CITY OF DALLAS

TO: Mayor Jim Fairchild and Council Members

FROM: Jerry Wyatt, Pro Tem City Manager

DATE: October 8, 2007

SUBJECT: Public Hearing - Blue Garden Dangerous Building Determination

RECOMMENDED ACTION: Request that based on the information presented to the City Council the Council makes a determination that the building is dangerous as defined in the Dallas City Code. If the council determines that the building is dangerous, the council may by resolution: Order the building to be abated; or by Resolution order the building to be made safe and prescribe what must be doe to make it safe. Attached is staff recommendation from the Building Official to make the building safe.

BACKGROUND: Staff has determined that the building at 827 Main Street meets the definition of a dangerous building as defined in the Dallas City Code.

DALLAS CITY CODE REFERENCE:

8.40 Nuisance Declared.

Every building found by the council to be a dangerous building is declared to be a public nuisance and may be abated by the procedures specified in sections 8.410 to 8.455 or by a suit for abatement brought by the city.

8.410 Initial Action.

When a city official determines that there is a dangerous building, the official shall report it to the council. The council shall, within a reasonable time, fix a time and place for a public hearing.

8.415 Mailed Notice.

(1) The city manager shall notify the owner of the building and, if not the same person, the owner of the property on which the building is situated. The notice shall state:

(a) That a hearing will be held concerning the nuisance character of the property; and

(b) The time and place of the hearing.

Blue Garden

Photos 2004 photos

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BLUE GARDEN
RESTAURANT
&
LOUNGE

BLUE
GARDEN
RESTAURANT
&
LOUNGE

RIGHT OF WAY
ONLY

(2) A copy of this notice shall be posted on the property.

8.420 Published and Posted Notices.

Ten days' notice of the hearing shall be published in a newspaper of general circulation in the city or by posting notices in three public places in the city.

8.425 Hearing.

(1) At the hearing, the owner or other persons interested in the dangerous building shall have a right to be heard.

(2) The council may inspect the building and may consider facts observed in determining if the building is dangerous.

(3) If the council determines that the building is dangerous, the council may by resolution:

(a) Order the building to be abated; or

(b) Order the building to be made safe and prescribe what must be done to make it safe.

8.430 Council Orders; Notice.

Five days' notice of the council's findings and any orders made by the council shall be given to the owner of the building, the owner's agent, or other person controlling it. If the orders are not obeyed and the building not made safe within the time specified by the order (not less than five days), the council may order the building demolished or made safe at the expense of the property on which it is situated.

8.435 Abatement by the City.

(1) If the council orders are not complied with, the council may:

(a) Specify the work to be done;

(b) File a statement with the city manager; and

(c) Advertise for bids for doing the work in the manner provided for advertising for bids for street improvement work.

(2) Bids shall be received, opened and the contract let.

8.440 Assessment.

(1) The council shall determine the probable cost of the work and assess the cost against the property upon which the building is situated. The assessment shall be declared by resolution, and it shall be entered in the docket of city liens and become a lien against the property.

(2) The creation of the lien and the collection and enforcement of the cost shall be performed in substantially the same manner as assessments for street improvements.

8.445 Summary Abatement.

The procedures of sections 8.400 to 8.455 need not be followed if a building is unmistakably dangerous and imminently endangers human life or property. In this instance, the city manager may summarily take whatever steps are necessary to eliminate the dangerous condition.

8.450 Errors in Procedure.

Failure to conform to the requirements of sections 8.400 to 8.455 that does not substantially affect a legal right of a person does not invalidate a proceeding under sections 8.400 to 8.455.

MEMORANDUM

To: Dallas City Council
Mayor Jim Fairchild

From: Anthony James – Assistant City Attorney

Date: October 5, 2007

RE: Dangerous Building – 827 Main Street

Dangerous Building Violations

Mr. and Mrs. James and Valerie Steele are owners of the property and building located at 827 Main Street, Dallas, Oregon. The building on the property, known as The Blue Garden, is in a state of disrepair and currently constitutes a nuisance as defined by the Dallas City Code Section 8.400 (Dangerous Buildings).

Background

The Steeles purchased the property and the Blue Garden building on August 17, 2004. On October 4, 2004, Dallas Staff inspected the building for code violations. The staff found the following violations of the building code:

1. A broken water line which had been leaking for approximately 10 months;
2. Major deficiencies to structural, shielding, and cosmetic components of the roof of the rear of the building, including large holes which expose the interior of the building to the elements;
3. Junk, debris, and rubbish piled into the rooms of the building.

At that time City Staff held that the structure was unsafe

> "because of the degree to which it is in disrepair, the lack of maintenance, signs of vermin or rats, mold and mildew, water damage, filth, debris, lack of proper electrical, sanitary service and the stability of the rafters and roof support system…"

- - and that the building met the definition of "Dangerous Building" as defined by Section 8.455 (7),(8), (10), (11), (15), (18), and (19) (now 8.400) of the Dallas City Code. The staff recommended immediate removal of the junk, debris, rubbish, walls, carpet, insulation, cabinets, and flooring and the closing of the holes in the roof.

On October 5, 2007, City Staff reinspected the Blue Garden and found "no change" in the dilapidated state of the building from the inspection 3 years earlier. The staff found the following violations of the building code:

1. Portions of the front of the building appeared unstable and posed a risk to pedestrians (DCC 8.400(9));
2. An Open Sewer line on the property;
3. Worsening of the major deficiencies in structural, shielding, and cosmetic components, holes in roof have not been closed, which has led to additional decay of the building (DCC 8.400(7), (11));
4. Damaged rain control mechanisms do not drain into storm water system which causes flooding and damage to surrounding properties.
5. No electric utilities for lighting and piles of trash around the building which limit access (DCC 8.400(2))

City Staff also noted that the broken water line had been shut off, but not repaired. As a result all parties had been using the same water meter which is a violation Section 609.7.2 and 603.3 of the Utility Code.

At this time, City Staff have not been able to enter the building and therefore can provide no information as to the state of the Blue Garden's interior. Based on the information provided by City Staff, the external features of the Blue Garden property constitute a Dangerous Building under the Dallas City Code.

Authorities

The City Attorney's office is of the opinion that Mr. and Mrs. Steele have a dangerous building and have violated, and are presently in violation of, the following provisions of the Dallas City Code:

8.400 Definitions.

As used in sections 8.400to 8.455, dangerous building means:

(1) Any building or structure that is structurally unsafe or not provided with adequate egress, or that constitutes a fire hazard, or is otherwise dangerous to human life;

(2) Any building or structure constituting a hazard to safety, health, or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage, or abandonment;

(3) Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members that are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified by the pertinent code.

(4) Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic.

(5) Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic.

(6) Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one half times the working stress or stresses allowed in the Building Code for new buildings of similar structure, purpose or location.

(7) Whenever any portion thereof has been damaged by fire, earthquake, wind, flood or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Building Code for new buildings of similar structure, purpose or location.

(8) Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property.

(9) Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one half of that specified in the Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Building Code for such buildings.

(10) Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction.

(11) Whenever the building or structure, or any portion thereof, because of (i) dilapidation, deterioration or decay; (ii) faulty construction; (iii) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (iv) the deterioration, decay or inadequacy of its foundation; or (v) any other cause, is likely to partially or completely collapse.

(12) Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used.

(13) Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one third of the base.

(14) Whenever the building or structure, exclusive of the foundation, shows 33 percent or more damage or deterioration of its supporting member or members, or 50 percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings.

(15) Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become so dilapidated or deteriorated as to become (i) an attractive nuisance to

children; (ii) a harbor for vagrants, criminals or immoral persons; or as to (iii) enable persons to resort thereto for the purpose of committing unlawful or immoral acts.

(16) Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this jurisdiction, as specified in the Building Code or Housing Code, or of any law or ordinance of this state or jurisdiction relating to the condition, location or structure of buildings.

(17) Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any nonsupporting part, member or portion less than 50 percent, or in any supporting part, member or portion less than 66 percent of the (i) strength, (ii) fire-resisting qualities or characteristics, or (iii) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location.

(18) Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise is determined by the health officer to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease.

(19) Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the Fire Marshal to be a fire hazard.

(20) Whenever any building or structure is in such a condition as to constitute a public nuisance known to the common law or inequity jurisprudence.

(21) Whenever any portion of a building or structure remains on a site after the demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public.

[Section 8.400 amended by Ordinance No. 1590, passed April 17, 2000.]

8.405 Nuisance Declared.

Every building found by the council to be a dangerous building is declared to be a public nuisance and may be abated by the procedures specified in sections 8.410 to 8.455 or by a suit for abatement brought by the city.

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October 5, 2007

Jerry Wyatt
Acting City Manager
City of Dallas

RE: 2nd Blue Garden Site Inspection

Mr. Wyatt, because of the condition of the building at the time of inspection: no power for lighting and piles of trash that limited access, this report is not to be considered complete by any means. The following conditions were observed and meet the definition of a dangerous building in the Dallas City code (D.C.C.) section 8.400 (2).

1. The front entrance at Main Street has blue tile missing (popped off) with cracked, warped and buckled tile lines. The tile is adjacent and above the pubic sidewalk appears unstable and maybe a hazard to the public. D.C.C. Section 8.400 (9**)** ***Action recommended – Secure/Remove tile or block off sidewalk in that area.***

2. There is an open sewer line in the north side alley adjacent to the entry door. This is a cast iron riser from what appears to be a clean out for the sanitary sewer as water was running and it had not rained for several days prior to the first site visitation. OUPC Section 707.*3* ***Action recommended provide an approved clean out cap that is gas and watertight.***

3. The first time staff was in the building a water pipe was broken. After turning off the water meter and having a licensed plumber repair the pipe, it was apparent that the one water meter severed more than the Blue Garden, maybe as many as 4-6 separate users**.** OUPC Section 609.7.2 & 603.3. ***Action recommended is to separate the combined users from the one meter. (Cross connection control)***

4. Much of the interior the ceiling finish and insulation in the back of the building has fallen down or has been partially removed. One of the worse areas is the ceiling in the back kitchen that has a second level above it. The sheathing of the floor-ceiling assembly is unsafe to walk on without the probability of falling through from the second floor into the kitchen**.** ***Action recommended is to finish removing the entire ceiling finish, them inspect, remove, replace and repair any deteriorated framing members as needed, followed by insulating the exterior envelope to building code standards and provide an approved surface finish.*** **D.C.C. 8.400 (11)**

5. The building exterior has many uncontrolled-unprotected penetrations to the exterior. It appears that AC equipment has been removed from the roof leaving many large openings; the openings expose the interior to weather and rodents. The adjacent rooms are damp and have mold growing on the surface of the hard materials and penetrating through the soft materials. In addition to the roof openings, near the SW corner of the lounge the CMU block wall is damage and provides the same access for weather and rodents. D.C.C/ 8.400(7**)** ***Action recommended is to repair in such a manner to be weather and rodent proof.***

6. Rain drains and roof in general are in poor condition and do not convey rainwater to public storm system. When there are many days of rain in a row the water from the

roof pools on the access to the alley and floods adjacent business. ***Action recommended is to connect roof drains to an approved public storm system.***

For all practical purposes this is the same list as first identified with the inspection back in February 12, 2004, with the exception of item number 6 being added on today's list based on events since February of 2004. These items are of major concern and should be addressed as soon as possible to prevent further public safety risks and damage to the building. Additional fire & life safety requirements will need to be addressed according to purposed use of the building.

Respectfully submitted

Ted Cuno
Building Official

CITY OF DALLAS

BLUE GARDEN INSPECTION REPORT

OCTOBER 4, 2007

REPORT OVERVIEW:

The following is a synopsis of the condition of the Blue Garden building located at 827 Main Street. The City has no documentation of the issuance of permits or the suggested repairs have occurred to satisfy compliance with City codes and regulations

Included in this report are the potentially significant improvements necessary to stabilize the building and limit the potential impact on adjoining buildings. The building known, as the Blue Garden Restaurant has been neglected for several months and is need of attention from general maintenance/cleaning to structural and service utility repairs. This report will address sight observations, repair recommendations and general remarks concluded from the site visit.

Front

Rear

IMPROVEMENT RECOMMENDATION HIGHLIGHTS / SUMMARY

The Blue Garden Restaurant is located under two floors in the front. An addition to the building is attached and extends to the alley. The rear portion of the building consist of two floors in the middle and single floor at the very back (bar area). A residence and dance studio is located above the front, restaurant area with access to Main Street.

Upon arrival the front door was locked and pinned so the members of the team were not able to enter through the front door. We gained access through a door in the alley. Upon entering the building, running water was observed in the mechanical room. A water line break was found behind the bar, it appeared by the amount of water on the floor and moisture in the building that the water line had been broken for several weeks. Upon further investigation, checking the water use records for the building it is estimated that the water line broke around December 19, 2003.

- **Major Concern, Repair:** Water damage to floors, walls ceiling, and roof.

The roof appears to be at the end of its life. The air conditioning units have been removed that left 4-5 large holes in the roof with exposure to the outside. Rafters, blocking and wood joist showed signs of significant water/moister content due to the exposure of water trapped in the building. In some areas the second floor flooring appears to be weakened by the exposure to water. There are two rooms on the second floor. One larger room was full of debris, furniture, cloths and old material (junk). The other smaller room was mostly empty, however we were not able to enter the room as the floor was unstable and determined by sight and sound to be unsafe and unable to support any additional weight load.

DESCRIPTION OF STRUCTURE:

Floor Structure: Slab on grade
Roof Structure: Rafters

OBSERVATIONS OF 2004:

Limitations of structure inspection.

The team performed a visual inspection limited in scope by:

- Structural components concealed behind finished surfaces.
- Furniture and or storage (debris) restricted access to some structural components.
- Utilities not functional in the building.
  - Interior conditions limited visibility with flashlights as primary source of light.

Foundation: Minor settlement was observed with minor cracks.

Floors: The concrete under floor appears to be in decent condition on the ground floor. The second floor has signs of water damage with loose title and floor settlement when walking in some areas.

Walls: Exterior wall cracks were observed. Interior walls have water damage. staining, signs of mildew were also observed.

Roof: Rafters damaged from exposure to water/moisture. Evidence of condensation and mildew was observed. Holes in the roof with loose or damaged downspouts. Exposed ceiling tiles with possible asbestos falling off of the ceiling and piled in the middle of the room (bar area) and falling apart above the bar.

CONCLUSIONS:

The ceiling insulation was removed in the bar area and piled up. The structure is unsafe because of the degree to which it is in disrepair, the lack of maintenance, signs of vermin or rats, mold and mildew, water damage, filth, debris, lack of proper electrical, sanitary service and the stability of the rafters and roof support system meet the criteria of the Dallas City Code Dangerous Buildings, Section 8.455 (7), (8), (10), (11), (15), (18), (19).

Due to the overall condition of the interior, trash/debris in the building, extent of moisture/water damage, condition of the roof (openings, rot, deterioration), exit or passageways obstructions, condition of the utilities and the presence of mold and mildew in the structure, staff has concluded that the building constitutes a hazard as defined in the Dallas Dangerous Building Ordinance and should at a minimum have all of the material, junk, debris, ceilings, walls, carpet, insulation, cabinets and flooring removed. The roof needs immediate attention to close. The rear portion of the building or “bar section” needs the most work with signs of abandonment and deterioration creating a hazardous to safety, health, or public welfare.

Upon entry and inspection on October 5, 2007, no change has occurred in the condition from the original report of the 2004 site visit. Staff has concluded that the present condition of the building has deteriorated since the initial visit.

Office of the City Manager

CERTIFIED MAIL

October 5, 2007

Mr. James Steele
831 Main Street
Dallas, OR 97338

NOTICE – Public Hearing Regarding a Dangerous Building at

827 Main Street
Owner- James Steele
831 Main Street
Dallas, OR 97338

This item will be presented to the City Council for Nuisance Determination on
October 15, 2007

Violation:

Pursuant to Section 8.400 of the Dallas City Code (DCC), notice is hereby given that the Dallas City Council, on October 15, 2007 at 7:45 p.m., during a regularly scheduled public meeting of the council, shall make a determination as to whether the structure is unsafe because of the degree to which it is in disrepair, the lack of maintenance, signs of vermin or rats, mold and mildew, water damage, filth, debris, lack of proper electrical, sanitary service and the stability of the rafters and roof support system, and meets the criteria of the Dallas City Code Dangerous Buildings, Section 8.400 (7), (8), (10), (11), (15), (18), (19).

Due to the overall condition of the interior, trash/debris in the building, extent of moisture/water damage, condition of the roof (openings, rot, deterioration), exit or passageways obstructions, condition of the utilities and the presence of mold and mildew in the structure, it has been concluded that the building constitutes a hazard as defined in the Dallas Dangerous Building Ordinance and should at a minimum have all of the material, junk, debris, ceilings, walls, carpet, insulation, cabinets and flooring removed. Upon further investigation of the structural integrity of the building and the appropriate repairs, the building may be able to be repaired as a "shell" structure with exposed studs and rafters. The roof needs immediate attention. The rear portion of the building or "bar section" needs the most work with signs of abandonment and deterioration creating a hazardous to safety, health, or public welfare.

If the City Council determines that the building is dangerous, it may cause a notice of abatement to be issued. Nuisance abatement procedures are set forth in DCC 8.435 through 8.455, copies of which are enclosed for your information.

Jerry Wyatt
Pro Tem Dallas City Manager

Enclosures
cc: Mr. Lane Shetterly - Dallas City Attorney