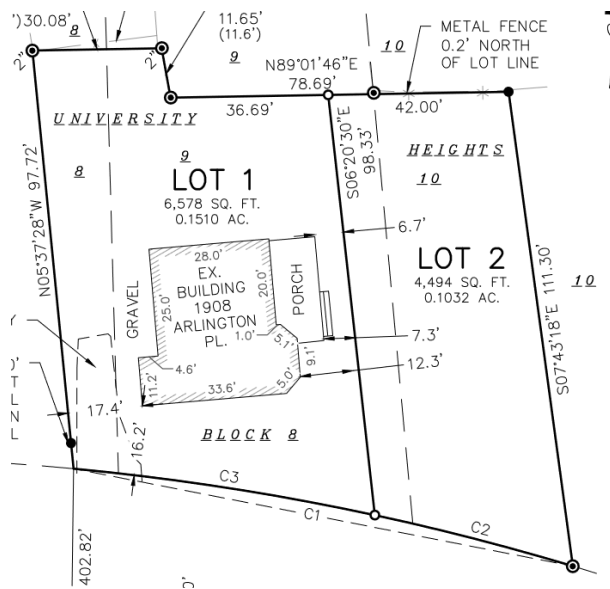




Topic: Appeal of Madison Landmarks Commission Decision
1908 Arlington Place
Legistar File ID # [82175](#)
Prepared By: Heather Bailey, Preservation Planner, Planning Division
Date Prepared: March 14, 2024

Landmarks Commission Project Approval

The Landmarks Commission reviewed and approved a proposal to remove two underlying lot lines on the parcel at 1908 Arlington Place and create a new lot line that would result in two lots rather than the parts of three lots that the parcel currently contains. 1908 Arlington is in the University Heights Historic District and therefore requires a Certificate of Appropriateness (“CoA”) from the Landmarks Commission for all land divisions and combinations. Under the proposal, the existing home would be the western lot (Lot 1) and the eastern lot (Lot 2) would be vacant:



On February 12, 2024, the Madison Landmarks Commission found that the proposal met the conditions of approval and granted a CoA. The Commission found that both of the proposed lots would meet zoning criteria and be of a similar size to other lots in the district and on this block. The Landmarks Commission only evaluates the adjacent lot sizes as part of their review and then the general lot size pattern for University Heights Historic District to complete their review. Any future construction would need to meet historic district standards. And obtain a separate CoA.

Landmarks Commission Standards of Approval

[MGO 41.18\(4\)](#)

Land Divisions and Combinations. The commission shall approve a certificate of appropriateness for land divisions, combinations, and subdivision plats of landmark sites and properties in historic districts, unless it finds that the proposed lot sizes adversely impact the historic character or significance of a landmark, are incompatible with adjacent lot sizes, or fail to maintain the general lot size pattern of the historic district.

Note that the Landmarks Commission reviews lots, not parcels. A “lot” is a documented subdivision of land with a legal description. A “parcel” is a quantity of land for taxation purposes. The size of other *parcels* in the historic district are not relevant to the CoA.

MGO 41.02

Lot means a tract of land, designated by metes and bounds, land survey, minor land division or plat recorded with the Dane County Register of Deeds.

The historic preservation ordinance encourages sensitive incorporation of new construction in relation to historic resources and is not intended to prevent development. Any new construction on the new vacant lot would need to meet the new construction standards in the historic district.

Per the applicable standards, there are three grounds for denying a lot combination/proposal:

1. Proposed lot sizes adversely impact the historic character or significance of a landmark
Only applicable to designated landmarks. Subject property is not a landmark.
2. Proposed lot sizes are incompatible with adjacent lot sizes
Ensures that the new configuration has compatible configuration with adjacent lots.
3. Proposed lot sizes fail to maintain the general lot size pattern of the historic district
Allows for a larger perspective in looking at the pattern of the district as a whole and how the pattern can shift across a district.

For a full analysis of how the project complies with the standards of approval in MGO 41, please see the following staff report, staff presentation, and the Landmarks Commission’s Action Report:

[81638 - 1908 Arlington STAFF REPORT 2-12-24](#)

[Staff Presentation 2-12-24](#)

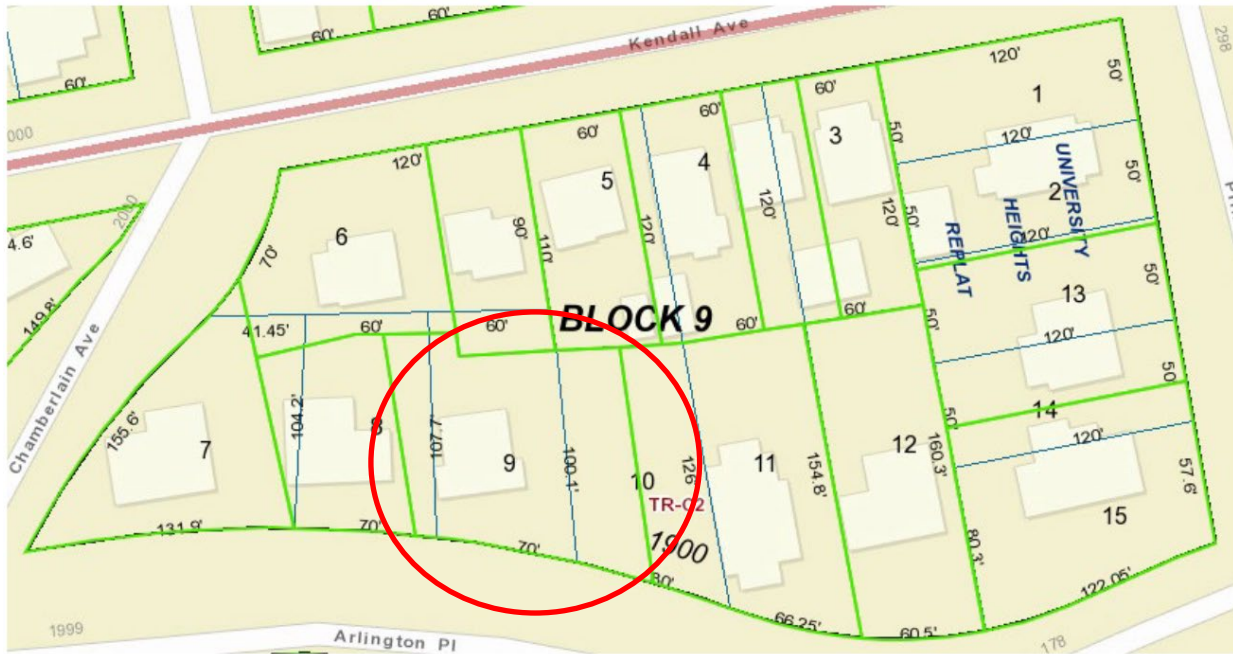
[81638 LC Report 2-12-24](#)

Appeal

Neighbors filed an appeal of the Landmarks Commission’s project approval on February 21, 2024. The appeal represents that the Commission:

- a. *“Failed to determine before the hearing the general pattern of lot sizes in the University Heights historic District to determine if the proposed lot deviated from that general pattern.”*
- b. *“Then, during the hearing, relied on a cursory review of a map of lots in University Heights which did not contain any numerical dimensions or other information regarding the size of the lots on the map, while ignoring other more relevant maps provided in advance in a written communication from a neighbor of the property.”*

Staff completes a review of all applications prior to writing a staff report. In this instance, staff reviewed the lot sizes and dimensions in City GIS in addition to reviewing the application materials. The lot size pattern of the historic district is apparent on the historic district map and in city mapping of parcels and lots. Below is the City aerial GIS map of Block 9 where the parcel (red circle) is located:



That analysis was present in both the staff report and presentation at the meeting for the Commission to review. During the meeting, staff again conducted the analysis to report the exact measurements of the adjacent lots and included visual comparisons for how the proposed new lots would look on Block 9. Historical aerial maps were also provided as visual aids. In the decade of completing these reviews for land combinations and divisions, staff has not included a numerical analysis into the text of staff reports and the standards of approval do not require this.

The Commission's review of the maps concluded that the new lots clearly met the varied lot development pattern of the district and were compatible with adjacent lot sizes. University Heights Historic District does not have a single lot size throughout the district. The additional historic map provided as part of public comment showed how the lot development pattern in the district evolved over time.

- c. *“Defined the word ‘adjacent’ in MGO 41.18(4) as meaning only ‘adjoining,’ a truncated and incorrect interpretation of the ordinance because ‘adjacent’ also means ‘nearby.’”*

While not specifically defined in the zoning code, the City consistently uses “adjacent lot” to mean adjoining. In other words, lots that directly abut one another in a 360 degree view. This method of review and interpretation of adjacency has been used in every land combination/division approval from the Landmarks Commission since that process was implemented in 2015. They have also used that definition of “adjacency” since they began providing advisory comments to Plan Commission on developments adjacent to a designated landmark in 1996.

For 1908 Arlington Place, adjacent lots include properties that front on Arlington Place and the properties behind the parcel that front on Kendall Avenue. The properties across the street – or across the right-of-way – are not considered adjoining. Staff's review and presentation to Landmarks Commission took into account the other properties on that block that front onto Arlington Place and properties fronting Kendall Avenue. While there is a topographical change where Kendall Avenue is lower in elevation than Arlington Place, that is irrelevant to adjacency.

The properties across the street from the subject property on Arlington Place were included in the consideration of the “general lot development pattern of the district,” but only the lots that directly abut the subject property

were included in the review of compatibility with adjacent lot sizes. Landmarks Commission examined both property groupings and concluded that the proposed new lots would not be out of character with the properties on Arlington Place or in the district.

- d. *“Relied on the orientation of a home at the corner of Chamberlain Ave. and Forest Street, as the basis, in part, for its determination that the proposed two small lots for 1908 Arlington Place were compatible with the larger lots that surround it on its west, east and south sides.”*

During their analysis, Landmarks Commission discussed several other properties in the University Heights Historic District, including 202 Forest Street and 120 Ely Place. At the Landmarks Commission meeting, public comment argued that the new lot configuration would impact the house by potentially changing the orientation of the front door. The houses on Forest Street and Ely Place were used as examples of front doors facing interior lot lines in the district.

While the Commission did discuss these properties, the orientation of the front door of a historic house is not one of the standards of approval. The Commission explained this at the meeting. As there is no designated landmark on the subject property, there is no consideration of how the proposed lot configuration will impact the historic character of a landmark.

- e. *“Improperly compared the new proposed lot sizes for 1908 Arlington Place only to lots located on Kendall Ave., which are below and, therefore, not on the same plane as those on Arlington Place.”*

Again, while the application materials only highlighted comparables on Kendall Avenue and Chamberlain Avenue, staff completed an analysis that included all of the adjoining/adjacent lots, while also taking into account the lot development pattern in the district as a whole and in the immediate vicinity to ensure that the proposed new lot configuration was both compatible with adjoining/adjacent lots and with how the lot development in the district had evolved in this area of the historic district. The Commission evaluated the lot configurations as required in the standards of approval.

Associated Approval and Regulations

The City’s Subdivision Regulations, MGO Section 16.23, defines a “Land Division” as “the division of a lot or parcel of land for the purpose of transfer of ownership or building development where the act of division creates four (4) or less parcels or building sites of 40 acres or less in area.” A Certified Survey Map (CSM) is (emphasis added) “a drawing meeting all the requirements of Sec. 236.34 Wis. Stats. which is a map or plan of record of a **land division**, including combination of parcels for building development.” The City’s ability to approve land divisions is established by Section 16.23(3)(b), and the process for approval is outlined in Section 16.23(4)(f). Additionally, Section 16.23(3)(a)6 states that “For land divisions and subdivision plats of landmark sites and properties in Local Historic Districts, no land shall be divided or combined without the approval of the Landmarks Commission under MGO Section 41.18(4).”

MGO Section 16.23(4)(f)6 states “The Plan Commission or its Secretary and the Common Council shall act on the land division within ninety (90) days of the filing of a complete application, unless the time is extended by written agreement with the applicant.” This requirement follows direction in Wis. Stats. Section 236.34(1m)(f), which states: “Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, approve conditionally, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act.”

The CSM of 1908 Arlington Place was submitted to the Planning Division for review pursuant to Section 16.23(4)(f) on January 8, 2024. Therefore, the 90-day limit for the City of Madison to act, including its Common Council, boards, committees, and commissions, is April 7, 2024. This includes the Landmarks Commission's ability to review land divisions given it by Section 16.23(3)(a)6. In order for the City to act on the proposed division of 1908 Arlington Place within the 90 days given it by statutes, staff recommends that the appeal of the Landmarks Commission be decided at the March 19 Common Council meeting, and that the appeal not be returned to the Landmarks Commission.

The Plan Commission reviewed the proposed land division at its March 11, 2024, meeting and recommended approval. The Common Council is scheduled to approve the resolution approving the land division also at its March 19 meeting (see ID [81560](#) for more information on the Plan Commission review).

Possible Common Council Actions

Per [MGO 41.20\(4\)](#), "after a public hearing, the Common Council may, by favorable vote of a majority of its members, reverse or modify the decision of the Landmarks Commission with or without conditions, or refer the matter back to the Commission with or without instructions, if it finds that the Commission's decision is contrary to the applicable standards under Secs. 41.18."

The Common Council may take any of the following actions:

1. Deny the Appeal
Findings: The Landmarks Commission's decision complied with the standards of approval in MGO 41.18
2. Approve the Appeal and Reverse or Modify the Decision of the Landmarks Commission
Findings: The Landmarks Commission's decision was contrary to the applicable standards in MGO 41.18
3. Refer Back to the Landmarks Commission
Common Council will need to specify how the Commission should reevaluate the project. *Note: Any referral back to the Landmarks Commission shall be decided before April 7, 2024 in accordance with MGO Section 16.23(4)(4) and Wis. Stats. Sec. 236.34.*