

**Guidelines for the Consideration of Applications for the
DEMOLITION or MOVING of STRUCTURES
within the Ypsilanti Historic District**

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A. RESPONSIBILITY OF THE HISTORIC DISTRICT COMMISSION

The Ypsilanti Historic District Commission's legal responsibility is the protection of the historic resources within the Historic District. The demolition or moving of any historic resource constitutes an irreplaceable loss to the Historic District and to the City of Ypsilanti. The demolition or moving of even a non-contributing resource can have serious consequences for the District as a whole. Consequently, demolition and moving are strongly discouraged. The demolition or moving of historic resources within the Historic District must always be the last resort.

B. DEFINITION OF DEMOLITION

The razing or destruction, whether entirely or in part, of a resource and includes, but is not limited to, demolition by neglect. Destruction by fire when arson by the owner or the owner's agent is proven shall be considered demolition. *(Note: the following guidelines apply only to applications for demolition, not to demolition by neglect or destruction by fire.)*

C. REQUIREMENTS OF APPLICANT

1. The APPLICANT who proposes to demolish or move a resource in the Historic District must submit an application which shall include all of the following:
 - a. Signatures of the applicant and property owner.
 - b. Name and mailing address of the property owner.
 - c. Name and mailing address of the applicant.
 - d. Specific grounds under the provisions of the Ypsilanti Historic District Ordinance upon which the application for a demolition or moving permit is based.
 - e. Information sufficient to justify the grounds upon which the applicant has chosen to base the application.
 - f. Written evidence that alternatives to demolition or moving have been evaluated (including but not limited to rehabilitation, sale, adaptive reuse) and both architectural and financial data to support a conclusion the demolition or moving is the only feasible option. This evidence shall show that the property was offered for sale, the price asked, the period of time during which the property was offered for sale, and how the property was advertised for sale.
 - g. Written evidence of any advice sought by the applicant from a professional(s) experienced in historic preservation work.
 - h. It is the applicant's burden to show that the application complies with the ordinance. If the applicant does not meet the burden, the application shall be denied.

D. GROUNDS UPON WHICH AN APPLICATION MAY BE BASED.

1. The resource constitutes a hazard to the safety of the public or the occupants.

Applicant shall provide:

- a. Written report by the Ypsilanti Building Official identifying the **hazard** posed by the building. Any dangerous conditions should be identified.
- b. Certified written report by a structural engineer licensed in Michigan as to the **structural soundness** of the building and its adaptability for rehabilitation. Any dangerous conditions should be identified.
- c. Detailed description of **existing conditions**.
- d. Detailed description of **proposed changes**.
- e. Site plan, to scale, showing the **location of the resource** proposed to be demolished in relationship to other structures on the property, and to the property lines.
- f. Site plan, to scale, and any other information which accurately describes the **proposed use and appearance** of the site after demolition or moving of the resource.
- g. Feasibility of **alternative uses** for the property that would allow retention of the structure.

As well as architectural & historical data, as available:

- a. Date of construction of the resource
- b. Architectural style of the resource
- c. Historic photographs of the resource
- d. Name of original owner / builder / developer
- e. Building timeline (i.e., dates and location of additions, demolition and changes)
- f. Detailed description of building materials that are original to the resource
- g. Historic information regarding the resource (i.e., notable residents, highly recognized landmark, important site, etc.)

2. The resource is a **deterrent to a major improvement program** that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary **planning and zoning approvals, financing and environmental clearances.**

Applicant shall provide:

- a. Written **description** of the nature of the proposed improvement and how it will benefit the broader community.
- b. **Site plan**, to scale, showing the site after the proposed work, including existing and new construction.
- c. Building **schematic plans and elevations** sufficient to illustrate the size, mass, materials and appearance of the proposed new construction in relation to remaining historic elements on the applicant's property and surrounding sites.
- d. Evidence of required **planning and zoning approval** for proposed work, financing and environmental clearances.

As well as architectural & historical data, as available:

- a. Date of construction of the resource
- b. Architectural style of the resource
- c. Historic photographs of the resource
- d. Name of original owner / builder / developer
- e. Building timeline (i.e., dates and location of additions, demolition and changes)
- f. Detailed description of building materials that are original to the resource
- g. Historic information regarding building (i.e., notable residents, highly recognized landmark, important site, etc.)

3. **Retaining the resource will cause undue financial hardship (as defined in Appendix, p. 10 of this document) to the owner when a governmental action, an act of God or other event beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.**

Applicant shall provide, in written form, information sufficient to establish financial hardship (as defined in Appendix, p. 10 of this document), which shall include:

- a. **Form of ownership** of the property, including names and addresses of the owners. If owner is an organization, governmental entity or corporation, include name and telephone number of a contact person.
- b. **Amount paid** for the property, date of purchase, party from whom property was purchased, and any relationship between the parties.
- c. **Remaining balance** on any mortgage or other financing secured by the property.
- d. If property is income-producing, (a) **annual gross income** for the previous three years (b) itemized **operating and maintenance expenses** (c) **depreciation deduction** (d) **annual cash flow** before and after debt service.
- e. **Assessed value and real estate tax** on the property, according to the two most recent tax assessments
- f. **Estimated fair market value** of the property (a) in its current condition (b) after complying with YHDC Standards and Guidelines (c) after the proposed demolition or moving.
- g. Any **real estate listing** of the property for sale or rent in the past three years, including price asked, open houses held, prospects shown the property and offers received.
- h. Three bids each for the **cost** of the proposed demolition or moving compared with the cost of complying with Ypsilanti Historic District Standards and Guidelines.
- i. Three bids each for the **cost** of the proposed demolition or moving compared with the cost of stabilizing or “mothballing” the resource.
- j. Long term and short term **availability of funds**, including incoming and financing, available to the owner that would allow retention of the resource.
- k. List of **financial incentives** for preserving the resource available to the applicant through federal, state, city or private programs.

As well as architectural & historical data, as available:

- a. Date of construction of the resource
- b. Architectural style of the resource
- c. Historic photographs of the resource
- d. Name of original owner / builder / developer.
- e. Building timeline (i.e., dates and location of additions, demolition and changes)
- f. Detailed description of building materials that are original to the resource
- g. Historic information regarding the resource (i.e., notable residents, highly recognized landmark, important site, etc.)

4. **Retaining the resource is not in the interest of the majority of the community.**

Applicant shall provide:

- a. Written description of the nature of the resource and existing conditions.
- b. Written description of proposed changes.
- c. Written discussion of how the demolition or moving of the resource might benefit the community.
- d. Site plan, to scale, showing the location of the resource proposed to be demolished or moved in relationship to other structures on the property, and to the property lines.
- e. Site plan, to scale, and any other information which accurately describes the proposed use and appearance of the site after demolition or moving of the resource.
- f. Feasibility of alternative uses for the property that would allow compliance with Ypsilanti Historic District Standards and Guidelines.

As well as architectural & historical data, as available:

- a. Date of construction of the resource
- b. Architectural style of the resource
- c. Historic photographs of the resource
- d. Name of original owner / builder / developer.
- e. Building timeline (i.e., dates and location of additions, demolition and changes)
- f. Detailed description of building materials that are original to the resource
- g. Historic information regarding the resource (i.e., notable residents, highly recognized landmark, important site, etc.)

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An application which does not include the required information and material is an **incomplete** application and shall not appear on a Commission agenda or be forwarded to the Commission until it has been determined by City staff to be complete and eligible for consideration by the Commission.

If the application is incomplete, the applicant shall be notified in writing that the application is incomplete and in what manner it is incomplete, in order to allow the applicant to submit such materials as will constitute a complete application.

An applicant who does not submit the requested materials risks denial of the application.

In all cases, the City shall supply **photographs** of the property, showing all elevations, close-ups of details, and relationship to adjacent and surrounding structures. Photos are to be labeled with street address, compass direction and date.

All documentation becomes part of the **public record**.

In all cases, the applicant should be urged to attend the Commission meetings/hearings at which the application is to be considered and to present his/her application to the Commission. If the applicant fails to attend, the Commission should record in its minutes:

- When the application was filed and by whom,
- When the applicant was notified of the meeting/hearing,
- That neither the applicant or applicant's representative was present,
- The time of day at which the applicant was to have appeared and the time of day at which it was determined that the applicant was not present,
- That anyone wishing to address the Commission regarding the application was allowed to speak,
- A list of the materials submitted by the applicant,
- A list of the materials submitted by parties other than the applicant.

E. REQUIREMENTS OF COMMISSION

1. At the **first meeting** at which a complete (as determined by city staff) application for demolition or moving is considered, the **Commission shall follow its usual procedures**, allowing for presentation by the applicant and discussion by the Commission.

The Commission shall determine whether sufficient information has been submitted with the application. The Commission may request any additional information it deems necessary for its determination.

If the application **can be accepted** as submitted, the Commission shall vote to accept the application and schedule a public hearing. (The application is considered formally accepted as the date of the vote to accept.)

If the application **cannot be accepted** because additional information is needed, the application may be tabled until such time as the additional information becomes available.

No action shall be taken by the Commission at this first meeting.

Exception: If the structure proposed for demolition or moving is found, by **unanimous** vote, to have **no** historical or architectural significance, the Commission **may** approve the demolition or moving at this first meeting, without holding a public hearing.

2. Following the **first meeting** of the Commission at which such application is considered, the Commission shall request that a notice be published in a newspaper of general circulation in the City of Ypsilanti. Such notice shall be published **at least fifteen (15) days prior** to the next meeting at which the application is to be considered and shall contain:
 - a. **Address of the structure.**
 - b. **Nature of the application**
 - c. **Name and address of the applicant.**
 - d. **Date, time, and place** of the meeting at which the application shall be discussed and a statement indicating that reasonable time will be allotted for comments by the public.

In addition, a **copy of such notice shall be mailed to the owner** of the resource, by regular first class mail, at the address contained in the application.

3. At the **public hearing** at which such application is considered, the Commission shall hear the applicant, the applicant's designated representative and any interested parties. The Commission shall then, without further comment from the applicant or the public, conduct its own discussion of the application and, if possible, reach a decision and vote either approval or denial.

F. WHAT THE COMMISSION SHALL CONSIDER in reviewing a Demolition/Moving application, as applicable:

The Commission shall **not** allow the demolition or moving of any resource which has historical and/or architectural significance **unless** one or more of the following conditions (*Ypsilanti Historical Preservation Ordinance, Sec. 54-83 (c)*) prevail (*the same conditions upon which an applicant must base his/her application*) and if, in the opinion of the Commission, the proposed demolition or moving will materially improve or correct these conditions:

1. The resource constitutes a **hazard to the safety** of the public or the occupants, as determined by the Building Department of the City of Ypsilanti.
2. The resource is a **deterrent to a major improvement program** that will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing and environmental clearances.
3. Retention of the resource will cause undue **financial hardship** (*as defined in Appendix, p. 10 of this document*) to the owner when a governmental action, an act of God or other events beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner.
4. Retention of the resource is **not in the interest of the majority of the community.**

Questions for the Commission to ask:

1. Does the resource proposed for demolition or moving have **architectural and/or historical significance**?
2. What would be the **effect on surrounding buildings** of demolition or moving of the resource?
3. What would be the **effect on the Historic District** as a whole of demolition or moving of the resource?
4. What would be the **effect on safeguarding the heritage of the City** of the demolition or moving?
5. What has been the **impact of any previous inappropriate alterations, construction or demolition** on the architectural significance of the resource?
6. Has owner offered the **property for sale**?
7. Has the owner asked a **fair price**?
8. Has the property been **marketed** for a reasonable time?
9. Has the property been **advertised broadly** in a reasonable manner?
10. Has the owner sought the **advice of a professional** experienced in historic preservation work?
11. What would be the **effect of open space** in that location if the lot is to be left vacant?
12. What would be the **effect on the community of any proposed replacement structure**?
13. What is the **appropriateness to the Historic District of the design** of any proposed replacement structure?

G. COMMISSION DECISION

1. If Application is Approved

If the Commission, having determined that the application for a permit to demolish or move a resource within the Historic District has **met all requirements** of the Ypsilanti Historical Preservation Ordinance and the Ypsilanti Historic District Commission Guidelines for the Consideration of Application for the Demolition or Moving of Structures within the Ypsilanti Historic District, votes to approve the application for demolition or moving, the Ypsilanti Building Department shall be authorized to issue a permit once Building Department requirements are met.

Approval to demolish or move may be issued either with or without reservation. Approval issued without reservation shall become effective immediately. Approval issued with reservation due to the historical/architectural/environmental significance of the involved resource shall not become effective until at least six (6) months after the date of such issuance in order to provide a period of time within which it may be possible to relieve a hardship or to cause the property, on its present site, to be transferred to another owner willing to preserve it.

The Commission may arrange to have the exterior and interior of a structure approved for demolition or moving photographically recorded.

2. If Application Is Denied

If the Commission denies demolition or moving, the applicant must be notified in writing of the reasons for the denial and of the applicant's right to appeal, first to the State Historic Preservation Review Board and second, if denied by the State Historic Preservation Review Board, to the Circuit Court. The Building Department must be provided with a copy of such letter.

APPENDIX

to the document entitled “Guidelines for the Consideration of Applications for the DEMOLITION or MOVING of STRUCTURES within the Ypsilanti Historic District”

**Guidelines for the Commission when considering
an application for demolition or moving based upon a claim of
FINANCIAL HARDSHIP**

The Commission shall make it clear in discussion and in its written record that each case of financial hardship is reviewed individually and that decisions from one case **cannot** be used in support of another claim on another property.

An applicant denied a permit to demolish or move a resource within the Historic District may claim financial hardship either during Commission consideration of the application or following Commission denial of the application.

1. Definition

Financial hardship is sometimes termed ‘a taking.’ The term ‘taking’ refers to the Just Compensation Clause of the Fifth Amendment to the U.S. Constitution which states “... nor shall private property be taken for public use, without just compensation.” This was originally interpreted to protect private property owners from actual seizure or physical taking of property. An expanded interpretation recognized that regulations (for example, historic district ordinances) may deprive private property owners of all reasonable use of and return from the property.

That said, there are no hard and fast rules for defining or determining financial hardship. Each Commission must make its own decision and, if the Commission’s decision is appealed, each subsequent body to hear the case will arrive at its own decision.

The most likely instance in which the taking issue arises in historic preservation is when the property owner is **denied permission to** alter or **demolish** (or move) his/her landmark property.

2. Consideration of a Claim of Financial Hardship

The Commission shall evaluate the financial capability of the resource, not the financial circumstances of the owner. An owner’s personal financial status is **not** an issue that the Commission may consider.

The applicant may claim that the cost of the preservation of a resource and its features will cause an undue and unreasonable financial burden. The following guidelines are intended to inform applicants as to the circumstances under which an applicant may claim financial hardship and seek approval to alter a property in a manner inappropriate to historic preservation (demolition or moving).

For the purposes of these guidelines, the term “financial hardship” shall refer to an owner’s inability to see a **reasonable** financial return on an investment if he/she is required to comply with the Ypsilanti Historic District Commission requirements to preserve the property.

Evidence of financial hardship is generally limited to instances when the cost of preservation exceeds the value of the building or when preservation will deprive the owner of **all** reasonable use of the property. **By law**, the owner is entitled only to a **reasonable** return on the property. If the applicant is claiming the cost of restoration is prohibitive, the applicant must present information sufficient to establish financial hardship.

3. **Burden of Proof**

Financial hardship cannot be simply claimed (“*I can’t afford it*”), it **must be proved** and **the burden of proof is on the applicant**. An applicant’s undocumented allegation of hardship is unacceptable. The Commission can and should require dollars and cents proof. The applicant must present written evidence sufficient to **prove that all** reasonable use and return will be lost if demolition or moving is denied. Simply showing some effect on value is not sufficient.

When considering financial hardship, the Commission may at its sole discretion consult experts (architects, engineers, appraisers, real estate analysts, market consultants, developers experienced in rehabilitation or reuse, etc.) to aid the Commission in determining if financial hardship exists, to research other uses for the property and to present evidence of reasonable financial use.

The applicant will have answered some of the following questions in his/her application. Nevertheless, the Commission must discuss them thoroughly when considering a claim of financial hardship.

1. Has the applicant tried to sell the property on its present site to a party willing to preserve?
2. Has the applicant tried to rent the property?
3. Has the applicant advertised the resource for sale or rental?
4. Has the applicant considered financially feasible alternate uses of the property which would allow its preservation?
5. Has the applicant explored the availability of financial programs that could assist in the rehabilitation and preservation of the resource?
6. Has the applicant considered stabilization or mothballing of the structure?
7. Has the applicant investigated the use of the resource by a public or quasi-public agency?
8. Has the applicant investigated the sale of the resource for moving and preservation on a new site? (The Commission should be aware that, once moved from its original site, the resource no longer has architectural and historical integrity.)
9. Can the resource still be used for its present purpose?

If none of these options have been considered, the owner cannot claim that he has **no** reasonable use or return and, therefore, he **cannot claim financial hardship**.

4. If Hardship is Found

If the Commission finds that without approval of demolition or moving, all reasonable use and return from the property will be denied the owner and that therefore financial hardship exists to the owner and that a governmental action, an act of God or other event beyond the owner's control created the hardship, and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner, the Commission shall approve the proposed demolition or moving and provide a copy of its decision to the Building Department.

5. If Hardship is Not Found

If the Commission finds that **no hardship** exists, it shall **deny** the application, notify the applicant in writing of the reasons for the denial and the applicant's right to appeal to the State Historic Preservation Review Board and to the circuit court, and provide a copy of same to the Building Department.

6. Appeal of the Commission's Decision

The **Commission** should be aware that **many more cases are decided on the basis of procedural errors or inadequate law than on the basis of financial hardship.** Judicial review is limited to the written record made of Commission meetings and public hearings and the judge must uphold the Commission's decision if the record shows a reasonable basis for the decision and the decision is not clearly against the weight of the evidence presented. Courts are not favorably disposed to Commissions that fail to follow their own procedures or standards. But, if the decision is based upon substantial evidence in the record, a court will not substitute its judgment for that of the Commission. For that reason, the Commission must conduct its meetings and its public hearings strictly according to its ordinance, giving no consideration to personal opinions, emotional appeals and the like. In addition, the Commission must always strive to be fundamentally fair.

The **applicant** must show that the Commission abused its discretion, used an improper standard, did not make sufficient findings of fact, or that there was not substantial evidence in the record to support the Commission's findings.

7. Some Issues at which Appeal Bodies May Look

- a. Did the Commission, in reaching its decision, conform to its established procedures and standards? Allow ample opportunity and time for the applicant and the public to state their positions? Make sufficient findings of fact?**

- b. Does the Ypsilanti Historical Preservation Ordinance promote a valid public purpose?**
Regulation of private property will not constitute a taking as long as the regulation advances a legitimate governmental (public) purpose. The US Supreme Court has found that historic preservation regulation is indeed a valid public purpose.
- c. Was the Ypsilanti Historical Preservation Ordinance enacted before the purchase of the property?**
If so, the applicant can be expected to have been aware of the regulations.
Or were regulations enacted after purchase of the property?
The City of Ypsilanti and the Historic District Commission should periodically publicize the existence and boundaries of the Historic District to alert owners that their properties are within the District.
- d. What has been the benefit of regulation to the public?**
- e. What has been the negative impact of regulation on the owner?**
The court may balance the benefit of regulation to the public against a negative impact of regulation on the applicant. In recent years, some courts have upheld regulation despite serious financial damage to the owner.
The question is, does **some** reasonable use remain possible even though the owner's **desired** use is restricted? Property owners may not establish a taking "simply by showing that they have been denied the ability to exploit a property interest that they had heretofore believed was available. The applicant's claim that he/she cannot make **more** money from the property than he/she presently makes does not constitute hardship.
Regulation of private property does not constitute a taking as long as the property owner retains some viable use of the property. Courts are apt to ask if the owner has tried to sell or rent the property or if financially feasible alternate uses have been considered – if not, the owner is not in a position to claim that there is no reasonable use or return.

April 2004

Credit due to:

Clarion Associates, Inc., *Contract with History: Preservation Legal Tools*, 1995
Roddewig and Duerksen, *Responding to the Takings Challenge*, 1989
Preservation League of New York State, *Economic Hardship Training for Landmark Commissions*
Ypsilanti Historic District Commission, *Policy on Demolition and Moving*, 1979
Ann Arbor Register of Historic Places, 1994
Gary L. Word, City Manager, City of Northville, 2001

Adopted June 2004

HDC - demo guidelines, Ypsilanti