



Project Name/Address: 719 Jenifer Street

Application Type: Demolition by Neglect

Legistar File ID # [62805](#)

Prepared By: Heather Bailey, Preservation Planner, Planning Division

Date Prepared: January 5, 2021

Background Information

Parcel Location: The subject site is located in the Third Lake Ridge historic district.

Relevant Historic Preservation Ordinance Sections:

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.

Analysis and Conclusion

The Historic Preservation Ordinance (Chapter 41) establishes a process to allow the Commission to find that a property is undergoing demolition by neglect (see Relevant Historic Preservation Ordinance section above). Based on the report and information provided by Inspector Adrian Van Berkel issued on September 18, 2019 (CB2019-259-05665) and by Inspector William Henry issued on May 28, 2020 (CB2020-141-02108), the continued deterioration since that time, and the testimony of the public hearing, the Landmarks Commission shall determine if the property is undergoing demolition by neglect. If the Commission finds that demolition by neglect is occurring, the action report of the Landmarks Commission will be provided to the Common Council, the Building Inspector, and the Office of the City Attorney.

As stated in the notice sent to the property owner from JoseMaria Donoso, Housing Inspection Supervisor, on October 23, 2020, staff believe that the property is currently undergoing demolition by neglect. This communication cites failure to correct violations specified in cases CB2019-259-05665 and CB2020-141-02108, failure to communicate with Building Inspection or respond to multiple inquiries regarding the maintenance of the building, and failure to appear in Municipal Court for legal proceedings pertaining to that case. A copy of this letter was provided to the Landmarks Commission at its August 27 meeting, at which time a public hearing on the matter of Demolition by Neglect was scheduled for this meeting.

Since the Notice of Demolition was received by the property owner, staff have met with the owner, his attorney, and his contractor to review the violations, preliminary drawings and a plan for making the necessary repairs, and the demolition by neglect process. This work will require a Certificate of Appropriateness to be issued by the Landmarks Commission. Those details will be discussed as part of a separate agenda item. The contractor has supplied a timeline for when the work related to the Certificate of Appropriateness application can be completed. The estimate is for the work to be completed by mid-June of this year.

Recommendation

Staff recommends that the Landmarks Commission find that the property at 719 Jenifer Street is undergoing demolition by neglect as defined in Chapter 41. However, if based on the testimony and discussion at the public hearing, the Landmarks Commission is highly confident that the property owner will secure a Certificate of Appropriateness and make the necessary repairs in an expedited timeframe, the Landmarks Commission could refer this matter to a future meeting. Staff would recommend that Landmarks Commission defer their consideration to the matter to the May 17 commission meeting to monitor the progress, and set a date for the final consideration at that time.