

Landmark Preservation Ordinance Update Task Force
Meeting #8 – November 13, 2018 – Summary

Present: Councilman Flynn, Mark Bowman, Jeff Pearson, Rosemary Stoffel, Will Baker, Amy Cole, Scott Chomiak, Charles Jordy, Hayden Hirschfeld, Annie Levinsky, Dennis Humphries, Chris Cowan
Staff: Jenn Cappeto, Kara Hahn, Becca Dierschow (CPD); Steven Baptista (CPD ZNIS); Adam Hernandez (COA)

Meeting Objective: Address ordinance/policy changes on these topics:

- Demolition by Neglect
 - Economic Hardship
 - Limiting Right to File to Denver Residents
 - Public Comments Received on Designation Applications
 - Housekeeping Items
-

I. Demolition by Neglect

Definition: “Failure to maintain a historic structure over a prolonged period of time and during which the structure becomes threatened”

- Lack of maintenance, deliberately
- Lack of maintenance, beyond control of property owner (beyond economic means, etc.)
- Many cities with a preservation ordinance also have demolition by neglect ordinances – comparative study included: San Antonio, Washington DC, Seattle, Madison, Fort Collins

Key aspects of Demolition by Neglect ordinances:

- Define what it is
- How identified
- How reviewed
- How enforced

Other Cities:

- San Antonio: Often large buildings located downtown, exploring affordable housing options
- DC: “preserve against such decay and deterioration and free from structural defects”. Defects include:
 1. Facades which may fall and injure persons or property;
 2. Deteriorated or inadequate foundation, defective or deteriorated flooring or floor supports, deteriorated walls or other vertical structural supports;
 3. Members of ceilings, roofs, ceiling and roof supports or other horizontal member which sag, split or buckle due to defective material or deterioration;
 4. Deteriorated or ineffective waterproofing of exterior walls, roofs, foundations, or floors, including broken windows or doors;
 5. Defective or insufficient weather protection for exterior wall covering, including lack of paint or weathering due to lack of paint or other protective covering; or
 6. Any fault or defect in the building which renders it not properly watertight or structurally unsafe

Denver’s Demolition by Neglect Policies:

Multiple programs:

1. Zoning Neighborhood Inspection Services (ZNIS) – enforces zoning code and Denver Revised Municipal Code compliance – inspector will verify if neglected and derelict, will board-up building if necessary. Must be unoccupied and boarded by ZNIS inspector, requires remedial plan. Specific enforcement process.

2. Denver Department of Public Health and Environment (DDPHE) – health hazards: rodents or pests, unsafe living conditions. Focuses on occupied buildings. Specific enforcement process.
3. Building Department (CPD Development Services) – unsafe or structurally unsound buildings- “An unsafe structure, building or equipment is one which constitutes a fire hazard or a hazard to life, health, property or public welfare.” Defined in Building Code (Section 105).

Landmark Ordinance (Chapter 30-8): “Structures designated for preservation or structures in districts designated for preservation shall be preserved against decay and deterioration and kept free from structural defects”. Landmark Ordinance does not have a definition of ‘decay’, ‘deterioration’, or “structural defects” so it is hard to enforce for Landmark Structures.

Enforcement of existing polices:

- Neglected and Derelict Buildings are identified by community, 311 calls, ZNIS neighborhood inspectors
- Landmark inspector: works with landmark staff and property owner prior to formal enforcement process, which may eventually include citations and notice of violation

Staff Recommendation: Define “preserve against decay and deterioration” and “kept free from structural defects” in ordinance. Use language that conforms with other city agencies: DDPHE, ZNIS, and Building Department

1. “Preserve against decay and deterioration” Building shall:
 - Be maintained in sound condition, good repair, and be secure
 - Not permit the entry of weather, pests, or vermin or permit the loss of heat
 - Be free from water infiltration or erosions
 - Be free from loose or peeling paint that is causing material degradation
 - May include: roofing, foundation, windows, doors, cladding and course work, architectural elements, drainage, accessory structures
2. “Kept free from structural defects” Building shall:
 - Be maintained in a sound condition and good repair
 - Be free from holes, cracks, breaks, and decay
 - Be free from bulges, shifting of materials, or loose material, which might fall or collapse
 - May include: roofing, foundation, windows, doors, cladding and course work, architectural elements, drainage, accessory structures

Discussion

Q: What is the benefit of expanding the definition?

A: Allows Landmark inspector to enforce the Landmark Ordinance, which includes a section on ‘Demolition by Neglect’. Allows the property owner, public, staff, and inspectors to all understand what ‘structural defects’ means, etc. so everyone is on the same page – currently the language is unclear

Q: Why do this here in Landmark ordinance when there are definitions in other places?

A: Some buildings fall through the cracks – are unoccupied but do not meet zoning definition of Vacant and Derelict. We can’t fix Chapter 12 (the building ordinance) but we can tighten up Chapter 30 to protect landmark buildings.

Q: What is the percent of derelict buildings - residential to industrial?

A: Have 1-5 properties a year, total. Mostly residential.

Q: Is there ever a conflict in what the other departments recommend vs what landmark recommends for remedy? Fire department may recommend demolition, which isn’t a solution the Landmark Preservation Commission would allow

A: It's important for Landmark to have a good relationship with other departments - fire dept, building dept, zoning and inspections - which landmark does have. Currently staff works together with those departments when there is an issue.

Q: How would [ZNIS] approach a building that falls under several agencies?

A: Each department has a point person, all departments do collaborative inspections, monthly meetings, group emails to update on where they are in the enforcement

Q: Could LPC adopt rules and regulations that defines decay, deterioration etc?

A: Yes, LPC could adopt it as a rule, not in the ordinance

- Makes me nervous to reference a building ordinance [for the definitions of decay, deterioration, etc] that may later be changed, without Chapter 30 being changed at the same time. Why not just refer directly to the other ordinance?
- Worried that Landmark would be potentially be overlapping with ZNIS, DDPHE, would be a potential hassle for the property owner, as each dept has a different goal.
- What if you refer properties to the other ordinances – refer out cases that are covered by other departments, leave only the properties that are not covered by the current policies in place under Landmark purview.
- what can we do to help people who don't have the financial means to repair their houses? Citing that person doesn't do any good – just makes the problem worse.
- Could the city step in with money at some point?
- Is there a way to proactively help people before it gets past the point of no return?
- There are some avenues of funding and help – some National Trust grants, DURA, historic tax credits, but it's hard to know who needs help. Can't tell from the outside that a building is in trouble
- Should be one agency, have other agencies on referral
- if you're trying to make it clear for the average lay person, it would fit in the ordinance – make it easier to know what to go, know what to do. Would be harder to find definitions in rules and regs

Taskforce Recommendations:

- Need to clarify what are the differences between ZNIS, DDPHE, Landmark
- Simplify rules, expectations for property owners
- Differentiate between different agencies' roles

II. Economic Hardship 30.6(8)

Economic Hardship is a review of the economic feasibility to reuse and rehabilitate the property.

It is not a review of self-imposed hardships such as:

- Demolition by neglect by current owner
- Deferred maintenance by current owner
- Risky investments, lack of due diligence, or inopportune economic climate
- Materials or design of elective alterations
- Not reviewing property owner's financial ability

Is the building so structurally unstable or are the materials it is built with in such poor condition that it would not be economically feasible to repair or stabilize it?

Staff Recommendations:

- Add definition of economic hardship (and what it isn't) to ordinance in Section 30-2
- Clarify language in 30-6(8)
- Add additional information required for the application
- Introduce language about how the LPC makes their determination of economic hardship

Information currently included in economic hardship application:

- A cost estimate for proposed work (that was denied by LPC)
- A cost estimate for proposed work that complies with LPC requirements
- Estimated market value of property in current condition
- Estimated market value of property after demolition or rehabilitation
- Assessment of structural condition of property and suitability for rehabilitation
- Amount paid for property, date of purchase, name of seller and purchaser, and relationship (if any) between the seller and purchaser
- Appraisals done within past 2 years
- Sale or lease listings, including price and written offers, within past 2 years
- Current property assessment
- Real-estate taxes for past 2 years
- For demolition: a proposal for a replacement structure and financial proof of ability to complete the replacement
- For income-producing property: annual gross income of property for past 2 years, itemized operating and maintenance expenses for past 2 years.

Proposed additions:

- Must supply at least one appraisal from the last two years
- The form of ownership (LLC, non-profit, for-profit, etc.)
- Economic incentives and available funding, including state or federal tax credits, grants and private funding

Discussion

Q: For economic incentives, how can that be enforced? Staff seems to be better suited to know what is available

A: Staff would direct applicants towards certain programs. If the incentives are not available, applicant would need to include that information in the application and LPC would take that in to consideration.

Q: Is there an approved list of appraisers or structural engineers?

A: Landmark does not have a list, as the city cannot recommend contractors, but Historic Denver has a list, and landmark does approve appraisers or engineers who can show a resume that includes experience with historic buildings.

- Maybe not right to require that section in the application – it is within the owner’s interest to say ‘none’. But staff should direct them toward these incentives.
- That requirement is trying to get the applicant ready for LPC’s question – to help them anticipate what questions the commission will ask
- Previous applications for Economic Hardship
 1. Bosler House
 2. Hose Company No 1
 3. Property in Witter Cofield, owner-neglected building

In all three cases, there was not sufficient evidence provided by the owner to show that there was no economically viable way to reuse or rehabilitate property. Part of the issue was that owners didn’t provide enough information to help the Commission understand their argument.

Q: Would it be considered economic hardship if the potential to get 25% return (with demolition) vs. 5% return (with rehabilitation)

A: Economic hardship is only that the cost of the rehabilitation exceeds the value of the property; commission has no obligation to guarantee an economic return

How would LPC makes its determinations:

In considering the economic hardship application, the commission shall assess whether the requirements set forth by the commission deny all reasonable and beneficial use, or economic return from the property. Factors to be considered by the commission include but are not limited to:

- A substantial decrease in the fair market value of the property as a result of the denial of the certificate of appropriateness or demolition;
- A substantial decrease in the financial return to owners of record or other investors in the property as a result of the denial of the certificate of appropriateness or demolition;
- The structural soundness of any structures on the property and their suitability for restoration or rehabilitation;
- The economic feasibility of restoration, rehabilitation or reuse of the existing structure or improvement on the property in the case of a proposed demolition.

Discussion:

- What's 'substantial decrease'? That seems too far, moving away from the definition of economic hardship. In the Downtown District, zoning may allow an 80-story tower, but landmark only allows 6 stories. Would that be a substantial decrease?
- Agree – this moves away from what Economic Hardship is
- Trying to solve a problem that doesn't exist – three examples in 8 years, all three have been resolved and the buildings have all been saved.
- We need to have some parameters in how LPC makes their determinations
- Might want to look at Salt Lake City. They recently added economic hardness to their ordinance - the ordinance says the application constitutes the evidence with which LPC makes their determination, along with testimony from expert witnesses. *Using the evidence at hand*, does the decision "deny all reasonable and beneficial use or economic return from the property"
- Parking lot for staff to consider: How would economic hardship play in to owner-opposed designations if it approved? Someone may do their due diligence to make sure the property isn't designated, plan to demolish it, and then the property is designated, and the circumstances have changed

III. Limiting Right to File Designations

Currently, "three residents, owners of property in Denver, or have a place of business in Denver"
Staff Recommending a change to "three residents" in the City and County of Denver

Discussion

- Need to be sure resident a legally defined term
- Should we change when/how council people can apply for designations?
- Should the application fee be raised when a council person applies for an owner opposed designation?
- There was discussion about whether or not councilmembers should be allowed to apply for designations, or if a majority of council needed to vote to bring forward a designation, but these ideas were dismissed

Conclusion

- The task force is willing to support the change to Denver residents only
- The task force did not agree to support specific limitations on council members

IV. Tabulating Public Comments on Designations

How staff get comments:

- Mailed to staff
- Electronic: email to staff person, CPD, zoning, 311, emails to city council
- Often multiple sources from single person
- Phone calls
- Petition in support and in opposition

The deadline for comments and the deadline for the staff report occur at precisely the same moment, so it is impossible to satisfy both. This leads to staff reports that are less precise.

Suggested Changes:

- Public Comment cut off before City Council: 5:00pm Wednesday for noon Thursday staff report deadline, gives staff Thursday morning to accurately compile public comments
- Use Survey database to log public comment (public could still submit comments via email, speak at public hearing, etc). Survey would log IP addresses and allow commenters to include their address, to show whether they are living in the potential historic district or not
- Eliminate the binary, 'yes or no' response in favor of a wider set of choices and the ability to offer comment and context

Discussion:

Q: Could this survey option just be in rules and regs, and not actually in ordinance – as technology may change quickly

A: Would be a rule and res change, not in ordinance

Q: Can you confirm the location provided by commenters?

A: No, cannot confirm, have to trust the public to provide their address, but the same can be said of the current practice.

Q: Do you summarize the public comments and send that to City Council, or send the comments as is?

A: We do both – summarize in staff reports, send along all the comments in a pdf. The survey software can do mapping and summarizing for staff, but all comments can be forwarded on to city council

Conclusion:

The task force supports the 5pm cut-off on Wednesday and with the survey option and supports amending the rules and regs to make the changes

V. Limiting Owner-Opposed Designations:

The task force discussed whether to allow owner-opposed designations only after the owner files either a demolition permit or a Certificate of Non-Historic Status

Q: When might someone apply for designation outside of the demo review process?

A: If someone alters the building too far, without needing a demolition permit (removing historic fabric), building could lose integrity, historic character

Discussion:

- Opposed to change – since the demo review / owner opposed designations were implemented, the city has never received an owner-opposed designation outside of the demo or CNHS review process
- Requiring demo permit immediately starts the clock, makes it a contentious process with a timeline.
- Council convened the task force to seek solutions that reduce conflict and that include more proactive community dialogue about potential designations – making this change does the opposite
- Could require on application: owner-opposed designation must provide proof of attempted contact/conversation with owner (Currently designation application materials indicate that public outreach and contact with owner is highly encouraged)
- Would be in rules and regs – as part of the application process, rather than an ordinance change
- Task force indicating some willingness to consider this and suggested taking this up with city attorney staff

VI. Housekeeping

1. COAs expire three years after original date of issuance, not revisions. Currently says expire after issuance. Also, proposal to extend COAs for three years when active building permit is pulled or building under construction, or if project has not substantially changed and relevant guidelines have not changed.

Taskforce approved changes regarding expiration of COAs

2. LPC must currently take action on a project within 30 days of the receipt of a complete application. Staff would like to change this to 60 days. If LPC doesn't take action, gets placed on the next agenda 'continue to a date certain'. Currently the 30 days is very tight, due to quorum issues, weather closures, incredibly high meeting volume.

Some task force members expressed reservations about a change to 60 days because it is only warranted occasionally. Instead, staff could work to tie timeframe to Commission's workload or to the number of LPC/LDDRDB meetings rather than specific number of days.

VII. Next Steps

- Staff will generate a document that summarizes all of the proposed changes to rules and regulations, internal policies and practices and the landmark ordinance
- Task force members should review the document and consider whether they are prepared to support the proposed changes
- Mike will schedule a call with each task force member to review the proposed recommendations and identify any barriers to a consensus recommendation of support from the task force
- The meeting agenda will center on any recommendations that do not have full task force support

Q: Will the task force see actual ordinance language?

A: Not in time for the December meeting – specific language for ordinance or rules and regs will follow after the task force work is complete – Mike will include this topic in the individual calls