



Historic Landmarks and Preservation Districts Commission

MEMORANDUM

To:	Historic Landmarks and Preservation Districts Commission
From:	Cynthia Elmore, Historic Preservation Officer
Date:	August 22, 2019

Case No: 19DESGNATION1000

Property Address: 2911 S. 4th Street and 2914 S. 3rd Street
(Parcel 050J-0166-0000)

Introduction to Ordinance Changes

On July 25, 2019, the Metro Council approved, and Mayor Fischer signed, recommended changes to LMCO 32.250, "Historic Landmarks and Preservations Districts Commission." Among the approved changes, including many of the changes recommended by the Commission, are revisions to the Individual Landmark designation process. The Jefferson County Attorney's Office advises that some of these changes apply to 19DESGNATION1000 as highlighted below.

Description of Ordinance Changes

Definition of an Individual Landmark

The definition of an individual landmark was changed to better reflect the Commission's idea of what it should be.

Individual Landmark: "A structure or site, including prehistoric and historic archaeological sites, designated as a local historic landmark by the Commission as provided in this subchapter or by action prior to the effect date of this subchapter. A landmark structure or site is one of significant importance to the city, the Commonwealth, or the nation and which represents irreplaceable distinctive architectural features or historical associations that represent the historic character of the city, the Commonwealth, or the nation."

Designation Criteria

The criteria were changed primarily to improve clarity and to separate criteria for Preservation District designations and Individual Landmark designations. Furthermore, Integrity of the resource is recognized as a core necessity for consideration, and a criterion is added to recognize underrepresented histories.

Per 32.260 (O), "In considering the designation of any area, site, or structure in Louisville Metro as an Individual Landmark, the Commission **shall** apply the following criteria with respect to such structure, site, or area. An Individual

Landmark **shall** possess sufficient integrity to meet criterion (a) and one or more of the other criteria (b) through (e)."

Integrity: "The authenticity of a structure or site's historic integrity evidenced by survival of physical characteristics that existed during the structure or site's historic or prehistoric period. To retain historic integrity a site must possess some of the following aspects: location, design, setting, materials, workmanship, feeling, or association."

In summary, an Individual Landmark has to have integrity as defined and meet criterion (a) as well as one or more of the other criteria. The table below shows the new criteria in comparison with the previous criteria.

New criteria	Previous criteria	Explanation for Change
(a) Its character, interest, or value as part of the development or heritage of the city, the Commonwealth, or the nation.	(a) Its character, interest, or value as part of the development or heritage of Louisville Metro, Jefferson County, the Commonwealth, or the United States.	All designation requests have to meet this criterion and one or more of the other criteria.
(b) Its location as a site of a significant historic event.	(c) Its location as a site of a significant historic event.	
(c) Its primary identification with a person or persons who significantly contributed to the culture, heritage, and development of the city, the Commonwealth, or the nation.	(d) Its identification with a person or persons who significantly contributed to the culture and development of Louisville Metro, Jefferson County, the Commonwealth, or the nation.	The word primary was added to emphasize that the person has to be why the site is significant.
(d) Its embodiment of distinguishing characteristics of an architectural type or specimen; or its embodiment of a significant architectural innovation; or its identification as the work of an architect, landscape architect, or master builder whose individual work has influenced the development of the city, the Commonwealth, or the nation.	(e) Its embodiment of distinguishing characteristics of an architectural type or specimen.	These criteria were combined into one to eliminate redundancies.
	(f) Its identification as the work of an architect, landscape architect, or master builder whose individual work has influenced the development of Louisville Metro, Jefferson County, the Commonwealth, or the nation.	
	(g) Its embodiment of elements or architectural design, detail, materials, or craftsmanship which represents a significant architectural innovation.	
(e) Its historic significance is based on its association with an underrepresented history within the city, the Commonwealth, or the nation and broadens our understanding of these underrepresented histories.	--	This criterion was added to include those histories that were previously not included.
--	(b) Its exemplification of the historic, aesthetic, architectural, prehistoric or historic archaeological, educational, economic, or cultural heritage of	Removed to eliminate redundancies.

	Louisville Metro, Jefferson County, the Commonwealth, or the nation.	
--	(h) Its relationship to other distinctive areas which are eligible for preservation according to a plan based on an historic, cultural, or architectural motif.	Moved to Preservation District designation criteria as it is more applicable there.
--	(i) Its location or physical characteristics representing an established and familiar visual feature or which reinforce the physical continuity of a neighborhood, area, or place within Louisville Metro.	Moved to Preservation District designation criteria as it is more applicable there.

Economic Hardship

In addition to the new designation criteria, the Ordinance now contains a provision for consideration of Economic Hardship during the consideration for designation of Individual Landmarks. The property owner may present evidence in strict compliance with the guidelines for projects, including New Construction and Demolition, that would present an Economic Hardship should the property be designated. The Commission may consider this information during the designation review process. Similarly, the Metro Council may also consider this information should a successful designation be appealed to the Council.

According to 32.257 (L), "The Commission shall grant an economic hardship exemption only if it finds that the applicant has demonstrated through a preponderance of the evidence that:

(1) With respect to an application involving a non-income producing structure or site, the site or structure cannot be put to any reasonable beneficial use according to the guidelines adopted by the Commission for economic hardship without the approval of the application.

(2) With respect to an application involving an income-producing structure or site, the applicant cannot obtain any reasonable return from the site or structure without the approval of the application."

The Commission has guidelines for determining economic hardship, which are attached to this memorandum. The guidelines stipulate the documentation that can be submitted to show the owner's financial information and determination of reasonable return/feasibility of beneficial uses.

According to the guidelines, "The deteriorated condition of a historic building attributable to the owner's failure to provide proper maintenance over an extended period of time will not be considered a mitigating circumstance in evaluations of economic hardship. Hardship that is attributable to a building's being allowed to deteriorate will be considered self-imposed; restoration costs incurred to remediate such neglect will not be considered."

Commission Voting Procedures

The Commission's voting procedures for designations of individual landmarks and districts were changed to reflect a decision of the majority of the total Commission rather than only those members present.

Per 32.54 (E), "The affirmative vote of a majority of the members present shall be required for any action taken by the Commission. However, the affirmative vote of a majority of the total membership shall be required to designate an individual landmark or district."

In summary, 7 members of the Commission must vote in favor of a designation of an individual landmarks or district for the designation to pass.

Economic Hardship Exemption

AND GUIDELINES FOR DEMOLITION

Introduction

Historic buildings, for one reason or another, present particular challenges for rehabilitation, adaptive reuse, and sometimes even continued habitation. All buildings require proper maintenance, and older buildings are particularly susceptible to deterioration. In the absence of a good roof or a few windows, the elements can do irreparable damage within a surprisingly short period of time. Abandoned buildings are particularly subject to rapid deterioration and may attract vagrants or vandals who will, intentionally or not, accelerate the deterioration. The best way to prevent demolition is to keep buildings properly maintained and secured. But it is an unhappy reality that occasionally buildings deteriorate to the point that demolition becomes a consideration.

The first and most important guideline for demolition of an existing contributing structure within any historic district or any individual landmark within the City of Louisville is:

Unless the City has determined that it poses an imminent threat to life or property, do not demolish any historic structure or part of a historic structure that contributes to the integrity of any historic district or individual landmark unless: 1) the demolition will not adversely affect the district's (or the landmark's) distinctive characteristics, taken as a whole, retained over time 2) the demolition will not adversely affect the district's importance as a "unified entity" composed of interrelated resources united historically or aesthetically by plan or physical development; and 3) the proposed replacement structure and development will strengthen the viability of the district as a whole.

The rationale for this kind of inflexible regulation is that historic districts are subject to seemingly small losses and degradation that will, over time, amount to significant and irreversible damage to the integrity and character of the historic district. This strict guideline recognizes and protects the significance of every one of Louisville's historic buildings.

The Economic Hardship Exemption

When an application for demolition or new construction is denied, an applicant may appeal for an economic hardship exemption from one or more specific guidelines. The procedure for determining economic hardship is rigorous, and the standards set for determining what constitutes economic hardship are quite high. The test for economic hardship is not whether demolition or proposed new construction provides a better use or return, but whether denial of the owner's request to demolish or build deprives the owner of *any reasonable beneficial use* in the case of a non-income producing property, or *any reasonable return* in the case of an income-producing property. The burden of proof is on the property owner to prove that any reasonable beneficial use (in the case of non-income producing property) or any reasonable return (for income producing property) cannot be obtained without the proposed demolition and/or new construction.

Determining Economic Hardship

The City of Louisville has established a procedure to evaluate whether or not its historic preservation guidelines for demolition and/or new construction constitute an economic hardship for individual property owners who request an exemption. The attached flow chart presents the process graphically. The process is intended to give fair review and consideration to the possibility that a property owner may have a claim to being exempt from specific historic preservation guidelines pertaining to demolition and new construction. The appeal for an economic hardship exemption is completely separate from the review of an application for a Certificate of Appropriateness, but must be initiated at the time the application is filed. The process is fair but requires the property owner to provide substantial proof that he or she deserves an exemption due to economic hardship.

The process to apply for an economic hardship exemption begins when the property owner applies to the Landmarks Commission for a Certificate of Appropriateness. The property owner must, *upon*

submission of the application for the Certificate of Appropriateness, submit evidence and documentation establishing that compliance with a specific design guideline or guidelines will constitute economic hardship. It is thus attendant upon the property owner to anticipate when he or she may require an economic hardship exemption from one or more of the guidelines for demolition and new construction. The property owner should consult with the staff of the Landmarks Commission, if he or she suspects the project will require an economic hardship exemption. The documentation and evidence required for the determination of economic hardship is discussed below.

The application for a Certificate of Appropriateness will be reviewed by the Architectural Review Committee. Should the Architectural Review Committee deny the application, the applicant may appeal the denial to the Landmarks Commission or, in cases of demolition or new construction, request an economic hardship exemption from compliance with the specific guideline(s) that constituted the basis of denial of the application. The applicant has ten days from notice of the Committee's decision to file a formal request for an economic hardship exemption.

The Commission will review the evidence and documentation prepared by the applicant and will conduct a public hearing specifically to address the request for an economic hardship exemption. The Commission may require the applicant to hire an approved independent real estate consultant to evaluate the documentation and evidence submitted by the applicant. Within 60 days of the Commission meeting at which the request for an exemption is received, the Commission must render its decision, a copy of which is sent to the applicant and the Commission. The Commission's decision to deny the request for the exemption is final, and will result in the denial of the Certificate of Appropriateness. If the Commission approves the request for the economic hardship exemption from specific demolition and new construction design guidelines, the Commission will issue a Certificate of Appropriateness, with or without conditions, within 30 days of approving the exemption.

Evidence and Documentation of Economic Hardship

The Landmarks Commission is charged with a detailed review of the facts associated with building projects that have the potential to have significant negative effect upon the character of Louisville's historic districts and individual landmarks. In order to make informed and fair evaluations of specific

proposals, the Commission requires detailed information pertaining to the finances of the historic structure as well as the use to which it will be put.

In order to be granted the hardship exemption that would clear the way for demolition of an income producing historic structure or for new construction, the applicant must provide clear and convincing evidence that any reasonable return cannot be obtained from the Property or Structure without approval of the request for demolition or for new construction. In order to show that any reasonable return cannot be obtained, the applicant must show that:

1. the Property or Structure currently is not capable of providing any reasonable return; and
2. *bona fide* efforts to sell or lease the Property or Structure have been fruitless; and
3. the costs required to rehabilitate the Property or Structure are such that any reasonable return on such an investment is not achievable.

In order to be granted the hardship exemption that would clear the way for demolition of a historic structure that is non-income producing (e.g., owner-occupied residences) or for new construction, the applicant must demonstrate through a preponderance of the evidence that the Property or Structure cannot be put to any reasonable beneficial use without approval of the request for demolition or for new construction. In order to show that beneficial use of the Property or Structure cannot be obtained, the applicant must show that:

1. the Property or Structure cannot now be put to any beneficial use; and
2. *bona fide* efforts to sell or lease the Property or Structure have been fruitless; and
3. it is not economically feasible to rehabilitate the Property or Structure.

In order to meet the tests set out above, an applicant seeking an economic hardship exemption should provide the following information pertaining to the historic structure.

A. Financial Information

1. Purchase Price, Date, and seller, including relationship, if any.
2. Copy of current Deed.
3. Current assessed value of land and improvements.

4. Annual gross income of property, if applicable.
5. Operating and Maintenance Expenses.
6. Real Estate Taxes, if applicable.
7. Annual Cash Flow from property.
8. Other federal income tax deductions produced, if applicable.
9. Any and all Appraisals.
10. All listings for sale or rent in the past 2 years.
11. Prices asked and offers received, including broker's testimony.
12. Profitable and adaptive reuses considered, as applicable.
13. Tax returns on or relating to property.

B. Determination of Reasonable Return/Feasibility of Beneficial Uses

1. Report from licensed architect or engineer regarding condition of structure.
2. Identification of alternative uses.
3. Cost estimates associated with rehabilitation for reasonable uses, including the scope of work upon which the cost estimate is based.
4. Pro forma of projected revenue and expenses for use or reuse of existing improvements, including the use of any tax credits, if applicable.
5. Estimate of current market value of property, with land and existing improvements as is.
6. Estimate of Internal Rate of Return based upon pro forma of income and expenses, including tax credits and estimate of equity investment, if applicable.
7. Estimates and analysis of the net impact of proposed new construction in stabilizing property values and the integrity of the District as a whole or of the Local Landmark.
8. Such other information as the Commission may reasonably request.

Demolition by Neglect

The deteriorated condition of a historic building attributable to the owner's failure to provide proper maintenance over an extended period of time will not be considered a mitigating circumstance in evaluations of economic hardship. Hardship that is attributable to a building's being allowed to

deteriorate will be considered self-imposed; restoration costs incurred to remediate such neglect will not be considered.

Guidelines for Demolition

In the case of applications to demolish both contributing and non-contributing buildings, Certificates of Appropriateness for demolition will not be granted until the design for new construction and the entire development has been reviewed and approved by the ARC and/or the Commission. The Certificate of Appropriateness shall contain a condition that the demolition permit shall not be issued until the permit for construction of the entire development has been issued.

In the case of demolition of non-contributing buildings and additions within Louisville historic districts, follow these guidelines:

- DE1** Do not demolish existing non-contributing buildings and additions in a manner that will threaten the integrity of existing contributing structures.
- DE2** Do take steps to assure the integrity of a wall exposed to the elements by the removal of a non-historic addition.
- DE3** Do remove non-historic interior finishes such as plaster, drywall or paneling that may be exposed as a result of the removal of non-historic additions.
- DE4** Do infill non-historic openings in historic walls, exposed as a result of the removal of the non-historic finishes.
- DE5** Do landscape areas that are left vacant as the result of removals of non-contributing buildings and additions. Topography should be made consistent with that of adjacent properties. The slope and grades of land left vacant after demolition should continue and be consistent with those features on adjacent properties.
- DE6** Do take measures to reestablish the street wall after demolition through the use of low fences, walls, and/or vegetation.

Economic Hardship Guidelines approved by the City of Louisville Board of Aldermen, December 17, 2002.

Economic Hardship Exemption Application Flow Chart

Application submitted for demolition or new construction, including information establishing the property's inability to provide reasonable beneficial use or return.



Application denied by the Architectural Review Committee; denial upheld by the Landmarks Commission.



Within ten days of the Landmarks Commission's decision, the applicant must file a request for an economic hardship exemption from the specific guidelines that were the basis of the denial.



The applicant prepares evidence and documentation regarding economic hardship.



The Landmarks Commission reviews documentation and evidence.



The Landmarks Commission holds a public hearing.



Within 60-days the Landmarks Commission renders a decision and sends a copy of the decision to the applicant.



The Landmarks Commission's decision is final. If the application for the economic hardship exemption is approved, the Commission issues a Certificate of Appropriateness with or without conditions. If the application is not approved, no Certificate of Appropriateness is issued.