

* = AAPS RECOMMENDATIONS THAT DO NOT APPEAR TO BE REFLECTED IN THE 5/6/10 REVISED DRAFT ORDINANCE
** = MOST SIGNIFICANT ITEMS



ATTACHMENT 1

March 2, 2010

(By electronic transmission)
City of Alameda Historical Advisory Board
2263 Santa Clara Avenue
Alameda, CA 94501

Subject: Historic Preservation Ordinance Revisions

Dear Boardmembers:

AAPS has reviewed the draft ordinance that was presented at the Board's February 4, 2010 meeting and would like to thank the HAB Ordinance Committee for incorporating many of our October 2009 comments into the latest draft, especially some of the comments concerning enforcement and penalties.

Some of our previous comments are not been reflected in the 2-4-10 revision. We would therefore like to reiterate some of those comments, with further explanation as stated below, and provide some additional comments that respond to new features in the ordinance and to some of the comments that were submitted by others at the HAB's February 4, 2010 meeting.

Our comments continue to be limited to what we believe are the most significant issues. We have not tried to address at this time less significant issues, such as inconsistent terminology.

1. **Do not require a Certificate of Approval for alterations (other than demolition or relocation) to properties other than Landmarks.** Under current rules, a Certificate of Approval for alterations is required only for historical monuments (to be renamed "Landmarks" under the proposed ordinance). Study List and pre-1942 properties currently require a Certificate of Approval only for demolition or removal.

However, under the draft ordinance any exterior change (other than painting) to any Historic-Cultural Resource (HCR) (formerly Study List properties) would require a Certificate of Approval. This would result in a much more protracted and costly review procedure for relatively minor changes, such as non-in-kind window replacements, that could create a public backlash toward historic preservation rules in general. It would also result in a big increase in HAB workload. AAPS therefore recommends retaining the current procedure that limits Certificate of Approvals for alterations just to Landmarks. As an alternative, the HAB could delegate approval of at least minor alterations to its Secretary, which might address the foregoing issues.

What was the intent of having every exterior change come to the HAB?

2. **Add "The proposal is necessary to implement a project important to the City" to the list of findings for issuing a Certificate of Approval.** This finding is probably what the City Council really wanted to make for the 2413 Buena Vista Avenue case, but was unable to do so because the finding was unavailable to them. Including this finding will allow the HAB (and the Council on any appeal) to deal directly with the tradeoffs that often occur between historic preservation and other priorities.

DISCUSS
WITH
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3. Amend AMC Sections 13-9.6 and 13-10.9 (Summary Abatement) and 13-9.7 and 13-10.13 (Summary Abatement Without Hearing) to allow the Building Official to use abatement methods other than "demolition or destruction" and to require the Building Official to follow the "least detrimental impact" procedure, as set forth in draft Historic Preservation Ordinance Section 30-21.6, if a summary abatement involves a Landmark or HCR. These AMC sections apply to "imminently hazardous" buildings or structures, including buildings damaged by earthquakes. These sections limit the Building Official's abatement options for such buildings only to "demolition or destruction". This section should be amended to expand the Building Official's options to include repair and selective demolition. The Building Official should also be allowed to order street or sidewalk closures and erection of street or sidewalk barricades as interim abatement measures. The costs of barricades, like any other abatement costs under the current AMC, would be billed to the property owner. The procedures for historic buildings in Oakland's Earthquake Repair Ordinance (Ordinance No. 11217 C.M.S.) should be considered as a model. See marked-up copy of Sections 13-10.7 and 13-10.13 (which contain language similar to Sections 13-9.6 and 13-9.7) included as Attachment 2.

In addition, Section 30-21.6 of the draft Historic Preservation Ordinance directs the Building Official to abate immediate hazard structures "in a manner that will have the least detrimental effect on the Historic-Cultural Resource". Section 30-21.6 is clearly intended to apply to the summary abatement procedures set forth in AMC Sections 13-9.6, 13-9.7, 13-10.9 and 13-10.13. However, Sections 13-9.6, 13-9.7, 13-10.9 and 13-10.13 do not reflect this and should therefore be amended to reference Section 30-21.6's "least detrimental effect" requirement. This will clarify the relationship between the two procedures and help avoid possible confusion for future summary abatements involving historic properties.

AAPS has been requesting these AMC changes since the unfortunate 1999 summary demolition without HAB review of the Webb Avenue Garage, a building that was on the Preservation Study List.

4. Give the HAB authority to impose conditions of approval on projects that replace demolished or removed HCRs, especially if the project is within a significant grouping of historic properties. If the historic property is not so deteriorated or damaged so as to be infeasible to rehabilitate and is to be removed "to create a vacant lot" or a parking lot, then the lot should be required to remain vacant for a designated period of time (perhaps 10 years). This would prevent applicants who would like to construct a new building from initially claiming that the purpose of the demolition is to create a vacant lot in order to avoid HAB review of the proposed plans. (Hopefully demolition permits will never be issued "to create a vacant lot".)
5. Do not allow demolition permits for historic properties to be issued until building permits for any replacement project are issued. This requirement, of course, would not apply if the purpose of the demolition is to "create a vacant lot".
6. Enforcement. Consider the following additional approaches to penalties and enforcement for illegal demolition and alterations:
- a. Provide additional financial penalty options in addition to the proposed \$50,000 fine and cost of replacing the demolished building or undoing unapproved alterations. This will give the City more flexibility in determining which penalties are appropriate. Examples include:

PAGE 34 OF 5/6/10 ORDINANCE ADDS A PERMIT FEE AND APPRAISAL-BASED FINE, BUT DOES NOT STATE WHO SELECTS THE APPRAISER.

- * i. One-half of the current appraised value, perhaps as set by the average value determined by the owner's appraiser and as set by either the County Assessor (but based current market value prior to demolition, not assessed value) or the City's appraiser;
 - * ii. A fine equivalent to five years (or other appropriate period) rent on the building as determined by appraisers; and/or
 - * iii. A fine equal to the full stated permit value of the proposed work. (This fine may not be high enough in some cases, but may be appropriate in others).
- * b. Require training for contractors who perform work without permit or who exceed the scope of approved permits. (Other communities report that contractor training has been very effective.)
 - ** c. Change from five years to 10 years the period during which the site of an illegally altered, relocated or demolished HCR cannot be developed in excess of the HCR's floor area ratio or dwelling unit density.
 - * d. Prohibit curb cuts as part of limits on any reconstruction on sites of demolished buildings (so the site cannot be used as a parking lot).
 - ** e. Define ~~replication~~ ^{restoration" in Section 30-21.15 on Page 37} more clearly, e.g. as set forth in Secretary of the Interiors' Standards and/or including requirements that replication must be based on definitive documentation such as old photographs, original plans, surviving physical evidence, etc.
 - ** f. Require deed recordations, where appropriate, such as where limits are imposed on building size due to penalties.
 - ** g. If requiring an illegally demolished or altered property to be restored to its original appearance is inappropriate (such as where a very different design was already approved, as in the case of 616 Pacific Avenue), allow the HAB to require enhancements to the previously approved design. This is essentially what the City Council did for 616 Pacific Avenue and what staff did for 1104 Oak Street.
 - * h. Ban the contractor from doing work in the City for a specified period (perhaps three years), pulling permits, working for an owner/builder or playing hide and seek games, such as working under a different name. This should probably be applied at least against repeat offenders and especially egregious first offenders. The folks at 500 Central are prime candidates.
 - ** i. In all cases, revised plans would have to be approved within a specified period (perhaps six months) and work resumed; otherwise additional penalties would be imposed.
 - * j. If the owner is nonresponsive, the City, in all cases, would have the ability to take whatever corrective action is necessary, (including providing security, weatherization, engineering analysis of the building's stability, preparation and implementation of any interim stabilization plan and completion of all work) and putting a lien on the property to cover the City's expenses.

7. **Expand HAB authority to specially designated Landmark interiors.** The draft ordinance gives the HAB authority over interior changes to specifically designated spaces in City-owned Landmarks, such as the Carnegie Building, Alameda Theater, etc. This authority should be expanded to specifically designated interior spaces in other publicly or privately owned Landmarks.

It should be noted that this review authority would apply only to specific interior spaces called out in the resolution designating the Landmark. Including this authority in the Historic Preservation Ordinance will therefore not by itself cause interior spaces to become subject to HAB review. Any designation of these spaces would instead be considered as a separate building-by-building process that could not occur until after the ordinance revisions are adopted and only after owner notification and full public review.

8. **Clarify the Integrity criterion for HCRs.** Confirm that the integrity criterion for the HCR Inventory is not a requirement for inclusion in the Inventory. Many altered properties that might not meet the integrity criterion in their current condition would meet the criterion if they were restored. The current wording of the integrity criterion is ambiguous.
9. **Provide a clearer definition of "in-kind" replacement.** For example, does the in-kind replacement material have to be an exact match for the original material or would a "visual match", e.g. cement fiber siding for wood siding, be sufficient? AAPS recommends the first approach.
10. **Why were the advertising requirements for building relocation in Subsection 30-21.5c deleted?** They should instead have been expanded to state that:
 - a. the building is available for one dollar;
 - b. preference is to be given to relocation sites in Alameda;
 - c. the building relocation is being required by the City of Alameda;
 - d. 90 days are available to enter into a relocation contract with a developer; and
 - e. a further time period is available (perhaps 120 days) to get the building moved once a contract is executed,

In addition, the advertisement should name a person at the City who potential developers could contact if they believed they were being stonewalled by the building owner.

- * 11. **Describe in the ordinance permitted uses for monies to be deposited into the HAB Fund.** Such uses should include a revolving fund to stabilize at-risk structures, such as 500 Central, using strategies such as receivership, if necessary.
- * 12. **Restore the tree removal provisions that were set forth in Section 30-17.8 of the 9-06 draft ordinance (See Attachment 1).** Also add a definition of tree removal that includes removing more than one-third of the canopy over a certain time period (perhaps five years, unless damaged in a storm or based on a Certified Arborist report) as well as topping and cutting branches or roots over a certain diameter.
13. **Historic Signs.** Add to the end of Section 30-21.8 (Designation of Historic Signs) the following text: "Demolition, removal, alteration or relocation of a historic sign shall require a Certificate of Approval per Section 30-21.5 of this Chapter". This language was in the 9-06 draft ordinance.

* 14. **Change the pre-1942 cutoff for HAB demolition approval to 50 years old.** This would also apply to California Historical Building Code eligibility and possibly to “historic” vs. “nonhistoric” building provisions in the Guide to Residential Design.

15. **Continue to require HAB review of ALL proposals to demolish pre-1942 properties that are not HCRs. Do not delegate this authority to Planning staff. Continue to apply the demolition definition to all building elevations rather than just street-facing elevations.** At the HAB’s February 4, 2010 meeting, a proposal was presented for the Planning Department to “pre-screen” pre-1942 structures proposed for demolition that are not in HCRs to determine if the structures have the characteristics of an HCR. If the structure lacks these characteristics, an HAB Certificate of Approval for demolition would not be required.

AAPS believes that the current procedure requiring an HAB Certificate of Approval is working well. The number of non-Study List pre-1942 properties that have required a Certificate of Approval since the pre-1942 threshold was adopted in 2003 has been minimal. The proposed revised definition of “demolition” to mean removal of 25% or more of a structure’s surface area will make the criteria triggering a Certificate of Approval more predictable. The exception of surface areas that will be replaced “in-kind” from the 25% threshold will help applicants design their projects to stay within the 25% threshold.

On the other hand, giving staff the authority to determine whether a pre-1942 property meets the HCR criteria presupposes a level of education that some past staffmembers have not possessed. Some important properties could therefore fall through the cracks. While AAPS believes existing staff is well qualified to make such determinations, there is no assurance that this will be true of future staff. At a minimum, any staff pre-screening should require public notice, the opportunity for public comment, and for the staff decision to be subject to a “Call for Review” by any HAB member and appeal to the HAB by any member of the public. (Note: Calls for Review can now be issued by Planning Board members for staff decisions and by City Council members for Planning Board and HAB decisions.)

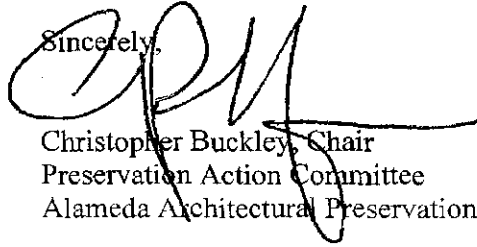
The proposal also recommended limiting the definition of “demolition” to removal of more than 25% of the surface of any exterior wall *that is adjacent to a street or public sidewalk*. We believe that the demolition definition should continue to apply to all exterior walls since: (a) significant portions of side and (for corner lots) rear walls are usually visible from the street; (b) non street-facing walls often contain significant historic fabric; and (c) non street-facing walls are still visible to neighbors.

It might be helpful to review past Certificates of Approval for demolition of pre-1942 non Study List properties and for non street-facing walls to determine whether the Certificate of Approval requirement was appropriate.

16. **Show future draft ordinance amendments in strike-out and underlined text.** This will help reviewers track changes to the ordinance.

Thank you for the opportunity to comment. Please contact me at (510) 523-0411 or cbuckleyAICP@att.net if you would like to discuss these comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'CB', written over the typed name and title.

Christopher Buckley, Chair
Preservation Action Committee
Alameda Architectural Preservation Society

Attachments:

1. September, 2006 Historic Preservation Ordinance Draft
2. Marked-up AMC sections concerning imminently hazardous structures

By electronic transmission:

cc: Jon Biggs, HAB Secretary
AAPS Board and Preservation Action Committee members