

Elmer, Linda

From: Richard W. Donner <rdonner@reinhartlaw.com>
Sent: Friday, March 8, 2024 5:29 PM
To: Eisenbrown, Ann (ann@pieperproperties.com)
Cc: Farris, Todd; Stern, Andrew; Bauman, Robert; Joe Goldberger; Elmer, Linda
Subject: File #231623 - Permanent Historic Designation of 3035 West Wisconsin Avenue

Ms. Ann Pieper Eisenbrown, Chair
City of Milwaukee Historic Preservation Commission

Re: Permanent Historic Designation of 3035 West Wisconsin Avenue (the "Property") as a Historic Site

Dear Ms. Pieper Eisenbrown:

As you know, this firm represents Berrada Properties 111, LLC regarding the proposed historic designation of its property at 3035 West Wisconsin Avenue (The Millerand). We are in receipt of the City's Permanent Historic Designation Report for the Property prepared by HPC Staff (the "Study Report"), which recommends that the Property be designated as a **Historic Site** "as a result of its fulfillment of criteria f-5 and f-6 of the Historic Preservation Ordinance, Section 320-21-3 of the Milwaukee Code of Ordinances."

In preparation for Monday's HPC hearing, we respectfully object to the proposed designation of the Property as a Historic Site (rather than a Historic Structure), and note the following:

1. The Milwaukee Historic Preservation Ordinance, MCO § 320-21, provides for three classifications of historic designation: Historic Sites, Historic Structures and Historic Districts, any of which may be designated by the Common Council upon the recommendation of HPC. Pursuant to MCO § 320-21-9(c), when reviewing a proposal for historic designation, HPC must consider "the criteria for determining historic, architectural and cultural significance" provided for in MCO § 320-21-3(f). The Study Report cites criteria f-5 and f-6 as the basis of its recommendation to designate the Property as a Historic Site:

f-5. Its embodiment of distinguishing characteristics of an architectural type or specimen.

As described in the Study Report, the Property "is an excellent example of an eclectic Beaux Arts-style applied to a luxury apartment building".

f-6. Its identification as the work of an artist, architect, craftsman or master builder whose individual works have influenced the development of the city.

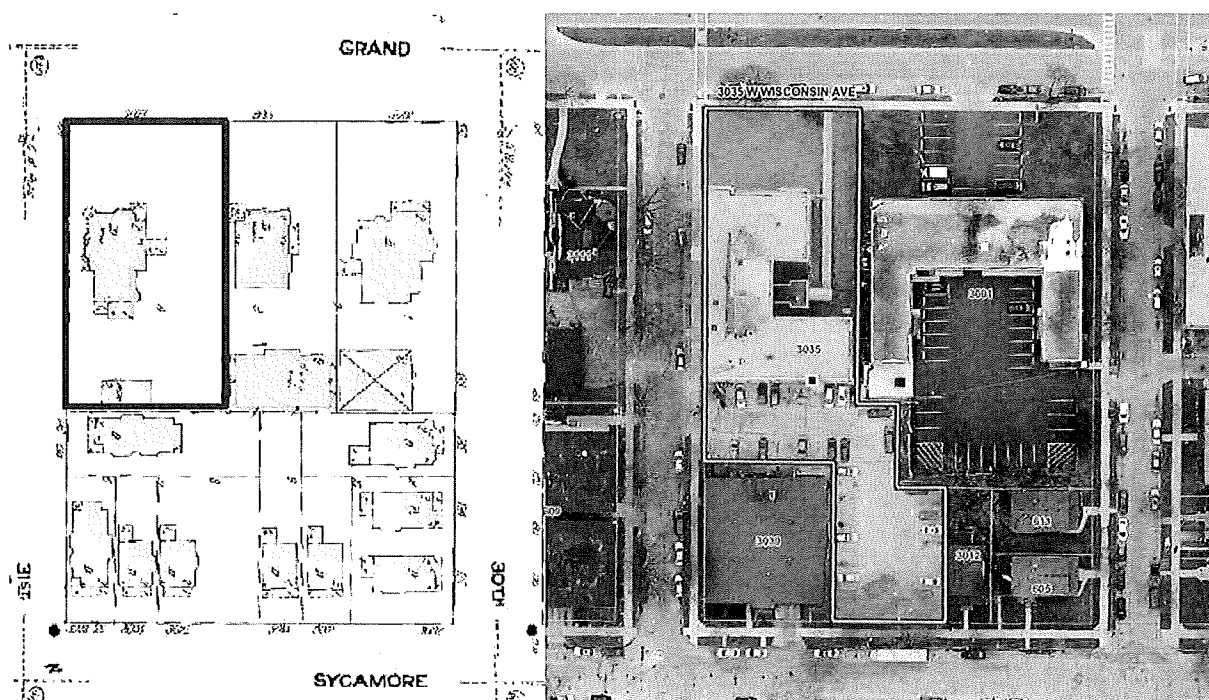
As described in the Study Report, the Property "was designed by Herbert Tullgren, a prominent and prolific Milwaukee architect during the first third of the twentieth century."

However, neither criteria cited in the Study Report (or the rationale provided in the Study Report for why the Property fulfills said criteria) describe the underlying real property on which The Millerand is located or why that real property may be culturally or historically significant. In fact, nowhere in the entire Study Report is evidence provided that demonstrates the cultural or historical significance of the underlying real property or why The Millerand and the underlying real property together constitute a Historic Site. All evidence regarding cultural and historical significance provided in the Study Report is in reference to The Millerand's façade and the architect that designed it. As such, criteria f-5 and f-6 may be fulfilled with respect to The Millerand; however, there is no basis for finding that said criteria

provides a foundation for designation of The Millerand and the underlying real property on which it is located as a Historic Site.

2. The rationale behind the decision to seek designation of The Millerand and the underlying real property on which it is located as a Historic Site appears to be (as best we can extrapolate) as follows: (i) MCO § 320-21-3(h-1) defines a Historic Site to include the *“real property on which a structure having historical significance is located”*; (ii) The Millerand is *“a structure having historical significance;”* and, (iii) The Millerand and the underlying real property on which it is located therefore together constitute a Historic Site. However, this interpretation of MCO § 320-21 renders meaningless any distinction between a Historic Structure and a Historic Site. All Historic Structures are located on real property. Thus, by this reasoning, all Historic Structures are also Historic Sites under MCO § 320-21-3(h-1). If correct, there is no reason for HPC to recommend and for the Common Council to designate a Historic Structure, as all the protections provided to Historic Structures under § 320-21 are also provided to Historic Sites. Moreover, there is no reason to reference Historic Structures in § 320-21 at all because Historic Sites and Historic Structures are one and the same. The language in the ordinance providing for a Historic Structure designation would serve absolutely no purpose unless one could surmise a situation in which a Historic Structure is not located on real property. This rationale clearly conflicts with the language of MCO § 320-21, which provides for three separate classifications of historic designation. It is also inconsistent with well-established principals of statutory interpretation, which provide that statutory language is to be read where possible to give reasonable effect to every word. (See, e.g., *Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶ 46, 271 Wis.2d 633, 681 N.W.2d 110).

3. In making a historic designation, the Common Council must *“balance the public interest in the preservation of the structure, site or district that is the subject of the recommendation and the interest of the owner or owners in using the property for his, her or their purposes.”* See MCO § 320-21-9(e). It is therefore incumbent upon the Common Council (and by extension HPC) to restrict private property only to the extent necessary to accomplish the stated goals of MCO § 320-21. MCO § 320-21 provides three distinct classifications of historic designation for such purpose. As described above, there is no basis for designating the real property The Millerand is located on as historic. The current neighborhood bears no relationship to the environment in which The Millerand was built. Following is a comparison of (i) a 1910 map of Grand Avenue showing the Property outlined in red (taken from the Study Report), and (ii) a current aerial photo showing the Property highlighted in blue further demonstrating this point. As shown below, the southern boundary of the Property has been expanded for use as resident parking (but was historically occupied by residential properties) and most of the surrounding properties have been significantly altered without regard for historical precedent.



Based on the foregoing, we respectfully object to the proposed designation of the Property as a Historic Site. This correspondence expressly preserves, and does not waive, any and all of our client's rights, claims, and remedies in this matter. I am happy to discuss at your convenience.

Thank you,

Rick

Richard W. Donner

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