

Introduced by: Mr. Cartier
Ms. Diller
Mr. Tackett
Ms. Kilpatrick
Date of introduction: July 10, 2012

ORDINANCE NO. 12- 084

TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 7 (“PROPERTY MAINTENANCE CODE”) AND CHAPTER 40 (“UNIFIED DEVELOPMENT CODE”) ARTICLES 15 (“HISTORIC RESOURCES”), 30 (“COUNTY COUNCIL AND ADMINISTRATIVE BODIES”) AND 31 (“PROCEDURES AND ADMINISTRATION”) TO PREVENT THE DEMOLITION BY NEGLECT OF PROPERTY ZONED HISTORIC OR WITH A HISTORIC ZONING OVERLAY AND TO DESIGNATE \$150,000 OF THE PROPERTY MAINTENANCE REVOLVING FUND FOR EMERGENCY REPAIRS FOR THESE HISTORIC PROPERTIES

WHEREAS, this ordinance is intended to preserve designated historic resources (those zoned historic or with historic zoning overlays) from inadvertent or deliberate neglect that results in severe deterioration, potentially beyond the point of repair; this ordinance would effectuate Strategy No. 9 in the draft 2012 Comprehensive Plan Update for historic preservation); and

WHEREAS, it is the further intent of this preservation ordinance to require affirmative maintenance of designated historic resources (those zoned historic or with historic zoning overlays) and to provide the Historic Review Board and the Land Use Department/Code Enforcement with collaborative and adequate remedies and enforcement authority to safeguard these important properties within our County; and

WHEREAS, New Castle County believes that the preservation and protection of historic sites and properties are critical to the character of the County; Council thus has adopted law calling for the establishment of historic zoning districts and encouraging the renovation and rehabilitation of buildings, structures, sites and objects which are designated as historic or which are located within, and contribute to, the character of districts designated as historic (*New Castle County Code* Division 40.15.000); and

WHEREAS, the first two charges of the County’s Historic Review Board are to develop a comprehensive inventory of buildings, structures, sites, objects, districts, landscapes and/or scenic landmarks of historical and other benefit, and to delineate the boundaries of, and recommend to Council for confirmation, districts meriting historic designation (*New Castle County Code* Section 40.30.330(A) and (B)); and

WHEREAS, the Property Maintenance Code provides that nothing therein will override laws on historic structures provided that said structures are maintained in good

repair and are not a threat to the health, welfare and safety of the occupants of the premises or the general public (*New Castle County Code* Chapter 7 “Property Maintenance Code,” Section 7.01.002 “Amendments to the International Property Maintenance Code,” Section PM 102.6 “Historic buildings”); further, the Code Official is authorized to placard any unsafe building (Section PM 109 “Emergency Measures”) and may employ necessary labor and materials to effect emergency repairs, with the costs charged against the real estate upon which the structure is located and a lien placed against the real estate (Section PM 109.4 “Emergency repairs”); the County Attorney additionally may institute appropriate action against the owner of the premises where the unsafe structure is or was located for cost recovery (Section PM 109.5—“Cost of emergency repairs”); and

WHEREAS, in strengthening the affirmative maintenance provisions for designated historic resources (those zoned historic or with historic zoning overlays), Council recognizes the importance of coordination between the Historic Review Board and Code Officials to identify and correct deferred maintenance problems before they reach the point of demolition by neglect; in fact, the Code in Section 40.30.330(J) already requires this collaboration to identify illegal demolition or demolition by neglect; and

WHEREAS, Council proposes to designate \$150,000 from the Property Maintenance Revolving Fund (revenue received from fines as set forth in Ordinance 10-127) to effectuate repairs that would halt demolition by neglect; and

WHEREAS, the County also already has incentivized historic preservation via the adoption of bonuses and incentives (*New Castle County Code* Division 40.07.400) and a tax exemption program for historic properties (*New Castle County Code* Chapter 14, Article 12); and

WHEREAS, New Castle County Council finds that the provisions of this ordinance further the public’s interest in protecting and encouraging the preservation of structures, objects and sites that reflect our shared heritage for generations to come; and

WHEREAS, New Castle County Council further finds that this ordinance is warranted to achieve the purposes of the draft Comprehensive Plan.

NOW, THEREFORE, THE COUNTY COUNCIL OF NEW CASTLE COUNTY HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 7 (“Property Maintenance”), Section 7.01.002 (“Amendments to the International Property Maintenance Code”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Section PM 102.6, Historic buildings, is amended by adding the underscored language to the first Code paragraph. The provisions of this code shall not be mandatory for existing buildings or structures designated as historic buildings when such buildings or structures

are judged by the code official to be safe and in the public interest of health, safety and welfare, and when the code provisions would otherwise affect the historic integrity of the structure, as determined in conjunction with the Historic Review Board.

Nothing contained in this Chapter shall be construed to override statutes, laws, ordinances, rules or regulations with respect to the architectural or design integrity of buildings which have been designated as historic structures or which have historical significance, provided that such structures are maintained in good condition and repair and are not a threat to the health, welfare or safety of the occupants of the premises or the general public. This is to be read and enforced in conjunction with the provisions of Section PM 102.6.1.

Section PM 102.6.1, Maintenance of historic structures and other property zoned historic or with historic zoning overlays—demolition by neglect. The owner, lessee, or other person in charge of a structure or property zoned historic or with a historic zoning overlay shall comply with all applicable codes, laws and regulations governing the maintenance of property, with the exception set forth in 102.6 above. No officially-designated historic structure or contributing structure on property within an historic district (those zoned historic or with historic zoning overlays) shall be allowed to deteriorate due to neglect by the owner, lessee or other person in charge. Demolition by neglect shall include any one or more of the following courses of action or inaction: a) deterioration of the structure’s exterior to the extent that it creates or permits a hazardous or unsafe condition; b) deterioration of exterior walls or other vertical supports, roofs, chimneys, horizontal members, exterior wall elements including, but not limited to, wooden walls, brick, plaster or mortar to the extent that it adversely affects the character of the historic structure or could lead to irreversible damage to the structure; c) defective or insufficient weather protection for the exterior walls, roofs, foundations, doors and windows, including broken windows or doors and including lack of paint or other protective covering on exterior walls. The code official shall proactively inspect all properties subject to this subsection, twice annually, from a list provided by the Historic Review Board, cite all violations as customary or as required in conjunction with the Historic Review Board as set forth above, and promptly submit a written report with photographic documentation on each such semi-annual inspection to the Historic Review Board....

SECTION PM 109. EMERGENCY MEASURES

Section PM 109.1. Imminent Danger...

Section PM 109.1.2. Imminent danger of demolition by neglect of designated historic structures or contributing structures (those zoned historic or with historic zoning overlays). If it is determined by the code official after consultation with, and a decision by, the Historic Review Board, that there is imminent danger of the loss of a designated historic structure or contributing structure zoned historic or with an historic zoning overlay via demolition by neglect, and after prior required notice and an opportunity to cure as set forth elsewhere in this chapter and in Chapter 40, the Office of Law may be

requested to seek injunctive relief deemed necessary and appropriate to preserve the structure and/or to pursue emergency repairs as set forth in Section PM 109.4-5.

Section 2. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 15 (“Historic Resources”), Division 40.15.000 (“Purpose”) is hereby amended by adding the material that is underscored, as set forth below.

Division 40.15.000. Purpose....

The purposes of this Division are to:

I. Prevent the demolition by neglect, as defined in Chapter 7 (“Property Maintenance Code”), of a building, complex of buildings, structure, site, object or district designated for preservation as a historic zone (zoned historic or with historic zoning overlay) pursuant to this Article.

Section 3. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 30 (“County Council and Administrative Bodies”), Table 30.110 (“Procedural Responsibilities”) is hereby amended by adding the following underscored material under “General Reviews”.

<i>Type of Action</i>	<i>Historic Review Board</i>	<i>Department of Land Use</i>
<u>Demolition by neglect</u>	<u>HD</u>	<u>R</u>

Section 4. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.300 (“Administrative boards”), Section 40.30.330 (“Historic Review Board”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

The Historic Review Board shall...The Historic Review Board shall have the following powers and duties:

A. Delineate the boundaries of and recommend to County Council for confirmation those districts which the Historic Review Board determines merit a historic designation...

B. Conduct and maintain an ongoing survey of the County for the purpose of developing a comprehensive inventory of buildings, structures, sites, objects, districts, landscapes and/or scenic landmarks of historical, architectural, cultural, archaeological or educational benefit...

D. Review and act upon all applications for the granting of permits required under Section 40.31.280 in a timely manner.

E. Make recommendations to the County Executive and County Council, and to the Department and Planning Board, concerning the use of grants, gifts and budgeting appropriations to promote the preservation...The Historic Review Board shall make recommendations to the County Executive and County Council that the County purchase buildings, structures, sites or objects of historical significance ~~where private preservation is not feasible~~ when deemed appropriate. The Historic Review Board shall also make recommendations, as appropriate, that the County acquire façade easements, conservation easements, development rights or any other property interest that would promote preservation.

F...

J. The Historic Review Board shall be responsible for identification and/or confirmation of demolition by neglect, in conjunction with the code official, as defined in Chapter 7 and as based on each semi-annual report and/or recommendation of the code official on properties zoned historic or with historic zoning overlays as required in Chapter 7 or an illegal demolition of a building, structure or object located within a historic district or meeting the criteria to be included in a historic district pursuant to Article 31 and the procedures set forth in this Chapter and the Board's rules. Review of semi-annual reports and recommendations on potential demolition by neglect shall be added to each agenda when received.

K. The Historic Review Board will work collaboratively with the code official to effectuate the goals of Chapter 7 and the draft Comprehensive Plan regarding designated historic resources zoned historic or with historic zoning overlays.

Section 5. *New Castle County Code* Chapter 40 (“Unified Development Code”), Article 31 (“Procedures and Administration”), Division 40.31.200 (“Miscellaneous application reviews”), is hereby amended by adding the material that is underscored and deleting the material that is stricken, as set forth below.

Division 40.31.200. Miscellaneous application and other reviews....

Sec. 40.31.280. Historic permits and demolition by neglect.

A. No person shall undertake exterior alterations, demolitions, relocation, construction or reconstruction on any building, structure, site, or object within a historic zoning district unless a permit is first obtained from the Department. If the Board or the Department is aware of the conduct of such work without a permit, the Department and/or the Board, as the case may be, and the Law Department, will be advised for pursuit of legal remedies.

B. The Department shall issue no permit required under Subsection A until the Historic Review Board first reviews and approves the application for the permit.

C. The Department shall forward the permit application, together with all attachments, to the Historic Review Board for its review within five (5) days of the proposed work...

E. The Historic Review Board shall hold a hearing on the application within forty-five (45) days...

F. The Historic Review Board shall determine whether it has any objection to the issuance of the permit within seventy-five (75) days...

G....

6. For demolitions, the Historic Review Board shall consider whether the building, structure or object can be used for any purpose for which it is or may be reasonably adapted. To that end, the applicant must demonstrate that the sale of the property is impracticable (as documented per 7(h) below), that rental cannot provide a reasonable rate of return (as documented per 7(h) below), and that other potential uses of the property are not feasible or available. In no event will a sale be deemed impracticable, rental returns unreasonable or other uses not feasible if the reason is deterioration of the property due to the owner, lessee, or person in charge's own intentional or gross negligence in maintaining the property.

7. Where an application for exterior alteration, relocation, construction or reconstruction is based on financial hardship, the Historic Review Board may lessen its requirements if the applicant can demonstrate the extent of financial hardship. In examining a claim of economic hardship, the Board will look beyond the relationship of the cost of repairs and the purchase price or the "as is" value to sort out the extent to which an economic hardship is attributable to the owner's actions or inactions, or to circumstances beyond the owner's control that would have existed in any event. When a claim of undue economic hardship is made, the owner and/or parties in interest must provide evidence during the hearing upon the claim, describing the circumstances of the hardship. Minimum evidence shall include:

a. Nature of ownership (individual, business or nonprofit) or legal possession, custody or control.

b. Financial resources of the owner or parties in interest.

c. Cost of repairs to the subject property.

d. Real estate taxes on the property in question for the prior two (2) years.

e. Assessed value of the land and improvements.

f. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the seller and purchaser or other means of acquisition of title, such as by gift or inheritance.

g. For income-producing property only, itemized operating and maintenance expenses for the subject property for the prior two (2) years and annual cash flow, if any, for the prior two (2) years..

h. Any and all listings of the property for sale or rent, price asked, and offers received for the prior two (2) years.

i. Annual gross income on the subject property for the prior two (2) years.

j. Annual debt service, if any, received in the prior two (2) years.

I. The Historic Review Board shall consider semi-annual or other reports on properties within Historic zones (property with a historic zoning overlay or zoned historic) to ascertain whether Demolition by Neglect as defined in Chapter 7 is occurring. The owner, lessee or person in charge will be provided an opportunity to be heard as set forth in this Code and Historic Review Board rules and regulations before a determination is made.

J. The Department and the Historic Review Board will notify all owners, lessees or persons in charge of properties in historic districts (properties zoned historic or with historic zoning overlays) that their historic properties will be subject to semi-annual inspection to insure compliance with this section.

Section 6. Council hereby designates \$150,000 from the Property Maintenance Revolving Fund (revenue received from fines as set forth in Ordinance 10-127) to effectuate repairs that would halt demolition by neglect upon the procedures set forth in this Ordinance, as set forth in Exhibit A.

Section 7. The County Council and the County Executive believe that the preservation of our County's historic resources promotes the health, prosperity, quality of life and welfare of all citizens and future citizens of New Castle County.

Section 8. The provisions of this ordinance shall be severable. If any provision of this ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this ordinance shall remain valid, unless the court finds that the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with Council's intent. If any provision of this ordinance is found to be unconstitutional or void, all applicable former ordinances and code provisions shall become applicable and

shall be considered as continuations thereof and not as new enactments regardless of severability if possible.

Section 9. This ordinance shall become effective immediately upon its adoption by New Castle County Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* Section 1156.

Adopted by County Council
of New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SYNOPSIS: This ordinance encodes affirmative maintenance provisions for properties with historic zoning overlays or zoned historic to address situations in which a property owner (frequently intentionally) allows a historic property to suffer severe deterioration, sometimes beyond the point of repair. It also equips the Historic Review Board and Land Use Department Code Officials with adequate remedies and enforcement authority to address this situation in collaboration. New Castle County believes that the preservation and protection of historic sites and properties are critical to the character of the County and its current and future inhabitants. This ordinance also will designate \$150,000 from the Property Maintenance Revolving Fund (revenue received from fines) to effectuate repairs that would halt demolition by neglect. This is in addition to the historic preservation bonuses and incentives currently encoded. The Draft FY12 Comprehensive Plan update, prepared by the Department of Land Use, includes as a key strategy for historic preservation the creation of additional legislation to protect against demolition by neglect.

FISCAL NOTE: