

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: February 28, 2011

MEMORANDUM

TO: Ald. Bidar-Sielaff; Amy Scanlon, Preservation Planner

FROM: Katherine C. Noonan, Asst. City Attorney

RE: 209 N. Prospect Ave.

Several questions/concerns have been raised regarding the request for a Certificate of Appropriateness for 209 N. Prospect Ave. that is before the Landmarks Commission this evening. I will address them individually below.

1. **Land division approved in 2008.** This lot was created as part of a Certified Survey Map approved in 2008. Its R2 zoning permits single family homes. Because the lot is in the University Heights Historic District, it also is subject to the relevant provisions of the Landmarks Ordinance. The Landmarks Ordinance, however, does not speak to the ability to divide a lot or to construct a single family home, or any other structure. Any concerns with the validity of the land division required an appeal to be filed within thirty (30) days of notification of the final action on the proposed land division. That time period has expired.
2. **Allowed uses on the lot.** R2 zoning allows a number of permitted and conditional uses. Permitted uses include single-family detached dwellings and churches, conditional uses include day care centers and cemeteries. Rezoning the property would substitute a different mix of permitted and conditional uses, however, the City cannot require the owners of this lot to leave it vacant.
3. **Jurisdiction of the Landmarks Commission.** This item is before the Landmarks Commission based on a request for a Certificate of Appropriateness. The Commission's consideration is limited to the standards for approving a Certificate of Appropriateness. For this request, the relevant provisions of the Landmarks Ordinance are in Sec. 33.19(5)(b)4. and Sec. 33.19(12)(f). The Commission shall consider impacts on surrounding properties and the district as a whole only to the extent specified in these provisions. The Ordinance provides for consideration of properties outside the visually related area of this lot (R2) only as it relates to exterior materials used in the proposed construction. (see Sec. 33.19(12)(f)1.b.). The remainder of the review criteria consider only properties in the visually related area.
4. **Landmarks Procedures.** Sec. 33.19(5)(b)3. requires a public hearing for new construction in the University Heights Historic District. Notice of this hearing shall be published as a Class 2 notice and property owners within two hundred (200) feet of the property for which the Certificate of Appropriateness is

requested shall be noticed. The required public hearing is scheduled for February 28, 2011. There are no other required hearings or notice in the Landmarks Ordinance. The Commission may receive informational presentations on projects prior to the meeting when the public hearing and determination on the request will take place. These informational meetings are not unique to the Landmarks Commission but also occur at the Urban Design Commission and the Plan Commission. They are considered helpful to both the applicant and the Commission to bringing more polished and acceptable proposals to the Commission for a determination. There is no publication or other notice required. Should the Commission wish to change its procedures to require additional notice, an ordinance amendment will be necessary.

5. **Submittal Requirements.** There are no submittal requirements in the Landmarks Ordinance. The Application for a Certificate of Appropriateness, the Landmarks Commission Schedule, and the City's website all contain information regarding submission materials. Only those on the Application are referred to as "Requirements", though even they are not part of any ordinance requirement. Due process requires a time and place to be heard, it does not require a specific document not noted in an ordinance requirement. Projects vary in their complexity and it is appropriate that Landmarks staff maintains flexibility to request those materials deemed necessary for staff or the Landmarks Commission to effectively apply the ordinance standards. In fact, both the City's website and the Application indicate that the materials noted are not an exhaustive list. It is expected that every proposal may not contain the same documents. Again, should the Landmarks Commission wish to include specific submittal requirements in the Landmarks Ordinance, an amendment will be necessary.