

Bailey, Heather

From: Alex Saloutos
Sent: Wednesday, November 1, 2023 9:26 AM
To: Bailey, Heather
Cc: Kevin Pomeroy; jon.furlow@gmail.com; bsfurlow71@gmail.com; Wachter, Matthew; Fruhling, William; Haas, Michael R; Rick Chandler
Subject: Old Spring Tavern -- Application of SOI's standards . . .

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Heather: Please enter my communication on this matter in the record. Thank you. –Alex

From: Heather Bailey <HBailey@cityofmadison.com>
Date: Wednesday, November 1, 2023 at 8:44 AM
To: "asaloutos;tds. net" <asaloutos@tds.net>
Cc: Kevin Pomeroy <urbanist@charter.net>, "jon.furlow@gmail.com" <jon.furlow@gmail.com>, "bsfurlow71@gmail.com" <bsfurlow71@gmail.com>, Matthew Wachter <MWachter@cityofmadison.com>, William Fruhling <WFruhling@cityofmadison.com>, Michael Haas <MHaas@cityofmadison.com>, Richard Chandler <rgcwis@charter.net>
Subject: RE: Old Spring Tavern -- Application of SOI's standards . . .

Alex,

We do indeed disagree. Please feel free to submit written comments to the Landmarks Commission. I am also happy to compile this correspondence if that is how you would like to proceed.



Heather L. Bailey, Ph.D. *(she/her)*
Preservation Planner
Neighborhood Planning, Preservation + Design Section

Department of Planning + Community + Economic Development
Planning Division
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PO Box 2985
Madison WI 53701-2985
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From: Alex Saloutos <asaloutos@tds.net>
Sent: Tuesday, October 31, 2023 6:17 PM
To: Bailey, Heather <HBailey@cityofmadison.com>
Cc: Kevin Pomeroy <urbanist@charter.net>; jon.furlow@gmail.com; bsfurlow71@gmail.com; Wachter, Matthew <MWachter@cityofmadison.com>; Bailey, Heather <HBailey@cityofmadison.com>; Fruhling, William <WFruhling@cityofmadison.com>; Haas, Michael R <MHaas@cityofmadison.com>; Rick Chandler <rgcwis@charter.net>
Subject: Old Spring Tavern -- Application of SOI's standards . . .

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Thanks, Heather!

I have reviewed and am familiar with the record on this matter, including the staff report from the August 2023 meeting. There is no evidence in the record I am aware of that the Landmarks Commission made any findings, came to any conclusions, or made a decision (voted) that trees in general or this specific black walnut tree are not a part of this project review. An opinion expressed by a commissioner about trees in general or this specific black walnut tree at a meeting of the Landmarks Commission is just that, an opinion.

Regarding the Secretary of the Interior's Guidelines for the Treatment of Cultural Landscapes that you cite:

"The Guidelines for the Treatment of Cultural Landscapes apply to a specific resource type: landscapes. The Guidelines have been prepared to assist in applying the Standards to all project work involving the treatment of cultural landscapes." [NPS website, Using the Standards + Guidelines](#).

The Old Spring Tavern is not a cultural landscape as the term is used by the Secretary of the Interior. Based on the Secretary of the Interior's instructions, the Guidelines for the Treatment of Cultural Landscapes do not apply to this landmarked property.

The [Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings](#) are used for interpretation and application of the Secretary of Interior's Standards for Rehabilitation, which is the standard required in [MGO 41.18\(b\)](#). For example, these guidelines recommend, "*retaining, and preserving* building and landscape features that are important in defining the overall historic character of the setting. Such features can include . . . vegetation." And they recommend not, "Introducing new construction on the building site . . . which damages or destroys important landscape features." And there no requirement I'm aware of in the standards or guidelines this specific tree must be referenced in the nomination in order for the standards and guidelines to apply to it.

Putting aside the Secretary of the Interior's Standards for Rehabilitation, [MGO 41.14\(1\)](#) requires that an owner of a City of Madison landmark and improvement on a landmark site do all the following:

- a. Protect the improvement against exterior decay and deterioration.
- b. Keep the improvement free from structural defects.
- c. Maintain interior portions of the improvement, the deterioration of which may cause the exterior portions of such improvement to fall into a state of disrepair.
- d. Refrain from actions that cause or may cause exterior decay and deterioration of a landmark, improvement on a landmark site, or improvement in a historic district that is located on a directly abutting property.

The tree is an "improvement" per MGO 41.02, which states, "Improvement means any structure, landscape feature or object intended to enhance the value or utility of a property (See structure, landscape feature and object.)" And per MGO 41.02 landscape feature means, "any improvement to the natural landscape including plants, gardens, parks, greenways and landscaping around structures (see Improvement)." It is common knowledge that disturbing the root system of a tree has an adverse impact on the tree. Based on the facts in the record, including the volume of encroachment of the proposed construction on the root system of this tree as shown in the applicant's submittal, an ordinary person can see that the proposed construction is contrary to and in violation of MGO 41.14(1).

My understanding is the city's historic preservation planner has a responsibility to enforce Chapter 41, including both MGO 41.18(b) and MGO 41.14(1) to protect this tree. It is in the public interest to know what impact the proposed construction will have on this black walnut tree. It is normal and customary in historic preservation to have a risk assessment and mitigation plan prepared by a subject matter expert for a tree like this when construction of this type is proposed. And there is no evidence in the record a risk assessment and mitigation plan has been prepared by a subject matter expert, or that it will be implemented. An ordinary person can see from the plans in the applicant's submittal that the encroachment of the new construction on the root system and the canopy of this tree, and the potential impact of construction equipment working around the tree, these actions may have an adverse impact on the tree. And I see no exception in the ordinance for the age or condition of this improvement. A competent historic preservation practitioner

serving the public interest would ask the applicant for the risk assessment and mitigation plan, recommend to the Landmarks Commission they review them before making a decision on this application, and ensure the applicant follows the mitigation plan if their application were approved.

Respectfully,

--



Alex Saloutos

BHHS True Realty

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Email: asaloutos@tds.net

Alex

From: Heather Bailey <HBailey@cityofmadison.com>

Date: Tuesday, October 31, 2023 at 1:46 PM

To: "asaloutos;tds. net" <asaloutos@tds.net>, "jon.furlow@gmail.com" <jon.furlow@gmail.com>, "bsfurlow71@gmail.com" <bsfurlow71@gmail.com>

Cc: Kevin Pomeroy <urbanist@charter.net>

Subject: RE: Old Spring Tavern -- Application of SOI's standards . . .

Alex,

I do understand that you believe that the tree is part of this review, but the Landmarks Commission has discussed the reasons why they believe that it is not a part of this project review. In addition to rewatching any of the meetings where you can refresh your memory about their conclusions, you can also find my summary in the [staff report](#) from the August meeting:

Black Walnut Tree

The Landmarks Commission has previously stated that the old black walnut tree on t of the commission's review. The commission only reviews removal of trees in instan a part of the historic designation, such as properties designated for their landsca discussion of the tree in the landmark nomination. In the rare instances that th impacting elements such as trees, the commission uses the guidance from the Guidelines for the Treatment of Cultural Landscapes, which views elements such as t to be maintained when possible, but with the knowledge that plantings die.

Please take the time to read through the [SOI for Treatment of Cultural Landscapes](#), which says:

"Vegetation may derive its significance from historical associations, horticultural or genetic value, or aesthetic or functional qualities. It is a primary dynamic component of the landscape's character; therefore, the treatment of cultural landscapes must recognize the continual process of germination, growth, seasonal change, aging, decay, and death of plants."

The project reviews that the Landmarks Commission has completed related to Tenney Park and Hoyt Park in recent years keeps the guidance of these treatments in mind, if you're wanting to learn what those look like and how that process works (everything is in Legistar and I am happy to point you to those projects to help with your training). This specific tree is not called out as part of the significance of the Old Spring Tavern property in any of the historic nominations for the site. However, looking at the introduction of another house on the property does utilize the guidance in these guidelines regarding the [Change and Continuity, and Geographic Context](#) as the cultural landscape of this property speaks to both its early history as a stagecoach stop and the transformations it underwent to become a part of the Nakoma neighborhood.

You are welcome to submit written comments again explaining your position and to make a statement to the Landmarks Commission. They have already discussed this topic more than once and have made an informed decision.



Heather L. Bailey, Ph.D. *(she/her)*
Preservation Planner
Neighborhood Planning, Preservation + Design Section

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From: Alex Saloutos <asaloutos@tds.net>
Sent: Tuesday, October 31, 2023 1:27 PM
To: jon.furlow@gmail.com; bsfurlow71@gmail.com
Cc: Bailey, Heather <Hbailey@cityofmadison.com>; Kevin Pomeroy <urbanist@charter.net>
Subject: Old Spring Tavern -- Application of SOI's standards . . .

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P.S.: The black walnut tree is significant because of the SOI's Standards for Rehabilitation, which are applicable to this project. For example, the SOI recommends, "*retaining, and preserving* building and landscape features that are important in defining the overall historic character of the setting. Such features can include . . . vegetation." And the SOI does not recommend, "Introducing new construction on the building site . . . which damages or destroys important landscape features." Again, thank you for your consideration. I look forward to hearing from you soon about any documentation your arborists provided, and Jeff looking at this tree. –Alex

From: "asaloutos;tds. net" <asaloutos@tds.net>
Date: Tuesday, October 31, 2023 at 12:44 PM
To: <jon.furlow@gmail.com>, <bsfurlow71@gmail.com>
Cc: Heather Bailey <hbailey@cityofmadison.com>, Kevin Pomeroy <urbanist@charter.net>
Subject: Old Spring Tavern -- Question about your application for a CofA for new construction on landmark site and the black walnut tree

Hi, Jon and Brenda!

I have a couple of questions about the black walnut tree on lot you own at 3701 Council Crest in Madison, which is a designated City of Madison landmark. In your submittal for a CofA to build a new home here you wrote, "We have worked with arborists to configure and reduce (*i.e.* notch in) the foundation footprint to mitigate root impacts. And we are planning steps during construction to minimize root impacts." There isn't any documentation in the record about what was done to assess the tree, the potential impact of the new construction you have proposed, and the mitigation plan that the arborists recommended. Who are the arborists you are working with? Was a risk assessment and mitigation plan prepared by an ASCA Tree and Plant Appraisal Qualified arborist? Can you share any reports or documentation your arborists provided regarding this tree? To better understand the condition of the tree, I have a certified arborist that is trained in risk assessment and mitigation plans who would like to look at the tree this week. His name is Jeff Albertini, Certified Arborist #WI-0975A (TRAQ). Is it OK for Jeff to visit the property and look at the tree? I've copied Heather Bailey, preservation planner for the City of Madison, and Kevin Pomeroy, president of the neighborhood association, on this email so they're in the loop.

Cheers,

--

A handwritten signature in black ink, appearing to be the name 'Alex Saloutos'.

Alex Saloutos

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Bailey, Heather

From: Alex Saloutos
Sent: Tuesday, October 31, 2023 11:16 PM
To: Bailey, Heather
Cc: Kevin Pomeroy; jon.furlow@gmail.com; bsfurlow71@gmail.com; Wachter, Matthew; Fruhling, William; Haas, Michael R; Rick Chandler
Subject: Old Spring Tavern -- What is a cultural landscape and errors of law

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Hi, Heather!

As a follow-up to my last email regarding the pending application for a Certificate of Appropriateness for new construction on the landmarked property known as the Old Spring Tavern, Legistar No. [79099](#), I wanted to supplement my last email with additional information from the Secretary of the Interior on what a cultural landscape is since you cited the Secretary of Interior's Guidelines for the Treatment of Cultural Landscapes in your analysis of this application. The definition of a cultural landscapes is on the Secretary of the Interior's website on the page titled [Cultural Landscapes 101](#), under the heading, *What are Cultural Landscapes*:

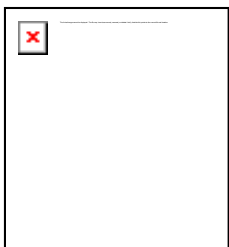
Cultural landscapes are historically significant places that show evidence of human interaction with the physical environment. Their authenticity is measured by historical integrity, or the presence and condition of physical characteristics that remain from the historic period.

As identified by the National Park Service, cultural landscapes are places within U.S. national parks that have significance in American history and authenticity to a historic time period. The components of park cultural landscapes include human-modified ecosystems such as forests, prairies, rivers and shores; as well as constructed works, such as mounds, terraces, structures and gardens.

The city landmark known as the Old Spring Tavern is not in a U.S. national park, based on the Secretary of the Interior's definition of cultural landscape, the Old Spring Tavern is not a cultural landscape, and the Secretary of the Interior instructs us that the Guidelines for the Treatment of Cultural Landscapes are specific to cultural landscapes. Hence, these guidelines would not apply to the Old Spring Tavern and this application and, based on these facts, it appears the staff report for this application should be amended.

Cheers,

--



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To: Landmarks Commission
Legistar File 79099 [3701 Council Crest]
Commission meeting date: November 6, 2023 (Agenda Item 5)

From: Kurt Stege, Co-chair of the Advocacy Committee of the Madison Trust for Historic Preservation
Wednesday, November 1, 2023

On Thursday, August 10, 2023, I submitted a document analyzing the susceptibility of the black walnut tree located on Lot 2 of the Old Spring Tavern to destruction due to the proposed construction of a new residence on that lot.

This huge tree, which has apparently existed in its present location for nearly 250 years, is reflected/represented in the applicant's perspectives of their completed residence and in their landscape plan for the proposed project. The presence (or absence) of this massive tree is crucial to determining the compatibility of the applicants' proposed project to the Old Spring Tavern and to the site of the tavern.

My August 10th analysis carefully applied the standards set forth in the leading international text regarding the protection of trees during construction, Managing Trees During Site Development and Construction (3rd Edition). Best Management Practices series of the International Society of Arboriculture. Nelda Matheny, E. Thomas Smiley, Ryan Gilpin, Richard Hauer. Published in 2023. A copy of that document, with important drawings, is attached.

I pointed out that the applicants had provided "almost no detail on what their preservation effort [for protecting the historic black walnut tree on the lot] will entail." After making the calculations established by the text for determining the area around the tree that had to be protected from excavation, fill, and compaction from construction equipment and supplies, I reached the following conclusion:

My estimate is that a full 40% of the TPZ [Tree Protection Zone] would be damaged by the proposed project. I believe **this damage would translate to "certain destruction" of the black walnut tree** that is central to (and provides context for) the site of the Old Spring Tavern. [Emphasis added.]

During the hearing at the August 14 Landmarks Commission meeting, the applicants failed to provide specific information regarding how they intended to protect the tree from disturbance and destruction due to the proposed construction. They referenced having spoken with an arborist who developed a plan for protecting the tree, but they failed to set forth the specifics of the plan or to establish the likely efficacy of that plan.

They didn't 1) identify the arborist, 2) explain the basis for the arborist's conclusions, 3) indicate whether the arborist considered the size of the construction zone, the amount and location of proposed fill and the effect of other landscaping rather than merely considering the areas of excavation, 4) provide any documentation, or 5) even verify that the arborist visited the site.

A. I believe it is reasonable to assign a burden of persuasion to the applicants to show that 1) the analysis in my August 10th submission was incorrect; 2) the proposed project would probably not result in destruction of the black walnut tree; and 3) the likelihood that any damage to the tree caused by the proposed construction project would not result in the demise of the tree within ten years of the completion of the project. This burden is essential to determining the compatibility of the proposed design with the Old Spring Tavern.

I have done what I can to supply reliable information to the Commission regarding the likely consequences for the black walnut tree if the applicants' residence is constructed as proposed. The applicants seem to suggest that tree will survive the project, but offer no qualified testimony and no specifics to that effect. All they offer is merely the applicants' hope that the tree (the size of which is vastly underrepresented in the application's elevations) will survive. Given the proximity of the Old Spring Tavern, and the tree's role in connecting a current observer to the era of Indigenous habitation, to the construction of the Tavern, to the stagecoach era, and to the Civil War, the applicants should be required to present reliable evidence that the 250 year old black walnut tree is likely to survive the construction of their "dream" retirement home.

B. When the Landmarks Commission is presented with an application for a certificate of appropriateness to build an additional structure on a lot within a historic district or on the property of a landmarked structure, the Commission is typically presented with product samples proposed for use on the exterior of the proposed additional structure. The color and texture of the samples are often viewed by the Commission as being important in insuring that the new structure is compatible with the existing landmark or district. I believe the Commission needs the samples in this instance to fulfill its responsibility to determine whether the applicants' proposal would be compatible with the Old Spring Tavern.

Thank you for serving on the Landmarks Commission, for visiting the site so you can begin to visualize the effect of the proposal, and for taking the time and making the effort to review this application for a Certificate of Appropriateness.

Attached: August 10, 2023 black walnut susceptibility analysis

To: Landmarks Commission
Legistar File 79099 [3701 Council Crest]
Commission meeting date: August 14, 2023

From: Kurt Stege, Co-chair of the Advocacy Committee of the Madison Trust for Historic Preservation
August 10, 2023

**Susceptibility of black walnut tree (Lot 2 of the Old Spring Tavern)
to destruction due to proposed construction project**

Introduction

The Certificate of Appropriateness application filed by the Furlows on or about July 24, 2023, (the “application”) addresses how the applicants intend to “preserve” the historic black walnut tree found on their lot. **However, they provide almost no detail on what their preservation effort will entail.** (Application memo, page 2.) They state they are taking “reasonable steps” to preserve the nearly 250-year-old tree, but also qualify their probability of success with the phrase that “nothing is guaranteed.” This opaque language does nothing to inform the reader of how the Furlows intend to protect the viability of the tree so that it is allowed to exist for even the average lifetime of a black walnut.

In the absence of any supporting information provided by the applicants and knowing that the base of the black walnut is only 15 feet from the closest point of their proposed structure on the landmarked site, I have consulted what is considered “the Bible” for protecting trees during construction. A careful reading of the text generates an informed analysis of whether the tree will survive the construction. The analysis is based on the generally accepted standards of arboriculture as reflected in the text referenced below. Please note that I am not a certified arborist and do not have an undergraduate degree, master’s degree or doctorate degree in forestry.

A diagram of the requisite “tree protection zone” for this heritage black walnut tree is appended to this memo along, as is a separate diagram reflecting the deadly damage inflicted on the tree by the project described in the application.

Text serving as the basis for this memo

Managing Trees During Site Development and Construction (3rd Edition). Best Management Practices series of the International Society of Arboriculture. Nelda Matheny, E. Thomas Smiley, Ryan Gilpin, Richard Hauer. Published in 2023. (Referred to below as “**text.**”

Abbreviations used:

DBH = Tree trunk diameter at breast height (4.5' above grade)

TPZ = Tree protection zone. Defined as the area within which certain construction-related activities are prohibited or restricted. This zone is initially calculated pursuant to a mathematical formula based on DBH and a multiplication factor that is based upon the species' identified tolerance to construction damage and the age of the tree. The calculation generates a radius dimension of a circular zone. Zone borders may be modified *somewhat* (Text, page 20) depending on soil types, compaction levels, spread of root system, orientation of canopy, visible roots, tree height, and crown spread information.¹ Only if construction activity such as excavation, placement of heavy equipment or materials, or transit of equipment during construction stays outside of the tree protection zone is the tree apt to remain healthy.

Information arguably provided by the applicants (the Furlows).

Age of tree	234 years compared to an "average life expectancy" of 250 years ²
Species of tree	Black Walnut
Location of tree	Noted on diagrams submitted with the application
Soil type	Dodge (Application, page 35 of 114)
Topography	Steeply sloping hillside
Hydrology (current)	Drainage area map (Application, page 36 of 114)
" (proposed)	Drainage area map (Application, page 37 of 114). This map shows that significant amounts of soil will have to be transported around almost all of Lot 2 in order to grade the lot as indicated on the map. Heavy equipment will be necessary to excavate and move soil so that a much steeper slope is created along nearly the entire eastern border of Lot 2. The hydrology map for the proposed project appears to be relatively consistent with the landscape plan found in the April application.
"Construction zone"	In order to adequately protect the tree, the construction zone must be kept outside of the Tree Protection Zone. A dotted line on the landscape plan submitted with the April application (Legistar 77464, page 23 of 23) is identified as "Limit heavy machinery on walnut tree root zone." This line indicates that approximately 7/8ths of the Applicants' lot would be subjected to unlimited heavy machinery traffic and

¹ "In some cases, increasing the specified [i.e. a non-circular] TPZ on the opposite side of the tree may help compensate for roots lost elsewhere. The specified TPZ should not be reduced to the point where serious tree damage is expected." (Text, page 20.) Also see Figure 5. on page 21.

² This number was calculated in the April application (Legistar 77464) using a DBH of 52", even though the same document also referred to a DBH of 48". A 48" DBH would translate to an age of 216 years.

excavation. As calculated below, this translates into heavy compaction or excavation of roughly 40% of the TPZ.

Inconsistent information provided in the applications.

DBH is listed as 52” on page 2 of the April application.

DBH is shown as 48” on site plan of the April application and the July application.

Ambiguous language found in this application.

“Limits of disturbance” found on page 33 of 114 is undefined. Does this line (just outside the perimeter of the residence as designed) equate to the minimal area that will have to be excavated, or does it also include the area in which all construction vehicles (which will otherwise compact the soil and damage the underlying root system) will be prohibited? In other words, does the “limits of disturbance” line identify the limits of the “construction zone”? Based upon the heavy equipment necessary for excavating the new foundation of the proposed structure as well as the machinery for fulfilling the hydrology map and the landscape plan, the “limits of disturbance” line only identifies the limits of excavation necessary for constructing the new home.

See “Construction zone” discussion, above, under “Information arguably provided.”

Relevant (per text) but unknown information.

Orientation of tree canopy

Visible roots

Tree height

Crown spread information

Spread of root system

A full description of the excavation depths necessary to construct the building proposed by the Furlows. The drawings of the proposed building (p. 22 of 114) merely indicate: “Foundation Wall Ht. <10 [feet]”

Identification of the requisite “construction zone” (for both construction and for construction equipment) for the proposal, as discussed above.

Calculating the TPZ

The black walnut species has a “low to medium” tolerance of construction damage. More specifically, it has low tolerance to root loss, intermediate tolerance of saturated soils, and low tolerance of mechanical injury due to poor compartmentalization. The tree’s ability to respond to damage is constrained by soil aeration and water availability. (Text, page 14.)

The age of this particular tree is “old” for purposes of developing the appropriate multiplication factor. (Text, page 19.)

Based upon the species and the age, the multiplication factor at the “low” tolerance level is 18, while the factor at the “medium” tolerance level is 15. (Text, page 19.) I believe the specific references to the species’ tolerance to different types of damage suggests using a factor no less than 17.

Multiplying 17 times a DBH of 52” for this tree yields a circular TPZ with a radius of 884” or approximately 74 feet from the tree.³ **This is the radius shown on the attached diagram entitled “circular Tree Protection Zone.”** A 74’ radius is approximately the same distance as between the eastern wall of the proposed residence and the western wall of the Old Spring Tavern. The TPZ for the heritage black walnut tree on Lot 2 includes all but the furthest reaches of the lot, approximately 75% of the lot or about 8,100 of the lot’s 10,832 square feet. It is a common practice to fence-off the TPZ prior to any construction activity so that it is protected from excavation, material storage, and heavy vehicles.

Comparing the TPZ to the project described in the proposed application

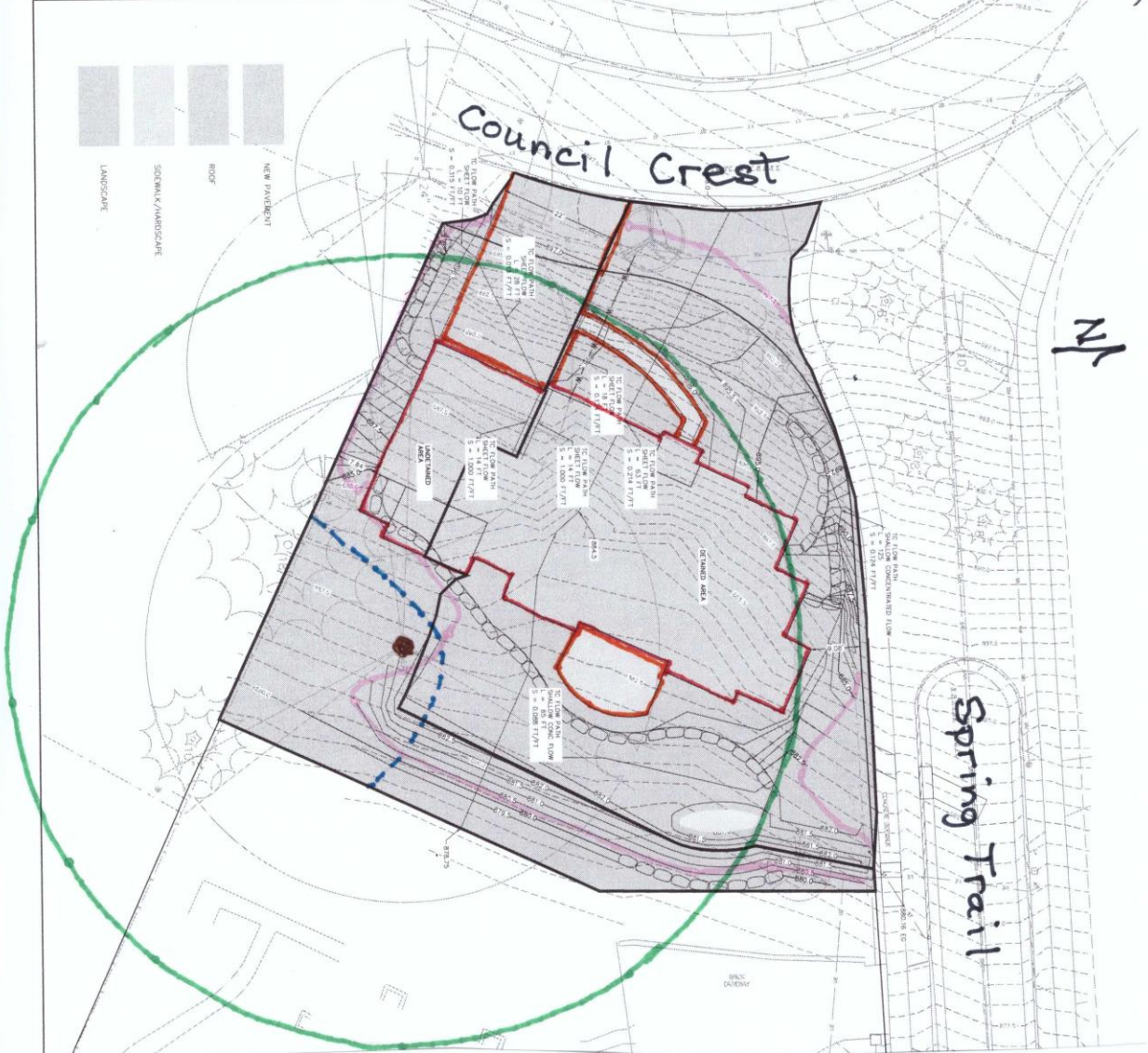
The **second diagram** attached to this memo contrasts the Tree Protection Zone that should be applied to construction on Lot 2 of the Old Spring Tavern site compared to the those areas of Lot 2 that would be: 1) excavated to contain the proposed structure as designed; 2) additional areas in Lot 2 that would be excavated for constructing the driveway, the brick paver walk, and the brick paver patio; 3) additional areas in Lot 2 that would be excavated or filled in order to create the topography behind the hydrology study that is included in the application; and 4) the tiny corner of Lot 2 shown on the landscape plan (that accompanied the April application) designated as the only portion of Lot 2 where “heavy machinery” will be kept off of the “walnut tree root zone.”⁴

Conclusion






My estimate is that a full 40% of the TPZ would be damaged by the proposed project. I believe this damage would translate to “certain destruction” of the black walnut tree that is central to (and provides context for) the site of the Old Spring Tavern.

³ If a DBH of 48” is applied, the circular TPZ would be a circle around the base of the tree with a radius of 816” or 68 feet.

⁴ Although this landscape plan technically was not part of the application currently before the Landmarks Commission, it is reasonably consistent with the hydrology study and the applicants have not suggested they have rejected it.



Color key

-  Border of circular Tree Protection Zone (In order to have a reasonable expectation of the survival of the heritage black walnut tree, the area encompassed by this circle should be kept free of construction activity, including heavy equipment and materials.)
-  Border of proposed structure
-  Proposed additional impervious material (requires excavation)
-  Edge of areas requiring significant excavation or fill causing root destruction or compaction
-  Extent of "limit heavy machinery on walnut tree root zone" shown on landscape plan (Page 23 of 23, April application.)



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November 1, 2023

To: City of Madison Landmarks Commission

Re: Old Spring Tavern property and proposed house at 3701 Council Crest
Legistar File ID No. 79099

Dear Commissioners and Preservation Planner Bailey,

The Madison Trust for Historic Preservation opposes the revised proposal to build a new house on the Old Spring Tavern property at 3701 Council Crest that was submitted to the Landmarks Commission by Jon and Brenda Furlow on September 25, 2023. We respectfully ask the Landmarks Commission to deny a Certificate of Appropriateness (COA) for the proposed new house.

The proposed house would have a significant adverse impact on this historic property, and the proposal fails to meet the requirements for approval of a COA set forth in the Madison Ordinances and the Secretary of the Interior's Standards for Rehabilitation, as explained in further detail below.

Update on Status of Application After August Meeting

At the August 14 Landmarks Commission meeting, the five members who were present all stated that the house design originally proposed by the owners of Lot 2 was too big. They also said that the most important consideration in evaluating the application is whether the proposed house is compatible with the landmark property, not how it compares with the neighboring houses on Council Crest.

The Landmarks Commission in August rejected the original proposal and said the owners should redesign the structure. One specific request was that a revised proposal should have a 20 foot setback from Spring Trail. In addition, the stated consensus that the original proposal was too big and not compatible with the landmark property means that an acceptable revised proposal should also be meaningfully smaller and significantly more compatible with the landmark property.

The revised proposal makes the house slightly narrower, in an attempt to address one specific concern raised by the Commission in August. However, it does not address in any significant

(Continued)

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way the general concerns raised by the Commission about the house being too big and being incompatible with the landmark Tavern.

In fact, the revised proposal is only marginally smaller than the original proposal. The revised proposal is for a 4,218 square foot house, only 5% smaller than the 4,450 square foot design that was reviewed in August. The revised proposal is slightly narrower on the north side, facing Spring Trail. In almost every other dimension, the house is still the same size as the original proposal.

The revised house still relates to the landmark property in the same way as the unacceptable original proposal. It still presents a three-story rear wall that would be only 26 yards from the two-story front of the landmark tavern, situated on a slope above the Tavern. It still has a roofline with a top that is 17 feet higher than the top of the roof of the Tavern. It still is much wider than the Tavern. It still occupies a very large share of the landmark west yard. It still is located dangerously close to the historic black walnut tree. Overall, it still is a very large house that looms over the Tavern and dramatically changes the appearance and feeling of the landmark west yard.

The Landmarks Commission should review the applicable Secretary's Standards and determine whether the revised proposal meets each of them. We believe it fails to meet the Secretary's Standards and should not be approved.

Standards for Approving Certificate of Appropriateness

The relevant provisions of the Madison Ordinances that apply to this application are Sections 41.18(1)(b) and 41.18(1)(d), which has been confirmed to us by Preservation Planner Heather Bailey.

Section 41.18(1)(b) says that the Landmarks Commission shall approve a Certificate of Appropriateness for exterior construction only if, in the case of construction of a structure on a landmark site, the proposed work would meet the Secretary of the Interior's Standards for Rehabilitation.

The relevant parts of the Secretary of the Interior's (SOI) Standards for Rehabilitation include these (with underlining added):

- Standard 1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
- Standard 2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.

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- Standard 9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
- Standard 10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

In addition, Section 41.18(1)(d) says that the Landmarks Commission shall approve a COA for exterior construction only if the proposed work will not frustrate the public interest expressed in the ordinances for protecting, promoting, conserving and using the City's historic resources.

Reasons for Denying Certificate of Appropriateness

We believe the revised proposal fails to meet Standards 1, 2, 9 and 10 of the Secretary's Standards, for the reasons explained below. The applicants for the COA have not explained or demonstrated how the proposal meets these standards, and they should be required to do so. The COA should not be granted if any one of the standards is not met.

Standard 1. The new use shall require minimal change to the defining characteristics of the building, site and environment. The landmark west yard is being put to a new use, which must involve minimal change to the site and environment. The proposed very large new house would make drastic changes to the appearance and feeling of the historically open west yard which are much more than minimal.

The west yard has been an open space since the Tavern was originally built as a stagecoach inn in 1854, and remained open through its years of use as a farm and tavern. Its historical significance was emphasized in the original landmark nomination adopted by the Common Council in 1972. While other parts of the property surrounding the Tavern have been developed as residential properties over the years, the core open space represented by the west yard has been preserved, and has been designated as a landmark property. Any house built on the property should make modest changes to it, not the extensive changes that a 4,218 square foot house would make.

Standard 2. The historic character of the property shall be retained and preserved. The proposed new house would dramatically change the appearance of the landmark west yard from an open space which reminds people of the historic open, rural setting of the Tavern, to a typical city lot with a very large house on it. It would change the appearance of the historic Tavern from that of a solitary inn with a view of extensive open space outside its front door, to that of a house hemmed in by a much larger house very close to its front door.

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There are three locations from which this historic site can be viewed by the public: Nakoma Road, Spring Trail and Council Crest. While most people are familiar with the property from the Nakoma Road perspective, the views from the other perspectives are more important for understanding the original setting, function and construction of the historic Tavern.

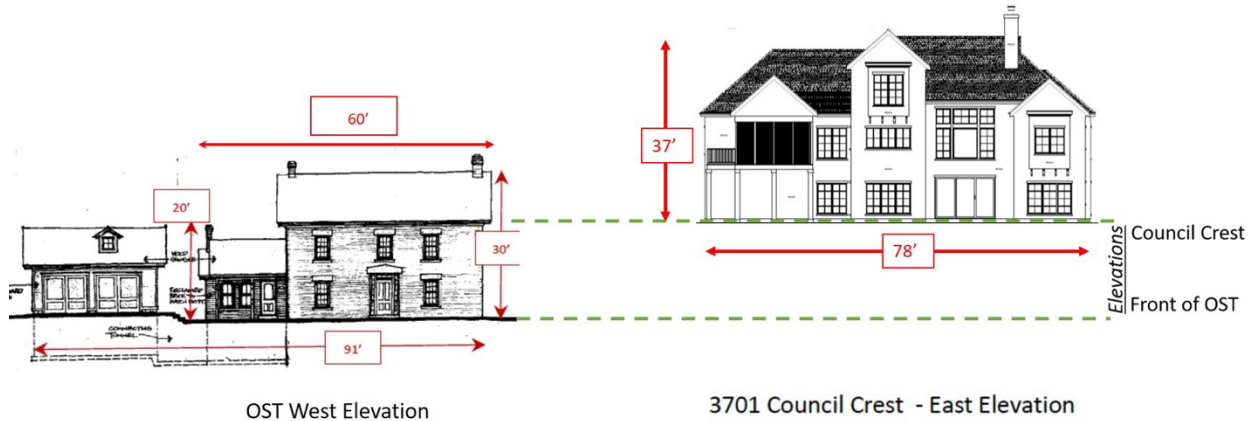
The view of the Tavern and west yard from Council Crest would be almost completely obliterated by the house in the revised proposal, and the view from Spring Trail would be fundamentally and severely compromised by having a very large structure situated very close to the Spring Trail sidewalk. The historic character of the property as a whole would be dramatically altered, not retained and preserved as required by the Secretary’s Standards.

Standard 9. The new work shall be compatible in its massing, size, scale and architectural features to protect the historic integrity of the property. The proposed new house is significantly larger in square footage and mass than the historic Tavern. It is much taller and wider, and its bulk and height are accentuated by the fact that it is situated on a slope with its base ten feet above the base of the Tavern. From the front door and front windows of the Tavern, people would be looking at a three-story building with its base one story above the Tavern’s base, meaning its roofline would be four stories above the base of the front door.

The drawings below show how the proposed house is much taller than the Tavern, with its roofline 17 feet higher than the roof of the Tavern. It is much wider than the Tavern, and it is located only 26 yards from the front door of the Tavern. It is very rare to have another house located so close to the front door of an existing house. All of this makes it completely incompatible with the historic nature of the property.



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A substantially smaller, less massive, narrower and shorter house, with its back wall farther from the front door of the Tavern, would not visually overwhelm the historic Tavern and would leave much more of the west yard with its historic open appearance. However, the proposed very large house is not compatible with or respectful of the historic Tavern and the historic west yard.

Standard 10. New construction should be done in a way so that, if it were removed, the historic property and its environment would be unimpaired. If the proposed house were to be built, it is very likely that the stress of the construction and the elimination of much of its root system would result in the premature death of the currently very healthy historic black walnut tree, which is a distinctive and integral feature of the landmark west yard. If the new house were to be built and then removed, it is highly likely that there would be a major and irrevocable change to the historic west yard.

An arborist we spoke with who closely observed the black walnut tree said that digging a home foundation close to the tree as the Furlows propose would very likely severely damage or kill it. He explained that the root system for a tree extends about 1.5 times further than the tree’s canopy, meaning that the root system for the black walnut tree extends under much of the west yard. Digging a foundation for a large house very close to the tree would inevitably significantly damage the root system and put severe stress on the tree.

The revised application proposes to dramatically re-contour the eastern portion of Lot 2. The additional soil will add to the compaction over the existing root system of the black walnut tree, causing additional stress to the tree.

The black walnut tree has stood in its present location since before the Tavern was built and the west yard was created, and has been a distinctive and defining feature of the landmark property since the Tavern was built in 1854. It has been listed as one of Wisconsin’s most

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significant and historic trees in the well-known 2005 book by arborist Bruce Allison, Every Root an Anchor: Wisconsin's Famous and Historic Trees.

While most trees by themselves aren't protected under Madison's ordinances, a historic tree that is an important and defining feature of a landmark lot qualifies for protection under the Secretary of the Interior's Standards along with the other notable features of the landmark property. Also, while the Furlows argue that trees have finite lifespans, there is a good chance that the currently healthy black walnut tree, if it does not sustain serious damage from construction, will outlive most of the participants in this debate.

Final Points

Here are a few final points:

- It has to be kept in mind that both the Tavern building and the west yard (Lot 2) have landmark status. Any new construction has to be compatible with the Tavern and make minimal changes to the landmark west yard (Lot 2) for the COA to be approved under the Secretary's Standards for Rehabilitation. The historic significance of this site derives from both the Tavern and the surrounding grounds, and both have to be protected.
- As mentioned above, the applicants need to explain how their proposal meets the Secretary's Standards. They have not done this. We have provided multiple reasons why their proposal does not meet the Secretary's Standards.
- There may be a temptation to say that the owners of the west yard have made some changes to their original house proposal by making it slightly narrower, and therefore the revised proposal should be approved in the spirit of compromise. However, the relatively minor changes that make the proposed house 5% smaller do not address the fundamental concerns raised by the Commission about the large mass of the house and its incompatibility with the Tavern. The Commission needs to uphold the Secretary's Standards and should not approve any revised proposal without significant changes that address the fundamental flaws in the original proposal in a meaningful way.
- Some people have said that the owners of the west yard have paid for the lot and should be allowed to build on it. However, any plans for construction have to be consistent with Madison's ordinances. The owners should have known this when they bought the lot. The Madison Trust sent a letter to the prior owner of the lot, David Gordon, and his attorney and Realtor prior to the sale of the lot indicating that any construction on the lot would have to conform to Madison's landmarks ordinances, so that he could disclose this to prospective buyers as a condition affecting the property. The seller and buyers have had ample notice that many people want to make sure that any changes to Lot 2 are consistent with Madison's landmarks ordinances.

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- The Furlows say the site has been altered and developed over time, with landscaping and additions to the Tavern (porches, driveway, patio, garage). The alterations the Furlows refer to were, relatively speaking, very modest changes and preserved the essential appearance and feeling of the property from the time when the Tavern was a solitary inn set in a rural landscape. The proposed very large new house would be a dramatic change that would alter most of the west yard and completely change the look and feel of the historic site.
- The Furlows say there has been a lot of adjacent development and their proposed home is consistent with that development. However, it should be obvious that no other home has been built on the landmark west yard, only 26 yards from the front of the landmark Tavern, so a home in this location is completely inconsistent with prior development. The other houses that have been built have been to the sides of the Tavern and are screened from the Tavern by foliage or are across Spring Trail, and most were built before the Tavern property had landmark status.

Conclusion

The revised application for a Certificate of Appropriateness for the proposed large house on the landmark Old Spring Tavern property should be denied. The proposal has multiple features that disqualify it under at least four of the Secretary of the Interior's Standards for Rehabilitation, including its large mass, proximity to the Tavern and tall height which make it incompatible with the landmark Tavern, its sweeping and extensive changes to the landmark west yard, and its threat to the historic black walnut tree.

In addition, the proposal should be disqualified under the general provisions of Section 41.18(1)(d), which say that the proposed work should not frustrate the public interest in protecting, promoting, conserving and using the City's historic resources. Taken as a whole, the proposal to place a 4,218 square foot house on the landmark west yard very close to the landmark Tavern unquestionably fails to protect and promote this historic site.

We appreciate the Commission's consideration of these points, and we are available to answer any questions or provide additional information.

Sincerely,

Rick Chandler

Rick Chandler
President
Madison Trust for Historic Preservation

Dedicated to Preserving Madison's Historic Places

A local partner of the National Trust for Historic Preservation

November 1, 2023

City of Madison Landmarks Commission
Planning Division
215 MLKJ Blvd.
#017
Madison, WI

Attention: Amani Latimer Burris (district 12@cityofmadison.com); David W.J. McLean (davidwjmclean@gmail.com); Edna Ely-Ledesma, Katherine N. Kaliszewski (knkaliszewski@gmail.com); Maurice D. Taylor (TaylorM@firstweber.com); Holly S. Harris, Richard B. Arnesen (rba@stonehousedevlopment.com)

Dear Commissioners:

Please consider this written testimony regarding the landmark site located at 3706 Nakoma Road (Old Spring Hotel), in the 10th Aldermanic District, and application for new construction at 3701 Council Crest (created through land division approved July 11, 2022), Legistar File 79099.

My comments will address 1) the City's process for consideration of the protection of historic landmark sites; and 2) the subsequent application for new construction at 3701 Council Crest, which has been placed on the November 6, 2023, agenda of the Landmarks Commission for consideration.

City of Madison Process:

Ten days prior to the July 11, 2022, meeting of the City of Madison's Landmarks Commission, residents within 200 feet of the Old Spring Hotel were advised of a developer's purchase of the property located at 3706 Nakoma Road, including the Old Spring Hotel, one of Madison's historic landmark sites. Residents received a 10-day advance notice of a public hearing to consider a request for certificate of appropriateness for land division of the landmarked property.

This is not just a question to be put to residents within 200 feet of the historic landmark. It is a "national" landmark, and people from all over the city and state are concerned about the integrity of this historic site. This decision does not affect a few neighbors or a neighborhood and, as such, should be noticed more broadly.

The Landmarks Commission met on July 11, 2022. Despite only a 10-day notice (and over the July 4th holiday), there were 19 people who spoke in opposition, 167 people who registered in opposition, and a petition was presented to the Landmarks Commission with 170 signatures in opposition to the proposal. The Board of Trustees for the Madison Trust for Historic Preservation, made up of 350 members, strongly opposed the developer's plan to divide the landmarked site into two parcels.

Despite overwhelming, unanimous opposition from the residents who received the postcard, the City moved forward with its hearing and approved a request for a certificate of appropriateness for land division of the designated Madison landmark. The vote was 3 ayes, 2 noes, and 2 excused, with approval based on a technical argument that the proposed new lot size was compatible with other nearby lot sizes

(the developer argued it was just a technical redrawing of the lot lines). Further, the vote allowed for land division of the parcel with the condition that the landmark designation remain on the newly configured lots, and that there be further review by the Landmarks Commission of potential adverse impacts of the new construction on the historic structure.

The motion passed by only 3 (of 4 voting/eligible to vote), despite overwhelming community opposition to the proposal, including Madison Trust for Historic Preservation. Another way of saying this is that the Commission is made up of 7 members, but only 3 members approved the request for land division. It should be required that a minimum of four members of the Landmarks Commission or a simple majority of the Landmarks Commission membership (7 members) approve decisions that affect landmarks, landmarked sites and historic districts.

On July 25, 2023, an individual who lives in the community called the Planning Division. She learned that the owners of the new, western parcel, had filed an application for a certificate of appropriateness to build a large-scale house on the western parcel. The caller was informed by Planning Division staff that the staff report of the impacts of the new construction on the historic structure was due on August 9; and, further, if the community wanted to have input, input must be received by that day. The community learned of the hearing scheduled for August 14, 2023, through an intermediary.

Residents are not given adequate time to respond. As the example above demonstrates, staff knew its recommendation was due August 9; and that there would be a Commission meeting on August 14. Yet, residents, within 200 feet of the property, only received a postcard notice ten days in advance of the hearing. This lack of timely notice hurts residents the most, who do not have adequate time to review the application, assess its impact on the historic structure, and prepare for the public hearing – and worse, are left totally in the dark and totally unaware.

Residents have now learned that there will be a Landmarks Commission meeting on November 6, at 5:00 p.m., regarding 3701 Council Crest. Residents have NOT received a postcard noticing the meeting. The City Preservation Planner has said, “We sent out postcards that went out a day late for the October meeting and then immediately followed up with a postcard noticing the November 6 date.” However, a cursory check with several neighbors revealed that no postcard was received.

MGO 41.6(3) requires public meetings to be noticed. The meeting scheduled for November 6 includes the agenda item regarding 3701 Council Crest. The agenda item should be removed because there was no notice as per the ordinance.

Residents of the community filed an open records request. Go to the link: <https://cmnna.org/wp-content/uploads/2023/07/Planning-Nakoma-20909638.pdf>.

Upon review, you will see that the developer began communicating with the city about the property in January of 2022. The conversations go something like this: Developer, “I am working on potentially purchasing the property at 3706 Nakoma Rd in Madison. This is a historic home on a large lot. Do you think I would be able to split the lot and build a second home? The new home would face Council Crest.” City staff, “It looks like you could split this one.” City staff, “I am looking forward to working with

you.” City staff, “If Landmarks Commission were to approve a land division, they would likely request an archaeological survey prior to that approval in order to assure that we would not be disturbing a burial site (and the state would require monitoring for any new structure anyway). I have time to talk through details tomorrow...”

Conversations between the developer and the Preservation Planner and other city employees have been constant, as evidenced by the open records request. Where was the interest of the residents/taxpayers in these closed door discussions? Clear guidance should be enacted to ensure a more transparent process, clarification of the role of staff, and specific criteria that triggers efforts to engage developers, local authorities, historians and concerned citizens well in advance of the staff report being written, finalized and the proposal presented to the Landmarks Commission.

What is equally disheartening is that there is a perception of indifference toward the concerns of residents, which has significantly contributed to decreased trust in the City’s process for preserving the integrity of Madison’s historic landmark sites – not to mention decisions that are made that don’t align with the community’s best interests.

Open and transparent communication between elected officials, especially, and city residents is crucial. Without it, healthy democracies die. The community has repeatedly asked Commissioners to visit the property in person. One Alderperson did visit the site, and it completely altered her views and stance as she witnessed firsthand the incompatibility of the new build to the Old Spring Hotel. Alders should be encouraged to visit sites to assess firsthand the location and impact of their decisions.

PROPOSAL OF NEW CONSTRUCTION ON A DESIGNATED MADISON LANDMARK SITE (DISTRICT 10):

The first proposal submitted by the applicants (and subsequently withdrawn) lacked sufficient and complete information for a certificate of appropriateness to build (despite the Preservation Planner’s initial view it was “adequate”).

The second application to build a 4,500 square foot house, on a one-quarter acre lot, on the designated Madison landmark site was sent back to the applicants by the Commission to address the size, scale and proportion, and massing of the property, specifically its setback.

Despite the lack of a public notice, reconsideration of the applicant’s proposal is now on the agenda for the November 6 meeting of the Landmarks Commission.

Madison General Ordinance 41.18(1)(b) states that the Landmarks Commission shall approve a Certificate of Appropriateness for exterior construction only if, in the case of construction of a structure on a landmark site, the proposed work would meet the Secretary of the Interior’s Standards for Rehabilitation. The Secretary of the Interior’s Standards for Rehabilitation are required by MGO 41.18(1)(b).

Applicable Secretary of the Interior's Standards for Rehabilitation for Granting a Certificate of Appropriateness

Secretary's Standard 1, "A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment."

The new construction proposed on the landmark site at 3701 Council Crest does not require minimal change to the defining characteristics of the land adjacent to the Old Spring Tavern. In fact, new construction of a massive size and scale home as proposed (even with slight setback tweaks) requires maximum change. The proposed construction is clearly more than a minimal change to the defining characteristics of the building and its site and environment and, as such, is contrary to the standard for approval.

Secretary's Standard 9, "New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."

The Historic Preservation Planner's previous staff report is based on this property being a part of and within a broader residential community. It does not address the significance of the proposal for new construction in terms of it being an integral part of the setting of the Old Spring Hotel itself. Further, it does not address the fact that the property adjacent to the Old Spring Hotel has been a part of the historic setting on the Old Spring Hotel for decades.

The staff report should include an emphasis on the compatibility of the proposed new construction – not with other very large sq. ft. homes in the neighborhood -- but on the significance of this parcel of land as part of the historic setting of the Old Spring Hotel.

Further, the significance of the 300 year old Black Walnut Tree on the site of the Old Spring Hotel and its environment should not be overlooked or diminished. Adding new construction that decimates the parcel's environmental landscape, including the 300 year old Black Walnut Tree, should be considered by the Landmarks Commission when considering an application for certificate of appropriateness. Disturbing the root system of a tree has an adverse impact on the tree. The encroachment of the proposed construction will impact the root system of this tree, which any ordinary person knows. Comments about the age of the tree, like those made at the last hearing by a Commissioner, are not relevant to the discussion at hand.

The applicant should provide a risk assessment and mitigation plan for the 300 year old Black Walnut Tree before any decision by the Landmarks Commission regarding this new build.

For the foregoing reasons, the application for a Certificate of Appropriateness to build a new home at 3701 Council Crest, a designated City of Madison landmark, fails to meet the standards for approval in MGO 41.18(1)(b) and the Secretary of the Interior's Standards for Rehabilitation. Therefore, the application for a Certificate of Appropriateness should not be granted.

Further, it should be mandatory that the City of Madison re-examine its policies and procedures for community engagement in decisions so that there is transparency, fairness and inclusivity in the decision making process.

Sincerely,

Kris Andrews

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cc: Heather Bailey, Preservation Planner, (hbailey@cityofmadison.com)
Yannette Figueroa Cole, District 10 Alder, (district10@cityofmadison.com)