

AGENDA # 1

City of Madison, Wisconsin

REPORT OF: LANDMARKS COMMISSION

PRESENTED: 9/16/19

TITLE: Appeal of Madison Landmarks
Commission finding of Demolition
by Neglect of a Designated
Madison Landmark in the Mansion
Hill Historical District regarding 121
Langdon Street.

REFERRED:

REREFERRED:

REPORTED BACK:

AUTHOR: Heather Bailey, Preservation Planner

ADOPTED:

POF:

DATED: 9/26/19

ID NUMBER: 56588

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

SUMMARY:

Stu Levitan, registering in opposition and wishing to speak

Bailey explained that this item is a reconsideration of the demolition by neglect finding made by the Landmarks Commission on June 24. She provided an update, and said that on July 3, the property owner filed an appeal of the Landmarks Commission's decision. The property owner also renegotiated the previous August 1 deadline to complete the Building Inspection work orders and was given an extension to September 1. She explained that on August 6, the Common Council referred the appeal back to the Landmarks Commission for reconsideration due to substantial work completed on site. She said that on August 30, she and Building Inspection signed off on the work orders because all items had been completed. She read the motion from Common Council, which instructed the Landmarks Commission to "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 to refer the Appeal back to the Common Council if the property owner continues to be in non-compliance." She showed photos of the property as the work was in progress and on August 30 after the work orders were completed. She said that the Certificate of Appropriateness dealt with the sum total of required work, and the work required by Building Inspection to bring the property into compliance triggered a site plan review by Zoning. She said that the deadline for completing the site work through Zoning is November 1, and pointed out that the site work is outside of the work orders that were referred to Landmarks by Building Inspection, which have been resolved. She said that during the work on the porches, the ground disturbance has caused water to pool against the foundation, which is a long-term issue that needs to be resolved. She said that this work is scheduled to be completed on November 1. She said that staff's recommendation is that demolition by neglect is no longer occurring and she recommends that the Landmarks Commission rescind the finding of demolition by neglect and direct staff to amend the report to the Common Council on the demolition by neglect proceedings to reflect this new determination.

Levitan urged the Commission not to rescind the finding of demolition by neglect for two reasons, the first of which is that it is terrible public policy. He pointed out that it took Building Inspection three years to get the property owner in compliance, which involved hours of work for the Preservation Planner and several meetings for the Landmarks Commission to resolve the issue. He said that if the Common Council can then snap its fingers and direct the Landmarks Commission to rescind their finding, what message does that send to future

owners of landmark properties? He said that it sends the message that if you let your buildings deteriorate and get to the point of demolition by neglect, once you take three years and finally fix them, the Common Council will wave a magic wand and absolve you. He said that there have to be consequences, and pointed out that the property in question is a contributing building in a National Register Historic District and a local landmark. He said that to wipe the slate clean after three years of the City's trying to get the property in compliance sends a bad message. He said that the second reason not to rescind the finding is the ordinance itself, and read from section 41.15(4)(d) that "...the Common Council may, by favorable vote of two-thirds 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 the applicable standards under this subchapter." He said that the Common Council made no such finding and instead made a motion with no debate. He said that the Common Council did not make the finding that it was supposed to under the ordinance. He said that to honor the ability of Building Inspection to act in a meaningful manner and the words of the ordinance, at the very least, the Commission should refer the item back to the Common Council. He said that if the Common Council thinks the finding should be rescinded, it has the power to do so, but instead it directed the Landmarks Commission to do its dirty work with no basis, no justification, and no finding that the Landmarks Commission's decision was against the applicable standards. He said that he hopes the Landmarks Commission will act in furtherance of the ordinance, Building Inspection, and all the work the Landmarks Commission did and not rescind the finding of demolition by neglect.

McLean asked what would follow if the Commission does not rescind their finding of demolition by neglect. Arnesen said that he had the same question, and asked what the consequences are of leaving the finding in place. Bailey said the Commission could say that they followed their process correctly and want the finding to stay, and refer it back to the Common Council to reconsider on their end. She explained that the justification for the Common Council returning it back to Landmarks is that the work was close to being completed and they were looking at it as keeping the process open with the idea that the Landmarks finding on June 24 was the final item that spurred the property owner to complete the work, so if the work was completed by the new September 1 deadline, then the provision within the ordinance had accomplished its task. She said that in terms of a penalty, the fine that was part of the court-approved agreement remains in place. Levitan said that his recollection is that the Common Council did not make the finding referenced in the last sentence of 41.15(4)(d). Bailey said that the Common Council framed it in a way that if the work is completed by September 1, their belief is that demolition by neglect is no longer occurring and they would ask the Landmarks Commission to look at the situation subsequent to that and send it back to Common Council if the work was still not in compliance. Levitan said that he doesn't think the Common Council made the determination that the Landmarks Commission's decision was contrary to the standards. Arnesen said that the fine will be levied, and asked what other consequences there are of not rescinding. He asked if there were more fines or if it is just a stain on the property owner's record. Bailey said that the finding of demolition by neglect was put in place so that a property owner can't say the property is so deteriorated that they must demolish it because it was through the owner's own inaction or action that it reached this deteriorated state. She said that in this case, the necessary repairs to remediate the situation are now complete, so there are no grounds for the property owner to make that claim.

Kaliszewski said that there is more work that needs to be done according to the site plan, and asked if that has the potential to lead to additional demolition by neglect if he does not complete that work. Bailey said that it has potential to lead to concerning deterioration on the property, but she recommends that it start over with another process rather than keeping on the demolition by neglect path. She said that it will start with the initial level of compliance with Zoning, who has enforcement actions they could take, and if it proves to be problematic, they could see it again as a demolition by neglect under a separate set of circumstances. Kaliszewski said that it sounded like the Common Council thought the finding of demolition by neglect made the work move forward, and asked what would happen if they rescind the finding and the site plan does not move forward. Bailey said that down the road, there could be a new demolition by neglect case with a new set of circumstances. McLean asked if the site work would be the new circumstances, and Bailey said that the site work that happened as part of the current construction created the situation with water on the foundation. McLean asked if there was any sign of water on the foundation prior to this. Bailey said that she doesn't know about there being any sign of water previously, but there is currently an approved site plan that would remediate the situation. McLean

said that he realizes there are some new issues due to construction, but he does not feel comfortable rescinding the finding until everything is resolved. Arnesen said that he feels the same way. He said that they went to all the trouble to go through this process, and it seems like the cause of the property owner completing the repairs. He asked why they would rescind at this point. He said that they are in the same position as they always have been, which is that they would consider rescinding if and when the work is finished. He said that if there are no additional consequences or fines in the next 60 days, what is the downside of not rescinding? He said that this way, it is still hanging over the property owner's head in order to make sure it gets done because he hasn't actually demonstrated a good track record.

Bailey said that given the November 1 deadline to complete the site work, there are two Landmarks Commission meetings in November to which they could refer the item. Arnesen said that it could be referred to November 11, so they would keep the finding and not rescind it. He said that when they made the finding, they were inclined to potentially rescind the finding if the property owner follows through, but they are not there yet.

ACTION:

A motion was made by Arnesen, seconded by McLean, to refer the item to the November 11, 2019 Landmarks Commission meeting. The motion passed by voice vote/other.