

section
nine

Demolition and Undue Hardship Guidelines

Demolition and undue hardship are two of the most difficult issues relating to design review in local historic districts. Maintenance is vital to the preservation and protection of historic resources. A lack of maintenance results in demolition-by-neglect, the preventable demise of a historic building due to willful lack of maintenance.

Undue economic hardship to the property owner is often difficult for Commission members to grant. The following guidelines give Commission members criteria for granting undue hardship.

The first part of this section lists the guidelines in numerical order for quick review. The second part of the section provides additional information for interpreting the guidelines.

Demolition and Undue Hardship Guidelines in Numerical Order

9.1 Demolition of Historic Resources

- 9.1.1 The demolition of a historic resource, including significant outbuildings, must meet one of the following criteria: a) the proposed replacement structure is more appropriate and compatible with the historic character of the district than the building proposed for demolition, b) no economically viable use of the property will exist unless the application is approved, or c) the structure poses an imminent threat to public health or safety.
- 9.1.2 All demolition applications must present plans for the use of the site after demolition. These plans will be reviewed by the Preservation Commission using the guidelines for the new construction of commercial (5.0) or residential (6.0) buildings.
- 9.1.3 All applications for demolition should provide a comparison between the cost of rehabilitating the current historic resource and the cost of demolition and the subsequent improvements to the site.
- 9.1.4 For an application of “no economically viable use” the following information will be used for review: a) the past and current uses of the building and property, b) the name and federal income tax bracket of the owner, c) the date and price of purchase or other acquisition of the structure and property, and the party from whom it was acquired, d) the assessed value of the building and property, e) the current fair market value of the structure and property as determined by a licensed appraiser, f) all listings of the structure and property for sale or rent within the previous two years, prices asked, and offers received, g) a profit and loss statement for the building and property, h) all capital expenditures during the current ownership, i) records depicting the current condition of the building and property, j) plans for proposed improvements to the site, and k) any other evidence that shows that the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable rate of return.
- 9.1.5 For an application to demolish a structure that poses an imminent threat to public health or safety the following information will be used for review: a) records depicting the current condition of the building, including photos and written descriptions and b) a report regarding the nature, imminence, and severity of the threat, as performed by a licensed architect or engineer or city inspector.
- 9.1.6 Demolition of a historic resource through neglect is subject to the demolition guidelines.

- 9.1.7 Demolition of structures less than fifty years of age will be permitted if the building is not eligible under the district's period of significance.

9.2 Undue Hardship

- 9.2.1 Inability to put the property to its most profitable use does not constitute undue hardship.
- 9.2.2 If the hardship is self-imposed, caused by an action of the owner, the applicant, or some other agent, undue hardship may not be granted.
- 9.2.3 The hardship must be peculiar to the building or property in question and must not be common to other properties. If the condition of hardship is common to other properties, the commission should consider a change to the Design Guidelines. Granting an exception in such cases is improper.
- 9.2.4 Mere inconvenience to the applicant is not sufficient grounds for undue hardship.
- 9.2.5 In order to grant undue economic hardship, the following is necessary for the commission's review: a) the past and current uses of the building and property, b) the name and federal income tax bracket of the owner, c) the date and price of purchase or other acquisition of the structure and property, and the party from whom it was acquired, d) the assessed value of the building and property, e) the current fair market value of the structure and property as determined by a licensed appraiser, f) all capital expenditures during the current ownership, g) records depicting the current condition of the building and property, h) plans for proposed improvements to the building, and i) the expense of rehabilitation.

Interpreting the Demolition and Undue Hardship Guidelines

9.1 Demolition of Historic Resources

9.1.1 The demolition of a historic resource, including significant outbuildings, must meet one of the following criteria: a) the proposed replacement structure is more appropriate and compatible with the historic character of the district than the building proposed for demolition, b) no economically viable use of the property will exist unless the application is approved, or c) the structure poses an imminent threat to public health or safety.

9.1.2 All demolition applications must present plans for the use of the site after demolition. These site plans will be reviewed by the Preservation Commission using the guidelines for the new construction of commercial (5.0) or residential (6.0) buildings.

9.1.3 All applications for demolition should provide a comparison between the cost of rehabilitating the current historic resource and the cost of demolition and the subsequent improvements to the site.

Demolition has a negative impact on a historic district. Because of market conditions and the unavailability of materials and skilled craftsman, compatible new construction is often not feasible. The demolition of a building creates a void on the streetscape and the improvements to the site are usually less well designed and constructed than the original. Each building proposed for demolition should be evaluated for historic and architectural merit as well as its importance to the character of the site and historic district. No demolition applications will be reviewed without being able to review the proposed site improvements at the same time. Demolition is irreversible.

9.1.4 For an application of “no economically viable use” the following information will be used for review: a) the past and current uses of the building and property, b) the name and federal income tax bracket of the owner, c) the date and price of purchase or other acquisition of the structure and property, and the party from whom it was acquired, d) the assessed value of the building and property, e) the current fair market value of the structure and property as determined by a licensed appraiser, f) all listings of the structure and property for sale or rent within the previous two years, prices asked, and offers received, g) a profit and loss statement for the building and property, h) all capital expenditures during the current ownership, i) records depicting the current condition of the building and property, j) plans for proposed improvements to the site, and k) any other evidence that shows that

the affirmative obligation to maintain the structure or property makes it impossible to realize a reasonable rate of return.

The burden of proof for a claim of "no economically viable use" rests with the property owner. The property owner must establish clear and convincing evidence to warrant a favorable action by the Commission. Property owners have a right to reasonable use of the land, but the U.S. Constitution does not guarantee the most profitable use. Federal Courts have upheld that if the entire property has a reasonable economic use, a taking of the property has not occurred.

9.1.5 For an application to demolish a structure that poses an imminent threat to public health or safety the following information will be used for review: a) records depicting the current condition of the building, including photos and written descriptions and b) a report regarding the nature, imminence, and severity of the threat, as performed by a licensed architect or engineer or city inspector.

The Commission should take into account the severity of the threat and compare it to the expense of correcting the structural issues. Often safety issues can be dealt with by stabilizing and mothballing the building.

9.1.6 Demolition of a historic resource through neglect is subject to the demolition guidelines.

9.1.7 Demolition of structures less than fifty years of age will be permitted if the building is not eligible under the district's period of significance.

Property owners who have allowed a historic resource to reach a state of demolition-by-neglect have in effect demolished the building without first acquiring a Certificate of Appropriateness and can be fined under Milledgeville's "Enforcement and Penalty Schedule: City Marshal/Code Enforcement." The demolition of structures less than fifty years old which are non contributing resources in the district may be demolished. Improvements to the site will fall under guidelines for new construction.

9.2 Undue Hardship

9.2.1 Inability to put the property to its most profitable use does not constitute undue hardship.

Property owners have a right to reasonable use of the land, but the U.S. Constitution does not guarantee the most profitable use. Federal Courts have upheld that if the entire property has a reasonable economic use, a taking of the property has not occurred.

9.2.2 If the hardship is self-imposed, caused by an action of the owner, the applicant, or some other agent, undue hardship may not be granted.

9.2.3 The hardship must be peculiar to the building or property in question and must not be common to other properties. If the condition of hardship is common to other properties, the commission should consider a change to the Design Guidelines. Granting an exception in such cases is improper.

9.2.4 Mere inconvenience to the applicant is not sufficient grounds for undue hardship.

Undue hardship must be proven. An exception issued for a lesser reason or simply because the commission feels it is doing "the right thing" is an invalid application of commission authority. The burden of proof lies with the property owner.

9.2.5 In order to grant undue economic hardship, the following is necessary for the commission's review: a) the past and current uses of the building and property, b) the name and federal income tax bracket of the owner, c) the date and price of purchase or other acquisition of the structure and property, and the party from whom it was acquired, d) the assessed value of the building and property, e) the current fair market value of the structure and property as determined by a licensed appraiser, f) all capital expenditures during the current ownership, g) records depicting the current condition of the building and property, h) plans for proposed improvements to the building, and i) the expense of rehabilitation.

The burden of proof for a claim of "undue economic hardship" rests with the property owner. The property owner must establish clear and convincing evidence to warrant a favorable action by the commission. The commission should consider the possibility of the owner taking advantage of State and Federal Income Tax incentives to make the rehabilitation project more feasible.