

SUMMARY

"Landmarks" differ from "historic districts." Landmarks are significant in their own right, while historic districts are significant in the collective character, and that character differs between the districts. The proposed ordinance would regulate historic districts more strictly than landmarked properties. The Secretary of the Interior's *Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, as modified, would become inviolable standards for historic districts and be applied to all features (not just character defining features) of structures.

Regulation of Landmarks

MGO 41.18(1)(a) provides that alterations to landmarks need to meet the Secretary of the Interior's Standards for Rehabilitation. There are 10 standards.¹

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1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The National Park Services has developed guidelines to assist in applying the 10 standards, *Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* ("Guidelines"). The NPS describes the guidelines, in part, as follows (emphasis added).

GUIDELINES FOR PRESERVING, REHABILITATING, RESTORING & RECONSTRUCTING HISTORIC BUILDINGS

The Guidelines for Rehabilitating Historic Buildings were initially developed in 1977 to help property owners, developers, and Federal managers apply the Secretary of the Interior's Standards for Rehabilitation during the project planning stage by providing general design and technical recommendations. Unlike the Standards, the **Guidelines are not codified as program requirements.**

The Guidelines are intended to assist in applying the Standards to projects generally; consequently, they are not meant to give case-specific advice or address exceptions or rare instances. For example, they cannot tell owners or developers which features of their own historic building are important in defining the historic character and must be preserved--although examples are provided in each section--or which features could be altered, if necessary, for the new use.

The Guidelines are intended as an aid to assist in applying the Standards to all types of historic buildings. They are not meant to give case-specific advice or address exceptions or unusual conditions.

<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>

The Landmarks Commission does not, pursuant to ordinance, use the Guidelines to determine whether the 10 standards are met. The proposed ordinance does not recommend any changes to the regulation of landmarks.

Regulation of Historic Districts

The consultant's proposed ordinance revisions relied "heavily upon applicable portions of the Guidelines."² Planning staff has continued to rely upon the Guidelines, and has even gone beyond the Guidelines.

This reliance on the Guidelines exists even though the consultant said (12/10/2018 Third Lake Ridge meeting) that she was not aware of any other municipality that has adopted the Guidelines into an ordinance. (A number of municipalities have adopted the Secretary's 10 standards, or some variation of those standards, but Ms. Lehrke could not identify one that has adopted the Guidelines.)

² "Consider incorporating applicable portions of the Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings (<https://www.nps.gov/tps/standards/treatment-guidelines-2017.pdf>) into the ordinance. Local, state, and federal officials utilize the Guidelines, which were updated in 2017, for reviewing a variety of project types, including state and federal historic tax credit applications. The follow Recommendations for the Standards for Review **rely heavily upon applicable portions of the Guidelines** as well as existing portions of Subchapter 41G."

<https://madison.legistar.com/View.ashx?M=F&ID=7015838&GUID=35AC6189-71AB-45BC-BB67-7DD3693563ED>

Legistar54447, document #2.

One might ask what is wrong with using the Guidelines as the basis for a new ordinance. The Guidelines are just that – guidance. As said by NPS: “They are not meant to give case-specific advice or address exceptions or unusual conditions.”

1. If the Guidelines, as modified, are adopted as standards, the ability to exercise discretion is lost. MGO 41.02 provides: “Under this ordinance, all standards adopted in a historic district **must be complied with in every instance** of development in that district.” (emphasis added) At times it is necessary for the Landmarks Commission and/or Preservation Planner to exercise discretion.
 - For example, the proposed alterations section states: “Re-siding with asbestos, wide clapboards over six (6) inches in exposure, composite clapboards and vertical panels with faux wood grain texture, diagonal boards, vertical boards, rough sawn wood, rough split shingles, shakes, metal, and vinyl siding are prohibited.”
As a general rule that may be just fine. But my siding has a 6 ½ inch exposure. When I find soft sections of siding, I need to replace with siding that has a 6 ½ inch exposure. (Siding replacement, even on a very limited basis, does not come under “repairs” since the repairs section only provides that deteriorated wood surfaces “may be repaired with epoxy or Dutchman repairs.”)
 - For example, the proposed alterations section states: “All doors shall be painted or finished with a material that resembles a painted finish, unless staining can be based on historic documentation.”
In the Third Lake Ridge, at least at the western end, there are many doors that are shellacked, varnished, or stained. How does a resident provide “historical documentation?” My door is not painted, and there are not any paint bits caught in the grain. Yet this evidence does not come within “historical documentation.”
 - For example, the draft ordinance prohibits removal of chimneys visible from the street. But if only the very top of the chimney is visible from a small stretch of the street, that chimney is not character defining and, at least arguably, should be allowed to be removed.
2. Historically, if a project was determined eligible for State tax credits, then the Preservation Planner/Landmarks Commission did not review the project. However, since the State can exercise discretion in determining whether the 10 standards are met through use of the Guidelines, but the City could not exercise discretion under the draft ordinance, Preservation Planner/Landmarks Commission would be needed on projects approved for State tax credits.
3. Standards require clarity. The Guidelines that are being modified into proposed standards lack clarity. For example, the 4/10 staff document uses “appropriate” numerous times, e.g., “appropriate flexible sealants” and “appropriate paint or other coatings.” What colors “are appropriate to the building and district”? When is lead paint required to be removed to “meet environmental regulations”? What is the “gentlest cleaning method”? What is “proper surface preparation”?

The proposed ordinance would regulate historic districts more strictly than landmarks. Maintenance and repair standards do not apply to landmarks. Landmarks are only subject to the Secretary's 10 standards, standards which focus on the character of the structure. The Guidelines, as modified, do not focus on a structure's defining characteristics -- the entire structure is deemed historically significant.

For example, see the draft ordinance history for entrances and porches. The first step under the Guidelines is to identify "features that are important in defining the overall historic character of the building." The consultant used this language, and only proposed to regulate character defining features. The 2/1 draft ordinance shortened up the consultant's proposal, removing reference to the materials and deleting examples of features. Planning staff's 4/10 proposal not only wants to preserve features that are important in defining the overall historic character of the building, but would also require ALL features of a certain age to be retained ("that is historic to the structure, or dates to the period of significance of the district") whether or not those features define the building's character.³

For example, see Legistar 51178 (approved 12/17/2018), in which a landmark, the Madison Club, was permitted to install a canopy on the Monona Terrace side of the building. Staff found that the "addition of the canopy will not destroy historic materials, features, and spatial relationships that characterize the property" and that "the essential form and integrity of the historic property and its environment would be unimpaired" if the canopy were to be removed in the future. The Landmarks Commission approved the canopy provided no new holes were drilled into the brick or masonry. In contrast, the proposed ordinance prohibits the "introduction of conjectural features such as flower boxes, shutters, weather vanes." In Legistar 51178, staff found the Secretary's third standard inapplicable ("Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken"). What is the difference between a flower box and a canopy?

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Guidelines

Identifying, retaining and preserving entrances and porches and their functional and decorative features that are important in defining the overall historic character of the building. The materials themselves (including masonry, wood, and metal) are significant, as are their features, such as doors, transoms, pilasters, columns, balustrades, stairs, roofs and projecting canopies.

Consultant's 11/28/18 version, with the 1/13/19 modification reflected

Entrances and porches and their functional and decorative features that are important in defining the overall historic character of the building shall be identified, retained, and preserved. The materials themselves (including masonry, wood, and metal) are significant, as are their features, such as doors, transoms, pilasters, columns, balustrades, stairs, roofs, and projecting canopies. A historic entrance or porch shall be retained even though it will no longer be used because of a change in the building's function. A porch that is original [changed "original" to "historic" in the 1/13/19 version] to the structure or dates to the period of significance of the district shall be retained and preserved.

2/1/2019 draft ordinance

Entrances and porches and their functional and decorative features that are important in defining the overall historic character of the building shall be identified, retained, and preserved.

4/10 draft language from Planning Staff

Entrances and porches and their functional and decorative features shall be identified, retained, and preserved including those that are important in defining the overall historic character of the building, that is historic to the structure, or dates to the period of significance of the district.

Historic District Variations

The phrase “good preservation practice is good preservation practice” has been used to explain why district-specific standards are not needed. That may well be true if one is looking to preserve an individual building in pristine condition, such as a landmark.

Historic districts, however, are intended to preserve the character of the district. For example, MGO 41.18(2) addresses demolition of structures. In a historic district, what is reviewed is whether the structure “contributes to the distinctive architectural or historic character of the historic district as a whole and therefore should be preserved for the benefit of the people of the City and the State.” Or, as the chair of the Landmarks Commission once said: “... historic districts are not museums.”

<https://madison.legistar.com/View.ashx?M=F&ID=3873950&GUID=AFAC862A-80D4-4BEC-9963-38CF8A0BEB96>

Even the State Historical Society does not expect structures to remain stagnant: “The good news is that historic preservation “best practices” recognize that buildings must evolve with the people who use them and with their changing needs.”

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

The input of historic district residents is critical to defining the criteria needed to preserve the district’s character.

“A preservation ordinance should reflect the preservation needs and goals of its community: ... A committee or task force of representatives will need to determine the preservation goals and objectives of the community and set priorities. Public input and support is important so that the concerns and issues of citizens are recognized and addressed.”

<https://www.wisconsinhistory.org/Records/Article/CS107>

In the past, residents were involved in developing the criteria. This draft ordinance, however, did not have such participation. Yes, there were three meetings for each district. I attended the first and third meetings for Third Lake Ridge. The first was a discussion of what is/isn’t working. The second meeting was primarily “historic preservation 101,” as labeled by the consultant.⁴ The discussion period of the second meeting, as reflected by the minutes, seems to have primarily focused on the presentation. The third set of meetings was primarily a defense of the consultant’s proposal.

Respectfully Submitted,
Linda Lehnertz

⁴ <https://www.youtube.com/watch?v=udeUNawqRiw>