



CITY OF WHEELING HISTORIC LANDMARKS COMMISSION

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November 10, 2020

Mayor and Members of City Council,

The City of Wheeling Historic Landmarks Commission held its regularly scheduled meeting on December 3, 2020. Within the Commission's role to aid and encourage the City to adopt ordinances and resolutions for the preservation of landmarks and historic districts, their buildings, structures, and character [Wheeling City Code, Article 173.07(h)], the Wheeling Historic Landmarks Commission has unanimously adopted a resolution recommending that City Council adopt the enclosed amendment to the City Code requiring a demolition permit before buildings or structures listed on the National Register of Historic Places or listed as a contributing structure in a Historic District may be demolished.

Background

Currently, the City Code has no special requirement for demolition permits and often historic structures have been demolished with little notice or opportunity for adjoining property owners or owners of property in the same historic district to comment or propose alternatives to demolition. This issue has been discussed by the Landmarks Commission, the Mayor and City Manager, members of City Council, and the City administration for several years. After much discussion, consultation with the City Solicitor's office, consultation with the Wheeling Building & Planning Department, and investigation regarding demolition ordinances in other similar cities, the Landmarks Commission is recommending that action be taken on the enclosed ordinance.

Further Action

The Landmarks Commission is prepared to meet with City Council, or any committee of City Council or the City of Wheeling, in order to explain the terms of the proposed ordinance or the rationale for any of its sections. We look forward to hearing from you.

Respectfully submitted,

C.J. Kaiser, Chair
Historic Landmarks Commission

173.13 Historic Review for Demolition Permits

173.13 DEMOLITION PERMITS FOR HISTORIC STRUCTURES; VARIANCES; APPEALS.

- (a) No building or structure which is listed on the National Register of Historic Places or is listed as a contributing structure in a Historic District shall be demolished unless a demolition permit under this section has been issued by the City of Wheeling Building & Planning Department (hereafter the “Department”).
- (b) An application for a demolition permit shall, in addition to those general terms required for a building permit, include the following additional requirements:
 - 1. A description of the building or structure as identified in the National Register of Historic Places or in the Historic District;
 - 2. Reason for the demolition of the building or structure and use to be made of the lot or area following the demolition of the building or structure;
 - 3. Estimated costs of demolition of the historic building or structure and for clearing the site;
 - 4. Extent to which all or part of the building or structure (or its component parts) will be used or made available for use as architectural salvage; and
 - 5. Architectural drawings and construction timeline for any building or structure to be constructed on the site with particular emphasis on how the new building or structure will be compatible with other buildings or structures in the Historic District.
- (c) A copy of the completed demolition permit application shall be provided to the Wheeling Historic Landmarks Commission (hereafter the “Commission”) which shall review the application for completeness and determine whether additional information is required or whether a public hearing before the Commission should be scheduled and notice of the hearing given.
- (d) When the application is deemed complete and the date for a public hearing has been scheduled, notice of the time and place of the public hearing shall be given by publication in a newspaper having general circulation within the City of Wheeling, at least seven (7) days before such meeting, and by posting such notice on or near the main entrance of any hall or room where the Commission usually meets. In addition to publication, written notice of the date for the public hearing on the application shall be given to all property owners within a Historic District containing less than twenty-five (25) property owners and, in larger Historic Districts, to those property owners located within two hundred (200) feet of the building or structure for which the demolition application has been made.
- (e) The public hearing before the Commission shall be scheduled no later than forty-five (45) days following the date the application is deemed complete. At the public hearing the applicant shall be prepared to state why the building or structure is being demolished, the extent to which alternatives for the building or structure have been

investigated, the cost of any such alternatives, and the use to be made of the site following demolition and the timing for the construction of any improvements. The Commission shall hear from any neighboring property owners, developers presenting alternatives, or other interested citizens regarding the permit application.

- (f) Within thirty (30) days following the public hearing, the Wheeling Historic Landmarks Commission shall issue a written report to the Department and Wheeling City Council. The Commission, by majority vote, shall approve the recommendation. Evidence of the rationale for the recommendation shall be recorded in the minutes of the Commission meeting. The written report shall include a recommendation with respect to the demolition permit as follows: (1) the application should be approved as the only reasonable alternative for the building or structure; (2) the application should be delayed for up to one hundred twenty (120) days while the applicant and/or the Commission and other parties investigate alternative reasonable uses for the existing building or structure; or (3) the application should be denied because the applicant failed to completely and truthfully answer the questions that are required to be answered on the application or at the public hearing.
- (g) **Exceptions for Public Safety.** A demolition permit otherwise subject to this section shall not be required for a building or structure, listed on the National Register of Historic Places or listed as a contributing structure in a Historic District, damaged beyond reasonable repair as the result of fire, natural disaster, or other calamity sufficient to justify to the Department and/or Wheeling Fire Department that there is an immediate threat to public health, safety, or welfare should the demolition not occur as soon as possible. In making this determination, the Department and/or Wheeling Fire Department shall take into account whether insurance is available for the protection of the public by, for example, fencing the area or shoring up the structure to protect further damage. Once the structure has been made safe or the immediate public threat has abated, a demolition permit shall be required.
- (h) If substantial changes are made to a demolition permit application either during the Public Hearing or in response thereto, the Commission may adjourn the Public Hearing to a date certain or require that notice of a new Public Hearing be given so that the public and other interested parties can comment upon the substantial changes to the application.
- (i) City Council may accept the recommendation of the Commission, reject the recommendation of the Commission and send the application back to the Commission for further investigation, or overturn the Commission's recommendation and direct the Department to issue the demolition permit. In the event City Council overturns the Commission recommendation, it shall state reasons for such rejection.
- (j) Any person adversely affected by any determinations made by City Council, the Department, or the Commission relative to the application for a demolition permit

may appeal such determination to the Circuit Court of Ohio County pursuant to the following:

1. Every decision or order of the Commission, or Wheeling City Council is subject to review by certiorari.
 2. Within thirty days after a decision or order by the Commission or Wheeling City Council, any aggrieved person may present to the Circuit Court of Ohio County, a duly verified petition for a writ of certiorari setting forth:
 - a. That the decision or order by the Commission or Wheeling City Council is illegal in whole or in part; and
 - b. Specify the grounds of the alleged illegality. (See generally by analogy WV Codes 8A-9-1).
- (k) Any owner of a building or structure which is listed on the National Register of Historic Places or listed as a contributing structure in a Historic District that demolishes such a structure without a permit issued in accordance with this section shall be fined the sum of Ten Thousand Dollars (\$10,000.00) or the cost of demolition whichever is greater. Moreover, the City of Wheeling, or any affected person, demonstrating to the court that he/she has the requisite standing to do so, may apply for the issuance of emergency injunctive relief to the Circuit Court of Ohio County, West Virginia, to stop demolition until a permit issued pursuant to this section has been issued. If injunctive relief is granted, the City or other interested party applying for injunctive relief may apply to the Circuit Court of Ohio County, West Virginia, for the reimbursement by the owner of the building or structure of reasonable attorneys' fees and expenses incurred by the City or other interested party in addition to any other damages or fines. The costs herein discussed if not promptly paid within thirty (30) days shall also be subject to statutory interest. Unpaid costs shall also constitute a lien against the owner's property and shall be filed in the County Clerk's office.
- (l) If the strict application of any provision of this section would result in exceptional practical difficulty or undue economic hardship upon any owner, as reasonably determined by the Historic Landmarks Commission, the Commission, shall have the power to vary or modify strict adherence to the provisions or to interpret the meaning of the provision so as to relieve such difficulty or hardship: Provided, that such variance, modification or interpretation shall remain in harmony with the general purpose and intent of the provisions of this section so that a building or structure which is listed on the National Register of Historic Places is preserved or maintained or the continuity of a Historic District in which the contributing structure is located shall be conserved and enhanced and substantial justice is done. In granting variances, City Council after receiving the recommendations of the Commission and the Department may impose such reasonable and additional stipulations and conditions as will in its judgment best fulfill the purpose of this article.

- (m) If any article, section, subsection, provision, clause or phrase of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, subsections, provisions, clauses or phrases or applications of the chapter, and to this end each and every article, section, subsection, provision, clause and phrase of this chapter is declared to be severable. The above article is in addition to and not dependent upon other Sections and Articles of the Codified Laws of the City of Wheeling, WV.

Nothing contained in this section shall substitute for any other local, state or federal requirements incumbent upon property owners. Likewise, nothing contained in this section, article, or other articles of this code shall constitute a defense to any action for personal injury, wrongful death or damage to property, etc.

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