



AXLEY BRYNELSON, LLP

• • • • •
ROBERT C. PROCTER
(608) 283-6762
rprocter@axley.com

September 16, 2011

SENT VIA HAND DELIVERY

Madison Landmarks Commission
Department of Planning & Development
215 Martin Luther King Jr. Blvd., Suite LL100
Madison, WI 53703

RE: 5117 University Avenue - Marshall Erdman & Associates Office
and Shop Landmark Nomination
(Legistar #23432)
Public Hearing
Our File: 12592.64910

Dear Landmark Commission Members:

We represent Erdman Real Estate Holdings, LLC (Erdman Holdings), the principal owner of 5117 University Avenue. Erdman Holdings urges the Commission to support the City's Staff report, and to not recommend designating its abandoned office building as a landmark or as a landmark site on the following basis:

1. As conclusively laid out by City Staff and the City Preservationist, the nomination does not establish any of the criteria that would be the basis of such a recommendation.
2. Erdman Holdings and Marshall Erdman's sons, employees and friends oppose such a designation for this building and site because this building is not an adequate representation of Marshall Erdman's contributions to the community.
3. Even if the Commission were to find that this building or this site could meet one of the criterion for such a recommendation, the Commission should exercise its discretion to not make such a recommendation because:
 - a. This site is a poor example of Marshall Erdman's legacy that designating it a landmark would not protect, enhance or perpetuate elements of the City's history;
 - b. Designating it a landmark would not safeguard the City's historic and cultural heritage;
 - c. Designating it a landmark would not serve as a support and stimulus to business and industry, and would actually stifle such concerns; and
 - d. Designating it a landmark would not strengthen the economy of the City, and would instead stifle job creation and the creation of approximately \$100 million of property assessments for tax purposes.

Erdman Holdings and Marshall Erdman's family, employees and friends believe that the best way to honor Marshall Erdman is to honor his commitment to healthcare by allowing the development of a health care facility at 5117 University Avenue as the fitting evolution of the site where he spent a career designing and building such health care facilities.

Marshall Erdman's legacy at this site would be best preserved by the permanent placement of a plaque or similar monument explaining his legacy as proposed by the developer.

The evidence that is already part of the record, and the evidence that will be presented at the Public Hearing provide a strong record to support the Commission not making a recommendation to designate 5117 University Avenue a landmark or a landmark site.

THE RECORD

A summary of the key submissions include:

- **The City's Preservationist, Amy Scanlon and City Staff Oppose a Recommendation of Landmark Designation.** Ms. Scanlon's report to the Commission provides that:
 - "Staff does not believe that this particular building exemplifies or reflects the broad cultural, political, economic or social history of the nation, state or community."
 - Staff does not believe that this building is an architectural specimen, and is not "characteristic of organic architecture espoused by Frank Lloyd Wright."
 - Staff does not believe that the building is a notable work of a master architect or building, and
 - Staff does not believe there is any evidence that William Kaeser designed the original building.
- **Marshall Erdman's Sons Tim and Rusty Erdman Oppose Landmark Designation.** Tim and Rusty Erdman submitted testimony by their letter dated September 1, 2011 to the Commission stating that the use of the location as a center for healthcare "is truly most fitting" and in keeping "with Marshall's legacy as a pioneer in outpatient health care facilities especially in the community he loved."

- ***Marshall's Son Dan Erdman Opposes Landmark Designation.*** Dan Erdman submitted testimony by letter dated August 2, 2011 stating "if the decision is whether to save [Marshall's] office building at the expense of doing something better, of making a significant, long term improvement to the area, I believe the answer is clear and the resulting development will be a fitting evolution on the site where my father spent a career."

- **Marshall Erdman's Employees Believe that Marshall Erdman Would Oppose Landmark Designation.**
 - Jerry Sholts, President of Erdman Real Estate Holdings, LLC, is a 45 year employee of Marshall Erdman and Erdman Holdings, and was one of Marshall Erdman's most trusted builders during his career. Jerry Sholts provided testimony by letter to the Commission dated September 13, 2011 explaining that healthcare facilities were Marshall Erdman's main focus and that Marshall "would be very upset and embarrassed that somebody would dedicate a building to him that had no real meaning except a place to run his business."

 - Alan G. Hembel, a personal friend and business partner of Marshall Erdman, and a current Director on the Erdman Holdings Board of Directors provided testimony by letter to the Commission dated September 14, 2011 that he does not believe Marshall Erdman had or would have wanted the buildings at 5117 University Avenue preserved.

 - Frank Miller, a former employee of Marshall Erdman, was a Professor of Architecture at the Massachusetts Institute of Technology, and testified at the August 8, 2011 hearing that the original building was a concrete block building, and that "[A]ssociating this building to Frank Lloyd Wright is not appropriate." *See Summary by Amy Scanlon Dated August 8, 2011.*

 - Richard J. Langer, Marshall Erdman's personal attorney described a conversation with Marshall where Marshall described this site as a "frugal place to do business" and the context of the conversation makes clear that Marshall Erdman did not view the site as a legacy of his work. *See Letter from Richard J. Langer of Michael Best & Friedrich LLP to Landmarks Commission dated September 13, 2011.*

- **Marshall Erdman’s Friends Oppose Landmark Designation.** Fred Mohs, who had known Marshall Erdman since 1950 and knew the building when it was his workshop, testified to the Commission in opposition to designating the building a landmark that ‘[t]his building was just a place to work.’ *See Summary by Amy Scanlon Dated August 8, 2011.*
- **Designating This Property a Landmark May Stop The University of Wisconsin Clinics and Hospital Authority Project, Which Will Weaken The City’s Economy and Stifle Business.**
 - The developer estimates that the entire development of the 14 acre Erdman Campus would create approximately \$100 million in tax base. *See Summary by Amy Scanlon Dated August 8, 2011.*
 - The proposed development could create up to 700 to 800 jobs. *See Summary by Amy Scanlon Dated August 8, 2011.*
 - Paul Lenhart of Krupp General Contractors submitted testimony by letter dated September 14, 2011 explaining that this application has been filed as a blocking tactic to development efforts.

**THE NOMINATION FAILS TO MEET THE
CRITERIA FOR LANDMARK DESIGNATION**

Under the appropriate ordinance, “[w]ithin ten (10) days after the close of the public hearing, and after the application of the criteria in Subsection (4), above, the commission *may* recommend the designation of the property as either a landmark or a landmark site ...” (Emphasis Added). *See City of Madison Ordinance § 33.19(6).*

The Staff’s report conclusively establishes that the application fails to meet any of the four criteria set forth in Subsection (4) of the ordinance. We will only add to the Staff’s response as to criterion (1) and criterion (2), which are the only criterion that the application appears to address with any relevant information.

Criterion (1). Criterion (1) provides that a landmark designation may be placed on sites if the sites “[e]xemplify or reflect the broad cultural, political, economic or social history of the nation, state or community.” This site itself does not reflect any cultural, political, economic or social history of the nation, state or community. It was Marshall Erdman’s workshop, but it does not have any cultural, political, economic or social history itself other than he worked at the site. As

pointed out by Staff, “there are numerous buildings in the area that better embody and identify [with Erdman’s] contributions than the buildings that served as his office and shop.” Perfect examples of buildings that are better identified with Marshal Erdman and the economic history of the community are the cluster of prefabricated homes in the area built by Marshall Erdman.

Criterion (2). This particular criterion provides that a landmark or landmark site designation may be placed on a site or building if the structure or site: “Are identified with historic personages or with important events in national, state or local history.” Marshall Erdman’s contributions are connected to the City’s history; however, this site and its improvements do not embody or identify with the breadth of his relevant work. Marshall Erdman’s family, employees and friends provide further evidence that the structure at 5117 University Avenue had no significance to Marshall Erdman, and that Marshall Erdman himself would be against the City designating it to preserve the memory of his work.

The Commission has cited examples of Walt Disney’s house, Cress Records in Chicago, and Aldo Leopold chicken coop as examples of landmarks that are eligible based on association with a historic person that may not be architecturally significant. Erdman Holdings does not dispute the point that a person can be of such historical importance that his or her mere presence at a location could support such a designation; however, as successful as Marshal Erdman was as a builder and businessperson, he does not rank such a distinction that his mere presence at the site supports such a designation. This is especially true when this site itself does not embody or identify with his work. The Commission should have no illusion – there would not be a pilgrimage of historians or citizens going to view the building at 5117 University Avenue to see where Marshall Erdman worked.

There are existing works that already honor Marshall Erdman’s legacy -- works that Erdman Holdings and the Erdman family deem as much more fitting tributes to his legacy.

**THE COMMISSION SHOULD EXERCISE ITS DISCRETION AND
NOT MAKE A RECOMMENDATION THAT 5117 UNIVERSITY
AVENUE BE DESIGNATED A LANDMARK**

Even if the Commission were to find that any of the four criteria were met to allow it to recommend designating the improvements or the site a landmark, it should not exercise its discretion to do so. It is clear that the Commission has the discretion to not recommend designating a site a landmark even if a criterion is met.

The Commission’s discretion should be guided by the purpose and intent of the Landmarks Commission, which is set forth at §33.19(1) of the Ordinance:

Purpose and Intent. It is hereby declared a matter of public policy that the protection, enhancement, perpetuation and use of improvements of special character or special historical interest or value is a public necessity and is required in the interest of health, prosperity, safety and welfare of the people. The purpose of this section is to:

- (a) Effect and accomplish the protection, enhancement and perpetuation of such improvements and of districts which represent or reflect elements of the City's cultural, social, economic, political and architectural history.
- (b) Safeguard the City's historic and cultural heritage, as embodied and reflected in such landmarks and historic districts.
- (c) Stabilize and improve property values.
- (d) Foster civic pride in the beauty and noble accomplishments of the past.
- (e) Protect and enhance the City's attractions to residents, tourists and visitors, and serve as a support and stimulus to business and industry.
- (f) Strengthen the economy of the City.
- (g) Promote the use of historic districts and landmarks for the education, pleasure and welfare of the people of the City.

The purpose and intent of the Landmarks Commission is the balancing of the above factors. Distilled, the Commission must weigh all of the factors when reaching its decision – the need to preserve the City's history, the support and stimulus of business and to strengthen the economy of the City. Weighing the historical significance of this site and the economic impact of the proposed development clearly indicates that the Commission should exercise its discretion, and not recommend a historical landmark designation for the property.

The proposed development will create approximately \$100 million tax base, and add hundreds of jobs. The historical significance of the abandoned building and site is so limited that City Staff, the City Preservationist and the Erdman family oppose such a designation.

CONCLUSION

Marshall Erdman's legacy at this site will be best preserved by the installation of a plaque or similar monument explaining his legacy as proposed by the developer. On behalf of the owner

of the property, we request that the Commission not recommend 5117 University Avenue be designated a landmark or a landmark site.

Sincerely,

AXLEY BRYNELSON, LLP

A handwritten signature in black ink, appearing to read "Robert C. Procter". The signature is fluid and cursive, with the first name "Robert" being the most prominent part.

Robert C. Procter

cc: Ms. Amy Loewenstein Scanlon (via email)
Mr. Tim Erdman (via email)
Mr. Rusty Erdman (via email)
Mr. Jerry Sholts (via email)
Mr. Jon Snowden (via email)