

June 19, 2008

VIA EMAIL

Alderman James N. Witkowiak, Chair
Zoning, Neighborhoods & Development Committee
Milwaukee Common Council
City Hall, Room 205
200 East Wells Street
Milwaukee, WI 53202

RE: Appeal of Denial of Certificate of Appropriateness for Demolition
of Structure Located at 2841 West Richardson Place
Appeal No.: 080104

Dear Chairman and Committee Members:

In this appeal, Neighborhood House asks that the Common Council reverse the erroneous refusal of the Historic Preservation Commission (“HPC”) to issue a Certificate of Appropriateness for demolition of the structure located at 2841 West Richardson Place. The building, which Neighborhood House acquired when it was already in a highly deteriorated state, not only should come down, but must come down to ensure that neighborhood children as young as 4 or 5 years old exiting buses have safe access to Neighborhood House. The requested relief should also be granted so that an important Milwaukee non-profit organization is not forced to continue unnecessarily expending precious resources on this matter.

BACKGROUND FACTS

A. Neighborhood House

Neighborhood House is a nonprofit community service organization located on Milwaukee’s west side. Neighborhood House provides a number of social, educational, and recreational activities and programs designed to support and empower children, youth, families,

and individuals. Among the services provided by Neighborhood House are day care, after-school programs for teens, and cultural and English language training for refugees.

The Neighborhood House campus consists of a modern, multi-purpose building that fronts West Richardson Place and North 28th Street. (See Ex. 1.) The only buildings facing West Richardson Place between North 28th Street and North 29th Street are Neighborhood House and the unoccupied structure located on the adjoining lot, the demolition of which is the subject of this appeal.

B. Acquisition of 2841 West Richardson Place to Alleviate Safety Concerns About Children Exiting School Buses

Each day, many buses arrive to drop off local children who participate in Neighborhood House's various programs. West Richardson Place is quite narrow, and Neighborhood House lacks on-campus space for buses to turn around. Thus, children as young as 4 or 5 must exit the buses in the middle of the street in order to get to Neighborhood House. The dangers presented by this situation are exacerbated during cold-weather months, when large piles of snow reduce visibility on the narrow street. To help alleviate this dangerous situation, Neighborhood House raised substantial donor funds and in August 2006 purchased the adjoining lot and structure, whose street address is 2841 West Richardson Place (the "Structure") with the goal of razing the rapidly deteriorating, unoccupied building. A safer bus turn-around area would then be created, along with several parking spaces, to alleviate the congested parking situation on West Richardson Place. As the Structure was in poor condition when Neighborhood House bought it, Neighborhood House assumed that it could accomplish its goal of removing the Structure and expanding its campus without affecting the historic character of the neighborhood.

C. Application for Certificate of Appropriateness for Demolition

Neighborhood House applied for, and received, approval from the Milwaukee Department of Neighborhood Services ("DNS") to demolish the Structure. (See Ex. 2.)

However, as the Structure is in a historic district, a Certificate of Appropriateness (“COA”) for demolition is subject to approval by the Historic Preservation Commission (“HPC”).

Unfortunately, before the HPC could consider Neighborhood House’s COA application, the DNS issued multiple citations to Neighborhood House related to the condition of the Structure. As indicated by the attached Summons and Complaint, the DNS alleges that the Structure is in need of major exterior repairs, such as replacement of missing siding, installation of rain gutters and fences, sidewalk repairs, and painting. (*See Ex. 3.*) Neighborhood House faces thousands of dollars in fines for these alleged violations.

D. Historic Preservation Commission Denial of Certificate of Appropriateness for Demolition

The HPC first considered Neighborhood House’s application for a COA at its November 12, 2007 meeting. The HPC produced a Staff Report regarding the COA. The report noted that “[t]he building was encased in stucco over the original wood siding in the 1920s, robbing it of much of its original period character.” (*See Ex. 4.*) (Emphasis added.) The report further observed that the proposed use was not problematic because “[a]ny new parking would be reviewed by HPC . . . in terms of proper screening, landscaping and lighting.” (*See id.*) Accordingly, the HPC Staff Report concluded that the COA for demolition should be granted.

The minutes of the November 12, 2007 meeting reflect that the HPC recognized Neighborhood House as “a fine organization that is worth accommodating.” (*See Ex. 5.*) Nevertheless, the HPC determined that the COA application should be tabled for a relatively short time (six months) while the HPC sought to possibly move the structure to a different location. (*See id.*) HPC also based its decision on erroneous factual grounds: (1) that demolishing the Structure would remove a taxable property from the rolls (it is tax-exempt); and (2) that Neighborhood House should seek a mothballing certificate (such certificates are

appropriate when property owners face DNS citations and want to renovate, not demolish, the building). (*See* Ex. 12.)

As a follow-up to the November 12th HPC meeting, on November 27, 2007 Carlen Hatala, a Senior Planner at HPC, sent an email to John Zweifel of Neighborhood House, which stated that HPC would be responsible for working to find a prospective buyer or party willing to move the Structure. (*See* Ex. 6.) The email concluded, “If there is no interest within the community to move 2841 W[est] Richardson Place, then that will end things. The HPC will be satisfied that at least some effort was made to preserve this structure.” (*See id.*)

The HPC considered Neighborhood House’s COA application a second time at its April 14, 2008 meeting. (*See* Ex. 7.) The Staff Report observed that the only historical components worth saving were old growth framing lumber “likely” preserved within the building’s walls. (*See* Ex. 8.) Again HPC Staff recommended that the COA for demolition be granted. (*See id.*) The report further indicated that the decision on the COA at the November 2007 meeting had previously been postponed in the hope that someone might move the building to a new location, but that no real interest had been shown. Thus, the report concluded that “[m]oving the house does not seem to be an option at this point.” (*See id.*) (Emphasis added.) Moreover, any proposed improvements to the lot would be subject to HPC approval. Based on these facts, the report determined that the COA should issue as of May 1. (*See id.*) Notwithstanding this recommendation, Neighborhood House’s application was denied. (*See* Ex. 9.)

Neighborhood House then initiated this direct appeal to the Zoning, Neighborhoods, and Development Committee and the Milwaukee Common Council.

STANDARD OF REVIEW

The Common Council is fully vested with authority to reverse decisions of the HPC.

Milwaukee Code § 308-81-9-f provides, in relevant part:

After a public hearing, the council may, by vote of 2/3 of its members, reverse or modify the decision of the commission if, after balancing the interest of the public in preserving the subject property and the interest of the owner in using it for his or her own purposes, the council finds that, owing to special conditions pertaining to the specific piece of property, failure to grant the certificate of appropriateness will preclude any and all reasonable use of the property and/or will cause serious hardship for the owner.

In this case, both the public interest and the serious hardship faced by Neighborhood House favor reversing the HPC's denial of the COA for demolition.

GROUND FOR REVERSAL

I. THE COMMON COUNCIL SHOULD REVERSE THE HISTORIC PRESERVATION COMMISSION'S IMPROPER DENIAL OF A CERTIFICATE OF APPROPRIATENESS FOR DEMOLITION OF THE STRUCTURE.

The HPC's denial of the demolition permit to Neighborhood House should be reversed.

The public interest strongly favors allowing Neighborhood House to construct a turn-around area for buses to avoid children having to exit on the street and to lessen parking congestion on West Richardson Place. Moreover, as detailed in the report of Eric Williams of VJS Construction, the Structure is in extremely poor condition, and rendering it habitable as a residence or office space is not economically feasible and would overburden Neighborhood House's limited budget. (*See* Ex. 10.) Both HPC Staff Reports recommended granting the COA for demolition. The Structure has also undergone significant renovations over the years that call into serious question its alleged architectural significance. For all these reasons, the decision of the HPC denying the demolition permit should be reversed.

A. The Interest of the Public in Allowing Neighborhood House to Better Serve Children Greatly Outweighs Any Alleged Public Interest Attributable to a Vacant, Uninhabitable Building.

In ruling on this appeal, the Common Council is required to balance the interest of the public in preserving the property with the appellant's interest in using the property for its own purposes. Making that comparison here leads to only one conclusion: Neighborhood House's interest in using the property to promote the safety of local children as young as 4 or 5 years old arriving at its facility and to reduce parking congestion on West Richardson Place greatly outweighs whatever minimal "historic" value the Structure may have.

As detailed in the report of Eric Williams of VJS Construction, many of the original wood windows have been replaced with vinyl. (*See Ex. 10.*) The original wood siding was also covered in stucco, and at some point a front porch was added. This is significant. The HPC's own publications state:

Inappropriate exterior remodeling is the most prevalent cause of loss of historic character for old buildings. Although often well-intentioned, such alterations as the replacement of the original window sash with modern prefabricated units, the installation of vinyl or aluminum siding, or the removal of architectural trim such as eaves, brackets, bargeboards, window caps or porches destroys the architectural integrity of old buildings and may actually lessen their resale value.

(*See Ex. 11.*) The vinyl windows, stucco siding, and front porch are not the only non-historic renovations made to the house, which also sports a "modern" kitchen and bathroom. In any event, as demonstrated by the photos attached to the VJS Construction report, one thing is clear: The Structure is in extremely poor condition. (*See Ex. 10.*) It poses a danger to the public or to anyone who ventures inside. A few windows have already been cracked on the house, and the unoccupied building may become an "attractive nuisance" for vandals, drug dealers, and other undesirable elements. The vacant, deteriorating, and improperly-renovated Structure detracts far more from the Concordia Historic District than Neighborhood House's proposed use. In fact,

Neighborhood House thought it was doing a favor to the community when it acquired the Structure with the intent of razing it.

The historical significance of the Structure is debatable because the study report that recommended the designation of the Concordia Historic District makes no mention of the Structure as being particularly crucial to the historic district. Conversely, there is no dispute that Neighborhood House serves the public good. Neighborhood House has provided vital services to the people of Milwaukee for several generations. Thanks to the generosity and vision of its staff and supporters, Neighborhood House was able to purchase the adjoining property to help ensure that children have safer access to its facilities. Yet, as more time goes by and the Structure continues to deteriorate, nobody wins. It would be a tragedy for the City of Milwaukee if a child was hit by a car or otherwise hurt because he or she had to exit a bus into the middle of the street. Most troubling of all, were the unthinkable to happen, Neighborhood House believes the accident would be entirely avoidable.

B. Failure to Grant the Certificate of Appropriateness Will Cause Serious Hardship for Neighborhood House.

The HPC's actions have forced Neighborhood House into a lose-lose situation. If the COA is not granted, Neighborhood House will be forced to sell the Structure at a significant loss (if any buyer could even be found). Likewise, the costs to make the structure usable – as either a residence or as office space – would be enormous, estimated at more than \$288,000. (*See Ex. 10.*) Considering the assessed value of the Structure is \$84,000 (*see Ex. 12*), the costs to repair the building may be presumed unreasonable under the Milwaukee City Ordinances, which provide:

If the commissioner determines that the cost of such repairs would exceed 50 percent of the assessed value of such building divided by the ratio of the assessed value to the recommended value as last published by the Wisconsin department of revenue for the city of Milwaukee, *such repairs*

shall be presumed unreasonable and it shall be presumed for the purposes of this section that the building is a public nuisance.

Milwaukee Code § 218-4-2-b. (Emphasis added.) Here, the \$288,000 cost to repair the Structure is more than three times higher than its \$84,000 assessed value. Therefore, repair is not a reasonable option.

Neighborhood House faces potentially thousands of dollars in fines from citations issued by the DNS related to the obvious problems affecting the Structure. (See Ex. 3.) Moreover, any additional carrying costs or costs that Neighborhood House incurs to repair the Structure come straight out of its programming budget. Every additional dollar spent on the Structure is one less dollar that can be put into Neighborhood House's community service programs. As the HPC observed, "Neighborhood House [is] a fine organization that is worth accommodating." (See Ex. 5.)

C. The Historic Preservation Commission Failed to Follow Two Staff Recommendations That the COA for Demolition Should be Issued.

HPC has never articulated a specific, concrete basis for the denial of the demolition permit. Rather, HPC indicated in November 2007 that after six months, the certificate for demolition would be granted. (See Ex. 5.) That date has long since come and gone. The HPC has also failed to abide by its statement that "[i]f there is no interest within the community to move 2841 W[est] Richardson Place, then that will end things. The HPC will be satisfied that at least some effort was made to preserve this structure." (See Ex. 6.) There is no discernible interest in moving the Structure, yet the HPC, without explanation, refuses to grant the permit.

The only written reports on the matter issued by HPC advocate granting the COA for demolition. (See Exs. 4 and 8.) In fact, the HPC's Staff Report concedes the obvious: At some point, the Structure was encased in stucco, thus "robbing it of much of its original period character." (See Ex. 4.) Meanwhile, the aging, vacant structure sits unused and continues to

deteriorate while children are forced to exit school buses into the middle of traffic on West Richardson Place.

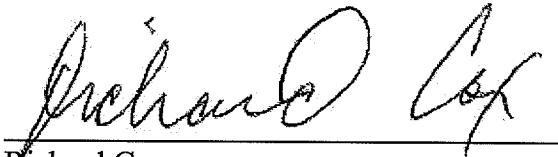
While the HPC has substantial discretion over matters under its jurisdiction, it may not exercise that discretion arbitrarily, oppressively, or erroneously. Based on the conclusions of HPC's own Staff Reports, it is apparent that this has occurred here. The HPC denial of the COA to Neighborhood House should be reversed.

CONCLUSION

The Common Council should reverse the decision of the Historic Preservation Commission denying a Certificate of Appropriateness to Neighborhood House for demolition of the Structure located at 2841 West Richardson Place.

Alternatively, the Common Council should modify the decision of the HPC to give it a few more months to find someone willing to move the Structure, and order that if no such party is found by this specific date, the Certificate of Appropriateness must be issued.

Respectfully Submitted,



Richard Cox
Executive Director
Neighborhood House of Milwaukee
2819 W. Richardson Place
Milwaukee, WI 53208
(414) 993-6161
rcox@nh-milw.org