

Topic 4: Demolition/Alteration, Demo by Neglect, and Imminent Danger

Demolition/Alteration Review Process

Clarion's Recommendations:

- Clarify the role of the Design Review Subcommittee.
- Consider using a decision matrix to more clearly differentiate between minor and major alterations.
- Reevaluate the criteria for approval and potentially add an economic hardship determination.
- Consider increasing the amount of time that the LPC can delay a decision in order to find alternatives to demolition

Quick review of the Demolition/Alteration process. Option for Design Review Subcommittee (DRS): If DRS and owners reach an agreement that meets the code requirements, then DRS recommends Director approval. If cannot come to an agreement, then it goes through to the Landmark Preservation Commission as a Final Demolition/Alteration Hearing.

Clarion suggested more flow charts and matrices to clarify process and decision making. Average of 600 reviews/year of which 5 go on to the Landmark Preservation Commission. Almost never go on to Council (exception: Woodward). **Staff will continue to develop flow charts, matrices, and explanation sheets.**

Clarion suggests adding economic hardship to our historic preservation codes. This would be a Council policy decision that would affect much more than the historic preservation codes.

Per: Would maximum profit be part of that conversation?

Karen: Don't know. If Council wants to investigate adding it, will talk about that.

Matt: Please explain---I've never heard that term.

Per: It is the maximum profit you could make off of a lot based on the Land Use Code.

David: What if the rehabilitation is economically not possible.

Karen: Alternatives, including financial incentives, different, less expensive material choices, design options. Economics not a finding, but is certainly part of the discussion.

Per: I think economic hardship is a puzzler. It opens up all types of worms. Potentially unfair. Attorneys and accountants squaring off with staff.

James: Support it if it isn't based on income. It would need to be based on the value of the asset itself.

David: I liked example of city [Gainesville, FL.] that laid out what needed to be disclosed. Lots of information required. Having a different track and focusing on context of each project is important. That was appealing to me not having an exact line, but working from empirical data.

Sherry: I think that's a door that City Council would not want to open.

Matt: I agree with staff's position on economic hardship. I'm looking at the list from Gainesville; I don't know if that shows a full picture. DDA sees a very diverse type of ownership in the Old Town area and I don't know if these record requests are valuable to the decision. Some very savvy investors with extensive portfolios and other mom and pops with one property.

Clarion's recommendation to consider adding economic hardship to the historic preservation codes, will be forwarded to Council with all of Clarion's recommendation, but noted this is not really a historic preservation issue but instead a city-wide policy change.

Brian: Number of buildings that we will be reviewed will be going up. I'm concerned about the resources of your department, both financially and on staff workload. What about reviewing only 60+ year old buildings?

Karen: Staff concerns about demolition/alteration reviews because take a lot of time, means less staff

time to do other projects that relate to preservation, such as survey, outreach, landmark designation, and supporting designated properties. In 2014, offered options to City Council to limit numbers of properties being reviewed; Council retained 50-year threshold. You are right that it has potential to dilute the money for incentives.

Karen: Clarion recommends that the LPC delay of 45 days should be increased, to allow for more options for saving the resource. Staff is reviewing the entire demo/alt delay process for efficiencies, best practices, appropriate timeline.

James: Can't LPC just say no to the application?

Karen: No, the LPC does not have the ability to say no to the application. Two options: They can approve the application, finding it's met the requirements; or forward to Council for nonconsensual designation.

James: Shouldn't there be the means to recommend that we do not want to designate property, but they don't approve of the current proposed project?

Brad: No, the only path is nonconsensual decision.

James: How often has that happened? There is no middle ground. I'm surprised that there isn't middle ground. What conditions could be attached?

Karen: The conditions that the Commission could attach are all based on that the Commission is approving the work, but asking for more documentation. They could also ask for something that is being removed to be saved.

James: So, no design conditions?

Karen: Correct. Delay process only. Owners are provided information on alternatives and incentives, and could change their plans, but have chosen not to.

Per: The middle ground is the optional Design Review Subcommittee. Owners are offered design options on how to preserve the building and still do work they want.

Matt: Other communities have external shaming—like Denver Fugly.

Karen: At Saving Places Conference, we learned that other communities ask registered neighborhood associations and HOAs for input – a recommendation to decision maker.

Karen: Any questions? Strong support or opposition? Alternatives?

Matt: Any magic to why the current code is 45 days?

Karen: Unaware why that number. Note that at time it was established, LPC met twice monthly; now one a month, which could cause a timing issue. If a meeting got cancelled, the applicant could be past the 45 days.

Sherry: Maybe a two-tier approach—not as part of 180-day delay, just extra time.

Karen: Will investigate the 45 days, and make sure fits into timing of overall process.

Determinations of Eligibility

Clarion's Recommendations:

- Focus on completing survey work to proactively identify eligible resources.
- Create an inventory of eligible historic resources.
- Reconsider the five-year period of validity. Consider a process for property owners to obtain a certificate of ineligibility with a five-year limit on validity

Clarion noted higher threshold in Fort Collins: properties need to be individually eligible; other communities all eligible properties including properties that could contribute to a district. The higher threshold discounts value of contributing buildings, not consistent with national practice; but do not have the staff capacity to do more. Council policy question.

Clarion again states need for survey.

Clarion notes need for an inventory of eligible resources. BFO offer 2 years ago, but was not funded. Staff is working on this. We are tracking our decisions and we will be able to map determinations within the next few months.

Clarion recommends rather than five-year period of validity for determinations, whether eligible or not-eligible, we presume that all buildings are eligible until determined to not be eligible, and review not eligible for possible eligibility after 5 years.

Matt: is the 5 year related to the life expectancy of survey?

Karen: Surveys are usually thought to last ten years.

David: Clarion's suggestion does seem like something that could be useful.

Karen: We have process now where the Chair and Director make a decision if a property is individually eligible or is not individually eligible. Whichever outcome, the decision stands for five years. Clarion suggested we only note not eligible and then review later. If you find it eligible, then it remains eligible without later review.

Meg: Makes sense. Why review it again if the home hasn't been changed?

Per: The setting could have changed so much that it might not be eligible.

Matt: Does anyone know of examples of types of properties that are looking for that period of validity? Residential? Commercial? What's the benefit? I see residential, but not commercial per say for a five-year period. Denver's process?

David: This process only starts when a permit is pulled, so if they want to know how much change they can do.

Maren: It is a window of predictability for whatever reason you need it.

Karen: How do we feel about the five year/how we're doing it now?

Sherry: I don't know how it originated way back, but SHPO does use five years as well for survey so that's been used for a long time. It seems reasonable and unless staff has issues, I can't see a big reason to change it.

Matt: If you're going to inquire with Denver, a question would be does the way they do it help address their workflow? Did they go through a surge and decide to do it this way?

David: Following off on what Matt just said, I think once the GIS component is implemented, there might be pockets that will be shown as not eligible and essentially able to be signed off automatically.

Staff will check with Denver regarding its approach.

Demolition by Neglect

Clarion's Recommendations:

- Specify the types of repairs that are required to prevent demolition by neglect.
- Increase penalties for properties undergoing demolition by neglect.
- If an inventory of eligible resources is created, extend maintenance requirements to eligible structures on the inventory.
- Incorporate preservation-related requirements in the general property maintenance standards.
- Develop financial incentives to assist with required property maintenance.

Demolition by neglect. Fort Collins has about 20 properties in the Old Town Neighborhoods that are falling apart or being neglected. They aren't being used or maintained. It is an issue for the community and can become a safety issue, affect property values. There are many reasons why it can happen, including mental health, financial issues, or trying to get around codes.

Clarion recommends address the people who purposefully let a building degrade through increasing penalties, and treating ongoing issues with problem properties as building on each other. Currently

treat each incident as new, even if multiple violations for same issue in same year—repeat offenders need stronger penalties.

Meg: On the one hand, we need to hold them accountable, but on the other hand, I don't want to incentivize tearing the building down.

Per: If a building is falling down, would HP staff look at it to determine if it is eligible?

Karen: No, we currently do not. This is a building code issue affecting historic resources. Used by some to skirt the city processes.

Per: If a building's stabilization impacts integrity, an individually eligible building could be rendered ineligible.

Meg: There seems like there has to be a point where neglected/dangerous buildings have to go through city's processes before becoming imminently dangerous.

Clarion recommends incorporate preservation-related requirements in the general property maintenance standards.

Clarion also recommends developing financial incentives to assist with required property maintenance.

People who are trying to repair but lack funds - provide financial incentives.

Difficult to address mental health issues.

Public Safety Exclusions (Dangerous Buildings)

Clarion's Recommendations:

- Clarify the requirement to fix dangerous conditions when deemed repairable by the building official.
- Review relevant building code definitions.
- Improve coordination between the LPC/preservation staff and the chief building official in regard to dangerous buildings.

We need a better definition of imminent danger. Building codes right now just have a blanket term for dangerous, no good definition of imminently dangerous.

Meg: If it gets to that point, we can't get a survey of the building before its demolished. So, if they reach dangerous, we should require some sort of survey done before they become imminently dangerous.

Matt: How actively is that portion of code exercised by the City?

Karen: Very little. It's a relatively new portion of code. But what we did find was that before adding this clause, a property owner could choose to either repair or demolish. We found that owners were purposely removing interior flooring. That was enough to make it dangerous and then they could tear it down. Easily fixed, but way to circumvent process. That's why city added both dangerous and imminently dangerous. Now if dangerous, need to repair or go through city processes before demolition. If imminently dangerous, demolish immediately. Need clear standards for difference between dangerous/imminently dangerous. Chief Building Official's decision, but needs rationale for decision.

Karen: Does CAC feel we should have distinction between dangerous?

James: yes

David: yes

Brian: If it isn't more clearly defined, I don't see the benefit or harm.

Anna: You should look at Charleston, SC's definition. City repairing the building.

Karen: In Fort Collins, dangerous does not mandate that someone repair the building. It just requires them to go through the city's process before they demolish.

Brian: I feel like there are loopholes within loopholes. If there's a building that's falling apart, the neighbors have a right to complain about it. I would support higher penalties for owners that let

buildings go and bigger carrots to incentivize rehabilitation. The historic review process should be part of this and at an earlier stage.

Karen: Some of the pushback that I've heard is that if the person lets it get this far, why would we bail them out financially?

David: I can see that being unfair to designated properties.

Matt: Imminently dangerous building—in addition to boarding up the building, what are the additional requirements? If found to be imminently dangerous, they are told that they must remediate the property immediately. They can put in the money to fix it or tear it down. The time allowed is decided by the Chief Building Official.

Tom: The building code only defines dangerous—imminently dangerous is only in the historic preservation code. So there aren't additional requirements for imminently dangerous. For the silos, they wanted CBO to declare it imminently dangerous so they could tear it down.

Matt: So for dangerous buildings, they can impose mitigation measures?

Tom: Yes, they have to post it, fence it, and fix it or go through city's processes to tear down.

Maren: Mitigation for nuisance issues, as well.

Per: The Chief Building Official doesn't get to dictate the means and methods though. That is where a building can go from individually eligible to not individually eligible – by work performed.

Maren: Permit required if not imminently dangerous. Work reviewed.

Matt: in the cases where you've dealt with this, when it's demo by neglect, what are the motivations of the owner? Is it to spite the preservation process? Is it economic hardship? What's your experience?

Karen: I would say that the two we see the most are spite/circumventing our process, or due to mental illness—where they aren't really rational about what they are doing. Folks with financial problems, aren't that many.

Per: The demo/alt process isn't that difficult or expensive. Demo by neglect isn't a great method if you're just looking to get rid of the building.

Matt: Yeah, I'm just trying to wrap my head around what would motivate someone to do that.

Meg: I can remember instance where a guy's pride was hurt. He was told he had to fix his foundation, but out of spite he decided to tear building down.

Meg: Clarion's report page 18. *[In some cities, the local preservation commission even has the power to initiate or recommend condemnation proceedings where demolition by neglect is occurring, allowing the local government to assume ownership of and begin repairs on neglected properties.]* Do we have something like that?

Karen: No, we do not.

Anna: Portland did that for a 1920s Elk's building.

Brad: We have eminent domain, but I'd have to research about historic resources. We do have to provide compensation for anything taken, at fair market value.

What's next? We've done a lot of discussion and not a whole lot of deciding.

Karen: Clarion is taking all the feedback and revising/enhancing their reports. They are ultimately coming up with a final, comprehensive report with final recommendations. They will be submitting that in the next month. Next meeting to discuss final report.

CAC and LPC comments on each of the topics and on the final report are being compiled, will be provided to Council.

Also develop a survey where CAC/LPC/others can respond individually – results provided to Council.

Presenting to different stakeholders (DRAC, LLAC, realtors, boards) and using public meetings to get this information out.

Open House on February 28, at Elizabeth Hotel.

Council work session second meeting in April. Receive Council direction. June 5th is the first reading of the new code.

Matt: One last question about public safety exclusions—how does staff feel about Clarion's recommendations?

Karen: I was hoping they would give more concrete examples of language, definition. City Attorney's office writing definition; feels comfortable with task.

Matt: Aware of other communities that have more developed approach? I know we are standing alone in other sections of code like infill, but are we still in the crowd on this one?

Karen: Others do this, but less common. Difficult to find. Which code section it is located in not always apparent. Clarion has been looking at preservation codes, not building or development review codes. That can be a disconnect in comparing codes.