



City of Madison

City of Madison
Madison, WI 53703
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Meeting Minutes - Approved AD HOC LANDMARKS ORDINANCE REVIEW COMMITTEE

Tuesday, April 14, 2015

5:00 PM

215 Martin Luther King Jr. Blvd.
Room 313 (Madison Municipal Building)

CALL TO ORDER / ROLL CALL

Present: 5 - Marsha A. Rummel; Steve King; Mark Clear; Chris Schmidt and Shiva Bidar-Sielaff

APPROVAL OF March 19, 2015 MINUTES

A motion was made by Rummel, seconded by Clear, to Approve the Minutes of the March 19, 2015 meeting. The motion passed by voice vote.

PUBLIC COMMENT

David Mollenhoff, representing the Madison Alliance for Historic Preservation, registering in support and wishing to speak.

Mollenhoff explained that he provided comments related to the need to manage historic resources. He explained that the Ordinance is regulatory, but that the elements of management should be included. Those elements include initiating new and updating existing historic preservation plans and surveys, encouraging economic development by promoting heritage tourism, providing technical assistance and information, providing adequate and effective historic preservation program funding, and encouraging cooperation and coordination in the administration and enforcement of this ordinance. Mollenhoff explained that these items overlap with the regulation and are needed for a successful preservation program.

King asked Mollenhoff how to reconcile ordinance issues with planning issues. Mollenhoff explained that many of these elements are already being done and that these elements would certainly be included in a plan, but that these elements are also needed for the day to day management of historic resources that cannot wait for a plan to be prepared or updated.

James Matson, representing the Madison Alliance for Historic Preservation, registering neither in support nor opposition and wishing to speak. Matson explained that the Alliance is pleased with the progress that has been made over the last few meetings and that the Alliance encourages the Committee to draft an ordinance that is clear and consistent. Matson explained that while waivers of historic preservation standards may be necessary, the waiver language should not be overly broad. Matson explained that the Common Council should apply the same standards in an appeal as the Landmarks Commission for a variety of reasons including that the Council should not act contrary to its own ordinance. He explained that references to

guidelines should be deleted altogether and that definitions should be reviewed in detail.

John Martens, registering neither in support nor opposition and wishing to speak.

Martens explained that as a professional working with this ordinance, the definitions are critical to the interpretation of the language.

Rummel asked Martens if he could provide a definition for gross volume. Martens explained that he did not have a definition for that term specifically prepared at this time, but that clarity was needed. He explained that he would be happy to work with the Committee and the City Attorney to find that clarity. Schmidt explained that the definitions must relate to the philosophical intent of the ordinance language. He explained that gross volume is different than apparent volume and the current ordinance is not clear about the intent.

Stu Levitan, representing the Landmarks Commission, registering in support and wishing to speak.

Levitan explained that he generally agrees with the Alliance memo. Levitan explained that he has reconsidered his original thoughts and believes that "variance" is a more technically accurate term than "waiver" and that the balancing test suggested for the appeal language was a misstep that should be removed from consideration. He explained that the Council should apply the same appeal standards as the Landmarks Commission. Levitan explained that the proposed economic hardship language of 4a is an improvement and that language explaining the requested relief shall not affect the historic character of the resources within the visually related area is necessary to include. Levitan explained that he needs clarification on the language of 41.21.4c regarding the standards for new construction.

Rummel asked Levitan about philosophy of intent and the definitions. Levitan explained that gross volume is a known term and that definitions should make the ordinance language more understandable.

Schmidt asked Levitan to explain why he changed his mind about "variance" and "waiver." Levitan explained that he viewed the term "variance" with the specialized experience from the Zoning Board of Appeals and that "waiver" would be more appropriate for the Landmarks Commission. He explained that the definition of a waiver is the voluntary relinquishment of a right and that is not what is being done here. The connotation of variance is most appropriate in the ordinance.

Jason Tish, registering in support and available to answer questions.

Jeff Vercauteren, representing Urban Land Interests, Apex Properties, Inc., Hovde Properties, Steve Brown Apartments, and Wright 2102 LP, registering neither in support nor opposition and available to answer questions.

Franny Ingebritson, registering neither in support nor opposition, and available to answer questions.

DISCLOSURES AND RECUSALS

None

1. [34202](#) Ad Hoc Landmarks Ordinance Review Committee Materials
2. [34577](#) Repealing and recreating Section 33.19 of the Madison General Ordinances to update the Landmarks Commission ordinance.

The discussion started with the appeal language. Bidar-Sielaff explained that (4)(b) language should be removed because the Council should not have a different set of standards than the Landmarks Commission. King explained that he will vote against removal of the language and that he will likely vote against the ordinance at Council if the language is removed. Schmidt explained that the purpose of providing protection through a landmarks ordinance is because there is public interest in the preservation of historic resources. He explained that this fact should be a baseline standard for the Landmarks Commission and the Council and that the act of balancing is already in the process.

Bidar-Sielaff suggested that there be an additional standard that the Landmarks Commission and Council could review based on the public interest as long as both bodies have the same standard. She explained that Council members could come to different conclusions by balancing the public interest while applying the standards without the language of (4)(b).

Clear explained that he recognizes that the purpose is not to undermine the Landmarks Commission, but the scope of the Council is broader than the scope of the Landmarks Commission and the Landmarks Commission is appointed for their expertise in a specific area. The Council has to make decisions based on a wide range of factors and the appeal language would be essentially make the Council find that the Commission incorrectly interpreted or applied the standards which is different than disagreeing with the Landmarks Commission in the application of the standards. Clear asked ACA Strange how the court would interpret the Commission and Council actions.

ACA Strange explained that case law explains that there is generally leeway to explain what the courts would review. If the language of 4b were removed, the Council review would apply the standards in the ordinance and the terms would be interpreted based on definitions or precedent decisions. He read a recent case law finding - "A municipality's interpretation of its own ordinance is unreasonable...if it is contrary to law, if it is clearly contrary to the intent, history or purpose, or if it is without rational basis. Interpretation that directly contravenes the words of the ordinance is also unreasonable." This statement shows that a court will reverse if the Council acts unreasonably. ACA Strange also explained that if the language of (4)(b) is removed and the Council feels that they can't interpret their way out without being reversed by the courts, but they really believe the appeal would allow for a project that is good for the City, there is no basis in the Ordinance for making that finding. The interest that is espoused in the ordinance is the public interest to

preserve and protect the historic resources. ACA Strange explained that the Council has leeway in interpreting the ordinance and amending the ordinance in the future.

Clear explained that Commission appointments by the Mayor could be contrary to the public interest. Bidar-Sielaff explained that standards can be interpreted differently by Commissioners on the same body or by Council members.

Rummel explained that the Plan Commission allows discretion in the interpretation of standards. The ordinances that are adopted by the Council should matter to the Council.

Schmidt suggested that the LORC review the demolition standards and the purpose and intent statement to see if the balancing of the public interest is already accommodated by the language. Schmidt used demolition standard a as an example of how the Commission may come to one conclusion while the Council could come to another. Rummel explained that the Landmarks Commission reviewed the demolition of an existing residence on Orton Park and some Commissioners felt that it was in the public interest to maintain that residence, but other Commissioners felt it was in the public interest to allow the existing structure to be demolished so that a new residence could better relate to the character of the district. The standards were interpreted and people with expertise came to different conclusions.

Clear explained that with the removal of (4)(b), there is not a standard that allows the proposed project to be of greater public interest than the public interest in preserving a particular building. Schmidt explained that the purpose of the ordinance is to protect the public interest of historic preservation and that the standards should be similar for both bodies because that is consistent with other appeal processes. King explained that a super majority is needed to override the purpose and intent of the ordinance and there needs to be a standard that allows a prescribed application.

Schmidt asked Scanlon for examples where this issue may be relevant. Scanlon explained that the original proposal for the 100 block of State Street involved the demolition of two landmark buildings and there was concern that the value of the public interest in this project would be found to be more important than the value of the public interest in the preservation of the landmarks. Ultimately, the proposal was changed so that the landmark buildings would be retained. Another example would be the original proposal for the Steensland House which included demolition of the landmark building to allow space for a large church expansion that would include space for outreach programs. In this case, the proposal was changed to request relocation instead of demolition. Scanlon explained that there have been two demolitions of primary buildings within the Third Lake Ridge historic district. In any case, the current demolition standards are interpretable and they may be interpreted differently. The purpose and intent section also provides language that can be considered differently.

Clear suggested an additional standard in 41.20.2 to allow the Commission and the Council to consider the public interest in removing a landmark or a building in a historic district. Bidar-Sielaff explained that the demolition standards already allow for a new development if it is in the public interest. Staff read the current ordinance language related to demolition standard g. Clear explained that standard g explains that what is replacing the historic resource should be compatible, but does not allow the new project to have public interest over preservation. Bidar-Sielaff explained that allowing the public interest to outweigh preservation is how Madison has gotten to this point where others decided it was in the public interest to demolish significant buildings in the name of public interest and that this practice should stop. She explained that providing flexible language might be fine, but language allowing the balancing test should be removed and if there is political will, the ordinance can be changed.

A motion was made by Rummel, seconded by Bidar-Sielaff, to remove 41.22(4)(b) from the draft ordinance.

Ayes: Rummel, Bidar-Sielaff

Noes: Clear, King

Schmidt voted Aye to break the tie (3:2)

Schmidt explained that public interest language should be included in the regular standards. Clear suggested adding language in 41.20(2) that would read, "Whether a structure or project proposed to replace a landmark or building in a historic district is in such public interest so as to outweigh the interest in the status quo." Bidar-Sielaff suggested that language of that sort should be in the waiver section. There was general discussion about the waiver process and the ordinance language. Clear explained that he did not have a strong opinion about whether his proposed language is in the waiver or the appeal section. Bidar-Sielaff suggested that Clear's language could be (d) in the waiver section. King suggested that given the discussion, ACA Strange could draft language for review at the next meeting. ACA Strange asked for clarification about the intent.

Clear shared a definition of waive which was "to set aside or dispense with" and of variance which is "the act of varying is taking place; that there is a difference in what is expected and what is taking place". Clear explained that "variance" is a better word for the intent of the language. There was general discussion about which word to use and the definitions and connotations of each. Rummel referred the discussion to the Alliance document the second item of #2 on page 2.

John Schlaefer explained that a waiver means the standard is not being evaluated and a variance means that standard is being evaluated but has been found to not apply. Schmidt explained that the definition should mean what is intended. Schmidt suggested that all references to waiver be changed to variance and that there be a definition of the word.

There was general discussion about the definition of gross volume and the intent of the ordinance language as to whether the language warrants gross

volume or apparent volume. Scanlon explained that gross volume is not in Phase 1 and the definition of gross volume would be relevant in the discussion of Phase 2 as it relates to the way the historic districts have used the term. Gross volume does appear in the list of items for historic district ordinance sections to consider so the term may require a definition that relates to the intent as used by existing historic district sections.

Schmidt suggested that ACA Strange and Scanlon begin providing definitions for review.

There was general discussion about the Madison Trust definitions. ACA Strange suggested that a definition of historic resource is necessary and will include buildings, structures and improvements. Character, gross volume, height, master, and landmark site require definitions.

King explained that in the definition of landmark site there was a suggestion to use parcel instead of lot. Scanlon explained that in some cases the landmark site is the area immediately adjacent to the landmark building, but in other cases the landmark building may be significant because of a large portion of the site so that this becomes a landmark specific discussion. ACA Strange explained the current definition and the need to have further discussion.

Madison Trust recession language revision was accepted.

Schmidt explained that the Management of Historic Resources items are not appropriate for the ordinance, but are appropriate for the Comprehensive Plan. King explained that all items should be addressed, but not in the ordinance. There was general discussion about how these items should be included in the Comprehensive Plan and Comprehensive Historic Preservation Plan.

A motion was made by Clear, seconded by Bidar-Sielaff, to refer the item to the next meeting. The motion passed by voice vote/other.

3. Upcoming Meetings

Schmidt explained that future meetings will be needed and that a schedule will be determined after the Committee members have their new Commission appointments.

ADJOURNMENT

A motion was made by King, seconded by Rummel, to Adjourn. The motion passed by voice vote. The meeting adjourned at 7:20 p.m.