection Case

The City of Madison Building Inspection Division has issued work orders for repairs of the building. These relate to violations of Madison General Ordinances Chapter 27, the minimum housing code, and include orders to repair the roof,

soffits and fascia, replace missing railings, fix a broken window, remove junk, trash, debris and glass from the yard, and repair siding (inspection date 1-22-02); and to replace a wooden beam supporting the front porch, repair wood soffits/fascia, and exterior painting, (inspection date 5-25-11).

On June 1, 2013 the case was referred to the City Attorney's Office for prosecution. The issue at trial, if one were held, would be whether a violation of the minimum housing code existed on the property on the dates alleged in the complaint. Each date a violation continues is counted individually. Generally, the goal of a Building Inspection prosecution is to bring the property into compliance with the minimum housing code, to stop a problematic situation from continuing any longer. To achieve compliance, a property owner usually has the option to fix the problem or pursue demolition of the structure. This case has been set for review to allow time for the property owner to seek approval of a demolition permit.

4. Discussion and Conclusion

Each process has its own factors for consideration. The question at issue for the Building Inspection case is whether a violation of Chapter 27, the minimum housing code, existed on the property. Under the minimum housing code, the property owner is responsible for maintenance and repair regardless of the status of the property at the time of purchase. Building Inspection has the authority to charge additional fines for each day a violation continues. One means of resolving a violation is demolition of the offending structure.

When considering a request for demolition, the Landmarks Commission may consider whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it. However, Commission should not approve a demolition based on this factor if the hardship or difficulty claimed by the owner is self-created. This consideration is unique to the Landmarks Commission's review. A work order or prosecution by the Building Inspection Division does not necessarily answer this question. Additionally, how the prosecutor working with the Building Inspection Division decides to resolve that case is not a factor for the Commission to consider. The Commission must make its own determination of whether or not demolition is appropriate, based on the factors outlined in its own ordinance. The Commission may give decisive weight to any of the listed factors in MGO 33.19(5)(c).

■ Room to Grow

Providing locations and opportunities for business and residential growth is essential to achieving many of the City's overall goals and implementing many of the recommendations in this plan. This growth is also critical for maintaining the vibrancy of Downtown and its neighborhoods. Downtown offers some of the best opportunities in the region for new development and private investment. Based on a conservative estimate, this plan's land use recommendations have identified infill and redevelopment areas to accommodate at least 4,000-5,000 net new residential units and 4-5 million square feet of net new commercial development (office, retail, etc.). The estimated value of this amount of development is in the range of 2 billion to 2.5 billion dollars.²


Downtown's desirability as a place to live and work continues to be strong, but development in built-up urban areas can be challenging and is often more difficult than developing on a "greenfield" site on the edge of the city. A concern often expressed during the planning process is that the development entitlement process for Downtown projects can be lengthy and unpredictable. True or not, this perception can be detrimental to attracting new development to Downtown. Having a current plan that clearly articulates expectations and policies and reconciles sometimes competing objectives can clarify a path to achieving the overall vision. It can also help provide a basis for a more predictable and efficient development review process that reduces risk and increases confidence in Downtown's future direction.

This plan establishes a framework of recommended land uses and

development intensities that can accommodate a significant amount of new employment, housing, and mixed-use development, and the plan should be used as a primary policy document when evaluating development proposals. Its goal is to provide a guide for new development potential in a proactive and deliberate way by outlining basic parameters for new development to provide additional predictability for property owners, developers, businesses, and residents. It is important that each proposed development be evaluated not as a stand-alone project, but on how well the project fits the context of both its immediate surroundings and that of the greater Downtown and the vision embodied in this plan. This plan should lead to a more clear and consistent approval process, but some flexibility to consider projects that are not consistent with the recommendations in this plan should be allowed to be able to accommodate appropriate projects not envisioned when this plan was developed. However, this should be a clear exception. To ensure that this plan remains relevant, it should be reviewed and updated, if necessary, at least every ten years.

Downtown has experienced a significant amount of new growth and development over the last twenty years, and the changes this has produced should be celebrated. Major developments during this time include Block 89, the Dane County Courthouse, the Risser Justice Building, 44 on the Square, the State Department of Administration Building, and the Tommy Thompson State Office Building, among others. This plan allows that momentum to continue and anticipates on-going growth at similar rates.

Room to Grow Recommendations

Objective 2.4: Encourage higher density infill and redevelopment that is innovative and sustainable, and complements and enhances the areas in which they are proposed. 

Recommendation 17: Guide development to locations recommended in this plan for buildings of corresponding height and scale.

Recommendation 18: Promote high quality architecture and craftsmanship for new buildings to reinforce Downtown as an engaging and attractive employment location.

Recommendation 19: Work with the owners of properties with good redevelopment potential as identified on the Parcel Analysis Map to achieve the goals and objectives of this plan.

Recommendation 20: Create zoning districts within the Zoning Ordinance that are designed to effectively and efficiently implement the recommendations of this Downtown Plan.

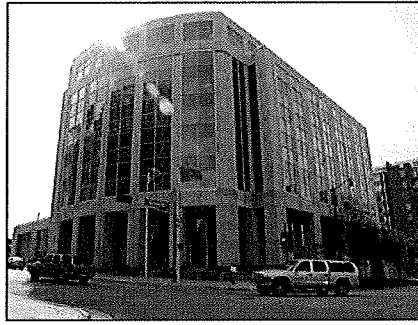
Recommendation 21: Allow existing buildings that are taller than the proposed height limits to be redeveloped at the same height provided the new building is of superior architectural design. Implement through the development of the new Downtown zoning districts.

Recommendation 22: Aggressively pursue and support the redevelopment of 1960s-1970s era "zero lot line" residential buildings, and allow new buildings up to a maximum height of 5 stories, plus an additional story if the 6th story has significant setbacks on all sides.

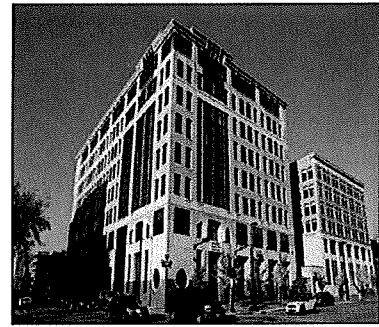
² Potential new infill and redevelopment estimates are based on the sites shown on the Parcel Analysis Map for sites over one-half acre in size, with potential additional development on unidentified smaller sites across the Downtown factored in. The estimates are based on height and land uses recommended in this plan. Planning Division staff estimated new development potential and construction value based on projects built in similar areas during the last 15 years. The estimates do not include sites containing designated landmarks, identified potential landmarks, or contributing buildings in National Register Historic Districts.



Block 89



Tommy Thompson State Office Building



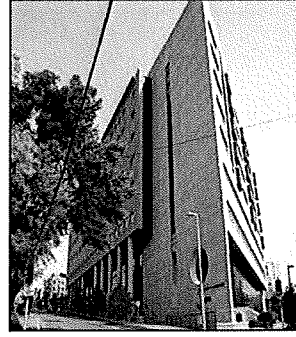
Risser Justice Building



44 on the Square



State Department of Administration Building



Dane County Courthouse

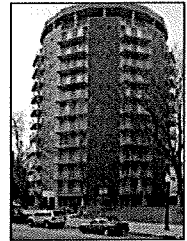
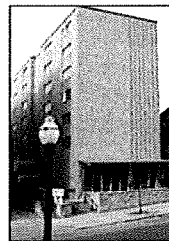
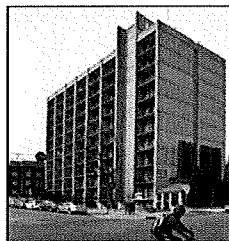
The Parcel Analysis Map identifies sites that have a potential for redevelopment or infill projects during the 20-year planning horizon. It shows only those parcels, or combinations of adjacent parcels, of one-half acre or more with the following characteristics: surface parking lots, 1960s-1970s era zero lot line developments, underutilized sites and/or obsolete buildings, public parking ramps, and vacant land. Other factors were also considered such as building condition, architectural character, and land valuation. Sites of at least one-half acre are large enough to provide opportunities to maximize flexibility in design that will facilitate creative approaches. Smaller sites with redevelopment or infill potential were not included, but can be found throughout Downtown. Successful redevelopment projects are often proposed for sites not necessarily recognized as having that potential beforehand, and this plan specifically recognizes that this is an acceptable occurrence. This is not an ultimate

build-out plan for Downtown, but a plan that will more than accommodate the growth expected during the next two decades. This plan should be revisited in approximately ten years, and revised with any new redevelopment opportunities that are identified at that time.

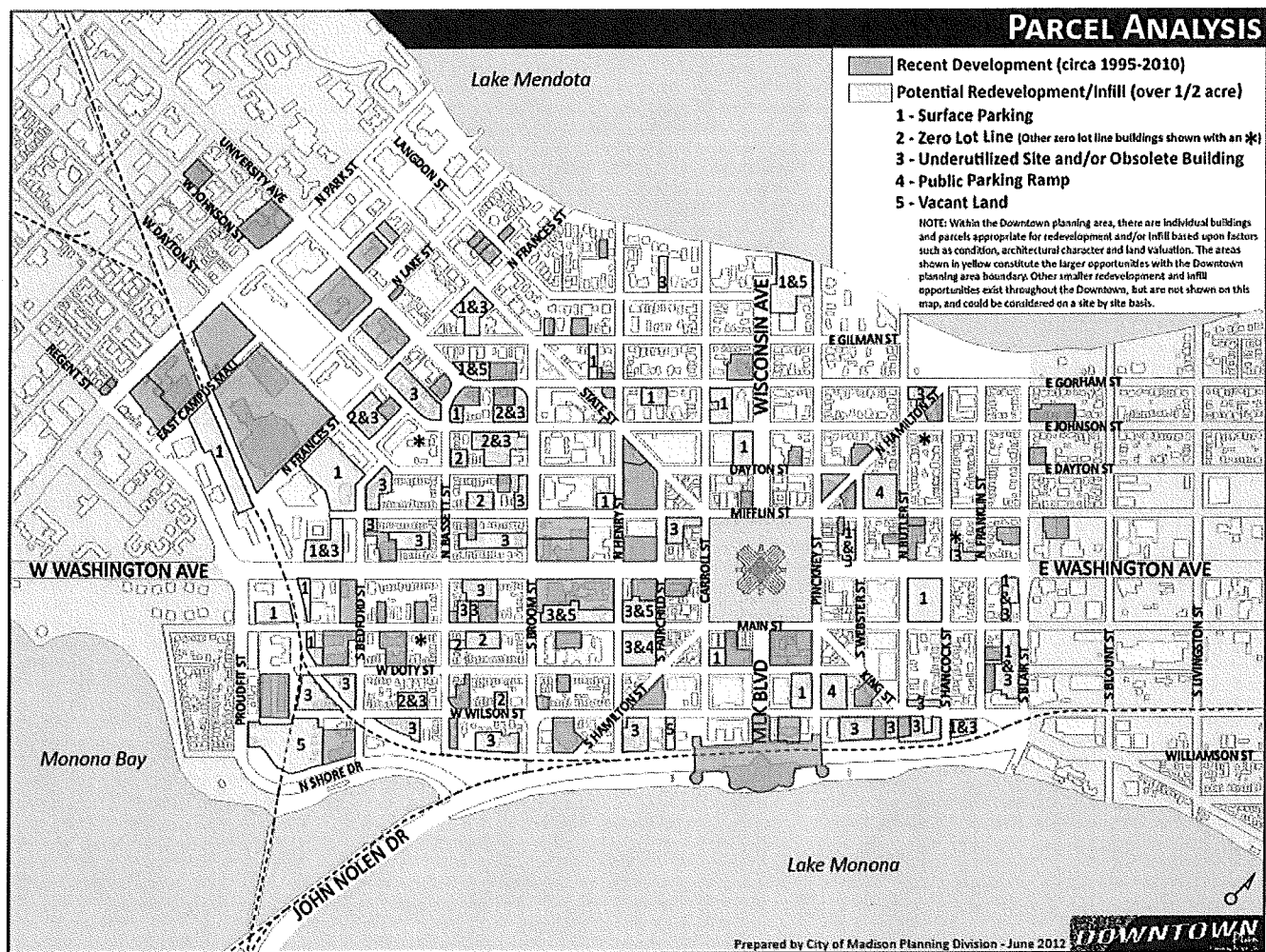
Existing Out-of-Context Buildings

There are several developments throughout Downtown that are much larger in height and/or mass than other buildings in their vicinity, and that architecturally do not contribute

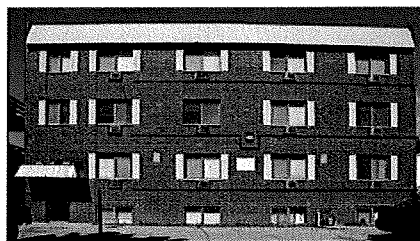
positively to the character of the surrounding area. Several of these buildings are taller than what is proposed for their area in this plan. In order to encourage redevelopment of these sites with new buildings that would enhance the area, it is proposed that new replacement buildings be allowed to be built to a similar height, density, or volume of the existing building provided that superior architectural design is required. Although the new building could be taller or larger than other buildings allowed in the area, replacing these less attractive, out-of-context structures with better designs would



Examples of buildings that are out of scale with their surroundings



benefit the neighborhood in which they are located and Downtown overall. Similarly, sites of the 1960s-1970s era zero-lot-line buildings, which are mostly three to four stories and characterized by surface parking lots in front of the buildings, should be allowed (and encouraged) to redevelop at up to a maximum of five stories, plus an additional story if stepped back on all sides, to promote their redevelopment.



Examples of 1960s-1970s era zero-lot-line buildings

Building Scale Recommendations

Objective 3.3: *Provide a flexible framework for building scale that encourages innovation and growth while reflecting the existing or planned (if recommended for change) character of the area in which a site is located and considers the larger Downtown context.*

Recommendation 49: *Establish maximum building heights as shown on the Maximum Building Heights Map and incorporate them into the Zoning Ordinance to provide variety and reflect and enhance the varied topography of Downtown. Maximum building heights may be exceeded through the planned development process. In "additional building height areas" shown on the Maximum Building Heights Map, the conditional use process may be used to approve up to two additional stories.*

Recommendation 50: *Establish building setback and/or build-to line requirements in the Zoning Ordinance that reflect the character of the areas in which the property is located. As a general rule, buildings in residential areas should be set back between 8 and 18 feet from the front property line, and buildings in mixed-use or non-residential areas should be set back between 0 and 10 feet from the front property line.*

Recommendation 51: *Establish building setback requirements in the Zoning Ordinance that reflect the character of the areas in which the property is located. As a general rule, a setback should be considered for street facades after the third or fourth story for buildings taller than five stories.*

Recommendation 52: *The City should commission the development of a digital, scale model of Downtown to assist in evaluating development proposals.*

■ Building Scale

Buildings frame the private and public spaces in which people experience Downtown, and the relationships among buildings and how they interface with the street are key determinants in defining the character of a block, street, or neighborhood, and collectively, of Downtown. Having a scale of buildings that is compatible with its surroundings leads to a built environment with a true sense of place. The building envelope defined by the allowable building height, setbacks, and stepbacks provides the basis for appropriate building scale across the planning area.

Building Heights

Allowable building height for new development is a frequent source of contention in Downtown redevelopment and infill projects, and can be a factor in longer and less predictable development review processes when structures are proposed that are taller than others in their immediate vicinity. The appropriate height for new buildings is influenced by numerous factors. Topography, important view corridors and viewsheds, the presence of historic buildings, the use and scale recommendations for an area, and the existing scale of buildings in the vicinity are among the factors considered. Developing a physical scale model of Downtown can help in this evaluation.

The Maximum Building Heights Map recommends a pattern of maximum building heights that reflects these considerations and the land use and other recommendations contained in this plan. Parts of Downtown have had maximum building heights for years through requirements of the C-4 Zoning District and Downtown Design Zones. In these areas, establishing absolute building heights has clarified expectations for new development and contributed to a more consistent and predictable development review

process. However, the tradeoff was the perceived lack of flexibility to consider taller buildings in these areas and this plan recommends that the Zoning Ordinance eliminate Downtown Design Zones and allow proposals for buildings taller than the recommended height limit to be considered through the conditional use and/or planned development process. The proposed height limitations are not intended to perpetuate the status quo, or unreasonably restrict redevelopment potential. The proposed height limits are significantly higher than most existing development in most parts of Downtown, and in fact, almost all of the development that occurred in Downtown over the past twenty years would be allowed under the proposed Maximum Building Heights Map.

The Maximum Building Heights Map illustrates the maximum height of the tallest building within each colored area, and does not illustrate more subtle height limits that may result from the protection of specific view corridors, building street setbacks, upper story building stepbacks, desired variety in building heights, or landmark or historic district designations. The map should not be interpreted as promoting the redevelopment of existing landmark buildings of less than the maximum allowed height. However, out-of-context sites with building types recommended for redevelopment (see Key 2) should be allowed to be redeveloped at taller heights than may be indicated on the map.

For the purposes of this plan, the Maximum Building Heights Map is intended to reflect recommended building heights based on typical story heights (floor-to-floor) of 14-18 feet for the first story, and 10-14 feet for upper stories. This should not be construed to allow additional stories for buildings with lower floor-to-floor heights, and buildings with taller floor-to-floor heights should reduce the number of stories accordingly. Also

■ Mansion Hill

The Mansion Hill Neighborhood possesses a rich architectural heritage as reflected by inclusion of most of the neighborhood in local and National Register Historic Districts. It contains numerous local landmarks and contributing buildings, most of which were originally very large single-family homes converted to multi-family rental properties years ago. Although it is adjacent to Lake Mendota, public access to the lake is limited by the high number of privately-owned lakefront properties.

The historic character of the area is a major asset for the city and Downtown, and new development should focus on residential opportunities that reflect these historic attributes. Several larger institutional and employment uses are also located in the neighborhood, and ensuring the long-term viability of these uses will also benefit the area. However, Mansion Hill is not viewed as a significant growth area for non-residential uses. Some limited commercial development, such as small-scale cafes or coffee shops along the lakefront in the lower

levels of lakefront buildings, may be appropriate. The largest potential site for new development is the land currently owned by National Guardian Life located between its office building and Lake Mendota. Although there has been much speculation about this site's future, a renewed interest has been generated by the approval of the Edgewater Hotel redevelopment and new proposed hotel structure on the adjacent property. This plan recommends that new development be residential, but a limited amount of complementary non-residential uses may be appropriate. Boat slips or docking facilities (but not a marina), for example, could serve residential uses on the site and in the neighborhood. A private street connecting Wisconsin Avenue to North Pinckney Street is recommended to enhance pedestrian and vehicular connectivity and provide a framework for future development.

Public views to the lake should be preserved however, and a lakefront path should be pursued as described in Keys 1 and 6. Wisconsin Avenue should be enhanced to reflect its prominence as a major avenue radiating from the Capitol.

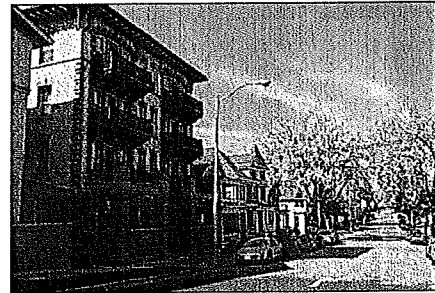
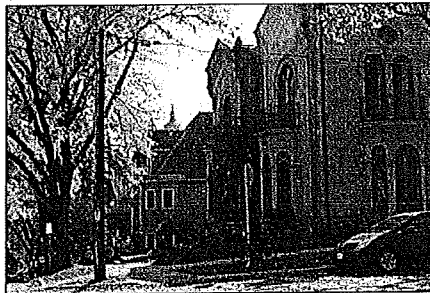
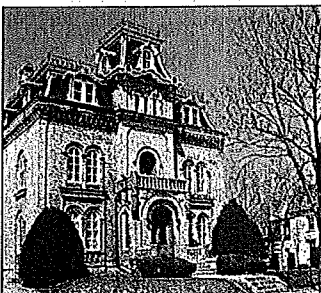
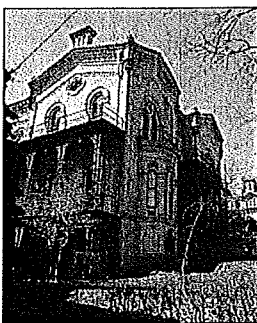
Mansion Hill Recommendations

Objective 4.10: Mansion Hill's historic character is a major asset and establishing a "complete historic district experience" of restored buildings, distinctive streetscape amenities, and a limited amount of new residential development that preserves and reflects these historic attributes should be pursued. The large historic homes provide a diversity of housing opportunities. Encourage sustainable rehabilitation of existing housing stock and period architecture, and owner occupancy.

Recommendation 98: Rehabilitate existing housing while encouraging selective residential infill.

Recommendation 99: Prepare a plan for the Mansion Hill Neighborhood, including recommendations to preserve the character of the Mansion Hill Historic District and ensure that new development is compatible with the historic context in scale and design.

Recommendation 100: Large office-employment uses should be limited to existing development, and any redevelopment or infill of these sites should encourage residential as the predominant use.



Scenes from Mansion Hill

Key 7: Build on Historic Resources

Downtown is home to the majority of the city's historic resources. These resources include dramatic structures that are iconic within the community and smaller collections of historic houses, but all contribute to the uniqueness of Downtown. This plan embraces Downtown's heritage by recommending a more comprehensive approach to bolstering the preservation of its historic districts and structures. This means not only addressing these buildings and districts from a reactive regulatory perspective, but being more proactive in establishing clear district-wide identities and objectives. These recommendations will create a more complete experience for Downtown's historic areas, including properly restored buildings, distinctive streetscape amenities, and a measured amount of new development that preserves and reflects the area's historic attributes.

The City's *Downtown Historic Preservation Plan* (adopted in 1998) includes many recommendations that are reflected in this plan relative to historic districts. It also identifies potential historic landmark properties. The recommendations of the *Downtown Historic Preservation Plan* were made after an extensive public process and were based on research, context, and the preservation goals of the City.

It has long been the City's policy to protect its historic resources. Tools currently available to preserve them include both regulatory measures through the Madison Landmarks Ordinance, and financial incentives through the National Register of Historic Places designation. Of these, the Landmarks Ordinance is the one that the City relies on most heavily. This plan proposes a more

proactive approach to enhance historic neighborhoods' true cultural amenities that, over time, will attract new investment. Brief descriptions of the existing local and National Register historic districts can be found later in this section.

Historic preservation and the desire for increased densities and new development can and should complement each other. This plan does not suggest that every building be saved simply because of its age, but its recommendations will advance a more deliberate and complete approach to historic buildings. It will also provide a degree of predictability to the development review process, while maintaining the high quality of Downtown architectural variety. Historic buildings are often successfully integrated into creative new construction projects and many times are restored as part of a larger more comprehensive development. However, simply preserving historic building facades as applied architectural treatments that are really demolition and redevelopment projects is not preservation and should not be viewed as such. Likewise, new structures in historic districts should not attempt to replicate historic buildings.

The maintenance of historic properties, especially rental properties, is an ongoing issue. This problem can be magnified when buildings are occupied by students. While many owners and landlords take great pride and reinvest significantly to keep properties at a high quality for the long term, others do not. There is a perception that some landlords simply seek to make the most of their investment by spending only what is necessary to meet the minimum housing codes. Still others purchase

Landmark Buildings and Local Historic Districts Recommendations

Objective 7.1: *Preserve historic buildings and groupings of buildings that contribute to the essential character of Downtown and its neighborhoods.*

Recommendation 182: *Review, and if necessary, revise the requirements of the Mansion Hill and First Settlement Local Historic Districts to better reflect their uniqueness, protect contributing structures, and identify opportunities for compatible new development that would strengthen these historic districts for the long term.*

Recommendation 183: *Consider establishing local Historic Districts as identified and as described in this Downtown Plan.*

Recommendation 184: *Preserve and restore landmark buildings.*

Recommendation 185: *Study the creation of financial incentives, such as a local property tax credit program, reduced assessment for improvements, grants, revolving loan fund, and/or a small cap tax increment finance (TIF) program, for the renovation and restoration of local landmarks and properties in local historic districts, including rental properties.*

Recommendation 186: *Complete the Downtown Historic Preservation Plan (1998) to ensure that it is an effective tool for preserving Downtown's heritage resources, including determining if potential landmarks are still valid and to identify whether previously unidentified buildings are now potentially eligible for landmarking.*

(continued on the next page)

Landmark Buildings and Local Historic Districts Recommendations

(continued)

Recommendation 187: Reinforce the identity of all Downtown historic districts with distinctive streetscape amenities, such as special streetlights, street signs, street tree selection, and terrace treatments, that helps create a clear definition that these districts are, in fact, special and create a branding program that includes education, marketing, and wayfinding.

Recommendation 188: Ensure that owners of historic properties are well informed about the Landmarks Ordinance through direct mailings and by working with the Building Inspection Division to distribute applicable historic district and/or local landmark requirements during inspections.

Recommendation 189: Partner with the Building Inspection Division to conduct more frequent systematic property and exterior building inspections to make sure that historic properties are in compliance with Landmarks Ordinance standards, including amending the City Code to allow staff to issue tickets for violations.

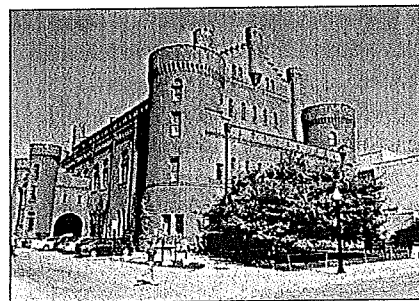
Recommendation 190: Prepare an inventory of historic properties in the State Street district and consider a local historic district designation if initiated by a representative group of property owners.

Recommendation 191: Prepare an inventory of historic properties in the Langdon Neighborhood and consider creating a local historic district that is generally coterminous with the Langdon Street National Register Historic District.

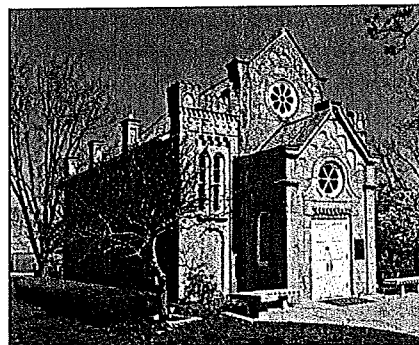
Recommendation 192: Make it a priority to designate potential landmarks in the Mansion Hill district as identified in the Downtown Preservation Plan as Madison historic landmarks.

Recommendation 193: Support the creation of a local historic district that is generally coterminous with the Fourth Lake Ridge National Register Historic District, a small portion of which runs along portions of East Gorham Street, and is within this neighborhood, if supported by a representative group of property owners.

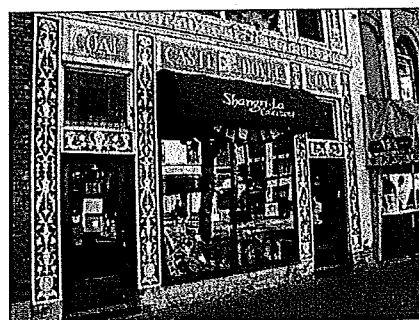
properties speculating that they will one day be able to redevelop them and in the meantime the properties fall into disrepair, leading to a de-facto "demolition by neglect." The exterior of all buildings within Downtown are scheduled to be inspected every 7-8 years for compliance with the City's housing and property maintenance ordinances. Because of the City's policy to protect the uniqueness and special significance of landmark structures and buildings in local historic districts, these properties should be inspected more often.



UW Armory and Gymnasium



Gates of Heaven Synagogue

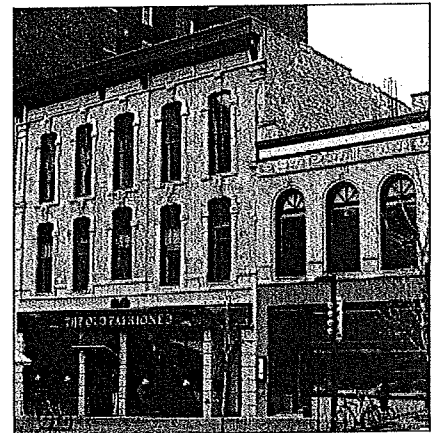


Castle and Doyle Building

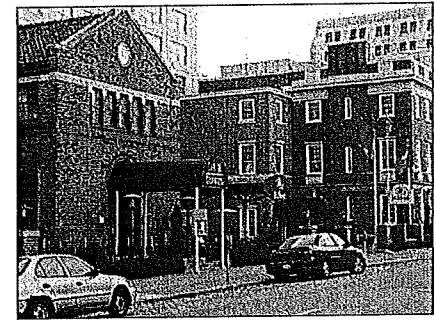
Landmark Buildings and Local Historic Districts

Historic districts provide positive local economic impacts in the district and in the City. They can contribute to the stabilization of property values, increased tax revenues, the revitalization of existing neighborhoods and small commercial districts, the expansion of tourism, and the promotion of sustainable living practices, among other benefits.

Madison's Landmarks Ordinance provides for the designation of properties as landmark sites, and for the designation of areas as local historic districts. As shown on the Local Historic Districts and Landmarks Map, there are currently 85 locally designated landmarks, 65 identified potential landmarks, and two local historic districts within the planning




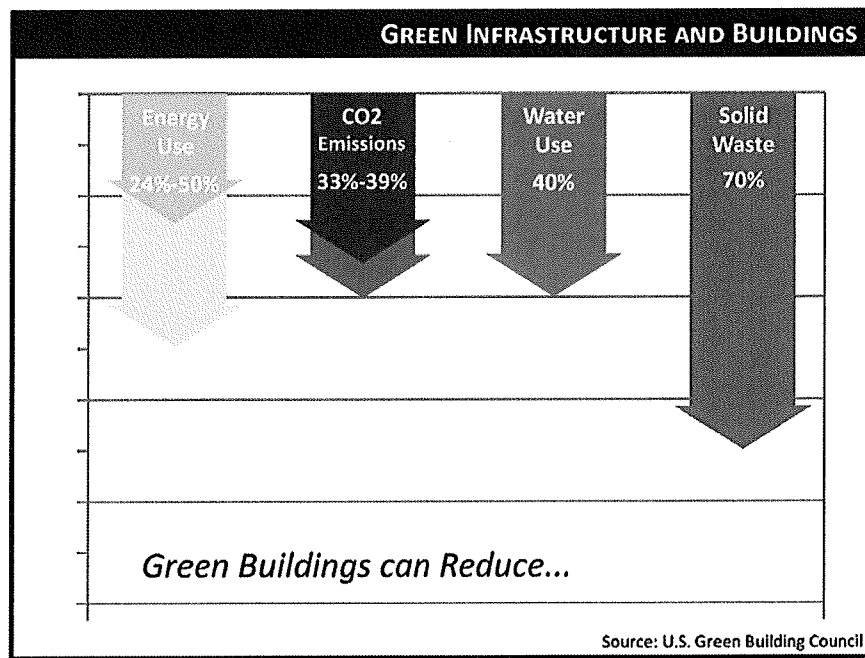
Maeder-Ellsworth Building



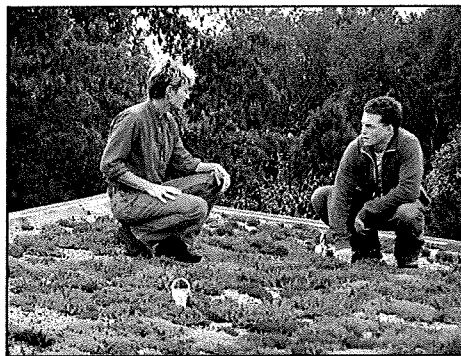
Madison Catholic Assn. Clubhouse and Madison Club

Above photos are examples of Madison historic landmarks

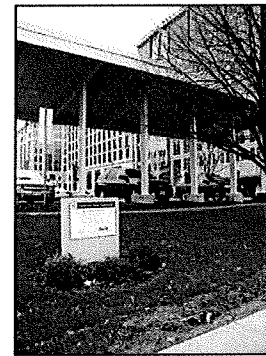
Recently, the City of Madison adopted The Natural Step as a framework for considering the environmental, social, and economic impacts of certain activities, and is soon to adopt *The Madison Sustainability Plan: Fostering Environmental, Economic and Social Resilience*. This *Downtown Plan* advances the goal of sustainability and includes recommendations that provide for a mix of uses in higher density developments, a variety and mix of housing types, preservation of existing structures, multi-modal transportation options with inter-modal connections, and easily accessible jobs, goods and services. Objectives and recommendations directly related to sustainability are noted throughout this document with a “”.



An urban solution to stormwater runoff

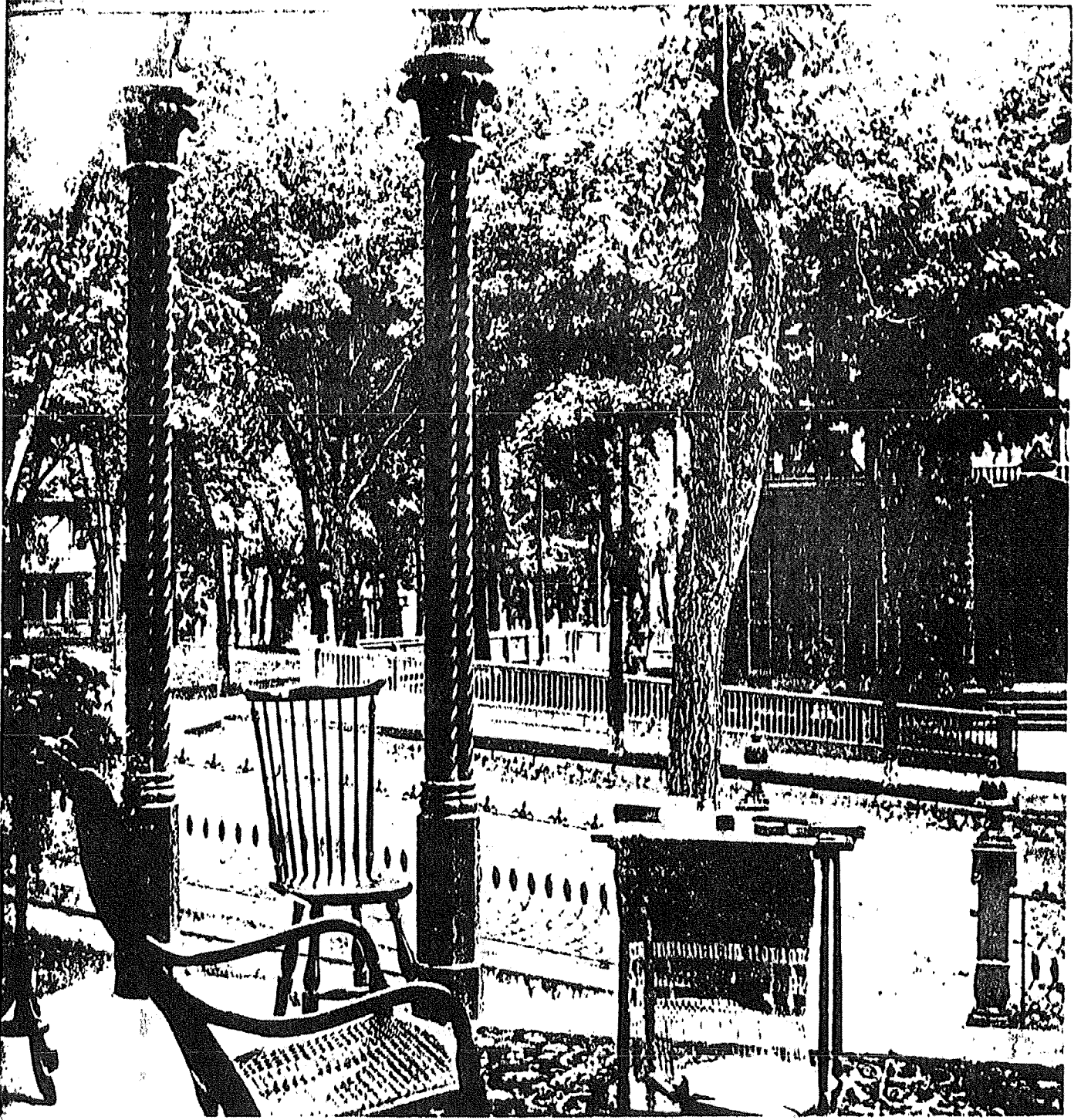


A green roof



A solar canopy

THE MANSION HILL HISTORIC DISTRICT
PRESERVATION PLAN
AND
DEVELOPMENT HANDBOOK







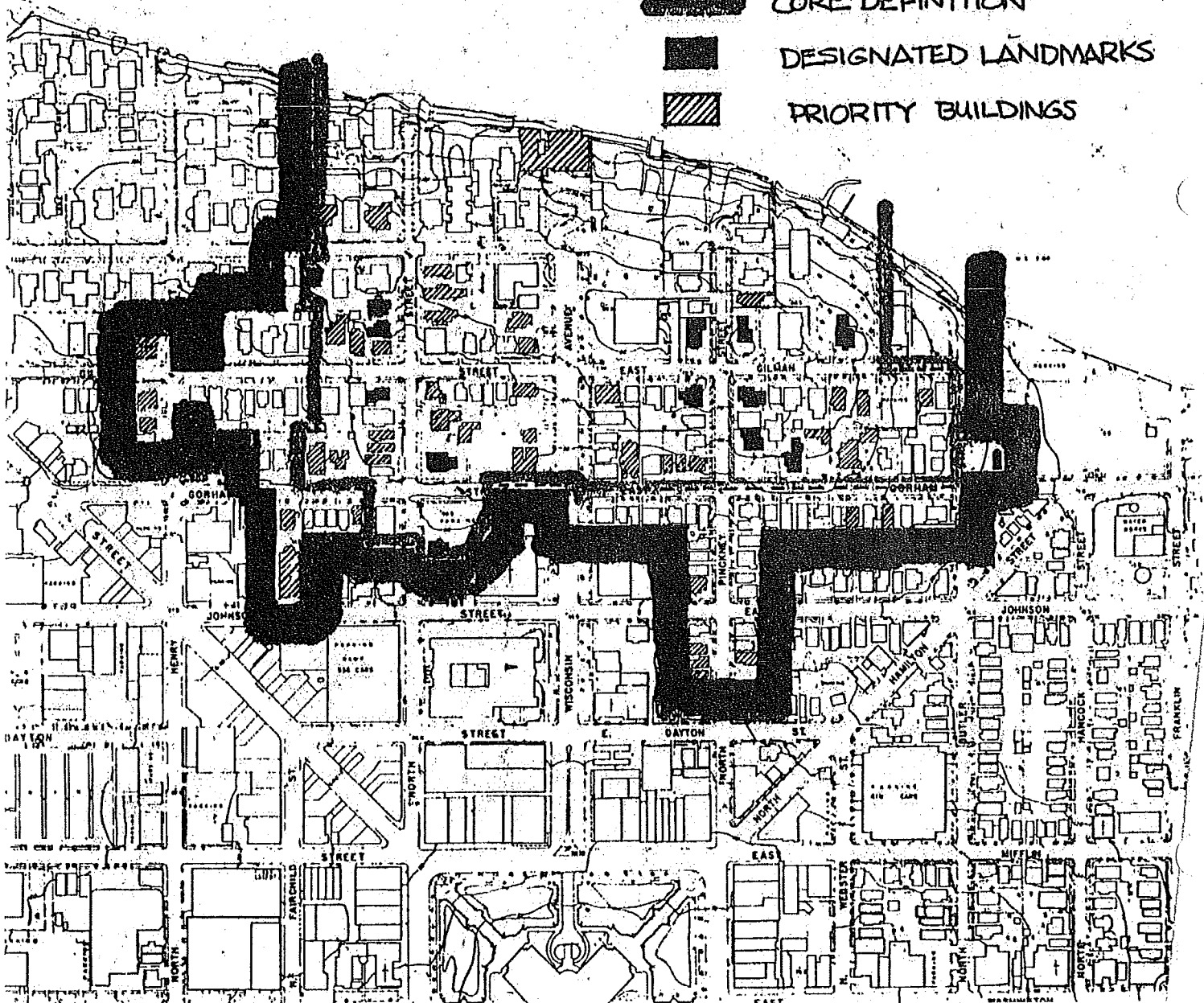
MANSION HILL: THE BOUNDARIES

After a careful assessment of the architectural and historical resources of this area today, boundaries for the District were mapped.

LAKE MENDOTA

MANSION HILL DISTRICT

-  BOUNDARIES
-  CORE DEFINITION
-  DESIGNATED LANDMARKS
-  PRIORITY BUILDINGS



When the materials are all prepared and ready, the
architects shall appear.
I swear to you the architects shall appear without fail,
I swear to you they will understand you and justify you,
The greatest among them shall be he who best knows you,
and encloses all and is faithful to all,
He and the rest shall not forget you, they shall perceive
that you are not an iota less than they,
You shall be fully glorified in them.

Whitman, Leaves of Grass, 1855.

DESIGNATION

The Mansion Hill Historic District is among the City's most valuable historical, architectural, and cultural resources. It is a unique place, and its uniqueness is felt by native and visitor alike. There is nowhere else like it: it is a one of a kind species. No one can replace it if it is destroyed: it is one of America's non-renewable resources.

Social movements are difficult to document at a personal or even local level and it would be folly to assume too much about socio-political interaction on Mansion Hill. However, just prior to the turn of the century, the neighborly mingling of people from the academic, governmental, and business sectors in this District probably made it a regional laboratory for the Wisconsin Idea, a concept that was to have nationwide significance in the Progressive Era of the early twentieth century. Truly the boundaries of action for these people were the boundaries of the State, and, more significantly, the concept of utilization of expertise from other fields to solve problems was given some of its earliest testing here. The interaction of these social, political, and business experts occurred as a natural neighborhood function in the old Mansion Hill District. For example, Dean Bryant with help from Regent Stevens was able to solve a controversy initiated by Judge Bashford about part-time instructors in the Law School; and Thomas Brittingham, a lumber company executive, maintained a long-time interest in the University and eventually endowed it with a considerable portion of his wealth.

In that the Mansion Hill Historic District reflects a pattern

In that the Mansion Hill Historic District reflects a pattern in the broad social history of Madison and in the State and the Nation, and in that elements within the District meet the other three designation criteria, (see Appendix G) namely that many of the buildings in the District:

- 1) are identified with historic personages or with important events in national, state or local history;
- 2) embody the distinguishing characteristics of an architectural type specimen, inherently valuable for a study of a period, style, method of construction, or of indigenous materials or craftsmanship;
- 3) are representative of the notable work of a master builder, designer or architect whose individual genius influences his age;

it shall be the firm determination of the City of Madison to designate the Mansion Hill Historic District, the first area of the City to be so designated, as an Historic District according to Section 33.01(6)(d) of the Madison General Ordinances with all guidelines and ordinance powers pursuant to designation to be administered by the Landmarks Commission.

HISTORY OF THE MANSION HILL DISTRICT: The Core Social Neighborhood

The Mansion Hill District existed in the nineteenth century as an elite social neighborhood with a middle class buffer zone surrounding its core. Indeed, the social configurations of the historic neighborhood significantly affected its developing architectural identity in the nineteenth century and made it physically distinguishable from other neighborhoods. Today much of the physical fabric of the neighborhood including its upper-middle class and middle-class buffer zone remain as a tangible document of its past social history.

Three periods distinguish the pre-World War I history of the core area alternately known as "Yankee Hill," Aristocrat Hill," or "Big Bug Hill". Though not one of the first settled areas of Madison, by the 1850's the neighborhood was building the substantial residences, some of local sandstone, that have characterized the area to this day. By the 1890's, "Big Bug Hill" entered its peak period as the active center of social life in the city. Around 1910, the neighborhood changed slightly to accommodate more academics and business people, while some of its older families died out or moved away. During each of these periods, however, the social nature of the neighborhood remained largely the same. One of the most significant features of the area was the mingling of experts from business, politics, and education, a key concept in the developing Wisconsin Idea.

A particular sample of sixty-four people who lived in the area selected over a period of years reveals a high social and economic status, and by implication a high educational status among these residents. These sixty-four, allowing for some overlap into more than one category included:

- 8 judges
- 18 other public officials
- 8 bankers
- 8 real estate developers
- 10 proprietors or merchants
- 6 regents of the University of Wisconsin
- 16 professors

Offices held by public servants ranged from the federal-level positions of Senator, Secretary of the Interior, Postmaster General, District Judge, U.S. Marshall, U.S. Assistant Attorney General, and Minister to China; to state positions including Governor, Treasurer, Court Justice, Auditor, Speaker of the Assembly, Senator, Assemblyman; and to municipal positions including Judge, Mayor, Alderman, City Clerk, and member of the Board of Education.

Financiers in real estate and banking counted such notables as N.B. Van Slyke, the prominent Timothy Brown family, the private banker J.J. Suhr, and early developer James Richardson. Important as regents of the university were Ezra Carr, Obadiah Conover, N.B. Van Slyke, and Breese Stevens. Outstanding professors included Dean E.E. Bryant of the Law School, Frederick Jackson Turner, one of the university's most eminent historians, Paul Reinsch, early political scientist, and Edward Van Vleck, nationally known mathematician.

Two conclusions of significance should be drawn from the survey of occupations of these past residents of Mansion Hill. First, there was large but not total concentration of the social elite of Madison in the core area. Second, while prominent Madisonians might reside elsewhere, within this district itself, there was a general homogeneity of social class. There were no skilled or unskilled workers who owned property in the core area. Upper class and upper middle class people characterized the area solely.

The widespread incidence of domestic residents further indicated the class of the neighborhood. A sample survey of the first two blocks of Langdon Street in the 1896-97 city directory (see Appendix E) revealed that of twenty residences, apparently only two had no domestic servants. Some residences employed two servants and several of their neighbors even retained coachmen. Interestingly, the original core area, outlined on the map (fig. 1), extended well down Langdon Street toward the University and included the 400 and 500 blocks of North Henry Street. These areas are only partially included in the present district because of the substantial number of demolitions of key structures over the past seventy-five years.

The occupations of the neighborhood and the existence of substantial domestic establishments show one type of conformity, but beyond this fact there was a definite cohesiveness among the residents of Mansion Hill. They interacted politically, economically, and socially.

The active political life of the residents has been mentioned. A striking example at an individual level occurred when Judge C. V. Bardeen of the Wisconsin Supreme Court died in 1903. Robert M. LaFollette, residing in the old Governor's Mansion, appointed his former

law partner Robert Siebecker to the Court. Siebecker not only assumed Bardeen's seat but moved into Bardeen's former residence, the Timothy Brown House. Further, a third justice lived in this same house when from 1922 to 1936 Timothy Brown, a grandson of the original owner and also a justice resided at 116 E. Gorham.

The First National Bank exemplified the close economic ties that existed among the neighbors of Mansion Hill. Early settlers, N.B., Van Slyke (510 N. Carroll), James Richardson (28 E. Gilman), Levi Vilas (N. Henry Street) and Timothy Brown (116 E. Gorham), organized the bank. In 1880, N.B. Van Slyke became president of the bank, responsible to a board of directors composed of his neighbors M.E. Fuller (423 N. Pinckney), Breese Stevens (401 N. Carroll), William F. Vilas (2 E. Gilman), and James Moseley (120 Langdon). Fellow banker J.J. Suhr lived across the street from Moseley at 121 Langdon.

The familial and social relationships among the residents of Mansion Hill drew the neighborhood particularly close. Often several members of the same extended family lived in the area.

- Henry K. Tenney resided at 421 N. Carroll, while his brother Daniel, who was also his law partner, built the house at 401 N. Carroll.
- The Van Slyke-Mears-Hobbins-Suhr blood relationship showed how proximity furthered social relations. N.B. Van Slyke's mother was a sister of the brothers, James R. (420 N. Carroll) and Charles Mears (116 E. Gilman).

James Mears' daughter Mary wedded Joseph W. Hobbins of 114 W. Gilman. The son of Joseph Hobbins, William J. Hobbins, married Bertha Suhr, thus relating the Suhr banking family to the Van Slyke banking family.

- Alexander H. Main (127 Langdon) and Willet S. Main (511 N. Carroll) were brothers, whose sister married U.S. Senator John C. Spooner. Alexander Main was at one time a law partner of Phil Spooner, John's brother.
- Orasmus Cole, a justice of the Wisconsin Supreme Court, married as his second wife Roberta Garnhardt, his next door neighbor, and took as part of the Garnhardt estate the house at 424 N. Pinckney to which he transferred his residence.

Friendships formed naturally among the people who interacted with each other on Mansion Hill.

- The obituary notice of Dean E. E. Bryant (423 Wisconsin Avenue), recorded that Judge Cassoday (139 E. Gilman) was "one who regretted his passing," and of his one-time law partner Colonel Vilas, it was said, "it was a rare day the friends were not together."
- Among the mourners for James S. Smith were Governor Robert LaFollette and honorary pall bearers M.E. Fuller, F.W. Oakley (524 N. Carroll), C.N. Gregory (10 Langdon), and Robert Bashford (423 N. Pinckney).

- Another circle of friends included Willett E. Main (410 N. Henry), F.W. Oakley, Col. A.H. Hollister (17 Langdon), and E.W. Keyes (102 E. Gorham).

The social interaction among the residents occurred at formal occasions as well. The following selection from Madison's society pages indicate that the core area's residents attended many of the same gala evenings and parties. The names marked in the selection indicate the families who resided in the district.

MANSION HILL AS A SOCIAL NEIGHBORHOOD: THE BUFFER ZONE

During the years around the turn of the century when the core area peaked in terms of the number and strength of ties that bound academic, business, and government professionals to the social fabric of the neighborhood, it is enlightening to investigate the radiating nature of these ties in the surrounding buffer zone of upper-middle class and middle class families. A survey of the residents of these latter areas in 1896-1897, indicates spot occupancy by skilled tradesmen, laborers, and students who mixed with academics and business and government professionals.

The boundaries of the Mansion Hill Historic District have been extended beyond the core area to include this historically mixed residential area since many of its occupants had blood, business, governmental and/or academic ties with people living in the core area, and since many handsome, though generally less grand, structures still exist in the buffer zone. (See: The Buffer Zone Yesterday and Today - the Physical Significances, p. 18)

THE ECONOMICS OF PHYSICAL IDENTITY IN THE CORE AREA

Those families who resided in the Mansion Hill core area in the nineteenth century frequently dwelt in brick or stone homes, elaborately detailed and decorated. This distinction in materials and design symbolized the wealth of the neighborhood.

An examination of assessments for the core area in 1875 and again in 1892 showed a high value assigned to the properties on Mansion Hill. For demonstration, these assessments have been grouped into quartiles, that is, each division contains one-fourth of the total number of buildings and indicates the range of their assessments.

They were:

1875	I	2,000- 3,000
	II	3,500- 4,750
	III	4,750- 6,750
	IV	6,750-12,500
1892	I	1,000- 2,250
	II	2,250- 3,300
	III	3,300- 8,000
	IV	8,000-14,000

(the 1892 figures are adjusted slightly according to a lake frontage factor)

These assessments were high and reflected heavily the value of the buildings.

A comparison area, an equally old residential neighborhood, but of different character, located on W. Main, W. Clymer (W. Doty), and W. Wilson showed unimproved lots assessed at only \$100 difference below the Mansion Hill area. For 1892 the assessments in the comparison area are grouped into quartiles. They were:

1892	I	500- 800
	II	800-1,000
	III	1,000-1,200
	IV	1,200-1,600

In the comparison area only six dwellings were of brick and none of stone.

THE ARCHITECTURAL CHARACTER AND SCALE OF THE DISTRICT

Significant clusters of examples of the variety in American architectural expression in the last half of the nineteenth century and the first three decades of the twentieth century are found in the Mansion Hill District. The core area of the district constitutes the last concentration of extant baronial nineteenth century palaces that once housed the City's social, business, political, and educational elite. Radiating from the core are smaller but not less significant architectural works formerly housing the less grand families.

The twentieth century buildings evidence a continuing vitality in the neighborhood, but indeed a vitality of a different order than that of the preceding century. The viability of the downtown for mixed use at the turn of the century was still great, but the wealthier

residents had begun to die out, to sell their extra lots, and/or move out to the fringe areas. Infill buildings made the district less open, but retained high standards of design befitting the good taste of their owners. The effect of the expanding University was felt on the western edge of the district especially as more housing and services were required for professors and students.

Significantly, the Mansion Hill District contains within its boundaries the largest concentration of extant 19th century sandstone structures in the City. There are ten sandstone buildings in this district, two of which are churches, the rest dwellings. The sandstone was presumably quarried on the west side of town in the bluff areas near Hoyt Park and Shorewood. This use of local building material gives the district a uniquely regional flavor.

Another testimonial to regional distinction is the influence of the Prairie School architects which appears to be common in the district. At least eleven buildings in the district are either Prairie style or directly related to the early twentieth century design movement centered on Frank Lloyd Wright and his mentor, Louis Sullivan. The majority of the houses appear to be attributable to the local architectural partnership of Louis Claude and Edward Starck, both of whom worked in Chicago before practicing in Madison.

In three unusual buildings by architect Lawrence Monberg, the melding of the Art Deco style and the International style of the 1930's is given expression. The Quisling Clinic, Quisling Apartments, and the Edgewater Hotel are important documents of this pre-World War II design phenomenon.

The demolition of several key houses within the District in the 1950's and 1960's has paved the way for new construction which in bulk and/or use is incompatible with the existing residential neighborhood. This new construction has taken advantage of traditional concentric zoning patterns and specific spot zonings to accommodate the tremendous expansion of the University of Wisconsin, the state government, and local business interest in this downtown residential area.

In addition to the loss of key structures, the invasion of the Dutch Elm beetle has perpetrated significant ravaging of the remaining aura of nineteenth century gentility in the area. A key element in the execution of a preservation plan in this area would involve substantial and sympathetic tree replanting in the District.

Recent developments in the downtown have necessitated the installation of high intensity street lights that are mounted on extremely tall poles. This lighting is out of scale and out of character with the District, and it is to be hoped that a general downtown improvement may allow the phasing out of these elements to be replaced by lighting units that are more appropriate to a residential area.

Much of the finest nineteenth century vernacular architecture in the City of Madison is, however, still extant in this area. Its integrity and its lesson for the future should be preserved and enhanced. Indeed, evident here in Mansion Hill, is the grandiosity and pomposity of an age that strove for the appearance of aesthetic rectitude as a symbol of status. Yet, by contemporary design standards,

these imaginative structures seem intensely human in scale and texture. The nineteenth century social elite which generated the growth of this neighborhood clearly intended that their homes be the palaces proper to their station in life. To the extent that they fall short of the standards set by emperors and princes, they are given the appearance of even greater humanity.

THE CORE AREA YESTERDAY AND TODAY - THE PHYSICAL SIGNIFICANCE

- A. For the core area, 68% of the homes that were standing in 1892 are still standing.
- B. On the 3½ core blocks of Gilman Street, which form the main axis of the proposed district, 85% of the homes standing in 1892 are still standing.
- C. On the Gorham-Gilman Street Block (original plat, block #96) over 80% of the buildings standing in 1892 are still standing.
- D. In 1875, the core neighborhood consisted of approximately 35 residences, of which 60% are still standing.
- E. Of the 18 houses on the Gilman Street axis in 1875, 66% are still standing.
- F. On the Gorham-Gilman block (96), of the 7 houses standing in 1875, 70% are still standing; on Carroll Street, of 10 houses in 1875, 70% are still standing.
- G. There are ten sandstone buildings still standing in the district; 8% of the core area consists of sandstone houses, 9% of the

core area is built with Prairie style characteristics, thus at least 17% of the core area represents indigenous contributions in architectural style or building materials.

THE BUFFER ZONE YESTERDAY AND TODAY - THE PHYSICAL SIGNIFICANCE

A subcommittee of the Landmarks Commission (three historians and an architect) carefully examined the buffer zone on the south and west edges of the core area in order to determine the validity of including parts of that zone in the total district. Although the majority of the houses in the buffer areas were originally conceived on a less than grand scale, many of them did incorporate important stylistic devices which mirror the development of the core area; and although the existing structures in the buffer zone are generally slightly younger than those of the core area, they do reflect the radiating influence of architectural taste in the core area during the last two decades of the nineteenth century and the first three decades of the twentieth. Indeed, the major physical development of the buffer zone appears to have occurred concurrently with or just after the effective peak of the viability of the core area.

Further, given the presently permitted zoning densities of the buffer area, it is reasonable to assume that the constant pressure for more housing units may focus new development in these areas of under-utilized land. In order to preserve the structures themselves and the remaining vistas to the core area, and in anticipation of efforts to replace this housing stock and to obstruct vistas by new high-rise, high-density development, the buffer zones have been included in the District.

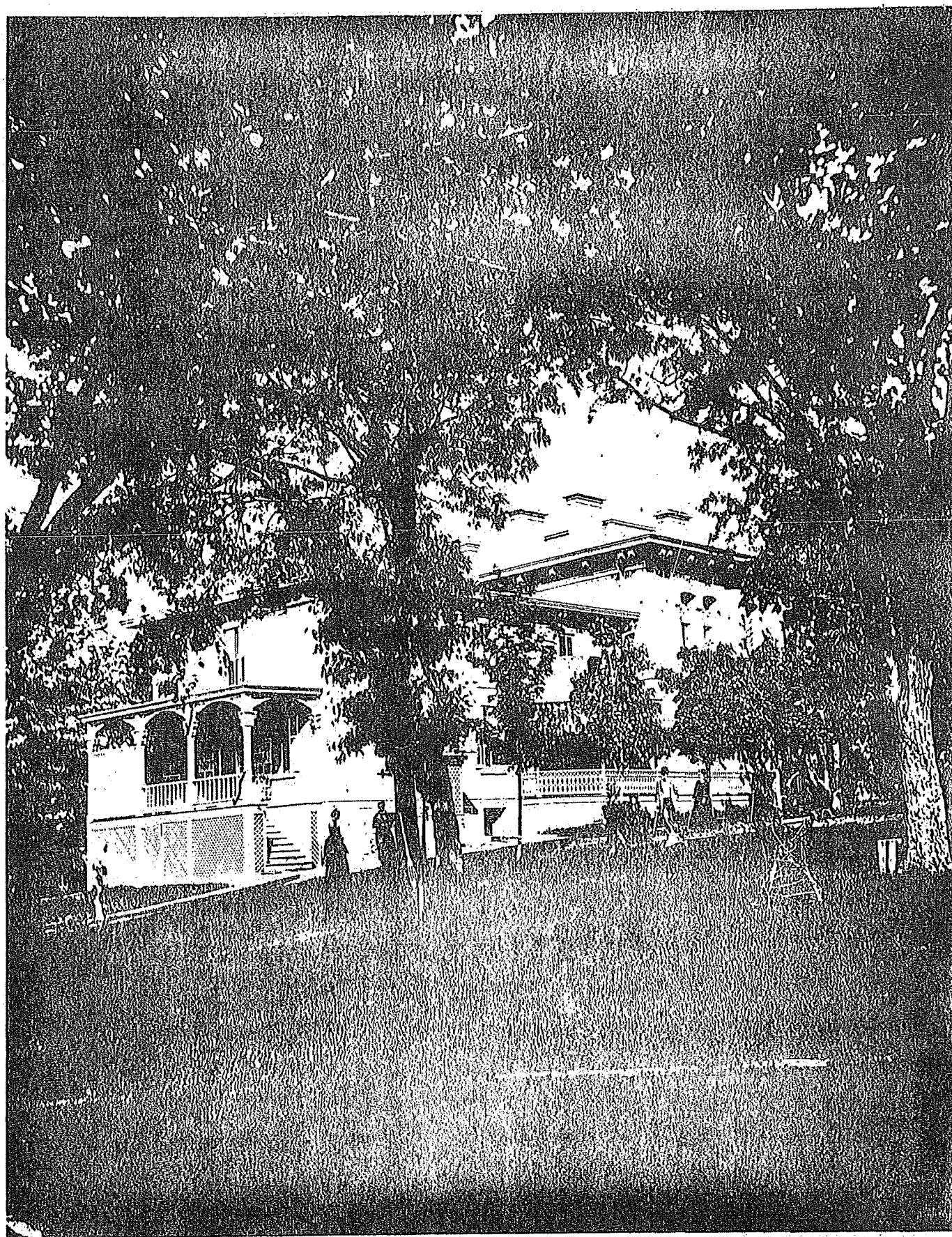
THE MANSION HILL DISTRICT TODAY: A BRIEF ASSESSMENT OF THE NATURE
OF THE HOUSING STOCK AND THE PEOPLE IT SHELTERS

Today the Mansion Hill District lies on the eastern edge of the University of Wisconsin campus and on the northern edge of the City's center. In this location it continues to provide solid alternate forms of apartment housing for University students and staff and for business and professional people who work near the Capitol Square. The multiple unit character of the District is a feature that should be maintained.

Although there has been considerable adverse impact to the District resulting from recent non-residential development, the area is also punctuated by houses still maintained as single family dwellings and by a demographic mix which includes not insubstantial numbers of the City's elderly.

While the original interiors of many of the finest older dwellings have been altered beyond recognition, their stolid street facades remain as evocative and attractive testimonials to the well-being of earlier generations who resided in the area. The popularity of the District for present day apartment seekers is evidenced in the steady occupancy (in spite of a high turnover rate) of nearly all of the buildings. The combined effect of these two empirical facts argues for the conservation and enhancement of this District and the preserved viability of residency there.

(NOTE: See Appendix A for demographic data relevant to the above statements)



THE DEVELOPMENT HANDBOOK

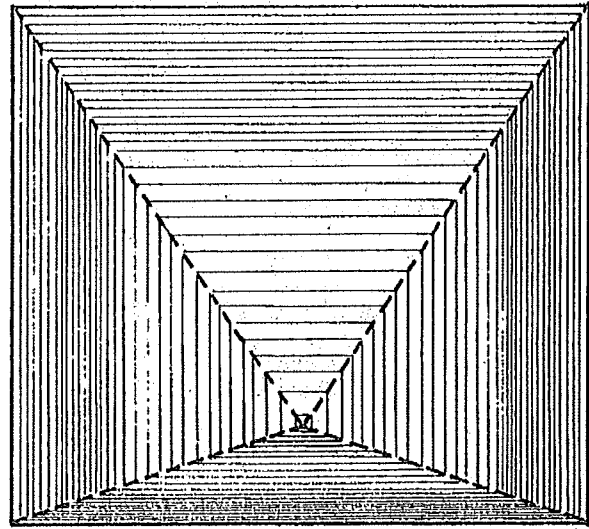
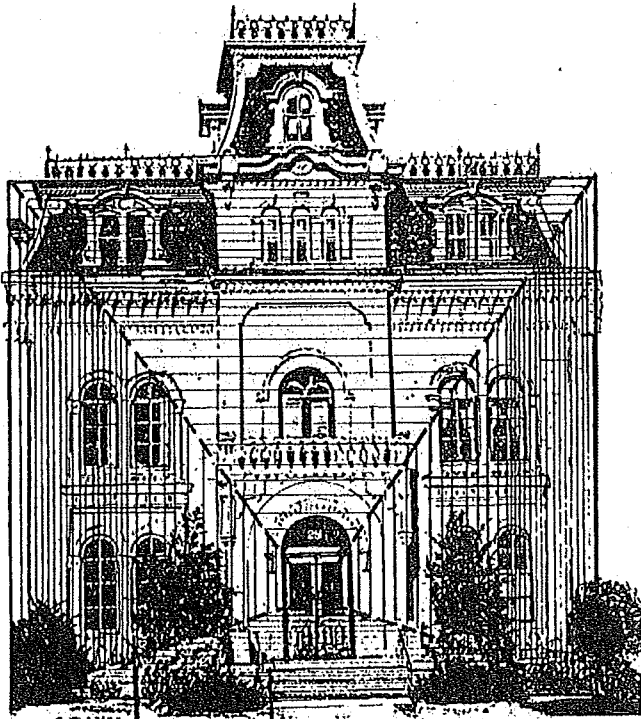
DEVELOPMENT CRITERIA: PURPOSES OF THE GUIDELINES

In order to preserve and enhance the architectural character of the Mansion Hill residential neighborhood, the Madison Landmarks Commission has created the following guidelines for future development, redevelopment, and/or architectural alteration within the Historic District.

Pursuant to Madison General Ordinance 33.01(5)(b), Certificates of Appropriateness are issued by the Landmarks Commission for new construction or for exterior alteration of an extant structure within all historic districts. The following illustrated guidelines are primary concepts on which the Commission may act to issue or not issue Certificates of Appropriateness. Further guidelines printed thereafter may be invoked in specific relevant instances at the discretion of the Commission according to Madison General Ordinance 33.01(6)(d). In all matters regarding the issuance of Certificates of Appropriateness the Landmarks Commission shall act to work in the best interests of the existing structures in the Historic District and in cooperation with the applicant in developing sympathetic and original new structures.

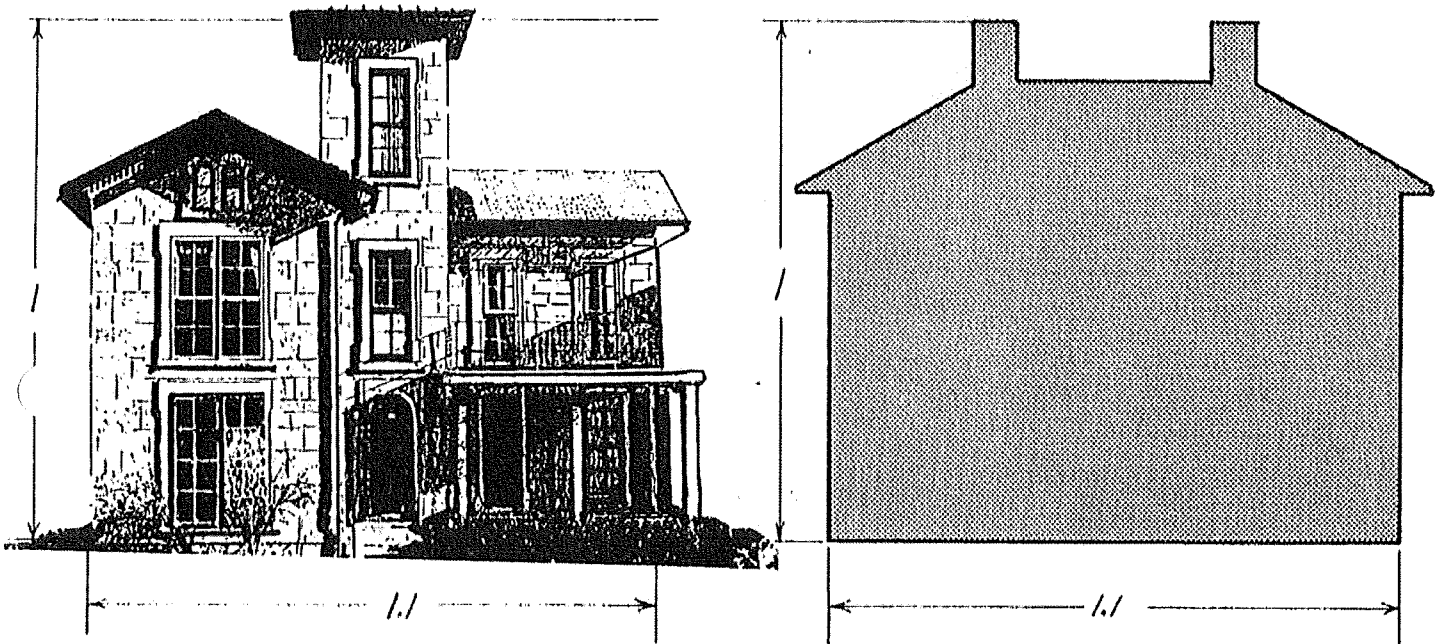
ILLUSTRATIONS AND STANDARDS

1. The gross volume of any new structure shall be visually compatible with the buildings and environment with which it is visually related.



The illustration purposely indicates no prescribed structure, but merely addresses the scale and bulk of a proposed structure. Given a streetscape with a mix of scale and bulk, averages will be used to indicate an appropriate "envelope". Spaced setbacks will be encouraged in proposed buildings that will cover more than one lot in order to relieve the visual impression of bulk (see No. 6). Questions of siting will be of key importance in the exercise of judgment regarding this criterion.

2. In the street elevation(s) of a building, the proportion between the width and height of the facade(s) should be visually compatible with the buildings with which it is visually related.



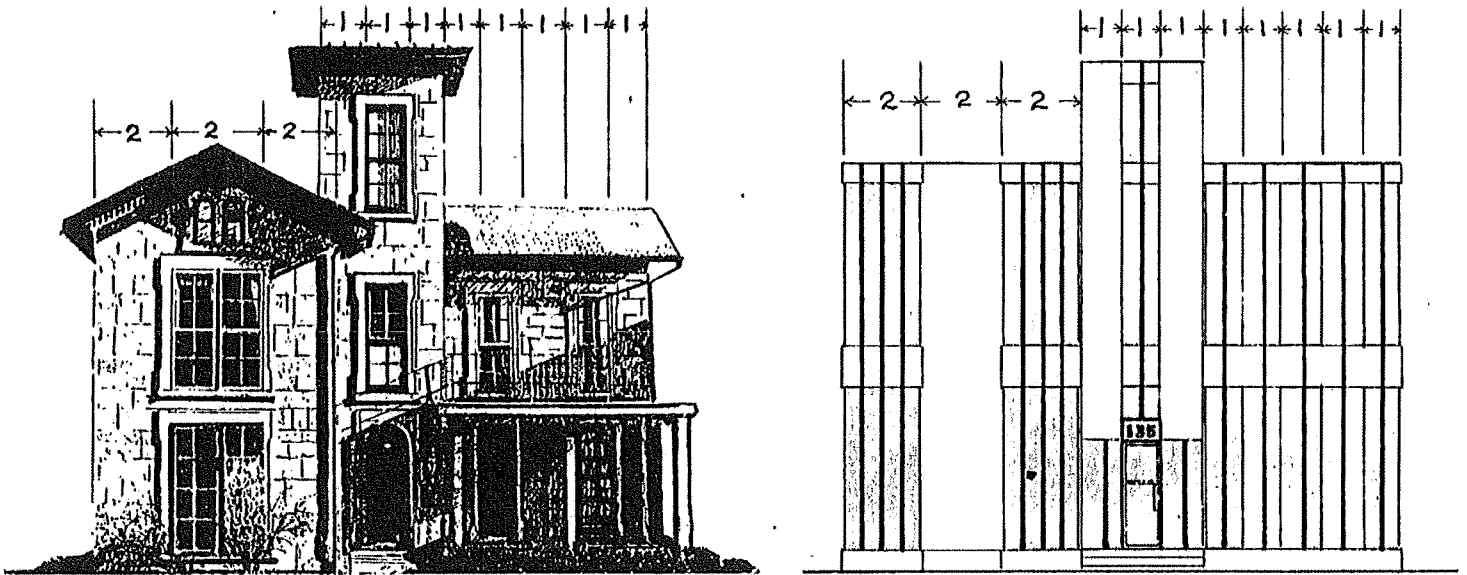
The illustration purposely illustrates no prescribed structure. The silhouette is drawn merely as a suggestion of what might occur. A more rectilinear form would also be possible. Allowances for roof projections within a given silhouette will be made according to the directional expression of all buildings in the environment with which the proposed building shall be visually related. In the mixed streetscapes averages will be taken should the proposed structure cover more than one lot. Spaced setbacks will be encouraged to minimize the appearance of too much width. (see No. 6)

3. The proportions and relationships between doors and windows in the street facade(s) should be visually compatible with the buildings and environment with which it is visually related.



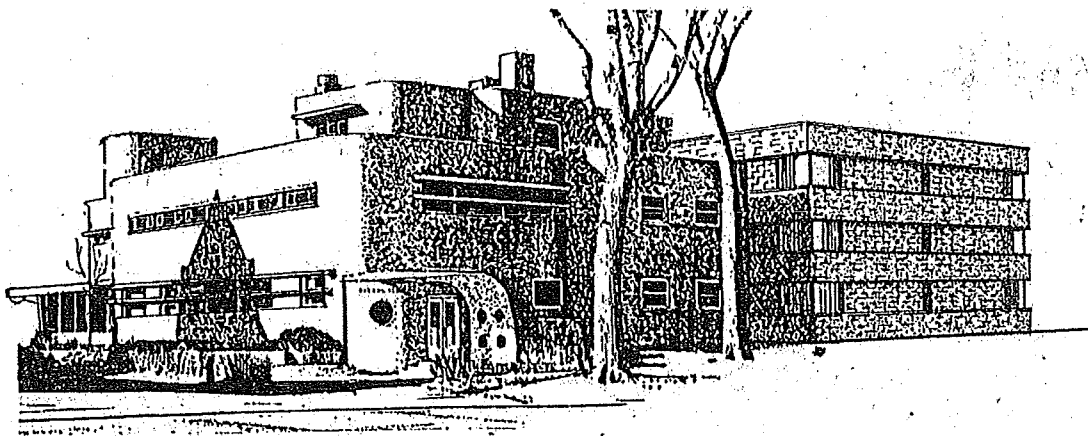
The illustrations serves to indicate the principle only insofar as it relates to the approximate proportion of the height to width of doors and windows. The placement of doors and windows in the facade is not prescribed and is only hypothetical. Ornamental and surface treatment are purposefully not shown in this illustration.

4. The rhythm of solids to voids, created by openings in the facade should be visually compatible with the buildings and environment with which it is visually related.



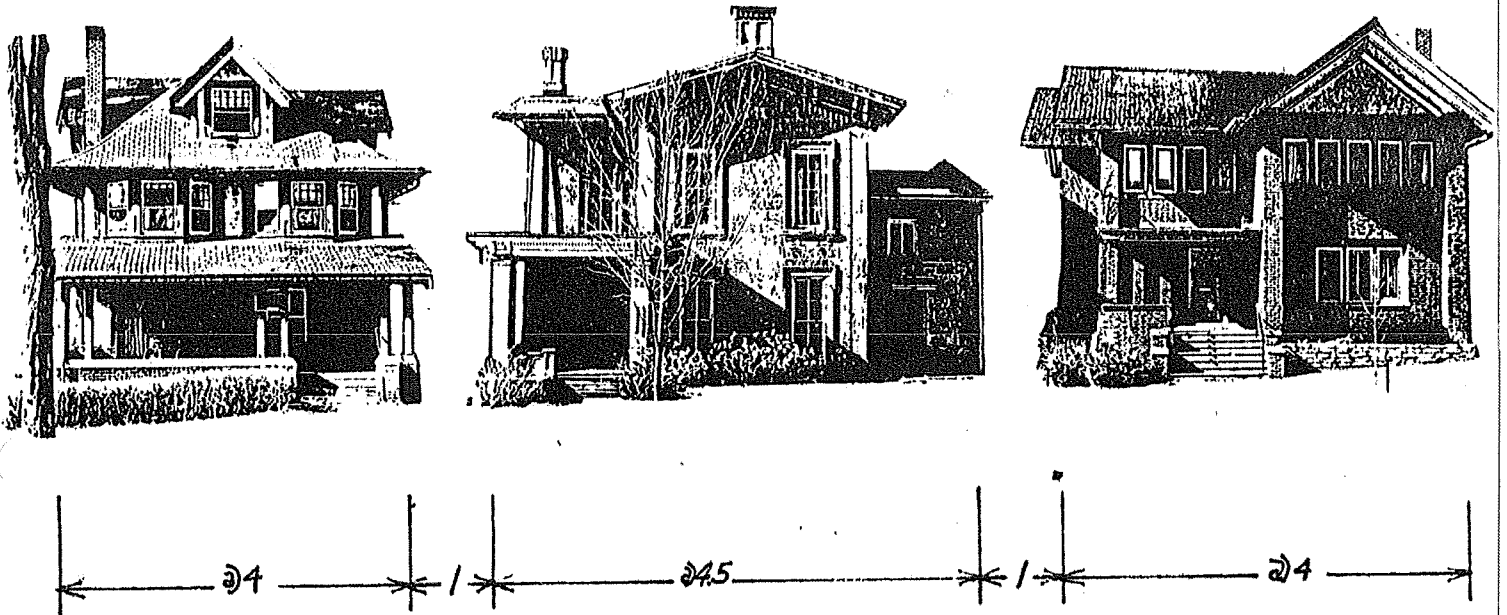
The illustration shows a purely hypothetical building which illustrates the principle as it is abstracted exactly from the existing rhythm of the house at 423 N. Pinckney. The illustration does not attempt to prescribe a potential building except insofar as this one principle is concerned. All buildings in the visually related area will be considered in judgments on this criterion.

5. All street facade(s) should blend with other buildings via directional expression should be carried over and reflected.



The proposed building illustrated is purely hypothetical. It merely serves to illustrate a possible solution for a potential gap site next to the Quisling Clinic, a horizontally expressed structure. Horizontal lines in the existing building are picked up in the hypothetical structure. Building materials in this illustration are merely suggestions.

6. The existing rhythm created by existing building masses and spaces between them should be preserved.



Should a gap in this streetscape occur, the replacement structure should duplicate the existing rhythm of building masses and open spaces. Consideration will also be given to schemes which allow for either more setback or sideyard than pre-exists a proposed design. In streetscapes where a double lot is to be developed, strong encouragement will be given to designs which include spaced setbacks to adapt to pre-existing single lot structures.

Guideline criteria also to be considered in the development of Historic District plans are as follows:

7. All new structures shall be constructed to a height visually compatible with the buildings and environment with which they are visually related.
8. The materials used in the final facade(s) should be visually compatible with the buildings and environment with which it is visually related.
9. The texture inherent in the facade should be visually compatible with the buildings and environment with which it is visually related.
10. Colors and patterns used on the facade (especially trim) should be visually compatible with the buildings and environment with which it is visually related.
11. The design of the roof should be visually compatible with the buildings and environment with which it is visually related.
12. The landscape plan should be sensitive to the individual building, its occupants and their needs. Further, the landscape treatment should be visually compatible with the buildings and environment with which it is visually related.
13. Architectural details should be incorporated as necessary to relate the new with the old and to preserve and enhance the inherent characteristics of the area.

**Transcripts of the January 22 and February 17 Landmarks
Commission meeting were distributed electronically.**

127 W. Gilman Street - January 30, 2014

Kyle Bunnow – City of Madison Housing Inspection Supervisor, P.E.

Scope of Work

This assessment consists of a general review of the building foundation, wood structural supporting members, and interior building conditions. The exterior of the building, as well as any electrical, HVAC, or plumbing systems, were not considered.

Foundation

The building foundation consists of sandstone and mortar construction. In several locations along the north, east, and west walls, the original foundation has collapsed or is severely compromised. Figure 1 depicts the foundation collapse along the east wall that is evident throughout the structure.

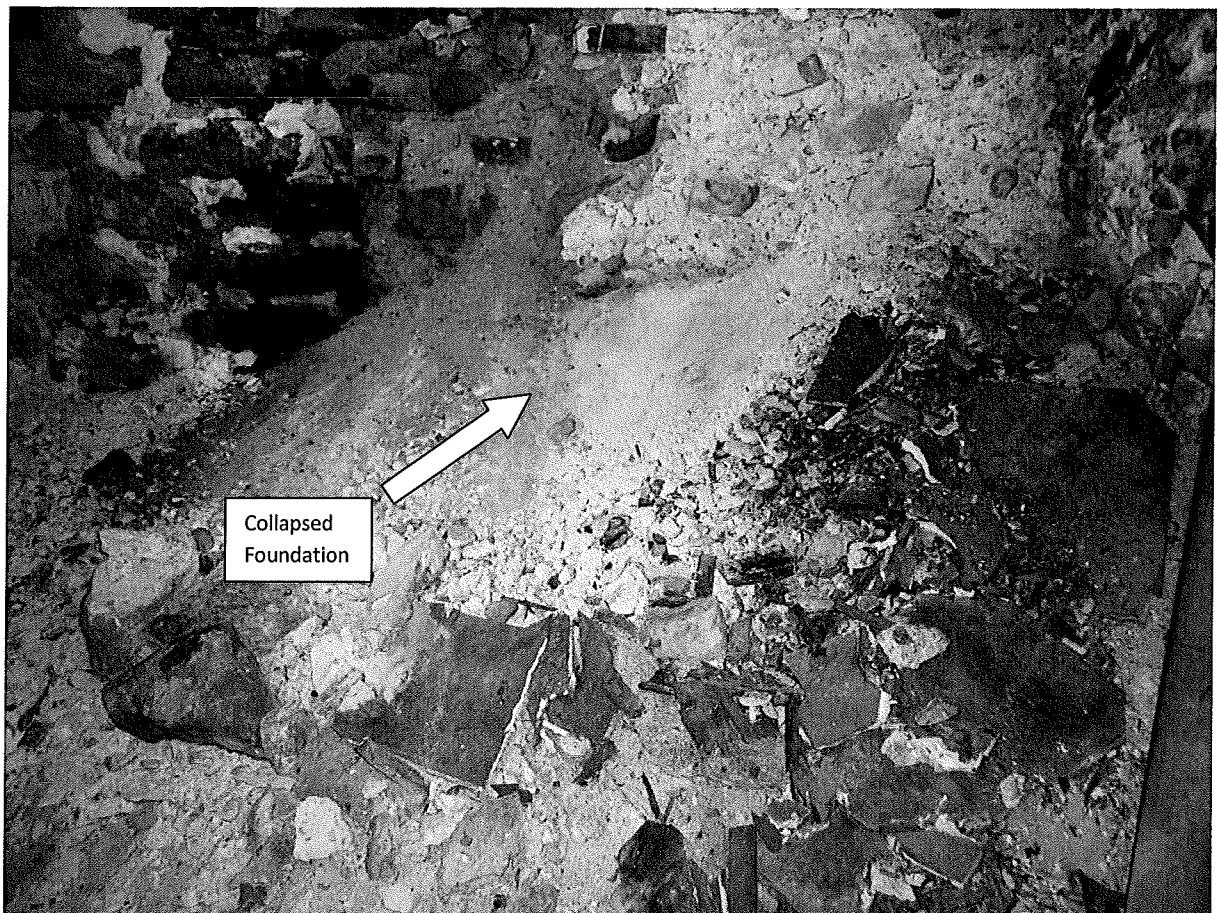


Figure 1 - Collapsed Foundation along East Wall

A secondary brick retaining wall was constructed to reinforce or repair previous collapse along the north, northeast, and northwest portions of the foundation. The secondary brick retaining wall has also failed at the north and northeast areas of the structure as shown in Figures 2.

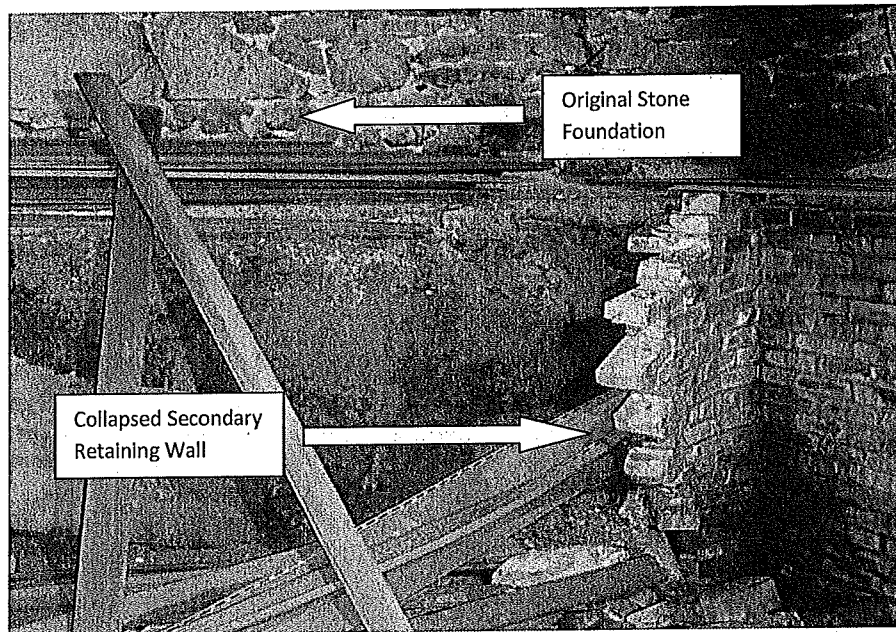


Figure 2 - Northeast Corner of Foundation with Collapsed Secondary Retaining Wall

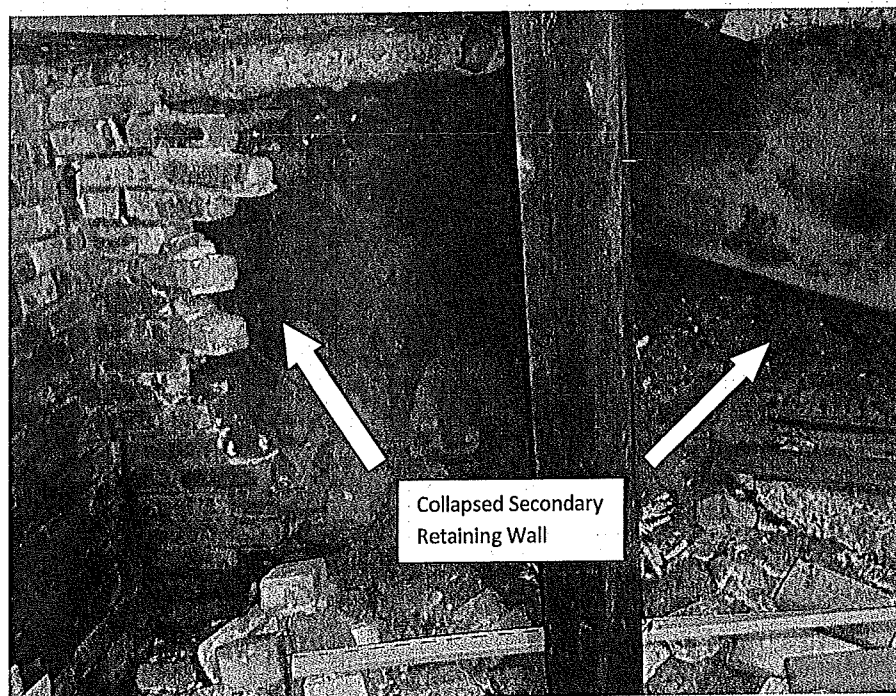


Figure 3 - Collapsed Secondary Retaining Wall along North End

A portion of the original stone foundation along the East sidewall has collapsed and is severely damaged. Additional sections of the East foundation exhibit significant bowing and movement in the wall. As shown in Figure 4, bowing along the East foundation is so significant that it has resulted in the fracture of a supporting wood column.



Figure 4 - East Foundation Wall Bowing Excessively and Fracture of a Wood Column

Areas of the foundation that have not collapsed show prominent deterioration and erosion of the mortar. Tuckpointing repairs have been attempted in several areas along the foundation wall, but are inadequate. Deterioration of the mortar, in areas particularly along the upper edges of the foundation, is so significant that moisture continually infiltrates the foundation further increasing the rate of

deterioration. Figures 5 and 6 depict areas of deterioration and moisture infiltration throughout the foundation wall.

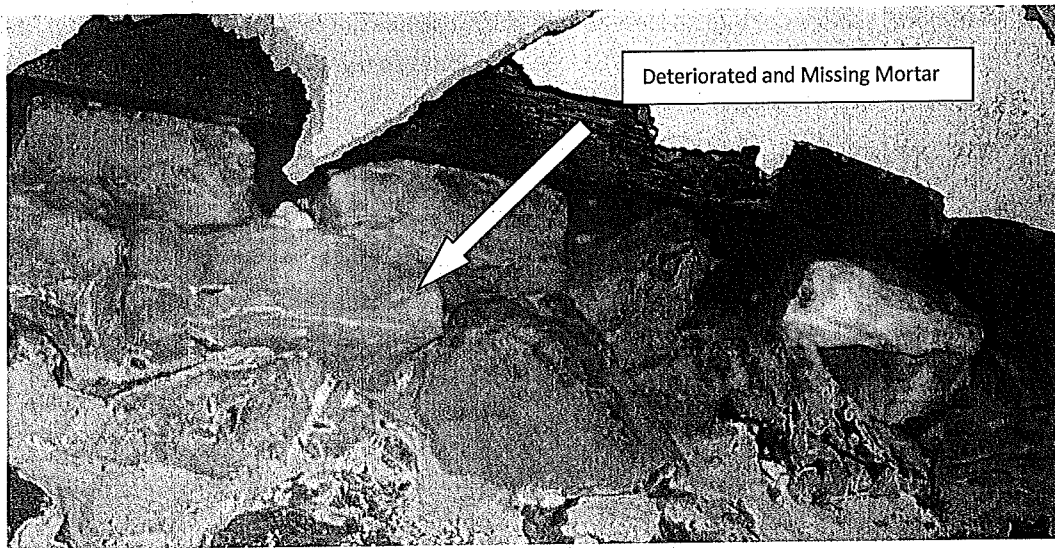


Figure 5 - Deteriorated and Missing Mortar

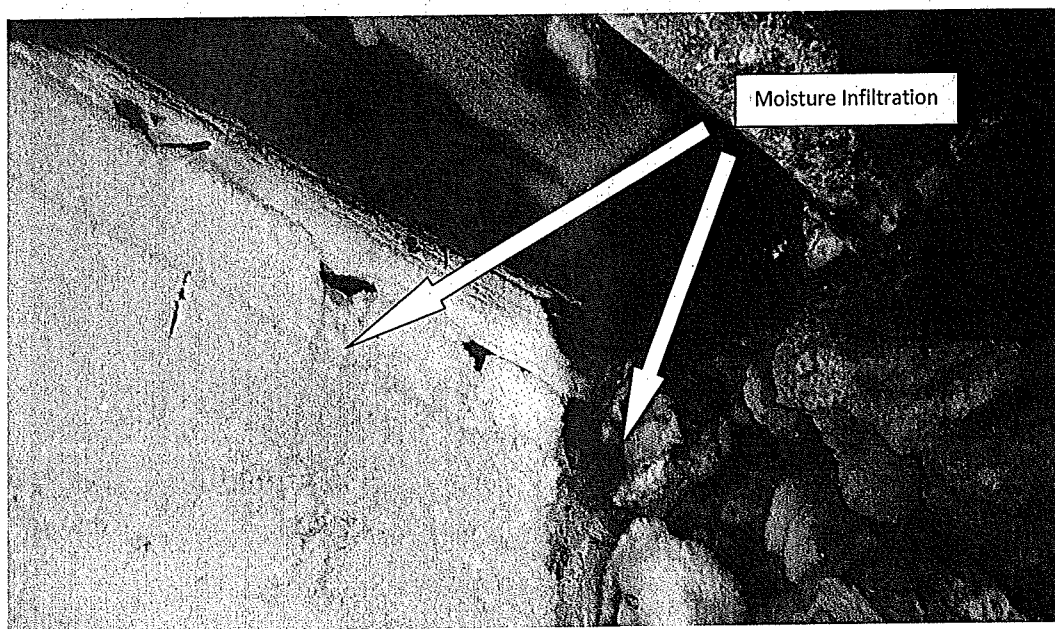


Figure 6 - Moisture Infiltration at the Upper Foundation

In total, the foundation system is severely compromised and beyond the reasonable expectation for repair. A completely new foundation would be required to provide adequate support to the structure.

Wood Structural Supporting Members

Examination of the wood structural members, including the rim joists, floor joists, and supporting columns, revealed rotted, crushed, or compromised wood on a large scale. Wood rot along the building rim joist as shown in Figure 7 is a particular concern. Areas of rot along the rim joist allowed for the infiltration of moisture in several locations.

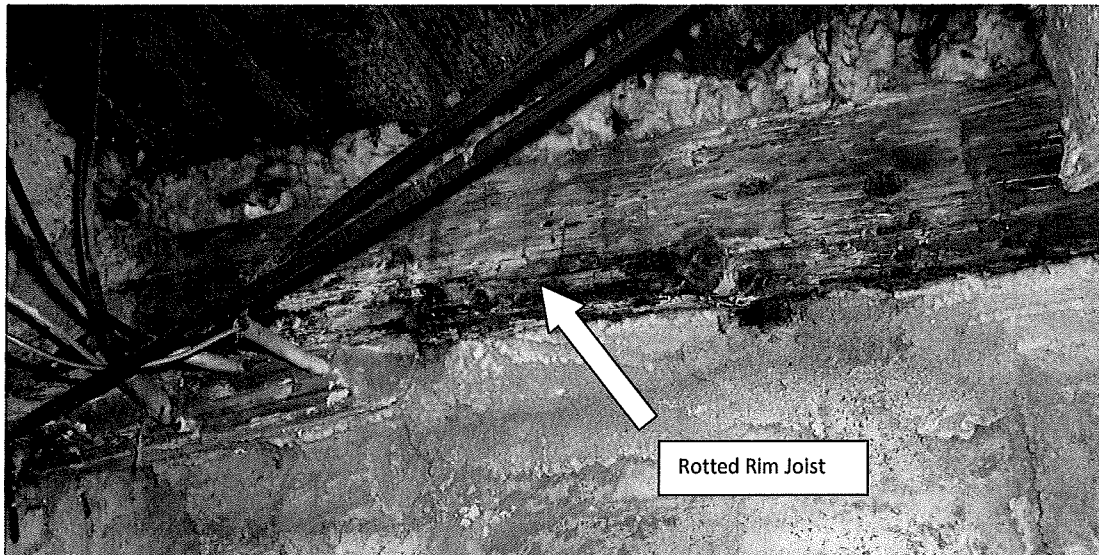


Figure 7 - Rotted Rim Joist

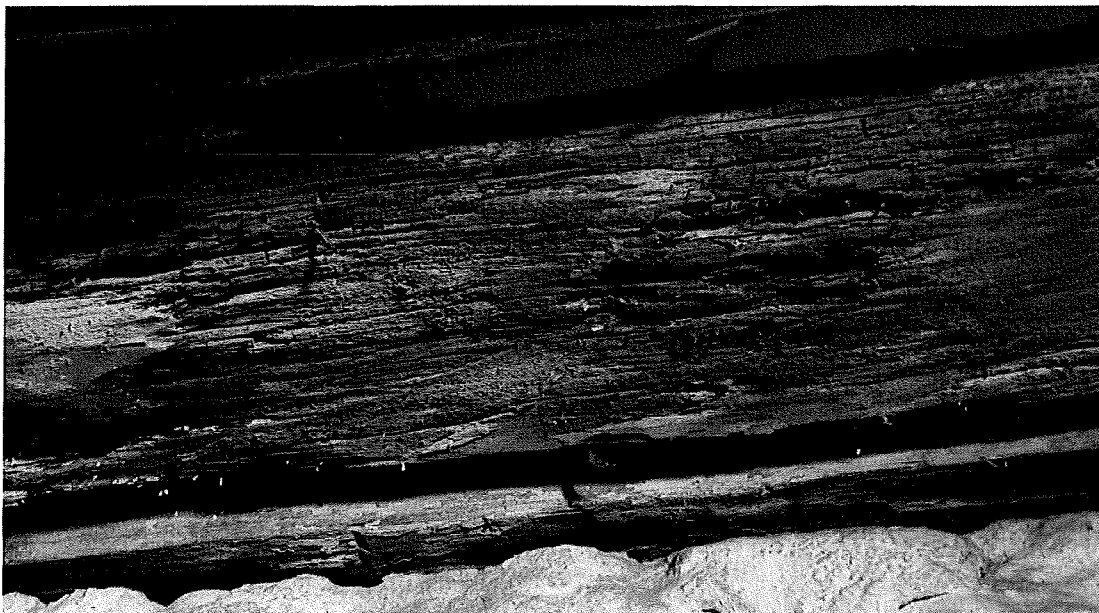


Figure 8 – Additional Example of Rotted Wood in Basement

Floor joists observed throughout the building show consistent evidence of dry rot. Figure 9 depicts the dry rot observed throughout the flooring system.

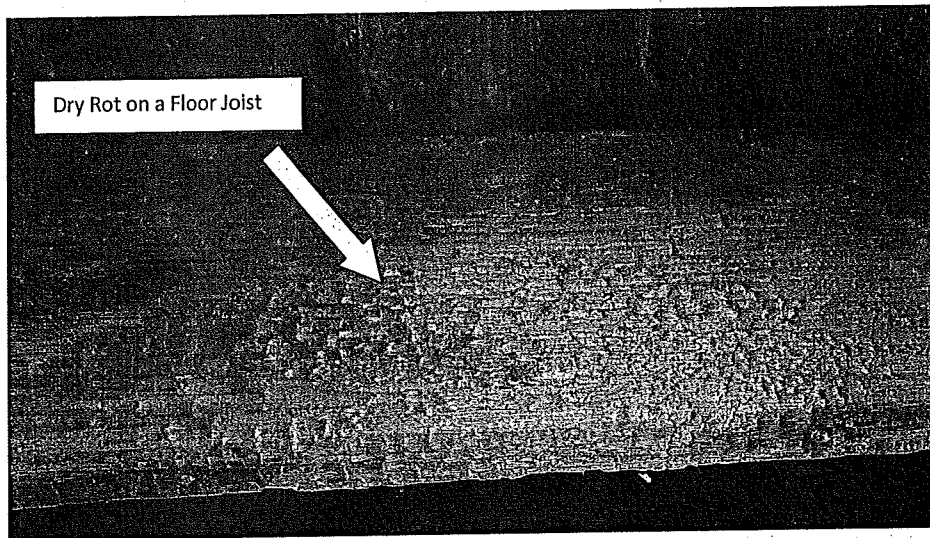


Figure 9 - Floor Joist with Dry Rot

In total, the wood structural supporting members have deteriorated beyond the reasonable expectation for repair. All rotted and compromised wood should be removed and replaced; this encompasses the entire rim joist system and all floor joists and supporting members.

General Interior Conditions

The flooring surface throughout the main level is inconsistent and deviates several inches in various locations. The deviation and unevenness in the flooring is likely caused by the earlier outlined deterioration and decomposition of the foundation, rim joists and floor joists. Figure 10 shows an area of structure where the main floor level has sunk as a result of inadequate support from the floor joists.

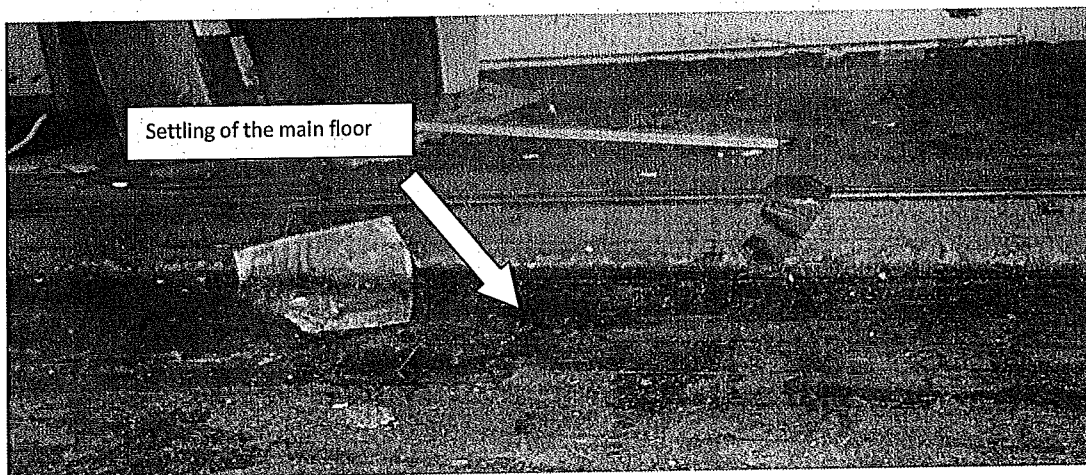


Figure 10 - Unevenness and Settling of the Flooring because of Inadequate Support

Most walls and ceilings on the main levels of the building exhibit significant damage caused by deterioration of the support members of the structure. Figures 11 and 12 show areas of ceiling collapse and sagging that are representative of several areas in the building.



Figure 11 - Ceiling Collapse and Wall Damage on the Main Level

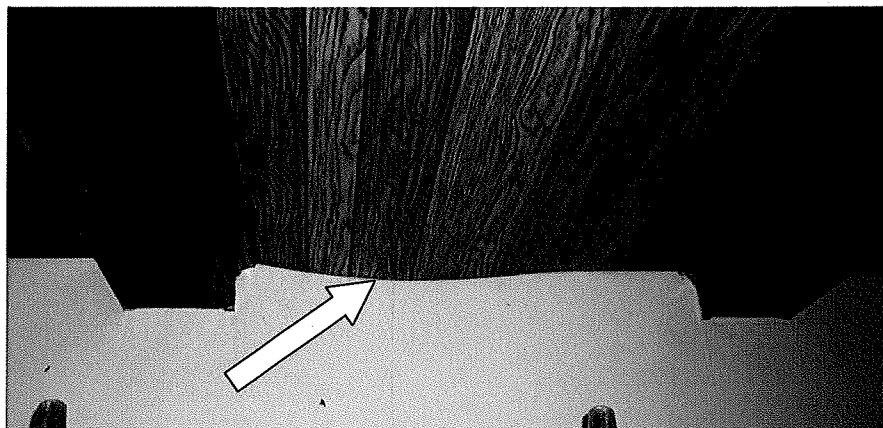


Figure 12 - Sagging In the Ceiling

The second and third levels of the structure exhibit similar cracks, damage, unevenness, and collapse as outlined on the main level. Water damage is also prevalent in portions of the building as a result of a hole that exposes the interior of the structure to additional moisture, shown in Figure 13.

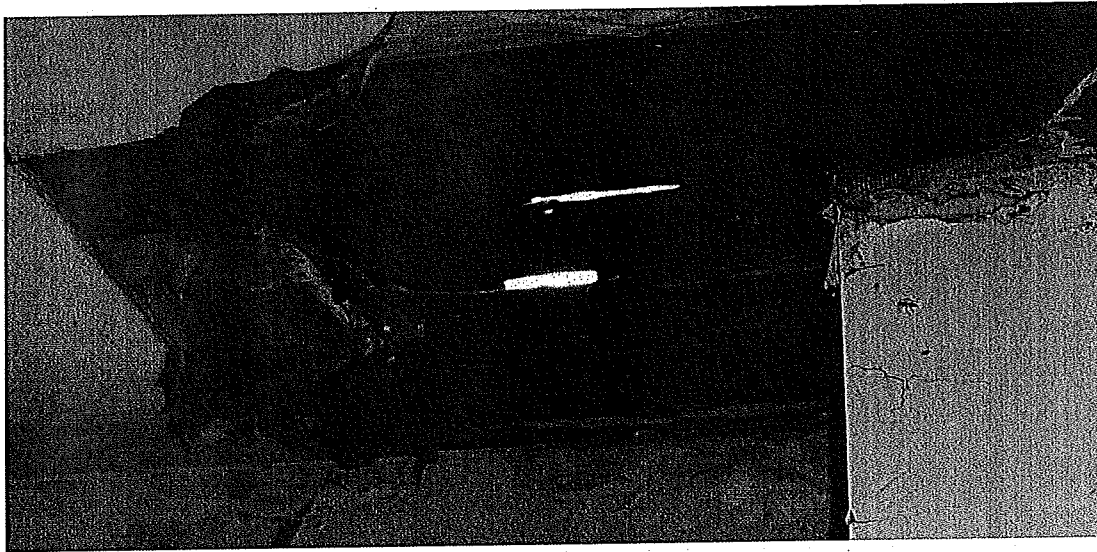


Figure 13 - Hole in the West Side of the Building

Review of the attic shows the trusses and roof supporting members have been compromised as a result of fire damage , shown in Figure 14.

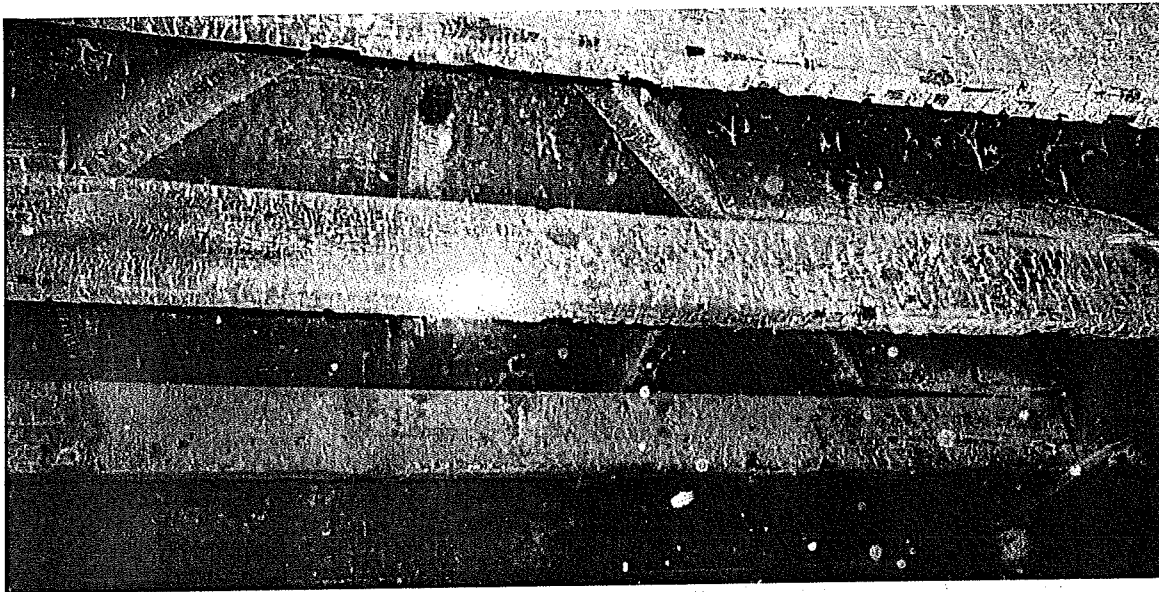


Figure 14 - Fire Damaged Trusses and Roof System

In total, damage to the building interior is significant. A new roofing system is likely needed to restore the roof to its designed capacity. General repair would likely include the complete rebuilding of the flooring, walls, and ceilings throughout the building. Though outside the scope of this report, it should also be stated that it is reasonable to conclude the total replacement of the building electrical, plumbing and HVAC, is also needed.

Conclusion

The foundation at 127 W. Gilman Street has eroded and shifted so significantly that total replacement of the foundation would be required. The demise of the foundation has in turn accelerated additional deterioration of the supporting wood members through increased exposure to moisture and the shifting of structural loads to compensate for such action. Rot, crushing, and deflection of the wood members throughout the building is so prevalent that it is not feasible to expect a repair can be accomplished without the complete deconstruction and replacement of the building support members. In total, the damage and deterioration of the structure at 127 W. Gilman Street is so significant that it is not reasonable to expect that the building can either be repaired or moved; rather, the building would need to be completely deconstructed and replaced with new materials to be returned to a functional state.