

Economic Hardship Guidelines^{1[1]}

In an effort to provide a process for administrative relief from restrictions in historic preservation ordinances, the City of Detroit Historic District Commission would like to offer guidelines for determining economic hardship. These guidelines are written to be used by homeowners, commercial and non-profit organization property owners for properties that are within historically designated districts.

Economic hardship procedures require the applicant/historic property owner to apply for a certificate of "economic hardship" after the commission has denied his/her application to renovate and/or demolish historic property protected under the historic preservation ordinance of the City of Detroit.

- In support of an application for relief on economic hardship grounds, the applicant must submit evidence sufficient to enable the commission to render a decision.
- The burden of proof is on the applicant.
- Consideration of expenditures alone will not provide a complete or acceptable picture of economic hardship whether an income-producing property, non-profit entity owned property or owner-occupied residential property.

The first and most critical step for the commission considering a claim of economic hardship is to understand how to evaluate economic impact.

^{1[1]} Miller, Julia, *Assessing Economic Hardship Claims under historic preservation ordinances*, pp16-18, January-February 2001, *News from the National Alliance of Preservation Commissions*

Economic Impact on Commercial Property Owners

With respect to commercial or income-producing properties, economic impact is generally measured by looking at the effect of a particular course of action on a property's overall value or return.

- Allows commission to focus on the bottom line of the transaction.
- Evaluation of reasonable or beneficial use is an important factor.
- Consideration of an owner's ability to continue to carry out the traditional or viable use of the property.
- Consider applicant's reasonable investment-backed expectations. As long as that expectation does not work contrary to the law. (An applicant's expectation of demolishing a historic property at the time of purchase is not considered reasonable.)

Economic Impact on Homeowners

As it relates to owner occupied property, applicants have a difficult time establishing the claim of a regulatory taking. Requiring the owner to maintain the property according to the ordinance does not deny use of the property. The fact that repairs may be more costly is not enough to determine economic hardship.

Economic Impact on Charitable or Non-Profit Property Owners

Because non-profit entities serve charitable rather than commercial purposes, it is appropriate that the commission focus on the overall benefit to the community. There are questions that must be considered i.e.,

- Determining or understanding the organization's mission or charitable purpose.
- Does the ordinance interfere with that mission?
- Will enforcement of the ordinance negatively impact the organization's mission?

The commission must note that the cost of repairing alone is not a hardship. As the commission reviews the evidence it must be careful to be objective and consistent in its approach.

Economic Hardship Proceedings

In hearing economic hardship matters, the commission must be prepared to make a legally enforceable decision.

- The applicant is required to submit specific evidence to support their claim.
 - Structural integrity
 - Estimated cost of rehabilitation
 - Projected market value after rehabilitation

As stated earlier the burden of proof rests on the property owner. Yet the commission must weight the evidence by asking five questions.

1. Is the evidence sufficient?
 - Does the commission have all of the information?
 - Is the applicant presenting the whole picture?

2. Is the evidence relevant?
3. Is the evidence competent?
4. Is the evidence credible?
5. Is the evidence consistent?

Evidentiary Checklist

The following checklist may serve as a useful tool for the commission and other regulatory agencies in considering economic hardship claims:

1. Current level of economic return:
 - Amount paid for the property, date of purchase, party from whom purchased, and relationship between the owner of record, the applicant and person from whom the property was purchased,
 - Annual gross and net income from the property for the previous three years, itemized operating and maintenance expenses for the previous three years, and depreciation deduction and annual cash flow before and after debt service, if any, during the same period,
 - Remaining balance on the mortgage or other financing secured by the property and annual debt service, if any, during the prior three years,
 - Real estate taxes for the previous four years and assessed value of property according to the two most recent assessed valuations,
 - All appraisals obtained within the last two years by the owner or applicant in connection with the purchase, financing or ownership of the property,

- Form of ownership or operation of the property, whether sole proprietorship, for-profit corporation, limited partnership, joint venture or other,
 - Any state or federal income tax returns relating to the property for the last two years.
2. Any listing of property for sale or rent, price asked, and offers received, if any within the previous two years, including testimony and relevant documents regarding:
 - Any real estate broker or firm engaged to sell or lease the property,
 - Reasonableness of price or rent sought by the applicant,
 - Any advertisements placed for the sale or rent of the property.
 3. Feasibility of alternative uses for the property that could earn a reasonable economic return:
 - Report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any building on the property and their suitability for rehabilitation.
 - Cost estimates for the proposed construction, alteration, demolition or removal and an estimate of any additional cost that would be incurred to comply with the requirements for a certificate of appropriateness,
 - Estimated market value of the property:
 - a. in its current condition,
 - b. after completion of the proposed alteration or demolition, and
 - c. after renovation of the existing property for continued use,
 4. Any evidence of self-created hardship through deliberate neglect or inadequate maintenance of the property.
 5. Knowledge of landmark designation or potential designation at time of acquisition.
 6. Economic incentives and/or funding available to the applicant through federal, state, city or private programs.
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