

ORDINANCE NO. 07-46

AN ORDINANCE AMENDING AND SUPPLEMENTING AN ORDINANCE ENTITLED THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF NEPTUNE ADOPTED BY THE TOWNSHIP COMMITTEE AND AMENDED FROM TIME TO TIME THEREAFTER TO REVISE AND AMEND SECTION 907 OF THE LAND DEVELOPMENT ORDINANCE RELATIVE TO DEMOLITION WITHIN AN HISTORIC DISTRICT

BE IT ORDAINED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF NEPTUNE THAT THE REVISED GENERAL ORDINANCES OF THE TOWNSHIP OF NEPTUNE ARE HEREBY AMENDED TO PROVIDE FOR THE REPEAL OF SECTION 907 OF THE LAND DEVELOPMENT ORDINANCE AND THE ADOPTION OF THE WITHIN REVISED ORDINANCE RELATIVE TO DEMOLITION WITHIN AN HISTORIC DISTRICT.

Section 1. Declaration: The Township Committee declares that revisions to the demolition application procedure for all structures located within Ocean Grove are critical to insure historic preservation and to maintain the designation of Ocean Grove as a National Historic District. To insure preservation, the Township Committee concludes that revisions to the demolition application procedure are necessary in order to establish strict guidelines to provide for the review and evaluation of demolition applications so as to prevent widespread demolition of historic structures within Ocean Grove. The Township Committee states that all applications for demolitions or partial demolitions shall be submitted, reviewed and determined by the Historic Preservation Commission in accordance with the within ordinance. Further, the Township Committee is determined to impose sanctions for those property owners or developers within Ocean Grove who unilaterally act to demolish or partially demolish a structure within Ocean Grove without the requisite approvals as required herein. The Township Committee declares that such actions are necessary to preserve the historic character of Ocean Grove and the designation of Ocean Grove as a National Historic District. The Township Committee further declares that the process to review and consider demolition and partial demolition applications should further include a clear and concise appeal process for any Applicant who believes the Historic Preservation Commission has acted arbitrarily in the review and determination of any application. Finally, the Township Committee believes that such revisions are necessary to clearly define the rights and responsibilities of all applicants, property owners and the Historic Preservation Commission in the evaluation of all demolition applications within Ocean Grove.

Section 2. Definitions: As used in this ordinance, the following terms shall have the following subscribed meanings:

(a) **Demolition:** shall mean the total demolition of more than fifty (50%) of the exterior walls of any structure, as determined by a qualified professional, situate within the Historic District and which shall consist of the razing or removal of said structure and/or the removal of such of the distinguishing or defining characteristics (as applicable) to the style of such structure or the removal of any architecturally or historically significant exterior elements from the structure which define or contribute to its classification within the Historic District. Demolition shall not be required for the removal, repair or replacement of the exterior sheathing, removal and replacement of a porch or deck, removal and replacement of any windows, doors, stairs,

steps, gutters, leaders, downspouts, finials, brackets or exterior adornments, removal, repair or replacement of a roof, provided further that in the case of a roof, any such repair or replacement shall be in kind and shall not alter or compromise the existing roof line, roof pitch or massing. Notwithstanding the foregoing, all such exterior repairs or replacements will still require the Applicant obtain a requisite Certificate of Appropriateness as required under applicable ordinance. Any total demolition, as defined herein, shall require any owner to obtain a demolition permit in accordance with the requirements set forth herein, which permit to be issued by the Construction Department.

(b) **Partial Demolition:** shall mean the removal or demolition of 15% or more of the exterior walls of any Key, Supporting or Contributing Structure located within the Historic District, as determined by a qualified professional and approved or confirmed by the Commission or the removal of such architecturally or historically significant features which would compromise the classification of a structure within the Historic District as determined by the Commission. An Applicant seeking to partially demolish a portion of a Key, Supporting or Contributing Structure shall obtain a demotion permit from the Commission in accordance with the procedures set forth herein. Partial Demolition shall not be required for the removal, repair or replacement of the exterior sheathing, removal and replacement of a porch or deck, removal and replacement of any windows, doors, stairs, steps, gutters, leaders, downspouts, finials, brackets or exterior adornments, removal, repair or replacement of a roof provided further that in the case of a roof, any such repair or replacement shall be in kind and shall not alter or compromise the existing roof line, roof pitch or massing. Notwithstanding the foregoing, all such exterior repairs or replacements will still require the Applicant obtain a requisite Certificate of Appropriateness as required under applicable ordinance. Partial Demolition shall not include those structures classified as “Other Structures”, so classified by the Commission, shall not require a formal demolition application for a partial demolition. However, an Applicant shall be required to obtain a Certificate of Appropriateness issued by the Commission.

(c) **Structure:** shall mean a combination of materials to form a construction for occupancy, use or ornamentation, whether installed on, above or below the surface of a parcel of land; provided the word “structure” shall be construed when used herein though followed by this the phrase “or part or parts thereof and all equipment therein” unless the context requires a different meaning and shall include any commercial building of any type, residential or non-residential building or dwelling of any type or character, located within the Historic District, including all accessory or other structures as defined in the Land Development Ordinance, Township of Neptune.

(d) **Historic District:** shall include any structure, commercial building of any type, residential or non-residential building or dwelling situate within that portion of Neptune Township identified as Ocean Grove

(e) **Commission:** as used herein Commission shall mean the “Neptune Township Historic Preservation Commission”, “Historic Preservation Commission” or the “HPC”.

(f) **Illegal Demolition:** Any demolition or partial demolition of a structure within the Historic District undertaken, commenced, started, completed or otherwise proceeding without first obtaining a demolition approval from the Historic Preservation Commission (except as may be provided pursuant to Section 17 (Exceptions) and an actual demolition permit issued by the Construction Official shall be deemed an illegal demolition for purposes of this ordinance.

(g) **Key Structure:** Includes all structures located within Ocean Grove originally constructed circa 1869 through 1910 which generally include building styles identified as Eastlake, Gothic Revival, Italianate, Stick Style, Queen Anne, Tent/tent Cottages, Bungalow/Craftsman and Early Summer Cottage Vernacular styles as classified or recognized by the Commission. Key structures shall not be demolished except where the Commission determines that such demolition or partial demolition shall not be detrimental to the historic designation and shall satisfy the criteria established herein. Key structures shall be carefully scrutinized by the Commission prior to the issuance of a demolition approval and the issuance of a demolition permit by the Construction Official; to demolish or partially demolish a Key Structure within the Historic District.

(h) **Contributing Structure:** Includes those structures located within Ocean Grove originally constructed circa 1910 through 1941 which generally include consisting primarily of Colonial Revival, Shingle Style, American Four-Square, Bungalow/Craftsman and other Late Pattern Book Victorian as classified or recognized by the Commission. Contributing structures shall not be demolished except where the Commission determines that such demolition or partial demolition shall not be detrimental to the historic designation and shall satisfy the criteria established herein. Contributing structures shall be carefully scrutinized by the Commission prior to the issuance of a demolition approval and the issuance of a demolition permit by the Construction Official to demolish or partially demolish a Contributing Structure within the Historic District.

(i) **Supporting Structures:** Includes those dwellings or structures constructed through World War II to date which sensitively replicate, emulate or complement the historic styles of the Victorian Era or the basic form or detail of the historic dwellings which preceded them as classified or recognized by the Commission. Supporting structures shall not be demolished except where the Commission determines that such demolition or partial demolition shall not be detrimental to the historic designation and shall satisfy the criteria established herein. Supporting structures shall be carefully scrutinized by the Commission prior to the issuance of a demolition approval and the issuance of a demolition permit by the Construction Official to demolish or partially demolish a Supporting Structure within the Historic District.

(j) **Other Structures:** Includes those dwellings or structures constructed after World War II which may not contribute to the overall historic styles or craftsmanship of its preceding historic dwellings or structures as classified or recognized by the Commission.

(k) **Zoning Board of Adjustment:** as used herein, "Zoning Board of Adjustment" or "Zoning Board" shall mean the "Neptune Township Zoning Board of Adjustment".

(l) **Tech Review Committee:** as used herein, shall mean a sub committee of the Historic Preservation Commission consisting of a minimum of two (2) Commission members who shall periodically meet to review current or pending demolition applications or those cases involving potential illegal demolitions and to review the demolition application process with current or future Applicant's in order to resolve any procedural questions or inquiries by any such Applicant and to make such other recommendations to the Commission as may be required under this Ordinance.

(m) **Distinguishing or Defining Characteristics:** as used herein shall refer to those architecturally or historically significant elements of a structure, including, but not limited to; the style of the structure, massing, exterior features including, materials, finials, brackets,

ornamental designs, turrets, gables, pents, roofline or such other features applicable to that structure or era of construction.

(n) **Exterior Wall:** as used herein shall mean a wall, bearing or non-bearing, that is used as an enclosing wall for a structure, other than a fire wall, and that has a slope of sixty (60) degrees (1.05 rad) or greater with the horizontal plane.

(o) **Demolition by Neglect:** shall result in the demolition or partial demolition of any structure created or occurring by decay, rot and/or deterioration of such structure caused or created by the neglect of the Owner of the said structure to properly maintain the structure causing the structure to become unsafe.

(p) **Qualified Professional:** shall mean an expert qualified in the field of engineering, structural engineering, architecture, architectural history, prehistoric archeology or historic archeology or similar related discipline.

(q) **Demolition Application or Demolition Application Process:** shall mean the process by which an Applicant applies to the Historic Preservation Commission for an approval to demolish or partially demolish a structure within the Historic District as provided herein. A demolition approval granted by the Historic Preservation Commission advises the Construction Official that the Applicant has satisfied the requirements hereunder and authorizes the Construction Official to issue a permit for a demolition or partial demolition subject to any further additional requirements of the Construction Official provided under Neptune Township Ordinance, applicable current state regulations or building codes.

(r) **Demolition Approval:** shall mean an approval issued by the Historic Preservation Commission for a demolition or partial demolition pursuant to the terms herein which authorizes the Construction Official to issue a permit for a demolition or partial demolition to the Applicant subject to any further additional requirements of the Construction Official provided under Neptune Township Ordinance, applicable current state building regulations or building codes

Section 3. Application Procedure: An Applicant seeking to demolish or partially demolish a structure within the Historic District shall first submit an application for a demolition approval to the Secretary, Historic Preservation Commission, on forms prepared or otherwise prescribed by the Commission. The Applicant shall provide their name, address and telephone number. In the case of a contract purchaser, developer, contractor or tenant, the Applicant shall further provide a written certification or affidavit from the Property Owner authorizing said contract purchaser, developer, contractor or tenant to proceed with the demolition application. The Secretary shall cause said certification or affidavit to be placed on file with the Commission. Upon receipt of the completed application, the Secretary, Historic Preservation Commission shall schedule the Applicant for a meeting with the Tech Review Committee to review the demolition application process.

Section 4. Tech Review Committee: All applications for demolition or partial demolition shall initially be reviewed by the Tech Review Committee of the Commission. The Tech Review Committee shall meet with each applicant and review each application for demolition or partial demolition. In the event the Tech Review Committee determines that the application is appropriate for demolition or partial demolition, than the Secretary shall cause the application to be listed for a demolition hearing before the full Historic Preservation Commission.

If the Tech Review Committee determines that the application does not require a demolition hearing, it may convert the application into an application for a Certificate of Appropriateness and schedule said application for consideration by the Commission, subject to final approval by the Commission.

Section 5. Procedure Before Hearing: An Applicant scheduled for a Demolition Hearing pursuant to an application submitted for demolition or partial demolition shall, a minimum of ten (10) days prior to the Demolition Hearing, submit the following to the Commission Secretary:

- (a) Any and all escrow and application fees as required by the Neptune Land Development Ordinance for the within application.
- (b) Executed Notice of Hearing mailed to all property owners within 200 feet of the subject property and all governmental or public entities as required under Neptune Township Ordinance, inclusive of The Township of Neptune Historical Society, Historical Society of Ocean Grove, State Office of Historic Preservation, State Historic Sites Committee, Office of Archaeology and Historic Preservation and the Department of the Interior and National Trust for Historic Preservation
- (c) Certification or Affidavit of Mailing of such Notice of Hearing to all property owners within 200 feet of the subject property and all governmental or public entities as required under Neptune Township Ordinance.
- (d) Affidavit of Publication for publication of a notice of hearing which shall have been published no sooner than twenty (20) days prior to the scheduled hearing date or later than ten (10) days prior to the scheduled hearing date in an official newspaper of the Township of Neptune. The within notice shall identify the nature of the application, a description of the application sought, the physical address of the subject property, the lot and block number, the date, time and location of the demolition hearing and the telephone number of the Commission Secretary who can provide additional information on the application.
- (e) Copies of any maps or surveys, photographs or reports of experts retained by the Applicant to be presented at the demolition hearing.
- (f) Such other documentation as may be requested by the Commission.

Section 6. Inspection of Property: Prior to the date fixed for the requisite demolition hearing required herein, the Applicant shall make the subject property available to members of the Historic Preservation Commission for their review and inspection. The dates and times of inspection shall be arranged between the Commission Secretary and the Applicant and shall be at such times deemed convenient for Commission members to attend. The Applicant or his representative shall be present during any such inspection.

Section 7. Commission Expert: The Commission may, from the escrow paid by the Applicant, retain an expert(s) for the purpose of independently reviewing any such reports, treatises or other documents submitted by the Applicant or any expert retained by the Applicant relative to the demolition application. Any expert(s) retained by the Commission shall have access to all reports relative to the application and shall further have access to the subject property at such times as may be arranged between the Commission Secretary and the Applicant. At the direction of the Commission, any such expert(s) retained may be required to submit a written report and/or provide such expert testimony as may be requested during the demolition hearing. The cost of such expert shall be the responsibility of the Applicant and shall be paid from the escrow collected from the Applicant pursuant to Neptune Township Ordinance 1000, Table II, Escrow Fees. At the request of the Commission Secretary, the Applicant shall

make such additional escrow payments or contributions necessary to defer any costs relative to this application including such application fees, expert fees, legal fees and Court Reporting or transcript preparation fees incurred by the Commission relative to the application.

Section 8. Demolition Hearing: On the date specified in the legal notices set forth herein, the Commission shall conduct a Demolition Hearing in order to determine whether to grant the application for Demolition Approval and the authorization for the issuance of a demolition permit by the Construction Official for the purpose of a demolition or partial demolition. The within hearing may be adjourned at the discretion of the Commission to permit the completion of all required testimony from the Applicant and the public and to insure a fair, complete and impartial presentation. The Applicant shall present his application to the Commission for a determination by the Commission relative to demolition approval. The Applicant may be represented by counsel. The Applicant may present testimony to the Commission including personal testimony, lay and expert testimony in support of the application. All witnesses may be questioned by the Commission, the Commission attorney and by the public. All testimony presented shall be given under oath. The demolition hearing shall be conducted in the following order:

- (a) Introduction of Application to the Commission and public.
- (b) Administration of Oath to Applicant and any witnesses.
- (c) Marking of any exhibits inclusive of the application and expert reports.
- (d) Opening statement of the interest parties (Applicant and Objectors).
- (e) Presentation of Applicant's case, which shall include all testimony of all lay and expert witnesses. At the conclusion of such testimony, Commission members and the public may ask any questions of the Applicant or any witness presented by the Applicant.
- (f) Presentation of Commission expert (if any). At the conclusion of such testimony, Commission members, Applicant and the public may ask any questions of the Commission expert.
- (g) Presentation by any Objector (if any), which shall include all testimony of all lay and expert witnesses. At the conclusion of such testimony, Commission members, Applicant and the public may ask questions of any witness presented by the Objector.
- (h) Public comment. The public shall be permitted to make statements for or against the application. All statements made by the public, either in support or against the within application shall be made under oath.
- (i) Closing statements by the Applicant and Objector on the subject application.
- (j) Conclusion of Hearing. Applicant shall be notified of the waiting period required under this ordinance, the required posting of notification and the publication at both the commencement and conclusion of the waiting period. The Commission will fix dates for the receipt of initial findings of facts to be prepared by the Commission Attorney and the date for formal adoptions of such findings of facts. The Chairperson shall announce all dates to the public.
- (k) The Chairperson may modify or amend this procedure set forth above in order to facilitate an orderly presentation of the matter before the Commission, including the receipt in evidence of all documents and exhibits presented and all testimony on the within application.

Section 9. Burden of Proof: The Applicant shall bear the burden of proof in all matters relative to the demolition or partial demolition of a structure within the Historic District. Such burden of proof shall include the presentation of testimony, lay or expert, introduction of exhibits,

reports, photographs scientific testing, maps, surveys or any other exhibits which will permit the Commission to make certain findings of fact as set forth in Section 10 herein. The failure of the Applicant to present such evidence necessary for the Commission to make the requisite findings of fact required herein shall be grounds for denial of the demolition approval and the requisite demolition permit.

Section 10. Findings of Fact: The Historic Preservation Commission shall not approve an application for demolition approval so as to authorize the Construction Official to issue a demolition permit for either a total demolition or partial demolition until after it has conducted a demolition hearing and has heard and considered testimony relative to the following specified criteria as applied to each structure within the Historic District, herein referred to as the “findings of facts”. The decision to grant or deny the demolition approval for a total demolition or partial demolition and to authorize the Construction official to issue a demolition permit shall be based upon the criteria set forth herein. The Commission shall either grant or deny a demolition approval for either a total demolition or partial demolition and shall make specific findings of fact based upon the following criteria:

- (a) The classification of the structure as a key structure, contributing structure, supporting structure or other structure as determined by the Historic Preservation Commission
- (b) The age or approximate age of the current structure together with the age or approximate age of any additions to the structure.
- (c) The specific architectural style of the structure, if such architectural style can be identified.
- (d) The existing ownership, historical ownership, current use and historical use of the structure.
- (e) The rationale or reasoning of the applicant for requesting demolition or partial demolition.
- (f) The architectural and/or historical importance of the structure and its status within the Historic District or national listings of such properties after notification by the Historic Preservation Commission to the appropriate agency(s) charged with this responsibility including, but not limited to, State Office of Historic Preservation, State Historic Sites Committee, Office of Archaeology and Historic Preservation, Department of the Interior and national Trust for Historic Preservation.
- (g) Any examples, displays or designs which adopt or promote a seashore style or vernacular including design features and craftsmanship located at the subject property that could not be reproduced easily inclusive of brackets, finials, window openings, glass windows, pents, decks, porches, rooflines or such other exterior features.
- (h) The structural soundness and integrity of the structure and the economic feasibility of restoring, repairing or rehabilitating the structure so as to comply with the requirements of the applicable building codes as determined by a qualified professional. The within rehabilitation or restoration may include a gut renovation of the subject property or an adaptive reuse or revision to the property.
- (i) The impact of the demolition or partial demolition on the Historic District and the surrounding neighborhoods within the Historic District compared with the existing condition of the property.
- (j) The effect such demolition or partial demolition will have upon the economic base of both the surrounding neighborhood and Historic District.
- (k) The effect the demolition or partial demolition would have upon the public's interest in architectural, historic and aesthetic matters generally including the maintenance of

an existing streetscape, massing or historic continuity that the structure may be associated with.

- (l) The importance of the structure to the Township of Neptune and the Historic District to the extent that such demolition or partial demolition would result in the loss of an architecturally and/or historically significant structure to the detriment of the public interest.
- (m) The extent to which the structure represents an historic era by design, location and/or massing or retains a design or craftsmanship indicative of the period that it could not be reproduced or reproduced only with great difficulty.
- (n) The location of the subject property in relation to prominent areas or streets featured within the Historic District whose removal would negatively impact on the seashore vernacular found in the Historic District.

Section 11. Waiting Period. Following the conclusion of the public hearing on the requested demolition or partial demolition application, there shall be established a waiting period to (a) allow for the preparation of the requisite findings of fact as required herein; (b) to allow a party or interested parties to establish a procedure for the acquisition of the property in order to preserve or rehabilitate the subject property. The waiting period shall be as follows:

- (a) In the case of an application for the total demolition of a structure characterized as a key structure, contributing structure or supporting structure, a minimum of ninety (90) days to a maximum of one-hundred and fifty (150) days from the conclusion of the public hearing.
- (b) In the case of an application for a total demolition of a structure characterized as an "other structure", a minimum of sixty (60) days to a maximum of one-hundred and twenty (120) days.
- (c) In the case of a partial demolition to any structure located within the Historic District, a minimum of sixty (60) days to a maximum of ninety (90) days.
- (d) In the case of a key structure, for good cause shown, the Commission may extend the waiting period an additional one-hundred and twenty (120) days to permit an interested party to establish a procedure to acquire and preserve the subject property.

Section 12. Notice. Commencing after the conclusion of the demolition hearing and for the length of waiting period specified in Section 11 herein, the Applicant shall cause notice of the proposed demolition or partial demolition to be publicly advertised as follows:

- (a) By posting a notice of the proposed demolition or partial demolition in a conspicuous location at the proposed structure facing the street fronting the subject property. In the case that the affected property shall front on two (2) public streets; the within notice shall be posted facing both public streets the demolition notice shall include:
 - (a) The address of the subject property.
 - (b) The lot and block of the subject property
 - (c) The applicable ordinance section
 - (d) The nature and scope of the application (demolition or partial demolition)
 - (e) The name, address and telephone number of the Historic Preservation Secretary who can supply information relative to the within application
 - (f) Name, address and telephone number of the Applicant or the representative of the Applicant with knowledge concerning the property

- (g) Notice advising a party or interested parties who may wish to establish a procedure for the acquisition of the property in order to preserve or rehabilitate the subject property.
- (h) The date and time fixed for the adoption of the findings of fact by the Historic Preservation Commission

(b) By publishing notice of the proposed demolition or partial demolition in an official newspaper of the Township of Neptune, which notice shall incorporate the elements of the within demolition notice set forth above, and which publication shall:

(1) Be published in an official newspaper within ten (10) days of the commencement of the waiting period set forth in Section 11 herein; and

(2) Be published in an official newspaper no less than ten (10) days or more than fifteen (15) days prior to the conclusion of the waiting period as set forth in Section 11 herein.

Applicant shall provide proof of the posting of the requisite demolition notice and proof of publication in an official newspaper of the Township of Neptune (Affidavit of Publication) prior to the formal adoption of the findings of fact required by Section 10 herein.

Section 13. Procedure where application for demolition or partial demolition approval is Granted: Upon the adoption of the findings of fact required under Section 10 herein, the Commission shall grant or deny the within application. In the event the application is Granted; the following procedure shall apply:

(a). Upon passage of the Resolution Adopting Certain Findings of Fact, the Secretary shall transmit a copy of the Resolution Adopting Certain Findings of Fact to the Applicant, Construction Official and to the Zoning Officer within ten (10) days following formal adoption.

(b) Applicant shall thereafter be permitted to apply to the Construction Official for the formal issuance of the demolition permit for demolition or partial demolition required in the Historic District. Applicant shall be responsible for the payment of any and all fees required by the Construction Official and/or the Township of Neptune.

(c) Applicant shall further comply with any and all requirements of the Construction Official and the Zoning Officer relative to the actual procedure used in the demolition or partial demolition of the structure.

(d) The demolition permit or the right to seek the issuance of demolition permit to demolish or partially demolish a structure within the Historic District shall be valid for a period of two (2) years from the date of the adoption of the findings of fact by the Commission. Upon request of the Applicant, and for good cause shown, the Commission may grant an extension to the Applicant to demolish or partially demolish a structure for an additional one (1) year period. If demolition or partial demolition is not completed within the time constraints set forth herein, said approval shall be deemed to have expired and the Applicant shall be required to submit a new application for demolition or partial demolition for consideration by the Commission

Section 14. Procedure where application for demolition or partial demolition is Denied: Upon the passage of the Resolution Adopting Certain Findings of Fact required under Section 10 herein, the Commission shall grant or deny the within application. In the event the application is Denied; the following procedure shall apply:

(a). Upon passage of the Resolution Adopting Certain Findings of Fact, the Secretary shall transmit the within findings of fact to the Applicant, Construction Official, Zoning Officer and to the Secretary, Zoning Board of Adjustment within ten (10) days following formal adoption.

(b) Applicant shall have forty-five (45) days from the receipt of a duly executed copy of the Resolution Adopting Certain Findings of Fact as required under Section 10 herein, by which to appeal the decision of the Historic Preservation Commission denying the application for demolition or partial demolition approval of a structure within the Historic District.

(c) Should an Applicant desire to appeal the denial of the application, the Applicant shall perfect said appeal by filing a Notice of Appeal with the Secretary, Zoning Board of Adjustment, on such forms required by the Zoning Board of Adjustment and in accordance with procedures determined by the Zoning Board of Adjustment.

(d) Upon the filing of an appeal to the Zoning Board of Adjustment, the Secretary, Historical Preservation Commission shall transmit to the Zoning Board of Adjustment the complete file of the within application including, but not limited too; the initial application, all exhibits and reports introduced into evidence and the Resolution Adopting Findings of Fact which denied the within application. Upon transmittal, jurisdiction of the within application shall be venued in the Zoning Board of Adjustment.

(e) Upon the filing of the within appeal, Applicant shall be required to post all required escrows and pay any filing fees as may be required to the Zoning Board of Adjustment, The Applicant shall further take steps to secure all necessary transcripts of the demolition hearing held before the Historic Preservation Commission or post all required escrows necessary to secure written transcripts of all proceedings before the Historic Preservation Commission.

Section 15. Decision of the Zoning Board of Adjustment: The decision of the Zoning Board of Adjustment with respect to any appeal filed from a decision of the Historic Preservation Commission relative to the demolition or partial demolition approval of any structure situate within an Historic District shall be deemed a final decision. Any further appeal challenging any decision, ruling or determination of the Zoning Board of Adjustment shall be cognizable in the Superior Court of New Jersey, Monmouth County.

Section 16. Procedure following appeal to Zoning Board of Adjustment: The decision of the Zoning Board of Adjustment shall be the sole appeal within the Township of Neptune from all matters cognizable before the Historic Preservation Commission. The Zoning Board of Adjustment shall issue a written decision which may affirm, reverse, dismiss or remand the within appeal back to the Historic Preservation Commission for such additional findings or conclusion as may be specified in accordance with the following:

(a) Affirmation: Should the Zoning Board of Adjustment affirm the decision of the Historic Preservation Commission, the Zoning Board of Adjustment shall adopt a Resolution affirming the decision of the Historic Preservation Commission which may adopt specific findings in support of affirmation. Certified copies of the within Resolution shall be transmitted to the Secretary, Historic Preservation Commission, Zoning Officer, Construction Official and to the Applicant. The Applicant shall have the right to appeal said determination to the Superior Court of New Jersey, Monmouth County, in accordance with Section 16. If no appeal is filed within 45 days of the filing of the within Resolution, the within affirmation shall be deemed final. Thereafter, the Applicant shall be barred from making a new application for demolition or partial demolition affecting the subject property for a period of two (2) years from the final decision of the Historic Preservation Commission or Zoning Board of Adjustment, whichever is later. Any transfer, assignment or change in ownership shall not abrogate or shorten the within period. The Secretary, Historic Preservation Commission shall record the within decision in the official records of the Commission.

(b) Reversal: Should the Zoning Board of Adjustment reverse the decision of the Historic Preservation Commission, the Zoning Board of Adjustment shall adopt a Resolution reversing the decision of the Historic Preservation Commission and shall adopt

specific findings in support of reversal. Certified copies of the within Resolution shall be transmitted to the Secretary, Historic Preservation Commission, Zoning Officer, Construction Official and to the Applicant. The Historic Preservation Commission shall have the right to appeal said determination to the Superior Court of New Jersey, Monmouth County, in accordance with Section 16. If no appeal is filed within 45 days of the filing of the within Resolution, the within affirmation shall be deemed final. The Secretary, Historic Preservation Commission shall record the within decision in the official records of the Commission.

(c) Dismissal: The Zoning Board of Adjustment may dismiss any appeal filed from a decision of the Historic Preservation Commission for any reason, including but not limited to; (a) failure of the Applicant to timely file the within appeal; (b) failure of the Applicant to post any required escrows or pay any required application fees; (c) failure of the Applicant to promptly secure transcripts of any proceedings conducted before the Historic Preservation Commission and deliver same to the Secretary, Zoning Board of Adjustment; (d) failure of the Applicant to comply with all scheduling notices or briefing schedules established by the Zoning Board of Adjustment; (e) failure of the Applicant to prosecute said appeal before the Zoning Board of Adjustment or (f) such other reasons as may be determined by the Zoning Board of Adjustment. The Secretary, Historic Preservation Commission shall record the within decision in the official records of the Commission.

(d) Remand: The Zoning Board of Adjustment may remand any appeal to the Historic Preservation Commission for such additional testimony, findings of facts, conclusions at law or such additional testimony as the Zoning Board of Adjustment shall direct. The Zoning Board of Adjustment shall adopt a Resolution remanding the within matter with specific instructions for any such supplemental evidence, findings or conclusions as may be required. The Zoning Board may also establish a reasonable time limit to transmit said supplemental findings. The Secretary, Historic Preservation Commission shall transmit all supplemental findings to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall proceed further based upon those additional findings consistent with this section.

Section 17. Illegal Demolition: Any demolition or partial demolition of a structure within a Historic District undertaken, commenced, started, completed or otherwise proceeding without a demolition approval issued by the Historic Preservation Commission and a demolition permit issued by the Construction Official shall be deemed an illegal demolition; except as may be provided in Section 17(Exceptions). The owner of said structure which has been demolished or partially demolished or which demolition activities have commenced shall be solely responsible to secure the requisite demolition approval and demolition permit as required hereunder. The owner of the said structure upon which demolition or partial demolition activities have commenced shall not evade responsibility hereunder based upon the failure to act or the actions or inactions of others including any qualified professional, contractor, tenant, contract purchaser or assignee relative to the demolition or partial demolition without having first secured the requisite demolition approval and demolition permit in accordance with the procedures set forth herein.

Exceptions: The sole exceptions to securing a demolition approval and demolition permit for the demolition or partial demolition shall be in the case of condemnation ordered by the Construction Official, Township of Neptune, based upon a determination that the structure, in its present condition, represents an imminent threat to the health and safety of any occupants or adjoining property owners or structures or to the public at large or based upon an Order entered by a Judge, Superior Court of New Jersey, Monmouth County which authorizes, approves and orders a condemnation of said structure.

(a) **Procedure Upon Discovery of an Illegal Demolition:** Upon such Notification by a Township Inspector, Police Official or based upon a upon a complaint brought by any citizen, the Secretary, Historic Preservation Commission shall immediately request a Commission Member(s) to inspect the subject property to determine whether the property is the subject of an illegal demolition. Upon confirmation by the Commission Member(s), the Secretary, Historic Preservation Commission shall request the Construction Official or designee to conduct an immediate inspection of the affected property. Should any inspection made by the Construction Official or designee confirm that an illegal demolition has been undertaken, commenced, started, completed or otherwise proceeding without a demolition permit the following procedure shall apply:

- (1) The Construction Official or designee shall notify the Secretary, Historic Preservation that an illegal demolition has occurred. The Construction Official or designee shall confirm the correct address, applicable lot and block and the name of the registered owner of the subject property.
- (2) The Construction Official or designee may take such appropriate action within his or her jurisdiction including the issuance of a “stop work order” and which “stop work order” shall be posted at the subject property in accordance with applicable local and state regulations and/or building codes The Construction Official or designee shall provide copies of the “stop work order” to the registered owner of record and to such professionals or contractors whom the Construction Official or designee may identify in accordance with applicable local and state regulations and/or building codes. The Construction Official or designee shall supply the Secretary, Historic Preservation Commission with copies of any written findings as well as copies of the “stop work order” issued with respect to the subject property.
- (3) The Secretary, Historic Preservation Commission shall immediately issue a written “Notice of Apparent Violation” to the registered owner of the subject property and forward said notice by regular and certified mail, postage pre-paid, to the address of the structure and to such other address on record with the Tax Assessor, Township of Neptune. The “Notice of Apparent Violation” shall specify the nature of the apparent violation, the action taken by the Construction Official and direct the Owner to file an application for a demolition permit in accordance with the procedures set forth herein within five (5) working days of the issuance of the Notice of Apparent Violation.
- (4) In the event the property owner fails to submit the required application, the Secretary, Historic Preservation Commission or designee shall cause a municipal court complaint to be signed and issued against the property owner of record. The matter shall be cognizable in the municipal court and prosecuted by the commission attorney or the municipal prosecutor.
- (5) In the event the property owner disputes the determination that the activity constitutes a demolition or partial demolition, the within matter shall be listed for review by the Tech Review Committee or the entire Historic Preservation Commission. No public notice shall be required for this review. The Applicant shall appear and present such documentation, exhibits and testimony in support of the position that a demolition permit is not required. Applicant shall have the burden to establish that a demolition permit is not required. In the event the Historic Preservation Commission determines that a demolition permit is required, Applicant shall have five (5) working days to submit such an application to the Secretary,

Historic Preservation Commission or designee shall cause a municipal court complaint to be signed and issued against the property owner. In the event the Commission determines that the within activity does not constitute a demolition or partial demolition, the Commission shall notify the Construction Official or designee of such determination. Thereafter, the Commission may request the Construction Official to maintain any "stop work order" issued until the Applicant secures the required Certificate of Appropriateness for any exterior work. Should the Commission determine that the activity does not require the issuance of a Certificate of Appropriateness, it shall request the Construction Official to consider rescinding the "stop work order" as soon as practical thereafter as the Construction Official may determine in accordance with local and state regulations and/or building codes.

- (6) Once a "stop work order" is issued pursuant to this Section 17, and any such applicable local or state regulations and/or building code governing such issuance, the "stop work order" shall remain in effect until such time as the Construction Official shall determine to rescind such "stop work order". The Construction Official shall consider any resolution or decision issued by the Historic Preservation Commission as set forth herein. Upon issuance of the "stop work order" all work shall cease on the subject property until the matter is resolved with the Historic Preservation Commission and satisfies the Construction Official in accordance with local and state regulations and/or building codes. Notwithstanding the foregoing, the Construction Official may authorize the Applicant to complete such necessary work to any structure in order to properly secure the structure or to address any conditions which the Construction Official deems a risk to the health or safety of the general public.
- (7) Failure of the Applicant to satisfactorily address the issue of an illegal demolition or partial demolition may result in the "stop work order" continuing in full force and effect until such time as the Construction Official shall so determine in accordance with local or state regulations and/or building codes. Nothing herein shall further limit the Construction Official or designee from issuing such other violations or sanctions to the Owner as the Construction Official may deem appropriate in accordance with such applicable local or state regulations or building codes.
- (8) Nothing herein shall further prevent or limit the ability of the Historic Preservation Commission from seeking the imposition of any such penalties as provided in Section 20 herein or from seeking such injunctive relief or restraints from the Superior Court of New Jersey, Monmouth County, to protect any structure from any illegal demolition or partial demolition.

(c) Failure to obtain Demolition Permit: An Applicant who commences a demolition or partial demolition and who thereafter fails to obtain the necessary permit in accordance with the procedure set forth herein, the Applicant shall be barred from making a new application for demolition or partial demolition affecting the subject property for a period of two (2) years from the final decision of the Historic Preservation Commission or Zoning Board of Adjustment, whichever is later. Any transfer, assignment or change in ownership shall not abrogate or shorten the within periods.

Section 18. Demolition By Neglect: All structures located in the Historic District shall be preserved by their owner(s) against decay, rot, deterioration and kept free of certain structural defects to prevent demolition or partial demolition caused solely by the neglect of said structure. Such owner(s) shall be required to repair and maintain such structure from the following defects, unless otherwise prohibited by the Construction Official in those cases where the structure may be deemed unsafe:

- (1) Deteriorated or inadequate foundations;
- (2) Defective or deteriorated flooring or floor supports of insufficient size to carry imposed loads with safety;
- (3) Members of walls or other vertical supports that split, lean, list, tilt or buckle due to defective material, workmanship or deterioration;
- (4) Members of walls or other vertical supports that are insufficient to carry imposed loads with safety;
- (5) Members of ceilings, roofs and their support system, or other horizontal members which sag, split or buckle due to defective material, workmanship or deterioration;
- (6) Members of ceiling and roof supports or other horizontal members that are insufficient to carry imposed loads with safety;
- (7) Fireplaces or chimneys which list, tilt, bulge or settle due to defective materials, workmanship or deterioration;
- (8) Deterioration or defects in paints, coating systems, sheathing or flashing resulting in destructive moisture or water penetration or rot;
- (9) Any fault, defect or condition in the structure which renders the same structurally unsafe or not properly watertight.

(a) Determination of Neglect: Upon notification to the Commission by a Commission Member, Construction Official, Code Enforcement Employee or any citizen, the Commission may request the Administrative Official or designee to investigate any claim that a structure is being demolished or partially demolished by neglect. Upon such notification, the Administrative Official or designee shall contact the Owner(s) and arrange for an immediate inspection of the structure. In the event such inspection shall reveal the presence of any of the conditions set forth herein, the Administrative Official shall report the nature and extent of said conditions to the Secretary, Historic Preservation Commission and to the Construction Official. The Secretary shall cause notice to be sent to the Owner(s) setting forth the within conditions found in the structure and affording the Owner(s) thirty (30) days from the date of said notice to correct the defects or present a plan to the Commission for remediation if the defects can not be rectified within the thirty (30) day period. Nothing herein shall restrict or otherwise prohibit the Construction Official from acting in accordance with applicable state regulations, building codes or municipal building codes.

Should the Owner(s) failed to correct the deficiencies within the thirty (30) day period specified herein or fail to present a plan to the Commission to correct said deficiencies or having submitted a plan, fail to carry out the remediation as proposed, the Commission may either (a) direct the issuance of a municipal court summons; (b) request the Administrative Official or Construction Official to take such appropriate action within his jurisdiction or (c) both. Nothing herein shall prevent the Commission from granting any reasonable extension requested by the Owner(s) by which to undertake or complete the necessary repairs. The issuance of a municipal court summons shall be deemed to continue and for each and every day that such violation thereof continues, the Owner(s) shall be subject to the maximum fine and/ or period of imprisonment or both as provided and/or be required to correct, abate and/restore said structure in the discretion of the Municipal Court Judge.

(b) Municipal Lien: In the event the Owner(s) shall refuse to undertake remediation, the Commission may request the Township of Neptune undertake such repairs as may be necessary to stabilize and protect the structure. The cost of repairs shall be paid by the Township who will thereafter charge all related costs and expenses for all such repairs and improvements to the record owner(s). Any such cost or expense so charged shall be assessed

and filed as a lien against the subject property including all costs associated with the preparation and filing of the lien documents. The Township, and its authorized agents, employees or contractors are hereby expressly authorized to enter the subject property at all reasonable hours for the purpose of completing those repairs necessary for the stabilization and repair of the structure. Neither the Township, its authorized agents, employees nor contractors shall be answerable for damage to the subject property due to the enforcement of this section.

Section 19. Time for Issuance of Demolition Permit: An Applicant shall have two (2) years from the adoption of the Findings of Fact to secure the necessary permit to demolish or partially demolish a structure from the Construction Official At the request of the Applicant, upon a showing of good cause, and prior to the expiration of the initial two (2) year period set forth herein, the Commission may extend this period for an additional one (1) year period. In the event the Applicant fails to secure the necessary demolition permit and commence the demolition or partial demolition, this approval shall expire and the Applicant shall be required to submit a new application for demolition or partial demolition.

Section 20. Penalties Upon Violation: In the event an owner shall fail to comply with the procedures set forth herein relative to the demolition or partial demolition as specified herein, in addition to any other penalties imposed by any other official of the Township of Neptune, the owner(s):

(a) Shall be subject to the issuance of a summons and complaint, returnable in the Municipal Court, charging a violation related to this chapter. Each separate day the violation exists shall be deemed to be a new and separate violation of this Chapter.

(b) **Penalties Designated:** Any owner or persons who violate or who permit, take part or assist in any violation of this Chapter, shall for each and every violation thereof, and for each and every day that such violation thereof continues to be subject to the maximum fine and/ or period of imprisonment or both as provided and/or be required to correct, abate and/restore said structure in the discretion of the Municipal Court Judge or complete and file the requisite application as required pursuant to this Chapter.

(b) **Injunctive Relief:** In the event that any demolition or partial demolition would permanently and/or adversely effect or change any structure or structures within the Historic District or an historic site or any other structure of historical/architectural significance without the issuance of a demolition permit by the Historic Preservation Commission, the Commission may authorize an application to the Superior Court of New Jersey, Monmouth County, for such injunctive relief or restraint as is required to prevent the unauthorized or illegal demolition of a structure within the Historic District.

Section 21. Effective Date: This ordinance shall take effect upon final passage and publication as required by law.

Section 22. Inconsistent Ordinances: All ordinances or parts thereof inconsistent with the provisions of this ordinance section are hereby repealed to the extent of such inconsistency.

Section 23. Severability: If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid by a Court of competent jurisdiction, such adjudication shall apply only to that section, paragraph, clause or provision and the remainder of this ordinance shall be deemed to be valid and enforceable.

APPROVED ON FIRST READING:

APPROVED, PASSED, AND ADOPTED:

Richard J. Cuttrell,
Municipal Clerk

James W. Manning, Jr.,
Mayor