

Ad Hoc Landmarks Ordinance Review Committee.
Meeting of July, 22, 2021
Agenda #3, Legistar 56918

I would like to expand a bit on the history provided in the staff memo ("Summary of LORC 2 process to date") and issues raised by that history that have impact today.

Edgewater

The Edgewater project was rejected by Landmarks based on gross volume. The Mayor reportedly (12/3/2009 WSJ) called the process "broken" after the Landmarks vote, and reportedly said "the council should determine the fate of the project, which he said would revive a historic building, create needed hotel rooms, provide 1,000 construction jobs, add \$1 million-plus annually in tax revenues and offer new public access to the lake."

For the appeal to the Council, the "citizen members of the Landmarks Commission" provided a statement that said, in part:

The Mansion Hill Historic District – the first local historic district in Wisconsin – requires the gross volume of new additions be compatible with the buildings and environment within 200 feet. If the gross volume is not compatible, the law simply does not allow us to approve a new addition. ... Some have said we should have looked to the larger public interest, and approve the project even though it didn't meet the explicit terms of the ordinance. But consider the implications of having your commissioners go beyond the terms of their charter and make decisions based on vague, personal notions of what's good for the city."

Contrast that to the 2020 variance approval for 7-11 N Pinckney, Legistar 60204. MGO 41.19(7) provides for a public interest variance if a project provides "unique, high priority benefits to the general public," those benefits "outweigh the strong public interest in preserving historic resources," and the proposed project could not occur elsewhere in the City. Staff did not believe the public variance standards were met. The public benefits discussed at the Landmarks meeting included employment, increasing the tax base, and bolstering struggling downtown retail. One Commissioner said the public benefits were related to the site and not to the project. Another said that Landmark's duty was to protect historic resources and that if the project was truly needed by the public, the Council could make that decision. The vote was 3:2 in favor of granting the variance, and the Chair voted to break the tie.

The question is: When talking about potential broad public benefits rather than "unique, high priority benefits to the general public," is the appointed Landmarks Commission or the elected Council the more appropriate body to balance concerns?

121-127 W Gilman

"The [Landmarks] Commission concluded that the proposal does not meet the gross volume standard." (Per the developer's calculations, the proposed building was 4.1 times larger than the average volume of buildings in the visually related area.)

<https://madison.legistar.com/View.ashx?M=F&ID=2863043&GUID=A92AD5C8-527F-4549-88C7-C29099DD7717>

The former Mayor had a snit in an Isthmus 3/7/2014 opinion piece with a bottom-line question of: "Is the new building better than what it's replacing?" The Mayor claimed that block should be moving to "bigger, more dense buildings." He went on to say the historic preservation movement "has moved way beyond just protecting high-profile historic buildings. It has become increasingly esoteric and arrogant." This was countered by the former Landmarks chair (Isthmus 3/28/2014): "The commission is a quasi-judicial body, so the primary question — the only question — is whether the facts of an application meet the law of the ordinance. Not whether somebody thinks something is "better" than what's there now." The former chair then continued on to explain how the height (in number of stories) and volume (in cubic feet) would result in a volume that "was so wildly incompatible with its immediate environment."

The Gilman owners appealed Landmarks failure to act on the demolition permits (rather than the denial of the Certificate), and the Council placed the appeal on file. At the next Council meeting, the creation of LORC was introduced. Under former Mayor Cieslewicz' perspective, there should not be any historic districts because not all buildings in a district are high-profile, but the Council rejected that perspective. In creating LORC, the Council resolution (sponsored by 15 Alders) spoke to "our goal of preserving our irreplaceable historic resources [historic districts and landmarked buildings]."

So, the question might be whether LORC was created to fix problems with the ordinance, or whether it was created to reaffirm commitment to historic preservation.

The Landmarks Legistar record for Gilman includes the "Mansion Hill Historic District Preservation Plan and Development Handbook," which is 72 pages and contains illustrations for gross volume and elevation. (It is also worth noting that the Legistar record for the Edgewater also contains that document.) The Council record for Gilman contains two important documents, both from the City Attorney's office.

- One discusses how both the base zoning code and the Landmarks Ordinance apply to building projects in the Mansion Hill Historic District, and that the more restrictive ordinance (or provisions thereof) prevail. The City Attorney concluded: "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."
- The other document, from ACA Strange, said that the Mansion Hill Historic District Preservation Plan and Development Handbook could be used to help interpret the meaning of the ordinance if the ordinance was ambiguous.

In February 2014, Landmarks used math (actual gross volume) to help determine whether the Gilman gross volume was visually compatible, and apparently considered the illustrated guidelines. Just a few months later in May, staff told Landmarks, with respect to 702 Williamson, that: the ordinance "language says "visually compatible" not mathematically compatible." True, these were different historic districts but both had the same standard: new construction needs to be "visually compatible with those historic resources [within 200 feet]" in terms of gross volume.

What changed in those few months? The ordinance was the same, staff was the same – perhaps the Mayor helped determine the new direction? It is also worth noting that the "Third

Lake Ridge Historic District Plan” was not part of the 702 Williamson record. The Third Lake plan, like the Mansion Hill plan, is referenced in the historic district ordinance.

So the question might be whether the meaning of “visually compatible” in new construction should depend upon staff’s view or whether the ordinance should provide more parameters as to its meaning.

Consultant and use of *Secretary of the Interior’s Guidelines for Rehabilitating Historic Buildings as standards*

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).

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)

The problem with lack of discretion is illustrated by the University Heights example of Legistar 64458, addressed at the joint meeting of LORC and Landmarks in March.

Meeting minutes provide: “Bailey described the case study in University Heights and the complicated analysis of the roof for the addition, which was of a different style than the existing roof form. The proposed ordinance says that the addition roof should be similar to the existing roof, but she said that in this case, it wouldn’t have looked right for this building.”

The proposed ordinance does not say “should” be similar, it says “shall” be similar.

Proposed 41.31(4)(a) lists the requirements for roofs:

- a. Additions to a roof shall maintain the character defining features and form of the existing roof.
Staff analysis: The parapet roof of the enclosed addition is of a style that relates to the house without trying to mimic the flared roof form of the historic structure, which allows the addition to read as subordinate to the historic structure. The screened porch has a very low pitch, which again helps it to remain subordinate to the historic structure.

- b. The form and pitch of the addition roof shall be similar to the existing roof form and pitch.
Staff analysis: The form and pitch of the roofs on the additions are different than the historic structure. However, the unique style of the roof on the historic structure are a key character defining feature and would be out of place on the single-story additions.

This analysis and waiver of a requirement would not be appropriate under the draft ordinance since the ordinance uses “shall” and removes all exercise of discretion. (Yet the end result would probably be better for having exercised that discretion.)

Unified ordinance; district variations

The Staff memo says: “The consultant’s recommendation was to create unified ordinance with the same set of standards and process for all historic districts, and the historic resources in those districts would continue to provide the unique character of those neighborhoods.” It is worth noting that the consultant admitted she had not walked down Williamson, and that she was unable to provide an opinion as to the newer large building at Williamson/Blount. This lack of assessment of the neighborhood context (especially with regard to whether at least a commercial district should have some degree of separate standards), makes me question the amount of reliance that should be placed on the consultant’s recommendation for a unified ordinance.

The Landmarks/LORC joint meeting minutes reflect that the Preservation Planner said a uniform set of standards is “cutting edge preservation practice.” I disagree.

I have looked for municipalities that have adopted the Secretary’s Guidelines as standards. There are a number of municipalities, including in 2021, which have adopted variations of the Secretary’s Guidelines as design *guidelines*. I have only found one that has adopted a variation of the Secretary’s guidelines as *standards* – Austin, Texas. However, Austin adopted those standards only for any historic districts/landmarks designated after March 2021. The eight historic districts created prior to that date continue to use the design standards developed during the district’s application process. And even newly created districts “can create a district specific supplement to the Historic Design Standards with more specific or restrictive standards relating to—for example—building height, porch depth, construction materials, or permanent landscape elements. A supplement may not contradict the requirements of these design standards and should be based on the features and characteristics of the historic district.”

The need for some degree of district specificity is also advanced by William Cook, Special Counsel for Cultural Heritage Partners. (Attorney Cook’s bio states his practice focuses on balancing historic preservation with economic development so that historic preservation law is more efficient, effective, and predictable.) David Mollenhoff provided the Committee members a binder, and Attorney Cook’s memorandum is at tab 8 of the binder. Attorney Cook says “the City of Madison should adopt an approach that allows for a core set of standards with district-specific differentiation and interpretive guidelines, in line with the Alliance’s proposed ordinance revisions.”

Respectfully Submitted,
Linda Lehnertz