



## PLANNING DIVISION STAFF REPORT

September 16, 2019

PREPARED FOR THE LANDMARKS COMMISSION

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

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

**Legistar File ID #** [56588](#)

**Prepared By:** Heather Bailey, Preservation Planner, Planning Division

**Date Prepared:** September 11, 2019

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### **Background**

On June 24, 2019, the Landmarks Commission made a finding that demolition by neglect was occurring at 121 Langdon. Per the remedies in MGO 41.15(4), the property owner filed an appeal of the Landmarks Commission decision on July 3, 2019. The Common Council held a public hearing on August 6, 2019, and referred the matter back to the Landmarks Commission for their reconsideration with the following motion:

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 property owner received a one month extension to complete the Building Inspection work order items and completed that required work on August 30, 2019. The construction activities triggered site plan requirements from Zoning. The site work was included in the plans that the Landmarks Commission approved for the Certificate of Appropriateness for this property. That work has not been completed at this time, but is scheduled for completion on November 1, 2019.

### **Analysis**

The Demolition by Neglect proceedings were triggered by the work order from Building Inspection. As that work is now complete, staff does not believe that demolition by neglect is still occurring. The work including ground disturbance around the perimeter of the building, which currently directs water to pool up against the foundation. In the short term, this is not problematic, but will cause problems if not corrected. However, the grading and drainage on the property will be addressed as part of Zoning's site plan process, and those required changes will be monitored and inspected by Zoning staff in cooperation with the Preservation Planner.

### **Recommendation**

Staff believes that demolition by neglect is no longer occurring and recommends the Landmarks Commission rescind the finding of demotion by neglect, and direct staff to amend the Landmarks Commission's report to the Common Council on the demolition by neglect proceedings to reflect this new determination.

**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.