



PLANNING DIVISION STAFF REPORT

December 3, 2019

PREPARED FOR THE COMMON COUNCIL

Project Name/Address: 121 Langdon St. (Suhr House)

Application Type: Appeal of Demolition by Neglect Finding by the Landmarks Commission

Legistar File ID # [56588](#)

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Date Prepared: November 14, 2019

Background

On August 6, 2019, the Common Council referred the appeal of the Landmarks Commission's finding of demolition by neglect back to the commission with the following instructions:

A motion was made by Heck, seconded by Bidar, to Refer to the LANDMARKS COMMISSION and should be returned by 9/16/2019. The motion passed by voice vote/other with the following instructions:

1. Rescind the previous finding of demolition by neglect if the property owner is found to be in full compliance with the conditions of the December 6, 2018 Certificate of Appropriateness, or
2. Refer the Appeal back to the Common Council if the property owner continues to be in non-compliance.

The Certificate of Appropriateness (COA) issued by the Landmarks Commission in December 2018 included both work on the building and associated site work. While the property owner completed the work related to the Building Inspection work order, the site work approved by Zoning through site plan review was not completed. Additionally, in order to complete some of the building work, contractors excavated areas next to the building, but did not correct the grading to create positive drainage. The regrading was to happen as part of the COA and Zoning approved site work. As that work has not been completed, the site current pools water against the foundation in several locations.

The site work was not completed by the September 16 Landmarks Commission meeting, but the property owner assured the commission that the work would be completed by the November 1, 2019, site plan deadline from Zoning. The commission referred the item to their November 11 meeting. The site work remained substantially incomplete.

As the property is not in full compliance with the terms of the COA and the condition of the site is detrimental to the preservation of the landmark building, the Landmarks Commission moved to refer the appeal back to the Common Council.

History of the Project

The Building Inspection Division first issued a citation in November 2016 pertaining to the exterior condition of the property. After two years of noncompliance, the Building Inspection Division submitted a notice to the Landmarks Commission that demolition by neglect was occurring at the subject property. The Landmarks Commission held a public hearing on September 17, 2018, and referred their decision to a future meeting in an effort to work with the property owner to successfully remedy the deterioration of the building. The commission issued a Certificate of Appropriateness on December 3, 2018, to complete exterior repairs and again referred their finding of demolition by neglect to a future meeting. The commission reviewed progress of the project at their meetings on April 22, May 6, and May 22, 2019. The property owner had not completed required tasks or secured the necessary permits and approvals to proceed. The Preservation Planner approved an initial phase of

work on May 19, 2019, so that the property owner could secure a building permit for the front porch repairs and begin masonry work.

At the June 24, 2019, commission meeting, other than initial investigations, no work had commenced at the site and the property owner had not secured a building permit or submitted for a site plan review. The applicant assured the commission that onsite investigations were underway and work would begin shortly, and made a case that therefore the building was no longer undergoing demolition by neglect. The Preservation Planner advised that the current condition of the building was due to a cumulative effect of unaddressed maintenance and that the totality of the work order and Certificate of Appropriateness must be completed in order for demolition by neglect to no longer be occurring. As none of the associated work or City processes had been completed to date, the commission determined that the building was undergoing demolition by neglect. The Landmarks Commission made a unanimous finding of demolition by neglect.

Please see associated Landmarks Commission Demolition by Neglect Report, submitted to Common Council for their meeting on July 16, 2019, and the addendum related to the Demolition by Neglect Appeal for the Common Council meeting on December 3, 2019.

Relevant Ordinance Sections – Demolition by Neglect:

41.02 DEFINITIONS.

Demolition by Neglect means the process of allowing landmarks, landmark sites or improvements in historic districts to decay, deteriorate, become structurally defective, or otherwise fall into disrepair.

41.14 MAINTENANCE OBLIGATION; ENFORCEMENT; PENALTIES

- (1) Maintenance obligation. Every owner of a landmark, improvement on a landmark site, or improvement in a historic district shall do all of the following:
 - (a) Protect the improvement against exterior decay and deterioration.
 - (b) Keep the improvement free from structural defects.
 - (c) Maintain interior portions of the improvement, the deterioration of which may cause the exterior portions of such improvement to fall into a state of disrepair.
- (2) Enforcement.
 - (a) The Building Inspector or designee is authorized to enforce the provisions of this chapter.
 - (b) The Building Inspector may issue an official written notice to a property owner, requiring the property owner to correct a violation of sec. 41.14(1) above by a date specified in the notice.
 - (c) The Building Inspector shall notify the Preservation Planner of all official compliance notices issued to owners of landmarks or improvements in historic districts. The Building Inspector shall further notify the Preservation Planner whenever a property owner fails to correct a violations by the compliance date specified in an official notice.
 - (d) City agencies or commissions responsible for enforcing chapters 18, 27, 29, 30 and 31 of the Madison general ordinances, or, in the absence of such city agency or commission, the Building Inspector, may grant individual variances from those chapters to facilitate historic preservation and maintenance under this chapter, provided that such variance does not endanger public health or safety or vary any provisions of this chapter.

- 41.15 DEMOLITION BY NEGLECT.** The owner of a landmark, improvement on a landmark site, or improvement in a historic district, may not allow the landmark or improvement to undergo demolition by neglect.
- (1) Notice of demolition by neglect. If the Building Inspector believes that a landmark or improvement is undergoing demolition by neglect, the Building Inspector shall give written notice of that belief to the owner of the landmark or improvement. The Building Inspector shall give a copy of the notice to the Preservation Planner and the Landmarks Commission.
 - (2) Public Hearing. Upon receiving a notice under sec. 41.15(1), the Landmarks Commission shall issue a hearing notice under sec. 41.06 and hold a public hearing to determine whether the landmark or improvement is undergoing demolition by neglect. The Commission shall hold the public hearing within 90 days of receiving the notice under sec. 41.15(1).
 - (3) Landmarks Commission Finding. If, after a public hearing, the Landmarks Commission finds that a landmark or improvement is undergoing demolition by neglect, it shall report its finding to the Common Council, the Building Inspector and the Office of the City Attorney. A Landmarks Commission finding of demolition by neglect is prima facie evidence of demolition by neglect for purposes of any administrative or civil court action, and also constitutes a determination that a public nuisance exists under sec. 27.05(3) of the Madison general ordinances.
 - (4) Appeal of Landmarks Commission finding.
 - (a) An appeal from a Landmarks Commission finding under sec. 41.15(3) may be taken to the Common Council by the owner of the affected landmark or improvement, the Alder of the district in which the subject property is located, or by the owners of 20% of the number of parcels of property within 200 feet of the subject property, measured according to sec. 41.03(5).
 - (b) An appeal under par. (a) shall be filed with the City Clerk within 10 days after the Landmarks Commission makes its finding. The appeal shall include the name and address of each petitioner, and shall specify the grounds for appeal. The City Clerk shall forward the petition to the Common Council.
 - (c) The Common Council shall hold a public hearing regarding any appeal it receives under par. (b).
 - (d) Following a public hearing, the Common Council may, by favorable vote of two-thirds (2/3) of its members, reverse or modify the Landmarks Commission finding, with or without conditions, or may refer the matter back to the Commission with or without instructions, if it finds that the Commission's decision is contrary to applicable standards under this subchapter.
 - (5) Abatement by the City. If the Landmarks Commission finds under sec. 41.15(3) that a landmark or improvement is undergoing demolition by neglect, the Building Inspector may proceed under the non-summary abatement procedures set forth in sec. 27.05(3)(e) of the Madison general ordinances to repair the landmark or improvement to abate the nuisance. The cost of the required repairs shall be paid by the property owner, or shall be imposed as a special charge against the property and collected pursuant to the provisions of sec. 4.09(13) of the Madison general ordinances and Wis. Stat. § 66.0627.
 - (6) Acquisition by City. If the Landmarks Commission finds under sec. 41.15(3) that a landmark or improvement is undergoing demolition by neglect, the Common Council may authorize the City to acquire the property under Wis. Stat. § 66.1111(2), if necessary through the initiation of condemnation proceedings under Wis. Stat. § 32.06.