

CHAPTER 16

DEMOLITION BY NEGLIGENCE

SECTION

- 11-1601. Minimum maintenance requirements to prevent demolition by neglect.
- 11-1602. Characteristics of deterioration.
- 11-1603. Implementation of minimum maintenance requirements.
- 11-1604. Initiating citation process.
- 11-1605. Citation hearing/public meeting.
- 11-1606. Enforcement.
- 11-1607. Unreasonable economic hardship.
- 11-1608. Penalties.

11-1601. Minimum maintenance requirements to prevent demolition by neglect. Any designated landmark within the Jonesborough City limits; or any building or structure within the historic zone must be kept in good repair and must be maintained at minimum maintenance requirements that will prevent one or more of the characteristics of deterioration set forth in § 11-1602 of this chapter. The presence of one or more of these characteristics, which left unrepaired could lead to deterioration of the building's structural frame or architectural integrity, shall constitute a failure to meet minimum maintenance requirements and is thus determined to be demolition by neglect. (as added by Ord. #93-02, June 1993)

11-1602. Characteristics of deterioration. Demolition by neglect is determined to be deterioration of a building(s) and/or surrounding environment, and the failure to meet minimum maintenance requirements characterized by one or more of the following:

- (1) Those buildings which have parts thereof which are so attached that they may fall and injure members of the public or property;
- (2) Foundations that are deteriorated or inadequate;
- (3) Floor supports that are defective or deteriorated or floor supports insufficient to carry imposed loads with safety;
- (4) Members of walls, or other vertical supports that split, lean, list or buckle due to defective material or deterioration;
- (5) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
- (6) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members which sag, split, or buckle due to defective material or deterioration;
- (7) Members of ceilings, roofs, ceiling and roof supports, or other horizontal members that are insufficient to carry imposed loads with safety;

- (8) Fireplaces or chimneys which list, bulge, or settle due to defective material or deterioration;
- (9) Important defining architectural features that are substantially deteriorated;
- (10) Those buildings with the peeling of external paint, rotting, holes, and other forms of decay;
- (11) Unsafe electrical and/or mechanical conditions;
- (12) Exterior plaster or mortar that is deteriorated or crumbling;
- (13) Those buildings with a lack of maintenance of the surrounding environment that is associated with the defining historical character of the structures; e.g. fences, gates, sidewalks, steps, signs, accessory structures, and landscaping;
- (14) Any fault, defect, or condition in the building which renders the same structurally unsafe, not properly water tight, or likely to lead to the deterioration characteristics listed above. (as added by Ord. #93-02, June 1993)

11-1603. Implementation of minimum maintenance standards.

(1) Identification of the failure to meet minimum maintenance requirements in a building as listed in § 11-1602 above may be made by a member of the historic zoning commission, commission staff, or the building inspector. This initial identification may be made by routine inspection of the district or neighborhood or by referral from someone in the area.

(2) Information related to initial identification of demolition by neglect is presented to the historic zoning commission. Upon determination of the historic zoning commission that the landmark or the building within the historic zone may not meet minimum maintenance requirements, the historic zoning commission may request; upon majority vote, that the building inspector inspect the structure. The chairman of the historic zoning commission shall send a letter by certified mail to inform the property owner of the action by the commission, the impending inspection by the building inspector, and the opportunity he or she will have at the next meeting to address the commission about the preliminary identification of demolition by neglect and the inspection report.

(3) The building inspector or his or her designee will present the inspection findings at the next commission meeting. The report shall detail any defects which constitute, in the inspectors opinion, a failure to meet the minimum maintenance requirements.

(4) If the determination is made by the building inspector that the structure does not meet the minimum maintenance requirements, the historic zoning commission, upon a majority vote, may initiate the citation process as specified in § 11-1604. At this time, the historic zoning commission must prepare an application for a certificate of appropriateness specifying corrective work that is required according to the commission's standards and guidelines, and indicating the time schedule that will be necessary to complete the

minimum maintenance improvements. The time schedule mandated by the historic zoning commission will be a minimum of thirty (30) days unless the building inspector determines that failure to immediately meet minimum maintenance requirements creates an imminent threat to the safety of the public or the property. (as added by Ord. #93-02, June 1993)

11-1604. Initiating citation process. (1) A citation is formal notification to the property owner that the historic zoning commission has determined that demolition by neglect is occurring on the property because minimum maintenance requirements have not been met; and notification of the owner that correction of the defects must be undertaken.

(2) After action by the historic zoning commission authorizing the citation process, the building inspector or his/her designee will attempt to notify the property owner(s) of the determination of demolition by neglect by the commission. The notification shall state the reasons why the structure is found to be in violation of the minimum maintenance requirements. In addition the notification shall include a copy of the application for a certificate of appropriateness listing the work required according to the commission's standards and guidelines. The notification shall be in writing and shall be delivered by certified mail, registered mail, or such other method that shows the receipt of the notification by the owner. Notice of the date, time, and location of a citation hearing/public meeting in which the owner may address the commission concerning said violations will also be provided.

(3) If after two attempts, the owner fails to receive the notification regarding the determination of demolition by neglect, the building inspector or designee will post the building/property with a notice of the violation. Posting will be in a conspicuous, protected place on the property. The posted notice will include the fact that the building is in violation of minimum maintenance standards and the date, time, and location of the citation hearing/public meeting held on the violations by the historic zoning commission.

(4) The owner(s) of the building/property determined to be in violation of the minimum maintenance standards shall be notified of said violations as specified in §§ 11-1604(2) or 11-1604(3) above a minimum of thirty (30) days in advance of the meeting on the issue held by the commission.

(5) After receiving notification of the determination of demolition by neglect, the owner(s) may initiate corrective action before the citation hearing/public meeting is held. Before work is begun however, the owner(s) must complete the application for a certificate of appropriateness, obtain a certificate of appropriateness, and a building permit. (as added by Ord. #93-02, June 1993)

11-1605. Citation hearing/public meeting. (1) If by the designated citation hearing/public meeting, the owner(s) of the property has not completed the corrective work specified in the notification of violation and the application

for a certificate of appropriateness, the historic zoning commission will restate the violations of the minimum maintenance requirements related to the property. The owner(s) will then be provided with the opportunity to address the concerns of the commission, to provide evidence, and to show cause why a citation should not be issued regarding the alleged violations.

(2) After reviewing the violations of the minimum maintenance requirements and providing the opportunity for the owner(s) to address the concerns; the historic zoning commission may consider a motion to recognize the condition of the building/property and the owner(s) failure to correct defects. Upon a majority vote of the commission, the building inspector may be authorized to issue a citation to the owner(s) for failure to comply with the minimum maintenance requirements of this ordinance. This citation will include the following requirements:

(a) A list of the minimum maintenance requirements still in violation.

(b) Any remaining or amended requirements detailed in the application for a certificate of appropriateness initially issued through § 11-1603(4) above.

(c) A written schedule of the time allotted to correct the violations.

(d) A statement detailing the requirement to complete and return within ten (10) days the application for a certificate of appropriateness, and to obtain a certificate of appropriateness, and a building permit.

(3) The determination of the historic zoning commission related to the citation and certificate of appropriateness as specified in § 11-1605(2) above shall on the date it is authorized be a final administrative decision subject only to the application process for unreasonable economic hardship as specified in § 11-1607 and appealable only to the appropriate state court. Any appeal of the historic zoning commission's decision to the state court must be made within thirty (30) days. (as added by Ord. #93-02, June 1993)

11-1606. Enforcement. If the owner has not complied with the historic zoning commission's requirement to complete the application for a certificate of appropriateness, obtain a certificate of appropriateness, and a building permit within ten (10) days; or if the owner(s) does not adhere to the allotted schedule for the corrections to take place as approved or amended by the commission in the certificate of appropriateness; or if the owner(s) has not complied with the requirements specified from the commission's standards and guidelines detailed in the certificate of appropriateness, then any or all of the following may apply:

(a) The owner(s) may be required to attend the next meeting of the historic zoning commission to explain to the commission's satisfaction why the corrections to the owner(s) cited building/property have not been made and to show cause why the commission should not initiate

additional enforcement action. Upon review of any information provided regarding delays in the correction of the demolition by neglect, the commission may defer the matter in order to provide the owner(s) with more time either to correct the deficiencies, make a proposal for repairs, or perhaps sell the property.

(b) The commission, upon majority vote, may request the board of mayor and aldermen to direct the town attorney to take the appropriate legal action, either civil or criminal, against the owner(s).

(c) Charges may be brought against the owner(s) in the municipal court of the town for the violation(s) of this chapter.

(d) The commission may upon majority vote, request the board of mayor and aldermen to cause such property to be repaired by the town at the town's expense at such time funds are available, or to cause such property to be repaired by a designated agent of the town. If repairs are initiated through action by the board of mayor and aldermen, the board will instruct the town attorney to file the necessary affidavits with the courts and/or the register of deeds which shall establish a lien and privilege against the cited property for the benefit of the town or the agent of the town to the extent of the amount of money spent for said repairs plus interest accrued at bank prime rates in effect beginning at the completion of said repairs and continuing until the lien is satisfied.

(e) In final recourse and to preserve the property from irreversible damage or loss, violations of the minimum maintenance requirements shall make a property subject to the town's right of eminent domain. The commission may, upon majority vote, request the board of mayor and aldermen to exercise its power of eminent domain if it is determined that no alternate course of action is feasible. The board may work with any agent to develop a plan for the purchase and the repair of the cited building. Upon obtaining ownership of the property, the town may transfer said ownership to any party or agent that enters into and consummates an agreement with the board of mayor and aldermen to make the necessary building repairs and maintenance corrections in an agreed upon period of time. (as added by Ord. #93-02, June 1993)

11-1607. Unreasonable economic hardship. (1) Unreasonable economic hardship can be considered when enforcement of regulations in the chapter deprives the owner(s) of the entire reasonable economic value of the property. Enforcement of a minimum maintenance requirement may create unreasonable economic hardship only if all of the following apply:

(a) There is no reasonable return possible on the property as it is;

(b) There is no profitable use to which, the property could be adapted;

(c) The sale or rental of the property is impractical or it is not feasible for the owner(s) to dispose of the property as is at a reasonable price.

(2) An owner(s) that feels he or she fits the criteria established for unreasonable economic hardship may file an application for a certificate of economic hardship. Applications will be accepted by the historic zoning commission after the commission votes to authorize the building inspector to issue a citation for violations and the notification has been received by the owner(s).

(3) The owner(s) of property cited for demolition by neglect must inform the historic zoning commission in writing of his or her intent to file an application for a certificate of economic hardship within ten (10) days of the date the citation was issued.

(4) The owner(s) of the cited property must file within thirty (30) days of the date the citation was issued, a completed application for a certificate of economic hardship. The completed application must be filed with the historic zoning commission and must be submitted with the following information:

- (a) A copy with the current recorded deed.
- (b) The amount paid for the property and purchase date.
- (c) The current assessed value.
- (d) Past and current use of property.
- (e) Current market value of the property preferably determined by a recent appraisal(s) or if not through county tax records.
- (f) Ownership structure of property (partnership, corporation, joint venture, not for profit, sole proprietorship, etc.)
- (g) Mortgage history of the property including any current mortgage principal balance and interest rate, and any other financing secured by the property including a detail of principal and interest.
- (h) Equity in current use and in previous alternative uses.
- (i) Tax bracket of ownership, and federal income tax returns for previous two (2) years.
- (j) Past and current income, expense, and net worth statements for a two (2) year period. If the property is income producing, annual gross income from the property and the itemized operating and maintenance expenses for the previous two (2) years. In addition the depreciation deduction and annual cash flow before and after debt services, if any, during the same period.
- (k) Past capital expenditures during ownership of the current owner(s).
- (l) Estimate of the cost of the proposed construction, alteration, demolition, or removal related to the corrective measures detailed in the citation issued by the historic zoning commission.
- (m) A detailed description of what alternative legal adaptive uses have been considered by the owner(s).

(n) A detailed description of what efforts have been made by the owner(s) to sell the property, including any listing of the property for sale or rent, price asked, and offers received, if any.

(o) A detailed description of what efforts have been made by the owner(s) to obtain financial assistance, tax credits, transfer of density, etc. that might generate funding for the needed improvements.

(5) The historic zoning commission shall schedule and hold a public hearing on the owners application for a certificate of economic hardship within thirty (30) days from receipt of the application. Notice of the date, time, and place of the hearing shall be provided to the owner(s) a minimum of seven (7) days in advance of the meeting.

(6) The historic zoning commission may require at the hearing that the applicant furnish additional information relevant to the application including but not limited to the solicitation of expert testimony.

(7) The historic zoning commission may request, receive, and consider studies and economic analysis related to the property in question from other agencies and sources including private organizations and individuals.

(8) In evaluating the owner's information provided in the application for a certificate of economic hardship, if the historic zoning commission determines that the owner(s) present return is not reasonable, the commission must consider whether there are other uses currently allowed for the structure that would provide a reasonable return and whether such a return could be obtained through an investment in the rehabilitation of the property.

(9) The historic zoning commission shall review all the evidence and information required of the applicant for a certificate of economic hardship, and make a determination within thirty (30) days following the conclusion of the hearing.

(10) Written notice of the determination will be provided to the applicant along with the reasons justifying the decision by the historic zoning commission.

(11) If the historic zoning commission grants a certificate of economic hardship, the commission must detail options it has considered that would bring the property up to minimum maintenance requirements and why each option is not deemed feasible. In granting a certificate of economic hardship, the historic zoning commission may determine that some corrections may be feasible while others cannot be implemented due to economic hardship. Under such circumstances, the historic zoning commission must authorize the building inspector to issue a building permit for any activity that is deemed feasible under the conditions detailed in the certificate of economic hardship.

(12) In granting a certificate of economic hardship, the historic zoning commission may also detail any feasible plan to relieve any aspect of the economic hardship. The plan may include, but is not limited to, tax relief, loans and grant available from any source public or private, building code modifications, etc. The commission may recommend that the planning

commission consider changes in zoning. The commission may also request the board of mayor and aldermen to consider relaxation of the provisions of this chapter sufficient to allow reasonable beneficial use of or return from the property. If no alternative cause of action has been deemed feasible, the commission may request the board to consider acquisition through eminent domain.

(13) If the historic zoning commission denies a certificate of economic hardship, the commission must detail in writing the economic and financial options that in the judgment of the commission will allow the improvements to be made to the property as required in the citation issued as specified in § 11-1605(2) above.

(14) If a certificate of economic hardship is denied by the historic zoning commission, the commission will revise, to the extent necessary, the designated schedule for completion of the corrective measures detailed in the citation taking into account any reasonable need for additional time due to time lost during consideration of the certificate application. The commission will notify the owner(s) in writing of any schedule amendments with the notification of the denial of the certificate.

(15) The determination by the historic zoning commission of an application for a certificate of economic hardship, either approving or disapproving, shall on the date it is issued be a final administrative decision appealable only to the appropriate state court. Any appeal of the historic zoning commission's decision to state court must be made within thirty (30) days. (as added by Ord. #93-02, June 1993)

11-1608. Penalties. Any person violating any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined not more than fifty dollars (\$50.00) for each offense. Each day such violation shall continue shall constitute a separate offense. (as added by ord. #93-02, June 1993)