Carly S. Conway
3706 Nakoma Road
Madison, Wisconsin 53711

August 4, 2023

Heather L. Bailey, Ph.D.
Preservation Planner
Dept. of Planning, Community, & Economic Dev.
215 Martin Luther King, Jr. Blvd., Suite 017
Madison, Wisconsin 53701-2985

Re: *Objection to New Home Construction Application for 3701 Council Crest*
City Legislative File I.D. No. 79099

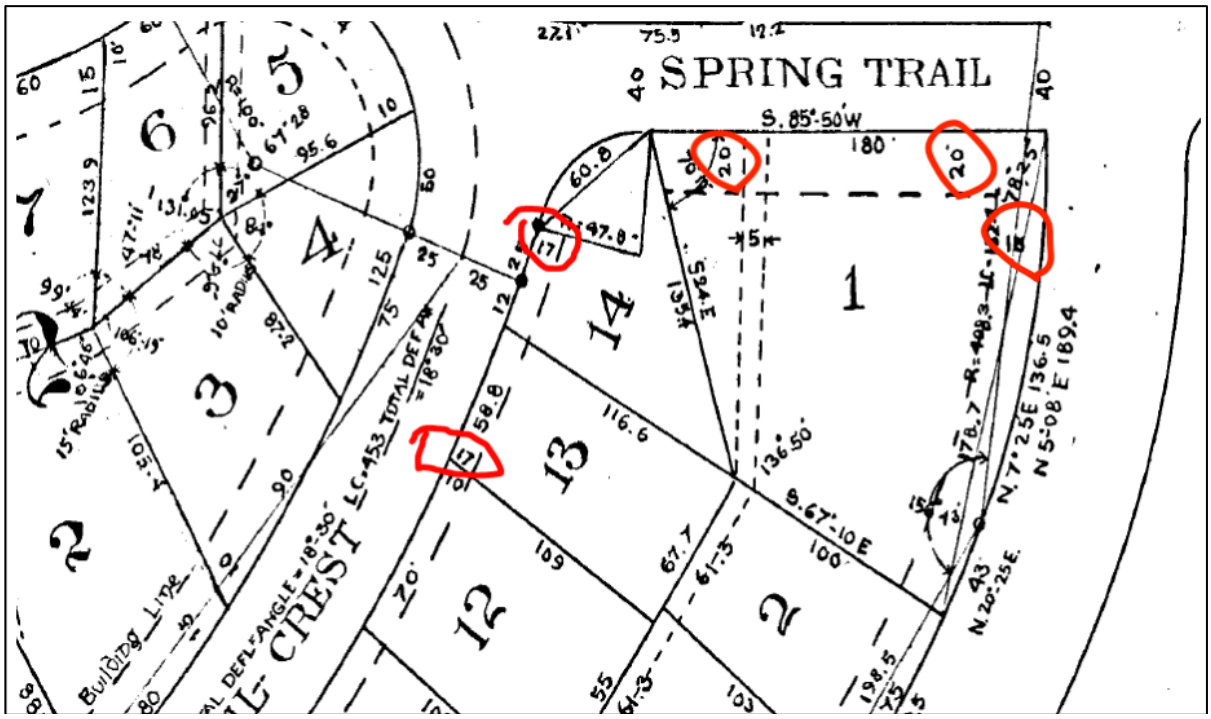
Dear Dr. Bailey:

My husband and I own the Old Spring Tavern, a city landmark built in 1854 and located at 3706 Nakoma Road. The City designated the Tavern a city landmark in 1972. The property is also listed on the national and state historic registers. Images of the front and back of the home are below:

The owners of the adjacent landmark parcel, 3701 Council Crest, recently submitted an application to the Landmarks Commission to construct a new home on the property. Because their proposed construction does not abide by historic building setbacks that have been in place since the founding of the Nakoma neighborhood, and to which all other neighboring houses adhere, we respectfully urge the Commission to deny the application as inconsistent with the Secretary of Interior's Standards for Rehabilitation.

A. Background

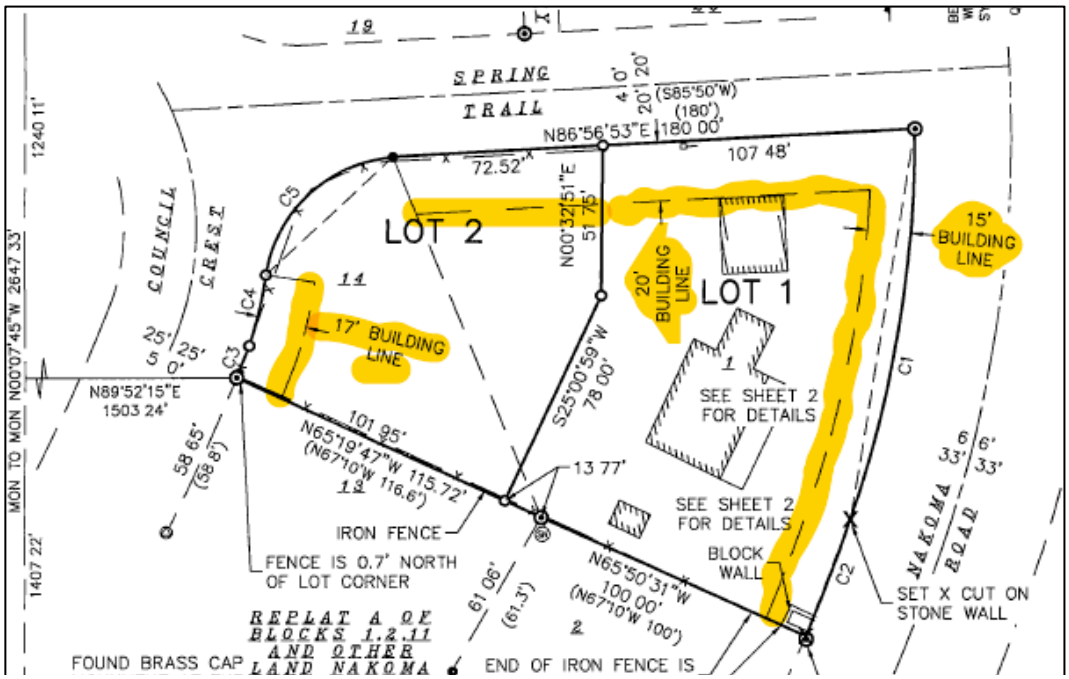
In the 1920s, the Madison Realty Company developed and sub-divided the section of the Nakoma neighborhood on which the Old Spring Tavern sits, after purchasing the property from the Gorham family—the second owners of the Tavern who ran it as an inn during the Civil War.[1] The Company filed the first and earliest available plat for the neighborhood with the Dane County Register of Deeds in July 1926. *See* Attachment A. The July 1926 plat imposed "building lines," or setbacks, of varying dimensions on every parcel in the three-block vicinity of the Tavern to ensure uniform spatial relationships among neighboring properties. Below is a portion of the July 1926 plat focused on the Old Spring Tavern and its immediately surrounding parcels with some of these setbacks circled in red:



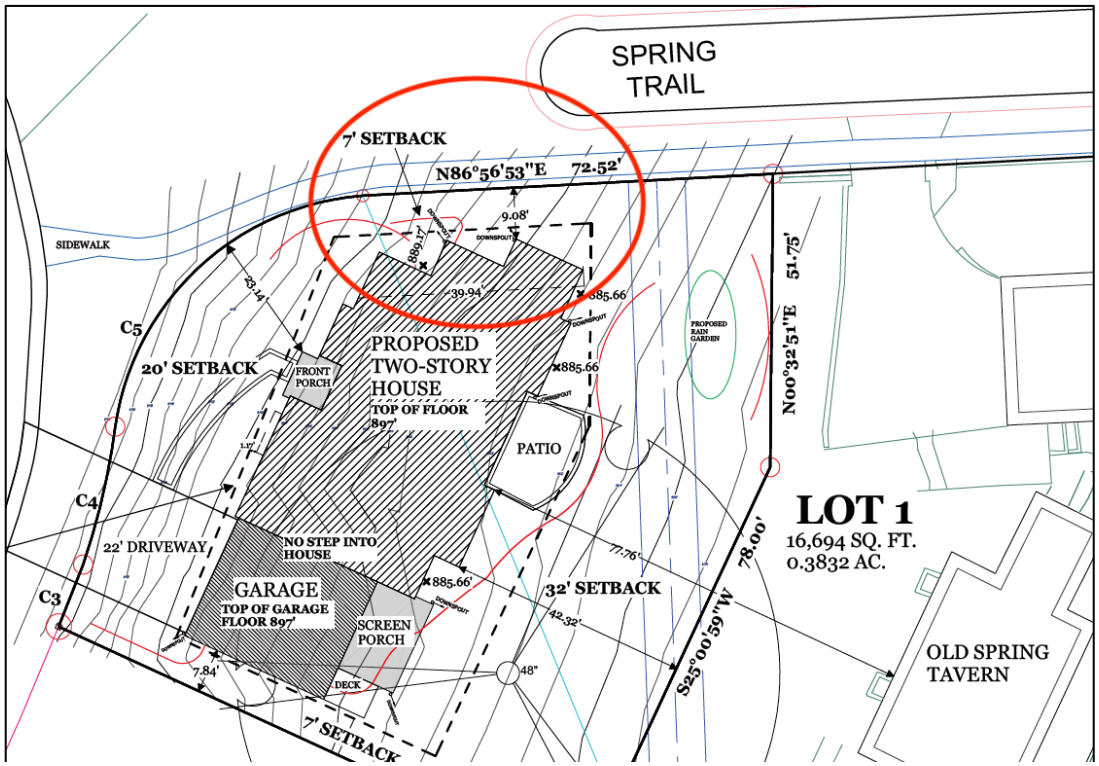
The Old Spring Tavern property historically consisted of two unequally-sized parcels (Lots 1 and 14 above) with one owner. In 2022, the Tavern was purchased by a developer who obtained Commission approval to adjust the lot line between Lots 1 and 14 to create two similarly-sized landmark sites—3706 Nakoma Road (Lot 1 below) and 3701 Council Crest (Lot 2 below). In doing so, the developer filed with the Register of Deeds a Certified Survey Map ("CSM") for the now-divided Old Spring Tavern property carrying forward the same front, rear, and side historic setbacks that were originally found on the July 1926 plat. *See* Attachment B. As is evident from the CSM, the Tavern itself complies with these historic setbacks, as does the garage structure on the property that was built around the year 2000, with the Commission's

[1] *See* The Nakoma Neighborhood, *available at* https://www.cityofmadison.com/dpced/planning/documents/Nakoma%20Walking%20Tour.pdf

approval. Below is the relevant portion of the CSM filed in October 2022, for the now-divided properties with the historic setbacks highlighted in yellow:



In contrast, the applicants' proposed construction for 3701 Council Crest (Lot 2) does not abide by the 20-foot side-yard historic setback. According to their survey, the proposed construction would stand just 9.08 feet away from the property line, as circled in red:



A perspective rendering from the applicants' submission shows just how close the proposed construction would be to the property line, which is demarcated by the iron fence:

B. Basis for Objection

Under Madison Ordinance § 41.18(1), a proposed new construction on a landmark site must "meet the Secretary of the Interior's Standards for Rehabilitation" to qualify for a certificate of appropriateness. The Secretary's Standards are designed to "assist the long-term preservation of a property's significance through the preservation of historic materials and features."[2] The Standards "encompass the exterior and the interior of historic buildings," as well as "the building's site and environment" and "adjacent . . . new construction." As relevant here, the Secretary's Standard Nos. 1 and 2 instruct that (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," and (2) the "alteration of features, spaces, and spatial relationships will be avoided."[3]

The Landmark Commission should deny the pending application because the proposed construction would needlessly violate the Secretary's Standards by disregarding historic setbacks that have defined the spatial relationships on the landmark site and its surrounding neighborhood for a century. The historic setbacks have existed in their present form since the

[2] Secretary of Interior's Standards for Rehabilitation, *available at* https://www.nps.gov/subjects/taxincentives/secretarys-standards-rehabilitation.htm

[3] The Secretary states the first standard with more specificity elsewhere on its website: "A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and *spatial relationships*." Secretary's Standards for Rehabilitation as a Treatment, *available at* https://www.nps.gov/articles/000/treatment-standards-rehabilitation.htm.

founding of Nakoma. They have always applied to the Tavern property, and continue to do so after the lot line adjustment in October 2022. Not only does the Tavern itself comply with these historic setbacks, a modern garage built next to the Tavern just two decades ago also complies. In addition, the historic setbacks extend to neighboring properties in the three-block vicinity of the Tavern, all of which uniformly comply with the setbacks despite having homes of varying ages and architectural styles. If the Commission were to approve the proposed construction, 3701 Council Crest would become the first and only property on the July 1926 plat to fail to conform with the historic setbacks after nearly a century—despite the property itself being a landmark site situated within a National Register Historic District.

In addition, a landmark's setting is "the larger area or environment in which the historic building is located."[4] According to the Secretary of Interior, "[t]he relationship of buildings to each other, setbacks, fence patterns, views, driveways and walkways, and street trees and other landscaping together establish the character of a district or neighborhood." The historic setbacks have served this very function on the landmark site and its surrounding parcels since Nakoma's founding, which has allowed the Old Spring Tavern's setting to maintain the verdant, capacious, and uniform character that has long defined its neighborhood. It would needlessly diminish these intentional spatial relationships to allow the construction of an irregularly-sized home on a too-small parcel that is itself a landmark site, when a conforming home easily could be proposed and approved.

The applicants contend in their submission that the proposed construction is consistent in scale with the Tavern. There are two problems with this statement. First, the Tavern is actually a much smaller structure than the applicants' proposed construction. To claim parity of scale, the applicants compare the scale of their single proposed structure to the scale of the Tavern and its detached garage, counting the landscaped area between the two. This is confirmed by the diagram set forth in their application:

[4] Secretary of Interior's Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings, pg. 21, *available at* https://www.nps.gov/orgs/1739/upload/treatment-guidelines-2017-part1-preservation-rehabilitation.pdf

Second, even if one were to accept the scale comparison between the Tavern and the proposed construction, the spatial relationship between these structures and their respective lots is not equivalent. The Tavern's lot (Lot 1) is considerably larger and wider than the applicants' lot (Lot 2). Lot 1 is 16,694 square feet (0.38 acres); Lot 2 is 10,832 square feet (0.25 acres). A structure that fits on a large, wide parcel does not fit in the same way on a smaller, narrower parcel. In this case, the proposed construction cannot fit on the applicants' lot without disregarding historic setbacks and disrupting the spatial relationships intended by the July 1926 plat. There is adequate space to build a home at 3701 Council Crest while still respecting these historic setbacks that have always governed the landmark site and its surrounding neighborhood.

Finally, this objection does not propose that the Commission enforce the historic setbacks as a matter of zoning. 3701 Council Crest is a TR-C1 zoned property subject to a 7-foot side-yard setback by ordinance. *See* Madison Ordinance 28.042. In contrast, the historic setbacks are restrictive private covenants imposed on Nakoma properties presumably by the Madison Realty Company since the neighborhood's founding in the 1920s. Although the City does not enforce private covenants, the Commission has the discretion to require adherence to them, in this case, as a historic component of the Old Spring Tavern's setting that has defined spatial relationships on the property and in the surrounding neighborhood since 1926.

Indeed, solid precedent exists for the Commission to do so. In July 2015, the owners of a nearby Nakoma property—4022 Manitou Way—sought approval to demolish the parcel's existing home in order to build a new home up to the 20-foot front yard setback required by the TR-C1 ordinance.[5] Like the properties here, 4022 Manitou Way had a private restrictive covenant dating to the original plat that required a 30-foot front yard building line. After vigorous debate, the Plan Commission acknowledged that the City does not enforce historic building lines of this sort as a matter of zoning.[6] Nevertheless, due to the historic nature of the Nakoma neighborhood, including its National Register Historic District status, the Plan Commission granted the demolition permit subject to the condition that any new construction on the proposed parcel honor the 30-foot historic setback.[7] The Landmark Commission should do the same thing here and require any new construction on 3701 Council Crest to adhere to

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[5] *See* Capital Times, "Madison Plan Commission Approves Contentious Nakoma House Demolition Proposal," Aug. 27, 2015, *available at* https://captimes.com/news/local/writers/todd-milewski/madison-plan-commission-approves-contentious-nakoma-house-demolition-proposal/article_6ae6b0ef-4eea-580a-965f-a1657f83f26a.html

[6] *See* Plan Commission Meeting, July 13, 2015, *available at* https://media.cityofmadison.com/mediasite/Showcase/madison-city-channel/Presentation/6f474bfb37ee44b9be1da4bcc7cf3cb81d (relevant debate at timestamps 2:27:37 to 2:39:50).

[7] *See* Plan Commission Meeting, Aug. 24, 2015, *available at* https://media.cityofmadison.com/mediasite/Showcase/madison-city-channel/Presentation/9d72394e06c64c5c93ac661eb1160fff1d (motion passes for demolition subject to 30-foot historic setback at 2:49:00).

the historical setbacks consistent with the Secretary's Standards before issuing a certificate of appropriateness.

We greatly appreciate your kind attention to this matter. We are prepared to assist you and the Landmarks Commission by providing any further information or access necessary to aid in the decision-making process.

Respectfully submitted,

Carly Conway

ATTACHMENT A

City Legislative File I.D. No. 79099

New Home Application for 3701 Council Crest

463246 A

Replat "A"

OF

BLOCKS 1, 2, 11 AND OTHER LAND

NAKOMA

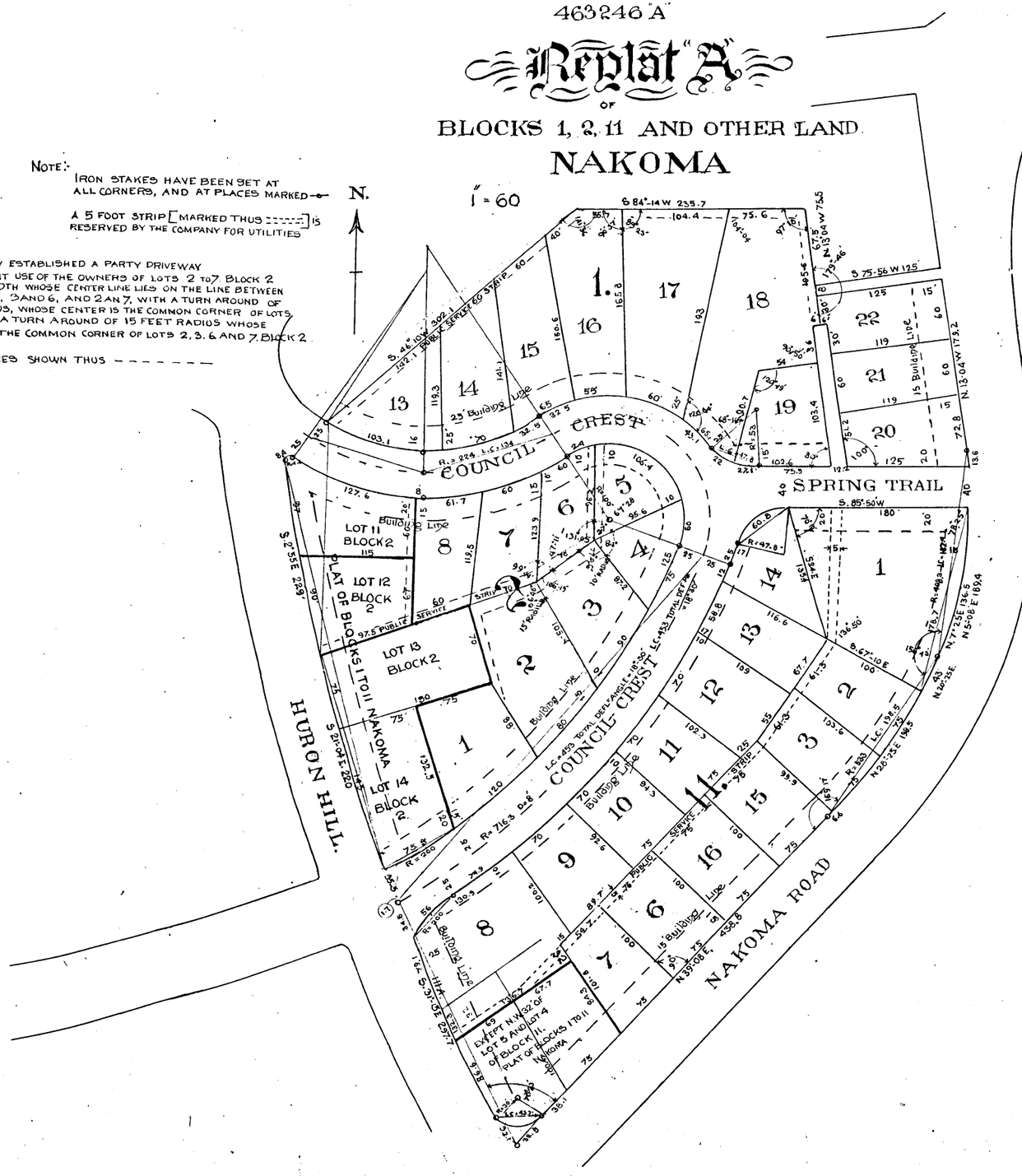
NOTE:-

IRON STAKES HAVE BEEN SET AT ALL CORNERS, AND AT PLACES MARKED ⊸

A 5 FOOT STRIP [MARKED THUS ::::::] IS RESERVED BY THE COMPANY FOR UTILITIES

THE COMPANY ESTABLISHED A PARTY DRIVEWAY FOR THE JOINT USE OF THE OWNERS OF LOTS 2 TO 7 BLOCK 2 OF 10 FOOT WIDTH WHOSE CENTER LINE LIES ON THE LINE BETWEEN LOTS 5 AND 6, 3 AND 6, AND 2 AN 7, WITH A TURN AROUND OF 10 FOOT RADIUS, WHOSE CENTER IS THE COMMON CORNER OF LOTS 3 TO 6, AND A TURN AROUND OF 15 FEET RADIUS WHOSE CENTER IS THE COMMON CORNER OF LOTS 2, 3, 6 AND 7 BLOCK 2

BUILDING LINES SHOWN THUS – – – – – –



I, Theo. J. Pankow, hereby certify that I am a surveyor, and that by direction of the Madison Realty Company, I have surveyed, platted and mapped the following described lands, lying in the S.W.¼ Sec 28-7N R.9E., to wit:- Beginning at the N.W. line of Nakoma Road, at the South corner of lot 5, Block 11 Plat of Blocks 1 to 11 Nakoma: thence N 35°-08 E 438.8 feet: thence N 28°-25 E, on curve to left, whose radius of 533 feet, and long chord of 198.5 feet:- thence N 5°-08 E, on curve to left with radius of 408.3 feet, and long chord of 189.4 feet:- thence N 13°-04 W. 179.2 feet to the South line of 84th walk:- thence S 75°-56 W 125 feet:- thence N. 13°-04 W 75.5 feet, to the East corner of lot 4, Block 1 of aforesaid plat:- thence S 84°-14 West, along the South line of lots 4 to 7 of said Block 1, 237.5 feet: thence S 4°-46' W, along the rear line of lots 8 to 12, of said Block 1, 302.1 feet, thence S 21°-55' E 229 feet to the corner of Manitou Way of Lots 12 and 13, Block 2 of said plat:- thence S 21°-04 E 220 feet to the South corner of Lot 14 of said Block 2:- thence S 31°-15 E. 297.7 feet to the beginning; but excepting Lots 11 to 14 Block 2, and all except the NW 32 feet of lots 4 & 5 Block 11, Plat of Blocks 1, 2, 11 Nakoma.

I also certify that the within plat is a correct representation of the exterior boundaries of the land surveyed, and the subdivisions thereof made, and that I have fully complied with the provisions of Chapter 236 of the laws of 1925 of Wisconsin in surveying, subdividing and mapping said land

Theo J. Pankow
Surveyor

Subscribed and sworn to before me this 29th day of March 1926
My commission expires Apr 7 1929
Marguerite C Hicks
Notary Public Dane Co Wis

MARGUERITE HICKS NOTARY PUBLIC DANE COUNTY WIS

State of Wisconsin } ss
County of Dane }

The Madison Realty Company, a Corporation organized under the laws of Wisconsin, of Madison, Wisconsin, by its President and Secretary, duly authorized thereto, duly hereby certify that it has caused the land described in the foregoing certificate of Theo J. Pankow, Surveyor to be surveyed, subdivided and mapped as represented on the within map, and that it is the owner of said land. In witness whereof the Madison Realty Company has caused these presents to be signed by its President, sealed with its Corporate Seal, and countersigned by its Secretary this 27th day of May A.D. 1926

Madison Realty Company
By E. Ray Stevens President
Countersigned Alfred T. Rogers Secretary

MADISON REALTY CORPORATE SEAL MADISON, WISCONSIN

A.H. Anderson
Bernice Jelmstad
Witnesses

State of Wisconsin } ss
County of Dane }

Be it remembered that on this 27th day of May A.D. 1926 personally appeared before me E. Ray Stevens known to me to be the President and Alfred T. Rogers known to me to be the Secretary of the Madison Realty Company, and personally known to me to be the persons who executed the above foregoing instrument, and who severally acknowledged that they executed said instrument as the free act of said Corporation, done by them in their several official capacities as aforesaid, pursuant to a resolution of the Directors setting in conformity to its By Laws and Articles of Incorporation.

Alice M. Kinney
Notary Public Dane Co. Wis

ALICE M. KINNEY NOTARY PUBLIC DANE COUNTY WISCONSIN

My commission as Notary Public expires Nov 4. 1929

"Resolved that a plat known as Replat of Blocks 1, 2, 11, Nakoma, being a part of section 28, be and hereby is approved, as required by Chapter 236 of the laws of 1925"

City of Madison } ss
County of Dane }

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Common Council of the City of Madison Wisconsin on the 28th day of May 1926 Witness my hand and corporate seal of said City this 2nd day of June 1926.

W. R Winder
City Clerk

CITY OF MADISON INCORPORATED MARCH 1856

"Resolved that a plat known as Replat of Blocks 1, 2, 11 Nakoma being a part of section 28 T7N. R.9E. be and hereby is approved as required by Chapter 236 of the laws of 1925.

Town of Madison
County of Dane } ss

I hereby certify that the foregoing is a true and correct copy of a resolution adopted by the Town Board, Town of Madison, Dane County, Wisconsin on the 5th day of June 1926.

Fred W. Wakem
Town Clerk

Office of Register of Deeds
Dane County, Wisconsin

Received for record this 1st day of July, 1926. at 2 o'clock P.M. and recorded in Volume 6 of Plats on page 4

C.A. Lewis
Register of Deeds

4

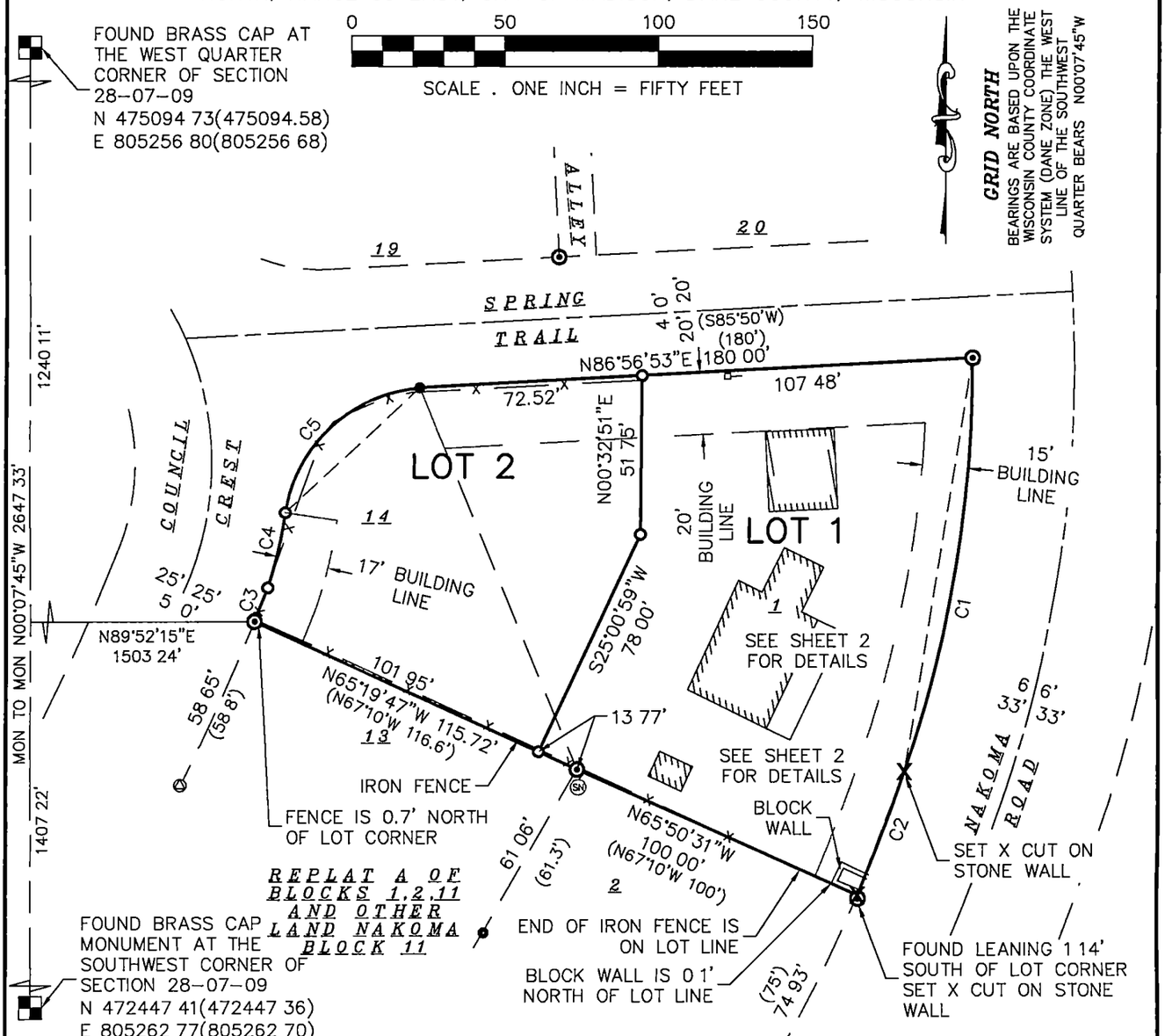
ATTACHMENT B

City Legislative File I.D. No. 79099

New Home Application for 3701 Council Crest

CERTIFIED SURVEY MAP No. 16136

LOTS 1 AND 14, BLOCK 11, REPLAT A OF BLOCKS 1, 2, 11 AND OTHER LAND NAKOMA, AS RECORDED IN VOLUME 6 OF PLATS, ON PAGE 4, AS DOCUMENT NUMBER 463246A, DANE COUNTY REGISTRY, LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 07 NORTH, RANGE 09 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN



NOTES

1 See sheet 2 for legend and curve table
2 See sheet 2 for easement and building dimension details
3 The lots created by this Certified Survey Map are responsible for compliance with MGO chapter 37 at the time of development
4 Lot 1 shall accept drainage over the common lot line to benefit Lot 2
5 CSM is subject to Notice of Landmark Designation in instrument recorded November 14, 1972 as Document No 1346993
6 A sewer lateral service will be required to obtain a building permit to improve Lot 2
7 The "Building Lines" shown and noted on this Certified Survey Map are the "Building Lines" as shown and denoted on Replat A of Blocks 1, 2, 11 and Other Land Nakoma The Building Lines were not noted as a restriction on that plat as required by a public body and also the plat does not name a public body as a grantee, promisee or beneficiary Therefore the "Building Lines" are not specifically enforceable by the City of Madison

LOT AREAS

LOT 1=16,694 SQ FT
OR 0.3832 AC
LOT 2=10,832 SQ FT
OR 0 2487 AC

WISCONSIN
MICHELLE L BURSE
S-2020
Sun Prairie
WI
10/18/2022
LAND SURVEYOR

SURVEYED FOR :
3706 NAKOMA ROAD LLC

SURVEYED BY :

Burse
surveying & engineering Inc.
2801 International Lane, Suite 101
Madison, WI 53704 608 250 9263
Fax 608 250 9266
email mburse@bse-inc net
www bursesurveyengr com

MAP NO 16136
DOCUMENT NO 5869517
VOLUME 119 PAGES 109
Date October 18, 2022
Plot View csm
\BSE2589\dwg\Survey\BSE2589 v2018 dwg

CERTIFIED SURVEY MAP No. 16136

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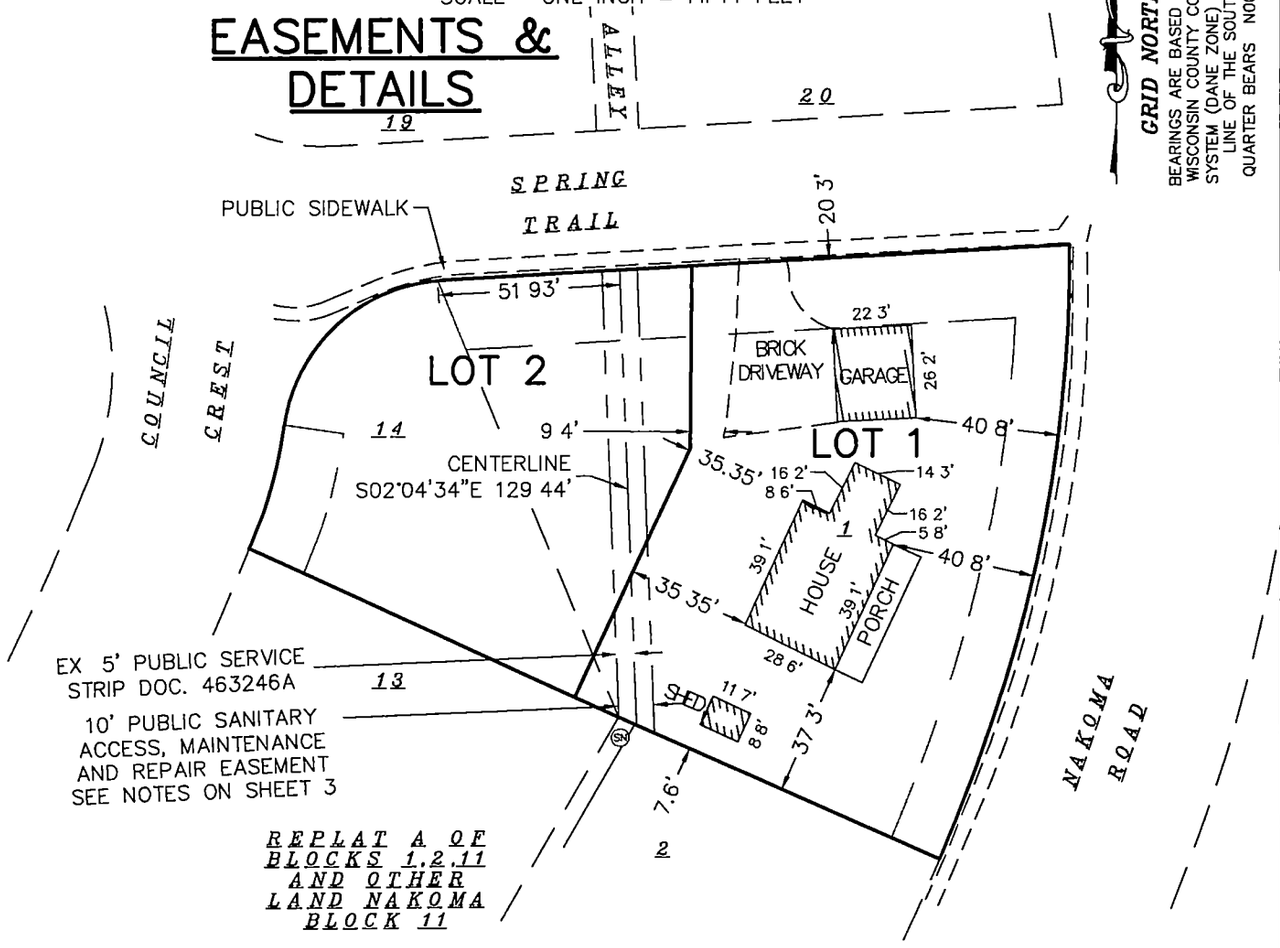
0 50 100 150

SCALE ONE INCH = FIFTY FEET

EASEMENTS & DETAILS



Curve Table

Curve #	Length	Radius	Delta	Chord Direction	Chord Length	TB IN	TB OUT
C1	137.04'	408 30'	19°13'47"	S09°13'59"W (S7°25'W)	136.39'(136 5')	S00°22'55"E	S18°50'52"W
C2	42 97'	533 00'	4°37'10"	S20°40'28"W (S20°25'W)	42 96' (43')	S18°21'53"W	S22°59'02"W
C3	11 75'	741 30'	0°54'29"	N21°31'24"E	11 75' (12')	N21°58'39"E	N21°04'10"E
C4	25.04'	125 00'	11°28'42"	N13°05'42"E	25 00'	N18°50'03"E	N7°21'21"E
C5	64.55'	47 80'	77°22'34"	N47°01'46"E	59 76' (60 8')	N08°20'29"E	N85°43'03"E

SURVEYED BY :

Burse
surveying & engineering Inc
2801 International Lane, Suite 101
Madison, WI 53704 608 250 9263
Fax 608 250 9266
email mburse@bse-inc net
www bursesurveyengr com

MAP NO 16136
DOCUMENT NO 5869517
VOLUME 119 PAGES 110

Date: October 18, 2022
Plot View csm
\BSE2589\dwg\Survey\BSE2589 v2018 dwg

WISCONSIN
MICHELLE L BURSE
S-2020
Sun Prairie
WI
10/18/2022
LAND SURVEYOR

LEGEND

- ⊙ 3/4" IRON PIPE FOUND
- ● 3/4" SOLID IRON ROD FOUND
- ◉ 1" IRON PIPE FOUND
- ○ 3/4" X 18" SOLID IRON RE-ROD SET, WT 1 50 lbs /ft
- ( ) INDICATES RECORDED AS

DISTANCES ARE MEASURED TO THE NEAREST HUNDREDTH OF A FOOT BUILDINGS ARE MEASURED TO THE NEAREST TENTH OF A FOOT.

CERTIFIED SURVEY MAP No. 16134

LOTS 1 AND 14, BLOCK 11, REPLAT A OF BLOCKS 1, 2, 11 AND OTHER LAND NAKOMA, AS RECORDED IN VOLUME 6 OF PLATS, ON PAGE 4, AS DOCUMENT NUMBER 463246A, DANE COUNTY REGISTRY, LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 07 NORTH, RANGE 09 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN

Public Sanitary Access Maintenance and Repair Easement

Creation of Easement Rights A permanent easement over, across a portion of the property (the "Easement Area") is established, memorialized, reserved by, granted, conveyed, transferred and assigned to the City of Madison for the uses and purposes hereinafter set forth The Easement Area may be used by the City of Madison for the ingress and egress for maintenance equipment, construction equipment and pedestrians in the Access Easement Area to enable the City, its employees and agents, to perform work related to the construction, inspection, maintenance, repair, and reconstruction of the public sanitary sewer located within the Public Service Strip per Doc No 463246A, Replat A of Blocks 1, 2, 11 and Other Lands Nakoma as shown and noted on this Certified Survey Map The City agrees for itself and its employees and agents to use the Access Easement Area in a manner fully complying with all laws and other legal requirements

Maintenance of Easement Area The property owners of Lots 1 and 2 of this Certified Survey Map (Owners) shall maintain a clear route at all times over the Easement Area The temporary closure of the Easement Area by the Owners for private yard maintenance shall be permitted City of Madison shall repair any damage caused to any turf located within the Easement Area and/or the Property as a result of the use of the Easement Area by or on behalf of the City of Madison as provided herein Following completion of any excavation work, City of Madison shall promptly restore the area affected by the work to the original surface grade including the repair or replacement of turf

Any plantings and landscaping within the Easement Area shall not obstruct routine access for maintenance of sewer facilities by the City In the event of required City maintenance or repair access to the sanitary sewer, any plantings and landscaping within the Easement Area may be removed as needed by the City without replacement or compensation to the Owner The Owner shall not change the grade of the Easement Area without the prior written approval of the City of Madison Engineering Division

Limitations on Use of Easement Area The Access Easement Area shall be used by the City as provided herein, in common with the Owners and the Owners' agents, employees, tenants, licensees, invitees, successors and assigns The Owners shall have the right to use and enjoy the Easement Area, provided such use does not unreasonably interfere with the use of the Access Easement Area by the City for the purposes set forth herein

The Owners shall not erect or permit to be erected any sign, fence without a gated access, wall, pole, post, structure, or other facility so as to prevent the City's access to the Easement Area If locked gating is required by the Owners, the Owners shall provide a key or substitute key arrangement satisfactory to the City Engineer allowing for access to the Existing Sewer Easement 24 hours a day, 7 days a week

The City's use of the Easement Area shall not unreasonably interfere with the use of the Owners' property by the Owners

The City shall not use the Easement Area for open storage or permanent parking of vehicles or equipment of any kind

The City shall use the Easement Area only as a route of access from Council Crest to and from the Public Service Strip containing the Public Sanitary Sewer lying within or abutting this Certified Survey Map The City shall not permit the Easement Area to become, or to be construed to be, a route of access by the general public to reach public lands

Binding Effect This Easement shall run with the land described herein and shall be binding upon the Owners, and their successors in interest

Release of Rights to Easements Created by Plat Any release of rights that were placed on platted land which was required by a public body or which names a public body or public utility as grantee shall be released by recording a separate easement release document with the Dane County Register of Deeds in accordance with ss236 293

MAP NO 16134
DOCUMENT NO 5869517
VOLUME 119 PAGES 111
Date October 18, 2022
Plot View csm
\BSE2589\dwg\Survey\BSE2589 v2018 dwg

SURVEYED BY :
Burse
surveying & engineering Inc.
2801 International Lane, Suite 101
Madison, WI 53704 608 250 9263
Fax 608 250 9266
email mburse@bse-inc net
www bursesurveyengr com

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LEGAL DESCRIPTION:

LOTS 1 AND 14, BLOCK 11, REPLAT A OF BLOCKS 1, 2, 11 AND OTHER LAND NAKOMA, AS RECORDED IN VOLUME 6 OF PLATS, ON PAGE 4, AS DOCUMENT NUMBER 463246A, DANE COUNTY REGISTRY, LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 07 NORTH, RANGE 09 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN
THIS DESCRIPTION CONTAINS 27,526 SQUARE FEET OR 0 6319 ACRES

SURVEYOR'S CERTIFICATE:

I, Michelle L Burse, Professional Land Surveyor No 2020, hereby certify that I have surveyed, divided, and mapped the above described lands under the direction of the owner of said land I further certify that the map on sheet one (1) is a correct representation of the exterior boundaries of the lands surveyed, and that I have fully complied with the provisions of Chapter 236 34 of the State Statutes, and the Land Division Ordinance of the City of Madison in surveying, dividing, and mapping the same

Dated this 18 day of OCTOBER, 2022

Signed Michelle L Burse
Michelle L Burse, P L S No 2020

OWNER'S CERTIFICATE

3706 Nakoma Road LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, does hereby certify that said limited liability company caused the land described on this Certified Survey Map to be surveyed, divided, mapped and dedicated as represented on this Certified Survey Map

3706 Nakoma Road LLC does further certify that this Certified Survey Map is required by S 236 34, Wisconsin Statutes and City of Madison Code of Ordinances to be submitted to the following for approval or objection

City of Madison

IN WITNESS WHEREOF, the said 3706 Nakoma Road LLC has caused these presents to be signed by David S. Gordon, its managing member on this 19 day of October, 2022

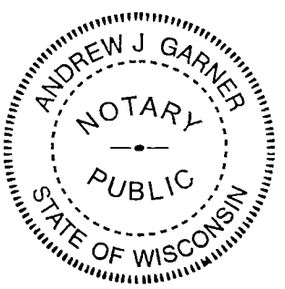
3706 Nakoma Road LLC

By David S Gordon

Name David S Gordon
Title. Managing Member

STATE OF Wisconsin)
)ss
County of Dane)

Personally came before me this 19 day of October, 2022, David S Gordon, Managing Member of the above named Limited Liability Company to me known to be the person who executed the foregoing instrument, and to me known to be such managing member of said Limited Liability Company, and acknowledged that they executed the foregoing instrument as such officers and the deed of said corporation, by its authority



A J.
Notary Public, Wisconsin
My commission expires 9/23/23

MAP NO 16136
DOCUMENT NO 5869517
VOLUME 119 PAGES 112
Date October 18, 2022
Plot View csm
\BSE2589\dwg\Survey\BSE2589 v2018 dwg

SURVEYED BY :
Burse
surveying & engineering Inc
2801 International Lane, Suite 101
Madison, WI 53704 608 250 9263
Fax 608 250 9266
email mburse@bse-inc net
www bursesurveyengr com

CERTIFIED SURVEY MAP No. 16136

LOTS 1 AND 14, BLOCK 11, REPLAT A OF BLOCKS 1, 2, 11 AND OTHER LAND NAKOMA, AS RECORDED IN VOLUME 6 OF PLATS, ON PAGE 4, AS DOCUMENT NUMBER 463246A, DANE COUNTY REGISTRY, LOCATED IN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 28, TOWNSHIP 07 NORTH, RANGE 09 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN

CORPORATE MORTGAGEE CERTIFICATE:

Dupaco Community Credit Union, a banking association, mortgagee of the above described land, does hereby consent to the surveying, dividing, mapping, and dedication of the land described on this C S M, and does hereby consent to the above certificate of 3706 Nakoma Road LLC, owner

IN WITNESS WHEREOF, the said Dupaco Community Credit Union, has caused these presents to be signed by Mark McCoy, its Senior Vice President at Madison, Wisconsin, this 19 day of October, 2022

Authorized representative

State of Wisconsin)
)ss
County of Dane)

Personally came before me this 19 day of October, 2022, the above named _____, to me known to be the persons who executed the foregoing instrument and acknowledged the same

Notary Public A. J. Garner

My commission expires/is permanent 9/23/23

ANDREW J. GARNER NOTARY PUBLIC STATE OF WISCONSIN

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WISCONSIN MICHELLE L BURSE S-2020 Sun Prairie WI 10/18/2022 LAND SURVEYOR

CERTIFIED SURVEY MAP No. 16136

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CITY OF MADISON PLAN COMMISSION CERTIFICATE

Approved for recording per the Secretary of the City of Madison Plan Commission

By. Timothy M Parks, for _____ Date 20 Oct 2022
Matthew Wachter, Secretary of the Plan Commission

CITY OF MADISON COMMON COUNCIL APPROVAL

Resolved that this Certified Survey Map located in the City of Madison was hereby approved by Enactment Number RES-22-00543, File I D Number72637, adopted on the 2nd day of August, 2022, and that said Enactment further provided for the acceptance of those lands dedicated and rights conveyed by said Certified Survey Map to the City of Madison for public use

Dated this 20 day of October, 2022

Maribeth Witzel-Behl
Maribeth Witzel-Behl, City Clerk
City of Madison, Dane County, Wisconsin

WISCONSIN
MICHELLE BURSE
S-2020
Sun Prairie
WI
10/18/2022
LAND SURVEYOR

WISCONSIN
MICHELLE BURSE
S-2020
Sun Prairie
WI
10/18/2022
LAND SURVEYOR

Received 10-21-22 8:26 am

SURVEYED BY :

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Office of the Register of Deeds
Dane County, Wisconsin
Received for Record
October 21st, 2022 at
10:20 o'clock A M as
Document No 5869517
in Vol. 119 of CSMs
pages 109-114

Kristi Chlebowski by:
Lisa Stahl-Saty, Deputy
Register of Deeds

Carly S. Conway
3706 Nakoma Road
Madison, Wisconsin 53711

August 4, 2023

Heather L. Bailey, Ph.D.
Preservation Planner
Dept. of Planning, Community, & Economic Dev.
215 Martin Luther King, Jr. Blvd., Suite 017
Madison, Wisconsin 53701-2985

Re: *Addendum Letter, New Home Construction Application for 3701 Council Crest*
City Legislative File I.D. No. 79099

Dear Dr. Bailey:

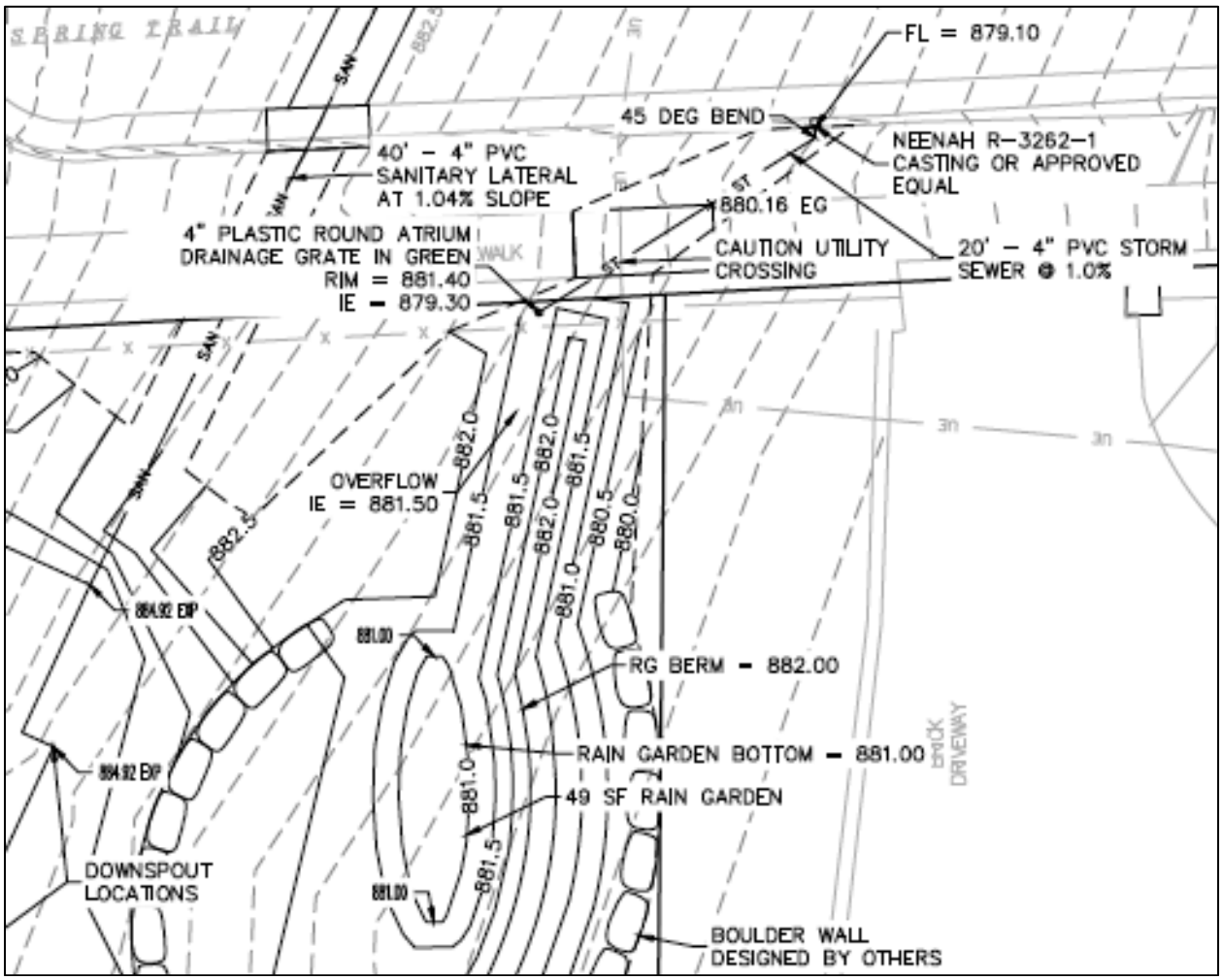
I write as an addendum to the objection letter I am contemporaneously filing regarding the new home construction application for 3701 Council Crest. In this letter, I will separately address the issue of stormwater drainage for the Commission's consideration in the event it overrules my objection. As you recall, earlier this year the applicants filed and withdrew a new home construction application containing little detail regarding their plans to mitigate the stormwater drainage risks posed to the Old Spring Tavern. At the time, I submitted a detailed objection explaining how important a comprehensive drainage plan is to protect the integrity of the historic landmark and to comply with the Secretary's Standards for Rehabilitation.[1] The applicants' current submission contains an "Erosion Control and Stormwater Management Report" ("Report") offering additional details about their drainage plans. We greatly appreciate the applicants' efforts to address these important concerns.

We have worked with a civil engineer to analyze the Report. At the applicants' suggestion, our engineer has spoken with the engineer who authored the Report to better understand the proposed drainage plan. On the whole, the plan appears reasonable so long as (1) the applicants implement the plan as specifically proposed, and (2) the applicants and any subsequent owners of their property maintain the drainage features in perpetuity.

First, the Commission should require the applicants to implement their drainage plan as specifically proposed in the Report. One area of particular concern is the proposed half-foot-deep "rain garden" located on the northeast portion of the applicants' property. The rain garden would essentially serve as a stormwater reservoir protecting the Old Spring Tavern from the increased runoff caused by the thousands of square feet of new impervious surface on the

[1] My previous objection is found in City Legislative File I.D. No. 77464 available at https://madison.legistar.com/View.ashx?M=F&ID=11956859&GUID=7AE65AB5-851A-44AA-96A4-A2A05514AFB3 (PDF pages 11 to 20).

applicants' uphill lot. As proposed, the rain garden would gather runoff from nearly 75 percent of the applicants' property. Any overflow would initially drain into a nearby 4-inch drainage grate that would connect underneath the sidewalk of the adjacent Spring Trail via an underground PVC pipe, 20-feet in length, 4-inches in diameter. Any stormwater that the PVC pipe could not convey would discharge onto the adjacent sidewalk. Below is a diagram from the Report depicting this proposal:



Stated simply, this drainage grate, PVC pipe, and sidewalk overflow would prevent the rain garden from discharging onto the Tavern property by redirecting water to the city sewer instead. This is a key component of the proposed drainage plan that will require careful implementation. It is essential that the Commission condition any certificate of appropriateness on close adherence to the specific details of the drainage plan as proposed, including this important rain garden element.

Second, the Commission should require the applicants to record a stormwater maintenance agreement against their parcel to ensure that the proposed rain garden system remains functional going forward. The City generally requires maintenance agreements to be recorded for new development that requires a stormwater permit. *See* Madison Ordinance

37.09(3)(c)(2). Although the proposed construction may not trigger a stormwater permit, the Commission should nonetheless require applicants to record a maintenance agreement with the Register of Deeds in order to ensure that the rain garden and its overflow mechanism remain functional into the future (*e.g.*, not clogged with sediment, not eroding, not in need of dredging, etc.). Once recorded, the maintenance agreement would require the applicants and future owners of the parcel to repair and maintain the rain garden system consistent with the approved proposal. It would also grant the City the right to maintain the rain garden at the parcel owner's expense in the event the owner fails to do so. A maintenance agreement would ensure that the applicants' proposed drainage plan continues to protect the Old Spring Tavern's integrity now and for many years into the future.[2]

Thank you for your careful and thoughtful attention to this matter. Please do not hesitate to contact me if you have any questions or require anything further.

Respectfully submitted,

Carly Conway

[2] A sample City of Madison stormwater maintenance agreement is available at https://www.cityofmadison.com/engineering/documents/stormwatermanagementdeclarationandeasement_form.docx

MADISON TRUST for Historic Preservation

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

August 4, 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 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 July 21, 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.

Background

The Madison Trust for Historic Preservation, founded in 1974, represents more than 350 members. We educate people about Madison's history and neighborhoods through historic architecture walking tours and other events, and we advocate for the preservation of significant historic sites to help protect the unique character of Madison's streetscapes and neighborhoods.

The Old Spring Tavern property is one of Madison's most significant historic sites. 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.

A visit to the Tavern property is among the most memorable stops on the 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 historic

(Continued)

west yard, as proposed by the Furlows, 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 completely change the character and appearance of the historic west yard and overshadow the landmark Tavern.

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 <u>minimal change to the defining characteristics of the building and its site and environment</u>.
- Standard 2. <u>The historic character of a property shall be retained and preserved.</u> The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
- Standard 9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. <u>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.</u>
- Standard 10. New additions and adjacent or related <u>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</u>.

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.

(Continued)

Reasons for Denying Certificate of Appropriateness

There are a number of reasons for denying a Certificate of Appropriateness for this proposed new construction.

The proposed house is very large at 4,500 square feet. It would be located very close to the Tavern and its highest point would be higher than the Tavern. This means its massing and scale would not be compatible with the Tavern, which disqualifies the proposal under SOI Standard 9. It also means that the historic character of the Tavern property, defined by an inn located in a rural landscape, surrounded by a large yard, would not be preserved, which disqualifies the proposal under SOI Standard 2.

- To demonstrate the size of the proposed house, consider that there are 644 houses in Nakoma. According to figures presented by the Furlows, the proposed house would be bigger than at least 97% of all Nakoma houses based on square footage. (They say that only 20 houses in Nakoma have a larger square footage than their proposed house.)
- Moreover, its highest point would be higher than the Tavern's highest point, its back wall would be only 26 yards from the front of the Tavern, and it would be built on a slope above the Tavern. All these aspects of the proposed house, along with its mass and bulk, would make it incompatible with the Tavern.
- The back of the proposed house would be 37 feet high, facing the 30 foot tall front of the Tavern, with 10 feet of height added to the proposed house because it would be built on a higher base because of the upward slope of the yard.
- That means that the top of the proposed house would be 47 feet above the bottom of the front door of the Taven, significantly higher than the top of the Tavern, which is only 30 feet above the bottom of its front door.

The proposed house would occupy an inordinately large proportion of its lot. This means that it would create significant change to the landmark lot, which disqualifies the proposal under SOI Standard 1, which requires minimal change to the site and environment.

- According to figures presented by the Furlows, the proposed house would occupy more of its lot than 98% of all Nakoma houses. (They say that only 10 of the 644 houses in Nakoma occupy a larger percentage of their lots than the proposed house.)
- Building a house that occupies so much of a lot by definition creates more than a minimal change to the landmark lot.

The proposed house would most likely seriously damage or kill the historic black walnut tree in the west yard. This disqualifies the proposal under SOI Standards 1 and 2, which require minimal change to the site and environment and retention of the historic character of the property.

(Continued)

- 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 significant and historic trees in the well-known 2005 book by arborist Bruce Allison, Every Root an Anchor: Wisconsin's Famous and Historic Trees.
- An arborist we spoke with who was trimming trees at the property next door to the west yard and 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 on the lot very close to the tree, as the Furlows propose, would inevitably significantly damage the root system and put severe stress on the tree.
- While ordinary 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.

If the proposed new construction took place but was later removed, the landmark west yard would be left in a completely different condition than it is now. This disqualifies the proposal under SOI Standard 10, which stipulates that new construction should be undertaken in such a manner that if removed in the future would leave the essential form of the historic property and its environment unimpaired.

- The large construction project proposed by the applicants would change the landmark west yard extensively, including likely damage to the historic black walnut tree, and it is clear that even if any construction was removed in the future the property would not be unimpaired.

Responses to Points Presented in Furlow Application

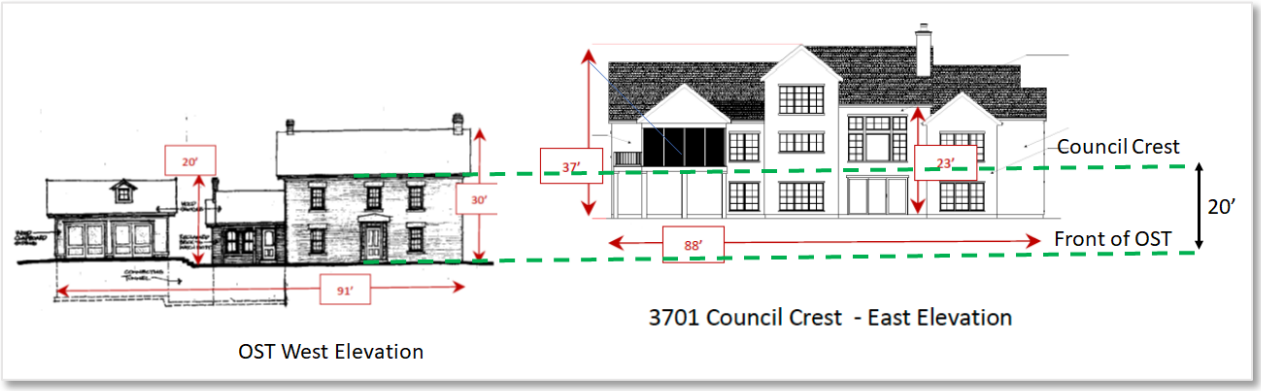
The Furlows made a number of points in their application, some of which were misleading or provided without context, so we wanted to respond to several of them.

Furlow Application Point 6.

- The Furlows say the proposed house is consistent in scale with the Tavern and show side-by-side comparisons of the two-story front of the house with the two-story front of the Tavern, and the three-story back of the house with the three-story back of the Tavern.

(Continued)

- This is the wrong comparison. The appropriate comparison would show the three-story back of the house with the two-story front of the Tavern, because those are the two sides of the buildings that would face each other, only 26 yards apart. (The distance between the two buildings would be short; 26 yards is less than the distance between home plate and first base on a baseball diamond, for instance.)
- The front of the Tavern is 30 feet high and the back of the proposed house is 37 feet high, and the base of the three-story back of the house would be on higher ground (10 feet higher) than the two-story front of the Tavern, so the top of the proposed house would be 47 feet above the base of the Tavern while the top of the Tavern is 30 feet above its base, a significant and incompatible difference.
- All of this means that the proposed house would overshadow the Tavern and be incompatible with it because of its height, mass and close location.
- We have provided a drawing below to illustrate the relative height and mass differences between the sides of the two buildings that would face each other.



Furlow Application Point 2.

- The Furlows say the site has been altered and developed over time, with landscaping and additions to the Tavern (porches, driveway, patio, garage complex).
- The alterations the Furlows refer to were very modest changes and preserved the essential look and feel of the property. Somebody who walks, bicycles or drives past the property on Spring Trail and Council Crest (including people from all over Madison who go on our walking tours) can still envision what the entire property looked like 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. Equating the impact of a 4,500 square foot house with the impact of a patio or modestly-sized garage is ridiculous.

(Continued)

Furlow Application Point 3.

- The Furlows say the black walnut tree is old and probably will die soon, but nevertheless they designed the proposed home with a "notch" in the foundation near the tree to try to preserve it.
- First of all, it's not at all certain that the tree will die soon. The Furlows say it's 234 years old (which means it started growing in 1789, the year George Washington took office as our first President), and they say that black walnut trees have an average life span of 250 years. If this tree lives 20% longer than average, it would live for another 66 years if it isn't seriously damaged by construction of a house, and it could live much longer than that. It's very healthy now, so there's an excellent chance it would exceed the average 250-year lifespan unless its roots are seriously damaged.
- The tree would be at serious risk if the proposed home was built very close to it as the plans provide. A small "notch" in the home's foundation would do very little to mitigate the risk of building a home close to the tree and damaging a large part of its root structure. The Furlows make the vague general statement that they are planning steps to minimize root impacts, but they don't provide any specific information about what those steps would be.

Furlow Application Point 4.

- The Furlows say they will preserve some existing site elements, specifically the fence and some of the stonework on the site of the proposed house.
- However, preserving a few minor site elements does not change the fact that covering much of the west yard with a very large house would eliminate or drastically alter most of the current elements of the site.
- As an example, the clay for the bricks in the Tavern was dug from the slope in the west yard (reportedly among the first bricks fired in the Madison area). The slope where the clay was dug would be covered by the proposed house.

Furlow Application Point 7.

- The Furlows say there has been a lot of adjacent development and their proposed home is consistent with that development.
- This is incorrect. As discussed above, the proposed home is larger than at least 97% of Nakoma homes, according to the figures provided by the Furlows. Also, 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.

(Continued)

- The Furlows also cite the fact that a garage was added to the property in 2000. However, the garage is much smaller than an average-sized house, much smaller than the Tavern itself, and occupies only a small proportion of the historic yard.
- Also, the garage design was carefully reviewed and approved by the Landmarks Commission before it was built. The architect and owners worked hard to make the garage compatible with the historic Tavern and to minimize its visual impact on the historic site, by doing things such as putting the connecting passageway between the garage and the Tavern underground, using weathered stone from an old barn in rural Dane County on the bottom of the garage, and making the color of the garage a neutral dark gray shade.

Furlow Application Point 8.

- The Furlows say their home is consistent in style and scale with Nakoma development.
- If this is meant to imply that the home is an average-sized or typical residence for the neighborhood, it is wrong. As discussed previously, the figures presented by the Furlows show that this is a very large house by Nakoma standards (in the top 3%), and occupies an inordinately large share of the lot by Nakoma standards (in the top 2%).
- Furthermore, there are no other homes in Nakoma that we are aware of that are built only 26 yards from the front door of another house. That style of construction is nonexistent in Nakoma. Constructing a house so close to the front of another house (as opposed to constructing it close to the side of another house, which is common) is highly intrusive and highly incompatible and would severely damage the historic setting of the Tavern.

Final Points

Here are a few final points:

- First, 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.
- Second, the applicants need to explain how their proposal meets the Secretary's Standards. They have not done this. We have provided multiple examples of why their proposal does not meet the Secretary's Standards.

(Continued)

Conclusion

The 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 4,500 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
Vice President
On Behalf of the Madison Trust for Historic Preservation Advocacy Committee