

9-28-09
adopted

**AN ORDINANCE AMENDING THE ZONING ORDINANCE
OF THE CITY OF OXFORD**

**BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE CITY OF
OXFORD:**

Section 1. Demolition by Neglect.

I. Intent

The purpose of this ordinance is to permit the City of Oxford, through its Historic Preservation Commission and its Planning Department, to protect its historic architectural resources by intervening when a significant resource is undergoing demolition by neglect. Demolition by neglect is defined as a situation in which a property owner allows the condition of improved property located in the Historic District to suffer such deterioration, potentially beyond the point of repair, as to threaten the historic character of the property or the district, the structural integrity of the structure or its relevant architectural detail such that the structure and its character may potentially be lost to current and future generations.

A significant resource, as the term is used in this ordinance, is defined as any property, structure, or architectural resource which was designated as "contributing" in the Oxford Historic District's nomination to the National Register of Historic Places, or in the Oxford Historic District Architectural Inventory of 2008, or which has gained significance in the intervening period.

II. Standards

The exterior features of any building or structure found to have significance (as the term is defined above) located within the Historic Overlay District shall be preserved by the owner or such other person who may have legal possession, custody, and control thereof against decay and deterioration and kept free from structural defects. The owner, or other person having such legal possession, custody, and control, shall upon written request by the City stabilize or repair such exterior features if they are found to be deteriorating, or if their condition is contributing to deterioration of the property or the District, including but not limited to any of the following defects:

- (1). Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling where such condition threatens the structural integrity of the structure.

- (2) Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling where such condition threatens the structural integrity of the structure.
- (3) Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling where such condition threatens the structural integrity of the chimney.
- (4) Deterioration or crumbling of exterior plasters or mortars where there is evidence that such condition has allowed deterioration of structural elements that threaten the structure's integrity.
- (5) Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors where there is evidence that such condition has allowed deterioration of structural elements that threaten the structure's integrity.
- (6) Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering where there is evidence that such condition has allowed deterioration of structural elements that threaten the structure's integrity.
- (7) Rotting, holes, and other forms of decay where there is evidence that such condition has allowed deterioration of structural elements that threaten the structure's integrity.
- (8) Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling where there is the possibility that the architectural details will be totally lost or destroyed.
- (9) Deterioration of contributing fences, gates, and accessory structures.
- (10) Deterioration that has a detrimental effect upon the special character of the district as a whole or the unique attributes and character of the significant structure within the Historic Overlay District.
- (11) Deterioration of any exterior feature so as to create or permit the creation of any hazardous or unsafe conditions to life, health, or other property.

III. Procedure for Enforcement

A. Due to the time consuming nature of pursuing enforcement under this section, no more than three (3) properties will be under consideration during one year. Staff shall review and process complaints on a quarterly basis (January, April, July, October).

B. Any citizen who believes demolition by neglect, as defined herein, is occurring with respect to any particular property in the Historic District may make a written complaint to the Planning Department. Such a complaint must include a clear description of the property and the nature of the deterioration claimed to constitute demolition by neglect.

C. Upon the receipt of two (2) complaints from unique addresses within a calendar year for the same structure, the Planning Department staff will conduct a preliminary investigation and prepare a staff report of each site for which it has received a complaint on a quarterly basis (January, April, July and October). The Planning Department staff member who makes the preliminary investigation may consult, at his discretion, with professionals including, but not limited to architects, landscape architects, engineers, building inspectors and historic preservationists but said consultations shall be at no expense to the City unless prior approval therefore is obtained from the Board of Commissioners.

D. If the Planning Department staff finds that the complaint has a basis in fact, it will notify the property owner that a complaint and staff report will be brought before the Historic District Commission in no fewer than 30 days. The notification to the owner shall to include: (1) a copy of the staff report documenting the violations, (2) steps in the process, (3) how the owner can resolve the issue immediately and (4) list of financial resources available, if any. The owner has an opportunity at this point to resolve the issue. If the preliminary investigation does not substantiate the complaint, the complaint is resolved and no further action will be taken.

E. The Planning Department staff will forward the complaint and staff report to the Historic Commission at its next regularly scheduled meeting after the 30 days in subsection D has elapsed.

F. The Historic Commission will review complaints and staff reports. If the Historic Commission finds that the complaint may have merit, it may, at its own discretion, file a petition listing specific defects with the Planning Director directing the Planning Director or a designee to act under the following procedures to require the correction of deterioration or making of repairs to significant structure located within the Historic District so that such structure shall be preserved and protected. Whenever a petition is filed with the Planning Director, a Planning Department staff member shall issue and cause to be served upon the owner and/or such other person who may have legal possession, custody, and control thereof, as the same may be determined by reasonable diligence, a written finding stating that the Historic Commission has reason to believe that the property is undergoing demolition by neglect, identifying the specific condition(s) at the property which have led to that determination, and containing a notice that a hearing will be held before the Planning Director at a place within the City not less than thirty (30) nor more than forty-five (45) days after service of such order; that the owner and/or parties in interest shall be given a right to answer AND to give testimony at the hearing; that the Historic Commission shall also be given notice of the hearing; and that the rules of evidence prevailing in courts of law or equity shall not apply in hearings before the Planning Director. The purpose of the hearing is to receive relevant evidence and information concerning the charge of deterioration and to ascertain whether the owner and/or other parties in interest wishes to file a claim of economic hardship with the Historic Commission.

G. If after such finding and hearing, the Planning Director determines that the structure is undergoing demolition by neglect as defined herein, the Planning Director shall make written findings of fact in support of such determination and shall issue and cause to be served upon the owner and/or other parties in interest therein, an order to repair within a time to be specified in the written decision those elements of the structure that constitute demolition by neglect. The Owner and/or other party in interest shall have ten (10) business days from the date of the Planning Director's written order within which to file with the Historic Preservation Commission a written petition for a claim of undue economic hardship. In the event that the owner and/or other parties in interest wish to petition for a claim of undue economic hardship, the Planning Director's order

shall be stayed until after the Historic Commission's determination in accordance with the procedures of this Ordinance, except as provided in the Section *Other City Powers*.

IV. Stay of Proceedings

Any improvements to the property, approved plans for improvements, or other arrangements to bring the property into compliance agreed upon by the property owner and the Planning Director or Historic Commission will stay all proceedings under this Ordinance.

V. Exemptions

A. Properties with approved Certificates of Appropriateness for work or demolition will not be subject to enforcement action under this section unless said work or demolition is not being carried out in accordance with the Certificate.

B. Properties actively listed and marketed by a licensed real estate agent will have enforcement waived for a period not to exceed six (6) months. However, both the property owner and the agent will be notified in writing that the property has received verified complaints under this section.

VI. Methods of Service

Complaints or orders issued by the Planning Department staff shall be served upon persons either personally or by registered or certified mail; but if the whereabouts of such persons are unknown and the same cannot be ascertained by Planning Department staff in the exercise of reasonable diligence, and Planning Department staff shall make an affidavit to that effect, stating the steps taken to determine and locate the persons in interest, then the serving of such complaint or order may be made by publishing the same once each week for two (2) successive weeks in a newspaper generally circulated within the City. Where such service is by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected.

VII. Safeguards from Undue Economic Hardship

Undue economic hardship is defined as the property owner's financial inability to make the repairs specified in Section II. A claim of undue economic hardship must be made, in writing, by filing a request for such a determination with the Planning Department within the time period specified for in Section III, G. The determination of undue economic hardship will be made by the Historic Commission on a case-by-case

basis. When a claim of undue economic hardship is made owing to the effects of this article, Planning Department staff shall notify the Commission within five (5) business days following the Planning Department's receipt of the written request for a determination of undue economic hardship. The Commission shall at its next regular meeting, schedule a hearing on the request within the limitations of its procedures for application deadlines. The Commission, in its sole discretion, may hold the hearing in open or closed session but minutes shall be taken thereof. The petitioner shall present the information required under subsection A below to the Commission at or prior to the hearing. The Commission may require that an owner and/or parties in interest furnish such additional information as the Commission may reasonably conclude is relevant to its determination of undue economic hardship and may allow the owner or party in interest a reasonable period of time (to be established by the Commission) to furnish the requested additional information. The Commission may reasonably request its staff to furnish additional information, as the Commission believes is relevant. The Commission shall also state which form of financial proof it deems relevant and necessary to a particular case. In the event that any of the required information is not reasonably available to the owner and/or parties in interest and cannot be obtained by the owner, the owner shall describe the reasons why such information cannot be obtained.

A. When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest must provide clear and convincing evidence thereof during the hearing upon the claim, describing the circumstances of hardship. The minimum evidence to be presented shall include:

- (1) Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control;
- (2) Financial resources of the owner and/or parties in interest;
- (3) Cost of repairs;
- (4) The immediate prior two (2) years of the owner and/or parties in interest's federal income tax returns, including all schedules attached thereto;
- (5) Assessed value of the land and improvements;

- (6) Any appraisals of the property that were prepared for any purpose, including those associated with any mortgages;
- (7) Real estate taxes for the previous two (2) years;
- (8) A financial statement of the owner and/or parties in interest, if available;
- (9) Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance;
- (10) Annual debt service, if any, for previous two (2) years; and
- (11) Any listing of the property for sale or rent, price asked, and offers received, if any.

In addition to the information required above, for income-producing property, the property owner and/or party in interest shall also provide the following information:

- (1) Annual gross income from the property for the previous two (2) years;
- (2) Itemized operating and maintenance expenses for the previous two (2) years, including proof that adequate and competent management procedures were followed; and
- (3) Annual cash flow, if any, for the previous two (2) years;

B. Within sixty (60) days of the Historic Commission's hearing on the claim, the Commission shall make a determination regarding undue economic hardship and shall enter the reasons for such finding into the record. In the event of a finding of no undue economic hardship, the Commission shall report such finding to the Planning Department staff, and the Planning Department staff shall cause to be issued an order for such property to be repaired within the time specified.

C. In the event of a finding of undue economic hardship, the finding shall be accompanied by a recommended Plan to relieve the undue economic hardship. This Plan may include, but is not limited to, loans or grants from the City, the County, or other public, private, or nonprofit sources (if any are available), acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this Ordinance sufficient to mitigate the undue economic hardship. The Commission

shall report such finding and Plan to the Planning Department staff. The Planning Department staff shall cause to be issued an order and Plan in accordance with the findings of undue economic hardship. Each component of the Plan that requires approval of a government, agency, or other entity can only be implemented when that government, agency, or other entity has provided approval for its provision. If the owner and/or party in interest is granted relief in the form of relaxation of the provisions of this Ordinance sufficient to mitigate the undue economic hardship, the order granting such relief will be reconsidered by the Historic Commission on an annual basis then until such time as all repairs are made to alleviate the demolition by neglect. At each such annual reconsideration, the owner and/or party in interest shall provide updated materials in the form as setout above to allow the Commission to determine whether an undue economic hardship is continuing.

D. At the conclusion of the hearing and all subsequent appeals, all materials submitted to the Commission for consideration shall be returned to the owner and/or party in interest. Any financial statements, income tax returns or related information shall be kept strictly confidential by the Commission.

VIII. Appeals

Findings made by the Planning Director or by the Historic Commission may be appealed to the Board of Adjustment. To perfect such an appeal, a written application must be filed by the aggrieved party, i.e., the owner or such other person who may have legal possession, custody, and control of the property in question, with the Board of Adjustment within ten (10) business days following receipt of the order for repair of the property or determination. Appeals shall be in the nature of certiorari (review of a quasi-judicial decision) such that the Board of Adjustment may review the record of the proceedings before the Planning Director or the Commission (as the case may be) to ensure that all procedures required by this Ordinance have been followed and to ensure that the decision appealed from is supported by competent evidence in the record. However, the Board of Adjustment may not substitute its judgment for that of the Planning Director or the Historic Commission unless it concludes that either:

- (1) there has been a procedural error which has resulted in prejudice to the appellant; or

- (2) there is no competent evidence in the record to support the decision. In the event that there is competent evidence in the record which supports the decision appealed from and competent evidence in the record against the decision, the Board of Adjustment may not reverse the decision.
- (3) Any appeal from the decision of the Board of Adjustment shall be made as provided for in N.C.G.S. §160A-388.

IX. Other City Powers

Nothing contained within this article shall diminish the City's power to declare a building unsafe or in violation of the minimum housing code.

X. Penalties and Remedies

Enforcement of this article may be by any one (1) or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

A. Equitable Remedy.

The City of Oxford may apply for any appropriate equitable remedy to enforce the provisions of this Ordinance in the General Court of Justice of Granville County, Superior Court Division.

B. Order of Abatement.

In addition to any other equitable remedy available to the City of Oxford, the City may make judicial application for an order of abatement to enforce this Ordinance. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this Ordinance. In addition, the City may seek enforcement of any order entered by the Court through the contempt powers of the Court. The City of Oxford shall have a lien, in the nature of a mechanic's and/or materialman's, on the property for the cost incurred by the City in obtaining any order of abatement from the Court and/or seeking enforcement of any such order in a contempt proceeding.

C. Civil Penalty.

The City of Oxford may impose a civil penalty for the failure of the property owner or such other person who may have legal possession, custody, and control thereof

for failure to comply with this Ordinance. However, no civil penalty shall be levied unless and until the Planning Department shall deliver written notice by personal service or by registered mail or by certified mail, return receipt requested, to the property owner or such other person who may have legal possession, custody, and control thereof, for each violation indicating the nature of the violation and ordering corrective action. The notice shall also set forth the time period when corrective measures must be completed. The notice shall state that failure to correct the violation within the specified time period will result in the assessment of civil penalties and other enforcement action. If after the allotted time period has expired and after the hearing of an appeal by the Board of Adjustment or Superior Court, if any, corrective action has not been completed, a civil penalty shall be assessed in the amount of one hundred dollars (\$100.00) per day of continuing violation.

D. Effect Repairs.

If the owner the owner or such other person who may have legal possession, custody, and control thereof, fails to comply with an order to repair, the City of Oxford may cause such building or structure to be repaired but only by majority vote of the Board of Commissioners. Nothing herein shall be deemed to require or obligate the City to make such repairs. The City shall not cause the repair of the property in question until the Historic Preservation Commission shall by resolution or other decree authorize the City to proceed to prevent demolition by neglect as set forth in this Ordinance. The amount of the cost of such repairs, alterations and improvements shall be a lien against the real property upon which such costs were incurred. Said lien shall be filed in the Office of the Clerk of Court and the Office of the Register of Deeds for Granville County and have the same priority and be collected or foreclosed upon in the same manner as is provided for assessments for local improvements. The property owner shall have the option of paying for the cost of such repairs, alterations and improvements either in cash or in five (5) equal annual installments with such installments bearing interest at the rate of six percent (6%) per annum from the date of the filing of the lien. If any costs are not paid in cash, the first installment, with interest, shall become due and payable thirty (30) days after the date of the filing of the lien, and one (1) subsequent installment and interest shall be due and payable on the same day of the month in each successive year until the

costs are paid in full. If any installment with interest is not paid when due, it shall be subject to the same penalties as are now prescribed by law for unpaid assessments, in addition to the interest herein provided for, and, in addition, all of the installments remaining unpaid shall at once become due and payable and the property may be sold in the same manner as now prescribed by law for the sale of land for unpaid taxes. The whole cost of such repairs, alterations and improvements may be paid at the time of paying any installment by payment of the principal and all interest accrued to that date.

Section 2. All provisions of any City ordinance in conflict with this ordinance are hereby repealed.

Section 3. This ordinance shall become effective upon adoption.