

Attorney Lester A. Pines
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March 7, 2024

Ms. Ledell Zellers
Chair
City of Madison Plan Commission
210 Martin Luther King Jr. Blvd.
Madison, WI 53703

Re: Re: Proposed Certified Survey Map for Land Division
at 1908 Arlington Place, Madison

Dear Ms. Zellers:

Thank you for your March 6, 2024, email in response to my March 6, 2024 letter through which I requested that the Plan Commission postpone its consideration of the proposed certified survey map for 1908 Arlington Place (hereinafter the "proposed 1908 CSM"). Your response suggested that there were significant timing issues with such a postponement and that I should discuss this matter with Tim Parks of the Planning Department staff. I contacted him yesterday and had a productive and helpful discussion.

Consequently, rather than requesting a postponement of the Plan Commission's consideration of the proposed certified survey map, I am hereby requesting that it conditionally approve the proposed 1908 CSM with the following conditions:

- The approval of the proposed 1908 CSM shall not be effective until after the consideration of the February 21, 2024, appeal of the Landmarks Commission's approval of a certificate of appropriateness for a land division at 1908 Arlington Place in the University Heights Historic District (the "February 21 appeal") by the Madison Common Council (the "Council") and the certificate of appropriateness is approved by the Council, and as a further condition,

- If the Council, after considering the February 21 appeal, refers the matter back to the Landmarks Commission, the approval of the proposed 1908 CSM shall not be effective: (a) until the Landmarks Commission again approves a certificate of appropriateness and that decision is not timely appealed; or (b), if there is a timely appeal, until the Council has rendered a final decision on it.

The basis for this request for a **conditional approval** by the Plan Commission of the proposed 1908 CSM is as follows:

Although the Landmark's Commission on February 12, 2024, approved a certificate of appropriateness for the 1908 land division, its action is not final because of the February 21, 2024, appeal. A March 19, 2024, hearing on the appeal is scheduled before the Council. Until it has acted on the appeal, there is no valid certificate of appropriateness for the proposed land division in the University Heights Historic District, and there cannot be one until the Council has acted. However, the Council does not have to make a final decision on March 19 because the Madison General Ordinances section 41.20(4) states that:

After a public hearing, the Common Council may, by favorable vote of a majority of its members, reverse or modify the decision of the Landmarks Commission with or without conditions, **or refer the matter back to the Commission with or without instructions**, if it finds that the Commission's decision is contrary to the applicable standards under Secs. 41.18, 41.19, or any district-specific standards contained in Subchapter G. (Am. by ORD-16-00082, 9-15-16) (emphasis added).

Wis. Stat. sec 236.34 (1m) (f) requires that the City of Madison (the "authority") requires it to act within 90 days on a request for a certified survey map as follows:

Within 90 days of submitting a certified survey map for approval, the approving authority, or its agent authorized to approve certified survey maps, shall take action to approve, **approve conditionally**, or reject the certified survey map and shall state in writing any conditions of approval or reasons for rejection, unless the time is extended by agreement with the subdivider. Failure of the approving authority or its agent to act within the 90 days, or any extension of that period, constitutes an approval of the certified survey map and, upon demand, a certificate to that effect shall be made on the face of the map by the clerk of the authority that has failed to act. (emphasis added)

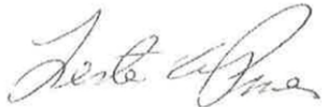
The request for approval of the proposed 1908 CSM was filed on January 8, 2024. By conditionally approving it with the conditions I have suggested, the City will have met

its obligation to act within 90 days while at the same time ensuring that the appeal of the Landmarks Commission decision can be fully considered by the Council without limiting its ability to remand the matter to the Landmarks Commission, if the Council deems that to be the best course of action. Conditionally approving the proposed 1908 CMS as I have requested protects the right of the applicant to a timely decision but will as well protect the rights of the property owners who have appealed the Landmarks Commission decision.

I will be happy to answer any questions that the members of the Plan Commission may have during its meeting on March 11 at 5:30 by Zoom. I will have registered to appear and speak.

Very truly yours,

PINES BACH LLP



Lester A. Pines

LAP:lkp

cc: All Plan Commission members
All Petition Signatories
Assistant City Attorney Kate Smith
Heather Baily, Ph.D.
Mayor Satya Rhodes-Conway