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Balancing Act: Preventing Demolition by Neglect

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"You must be careful in enforcing preservation ordinances. Through a democratic process, citizens can take this gift away if they feel they are being abused by its laws."

- Dan Becker,
Raleigh
Historic
Districts
Commission

In 1993, The National Alliance of Preservation Commissions conducted

a survey of preservation commissions from across the country. The purpose of the survey was to identify common characteristics of local commissions and to determine their needs. Results showed that local commissions believe that preventing demolition by neglect was the most difficult situation with which they must deal. Only 25% of the commissions surveyed have some sort of authority to prevent demolition by neglect. Additionally, these commissions stated that dealing with claims of economic hardships were also difficult.

In this brief, issues of preventing demolition by neglect and dealing with claims of economic hardship will be considered. First, demolition by neglect laws will be defined on a broad level, and a general overview of procedures to prevent demolition by neglect will be given. Economic hardship will also be defined in legal terms, and its presentation within the scope of demolition by neglect cases will be demonstrated. Finally, the brief will present and analyze examples of demolition by neglect cases in North Carolina, Michigan, and California. Through illustration of these localized cases around the country, readers can better understand the complexities of dealing with demolition by neglect of historic structures.

The legal definition of demolition by neglect described by the National Trust for Historic Preservation is the "process of allowing a building to deteriorate to the point where demolition is necessary to protect

public health and safety." Sometimes an owner of an old historic building will let it deteriorate to the point of collapse in order to rid themselves of the responsibility of ownership and upkeep. In progressive stages of deterioration, city building inspection officials will find an historic property to pose a health and safety risk to the public, and they will order that the building be demolished. Demolition of this sort offers the city or county the easiest and quickest route to eliminating a safety hazard as well as a way to "circumvent local preservation ordinances" (Cofresi, Radtke 151-152). Thus, an owner engaging in demolition by neglect of an historic structure pits the local governmental building inspectors against local preservation commissions. It is difficult to legally prove that an owner is intentionally neglecting their building, thus complicating the process of preventing demolition by neglect (Mayes 178-179).

In justifying demolition by neglect, owners often make arguments of economic hardship in order to protect themselves from the burden of maintaining their building through action by the local preservation commission. Economic hardship is "extreme economic impact on an individual property owner resulting from the application of a historic preservation law" (National Trust for Historic Preservation). Discussion of the legal implication of claims of economic hardships in demolition by neglect is beyond the scope of this paper. However, it is important to note that preservation commissions from across the country find defining economic hardship and dealing with



Fig. 2: 615 Martin Street, Raleigh, NC.



Fig. 3: Detail of trim work, 615 Martin Street, Raleigh, NC.

claims to be some of their greatest challenges (NAPC). Claims of economic hardship carry great emotional weight because of the financial difficulties that a deteriorating property presents to an owner. Thus claims of economic hardship often further complicate and emotionally charge demolition by neglect cases.

Demolition by Neglect in North Carolina: Three Communities

In North Carolina, most cities and towns have modeled their legislation to prevent demolition by neglect after Raleigh's preservation ordinance. Through an interview with the author for this article, Dan Becker, the Historic Preservation Planner for the city, makes several points regarding interpretation and application of demolition by neglect legislation by local governments. He states that Raleigh was the first municipality in North Carolina to take advantage of North Carolina's state-wide enabling legislation by developing a preservation ordinance in 1992. The preservation ordinance gives the Raleigh Historic Districts Commission and the city Planning Department the authority to prevent demolition by neglect.

As part of legal procedures, the Planning Department must produce visual and written documentation of a structure as evidence that it is undergoing demolition by neglect. This evidence must correspond with standards defined by the ordinance. These standards often include deterioration of exterior walls, structural support, character-defining historic features, chimneys, flooring, roofing, porches, and other significant features. Property owners have ten days from the notification date to make a legal claim of economic hardship. The city must hold a public hearing within thirty days of notification in which the city presents its case to prove demolition by neglect, and the property owner may present arguments against the city's case or may

present evidence to correct the situation. If the owner refuses to stabilize and repair the building, or does not sell the property, then the city, through the Historic Districts Commission, can apply to the court for an Order of Abatement. Court approval of an Order of Abatement would allow the city to make necessary repairs to the structure to bring it into compliance with the preservation ordinance, then take out a lien against the property owner for the cost of such repairs. Other protective measures in Raleigh's ordinance include a delay of demolition for up to 365 days, in which time the city can find alternative solutions to demolition (Raleigh Historic Districts Commission).

Becker says that the city takes a "conservative approach" to applying the law: the general policy of the planning department is to regard preventing demolition by neglect as a "significant government action with regard to private property." In treating demolition by neglect, Raleigh tries to give ample rights and control to the property owner, both in the way that the law is written, and in the way that it is applied to a violation. Since 1990, the city has dealt with six cases to prevent demolition by neglect. In each case, staff are "careful and deliberate" in analyzing the building and its problems (Becker). Mostly they look for structural and safety issues that pose of threat to people living in the building, pedestrians, neighbors, and the general community. They document the building carefully and with detail, identifying and taking photographs of physical evidence of ordinance violation and unsafe features. They key each piece of physical evidence back to the city's ordinance to justify citing each violation. Additionally, Becker notes the importance of timing in building a successful case to prevent demolition by neglect. A building must be in such a state of deterioration that the evidence clearly supports claims of



Fig. 4: An early 20th century bungalow in deteriorated condition, Lane Street, Oakwood Historic District, Raleigh, NC.

demolition by neglect. This way, the city is more likely to show burden of proof and will have better chances of winning preventative measures in court.

Most of the cases in Raleigh have been successful in preventing demolition by neglect. Few have ended up in court. Becker states that the first case Raleigh handled was a rooming house in an historic district that had fallen into terrible disrepair. No one was formally living in the house, but a few homeless individuals were squatting there for shelter. There was a lot of crime in the area, some of which police suspected to be originating from the house. The planning department treated the situation as simple code enforcement. They cited the owner with a minimum housing code violation and a Certificate of Appropriateness (COA) violation. The threat of action by the city proved to be enough to motivate the owners of the house at the time to take action. The owners sold the house to a woman who rehabilitated the home and used it as a residence for herself. Dan Becker stated that new ownership has been the solution to most of their cases to prevent demolition. Becker gives credit to a strong real estate market in Raleigh for the salvation of many historic homes.

The city of Hillsborough, NC, is currently handling a case to prevent demolition by neglect. Margaret Schucker is the preservation planner for Hillsborough. She states that the city has modeled their legislation to prevent demolition by neglect after Raleigh's legislation. Again, Hillsborough applies the law to prevent demolition by neglect conservatively. They try to respect the rights of the property owner by extending as much control as possible to the owner. The demolition by neglect case of the Colonial



Fig. 5: Colonial Inn in March 2005, King Street, Hillsborough, NC.

Inn is the city's first and only case, and it is currently being reviewed in court.

The Colonial Inn was built in 1759. Local legend states that British General Cornwallis used the inn as his temporary residence in the area. Post-Revolution, Aaron Burr, the third vice president, and Dolly Madison were both reported to have stayed here (Rogers, Singer). The Colonial Inn has been operating as a hotel for approximately 250 years. In April 2001, the inn "closed for renovations" (Rogers, Singer) after the owners filed for bankruptcy (WRAL.com). In March of 2002, Francis Henry from Wilmington bought the Colonial Inn in a bid contest for \$410,000 (Lewis, Ensslin). From the beginning of his stewardship, clear plans for the Inn have not been evident. According to news reports, Henry had planned to restore the inn, but he made no progress with that plan. For city officials, he remained notoriously hard to contact. During his period of inaction, the town cited 18 physical problems that needed repairing on the structure in February 2004. In response, Henry decided to put the inn on the market for \$1.7 million. He has received offers for substantially lower amounts and has refused those (Lewis, Wallace). The building is in poor condition and will take considerable money to restore. The town planning board has enacted fines against Henry amounting to \$100 per day until restoration work begins. These fines were effective beginning March 26, 2004 (Wallace). To date, Henry has not begun work on the inn. In May 2004, the town filed suit to prevent demolition by neglect; they are asking that the courts force Henry to begin restoration, or to allow the town to take over the property and begin restoration (WRAL.com). The town would then place a lien on the inn to recuparate expenses. The case is currently in court. Henry's lawyers are arguing that the town is infringing on his rights as a property owner by seeking to save the building. They have also charged that the town is discriminating against him (Lewis, Wallace). As of February 2005, a judge has ordered



Fig. 6: Detail of front porch, Colonial Inn.

the town and Henry to attempt to work out a compromise for restoring the inn (WRAL.com). So far, no compromise has been reached.

Margaret Schucker states that Hillsborough's preservation ordinance, modeled after the Raleigh ordinance, does not allow Hillsborough to stabilize and repair the structure without judicial approval. Through the case of the Colonial Inn, readers can see how more progressive legislation to prevent demolition by neglect might give more control to preservation planners in cities to proactively prevent the neglect by stepping in and physically restoring the structure. However, Dan Becker of Raleigh noted benefits to the conservative approach, which the town of Hillsborough also seems to embrace. Becker states that the more control property owners feel that they have in these matters, the more likely they will be willing to work with preservation legislation, and the more supportive the community will be. Because the preservation ordinances are granted through the state enabling legislation, citizens can challenge preservation laws if they feel that the laws are too imposing or restrictive, and the preservation ordinances can be dissolved. Thus, Becker recommends a careful balance of public relations. He emphasizes the importance of partnering with neighborhood associations to foster awareness, advocacy, and participation in preservation among citizens. In the case of the Colonial Inn in Hillsborough, however, support for preservation is prevalent among the residents there. Unfortunately, the town has run into an owner who is a poor steward of this historic structure and who is unwilling or unable to act in the interest of preservation of the Colonial Inn at this time.

Fayetteville, NC, has taken a proactive stance on applying demolition by neglect laws. The city's legislation is also



Fig. 7: Detail of chimneys, deteriorated wood siding and metal roof of the Colonial Inn.

modeled after Raleigh's. Bruce Dawes, Fayetteville's Historic Properties Manager, states that Fayetteville adopted its preservation ordinance in 1997. At that time, downtown Fayetteville was quite "blighted," with many buildings that had windows boarded up and were vacant and decaying. They promptly sent out a mailing to every property owner of a downtown structure. The mailing outlined the prevention of demolition by neglect legislation and actively ordered compliance with the new preservation codes. Owners were to begin restoring their buildings or the city would levy \$100 per day fines.

Bruce Dawes credits the city's progressive approach to turning its downtown around and revitalizing the area. He reported that people quickly began restoring the downtown buildings or selling their property to owners who would. When restoration began, they discovered that many buildings retained original features, such as windows, doors, and hardware. The restoration efforts also corrected structural and safety problems in the downtown area. The revitalization spread to the nearby Haymount neighborhood, which is now an historic district. Throughout the city's campaign to mandate compliance with the ordinance, no cases ever resulted in a court battle. Additionally, only one building was lost. The owners of an old theater downtown opted for demolition. The city was able to delay the demolition for 180 days, during which time they tried to find alternative solutions to the demolition. However, efforts were unsuccessful, and the owners were allowed to proceed with demolition. Regardless, Fayetteville's campaign for mandatory compliance to the preservation ordinance has resulted in significant revitalization and has "turned the downtown around."

Through the illustration of these cases in North Carolina, readers can understand the advantages and disadvantages



Fig. 8: The Monroe Block in 1915, Detroit, MI.

of proactive or conservative approaches to preventing demolition by neglect. Often, the difference in approaches between cities lies not in the actual wording of the legislation but in how the city applies the legislation. The attitudes of planners, preservation commission members, city officials, and the community often guide the application. Residents in all three cities respect and support preservation as a link to history and as an economic tool. Raleigh and Hillsborough place primacy on the rights of property owners, whereas Fayetteville has used demolition by neglect legislation to quickly revitalize its downtown. Readers can also understand the difficulty of applying legislation to prevent demolition by neglect. The legislation can infringe on the rights of a property owner to protect, preserve, and enhance the larger community. Other cases in Detroit, Michigan, and St. Louis, Missouri, illustrate the intricacies of demolition by neglect cases in other regions of the country.

Demolition by neglect in Detroit, Michigan

In 1990, Detroit lost an entire block of historic commercial buildings to demolition (Hyde 40). The historic Monroe Block consisted of eight commercial buildings that were built between 1852 and 1872. They were Detroit's last remaining antebellum commercial buildings and impressive resources for the rest of the nation as well. The buildings were constructed of brick and grey-cut sandstone (Hyde 41). Most of the buildings had many decorative features in the form of cast iron sills and lintels around windows and doors. The castings included scroll and urn motifs and were a highly ornate complement to the brick and sandstone. Through the 19th century, the buildings were home to a wide variety of retail stores, offices and apartments. In the early 20th century, many famous movie theaters were



Fig. 9: The Monroe Block in 1951, Detroit, MI.

housed in these buildings, and the Monroe Block was known at the time as Detroit's premier theater district (Hyde 41).

During the 1960s, the Monroe Block's condition declined rapidly, like much of downtown Detroit, due to a complex interplay of issues, including loss of auto manufacturers and other business, racial tensions, and "white flight" to the suburbs (Galbraith 17). The Monroe Block buildings were listed on the National Register as the Monroe Avenue Historic District in 1975 (Hyde 42). From 1975 until 1990, the city of Detroit, through its Downtown Development Association, made several attempts at finding new uses for the buildings. Research from 1978 by Preservation Design Inc. of Ann Arbor showed the costs of rehabilitation to be staggering compared to costs for demolition - \$48.6 million for rehab to \$370,000 for demolition (Hyde 43). Between 1978 and 1984, a few developers came forward with plans for the buildings. These plans included development for J.L. Hudson's department store, which would require the eventual demolition of the block to make way for a new flagship store; another plan was to restore the majority of the buildings and blend them into new office towers (Hyde 44). The city even got an Urban Action Development Grant to stabilize and restore the buildings, but failed to use this grant. All of the development plans fell through, and the city proceeded with plans to demolish the Monroe Block in 1989. The National Park Service thoroughly documented the buildings in the summer of 1989 as part of their Historic American Buildings Survey (Hyde 45). In January of 1990, the city demolished the buildings—it took three days.

Charles Hyde attributes the loss of the Monroe District to the city of Detroit's refusal to go through the Section



Fig. 10: The Monroe Block in 1989, Detroit, MI.

106 process of the National Historic Preservation Act (45). Section 106 of that act requires that federal state, or local government agencies examine the impact of their proposed action on historic resources. However, as official compliance with Section 106 is often primarily enforced by vigilant and concerned citizens, the legislation is easy for government agencies to sidestep. The city was also unwilling to stabilize the structures, at a proposed cost of \$400,000 in 1984, when plans to develop the district repeatedly fell through (Hyde 43). Additionally, Hyde claims that Detroit lacked a "sophisticated historic preservation advocacy group" to help put grassroots political pressure on the city to save the Block; the two groups that existed at the time were too young and too small to be effective (45). Thus, advocacy for preservation and government compliance with preservation legislation requires vigilant and capable citizens.

La Jolla, California: Seaside Bungalows

In the summer of 2003, the local non-profit Save Our Heritage Organization (SOHO) of La Jolla, CA, successfully prevented the demolition by neglect of two of California's first seaside bungalows. The Red Roost and the Red Rest cottages were built in 1894 and are the forerunners of arts-and-crafts California bungalows that would become popular in the 1920s (Davenport). The cottages are listed on the National Register and are the oldest buildings in La Jolla. The owner is Cove Properties, Inc. They are real estate developers and originally wanted to demolish the cottages and build a multistory hotel (Davenport). The Coastal Commission of San Diego County denied permission, and Cove Properties thus set out to demolish the cottages by neglect. For 25 years, the cottages have sat rotting. Their roofs caved in, the wood rotted, and the floors



Fig. 11: Detail of the Monroe Block, 1989.

deteriorated. Cove Properties have not sought revenue from the properties, refusing tenants and generous offers to buy the cottages (Davenport). Some individuals offered to buy the property for \$3.5 million (Davenport). Cove Properties, Inc. was simply determined not to be told by the city or county government what to do with their land, so they let it become an eyesore and tried to devalue the property (Davenport). The Save Our Heritage Organization complained that the city of La Jolla was much too slow in taking steps to prevent demolition by neglect through their local zoning ordinance. Thus, SOHO filed a lawsuit against Cove Properties, Inc. to force them to stabilize and repair the cottages. In the face of a lawsuit, Cove Properties made a deal to cooperate with SOHO and with the city's ordinance. As of 2003, Cove Properties has stabilized the cottages, covered the roof with tarp, and mothballed the structures to keep insects away. They are incorporating the cottages into new redevelopment plans, including preserving both cottages and turning one into a restaurant to serve the new timeshare condominiums that the developer plans to build. The redevelopment is scheduled to begin this year (Davenport).

While the La Jolla bungalows are still in a deteriorated state, and progressive rehabilitation has not occurred, the bungalows have been saved from demolition. The city of La Jolla was too slow and conservative in enforcing the zoning codes preventing demolition by neglect (Davenport). Thus the buildings were allowed to deteriorate for 25 years. This case underscores the importance of preservation advocacy within the city government. The case also points to the importance of having active, sophisticated non-profit advocacy groups in the community, such as the Save Our Heritage Organization, as well as concerned citizens. The preservation of these cottages has been possible because of their efforts.



Fig. 12: Red Rest cottage in 1975, La Jolla, CA.



Fig. 13: Red Roost cottage in 1975, La Jolla, CA.

Conclusion

Preventing demolition by neglect is a complex and difficult situation with which local preservation organizations deal. It requires careful interpretation of the law and successful timing in bringing a case forward. It also depends greatly on watchdog citizens to alert city officials to possible demolition by neglect of historic structures. Economic factors of the property owner and neighborhood often play into the hearing process. Strong emotions can arise from community members over demolition by neglect cases. As these case studies have shown, cities across North Carolina, as well as in other states across the country, interpret legislation preventing demolition by neglect differently. Some take a conservative approach and give individual property rights primary consideration while others take a pro-active approach. The interpretive approach taken by a city must be finely tuned to community reception to preservation in order to be successful.

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Fig. 14: Detail of the Red Roost, 2003.



Fig. 15: Rear view of the Red Roost.

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