

127 W. Gilman St.

End of Useful Life vs. Demolition by Neglect

I. Introduction

Steve Brown and the Senior Management of Steve Brown Apartments (SBA) were surprised by the allegations contained in a City Inspector's July 1, 2013 report that, "The building is located in an historic district so demolition may not be possible and it appears that the owner attempting to allow the building erode through neglect and plans on using deteriorated conditions as justification and support for demolition at a future date."

Mr. Brown owns, and SBA manages, millions of dollars of property in Dane County, much of it in historic districts and areas. The aspersions in the July 1st report are in our opinion completely unwarranted. Equally important, the allegations in the report obscure the fact that there is ample evidence that 127 W. Gilman has been structurally unsound and unsalvageable for years and that Mr. Brown and SBA have made numerous efforts to garner support for more appropriate housing for the location. To that end, we offer the following information.

II. Context

Steve Brown Apartments currently owns 20 of the 175 properties located in the Mansion Hill Historic District. Nineteen of those properties, including 127 W. Gilman St., have been deemed "contributing structures." Eighteen of those nineteen properties have been carefully maintained, reinvested in and rehabilitated over the last thirty years. In the last seven years alone, during the worst economic recession in the past 75 years, Steve Brown Apartments invested \$4.4 million of the company's money in physical improvements and the rehabilitation of properties owned in the Mansion Hill and University Heights Historic Districts. As a direct result of Mr. Brown's ownership, reinvestment and stewardship, more than 10% of the total Mansion Hill Historic District properties have been preserved, a proud record of commitment to preservation of the Historic District unmatched by very few.

III. Background and Definitions

Many cities and municipalities across the country grapple with how best to achieve the financial and social vitality required to sustain historic districts while preserving and protecting the architectural and cultural history that exists in those districts. Local units of government across the country have attempted to provide guidance on this question; much of which reflects the often unavoidably subjective nature of the historic preservation decision-making process. In Madison, the Landmarks Commission developed its own guidance specifying standards for both demolition and new construction within a Historic District.

With regard to demolition, seven standards were established to which the Commission may give "decisive weight" in determining whether a structure should be demolished. The standard that has been called into play by the unwarranted and unsubstantiated allegations in the July 1st report is Standard "f." which reads:

“Whether the building or structure is in such a deteriorated condition that it is not structurally or economically feasible to preserve or restore it provided that any hardship or difficulty claimed by the owner which is self-created or which is the result of any failure to maintain the property in good repair cannot qualify as a basis for the issuance of a Certificate of Appropriateness.”

It should be noted that Standard “f.” specifically acknowledges that a “building or structure” might be in “...such a deteriorated condition that is not structurally or economically feasible to preserve or restore it...” This language identifies two standards (i.e., structurally unsound and economically unfeasible), either of which, if met, would justify demolition. It is Mr. Brown’s and SBA’s contention that 127 W. Gilman meets not one, but both of these standards.

It should also be noted that Standard “f.” cites only two circumstances under which the Commission may ignore the fact that “...it is not structurally or economically feasible to preserve or restore...” the building or structure in question. The first circumstance under which the Commission could ignore the actual condition of the building or structure would be if the non-salvageable condition of the building or structure has been “self-created.” Mr. Brown and SBA strongly reject the notion that this criteria could be applied and would point out that no one has suggested that Mr. Brown or SBA engaged in any pro-active destruction of 127 W. Gilman.

That being the case, the only remaining criteria in Standard “f.” that could justify Commission rejection of the a request to demolish would require proof the condition of the building or structure “...is the result of any failure to maintain the property in good repair...” Three terms are important in this language.

- The first is “is the result of...,” which Mr. Brown and SBA believe makes clear that the Commission must prove one or both of the circumstances indicated in the sentence in order to deny a request for demolition.
- The second is the word “failure,” which Webster’s dictionary describes as meaning, either “a failing to perform a duty or expected action or “ a state of inability to perform a normal function.” With regard to the first definition, it is Mr. Brown’s and SBA’s contention that proving failure to perform a duty or expected action would require demonstrating that the owner of the building should have been aware of the expected duty, that failure to perform the duty had been noted by the appropriate authorities and that failure to perform the duty was directly related to the structural unsoundness or economic unfeasibility of the building or structure. It is Mr. Brown’s and SBA’s contention that none of these conditions can be met and we would note that in the course of SBA’s nineteen years of ownership, the only notations and/or citations SBA received on 127 W. Gilman related to painting the exterior of the building. We would respectfully point out that we are not requesting demolition on the grounds that the exterior paint does not look good.
- The third important term is, “...maintain the property in good repair...” Webster’s

defines “good” as “of high quality” or “of high, but not excellent quality” and offers two relevant definitions of the word repair, including “to restore by replacing a part or putting together what is torn or broken;” and “to restore to a sound or healthy state.”

Once again, Mr. Brown and SBA believe that the facts make clear that 127 W. Gilman was not in good repair when SBA assumed ownership and so technically could not have been “maintained” in good repair and, more importantly: a) was so structurally unsound that it could not be restored to “good repair;” and b) estimates provided on what it could cost *to attempt* to restore it to “good repair” made it economically unfeasible to do make the attempt.

With all of this in mind, we offer the following review of the relevant history and specific circumstances related to the building located at 127 W. Gilman St..

IV. The history of the building located at 127 W. Gilman

1893 to 1994

There is some confusion about whether 127 W. Gilman St. was built in 1893/94 replacing a house constructed in 1858 or whether it is the 1858 structure which was either relocated to the current location or altered at that location by the owner in 1893/94. The building was expanded in 1896.

It is believed to have served as a private residence from 1893/94 until 1922 when the building was used first by a Jewish organization and then, starting in 1927, as a Chapter House by the Phi Sigma Delta fraternity. It was during the 20’s, presumably for one of these occupants, that it was converted to the rooming house style dwelling it remained for various groups and ownerships for the next 70 years. At some point during this period, there was a fire in the attic that significantly compromised the structural integrity of the roof.

1994 to 2002

SBA acquired the 127 W. Gilman “as-is” near its 100th birthday in 1994 as part of a package deal that included 134 W. Gorham and 114-116 W. Gorham. Steve Brown had established his office at 120 W. Gorham in the Nationally Registered Wooton-Meade House and wanted to preserve the buildings flanking his headquarters. The owner of those buildings would not sell them to Mr. Brown unless he also purchased 127 W. Gilman.

The building was still being used at that time as a rooming house and SBA initially continued to let rooms in the building. By early 2000, however, SBA had become concerned about the building’s structural integrity and in April of that year retained the professionals at Buss Construction to perform a comprehensive analysis of the current condition of 127 W. Gilman St. and provide a recommendation regarding the long-term viability of the building.

The 2000 Buss Construction analysis identified insufficient mechanicals, necessary foundational reconstruction, a compromised roof structure as well as the need for a complete

replacement of the building's plumbing and electrical systems. In light of the property's current condition, the report recommended demolishing the entire building and replacing it with a new structure from the ground up. The associated costs of this recommendation were estimated at somewhere between \$276,500 and \$358,150 which equates to between \$364,000 and \$471,000 in 2012 money. SBA concluded that the projected costs were not economically feasible or wise at that point in time.

As their concerns mounted, SBA commissioned a second report, in February 2002, this time by Severin Engineering. The Severin analysis reiterates many of the concerns noted by Buss Construction and provides additional detail indicating the house had been in a deteriorated condition for a significant amount of time. Specifically, the engineering analysis found, among other things, that:

- “Many areas of siding are different, indicating that small repairs were done in the past without regard to matching materials;”
- “many (windows) at the first floor level have dry-rotting sashes;”
- “The original sandstone foundation walls have been deteriorating, losing mortar and the stones are crumbling...areas of this wall have been re-built with brick...other areas have sloped concrete poured over the walls on the inside to keep the walls from pushing inward;”
- “rear porch is separating from the main house, indicating a settlement problem at the outer piers.”
- “Great care has been used to keep this area (boiler room) sealed...This lack of ventilation or air movement usually leads to a high moisture level in these basements, which causes most of the noted problems;”
- “floor joists visible in one area of the basement have been doubled up at some time in the past (prior to the mid-sixties, based on the joist sizes). The original joists are completely dry-rotted, and the replacement joists are now also showing signs of dry rot. Main visible beams, ring plates, and posts also exhibit areas of dry rot and mold.”

In addition to these concerns, the report also detailed a number of building and fire code deficiencies that would have required immediate remedy upon the initiation of any rehabilitation work. The final recommendation was to abandon the house and to prohibit further occupancy until an economically viable solution could be identified. Following this advice, 127 W. Gilman St. was vacated in 2002 eight years after it was acquired by Steve Brown Apartments and 108 years after it was built.

2002-2014

In 2002, Mr. Brown commissioned architectural renderings of possible alternative housing options for the land and met with neighbors to discuss the possibilities. Neighbor opposition to the alternatives proposed persuaded Mr. Brown that more time and thought was needed to develop the right approach and he and SBA have worked over the years to arrive at the current proposal.

During the nineteen years SBA has owned 127 W. Gilman Street, only one citation was issued. That citation was issued in May of 2011; nine years after SBA closed the building. The citation, as indicated earlier in this document only required attention exterior painting and did not acknowledge or require any action on structural flaws inside the building.

V. Conclusions

A. It is not structurally or economically feasible to preserve or restore the building located at 127 W. Gilman.

1. Mr. Brown and SBA contend that the governing standard relevant to the proposal to demolish the building at 127 W, Gilman is Standard “f.” We believe, as indicated above, that Standard “f.” identifies two standards (i.e., structurally unsound and economically unfeasible), *either of which*, if met, would justify demolition.
2. Mr. Brown and SBA contend that 127 W. Gilman meets both of these standards.
 - a. Two professional engineering assessments were done of the building. Both firms (Buss Construction in 2000 and Severin Engineering in 2002) concluded the building was structurally unsound and recommended that it be demolished. As of this date, there have been no refutations of either of these reports by anyone. Consequently, Mr. Brown and SBA would argue that under Standard “f.”, the Landmark Commission is obliged either to accept the findings of the only existing professional assessments of whether or not the building is structurally unsound or commission another assessment to confirm or refute the findings of these two studies.
 - b. In 2000 Buss Construction estimated that it would cost somewhere between \$364,000 and \$471,000 (adjusted for inflation) just to attempt to “restore” the building. Mr. Brown and SBA believed then and now that the expense was not economically feasible or advisable for a variety of reasons, including: 1) the return on investment could not be justified in terms of likely rental income; more importantly, 2) assuming the effort could have succeeded, the work required would have replaced so much of the existing structure that the final outcome would not have been a restoration, but a replica and as such could no longer be rightfully described as a Contributing Property; and 3) the odds that the work would be successful were slim to none which means the money would have been spent for naught.
 - c. It is also worth noting that Findorff Construction has offered their professional opinion that the structure cannot be moved without destroying what is left of it.

B. Neither of the circumstances specified in Standard “f.” as allowing the Landmark Commission to ignore the fact that it is not structurally or economically feasible to preserve or restore the building located at 127 W. Gilman exist.

1. Neither Mr. Brown nor SBA engaged in any activity that could be described as “self-created” contributions to the structural problems with the building. No such assertions have been made by anyone.
2. There is no proof that the building’s structural problems are “...the result of any failure [on the part of SBA] to maintain the property in good repair...”
 - a. There are two professional engineering assessments that identify the structural damage to the buildings as occurring before SBA acquired the building.
 - b. The building was not in good repair when SBA acquired it. For reasons cited elsewhere in this document, restoring the building to “good repair” was not a feasible option.
 - c. Since SBA could not restore it to “good repair,” it could not maintain it in “good repair.” It is important to note here that both the City of Madison and the State of Wisconsin have the power take pro-active steps to stop “demolition by neglect.”
 - i. Local units of government like Madison can issue citations requiring owners to repair properties and the National Trust for Historic Preservation reports that, “...commonly, demolition by neglect controversies end up...with the local government issuing citations to repair the building, and the owner ignoring the citations.”

No such citations were issued by the City of Madison between 1994 and April of 2011. Only one citation has been issued since then and that was for exterior painting, clearly not an issue related to the structural or economic feasibility of the property and therefore not relevant to the language contained in Standard “f.” That said, it is also worth noting that SBA has spent more than \$11,000 on up-keep of the vacant building at 127 W. Gorham since it was closed.

- ii. The State of Wisconsin has enacted a provision which allows it to: “acquire by gift, purchase, or condemnation any property right in historic property, whether the property is real or personal.” Apparently, no such action was deemed necessary to “protect” 127 W. Gilman.
- d. Mr. Brown’s and SBA’s record with regard to the other 18 historic properties it owns in the Historic District do not support any suggestion that there would be or has been owner neglect with regard to 127 W. Gilman

C. The Landmark Commission should approve the request to demolish 127 W. Gilman

1. The building has been judged not structurally salvageable by two professional engineering firms and Findorff Construction has concluded it is not moveable.
2. The standards for denying demolition under Standard “f.” do not exist.
3. The proposed replacement housing will contribute to the economic and social vitality of the neighborhood and the Historic District.

4. The replacement housing will significantly increase property tax revenues to support schools and other services in our community.