

## Certificate of Appropriateness—Demolition

1. COA application filed with City Clerk. (320-21-11-a)
2. City Clerk to refer COA application to HPC. (320-21-11-a)
3. HPC review COA application at next regular meeting. (320-21-11-b)
4. HPC may approve application and direct issuance of COA or HPC shall schedule a public hearing on application within 30 days of its original review date. (320-21-11-b).
5. In case of demolition, HPC may vote within 30 days after the public hearing to defer a determination on the application for a period not to exceed one year from the date of the application. HPC shall provide applicant a report on the reasons for the deferral. (320-21-11-g)
6. If deferred, applicant can appeal deferral to the CC. (320-21-11-g)
7. During period of deferral, HPC and applicant shall discuss and cooperate on application. (320-21-11-g)
8. During period of deferral, owner shall take whatever steps are necessary to prevent further deterioration of the building. (320-21-11-g)
9. At end of year of deferral, HPC shall act on application. (320-21-11-g)
10. HPC criteria for COA for demolition. (320-21-11-h).
11. Applicant may appeal to CC if 1) HPC denies COA or 2) HPC issues COA with conditions that applicant refuses to accept. (320-21-11-f)
12. 2/3 vote of CC required to **reverse** or **modify** decision of HPC. (320-21-11-f)
13. CC standard of review (320-21-11-f):

**After balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes,**

**The CC finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the COA:**

**will preclude any and all reasonable use of the property  
and/or**

**will cause serious hardship for the owner provided that any self-created hardship shall not be a basis for reversal or modification of the HPC decision.**

CAO Rec'd 12-10-10  
@ 3:03 PM

# Mallery & Zimmerman S.C.

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December 10, 2010

## ALL BY MESSENGER

Paul Jakubovich  
Historical Preservation Commission  
City Clerk's Office  
City Hall, Room 205  
200 East Wells Street  
Milwaukee, WI 53202

James Owezarski  
Deputy City Clerk  
City Hall, Room 205  
200 East Wells Street  
Milwaukee, WI 53202

Dear Paul and Jim:

Re: Marriott Hotel, Corner of Wisconsin  
Avenue and Milwaukee Street

As you are aware, on December 13, 2010 a public hearing ("Hearing") will be held to review an Application ("Application") of Certificate of Appropriateness ("COA") submitted by Wave Development LLC ("Applicant") to the Historic Preservation Commission ("HPC") on November 3, 2010. We want to take this opportunity to set forth our understanding of what has occurred to date and the procedure which will be followed at the Hearing. The following sets forth our understanding of the applicable ordinance, HPC's Bylaws and Procedures and the discussion Timothy Van de Kamp and I had with the two of you on November 18, 2010.

The Application requests that HPC issue a COA to (i) raze the buildings on the Property and (ii) for the construction of a new building at the Property in accordance with the plans attached to the Application (the plans constitute the "Project"). The City has accepted the Application and the Application is deemed complete. During our meeting with both of you on November 18, 2010 Jim stated the City has an obligation to tell us if the Application is not complete and Paul stated he would let us know by November 24, 2010 if there was any additional information required to complete the Application. We did not receive a request for any additional information prior to November 24, 2010. Since November 24, 2010 Paul has requested that we submit a name of a "trained architectural historian (with a track record of historical writing on this subject)" that will be working with us. We have informed Paul we will be using Doug Nysse from Kahler Slater.

At the public Hearing, the following will occur in the following order (see Section 4 of HPC's Procedures):

- There will be a presentation by staff of its report and recommendations with respect to the Application.
- HPC members will ask questions of staff regarding the staff report.
- Presentation by the proponents of the Project.
- Presentation by the opponents of the Project.
- Discussion of the issue by HPC members and expression of individual positions.
- HPC members will vote to (a) approve the Application, (b) deny the Application, (c) conditionally approve the Application or (d) continue the Application for a period of time not to exceed one year. The action at the Hearing will be determined by a simple majority of the votes of the members of HPC.

The only actions which may be taken by HPC at the Hearing are as follows (see Section 4 of HPC Procedures and Ordinance 320-21):

1. HPC Votes to Approve.

If HPC approves the Application at the Hearing, then the Applicant may commence razing the buildings and constructing the Project.

2. HPC Votes to Deny.

- 2.1. If HPC votes to deny the Application at the Hearing, HPC must notify the Applicant in writing by certified mail within 15 days after the hearing on December 13, 2010. 320-21-11 (f). The Applicant does not have to wait to receive the denial in writing and may file an appeal of the denial immediately after the Hearing. Statement by Deputy City Clerk.
- 2.2. The Applicant files the appeal with the City Clerk. Although not specifically stated in the Ordinances, the appeal is then scheduled for a public hearing in front of the Zoning, Neighborhoods & Development Committee ("ZND"). The appeal is calendared by the Chairman of ZND. ZND may vote to reverse or modify the decision of HPC. The vote at ZND is determined by a simple majority. Statement of the Deputy City Clerk.

- 2.3. The recommendation of ZND goes to the Common Council ("Council") and the Council may vote to reverse or modify the decision of HPC. 320-21-11(f). The Council can reverse or modify the decision of HPC. 320-21-11(f). The vote at the Council is determined by 2/3rds of the members of the Council. 320-21-11(f).
  - 2.4. If the Council votes to reverse the decision by HPC, then the Applicant may commence razing the buildings and constructing the Project in accordance with the Application. 320-21-11(f).
  - 2.5. If the Council votes to modify the decision of HPC, then the Applicant may commence razing the buildings and constructing the Project in accordance with the revisions made by the Council. 320-21-11(f).
3. HPC Votes to Conditionally Approve.
- 3.1. If HPC conditionally approves the Application, HPC can give Applicant the conditions at the Hearing or can deliver conditions at the next HPC meeting. Statement by Deputy City Clerk.
  - 3.2. If the Applicant accepts the conditions, the Applicant may commence razing the buildings and constructing the Project in accordance with the conditions approved by HPC.
  - 3.3. Regardless if the conditions are delivered to the Applicant at the Hearing, the Applicant may appeal the conditional approval of the Application any time after the Hearing. Statement of the Deputy City Clerk. The appeal of the conditional approval follows the same appeal procedure for a denial as set forth in Section 2 above. 320-21-11(f).
4. HPC Votes to Defer for Up to One Year.
- 4.1. If HPC votes to defer the Application for a period of up to one year, then HPC must provide the Applicant with a written report within 30 days after the Hearing. 320-21-11(g). If the Applicant desires to appeal the deferral by HPC, then the Applicant does not have to wait for the issuance of the report and the Applicant may immediately file the appeal with the City Clerk's office. Statement of the Deputy City Clerk.
  - 4.2. The Applicant files the appeal with the City Clerk. The appeal is then scheduled for a public hearing in front of ZND. The appeal is calendared by the Chairman of ZND. ZND may vote to sustain the denial of HPC,

reverse the denial by HPC or modify the actions of HPC. The vote at ZND is determined by a simple majority.

- 4.3. The recommendation of ZND goes to the Council and the Council may vote to sustain the denial of HPC, reverse the denial of HPC or modify the actions of HPC. The vote at the Council is determined by a simple majority.
- 4.4. If the Council votes to sustain the denial of HPC, then the buildings cannot be demolished and the Project cannot be built.
- 4.5. If the Council votes to reverse the denial by HPC, then buildings can be demolished and the Project can be built in accordance with the Application.
- 4.5. If the Council votes to modify the denial of HPC, then Applicant may demolish the buildings and construct the Project in accordance with the Application and any changes requested by the Council.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. DeMuth', enclosed within a large, loopy oval shape.

Thomas P. DeMuth

TPD:jf

cc: Gregg C. Hagopian (By Messenger)

## HPC OUTLINE

### MONDAY, DECEMBER 13, 2010 HPC PUBLIC HEARING

#### Doc. No. 164324

1. **LOCAL HISTORIC DISTRICT:** East Side Commercial District. District-designation approved by Common Council by File No. 87-0085 (per HPC Staff, district placed on local register on Nov. 17, 1987).

2. **COA APPLICANT:** Thomas DeMuth, agent for developer, Wave Development LLC

3. **PROPERTIES:**

- 319-325 E. Wisconsin (Assessor site says address is 319-323 E. Wisconsin), 392-0735-5, MBI Properties LLC ("MBI"), 2010 assessment is \$732,000.
- 327 E. Wisconsin, 392-0734-X, MBI, 2010 assessment is \$436,000 (COA application says this includes 633 N. Milwaukee)
- 625 N. Milwaukee, 392-0738-1, Milwaukee NOW! LLC ("NOW"), 2010 assessment is \$2,155,000. 2009 tax delinquency of \$60,859.48.
- 627 N. Milwaukee, 392-0737-6, MBI, 2010 assessment is \$194,000.
- 629-631 N. Milwaukee, 392-0736-0, MBI, 2010 assessment is \$319,000

4. **COA APPLICATION FILED WITH HPC 11-3-10.**

- MCO 320-21-11-a required filing COA application with City Clerk, and Clerk to forward to HPC. COA Application was filed 11-3-10.
- 11-15-10 HPC Meeting. MCO 320-21-11-b required HPC to review project at HPC next regular meeting and if HPC did not find project appropriate then, and then direct COA issuance, HPC was to set a public hearing within 30 days. This is what happened on 11-15-10, and 12-13 hearing was set.
- COA application is combined one, for demo and for new building.

5. **WHAT HPC MUST CONSIDER AT 12-13-10 PUBLIC HEARING.**

A. **320-21-11-b says that the HPC sets a public hearing on the COA application, and when reviewing the application, the HPC "shall consider" the sub b-1-3 items.** Sub b-1 is, will proposed work detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done.....Sub b-2 is, in the case of construction of a new improvement in a historic district, will the exterior of the improvement adversely affect or not harmonize with the external appearance of other neighboring improvements "on the site"?.....Sub b-3 is, will the project (proposed construction and demo) conform to the objectives of the historic preservation plan for the district as duly adopted by the Council?

**B. Because of 320-21-11-b-3, the HPC considers the Plan for the District, the Historic Designation Study Report for the District. District Designated on November 17, 1987 by Council Resolution File No. 87-0085**

*DISTRICT DESIGNATION (§I)* - Includes entire block with subject buildings (bounded by Wisconsin Avenue, Milwaukee Street, Michigan Street and Broadway Street) and 2 other blocks.

Study Report (pg. 1) says all buildings in District are listed in NTL REGISTER of historic places.<sup>1</sup>

Report § X contains PERSERVATION GUIDELINES, with HPC reserving the right to make "final decision based upon particular design submissions" (pg. 14).

§X.A., guidelines for rehab, says "These guidelines are not intended to restrict an owner's use of his/her property, but to serve as a guide for making changes that will be sensitive to the architectural integrity of the structure and appropriate to the overall character of the district" (pg. 14).

§X.B. are guidelines for streetscapes.

§X.C. are guidelines for NEW CONSTRUCTION (pg. 16) (that pertain to siting, scale, form and materials) that provide that "It is important that additional new construction be designed so as to harmonize with the character of the district."

§X.D. are guidelines for DEMOLITION (pg. 17) that provide that "Although demolition is not encouraged and is generally not permissible, there may be instances when demolition may be acceptable if approved by the" HPC. And, the HPC is required to take into consideration the following (pp. 17-18):

- Condition – demo requests may be granted when there is clear demonstration that the condition of a building or portion of it "constitutes an immediate threat to health and safety."
- Importance – consideration will be given to whether "the building is of historical or architectural significance or displays a quality of material and craftsmanship that does not exist in other structure in the area."
- Location – consideration will be given to whether "the building contributes to the neighborhood and the general street appearance and has a positive affect on other buildings in the district."
- Potential for Restoration – consideration will be given to whether "the building is beyond economically feasible repair."

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<sup>1</sup> The Dept. of Interior, National Park Service, administers the National Register. Per Ntl. Park Service website, owners of private property listed in the National Register are "free to maintain, manage, or dispose of their property as they choose provided that no Federal monies are involved."

- Additions – consideration will be given to whether the demo “is a later addition that is not in keeping with the original design of the structure or does not contribute to its character.”
- Replacement – consideration will be given to whether the “building is to be replaced by a compatible new building that would fulfill the same aesthetic function in the district as did the old structure.”

C. 320-21-11-d says that at the public hearing on the COA application, the HPC considers whether “the proposed changes in the application are consistent with the character of” the properties “of its district.”

D. 320-21-11-d also says that, in making the HPC determination on a COA application, the HPC shall apply the criteria in sub. 12, so HPC must consider 320-21-12-a thru j, the guidelines for rehab.

320-21-12-a (thru j) criteria are.....sub. a [every reasonable effort must be made to provide a compatible use for a property that requires minimal alteration of the exterior of a building, structure or site and its environment].....sub. b [the distinguishing original qualities or character of a building, structure, or site and its environment shall not be destroyed, and the removal or alteration of any historical material or distinctive architectural features should be avoided when possible].....sub. c [all buildings, structures and sites are products of their own time, and alterations that have no historical basis and that seek to create an earlier or later appearance shall be discouraged].....sub. d [changes that may have taken place in the course of time are evidence of history and development of a building, structure or site and its environment. These changes may have acquired significance in their own right and this significance shall be recognized and respected].....sub. e [distinctive stylistic features or examples of skilled craftsmanship that characterize a building, structure or site shall be treated with sensitivity].....sub. f [deteriorated architectural features shall be repaired rather than replaced wherever possible. If replacement is necessary, the new material shall match material being replaced in composition, design, color, texture, and other visual qualities, and repair or replacement must be based on accurate duplications substantiated by historical, physical or pictorial evidence rather than on conjecture designs or availability of different elements from other buildings].....sub. g [surface cleaning of structures shall be undertaken with the gentlest means possible, no sandblasting or other damaging cleaning methods without a COA] .....sub. h [every reasonable effort shall be made to protect and preserve archaeological resources affected by or adjacent to any project].....sub. i [contemporary design for alterations and additions to existing properties shall not be discouraged when the alterations and additions do not destroy significant historical, architectural, or cultural material, and design is compatible with size, scale, color, material and character of the property, the neighborhood, or environment].....sub. j [new additions or alterations to structures shall be done in such a manner that if the addition or alteration were removed later, the essential form and integrity of the structure would be unimpaired].



**E. 320-21-11-h Requires the HPC, in determining whether to issue a Demo COA to consider the following, and the HPC may give decisive weight “to any or all of the” h-1 thru 7 criteria.**

320-21-11-h-1 thru 7 are ..... [is the building or structure of such architectural or historical significance that demo would be detrimental to public interest and the general welfare of the people of the City and State?] ..... [whether the building or structure, although not itself an individually designated building, contributes to the distinctive architectural or historic character of the district as a whole and should it be preserved for the benefit of the people of the City and State?] ..... (whether demo of the buildings would be contrary to the purpose and intent of 320-21<sup>2</sup> and the objectives of the historic preservation plan for the district?) ..... [is the building or structure so old, and unusual or of uncommon design, texture or material that it couldn't be reproduced without great difficulty or expense?] ..... [whether retention of the building or structure would promote the general welfare of the people of the City and State by encouraging study of American history, architecture and design or by developing an understanding of American culture and heritage?] ..... [whether the building is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore or use it, provided that any hardship or difficulty claimed by the owner that is self-created or the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a COA] ..... [whether any new structure proposed to be constructed, or change in use proposed to be made, is compatible with the buildings and character of the district in which the subject property is located].

**6. TIMING FOR AND DECISION AT COA PUBLIC HEARING.**

**A. From Nov. 15 HPC Meeting to Dec. 13 COA Hearing.** 320-21-11-b. The HPC was able to “set a public hearing” within 30 days of its original review (30 days from November 15<sup>th</sup>) regarding the COA application. The HPC established the December 13<sup>th</sup> hearing.

**B. Notice of Hearings and Delay.** 320-21-11-c, provides for notice of the public hearing on the COA, and says that, if the APPLICANT is unable to furnish any required supplemental information by the December 13 hearing date, then the APPLICANT “may request such a delay in the hearing as may be reasonable for obtaining the required information” and goes on to say that the HPC “may also grant a request for a delay for any other good cause.”

**C. Approve COA, Disapprove COA, or Approve COA With Conditions On December 13.**

320-21-11-d, e, and f contemplate the HPC being able to APPROVE, DISAPPROVE, or APPROVE WITH CONDITIONS a COA.

**D. Approving a COA With Conditions.**

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<sup>2</sup> 320-21-1 is the “purpose and intent” section of the HPC ordinance.

Under 320-21-11-e, the HPC can direct issuance of a COA "upon applicant's acceptance of certain changes in his or her plan." If the applicant refuses to accept the changes, the applicant has appeal rights (see below).

**E. Regarding Demo, Deferring a Determination.**

Under 320-21-11-g, "notwithstanding the provisions of the preceding paragraphs" of the ordinance, when a Demo COA is sought, the HPC "may by affirmative vote within 30 days after the public hearing defer determination on the application for a period not to exceed one year from the date of application for the demolition permit, and shall provide the applicant with a written report setting forth the reason or reasons for its deferral" on the COA application.

If the HPC defers determination on the Demo COA then the HPC and applicant "shall undertake serious and continuing discussions for finding a mutually agreeable method of saving the subject property," and during that time, the owner "shall take whatever steps are necessary to prevent further deterioration of the building."

At "the end of the one-year period," the HPC "shall act on the suspended application by either granting or refusing to grant a" a COA "for the proposed demolition."

**7. APPEAL RIGHTS OF APPLICANT TO COMMON COUNCIL.**

320-21-11-f, APPEAL. If the HPC disapproves the COA, and no CONDITIONAL COA is issued, or if the applicant REFUSES TO ACCPET "the changes in the plans recommended by the" HPC, the HPC must notify the applicant of its decision by certified mail within 15 days, and the applicant may appeal to the Common Council. Appeals are by written request filed with the City Clerk within 20 days after mailing of certified letter. Clerk then files request to appeal with Council, and "After a public hearing, the council may, by vote of 2/3 if its members, reverse or modify the decision" of the HPC if, "after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes" and the Council finds that "owing to special conditions pertaining to the specific piece of property, failure to grant the" COA "will preclude ANY AND ALL REASONABLE USE of the property or will cause SERIOUS HARDSHIP for the owner, provided that any self-created hardship shall not be a basis for reversal or modification of the" HPC decision.

320-21-11-g, APPEAL OF A DEFERRAL ON A DEMO COA APPLICATION. An applicant whose Demo COA application has been deferred by the HPC, may appeal the deferral to the Council.