

Ad Hoc Landmarks Ordinance Review Committee  
Meeting of December 15, 2020  
Agenda #2, Legistar #56918

### Guidelines versus requirements

I have become aware of misperception to my comment letter of December 8<sup>th</sup>, thus I am writing again in further detail.

This draft ordinance for historic district standards started with the consultant's recommendations. Those recommendations, per the consultant, relied heavily upon applicable portions of the Secretary of the Interior's Guidelines for Rehabilitating Historic Buildings. The consultant was not aware of any municipality that had adopted the *Guidelines* as an ordinance (statement provided at the Third Lake Ridge round 3 meeting).

The reliance on the *Guidelines* continued when staff took over the ordinance rewrite. At the 2/19/19 LORC meeting staff said:

"...Scanlon said that a lot of the guidelines have been included. Bailey said that the guidelines are a substantial document, so the consultant spent time pulling out parts of the guidelines that are more pertinent to the way preservation is done in Madison, and summarized them extensively. Scanlon said that the guidelines should remain in the ordinance as standards."

I believe the draft ordinance continues to rely on the *Guidelines*. As an example, please see Attachment A which compares the masonry language in the draft ordinance to the masonry language in the *Guidelines*.

I strongly believe that the *Guidelines* should not be turned into ordinance and have repeatedly said so (comment letters dated 12/1/18, 2/12/19, 9/18/19, 1/23/20, testimony at 4/10/19, 6/25/19, and 3/10/20 meetings).

My primary objection to basing the ordinance on the *Guidelines* is the lack of discretion. *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings* (2017) states:

Guidelines, however, **are developed to help apply the Standards** to a specific type of historic resource. ... 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**. (emphasis added)

By placing the *Guidelines* into an ordinance, the *Guidelines* are transformed from an assistance tool into requirements, requirements that apply in every case, requirements not allowing for exceptions or rare instances. The few examples I provided in my December 8<sup>th</sup> comment letter were not for "gotcha" purposes, nor to be critical of wording. Rather, my examples were to illustrate what happens when a product designed to provide guidance is turned into requirements.

One example I provided was the texture of my foundation's brick mortar. Repointing does not require a building permit, nor a Certificate of Appropriateness. So how can I be relieved of the

requirement to use the oyster shells in the repointing mix? The Preservation Planner does not have the authority to ignore ordinance language ("Repointing mortar shall duplicate the ... texture ...") and allow me to ignore the texture requirement. Perhaps the Building Inspector could waive the requirement pursuant to MGO 41.14(2)(d), but I cannot find any requirements about mortar joints in Chapters 27 or 29. At a minimum, I suggest a process be clearly defined for how a property owner can pursue alternatives to the ordinance language when a COA is not needed.

Another example would be the discussion at the last meeting about residing with vinyl. Siding requires a building permit and COA, so the property owner could apply for an alternative design variance under MGO 41.19, but that variance cannot be granted if there are "material deviations from historic district standards and guidelines." Would allowing certain types of vinyl be a "material deviation" when the ordinance specifically prohibits the use of vinyl? Yes, this particular issue is being addressed, but what other issues have not been noticed? (For example, the prohibition of pebble dash on additions. My house has pebble dash, as do other historic resources. Pebble dash was a historic finish, see Preservation Brief 22. Historic pebble dash looks different than modern pebble dash and could be entirely appropriate for an addition.)

#### Raleigh NC, use of guidelines and neighborhood character

At the February 12, 2020 meeting, staff discussed Raleigh's ordinance:

As an example, she provided the Raleigh Historic Districts and Landmarks Design Guidelines and pointed out that it was organized in a similar way to staff's draft ordinance, and the language was largely pulled from the Secretary of the Interior's Guidelines. Raleigh's design guidelines are adopted as standards, and they use this one set of unified standards for all historic districts and landmarks.

This is not quite accurate. Raleigh has an ordinance that specifies what documents will be used in considering applications for Certificates of Appropriateness

Historic Development Standards

1. See documents entitled: "Design Guidelines for Raleigh Historic Districts and Landmarks dated May 2, 2017," "The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings," and "The Secretary of the Interior's Standards for the Treatment of Historic Properties and the Guidelines for the Treatment of Cultural Landscapes." These documents are incorporated by reference as authorized by N.C. Gen. Stat. §160A-76, are made a part of this UDO and are on file with City Planning. These documents contain architectural guidelines and design standards that will be applied in considering applications for Certificates of Appropriateness to ensure as far as possible that the exterior features of buildings, structures and their associated features located within a -HOD-G, and designated as a Historic Landmark, remain in harmony with other buildings, structures and appurtenant features in the overlay district, and the character of the Historic Landmark.

One of those documents is "Design Guidelines for Raleigh Historic Districts and Landmarks dated May 2, 2017." These design guidelines do not use the Secretary's *Guidelines* as requirements – the Secretary's *Guidelines* are used as intended, as guidelines. For example, with respect to masonry, see page 41 of Raleigh's guidelines: The heading is: "2.2 Masonry:

Guidelines.” Thus, Raleigh’s landmarks commission will consider those guidelines but retains the ability to exercise discretion. See also page 7: “Rather, these design guidelines provide applicants, the commission, and staff a basis from which to reach decisions and an assurance that consistent procedures and standards will be adhered to.”

<https://cityofraleigh0drupal.blob.core.usgovcloudapi.net/drupal-prod/COR10/RHDCGuidelines.pdf>

Nor does Raleigh treat all historic districts the same.

The Special Character Essays for each district are a critical part of the review process because each district is distinctly different. A brief description of the character of each district is provided along with a map in the appendices. The Historic Overlay District (HOD) reports supplement the special character descriptions.

Pages 86-109 of Raleigh’s guidance address the character of each district and that character is a “critical part” of the review process.

Respectfully Submitted,  
Linda Lehnertz

**Attachment A**  
**Comparison of masonry language from ordinance draft, version dated October 26, 2020 (black)**  
**to**  
**The Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for**  
**Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (2017) (blue)**

**41.xx STANDARDS FOR MAINTENANCE**

**(3) Exterior Walls**

(a) Masonry

1. Requirements

- a. The Preservation Planner shall approve proposed masonry cleaning methods.
- b. Abrasive methods (including sandblasting, other media blasting, or high-pressure water or acids on limestone or marble) which can damage the surface of the masonry and mortar joints are prohibited.

**Not recommended:** Cleaning or removing paint from masonry surfaces using most abrasive methods (including sandblasting, other media blasting, or high-pressure water) which can damage the surface of the masonry and mortar joints.

- c. Masonry building walls and features shall be maintained with tight mortar joints and operational rain water conduction systems.

- Repairing masonry walls and other masonry features by repointing the mortar joints where there is evidence of deterioration, such as disintegrating mortar, cracks in mortar joints, loose bricks, or damaged plaster on the interior.
- Protecting and maintaining masonry by ensuring that historic drainage features and systems that divert rainwater from masonry surfaces (such as roof overhangs, gutters, and downspouts) are intact and functioning properly.
- Protecting and maintaining masonry by providing proper drainage so that water does not stand on flat, horizontal surfaces or accumulate in curved decorative features .[1995 version]

- d. Sealants and water-repellent coatings applied to the face of the masonry are prohibited.

**[Note: draft ordinance is more restrictive]** Applying non-historic surface treatments, such as water-repellent coatings, to masonry only after repointing and only if masonry repairs have failed to arrest water penetration problems.

- e. Previously painted masonry may be repainted, but the painting of previously unpainted masonry is prohibited.

**Not recommended:** Applying paint or other coatings (such as stucco) to masonry that has been historically unpainted or uncoated.

2. Guidelines

- a. Masonry is susceptible to damage by allowing water to pool on surfaces, improper maintenance or repairs, abrasive cleaning, or application of nonpermeable coatings.

- b. Masonry should only be cleaned when necessary to halt deterioration or remove heavy soiling.

**Cleaning masonry only when necessary to halt deterioration or remove heavy soiling.**

c. Soiled masonry surfaces should be cleaned with the gentlest method possible, such as low-pressure water and detergent and natural bristle or other soft-bristle brushes and tested on a small area to ensure that no damage has resulted.

- Cleaning soiled masonry surfaces with the gentlest method possible, such as using low-pressure water and detergent and natural bristle or other soft-bristle brushes.
- Carrying out masonry cleaning tests when it has been determined that cleaning is appropriate. Test areas should be examined to ensure that no damage has resulted and, ideally, monitored over a sufficient period of time to allow long-range effects to be predicted.

d. Joints in concrete should be sealed with appropriate flexible sealants and backer rods, when necessary.

Sealing joints in concrete with appropriate flexible sealants and backer rods, when necessary.

e. If approved by the Preservation Planner and Building Inspection Division, or the Landmarks Commission, masonry that was not historically painted may have paint removed by allowing the property owner to remove peeling paint over time or by other nonabrasive means, such as low-pressure water and detergent and natural bristle or other soft-bristle brushes.

#### 41.xx STANDARDS FOR REPAIRS

##### (3) Walls

###### (a) Masonry

###### 1. Requirements

a. Masonry mortar joints shall be repointed where there is evidence of deterioration, such as disintegrating mortar, cracks in mortar joints, loose bricks, or damaged plaster on the interior.

Repairing masonry walls and other masonry features by repointing the mortar joints where there is evidence of deterioration, such as disintegrating mortar, cracks in mortar joints, loose bricks, or damaged plaster on the interior.

b. For structures constructed within the period of significance, deteriorated mortar shall be carefully removed by hand raking the joints to avoid damaging the masonry. Power tools shall only be used on horizontal joints on brick masonry in conjunction with hand chiseling to remove hard mortar that is deteriorated or is causing damage to the masonry units.

- Removing deteriorated lime mortar carefully by hand raking the joints to avoid damaging the masonry.
- Using power tools only on horizontal joints on brick masonry in conjunction with hand chiseling to remove hard mortar that is deteriorated or that is a non-historic material which is causing damage to the masonry units.

c. Repointing mortar shall duplicate the strength, composition, color, texture, width, and profile of the historic mortar joints.

Duplicating historic mortar joints in strength, composition, color, and texture when repointing is necessary.

Duplicating historic mortar joints in width and joint profile when repointing is necessary.

d. Stucco and Concrete shall be repaired by removing the damaged material and patching with new material that duplicates the old in strength, composition, color, and texture.

Repairing stucco by removing the damaged material and patching with new stucco that duplicates the old in strength, composition, color, and texture

e. Application of sealers and abrasive cleaning is prohibited of masonry units is prohibited.

[Note: draft ordinance is more restrictive] Applying non-historic surface treatments, such as water-repellent coatings, to masonry only after repointing and only if masonry repairs have failed to arrest water penetration problems.

f. For replacement of masonry units, see Standards for Alterations (2)(a).

## 2. Guidelines

a. Exterior insulation and finish system (EIFS) is not an acceptable new material.

Not recommended: Replacing deteriorated stucco with synthetic stucco, an exterior insulation and finish system (EIFS), or other non-traditional materials

## 41.xx STANDARDS FOR ALTERATIONS

### (3) Exterior Walls

#### (a) Masonry

##### 1. Requirements

a. Masonry not previously covered shall not be covered with stucco, exterior insulation and finish systems (EIFS), paint, or other covering.

- Not recommended: Applying paint or other coatings (such as stucco) to masonry that has been historically unpainted or uncoated.
- Not recommended: Replacing deteriorated stucco with synthetic stucco, an exterior insulation and finish system (EIFS), or other non-traditional materials.

b. Removing a chimney visible from the street or altering its appearance is prohibited.

Not recommended: Removing a roof feature from the restoration period that is unrepairable, such as a chimney or dormer, and not replacing it, or replacing it with a feature that does not match.

c. Refer to Section (3)(d) related to chimneys as roof elements.

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

Not recommended: Replacing an entire masonry feature, such as a column or stairway, when limited replacement of deteriorated and missing components is appropriate.

Not recommended: Using replacement material that does not match the historic masonry feature.

e. Composite patching, epoxy repair, mechanical repair, or a Dutchman repair of large masonry units shall follow established conservation methods, with the alteration to match the historic appearance as closely as possible.

Repairing masonry by patching, splicing, consolidating, or otherwise reinforcing the masonry using recognized preservation methods.

##### 2. Guidelines

a. Maintaining elastomeric caulking between masonry and other building materials will assist with keeping a building weather tight.