

AGENDA # 1

City of Madison, Wisconsin

REPORT OF: LANDMARKS COMMISSION

PRESENTED: 6/24/19

TITLE: 121 Langdon St - Demolition by Neglect
of a Designated Madison Landmark
in the Mansion Hill Hist. Dist. (Suhr
House); 2nd Ald. Dist.

REFERRED:

REREFERRED:

REPORTED BACK:

AUTHOR: Heather Bailey, Preservation Planner

ADOPTED:

POF:

DATED: 6/28/19

ID NUMBER: 53000

Members present were: Stuart Levitan, Richard Arnesen, Katie Kaliszewski, Arvina Martin, and David McLean. Excused was Anna Andrzejewski.

Other City staff present: Kyle Bunnow, Plan Review and Inspection Supervisor, Building Inspection Division

SUMMARY:

Harold Langhammer, registering in opposition and wishing to speak

Nick Morgan, registering in opposition and wishing to speak

David Ferch, registering neither in support nor in opposition and available to answer questions

Fred Mohs, registering neither in support nor in opposition and wishing to speak

Kurt Stege, registering neither in support nor in opposition and wishing to speak

Bailey provided a timeline of the previous dates on which the Landmarks Commission has reviewed the potential demolition by neglect of the property at 121 Langdon Street. She said that a public hearing was held on September 17, 2018 in response to the notice of demolition by neglect that the Landmarks Commission received from the Building Inspection Division. On December 3, 2018 a Certificate of Appropriateness was issued with conditions and the decision regarding the demolition by neglect was referred to April 22, 2019 in order to give the property owner time to comply with the court-approved agreement. The item was then referred to meetings on May 6 and May 22, 2019 as the Landmarks Commission and staff worked with the applicant to meet the conditions of the Certificate of Appropriateness. She noted that the date of the court-approved agreement by which the owner must complete the items on the Building Inspection work orders is August 1, 2019, which had previously been reported incorrectly as August 15, 2019.

Bailey said that there are outstanding conditions to be met per the Certificate of Appropriateness; staff has approved construction documents for the majority of the work, but are still lacking information regarding two porches and an arched window that is being replaced. She said that she and Building Inspection staff visited the site on Friday, June 21, 2019 to meet with the mason, and the masonry work will begin soon.

Bailey said that staff's recommendation is that the Landmarks Commission make a finding of demolition by neglect, per the recommendation of the Building Inspection Division as outlined in a memo from Plan Review and Inspection Supervisor Kyle Bunnow on June 3, 2019. She said that she and Building Inspection believe that the work cannot be completed by the August 1, 2019 deadline. She explained that if the Landmarks Commission were to make a finding of demolition by neglect, they are obligated to submit a report to the Common Council, Building Inspection, and the City Attorney's Office with a recommendation on how to proceed. She said that she suggests they recommend that the finding of demolition by neglect serve to support

actions taken through the Building Inspection Division and the City Attorney's Office to remediate the physical condition of 121 Langdon Street.

Bunnow explained that Building Inspection has exhausted all of the tools at their disposal, and he believes that the property continues to undergo demolition by neglect. He said that a finding of demolition by neglect is an opportunity to put something on file that will prevent anyone from claiming the building is beyond repair in the future. He stated that Building Inspection is the entity that will give an approval or denial for the work orders that are completed, and while they have not reached the court-approved deadline for the completion of that work, he does not think it is reasonable to expect that the work will be completed by the August 1 deadline. He explained that a finding of demolition by neglect creates a point whereby the property cannot be redeveloped in the future with a claim that it is in such poor shape that it cannot be salvaged. He said they will continue to use tools such as fines, City Attorney prosecution, and liens in order to gain compliance and hold the property owner responsible. He explained that in a situation of demolition by neglect, the City can seek control of the property and have the work completed at their discretion; however, the City does not want that to happen. Levitan asked what will happen if the work is not completed by the August 1 deadline. Bunnow said that two potential penalties were negotiated. If the work is completed, there is a lower fine amount, and if the work is not completed, the City Attorney's Office will seek to have the Municipal Court impose a higher fine amount. Building Inspection will also assess the condition of the building and ask for the case to be re-filed and prosecuted with more penalties.

Arnesen asked if a finding of demolition by neglect might have the potential to scare away a potential purchaser of the property, or if it allows for a good faith purchaser to restore the house. Bunnow said that any fines incurred during the time in which the current owner has owned the property are the responsibility of the current property owner. He said that there is also a policy that when a new person purchases a property, they are given a reasonable amount of time from the date purchased to complete the repairs. The purchaser is not penalized for the property's current condition, but will need to make arrangements to complete the work orders or will face penalties.

Arnesen asked if there is removal of a finding of demolition by neglect, and Bunnow said that the ordinance does not address that. Bunnow said that Building Inspection would take the position that if the code violations are corrected, the property would no longer be undergoing demolition by neglect.

Morgan introduced himself as the mason for this project, and said he has already begun his prep work. He said that he was able to track down the specific type of mortar required and has brick samples for Bailey to review for the chimney repairs. He explained that he will refurbish the chimney, complete tuckpointing, and reconstruct the columns. He said that he is willing to put in a lot of hours and will bring in additional workers in order to complete the masonry portion of the repairs.

Langhammer said that he is not pleased with the situation and if he could have done this differently, he would have, though he thinks that a finding of demolition by neglect is inappropriate. He said that the building is structurally sound and any problems will be corrected. He said that it wouldn't have made a difference if the work were completed a year ago because it is a 140-year-old house. He said that he will use whatever resources are necessary to get the work done, and the carpenter he has hired has the same attitude as Morgan. He said that he does not dispute the comments in Bunnow's June 3, 2019 memo that he did not have the required permits and approvals at that time, but said that he did have a signed contract from a different mason. After weeks of delay by that mason, Langhammer sought out different help and said that he now has contracts, permits, and approvals. He said that the property has already improved, and would appreciate if he was given the opportunity to complete the work before a decision is made regarding the demolition by neglect.

Ferch said that there are plans in for review that Building Inspection will likely approve tomorrow for work on the front porch, tuckpointing, and painting. He said that the plans for the rear and side porches have not been approved yet because they also require site plan review. He said that the front porch should be mostly complete in a month aside from a few moldings that have not been made yet.

Kaliszewski asked why it has taken so long to go through this process, and Langhammer said that it was a delay on his part. He pointed out that the existing rear and side porches are not appropriate for the era or the house, and he intends to rebuild the porches to look authentic and complementary to the house. He said that he decided to do this extra work beyond the work orders so that it will end up a handsome building. He said that he had considered selling the property, but now that he is engaged in completing the work, he does not intend to sell at this point.

Levitan asked if there are contractors in place to comply with all existing work orders, and Langhammer responded that he does have contractors. Levitan requested confirmation that the plans are not all approved, and Ferch stated that he was correct. Ferch said that the site plan work has not been submitted yet, and he is still working on plans for the side and rear porches based on previous feedback from the Landmarks Commission. Arnesen asked if the contractor who had previously signed a contract for the work was still involved. Langhammer explained that he previously had a signed contract and paid 1/3 of the fee up front, but the contractor stopped showing up and now the project is behind.

Bunnow said that at the time the memo was written on June 3, he had not had any contact with Langhammer and had expected that at that point, plans would be submitted and going through the review process. He said that after 2 ½ years of pursuing this case and the lack of communication from the property owner, he decided to write the memo. He said that construction plans were submitted last week, and given the situation, staff has chosen to expedite the review, which they do not do lightly. He pointed out that this has been challenging because work done under pressure is often work not done to the highest level of quality, so they need to find a balance to ensure things are getting done and are done well. He said that no matter the finding that the Landmarks Commission makes, Building Inspection will continue to monitor the property, and mentioned that he does believe that Langhammer wants to complete the work.

Arnesen asked what the practical repercussions are if they were to make a finding of demolition by neglect versus referring to see if the deadline is met. Bunnow pointed out that the timelines for penalties and the Landmarks Commission finding are independent. He said that Building Inspection will inspect the property a day or two after August 1 per the City Attorney Office to assess whether the work is completely done or not. He explained that if the work is not complete, the City Attorney's Office may choose to seek a higher penalty. If the Landmarks Commission were to make a finding of demolition by neglect, that would be further information for the City Attorney's Office to use in the prosecution of the case.

Levitan asked for the opinion of District 2 Alder Heck, who said that he defers to staff and the work they have done over the last several months. Heck said that he believes the cumulative impact of the many postponements of this project is such that it is questionable whether this work can be completed on time.

Kaliszewski asked if all of the work that the Landmarks Commission had approved is finished. Bailey said that she is still missing items related to the conditions of the Certificate of Appropriateness. Bailey said that if the Landmarks Commission makes a finding of demolition by neglect, she will still work with the property owner to complete the work orders. Kaliszewski asked if they could pull a finding of demolition by neglect if the work ends up being completed. Bailey said that the ordinance does not specify that process.

Levitan asked Bunnow if we have now gotten the property owner's attention. Bunnow said that he thought they had gotten the owner's attention last December, but as of today, the property is effectively in the same condition as it was when this case began 2 ½ years ago. He said that many steps in the right direction have occurred over the last few weeks in lining up the mason and submitting plans, but he is not going to say that the work will be completed on time or be done well until we get to the final completion.

Levitan asked Bunnow if his recommendation on a finding of demolition by neglect would be the same had there been a mason on duty and plans submitted as of June 3. Bunnow said that he does not believe the work will be done by August 1, pointing out that there is still a significant amount of work to complete and factors outside of our control like the weather and the arrival time of materials that could easily make this not occur. He

said that the August 1 deadline is only relevant to the Landmarks Commission as a date they had also tagged as significant, but that he would still probably have written the memo.

Langhammer said that the deadline of August 1 is of great cost to him. He encouraged the Commission to refer their decision on the demolition by neglect for four weeks because the building will be in better condition at that time. He said that if the work isn't 100% done, it will be close to it, which should satisfy their concerns. He said that a finding of demolition by neglect would only impose unnecessary conditions on him.

Levitan asked Bunnow which of the three conditions of the Certificate of Appropriateness, porch repair, tuckpointing, and window replacement, are more relevant to a finding of demolition by neglect. Bunnow said that masonry is at the top of the list because water is one of the main causes of deterioration to a structure. He said that because the porches are exterior in nature, they may look poor but may not impact the structure. He pointed out that he has not examined the structure of the building, but would put porches second in priority because of their volume. He said that the replacement window would be lowest in priority because we don't know that the existing window has lost the ability to keep the elements out.

Bailey said that it is important to look at the cumulative effect of all of these elements coming together to create a situation for demolition by neglect. McLean said that if they make a finding of demolition by neglect tonight versus closer to the August 1 deadline, they may be preempting history and could potentially make a more accurate assessment based on what ends up happening to the property closer to the deadline.

Mohs said that in his experience of doing building rehab, it is important to have help from experts in the field because a homeowner simply can't know enough about the specific work to be completed. He said that this is especially true for tuckpointing because the work is being done in a place that one cannot see. He recommended that Langhammer seek an engineer supervisor to oversee the work and produce a report that would be beneficial to have if he were to ever sell the property. Levitan asked Mohs to speak to the demolition by neglect, and Mohs said that it exists for sure, so he doesn't know why the Commission wouldn't make that finding. He said that the property owner needs to watch the work being done to see that it is being done well, and he hopes that Building Inspection will watch what is happening as well. He said that this is a wonderful house, and completing this work is not throwing money away because if the job is done right, the house will be worth more.

Stege, representing the Madison Trust for Historic Preservation, said that there is a benefit to having the demolition by neglect ordinance in the books. He commended the work of the building inspectors who have been monitoring the structure and taking action. He said that the Trust is concerned about the substantial ongoing damage to the property and encourages acting as promptly as possible to stabilize the structure. He said that a step in that direction has to be making a finding of demolition by neglect. He mentioned that the rehab of Garver Feed Mill could be instructive in that the estimated repair cost increased substantially between the time bids were submitted and when the work commenced, despite interim steps to mitigate the damage. He said that the speed of deterioration will increase, and pointed out the many rotted, unprotected areas on the structure at 121 Langdon. He said that the community is also interested to see how the demolition by neglect ordinance will be applied by the City. He said that Building Inspection and the Landmarks Commission will determine that, but the many referrals indicate that the City will allow delays when it comes to deteriorating local landmarks and structures in historic districts. He pointed out that this property is in an area of the city under strong developmental pressure, and he personally believes that the house has clearly been neglected much longer than 2 ½ years.

Levitan asked Bunnow to speak to the unprotected deteriorated wood to which Stege referred. Bunnow said that deterioration happens slowly until it happens fast because it slowly accumulates over time, but once wood rot sets in, it can spread more rapidly and lead to failures in structural integrity. He said that wood preservation is important, and there are several areas on the building that need to be preserved, as well as many areas of masonry that need to be treated. He expressed that Building Inspection is not the project manager, they are the enforcers of the building code and it is up to the property owner to direct the work. He said that Building Inspection will dedicate a tremendous amount of staff resources for this project and will make people available

to visit the site frequently in order to determine whether the work is done appropriately. He said that this project is getting to the point where it really needs to move forward because the construction season is getting shorter and contractors are booked far in advance.

Levitan asked Bunnow what a finding of demolition by neglect would do to expedite the necessary work. Bunnow said that it does little today, but will be very significant if the work is not completed by the negotiated deadline and the City seeks additional penalties. Bailey said that if the Landmarks Commission makes a finding of demolition by neglect, there are additional steps in the process. She said that staff's recommendation is phrased in a way that other entities could use the finding in order to move forward with the property expeditiously. She said that the decay on the structure is such that they need to do that, and pointed out that the Landmarks Commission is supposed to be a steward of landmark properties. In response to Langhammer's earlier comments about the amount of work that may be completed, Bailey said that all of the work needs to be done; there is an obligation for maintenance, and the entire work order must be completed. Langhammer said that 100% of the work will be done.

Levitan asked if the Commission feels that the first masonry contractor failing to show up is a reason to excuse the delay. Arnesen and Kaliszewski said no. Kaliszewski pointed out that it is June 24 and the property owner doesn't have everything lined up yet; when he appeared in front of the Commission almost a year ago, he said he would take care of it quickly, but still doesn't have plans approved. She said that the history of this property has shown that any pressure from Building Inspection did not work because they were ignored for 2 years. She asked if making a finding of demolition by neglect would matter because none of the previous actions by the City have sped anything up. Arnesen said that the property owner had plenty of time to get the work lined up and start earlier, but he didn't submit any contracts to the Landmarks Commission until recently. He said that he agrees with Mohs and does not think they should refer because it puts artificial pressure on the contractors to rush to finish in order to avoid the finding of demolition by neglect. He said that if they were to make a finding of demolition by neglect today, it doesn't seem to put the property owner in a worse position as long as he follows through. He explained his understanding that if the work is completed, the finding will not cause the property owner any other issues, but if he fails to complete the work, it will. He said that the Landmarks Commission has been patient and referred the item many times, but it wouldn't do any good to refer another month. Martin said that she agreed.

Levitan said that with a finding of demolition by neglect, it is then reported to Common Council, Building Inspection, and the City Attorney's Office.

Arnesen said that if the property owner gets the work done, he would like to rescind the finding of demolition by neglect. Kaliszewski agreed.

Kaliszewski pointed out that the property owner can file an appeal within 10 days with the City Clerk. Levitan asked for confirmation that the District 2 Alder would not appeal the finding, and Heck said that was correct.

ACTION:

A motion was made by Arnesen, seconded by Kaliszewski, to make a finding of demolition by neglect. The motion passed by voice vote/other.