

Docket Item #9
SBA Case #2004-0001
SPOT BLIGHT ABATEMENT

Planning Commission Meeting
October 5, 2004

ISSUE: Consideration of designation of property as blighted and consideration of proposed work plan to abate blighted conditions.

APPLICANT: City of Alexandria, Code Enforcement Bureau
by Art D. Dahlberg, Director

LOCATION: 325 Duke Street

site graphic

Available in the Planning and Zoning Office

STAFF RECOMMENDATION:

Staff recommends **approval** of the following findings and recommendation:

1. The property at 325 Duke Street is blighted under section §8-1-141 et seq. of the City Code.
2. The owner of the blighted property has failed to present or implement an acceptable blight elimination work plan.
3. The work plan presented by staff for correcting the blighted conditions is consistent with city laws, reasonably designed to eliminate blighting conditions, and should be implemented.
4. The City's proposed work plan should be implemented as follows:
 - (a) The owner of the blighted property, within thirty (30) days of the date of City Council's designation of the property as blighted and approval of the City's proposed work plan (the "Designation Date"), shall complete items 1 through 17, inclusive, to the satisfaction of the Director of Planning and Zoning and the Director of the Code Enforcement Bureau.
 - (b) In the event the owner of the blighted property fails to implement the City's proposed work plan in accordance with subparagraph (a) above, the City may notify the owner of the blighted property of the city's intention to implement all or a portion of the City's proposed work plan and direct the owner of the blighted property to discontinue their implementation of all or a portion of the City's proposed work plan. In such event, the cost of any work performed by the City may be billed to the property owner and, if necessary, assessed against the owner as a lien on the property.
 - (c) Nothing in subparagraphs (a) and (b) above shall be construed to affect the "Note" in the City's proposed work plan, including, without limitation, that portion of the Note which expresses the reservation of the City's right, consistent with and pursuant to City Code § 8-1-141 et seq., to acquire the property in order to perform the work in the City's proposed work plan and to remove the blighted conditions from the property.

DISCUSSION

I. Spot Blight Abatement Program

The Spot Blight Abatement Program, adopted by City Council in 1999, is designed to deal with individual properties that become a problem for a neighborhood. Under the program, the City is authorized, pursuant to a plan approved by Council following a public hearing, to repair, or to acquire and repair, a property designated as blighted under the program. The City may recover its costs in repairing the property either from the owner or from the proceeds from the sale of the property. The program allows an owner of a blighted property to avoid any repair or other action by the City if an acceptable work plan for the elimination of the conditions that created the blighted condition is prepared and implemented.

The Spot Blight Abatement Program contains the following elements:

- designation of a property as “blighted”;
- attempts to work with the property owner to correct the blight conditions;
- notice to the owner that official action will be taken unless an acceptable corrective plan is submitted;
- notice to adjoining property owners and the civic association;
- consideration by the Planning Commission;
- action by City Council; and
- implementation of a work plan by the City which corrects the blighted condition.

In this case, staff has made a determination that the property at 325 Duke Street is blighted. Because attempts to work with the owner and/or occupants to correct the problem have failed, staff is now requesting that the Commission find that the blighted designation is appropriate, and recommend to City Council that the proposed work plan be approved.

II. The Blighted Property at 325 Duke Street

The property at 325 Duke Street is a residential structure located on the northeast corner of Duke and South Royal Streets. It is located in the Old and Historic Alexandria District. The residential building is a two story, two bay frame duplex house with a standing seam metal gable roof. According to the City’s historical records, the lots at 321, 323 and 325 Duke Street sold in 1832 for \$200.00 each. These same records indicate that the house at 325 Duke Street was connected to the City’s water system in 1850.



325 Duke Street is at the corner of
Duke and South Royal Streets.
Photo was taken in 1960.

A. The condition of the property violates city laws.

The City has dealt with the owner of this property for the last five years regarding this property. During this period, Ms. Nancy Hoy, the owner of record, has been cited numerous times for several exterior code violations. Finally, on August 12, 2002, sufficient information was received from neighbors and witnesses who provided information regarding the interior condition of the property to establish probable cause for Code Enforcement staff to obtain a forcible entry inspection warrant. This type of entry is permitted under the City Code (§4.2.12) and the Virginia Statewide Fire Prevention Code (§ F-106.3.)

After gaining entry into the dwelling, it was immediately apparent that the structure was severely fire loaded with combustible material, furniture and trash of such quantities to warrant immediately declaring the property unfit for human habitation. Code Enforcement staff also felt that the property in its condition was a severe fire hazard and removed all utilities to minimize the risk of fire in this, as well as the adjoining structures. Photographs of the interior of the structure taken on August 12, 2002 are attached to this report.

As indicated by the clutter in the photographs, staff was unable to complete a thorough inspection of the interior. However, the following is a general summary of the violations noted at the property.

- 1) The interior of the structure is unsanitary, cluttered and has been deemed to be uninhabitable under the applicable provisions of the Uniform Statewide Building Code (USBC), the Property Maintenance Code and the Virginia Statewide Fire Prevention Code.

- 2) The structure appears to be leaning which may be indicative of failure of some of the structural members. Accordingly, staff is recommending that the structure, once emptied of its contents, be fully evaluated by a Virginia Registered Professional Engineer to determine its structural integrity.

3) Likewise, a Mechanical Engineer will have to evaluate the status and operability of all mechanical equipment (e.g. water heater, furnace and all plumbing fixtures). It should be noted that the dwelling was without power or water for nearly two years which may have resulted in the freezing or other damage to the equipment and fixtures.

B. The property is blighted.

The standard for designating a property under the new program as “blighted” is found in the City Code at Sec. 8-1-142(a). That provision states that a “blighted” designation may be made if a property exhibits “dilapidation, obsolescence, overcrowding, lack of ventilation, light or sanitary facilities, or excessive land coverage,” and, as a result, is “detrimental to the health, safety and welfare of the community.” The descriptive terms, “dilapidation,” “excessive land coverage,” and “lack of ventilation,” are further defined. For example, “dilapidation” is “the condition of property resulting from inadequate maintenance that contributes to unsafe site or building conditions, or that gives the appearance of unsafe site or building conditions.” Sec. 8-1-142 (c).

In this case, several of the conditions required for a finding of “blighted” are present. First, the property is so cluttered which makes it impossible for someone to safely reside in the dwelling. The blighted definition, however, requires only that the condition of the property give the “appearance of unsafe site or building conditions.” This property meets that test. Second, it is apparent that the structure is being used as storage of material which represents an illegal change of use under the applicable provisions of the USBC. Additionally, due to the lack of climate control and adequate ventilation, there is considerable amount of mold and mildew throughout the dwelling which, in addition to being a code violation, would present a significant health hazard to occupants of the structure.

This is a historical structure and an integral part of the historical fabric of the City. The total lack of care and maintenance by the owner has clearly had a deleterious effect on the surrounding community not to mention a decline in property values.

The combination of these characteristics creates an unsightly appearance in an area of the City which is an embarrassment to the citizens who live nearby and to the City as a whole. It suggests that the City does not have requirements for proper construction or maintenance and that it does not enforce the requirements it does have. The conditions appear precarious and therefore dangerous to personal safety. They also create an optimal condition for rodent harborage and infestation. It is therefore detrimental to the health, safety and welfare of the City to allow the conditions of the property to remain. Those conditions led staff to designate the property as blighted. The Citywide Code Compliance Committee, the staff group responsible for identifying potential blighted properties under the program, agreed and nominated the site for the spot blight designation. The City Manager

agreed with the Committee's designation. Staff recommends that the Planning Commission agree, making a finding that the site meets the definition of "blighted."

III. Chronology of contacts and notice to Ms. Nancy Hoy

Following is a chronology of contacts and events that have occurred surrounding the property at 325 Duke Street. Official City notification letters are included in Attachment 2.

10/27/98 - Complaint received from neighbor regarding house in disrepair - Exterior inspection conducted and seven violations cited (Exterior paint in disrepair, gutter and down spouts fail to meet code, window shutters in disrepair, window and door frames need painting, fence in disrepair, front door needs painting, no house numbers). Notice posted on the door.

11/10/98 - Inspection reveals notice still on the door - Official case letter mailed to owner notifying her of the violations with a compliance date of November 27, 1998.

11/17/98 - Mrs. Hoy called stating she would begin requesting bids to have the violations corrected. She requested an extension for exterior painting until weather permits. Advised by inspector reinspection of other violations will be Jan. 1999.

1/6/99 - Ms. Hoy called Inspector and stated repairs have been contracted out except for painting and will be corrected by February 1999.

2/3/99 - Reinspection of property - no corrections made. Neighbor complains about rat infestation and feels they are coming from 325 Duke Street. Separate citation issued for that violation.

2/6/99 - Ms. Hoy called inspector. She is advised another reinspection will be made on 2/26/99 and inspector must see evidence that work has started and a receipt from an exterminator that rat extermination has been completed.

2/24/99 - Ms. Hoy left message that no work had been started due to weather. Also, she requested explanation for extermination request.

2/26/99 - Ms. Hoy was sent certified letter for pre-prosecution hearing to show cause why violations cited on 10/27/98 had not been corrected. Hearing set for 3/15/99

3/15/99 - Show cause hearing - Ms. Hoy failed to appear or call.

3/16/99 - Civil Penalty Tickets issued for six violations - window shutters in disrepair; fence in disrepair; gutters and down spouts in disrepair; front door in disrepair and damaged; house numbers; windows in disrepair.

3/26/99 - Letter received from Ms. Hoy requesting an extension until 4/30/99 - Extension granted

3/30/99 - Exterminator faxed receipt for rat extermination

4/30/99 - No violations corrected

5/26/99 - Exterior painting begins - Old Town Painting Company - (later, Inspector Zuidema was subpoenaed into court as a witness by Old Town Painting Company due to nonpayment from Ms. Hoy).

1/23/02 - Property cited for exterior violations - house numbers not being displayed (again), fence needs repair (again), unlawful accumulation of trash in rear yard (yard debris, doors & paint cans); illegal storage (shutters & windows in rear yard), chimney needs repair for loose bricks, replace/repair rotted work on hatchway leading to cellar. Compliance date 2/4/02.

2/18/02 - Reinspection - no violations corrected.

3/2/02 - Letter received from a former owner (1980-1986) stating he was inside the property in 1997 and at that time he was appalled at the condition of the house. "There was a mattress on the floor and trash bags throughout the downstairs. Plastic bags covered the windows and the place was void of furniture except for the mattress." He stated he "left dismayed that the house was so run down and dirty."

3/20/02 - No corrections - No response from Ms. Hoy - all correspondence returned unclaimed from post office. All notices posted on property remain. Attempting to locate address or telephone number for Ms. Hoy.

4/02, 5/02, 6/02 - No contact with owner - no evidence of anyone having property violations corrected.

7/9/02 - Certified letter sent to Ms. Hoy scheduling pre-prosecution hearing for July 16, 2002 for violation notice issued 1/24/02.

7/16/02 - No appearance at hearing and no telephone call.

8/12/02 - Inspection Warrant obtained and property entered by Deputy Fire Marshal Ed Schomp. Fire Marshal Schomp reported rotting wood around the basement hatchway, fence in disrepair, no water or electric service to property. Interior revealed trash and debris piled up on the interior of the unit (2 to 3 feet tall in some areas), access to the upper levels was difficult because of the large amount of trash and debris on the stairwell and landing. He noted missing or damaged floor boards on the third level. Cracked and peeling paint throughout the interior and deteriorating surface conditions around window and door areas was noted. The interior conditions with the excessive fire loading of combustible items (newspapers, boxes, bags, papers, etc.) deemed the property unfit for human habitation and the property was condemned by the Fire Marshal. The building was secured from entry and posted for fire fighting purposes with a number 4 indicating that no entry should be made by fire fighting personnel due to hazardous conditions inside.

8/14/02 - Written notice was sent by certified mail to Ms. Hoy advising of the condemnation of the property.

8/30/02 - Ms. Hoy called requesting information as to why her property had been condemned. A copy of the notice was faxed to her in New York (FAX # 212-956-5811).

10/21/02 (that week) - Director Dahlberg met with Steven M. Garver, (Ms. Hoy's Attorney). Scheduled for Ms. Hoy to enter property on 11/4, 5 and 6/ 2002 to enter and clean property.

11/4/02 - Ms. Hoy given access to property at 9:00 a.m. Agreed to lock and leave property no later than 5:00 p.m. each day. Deputy Fire Marshal Furr checked the property at 7:53 p.m. and found the front door unlocked. He noticed the hasp had been removed and no padlock or hasp was on the property (although it had been on there at 9:00 that morning when Ms. Hoy entered.) He contacted Deputy Fire Marshal Perry and they made a search of the building for occupants. None were found. APD was also notified. While waiting for the board-up contractor to resecure the building, Ms. Hoy arrived, denied removing the locks. She locked the front door with her key. New locks and hasps were installed on the front and rear doors.

11/5/02 - Property unlocked at 9:00 a.m. for Ms. Hoy. She entered the property, stayed about 15 minutes, left, locked the door and Code Enforcement had no further calls or requests from Ms. Hoy for access to the property.

Code Enforcement continued to monitor the property on a monthly basis to ensure that it remained vacant, secured and placarded.

7/21/03 - Letter sent to Ms. Hoy from Barbara Ross in Planning and Zoning advising that due to lack of response in correcting violations the City will be taking further action to bring property into compliance by either instituting legal proceedings to acquire the property or take action to repair the property with a lien for the City's work.

9/25/03 - Letter received by Barbara Ross from Attorney Ryan Mattson advising Ms. Hoy will submit a work plan within a week.

10/21/03 - FAX received by Art Dahlberg from Ms. Hoy stating she wants access to house on Nov. 3 & 4th. She advises that a walk-thru can be done the afternoon of Nov. 18th or 19th.

10/27/03 - Letter sent to Ms. Hoy from Art Dahlberg advising property will be opened per her request and walk through scheduled for Nov. 17, 2003 at 1:00 p.m. Ms. Hoy advised that if all violations are not corrected by that time the City will immediately institute the statutory "Spot Blight" proceedings.

11/02/03 - FAX received from Ms. Hoy cancelling property opening scheduled for Nov., 3 & 4 and requesting Nov. 12 & 18th. Also requests that walk through inspection be deferred.

11/11/03 - Letter sent to Ms. Hoy from Director Dahlberg stating walk-through inspection will be held on Nov. 17th at 1:00 as scheduled with Director Dahlberg, Peter Smith and Barbara Ross.

11/17/03 - Ms. Hoy denies access to property to Ms. Ross, Mr. Smith and Director Dahlberg.

12/8/03 - First letter sent to Ms. Hoy starting "Spot Blight" process. Returned Unclaimed.

12/29/03 - Letter received from Harry Hart, Attorney for Ms. Hoy enclosing copy of a proposed schedule to correct all violations by Jan. 18, 2004.

1/8/04 - Second "Spot Blight" letter sent to Ms. Hoy.

1/9/04 - Letter sent to Mr. Hart advising City will continue the Spot Blight process until code compliance is achieved based on past experiences with Ms. Hoy.

2/19/04 - Letter sent to Ms. Hoy from City Manager giving "Notice of Preliminary Determination that Property is Blighted and a Request for Submission of a Plan to Cure Blight.

3/17/04 - Letter from Ms. Hoy to City Manager advising termination of Harry Hart as her representative and advising she will have all work completed by May 8, 2004.

3/18/03 - Letter sent to Ms. Hoy advising that Director Dahlberg will inspect property on 3/24/04 with her to determine if suspension of Spot Blight process is warranted.

3/31/04 - Letter received from Ms. Hoy requesting a temporary suspension of the Spot Blight process to allow more time to complete necessary work. Ms. Hoy advised that all work would be completed on or before May 8, 2004. Temporary suspension granted by City Manager.

4/14/04 - Letter sent to Ms. Hoy from Director Dahlberg advising that reinspection will be held on May 8, 2004 at 11:00 a.m. to determine if work has been completed.

5/7/04 - Ms. Hoy called to advise that electricity and water are back on and she is interviewing painters and hiring a mason today.

5/8/04 - Ms. Hoy did not meet with Director Dahlberg at property.

5/26/04 - FAX received from Ms. Hoy to Director Dahlberg advising that work is not finished.

6/25/04 - Letter sent to Ms. Hoy from City Manager advising that since the May 8th compliance date was not met, the City was re-instituting the Spot Blight Abatement process. Ms. Hoy advised that no further delays in the Spot Blight Abatement process would be granted.

IV. Work plan

Ms. Hoy has failed to correct the conditions of the property which led to the blighted designation. She has also failed to comply with all previous notices and failed to carry out all previously submitted corrective plans. Pursuant to the applicable provisions of the City's Spot Blight program, the Planning Commission and the City Council may vote to either: 1) make the necessary repairs at the City's expense and place those charges as a lien against the property; or, 2) acquire and dispose of the property.

To assist in this decision making process, Code Enforcement staff has developed a work plan to complete all work necessary to return the property to a code compliant condition. An alternative, consistent with the spot blight program, is for the City to purchase the property if it determines that the purchase is necessary to abate the blighted conditions, with the cost of abatement to be recovered from the sale of the property.

- 1) Inventory, document, pack and remove all personal belongings in the property and remove to local storage facility.
- 2) Rent one or more 10' x 30' storage lockers to store personal items for a period not to exceed six months at which time Ms. Hoy would resume responsibility for the payments.
- 3) Have Structural Engineer evaluate structure members for integrity and provide written report.
- 4) Have Mechanical Engineer evaluate all plumbing and mechanical fixtures to determine code compliance and operability.
- 5) Treat all interior surfaces for the presence of mold and mildew.
- 6) Clean and sanitize interior of the structure.
- 7) Have masonry contractor point up, repair and/or replace damaged brickwork in foundation and exterior chimney.
- 8) Restore interior flooring.
- 9) Patch, repair and paint all interior surfaces, woodwork and trim.
- 10) Replace all rotted wood siding.
- 11) Replace missing wood shutters.
- 12) Clear gutters and down spouts of leaves and debris.
- 13) Replace all windows and re-install original glazing.

14) Scrape and paint exteriors surfaces.

15) Paint metal standing seam roof.

16) Replace all exterior doors

17) Exterminate entire structure

V. Consultation with the Old and Historic Alexandria BAR

For properties in an historic district, Section 8-1-144(c) requires that the Planning Commission consult with the Board of Architectural Review about the activities described for the property in the work plan.

Mr. Dahlberg briefed the Old and Historic Alexandria Board of Architectural Review at its regular meeting on September 1, 2004. He also distributed a written status report and a preliminary work plan (Attachment 5). He said that the City had been unsuccessful in attempting to work with the homeowner over a period of several years to have the property brought up to proper building code status. He outlined the two options open to the City: fix up the property and place a lien against it for recovery of expenses when the building is sold or acquiring the property and then reselling it. The Board reviewed the work plan. Chairman Hulfish asked if the shutters could also be replaced, since the house had always had shutters. Mr. Dahlberg said that it could be added to the work plan.

The Board members concurred that the inclusion of the property in the Spot Blight Abatement Program was appropriate. On a motion by Dr. Fitzgerald, seconded by Mr. Keleher the Board endorsed the proposed work program. The vote on the motion was 4-0.

VI. Required Actions by Planning Commission and City Council

Under the Spot Blight Abatement Program, the Planning Commission must determine: (1) whether the owner of the blighted property has failed to present or implement a blight-elimination plan; (2) whether the property is blighted under the definition in the ordinance; and (3) whether the City plan for correcting the deficiencies is consistent with the City's zoning ordinance and other applicable land use laws and regulations, and should, in whole or part, be implemented. In addition, for properties located within the Old and Historic Alexandria District such as this one, the Planning Commission must consult with the Board of Architectural Review regarding the activities described for the property in the work plan. City Code, Sec. 8-1-144(c).

City Council may then act to affirm, modify or reject the Planning Commission findings and recommendations. If City Council determines that the property is blighted and the work plan is appropriate, then the City may act to carry out the plan in accordance with City Code, Sec. §8-1-145

Conclusion

The Spot Blight Abatement Program attempts to close a gap in the enforcement tools of the City by defining “blight” in general terms, but laying out an onerous procedural route prior to allowing the City to take any action to correct the problem. Staff has found the property at 325 Duke Street meets the requirements of the blight definition and has painstakingly followed each of the required procedural hurdles before bringing this case forward for official action. Staff has repeatedly attempted to work with the property owner in order to convince her to clean up the property and bring it into compliance with Federal, state and city laws. None of staff’s efforts at citation, discussion or official notification has brought resolution to this case. Staff therefore requests that the Planning Commission and City Council act to allow staff to correct the problems at the site itself, or take the property and offer it for sale consistent with the intent of the City’s Spot Blight Abatement Program.

STAFF: Arthur Dahlberg, Director, Code Enforcement;
Hal Phipps, Division Chief, Zoning & Land Use Services, Planning and Zoning.

Attachments:

1. Spot Blight Abatement Law
2. Notice Letters
3. Work Plan
4. Photographs of 325 Duke Street
5. Status Report Submitted to Old & Historic BAR

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REPORT ATTACHMENTS
AVAILABLE IN THE PLANNING AND ZONING OFFICE