

September 12, 2008



VIA FACSIMILE AND FIRST CLASS MAIL

Patricia Balon
Chair, Historic Preservation Commission
Dept. of City Development
809 North Broadway - 1st Floor
Milwaukee, WI 53202

RE: Goll House Certificate of Appropriateness

Dear Ms. Balon:

As you know, the National Trust for Historic Preservation has indicated publically our support for the entire Goll House project as proposed because we feel its commitment to the restoration and long term preservation of the mansion successfully mitigates the impact of the proposed tower construction on the rear portion of the site. We stand by our support for the project but such support should not be construed to indicate our concurrence with interpretations of the Milwaukee Preservation Ordinance which would essentially vitiate its protections for other historic places by the limiting the authority of the Historic Preservation Commission and separating historic structures from the site upon which they are located as outlined by the Staff Report and the opinion of the city attorney. Thus I am writing on behalf of the National Trust for Historic Preservation to provide insight and clarification on the question of the scope of the Historic Preservation Commission's jurisdiction over the historic Goll House.

The National Trust for Historic Preservation is a private, nonprofit organization chartered by Congress in 1949 to promote public participation in the preservation of our nation's heritage, and to further the historic preservation policy of the United States. With the strong support of our 250,000 members nationwide, including close to 4,000 members in Wisconsin, the National Trust works to protect significant historic sites and to advocate historic preservation as a fundamental value in programs and policies at all levels of government.

It is the National Trust's position that the Historic Preservation Commission has jurisdiction over not just the house, but the entire Goll House property, notwithstanding the city's designation of the Goll House as a "historic structure."

1. The Entire Property is Subject to Commission Review Under the Plain Meaning of MCO § 308-81

According to the National Trust's reading of Milwaukee's historic preservation law, set forth at MCO § 308-81, the Historic Preservation Commission (HPC) has jurisdiction over the *entire* Goll House property and thus a Certificate of Appropriateness is required for *all* changes to the property, not just those changes directly affecting the exterior of the Goll House.

Under MCO § 308-81-8, the HPC may recommend for designation a “structure, site, or area” to the Common Council. Pursuant to this authority, the HPC recommended that the Goll House property be designated as a “historic structure.” The Common Council, in response to the HPC’s recommendation, designated the entire property, described as 1550 North Prospect Avenue, as a “historic structure.” The Common Council’s Resolution, Council File 011566, specifically states:

Resolved, By the Common Council of the City of Milwaukee that the Frederick T. and Eleanor Goll House, 1550 North Prospect Avenue, and further described as follows:

Rogers' Addn in SE 1/4 Sec 21-7-22 Vol 1 p 40 Block 199 (SW 61.35' Lot 12 Sd Subd & NE 38.75' Lot 8 Ronalds Subd) exc RR & Nwlt 7' for St

be designated as a Milwaukee Historic Structure.”

Emphasis added.

Thus, any claim that the city only designated the Goll House per se is in direct conflict with the express language of the Council’s resolution, which designates the entire property.

2. A Certificate of Appropriateness is Required for Changes to the Goll House and the Construction of New Improvements.

Once a property is designated as a historic structure, a Certificate of Appropriateness is required to alter any part of a structure’s exterior or to construct any improvement to the property.

No owner, renter, occupant or person in charge of a historic site, historic structure or an improvement within a historic district shall reconstruct or alter all or any part of the exterior of such property or construct any improvement upon such a property or properties or permit any such work to be performed upon such property or demolish such property unless a certificate of appropriateness has been granted by the commission. Unless such certificate has been granted by the commission, the commissioner of city development shall not issue a permit for any such work.

See MCO § 308-81-9 (emphasis added).

Pursuant to MCO § 308-81-2, the term “alteration” is defined as: “Any material change in the external architectural features of any historic structure or structures within a historic site or district,” and the term “improvement” is defined as: “Any building, structure, place, work of art, or other object constituting a physical betterment of real property, or any part of such betterment.” Also note that changes to the “property,” notwithstanding designation as a historic structure, trigger the city’s certificate requirement.

Under the plain meaning of this provision, New Land Enterprises is required to obtain a Certificate of Appropriateness prior to altering any part of the exterior of the Goll House and prior to constructing any improvement on 1550 North Prospect Avenue.

3. The Historic Preservation Commission Has Jurisdiction to Review and Act On Both Alterations to the Goll House *and* Improvements to the Property

Also pursuant to MCO § 308-81-9, the HPC is charged with reviewing and acting upon applications for Certificates of Appropriateness. In exercising this jurisdiction, it is *required* to consider:

- b-1. Whether, in the case of a designated historic site, structure or district, the proposed work would detrimentally change, destroy or adversely affect any exterior architectural feature of the improvement upon which said work is to be done; and
- b-2. Whether, in the case of construction of a new improvement upon a designated site or within a historic district, the exterior of such improvement would adversely affect or not harmonize with the external appearance of other neighboring improvements on such site; and
- b-3. Whether, in the case of any property located in a historic district the proposed construction, reconstruction, exterior alteration, or demolition conforms to the objectives of the historic preservation plan for such district as duly adopted by the common council.

Section b-1, which requires consideration of the impact of a proposed alteration to the Goll House itself, and section b-2, which focuses on the impact of a new improvement on the Goll House, as a neighboring improvement on the site, apply. Section b-3 would not apply because the property is not located in a historic district.

Despite the express language in § 308-81-9, which, as noted above, requires a certificate of appropriateness prior to constructing *any* improvements (buildings or structures) to the property, it has been maintained that the HPC 's jurisdiction only extends to changes to the exterior and thus section b-1 does not apply. The argument is that because the property was designated as a "historic structure" rather than a "historic site," the HPC lacks jurisdiction over improvements to the site. This argument, however, is contrary to the express language of MCO § 308-81. First, as explained above, the Common Council designated the *entire property*, not just the Goll House. Second, as also explained above, a certificate is required for both alterations and new improvements, notwithstanding designation as a "historic structure." Third, and perhaps most importantly, the term "historic site" includes real property on which a structure having historic significance is located, which is the situation here. MCO § 308-81g states:

- g. Historic site means the real property:
 - g-1. On which a structure having historical significance is located; **or**
 - g-2. On which there is no structure, but which itself is of historical significance that has substantial value in tracing the history of aboriginal man, or upon which a historic event has occurred; **or**
 - g-3. Has been designated a historic site by the common council.

h. Historic structure means any improvement which has a special character or special historic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation and which has been designated as a historic structure by the common council.

Emphasis added. Note that this provision is written in the disjunctive.

Finally, the fact that the Common Council, pursuant to File No. 011566, approved and adopted the Commission's Study Report and Study Report Guidelines in their entirety, underscores this point. The Council stated:

“The Preservation Guidelines pursuant to the Historic Designation Study Report, a copy of which is attached to the Common Council File, shall apply to this structure are adopted by the Common Council as part of the resolution.”

With respect to new construction, the Guidelines (p. 16) state: “It is important that new construction be designed so as to be as sympathetic as possible with the character of the house.”

Notwithstanding claims to the contrary, the use of the word “structure” in the resolution does not somehow establish, much less infer, intent on the part of the Council to limit the application of the guidelines to only the Goll House. Such a broad reading of the resolution is inconsistent with the Council's designation of the entire property; its adoption of the Guidelines; and the express requirements of the city's preservation law.

4. Designation of the Goll House and Review of Both Alterations and New Construction is Consistent with the Legislative Purpose of MCO § 308-81 and Preservation Practices Around the Country.

The City of Milwaukee, pursuant to s. 62.23(7)(em), Wis. Stats., declared that “the protection, enhancement, perpetuation, and use of improvements of special architectural 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.” MCO § 308-81-1. To fulfill this mandate, that is, to protect the Goll House, an improvement of special character, the City adopted a preservation law which requires that its Historic Preservation Commission review changes that could adversely affect the Goll House, including both alterations to the structure itself and new construction. See discussion above.

The City's approach to preservation is consistent with preservation approaches around the country. Indeed, to restrict a preservation commission's authority to the structure itself would not only be at odds with prevailing practices but also counterintuitive. Imagine a fifteen story, stainless steel clad building with rotating neon lights behind the Goll House. As explained by the National Park Service, which administers the National Register of Historic Places and is charged with providing leadership on historic preservation, “[local preservation ordinances and guidelines] are not intended to prevent property owners from making changes to their property.” Rather, such laws “are meant to ensure that those changes enhance the historic qualities that are enjoyed by all members of the community and which make an area a special place in which to live and work.” See *Working on the Past in Local Historic District's*, posted on the National Park

Service's website at www2.cr.nps.gov/workingonthepast. In other words, historic preservation permits changes to occur. However, those changes must be managed.

Significantly, the philosophical principles expressed by the National Park Service and embodied in Milwaukee's preservation laws are also consistent with the Secretary of the Interior's Standards for Rehabilitation, the primary standards used by preservation commissions across the country in their review of changes to historic properties. With respect to new construction, these standards require that new construction be "compatible" with the historic property.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in a such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

36 C.F.R. Part 68.3.

Moreover, compatibility of new construction—in terms of height, scale, mass, and materials—has long been recognized by courts as a legitimate goal of local governments in preserving their historical resources. As the Supreme Judicial Court of Massachusetts stated in *Opinion of the Justices*, 128 N.E.2d 557 (Mass. 1955), "[i]t is not difficult to imagine how the erection of a few wholly incongruous structures might destroy one of the principal assets of the town. . . ." See also *City of New Orleans v. Pergament*, 5 So. 2d 129 (1941) (recognizing the need to preserve the whole district or the "toute ensemble," including non-historic structures); *City of New Orleans v. Impastato*, 3 So. 2d 798 (La. 1941) (following *Pergament* by upholding regulation of all exterior changes, including those to non-historic structures); and *Faulkner v. Town of Chestertown*, 428 A2d 874, 883 (Md. 1981) (upholding authority to regulate all structures in a historic district). Courts, accordingly, have consistently upheld the authority of local governments to deny permits to build incompatible structures. See, e.g., *Bellevue Shopping Center Associates v. Chase*, 574 A.2d 660 (R.I. 1990) (affirming denial of a property owner's application to add a 8,358 square-foot, one-story building to an existing shopping center located in a city historic district); *District Intown Properties, Ltd. Partnership v. District of Columbia*, 198 F.3d 874 (D.C. Cir. 1990), cert. denied, 531 U.S. 812 (2000) (upholding denial of certificate of appropriateness to build townhouses on subdivided lots on the lawn of a historic apartment building).

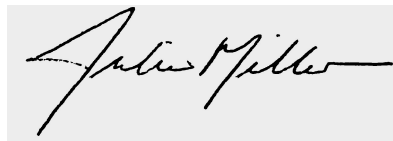
5. Conclusion

Milwaukee sits at a critical crossroad. It has a wealth of significant historic structures that merit full protection under the city's preservation laws. By limiting the Historic Preservation Commission's jurisdiction to the Goll House itself, the City will be acting contrary to MCO §

381-81, *et seq.* and prevailing historic preservation practices across the country. It will also be creating a dangerous precedent for historic preservation in the city, thereby jeopardizing the integrity of all of Milwaukee's designated historic structures.

The National Trust urges you to adhere to your own preservation laws and the Council's resolution designating the Goll House as a "Historic Structure," and require a certificate of appropriateness for changes to the Goll House itself as well as any new construction on the property.

Sincerely,

A handwritten signature in black ink on a light gray rectangular background. The signature appears to read "Julia H. Miller" in a cursive script.

Julia H. Miller, Special Counsel
National Trust for Historic Preservation

cc:

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