

From: [ARNOLD R. ALANEN](#)
To: [All Alders](#)
Subject: Appeal of Landmark Commission decision for COA at 3701 Council Crest
Date: Monday, January 8, 2024 4:44:12 PM

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January 8, 2024

To: Common Council, City of Madison, WI

From: Arnold R. Alanen, Ph.D.
1910 West Lawn Avenue, Madison 53711

RE: January 9, Meeting Agenda; Item #6
Appeal of Landmark Commission decision granting a Certificate of
Appropriateness for new construction on the site of a designated city landmark at
3701 Council Crest

Dear Alders:

I write to you as a cultural landscape historian and a resident of the Dudgeon-Monroe neighborhood for the past fifty years. I was a professor in the Department of Landscape Architecture at the UW-Madison from 1974 to 2009 and served as the department's chair for five of those years.

I urge you to support the appeal to deny the Certificate of Appropriateness for new construction on the site of the designated city landmark at 3701 Council Crest. I oppose granting the COA for the landmark site because, in my opinion, the size, scale, and massing of the proposed house on the landmark site adversely impacts the property's integrity, thus diminishing the historical significance of the 1854 Old Spring Tavern.

It is important to remember that the tavern has long been acknowledged for its historical significance. It remains one of the few properties of its kind with high integrity remaining in the state. The tavern was among Wisconsin's earliest National Register designations when it was listed in 1974—two years after it became the city's 16th Landmark. The property's historical significance is linked to the development of Wisconsin's accommodations for travelers and for its Greek Revival architecture. Both points of significance, nineteenth century architecture and history, are enhanced by an appropriate setting—including the immediate landscape and the longer viewshed to the north of the tavern. The documentation for the property's landmark designation is more than 50 years old. At that time landscape-related issues were rarely considered in National Register and local nominations for designation. In 1995, however, the Secretary of the Interior codified *Guidelines for the Treatment of Cultural Landscapes*. The guidelines reference the Secretary's Standards for the Treatment of Historic Properties but specifically address landscapes, including the settings of historic buildings. Since that time, the settings of buildings and their components have been given important status when reviewing proposed alterations to landmark properties. In this case, that includes preserving the integrity of the entire landmark site, specifically the feeling of an open rural setting that has been shaped by the property's use as a tavern and inn in Madison's early Euro-American settlement history.

Furthermore, you are being asked for approval of a COA for a residence on the landmark grounds that fits the historic characteristics of the Nakoma subdivision, which was platted in the mid-1910s, with significant buildings dating from 1915 to 1946. The Old Spring

Tavern nomination, however, makes no mention that the Nakoma subdivision itself provides historic context for the landmarked property. Since the time of Nakoma's development, the Tavern's position at the base of its slope has effectively screened some of the surrounding neighborhood and preserved a measure of its mid-19th century setting. This setting will be eroded by the construction of a large and imposing house at the top of the slope.

As proposed, the 4,200 square-foot residence is of a size and scale that will cover most of the lot, and thereby diminish the significance and integrity of the historic landscape.

Mitigating the loss of historic character by requiring a lower-profile, smaller scale residence should be the foremost consideration in reviewing this appeal. On this basis, I urge you to prevent the proposed construction from moving forward by supporting the appeal to deny the COA.

Thank you for your consideration.

Arnold R. Alanen, Ph.D.
1910 West Lawn Ave.
Madison, WI

Matthias, Isaac L

From: Richard Chandler <rgcwis@charter.net>
Sent: Tuesday, January 9, 2024 11:47 AM
To: All Alders
Cc: Bailey, Heather
Subject: Proposed House on Old Spring Tavern Property - Size and Scale of Adjacent Homes - Legistar File 80871 - Common Council Meeting on January 9, 1974

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To the Common Council:

We have been asked about how the 4,200 square foot house that Jon and Brenda Furlow propose to build at 3701 Council Crest on the Old Spring Tavern property compares with adjacent homes, in connection with the Council's review of the appeal of the Landmarks Commission decision to approve the house.

The most important things in deciding whether the house should be approved under the Secretary of the Interior's Standards for Rehabilitation are whether it is compatible with the landmark Old Spring Tavern and what its impact is on the historic environment and character of the landmark west yard. However, the Furlows have said the proposed house is "consistent in size and scale with adjacent homes" in a fact sheet dated January 5 and sent to the Council, which has raised questions about that issue.

We believe the proposed house is not consistent in size and scale with adjacent homes.

- **The size of the proposed Furlow house is 4,218 square feet.**
- **The average size of the 23 homes on adjacent properties is 2,255 square feet.**
- **The size of the Old Spring Tavern is 3,573 square feet.**

The proposed Furlow house is larger than every home in the adjacent area. Most of the adjacent homes are smaller than 2,500 square feet. Only three of the adjacent homes are larger than 3,000 square feet, and only two more are between 2,500 and 3,000 square feet. The largest adjacent home is the Old Spring Tavern itself at 3,573 square feet, so if the proposed house was built it would be the largest home by far in the immediate neighborhood. Looking at the homes that are immediately adjacent to the proposed house on the same block of Council Crest, only one is larger than 2,500 square feet.

Our compilation of these figures was done as follows:

- The 23 adjacent homes, including the Old Spring Tavern, are the homes identified by the Furlows as adjacent homes on their map of adjacent properties on their January 5 fact sheet.
- The square footage figures for those 23 properties are from the City Assessor website.
- The square footage figures for the proposed Furlow house are from the floor plan on the application submitted to the Landmarks Commission.

Please contact us if you have questions.

Rick Chandler

President, Madison Trust for Historic Preservation

Matthias, Isaac L

From: Patricia Elson <pattyelson45@gmail.com>
Sent: Monday, January 8, 2024 3:36 PM
To: All Alders
Subject: Old Spring Tavern

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Please support the appeal coming before the Common Council tomorrow. This is a historic preservation issue. We must preserve our past.

Thank you
Patty Elson
717 Huron Hill
Madison WI 53711

Matthias, Isaac L

From: Brenda Furlow <bsfurlow71@gmail.com>
Sent: Friday, January 5, 2024 12:10 PM
To: All Alders
Cc: 'Jon Furlow'
Subject: January 9 meeting File #80871
Attachments: January 5 Letter to Alders.pdf; January 5 Supplement.pdf

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Dear Alders, we are the owners of the property at 3701 Council Crest, which is the subject of Agenda Item 80871 scheduled for the January 9 Common Council meeting. Please see attached comments. We are happy to answer questions or provide additional information prior to or at the hearing.

Thank you in advance for your time and attention.

Brenda and Jon Furlow

Jon and Brenda Furlow
3701 Council Crest, Madison, WI 53711
608.852.4506/608.692.0175

January 5, 2024

RE: [Legistar File ID # 80871](#) (District 10) Appeal of Madison Landmarks Commission decision granting a Certificate of Appropriateness for new construction on the site of a designated city landmark at 3701 Council Crest.

Dear Alders:

We are the owners planning to build a home on the vacant lot located in Nakoma at 3701 Council Crest in Madison, which is adjacent to the Old Spring Tavern home. Over a year ago, the Common Council approved the survey creating this lot, which is almost a quarter acre in size, and is zoned TR-C1 (Traditional Residential - Consistent 1 District).

The Common Council Review

The Landmarks Commission approved a Certificate of Appropriateness for construction of our proposed home. ([Landmarks Commission Meeting Report](#)). The nearby neighbors have now appealed.

To decide this appeal, the Common Council does not start from scratch and redo all the work already completed by the Landmarks Commission. Instead, the Council approves the Landmarks Commission decision unless it decides “the Commission's decision is *contrary to* the applicable standards” under MGO Subchapter 41.18(1) and further, specifies why and how the Commission did not meet those standards (emphasis supplied.)

Even the briefest glance at the extensive and thorough Landmarks Commission decision making process demonstrates that its decision is consistent with MGO Subchapter 41.18(1). The Commission received extensive public comments, and considered carefully reasoned reports from the City's Preservation Planner that demonstrated how the construction of our proposed home satisfied each of the standards in Subchapter MGO 41.18(1). There were two public hearings that together lasted over 4 hours, and were accompanied by thoughtful discussions by the Commissioners.

While the neighbors argued for a different outcome, there is no reasonable doubt that the Landmarks Commission decision is consistent with MGO Subchapter 41.18(1) and should be approved.

Summary of Comments

On November 6, 2023, the Landmarks Commission approved construction of our home design, concluding that it meets all the standards in MGO 41.18 for a Certificate of Appropriateness,

including the Secretary of Interior's Standards for Rehabilitation. ([Landmarks Commission Meeting Report](#)).

The Commission's decision was made after thoughtful discussion and careful consideration. ([Legistar File ID #79099](#).) The Commission reviewed lengthy and detailed written public comments. The City Preservation Planner, Dr. Heather Bailey, evaluated our project and prepared a detailed written analysis. ([Planning Division August Staff Report](#).) The Commission received and considered public comments in an initial public hearing lasting over 2 hours.

Based on that hearing, the Commission did not approve our initial design and instead requested that we make specific modifications. We agreed, and submitted a redesign that incorporated all the Commission's requests, and more. Dr. Bailey evaluated our redesign, and prepared a supplemental analysis recommending approval of our project. ([Planning Division October Staff Report](#).) After a second public hearing that again lasted over 2 hours, the Landmarks Commission approved our redesign, finding that it meets all the relevant standards in MGO 41.18 for a Certificate of Appropriateness, including the Secretary of Interior's Standards for Rehabilitation.

We are well aware of some neighbors' concerns about our planned home, and have made every reasonable effort to accommodate those concerns through design changes and engineering studies. It is clear, though, that some neighbors near our lot will oppose the construction of any house regardless of size, shape, configuration, etc - they prefer that our lot remain vacant to preserve open space adjacent to the Old Spring Tavern.

Leaving our lot as open space is not an option. The Landmarks Commission decided over a year ago that a house could be built on this lot when in July 2022 it approved a Certificate of Appropriateness to adjust the lot line on the Old Spring Tavern property to create a separate, larger lot for construction of a new home consistent with neighborhood development. ([Legistar File ID # 72243](#).) The neighbors adamantly opposed that lot line adjustment, but did not appeal that decision.

In September 2022, by a vote of 17-1, the Common Council approved the certified survey map that zoned this lot as single family residential. ([Legistar File ID # 72367](#).) We were not involved with the City process that created this larger lot, and did not purchase the lot until after the City approved the certified survey map and zoned the lot single family residential.

The Extensive, Iterative Process Leading to the Landmark's Commission Approval

I. Why and How We Decided to Purchase the Nakoma Lot.

Before moving to Minneapolis in 2014 for job-related reasons, we lived in Nakoma for 22 years. We raised our family there, and our two children graduated from the Madison public schools. We both worked as lawyers in Madison firms and companies and were very active in the Nakoma

neighborhood and Madison community. Now that we are both retired, we are hoping to return to Madison and the Nakoma neighborhood.

A. The Landmarks Commission Adjusted the Lot Line To Create A Larger Lot So A House Could Be Built.

We learned about this lot in the fall of 2022 when we were in Madison visiting friends in the neighborhood. There had always been two legal lots on the site where the Tavern home was located, and we learned that the Landmarks Commission had approved a Certificate of Appropriateness to adjust the lot line to make the second, vacant lot larger so that a home could be built. ([Legistar File ID # 72243.](#)) The Commission retained the landmark designation on the vacant lot to “ensure preservation of the historic structure on the eastern lot by allowing for review of potential adverse impacts of the new construction on the historic structure.” ([Landmarks Commission Report.](#))

B. The Common Council Votes 17-1 To Adopt the Plan Commission Recommendation to Create the Larger Lot for a Future Residence.

A Certified Survey Map (“CSM”) was prepared, and the matter went to the Plan Commission, where the [Staff Report](#) recommended approval of the CSM “to reconfigure the two underlying lots to create a larger lot for a future residence to be constructed on the Council Crest side of the property.” The Plan Commission approved the CSM and the Common Council voted 17-1 to adopt the Plan Commission recommendation. ([Legistar File ID # 72367.](#))

C. We Conducted Extensive Due Diligence With the City and Others Before Purchasing the Lot.

After the Common Council approved the CSM, we did extensive due diligence to understand the requirements for building a home on the lot.

We first consulted city zoning and planning officials to understand the legal set-backs and how siting a home on the lot would affect set-backs. Next, since the lot had a landmark designation, we consulted with Landmarks Commission staff to understand the standards for a Certificate of Appropriateness, including how the Secretary of Interior’s Standards for Rehabilitation applied to our design and construction of a new home.

Based on the guidance from the City, we consulted with builders, architects, archeologists and arborists to decide whether we could design a house that not only fit our family needs, but would also meet all the parameters provided to us by the City.

D. Based on Our Due Diligence, We Purchased the Lot.

Only after we were comfortable that we could design a house within the parameters provided by the City did we decide to purchase the lot in Nakoma, now known as 3701 Council Crest.

II. The Extensive Landmarks Commission Process.

Since our purchase of the lot over a year ago, we have been working to get final approval for our design plans, including undertaking multiple re-design efforts and consultations with experts.

A. We Submit, and Then Withdraw, Our Initial Landmarks Application.

On April 21, 2023, we submitted a [Letter of Intent and Application](#) for our original design, and provided [Supplemental Information](#) with photos and information about the Tavern and neighborhood properties. ([Legistar File ID # 77464.](#)) We traveled to Madison to meet with adjacent neighbors and neighborhood representatives to show them the plans and answer questions.

As the hearing approached, various comments were filed expressing concerns. The Preservation Planner also asked that we provide more detail as to how our design would direct water away from the historic Tavern building. We decided to withdraw our Application to further study those comments.

B. Based on Public Comments, We Review Our Design and Retain An Engineer To Evaluate the Drainage Impacts of Our Home on The Tavern Home.

After further review, we were comfortable with our design. As to drainage, the Landmarks Commission had already considered this when the lot was enlarged, and one of the Commissioners pointed out that a home on the lot “could actually improve flooding issues depending on how it was handled.” ([Landmarks Commission Report, at p. 2.](#)) Nonetheless, as noted above, based on neighbor and City input, we retained Burse Surveying and Engineering to conduct a formal drainage study.

C. We Submit A Revised Landmarks Application With A Drainage Study Showing that Our Design Reduces Drainage Toward the Tavern.

On July 21, 2023, we submitted our [Revised Letter of Intent and Application](#) which was based on our original design, but now included an extensive drainage study conducted by the Burse engineering firm. ([Legistar File ID #79099.](#)) The drainage study demonstrated that our construction did not create a risk of flooding the Tavern home, but actually protected the Tavern home by **reducing** the drainage toward the Tavern home in every case from a 1-Year, 24hr Storm Event to a 500-Year, 24hr Storm Event.

D. The Landmarks Commission Conducts A Public Hearing And, After 2 Hours of Public Comment and Discussion, Refers Our Application To A Later Meeting, With Specific Directions On A Redesign.

The Landmarks Commission considered our Revised Letter of Intent and Application at its August 14, 2023 meeting. In advance of that meeting, Dr. Bailey evaluated our July Application and concluded that we met the standards for granting a Certificate of Appropriateness (including the Secretary of Interior's Standards for Rehabilitation) and prepared a detailed [Planning Division Staff Report](#) recommending that the Landmarks Commission approve our project so long as we would submit an archaeological monitoring report. Dr. Bailey concluded, among other things, that our design was consistent with the neighborhood and Tavern home setting, and noted that the City Stormwater Engineer had reviewed our drainage study and confirmed that our analysis was correct.

After extensive public comment and a lengthy meeting, the Landmarks Commission decided by a vote of 4-1 that our design was too wide compared to the Tavern home and requested that we redesign our home to satisfy specific set-back requirements that were more restrictive than the City zoning set-backs:

A motion was made by Arnesen, seconded by Harris, to refer this item to a future meeting and ask the applicant to redesign the structure to meet a 20' setback from the road. The motion passed by roll call vote. Yes: Harris, Arnesen, Morrison, Kaliszewski. No: Alder Amani.

[\(Landmarks Commission Report, at p. 5.\)](#)

E. We Comply With The Landmarks Commission Specific Directions, And Redesign Our Home to Meet The Increased 20' Setback, Plus We Change Roof Design and Commission An Updated Engineering Study.

Based on the Commission's guidance at the hearing, we worked with our builder to redesign our home, reconfiguring and reducing room sizes to satisfy the Commission's request to increase the setback from Spring Trail to 20'. We also took an extra step and changed the roof design from a gable end to a hip roof, which further reduced the overall visual look of our home.

Since our home was now smaller than our prior design, we went back to our engineers and commissioned a second drainage study. Like the first study, the engineers concluded that drainage from our redesign did not adversely affect the Tavern home, and again reduced the drainage toward the Tavern home in every case from a 1-Year, 24hr Storm Event to a 500-Year, 24hr Storm Event.

On September 25, 2023, we submitted our [September Redesign Proposal](#) which met and exceeded the guidance provided by the Commission, reducing visual mass, narrowing the footprint by almost ten feet, and opening up a wider view of the Tavern from Spring Trail.

III. The Landmarks Commission Conducts A Second Public Hearing, and After 2 More Hours of Public Comment and Discussion, Approves Our Redesigned Home.

The Landmarks Commission considered our September Redesign Proposal at its November 6, 2023 meeting. In advance of that meeting, Dr. Bailey reviewed our redesign, noted that we “followed the specific guidance from the commission and further reduced the massing with the design shift to a hipped roof,” concluded that “the standards for granting a Certificate of Appropriateness are met” and recommended approval:

The new design, with its reduced scale is differentiated from the historic resources on the site, and of a similar architectural character, scale, and size as the other residential structures in the immediate vicinity, which will allow it to blend with the residential neighborhood setting in which this designated landmark is designated.

[\(Planning Division Staff Report\)](#)

On November 6, 2023, the Landmarks Commission met, and after another round of extensive public comments and discussion that lasted over 2 hours, voted 3-1 to approve the Certificate of Appropriateness for our project. [\(Landmarks Commission Meeting Report.\)](#)

We ask that you approve the Landmarks Commission’s decision, which is consistent with all the standards in MGO Subchapter 41.18(1) for a Certificate of Appropriateness.

Thank you for your consideration.

Respectfully submitted,

Jon and Brenda Furlow
3701 Council Crest

Jon and Brenda Furlow
3701 Council Crest, Madison, WI 53711

January 5, 2024

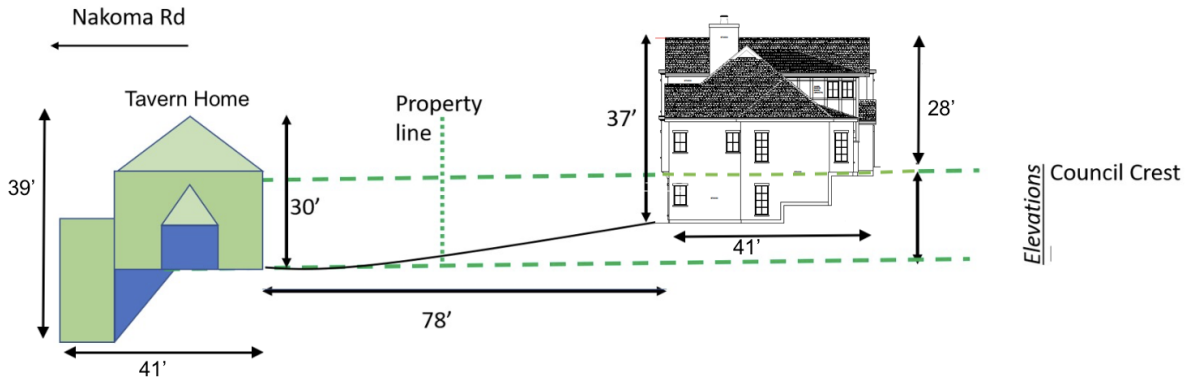
**Fact Sheet About the Proposed Home at 3701 Council Crest
Which Was Approved by The Madison Landmarks Commission
[Legistar File ID # 80871](#) (District 10)**

We are the owners of the residential lot at 3701 Council Crest. We urge the Common Council to approve the decision by the Landmarks Commission granting a Certificate of Appropriateness allowing us to build our home. We recently became aware of a submission by the Madison Trust for Historic Preservation (MTHP) that opposes our proposed home, and wanted to correct a number of errors in that submission.

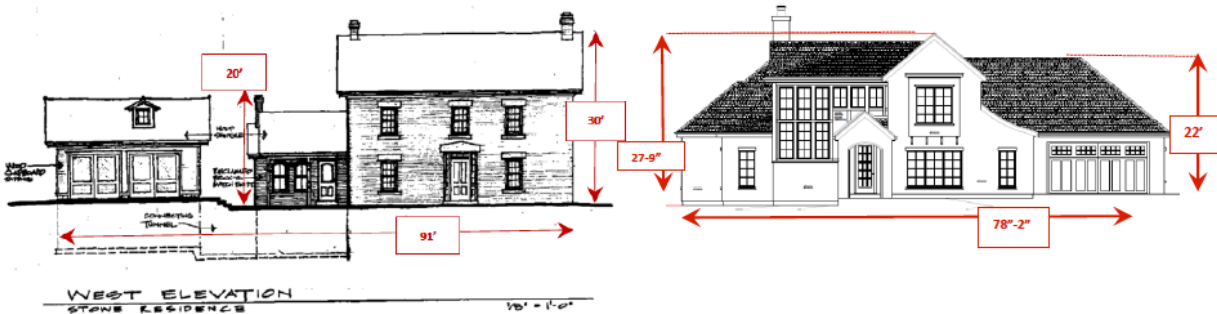
Here are the facts:

1. The Landmarks Commission thoroughly considered and evaluated exhaustive public comments about our project over **two full public meetings that together spanned over 4 hours**. During this process, all of the arguments now being made by MTHP were carefully considered.
2. The City's preservation expert, Dr. Heather Bailey, evaluated our project and issued two detailed reports concluding that **our proposed home meets all the standards for a Certificate of Appropriateness**.
3. The so-called "west yard" where our lot is located was **not designated a landmark in 1972**. The [1972 Landmarks Designation](#) only designated the Tavern structure itself as a landmark.
 - The Nomination Form clearly shows that "Landscape Architecture" was **not designated** as an Area of Significance.
 - The **only** reference to surrounding landscape relevant to the Tavern structure was the Duck Pond on the other side of Nakoma Road, which was described in the Nomination Form as "a great spring across the road, (now a duck pond) to water horses and oxen."
4. **The City engineer reviewed and approved** our drainage plan, which is supported by an engineering study with modeling that shows that construction of our home will **reduce drainage** toward the Tavern home in every case from a 1-Yr, 24hr storm to a 500-Yr, 24hr storm.

5. Our proposed home is **narrower** and **shorter** than the Tavern home, and **consistent in size** – see drawings below. To be sure, our home is on a hill, but any home built of this lot will be on the hill overlooking the Tavern, a fact that was known in 2022 when the City adjusted the lot line to create a buildable lot in 2022. In fact, every home in this area is on a hill with the home at the top, no matter the size, by necessity being “taller” than its downslope neighbor.

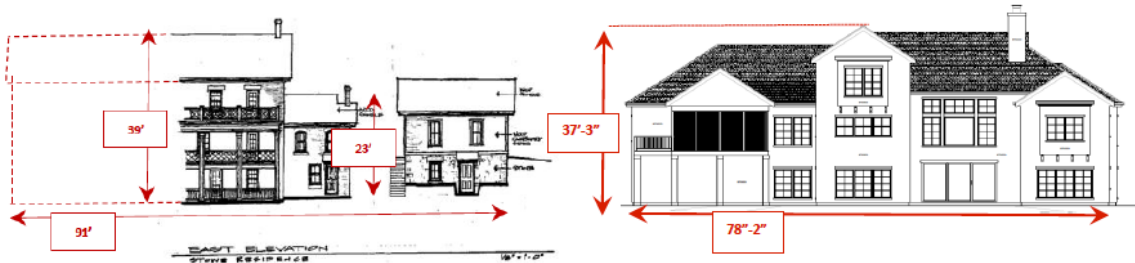


Side View Looking South from Spring Trail



3706 Nakoma Road - West Elevation

3701 Council Crest - West Elevation

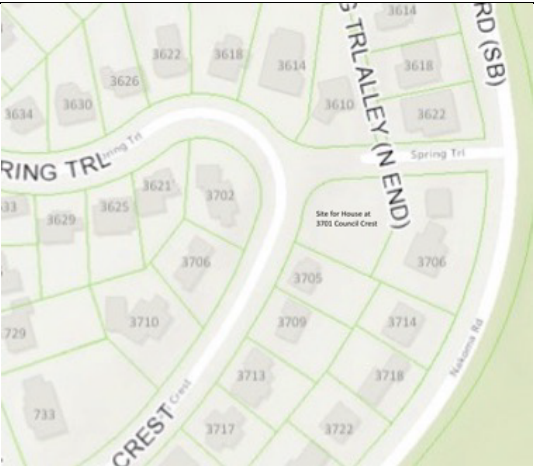



3706 Nakoma Road - East Elevation

3701 Council Crest - East Elevation

Comparison of East and West Elevations

6. Our proposed home is consistent in size and scale with the adjacent homes, as show in the [map and photos of the area](#). Here are some examples:

	
<p>Map of Adjacent Properties</p>	<p>Photo of Adjacent Homes</p>
	
<p>Home Next Door to Tavern Home</p>	<p>Looking up from Tavern Home to Council Crest Homes</p>
	
<p>View Showing Tavern Home in Context</p>	<p>View from Our Property Across Council Crest</p>

Matthias, Isaac L

From: Erica & Mark Gehrig <gehrigs4@gmail.com>
Sent: Monday, January 8, 2024 3:04 PM
To: All Alders
Subject: Spring Tavern

Caution: This email was sent from an external source. Avoid unknown links and attachments.

To the Madison alders -

As a former member of the Landmarks Commission, and a citizen of Madison, I am opposed to the project proposed for the yard of the historic Spring Tavern. The fact that this enormous project has even gotten this far is disturbing. Please stand up for the properties that are supposed to be protected by city ordinance - the Madison Landmarks and local historic districts - and respect the National Register historic districts for the neighborhoods they create.

This site is important locally and nationally, and will be adversely affected by having a giant house in its backyard.

Thank you -
Erica Fox Gehrig
1811 Vilas Ave, in the Wingra Park National Register District



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Matthias, Isaac L

From: Patty Holliday <pattyholliday@gmail.com>
Sent: Monday, January 8, 2024 2:44 PM
To: All Alders
Subject: Oppose Proposed 4,200 sq. ft. House on Old Spring Tavern Property

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I want to preserve our historic sites, that you oppose the proposed 4,200 square foot house on the Old Spring Tavern property because it is incompatible with the historic landmark Old Spring Tavern and yard, and that you hope they support the appeal of the Landmarks Commission decision.

Thank you,
Patty Holliday
11 Harvest Way
Fitchburg, WI 53711

Matthias, Isaac L

From: Cathy hynum <mch.cathy3@gmail.com>
Sent: Monday, January 8, 2024 7:02 PM
To: All Alders

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Please Oppose the large house on spring tavern lot
Cathy Hyrum



P.O. Box 296
Madison, WI 53701-0296
(608) 441-8864
info@madisonpreservation.org
www.madisonpreservation.org

Background on the Madison Trust for Historic Preservation

The Madison Trust for Historic Preservation, founded in 1974, represents more than 500 members from all areas of the city.

- We educate people about Madison's history and neighborhoods through historic architecture walking tours and other events.
- We advocate for the preservation of significant sites to help protect the unique character of Madison's neighborhoods and landscapes.
- We present more than 80 tours every year and our monthly electronic newsletter and social media posts reach thousands of people.

Our walking tours tell the stories of a wide variety of Madison neighborhoods, including working class neighborhoods, minority neighborhoods, middle class neighborhoods, and neighborhoods with mansions. Our tours help people learn about the development of Madison's commercial and industrial areas, and we also have several university tours.

We believe that Madison's historic buildings, neighborhoods and landscapes are an important part of what makes Madison unique and attractive. We understand the importance of development that brings good jobs, affordable housing and improved transit, and we want to preserve the best of the past as we shape the future.

For further information about tours, virtual lectures and other events, please visit our website, which also has our electronic newsletter and information about our advocacy efforts. Feel free to contact us with any questions or suggestions.

December 20, 2023

Background Information About Proposed House on
Old Spring Tavern Property, 3701 Council Crest
(Legistar File 80871)

December 20, 2023

We Urge the Common Council to Oppose a Proposed Large New 4,200 Square Foot House on the Historic Old Spring Tavern Property

The Madison Trust for Historic Preservation opposes the proposal to build a large new 4,200 square foot house on the west yard of the landmarked Old Spring Tavern property at 3701 Council Crest, which will be considered by the Common Council on January 9, 2024.

- We respectfully ask the Common Council to vote against the proposal because the applicable standards for approval have not been met. The proposed house is incompatible with the historic Old Spring Tavern and makes unacceptably large changes to the landmark west yard.
- A Certificate of Appropriateness (COA) for the house which would allow construction was approved by the Landmarks Commission on a 3-1 vote with three members absent or not voting and with Alder Amani Latimer Burriss voting no. There are ample legal grounds for reversing the decision.
- If the approval of the proposal for a 4,200 square foot house is reversed, the owners of the west yard can return with a proposal for a smaller house that is compatible with the Old Spring Tavern.

Background on the Old Spring Tavern

The Old Spring Tavern, built in 1854, is one of Madison's oldest and most significant historic sites. The Tavern was originally a stagecoach inn on the road to southwest Wisconsin. It later served as a farmhouse and tavern, and for more than 100 years has been a private residence.

The tavern and the grounds surrounding it were designated as a Madison landmark in 1972, the 16th of 184 local sites to be designated as a landmark. The importance of the Tavern site is shown by the fact that the property is the very first site pictured in the city's official report on Madison's Historic Preservation Plan, which was adopted by the Common Council on May 27, 2020. The Tavern is also listed on the National Register of Historic Places.

(Continued)

A visit to the tavern property is among the most memorable stops on the historic architecture walking tours conducted by the Madison Trust because of the unique landscape of the property and the fascinating history of the Tavern as an inn during the stagecoach era. If a very large house was built on the west yard, as has been proposed, it would be much harder to understand the historic setting and feeling of the property.

The historic appearance of a solitary inn set on a road in an open, undeveloped landscape has been maintained by a succession of owners over the years and should not be lost due to construction of a very large house that would be completely incompatible with the Tavern itself and would completely change the character and appearance of the historic west yard.

Proposed New House and Landmarks Commission Decision

The owners of the lot at 3701 Council Crest, Jon and Brenda Furlow, initially proposed building a roughly 4,500-square-foot house on the property. The Landmarks Commission did not approve this proposal and asked the Furlows to propose a smaller house that would not be incompatible with the historic tavern. The Furlows then proposed a house that was 5% smaller at about 4,200 square feet, which the Landmarks Commission approved on November 6 on a 3-1 vote.

The proposed new house is massive compared with the historic Tavern. It is wider and taller. Its roofline is 17 feet higher than the roofline of the Tavern. It would be built on a slope above the Tavern, with a base that is ten feet higher than the base of the Tavern. It has a towering three-story rear wall that would be located only 26 yards from the two-story front of the Tavern.

The new house would occupy a large share of the steeply sloping west yard of the Old Spring Tavern property. It would be located very close to a historic 234-year-old black walnut tree, and it is likely that the stress of construction and the destruction of a large part of the tree's root system would result in the death of the tree. It would dramatically alter the historic view of the west yard from the front of the Tavern, and it would almost completely block the historic view of the Tavern from Council Crest, which is the historic front of the Tavern.

Overall, the proposed 4,200 square foot house would loom over the tavern and dramatically change the appearance and feeling of the landmark west yard.

Grounds for Appeal to Common Council

Preservation Planner Heather Bailey has emphasized that under the Madison Ordinances the project needs to be evaluated using the Secretary of the Interior's Standards for Rehabilitation. The applicant has not shown or explained how it qualifies under the standards. Organizations and citizens from throughout Madison have provided extensive evidence of the multiple ways in which it does not comply. We urge the Common Council to look at each of the standards and decide whether this proposal meets them.

(Continued)

- The proposed house violates Standard 1 because it clearly makes far more than a minimal change to the defining characteristics of the site and environment, as you can see when you view the site from Council Crest, Spring Trail or the front door on the west side of the Tavern.
- It violates Standard 2 because it does not retain and preserve the historic character of the property.
- It violates Standard 9, which requires it to be compatible with the massing, size, scale and architectural features of the Tavern. It's much bigger than the Tavern. Its 4,200-square-foot size, much larger overall mass, taller height, and location on a slope looming above the Tavern all make it dramatically incompatible.
- It violates Standard 10, because its environment would be significantly impaired, and its construction would likely kill the historic 234-year-old black walnut tree on the lot, a defining feature of the site.

Frequently Asked Questions

Question: Don't we need new housing and new development?

Answer: We support development and housing, but they should be compatible with maintaining the special qualities that make Madison a good place to live, including our unique historic properties. A smaller house on this property would provide just as much housing as a 4,200 square foot house built for two people. What is being proposed is not a multi-family dwelling.

Q: Isn't opposing the proposed house an example of NIMBYism?

A: The opponents of the proposed 4,200 square foot house aren't opposing any construction on the site, just construction of a house that is dramatically out of scale with the historic Tavern and that consumes too much of the historic west yard. Also, this isn't just a neighborhood issue. The Old Spring Tavern property is a historic resource for all of Madison. People from all over Madison take walking tours of the neighborhood which feature the Old Spring Tavern property, and are concerned about the preservation of this unique resource.

Q: Lot 2 is a buildable lot. Shouldn't the owners be allowed to build the house they want there?

A: Any house that's built on a buildable lot has to comply with zoning requirements and the historic preservation ordinances. This proposed house should not be approved because it's incompatible with the historic property. The owners knew that they'd have to comply with the historic preservation ordinances when they bought the property. They were told that neighbors and people interested in historic preservation would object to any house that was incompatible with the historic property.

(Continued)

Q: Don't the owners have a right to build the house they want? They paid a lot of money for the lot.

A: While the owners of the lot have a right to build a house that complies with zoning requirements and the historic preservation ordinances, the owners of the Old Spring Tavern have important rights too. They have a right to protection of their historic property. They bought the historic Tavern with the knowledge that a house would probably be built on the west lot, but with the belief that under the Madison ordinances it would be compatible with the Tavern. They have committed to using their resources to maintain the historic Tavern for future generations. The commitment of the city to protect the historic property from the intrusion of a very large house should be maintained.

Q: Why shouldn't the owners be able to build a big house? The Nakoma neighborhood has quite a few big houses.

A: The proposed 4,200 square foot house would be among the biggest houses in Nakoma. Other houses in the immediate neighborhood of the Tavern are much smaller. For example, the house right beside the west yard at 3705 Council Crest is only 1,300 square feet, and the house beside it at 3709 Council Crest is 1,540 square feet. Many homes along Council Crest and throughout Nakoma are around 2,000 square feet.

Q: The owners say that their house fits in with other houses along Council Crest.

A: The key legal test is not whether the new house is compatible with other houses but whether the new house is compatible with the historic landmark Tavern, which is not the case because it is too massive, too tall, too close to the Tavern and located on a slope looming above the Tavern. Also, the house would be much larger than most of the houses on Council Crest.

Q: Does the Common Council have the legal authority to reverse the approval of the new house by the Landmarks Commission?

A: The Council has ample legal grounds to disapprove the proposed new house. The Madison Ordinances clearly allow the Council to change decisions of the Landmarks Commission. The Secretary of the Interior's Standards for Rehabilitation provide clear grounds to disapprove the new house, as explained by expert testimony at the Landmarks Commission.

Q: Why should the Council be concerned about the water damage issue?

A: The ordinances provide that historic properties like the Tavern should be protected. The risk of water damage from an improperly located house uphill from the Tavern is significant. The owners should be required to present a much more thorough analysis of the drainage issues than they have done. Additionally, the city could consider having the owners of the lot enter into an agreement to make sure that water runoff protection measures are maintained in the future.

(Continued)

Q: Why should the Council be concerned about the tree? The city generally doesn't get involved if people want to cut down trees or if they damage trees on their lots.

A: The reason to care about the 234-year-old black walnut tree is that it is a key feature of the historic west yard which has landmark protection. While trees in general aren't regulated by the ordinances, the ordinances do provide that historic properties and landscapes should be protected, which includes essential elements of the landscape like the black walnut tree.

Q: Where is the front door of the Tavern?

A: The front door of the Tavern is on the west side of the Tavern, facing the west yard and Council Crest. The current owners and previous owners have consistently used this as the front door. The design and floor plan of the house make it clear that the front door is the door on the west side.

Highlights of Expert Commentary About the Proposed New House

Paul Edmondson, Former President and General Counsel for National Trust for Historic Preservation.

- I share the views of commentators who question the compatibility of the proposed house with the immediate setting of the Old Spring Tavern.
- The National Park Service has a set of "recommended" and "not recommended" practices that apply to construction for historic properties.
 - Recommended practices include locating new construction where it will be minimally visible and will not negatively affect a historic building's site or setting, and ensuring that new construction is secondary to the historic building.
 - Practices that are not recommended include adding new construction on an adjacent site that is much larger than the historic building and results in a loss of historic character of the setting.

Jeffrey Albertini, Certified Arborist.

- It is my professional opinion that the proposed construction will have a substantial, long term adverse impact on the black walnut tree.
- The proposed level of disturbance would be expected to have a negative effect on both immediate performance (growth, etc.), longevity, and other secondary stressor tolerance (i.e., drought-related stress).

Note: These are edited excerpts from expert testimony submitted to the Landmarks Commission. Please see the Legistar file from the Landmarks Commission meeting of November 6, 2023, for complete expert testimony.



To: Madison Common Council
Re: Proposed House on Old Spring Tavern Property, 3701 Council Crest
Legistar File 80871; Common Council Meeting on January 9, 2024
Date: December 20, 2023

We Urge the Common Council to Oppose a Proposed Large New 4,200 Square Foot House on the Historic Old Spring Tavern Property at 3701 Council Crest

- We oppose the proposal to build a large new 4,200 square foot house on the west yard of the landmarked Old Spring Tavern property at 3701 Council Crest.
- The Old Spring Tavern, built in 1854, is one of Madison's oldest and most significant historic sites. The Tavern was originally a stagecoach inn on the road to southwest Wisconsin. It later served as a farmhouse and tavern, and for more than 100 years has been a private residence.
- We respectfully ask the Common Council to vote against the proposal for a large new house because the applicable standards for approval have not been met. The proposed house is incompatible with the Tavern and makes unacceptably large changes to the landmark west yard.
- The proposal was approved by the Landmarks Commission on a 3-1 vote with three members absent or not voting and with Alder Amani Latimer Burris voting no. There are ample legal grounds for reversing the decision.
 - If the decision is reversed, the owners can return with a proposal for a smaller house that is compatible with the Old Spring Tavern.
- The City's Preservation Planner has emphasized that under the Madison Ordinances the project needs to be evaluated using the Secretary of the Interior's Standards for Rehabilitation. The project does not meet the standards in several ways.
 - The proposed house violates Standard 1 because it clearly makes far more than a minimal change to the defining characteristics of the site and environment.
 - It violates Standard 2 because it does not retain and preserve the historic character of the property.
 - It violates Standard 9, which requires it to be compatible with the massing, size and scale of the Tavern because it's much bigger than the Tavern. Its 4,200 square foot size, much larger overall mass, taller height, and location on a slope looming above the Tavern, all make it dramatically incompatible.
 - It violates Standard 10, because its environment would be significantly impaired and the construction would damage or kill the yard's historic 234-year-old black walnut tree, a defining feature of the site.

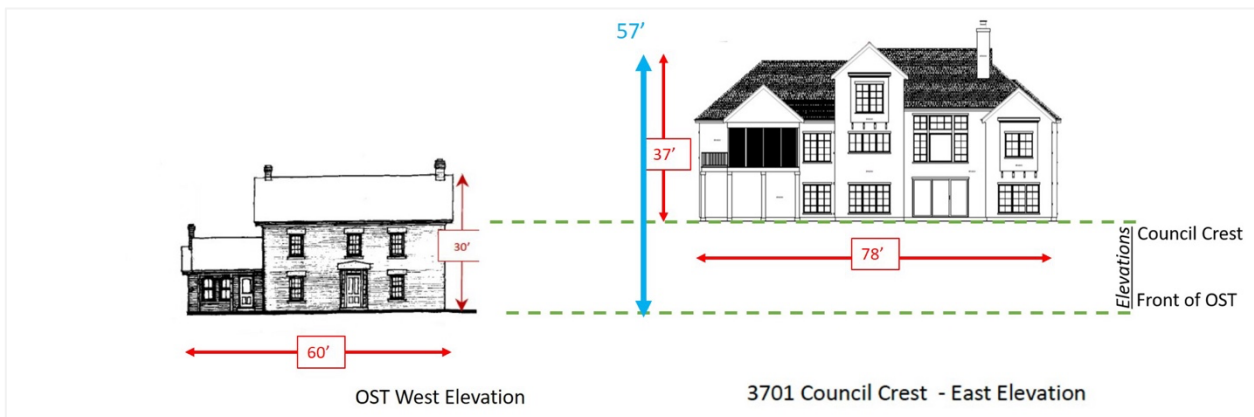
(Continued)



View of front of OST from Spring Trail. The proposed house would be 13 yards from the lot line, on the slope above the OST.



View of front of OST and landmarked west yard from Council Crest. The proposed house would block this view.



Side view of OST and proposed house from Spring Trail

Matthias, Isaac L

From: Mary Odell <odellme@att.net>
Sent: Tuesday, January 9, 2024 9:10 AM
To: All Alders
Subject: Resolution #80871

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Last week I sent each of you a letter asking that you make a personal visit to the property at 3701 Council Crest. I hope you were able to do that because I believe it is the "best" way to understand the concerns regarding the proposed house. And as one more effort, I am sending this to you. Please vote to **SUPPORT Resolution 80871** to send the issue back to the Landmarks Commission for further review. The property is still in Landmark Status so this seems an appropriate destination.

Thanks, Mary Odell

Matthias, Isaac L

From: Crawford Marlborough Nakoma Neighborhood Association <info@cmna.org>
Sent: Monday, January 8, 2024 5:34 PM
To: All Alders; Mayor
Subject: Legistar 80871 - Appeal of LC decision granting a CofA for new construction at 3701 Council Crest
Attachments: 240104_OLDSRINGTAVERN_MEMO.pdf

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Alders,

I'm President of the Crawford Marlborough Nakoma Neighborhood Association and our organization supports Legistar 80871 - Appeal of Madison Landmarks Commission decision granting a Certificate of Appropriateness for new construction on the site of a designated city landmark at 3701 Council Crest. For the Landmarks Commission to approve a CofA on this locally designated landmark property, the new construction must comply with the Secretary of the Interior's Standards for Rehabilitation.

We support the referral back to the Commission with specific instructions to consult the Secretary of the Interior's Standards for Rehabilitation and additional guidance that the size of the proposed house should be smaller than the Old Spring Tavern and comparable in size to nearby houses.

Many thanks for your service to the community,

Kevin Pomeroy
President
[Crawford Marlborough Nakoma Neighborhood Association](#)
P.O. Box 46481
Madison, WI 53744
608-438-8968



Crawford • Marlborough • Nakoma
Neighborhood Association

M E M O R A N D U M

January 8, 2023

To: All Alders, City of Madison
From: Kevin Pomeroy, President
Re: Review of Landmarks Commission Decision to Approve a Certificate of Appropriateness for New Construction on the Site of the Old Spring Tavern, a City Landmark
Legistar No. [79099](#) and [80871](#)

The Old Spring Tavern is a designated city landmark that tells an important story about our history. It possesses a high level of historic integrity that is irreplaceable.

When the city's Landmarks Commission (Commission) approved the above Certificate of Appropriateness (CofA), it appears there were three issues with their decision: 1) the Commission relied on facts that were incorrect, 2) the Commission didn't have important information they needed to make an informed decision, and 3) based on the factual errors and missing information, the Commission did not consider significant aspects of several of the standards. These procedural and factual errors could have significant implications for the integrity of the landmark, and may irreversibly alter its historic character. Based on these errors, the most judicious and legally sound recourse is to refer this matter back to the Commission.

For the Commission to approve a CofA for new construction on the site of a designated city landmark, the new construction must comply with Secretary of the Interior's Standards for Rehabilitation (Secretary's Standards).^{1, 2} The Secretary's Standards are ten guiding principles for the rehabilitation and preservation of historic resources. The purpose of this review was to identify factual errors the Commission relied on in their decision, and important information relevant to their decision that was missing.

After a thorough review of the complete record in this matter, a number of significant and material errors were identified related to Standards 1, 2, 3, 5, and 9. This review focused on the most egregious errors that would affect the decision of the Commission and is not meant to be complete or exhaustive. Conformance with the Secretary's Standards was not part of this review. This memo includes the following information regarding the Commission's decision:

1. The Standard;
2. The discussion in the staff report of that Standard;
3. Factual errors that the Commission relied on to make their decision; and

¹ [MGO 41.18.](#)
² [36 CFR 67.7.](#)

4. Important information the Commission did not have about the adverse effects of the new construction on the landmarked property that they needed to make an informed decision on that Standard.

Three errors that effect most or all of the Secretary's Standards.

There were three errors that likely would have a material and adverse impact on the Commission's decision regarding most, if not all of the Secretary's Standards:

- The Commission did not have any of the detailed and thorough guidance provided by the Secretary on the use of the Standards.³
- The Commission was not aware that the definition of "property" as the term is used in the Secretary of the Interior's Standards for Rehabilitation means, "a building, site, and landscape features."^{4, 5}
- The Commission was instructed not to consider the adverse effect of the new construction on landscape features, contrary to the Secretary's Standards.^{6, 7}

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.

Discussion in staff report regarding Standard 1.

The landmark site was listed for the significance of the Old Spring Tavern, which operated as an inn and hotel from 1853-1895. After that point, the property became a residence. When the Nakoma neighborhood was platted in 1926, a few houses had already been built (like 3710 Council Crest, constructed in 1923), the owners of the Old Spring Tavern property retained two of the lots for the development. Gradually houses came to surround the historic resource, with most of them dating to the 1930s. The north lot, which is the subject property was vacant and gradually transformed to be a yard more typical of a suburban neighborhood through the introduction of landscaping. The two-lot landmark site has functioned as a residential property located within a residential neighborhood of similarly sized houses for nearly a century. The introduction of another house within this setting, and having that house located significantly far away from the historic resource meets this standard's requirements of minimal change to the

³ "For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. 'Preservation Briefs' and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the SHPOs and NPS WASO." [36 CFR 67.7\(c\)](#).

⁴ Key terms used in the Secretary of the Interior's Standards for Rehabilitation are defined in the Code of Federal Regulations. [36 CFR 67.2](#).

⁵ "Property" as the term is used in the Secretary of the Interior's Standards for Rehabilitation means, "a building, site, and landscape features." [36 CFR 67.2 "Property"](#).

⁶ The preservation planner advised commissioners, "The Commission doesn't have regulatory authority over the tree.", Landmarks Commission, [Meeting Video](#), July 22, 2022.

⁷ "The Commission has previously stated that the old black walnut tree on the landmark site is not a part of the commission's review." And, "The commission only reviews removal of trees in instances where the landscaping is a part of the historic designation, such as properties designated for their landscape architecture. There is no discussion of the tree in the landmark nomination." Heather Bailey, [Staff Report](#), August 14, 2023, page 5.

defining characteristics of the setting and no changes to the physical character of the historic building itself other than mitigating the stormwater that currently impacts the historic resource.

Factual errors and missing information regarding Standard 1.

Factual errors:

- The Commission did not consider the adverse effect of the new construction on the site or landscape features.

Answers to the following question(s) about the adverse effects of the new construction, and other information the Commission needed to make an informed decision regarding compliance with Standard 1, but did not have:

- Is the new construction necessary for new use of the landmarked property?
- Does the proposed new construction require a minimal change to the defining characteristics of the site?
- Guidance on appropriate and inappropriate rehabilitation treatments provided by the Secretary relevant to Standard 1.
- “Property” as the term is used in the Secretary’s Standards means, “a building, site, and landscape features.”

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.

Discussion in staff report regarding Standard 2.

There are no historic materials proposed to be removed. The deep yard on the western half of the landmark site is proposed to have a house located on it, which matches the neighborhood setting in which the historic tavern is located.

Factual errors and missing information regarding Standard 2.

Factual errors:

- The Commission did not consider the adverse effect of the new construction on the site or landscape features.
- The staff report concludes, “The deep yard on the western half of the landmark site is proposed to have a house located on it, which matches the neighborhood setting.” This conclusion is not relevant to Standard 2. There is no requirement in Standard 2 that the new construction match or is compatible with the neighborhood or setting.

Answers to the following question(s) about the adverse effects of the new construction, and other information the Commission needed to make an informed decision regarding compliance with Standard 2, but did not have:

- Is the historic character of the building, site, and landscape features retained and preserved?
- Is the alteration of features and spaces that characterize the historic building, site, and landscape features avoided?
- Guidance on appropriate and inappropriate rehabilitation treatments provided by the Secretary relevant to Standard 2.
- “Property” as the term is used in the Secretary’s Standards means, “a building, site, and landscape features.”

Standard 3.

Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.

Discussion in the staff report regarding Standard 3.

The new house will read as a product of its time and will not create a false sense of history. It uses a similar architectural vocabulary to the nearby residential structures, but is obviously a new design.

Factual errors and missing information regarding Standard 3.

Factual errors:

- The Commission did not consider the adverse effect of the new construction on the site or landscape features.
- The discussion in the staff report concludes, “The new house will read as a product of its time,” which is not relevant to Standard 3. Standard 3 requires that the historic building, site, and landscape features—not the new construction—be recognized [read] as a physical record of their time, place, and use.

Answers to the following question(s) about the adverse effects of the new construction, and other information the Commission needed to make an informed decision regarding compliance with Standard 3, but did not have:

- Will the new construction have an adverse effect on the ability of the historic building, site, and landscape features to be recognized as a physical record of their time, place, and use?
- Will the proposed changes create a false sense of historical development?

- Guidance on appropriate and inappropriate rehabilitation treatments provided by the Secretary relevant to Standard 3.
- “Property” as the term is used in the Secretary’s Standards means, “a building, site, and landscape features.”

Standard 5.

Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.

Discussion in the staff report regarding Standard 5.

There are no distinctive features to this side of the landmark site and no examples of craftsmanship to preserve.

Factual errors and missing information regarding Standard 5.

Factual errors 5:

- The Commission did not consider the adverse effect of the new construction on the site or landscape features.
- The discussion in the staff report concludes, “There are no distinctive features to this side of the landmark site,” which is contrary to the Secretary’s Standards. The Secretary’s guidance on the use of the Standards recommends identifying, retaining, and preserving features of the building site that are important in defining its overall historic character, which may include steps, walks, paths, vegetation such as trees, and landforms such as hills.⁸

Answers to the following question(s) about the adverse effects of the new construction, and other information the Commission needed to make an informed decision regarding compliance with Standard 5, but did not have:

- Are the distinctive features that characterized the historic building, site, and landscape features preserved?
- Guidance on appropriate and inappropriate rehabilitation treatments provided by the Secretary relevant to Standard 5.⁹
- “Property” as the term is used in the Secretary’s Standards means, “a building, site, and landscape features.”

⁸ Secretary of the Interior, [Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings](#), page 137.

⁹ “For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. ‘Preservation Briefs’ and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary’s Standards for Rehabilitation are available from the SHPOs and NPS WASO.” [36 CFR 67.7\(c\)](#).

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.

Discussion in the staff report regarding Standard 9.

The new construction is located 78 feet away from the historic resource. The new building will read as a building of its time, but it [is] still compatible with the size and style of houses found in that part of the Nakoma neighborhood.

Factual errors and missing information regarding Standard 9.

Factual errors:

- The Commission did not consider the adverse effect of the new construction on the site or landscape features.
- The discussion in the staff report concludes, “The new building will read as a building of its time, but it still compatible with the size and style of houses found in that part of the Nakoma neighborhood.” While the new construction may be compatible with the environment, the staff report does not address if the new construction protects the historic integrity of the site and landscape features, which is required in Standard 9.

Answers to the following question(s) about the adverse effects of the new construction, and other information the Commission needed to make an informed decision regarding compliance with Standard 9, but did not have:

- Is the new construction related to the new use of the historic property?
- Does the new construction destroy historic materials that characterize the site and landscape features?
- Is the new construction compatible with the massing, size, scale, and architectural features to protect the historic integrity of the site and landscape features?
- Guidance on appropriate and inappropriate rehabilitation treatments provided by the Secretary relevant to Standard 9.
- “Property” as the term is used in the Secretary’s Standards means, “a building, site, and landscape features.”

Attachment: CFR § 67.7 Standards for rehabilitation.
CFR § 67.2 Definitions.

cc: Mayor Satya Rhodes-Conway

This content is from the eCFR and is authoritative but unofficial.

Title 36 – Parks, Forests, and Public Property

Chapter I – National Park Service, Department of the Interior

Part 67 – Historic Preservation Certifications Under the Internal Revenue Code

Authority: 16 U.S.C. 470a(a)(1)(A); 26 U.S.C. 47 and 170(h).

Source: 54 FR 6771, Feb. 26, 1990, unless otherwise noted.

Editorial Note: Nomenclature changes to part 67 appear at [76 FR 30541](#), May 26, 2011.

§ 67.7 Standards for rehabilitation.

- (a) The following Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation. The intent of the Standards is to assist the long-term preservation of a property's significance through the preservation of historic materials and features. The Standards pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior of historic buildings. The Standards also encompass related landscape features and the building's site and environment, as well as attached, adjacent, or related new construction. To be certified, a rehabilitation project must be determined by the Secretary to be consistent with the historic character of the structure(s) and, where applicable, the district in which it is located.
- (b) The following Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility. (The application of these Standards to rehabilitation projects is to be the same as under the previous version so that a project previously acceptable would continue to be acceptable under these Standards.)
 - (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.
 - (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.
 - (3) Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
 - (4) Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
 - (5) Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
 - (6) Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
 - (7) Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

- (8) Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
 - (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.
 - (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.
- (c) The quality of materials and craftsmanship used in a rehabilitation project must be commensurate with the quality of materials and craftsmanship of the historic building in question. Certain treatments, if improperly applied, or certain materials by their physical properties, may cause or accelerate physical deterioration of historic buildings. Inappropriate physical treatments include, but are not limited to: improper repointing techniques; improper exterior masonry cleaning methods; or improper introduction of insulation where damage to historic fabric would result. In almost all situations, use of these materials and treatments will result in denial of certification. Similarly, exterior additions that duplicate the form, material, and detailing of the structure to the extent that they compromise the historic character of the structure will result in denial of certification. For further information on appropriate and inappropriate rehabilitation treatments, owners are to consult the Guidelines for Rehabilitating Historic Buildings published by the NPS. "Preservation Briefs" and additional technical information to help property owners formulate plans for the rehabilitation, preservation, and continued use of historic properties consistent with the intent of the Secretary's Standards for Rehabilitation are available from the SHPOs and NPS WASO. Owners are responsible for procuring this material as part of property planning for a certified rehabilitation.
- (d) In certain limited cases, it may be necessary to dismantle and rebuild portions of a certified historic structure to stabilize and repair weakened structural members and systems. In such cases, the Secretary will consider such extreme intervention as part of a certified rehabilitation if:
- (1) The necessity for dismantling is justified in supporting documentation;
 - (2) Significant architectural features and overall design are retained; and
 - (3) Adequate historic materials are retained to maintain the architectural and historic integrity of the overall structure.

Section 47 of the Internal Revenue Code of 1986 exempts certified historic structures from meeting the physical test for retention of external walls and internal structural framework specified therein for other rehabilitated buildings. Nevertheless, owners are cautioned that the Standards for Rehabilitation require retention of distinguishing historic materials of external and internal walls as well as structural systems. In limited instances, rehabilitations involving removal of existing external walls, *i.e.*, external walls that detract from the historic character of the structure such as in the case of a nonsignificant later addition or walls that have lost their structural integrity due to deterioration, may be certified as meeting the Standards for Rehabilitation.

- (e) Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary's Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.
- (f) The qualities of a property and its environment which qualify it as a certified historic structure are determined taking into account all available information, including information derived from the physical and architectural attributes of the building; such determinations are not limited to information contained in National Register or related documentation.

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Title 36 – Parks, Forests, and Public Property

Chapter I – National Park Service, Department of the Interior

Part 67 – Historic Preservation Certifications Under the Internal Revenue Code

Authority: 16 U.S.C. 470a(a)(1)(A); 26 U.S.C. 47 and 170(h).

Source: 54 FR 6771, Feb. 26, 1990, unless otherwise noted.

Editorial Note: Nomenclature changes to part 67 appear at [76 FR 30541](#), May 26, 2011.

§ 67.2 Definitions.

As used in these regulations:

Certified Historic Structure means a building (and its structural components) which is of a character subject to the allowance for depreciation provided in section 167 of the Internal Revenue Code of 1986 which is either:

- (a) Individually listed in the National Register; or
- (b) Located in a registered historic district and certified by the Secretary as being of historic significance to the district.

Portions of larger buildings, such as single condominium apartment units, are not independently considered certified historic structures. Rowhouses, even with abutting or party walls, are considered as separate buildings. For purposes of the certification decisions set forth in this part, a certified historic structure encompasses the historic building and its site, landscape features, and environment, generally referred to herein as a “property” as defined below. The NPS decision on listing a property in the National Register of Historic Places, including boundary determinations, does not limit the scope of review of the rehabilitation project for tax certification purposes. Such review will include the entire historic property as it existed prior to rehabilitation and any related new construction. For purposes of the charitable contribution provisions only, a certified historic structure need not be depreciable to qualify; may be a structure other than a building; and may also be a remnant of a building such as a facade, if that is all that remains. For purposes of the other rehabilitation tax credits under section 47 of the Internal Revenue Code, any property located in a registered historic district is considered a certified historic structure so that other rehabilitation tax credits are not available; exemption from this provision can generally occur only if the Secretary has determined, prior to the rehabilitation of the property, that it is not of historic significance to the district.

Certified Rehabilitation means any rehabilitation of a certified historic structure which the Secretary has certified to the Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, where applicable, with the district in which such structure is located.

Duly Authorized Representative means a State or locality's Chief Elected Official or his or her representative who is authorized to apply for certification of State/local statutes and historic districts.

Historic District means a geographically definable area, urban or rural, that possesses a significant concentration, linkage or continuity of sites, buildings, structures or objects united historically or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically during the period of significance but linked by association or function.

Inspection means a visit by an authorized representative of the Secretary or a SHPO to a certified historic structure for the purposes of reviewing and evaluating the significance of the structure and the ongoing or completed rehabilitation work.

National Register of Historic Places means the National Register of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture that the Secretary is authorized to expand and maintain pursuant to section 101(a)(1) of the National Historic Preservation Act of 1966, as amended. The procedures of the National Register appear in 36 CFR part 60 et seq.

Owner means a person, partnership, corporation, or public agency holding a fee-simple interest in a property or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits.

Property means a building and its site and landscape features.

Registered Historic District means any district listed in the National Register or any district which is:

- (a) Designated under a State or local statute which has been certified by the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of significance to the district, and
- (b) Certified by the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

Rehabilitation means the process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while preserving those portions and features of the building and its site and environment which are significant to its historic, architectural, and cultural values as determined by the Secretary.

Standards for Rehabilitation means the Secretary's Standards for Rehabilitation set forth in section 67.7 hereof.

State Historic Preservation Officer means the official within each State designated by the Governor or a State statute to act as liaison for purposes of administering historic preservation programs within that State.

State or Local Statute means a law of a State or local government designating, or providing a method for the designation of, a historic district or districts.

[54 FR 6771, Feb. 26, 1990, as amended at 62 FR 30235, June 3, 1997]

Matthias, Isaac L

From: Larry and Ginny White <lgwhites@gmail.com>
Sent: Sunday, January 7, 2024 4:45 PM
To: All Alders
Subject: 1/9/24 Agenda Item #80871

Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Madison Alder:

It's customary for alders to show deference to colleagues on routine matters. You can usually expect your colleagues to know what's right for their own districts.

But when matters have city-wide implications, we expect you to make an independent decision.

The Old Spring Tavern on Nakoma Road is a historic landmark at risk of being overwhelmed by an oversized house. The Landmarks Commission approved the building plan despite strong objections from the Madison Trust for Historic Preservation and nearby neighbors. Now that the action is being appealed, we urge you to make an independent decision. Historic preservation is a city-wide issue in a city fast losing its charm and sense of history.

Please consider this question anew. A developer bought the historic property, carved out and sold a buildable lot and walked away with a substantial profit.

Now, should the lot buyers be allowed to deface a historic site because they can afford to? Afford to pay \$500K for a lot; hire attorneys, engineers and architects as advocates; and spend hundreds of thousands of dollars more to build a 4,200-square-foot house that's too massive for the site?

We ask you to consider this bottom-line question: Does money trump historic preservation in Madison or do we still value our past?

Respectfully,

Ginny and Larry White
71 Oak Creek Trail
Madison