

HISTORIC DISTRICT COMMISSION

Minutes
October 17, 2006
DRAFT

City Commission Chambers
2nd Floor, City Hall
241 W. South Street
Kalamazoo, MI 49007

Members Present: Lisa Poole-Woldring, Chair; Fred Decker, Vice Chair; Nelson Nave; Bob Oudsema; Bill Snyder; James Tribu

Members Excused: Linda DeYoung

City Staff: Sharon Ferraro, Historic Preservation Coordinator; Amy Thomas, Recording Secretary

Guests: David Anderson, City Commission

CALL TO ORDER

Ms. Poole-Woldring called the meeting to order at 5:05 p.m.

APPROVAL OF ABSENCES

The excused absence of Ms. DeYoung was approved by unanimous voice vote.

AGENDA (October 17, 2006)

There were no changes to the agenda.

PUBLIC COMMENT

None

DISCLAIMER

Ms. Ferraro read the disclaimer into the record.

OLD BUSINESS

531 Eleanor (Case #: IHA 06-0155)

John Cooper, Council for the Diocese, was present to discuss the application. The application requests demolition of the deteriorated and fire damaged house and construction of a prayer garden.

Attorney Cooper advised that his client is requesting that 531 Eleanor be demolished. He stated that Norm Hamann of Diekema Hamann Architects was also present to answer questions.

Attorney Cooper stated that 531 Eleanor has been on the Dangerous Buildings Board (DBB) agenda. He referred to Michigan statute 125.541 which states that if the estimated cost of repair exceeds the SEV of the building or structure to be repaired, a rebuttable presumption exists that the building or structure requires immediate demolition. The SEV for 531 Eleanor is \$34,000. The city's estimate to repair this building is \$165,000, roughly 5 times the SEV. Ms. Ferraro advised that there is a revised repair estimate from Fletcher contractors of \$215,000.

Attorney Cooper noted the substantial difference in repair estimates between Miller Davis and Fletcher. According to the estimates, Miller Davis wouldn't attempt to do the rehabilitation without excavating the foundation. Fletcher proposed nothing with regard to the foundation below ground, the slab in the basement, the footings, roof or roof structure. Even if the \$215,000 estimate were correct, it wouldn't be a sound economic decision for the church to rehab that house on that street.

Attorney Cooper stated that the three houses on Old Orchard would benefit from the demolition on Eleanor; they would have site lines out the back that don't currently exist. Under Michigan law, there is a strong case for demolition. The federal RLUIPA (Religious Land Use and Institutionalized Persons Act) statute governs the extent to which local authorities can govern the religious use of properties. The Catholic diocese has a religious use in mind for this property, and is committed to proceeding with the prayer garden at 531 Eleanor after the demolition. Attorney Cooper stated that he hoped the HDC would look favorably upon the demolition request so that the diocese doesn't have to proceed with this matter in a court of law, and have a judge administer the provisions of the RLUIPA.

Mr. Snyder inquired if the brief is the application and the attachments, and Ms. Ferraro responded in the affirmative. Mr. Snyder mentioned that he didn't have the information regarding the SEV and the calculations to which Attorney Cooper referred. Ms. Ferraro advised that the information regarding the SEV was in the HDC packet last month. Attorney Cooper pointed out that the repair estimate is six times the SEV so there is a rebuttable presumption that demolition is appropriate in this case.

Mr. Tribu inquired if federal law states that if a religious use is requested, the requestor can do what they want. Attorney Cooper responded in the affirmative and added that there are parameters for the request. The prayer garden fits into the religious mission of the church. Mr. Tribu inquired if a half-way house (the ARK) would also fit into religious mission of the church. Attorney Cooper stated that the church decided not to pursue that option of having the ARK at the Eleanor Street location.

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Mr. Nave inquired if the estimate from Miller-Davis was for a duplex or single-family renovation costs. Attorney Cooper stated that he thought the estimate was based on single-family residence. Ms. Ferraro advised that Miller-Davis evaluated 531 Eleanor as a single-family home. The house is approximately 2,700 square feet.

Mr. Oudsema mentioned that the thrust for proceeding with the demolition is the religious use, and he inquired as to how long that use would be in place. Attorney Cooper advised that the use would be in place in perpetuity. The investment would not be made with the expectation that the garden would only be there for a short period of time. It is expected that the prayer garden will be a valuable part of the church's mission for a long time.

Mr. Oudsema inquired as to the budget for the prayer garden. Attorney Cooper stated that there are only conceptual drawings at this point. Mr. Oudsema inquired as to what would happen if the church wants that land for a different use later; would the church be able to change the use in a year? Attorney Cooper responded in the affirmative. Attorney Cooper referred to the RLUIPA and advised that he would pursue that if necessary. Mr. Oudsema inquired if a parking lot would fall under that category. Attorney Cooper stated that he thought a parking lot would not constitute a religious use. Mr. Oudsema inquired as to what would happen if the existing parking lot was not adequate. Ms. Ferraro advised that such a question might need to be answered in a court of law.

Mr. Decker inquired as to the basis for the \$125,000 asking price for the two properties. Attorney Cooper stated that the intention was to determine what the market would command for those properties. Mr. Oudsema inquired if the church would be willing to offer the property at two times the SEV. Attorney Cooper stated that the church would not be willing to do that because there is an obligation to make the building safe for the kids in the area, etc. People were living there that shouldn't have been. Attorney Cooper advised that there was a candle in the basement when he last visited the property yesterday at 3:00.

Ms. Poole-Woldring inquired as to the SEV for 527 Eleanor, and Attorney Cooper stated that he didn't know. Ms. Ferraro advised that the SEV for 527 Eleanor was approximately \$40,000 not substantially higher than 531 Eleanor.

Commissioner Tribu inquired if the church would be opposed to having the right investor repair 531 Eleanor. Attorney Cooper stated that the church wants a prayer garden, and it wants to protect its investment in that neighborhood.

Mr. Oudsema inquired as to the long-term plans for 527 Eleanor. Attorney Cooper stated that the plans are for a single-family residence. The church wants to maintain the frontage on Eleanor and that structure is in good shape. Attorney Cooper stated that a cost analysis has not been done. Ms. Ferraro stated that there had been a burst pipe at 527 Eleanor, but otherwise the property is ready to certify. Attorney Cooper advised that the church intends to use 527 Eleanor for purposes consistent with the church's mission, such as a home for single mothers.

Mr. Oudsema commented that it looks like the church would be spending \$150,000 to \$200,000 on 527 Eleanor to put that property to use, and it doesn't seem like a substantial difference between the two properties. Ms. Ferraro advised that 527 Eleanor actually needs very little work in order to qualify as a certified rental.

Mr. Tribu inquired as to why 527 Eleanor isn't a rental at this point. Attorney Cooper advised that 527 Eleanor has been the subject of different plans, including the plans for the ARK. Its fate awaits the decision regarding 531 Eleanor. Mr. Tribu inquired as to why the fate of one property is contingent on the fate of the other. Attorney Cooper stated that both properties were advertised for sale to see what the market would command.

Ms. Ferraro inquired as to how long the properties have been listed with O'Brien Realty. Attorney Cooper responded that the properties had been listed for at least 60 days and probably longer. He commented that if someone wants to spend that kind of money on the property, that's their choice. The church doesn't have that kind of money to spend.

Ms. Poole-Woldring inquired as to the cost of the rosary garden, and Mr. Cooper stated that he didn't know.

Mr. Decker inquired as to why the houses have been listed together, if the church only wants to sell one property. Attorney Cooper stated that the church wants to know who might be interested in purchasing the properties and how the purchaser would use those properties. There have been no offers on either property.

Public Hearing

Kurt Cobb, 3308 Pine Bluff Lane, SARA Advocacy Committee. Mr. Cobb read a six – minute long statement into the record. He concluded by stating that the diocese wants the HDC to relieve them of their responsibility, which they took on willingly. Demolition by neglect has now become an issue. Mr. Cobb stated that if the money spent to date by the church on various proposals for 531 Eleanor had been spent on renovations, the property could have been renovated by now.

Leslie, Decker, 511 Woodward, advised that she was speaking as a private citizen. Ms. Decker stated that the demolition request has been denied by the HDC and the decision was upheld by State Historic preservation Review Board when the Diocese appealed. The case is being reviewed on a technicality from the DBB (Dangerous Buildings Board). Ms. Decker stated that she is the Chair of the DBB. The DBB only determines the cost of the exterior repairs not the interior repairs. The determination of the DBB in November of 2004 was that the church was to submit plans for repair. Because the minutes from the Dangerous Buildings Board are not as complete as they might have been, the attorney's from the diocese and the city decided that submitting a raze order constituted submitting a plan. This creates a "catch 22" since it has already been determined that the demolition plan cannot be carried out. Ms. Decker stated that she has been through 531 Eleanor and houses in worse condition have been saved. The \$215,000 repair estimate is ludicrous.

To grant demolition for this religious use would put many historic houses in jeopardy because it would set a precedent.

Joshua Davis, 420 Douglas, advised that he has lived in the historic district since 1988. He stated that he has been able to distill his experiences to one very simple truth that enables him to live in harmony with Kalamazoo's preservation ordinance. That truth is that the person must bend to fit the property not vice versa; there are no exceptions. The people who are the most unhappy about living in the historic district are the ones who don't arrive at that conclusion. He referred to Senator Stuart's house at 427 Stuart, which is behind Mr. Davis' property. That property has been vacant since 1998, when a tree fell on the house and damaged it. Mr. Davis advised that it will cost a lot more than the amount of the SEV (approximately \$199,000) to fix that house. He questioned what would happen if a religious organization decided that Senator Stuart's house should come down; that house is the flagship of the neighborhood. He agreed with statements made by the previous speakers pertaining to the amount of money spent by the diocese for various plans, which could have been spent for restoration of 531 Eleanor. Mr. Davis encouraged the HDC to deny any request from the diocese that didn't result in the restoration of the Eleanor Street properties.

Jay Bonsignore, 443 Stuart, stated that he is a builder and has done quite a bit of remodeling. He stated that he has not been in 531 Eleanor, but that he thought the estimates were too high and had no relation to reality.

Attorney Cooper commented that Mr. Cobb may think that the historic preservation ordinance takes precedence over the first amendment of the constitution, but it doesn't. It doesn't take precedence over federal statute, federal law or state law. He commented about the stunning accusations regarding the trumped-up numbers to support the application. Mr. Cooper stated that he has never met Mr. Fletcher, who was retained by City of Kalamazoo staff. The repair estimate from Mr. Fletcher is \$215,000; counsel for the diocese did not make up that estimate. Attorney Cooper requested that the HDC follow the order and law of the State of Michigan.

There were no further public comments and the public hearing was closed.

Mr. Nave, supported by Mr. Decker, moved to deny the application for demolition of 531 Eleanor based on the Secretary of Interior's Standards and Guidelines #1.

Ms. Ferraro referred to Chapter 16 of the City of Kalamazoo's ordinance regarding the four conditions under which demolition can be allowed in the historic district. She read the following information from the ordinance:

Work within a historic district shall be permitted through the issuance of a Notice to Proceed by the Historic District Commission if any of the following conditions prevail and if the proposed work can be demonstrated by a finding of the Commission to be a necessary to substantially improve or correct any of the following conditions:

1. The resource constitutes a hazard to the safety of the public or to the occupants;

2. The resource is a deterrent to a major improvement program, which will be of substantial benefit to the community and the applicant proposing the work has obtained all necessary planning and zoning approvals, financing and environmental clearances;
3. Retention of the resource would cause undue financial hardship to the owner when a governmental action, an act of god or other events beyond the owner's control created the hardship and all feasible alternatives to eliminate the financial hardship, which may include offering the resource for sale at its fair market value or moving the resource to a vacant site within the historic district, have been attempted and exhausted by the owner;
4. Retaining the resource is not in the interest of the majority of the community.

The request has to meet one of those conditions for the Historic District to allow the demolition. She stated that the motion should refer to 16.23G (1-4) of the City of Kalamazoo Code of Ordinance and state whether the HDC feels those conditions have or have not been met.

Mr. Snyder, supported by Mr. Decker, moved to amend the motion to state that none of the criteria specified in City of Kalamazoo ordinance 16.23G of the historic district governance apply to the application for demolition regarding 531 Eleanor. With a roll call vote, the motion carried by a majority vote.

Ayes: Decker, Nave, Poole-Woldring, Snyder, Tribu

Nayes: Oudsema

Mr. Decker expressed concern that the asking price for the properties is a deterrent to prospective buyers. Also, the Historic District Commission is not charged with interpreting federal law. Lastly, the Historic District Commission exists to serve the property, not the demolition. Attorney Cooper can pursue the option of taking this matter to a higher authority to have the HDC overruled.

Mr. Nave stated that he agreed with Mr. Decker's comments, and added that it is the responsibility of the HDC to regulate work according to the local historic district act. He commented that these two houses have been part of the streetscape of houses for many years. Removing one of them would be like pulling out one front tooth; the streetscape would no longer look historic. Mr. Nave advised that the roof is in good shape; it is keeping most of the house dry except a couple spots in the basement. The stone foundation has some problems but overall it's in good shape, and just needs to be restored. Mr. Nave stated that \$215,000 does not seem out of line to restore 2,700 square feet. Restoration of 531 Eleanor would help the church property and the neighborhood. The house could be used for many things church-related.

Mr. Oudsema commented that 531 and 527 Eleanor are all that is left of the streetscape. There are two commercial buildings to the east. He commented that \$215,000 seems high for the amount of work that is required. It might not be in the owner's best economic interest to have it repaired. Mr. Oudsema stated that, philosophically, he is sympathetic to demolition by neglect, but the city must be more aggressive about that

earlier. Mr. Oudsema stated that change needs to take place in a responsible way and he suggested allowing the church to proceed with their plans. Mr. Oudsema questioned if demolition by neglect will continue to be allowed by the city. He stated that he feels the HDC is being used in that regard.

NEW BUSINESS

723 Eleanor (Case #: IHV 06-0006)

Amanda Terberg was present to discuss the application. The application requests retroactive approval for the installation of a door on the east side of the house to provide basement access to the electrical box for all the tenants in the house.

Ms. Terberg stated that Glenda Campbell is the housing inspector for this property and that she requested that all tenants have access to the electrical panel. Ms. Terberg had been informed by the owner was advised that a door was in this position originally, and that it opened to the outside. There are three apartment units at this address.

Mr. Snyder inquired if the housing inspectors are expected to inform the property owners when a property is in the historic district, and if anyone followed up with Inspector Campbell. Ms. Ferraro advised that she hadn't followed up with the housing inspector's report.

Ms. Terberg stated that she was aware that the property is in the historic district. However, she is a new property manager and was unaware that she needed to apply to have the work done.

Ms. Terberg stated that she went through a learning process with regard to the steps. The risers need to be corrected and the overhand should be installed, etc. She inquired as to what else she would need to do to make things right.

The commission expressed concern that the work may have been done this way intentionally. Mr. Oudsema commented that Mr. O'Brien is not an uninformed landlord. Mr. Oudsema suggested boarding up the door and losing the apartment.

Mr. Post suggested putting individual disconnects into each apartment rather than losing the apartment rental. Ms. Terberg stated that access to the basement is through one apartment. The current tenant a medical condition that causes her temperature to fluctuate, so when she gets hot, she turns off the heat. The other tenants called and the tenant wouldn't let the other tenants in her apartment. Sometimes the tenant would get cold and turn the thermostat up to 90°

Mr. Nave, supported by Mr. Snyder, moved to retroactively approve the door with requirements that the stair meet historic district standards, and the trim should match the other openings next to it. The motion failed with a tie vote.

Ayes: Nave, Decker, Tribu

Nayes: Oudsema, Snyder, Poole-Woldring

Mr. Oudsema inquired if the HDC could ask the owner to remove the door that was installed without a permit, and Ms. Ferraro responded in the affirmative. She stated that it would depend on the City Attorney and Mr. O'Brien as to whether or not the request was carried out. The property owner could incur fines if they didn't follow through with the request.

Mr. Snyder, supported by Mr. Oudsema, moved to request removal of the basement access door and all related features at 723 Eleanor. The light over the door is also to be removed. All work to standards. The work is to be completed within 60 days of this meeting, not including the paint. With a roll call vote, the motion carried unanimously.

909 Village (a/k/a 737 Village) (Case #: IHA 06-0169)

Doug Post was present to discuss the application. The application requests installation of vinyl siding to improve appearance instead of three different siding materials currently in place.

Mr. Post advised that there are five types of different siding on the building. Mr. Post stated that he had not yet applied for a building permit, and that he was just looking for advice on whether or not the proposed work would be possible. Mr. Post approached the dais with pictures of the property.

The original garage structure, probably built in the 1940s, was a garage with an apartment above. As additions were put on siding was added including Insul-Wood (a shingle type material), split cedar shakes, Permastone, T-111 and underneath it all the original wooden Dutch lap siding.

Ms. Ferraro advised stripping off the other sidings and replacing the Dutch lap siding as necessary. Mr. Post commented that if the existing Dutch lap siding is cheaper to repair he would proceed to do that. Wooden Dutch lap is \$432 per square, Hardie Plank (10 feet) is \$234 a square and vinyl is \$108 per square.

Mr. Snyder suggested pulling off enough of the exterior layer of siding to allow an evaluation of the original siding underneath. He mentioned that weather would be a factor in proceeding with the proposed work, and he inquired if the project was urgent. Mr. Post stated that the project was not urgent since the property rents as is, he's just interested in improving it.

Mr. Snyder commented that the PermaStone on the front may seal the fate of the structure. The HDC has not requested anyone re-side unless that is a reasonable option. Abandoning windows would require that they be sided over. He inquired if the applicant

was asking for conceptual approval. Mr. Post advised that he wanted HDC approval to abandon the windows. He also requested advice on what to do about the rear deck. Mr. Snyder stated that the rear deck is a different issue.

Discussion followed as to whether a one-hour or two-hour fire separation wall would be needed by the garage. Mr. Nave suggested venting in the middle to solve problems with leaking.

Ms. Ferraro stated that in 1908 a building near this position on the lot, but further from the street had an address as a dwelling. Therefore, it was not a carriage barn.

Mr. Post stated that he was proposing a 4½” reveal of siding; the siding is to be smooth per Ms. Ferraro. Mr. Nave stated that he would like to see the original siding exposed first.

Ms. Ferraro inquired if the HDC is comfortable with losing the first floor windows. She stated that the applicant is making the building look like what it is, an apartment over a garage.

Mr. Snyder, supported by Ms. Poole-Woldring, moved to authorize the removal of the exterior surface siding (non-original siding) in an exploratory manner to determine the condition of the original siding at 909 Village. The applicant is to confer with the Historic Preservation Coordinator and she is to report back to the HDC. With a roll call vote, the motion carried unanimously.

Ms. Ferraro advised that a permit would not be required to remove the siding. She advised the applicant to remove a portion of the siding and then make a proposal. The applicant will need to obtain a permit if the windows are to be closed off. If the building is just to be sided, a permit is not necessary.

602 Forest (Case #: IHV 06-0107)

Vern Middleton was present on behalf of JVC Investments to discuss the application. The application requests retroactive approval for replacement of two severely damaged wooden windows.

Mr. Middleton stated that the two old windows were stuck and two new double-hung, wood windows have been installed. The new windows and trim are as close as possible to the originals.

Mr. Snyder inquired as to why the applicant didn't consult with the HDC prior to beginning the project. The applicant advised that he was new at this and was unaware of the rules. Ms. Ferraro advised that the HDC doesn't rule on paint, paving or plants but the Historic Preservation Coordinator and/or the HDC should be consulted with regard to other exterior changes. Mr. Middleton stated that he doesn't have the original sashes.

Mr. Nave, supported by Mr. Oudsema, moved approval of the new windows installed at 602 Forrest. The new trim and sills are to be replaced with trim and sills to match the rest of the existing windows. With a roll call vote, the motion carried unanimously.

Mr. Snyder inquired if the brick molding is there or if the siding is to be raised. Ms. Ferraro stated that the aluminum siding has covered part of the window frame. There may be more trim underneath that is not visible at this point. Mr. Snyder inquired as to what would be underneath if the brick molding around the windows is removed. The applicant stated that he used the existing framing; the windows are custom made for the existing openings. They were made to match as closely as possible the windows that were removed.

Ms. Ferraro advised that she would set up a site visit with the applicant to take care of the details.

820 W. Lovell (Case #: IHV 06-002)

Ms. Ferraro stated that she had mistakenly approved the replacement of the storm door at this address. Mr. Snyder inquired if the permission was in writing. Ms. Ferraro stated that there had been no application until now, and Mr. Snyder commented that the information presented did not resemble an application. He provided the following account of the events leading to this situation: A door and transom were removed at 820 W. Lovell and Mr. Snyder reported to Ms. Ferraro that a metal door had been installed and there was plywood across the transom. Ms. Ferraro followed up with the property owner and it took a couple of months for them to put back the original door and transom. After several months, they began installation of an inappropriate storm door. Prior to the installation, Mr. Snyder, then chair of the Historic District Commission, spoke with the installer explained that the door was inappropriate. They packaged it up and took it away, but a month or two later it was back up. There was no reason to allow the door to be reinstalled.

Mr. Snyder, supported by Mr. Nave, moved to disallow the installation of the inappropriate storm door at 820 W. Lovell, per the Secretary of the Interior's Standards and Guidelines number 9. With a roll call vote, the motion carried by a majority vote.

Ayes: Nave, Snyder, Poole-Woldring, Decker

Nays: Oudsema, Tribu

Mr. Oudsema inquired if the homeowner contacted Ms. Ferraro and she responded in the affirmative. Ms. Ferraro stated that she gave approval based on the homeowner installing a door that was the same design as the one removed. There was no written authorization, just a verbal o.k.

Mr. Snyder expressed concern with regard to the approval of the inappropriate storm door by the Historic Preservation Coordinator. Mr. Oudsema commented that the homeowner did what they thought they were supposed to do, and Ms. Ferraro has already expressed regret with regard to the outcome of this matter. Mr. Snyder cautioned against applying standards inequitably in a court of law. He added that he would challenge this matter in a court of law if necessary. He urged the HDC to vote to correct this situation so that it is consistent with what is allowed in the historic district.

Ms. Ferraro stated that she had written a letter of apology to the property owner and requested that they install an appropriate door. Thus far, the property owner has failed to comply with that request.

Mr. Snyder, supported by Mr. Nave, moved to disallow the use of the inappropriate storm door at 820 W. Lovell. With a roll call vote, the motion carried by a majority vote.

Ayes: Nave, Snyder, Poole-Woldring, Decker

Nays: Oudsema, James

After a brief discussion, Mr. Oudsema suggested taking up a collection to buy the property owner an appropriate door. The commissioners voiced their approval for this suggestion. Mr. Oudsema requested that Ms. Ferraro contact the property owner to inquire if he/she would be willing to install an appropriate door if the funds or the door were provided. Several contributions were made at the meeting and others advised that they would contribute if the property owner approved of this suggestion.

OTHER BUSINESS

Mr. Oudsema inquired about the plans for Chenery Auditorium. Ms. Ferraro stated that she was asked by Lynn Houghton to get reactions from people regarding the potential renovations of the State Theater or Chenery auditorium or building a new concert hall for the Kalamazoo Symphony Orchestra. Ms. Houghton is looking for comments on how the HDC feels.

Mr. Oudsema stated that he was approached about joining the KSO (Kalamazoo Symphony Orchestra) Board, and he saw some drawings for this project. He was asked about strategies for acquiring properties around old Kalamazoo Central High School about 10 or 15 years ago, which pertained to the proposed Chenery remodel. The properties were to be acquired for more parking and a lobby area be created at Chenery facing Dutton Street.

Ms. Ferraro advised that WMU turned over management of the auditorium (Miller) to Clear Channel Radio, and a decision is to be made about the symphony hall by the end of December.

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Mr. Oudsema stated that the proposal for Chenery might include the demolition of 7 or 8 houses, and that he would have parking on the other side of his fence instead of tenants. Ms. Ferraro advised that a parking structure is part of some very early concept plans being considered.

Mr. Nave advised that the attic window at 524 Forrest is open and there may be a new window on the back.

MINUTES (September 19, 2006)

Mr. Nave, supported by Mr. Snyder, moved approval of the September 19, 2006 HDC minutes as amended. With a voice vote, the motion carried unanimously.

ADJOURNMENT

The meeting adjourned at 7:50 p.m.

Submitted by: _____

Dated: _____

Reviewed by: _____

Dated: _____

Approved by: _____

Dated: _____