

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

Date: December 20, 2023

**MEMORANDUM**

TO: Heather Bailey, City of Madison Preservation Planner

FROM: Kate Smith, Office of the City Attorney

RE: Appeal of Landmarks Commission decision at 3701 Council Crest

Legistar Number 80871 is an appeal from the Landmarks Commission decision on November 6, 2023 to grant a Certificate of Appropriateness for new construction on a designated landmark at 3701 Council Crest. 3701 Council Crest is zoned TR-C1 (Traditional Residential – Consistent District 1) and under MGO Sec. 28.032, detached single-family residents are permitted (or “by right”). Typically, permitted zoning uses are not before the Common Council. But in this case, 3701 Council Crest is a designated landmark site and therefore required to obtain a Certificate of Appropriateness (“CoA”) for new construction.

The property owners have the right to build a new single-family home on their property but must first be granted the CoA by the Landmarks Commission. After a few revisions, the owners got the CoA for a house with an attached garage. In response, nearby property owners filed a valid appeal pursuant to MGO 41.20. Preservation Planner Heather Bailey’s memo outlines the procedural history of the project and the standards for approving a CoA.

Under MGO 41.20, “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.” To reverse or modify the CoA, the Council must make specific findings to **why and how** the Landmarks Commission is contrary to MGO 41.18 (language below from Heather Bailey’s attached staff memo):

*(1) New Construction or Exterior Alteration . The Landmarks Commission shall approve a certificate of appropriateness for exterior alteration or construction only if:*

*(a) N/A. (The proposed work is not to the designated landmark, which is the Old Spring Tavern, but rather to the landmark site.)*

*(b) In the case of exterior alteration or construction of a structure on a landmark site, the proposed work would meet the Secretary of the Interior's Standards for Rehabilitation.*

*(c) N/A*

*(d) In the case of any exterior alteration or construction for which a certificate of appropriateness is required, the proposed work will not frustrate the public*

*interest expressed in this ordinance for protecting, promoting, conserving, and using the City's historic resources.*